

**Rights to Education and Employment for Persons with Disabilities
in Nigeria: Towards a Human Rights Model of Disability**

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ABSTRACT

Nigeria is a party to several international and regional instruments including the Convention on the Rights of Persons with Disabilities, and more recently the 2030 Agenda on Sustainable Development which guarantees explicitly the education and employment rights of persons with disabilities. These international instruments impose obligations on states including Nigeria in the implementation of education and employment for persons with disabilities. Therefore, this thesis evaluates Nigeria's progress in achieving the (Sustainable Development Goals) SDGs by considering whether Nigeria is meeting its international obligations for persons with disabilities in education and employment.

Applying the 4As (Adaptability, Acceptability, Availability, and Accessibility) and disability human rights frameworks, this thesis contends that although Nigeria has made some progress towards achieving the SDG goals 4 and 8, and has adopted some measures to protect and promote the education and employment rights of persons with disabilities, yet the country is still failing to meet its obligations to make education and employment acceptable, adaptable, available, and accessible to persons with disabilities. Moreover, Nigeria continues to promote the moral/medical approaches to disability rather than the human rights model of disability in its domestic framework and practices relevant to persons with disabilities in education and employment.

For Nigeria to comply with its international obligations, it needs not only to move towards a human rights model of disability in its domestic laws, policies, and practices relevant to persons with disabilities in education and employment but also, shift towards protecting and promoting the rights of people with disabilities in these areas, by providing more financial resources and making procedural, institutional, substantive, and cultural changes. A shift towards a human rights model of disability by Nigeria will significantly improve the situation of persons with disabilities as well as ensure Nigeria's progress in achieving inclusive quality education and full productive employment for persons with disabilities in line with the 2030 Agenda on Sustainable Development.

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To my lovely husband Adefolaju

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LIST OF ABBREVIATIONS

4As	Accessibility, Adaptability, Acceptability and Availability
ACHPR	African Charter on Human and Peoples' Rights
AU	African Union
CESCR Committee	Committee on Economic, Social, and Cultural Rights
CMW	Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CRC	Convention on the Rights of the Child
CRC Committee	Committee on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CRPD Committee	Committee on the Rights of Persons with Disabilities
CSOs	Civil Society Organisations
DEEL	Digital Skill Acquisition, Employability, Entrepreneurship, and Leadership
ECOWAS	Economic Community of West African States
EFA	Education for All
ERGP	Economic Recovery and Growth Plan
ESCRs	Economic, Social, and Cultural Rights
HLPF	United Nations High Level Political Forum
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
FME	Federal Ministry of Education
GEEP	Government Enterprise and Empowerment Program
ILO	International Labour Organisation
MDGs	Millennium Development Goals
MSME	Small and Medium Scale Enterprises
NHRC	National Human Rights Commission
NHGSFP	National Home-Grown School Feeding Program
NIRSAL	Nigeria Incentive-Based Risk Sharing System for Agricultural Lending

NPIS	National Policy on Inclusive Education
NPSNE	National Policy on Special Needs Education
NSITF	Nigeria Social Insurance Trust Fund
OHCHR	Office of the High Commissioner for Human Rights
PWDA	Discrimination against Persons with Disabilities (Prohibition) Act 2019
SDGs	Sustainable Development Goals
SME	States Ministries of Education
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Education, Scientific, and Cultural Organisation
UNICEF	United Nations Children’s Fund
UPIA	Union of the Physically Impaired against Segregation

CHAPTER 1

INTRODUCTION

1.1 The Thesis: Overview

Nigeria has actively supported international human rights including being signatory to core UN, ILO, UNESCO, AU, and ECOWAS instruments.¹ It also actively participated as part of the African Group during the negotiation of the UN Convention on the Rights of Persons with Disabilities (CRPD).² Indeed, it has accepted its political commitments under the 2030 Agenda on Sustainable Development (SDGs) to leave no one behind and to ensure the promotion of full and productive employment as well as inclusive quality education at all levels.³ However, since Nigeria's ratification of the CRPD and its Optional Protocol in 2010 and acceptance of its moral commitments under the Sustainable Development Goals (SDGs) in 2015, the question remains to what extent is it in compliance with its international obligations for persons with disabilities in education and employment?

To this end, this thesis examines Nigeria's domestic laws, policies, and practices relevant to persons with disabilities in education and employment against international standards using the 4As as well as the disability human rights frameworks. Although a similar inquiry has been carried out in other jurisdictions;⁴ this thesis is different because of its focus on Nigeria. Studies previously done, have also rarely evaluated compliance of states to the disability human rights model and the

¹ United Nations (UN), International Labour Organisation (ILO), United Nations Education and Scientific Council (UNESCO), African Union (AU), and Economic Community of West African States (ECOWAS).

See https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=127&Lang=EN accessed 7th April, 2021.

² Equal Rights for Persons with Disabilities International, Inc <https://sustainabledevelopment.un.org/index.php?page=view&type=20036&menu=1561&nr=55262> accessed 10 April 2021.

³ Implementation of the SDGs: A National Voluntary Review (Nigeria), <https://sustainabledevelopment.un.org/content/documents/16029Nigeria.pdf> accessed 12 April, 2021.

⁴ Douglas Hodgson, 'The Educational Rights of Persons with Disabilities: International Human Rights Law and Australian Law Perspective' (2013) 12(4) IJDL 183, Ron McCallum and Hannah Martin, 'A Forgotten Cohort: Citizenship through Work and Persons with Disabilities' (2016) 41(2) QLJ 317, Andrea Broderick, 'The Rights to Inclusive Education: Article 24 of the UN Convention on the Rights of Persons with Disabilities and the Irish Experience' in Siobhan et al (eds), *The Irish Yearbook of International Law* (Hart Publishing 2014), Eilionoir Flynn, 'Ireland's Compliance with the CRPD: Towards a Rights-Based Approach for Legal Reform' (2009) 31 DULJ 357, Nate Stein, 'A Society Disabled: State of the Right to Education for People with Disabilities in China' (2015) 47(50) NYUJILP 501, Eric Zhang, 'Employment of People with Disabilities: International Standards and Domestic Legislation and Practices in China' (2006-2007) 34 SJILC 517; Charles Ngwena, 'Human Rights to Inclusive Education: Exploring a Double Discourse of Inclusive Education Using South Africa as a Case Study' (2013) 31(4) NQHR 473.

SDGs.⁵ Hence, this thesis' goals are to establish the conceptual and international standards for the full fulfillment of education and employment for persons with disabilities.

The fields of education and employment were chosen because they impact on the economic growth and development of individuals and states alike and have direct nexus with poverty reduction. In other words, the provision of quality inclusive education, employment and decent work inversely leads to reduction in poverty. More importantly, employment and education are interrelated areas where people with disabilities continue to experience disability-based discrimination.⁶ Besides, poverty and unemployment are very common amongst persons with disabilities, with unemployment rate much higher for persons with disabilities compared with persons without disabilities in Nigeria. According to Leonard Cheshire, persons with disabilities in Nigeria proportionately experienced higher rates of unemployment than the general population. In fact, 62.5 per cent of adults with disabilities were unemployed, compared with 21.5 of adult without disabilities.⁷ It is therefore vital to evaluate the extent to which the Nigerian government is moving towards achieving the SDGs and improving the education and employment situation of persons with disabilities.

1.2 Definition of Terms

This sub-section seeks to clarify the key terms relevant to the thesis and these include meaning of terms such as 'education', 'work and employment', 'persons with disabilities', and 'human rights model of disability'.

1.2.1 Education

Education can be defined as 'the process of teaching or learning, especially in a school or college, or the knowledge that you get from this'.⁸ It involves the facilitating the acquisition of skills, knowledge, values, and beliefs.⁹ It is established under international law that education at the

⁵ Adejoke Oyewunmi and Philip Folarin, 'International Standards on Protection of the Disabled at Work: Wither Nigeria' (2016) 2 CILR 156; Bukola Ruth Akinbola, 'The Right to Inclusive Education in Nigeria: Meeting the Needs and Challenges of Children with Disabilities' (2010) 10 AHRLJ 457.

⁶ CESCR, General Comment 5: Persons with Disabilities, UN Doc E/1995/22, (1994), para 35.

⁷ Leonard Cheshire, 'Disability Data Review: A collation and analysis of disability data from 40 countries' (Leonard Cheshire, UK, 2018) https://www.disabilitydataportal.com/fileadmin/uploads/lcdp/Documents/report-web_version.pdf accessed 11 April, 2021.

⁸ Cambridge Dictionary, < <https://dictionary.cambridge.org/dictionary/english/education>> accessed 21 April 2021.

⁹ CRPD, General Comment No.4: The Right to Inclusive Education, UN Doc. CRPD/C/GC/4, 2 September 2016, para. 9.

primary level has to be offered to everyone including persons with disabilities for free and made compulsory. However, international law does not limit its protection to primary education alone.¹⁰ Thus, education must be understood as a broad concept, which includes all types and levels of education, including adult education, vocational training, and lifelong learning.¹¹

1.2.2 Work and Employment

Work and employment is used interchangeably in the thesis and the term ‘work’ ‘comprises any activity performed by persons of any sex and age to produce goods or to provide services for use by others or for own use’¹² Work is also a source of ‘personal dignity, family stability, peace in the community, democracies that deliver for people, and economic growth that expands opportunities for productive jobs and enterprise development’.¹³ However, in international law, it is established that decent work and full productive employment be promoted for all including persons with disabilities. This would involve creating opportunities for work that is productive and delivers a fair income, security in the workplace, and social protection.¹⁴

1.2.3 Persons with Disabilities

Although the phrase ‘persons with disabilities’ is not defined in international law, it is however described in the CRPD which provides the latest standards for the implementation of the rights of persons with disabilities as ‘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’.¹⁵ This description has been criticized by scholars for reflecting persons with disabilities within the medical/social framework instead of the human rights framework.¹⁶

¹⁰ Ibid, para 6.

¹¹ Ibid.

¹² ILO Glossary of Statistical Terms < <https://www.ilo.org/ilostat-files/Documents/Statistical%20Glossary.pdf>> accessed 20 April 2021.

¹³ UN High Commissioner for Human Rights, Thematic Study on the Work and Employment of Persons with Disabilities, A/HRC/22/25 (17 December 2012), para 6.

¹⁴ Ibid.

¹⁵ UN Convention on the Rights of Persons with Disabilities, Article 1.

¹⁶ Anna Lawson, *Disability and Equality Law in Britain: The Role of Reasonable Adjustment* (Oxford: Hart Publishing Ltd 200) 15.

1.2.4 Human Rights Model of Disability

Human rights model of disability is one of the dominant paradigms in disability studies and human rights and has been the subject of discussion amongst scholars in both fields of enquiry.¹⁷ The framework which has been noted by scholars as mirroring the CRPD gives recognition to the rights of all persons with disabilities.¹⁸ The paradigm views persons with disabilities as rights holders, while disability is seen as a human rights issue.¹⁹

1.3 Research Questions

The main research question that this study seeks to investigate is whether Nigeria is in compliance with the fullest extent of its international obligations for persons with disabilities in education and employment. To address this question, this thesis focuses on the following interrelated sub-research questions:

- (1) What does a disability human rights model entail in relation to states' obligations in education and employment?
- (2) What are the general states' treaty obligations in education and employment, and what is the effects of ratifying the CRPD on states' obligations?
- (3) What are states' specific international obligations for persons with disabilities in education and employment?
- (4) Is Nigeria meeting its international obligations for persons with disabilities in education and employment?

1.4 Contributions to Knowledge

This thesis adds to the literature in several ways. It contributes to the literature by providing understanding of the disability human rights model within the Nigerian context. Moreover, it adds

¹⁷ Theresia Degener, 'A New Human Rights Model of Disability' in Valentina Della Fina et al (eds), in *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary* (Springer 2017) 41;

¹⁸ Lucy Series, 'Disability and Human Rights' in Nick Watson and Simo Vehmas (eds), in *Routledge Handbook of Disability Studies* (2nd Edition 2019); Amita Dhanda, 'Constructing a New Human Rights Lexicon: Convention on the Rights of Persons with Disabilities' (2008) 8 *SIJHR* 42, 45; Michael Ashley Stein and Penelope Stein, 'Beyond Disability Civil Rights' (2006) 58(6) *Hastings Law Journal* 1203, 1221; Gerard Quinn, 'A Short Guide to the UNCRPD' (2009) 1 *EYBDL* 89, Michael Ashley Stein, 'Disability Human Rights' (2007) 95 *CLR* 75, Rosemary Kayess and Philip French, 'Out of Darkness into Light? Introducing the CRPD' (2008) *HRLR* 8, Paul Harpur, 'Embracing the New Disability Rights Paradigm: Importance of the CRPD' (2012) 27(1) *DS* 1.

¹⁹ Theresia Degener, 'Disability in a Human Rights Context' (2016) 5 *Laws* 1.

to the literature by examining the effects on state obligations in ratifying the CRPD within the Nigerian context, as well as, states' specific obligations for persons with disabilities in education and employment under the SDGs in the light of the human rights model of disability. Additionally, the research adds to the literature because there is little written on the rights of persons with disabilities in education and employment in the Nigerian context. Besides, this study contributes to the literature on the rights of persons with disabilities by collating Nigerian laws and policies relevant to persons with disabilities in education and employment. It also adds to knowledge of the relevant Nigerian legal framework, what the framework should have been providing, and the gaps existing in the framework. It further adds to the literature on the Nigerian legal framework by analysing the extent to which Nigerian laws and policies meet the international legal framework which Nigeria has accepted.

1.5 Methodology

This thesis employed a doctrinal approach using the 4As framework²⁰ and the disability human rights model to address the research questions. This approach was adopted to provide better understanding of the scope of Nigeria's legal obligations for persons with disabilities in education and employment. Besides, this research method was utilized to investigate what should be happening in Nigeria and how the country could better improve the situation of persons with disabilities since the study adopts the approach in the hope that the research can have a practical implication in Nigeria and contribute towards improving the situation of persons with disabilities.

To examine the disability rights-based approach to education and employment and its implications for states' obligations in chapter 2, this research primarily relies on primary and secondary sources of law including textbooks and journal articles. In particular, recent journal articles were relied upon to provide better understanding on the debates around the human rights model, as well as the tension between the social and human rights approaches.

To demonstrate the general and specific standards for the full fulfillment of the rights of persons with disabilities in education and employment, the research examines international instruments including the International Covenant on Economic, Social, and Cultural Rights (ICESCR),²¹ the

²⁰ 4As means Adaptability, Accessibility, Acceptability, and Availability. Discussed in more details in Chapter 4.

²¹ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

International Convention on the Rights of Persons with Disabilities (CRPD), and the Sustainable Development Goals (SDGs) to ascertain the nature of the obligations on states including Nigeria. The ICESCR is particularly examined to establish the general (immediate) standards and to explain ways states could progressively realise education and employment for persons with disabilities in Chapter 3.

Additionally, the study establishes the specific standards in Chapter 4 in relation to education and employment for persons with disabilities, with attention paid particularly to articles 6, 7, 8, 13, and 14. The CRPD which builds on the ICESCR was employed in this research to establish the latest standards in the implementation of the rights of persons with disabilities in education and employment, in particular the minimum core standards and strategies for the progressive realization of education and employment for persons with disabilities in Chapter 3, and to explain the specific standards in the realisation of education and employment for persons with disabilities under the SDGs and other international instruments in Chapter 4. Although the SDGs is not a binding instrument in international law, it is a soft law that builds on the Millennium Development Goals (MDGs) and is grounded in human rights. It is examined in this thesis (Chapter 4) to show states' specific international obligations for persons with disabilities in education and employment.

In order to investigate the conduct expected of states towards the full realisation of education and employment for persons with disabilities, the decisions of a number of international human rights monitoring bodies including the Committee on the Rights of Persons with Disabilities (CRPD Committee) and the Committee on Economic, Social, and Cultural Rights (CESCR Committee) are examined.²² Having established the international standards, the study then measures Nigerian laws against these standards in chapter 5.

The research in chapter 5 reviews the provisions of the Nigerian Constitution,²³ the recently enacted Discrimination against Persons with Disabilities (Prohibition) Act 2019 (PWDA)²⁴, and other supportive laws and policies relevant to persons with disabilities in education and employment including the National Policy on Inclusive Education,²⁵ the National Action Plan on

²² (CRPD Committee), 'Monitoring Disability Rights', Available at: <https://www.ohchr.org/en/hrbodies/crpd/pages/crpdindex.aspx> accessed 07 April 2021.

²³ The Nigerian Constitution as Amended (adopted in 1999).

²⁴ The Discrimination against Persons with Disabilities (Prohibition) Act (enacted into law in 2019).

²⁵ The National Policy on Inclusive Education in Nigeria and its Implementation Guidelines (adopted in 2016).

Human Rights and Business in Nigeria (2021-2025),²⁶ and the National Action Plan on the Promotion and Protection of Human Rights in Nigeria (2021-2025).²⁷

The Nigerian Constitution is particularly examined in this thesis (chapter 5) to understand the Nigerian legal and policy context. Also, the Discrimination against Persons with Disabilities (Prohibition) Act 2019 (PWDA) is employed in this study to not only show the measures adopted by the Nigerian government to promote and protect the rights of persons with disabilities in education and employment, but to assess the extent to which the domestic framework and practices in Nigeria are rights-based or consistent with the CRPD.

Moreover, the National Policy on Inclusive Education is engaged in this study (chapter 5) to provide understanding on the extent of implementation of inclusive education in Nigeria. Furthermore, the National Action Plan on Human Rights and Business and the National Action Plan on the Promotion and Protection of Human Rights are examined in this research to address the measures adopted to the Nigerian government in the implementation of human rights including the rights of persons with disabilities.

Finally, aside these domestic instruments, cases, independent reports, statistical data on the situation of persons with disabilities, and non-governmental reports by civil societies organizations are used particularly in chapter 5 as evidence to evaluate the extent to which Nigeria is meeting with its international obligations in education and employment for persons with disabilities.

1.6 Scope and Limitations of the Study

The focus of this thesis is on Nigeria and its implementation of education and employment for persons with disabilities. The limitations of the thesis are that the disability human rights paradigm and the notion of inclusive education are developing concepts in human rights. Therefore, the study seeks to exploit the developing nature of these concepts by contributing to the development of the concepts and offering views on the evolving implications of the concepts in Nigeria.

²⁶ The National Action Plan on Human Rights and Business (2021-2025).

²⁷ The National Action Plan on the Promotion and Protection of Human Rights (2021-2025).

1.7 Structure of the Thesis

This thesis comprises of six chapters. Chapter 1 (the present chapter) provides a brief explanation about the main points that the thesis takes into consideration. Chapter 2 addresses the first sub-research question ‘What a disability human rights model entails in relation to states’ obligations in education and employment’. It establishes the conceptual standard which this thesis will apply to evaluate the implementation of the rights of persons with disabilities in Nigeria in education and employment. To achieve this, it traces the development of disability human rights model. It examines the disability model in relation to employment and education and considers its implications for states’ obligations. It shows that states are duty bound to develop disability inclusive education and employment in order to comply with their obligations in international law. To achieve disability inclusive education and employment, therefore, states are required to undergo procedural, substantive, institutional, and cultural changes. It argues that in order for states including Nigeria to comply with its international obligations for persons with disabilities, it is imperative for them to adopt the disability human rights framework in the implementation of education and employment.

Chapter 3 considers the second sub-research question: the general states’ treaty obligations in education and employment, and the effects of ratifying the CRPD on states’ obligations. To achieve this, it considers how states can realise progressively education and employment for persons with disabilities and the effects of ratifying the CRPD on states obligations. It shows that although states have a duty to progressively achieve the full fulfillment of education and employment for persons with disabilities, states however have immediate core obligations regarding the rights of persons with disabilities to education and employment. It argues that the standards for the realization of the education and employment rights of persons with disabilities under the CRPD are much higher than the standard provided under pre-existing human rights treaties. Since states are now required to ensure that the individual needs of persons with disabilities are reasonably accommodated. Besides, states have to be more proactive, provide more resources, and adopt positive measures to promote employment and inclusive education for persons with disabilities.

Chapter 4 investigates the third sub-research question: ‘What are states’ specific international obligations for persons with disabilities in education and employment?’. It examines states’

specific obligations for persons with disabilities in education and employment under international law, with particular focus on the SDGs. To achieve this, it applies the 4As framework (accessibility, adaptability, acceptability and availability), developed by the first United Nations Special Rapporteur on the right to education, Katarina Tomasevski to elaborate on states' obligations in education, work, and employment. It argues that states have obligations to make education, work, and employment for persons with disabilities accessible, available, adaptable, and acceptable. It further contends that while the SDGs integrate human rights standards to an extent, the SDG framework largely still does not incorporate the rights -based standards.

Chapter 5 investigates the fourth sub-research question/main research question of the thesis; whether Nigeria is meeting its international obligations for persons with disabilities in education and employment. To achieve this, it employs the 4As framework to evaluate the extent to which the country is in compliance with its international obligations for persons with disabilities in education and employment. It also applies the disability human rights model to assess whether the Nigeria's framework relevant to persons with disabilities in education and employment is right-based or consistent with the CRPD. It shows that, although Nigeria had made some progress regarding the implementation of education and employment for persons with disabilities, it is still not meeting its international obligations to make education and employment accessible, available, adaptable, and acceptable to persons with disabilities. It also contends that Nigeria's domestic framework relevant to persons with disabilities in education and employment is not consistent with the disability human rights approach. It thereafter provides suggestions on ways the Nigerian government could better comply with the disability human rights model and its international obligations for persons with disabilities in education and employment. Finally, Chapter 6 concludes the thesis by revisiting the research questions as addressed throughout the thesis.

To begin addressing the research questions, the next chapter examines the disability human rights-based approach to education and employment as well as the implications of the model for state obligations.

CHAPTER 2

HUMAN RIGHTS MODEL OF DISABILITY: IMPLICATIONS FOR STATES’ OBLIGATIONS IN EDUCATION AND EMPLOYMENT

2.1 Introduction

While pre-existing human rights instruments echoed other disability paradigms (such as the social, medical, and moral), the United Nations Convention on the Rights of Persons with Disabilities (CRPD)¹ is the first binding international treaty in the 21st century to adopt a ‘new human rights model of disability’.² Indeed, the coming into force of the CRPD in 2008 heralded a paradigm shift in understanding disability and persons with disabilities within a human rights approach.³ Unlike pre-existing disability models, this disability human rights framework can better account for the experiences of all persons with disabilities including the more vulnerable members of society such as women and children with disabilities.⁴

Although the modern disability human rights paradigm is the new approach to disability and in understanding persons with disabilities, it is however an evolving paradigm that is still not fully understood.⁵ Moreover, what a disability human rights approach demands of states is still unclear. Therefore, there is a need to conduct further research to establish the main features of the paradigm and explain its requirements for states in relation to the implementation of education and employment for persons with disabilities in order to make progress towards achieving the Sustainable Development Goals (SDGs).⁶

¹ United Nations Convention on the Rights of Persons with Disabilities (Adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3.

² Theresia Degener, ‘A New Human Rights Model of Disability’ in Valentina Della Fina et al (eds), in *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary* (Springer 2017) 41; Stein (n 2) 75; Stein and Stein (n 2) 1203.

