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A Review and Call for Domestication of the United Nations Convention on the Rights of Persons with Disabilities in Nigeria

Akinbola B. R.¹

Abstract

The Convention on the Rights of Persons with Disabilities (CRPD) has been rated the most widely subscribed United Nations (UN) instrument within a short time after it was adopted in 2006. As at October 2012, the CRPD had been ratified by 125 countries including Nigeria. The high level of acceptance and eagerness of many countries to adopt the CRPD shows that the CRPD was a something the global community had been waiting for. It is also indicative that there had been a wide spread shift in the paradigm of understanding of the concept of disability as well as the human right status of persons with disabilities (PWDs). The high level of participation in negotiating the CRPD marked a definite break from previous approaches that did not pay attention to the rights of PWDs. The article adopted the content analysis research method. It started with a theoretical background and then x-rayed the text of the CRPD, bringing to the fore, unique provisions, including 'reasonable accommodation' which meets the specific needs that may arise from disability and which may need to be met before some PWDs can fully exercise their rights. Universal Design, which is both needful and economical, is also a unique concept in the CRPD (such as the provision of a ramp instead of a stair case). It concludes that Nigeria's domestication of the CRPD is both for its benefit and an obligation under section 12 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

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¹ Paragraph g of the Preamble to the United Nations Convention on the Rights of Persons with Disabilities and Optional Protocol. It provides thus: "(g) Emphasizing the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development, ..."

Introduction

Non-discrimination and inclusiveness are key ingredients of development in any human society and therefore, no segment of society ought to be left out in the planning and execution of development². However, persons with disabilities (PWDs) have not been active participants in development in Nigeria in the past, even though global trend points in the direction of inclusiveness of PWDs. On the global scope, Wolfelsohn has observed that there is increasing recognition of the fact that bringing people with disabilities into the development mainstream will significantly affect any plan to cut poverty in the developing world³, especially because disability affects not only the individual, but also the family and the society at large. On the regional scope, previous efforts to put disability in the forefront of the development agenda in Africa, has been rated not to have yielded all the expected results, as a result of poor resources, blamed partly on the lack of commitment on the part of governments⁴. The United Nations Convention on the rights of Persons with Disabilities (CRPD) 2006, therefore seeks to provide for comprehensive protection for the rights of persons with disabilities as a standard international instrument, which can guide municipal governments and even be adopted as a domestic legislation in order to protect the rights of their citizens with disabilities. The CRPD recognizes the wholeness of human rights and acknowledges that human rights are universal, indivisible, interrelated, and interdependent⁵. Thus,

² Paragraph g of the Preamble to the United Nations Convention on the Rights of Persons with Disabilities and Optional Protocol. It provides thus: "(g) Emphasizing the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development, ..."

³ Wolfensohn, J.D. (2003) Poor disabled and shut out. *Washington Post*, 3 December, in Amusat, N. 2009. Disability Care in Nigeria: The need for professional advocacy, *AJPARS* Vol. 1, No. 1, pp. 30-36 at p. 30 -31.

⁴ Mji, G., MacLachan, M., Melling-Williams, N. and Gcaza, S. (2009) Realizing the rights of disabled people in Africa: an introduction to the special issue. *Disability and Rehabilitation* 31, pp.1-6, in Amusat, N. *Ibid*

⁵ Paragraph c of the Preamble to the United Nations Convention on the Rights of Persons with Disabilities and Optional Protocol. It provides thus: "(c)

all human rights are to be accorded to all human beings, including those with disabilities, without any discrimination⁶. Disability can be in various forms and degree in terms of their “disabling” effect on the individual, depending on the type and extent. This article is in five parts, including the introduction. The second part examines the classifications of disability, the third part is an overview of the international Convention on the rights of persons with disabilities and its optional protocol while the fourth part examines the the CRPD within the context of the law in Nigeria and the need for Nigeria to legislate or adopt the CRPD 2006 as a way of domesticating it within the Nigerian legal framework. It is concluded in the fifth part by a recommendation that the CRPD 2006 should be adopted as a national law which reflects global standards.

Classification of Disability

Disability is not a homogenous experience but comprises of varied experiences, ranging from physical to mental and psychological challenges. Every one of the different types of disability can be a limiting factor to a person’s ability to function, unless the environment is made friendly or compliant. Though the various classes of disability will be briefly highlighted here, it is noted that physical disability is usually the most visible.

