CONTEMPORARY PERSPECTIVES ON THE RIGHTS OF PERSONS WITH DISABILITIES UNDER INTERNATIONAL HUMAN RIGHTS LAW

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Abstract

It is clear that people with disabilities have some rights that are particular to them, different from the rights that are guaranteed under the Constitution of Federal Republic of Nigeria, 1999. There are reasons for the promulgation of a separate law for people with disabilities. The paper adopted qualitative research methodology which was basically doctrinal. The paper examined primary source such as Constitution of Federal Republic of Nigeria, 1999, the Discrimination Against Persons with Disabilities (Prohibition) Act, 2018, the United Nation Convention on the Right of Person with Disabilities and many more. The Secondary sources relied on includes journal articles, and online sources, newspapers and many more. The study found that there are certain rights which are peculiar to persons with disabilities. However, all these rights are guaranteed for the people with disabilities because of their circumstances. There is a special way by which an educational training is also done for the people with disabilities which is not required in the case of the able person. The study found further that even though all these rights are stated and contained in our law, the law itself is very dormant, as there is little or no awareness of the law, majority of the people in the society except from few people with disabilities are still very ignorant of the law. The paper recommends that if there will be adequate compliance with the law, the government must take a first step of ensuring that the there is adequate awareness of the law.

Keywords: Disability rights, International human rights, Discrimination against Persons with Disabilities

Introduction

The plight of the people with disabilities is heartbreaking, as the society often distance itself from them through discrimination and stigmitisation. The society has gone to the extent of tagging them with term people with disabilities. However, it must be understood that the right of person with disabilities are guaranteed under the international human rights law, on the basis of equality of all human beings. Each individual is deemed to be of inestimable value and nobody is insignificant. People are to be valued not just because they are economically or otherwise useful but because of their inherent self -worth. Recognition of the value of human dignity serves as a powerful reminder that people with disabilities have a stake in and a claim on society that must be honoured quite apart from any considerations of social or economic utility. It must be noted that the international and regional human rights systems remain one of the greatest achievements in the internationalisation of

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human rights and today the systems are important venues for the protection and promotion of human rights and in particular people with disability.[1]

Before the 1970s, most legislation dealing with the challenges faced by such persons were more concerned with the provision of some form of social security or public assistance benefits. There was a change in the 1970s and 1980s centered on the rights of disabled people to the same protection under the law as enjoyed by the rest of the population.[2] In advocating for their rights, people with disability have strived to establish that they be considered on the basis of individual merit, not on some stereotyped assumption about disability. They also advocated that society must make certain changes to enable them to participate more meaningfully in secular activities.[3] They also advocated that society must make certain changes to enable them to participate more meaningfully in secular activities.[4]

However, in the mid-1990s, the World Health Organization (WHO) began a process of examining the International Classification of Impairments, Disabilities and Handicaps (ICIDH) and one Rachel Hurst represented Disabled People's International (DPI) in this review[5].

The theory of social and medical models of disability

Persons with disabilities are some of the world's largest minorities. History has shown that they have not always been treated fairly and equally. Historical examples of discrimination against people with different forms of physical and mental disabilities range from being ridiculed to being condemned to permanent exclusion in asylums; from being allowed to drown or die to being outrightly executed.[6] It has been noted that throughout antiquity people with disabilities have been subjected to a multitude of oppressive social attitudes, which have included "horror, fear, anxiety, hostility, distrust, pity, over-protection and patronizing behavior". The real issue as far as disability is concerned, therefore, has to do with these pejorative attitudes combined with particular social contexts, namely, the way people with disabilities are treated and an inhospitable physical environment (i.e. inaccessible buildings and unusable transport systems, etc.)[7].

Discussions on disability have in the last 30 years moved away from the medical model of disability to the social model of disability. On the former approach, the notion of disability is understood as a medical condition involving physical features of individuals. This is the sort of model expressed in the definition of disability in The Disability and Discrimination Act which takes a person with disability as someone who "has a physical or mental impairment that has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities.[8] By contrast, to the medical model of disability, the social model of disability gives primacy and importance to certain social contexts such as politics, empowerment, citizenship and choice in the expression of disability. Disability is construed in terms of society's failure to provide adequate and appropriate services for its citizens. This is the model we see expressed by the World Health Organization (WHO), which takes disability as an "umbrella term, covering impairments, activity limitations, and participation restrictions."[9]

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1 United Nations, Office of the United Nations High Commissioner for Human Rights and Inter-Parliamentary Union, From Exclusion to Equality: Realizing the Rights of Persons with Disabilities, Handbook for Parliamentarians, Professional Training Series No. 14 (United Nations, 2007),

2. R. F. Antonak, 'Development and Psychometric Analysis of the Scale of Attitudes Toward Disabled Persons', 13 (2) Journal of Applied Rehabilitation Counseling (1982): 22–9.

3 Ibrahim Imam & M.A. Abdulraheem Mustapha 'Right of People with Disability in Nigeria Attitude and Commitment' African Journal of International and Comparative Law (2016 Edinburgh University Press)

4 Ibid

5 J. O. Mmatli, 'Translating Disability-Related Research into Evidence-Based Advocacy: the Role of People with Disabilities', 31 Disability and Rehabilitation (2009): 14–22.