³ Amita Dhanda, ‘Constructing a New Human Rights Lexicon: Convention on the Rights of Persons with Disabilities’ (2008) 8 SIJHR 42, 45; Michael Ashley Stein and Penelope Stein, ‘Beyond Disability Civil Rights’ (2006) 58(6) *Hastings Law Journal* 1203, 1221; Gerard Quinn, ‘A Short Guide to the UNCRPD’ (2009) 1 EYBDL 89, Michael Ashley Stein, ‘Disability Human Rights’ (2007) 95 CLR 75, Rosemary Kayess and Philip French, ‘Out of Darkness into Light? Introducing the CRPD’ (2008) HRLR 8, Paul Harpur, ‘Embracing the New Disability Rights Paradigm: Importance of the CRPD’ (2012) 27(1) DS 1.

⁴ Stein and Stein, ‘Beyond Disability Civil Rights’ (n 2) 1203.

⁵ Lucy Series, ‘Disability and Human Rights’ in Nick Watson and Simo Vehmas (eds), in *Routledge Handbook of Disability Studies* (2nd Edition 2019). Series who after examining the human rights approach to disability suggested further study be conducted on understanding the contours of what a disability human rights approach to disability within the context of what state duties requires, and show how states could comply with the paradigm in practice

⁶ CRPD, Concluding Observations: India, UN Doc. CRPD/C/IND/CO/1 (29 October 2019), para. 7. The Committee on the Rights of Persons with Disabilities requested the Indian state to follow the disability human rights paradigm in

This chapter examines the disability models, in particular, the disability human rights model and explains its requirements for state obligations in education and employment. The disability approaches are explained in this study to provide better understanding of the shift in disability perceptions. In particular, understanding the models provides clearer understanding of the tension between the disability models, and why implementation of the rights of persons with disabilities is problematic. While Stein and Stein explained the disability human rights-based approach to development,⁷ this chapter seeks to add to the literature by explaining the disability human rights-based approach to education and employment as well as its implications for states' obligations. More importantly, this chapter contributes to the literature by providing understanding of the disability human rights model within the Nigerian context.

To achieve this, the chapter firstly shows how the disability models evolved by tracing the development of the disability human rights paradigm from pre-existing disability models. It considers the disability models under both disability studies and human rights. Secondly, it examines the disability human rights approach in relation to education and employment. Finally, it considers the implications for state obligations in adopting a disability human rights model, as well as the framework states can adopt in order to achieve disability human rights approach to education and employment in practice.

This chapter is vital to this thesis in a number of ways. Firstly, the disability human rights paradigm provides the conceptual framework that guides the entire research (theoretical standards that Nigeria as state party to the CRPD must follow in order to make progress towards the SDGs and to comply with its international obligations for persons with disabilities in education and employment). Secondly, this paradigm will be employed later in chapter 4 to assess if states' obligations under the SDGs regarding education and employment for persons with disabilities are consistent with the disability human rights model. Lastly, the framework will be further engaged in chapter 5 to evaluate if Nigeria is in compliance with its international obligations for persons with disabilities in education and employment. In particular, it evaluates if Nigeria's domestic

order to comply with their duties and effectively implement the rights of persons with disabilities in accordance with the CRPD.

⁷ Michael Ashley Stein and Penelope J S Stein, 'Disability, Development, and Human Rights: A Mandate and Framework for International Financial Institutions' (2014) 47 UCD L Rev 1231.

framework relevant to persons with disabilities in education and employment is consistent with the disability human rights paradigm.

This chapter is divided into five sections. Following this introduction (section 2.1), section 2.2 traces the shift from pre-existing disability paradigms (medical, moral, and social) to the disability human rights model. Section 2.3 examines the disability human rights approach in education and employment. Section 2.4 considers the implications of the disability human rights model for states' obligations as well as the framework for achieving the disability human rights approach to education and employment for persons with disabilities. The final section (section 2.5) provides some concluding remarks.

2.2 The Shift to the Human Rights Model of Disability

This part of the chapter traces the shift to the human rights model of disability in disability studies and human rights. While there are various disability approaches,⁸ the discussion in this section of the chapter is restricted mainly to the four dominant disability paradigms in disability studies and human rights (the moral, medical, social (British social model and the American minority group model), and human rights paradigms).⁹ Thus, the four main disability models are examined in this study because the debate on disability and persons with disabilities revolves around only these four paradigms.¹⁰ Understanding these disability paradigms and the emergence of the disability human rights approach is further important to this research since it will help to provide better understanding on the conceptualization of disability and persons with disabilities from the medieval epoch to contemporary times as well as establishes the theoretical standards of the CRPD.

Looking at the disability models, disability and persons with disabilities were initially viewed using the moral model. The framework refers to the attitude that people are morally responsible for their own disability. Afterwards, there was a gradual shift in thinking from the moral to the medical approach. Like the moral model, the medical model also viewed disability as a personal responsibility but viewed disability as a medical condition requiring cure. From the medical

⁸ There are other disability models including the Capabilities Approach, the Economic Model etc.

⁹ Degener, 'Disability in a Human Rights Context' (n 9) 1.

¹⁰ Stein (n 2) 75; Tom Shakespeare and Nicholas Watson, 'Defending the Social Model' (1997) 12(2) DS 293.

perceptions, there was a shift to the social model. The social model provided a social thinking of disability as society was blamed for the exclusion of persons with disability through the existence of barriers. Unlike the pre-existing models, the human rights model promotes a holistic viewpoint, as it accords fundamental human rights to persons with disabilities. Moreover, it imposes more obligations on public and private actors in the realization of the human rights of persons with disabilities.

2.2.1 The Shift from Moral/Medical Models to the Social Model of Disability

From time immemorial till the 18th century, the moral model of disability (sometimes called the religious model or charity-based model) held sway.¹¹ During this period, there was a complete absence of disability and persons with disabilities within human rights instruments.¹² This model which is the oldest approach to understanding disability and persons with disabilities is found in a number of religious traditions including the Christian institution.¹³ The framework refers to the attitude that people are morally responsible for their own disability. In fact, disability is viewed as retribution for sin or as manifestation of evil.¹⁴

Although this model is the oldest in understanding disability and the situation of persons with disabilities,¹⁵ the framework is still very relevant in most parts of Asia and Africa.¹⁶ This is because culture and religion influenced how most people view disability and persons with disabilities. For example, in Nigeria, many cultures and religions associate disability with punishment for sin committed in past life. Indeed, mental disability is still mostly viewed by members of Nigerian society as a consequence of a person's past evil deeds.

¹¹ Colin Barnes et al, *Exploring Disability: A Sociological Introduction* (Polity 1999) 17; Mary Ann Jackson, 'Models of Disability and Human Rights: Informing the Improvement of Built Environment Accessibility for People with Disability at Neighborhood Scale?' (2018) 7(10) *Laws* 3.

¹² Berghs et al, 'Implications for Public Health Research of Models and Theories of Disability: A Scoping Study and Evidence Synthesis' (2016) 4(8) *Public Health Research* 1.

¹³ Nicole Reibe, 'The Convent of the Infirm: Teresa de Cartagena's Religious Model of Disability' (2018) 22(2) *Journal of Disability and Religion* 130.

¹⁴ *Ibid.*

¹⁵ Romel W Mackelprang, 'Disability Controversies: Past, Present, and Future' (2010) 9 *JSWDR* 87; Nicole Reibe, 'The Convent of the Infirm: Teresa de Cartagena's Religious Model of Disability' (2018) 22(2) *Journal of Disability and Religion* 130; Dan Goodley, *Disability Studies: An Interdisciplinary Introduction* (SAGE 2011) 7.

¹⁶ Angi Stone MacDonald, 'Cultural Beliefs about Disability in Practice: Experience at a Special School in Tanzania' (2012) 59(4) *IJDDE* 393.

While disability is seen as a form of punishment for sins committed against God by the individual with a disability or his birth parents,¹⁷ it is also viewed as a form of punishment for wickedness committed in past life by a person with impairment.¹⁸ Surprisingly, disability under this approach is further regarded as an ‘act of a higher being’ and an ‘opportunity for miracles to occur’.¹⁹ As the presence of impairment is perceived as a means of testing one’s faith in God.²⁰ As Goodley has explained, a person with a disability under this framework is seen as ‘having a special relationship with God’.²¹ This latter viewpoint of the paradigm is controversial and is responsible for the continuous existence of the model.

Whereas disability is understood as an individual problem, the human rights model of disability considers disability as a social problem. Unlike the moral model that considers persons with disabilities as passive objects of charity, the human rights approach views persons with disabilities as rights holders.²² Furthermore, while persons with disabilities under the moral framework are considered objects of pity that are dependent on the benevolence of others,²³ the human rights model views persons with disabilities as part of humanity with the capacity to contribute to society. A negative feature of the moral framework is that it attributes disability to moral responsibility, which often leads to explicit stigma and discrimination towards both individuals with disabilities and their families. This in turn severely limited their access to education and employment opportunities. Society responded by providing charity and welfare-based care and assistance.²⁴

However, improvements in medical sciences and scientific research gradually shifted attention from the religious/charity/moral based approach to a more scientific-based thinking about disability and persons with disabilities.²⁵ From the 18th Century to the Mid-20th Century, the

¹⁷ Reibe (n 15)130.

¹⁸ Marno Retief and Rantsoa Letsosa, ‘Models of disability: A brief overview’ (2018) 74(1) HTS Theological Studies/Theological Studies 2.

¹⁹ Louise Humpage, ‘Models of Disability, Work and Welfare in Australia’ (2007)41(3) Social Policy and Administration 215; Justin Haeghele and Samuel Hodge, ‘Disability Discourse: Overview and Critiques of the Medical and Social Models’ (2016) 68(2) Quest 193.

²⁰ Reibe (n 15) 130.

²¹ Goodley (n 15) 7.

²² Simo Vehmas et al, ‘The Unavoidable Alliance of Disability Studies and Philosophy’ in Kristjana Kristiansen et al (eds) *Arguing About Disability: Philosophical Perspectives* (Routledge 2009) 2.

²³ Reibe (n 15)130.

²⁴ Retief and Letsosa (n 22) 2.

²⁵ Jane Campbell and Mike Oliver, *Disability Politics: Understanding Our Past, Changing Our Future* (Routledge 1996) 36.

medical thinking about disability dominated the process of understanding disability and people with disability.²⁶ The medical model of disability (sometimes called the individual model of disability)²⁷ not only equates impairment with disability, but also views disability as a ‘biological trait in which persons with disabilities need physiological assistance to remediate the effects of disability’...²⁸ This model also views disability as ‘an impairment that needs to be treated, cured, fixed, or rehabilitated’.²⁹ The paradigm is rooted in medical diagnosis, which gives a partial view of disability and persons with disabilities.³⁰ In fact, the social effects of disability is not considered. This viewpoint is in turn entrenched in society through the persistence of negative attitudes, and the domination of medical professionals and other related medical specialists working with persons with disabilities.

The medical model further views disability as a medical condition residing in the individual,³¹ and all forms of disability are seen as the direct result of ‘some physiological impairment due to damage or to a disease process’.³² Disability is seen as a problem within the person rather than in society as the role of ‘factors external to the individual is not considered as a major contributor to disability’.³³ Under the framework, a person with a disability is deemed a deviation from the norm and insignificant to society.³⁴ As Hunt notes, society regarded people with impairments as ‘unfortunate, useless, different, and oppressed and sick’, because they pose a direct challenge to commonly held societal values.³⁵

On the positive side, the medical model of disability has advantages over the other models of disability in ‘responding supportively to difference, meeting individual needs and practising

²⁶ Michael Oliver, *Understanding Disability: From Theory to Practice* (Macmillan Press 1996) 31.

Ibid.

²⁸ Jaqueline Nicolaisen et al, ‘Medical and Social Models of Disability; A Tourism Providers’ Perspective’ (2012) 54(3) WLJ 201, 203.

²⁹ Degener, ‘A New Human Rights Model of Disability’ (n 3) 42.

³⁰ Paul Jaeger, *Disability and the Internet: Confronting a Digital Divide* (Lynne Rienner 2012) 10.

³¹ Colin Barnes et al, *Exploring Disability: A Sociological Introduction* (Polity 1999) 21; Degener, ‘A New Human Rights Model of Disability’ (n 3) 41; Michael Oliver, *The Politics of Disablement* (Macmillan 1990) 1.

³² Bradley Areheart, ‘When Disability isn’t Just Right: The Entrenchment of the Medical Model of Disability and the Goldilocks Dilemma’ (2008) 83 ILJ 181.

³³ Mary Forhan, ‘An Analysis of Disability Models and the Application of the ICF to Obesity’ (2009) 31(16) Disability and Rehabilitation 1382, 1383.

³⁴ Areheart, ‘When Disability isn’t Just Right: The Entrenchment of the Medical Model of Disability and the Goldilocks 181.

³⁵ Ibid.

prevention'.³⁶ The model can account for the fact that 'not all people with losses, diseases, and illness experience disability'.³⁷ Nevertheless, the medical model of disability is 'not adequate in understanding disabled people's experiences'.³⁸ As Shakespeare and Watson contend, the framework cannot address issues related to the protection of the human rights and freedoms of persons with disabilities in society, particularly the issues around their exclusion and continued discrimination in society.³⁹

In addition to that, the medical model of disability does not provide a means to explore social causes of disablement experienced by people with disabilities.⁴⁰ This is because the need to fix impairment promotes dependency on medical professionals whose position on impairment are same as the general public in terms of negative attitudes towards persons with disabilities. Moreover, the framework has been heavily criticized for neglecting the role of society in creating disability and its emphasis on treatment and rehabilitation.⁴¹

At the UN level, the 1940s to the 1960s brought about the adoption of the International human rights instruments such as the Universal Declaration of Human Rights (UDHR),⁴² the International Covenant on Civil and Political Rights (ICCPR),⁴³ and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).⁴⁴ However, none of these human rights instruments expressly referenced disability or persons with disabilities except for the non-binding UDHR that mirrors the medical model of disability. As the instrument guarantees adequate standard of living including social protection in the event of disability.⁴⁵

³⁶ Zandi Massoumeh and Jamshidi Leila, 'An Investigation of Medical Model and Special Education Methods' (2012) 46 *Procedia-Social and Behavioural Sciences* 5802.

³⁷ John Harris, 'Is There a Coherent Social Conception of Disability?' (2000) 26 (2) *JME* 95.

³⁸ Tom Shakespeare and Nicholas Watson, 'Defending the Social Model' (1997) 12(2) *DS* 293.

³⁹ *Ibid.*

⁴⁰ Dan Goodley, *Disability Studies: An Interdisciplinary Introduction* (SAGE 2011) 7.

⁴¹ Oliver, *Understanding Disability from Theory to Practice*.

⁴² Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III).

⁴³ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

⁴⁴ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

⁴⁵ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III), Article 25.

Nevertheless, the 1970s witnessed demonstrations for a shift to the social approach to disability.⁴⁶ Disability advocates and scholars in North America⁴⁷ and in some parts of Europe specially the United Kingdom reasoned that disability was a social construct rather than a medical challenge.⁴⁸ Likewise, the period saw the development of various versions of the social approach to disability including the British social model and the American minority group model.

The British social model of disability was developed as a critique to the medical model by disability activists and academics within disability studies.⁴⁹ This paradigm contested the expert-led medical treatment of persons with disabilities.⁵⁰ This version of the social approach to disability emerged out of the United Kingdom with the influence of scholars such as Colin Barnes, Vic Finkelstein, Michael Oliver, Tom Shakespeare, and Paul Hunt. The model was developed from the ideas expressed in the Fundamental Principles of Disability document, published in the 1970s by the Union of the Physically Impaired against Segregation (UPIA).⁵¹ The document states that disabled persons are not disabled by their impairments, but rather by the disabling barriers created by society.⁵² Michael Oliver, one of the main proponents of this paradigm coined the term ‘social model of disability’ and argued for a social thinking about disability as a means of countering the ‘medicalisation’ of disability by medical experts.⁵³ Oliver claims that disability is a social construct and that the restriction of persons with disabilities in society is as a result of the existence of environmental, social, and cultural barriers.⁵⁴

⁴⁶ Berghs et al, ‘Implications for Public Health Research of Models and Theories of Disability: A Scoping Study and Evidence Synthesis’ 1.

⁴⁷ Arlene Kanter, ‘The UNCRPD and Its Implications for the Rights of Elderly People under International Law’ (2009) 25 GSULR 527.

⁴⁸ Rannveig Traustadottir, ‘Disability Studies, the Social Model and Legal Developments’ in Oddny Mjoll Arnardottir and Gerard Quinn (eds), *The UN Convention on the Rights of Persons with Disabilities: European and Scandinavian Perspectives* (Martinus Nijhoff Publishers 2009); Stein, ‘Disability Human Rights’ 75; Harpur, ‘Embracing the New Disability Rights Paradigm: Importance of the CRPD’ (2012) 1.

⁴⁹ Amita Dhanda, ‘Constructing a New Human Rights Lexicon: Convention on the Rights of Persons with Disabilities’ (2008) 8 SIJHR 42.

⁵⁰ Harpur, ‘Embracing the New Disability Rights Paradigm: Importance of the CRPD’ 1.

⁵¹ The Union of the Physically Impaired against Segregation and the Disability Alliance Discussion on the Fundamental Principles’ <<https://disability-studies.leeds.ac.uk/wp-content/uploads/sites/40/library/UPIAS-fundamental-principles.pdf>> accessed 2 June 2020.

⁵² Carol Thomas, ‘Disability Theory: Key Ideas, Issues and Thinkers’ in Collins Barnes et al (eds), *Disability Studies Today* (Polity Press 2002).

⁵³ Mike Oliver, ‘The Social Model of Disability: Thirty Years on’ (2013) 28(7) D&S 1024.

⁵⁴ Oliver, *The Politics of Disablement* 1.

On the other hand, the minority group model of disability (also called the socio-political model) which is another form of the social model emerged in North America in the 1970s as a result of a disability social movement.⁵⁵ This model designates persons with disabilities as a minority group seeking inclusion in society.⁵⁶ Under the minority group model, persons with disabilities are viewed as ‘victims of discrimination and exclusion’.⁵⁷ This paradigm views persons with disabilities as ‘belonging to a minority group of individuals who have not yet received their full civil rights’.⁵⁸ The main promoters of the minority-group model of disability are Harlan Hahn, Anita Silvers, and Irving Kenneth Zola. The model further stresses that disability should be understood as a social problem in the form of attitudinal discrimination against persons with disabilities as a group and the attainment of civil rights as the solution.⁵⁹

This model underscores disabled people as an oppressed group of people.⁶⁰ Thus, the focus under the model is power politics and identity politics.⁶¹ Although the minority-group model of disability like the British social model of disability focuses on society as the problem, they differ in some ways. Unlike the British social model of disability, the North American minority group model of disability does not make a distinction between biological impairment and disability. This latter model explains the everyday experiences of persons with disabilities in society and the prejudice and discrimination suffered by persons with disabilities in society which constitutes obstacles against the actualization of their civil rights.

The main argument of the social model of disability against the medical approach to disability is that disability is not a product of bodily pathology but of specific social and economic structures.⁶² This is because societal structures are responsible for the exclusion of disabled people from full participation in social activities. Under the model, disability is not a matter of personal tragedy as

⁵⁵ Keith Brown et al, ‘Doing Disability: Disability Formations in the Search for Work’ (2008) 79 1 Sociological Inquiry 1.

⁵⁶ Arlene S Kanter, ‘The Law: What’s Disability Studies Got to Do with It or An Introduction to Disability Legal Studies’ (2010-2011) 42 Colum. H.R.L. Rev. 403.

⁵⁷ Ibid.

⁵⁸ Julie F Smart and David W. Smart, ‘Models of Disability: Implications for the Counseling Profession’ (2006) 84 JC&D 29, 30.

⁵⁹ Harlan Hahn, ‘Antidiscrimination Laws and Social Research on Disability: The Minority Group Perspective’ (1996) 14 (1) Behavioural Sciences & the Law 41, 41.

⁶⁰ Ibid.

⁶¹ Kanter, ‘The Law: What’s Disability Studies Got to Do with It or An Introduction to Disability Legal 403.

⁶² Justin Haegele and Samuel Hodge, ‘Disability Discourse: Overview and Critiques of the Medical and Social Models’ (2016) 68(2) Quest 193.

viewed by the medical model approach to disability but a social construct.⁶³ Moreover, there is a sharp distinction between impairment and disability under the social model of disability unlike the medical model of disability, which merges disability with impairment. This position has been criticized by Riddle who rejects ‘the idea that we can define disability as some sort of medically observable deviation from biomedical norms’...⁶⁴ Unlike the medical model of disability, the social model of disability is born out of a struggle against oppression by non-disabled people such as medical experts and professionals working with persons with disabilities.⁶⁵

Like the medical model of disability, the social model of disability has also been strongly criticized. One criticism is that the social model of disability does not adequately capture the lived experiences of persons with disabilities.⁶⁶ The model fails to correspond to the everyday experience of disabled people, many of whom experience physical and mental difficulties as well as social barriers. The model is equally criticized for being ‘too universalizing and too simplistic to serve as a model for the way in which disability works’...⁶⁷ The model’s ‘emphasis on self-advocacy and a rights-based approach’ has been condemned because the approach can be used to undermine support practices where individuals with disabilities require assistance in order to participate’ in society.⁶⁸

In addition to the above criticisms, the framework is not able to motivate or mobilize all disabled people to challenge discrimination against them.⁶⁹ This is because the framework does not give recognition to minority groups within organisations of persons with disabilities.⁷⁰ The model has also been challenged for ignoring the difference experiences amongst various disabled people due to gender, sexuality, race, culture and other status. As Deborah Marks asserts that the social model of disability ‘has not proved adequate in analyzing impairment, sexuality, people with learning

⁶³ Amita Dhanda, ‘Constructing a New Human Rights Lexicon: Convention on the Rights of Persons with Disabilities’ (2008) 8 SIJHR 42; Deborah Marks, *Disability: Controversial Debates and Psychosocial Perspectives* (Routledge 1999) 88.

⁶⁴ Christopher A Riddle, ‘Defining Disabilities: Metaphysical not Political’ (2013) 16 MHCP 377.

⁶⁵ Stein and Stein, ‘Beyond Disability Civil Rights’ 1221.

⁶⁶ Philip Andrew Scullion, ‘Models of Disability: Their Influence in Nursing and Potential Role in Challenging Discrimination’ (2010) 66 (3) JAN 697.

⁶⁷ Tom Shakespeare, ‘Social Models of Disability and Other Life Strategies’ (2004) 6 (1) SJDR 8.

⁶⁸ J. A Mckenzie, ‘Models of Intellectual Disability: Towards a Perspective of (Poss) ability’ (2013) 57 (4) JIDR 370

⁶⁹ Marks, *Disability: Controversial Debates and Psychosocial Perspectives* 88.