Locomotor Disability: This is defined as the person’s inability to execute distinctive activities associated with moving both himself and the objects, from place to place and such inability resulting from affliction of musculoskeletal and/ or nervous system. Some

Reaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination, ...”

⁶Paragraph h of the Preamble to the United Nations Convention on the Rights of Persons with Disabilities and Optional Protocol. It provides thus: “(h) Recognizing also that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person, ...”

common conditions giving rise to locomotor disability could be poliomyelitis, cerebral palsy, autism, amputation, injuries of spine, head, soft tissues, fractures, muscular dystrophies etc.⁷

Visual Disability: Visual Disability or Blindness refers to a person's inability to see either fully or partially. A visually disabled person is also known to be suffering from visual impairment.

Low Vision or Poor Eye Sight: A person with low vision or poor eyesight is one who continues to have the problem even after going through medically approved corrective measures. This person with poor eyesight is still in a position to continue his tasks with appropriate assisted devices⁸.

Mental Illness: This includes both mental ill health and retardation. Mental retardation is defined as a state of arrested or incomplete development of the mind, which is specially characterized by impairment of skills manifested during the development period which contribute to the overall level of intelligence, i.e., cognitive language, motor and social abilities. On the other hand, mental ill health comprises of schizophrenia, anxiety disorder and depressive disorder or any other problem, which is caused due to series of chemical changes in the brain⁹.

Speech and Hearing Disability: Speech and Hearing Disability is referred to as a condition wherein the person is incapable of speaking and hearing any sound¹⁰.

Learning Disability: It is a disorder, which affects the basic psychological processes of understanding or using written or

⁷ Leni Chaudhuri Disability in India Issues and Concerns, Ess Conference Paper, May, 2006, pp.3 - 4.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

spoken language. This disorder affects development of language, speech, and reading and associated communication skills needed for social interaction.

Conditions such as brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia are examples of learning disabilities¹¹.

Multiple Disabilities: A combination of two or more disabilities¹², namely Blindness/low vision Speech and Hearing impairment Loco motor disability including leprosy, Mental retardation and Mental illness could occur in an individual, who is then said to have multiple disabilities.

The above mentioned disabilities all have the potential to limit a person affected by them. However, with the right approach, especially with observance of the laws on disability, PWDs should and can access and enjoy their human rights. It is therefore important to examine the CRPD which to date is the most comprehensive provision for the protection of the rights of PWDs, in terms of providing a legal global standard for the relationship between society and PWDs.

Overview of the International Convention on the Rights of Persons with Disabilities (CRPD)

The United Nations Convention on the Rights of Persons with Disabilities (the CRPD)¹³ was adopted on December 13, 2006 and entered into force on May 3, 2008. It constitutes a key instrument and landmark in the development of law. It is a critical milestone in the development of international law on the rights of persons with disabilities. The text of the CRPD comprises of 25 preambular paragraphs and 50 Articles. Its Optional Protocol contains 18 Articles. The mandate of the Convention was disclosed within the Convention which was negotiated and adopted by the

¹¹ *Ibid.*

¹² As defined in clause (i) of section 2 of the Person with disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995

¹³ (Convention No. 106) 2006.

United Nations (UN). Rather than a new set of rights and obligations, what the General Assembly provided for in the CRPD was the elaboration of human rights within the context of disability and not the enumeration of any new rights¹⁴. Essentially, the CRPD did not create new rights, but contextualized the existing human rights provisions, making them applicable to PWDs. Nonetheless, the Convention has been described as a progressive development of existing human rights law by making them more realizable to PWDs.

The preamble of the CRPD, numbered from (a)-(y) is a lengthy 25 paragraphs back ground to the convention and it is explicit in its reference to equality and non-discrimination provisions that are contained in the United Nations Universal Declaration. It acknowledges human rights provisions contained in previous UN human rights instruments and recalls the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in preamble (d). The preamble emphasizes the need for protection and promotion of the rights of PWDs, regardless of their gender, age, or any other status. It recognizes the importance of cooperation among countries for the purpose of protecting the rights of individuals with disabilities.

¹⁴ Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities, *infra* note 50; see also "Frequently Asked Questions Regarding the Convention on the Rights of Persons with Disabilities," available at <<http://www.un.org/esa/socdev/enable/faqs.htm>> (last visited August 17, 2010).