6 Pritchard, D. Education and the Handicapped 1760-1960. Routledge and Kegan Paul. (1963).

7 Barnes, C. Disabled people and discrimination in Britain: the case for anti-discrimination legislation. (1991).

8 United Kingdom. (1995). Disability and Discrimination Act 1995.

9 World Health Organization (2011 and 2018)

This model of disability understands the concept as not just a health problem, but sees it as a complex phenomenon, reflecting the interaction between features of a person's body and characteristics of the society or environment in which he or she lives. That is to say, disability does not simply refer to an individual's intrinsic features but comes about as "a result of an interaction between a person (with a health condition) and that person's contextual factors (both environmental and personal factors)" (WHO, 2011) and as "mainly as a socially created problem, and basically as a matter of the full integration of individuals into society."[10]

The social model of disability has evolved substantively over the last three decades. In exploring the notion of the social model of disability, Hahn (1986) takes disability as "the failure of a structured social environment to adjust to the needs and aspirations of citizens with disabilities rather than from the inability of the disabled individual to adapt to the demands of society"[11]. It has further been opined that disability should be understood within the context of oppression. He notes that the majority of people with disability have been so psychologically oppressed by society that their oppression has become internalized, leading to them developing, what he calls a Marxian notion of "false consciousness", according to which they now come to believe that they are less capable than others.[12] It was further argued that analogous of persons with disabilities to other groups in society (i.e. women and ethnic minorities), people with disabilities encounter oppression, whereby such oppression in turn gives rise to institutional discrimination.[13]

The disability movement has effectively utilized the social model of disability both as a (i) political platform and (ii) tool to secure the "rights" of people with disabilities. Besides exploiting this model of disability to advance and secure the "rights" of people with disabilities with a view to ensuring that they enjoy the status of full and equal citizenship in society, the disability movement has also taken advantage of the emergence of several legal provisions in international conventions (or treaties and laws) that have variously recognized the rights of persons with disabilities.[14] In Nigeria the persons with disabilities are still widely discriminated against in the areas of education, employment, sports, religion and social life.[15]

International (United Nations) legal instruments and documents

Some of the legal instruments and documents that offer protection on the persons with disabilities are Convention on the Rights of Persons with Disabilities 2006a (CRPD), the International Convention on Civil and Political Rights 1966a (ICCPR), the International Covenant on Economic, Social and Cultural Rights 1966b (ICESCR), and the Convention on the Rights of the Child 1989 (CRC).

However, CRPD is the major convention for the person with disabilities, the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) heralds a new leaf in the protection of the rights of the disabled globally. While the Convention does not grant people with disability any new human rights, is nevertheless a document to ensure that people with disability enjoy the same human rights as everyone else.[16] A close excursion into the Convention adopted in 2006 gives clear

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[10] Ibid (n10)

11 Hahn, H. Public support for rehabilitation in programs: The analysis of US disability policy. Disability, Handicap & Society, (1986) 1(2):121–138

12 Charlton, J. Nothing about us Without us: Disability, Oppression and Empowerment. Berkeley, CA: (1998). University of California Press.

13 Abberley, P. The concept of oppression and the development of a social model of disability. Disability, Handicap & Society, (1987). 2(1): 5–19.

[14] Edwin Etieyibo "Right of Person with Disabilities in Nigeria" *Afrika Focus* Volume 33, Pg.59-81

[15] Baba-Ochankpa, R. Life is no picnic for disabled Nigerians. (2010). Next.com Nigeria,

16 The nine core international human rights instruments are: International Convention on the Elimination of All Forms of Racial Discrimination, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, Convention on the Elimination of All Forms of Discrimination against Women, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Rights of the Child, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and Convention on the Rights of Persons with Disabilities, International Convention for the Protection of All Persons from Enforced Disappearance (not yet into force). See, United Nations Human Rights, Monitoring the Convention on the Rights

evidence that the covenant aims to prohibit all forms of discrimination, torture and ill-treatment by providing further authoritative guidance.[17] For instance, Article 3 of the Convention proclaims the principle of respect for the individual autonomy of persons with disability and the freedom to make their own choices. Further, Article 12 recognizes their equal right to enjoy legal capacity in all areas of life, such as deciding where to live and whether to accept medical treatment. In addition, Article 25 recognizes that medical care of persons with disabilities must be based on their free and informed consent. Incidentally, this covenant complements other human rights instruments. These include the absolute prohibition of torture as contained in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 7 of the International Covenant on Civil and Political Rights, while Article 37 of the Convention on the Rights of the Child was reaffirmed in the Convention on the Rights of Persons with Disabilities.

Accordingly, Article 15 of that Convention, posits that PWD have the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment or, in particular, to scientific or medical experimentation.