⁷⁰ Haegele and Hodge, ‘Disability Discourse: Overview and Critiques of the Medical and Social Models’ 193.

disabilities and genetics'.⁷¹ There are concerns about its validity in relation to people with intellectual impairment.⁷² This is because the paradigm cannot account for their experience.⁷³

Furthermore, the paradigm does not cover all issues affecting persons with disabilities⁷⁴ including issues relating to the management of impairment, the continuous compulsory medical treatment and detention of persons with disabilities without recourse to their consent, bioethics, the provision of HIV/AIDS education for persons with disabilities, and medical research on disability. This in turn affects the effective implementation of the human rights of persons with disabilities. As Mike Oliver argues, the social model of disability barely challenges the 'hegemony of special education in schools' and that in employment, though the disabling barriers are identified, the solution 'offered have usually been based on an individual model of disability'.⁷⁵

Nevertheless, the 1970s witnessed the gradual influence of the social thinking about disability in international human rights instruments. Although many human rights instruments evidenced a shift to the social model of disability rather than the medical approach to disability, 'yet each persisted to maintain that individuals are disabled due to special medical problems and dependent on social services and institutions'.⁷⁶ To illustrate, while both the 1971 Declaration on the Rights of Mentally Infirm Persons⁷⁷ and the 1975 Declaration on the Rights of Disabled Persons⁷⁸ claim to advance the social thinking about disability, both these human rights instruments infused the medical approach to disability. These instruments provided an understanding of disability and persons with disability from the notions of the body, care, prevention, and rehabilitation instead of the removal of disabling barriers.

⁷¹ Marks, *Disability: Controversial Debates and Psychosocial Perspectives* 88.

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ Oliver, 'The Social Model of Disability: Thirty Years on' 1025.

⁷⁶ Stein and Stein, 'Disability, Development, and Human Rights: A Mandate and Framework for International Financial Institutions' 1231.

⁷⁷ Declaration on the Rights of Mentally Infirm Persons (Proclaimed by General Assembly resolution 2856 (XXVI) of 20 December 1971).

⁷⁸ Declaration on the Rights of Disabled Persons (Proclaimed by General Assembly resolution 3447 (XXX) of 9 December 1975).

Still, the 1980s marked a permanent shift to a social model of disability in United Nations policies.⁷⁹ The United Nations acknowledged the social thinking about disability as the organization decreed 1981 as the International Year of Disabled Persons.⁸⁰ In fact, the resolution accepted negative social attitude towards persons with disabilities as one of the barriers to the realization of the goal of full participation and equality in society.⁸¹ Flowing from the resolution was the 1982 adoption of the World Programme of Action Concerning Disabled Persons⁸² which reechoed a global strategy to enhance equalisation of opportunities for persons with disabilities.⁸³ More importantly, the instrument for the first time acknowledged the need to approach disability from a human rights perspective.⁸⁴ At the same time, the United Nations proclaimed 1983-1992 as the Decade of Disabled Persons.⁸⁵ Moreover, the social model of disability was a trend in national, regional and international instruments in the 1990s. As Bergh et al state, the period witnessed a 'commitment to disability anti-discrimination legislation'.⁸⁶

Nationally, the social model of disability which is reflected in the 1990 Americans with Disabilities Act⁸⁷ influenced other anti-discrimination legislations around the world including in Australia Disability Discrimination Act of 1992⁸⁸ and the United Kingdom 1995 Disability Discrimination Act (which later became the Equality Act of 2010).⁸⁹ Regionally, the social model also inspired the European Union's Framework Employment Directive.⁹⁰ Importantly, the General Assembly in 1993 upheld the social model of disability with the adoption of the Vienna Declaration and Programme of Action⁹¹ which shaped the Standard Rules on the Equalisation of Opportunities for

⁷⁹ Stein and Stein, 'Disability, Development, and Human Rights: A Mandate and Framework for International Financial Institutions' 1231.

⁸⁰ International Year of Disabled Persons (General Assembly resolution 31/123, 1981).

⁸¹ Ibid.

⁸² World Programme of Action Concerning Disabled Persons (Adopted by the General Assembly on 3 December 1982, by its resolution 37/52).

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ The General Assembly proclaimed 1983-1992 the United Nations Decade of Disabled Persons (General Assembly resolution 37/52).

⁸⁶ Berghs et al, 'Implications for Public Health Research of Models and Theories of Disability: A Scoping Study and Evidence Synthesis' 1.

⁸⁷ Americans with Disabilities Act (entered into force on July 26, 1990).

⁸⁸ Australia Disability Discrimination Act (entered into force in 1992).

⁸⁹ Disability Discrimination Act (entered into force in 1995).

⁹⁰ The European Union's Employment Equality Framework Directive (Council Directive 2000/78/EC of 27 November 2000, came into force on 2 December 2000).

⁹¹ The Vienna Declaration and Programme of Action (adopted 14-25 June 1993).

Persons with Disabilities⁹² and other human rights instruments including the Convention on the Rights of the Child (CRC).⁹³ Indeed, the CRC mirrored the social approach to disability with explicit recognition given to the human rights of persons with disabilities, especially children with disabilities.

2.2.2 Shift to the UN Convention on the Rights of Persons with Disabilities

Despite the shift to the social model of disability, agitations for the adoption of a new understanding of disability and persons with disabilities continued worldwide.⁹⁴ Disability scholars and activists claimed that the social model of disability was not a holistic model, as it does not adequately provide the means of understanding disability and persons with disabilities.⁹⁵ They contended further that the framework failed to consider minority groups within people with disabilities, as well as promote cultural identity.⁹⁶

Moreover, pre-existing human rights instruments did not adequately give recognition to disability and the rights of persons with disabilities. For example, Quinn et al in a report commissioned by the United Nations suggested that pre-existing human rights instruments failed to interact adequately with disability.⁹⁷ Similarly, Stein and Stein noted that until the adoption of the CRPD, people with disabilities were ‘theoretically but not practically protected’ by human rights treaties.⁹⁸

This debate amongst human rights scholars and promoters for a new disability approach resulted in the establishment of an Ad Hoc Committee by the United Nations General Assembly to consider the development of a disability-based human rights instrument in 2001.⁹⁹ The treaty negotiation took place from 2002 to 2006 making the CRPD, one of the fastest negotiated human rights

⁹² Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (adopted 20 December 1993) Res. 48/96 annex. Rule 19.

⁹³ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

⁹⁴ Berghs et al, ‘Implications for Public Health Research of Models and Theories of Disability: A Scoping Study and Evidence Synthesis’ 1.

⁹⁵ Oliver, ‘The Social Model of Disability: Thirty Years on’ 1025.

⁹⁶ Ibid.

⁹⁷ Quinn et al, *Human Rights and Disability* (New York and Geneva, United Nations 2002) 14.

⁹⁸ Stein and Stein, ‘Disability, Development, and Human Rights: A Mandate and Framework for International Financial Institutions’ 1231.

⁹⁹ Richard Duffy and Brendan Kelly, ‘Rights, laws and tensions: A comparative analysis of the Convention on the Rights of Persons with Disabilities and the WHO Resource Book on Mental Health, Human Rights and Legislation’ (2017) 54 IJLP 26.

instruments in the United Nations system.¹⁰⁰ The Convention was adopted by general consensus on December 13 2006, while the instrument entered into force on May 3, 2008. The Convention is the latest human rights instrument on disability and, is the first treaty to adopt a ‘new human rights model of disability’.¹⁰¹

This new disability paradigm was referenced by human rights advocates as the way forward during the drafting process of the CRPD.¹⁰² Indeed, during the negotiation of the CRPD, the human rights model of disability was promoted by the World Network of Users and Survivors of Psychiatry and the International Disability Caucus.¹⁰³ As both organisations rejected segregated employment for persons with disabilities since this form of employment is not rights-based and promotes the exclusion of persons with disabilities from the open labour market.¹⁰⁴

Similarly, during the negotiation of the CRPD, there was a lot of discussions on draft article 27 on the right to work and employment. There was massive support for the rights- based approach to employment in the Canadian proposal on the draft content. The Canadian proposal on draft article 27 was subsequently accepted as part of the CRPD by the Ad Hoc Committee.¹⁰⁵ The next part of this chapter explains the shift from the social model of disability to the human rights model of disability.

2.2.3 Shift from the Social Model of Disability to the Human Rights Model of Disability

While some scholars within disability studies claim that the social model of disability is a rights-based model of disability,¹⁰⁶ other scholars however contend that the human rights model differs from the social model of disability.¹⁰⁷ Indeed, Degener, a former member of the Committee on the Rights of Persons with Disabilities, argues convincingly that the disability human rights paradigm

¹⁰⁰ Paul Harpur, ‘Embracing the New Disability Rights Paradigm: Importance of the CRPD’ (2012) 27(1) DS 1.

¹⁰¹ Degener, ‘A Human Rights Model of Disability’ 45.

¹⁰² Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, UNITED NATIONS ENABLE, <
<https://www.un.org/esa/socdev/enable/rights/ahc6sum10aug.htm>> (last visited on July 03, 2020).

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Marcia Rioux and Anne Carbert, ‘Human Rights and Disability: The International Context’ (2003) 10(2) Journal of Developmental Disabilities 1.

¹⁰⁷ Degener, ‘Disability in a Human Rights Context’ 1; Stein and Stein, ‘Beyond Disability Civil Rights’ 1203; Stein, ‘Disability Human Rights’ CLR 75.

differs from the social model of disability.¹⁰⁸ As the model builds on the social model of disability and goes further.¹⁰⁹ Moreover, she notes that during the negotiation of the CRPD, the social model of disability was originally the theoretical thinking to be adopted but, at the conclusion of negotiation, the Ad Hoc Committee adopted a ‘new human rights model of disability’.¹¹⁰

This latter position is further supported by other scholars who have consistently claimed that the CRPD echoes a human rights model of disability rather than a social model of disability.¹¹¹ For example, Stein and Stein contend that the CRPD echoes the contemporary rights-based approach to disability as the paradigm ‘combines the best aspects of the social model of disability, the human rights to development, and the capabilities approach to create a holistic and comprehensive rights theory’.¹¹²

The human rights model of disability is a paradigm that provides an understanding of disability and persons with disability within the social thinking about disability, but premised on human rights principles.¹¹³ This paradigm signposts persons with disabilities as rights holders rather than objects of welfare.¹¹⁴ Disability under this perspective, is viewed as a social construct rather than a medical issue.¹¹⁵ The model accepts that all persons with disabilities are entitled to human rights because they are human beings and cannot be denied these rights based on the mere presence of impairment.¹¹⁶ In other words, rights cannot be denied to persons with mental disability for instance due to the presumption of lack of mental capacity.¹¹⁷

Aside the recognition of the rights of persons with disabilities, the paradigm accepts impairment as part of human diversity and humanity.¹¹⁸ The framework acknowledges that impairment causes pain and may reduce the life expectancy of individuals with disabilities.¹¹⁹ Moreover, the human

¹⁰⁸ Theresia Degener, ‘A Human Rights Model of Disability’ in Valentina Della Fina et al (eds), *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary* (Springer 2017) 45.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Ibid; Stein, ‘Disability Human Rights’ 75.

¹¹² Stein and Stein, ‘Beyond Disability Civil Rights’ 1203.

¹¹³ Series, ‘Disability and Human.

¹¹⁴ Stein, ‘Disability Human Rights’ 75.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Article 12 of the CRPD.

¹¹⁸ Degener, ‘Disability in a Human Rights Context’ 2.

¹¹⁹ Ibid.

rights model of disability acknowledges difference.¹²⁰ Unlike the social model of disability where identity politics was not a major concern, the human rights model of disability accepts the politics of identification.¹²¹ Identity politics is a process of recognizing the difference that exist within the same class of persons.¹²² For instance, within persons with disabilities, there are several minority groups and cultural difference including deaf persons, deaf-blind persons, and women with disabilities. While the social model of disability viewed persons with disabilities as a unitary group, the human rights disability model values and acknowledges different layers of identification within people with disabilities.

Notably, the model accommodates civil rights as well as economic rights.¹²³ Prior to the shift to the human rights model of disability, disability under the social model was viewed as a social problem rooted in inequality and oppression caused by society.¹²⁴ The solution according to the social thinking about disability is the need to reform civil rights and anti-discrimination legislations ignoring economic rights.¹²⁵ To address this shortfall in the social understanding of disability, the human rights paradigm extends not only civil rights, but also economic rights to persons with disabilities. As Degener states the human rights paradigm ‘acknowledges the interrelationship of first and second generation rights’.¹²⁶ She argues further that the CRPD’s adoption of this model provide a holistic approach to human rights protection which ‘allows the framework to avoid the dichotomous difficulties encountered by the social model of disability’.¹²⁷ The CRPD therefore gives value and recognition to the indivisibility of civil, economic, and cultural rights such as the rights to education and employment.

Notwithstanding the positive features of the disability human rights paradigm, the framework has been criticized by academic scholars within and outside human rights.¹²⁸ This model has been

¹²⁰ Degener, ‘A New Human Rights Model of Disability’ 41.

¹²¹ Ibid.

¹²² Ibid.

¹²³ Maya Sabatello, ‘A Short History of the International Disability Rights Movement’ in Sabatello and Schulze (eds), in *Human Rights and Disability Advocacy* (University of Pennsylvania Press 2014) 13.

¹²⁴ Stein and Stein, ‘Beyond Disability Civil Rights’ J 1203.

¹²⁵ Ibid.

¹²⁶ Degener, ‘A New Human Rights Model of Disability’ 41.

¹²⁷ Ibid.

¹²⁸ Berghs et al, ‘Implications for Public Health Research of Models and Theories of Disability: A Scoping Study and Evidence Synthesis’ 1.

disparaged for not reflecting an international disability paradigm.¹²⁹ Shakespeare for instance argues that the disability human rights model is too restrictive and does not echo an international outlook in understanding disability and the situation of persons with disabilities.¹³⁰ Other scholars also suggest that due to the approach's focus on human rights, the model cannot bring about real social change.¹³¹

Other academic scholars further note that the approach to understanding disability within the human rights context is individualistic and legalistic in approach, and is not a good tool for analyzing disability and understanding the situation of persons with disabilities.¹³² As Hurst notes the use of the model as an analytical tool 'muddle and confuse and inadequately turn human rights into an analysis of a relationship instead of what they really are'.¹³³ The paradigm has been criticized for its failure to address the root causes of disability as its 'limited to ensuring same rights to as those to a group granted to the white middle-class males'.¹³⁴

Moreover, critics of the contemporary rights-based approach to disability note that the paradigm has not completely adopted the emancipatory research paradigm principles-letting people with disabilities have control over the research process.¹³⁵ The term 'emancipatory research paradigm' was coined by Mike Oliver and requires that disability should be seen as a political problem.¹³⁶ It requires that persons with disabilities and their organisations rather than professional academics and researchers be allowed to tell their situation through research.¹³⁷ As Barnes states,

¹²⁹ Ibid.

¹³⁰ Tom Shakespeare, *Disability Rights and Wrongs Revisited* (Abingdon: Routledge 2013).

¹³¹ Alison Sheldon, 'One World, One People, One Struggle? Towards the global implementation of the social model of disability' in Barnes and Mercer (eds), *The Social Model of Disability: Europe and the Majority World* (The Disability Press 2005) 122.

¹³² Ibid.

¹³³ Rachel Hurst, 'Disabled Peoples' International: Europe and the social model of disability' in Barnes and Mercer (eds), *The Social Model of Disability: Europe and the Majority World* (The Disability Press 2005) 65, 65.

¹³⁴ Sheldon, 'One World, One People, One Struggle? Towards the global implementation of the social model of disability' 122.

¹³⁵ Mike Oliver, 'Emancipatory Research: A Vehicle for Social Transformation or Policy Development' (3 December 2002) <<https://disability-studies.leeds.ac.uk/wp-content/uploads/sites/40/library/Oliver-Mikes-paper.pdf>> accessed 13 June 2020.

¹³⁶ Ibid.

¹³⁷ Colin Barnes, 'Emancipatory' Disability Research: Project or Process' (Public Lecture, 24 October 2001) <<https://disability-studies.leeds.ac.uk/wp-content/uploads/sites/40/library/Barnes-glasgow-lecture.pdf>> accessed 13 June 2019.

‘emancipatory disability research should be judged mainly by its ability to empower disabled people through the research process’.¹³⁸

Furthermore, the practical enforcement of the disability human rights model has been criticized by scholars.¹³⁹ For example, Lawson suggests that the enforcement of the CRPD will expose the issue of understanding what a reasonable accommodation as a concept actually means in practice.¹⁴⁰ While the notion of reasonable accommodation is complex in implementation due to the involvement of financial resources, it is submitted that Lawson’s contention that there will be issues around understanding the concept of reasonable accommodation is not totally justified. Regarding the implementation of inclusive education for example, schools whether public or private are required to reasonably accommodate the needs of individual learners in schools. Therefore, states are required to promote inclusive education by providing adequate resources to ensure that this duty is achieved in practice.

Despite these criticisms, the disability human rights paradigm is a better instrument for conceptualizing disability and better embodies the CRPD. This is because only the human rights model of disability can better explain the experiences of all people with disabilities. As the social model of disability does not account for the lived experiences of all persons with disabilities. On the other hand, the human rights model of disability specifically recognizes all persons with disabilities. For example, articles 6 and 7 of the CRPD acknowledge the rights of women and children with disabilities. It also gives recognition to the rights of persons with intellectual and psychosocial disabilities to exercise their legal capacity with the necessary support.¹⁴¹

Unlike the social model of disability that barely challenges the dominance of special segregated education, the disability human rights model requires the promotion of inclusive education at all levels of education.¹⁴² Although the human rights model of disability permits special education for some categories of persons with disabilities, however such education must be provided based on

¹³⁸ Ibid.

¹³⁹ Berghs et al, ‘Implications for Public Health Research of Models and Theories of Disability: A Scoping Study and Evidence 1.

¹⁴⁰ Anna Lawson, *Disability and Equality Law in Britain: The Role of Reasonable Adjustment* (Oxford: Hart Publishing Ltd 2000).

¹⁴¹ United Nations Convention on the Rights of Persons with Disabilities (CRPD) (Adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3, Article 12.

¹⁴² CRPD, Article 24.

choice and within the goal of promoting inclusion. Besides, the human rights model of disability unlike the social model of disability challenges segregated employment, and requires states to prioritize employment in the open employment. For instance, article 27 of the CRPD requires states to promote employment for persons with disabilities in an open inclusive work environment.

Whereas the social model of disability fails to consider the issues of compulsory medical treatment and detention without consent, the human rights model of disability addresses these issues by prohibiting compulsory medical treatment and detention of persons with mental disabilities. For instance, article 25 of the CRPD requires medical professionals to seek the consent of persons with mental disabilities before commencing treatment. At the same time, article 14 of the CRPD prohibits the compulsory detention on grounds of impairment of persons with mental disabilities.

Unlike the social model of disability's distinction between impairment and disability, the human right model of disability goes further. It does not focus on the distinction between impairment and disability. Rather emphasis is on the fulfilment of the rights of all persons with disabilities as well as the empowerment of their individual talent. This framework recognizes that people with disabilities should speak on matters affecting them through participation in decision-making. Indeed, the disability human rights model unlike the social model of disability highlights the importance of social participation.

The disability human rights paradigm allocates resources to enable preference as a matter of ensuring individual's autonomy and dignity. In contrast to the social model of disability, this model enables the development of the individual talent and acknowledges special needs. The model builds on the social model of disability in acknowledging the amendable nature of social exclusion. However, the model diverges from this scheme by requiring policy makers to provide resources for disability-based inclusion that exceed minimal levels.

Unlike the social model of disability, the human rights model of disability recognizes diversity and identity difference. The latter model also respects the linguistic identity of deaf persons. The paradigm requires states to promote the cultural identity of deaf persons through the promotion of the use of sign language as means of communication. For instance, article 24(3) of the CRPD requires states to provide appropriate means of communication to enable learners with disabilities to effectively participate in the school environment and in the society.

For persons with disability, the human rights model requires governments to take more proactive steps to advance the rights of persons with disabilities compared to the general public. For example, government would be required to consult representatives of disability groups in making of laws and policies concerning people with disabilities. The model recognizes impairment as a natural aspect of human diversity. Therefore, the government is required to move beyond the equal opportunity principle by understanding that governments have a responsibility to support persons with disabilities in the actualization of their rights.

2.2.4 Impact of the Disability Models at the United Nations and in National Laws

Although the moral model existed from time immemorial up until the 1800s, there was a complete absence of disability and persons with disabilities within international instruments. Nevertheless, the moral model is reflected in practices such as alms begging, exclusion of children with disabilities from schools, and the practice of hiding children with disabilities from society by parents.

However, between the 1800s and the 1970s, the United Nations adopted several instruments that mirrored the medical model of disability such as the Universal Declaration of Human Rights,¹⁴³ the 1971 Declaration on the Rights of Mentally Infirm Persons,¹⁴⁴ and the 1975 Declaration on the Rights of Disabled Persons.¹⁴⁵ These instruments provided an understanding of disability and persons with disability from the notions of the body, care, prevention, and rehabilitation.

Nevertheless, the 1990s witnessed the gradual shift from the medical model to the social model at the United Nations, with the adoption of the Vienna Declaration and Programme of Action,¹⁴⁶ which later formed the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities.¹⁴⁷ Indeed, the UN Convention on the Rights of the Child (CRC)¹⁴⁸ reflects the social

¹⁴³ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III).

¹⁴⁴ Declaration on the Rights of Mentally Infirm Persons (Proclaimed by General Assembly resolution 2856 (XXVI) of 20 December 1971).

¹⁴⁵ Declaration on the Rights of Disabled Persons (Proclaimed by General Assembly resolution 3447 (XXX) of 9 December 1975).

¹⁴⁶ The Vienna Declaration and Programme of Action (adopted 14-25 June 1993).

¹⁴⁷ Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (adopted 20 December 1993) Res. 48/96 annex. Rule 19.

¹⁴⁸ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

model. Likewise, the paradigm is reflected in national and regional laws including the Americans with Disabilities Act 1990 as amended,¹⁴⁹ the Australia Disability Discrimination Act of 1992 as amended,¹⁵⁰ and the United Kingdom 1995 Disability Discrimination Act (which later became the Equality Act of 2010).¹⁵¹ Regionally, the social model similarly inspired the European Union's Framework Employment Directive.¹⁵²

Yet, because of the partial focus of the social model, a new disability model was adopted at the UN in 2006. The adoption of the UN Convention on the Rights of Persons with Disabilities¹⁵³ brought about the human rights model of disability which is based on human rights principles and provides a holistic understanding of disability and persons with disabilities. The next part of the chapter explains the disability human rights approach to education and employment.

2.3 Disability Human Rights Approach to Education and Employment

The disability human rights approach to education and employment obliges states to promote inclusion in the fields of education and employment. In effect, states are duty-bound to develop inclusive education and employment in order to comply with their obligations under the human rights model.

2.3.1 Inclusive Education

Uniquely, among the UN human rights treaties, the CRPD includes a specific inclusive education provision.¹⁵⁴ Specifically, article 24 regulates the measures to be adopted by states in realizing the right to education of persons with disabilities. Among the numerous measures is a directive that states should realise this right within an inclusive education system. Likewise, the same article calls upon states to support and facilitate inclusive quality education through enabling skills learning, ensuring the provision of human resources, and the provision of support and accommodations.

