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THE LAW AND DISABILITY DISCRIMINATION IN NIGERIA

BUKOLA RUTH AKINBOLA

ABSTRACT

This study has examined the incidence of disability as a human experience that attracts discrimination and particularly in Nigeria as a developing country. It has found discrimination to be expressed in terms of the names disabled persons are called, the causes adduced for disability under customary law and discriminatory practices under customary law. These practices include deification, mutilation and scarification. It also includes giving of care motivated by wrong motives, using a person with a disability to apply pressure on a debtor to make him pay, occupational biases, institutionalization and many other discriminatory practices. The work is in three main parts namely the pre-missionary, the missionary and the post missionary eras. The importance of legislations in regulating the relationship of society with people who have disability is examined and some recommendations are made for better protection for persons with disabilities and then a conclusion.

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INTRODUCTION

Around 10 per cent of the world's population, or 650 million people, live with a disability and they are the world's largest minority¹. Eighty per cent of persons with disabilities live in developing countries, according to the United Nations Development Programme (UNDP)². Another view which is similar to that of the UNDP, is that, of these persons with disabilities (pwds) in the world, two-thirds live in developing countries, including Nigeria³. The same author also agrees with the world benchmark that 10% of a country's population has disabilities⁴. If this benchmark is applied to Nigeria based on a current estimated population of 137 million people, at least 13.7 million Nigerians have disabilities⁵. The fact that disability exists in high proportions in the developing world has always attracted discriminations in different cultures through the ages.

The role of law in mitigating the hardship faced by pwds through the history of Nigeria will form the focus of this article. The history of the development of law on disability in Nigeria generally, can be broadly divided into three major phases comprising of the pre-missionary, the missionary and the post missionary eras. The pre-missionary period covers the indigenous traditional setting during which customary law⁶ was the parameter for setting standards in society.

The Missionary era was the actual inception of formal care of the persons with disabilities (pwds) in Nigeria in the modern sense, while the post missionary era represents the current dispensation of government participation and legislative regulations of issues affecting pwds. These classifications are not absolute and indeed there were many overlaps between the periods. This article examines the three periods and how discrimination was evident in the relationship of society with pwds as well as the position and role of the law in the context of disability in Nigeria to date.

PRE-MISSIONARY PERIOD

The period under reference here, covers the time from the early man to the early twentieth century when missionaries appeared on the stage of caring for the handicapped in Nigeria⁷. Traditional healers kept mentally

disabled persons at their backyard for treatment and had a semi-formal arrangement⁸ under the customary settings, but such were much less formalized than what the missionaries operated. In Nigeria, customary law is one of the major sources of law and governs the lives and beliefs and therefore attitudes of the majority of people to issues of life generally. In terms of its origin, customary law in Nigeria;

"emerges from the traditional usage or practice of a people in a given community, which by common adoption and acquiescence on their part, and by long and unvarying habit, has acquired, to some extent, element of compulsion, and force of law with reference to the community usage, it attracts sanctions of different kinds and is enforceable"⁹.

Disability is perceived by many in Nigeria, against the background of customary law. Three key factors that epitomize discrimination against pwds under this era were the names by which pwds were called, the perceived causes of disability in customary beliefs and some discriminatory customary practices. A few of each of these will now be highlighted.

Discrimnatory Names for Disability: Customary law notions of disability as portrayed by the names given to different kinds of disabilities, clearly show wide spread discrimination, cruel and inhuman treatments of pwds (resulting from the wrong and erroneous perceptions of the phenomenon of disability), before the missionaries and the State came to be involved in catering for pwds. Many of the names by which pwds were called, show that there were similar sentiments towards disability in Nigeria under customary law, as those that informed eugenic and euthanasia practices of the western world against pwds.

The stereotypic and adverse attitudes of humanity towards pwds are universal and hardly have limitation across cultures. Different ethnic groups in Nigeria have their peculiar perceptions of disability and these different orientations to disability have influenced in a great measure, the way the society relates with pwds as portrayed by the names and identifications engaged in describing them. The Bokyi tribe of Cross River State referred to them as *Eyiam* – meaning an “animal” or *k’nyiam* – meaning a “fool”¹⁰. The Iyala tribe referred to them as “animal that have

assumed a human form". A hydrocephalic child had labels such as those of the 'Idoma' tribe of Benue State of Nigeria where they are called "*Idiogom*" – meaning large head while the micro cephalic was referred to as "*Ikepelifu*" - meaning "rats' head or small head", to mention a few.¹¹

With this background, it is apparent that pwds have not been a highly valued group in many parts of the Nigerian society. Many pwds suffered from intense poverty and discrimination from the society as a direct consequence of the names related to disability. Among the Hausas, a limb impaired person is referred to as "*gurgu*" which implies 'twisted'. The Yorubas of the south west Nigeria call a blind person "*afaju*" which means 'a broken eyed person' and a limp impaired is called '*Aro*' also implying that such a person is twisted¹².