Article 15, paragraph 2, contains the obligation for states parties to take all effective legislative, administrative, judicial or other measures to protect persons with disabilities from torture or ill-treatment on an equal basis with others. Article 16 prohibits violence, abuse and exploitation of persons with disability and Article 17 recognizes the right of every person with disability to respect for his or her physical and mental integrity. Considering the significance of the convention, the attitude of the Nigerian government towards domestication of the convention is directly hindering adequate protection for people with disability. This has in turn threatened the rights of PWD against general neglect, physical and mental assault as well as inhuman and degrading treatment for some time. The neglect extends to the inadequacy of special facilities at the disposal of people with disability, while discrimination in the areas of employment, housing, education, transportation, communication, recreation, health services, institutionalization and voting cannot be overemphasized. Discrimination against people with disability is worsened due to a lack of legal recourse to redress such discrimination.[18]

In a nutshell, there are eight guiding principles that underlie the Convention (CRPD). These are: (a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons; (b) non-discrimination; (c) full and effective participation and inclusion in society; (d) respect for difference, and acceptance of persons with disabilities as part of human diversity and humanity; (e) equality of opportunity; (f) accessibility; (g) equality between men and women; (h) respect for the evolving capacities of children with disabilities, and respect for the right of children with disabilities to preserve their identities.

Nigeria's Legal Instrument and Instruments

Two of the prominent legal instruments in Nigeria that will be considered are the Constitution of the Federal Republic of Nigeria 1999a (henceforth, Nigerian Constitution), and the Nigerian Discrimination Against Persons with Disabilities (Prohibition) Act (2009, 2011 and 2018). Hereinafter, this Act will simply be referred to as the Disabilities Act. The Nigerian Constitution (1999a) also recognizes some similar rights as those in the ICCPR and ICESCR. It aims to "maintain and enhance the human dignity of all persons" (chapter II, section 1(2)). That is, it recognizes the human and equal rights of every citizen, and the "sanctity of the human person" (Nigerian Constitution: chapter IV sections 33-35, 37 & 41-42). Explicit provisions in respect of the rights of citizens can be found in chapter IV. Section 33(1) states that "every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria". Section 34(1) stipulates that

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of Persons with Disabilities, Guidance for Human Rights Monitors, Professional Training Series No.17 (United Nations, 2010

[17] B. Parekh, 'Rethinking Humanitarian Intervention', 18 (1) *International Political Science Review* (1997): 56

18 K. Parahoo, 'Barriers to and Facilitators of Research Utilization among Nurses in Northern Ireland', 31 *Journal of Advanced Nursing* (2000): 89–98.

"every individual is entitled to respect for the dignity of his person" and section 35(1) states that with the exception of certain circumstances in accordance with procedure permitted by law "every person shall be entitled to his personal liberty." If one applies the above provisions (in the Nigerian Constitution) broadly, then they can be said to similarly apply to persons with disabilities. However, the absence of a clear, specific, and robust reference to the rights of persons with disabilities in the Nigerian Constitution necessitated the upper legislative arm of the Nigerian Government (The Senate) to enact the Disabilities Act, of which a few things need to be said as a preamble. The passage into law of the Disabilities Act has been protracted and it has its different versions. The Disabilities Act was first passed into law on 10 March 2009 by the Nigerian Senate. But it did not get the assent of the then President of Nigeria, Umaru Yar'Adua. In 2011 and 2014, the Act was again passed by the Senate and in both occasions, it was not assented to by President Goodluck Ebele Jonathan. Only recently (13 July 2016), it was passed by the Senate but was later signed into law by President Muhammadu Buhari. There are not many variations amongst the versions of the 2009, 2011, 2014 and 2018 Act. The only noticeable difference is that the 2011, 2014 and 2018 versions establish a National Commission to oversee and monitor the implementation of provisions in the Act as well as formulate and implement policies and guidelines as appropriate with regard to the education and social development of persons with disability.

In general, the Disabilities Act is meant to provide the framework for the full integration of people with disabilities into Nigerian society and to ensure that their rights (social and economic rights including the rights to education and healthcare) as contained in the Nigerian Constitution are attained and realized. The Disabilities Act applies to persons with disabilities who are citizens or legal immigrants of Nigeria and seeks to protect and enhance the rights of persons with disabilities in all areas of social, economic, cultural and political life. It forbids actions by any person or institution that discriminate against persons with disabilities on account of their disability (section 1). Some of the provisions in the Act in the areas of life, liberty and security of person, education, work and employment, accommodation, safety and accessibility are similar to those in the CRPD. The rights that will be considered going forward are in education, work and employment, accommodation, safety and accessibility. In terms of education, section 56 (1 and 2) states that a person with disability shall have a right to education without discrimination or segregation in any form, and is entitled to free education at all levels in all public educational institutions. In addition, section 57(1) requires that all schools shall be inclusive of and accessible to persons with disabilities and "shall have (a) at least one trained staff member to cater for the educational development of persons with disabilities; (b) a program for continued training of personnel catering for persons with disabilities; (c) special facilities for the effective education of persons with disabilities." In terms of work and employment, section 67 states that "persons with disabilities shall have the right to work, on an equal basis with others" and "the right to opportunity to gain a living by work freely chosen or accepted in a labour market." Section 68(1) prohibits employers from dismissing any person with disability mainly on the ground of disability. There are other provisions contained in this section. Some of these include requiring employers or their agents to desist from discriminating against persons with disabilities in "(a) the job application procedure; (b) the terms and conditions of employment; (c) opportunity for promotion, advancement, transfer or training or to any other benefit associated with employment; (d) on-the-job training; (e) accommodation; (f) employee compensation". And finally, in the areas of accommodation, safety and accessibility, section 3 states that it is unlawful for a person to discriminate against persons with disabilities by refusing them access to any public premises, facilities and services. Section 4 requires that public buildings are "constructed with the necessary accessibility aids such as lifts (where necessary), ramps and any other facility." Section 5 stipulates that "a road side-walk, pedestrian crossing and other facility made for public use shall be made accessible" for persons with disabilities. Furthermore, section 9 requires that "[in] parking lots, suitable spaces shall be properly marked and reserved" for persons with disabilities, whereas section 12 requires that persons with disabilities be given due and fair consideration in circumstances "where accommodation is being provided by schools for their students, employers for their employees, service providers for their customers, organizations for their members, government for the persons."