The fundamental objectives of the CRPD are set out in its article 1 as follow:

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

The full and equal enjoyment of human rights by PWDs is clearly the goal of the CRPD which though does not introduce entirely new rights, brings the basic existing human rights to the context of disability. Javaid described the preamble to the CRPD as unusually detailed, highlighting the principle of equality as contained in other human rights treaties, notably the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and other Cruel and Inhuman or Degrading Treatment or Punishment.

Although it would not have been out of place to do so, the CRPD does not provide a definition for disability, but simplifies it by listing the category of persons with disabilities thus:

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

In terms of acceptance evidenced by subscription, the CRPD has been rated as the most widely subscribed UN instrument within a short time after it was adopted. As at October 2012, the CRPD had been ratified by 125 countries. The high level of acceptance and eagerness of many countries to adopt the CRPD is indicative of the fact the global community had been awaiting for the CRPD, an

indication that there had been a wide spread shift in the paradigm of understanding of disability as a concept and the human right status of PWDs. By its adoption, the negative perception of PWDs was debunked and the CRPD makes it clear that PWDs are no longer to be seen: “as objects of charity, medical treatment and social protection”¹⁵, but as “subjects of rights”¹⁶.

The CRPD estimates of PWDs and definition of disability have impacted on the regional protection of PWDs also. In the European Union for instance, it has been estimated that one in six people - around 80 million - has a disability that ranges from mild to severe¹⁷. According to the Council of Europe Commissioner for Human Rights, this figure within the Council of Europe member states is between 10 and 15 percent of the population, i.e. between 80 and 120 million people¹⁸. According to Jarlath, the wide range of impairments that fall within the term “disability”, make the definition more encompassing than the definitions which apply to any other vulnerable group¹⁹, which confirms the view that PWDs are the world’s largest minority group. Jarlath further stated that persons with disabilities include persons with physical, mental, examples of which include schizophrenia or bipolar disorder;

¹⁵ U.N. High Commissioner for Human Rights heralded the CRPD as a rejection of negative understanding of PWDs.

¹⁶ Declaration on the Rights of Mentally Retarded Persons, G.A. Res. 2856 (XXVI), 26 U.N. GAOR Supp. (No. 29), at 93, U.N.Doc. A/8429 (Dec. 20, 1971).

¹⁷ European Commission, European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe, SEC(2010) 1324 final, Brussels, 15 November 2010, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2010:1324:FIN:EN:PDF>.

¹⁸ Council of Europe Commissioner for Human Rights, Human Rights and Disability: Equal Rights for All, CommDH/IssuePaper (2008)2, Strasbourg, 20 October 2008, available at: <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1355349&Site=CM>.

¹⁹ Jarlath Clifford (2011). The UN Disability Convention and its Impact on European Equality Law, *The Equal Rights Review*, Vol. Six (11-25), 23.

intellectual, such as learning limitations caused by Down's syndrome; and sensory impairments²⁰.

The text of the Convention itself, and the highly participatory process by which it was negotiated, marked a definite break from previous international approaches that focused on disability within a medical model framework. The CRPD embraces a social model of disability, in contrast to traditional approaches which concentrate the disability experience in individual deficiency, thus referring to PWDs as "disabled", "handicapped" and the like. The condition of disability or inability was made more prominent than the person affected.

However, in the social model with a disability friendly constructed environment, the barriers that impede the participation of persons with disabilities in society, are removed or obliterated. As a result of the antecedent in locating disability within the medical model and the attendant human rights violations of treating disability as a health condition necessitating medical interventions, there are tensions between the medical model and the social model, which recognizes the rights of PWDs. Lord, *et al* have noted that while the social model of disability is reflected in the Convention, the tensions between the framing of disability within a medical model and the conceptualization of disability as a social construction are not fully resolved by the Convention,²¹ and that the unresolved tension will inevitably lead to some challenges, as well as opportunities, when considering the broader implications of the CRPD for global health governance²². Despite these challenges, from a health perspective for instance, it is clear that given the relevance of the CRPD to important issues of global health governance, the Convention may be regarded as a

²⁰ *Ibid*.

²¹ Lord, Janet E., Suozzi, David & Taylor Allyn L. 2010. Lessons from the Experience of U.N. Convention on the Rights of Persons with Disabilities: Addressing the Democratic Deficit in Global Health Governance journal of law, medicine & ethics, global health governance. Pp 564-579 at 564-565.