The interesting thing about such names is that they emanate from the attempt of the society to describe the affected individual and in the course of time, they become more often used by all to the point that the actual names given at birth becomes unknown while the disability related description supersedes all other names as though to remind society that such a person is 'incomplete and needs to be treated in the light of the deficiency brought about by the disability'. One wonders why names that portray the strengths of character and form are not equally emphasized until the names that project disability is shrunken into oblivion. Disability projecting names are nothing but discriminatory labels.

Customary Causes Adduced for Disability: Disability and other aspects of life were generally regulated by customary law, with little foreign influence, until the advent of the Christian missionaries in Africa. The period was characterized by many unscientific and superstitious customary beliefs in Nigeria. Views about disability and other aspects of life were closely linked with traditional religions and experiences were explained in relation to the pleasure or displeasure of 'the gods'. Disability was seen as evil and therefore often attributed to the displeasure of one deity or the other, which might have placed it on an individual either as a punishment for wrong deeds, the breaking of a taboo, or other reasons. Reasons given for disability during the pre-missionary period were largely cultural and not biological in nature and they portrayed discrimination against pwds.

According to a study¹³ on “Nigerian culture, its perception and Treatment of the Handicapped” 16 salient factors in the cause and effect relationship of birth of handicapped children were identified.¹⁴ The following are some of the causes and effect relationship identified with the numbers in bracket indicating the number of cultures that believe in the cause and effect relationship: “

- (i) curse from God (12),
- (ii) breaking laws and family sins; (10),
- (iii) offences against gods (9),
- (iv) witches and wizards (5),
- (v) adultery (3),
- (vi) misfortune(3),
- (vii) ancestors (3),
- (viii) God’s representatives (2),
- (ix) misdeeds in a previous life (2),
- (x) illegal or unapproved marriage (2),
- (xi) shows the omnipotence of God,
- (xii) evil spirit, e.g. Ekwensu (2),
- (xiii) killing certain forbidden animals,
- (xiv) a warning from God (1),
- (xv) Fighting elders during harvest/planting seasons (1)”¹⁵.

Conversely, in respect of developing countries generally, (Nigeria inclusive), Marfo identified major causes of disability as malnutrition, infections and non-communicable somatic diseases.¹⁶ According to him, these account for 50% of disability cases even though they are preventable. By inference, about 50% of disabilities in Nigeria if not more, are preventable. The issues related to the causes of disability like malnutrition and poor hygiene.

Discriminatory Customary Practices: There are misconceptions and consequent discriminatory practices against pwds varying from one jurisdiction to another across the globe. There is hardly any community without some form of bias or prejudice against disability and people who had it within the society. A few of such will be highlighted here as found in some customs in Nigeria.

- (1) **Deification, Mutilation and Scarification:** Studies of Nigerian cultures show that the Yorubas respect the 'Emeres' (a category of pwds) regarded as (God's representatives) while they are alive and especially if they live to be adults; they are consulted on important matters. However, if they die young, they are either burned, or cut into pieces and buried. This belief goes further to say that these treatments before burial, cause deformity on reincarnation.¹⁷ While these practices maybe devoid of any scientific basis, some of them still linger to this day among the highly indigenous Yorubas, (especially the poor, illiterate and rural populace). In a typical traditional setting in Nigeria today, most of the listed misconceptions and stereotypes are still strongly upheld by many of the tribes concerned, especially the Yoruba tribe (to which the writer belongs and have the opportunity of observation).
- (2) **Care for the Wrong Motive:** A major discriminatory practice is the care of pwds among the Yorubas was to avoid social stigma which may result from the person going out to beg and consequently bringing shame to the family. Yorubas generally believe that such a person begging maybe mistreated by adversary ethnic groups and to prevent such, care is provided¹⁸. While the care offered appears to be an integration action, the motive for care is clearly discriminatory. Pwds are cruelly treated on one hand while a measure of kindness is also meted to them on the other hand.

This appears to be a self contradiction in the same culture but it may not be after all. Reasons have been adduced for why the Yorubas take care of handicapped people. These reasons are apparently not in the interest of the pwds, but rather in the interest of the community or individuals who have the responsibility of taking care of such persons with a disability, especially the immediate family of a person with a disability. Apart from stigma, another reason adduced for care of pwds, is to prolong the life of the handicapped child as long as the mother is of child-bearing age. There is a strong belief that if the handicapped dies very young and while the mother is of child-bearing age, the mother will bear the same child again and he will

be handicapped¹⁹. The scientific prove of these beliefs is not known. The belief however further confirms that pwds suffered much rejection and discrimination under customary law systems in Nigeria, especially among the Yorubas. Essentially, the care of pwds under this regime was informed either by a desire to protect the ego of the family or the community, or the need to prevent a reoccurrence of disability in the family, and not due to recognition of the human identity and human rights of such individual who has a disability.