With respect to children with disabilities, the Disabilities Act prohibits embarking on any activity that curtails the rights of children with disabilities whether in education or in other areas. In addition to guaranteeing their education, the Act in article 10(1) proscribes using children with disabilities to beg for alms. It states: "A person shall not employ, or use another person with disability in soliciting for alms". The discussion of both the international and local legal instruments and documents of rights in general, and rights of person with disabilities in particular, gives us the context in which to be able to discuss a number of exclusionary and discriminatory practices and highlight how these constitute violations of the rights of person with disabilities.

Discussion on the supposed rights of persons with disabilities visa vis Nigeria situation

It is presumed that the persons with disabilities are entitle to enjoy their fundamental right as stated the chapter four of the constitution which is derived from the International Covenant on Civil and Political Right, it is also of great importance for these people to also enjoy the right guaranteed under the chapter two of the 1999 Constitution as amended which is also derived from the International Covenant on Social Economic and Cultural Right, however these persons with disabilities are not really enjoy these right due to their circumstances. Under this heading some of the rights that are supposed to enjoy by these people shall be discussed.

Rights of Person with Disabilities to Equity in Education: After more than a century of state-sponsored education in Nigeria, PWD, children and young people are still not legally entitled to the same type of schooling as their non-disabled counterparts. The reasons behind this include poverty, neglect by family or community, lack of proper enlightenment, etc. The overwhelming majority of Nigerian schools, colleges and universities remain unprepared to accommodate willing PWD in a mainstream setting. As a result, students with disability are forced to accept segregated 'special' facilities which do not have the tools and resources to provide them with the necessary skills to either get a job or live independently as adults. The segregation of disabled people is not due to overcrowding in ordinary schools nor is it because of lack of resources but is due to an unwillingness and capacity to address the problems. There are attempts as earlier noted concerning the provision of services to individuals with disability as can be inferred from the Nigerian National Policy on Education[19] which provides that 'every Nigerian child shall have a right to equal educational opportunities irrespective of any real or imagined disability, each according to his or her ability.[20]

This provision is further complemented thus: 'equal access to educational opportunities for all citizens of the country at primary, secondary and tertiary levels both inside and outside the formal school system'. [21]However, due to lack of mandatory legislation, the manifestation of such services has not been forthcoming. It has been rightly observed that there has been severe criticism of Nigerian education, among which is its failure to take account of learners living with disability. The need to consider individual differences, especially those of disabled persons, is not unconnected with the fact that children do not all develop the same way.[22]

In Nigeria a major problem in the disability issue is the lack of access to equal education opportunities for persons with disabilities. Though the right to equal education forms part of the directive principles and state policy it is not within the fundamental rights provision. Thus, the non-justiciability of equal educational opportunity makes it difficult to be unenforced against government by people with disability. This is contrary to the fundamental right to education for all found in the Universal Declaration of Human Rights and protected through various international conventions. This is a very serious phenomenon. In view of this there is a difference in the educational opportunities

19 Recently a special school for the almajiris (beggars) has been established in the northern part of the country; there have been other efforts before, like the Nomadic Education and Adult Literacy programme.

[20] Section 1(4)(c), National Policy on Education 2004 (Nigeria).

[21] Ibid (n 20)

22 M. M. Akanbi, Advocating Mandatory Laws for the Protection of Rights of Persons with Disabilities, paper presented at the inauguration seminar of the Nigerian Universities Deaf Students Association, Unilorin Chapter, held at the University of Ilorin (2007), p. 3

provided for disabled persons and non-disabled persons in Nigeria. It will simply not be possible to realize the goal of Education for All if the Nigerian government does not achieve a complete change in circumstances.[23] The current challenges faced by persons with disability in realizing their right to education remain profound, even with the increasingly clear set of areas of action for the Nigerian government which has not been adequately explored. There is evidence from the lack of policy responses that can help reduce the common barriers faced by disabled persons in gaining a quality education, from the family, local communities and national government.

The 2006 UN Convention on the Rights of Persons with Disabilities (CRPD) was a milestone in this regard. The CRPD established inclusive education as the key mechanism to deliver the right to education for disabled persons. Inclusive education systems in this spectrum can be defined as all persons learning together in mainstream classrooms in their locality or community, irrespective of the different range of ability and disability, with teaching methods, materials and school environments that address the needs of all girls and boys. Inclusive education systems are grounded in a rights-based analysis, which can empower learners, celebrate diversity, combat discrimination and promote more inclusive societies. This can be a powerful tool in addressing inequalities. It can also tackle discrimination by challenging widely held attitudes and behaviours helping us to celebrate and embrace the diversity in our societies.