²² Lord, Janet E., *et al.*, *Id*.

significant breakthrough in efforts to democratize global health governance. There is no doubt that a path has been charted for the progressive development of international disability standards and the shift from a medical model of disability inherent in early instruments to a social model, which includes the understanding of disability from a human rights angle, which the Convention reflects²³. An analytical review of the Convention's structure and substantive content in a human rights context is therefore important.

The United Nations Convention on the Rights of Persons with Disabilities (the CRPD)²⁴ constitutes a key landmark in the emerging field of global education law and a critical milestone in the development of international law on the rights of persons with disabilities (PWDs)²⁵. At the time of its adoption, the U.N. High Commissioner for Human Rights heralded the CRPD as a rejection of the understanding of persons with disabilities "as objects of charity, medical treatment and social protection" and an embrace of PWDs as "subjects of rights." The CRPD for instance, in its Article 1 provides that: "*Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.*" The way the convention defines the term disability, is

²³ Lord, Janet E., et al. *Id.* p. 565.

²⁴ United Nations Convention on the Rights of Persons with Disabilities (the CRPD) was adopted on December 13, 2006 and entered into force on May 3, 2008.

²⁵ The Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, U.N. Doc. A/Res/61/106 (Dec.13, 2006) [hereinafter CRPD]. An Optional Protocol was adopted at the same time, Optional Protocol to the Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, U.N. Doc. A/Res/61/106 (December 13, 2006) [hereinafter Optional Protocol]. The CRPD text, along with its drafting history, resolutions, and updated list of signatories and States Parties is posted on the United Nations Enable website, Retrieved on July 2, 2010 from <<http://www.un.org/esa/socdev/enable/rights/convtexte.htm>>

a deviation from the usual stereotypic historical view which is dominated by medicalization of disability. The historical perspectives make disability a medical problem rather than recognizing the human rights of persons affected. That model of disability has now shifted towards the social model understanding of disability and the CRPD is instrumental in this regard. The CRPD further recognizes some specific human rights of particular relevance in the context of disability, including but not limited to:

- i The right to be protected from abuse, violence, and torture;
- ii The right to live in the community, with one's family, without being institutionalized against one's will;
- iii The right to have access to education, transportation, and other public services;
- iv The right to access information and communication, including via sign language or Braille;
- v The right to education;
- vi The right to employment and a decent standard of living; and
- vii The right to access social justice.

The CRPD provides for both civil and political rights as well as economic, social and cultural rights, while some of the rights are cross cutting as described.²⁶ In a broad sense, the CRPD provides for civil and political rights in its articles 5 on equality and non-discrimination; 10 on the right to life; 12 on the right to equal recognition before the law; 13 on access to justice; 14 on Liberty and security of person; 15 on Freedom from torture or cruel, inhuman or degrading treatment or punishment; 16 Freedom from exploitation, violence and abuse; 17 on Protecting the integrity of the person; 18 on Liberty of movement and nationality; 19 on Living independently and being included in the community; 20 on Personal mobility; 21 on

²⁶ A Human Rights - Based Approach to Disability in Development, being a study produced jointly by Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, a federally owned enterprise, implementing development programmes on behalf of the German Government, and CBM, a non-governmental organisation.

Freedom of expression and opinion, and access to information; 22 on Respect for privacy; 23 on Respect for home and the family respectively.

Provisions on economic, social and cultural rights are contained in articles 24 to 29 of the CRPD as follow: articles 24 and 25 on the rights to education and health respectively; 26 on the right to habilitation and rehabilitation; 27 on Work and employment; 28 on Adequate standard of living and social protection; while article 29 provides for the right of Participation in political and public life.

Other provisions address various subjects like group rights of women and children in articles 6 and 7 respectively; article 11 provides for the protection of PWDs in situations of risk and humanitarian emergencies; and article 32 provides that state parties should recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the CRPD.