- (3) **Debt Collection:** The Yorubas use the handicapped to collect debts from unwilling debtors. To achieve this, the handicapped person is dumped at the door of the debtor, which forces him to pay up his debt or be saddled with what may otherwise be tagged "a nuisance" at his door.²⁰
- (4) **Occupational Biases:** In terms of occupational opportunities for pwds, among the Yorubas one of the most successful forms of apprenticeship for blind children was to be found in the priesthood of the *Ifa* deity.²¹ This is not a surprise, considering what an *Ifa* priest does for a living. An *Ifa* priest is supposed to be a diviner, telling people the unknown by mystical means. If the priest is blind, and he divines correctly, it gives more convincing proof that his claims are authentic as against a person who sees and has the potential of being influenced through sight in what he foretells or divines. To do the job of an *Ifa* priest therefore, sight disability was an advantage for the applicant/apprentice.
- (5) **Institutionalization:** Oral history emphasizes the existence of native doctors' healing or training centres which housed pwds under the care of a single man who was singularly responsible for the admission, programmes, evaluation and accountability over the persons in his custody.²² "From the information collected among the Yorubas, Igbos, Hausas, Tivs, Idomas, Efiks and many other ethnic groups the native doctors established backyard curing or custodian centres for the lepers and lunatics long before the came."²³ He went further to note that the deaf and crippled were naturally

integrated into communal life. This also points to the fact that even in the customary setting, different disabilities attracted different intensities of discriminations, just as some categories of pwds in contemporary times are more easily integrated into society than others. The all important question at this point is whether a single man acting in so many capacities as the native doctor did could possibly observe respect for the human rights of those under his care especially if they had mental illnesses? It is doubtful in the view of this writer. Human rights violations therefore were perpetrated without any sanctions except in extreme and uncommon cases.

- (6) **Others:** Little information exist in documentary form about many other ethnic groups in Nigeria, particularly from the Eastern and Northern parts, and how they dealt with disability but each culture appears to have a way of either eliminating pwds or making them as invisible as possible in the society. Women and children were the worse victims. This is done through outright killing immediately after birth, termination of pregnancy, or dumping in a dust bin, river or forest as soon as possible after discovery of disability in a child. In the East for instance, history records that “Albinos” and twins were killed in many communities before the advent of the missionaries. Persons with hunch backs were often used for ritual purposes and killed thereby in many Yoruba communities. Summarizing the various expressions of discriminations and consequent cruelty against pwds in pre-missionary Nigeria, Caulcrick states that;

Other cultures kill the handicapped by poisoning him or starving him to death. Both the Yorubas and the Igalas engage in this practice. Some cultures take the baby into a far away bush and leave him there to die. There are various other ways of getting rid of the handicapped. For instance, the Kagoros take the child to the shrines and forbid the parents to visit him. The Yorubas cut the child to pieces or burn him before burying him, and the Atakas take him to a distant bush, leave him with

the promise to fetch him food and never return; while the Tivs throw the child into the river with the believe that he will change into a snake²⁴.

Apart from killings and cruel treatments mentioned earlier, other discriminations and abuses abounded in the relationship between the society and the pwds in the pre-missionary customary setting in Nigeria which are outside the scope of this article.

MISSIONARY ERA

Private/Non Government Care for People with Disabilities: Credit must be given to care givers every where, for initiating and sustaining the community care for pwds until a time when governments became involved in many jurisdictions including Nigeria²⁵. Those who offered care were mainly the families of pwds, Missionary agencies and religious organizations, non-Governmental organizations and philanthropic individuals. These classes of persons are still key players in the care of pwds in Nigeria today. However, the driving force for their care was charity rather than recognition of the fundamental rights of the pwds. The native doctors who ran backyard curing centres in the pre-missionary days of Nigeria for instance, did so for commercial reasons and other rewards in kind like marriage between them and a cured patient.

Formal care as known in modern days for people with disabilities began in Nigeria with the advent of Christian missionaries in Nigeria, who perhaps had to start their social work with the 'rejects' in society as the most available people. The missionary period which marked the beginning of administration of services to pwds in the modern day sense started in the second decade of the twentieth century²⁶. The planning and implementation of the lepers' colony by the Roman Catholic Mission at Sacred Heart Hospital in Abeokuta, Ogun State, in 1914 started the formal history of regulated care of pwds.

Other Christian missions like the Sudan Interior Mission, the Baptist Mission, the Methodist Church, the Church Missionary Society then in collaboration with the Local Governments, set up centres for the custody of pwds in different parts of the country between 1930 and 1950²⁷. Some

form of regulatory control was necessary for the missionary agencies to acquire and use facilities like land for their business in taking care of pwds and this must have necessitated collaboration between the State and the missionaries. At some points, missionary interventions and those of the State overlapped. However, missionaries did not cease from care giving and education as soon as government became involved with pwds. Policies, laws, edicts and other regulations were made for the control of services to pwds in the country from the late 1940s up to the 1960s and many institutions for their care were established during the period. Some of the landmark laws and policies made at that time were:

1. **1943:** Young People and Children's Act, by the Colony Welfare for the Delinquent Children.
2. A Federal Ordinance was passed which indicated that grants may be paid to a local authority or an approved voluntary agency which cares for the handicapped. Support must be in form of special school equipment, medical supervision for the handicapped.
3. **1954:** The Western Region Law was passed which directed the Ministry of Education to define the several categories of primary pupils requiring special education, and make provision for the education of pupils in each of the categories. The regulation paved way for the integration, that is, it was established that children with mild problems should be educated in the ordinary school. An interesting aspect of the law is that it mandated the school to comply without option. Schools were expected to comply with the government regulation and government approval of the school's right to operate could be withdrawn if it failed to comply. Parental and child protection was embedded in the law. Compulsory religious worship and instruction were enforced, unless a parent desired otherwise. The government made provision for the medical service of the handicapped children as well meals and refreshments.
4. **1967:** Lagos State Education Act of 1967 Article 619 by Lagos State-established grant in aid for the handicapped.
5. **1964:** The Northern Nigeria Education Law section 3 sub section 2, established treatment and procedure of education in northern

Nigeria. The law gave authority to the minister to provide special schools for the handicapped children and ensure an adequate supply of training of appropriate teachers.

6. According to Ihanacho (1986), the provision of service to handicapped during the period in the Eastern Region of Nigeria has no specifically enacted law or edict. The Federal Government ordinances served as a medium of operating guidelines in the region²⁸.

POST MISSIONARY PERIOD

The middle 1970s to date is the period under reference here. This period marked the formal assumption of more active roles by government in the affairs of pwds. During the period, the government took over all schools, including the special schools for the handicapped²⁹. In 1976, the Federal Government (FG) took over the administration of education and this resulted in the release of the Special Education administration by all private agencies to the FG. At the onset the regulation of care for pwds was mainly by government policies and a few regional legislations.

NATIONAL POLICY ON DISABILITY IN NIGERIA

The Universal Primary Education programme was established and there was a national policy on education to support it in 1977. The Federal Government's focus on disability was centered on education for obvious reasons. The missionary handlers of care for pwds operated in the context of education and when the government became involved in providing care for the same group, it was natural also to expect an education centered provision/initiative. The provision of equal educational opportunities was considered in the Third National Development Plan (1973 -1980)³⁰.

This provision led to the inclusion of section 8 in the National Policy on Education (NPE) 1972, which was revised in 1981. Sections 8 of the NPE provides among other things, for special education within the context of the Universal Primary Education (UPE) and states the objectives and purposes of special education as well as allocate responsibilities to

the Ministries involved with the handicapped³¹. The National Policy on Education gave rise to a number of developments, many of which were positive. The passing of the 1981 law on services to the handicapped in Plateau State for instance, was an outcome of the National Policy on Special Education.

Also, each of the affiliated Ministries in the programme (Education, Health and Social Welfare and Labour) developed units of Special Education. At tertiary level, Departments of Special Education were developed in the University of Ibadan and subsequently at Universities of Jos and Calabar respectively while a Federal College of Education (Special) was established at Oyo. Also, each State was to establish special education schools and of course that implied the establishment of special education units in the states ministries of education.

NATIONAL LEGISLATIONS ON DISABILITY IN NIGERIA

In recent times, there have been more legislative regulations at the Federal Government level. Why is it important to have more legal control through legislations? The importance of legislation on the subject of disability cannot be overemphasized. Legislation possesses much positive potential for redressing the anomalous and aberrant relationship of society with pwds. Although integration into mainstream of society is best guaranteed by the combination of legislation and attitudinal change, there is a great need for necessary legislative framework for the protection of the rights of Nigerians with disabilities.

Events at the level of the UNGA on developing international instruments for the protection of pwds had a good influence on Nigeria as a member state. Nigeria has passed some legislations and is still in the process of passing more bills to law on disability. There are presently the "Nigerians with Disabilities Decree" (NDD) of 1993 and the "Disability Discrimination Act" (DDA) 2001 in operation to date. However, both Acts offer minimal protection to pwds in Nigeria. The two pieces of legislation appear both scanty and fail to adequately secure the equality that pwds very much need. The NDD for instance, has only a total of 14 sections and a few sub sections. It is set out as follows:

- Section 1 - provides for General principles;
- Section 2 - Declaration of policy;
- Section 3 - Interpretation;
- Section 4 - Rights and privileges of persons with disability;
- Section 5 - Education;
- Section 6 - Vocational Rehabilitation and Employment;
- Section 7 - Housing;
- Section 8 - Accessibility;
- Section 9 - Transportation;
- Section 10 - Supportive services;
- Section 11 - Sports and Recreation;
- Section 12 - Telecommunication;
- Section 13 - Voting Access; and
- Section 14 - Legal services.³²

The Decree at the end, establishes a National Commission for People with Disability which was to be a body corporate with perpetual succession and a common seal and which may sue in its own name. The establishment of a Commission on Disability has remained in the realm of letters ever since the Decree³³ provided for it. As at now, there is none in existence. The listed sections addressed the subject matters in very terse and scanty manner. For instance, section 13 on voting rights, failed to make provision for alternative voting manner or adaptive voting materials and merely states that the disabled person shall be entitled to assistance without specifying what the nature of the assistance should be. Its provisions are fraught with ambiguity.