Incidentally, there are some differences in disability; for example, there are people with physical disability, as well as problems with intelligence, emotional maturity and social development. These differences account for the variations in their total development which special education is meant to take care of.[24] Osakwe has observed that the school systems now face increasing pressure to raise standards, develop social and personal skills, broaden curricula, pay greater attention to equal educational opportunities and prepare young people for a rapidly changing world.[25] Interestingly, the modern trend all over the world is shifting towards addressing the educational plight of students with one form of disability or the other so as to better their lives. The rationale behind this is contingent upon the fact that people with disability too have invaluable roles to play in national development. In order for them to be able to do this effectively and meaningfully, their educational needs must be given proper attention.[26]

The Federal Government of Nigeria in its quest to address inequality in education for people with disability established the National Council for Special Education in 1976, with the aim of looking into the issues of the disabled and providing advice to the government from time to time.[27] A special Unit was also created at the Federal Ministry of Education while a Special Education Section was also created in all the State Ministries of Education in response to a directive from the Federal Government. Furthermore, an institution and centre for education for the disabled were established.[28]

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23 Instructively, the Dakar Framework for Action adopted a World Declaration on Education for All (EFA) in 2000, establishing the goal of providing every girl and boy with primary school education by 2015. It also clearly identified Inclusive Education (IE) as a key strategy for the development of EFA. Notwithstanding this the Salamanca Statement and Framework for Action was endorsed by 92 governments (including Nigeria) and 25 international organizations at the World Conference on Special Needs Education, June 1994. See Bengt Lindqvist, the United Nations Special Rapporteur on Human Rights and Disability.

24 M. A. Oladejo and S. A. Oladejo, 'Educating Students with Disabilities in Nigeria: Some Challenges and Policy Implications', 3 (1) *European Journal of Humanities* (2011): 127–39

25 R. N. Osakwe, 'Education for People with Special Needs in Nigeria: Challenges and Way Forward', in M. I. Atinmo, J. B. Babalola, O. A. Moronkola and A. I. Atanda (eds) Education for Sustainable Development (Faculty of Education, University of Ibadan, 2010), pp. 33–43.

26 Ibid (n 25)

27 M. A. Oladejo, 'Educating Nigerian Disabled Students: Problems and Prospects', Journal of School of Education (Federal College of Education (Special), Oyo, 2001), pp. 15–24.

28 The institutions include Cheshire Homes, the Ibadan School for the Deaf and the Wesley School for the Deaf as well as the Pacelli School for the Blind, among others established by the NGO for the education of people with disabilities. The Federal Government of Nigeria also recognizes the importance and relevance of the disabled when in the Third National Development Plan, it was decreed that 'Educational services for the disabled shall be the joint efforts of all tiers of government.' To this end, training centres for the disabled as a matter of priority were established, i.e. the Federal

This effort is yet to record any positive achievement in alleviating the plight of disabled people in Nigeria because of inadequate and inappropriate institutional arrangements, limited conceptual understanding and a general lack of capacity.

There is evidence that academically, the learning experience for disabled children in separate school environments compares badly with that of non- disabled children in ordinary classes. Much of the further education provided for disabled students concentrates on 'social training' and 'general life skills.' However, government effort in this perspective has also faced some setbacks, hindering people with disability against personal, vocational and social adjustment. These setbacks extend to the inadequacy of educational funding and the lack of special educational materials, facilities and equipment which could enable people with disabilities access educational opportunities without discrimination.[29] At the same time there is the high cost of educational materials and equipment such as Braille machines and papers, typewriting machines and typing sheets, carbon papers, thermoforming papers, tape recorders and cassettes, and ear-mould hearing devices for use by these students, which, of course, many of them cannot afford to buy.[30] The architectural designs of most Nigerian institutions of learning do not take into consideration the requirements of people with disability. These setbacks are further reinforced by the challenge of poor and ineffective implementation of the policies formulated towards the betterment of the education of students with disability.

It is posited that when a disabled person gets the opportunity to receive an equal and quality education it will enable them to secure other rights throughout their lifetime, fostering better access to jobs, health and other services. For education to play this role as 'an enabling right', it must be of high quality, available equitably, built to tackle discrimination and allow each child to flourish according to their own talents and interests.

Rights of person with disabilities to equity in employment opportunity

Disability is both a cause and a consequence of poverty. There is a strong relationship between disability and poverty and a cyclical tendency in which poverty makes people more vulnerable to disability and disability reinforces and deepens poverty. Access to employment for people with disability is inadequate, with the attendant economic and social implications if the status quo is maintained. Instructively, the vicious cycle of disability and poverty has been recognized, which led the United Nations to promulgate rules for equal opportunities for people with disability, with rehabilitation as one of the tenets for achieving an optimal level of independence[31]. However, despite many disability initiatives, accessibility to employment opportunity is far from being achieved for people with disability in Nigeria. The poor perception of disability and people living with it has fueled the lackluster attitude of governments in terms of policy direction and action on the provision of equal employment for PWD. This is unfortunate because the extent to which a society provides the means of sustenance is probably not a good measure of how much interest it has in and importance it attaches to the well-being of its PWD. Employment is crucial for every individual's economic and social well-being yet Nigerian attitudes and practices still demonstrate elements of discrimination against PWD