¹⁴⁹ Americans with Disabilities Act (entered into force on July 26, 1990).

¹⁵⁰ Australia Disability Discrimination Act (entered into force in 1992).

¹⁵¹ Disability Discrimination Act (entered into force in 1995).

¹⁵² The European Union's Employment Equality Framework Directive (Council Directive 2000/78/EC of 27 November 2000, came into force on 2 December 2000).

¹⁵³ United Nations Convention on the Rights of Persons with Disabilities (Adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3.

¹⁵⁴ CRPD, Article 24.

Other provisions in the CRPD expressly or implicitly reference the right of persons with disabilities to inclusive education and inclusive quality education. The preamble to the Convention explicitly acknowledges the importance of accessibility to inclusive education.¹⁵⁵ Article 4 (General Obligations), as a cross-cutting provision, requires states to consider promoting disability related human rights in all policies and programs;¹⁵⁶ article 5 (Non-discrimination) requires states to ‘prohibit all disability based discrimination’;¹⁵⁷ article 13 (Equal Recognition before the Law) demands support for learners with disabilities ‘in building their confidence to exercise legal capacity’;¹⁵⁸ article 16 (violence, and Abuse) obliges states to ‘provide protection from exploitation, violence and abuse against persons with disabilities’;¹⁵⁹ article 19 (living independently and in the community) requires states to ensure ‘recognition of the right of persons with disabilities to live within the community’;¹⁶⁰ article 20 (personal mobility) calls on states to ‘guarantee personal mobility on an independent basis’;¹⁶¹ article 26 (Habilitation and Rehabilitation) expects states to provide ‘habilitation and rehabilitation services within the education system through the development of community based rehabilitation that address(es) early identification’;¹⁶² article 27 (Work and Employment) acknowledges the role of quality inclusive education and its nexus with the work life of persons with disabilities;¹⁶³ article 29 (Political Life) asserts that full participation in political and public life is enhanced through the realisation of the right to inclusive education;¹⁶⁴ and article 30 (Cultural Rights) compels states to remove barriers and promote inclusive opportunities for participation in ‘play and recreation in the school system’.¹⁶⁵ The importance of realising the right to quality inclusive education for persons with disabilities is also considered in relation to more vulnerable persons including children with disabilities,¹⁶⁶ and women with disabilities.¹⁶⁷

¹⁵⁵ CRPD, Preamble v.

¹⁵⁶ CRPD, Article 4.

¹⁵⁷ United Nations Convention on the Rights of Persons with Disabilities (Adopted 13 December 2006, entered into CRPD, Article 5.

¹⁵⁸ CRPD, Article 13.

¹⁵⁹ CRPD, Article 16.

¹⁶⁰ CRPD, Article 19.

¹⁶¹ CRPD, Article 20.

¹⁶² CRPD, Article 26.

¹⁶³ CRPD, Article 27.

¹⁶⁴ CRPD, Article 29.

¹⁶⁵ CRPD, Article 30.

¹⁶⁶ CRPD, Article 7.

¹⁶⁷ CRPD, Article 6.

One of the main concerns with article 24 during the negotiation of the CRPD was based on ways states could develop an inclusive education system in practice.¹⁶⁸ During the negotiation sessions leading to the CRPD's adoption, several states including Morocco, Yemen, New Zealand, and Mexico suggested that states needed to provide supportive, specialised training to teachers and other professionals supporting learners with disabilities, accessible curriculum, teaching medium and technologies, accessible physical environment, and alternative learning strategies and communication modes.¹⁶⁹ In fact, a major point of discussion during the third ad hoc meeting was whether to abolish the provision of special education services.¹⁷⁰ It was decided that while education for persons with disabilities in the general education system be the general rule, the provision of specialist alternative form of learning should be regarded as an exception for learners that cannot adequately learn in mainstream education system.¹⁷¹ Nevertheless, education provided in the latter must be of quality. As stated by Australia, 'the alternative forms of education must reflect the same standards and objectives provided in the general education system'.¹⁷²

Thus, the response by states to article 24 for those that have ratified it, has been quick and far reaching. There is an ongoing transformation of special schools into resources centres. Indeed, Chile, Norway, Spain, and Costa Rica have special education resources centres that can support mainstream schools in the integration process. For example, Costa Rica has embarked on 'projects to provide integration services with a view to moving towards inclusion'.¹⁷³ To comply with providing alternative means of learning, the trend amongst states is to convert special schools to resource centres as means of taking steps towards developing an inclusive education system.

2.3.2 Inclusive Employment

¹⁶⁸ See Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, United Nations Enable, <https://www.un.org/esa/socdev/enable/rights/ahc3reporte.htm> (last visited July 03, 2020).

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² See Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, UNITED NATIONS ENABLE, <<https://www.un.org/esa/socdev/enable/rights/ahc3reporte.htm>> (last visited July 03, 2020).

¹⁷³ UN High Commissioner for Human Rights, Thematic Study on the Work and Employment of Persons with Disabilities, A/HRC/22/25 (17 December 2012).

Another exceptional provision among UN human rights treaties, is that contained in the CRPD. The provision requires states to promote inclusive employment for persons with disabilities.¹⁷⁴ Article 27 of the CRPD obliges states to promote employment opportunities, protect employment, and ensure that people with disabilities can access employment in an ‘open, inclusive, and accessible environment’. This provision imposes amongst others on governments as employers, the duty to regulate and promote flexible and alternative work arrangement, as well as promote an environment that offers reasonable accommodation. It also requires states to ensure that employers promote the employment right of persons with disabilities.

Other provisions in the CRPD expressly or implicitly reference the right of persons with disabilities to inclusive employment. Article 8 (Awareness raising) requires states to combat stereotypes, harmful practices, and prejudices in employment and work environment¹⁷⁵; article 9 (Accessibility) demands states to ensure access to the work environment and to eliminate barriers and obstacles to accessibility;¹⁷⁶ article 12 (Equal Recognition before the Law) requires recognition for persons with disabilities regarding the enjoyment of their legal capacity in work and employment;¹⁷⁷ article 17 (Respect for Personal Dignity) gives recognition to the right of every person with disability to respect for his physical and mental integrity;¹⁷⁸ article 20 (Personal Mobility) compels states to ensure personal mobility;¹⁷⁹ and article 26 (Habilitation and Rehabilitation) demands the extension of habilitation and rehabilitation services and programmes in the area of employment.¹⁸⁰

The debate amongst states regarding article 27 of the CRPD centred on the requirement on states to promote employment in an ‘open, inclusive and accessible environment’.¹⁸¹ During the negotiation, several states including the Russian Federation expressed concern about the terminologies included in the provision and highlighted that the term ‘inclusive’ is

¹⁷⁴ CRPD, Article 27.

¹⁷⁵ CRPD, Article 8.

¹⁷⁶ CRPD, Article 9.

¹⁷⁷ CRPD, Article 12.

¹⁷⁸ CRPD, Article 17.

¹⁷⁹ CRPD, Article 20.

¹⁸⁰ CRPD, Article 26.

¹⁸¹ Ibid.

‘superfluous’.¹⁸² While there was no agreement amongst states and other parties as to its exact meaning, there was serious discussion as to whether article 27 of the CRPD prohibited sheltered or assisted employment.¹⁸³ During the negotiation sessions leading to the CRPD’s adoption, many disability organisations including the World Network of Users and Survivors of Psychiatry and the International Disability Caucus rejected sheltered employment and instead canvassed for the prioritisation of employment in the open labour market.¹⁸⁴ But, at the end of deliberations, a compromise was reached by parties. While priority was given to the full integration of persons with disabilities in the open labour market, the employment of persons with disabilities outside the open labour market was to be kept at a minimum.¹⁸⁵

Some states have responded to article 27 of the CRPD by raising awareness on the right to work and employment of persons with disabilities. Truly, some states including Peru and Serbia have adopted measures to enlighten employers and the society on the right of persons with disabilities to employment in the open labour market.¹⁸⁶ For example, Peru has initiated state-focused approach aimed at raising awareness among employers on the rights of persons with disabilities with a view to eliminating stereotypes related to the capacity of persons with disabilities to work.¹⁸⁷ The next part of the chapter explains the effects of the disability human rights model on states’ obligations as well as the framework to achieve disability- inclusive education and employment.

2.4 Framework for Achieving Disability-Inclusive Education and Employment

To achieve disability-inclusive education and employment, states are required to undergo procedural, substantive, institutional, and cultural changes. Procedurally, states should enable the participation of representatives’ organisations of persons with disabilities in education and in labour-related matters, mainstream disability programmes particularly in the fields of education and labour, provide adequate budgeting, accountability, as well as ensure research and data

¹⁸² See Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, UNITED NATIONS ENABLE, <<https://www.un.org/esa/socdev/enable/rights/ahc6sum10aug.htm>> last visited July 03, 2020).

¹⁸³ Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

¹⁸⁶ UN High Commissioner for Human Rights, Thematic Study on the Work and Employment of Persons with Disabilities, A/HRC/22/25 (17 December 2012).

¹⁸⁷ Ibid

collection. Furthermore, states are required to promote rights-based approach to education and labour matters in addition to encouraging cultural changes.

2.4.1 Framework for Achieving Disability-Inclusive Education

To attain disability-inclusive education, states should enable the participation of representative organisations of persons with disabilities, mainstream disability programmes and policies on education, provide adequate budgeting for education, ensure accountability and rights-based education, promote cultural changes, and guarantee data collection.

2.4.1.1 Participation

To achieve disability-inclusive education, states should enable the participation of persons with disabilities through their representative organisations in the planning, implementation, monitoring and evaluation of inclusive education.¹⁸⁸ Inclusive education is vital to the participation of persons with disabilities in the implementation of the CRPD. In fact, article 4(3) of the CRPD requires states as part of their general obligations to ‘closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations’ in developing policies to implement the CRPD and ‘in other decision-making processes concerning issues relating to persons with disabilities’. Similarly, article 33(3) of the CRPD demands in the monitoring of the CRPD, the participation of ‘civil society, in particular persons with disabilities and their representative organizations’. The preamble on participation in the CRPD requires that ‘persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them’.¹⁸⁹ These provisions of the CRPD are all applicable to education and in understanding inclusive education.

In effect, states are expected to enable the participation of all persons with disabilities through their representative organisations in all aspects of inclusive education policies.¹⁹⁰ To achieve disability-inclusive education, states should ensure that educational institutions (both private and public) consult regularly with persons with disabilities prior to making decisions affecting their

¹⁸⁸ UN, Committee on the Rights of Persons with Disabilities, General Comment No.4: Article 24 on the Right to Inclusive Education, CRPD/C/GC/4 (2 September 2016).

¹⁸⁹ CRPD, Preamble O.

¹⁹⁰ UN, Committee on the Rights of Persons with Disabilities, General Comment No.4: Article 24 on the Right to Inclusive Education, CRPD/C/GC/4 (2 September 2016).

education.¹⁹¹ Correspondingly, states are required to ensure that the views of persons with disabilities are given due consideration within the education system.¹⁹² Furthermore, to attain inclusive education, states must value and give recognition to persons with disabilities as partners in education instead of being regarded as recipients of education.¹⁹³

2.4.1.2 Rights-based Education

Aside making participatory changes, there is need to promote meaningful changes within the education sector. States should adopt a rights-based approach to education in order to achieve inclusive education. This demands that states acknowledge persons with disabilities not as welfare recipients but rather, as rights holders with claims to education.¹⁹⁴ Likewise, it obliges states to accept barriers as responsible for the exclusion of persons with disabilities from the educational system. Moreover, states are mandated to give recognition to difference within persons with disabilities, particularly those more at risk of exclusion from education. By providing adequate support to students with higher support needs such as blind students and learners with autism. Furthermore, it demands that states make changes to its approach to impairment as well as its use as an excuse to exclude persons with disabilities from the general education system.¹⁹⁵

To achieve disability-inclusive education, states are required to adopt all measures prohibiting the exclusion of persons with disabilities from the education system on the basis of their impairment.¹⁹⁶ Also, states need to adopt a rights-based approach to education in which children with disabilities are given the same rights as children without disabilities. This will require states to regulate schools to uphold the right to education of children with disabilities. This can be achieved by ensuring their active participation in the general education system.¹⁹⁷ It may also require ensuring the provision of accommodation in schools for children in need of adjustments to either the structure or delivery of education. It may further require that school authorities provide the needed support to students in need of additional support measures.

¹⁹¹ Ibid.

¹⁹² Ibid.

¹⁹³ Ibid.

¹⁹⁴ Ibid.

¹⁹⁵ Ibid.

¹⁹⁶ Ibid.

¹⁹⁷ Ibid.

2.4.1.3 Accountability

To achieve disability-inclusive education, states must ensure that responsibility for education for all persons with disabilities at all levels of education rests with the education ministry rather than medical related ministries within government.¹⁹⁸ This is important for the realization of inclusive education, as it will ensure the promotion of the interest of persons with disabilities as well as their inclusion in mainstream legislation, policies, planning, and in resourcing for education. States should likewise establish an intersectoral commitment to inclusive education by relevant ministries.¹⁹⁹

2.4.1.4 Budgeting

States are expected to make planning changes by allocating budget to strategies and plans for the implementation of the rights of persons with disabilities. In order to implement inclusive education, states are obligated to provide adequate budgetary allocation to education and ensure expenditure monitoring. Therefore, to attain disability-inclusive education, states are initially required to commit sufficient financial and human resources in the implementation of inclusive education that follows the principle of progressive realization.²⁰⁰ They are also to ensure budget allocation through public procurement processes and partnerships with the private sector.²⁰¹ Moreover, states are required to transfer resources from segregated settings to inclusive environments.²⁰²

2.4.1.5 Research and Data Collection

States are obliged to make changes to the process of information collection on the situation of persons with disabilities in education. States are mandated to collect appropriate disaggregated statistics and data on challenges to implementation of inclusive education. Data gathering is important because it help states in the formulation of policies, plans, and programmes to fulfil their obligations under article 24 of the CRPD. In fact, as a general obligation, article 31 of the CRPD

¹⁹⁸ UN, Committee on the Rights of Persons with Disabilities, General Comment No.4: Article 24 on the Right to Inclusive Education, CRPD/C/GC/4 (2 September 2016).

¹⁹⁹ Ibid.

²⁰⁰ Ibid.

²⁰¹ Ibid.

²⁰² Ibid.

requires states to collect statistics and data to enable them to formulate and implement policies to give effect to the rights of persons with disabilities including educational right. To achieve disability-inclusive education therefore, states should gather disaggregated data and evidence on the barriers to attaining inclusive quality education, conduct research on the lack of sufficient quality research and data relating to access to provision of reasonable accommodation, as well as adopt measures to address the lack of accurate data on the prevalence of persons with different impairments.²⁰³

2.4.1.6 Cultural Changes

Likewise, achieving inclusive education demands a change in approach to disability and persons with disabilities. States are obliged to take steps to change negative attitudes and perceptions about disability and persons with disabilities. Indeed, this is a general obligation which requires states to adopt measures to amend practices, laws, and policies that discriminate against persons with disabilities.²⁰⁴ To achieve disability-inclusive education, states should as part their obligations promote persons with disabilities as rights holders. Changes in attitude can also be achieved through awareness raising on the human rights of persons with disabilities. Definitely, article 4(1) of the CRPD imposes as part of its general obligations, the duty to promote training on the rights of persons with disabilities to public officials within the education ministry. It also requires enlightening teachers on the need to forsake negative stereotypes about persons with disabilities.

2.4.1.7 Mainstreaming Disability via the Twin Track Approach

To achieve inclusive education, states should ensure policies and programmes are designed to be inclusive and incorporate disability perspective in policy making in the education sector.²⁰⁵ This can be attained by ensuring non-discrimination, accessibility, and support provisions in all educational policies and programmes.²⁰⁶ In effect, changes will be required as states will be obligated to adopt disability-specific programmes ‘aimed at overcoming particular disadvantages

²⁰³ Ibid.

²⁰⁴ CRPD, Article 4(1).

²⁰⁵ United Nations Convention on the Rights of Persons with Disabilities (Adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3, Article 4.

²⁰⁶ UN, Committee on the Rights of Persons with Disabilities, General Comment No.4: Article 24 on the Right to Inclusive Education, CRPD/C/GC/4 (2 September 2016).

or obstacles' in the area of education.²⁰⁷ Similarly, it may require states to ensure that persons with disabilities are included in general education programmes.

2.4.2 Framework for Achieving Disability-Inclusive Employment

To achieve disability-inclusive employment, states should undergo procedural, substantive, institutional, and cultural changes. Procedurally, states should enable the participation of representative organisations of persons with disabilities in labour related programmes, collect data, mainstream disability programmes, and ensure accountability. In addition to that, states are required to ensure substantive and cultural changes.

2.4.2.1 Participation

Participation of persons with disabilities and their representatives is a general principle of the CRPD and a core obligation imposed on states. The Convention in article 4(3) requires that organizations of persons with disabilities be consulted and involved in the development and implementation of the CRPD and in other decisions affecting persons with disabilities. This certainly applies in the area of employment. Similarly, the ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention No. 159²⁰⁸ calls for consultation with persons with disabilities and their representative organisations in the development of national policies on vocational rehabilitation and employment.²⁰⁹

Moreover, trade unions have a role in the protection and promotion of the rights of workers with disabilities in the work environment through their representation. Therefore, persons with disabilities and their representative organizations must partake in trade unions.²¹⁰ Moreover, the interest of workers with disabilities should be represented in collective bargaining and other employment-related negotiations at the national level through trade unions in collaboration with representative organisations of persons with disabilities.²¹¹

²⁰⁷ Ibid.

²⁰⁸ Convention concerning Vocational Rehabilitation and Employment (Disabled Persons) (adopted 20 June 1983, entered into force 20 June 1985).

²⁰⁹ Convention concerning Vocational Rehabilitation and Employment (Disabled Persons) (adopted 20 June 1983, entered into force 20 June 1985), Article 5.

²¹⁰ UN High Commissioner for Human Rights, Thematic Study on the Work and Employment of Persons with Disabilities, A/HRC/22/25 (17 December 2012).

²¹¹ Ibid.

Therefore, in order to attain inclusive employment, states should initially ensure that the adoption of all policies regarding the right of persons with disabilities to work and employment is taken in consultation with the involvement of representative organizations of persons with disabilities.²¹² Moreover, states should ensure that labour policies are adopted seeking to guarantee access to employment for persons with disabilities.²¹³ Furthermore, states need to develop the capacity of representative organisations of persons with disabilities in the negotiation process.²¹⁴

2.4.2.2 Substantive Changes

To achieve disability-inclusive employment, states need to ensure that employers of labour adopt a rights-based approach in the work environment and in the process of employment. States should ensure that employers do not discriminate against persons with disabilities due to the presence of impairment during the recruitment process.²¹⁵ Also, it requires employers to respects the rights of persons with disabilities to seek employment. On the part of states, they must promote employment for persons with disabilities within inclusive settings rather than in separate segregated workshops.²¹⁶ States are also required to make the work environment inclusive through the provision of accessible transportation and environment.²¹⁷ Moreover, states should adopt measures prohibiting disability discrimination in all the processes of recruitment.²¹⁸ It should adopt legislative measures to ensure employers provide necessary accommodations in the workplace.²¹⁹

2.4.2.3 Cultural Changes

There is need for states to change the perceptions of employers in the labour market in order to achieve inclusive employment. Under the framework, persons with disabilities should be seen as citizens that can contribute to society rather than as recipients of charity. In fact, they should be valued as rights holders and empowered. States should therefore educate employers on the need to view impairment as part of human diversity and humanity. At the same time, workers with higher

²¹² Ibid.

²¹³ Ibid.

²¹⁴ Ibid.

²¹⁵ Ibid.

²¹⁶ Ibid.

²¹⁷ Ibid.

²¹⁸ Ibid.

²¹⁹ Ibid.

support needs should be encouraged through the provision of support and other assistance in order to fit into the work environment.

Therefore, to achieve disability-inclusive employment, states should as part their obligations promote persons with disabilities as rights holders. Changes in negative attitudes can be achieved by awareness raising on the rights of persons with disabilities in the labour market.²²⁰ Indeed, article 4(1) of the CRPD imposes as part of the general obligations, the duty to promote training on these rights to public officials within the labour ministry and related ministries. Also, it requires enlightening employers on the need to forsake the negative stereotypes about persons with disabilities particularly against minorities and those with cultural identity such as deaf persons, persons with intellectual disabilities, and women with disabilities.

2.4.2.4 Information Gathering

One of the general obligations on states is to conduct research and gather information on the situation of persons with disabilities. States are required as part of their duties to understand the employment situation of persons with disabilities as well as design indicators to monitor progress in the implementation of the right to work based on ILO indicators.²²¹ States also should undertake systemic collection of disaggregated data in compliance with article 31 of the CRPD. At the same time, the data collected by states should be disaggregated by type of work and disability.²²²

2.4.2.5 Accountability

To achieve disability-inclusive employment, states should ensure there is an independent mechanism responsible for employment protection of persons with disabilities.²²³ Article 33 of the CRPD imposes a general obligation on states to establish an independent monitoring mechanism to promote, protect, and monitor the implementation of the Convention. Such a mechanism should promote employment of persons with disabilities as well as monitor progress.²²⁴ Furthermore,

²²⁰ Ibid.

²²¹ Ibid.

²²² Ibid.

²²³ Ibid.

²²⁴ Ibid.

persons with disabilities who, individually or as a group, are victims of violation of their right to work should have access to effective judicial or other appropriate remedies at the national level.²²⁵

2.4.2.6 Mainstreaming Disability Policies

States should ensure policies and programmes are inclusive and incorporate disability perspective in the field of employment.²²⁶ This can be achieved by ensuring non-discrimination, accessibility, and support provisions in employment policies and programmes.²²⁷ To achieve disability-inclusive employment, states should adopt labour related disability-specific programmes. It also should ensure that persons with disabilities are included in ‘general skills development as well as in enterprise and employment-related services and programmes on vocational training and employment’.²²⁸

2.5 Conclusion

This chapter considered the disability human rights approach to education and employment as well as its effects on states’ obligations. It found that states as part of their duties are required to promote inclusive education and employment in line with the human rights model of disability. Therefore, in order to make progress towards the Sustainable Development Goals (SDGs) and achieve inclusive education and employment, states are encouraged to make practical, substantial, institutional, and cultural changes. Practically, states are required to mainstream disability policies in the fields of education and employment; gather data and information on the educational and employment situation of persons with disabilities; promote the participation of representative organisations of persons with disabilities in education and labour-related matters; as well as promote accountability. Furthermore, states are mandated to make substantive, institutional, and cultural changes both in education and employment.

²²⁵ Ibid.

²²⁶ Report by Catalina Devandas- Aguilar, Special Rapporteur of the Human Rights Council on the Rights of Persons with Disabilities, UN Doc A/71/314 (9 August 2016).

²²⁷ UN High Commissioner for Human Rights, Thematic Study on the Work and Employment of Persons with Disabilities, A/HRC/22/25 (17 December 2012).

²²⁸ Ibid.

The next chapter discusses states' general treaty obligations in education and employment for persons with disabilities as well as the effects for states obligations in ratifying the CRPD.