The length of the NDD and non implementation of its provisions are bad enough, but worse still is the fact that it lacks provisions for sanctions against violators or defaulters of its provisions. The Decree fails to specify the punishment appropriate for failing or refusing to obey its provisions and thus falls short of what is needed to secure adequate protection against discrimination and to serve as deterrent to those who contemplate violating its provisions.

Another attempt was made to protect pwds and to prohibit discrimination on grounds of disability by the enactment of the Disability

Discrimination Act³⁴. It has a total of 43 sections divided into three parts broadly titled: Preliminary, Prohibition of disability discrimination and Miscellaneous respectively. Part I covers preliminary matters like the short title, objects interpretation and the like. Part II is the crux of the Act, covering discrimination at work, discrimination in other areas including education, access to premises, goods, services and facilities, accommodation, land, clubs and associations, sport, administration of laws and programs, among others.

Currently, there are several bills pending before the National assembly, seeking to prompt legislations that will mainstream pwds and secure equalization of rights for them in Nigeria in politics, economic, social, cultural and educational and all other aspects of life. The DDA also has not provided the needed protection it set to and a very important reason in the view of this writer is that it contains no sanctions for violation of its provisions. The Government of Nigeria both under the Military and Civilian dispensations has not shown sufficient commitment to the course of disability. While the DD Act prohibited discrimination on grounds of disability in employment, education, access to premises, accommodation, sports, insurance and others, it also provided for exceptions which are wide enough to allow any violator to escape penalties. For instance, in respect of education, the DD Act provides,

It is unlawful for an employer or a person acting or purporting to act on his behalf to discriminate against a disabled person on the ground of his disability in any manner whatsoever such as:

- (a) in the arrangements made for the purpose of determining who should be offered employment;*
- (b) in determining who should be offered employment; or in the terms or conditions on which employment is offered³⁵.*

The Act however appears to take back this protection with the other hand by adding that,

Nothing in this Act renders unlawful any such discrimination by an employer as aforesaid, if ...he would, in order to carry out those requirements, require services or facilities not required by persons without disability and the provision of

which would impose an undue hardship on the employer³⁶. Interestingly, the Act does not specify what amounts to "undue hardship" on an employer or an educational establishment or any one for that matter.

Also in respect of the right to education devoid of discrimination, the Act gives with one hand but withdraws with the other³⁷.

IMPORTANCE OF LEGAL PROTECTION FROM DISCRIMINATION ON GROUNDS OF DISABILITY

The history of disability in Nigeria generally has shown a compelling need for legal protection for pwds as a vulnerable group. Improved level of protection may be achieved by adopting further provisions for the right to equality as contained in the national constitutions of different countries whenever the current constitution is being reviewed with a view to increase the present level of protection. The Americans with Disabilities Act,³⁸ for instance, is much more detailed and will be a good reference resource for the improvement of services to people with disabilities. While the constitution of the Federal Republic of Nigeria,³⁹ in its fourth chapter broadly titled:

Fundamental Rights⁴⁰ provides for equality of all Nigerians, pwds cannot be said to enjoy equal rights with others in many respects. Rights conferred by the CFRN 1999 include the right to life, right to dignity of human person, right to personal liberty, right to fair hearing, right to private and family life, right to freedom of thought, conscience and religion, right to freedom of expression and the press, right to peaceful assembly and association, right to freedom of movement, and right to freedom from discrimination. The disability specific legislations if properly implemented will strengthen the realization of the rights contained in the national constitution, for pwds on Nigeria.

It is an established fact that legislation, especially if it is sufficiently comprehensive and properly enforced, will go a long way to specify, protect, promote and get the state committed to the legal rights of persons with disabilities. The view has been expressed, which this writer agrees with, that legislation with respect to disability has many advantages, some of which are that it:

- (i) Accords legitimacy.
- (ii) Clarifies ambiguities and prescribes implementation.
- (iii) Helps to secure resources necessary to carry out modification essential to integration.
- (iv) Helps to draw attention to discrepancies between policy and practice.
- (v) Helps to effect change in negative attitudes in society.
- (vi) Grants enablement to advocacy groups to seek change⁴¹.

With so many benefits attached to legislation, many countries of the world, including Nigeria, now have one form of anti-disability discrimination legislation or the other. The importance attached to such laws, the extent of details included, the spectrum of coverage and levels of implementation vary from one country to another in respect of the legislations. The existence of legislation is important but of no less importance, is the quality of legislation on disability. Evaluating the relevance and importance of having comprehensive legislations in the integration of pwds into mainstream of society, the UN Enable, stated that:

Despite some progress in terms of legislation over the past decade, such violations of the human rights of persons with disabilities have not been systematically addressed in society. Most disability Legislations and policies are based on the assumption that persons with disabilities simply are not able to exercise rights as non disabled persons. Consequently, the situation of persons with disabilities often will be addressed in terms of rehabilitation and social services. A need exists for more comprehensive legislation to ensure the rights of disabled persons in all aspects - political, civil, economic, social and cultural rights - on an equal basis with persons without disabilities. Appropriate measures are required to address existing discrimination and to promote thereby opportunities for persons with disabilities to participate on the basis of equality in social life and development⁴².