Government established a College of Education called Federal Government Advanced Teacher Training (Special) Education, Oyo in 1977 (now the Federal College of Education (Special)). See, generally, Oladejo and Oladejo (n 27)

29 See the Nigerian National Policy on Education 2004, particularly section 8 thereof, which provides that the employment policy of the Federal Government should at least provide for 2 per cent of the available positions to be reserved for people with disabilities, that the special students' bursary/scholarship policy be formulated to enhance easy access for students with disabilities to financial support, and that the architectural design of lecture rooms where the education of students with disabilities occurs be put in place so as to ease the process of teaching/learning for special learners. See P. O. Mba, Fundamentals of Special Education and Vocational Rehabilitation (Codat Publication, 1995), p. 56

30 A. Garuba, 'Inclusive Education in the 21st Century: Challenges and Opportunities for Nigeria', 14 (2) *Asia Pacific Disability Rehabilitation Journal* (2003): 74

31 R. Teasell et al., Evidence-Based Review of Stroke Rehabilitation, 11th edn (2009), available at http://www.ebrsr.com/index.ph and United Nations, UN Standard Rules on the Equalization of Opportunities for People with Disabilities (1993)

in the realm of employment which are well entrenched in the labour market. Some of these elements are conspicuous in: the policies of employers against disabled workers; employment agencies, both public and private, when they direct disabled workers into low-status occupations; the provision of employment quotas for the disabled in society; the accessibility and compatibility of workplace facilities for the disabled.

In most of the management positions in organizations specializing in the employment of disabled people in Nigeria such as schools for the handicapped and even ministries responsible for the disabled are held by non-disabled people. This level of inequality accelerates the discriminatory spiral into which the majority of disabled people find themselves. This is in contradistinction with South Africa which has the most comprehensive disability legislation and policy that address integration and employment opportunity for the PWD.[32]

Rights of PWD to equity in transportation to the workplace: In a similar vein, the attitude and commitment of Nigeria to transportation still demonstrates clear discrimination against people with disability. Essential transportation and mobility play key roles in the struggle to meet employment requirements and equal opportunities in the workplace and environment discriminate against people with disability in Nigeria. It must be noted that affordable and reliable transportation allows people – and especially those with disability – access to important opportunities in education, employment, healthcare, housing and community life. Because of Nigerian's lackadaisical attitude to the rights of people with disability in this realm, transportation infrastructures have remained disproportionately inaccessible to people with disability who often lack viable transportation options. Importantly, people with disability particularly need accessible, affordable transportation options that bring employment, healthcare, education, housing and community life within reach. However, transportation choices for people with disability are still limited and account for the persistent gaps in compliance that continue to create significant barriers for people with disability.

In Nigeria there is no evidence of a commitment from the government through policy formulation in this area to provide adaptable and accessible transportation as an essential means of mobility to the workplace. When people with disabilities cannot access a station or bus stop, they may be forced to go out of their way to find one that is accessible, which in some cases may make travel prohibitive. Adequate and adaptable transport services are crucial for those individuals with disability who rely on it to get around. Therefore, the failure of the Nigerian government to show commitment in providing accessible transport services not only causes frustration but can also cause missed health appointments and employment problems for those with disability. It is argued that there is need for a programme of and support for new public transportation services and alternatives to assist individuals with disability with their transportation needs to the workplace. There ought to be mobility management programmes utilizing a comprehensive and holistic approach to assist people with disability to use all types of transportation to meet their transportation needs.

Political rights of persons with disabilities: There is no provision under the Nigerian Constitution which emphatically accords PWD any special rights to participation in government in the form of equal representation, nor is there any in terms of exercising the rights of franchise.[33] Although it may be argued that membership of political party of one's choice and participation in elections are guaranteed to PWD by virtue of the Nigerian Constitution the reality of this argument is that no such opportunity exists for PWD in term of representation, a special voting environment or contesting for elective position.

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[32] See, generally, the Employment Equity Act 1998 (South Africa).

33 There is no record of a single individual with disability currently in the Nigerian government: from the Presidency to the Members of the National Assembly, from Governors, Deputies and Ministers (even the minister of the ministry responsible for PWD), to Commissioners, from the Chairmen of the Local Governments in Nigeria to Councillors and even special advisers – there is not a single disabled person. This can be addressed only where the constitution provides for the employment of a certain percentage of the PWD in all government institutions/ministries and election into political offices

Unlike Nigeria, some countries have gone a step further in the protecting the political rights of PWD by inserting specific clauses that recognize PWD representation in government.[34] A good point of reference is the Constitution of Malawi that provides for the representation of various interest groups including disabled persons in the Senate[35] while the Constitution of Uganda requires that Parliament shall consist of a certain number of representatives of persons with disability.[36] It provides: 'such numbers of representatives of the army, youth, workers, persons with disability and other groups as Parliament may determine'. Similarly, the Kenyan Constitution provides that Kenyan citizens shall be protected from discrimination on the grounds of race, colour, disabilities, etc. and no law shall be made in any provision that is discriminatory either of itself or in its effect.[37]