CHAPTER 3

STATES' TREATY GENERAL OBLIGATIONS IN EDUCATION AND EMPLOYMENT FOR PERSONS WITH DISABILITIES/ EFFECTS ON STATE OBLIGATIONS IN RATIFYING THE CRPD

3.1 Introduction

Chapter 2 of the thesis examined the human rights model of disability within the context of education and employment. It established state requirements in achieving disability-inclusive education and employment. The chapter is important to the study because it provides the theoretical standards to be employed later in the research to assess Nigeria's efforts at implementing education and employment for persons with disabilities.

Chapter 3 examines states' treaty general obligations in education and employment for persons with disabilities as well as the effects on state obligations in ratifying the UN Convention on the Rights of Persons with Disabilities (CRPD). Although scholars have previously addressed some of these questions generally,¹ it is essential that the same questions are reexamined in the light of the emerging developments on rights under the CRPD and the Sustainable Development Goals (SDGs). Therefore, the study contributes to the literature as it examines the effects on state obligations in ratifying the CRPD within the Nigerian context.

Chapter 3's goals are in two folds. First, it aims to establish the general standards, particularly, states' core minimum obligations in education and employment under the CRPD and other related treaties. This is because the implementation of the immediate legal obligations regarding employment and education would help states make faster progress towards achieving decent work and quality inclusive education for persons with disabilities under the SDGs. Lastly, it aims to consider the effects on states' obligations in ratifying the CRPD.

To achieve this, the chapter will firstly consider the effectiveness of human rights treaties. Secondly, it will investigate the reasons states ratify human rights treaties. Thirdly, it will examine

¹ Arlene Kanter, 'The UNCRPD and Its Implications for the Rights of Elderly People Under International Law' (2009) 25 GSULR 527; Lisa Waddington, 'Breaking New Grounds: The Implications of Ratification of the UN Convention on the Rights of Persons with Disabilities for the European Community' in Oddny Mjoll Arnardottir and Gerard Quinn (eds), *The UN Convention on the Rights of Persons with Disabilities: European and Scandinavian Perspectives* (Martinus Nijhoff Publishers 2009); Suzanne Doyle and Eilionoir Flynn, 'Ireland's Ratification of the UNCRPD: Challenges and Opportunities' (2013) 41 BJLD 171.

states' general treaty obligations such as the duty to progressively realise education and employment. Finally, it will consider the effects on states obligations in ratifying the CRPD.

In evaluating states' general treaty obligations in education and employment, it is important to investigate ways states can realise progressively the rights to education and employment under human rights. An investigation of these obligations is necessary given the confusions about progressive realization and its role in the implementation of economic, social, and cultural rights (ESCRs) which encompasses education and employment. Moreover, although ESCRs require states to take steps towards achieving full fulfillment, the exact criteria for assessing compliance with human rights treaties remains uncertain.

An analysis of the concept of 'progressive realisation' requires an understanding of this obligation in the light of the International Covenant on Economic, Social and Cultural Rights (ICESCR).² Likewise, an examination of the meaning of 'inclusive education' demands an interpretation according to Article 24 of the CRPD, since achieving inclusive education and employment are important goals, it is also vital to look at the measures to be adopted for the progressive realisation of the rights to inclusive education and employment.

The Committee on the Rights of Persons with Disabilities (CRPD Committee) has already offered some direction on these measures. Likewise, the CRPD Committee has made recommendations as to the measures required to make additional progress towards the full realization of the rights to inclusive education and employment for persons with disabilities. Accordingly, this chapter examines not only what is expected from states parties to the CRPD but also, what strategies they may adopt in order to fulfil these obligations. In addition to academic scholarship on the rights to inclusive education and employment, this chapter relies on the Concluding Observations and General Comment No. 4 on the Right to Inclusive Education of the CRPD Committee.³ Others include Concluding Observations, General Statements, and General Comments of the CESCR

² International Covenant on Economic, Social and Cultural Rights (ICESCR) (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

³ CRPD, General Comment No.4: The Right to Inclusive Education, UN Doc. CRPD/C/GC/4, 2 September 2016.

Committee such as General Comment No.18 on the Right to Work,⁴and General Comment No. 23 on the Right to Just and Favourable Conditions of Work.⁵

This chapter is divided into six sections. Immediately after this introductory section (section 3.1), section 3.2 examines whether human rights treaties are effective in rights protection. In section 3.3, the reasons countries ratify human rights treaties are studied, along with the likely reasons Nigeria ratified the CRPD. Section 3.4 explains how states can realise progressively the right to inclusive education. By examining the international legal framework of progressive realization, it takes into account the recommendations of the Committee on Economic, Social and Cultural Rights (CESCR Committee). It then explains the measures and strategies that states parties to the CRPD must adopt in order to achieve the full fulfillment of the right to inclusive education. Likewise, section 3.5 studies how states can realise progressively the right to employment. The examination will equally focus on the international legal framework of progressive realisation and the right to employment. It considers the measures and strategies that states parties to the CRPD should adopt in order to realise the right to employment. Section 3.6 examines the effects on state obligations in ratifying the CRPD, alongside the effects on Nigeria's obligations in ratifying the CRPD. The chapter concludes in section 3.7 with some closing remarks.

3.2 How Effective are Human Rights Treaties?

There is a debate amongst scholars as to whether human rights treaties are useful in the protection of human rights. Some scholars agree that treaties are not efficient in the protection of human rights since rights violations have increased worldwide despite the ratification of human rights treaties by states. Eric Posner, for example, argues that human rights treaties have not been helpful in improving the wellbeing of people.⁶ He contends that the 'human rights agenda has fallen on hard times' with the continuous violation of human rights.⁷ In his book, the *Twilight of Human Rights Law*, Posner further asserts that the continuous existence of suppression worldwide is an indication that human rights law has not worked and should be abandoned.⁸ Promoters of this

⁴ CESCR General Comment No. 18: Right to Work (Article 6 of the ICESCR) (6 February 2006) UN Doc. E/C.12/GC/18.

⁵ CESCR General Comment No. 23: On the Right to Just and Favourable Conditions of Work (Article 7 of the ICESCR) (27 April 2016) UN Doc. E/C.12/GC/23.

⁶ Eric Posner, 'The Case Against Human Rights' (*The Guardian*, 4 December 2014) <https://www.theguardian.com/uk/culture> accessed 3 September 2020.

⁷ Ibid.

⁸ Eric Posner, *The Twilight of Human Rights Law* (Oxford University Press, 2014).

viewpoint maintain that while many countries have ratified core human rights treaties, rights violation persist. They observe that despite the speedy ratification of treaties such as the Convention on the Rights of the Child,⁹ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,¹⁰ and the Convention on the Elimination of all Forms of Discrimination against Women,¹¹ issues of child labour, slavery, discrimination against women, and torture are nevertheless common practices in ratifying states.

Other scholars provide related arguments that human rights treaties are not relevant in today's world. Stephen Hopgood for example maintains that human rights treaties are 'ill adapted to current reality' in the world.¹² Samuel Moyn, on his part, describes human rights as 'a powerless companion' that does not have the capacity for rights protection.¹³ Matau Mutua also claims that human rights have no effects on everyday life because they have not created opportunities for a better life.¹⁴

Others investigating by empirical research further suggest that human rights treaties are not beneficial in rights protection. For example, Oona Hathaway, in a quantitative analysis of 166 nations in five areas of human rights law (genocide, torture, fair and public trials, civil liberties, and political representation of women) asserts that human rights treaty ratification has little or no effect on state practices.¹⁵

By contrast, there are scholars who support the viewpoint that human rights treaties have positively impacted rights protection. For example, Beth Simmons states that human rights law has made a great influence on rights protection since ratification of treaties by countries has led to better rights practices.¹⁶ Similarly, Sikkink argues that human rights treaties have made great changes in rights

⁹ Convention on the Rights of the Child (CRC) (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

¹⁰ International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85.

¹¹ International Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 3.

¹² Stephen Hopgood, *The Endtimes of Human Rights* (Cornell University Press, 2013).

¹³ Samuel Moyn, 'A Powerless Companion: Human Rights in the Age of Neoliberalism' (2014) 77(4) *Law and Contemporary Problems* 147, 169.

¹⁴ Matau Mutua, *Human Rights: A Political and Cultural Critique* (University of Pennsylvania Press 2002).

¹⁵ Oona Hathaway, 'Do Human Rights Treaties Make a Difference' (2002) 111(8) *The Yale Law Journal* 1935.

¹⁶ Beth Simmons, *Mobilising for Human Rights: International Law in Domestic Politics* (Cambridge University Press 2009).

protection.¹⁷ Kanter too suggests that human rights treaties matter in rights protection.¹⁸ Using the CRPD as evidence, she asserts that the adoption of the disability treaty has not only impacted the laws, policies, and practices of state parties but also, improved the protection of the human rights of persons with disabilities and persons without disabilities.¹⁹

Although violations of human rights persist worldwide, human rights treaties have been effective to a great extent in not only reducing the incidents of rights violation, but have created awareness on rights especially in the global south. While Posner claims that treaties have not been helpful in improving the wellbeing of people, this is not the case in African countries where the coming into force of the UN Convention on the Rights of the Child for example significantly improved the situation of children in the continent, with ratifying states proscribing female genital mutilation and forced marriage, which hitherto used to be the norm in most states.

Moreover, this thesis does not subscribe to the view expressed by Posner and others who contend that human rights treaties are not beneficial in rights protection. This is because treaties have played an important role in the process of development of human rights norms. As Simmons notes treaties have contributed in rights protection especially in relation to vulnerable groups including women. Even though women still experience rights violation with the adoption of the UN Convention on the Elimination of All Forms of Discrimination against Women, the situation of women has improved with greater access to education and employment opportunities.

3.3 Reasons Countries Ratify Human Rights Treaties

There is rarely a legal obligation on states to ratify treaties, but there may be a moral obligation.²⁰ Nevertheless, whenever countries commit, they are under duty to implement the responsibilities under the instruments. But why do countries decide to commit to treaties in the first place? What influences their decisions to ratify or not ratify human rights treaties? This part of the chapter examines the reasons countries decide to ratify human rights treaties.

¹⁷ Kathryn Sikkink, *Evidence for Hope: Making Human Rights Work in the 21st Century* (Princeton University Press 2017).

¹⁸ Arlene S Kanter, 'Do Human Rights Treaties Matter: The Case for the United Nations Convention on the Rights of People with Disabilities' (2019) 52 Vand J Transnat'l L 577.

¹⁹ Ibid.

²⁰ Eric A Posner, 'Do States Have a Moral Obligation to Obey International Law' (2003) 55 Stan L Rev 1901.

Although states are legally required to give effect to treaties they ratify, there is rarely a legal obligation to ratify treaties. Most commentators agree that some countries ratify human rights treaties with no intention of complying with the terms of these treaties.²¹ A country may decide to commit to a treaty to protect its image in the international arena as well as to avoid the implications related to non-ratification of that treaty. As such, a country may believe that they have ‘no choice but to ratify’ a particular treaty in order to be accepted by the international community.²² Although some countries may have committed themselves to the terms of various treaties, they will not comply with the terms of the treaty in law and practice. As Kanter notes the decision to ratify treaties by some states is purely ‘symbolic’.²³ According to this view, states commit to human rights treaties for the sake of showing or portraying to the international community a sense of commitment to international standards without the real intention of complying with the terms and principles of the treaty.

An interrelated reason states may commit to human rights treaties is to gain acceptance in the international community. Which may be a prerequisite for the delivery of international aid and trade, and for political support.²⁴ Due to the need to benefit from aids from foreign donors, some countries may be inclined to commit to treaties solely for economic and political reasons. Such countries may ratify these treaties believing that, if they commit to these treaties, the international community will be more accepting of those countries. In turn, this may open up opportunities for international cooperation, international aids, and international trade.

However, some scholars disagree with this claim that countries commit to human rights treaties for economic reasons. Instead, they argue that autocratic states rather than democratic states commit to treaties not because of material benefits but to seek political gains.²⁵ In view of the fact

²¹ Joshua Keating, ‘Why Countries Make Human Rights Pledges They Have No Intention of Honoring’ (*Slate*, 21 October 2014) <<https://slate.com/news-and-politics/2014/10/why-countries-make-human-rights-pledges-they-have-no-intention-of-honoring.html>> accessed 13 September 2020.

²² Beth Simmons (16).

²³ Kanter, (n 18) 585.

²⁴ Oona A. Hathaway, ‘The Cost of Commitment’ (2003) 55 *Stan. L. Rev.* 1823,1833.

²⁵ Peter Dizikes, ‘Why sign rights treaties? Study: Autocratic leaders who sign human-rights treaties seek political gain, not material benefits’ (MIT News Office, 20 October 2014). <<file:///C:/Users/USER/Desktop/WHY%20SIGN%20HUMAN%20RIGHTS%20TREATIES/Why%20sign%20rights%20treaties%20%20MIT%20News.html>> accessed 30 September 2020.

that they are mostly in need of presenting a better image internationally, these repressive countries ratify these human rights treaties for the sole aim of achieving political support.

Some scholars also agree that a country may be inclined to ratify a human rights treaty if its regional neighbours have endorsed a particular treaty.²⁶ Countries are more likely to commit to a treaty if their geographical neighbours have ratified a particular human rights treaty. For instance, Nigeria's decision to ratify the CRPD may be due to the mass commitment to the treaty by other African countries. Furthermore, countries are more willing to commit to treaties if they actively participated in the drafting process. For instance, most African countries were inspired to commit to the CRPD because they partook in the negotiation and drafting procedure of the CRPD as part of the African Group.

Another reason a state may decide to ratify a treaty may relate to the country's resources and status in the international arena. Most scholars agree that the more powerful a country is, the more likely it is to ratifying human rights treaties.²⁷ Unlike weak poor countries, the rich powerful countries that have great influence in the global community are more likely to ratify treaties because these countries have the purse to address any financial implications associated with ratifying a treaty. Nevertheless, some other scholars oppose this position and argue that weaker countries in the international arena may choose to ratify treaties in order to gain legitimacy,²⁸ since their intention to commit to these treaties is to gain acceptance in the international community.²⁹

Apart from status and monetary reasons, is the cost-benefit perception. A country may ratify a treaty if the benefits of such ratification outweigh the cost implications. This is the position of some scholars who have examined treaty ratification using the cost-benefit analysis.³⁰ They argue that countries ratify treaties only after a calculation of the costs and benefits of such ratification. If the cost of ratification of the treaty is low compared to its benefits, countries are more likely to commit to such a treaty than if the cost is on the high side and the benefit is low.

²⁶ Sikkink (n 17).

²⁷ Jay Goodliffe and Darren Hawkins, 'Explaining Commitment: States and the Convention Against Torture' (2006) 68(2) *The Journal of Politics* 353.

²⁸ Hathaway (n 24)1823.

²⁹ *Ibid.*

³⁰ *Ibid.*

Furthermore, some scholars agree that a country may ratify a human rights treaty, if such treaty does not make changes in the state.³¹ Indeed, countries are more willing to ratify a treaty if it does not make changes in the country, than when such treaty requires a country to make substantial changes to its laws, policies, and practices. As such, a country may commit to a treaty if the terms of the treaty suit the country's laws, practices, and policies.

A final related reason a country may ratify a treaty is when a country's norm aligns with a treaty's standards.³² If a country's religion and cultural traditions aligns with a treaty's standard, a country is believed to be more likely to ratify the treaty. This is because the country will not be required to adjust much of its policies, laws, and practices since they are already in conformity with the standards of the treaty. For example, even though the United States is yet to ratify the CRPD, most of the standards of the United States in relation to disability rights are akin to those of the CRPD. As the United States' Americans with Disabilities Act 1990 as amended³³ inspired much of the international disability treaty.

Therefore, a country's decision to ratify treaties may be influenced by a number of factors such as gaining respect and acceptance in the international arena, achieving the benefits of the treaty, pressure from regional neighbours, resource availability and status at the international stage, and treaty norms. The next sections (section 3.4 and 3.5) examine states' general obligations in education and employment for persons with disabilities, particularly ways states can progressively achieve education and employment for persons with disabilities.

3.4 Ways States can Progressively Realise the Right to Inclusive Education

This part of the chapter examines how states can achieve progressively the right to inclusive education. For states to progressively realise the right to inclusive education, they must adopt the human rights model of disability. Unlike pre-existing human rights treaties (ICESCR and CRC) that is mostly fixated on the medical and social approaches to education, the CRPD mirrors the disability human rights-based model that promotes inclusive education.

³¹ Ibid.

³² Oona A. Hathaway, 'Between Power and Principle: An Integrated Theory of International Law' (2005) 72 U. Chi. L. Rev. 477.

³³ Americans with Disabilities Act as Amended (entered into force on July 26, 1990).

Therefore, this part of the chapter is subdivided into four sections. The first section considers the legal framework for progressive realisation and the right to inclusive education. The second section examines what inclusive education entails under human rights, particularly states' minimum core obligations in education. The third section investigates the measures to be adopted by states in order to gradually achieve the right to inclusive education. The final section examines the strategy to be applied by states, in order to accomplish the full fulfillment of the right of persons with disabilities to inclusive education.

3.4.1 Legal Framework for Progressive Realisation and the Right to Inclusive Education

The right to education falls within the economic, social and cultural rights. This right is provided for in articles 13 and 14 of the ICESCR³⁴ and articles 28 and 29 of the CRC.³⁵ However, neither the ICESCR nor the CRC make provision for the right to inclusive education. The right to education through the establishment of an inclusive education system is expressly provided for under article 24 of the CRPD.³⁶

Regarding economic, social and cultural rights, article 2(1) of the ICESCR provides that 'state party... undertakes to take steps... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant'. This provision is repeated in less detail in article 4(2) of the CRPD which provides that 'each State Party undertakes to take measures to the maximum of its available resources ...with a view to achieving progressively the full realization of these rights'. Since the wordings found in article 4(2) of the CRPD are similar to those contained in article 2(1) of the ICESCR, it therefore means that what applies to economic, social and cultural rights (ESCRs) in the ICESCR equally applies to ESCRs in the CRPD.³⁷ Consequently, the right to inclusive education is subject to progressive realisation.

The term 'progressive realisation' has been interpreted by the Committee on Economic, Social and Cultural Rights (CESCR Committee). The Committee notes that 'the concept of progressive

³⁴ICESCR (n 2).

³⁵CRC (n 9).

³⁶ Convention on the Rights of Persons with Disabilities (CRPD) (Adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3.

³⁷ Gauthier de Beco, 'Progressive Realisation and the Right to Inclusive Education' in Gauthier de Beco et al (eds), *The Right to Inclusive Education in International Human Rights Law* (Cambridge University Press, 2019).

realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time'.³⁸ This means that 'states parties to the ICESCR may delay fulfilling some of their obligations for implementing economic, social and cultural rights'.³⁹ However, the postponement in achieving some duties necessary for the achievement of economic, social and cultural rights is not definite since states parties are expected to 'move as expeditiously and effectively as possible towards' the full realisation of all economic, social and cultural rights.⁴⁰ This is because it has been established that states parties to the CRPD are required to realise progressively the right to inclusive education. This then means that states have a 'specific and continuing obligation to move as expeditiously and effectively as possible towards the full realization' of the right to inclusive education.⁴¹

Although fulfilling economic, social and cultural rights is gradual in nature, it however also levies immediate obligations on states. The CESCR Committee has recommended that states parties should 'ensure the satisfaction of, at the very least, minimum essential levels of each of the rights' in the Covenant.⁴² This means that states have a minimum core obligation with respect to every right in the Covenant. This principle has been applied in a number of cases. In the case of *Government of the Republic of South Africa. & Ors v Grootboom & Ors*,⁴³ the Court held that in relation to the right to housing, states have the core duty to provide basic shelter to those in need. Similarly, in *Lindiwe Mazibuko & Others v City of Johannesburg & Others*,⁴⁴ the court held that the right of access to sufficient water does not require the state to provide every person with sufficient water. Rather it requires the state to take reasonable legislative and other measures progressively to realise the achievement of the right of access to sufficient water, within available resources. Correspondingly, in *Minister of Health v Treatment Action Campaign*,⁴⁵ the issue was whether there is an unrestricted right to minimum core medical services. The court found that the

³⁸ CESCR General Comment No. 3: The Nature of States Parties' Obligations (Article 2, Paragraph 1, of the Covenant) (14 December 1990) UN Doc E/1991/23) at 9.

³⁹ de Beco (n 37).

⁴⁰ CESCR General Comment No. 3(n 38) 9.

⁴¹ CRPD General Comment No.4 (n 3) para 40.

⁴² CESCR General Comment No. 3 (n 38)10.

⁴³ 2000 (11) BCLR 1169. (CC).

⁴⁴ Case CCT 39/09, [2009] ZACC 28.

⁴⁵ (2002) 5 SA 721 (CC).

South African government had a core duty to extend available anti-viral drugs to hospitals and clinics.

Consequently, regarding the right to education- the CESCR Committee recommends that states have an immediate obligation to ‘ensure the right of access to public educational institutions and programmes on a non-discriminatory basis; and [to] ensure that education conforms to the objectives set out in article 13 (1)’ of the ICESCR.⁴⁶ Unlike the ICESCR which mostly mirrors the medical/social models, these minimum core standards regarding education for persons with disabilities have been extended under the CRPD to reflect the human rights model of disability. Since states parties to the CRPD are obligated to ensure that persons with disabilities can access education on the basis of non-discrimination.⁴⁷ This obligation includes the duty to provide reasonable accommodation in mainstream schools.⁴⁸ It also requires states to ensure that children with disabilities are not excluded from conventional schools on grounds of their impairment and that if needed, reasonable accommodation is provided to enable them fully access education. Aside the duty to proscribe discrimination in accessing education is the duty to ensure the provision of ‘the most basic forms of education’ to children with disabilities.⁴⁹ This kind of education is not limited to the provision of primary education only but also includes ‘other levels of education’⁵⁰ since education at different stages contributes to the overall life prospects of people with disabilities.⁵¹

Then what does progressive realisation mean for the right to inclusive education? This question has been commented upon by the CRPD Committee. The Committee noted that progressive realisation is not ‘compatible with sustaining two systems of education: a mainstream education system and a special/segregated education system’.⁵² Therefore, the provision of special education for children with disabilities is clearly not in compliance with fulfilling economic, social and cultural rights. Therefore, states parties to the CRPD are required to aim at ensuring ‘an inclusive

⁴⁶ CESCR General Comment No. 13: The Right to Education (Art. 13 of the ICESCR) (8 December 1999) UN Doc E/C.12/1999/10 at [57].

⁴⁷ General Comment No.4 (n 3) para 41(a).

⁴⁸ CRPD General Comment No.4 (n 3), para 41(b).

⁴⁹ CRPD General Comment No.4 (n 3) para 41(a).

⁵⁰ de Beco (n 37).

⁵¹ Ibid.