Since there have been a number of landmark developments and legislative initiatives on disability in Nigeria, some of them will now be highlighted, especially Federal laws, some of which date back to the colonial days of Nigeria.

1. Formal education came to Nigeria around 1844 but education for the handicap had to wait until another century had passed⁴³.
2. For children with visual impairments, formal education in Nigeria started only in 1916,⁴⁴ more than a decade later than for children without disabilities. This disparity in opportunity can largely be blamed on the absence of laws for equalization of treatment between the two groups.
3. The first legislation enacted in Nigeria for the protection of pwds was the Young People and Children's Act of 1943 introduced by the Colony Welfare Service for the benefit of handicapped children, especially socially maladjusted children⁴⁵.
4. Most of the earliest laws on disability sought to regulate the education of pwds as they revolved around education which was a major concern of the early European missionaries who spearheaded the care and education of pwds in Nigeria.
5. The Ministry of Education became involved when the first grant-aided school for the handicapped was established in 1957.⁴⁶ This was followed by the Northern Nigeria Education Law of 1964⁴⁷ and the Western region also had its regional law on the education and treatment of handicapped pupils, according to Caulcrick:⁴⁸

RECENT ATTEMPTS AT EQUALIZATION OF RIGHTS FOR PERSONS WITH DISABILITIES

Lately, the media has been rife with reports that in the National Assembly, there was much frenzy on what should be done to equalize opportunities for people with disabilities⁴⁹. A bill requesting for a commission to take charge of the cause of disability was tabled before the House of Assembly⁵⁰.

Simultaneously, the House of Representatives was committing a similar welfare bill⁵¹, after it scaled a second reading. A special forum⁵² was convened by the International Republican Institute to dissect the position of people with disabilities within the framework of the Electoral Reforms of the present administration⁵³. All the speakers and participants did not mince words in advocating for urgent action towards proper

legislative protection and empowerment of pwds in the current democratic dispensation. It is obviously long overdue for the Legislature to enact laws to protect Nigerians with disabilities after more than eight years of continuous democratic governance,⁵⁴ but it is still better late than never.

It is hoped that with Nigeria being a party to the International Convention on Disability, speedy action will also be taken at the national level to domesticate the Convention on the Rights of people with Disabilities. With proper re-orientation about the causes and implications of disability, and adequate legislative provisions, pwds can be protected from human rights abuses and be integrated into the society, part of which they are from time immemorial, although they have always been discriminated against by the society.

The Nigerian Senate on March 10, 2009, passed a bill outlawing discrimination against disabled persons. With the passing of the Bill, any company that violates its provisions will pay a fine of N1 million.⁵⁵ Entitled: "The Discrimination Against Persons with Disabilities (Prohibition) Bill 2009," which provides that government and public organisations should provide convenient access for disabled persons to enter and exit premises⁵⁶.

Specifically, Section Seven of the Bill provides: "a public building shall be constructed with the necessary accessibility aids such as lifts, (where necessary) ramps and any other facility that shall make them accessible and usable to persons with disability"⁵⁷. These are welcome developments in the treatment of pwds in an egalitarian society like Nigeria. The Senate is to be commended for the upwardly mobile stance it has taken in making a law to prohibit discrimination against pwds in Nigeria along side with the global community at a very strategic point in global history when the UNCERD has just come into force. Enforcement is however of paramount importance in the realization of the goals of the Act as it will only make a difference to pwds when applied in their favour.

CONCLUDING REMARKS

There were generally very few legal provisions that protected the rights of pwds in Nigeria. Fortunately, in the month of March 2009 as this

article was being concluded, the National Assembly passed a law against disability discrimination. The law provides for a sanction of 1million Naira and 500,000.00 Naira for a corporate and a private offender respectively. This is only a part of the solution to the problem of disability discrimination. Enforcement is the other part which must be rigorously pursued to give life to the legislative provisions in according due rights to pwds. Till date, the level of awareness and observance of laws against disability discrimination has also been relatively low, compared to the human rights protection of other vulnerable groups like women and children. This appears to be a global pattern of exclusion of pwds.

For instance, there had been an international Convention for the Elimination of all forms of Discriminations against Women (CEDAW)⁵⁸ and a Child's Rights Convention (CRC)⁵⁹ for many years before in December 2006, the United Nations General Assembly finally adopted a Convention for the rights of Persons with Disabilities (CRPD). Nonetheless, the laws for the protection and promotion of the rights of pwds to live in the community without discrimination and to enjoy equal rights with people without disabilities have evolved slowly but surely over the years. Nigeria now also has the "The Discrimination against Persons with Disabilities (Prohibition) Act 2009" added to the existing laws on disability.

At the global level, existing international human rights instruments provided for the protection of everyone including pwds but prior to the adoption of the new Convention on the rights of people with disabilities (CRPD)(2006). However, the existing Human Rights Conventions and Treaties had not comprehensively addressed the protection of the rights of persons with disabilities. Persons with disabilities had also underutilized the various protection mechanisms under those instruments.