In terms of implementation, the protection of the right to education is examined here to exemplify the way the provisions of the CRPD operates in protecting the rights of PWDs, even though as earlier stated, the rights are not entirely new. There are two key elements that make the CRPD important in the context of education, namely: the text of the Convention itself, and the highly participatory process by which it was negotiated. These two factors brought about a definite break from previous international approaches that focused on disability within a medical model framework. In contrast to traditional approaches, the CRPD embraces a social model of disability, concentrating the disability experience not in the individual's deficiency, but in the socially constructed environment and the barriers that impede the participation of PWDs in society. While the social model of disability is reflected in the Convention, the tensions between the framing of disability within a medical model and the conceptualization of disability as a social construction are not fully resolved by the Convention. It is submitted that there are tensions that are very difficult to resolve in reconciling human rights with certain types of disabilities. For instance, if a person suffers mental retardation and therefore learns at a much slower pace than his/her peers, would it be lawful to make the class learn at the speed of the mentally retarded person? On the other hand, would it be just for the

class to learn at the speed of those class members who do not suffer from mental retardation, leaving the mentally retarded behind? Or worse still, is it just to keep learners with mental retardation segregated and isolated from their learning peers, while teaching them at their own pace?

The unresolved tension will inevitably lead to some challenges, as well as opportunities, considering the broader implications of the CRPD for global education regulation. Notwithstanding the challenges, it is clear that viewing the relevance of the CRPD through the mirror of important issues of global education rights protection, the Convention may be regarded as a significant breakthrough in its efforts to democratize access to education for PWDs. It charts the progressive development of international disability standards and the shift from a medical model of disability inherent in early instruments to a social model, which embodies the rights-oriented understanding of disability reflected by the Convention. The CRPD's contributions to the principle of participation in decision making through enhanced right of access to education remains one of its commendable attributes.

Furthermore, while the CRPD does not explicitly indicate what an inclusive education should look like, support documents from the UN shed some light on the UN's interpretation of the concept. In the handbook for parliamentarians titled *From Exclusion to Equality*²⁷, the UN proposes the following tenets of inclusive education:

- i. Suitable equipment and teaching materials is provided;
- ii. Teaching methods and curricula embrace the needs of all learners and promote social diversity;
- iii. Teachers are trained to teach in a classroom of differentiated learners, and encouraged to support each other; and
- iv. A full range of supports is provided by schools to meet the diverse needs of all students.

²⁷ United Nations. 2007. *Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol. From Exclusion to Equality: Realizing the Rights of Persons with Disabilities*. Geneva: United Nations.

The publication also suggests that inclusive philosophy should not be limited to curriculum and teaching, but that it is also helpful in thinking about physical accessibility within the school building and transportation to and from school.

The CRPD is an instrument purposely targeted at the protection of the rights of all people with disabilities, including children. It strengthens the shift from institutional care by recognizing the right of PWDs, to live in the community, backed up with the necessary support and community based services to make that possible. It requires that governments make every effort to ensure that when a family cannot care for a child, the alternative placement is either with the wider family or in a family setting in the community. An institution is not an acceptable option. Generally, "*Disabled people are not only the most deprived human beings in the developing world, they also the most neglected*"²⁸. Discrimination against PWDs cuts across all spheres of human endeavours including education, politics, health provision, right to information and the right to work.

Thus the CRPD has introduced a profound shift in emphasis. It provides for equality by making equal recognition before the law as well as access to justice rights in the context of disability. This is important for the recognition and protection of other rights²⁹. Equal recognition before the law has a multiplier effect on other rights and once there is *locus standi*, disability does not hamper the pursuit of justice according to law for PWDs.

The CRPD has brought innovation into the realization of its goals, by requiring state parties to take proactive measures³⁰, by

²⁸ Amartya Sen 1992, *Mental Handicap Among Rural Indian Children*. Sage Publications Limited, New Delhi.

²⁹ Article 12 of the CRPD provides for equal recognition before the law.

³⁰ Article 4 of the CRPD which provides for general obligations, generally commits state parties to take certain measures towards the realization of the protection of the rights of PWDs within their jurisdictions thus:

1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:
 - (a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;

providing for “reasonable accommodation”, a phrase it defines as follow:

Reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms³¹

The concept of reasonable accommodation acknowledges the specific needs that may arise and which may need to be met before a person with disability can fully exercise his/her rights, but not in a derogatory

-
- (b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
 - (c) To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;
 - (d) To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;
 - (e) To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;
 - (f) To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;
 - (g) To undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;
 - (h) To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;
 - (i) To promote the training of professionals and staff working with persons with disabilities in the rights recognized in the present Convention so as to better provide the assistance and services guaranteed by those rights.