⁵² CRPD, General Comment No.4 (n 3), para 40

education system at all levels and lifelong learning'.⁵³ This goal can be achieved through the allocation of sufficient resources as well as the implementation of measures within a reasonable time. As De Beco suggests, inclusive education is a process that can be attained 'through the elaboration of an appropriate strategy for the implementation of the right to inclusive education'.⁵⁴

3.4.2 Inclusive Education

In order to establish how states parties to the CRPD can progressively realise the right to inclusive education, it is important to understand the meaning of the phrase 'inclusive education' as provided in the CRPD. Although the notion of inclusive education is endorsed in human rights, the CRPD is the first binding international treaty that establishes inclusive education as a means of fulfilling the right of persons with disabilities to education.⁵⁵ Although the term 'inclusive education' is mentioned in regards to the right to education, it is unfortunately not defined in the Convention.⁵⁶

While 'inclusive education' is not defined in the Convention, there are however some well-defined indications as to its content. Inclusive education is not putting children with disabilities in schools for them to fit into such institution.⁵⁷ This would result in children with disabilities not participating in school on the basis of equality, thereby contradicting the aims of the CRPD of promoting inclusion and diversity. Likewise, inclusive education for children with disabilities is not placing them in special schools based on disability.⁵⁸ This would separate children with disabilities from children without disabilities and it goes against the aspirations of the Convention of promoting free participation and freedom of choice.

The CRPD Committee observes that inclusive education is 'a process that not only recognises the duty to eliminate barriers that restrict participation in mainstream education settings, but also to change culture, policy, and practice of regular schools...'.⁵⁹ According to the Committee, the procedure involves 'strengthening the capacity of the education system to reach out to all learners'.⁶⁰ It also requires an 'in-depth transformation of education systems in legislation, policy,

⁵³ CRPD (n 36) Article 24 (1).

⁵⁴ de Beco, 'Progressive Realisation and the Right to Inclusive Education'.

⁵⁵ CRPD (n 36) Article 24 (1).

⁵⁶ CRPD (n 36) article 2.

⁵⁷ CRP, General Comment No.4 (n 3), para 40.

⁵⁸ CRPD General Comment No. 4(n 3), para 40.

⁵⁹ Ibid.

⁶⁰ Ibid.

and the mechanisms for financing, administration, design, delivery, and monitoring of education'.⁶¹ States parties to the CRPD should make as priority the transformation of the whole process of education in order to enable the proper accommodation of students with disabilities.

Therefore, states should aim to apply a universal design to education.⁶² This means that states must ensure that goods, services, technologies, and facilities are accessible to all persons including persons with disabilities from the beginning.⁶³ Universal design is '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'.⁶⁴ For states to achieve inclusive education, there has to be a gradual and definite shift towards providing buildings and others facilities in an accessible format.⁶⁵

3.4.3 Measures to Achieve Inclusive Education

States are expected to take steps towards achieving an inclusive education system. But what are these measures? What steps are states expected to take in order to progressively realise inclusive education? Based on CRPD, States are required to adopt a number of measures for the progressive realisation of inclusive education. These measures are: the provision of teacher training, awareness raising, accessibility, and the provision of support. This arrangement is in line with the approach of the CRPD Committee,⁶⁶ non-governmental organisations,⁶⁷ and academic experts.⁶⁸ Starting with the last point, children with disabilities need support to partake in ordinary schools. Article 24(2)(d) of the CRPD stipulates that person with disabilities should 'receive the support required, within the general education system, to facilitate their effective education'. Offering support is an important step towards inclusion in education. Without support, children with disabilities cannot efficiently participate in mainstream education. In order to achieve the full realization of inclusive education, states parties to the CRPD must adopt several wide-ranging and individual support measures. The general support measures involve the provision of steps that are common to all

⁶¹ Ibid.

⁶² de Beco (n 37).

⁶³ CRPD, General Comment 2: Accessibility, UN Doc. CRPD/C/GC/2 (22 May 2014), para. 1.

⁶⁴ CRPD (n 36) Article 2.

⁶⁵ de Beco (n 37).

⁶⁶ CRPD, General Comment No.4 (n 3) para 40.

⁶⁷ UN High Commissioner for Human Rights, Thematic Study on the Right to Education of Persons with Disabilities, A/HRC/22/25 (17 December 2012).

⁶⁸ de Beco (n 37).

learners.⁶⁹ These steps comprise the provision of adequately trained and supported teaching staff, school counsellors, psychologists, speech and language therapists and other relevant health and social service professionals, as well as access to scholarships and financial resources. Individual support measures on the other hand include measures needed to support the peculiar needs of a particular learner with disabilities such as the provision of personalised education plans.⁷⁰ Although majority of students with disabilities attend regular schools, the major problem is the lack of or insufficient provision of support. This is a serious drawback that has the ability to prevent some children with disabilities (deaf and deafblind students, children with autism) from attending mainstream schools. States should ensure that sufficient support is delivered to students with disabilities in all areas of the inclusive education system. This could be achieved by ensuring adequate budgetary resource allocation towards the development and implementation of inclusive education.

The CRPD Committee has expressed its concern regarding the lack of or inadequate provision of support to a number of states parties to the CRPD. To Cook Islands, it noted that ‘there is an insufficient...provision of support for inclusive education’,⁷¹ and to Austria, it observed with ‘concern reports suggesting ...that insufficient efforts are being made to support inclusive education of children with disabilities’.⁷² To Sweden, it also expressed concern at ‘reports indicating that some children who need extensive support cannot attend school due to a lack of such support’⁷³ and to Ukraine, it regretted that the state party...’does not have in place such measures as ...providing ...other support mechanisms to develop quality, inclusive education’.⁷⁴ To Kuwait, the Committee further observed the ‘lack of measures taken to... ensure the provision of individualized support....to all children with disabilities in mainstream schools’.⁷⁵

Moreover, achieving inclusive education requires competent teachers. Article 24(4) of the CRPD requests that states parties ‘take appropriate measures to employ teachers... who are qualified in

⁶⁹CRPD, General Comment No.4 (n 3) para 40.

⁷⁰ Ibid.

⁷¹ See CRPD, Concluding Observations: Cook Islands, UN Doc. CRPD/C/COK/CO/1 (17 April 2015), para. 43.

⁷² See CRPD, Concluding Observations: Austria, UN Doc. CRPD/C/AUT/CO/1 (2-13 September 2013), para. 40.

⁷³ See CRPD, Concluding Observations: Sweden, UN Doc. CRPD/C/SWE/CO/1 (11 April 2014), para. 47.

⁷⁴ See CRPD, Concluding Observations: Ukraine, UN Doc. CRPD/C/UKR/CO/1 (05September 2015), para. 44.

⁷⁵ See CRPD, Concluding Observations: Kuwait, UN Doc. CRPD/C/KWT/CO/1 (24 September 2019), para. 46(a).

sign language and/or braille, and to train professionals and staff who work at all levels of education'. Skilled teachers are an important human resource needed for the attainment of an inclusive education system. In order to accomplish inclusive education, states parties to the CRPD should employ skilled teachers who are able to teach in sign language and braille.⁷⁶ Without teachers trained in sign language and braille capability, deaf and blind children are at a significant disadvantage and may not be able to participate in regular schools. However, the main issue is not the lack of teachers per se but, the lack of teachers with the required skills or teachers having inadequate skills to teach students with disabilities. This is a serious challenge that has the capability of keeping children with disabilities in special schools. States should therefore ensure that appropriate training is provided to all teachers in mainstream schools. This could be achieved by ensuring the adoption of a national action plan as well as the allocation of the requisite budget for the compulsory training of teachers in inclusive education techniques.

The CRPD Committee has acknowledged the lack of trained teachers as well as deficits in teacher training. For instance, to Uruguay, the Committee expressed concern that 'there is no training for teachers on inclusive education',⁷⁷ and to Austria, it noted the 'lack of teacher training for teachers with disabilities and teachers who use sign language'.⁷⁸ To Ukraine, it also regretted that the state ...'does not have in place such measures as training teachers and other professionals',⁷⁹ and to Uganda, it expressed concern about 'the lack of adequately trained teachers to promote inclusive education at all levels of the education system'.⁸⁰ To Mongolia, it further expressed concern that 'the number of teachers trained on teaching children with disabilities remains low',⁸¹ and to Costa Rica, it noted the 'continuing existence of the special education model...and that training for teachers and other professional staff continues to be provided within this specialized framework'.⁸²

Furthermore, children with disabilities must be able to access education in mainstream schools. The CRPD provides for accessibility as a general obligation under article 9. It requires states parties to ensure that persons with disabilities can access the physical environment, means of

⁷⁶ CRPD, General Comment No.4 (n 3) para 40.

⁷⁷ See CRPD, Concluding Observations: Uruguay, UN Doc. CRPD/C/URY/CO/1 (02 September 2016), para. 51.

⁷⁸ See CRPD, Concluding Observations: Austria, UN Doc. CRPD/C/AUT/CO/1 (2-13 September 2013), para. 42.

⁷⁹ See CRPD, Concluding Observations: Ukraine, UN Doc. CRPD/C/UKR/CO/1 (05 September 2015), para. 44.

⁸⁰ See CRPD, Concluding Observations: Uganda, UN Doc. CRPD/C/MNG/CO/1 (13 May 2015), para. 7(b).

⁸¹ See CRPD, Concluding Observations: Mongolia, UN Doc. CRPD/C/MNG/CO/1 (17 April 2015), para. 36.

⁸² See CRPD, Concluding Observations: Costa Rica, UN Doc. CRPD/C/CRI/CO/1 (11 April 2014), para. 45.

transportation, services, and others facilities open to the public. In the context of education, access extends to the entire process of inclusive education.⁸³ This means that states parties to the CRPD must adopt measures to allow children with disabilities partake in the whole general education system. Such measures require designing the environment of students with disabilities, and ensuring that school transport is inclusive, accessible and safe. Others include ensuring accessible water and sanitation facilities, school cafeterias, and recreational spaces. In order to achieve inclusive education, states parties to the CRPD must adopt measures addressing and eliminating barriers to education. This includes physical, communication, information, and transport related barriers. However, one of the major problems is that the number of accessible means of transport is insufficient to accommodate the needs of students with disabilities. This is a serious problem that has the possibility of keeping children with disabilities from school. States should secure a sufficient number of accessible means of transport in order to accommodate the needs of students with disabilities. This could be achieved by allocating sufficient budget and guaranteeing accessibility to means of transportation.

The practice of the CRPD Committee indicates many forms of inaccessibility in education. For instance, to Ukraine, the Committee expressed concern about the lack of ...'measures as ...providing architectural access to school premises.⁸⁴ It equally noted the 'poor accessibility in schools' in Belgium⁸⁵ as well as the 'inability of schools to meet the accessibility requirements of children with disabilities' in Uganda.⁸⁶ Similarly, to Brazil, it observed the 'lack of... accessible school environments in the mainstream education system'⁸⁷ and to Mauritius, it stated that 'pupils with disabilities who do not have access to public transport in rural areas...'.⁸⁸ Furthermore, to Greece, it noticed that 'schools and universities lack accessible and inclusive environments, buildings, educational material, services, equipment, information and communication'⁸⁹ and to India, it noted the 'lack of accessible inclusive schools in rural and remote areas'.⁹⁰

⁸³ CRPD General Comment 2: Accessibility (n 60) para. 1.

⁸⁴ See CRPD, Concluding Observations: Ukraine, UN Doc. CRPD/C/UKR/CO/1 (05 September 2015), para. 44.

⁸⁵ See CRPD, Concluding Observations: Belgium, UN Doc. CRPD/C/BEL/CO/1 (03 September 2014), para. 44.

⁸⁶ See CRPD, Concluding Observations: Uganda, UN Doc. CRPD/C/UGA/CO/1 (21 April 2016), para. 48 (c).

⁸⁷ See CRPD, Concluding Observations: Brazil, UN Doc. CRPD/C/BRA/CO/1 (04 September 2015), para. 44.

⁸⁸ See CRPD, Concluding Observations: Mauritius, UN Doc. CRPD/C/MUS/CO/1 (04 September 2015), para. 33.

⁸⁹ See CRPD, Concluding Observations: Greece, UN Doc. CRPD/C/GRC/CO/1 (29 September 2019), para. 34(b).

⁹⁰ See CRPD, Concluding Observations: India, UN Doc. CRPD/C/IND/CO/1 (24 September 2019), para. 50 (c).

Finally, children with disabilities must be accepted in mainstream schools. The CRPD offers awareness raising as a general obligation under article 8 of the CRPD. It requires that states parties not only raise awareness about the rights of people with disabilities but also, promote respect for their dignity. It further demands for the promotion of ‘awareness of the capabilities and contributions of persons with disabilities’ as well as combat ‘stereotypes, prejudices and harmful practices relating to persons with disabilities ...in all areas of life’.⁹¹ This means that states parties to the CRPD must adopt measures to allow children with disabilities partake in the whole general education system. Such measures require designing the environment of students with disabilities, and ensuring that school transport is inclusive, accessible and safe. Others include ensuring accessible water and sanitation facilities, school cafeterias, and recreational spaces. In the context of education, it demands the promotion of an attitude of respect for the right of persons with disabilities to education.⁹² This means that states parties to the CRPD should adopt measures to sensitize the society on the right of persons with disabilities to inclusive education.

These measures comprise awareness-training programmes, public awareness campaigns, and encouraging the media to positively portray persons with disabilities. Other measures that may be adopted contain those to combat stereotypes, prejudices and harmful practices relating to persons with disabilities. However, a major hindrance seems to be the negative societal attitudes towards the attendance of children with disabilities at regular schools. This is a crucial issue that can limit the education of children with disabilities to those delivered in special schools. States parties to the CRPD should therefore employ measures to combat prejudice amongst staff and students in schools. This could be achieved by allocating sufficient budget for public sensitization, as well as provide adequate training for school staff.

The CRPD Committee has acknowledged awareness raising campaigns as an important tool for realizing quality inclusive education to a few numbers of states parties to the Convention. For instance, to India, the Committee urged it to ‘undertake campaigns to combat disability stereotypes...’⁹³ and to Myanmar, it suggested that it undertakes ‘information campaigns to promote their enrolment in mainstream schools at all levels’.⁹⁴ Additionally, to Uruguay, it

⁹¹ CRPD (n 37) Article 8.

⁹² CRPD (n 37) Article 8.

⁹³ CRPD, Concluding Observations: India, UN Doc. CRPD/C/IND/CO/1 (24 September 2019), para. 51(b).

⁹⁴ CRPD, Concluding Observations: Myanmar, UN Doc. CRPD/C/MMR/CO/1 (24 September 2019), para. 46(b).

endorsed conducting ‘awareness-raising campaigns aimed at the general public, schools and the families of persons with disabilities, in order to promote high-quality inclusive education’.⁹⁵

3.4.4 Strategy for the Realisation of Inclusive Education

In order to progressively fulfill inclusive education, states parties to the CRPD should implement a strategy that comprises monitoring, planning, and budgeting. As regards budgeting, progressive realisation of the right to inclusive education requires the use of a state party’s maximum available resources.⁹⁶ The CRPD Committee in its Concluding Observations on states parties’ reports have consistently recommended that states must...’allocate effective and sufficient financial and material resources, as well as adequately and regularly trained staff’.⁹⁷ This means that states should make the implementation of inclusive education a matter of urgency by employing the resources at their disposal or available internationally to build an inclusive education system.⁹⁸ Resources are both financial and non-financial in nature.⁹⁹ They include natural, human, technological, informational and international resources.¹⁰⁰ States parties to the CRPD must assign a budget with a view to achieving the full realisation of inclusive education. However, the availability of resources remains a challenge to realizing inclusive education.

Although some states parties to the CRPD have adopted national legislation acknowledging the right of persons with disabilities to inclusive education, there is the dearth or inadequate resources for the implementation of inclusive education. The lack of or limited resources to accomplish inclusive education has been pointed out on numerous occasions by the CRPD Committee. For example, to Ukraine, the Committee expressed concern that ‘there is an insufficient budget allocation...for inclusive education’,¹⁰¹ and to Portugal, it noted that ‘because of austerity

⁹⁵ CRPD, Concluding Observations: Uruguay, UN Doc. CRPD/C/URY/CO/1 (02 September 2016), para. 52.

⁹⁶ Article 2(1) of the ICESCR, CRPD (n 36) Article 4(2), and Article 4 of the CRC.

⁹⁷ See CRPD, Concluding Observations: Albania, UN Doc. CRPD/C/ALB/CO/1 (20 September 2019), para. 40(d); CRPD, Concluding Observations: Lithuania, UN Doc. CRPD/C/LTU/CO/1 (21 April 2016), para. 46(d); CRPD, Concluding Observations: South Africa, UN Doc. CRPD/C/ZAF/CO/1 (24 September 2018), para. 41(b); CRPD, Concluding Observations: Greece, UN Doc. CRPD/C/GRC/CO/1 (20 September 2019), para. 35(d).

⁹⁸ CESCR Committee, ‘An Evaluation of the Obligation to Take Steps to the “Maximum of Available Resources” Under an Optional Protocol to the Covenant: Statement’ (E/C.12/2007/1) (10 May 2007) para. 5.

⁹⁹ Ibid.

¹⁰⁰ Working Group Paper 3: ‘States parties’ obligations: realizing economic, social and cultural rights. Are child rights a luxury during an economic crisis?’, prepared for the Celebration of the 20th Anniversary of the Adoption of the Convention on the Rights of the Child, <http://www2.ohchr.org/english/bodies/crc/docs/20th/BackDocWG3.doc>.

¹⁰¹ See CRPD, Concluding Observations: Ukraine, UN Doc. CRPD/C/UKR/CO/1 (05 September 2015), para. 44.

measures, human and material resources have been cut, thereby putting the right to and opportunity for an inclusive education of high quality at risk'.¹⁰²

Progressive realisation of the right to inclusive education also involves the redefinition of budgetary allocations. States parties to the CRPD are required to reallocate budgets from special education to develop an inclusive education system since providing budgetary support towards promoting special education will be contrary to the objectives of the Convention. This view is reaffirmed by CRPD Committee in its recommendations to states parties' reports, in which it stated the need to redirect resources from special education. For example, to Ecuador, it recommended that it 'redirect budget allocations from special education to the regular education system'¹⁰³ and to Kuwait, it stated the need 'to redirect resources from segregated educational settings towards quality, inclusive education'.¹⁰⁴

Progressive realization of inclusive education further involves planning. Promoting an inclusive education system demands the development of national action plans. Although the CRPD does not mention action plans as means of achieving inclusive education, it is however provided for in article 14 of the ICESCR and recommended by the CRPD Committee. The CRPD Committee urges states parties to the CRPD to 'adopt and implement a national action plan on inclusive education involving all line ministries and stakeholders'...¹⁰⁵ Planning is crucial to the full realisation of the right to inclusive education since it helps to ensure that education policies to promote inclusion are well formulated. The CRPD Committee has confirmed that planning is indispensable in order to gradually achieve inclusive education. To South Africa, it requested the development of 'a comprehensive plan...in which children can stay in their local schools'... as well as 'prepare a time-bound plan of action to address the high levels of physical, sexual, verbal and emotional abuse'.¹⁰⁶

Lastly, progressive realisation includes monitoring the progress towards the full achievement of inclusive education. Attaining inclusive education is a process that requires regular checks and the CRPD mandates states parties to evaluate the progress made towards the realization of inclusive

¹⁰² See CRPD, Concluding Observations: Portugal, UN Doc. CRPD/C/PRT/CO/1 (21 April 2016), para. 44.

¹⁰³ CRPD, Concluding Observations: Ecuador, UN Doc. CRPD/C/EQU/CO/2-3 (24 September 2019), para. 44.

¹⁰⁴ CRPD, Concluding Observations: Kuwait, UN Doc. CRPD/C/KWT/CO/1 (24 September 2019), para. 47 (b).

¹⁰⁵ See CRPD, Concluding Observations: Myanmar, UN Doc. CRPD/C/MMR/CO/1 (20 September 2019), para. 46(b).

¹⁰⁶ CRPD, Concluding Observations: South Africa, UN Doc. CRPD/C/ZAF/CO/1 (24 September 2018), para. 41(b).

education.¹⁰⁷ This can be accomplished through the formation of indicators concerning the right to inclusive education as outlined by international human rights organisations¹⁰⁸ and supported by academic scholars.¹⁰⁹ These indicators can be divided into structural, process, and outcome indicators in line with the approach adopted by the Office of the United Nations High Commissioner for Human Rights.¹¹⁰ In relation to inclusive education, the structural indicators can aim at measuring barriers to inclusive education. The process indicators should aspire to measure the changes regarding accessibility of the physical environments, curriculum adaptations, teacher training etc. The outcome indicators can measure areas such as the percentage of students with disabilities in inclusive learning environments, the percentage of students with disabilities admitted to secondary education, and affirmative action measures adopted such as quotas or incentives. Additionally, the CRPD requires that states parties to the CRPD ‘collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention’.¹¹¹ This means that states parties to the CRPD ‘should gather such data so that their achievement can be measured regularly’.¹¹² The data collected must also be disaggregated as provided under article 31(2) of the CRPD.

The CRPD Committee has enjoined states parties to the Convention to gather disaggregated data on the right to inclusive education. For instance, to Kuwait, the Committee recommends the collection of ‘data, disaggregated by age, gender, nationality, disability and geographical area, on children with disabilities in and out of education in both mainstream and special education schools and on enrolment and dropout rates...’.¹¹³ To South Africa, it also suggests that the state should engage in supplying ‘systematic data collection, disaggregated by sex and type of impairment’.¹¹⁴ Developing indicators and collecting data helps to ensure that states parties to the CRPD to measure progress made and shows areas where further progress is needed. As De Beco notes, ‘developing indicators and gathering data are precondition for making sound policy and therefore

¹⁰⁷ CRPD (n 36) Article 33.

¹⁰⁸ Office of the United Nations High Commissioner for Human Rights, *Human Rights Indicators: a Guide to Measurement and Implementation* (New York and Geneva, 2012).

¹⁰⁹ Gauthier de Beco, ‘Human Rights Indicators for Assessing State Compliance with International Human Rights’ (2008) 77 *Nordic Journal of International Law* 23.

¹¹⁰ Office of the United Nations High Commissioner for Human Rights, *Human Rights Indicators: a Guide to Measurement and Implementation* (New York and Geneva, 2012).

¹¹¹ CRPD (n 36) Article 31(1).

¹¹² de Beco (n 37).

¹¹³ CRPD, Concluding Observations: Kuwait, UN Doc. CRPD/C/KWT/CO/1 (24 September 2019), para. 47(c).

¹¹⁴ CRPD, Concluding Observations: South Africa, UN Doc. CRPD/C/ZAF/CO/1 (24 September 2018), para. 41(b).

a necessary tool to ensure that states parties to the CRPD are actually realizing economic, social and cultural rights...'.¹¹⁵

The CRPD Committee has likewise emphasized the importance of data collection in the realisation of the right to inclusive education to a number of states parties to the Convention. For instance, to Albania, it expressed concern about 'the absence of data and indicators to monitor the quality of education and inclusion of students with disabilities at all levels of education' as well as 'the lack of data on the public resources allocated to inclusive education in primary, secondary and higher education institutions'.¹¹⁶ To Greece, it stated also that 'there is insufficient data on the amount of public resources allocated for inclusive education in mainstream schools and higher education institutions...'.¹¹⁷

3.5 Ways States Can Progressively Realise the Right to Employment

This part of the chapter examines how states can gradually achieve the right to employment for persons with disabilities. It is divided into three sections. The first section considers the legal framework for progressive realisation and the right to employment under human rights. In order to understand how states parties to the CRPD can progressively achieve the right to employment, the second section investigates the measures to be implemented by states. The final section examines the strategy to be employed by states in order to attain the full recognition of the employment right of persons with disabilities.