So also, no person shall be treated in a discriminatory manner by a person acting by virtue of any written law or in the performance of the functions of a public office or a public authority.[38] In this section, the expression 'discriminatory' means affording different treatment to different persons, attributable wholly or mainly to their respective descriptions by race, tribe, place of origin or residence or other local connotation, political opinions, colour, creed or sex. Thus persons of one of such description are subjected to disability or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.[39]

The results which can be inferred from the constitutions of these jurisdictions reveal a clear positive attempt at creating equal opportunities for citizens' self-actualisation, including able and disabled people. Though in some countries such rights exist as mere directive principles of state policy which are not ordinarily justiciable[40] they remain the instrument with which to measure the performance of any government activity in the area of protection for disabled persons. Incidentally, while constitutional anti-discriminatory provision may appear to be a way forward because of the supremacy of the constitution, it is claimed in most countries with a written constitution that these constitutions give no justiciable rights to citizens in areas relating to the state's social policy.[41]

The implication is that, disabled persons may not be able to invoke anti-discrimination provisions to seek redress against any violation in court. From this perspective the application of constitutional rights appear to be limited to public rights only, therefore while constitutional provisions protect disabled persons against discrimination by state entities, it does not offer protection against discrimination, for instance by private employers or private providers of goods and services. Even with the justiciable provisions in the constitution relating to discrimination such as the right to freedom against discrimination under Chapter IV of the Nigerian Constitution[42] it does not confer any special rights to people with disability as one of the prohibited grounds. Be that as it may, by general inference from the wording of the section, a person with disability should not suffer any form of discrimination as a result of his or her disability. However, he or she cannot invoke the section to assert their right against any violation based on disability.

Rights of person with disabilities to health and medical care: Having access to basic healthcare services is a precondition to equal opportunities, as outlined in the United Nations (UN) Standard Rules for Equalisation Opportunities[43] and an essential component of being a valued and productive

34 See, generally, M. Oliver, Disability Studies: Past, Present, and Future (Disability Press, 1997); UNICEF and the Victor Piñeda Foundation (1997) It's About Ability: An Explanation of the Convention on the Rights of Persons with Disabilities (UNICEF, 2008), available at https://www.unicef.org , p. 67.

35 s 68(2)(i), Constitution (Malawi).

36 In the Kwara and Delta State judiciary, out of all the judges serving in the state, there is only one judge(magistrate) with disability. This shows the level of recognition and job opportunity given to the PWD

37 Article 82(2)(9), Constitution 2008 (Kenya).

38 Ibid

39 B. Michael, 'Stigma, Discrimination and Marginalization: Gateways to Oppression of Persons with Disability', 3 (1) Journal of Education and Social Research (2013): 189.

40 See Chapter II, Constitution 1999 (Nigeria).

41 s 17 of Chapter II, Constitution 1999 (Nigeria), on Directive Principle of State Policy.

42 Ibid, s 42

43 United Nations Standard Rules on the Equalization of Opportunities for PWD

member of society. But in Nigeria, people with disability often experience inequality in securing sufficient healthcare services as a result of barriers to accessing health facilities and the discriminatory attitude of health practitioners.[44]

This is because there is no special educational training or interpreter package for healthcare staff to handle the medical care of people with disability, particularly with hearing impairments or sight disability. Lack of an equitable health service for the disabled in Nigeria is spread across the spectrum from health promotion and disease prevention services to lack of health insurance or coverage for necessary services such as specialty care, long- term care, care coordination, prescriptions, durable medical equipment and assistive technology.[45] The challenges extend to poverty, poor communication, discriminatory attitudes, lack of understanding and education in connection to this vulnerable group. It is contended that, without adequate education on how to handle the specific medical care of PWD, the attitudes of the Nigerian healthcare providers will remain similar to those held by the general public to people with disability. It is thus posited that medical practitioners in all settings should be educated in providing medical care for patients with any form of disability. Thus, there is a need for department/ministry of health commitment to providing a fair and equitable health service that is responsive to disabled patients' needs. These and related challenges will definitely affect the quality of life, productivity and well-being of the disabled person in Nigeria.

Some countries have tried to develop strategies to address disability in the process of overall development strategies.[46] For instance, South Africa's key policy areas included, notably, prevention, healthcare, rehabilitation and research. Policy objectives, strategies and mechanisms for each area were developed. The strategy identified the need for legislative scrutiny which may lead to new legislation or the amendment of existing law.[47]

Notwithstanding the doubt over the authenticity of the law on Nigerians with Disability, it is pertinent to note it has a section which directs all public health institutions to provide free medical and health services including general medical needs to the vulnerable. This type of provision, if implemented, would achieve the promotion and protection of the affected class of people in this paradigm[48]Similarly, where disability is suspected in the course of medical treatment, health institutions are duty-bound to provide free health service and submit a comprehensive report to the National Commission for People with Disability[49] which, upon acknowledgment, shall be entitled to compensation for all health services rendered to the disabled. Likewise, upon the recommendation of a treating physician, a disabled person shall be entitled to a permanent Disability Certificate which shall make him or her qualified as a disabled person entitled to all the rights and privileges for free health service, while the purchase, importation, transfer or gift of health materials to a disabled person shall not be subject to any tax, duties, surcharges or levies whatsoever.[50] Given the challenges PWD are still experiencing in the health sector, it is especially important to understand the complex and interrelated factors that contribute to health and healthcare inequalities and to identify practical solutions. It must be the foremost duty of the Nigerian government to protect people with disability and this can be achieved with particular reliance on the strength of human rights laws. Thus, where government commitment and the policy environment are favourable, the majority of people with disability may experience significant changes in the quality of life and access to equal rights.[51]

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[44] M. Oliver, Theories of Disability in Health Practice and Research (BMJ Publishing Group, 1998),pp. 1446–9.