³¹ Article 2 of the CRPD, 2006.

sense. It places responsibility for making necessary modifications and provisions that will allow equal access to and the enjoyment of all human rights irrespective of their disability status.

Another concept which is uniquely welcome in the CRPD, is the Universal Design. It is both needful and economical. As the name suggests, universal design is one that will be usable both by PWDs as well as persons without disability. The provision of a ramp instead of a stair case for example, will be suitable for anyone to get to a high rise structure, but a stair case will only admit or accommodate those who climb without wheelchair. The CRPD defines it thus:

Universal design" means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design.

Universal design" shall not exclude assistive devices for particular groups of persons with disabilities where this is needed³².

The CRPD provisions concern themselves with issue of respect for the dignity of the human person, including the rights to liberty and security of persons; Freedom from torture or cruel, inhuman or degrading treatment or punishment; Freedom from exploitation, violence and abuse; Protecting the integrity of the person and Liberty of movement and nationality respectively³³. For instance, it frowns at institutionalizing children with disabilities which involves removing them from public view and effectively rendering them invisible. That was an approach which identified the child as a 'problem' to be got rid of. The philosophy underpinning the CRPD encourages the removal of the social, physical, cultural, attitudinal and economic barriers that impede the realisation of rights not the removal of the child. In respect of the family, it requires that their resources and strengths are mobilised and supported to provide alternative care³⁴. The CRPD

³² Article 2 of the CRPD, 2006.

³³ Articles 14, 15, 16, 17 and 18 of the CRPD respectively.

³⁴ In addition, investment must be made in recruiting, training and supporting foster families who can provide a home for children, or establishing small

adds an additional requirement that a child must never be separated from parents on the basis of disability³⁵. The forced institutionalisation of children with disabilities represents a form of discrimination. It would not be acceptable to deny the liberty of other children on this basis. Article 14 of the CRPD introduces a requirement on Governments to ensure that people with disabilities, including children, are entitled to enjoy the right to liberty on the same basis as others. It also requires that any deprivation of liberty must be neither unlawful nor arbitrary and that the existence of a disability must never be used to justify the deprivation of liberty³⁶. In terms of its educational guarantee, article 24 CRPD on education provides as follow:

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:

- (a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
- (b) The development by persons with disabilities of their personality, talents and creativity, as well as

group homes where children can be cared for and participate fully within the local community.

³⁵ This means, for example, that doctors, social workers, other professionals or the courts must never impose a decision to place a child away from parents, simply because the child has a disability. Nor must they pressurise parents to agree to such a decision. The emphasis must be on providing for the child's needs within rather than away from the family.

³⁶ The CRC stresses that children should never be removed from their parents against their will, unless it is necessary for the best interests of the child, for example, where the parents are subjecting the child to physical abuse or are neglecting him or her. In addition, removal from their family is a matter of extreme concern to children, and should never be undertaken without consulting them and taking their views seriously, in accordance with their age and maturity.

their mental and physical abilities, to their fullest potential;

(c) Enabling persons with disabilities to participate effectively in a free society.

2. In realizing this right, States Parties shall ensure that:

(a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;

(b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;

(c) Reasonable accommodation of the individual's requirements is provided;

(d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;

(e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

(a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;

(b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;

(c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is

delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

The CRPD puts responsibility on governments to ensure the implementation of the provisions made for the protection of the right to education of PWDs. This is important in the light of the vulnerability associated with being in a disabled condition where even persons without disabilities encounter many challenges in accessing education in Nigeria for instance.

It is however notable that such challenges like discrimination, are not peculiar to Nigeria. According to Jarlath for example, writing on *The UN Disability Convention and its Impact on European Equality Law*,³⁷ he stated that in many European countries disabled persons are marginalised from political and legal decision-making processes because of the historical perception that they do not have the capacity to be involved and actively participate. The author cited examples of Belgium, Czech Republic, Germany, Ireland, Poland and Portugal, which exclude persons with mental health problems and persons with disabilities from the right to political participation³⁷.

³⁷ Jarlath Clifford, European Union Agency for Fundamental Rights, *The Right to Political Participation of Persons with Mental Health Problems and*

This attests to the universality of discrimination against PWDs, particularly in the older models of the subject.