The adoption of the CRPD and the establishment of new human rights protection and monitoring mechanisms are therefore expected to significantly improve the protection of the rights of persons with disabilities under international law and much more at national levels as the CRPD is domesticized in municipal laws by different countries. A common thread that appears to run through the different jurisdictions is that of discrimination. pwds were marginalized both in the developed world as

well as in the developing countries although in various ways from one locality to the other.

It is important to explore the past in order to chart a course for the future that will engender escape from the pitfalls of the past. Nigeria needs to keep pace with the global developments in human rights and disability. To achieve this, it is therefore recommended as follows:

Awareness should be created across all strata of society about issues relating to disability and the causes and other relevant information about the rights of pwds. The beliefs and myths surrounding the subject account for many of the discriminatory treatments meted to pwds by members of the society rather than share hatred. A successful public awareness and image promotion will help translate the status of pwds in Nigeria from that of being objects of charity to subjects of the Law.

All existing laws need to be applied with a consciousness of respecting the human rights of persons with disabilities and members of the Judiciary need to be sensitized to the need to be disability accommodating in their approach to issues.

Court rooms and other public facilities should be made accessible to persons with disabilities as part of making justice accessible to them.

Medical and other health care givers should be made accountable for their handling of pwds and where negligence or discrimination is established, stiff penalties must be applied with a view to deter others from such unwholesomeness.

Laws that affect pwds should be reviewed regularly to reflect changes at the international levels

Court cases that are hinged on discrimination on the basis of disability should be given expedited hearing in courts in view of the need to put minimum stress on the pwds and to enrich the case law on disability in Nigeria which at the moment is very scanty.

NOTES

- ¹Fact sheet prepared by the United Nations (UN) Web Services Section, Department of Public Information © United Nations 2006.
- ²**Ibid.**
- ³**Guteng**, (2005), in Mark M. Lere., *The Organization and Administration of Special Education in Nigeria*. (Jos University Press Ltd., 2007), 7 - 8.
- ⁴**Ibid.**
- ⁵**Ibid.**
- ⁶Customary law comprises of customs, traditions, values and ways of life of the people which over time have gained the force of law, and which varied from place to place.
- ⁷**Oni, J. O.** Historical Perspective of Special Education Administration in Nigeria, in *A Comprehensive Textbook of Special Education*, Onwuchekwa, Julie (ed.) (2005), Ibadan, Agbo Areo Publishers, p.8.
- ⁸**Ibid.**
- ⁹**Niki Tobi**, *Sources of Nigerian Law*, MIJ Professional Publishers Limited, Lagos, 1996, 103-104.
- ¹⁰**Abang, T.** *The exceptional child Handbook of special education*, Fab Aniih(Nigeria) Limited, (2005) p.15.
- ¹¹**Ibid.**
- ¹²These additional Nigerian names were noted by the author in the course of daily observations.
- ¹³The study gathered data from the first assignment given to first year students drawn from the then 19 states of the Federation by the then vice principal of the institution as recorded in Ellen Oluwasolafunmi Caulcrick, *Handicapped Children: Early Detection, Intervention and Education UNESCO CASE STUDY 1979, Memoirs of God-Directed Service in Social Work and Special Education*. Emeka Desmond Ozoji (ed.), (Deka Publications, Nigeria, 2008), 141 - 142.
- ¹⁴**Caulcrick, E. O.** *Handicapped Children: Early Detection, Intervention and Education UNESCO CASE STUDY 1979, Memoirs of God-Directed Service in Social Work and Special Education*. Emeka Desmond Ozoji (ed.), (Deka Publications, Nigeria, 2008), 141 - 142. The study was by the Vice Principal of the Federal Advanced Teaching Training College for Special Education Ibadan in 1977.

- ¹⁵ **Ibid** (Ellen).
- ¹⁶ **Marfo, K.** (1986). Confronting Childhood Disability in the Developing Countries. In Walker S, Bernard C. (Eds). *Childhood Disability in Developing Countries: Issues. In Rehabilitation and Special Education*, Praeger Publishers, New York.
- ¹⁷ **Ibid.**
- ¹⁸ **Caulcrick, E. O.** (1977). Handicapped Children: Early Detection, Intervention and Education UNESCO CASE STUDY 1979, *Memoirs of God Directed Service in Social Work and Special Education*. Emeka Desmond Ozoji (ed.), (Deka Publications, Nigeria, 2008), 141 - 142. The study was by the Vice Principal of the Federal Advanced Teaching Training College for Special Education, Ibadan.
- ¹⁹ **Ibid.**
- ²⁰ **Ibid.**
- ²¹ **Ayoka, F. A.** (2006). The Visually impaired in the Regular Classroom, in *Teaching Pupils with Special Education Needs*, Obani T. C. (ed.), 101.
- ²² **Oni, J.O.** Historical Perspective of Special Education Administration in Nigeria, in *A Comprehensive Textbook of Special Education*, Onwuchekwa, Julie (ed.) (2005), Ibadan, Agbo Areo Publishers, p.9.
- ²³ **Ibid**, (J.O. Oni).
- ²⁴ **Ibid.** Mrs. Caulcrick is the founder of the Olusoye Compensatory Center Ilupeju, Lagos, and is fondly called "mama" by Special Education experts in Nigeria.
- ²⁵ History generally attests to the fact that in many places, government came into the care of pwds after private charitable organizations had been in charge for a long time and Nigeria was not an exception to this trend.
- ²⁶ **Oni, J.O.** Historical Perspective of Special Education Administration in Nigeria, in Onwuchekwa, Julie (ed.), *A Comprehensive Textbook of Special Education*, (2005), Ibadan, Agbo Areo Publishers, p.9.
- ²⁷ **Nigerian Education Research Council (NERDC) Record** (1989).
- ²⁸ **Adopted from Oni J.O.**, The Need to Legislate the services for the handicapped in Nigeria. *The Journal for Special Education and Rehabilitation*, Vol. I, No. II, the Department of Special Education University of Jos, Nigeria.