3.5.1 Legal Framework for Progressive Realisation and the Right to Employment

The right to employment falls within the category of economic, social and cultural rights. This right is provided in articles 6, 7 and 8 of the ICESCR,¹¹⁸ and article 27 of the CRPD.¹¹⁹ Unlike the ICESCR, the CRPD provides the most detailed standard for achieving the right to employment.¹²⁰ Although article 27 of the CRPD employs a similar language to that provided under article 6 of

¹¹⁵ de Beco (n 37).

¹¹⁶ CRPD, Concluding Observations: Albania, UN Doc. CRPD/C/ALB/CO/1 (24 September 2019), para. 39(b)(c).

¹¹⁷ CRPD, Concluding Observations: Greece, UN Doc. CRPD/C/GRC/CO/1 (24 September 2019), para. 34(d).

¹¹⁸ ICESCR (n 2).

¹¹⁹ CRPD (n 36) (Adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3.

¹²⁰ Eric Zhang, 'Employment of People with Disabilities: International Standards and Domestic Legislation and Practices in China' (2006-2007) 34 SJILC 517.

the ICESCR, the CRPD expands the latter provision¹²¹ and asserts the right to work as including for persons with disabilities ‘the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible...’.¹²²

On the subject of economic, social and cultural rights, article 2(1) of the ICESCR provides that ‘state party... undertakes to take steps... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant’. This provision is replicated though in fewer details in article 4(2) of the CRPD which provides that ‘each State Party undertakes to take measures to the maximum of its available resources ...with a view to achieving progressively the full realization of these rights’. In view of the fact that the words found in article 4(2) of the CRPD are comparable to those in article 2(1) of the ICESCR, it therefore means that what pertains to economic, social and cultural rights (ESCRs) in the ICESCR likewise applies to ESCRs in the CRPD. Consequently, the right to employment is subject to progressive realisation.

The Committee on Economic, Social and Cultural Rights (CESCR Committee) has clarified article 2(1) of the ICESCR and expresses the position that the term ‘progressive realisation’ indicates ‘a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time’.¹²³ This suggests that states parties to the ICESCR may not instantly accomplish some of their duties for achieving economic, social and cultural rights. However, the delay in attaining some obligations needed for the achievement of economic, social and cultural rights is not fixed since states parties are expected to ‘move as expeditiously and effectively as possible’ towards the full realisation of all economic, social and cultural rights.¹²⁴ Since it has been established that states parties to the CRPD are required to realise progressively the right to employment, this then means that states should move towards the realisation of the right to employment within ‘a reasonable time’.¹²⁵

¹²¹ Marco Fasciglione, ‘Article 27 of the CRPD and the Right of Inclusive Employment of People with Autism’ in V Della Fina and R Cera (eds), *Protecting the Rights of People with Autism in the Fields of Education and Employment: International, European and National Perspectives* (Springer Open 2015).

¹²² CRPD (n 36) Article 27(1).

¹²³ CESCR General Comment No. 3 (n 38) 9.

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

Although economic, social and cultural rights entail progressive duties, they also impose immediate obligations on states. The CESCR Committee maintains that states parties have minimum core obligations and must ‘ensure the satisfaction of, at the very least, minimum essential levels of each of the rights’ in the Covenant.¹²⁶ This means that states have minimum core obligations with respect to every right in the Covenant. Therefore, regarding the right to employment- the CESCR Committee recommends that states parties have immediate obligations. However, concerning persons with disabilities, the standard is much higher under the CRPD unlike under pre-existing human rights treaties. These obligations include to ‘ensure non-discrimination and equal protection of employment’.¹²⁷ Accordingly, states parties are duty bound to fulfil their minimum core obligations by ensuring access to employment and work on the basis of non-discrimination and equality. This obligation includes the duty to provide reasonable accommodation. Others include the duties to ‘put in place a comprehensive system to combat gender discrimination’; ‘establish minimum wages that are non-discriminatory’; and ‘prohibit harassment including sexual harassment’ at the workplace.¹²⁸

Moreover, the CESCR Committee has recommended that states ‘adopt and implement a national employment strategy and plan of action...addressing the concerns of all workers on the basis of a participatory and transparent process that includes employers’ and workers’ organizations...’.¹²⁹ According to the Committee, the ‘employment strategy and plan of action should target disadvantaged and marginalized individuals and groups in particular and include indicators and benchmarks by which progress in relation to the right to work can be measured and periodically reviewed’.¹³⁰ Furthermore, states parties have the immediate obligations to ‘adopt and implement a comprehensive national policy on occupational safety and health’ and ‘introduce and enforce minimum standards in relation to rest, leisure, reasonable limitation of working hours, paid leave and public holidays...’.¹³¹

In order to realise progressively the right to employment, states parties to the CRPD are required to allocate sufficient resources and adopt appropriate measures within a reasonable time.

¹²⁶ CESCR General Comment No. 3 (n 38) 10.

¹²⁷ CESCR General Comment No. 18(n 5) 31.

¹²⁸ CESCR General Comment No. 23 (n 5)65.

¹²⁹ CESCR General Comment No. 18 (n 4), 31.

¹³⁰ Ibid.

¹³¹ CESCR General Comment No. 23 (n 5), 65.

Achieving the right to employment is a process that can be accomplished through the putting in place of an appropriate strategy. To achieve this process, states parties must gradually build a conducive work environment and inclusive labour market that supports the employment right of persons with disabilities within a reasonable time.

3.5.2 Measures to Achieve the Right to Employment

How then can states achieve progressively the right to employment? What steps are needed to be taken in order to attain the right to employment? The CRPD provides for the steps to be taken in order to realise progressively the right to employment. It requires states parties to adopt a number of measures for the progressive realisation of the right to work. Based on the CRPD, these measures can generally be divided into three major groupings: promoting an inclusive labour market, promotion of employment opportunities, and promoting the involvement and participation of disability organisations in labour-related matters. This arrangement is in line with the categorization provided by international human rights organisations¹³² as well as academic scholars.¹³³

Firstly, states are required to promote an inclusive labour market. Article 27(1) of the CRPD demands that states parties acknowledge the right of persons with disabilities to work including ‘the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive, and accessible to persons with disabilities...’. However, the CRPD does not provide insight as to the exact meaning of the phrase ‘open, inclusive and accessible’. The word ‘open’ is also mentioned in article 27(1)(j) of the CRPD. This provision requires states parties to ‘promote the acquisition by persons with disabilities of work experience in the open labour market’. Liisberg suggests, that the word ‘open’ as used in article 27(1) of the CRPD should be understood as ‘ordinary or as the opposite of a segregated labour market’.¹³⁴ According to this viewpoint, states parties to the CRPD are required to support employment in the open labour market for persons with disabilities. This interpretation aligns with the position expressed by the International Labour Organisation (ILO) in its proposal to amend article 27 of

¹³² UNHCHR, Thematic Study on the Work and Employment of Persons with Disabilities, A/HRC/22/25 (17 December 2012).

¹³³ Maria Ventegodt Liisberg, 'Flexicurity and Employment of Persons with Disability in Europe in a Contemporary Disability Human Rights Perspective' (2013) 4 Eur YB Disability L 145.

¹³⁴ *Ibid.* 149.

the CRPD on the right to work.¹³⁵ Although the ILO requested support for alternative forms of employment, it however in its proposal highlighted the need to promote an open employment for persons with disabilities.¹³⁶

Moreover, at the 7th session, the ILO as part of its contributions to draft article 27 of the CRPD acknowledged the need to promote an inclusive and accessible labour market, but failed to provide definitions of the wordings.¹³⁷ Also, some state governments made proposals for amendment to draft article 27 of the CRPD without explanation as to the meaning of the wordings ‘an open, inclusive, and accessible work environment and labour market’. Israel for instance, instead proposed for an amendment to article 27 to indicate a clear distinction between proscribing disability-based discrimination in employment found only in regulation protecting persons with disabilities and general employment protection laws that equally applied to persons with disabilities.¹³⁸ Liisberg suggests that while article 27 (1)(a) of the CRPD provides a duty to prohibit discrimination, article 27(1)(b) of the CRPD was intended to explain how legislation of general application should be shaped to ensure the inclusion of persons with disabilities.¹³⁹ According to this understanding, states are to ensure ‘equality of opportunity in work and employment through legislation guaranteeing protection against discrimination’ as well as to ‘ensure that the general structure of the labour market in terms of laws and policies are made inclusive and accessible’.¹⁴⁰

On the meaning of an ‘accessible’ labour market and working environment, some guidance is provided by article 9 of the CRPD. The provision states that an accessible work environment indicates accessibility in relation to the general structures (laws and policies), attitudes, information, means of communication and transportation, goods, and services, and physical structures.¹⁴¹ While accessibility in relation to the labour market signifies ‘an accessible labour market that has general laws on employment protection, work environment and employment

¹³⁵ ILO Comments for amendments to draft 22 on the Right to Work made at the Sixth Session (1-12 August 2005) <<https://www.un.org/esa/socdev/enable/rights/ahc6contunagencies.htm>>accessed 8 September 2020.

¹³⁶ See Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, United Nations Enable, <<https://www.un.org/esa/socdev/enable/rights/ahc6contunagencies.htm>>accessed 8 September 2020.

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ Liisberg (n 130)145.

¹⁴⁰ Ibid.

¹⁴¹ CRPD General Comment 2: Accessibility (n 60) para. 41.

promotion which ensures equal opportunities, positive attitude and information, as well as means of transportation’.¹⁴²

The word ‘inclusive’ is equally not defined in the CRPD but it is mentioned in relation to article 24 of the CRPD. The Convention provides for the right to education through the establishment of an inclusive education system. In achieving inclusion, states parties to the CRPD must attain the objectives provided by the Convention such as helping to develop the ‘sense of dignity’, ‘self-worth’, and ‘potential’ of persons with disabilities.¹⁴³ This suggests that an inclusive labour market is a marketplace where persons with disabilities are valued and seen as productive members of society. It also implies a market where the laws and policies ensure that people with disabilities are not excluded from the labour market and that they receive the ‘necessary support within the ordinary system’.¹⁴⁴ In relation to the labour market, general laws on employment protection and on health and safety should ensure that persons with disabilities are not excluded from employment due to their disability. At a minimum, it should reflect ‘the duty of employers to make reasonable accommodation for persons with disabilities...’.¹⁴⁵ Therefore, the creation of an open inclusive and accessible labour market requires at a minimum, that the mainstream employment law imposes duties on employers to ‘limit dismissals due to reduced working capacity linked to disability’ and ‘make reasonable accommodation for persons with disabilities in accordance with existing anti-discrimination laws...’.¹⁴⁶

To achieve the realisation of the right to work, states parties to the CRPD are required to develop measures such as the adoption of public policies to promote the inclusion of persons with disabilities in the labour market. This means that states may launch awareness-raising campaigns, implement reasonable adjustments, and develop training, and self-employment programmes. However, the principal issue is that persons with disabilities continue to suffer segregation in the labour market despite the adoption of employment policies to promote their inclusion in the labour market. This is a big problem that has the potential of relegating persons with disabilities to a segregated labour market. States should therefore provide regulations that effectively create an

¹⁴² Liisberg (n 130) 145.

¹⁴³ CRPD (n 36) Article 24.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

inclusive labour market in accordance with the CRPD. This could be achieved by creating employment opportunities in accessible workplaces.

The CRPD Committee has expressed its concern regarding the continuous segregation of persons with disabilities in the labour market to a number of states parties to the Convention. To Kuwait, it observed the lack of ‘inclusive employment policies’,¹⁴⁷ and to Argentina, it expressed concern about the ‘cultural barriers and prejudices that hinder persons with disabilities from entering the labour market’.¹⁴⁸ To Greece, it also expressed concern about ‘the insufficient efforts to ensure their inclusion in the open labour market, particularly with regard to women with disabilities...’,¹⁴⁹ and to Turkey, it expressed concern about the promotion of ‘sheltered workplaces for persons with disabilities... rather than creating opportunities for their employment in the open labour market’.¹⁵⁰

Secondly, states parties are required to adopt positive measures to promote employment. The CRPD provides a detailed list of the promotional positive measures to be adopted by states in order to encourage the employment of persons with disabilities in the open labour market.¹⁵¹ In view of the fact that positive measures increase recognition of the value of diversity in the workplace and promote equal career development, they are indispensable in order to advance the inclusion of people with disabilities into employment in the open labour market. Positive measures refer to measures to ensure adequate representation in employment.¹⁵² Such measures include ‘outreach or support programmes, allocation and reallocation of resources, preferential treatment, targeted recruitment, hiring and promotion, numerical goals connected with time frames, and quota systems...’.¹⁵³ Others measures include those adopted to support positive measures in order to accelerate the de facto equality between person with disabilities and those without disabilities such as the promotion of vocational training and self-employment.¹⁵⁴ To promote employment in the private sector for example, states are further encouraged to adopt ‘incentives’ and measures tending to boost employers in order to promote employment of persons with disabilities in the

¹⁴⁷ CRPD, Concluding Observations: Kuwait, UN Doc. CRPD/C/KWT/CO/1 (24 September 2019), para. 52(a).

¹⁴⁸ CRPD, Concluding Observations: Argentina, UN Doc. CRPD/C/ARG/CO/1 (17-28 September 2019), para. 43.

¹⁴⁹ CRPD, Concluding Observations: Greece, UN Doc. CRPD/C/GRC/CO/1 (24 September 2019), para. 38 (a).

¹⁵⁰ CRPD, Concluding Observations: Turkey, UN Doc. CRPD/C/TUR/CO/1 (11 March-5 April 2019), para. 52(a).

¹⁵¹ CRPD (N 36) Article 27.

¹⁵² Arthur O’Reilly, *Right to Decent Work of Persons with Disabilities* (ILO Geneva, 2007), 57.

¹⁵³ CEDAW, General Recommendation 25, Temporary Special Measures (2004), para 22.

¹⁵⁴ CEDAW, General Recommendation 25, Temporary Special Measures (2004), para 17.

open labour market'.¹⁵⁵ These measures may include affirmative action programmes, incentives etc. In order to achieve the realisation of the right to work, states may adopt any measure or incentive necessary to promote employment in the labour market. However, there is the problem of lack of incentives or measures by states to promote employment of persons with disabilities in the open labour market. This problem has the possibility of increasing the unemployment rate of persons with disabilities. States should therefore adopt effective measures to increase the rate of employment of persons with disabilities in the open labour market as well as promote measures to ensure that the open labour market is inclusive and accessible. This could be achieved by states working in close consultation with organisations of persons with disabilities.

The CRPD Committee has accepted the importance of adopting various promotional measures to increase employment opportunities to a number of States Parties to the Convention. For example, to India, the Committee recommended the implementation of 'effective measures to promote the employment of persons with disabilities in the open labour market, particularly persons with disabilities from marginalized groups',¹⁵⁶ and to Myanmar, it suggested the adoption of 'effective affirmative action measures to increase the rate of employment of persons with disabilities...in the open labour market'.¹⁵⁷ To Iraq, it also suggested that it 'redouble its efforts to create job opportunities for persons with disabilities...in the open labour market, ...through entrepreneurship, appropriate vocational training, the facilitation of loans and the provision of specific incentives for employers to hire persons with disabilities'.¹⁵⁸ To Ecuador, it further suggested an increment in 'the number of persons with disabilities who are employed in regular positions and who are self-employed in open work environments... as well as 'to comply with measures designed to promote the employment of persons with disabilities, including quotas in the public sector...'.¹⁵⁹

Lastly, the two previously mentioned steps are not efficient without promoting the participation of representative disability organisations in labour-related matters. Article 4(3) of the CRPD requires that 'in the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes..., states parties shall closely consult with

¹⁵⁵ CRPD, Concluding Observations: Algeria, UN Doc. CRPD/C/DZA/CO/1 (27 June 2019), para. 44.

¹⁵⁶ See CRPD, Concluding Observations: India, UN Doc. CRPD/C/IND/CO/1 (24 September 2019), para. 51(b).

¹⁵⁷ CRPD, Concluding Observations: Myanmar, UN Doc. CRPD/C/MMR/CO/1 (24 September 2019), para. 51(c).

¹⁵⁸ CRPD, Concluding Observations: Iraq, UN Doc. CRPD/C/IRQ/CO/1 (24 September 2019), para. 50(b).

¹⁵⁹ CRPD, Concluding Observations: Ecuador, UN Doc. CRPD/C/ECU/CO/2-3 (24 September 2019), para. 48(b).

and actively involve persons with disabilities..., through their representative organizations’. In addition, article 33 (3) of the CRPD on domestic implementation and monitoring of the Convention asserts that ‘civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process’. This suggests that states are obligated to consult with disability organisations in the development and adoption of measures to promote the rights of persons with disabilities in all sectors. With regards to the right to work, it requires that states must consult with and involve representative organizations of persons with disabilities in the adoption and implementation of employment policies. These policies may include those guaranteeing access to employment, promoting work in the inclusive labour market, ensuring equal opportunities and gender equality, and providing for reasonable accommodation and support for all persons with disabilities.¹⁶⁰

The CRPD Committee has consecutively suggested the need to promote the participation of disability organisations regarding attaining employment to a number of states parties to the Convention. For example, to Tunisia, it recommended that it should ‘ensure the participation of persons with disabilities and their representative organizations within the labour inspection office and the conciliation committee’.¹⁶¹ To Albania, it also urged the promotion of ‘employment in the open labour market..., in close consultation with persons with disabilities and their representative organizations’,¹⁶² and to Lithuania, it suggested ‘in close collaboration with representative organizations of persons with disabilities’, the elimination of ‘the concept of “working incapacity” of persons with disabilities’.¹⁶³ To Portugal, it further suggested that in close consultation with organizations representing persons with disabilities to ‘review its public- and private-sector labour legislation to bring it into line with the Convention’,¹⁶⁴ and to Mauritius, it recommended the establishment of ‘programmes to facilitate the inclusion of young persons with disabilities in the open labour market, in close consultation with organizations of persons with disabilities...’.¹⁶⁵

¹⁶⁰ CRPD, General Comment No. 7: On the Participation of Persons with Disabilities, including Children with Disabilities, through their Representative Organizations, in the Implementation and Monitoring of the Convention (Articles 4(3) and 33(3) of the CRPD) (9 November 2018) UN Doc. CRPD/C/GC/7 at [86].

¹⁶¹ CRPD, Concluding Observations: Tunisia, UN Doc. CRPD/C/TUN/CO/1 (11-15 April 2011), para. 34(c).

¹⁶² CRPD, Concluding Observations: Albania, UN Doc. CRPD/C/ALB/CO/1 (24 September 2019), para. 44(b).

¹⁶³ CRPD, Concluding Observations: Lithuania, UN Doc. CRPD/C/LTU/CO/1 (21 April 2016), para. 52.

¹⁶⁴ CRPD, Concluding Observations: Portugal, UN Doc. CRPD/C/PRT/CO/1 (21 April 2016), para. 52.

¹⁶⁵ CRPD, Concluding Observations: Mauritius, UN Doc. CRPD/C/MUS/CO/1 (04 September 2015), para. 38.

3.5.3 Strategy for the Realisation of the Right to Employment

In order to progressively fulfill the right to employment, states parties to the CRPD need to adopt a strategy that accommodate the human rights model of disability. This strategy includes planning, accountability, monitoring, budgeting, and the promotion of the participation of disability organisations. Starting with budgeting, progressive realisation requires the use of a state party's maximum available resources.¹⁶⁶ The CRPD Committee in its Concluding Observations on state party reports have recommended that states parties to the CRPD should deploy sufficient resources and qualified professionals in order to facilitate the employment of persons with disabilities.¹⁶⁷ This means that states should not only focus on employment promotion but also ensure the promotion of an inclusive labour market. This can be achieved by allocating sufficient resources (both financial and non-financial) at their disposal as well as those available internationally towards developing the employment right of persons with disabilities.¹⁶⁸ Therefore, states parties to the CRPD must allocate a budget alongside qualified personnel with a view to achieving the full realisation of the right to employment. Although states have approved general laws promoting the right to work, there is the problem of no or limited resources for the purpose. This can in turn affect the proper monitoring and enforceability of the right to work of persons with disabilities. In order to implement the right to employment, sufficient financial resources and qualified professionals should be provided in order to facilitate the employment of persons with disabilities.

Progressive realisation also demands putting in place a responsibility structure. The CRPD requires states to establish an independent monitoring mechanism to promote, protect and monitor the implementation of the CRPD.¹⁶⁹ This is an important aspect of implementing the right to employment, since the responsible agency will assist to safeguard the right of people with disabilities to employment in an inclusive labour market. More importantly, the creation of an independent mechanism plays an important role in helping to create a 'stronger link between social partners already engaged in employment policy and monitoring, and representative organisations

¹⁶⁶ Article 2(1) of the ICESCR.

¹⁶⁷ CRPD, Concluding Observations: Algeria, UN Doc. CRPD/C/DZA/CO/1 (27 June 2019), para. 45(a).

¹⁶⁸ CESCR Committee, 'An Evaluation of the Obligation to Take Steps to the "Maximum of Available Resources" Under an Optional Protocol to the Covenant: Statement' (E/C.12/2007/1) (10 May 2007) para. 5.

¹⁶⁹ CRPD (n 36) Article 33.

of persons with disabilities...'.¹⁷⁰ Accordingly, the CRPD Committee has called for the strengthening of 'the national agency responsible for the implementation and monitoring' of the right to employment of people with disabilities.¹⁷¹

Moreover, progressive realisation requires the monitoring of progress made towards realising the right to employment. The monitoring progress is an essential part of implementing the right to work as it helps to track improvement made over a period of time. This can be done through the development of indicators relating to the right to work as advocated by the ILO such as the rate of unemployment, underemployment, and the ratio of formal to informal work.¹⁷² Article 31(1) of the CRPD also requires that states parties to the CRPD 'collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention'. This means that states parties should gather necessary data to enable the CRPD Committee to measure their accomplishment. The data must furthermore be disaggregated as provided under article 31(2) of the CRPD.

The CRPD Committee has confirmed that states parties should gather disaggregated data on the right to employment of persons with disabilities. For instance, to Cook Islands, the Committee suggested the collection of 'disaggregated data and information on persons with disabilities in employment programmes, vocational programmes and transition programmes',¹⁷³ and to Argentina, it recommended the undertaking of 'systematic collection of disaggregated data as a basis for a proper assessment of compliance with the employment quota at the national and provincial levels...'.¹⁷⁴ Creating indicators and collecting data are essential tools to ensure that states parties to the CRPD are really fulfilling economic, social and cultural rights, since they help in gauging the progress made as well as identify possible areas for further development.