It is also important that both the CRC and the CRPD require that the best interest of the child should always be the paramount consideration. A child with disability needs to enjoy as much equality as possible with other children who have no disabilities in both the learning process as well as the classroom environment, unless it is practically impossible. Isolation or segregation of children with disabilities amount to discrimination. In terms of implementation of the right to education, the school system has to decide to provide education for PWDs, and therefore require modifications of both curricula and infrastructure. Governments have to choose to cater for the needs of their citizens who have disabilities, (even if at an increased cost). It is also important that the PWDs themselves should be determined to integrate into the mainstream of society notwithstanding the discriminatory attitudes of other members of society and institutions in a number of ways. Success in combating disability based discrimination requires a multi-track approach in which the State, the PWDs and their associations, families of PWDs and the larger society must all see themselves as key actors. The CRPD provisions recognize this.

Also, Legal capacity³⁸ and reasonable accommodation³⁹ which according to Jarlath are either unique to disability or have been traditionally perceived as disability issues thereby presenting greater practical and conceptual difficulties to law and policy makers, have been made clearer by the CRPD. The CRPD has set clear and instructive standards which bind State Parties to adopt measures that improve the equality outcomes for persons with disabilities⁴⁰.

Overview of the Optional Protocol on the Convention on the Rights of Persons with Disabilities (CRPD)

Persons with Intellectual Disabilities, October 2010, available at: http://www.fra.europa.eu/fraWebsite/attachments/Report-vote-disability_EN.pdf.

³⁸ Art. 12, CRPD, 2006.

³⁹ Art. 5 (3), CRPD, 2006.

⁴⁰ See Jarlath op.cit., note 36 above.

The optional protocol on the CRPD 2006 has a total of 18 articles which set out issues of concern for the protocol, including the disclosure of its purpose, which is to make State Parties recognize the competence of the Committee on the Rights of Persons with Disabilities ("the Committee") to receive and consider communications from or on behalf of individuals or groups of individuals subject to its jurisdiction, who claim to be victims of a violation by that State Party of the provisions of the Convention⁴¹. The same article excludes the committee from exercising jurisdiction over communications submitted to it in respect of non-State Parties⁴². In article two, the protocol sets out conditions under which the committee will not entertain a communication, including when such is sent anonymously, constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of the Convention⁴³. Also, where the same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement, the committee will not entertain such to avoid duplication and a waste of resources on the same matter.

Other conditions where the committee may not entertain a communication are when all available domestic remedies have not been exhausted, a rule which shall not apply where the application of the remedies is unreasonably prolonged or unlikely to bring effective relief; where it is manifestly ill-founded or not sufficiently substantiated; or when the facts that are the subject of the communication occurred prior to the entry into force of the Protocol for the State Party concerned, unless those facts continued after that date⁴⁴.

The Optional Protocol is the legal instrument that provides for obtaining remedies in cases of violation of the rights of PWDs. It gives the Committee on the Rights of Persons with Disabilities the power to address individual complaints of violations of all rights in

⁴¹ Art. 1(1), Optional Protocol on the Convention on the Rights of Persons with Disabilities, 2006.

⁴² Art. 1(2), *Ibid.*

⁴³ Art. 2, (b), *Ibid.*

⁴⁴ Art. 2, (c)-(f), *Ibid.*

the Convention. However, the individual must have first exhausted avenues at the national level for obtaining redress. To enjoy the benefits or be bound by the obligation therein, States parties to the Convention must individually sign and ratify the Optional Protocol in addition to their obligations under the CRPD. Only Parties to the Convention are allowed to be parties to the Optional Protocol. As at 1 July 2008, there were 18 States parties to the Optional Protocol, which entered into force on 3 May 2008.

The Protocol and its provisions are necessary in order to give effect to the Convention and to translate it to an effective instrument which will ensure that PWDs enjoy their human rights. The CRPD will otherwise be a mere advisory document and at best, set standards which if State parties do not adhere to, the victims of violations under the CRPD will not be able to enforce. For the lofty goals of the CRPD to be fully realized, the Protocol is a necessary additional instrument.

The CRPD in the context of the Nigerian Legal Structure

Though disability is a universal phenomenon and is by no means peculiar to Nigeria, the country has its fair share of persons with disabilities. The World Health Organization (WHO) estimated that about 15% of the World's population 1 Billion people live with disability worldwide, with about 80% living in the developing countries⁴⁵. In Nigeria, WHO estimates put the number of people with disability at 19 million or approximately 20% of the country's population, according to Lang and Upah⁴⁶. Accurate statistics are not readily available on disability in Nigeria and Amusat has rightly stated that there are no credible and robust statistics in Nigeria about most things, including disability, suggesting that there is therefore a big knowledge gap that needs to be bridged⁴⁷ in this area of research.