- Another source for some of this information is the Nigerian Education Research Council (NERDC) record (1989).
- ²⁹**Oni, J.O.** Historical Perspective of Special Education Administration in Nigeria, in *A Comprehensive Textbook of Special Education*, Onwuchekwa, Julie (ed.) (2005), Ibadan, Agbo Areo Publishers, p.9.
- ³⁰**Ibid** (J.O. Oni), p.14.
- ³¹**Ibid** (J.O. Oni), p.12.
- ³²The Nigerians with Disabilities Decree (NDD) of 1993.
- ³³1993. Which is now 16 years ago.
- ³⁴Disability Discrimination Act, 2001 of Nigeria.
- ³⁵Section 11 (1) of the Disability Discrimination Act 2001.
- ³⁶Section 11 (3), Disability Discrimination Act, 2001.
- ³⁷The Disability Discrimination Act protects disabled persons from discrimination in section 16 (1) – (3) but in 16 (4), it gives an exception proviso by which it appears any one can discriminate against pwds and escape liability just like in employment.
- ³⁸Americans with Disabilities Act, 1990.
- ³⁹Constitution of the Federal Republic of Nigeria 1999 is currently in force at the time of this writing.
- ⁴⁰Sections 33 – 43 of the CFRN 1999.
- ⁴¹**Adelowo**, (2004), Improving Special Education Provisions in Nigeria through Legislation: National Association of Special Education Teachers (NASSET) Conference paper, Makurdi, 1994.
- ⁴²United Nations Enable, Overview of International Legal Frameworks for *Disability Legislation*, <http://www.un.org/esa/socdev/enable/discovl.htm> accessed 10/ 6/2006.
- ⁴³**Mba, P.O.** The beginnings of Special Education in Nigeria and early institutions, in *Elements of Special Education*, (Codat Publications, Ibadan, Nigeria, 1995) 23.
- ⁴⁴**Hill, C.** (1993). Rev. David Forbes, the forgotten Father of Nigerian special Education, *Exep. Children* (1993) 1.1-6.
- ⁴⁵**Ayoka, E. A.** The visually Impaired in the regular classroom, in *Teaching Pupils with Special Education Needs in Regular UBE Classroom*, Obani T.C. (ed.), (Book Builders *Editions Africa, Nigeria, 2006), 101.

- ⁴⁶The Lagos Education Act of 1957, (Article 61 g) established the Wesley School for the Deaf in 1957.
- ⁴⁷Northern Nigeria Education Law, 1964, section 3 paragraph 3.
- ⁴⁸**E. O. Caulcrick**, Handicapped Children: Early Detection, Intervention and Education UNESCO CASE STUDY 1979, *Memoirs of God-Directed Service in Social Work and Special Education*. Emeka Desmond Ozoji (ed.), (Deka Publications, Nigeria, 2008,) 143.
- ⁴⁹As at May 05, 2008 at a general sitting of the National Assembly.
- ⁵⁰About a fortnight earlier, Senator Bode Olajumoke had presented a Bill for protecting pwds from discrimination in Nigeria, notwithstanding the earlier existing laws to that effect.
- ⁵¹Brought by Honorable Aduke Dabiri to the Beni Lar led Committee on Youth and Women Affairs.
- ⁵²On Tuesday the May 5, 2008.
- ⁵³At that forum, Dr Osagie Obayuwana, described as “iconoclastic” University Teacher and Lawyer, was the Guest of Honor.
- ⁵⁴It is notable that in the past, many failures and inadequacies have been blamed on Military governance and the non democratic approach to matters since Nigeria has had the misfortune of frequent military take over of government in the past before the present democracy.
- ⁵⁵This Day Online Available on 19 March, 2009 at: <http://www.thisdayonline.com/nview.php?>
- ⁵⁶**Ibid.**
- ⁵⁷**Ibid.**
- ⁵⁸Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) which came into force in 1981.
- ⁵⁹Convention on the Rights of the Child (CRC) which came into force on 2 September 1990.