45 M. J. Paris, 'Attitudes of Medicine Students and Health-Care Professionals toward People with Disabilities', 74 (8) Archives of Physical Medicine and Rehabilitation (1993): 818–25

[46] South Africa Integrated National Disability (SAIND), White Paper, 1997

[47] Ibid (n 46)

[48] s 21 of the Discrimination Against Persons with Disabilities (Prohibition Act) 2018

[49] Ibid

50 See, generally, A. O. Okunade, Child Care Health: Attitude of Yoruba of Western Nigeria to Handicap in Children (1981), available at http://www.ncbi.nlm.nih.gov/entrez/query

51 Ibrahim Imam & M.A. Abdulraheem Mustapha 'Right of People with Disability in Nigeria Attitude and Commitment' African Journal of International and Comparative Law (2016 Edinburgh University Press)

Rights of accessibility to public facilities:[52] Another important area which inappropriately exposes people with disability to discrimination and neglect is in the realm of accessibility to public facilities. The existing structural design of buildings in Nigeria, in both the public and private sectors and communities, do not take into account of making them accessible for people with disability. In order to secure the rights of people with disability (the lame, crippled and blind), the government should ensure through the town planning departments in all the states of the federation and the Federal Capital Territory, Abuja, that new buildings are constructed in accordance with codes and guidelines for accessibility while old buildings should be remodelled to meet the codes. Similar efforts are required in the area of road construction and transportation that are adaptable to the particular circumstances of the disabled person in society.

Rights of access to sporting activities:[53] In its quest to promote and protect the rights of persons with disability, the Nigerian government's efforts in this area are commendable. The government has allowed persons with disability to be actively involved in its sporting programmes at the national and international level.[54] To this end Nigerian people with disability have participated in almost every arena of big sporting event like the Olympics with tremendous achievements. The government attitudes provide that public and private sports facilities shall be accessible to the disabled and accordingly have directed all the appropriate authorities and organs to ensure that the disabled are not discriminated against in any sporting or rehabilitation facilities[55]

The Nigerian government has even established Rehabilitation Commissions in most of the states of the Federation with a coordinating body known as the National Council for Rehabilitation of the disabled, functioning at the Federal level under the aegis of the Ministry of Social Development, Youth, Sports and Culture. However, while these efforts do undoubtedly represent an accomplishment, gaps still exist in certain areas of legislation, financing, architectural barriers, transportation, personnel, attitudes and leisure education for this almost forgotten group of individuals.[56] These efforts demonstrate one of the principal and overriding aims of the system set up by the European Convention on Persons with Disability to bring about a situation in which each and every individual in a country without discrimination is effectively protected.[57]

Conclusion

This paper examined the right of the person with disabilities under the international human right and Nigerian law. It is obvious that the right of PWD is recognized at both international, regional and national level, however, these laws are very dormant especially at the national level, until when we commenced research on this paper, we never knew that there is law in Nigeria which offer protection to the people with disabilities, the question is if we as a lawyer are ignorant of this law, then how do we expect the average Nigerian in the street to know the law? This clearly shows that there is little or no awareness about the law, and this lack awareness will affect the compliance of the Nigerians with the law especially professionals such architect or transporters who are supposed to build house or cars that will help the people with disabilities. The study therefore recommends that There should be adequate awareness about the law on the People with Disabilities. Government should ensure compliance with law and ensure the enforcement of the penalties and sanctions

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[52] Section 3 to 7 of Discrimination Against Persons with Disabilities (Prohibition Act) 2018

53 Section 32 of the Discrimination Against Persons with Disabilities (Prohibition Act) 2018 mentioned sport Ministry as one of the ministries for person with disabilities

54 Nigerian People with Disability have been part of country's plan and participated in several internationally organised sporting programmes. Nigeria made its debut in international sporting events in Barcelona 1992 and since then it has also participated in Paralympic events. To date Nigeria has won a total of 22 gold, 11 silver and 12 bronze

[55] Ibid (n 53)

[56] O. E. Achalu, 'Recreation for the Disabled Person: An Overview', p. 23. Available at www.unilorin.edu.ng

57 Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, adopted 25 November 1981, GA Res. 36/55, 36 UN GAOR, Supp. (No. 5+) UNDOC A/36/51, at 171. This is true of the Nigerian Constitution and Indian Constitution incorporating the right against discrimination. See Jean-Bernard Marie, 'National Systems for the Protection of Human Rights', in Januz Symonides (ed.), Human Rights International Protection, Monitoring, Enforcement (UNESCO Publishing, (2003), at p. 258.

stipulated in the law. The Constitutions should be amended to include the provision on the right of the people with disabilities. It is possible to ensure that the people with disabilities are also involve in the running of the affair of the government of the country. The provision of the law on the right of the people with disabilities to free education should be free adherent to.