⁴⁵ Women With Disabilities Australia (WWDA), 2013. Issues Paper, The Sexual and Reproductive Rights of Women and Girls with Disabilities July 1st, 2013, By Carolyn Frohmader and Stephanie Ortoleva.

⁴⁶ Lang, R. and Upah, L. (2008) Scoping study: Disability issues in Nigeria. Viewed May 3, 2009, <http://www.ucl.ac.uk/lcccr/downloads/dfid_nigeriareport>

⁴⁷ Amusat, N. 2009. Disability Care in Nigeria: The need for professional advocacy *AJPARS* Vol. 1, No. 1, pp. 30-36, at 31.

Nigeria like many other countries, has declared support for disability rights. On Friday, September, 24, 2010, Nigeria signed both the Convention on the rights of Persons with Disabilities (CRPD) and its Optional Protocol, thus becoming the 94th ratifier of the Convention and 58th ratifier of the Optional protocol.

In its short lifetime, the CRPD has already added an extremely important new dimension to the fight against discrimination on grounds of disability in Europe. It has consolidated legal concepts such as reasonable accommodation, guided the jurisprudence of the ECtHR and energised European countries to develop new safeguards and measures to entrench disability rights and promote effective equality for persons with disabilities⁴⁸.

Nigeria has an obligation to under international law as a party to the Convention, to establish mechanisms to effectively respect, protect, promote and enforce or implement measures for the realization of the various rights contained in the Convention, haven signed and ratified it⁴⁹. The country has a pending Bill before its national Assembly for more than five years which is aimed at providing legal protection for the rights of PWDs, but it is yet to be passed into law. Even till the time of concluding this research, Nigeria is yet to domesticate the CRPD 2006. This suggests that steps of signing and ratifying the CRPD earlier on in 2010 by Nigeria, may have only been an indication of sympathy, while keeping PWDs as beggars in the streets and an indication that failure or refusal to legislate to make Nigerians with disabilities enjoy rights rather than charity, is the preferred option.

Conclusion

Considering the fact that disability is a phenomenon that increases the vulnerability of PWDs and makes it necessary for the law to provide adequate protection for their rights, Nigeria needs to translate the CRPD to advantage. In view of the universality, indivisibility, interdependence and interrelatedness of all human rights and

⁴⁸ Jarlath, *op.cit.* (note 18 above).

⁴⁹ Article 33 of the CRPD 2006 under the heading of National Implementation and Monitoring, requires State parties to take steps to make the provisions of the CRPD applicable within their municipal jurisdictions.

fundamental freedoms, there is a need for persons with disabilities to be guaranteed the full enjoyment of human rights without discrimination and there is a need for a global instrument for such a purpose. The CRPD which came into force in 2008, is that instrument that has set minimum standards for the global community and provided a guide for municipal governments for the legal protection of their citizens who have disabilities. It is therefore imperative for any upwardly mobile and progressive sovereign state to either enact an instrument with similar provisions or at the least, adopt the CRPD by domesticating its provisions within its municipal legal structure. To date, Nigeria has not made the CRPD enforceable in its jurisdiction by domesticating it as required under section 12 of the 1999 CFRN (as amended). This article advocates and recommends that Nigeria should take urgent steps to domesticate the CRPD and its optional Protocol, as it signifies a paradigm shift in the relationship of society and PWDs from a medical to a social model. The social model in contrast to the medical one, views PWDs as subjects of rights rather than deficient or sick persons who require being fixed before participating fully in society. The CRPD 2006 adopted a human rights approach to the subject of disability. Much as the CRPD does not invent entirely new rights, it has contextualized existing human rights provisions to enable PWDs to access and enjoy their human rights. Nigeria should therefore domesticate the convention on disability without any further hesitation in view of the benefits of so doing to the PWDs and the society at large. Benefits that will accrue to Nigeria if it domesticates the CRPD include adding important new dimension to the fight against discrimination on grounds of disability, consolidating legal concepts such as reasonable accommodation and the use of universal design, and guidance for the jurisprudence on disability in the country. It will also enable Nigeria to develop new safeguards and measures to entrench disability rights and promote effective equality for PWDs.