The CRPD Committee has likewise mentioned the role of data collection in evaluating the extent to which the right to work has been realized to states parties to the CRPD. For instance, to Argentina, the Committee observed with concern that 'there is a lack of the disaggregated data

¹⁷⁰ UNHCHR, Thematic Study on the Work and Employment of Persons with Disabilities, A/HRC/22/25 (17 December 2012) at [10].

¹⁷¹ CRPD, Concluding Observations: Algeria, UN Doc. CRPD/C/DZA/CO/1 (27 June 2019), para. 45 (a).

¹⁷² Decent Work Indicators: Guidelines for Producers and Users of Statistical and Legal Framework Indicators (ILO Manual, Second version December 2013).

¹⁷³ CRPD, Concluding Observations: Cook Islands, UN Doc. CRPD/C/COK/CO/1 (17 April 2015), para. 50(a).

¹⁷⁴ CRPD, Concluding Observations: Argentina, UN Doc. CRPD/C/ARG/CO/1 (17-28 September 2012), para. 44.

(by, inter alia, sex, age, type of disability and geographic location) needed to assess compliance with this quota at the national and provincial levels’,¹⁷⁵ and to Kuwait, ‘the lack of disaggregated data on persons with disabilities in employment’.¹⁷⁶ To Albania, it also noted with concern that ‘there are no comprehensive and comparable data on the situation of persons with disabilities employed in the public sector’,¹⁷⁷ and to Myanmar, the ‘the lack of data, disaggregated by age, sex, disability and level of employment, on persons with disabilities in employment’.¹⁷⁸

Finally, progressive realisation includes disability organisations. Article 4(3) of the CRPD requires that ‘in the development and implementation of legislation and policies... and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities...through their representative organizations’. In addition to that, article 33 (3) of the CRPD on domestic implementation and monitoring of the Convention asserts that ‘civil society, in particular persons with disabilities and their representative organisations, shall be involved and participate fully in the monitoring process’. This means that states parties to the CRPD are required to not only promote the participation of disability organizations in the formulation of laws and policies, but also in monitoring the full realization of the right to work. Therefore, as part of monitoring progress towards realising the right to work, disability organization must be involved in all the processes of implementing the right to work by states parties to the CRPD.

The CRPD Committee has confirmed that states parties to the CRPD should involve and promote the participation of disability organization in the realisation of the right to work. For instance, to Algeria, it recommended the formulation of ‘a national strategy, in close consultation with organization of persons with disabilities,¹⁷⁹ and to Myanmar, it urged the state party to in ‘close consultation with organizations of persons with disabilities, ...provide,...data, disaggregated by age, sex, disability and level of employment, on the progress made in the inclusion of persons with disabilities in employment in the public and private sectors...’.¹⁸⁰ To Brazil, it recommended that, in consultation with organizations representing persons with disabilities, ‘develop and implement

¹⁷⁵ CRPD, Concluding Observations: Argentina, UN Doc. CRPD/C/ARG/CO/1 (17-28 September 2012), para. 43.

¹⁷⁶ CRPD, Concluding Observations: Kuwait, UN Doc. CRPD/C/KWT/CO/1 (24 September 2019), para. 52(d).

¹⁷⁷ CRPD, Concluding Observations: Albania, UN Doc. CRPD/C/ALB/CO/1 (24 September 2019), para. 43.

¹⁷⁸ CRPD, Concluding Observations: Myanmar, UN Doc. CRPD/C/MMR/CO/1 (24 September 2019), para. 51(c).

¹⁷⁹ CRPD, Concluding Observations: Algeria, UN Doc. CRPD/C/DZA/CO/1 (27 June 2019), para. 45(b).

¹⁸⁰ CRPD, Concluding Observations: Myanmar, UN Doc. CRPD/C/MMR/CO/1 (24 September 2019), para. 52(c).

a coordinated strategy to increase employment of persons with disabilities in the open labour market'.¹⁸¹ The next section examines the effects on state obligations in ratifying the CRPD.

3.6 Effects on State Obligations in Ratifying the CRPD

Since the previous parts of the chapter has explained the responsibilities, particularly the minimum core obligations levied on states in order to achieve inclusive education and employment, it is essential to clarify the potential consequences on state duties in committing to the CRPD. This part of the chapter is divided into two sections. Section 3.6.1 considers the implications on state obligations in ratifying the CRPD. This question is reexamined here because there is a contemporary debate as to whether or not the CRPD creates new rights under human rights. While supporters of the CRPD agree that the Convention does not create new rights,¹⁸² there are others scholars who have argued convincingly that the treaty not only offers novel innovations but also provides for new rights.¹⁸³ Therefore, this section of the chapter aims to provide an update on the contributions of the CRPD as well as the effects on state responsibilities in ratifying the CRPD in the light of the new rights. Although previous researches have considered similar questions,¹⁸⁴ this study establishes the implications on states' responsibility in ratifying the CRPD. Lastly, section 3.6.2 investigates the effects on Nigeria's obligations in ratifying the CRPD.

3.6.1 Contributions of the CRPD/Effects on State Obligations in Ratifying the CRPD

The CRPD has contributed to the advancement of the rights of persons with disabilities. It has given persons with disabilities a voice and has made them more visible at the international stage.¹⁸⁵ More importantly, the CRPD mandates states parties as part of their general obligations, to engage in changing society's perceptions of persons with disabilities.¹⁸⁶ This is an important duty on states parties since eradicating the exclusion of persons with disabilities in all spheres of life requires image reorientation on the part of society.

¹⁸¹ CRPD, Concluding Observations: Brazil, UN Doc. CRPD/C/BRA/CO/1 (04 September 2015), para. 49.

¹⁸² Rosemary Kayess and Philip French, 'Out of Darkness into Light? Introducing the CRPD' (2008) HRLR 8; Paul Harpur, 'Embracing the New Disability Rights Paradigm: Importance of the CRPD' (2012) 27(1) DS 1.

¹⁸³ Andrea Broderick, 'Of Rights and Obligations: The Birth of Accessibility' (2020)24(4) *The International Journal of Human Rights* 393.

¹⁸⁴ Waddington (n 1), Suzanne Doyle and Eilionoir Flynn, 'Ireland's Ratification of the UNCRPD: Challenges and Opportunities' (2013) 41 *BJLD* 171.

¹⁸⁵ Theresia Degener, 'A Human Rights Model of Disability' in Valentina Della Fina et al (eds), *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary* (Springer 2017) 45.

¹⁸⁶ CRPD (n 36) Article 8.

Indeed, the CRPD has contributed in numerous aspects towards the advancement of human rights such as the drafting process that resulted in the adoption of the disability treaty. While pre-existing human rights instruments mainly viewed persons with disabilities as passive recipients of charity, this is the first treaty in which recipients of a treaty (persons with disabilities) not only actively participated in the drafting process of the treaty, but are now viewed as stakeholders in the human rights process.¹⁸⁷ Aside their participation in the drafting process, the CRPD requires organisations of persons with disabilities for the first time in international law to play pivotal roles in the monitoring and implementation of the treaty.¹⁸⁸ While prior human rights treaties recognised the functions of disability organisations to the realisation of rights, persons with disabilities in their slogan ‘nothing about us without us’ set the scene for their participation in their own affairs by ensuring the effective implementation of their human rights by state and non-state actors.

The CRPD also introduces new rights to human rights law. Prior to the adoption of the Convention, drafters and promoters of the treaty suggested that it was not fashioned with the intention to provide new rights. However, it invents new rights in international law. It gives recognition to the right of persons with disabilities to live in the community with choices equal to others.¹⁸⁹ Prior human rights treaties do not contain this right since the autonomous right of persons to live in community with others was denied or restricted. The right to live in the community is a unique right that is not only in line with respecting the autonomy of persons with disabilities, but also their right to make choices on matters that affects them. Similarly, the right to reasonable accommodation is a right that is mentioned expressly for the first time in the history of the United Nations. Unlike pre-existing human rights treaties, the CRPD acknowledges the right to reasonable accommodation as a part of the right to equality and non-discrimination.¹⁹⁰ This right, which translates into an immediate obligation on states parties, requires the provision of accommodation on a case-by-case basis. Indeed, the right is linked to other rights and is essential for the full fulfillment of other rights such as the rights to inclusive education and employment.

¹⁸⁷ Degener (n 182) 45.

¹⁸⁸ Broderick, ‘Of Rights and Obligations: The Birth of Accessibility’ (2020)24(4) *The International Journal of Human Rights* 393.

¹⁸⁹ CRPD (n 36) Article 19.

¹⁹⁰ Andrea Broderick and Shivaun Quinlivan, ‘The Right to Education: Article 24 of the CRPD’ in Charles O’Mahony and Gerard Quinn (eds), *Disability Law and Policy: An Analysis of the UN Convention* (Clarus Press 2017) 304.

Moreover, the CRPD provides for accessibility right. This right imposes for the first time in human rights law, general obligations on states in the implementation of the human rights of persons with disabilities. Accessibility is provided under article 9 of the CRPD and imposes responsibilities on states parties in most areas of life including education, health, and employment. The accessibility obligations levied on states parties to the CRPD goes beyond those provided under the right to access in pre-existing human rights treaties. Unlike previous human rights treaties, the CRPD imposes ‘widespread positive obligations on states parties...’ to ensure the realization of the rights of persons with disabilities.¹⁹¹ Furthermore, the right to communication access is a new right in human rights law. Unlike prior human rights treaties, this is the first time in human rights law that the right of persons with disabilities to access means of communication will be expressly mentioned.¹⁹² Article 9 of the CRPD demands that states parties to the CRPD should ensure access for persons with disabilities to means of communication especially in the exercise of their rights to education and employment.

Finally, the CRPD identifies the role of civil society in the development of norms in human rights law. The treaty for the first time in the history of human right law acknowledges the civil society as partner in the development and implementation of the Convention. Although prior human rights treaties such as the Convention on the Rights of the Child and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families¹⁹³ expressly envision a role for non-governmental organisation in the works of their treaty bodies. As Broderick notes, ‘these treaties do not expressly envisage a role for civil society in the development of standards and their implementation in the way the CRPD does’.¹⁹⁴

As the section above has shown the contributions of the CRPD to human rights, it will now consider the effects on states duties in committing to the Convention particularly with the recent interpretation of the treaty (as creating new rights), which imposes new responsibilities on states parties in the implementation of the rights of persons with disabilities.

¹⁹¹ Broderick (n 180) 393.

¹⁹² Ibid.

¹⁹³ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3.

¹⁹⁴ Broderick (n 180) 393.

Firstly, commitment to the Convention requires the adoption of instruments establishing minimum standards and guidelines for the accessibility of facilities open to the public. Under the CRPD, article 9 (1) requires states parties to ‘take all appropriate measures’ including identifying and eliminating barriers to accessibility, in order to ‘ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communication’. Moreover, article 9(2) of the CRPD requires states parties to ‘take appropriate measures to develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public’. Furthermore, states parties to the Convention are obligated to ensure that persons with disabilities have access to communication means. Regarding education and employment for persons with disabilities, states are to ensure that suitable means of communication are adopted by educational institutions and employers including the use of sign language, braille, and the use of technologies.

Secondly, endorsement of the CRPD by states parties affects their procedural obligations. It obliges states in the implementation and monitoring of the CRPD, to actively involve and consult with organisations of persons with disabilities. Under Article 4(3) of the CRPD, states parties are obligated to ‘closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organisations’ in developing and implementing laws and policies to fully realise the rights in the Convention and in other decision-making issues concerning persons with disabilities. A similar condition is provided in article 33(3) of the CRPD which requires that ‘civil society in particular persons with disabilities and their representative organisations’ be involved in the monitoring process of the Convention.

Thirdly, ratification of the CRPD requires the adoption of mainstream legislation that promote the interest of persons with disabilities including ensuring the provision of accommodation. The Convention in article 2 requires states parties to prohibit disability-based discrimination. Notably, the definition indicates that the denial of reasonable accommodation as a form of disability discrimination. Additionally, article 4 of the CRPD requires states to ‘take all appropriate measures’ to eradicate laws, customs and practices that discriminates against persons with disabilities and under article 5, states parties are required ‘to promote equality and eliminate discrimination’ by taking ‘all appropriate steps to ensure that reasonable accommodation is provided’. Furthermore, article 27 of the Convention requires states parties to take ‘all appropriate

steps, including through legislation’, to among others, prohibit disability discrimination in all forms of employment, to protect the labour rights of persons with disabilities, and promote employment for them in the labour market. This indicates that states are required to adopt appropriate measures to promote an inclusive labour market as well as promote employment opportunities.

Fourthly, ratification of the CRPD imposes higher standards on states in the implementation of education and employment for persons with disabilities. The Convention levies additional core obligations on states in the realization of education and employment for persons with disabilities because states parties to the treaty are mandated to ensure that reasonable accommodation is provided in educational institutions and in the workplace. Lastly, the CRPD in article 2 provides the group of individuals protected by the treaty and goes further in article 8 to require states to raise awareness on the contributions of persons with disabilities to society. This means that states are expected to change the mindset of society by engaging in campaigns and encouraging the media to portray persons with disabilities in a positive light. In the fields of education and employment, persons with disabilities are to be viewed as productive and important members of society whose dignity and self-worth should be respected at all times. Besides, their right to make choices, including the right to live in the community should be upheld. More importantly, sufficient resources are expected to be deployed to ensure the full implementation of the rights of persons with disabilities. The next section examines the potential implications on Nigeria’s obligations in committing to the CRPD.

3.6.2 Implications of Nigeria’s Ratification of the CRPD

First, ratification of the CRPD by Nigeria requires substantial amendment to both the recently enacted Discrimination against Persons with Disabilities (Prohibition) Act 2019,¹⁹⁵ and the National Building Code 2006.¹⁹⁶ These laws do not currently contain in substantial details, minimum standards and guidelines for the accessibility of facilities open to the public. In addition to that, these laws do not guarantee disability accessibility. This will be discussed in greater details in chapter 5. Under the CRPD, article 9(1) requires states parties to ‘take all appropriate measures’ including identifying and eliminating barriers to accessibility, in order to ‘ensure to persons with

¹⁹⁵ The Discrimination against Persons with Disabilities (Prohibition) Act (Enacted in 2019).

¹⁹⁶ The National Building Code (Adopted in 2006).

disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communication'. Article 9(2) of the CRPD also requires states parties to 'take appropriate measures to develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public'. Unfortunately, the Nigerian framework is not in line with the standard in the CRPD as it neither provides for minimum standards for the accessibility of facilities and services open to the public nor does it ensure disability accessibility. Accordingly, it seems ratification of the Convention will impose an obligation on Nigeria to adopt legislation to ensure disability accessibility to transportation, the physical environment, information and communication, as well as promoting minimum standards for the accessibility of facilities open to the public.

Second, Nigeria's ratification of the CRPD affects its procedural obligation. It requires the implementation and monitoring of the CRPD as well as the involvement and consultation with organisations of persons with disabilities. Under article 4(3) of the CRPD, states parties are obligated to 'closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organisations' in developing and implementing laws and policies to fully realise the rights in the Convention and in other decision-making issues concerning persons with disabilities. A similar requirement is provided in article 33(3) of the CRPD which requires that 'civil society in particular persons with disabilities and their representative organisations' be involved in the monitoring process of the Convention.

However, Nigeria has not demonstrated a willingness to either consult or involve organisations of persons with disabilities such as the Joint Association of Persons with Disabilities and others in the implementation of the CRPD.¹⁹⁷ Although the Joint Association of Persons with Disabilities is the umbrella body in charge of all persons with disabilities in Nigeria, its influence is not widespread since it is mostly limited to the federal level.¹⁹⁸ While several other disability organisations operate at the regional levels in Nigeria.

In addition, by virtue of article 33 of the CRPD, which requires states parties to designate one or more independent mechanisms to 'promote, protect and monitor implementation of the

¹⁹⁷ Raymond Lang and Leah Upah, 'Disability Scoping Study in Nigeria' (Department for International Development, London 2008) <<https://studylib.net/doc/13390397/scoping-study--disability-issues-in-nigeria-final-report>> accessed 12 March, 2022.

¹⁹⁸ Ibid.

Convention’, Nigeria will be required to go beyond the Ministry of Humanitarian Affairs and Disaster Management, which is currently in charge of matters affecting persons with disabilities to creating an independent mechanism to oversee the monitoring of the implementation of the CRPD.

Third, commitment to the Convention requires the adoption of comprehensive anti- disability discrimination legislation. The CRPD in article 2 requires states parties to prohibit discrimination based on disability. Notably, the definition of discrimination under the treaty indicates that the denial of reasonable accommodation is a form of disability discrimination. Further, article 4 of the CRPD on general obligations, requires states to ‘take all appropriate measures’ to eradicate laws, customs and practices that discriminates against persons with disabilities and under Article 5, states parties are required ‘to promote equality and eliminate discrimination’ by taking ‘all appropriate steps to ensure that reasonable accommodation is provided’. Article 27 of the Convention requires states parties to take ‘all appropriate steps, including through legislation’, to among others, prohibit disability discrimination in all forms of employment, to protect the labour rights of persons with disabilities, and promote employment for them in the labour market.

Nigeria recently enacted the Discrimination against Persons with Disabilities (Prohibition) Act 2019 to domesticate the principles of the CRPD. The current framework is at variance with the disability treaty. Although the Act prohibits disability discrimination, the definition of discrimination under the Act is not in line with article 2 of the CRPD. Moreover, the concept of reasonable accommodation under the Act is also not detailed. Thus, it seems by ratifying the CRPD, an obligation is imposed on Nigeria to ensure the provision of reasonable accommodation in all areas. This is discussed in greater details in chapter 5. Finally, Nigeria in order to meet the standards of the CRPD is required to allocate more resources towards the fulfilment of its obligations, especially in relation to realising inclusive quality education for children with disabilities. It is also required to increase funding and engage in changing perceptions about disability and persons with disabilities through campaigns and awareness programmes and training. As article 8 of the Convention requires states to combat stereotypes and prejudices against persons with disabilities through raising awareness on disability as part of humanity.

3.7 Conclusion

This chapter examined the general standards for the implementation of education and employment for persons with disabilities. It also investigated the effects on state obligations in ratifying the CRPD. It found that states have immediate duties regarding education and employment even though they are economic and social rights. It argued that the CRPD unlike pre-existing human rights treaties impose higher standards in the implementation of education and employment for persons with disabilities. It further contended that ratification of the CRPD imposes more responsibilities on states, since states will be required to be more proactive and adopt more positive measures to promote inclusion in both the fields of education and employment.

The next chapter examines states' specific obligations for persons with disabilities in education and employment under the Sustainable Development Goals (SDGs).

CHAPTER 4

STATES' SPECIFIC INTERNATIONAL OBLIGATIONS FOR PERSONS WITH DISABILITIES IN EDUCATION AND EMPLOYMENT UNDER THE SUSTAINABLE DEVELOPMENT GOALS

4.1 Introduction

Chapter 3 considered states' treaty general obligations under human rights treaties, in particular, the obligation to progressively realise education and employment for persons with disabilities. It also examined the effects on state obligations in ratifying the Convention on the Rights of Persons with Disabilities (CRPD). It was argued that although economic, social, and cultural rights (ESCRs) require progressive realisation rather than immediate implementation, states have minimum core obligations in the realization of the rights to education and employment. Indeed, unlike pre-existing human rights treaties, the CRPD imposes a much higher standard in the realization of education and employment for persons with disabilities.

Whereas chapter 3 investigated states' treaty general obligations for persons with disabilities in education and employment, chapter 4 establishes states' specific international obligations for persons with disabilities in education and employment under the Sustainable Development Goals (SDGs).¹ Although references will be made to other international instruments relevant to education and employment (ILO Conventions, UNESCO Conventions, and human rights instruments generally), attention is majorly given to the SDGs. While the SDGs are not legally enforceable, they are however a soft law source. Moreover, they add weight to the obligations on the states from treaties, and give the latest road map towards the realisation of human rights at the international level.

To achieve this, it evaluates if the SDGs is an improvement on the Millennium Development Goals (MDGs) in the promotion and protection of human rights generally, and particularly the rights of persons with disabilities. It also considers whether the SDGs advance the MDGs in education and employment for persons with disabilities. It further examines states' international obligations for persons with disabilities in employment, specifically, if employment under the SDGs align with ILO and human rights standards in line with states' obligations for persons with disabilities. Lastly,

¹ 2030 Sustainable Development Agenda
<https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> accessed 20 February 2021.

it investigates states' obligations for persons with disabilities in education in particular, if the education related-goal, targets, and indicators under the SDGs are consistent with human rights standards linked with state obligations for persons with disabilities.

Although academic scholars have previously addressed some of these questions to some extent,² it is imperative that these questions are examined in greater details. Unlike previous studies done,³ this research assesses these questions in the light of the human rights model of disability and other international instruments specially as the CRPD is the latest standard in international disability rights law and the Convention reflects the disability human rights paradigm.

This chapter is important to the thesis. It provides the additional standards to be employed later in chapter 5 to assess the extent of Nigeria's compliance with its international obligations for persons with disabilities in education and employment. It also provides an understanding of the SDGs regarding education and employment, which is engaged later in chapter 5 to examine Nigeria's commitments to leave no one behind and to assess its progress towards achieving the SDGs- goals 4 and 8 (on inclusive quality education and decent work).

The chapter applies the human rights model of disability and the 4As- (accessibility, adaptability, acceptability and availability), developed by the first United Nations Special Rapporteur on the right to education, Katarina Tomasevski to elaborate on the international duties of states regarding persons with disabilities in education and employment.⁴ This methodology has been adopted by several human rights treaty bodies including the UN Committee on Economic, Social and Cultural Rights⁵ as well as the UN Committee on the Rights of Persons with Disabilities.⁶ The human rights model of disability and the 4As framework are employed in this study because they are examinations tools that are based on human rights principles.

² Gillian MacNaughton, 'Human Rights Education for All: A Proposal for the Post-2015 Development Agenda' (2015) 24 Wash Int'l LJ 537; Gillian MacNaughton and Diane F Frey, 'Decent Work, Human Rights and the Sustainable Development Goals' (2016) 47 Geo J Int'l L 607; Gillian MacNaughton and Diane F Frey, 'Decent Work, Human Rights, and the Millennium Development Goals' (2010) 7 Hastings Race & Poverty LJ 303.

³ Ibid.

⁴ Katarina Tomasevski, 'Right to Education Primers No.3: Human Rights Obligations- Making Education Available, Accessible, acceptable and Adaptable' (2001)<https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Tomasevski_Primer%203.pdf> accessed 06 February 2021.

⁵ CESCR, General Comment 13, UN Doc E/C.12/1999/10 (8 December 1999).

⁶ CRPD, General Comment No.4, UN Doc. CRPD/C/GC/4 (2 September 2016).

This chapter is divided into six sections. Following this introduction (section 4.1), section 4.2 provides a brief discussion of the movement from the MDGs to the SDGs. It assesses whether the SDGs improves on the MDGs regarding human rights and the rights of persons with disabilities. Section 4.3 examines whether the SDGs advances employment and education for persons with disabilities. Section 4.4 investigates the specific states' international obligations for persons with disabilities in employment under the SDGs and other instruments. Likewise, section 4.5 examines states' specific international obligations for persons with disabilities in education under the SDGs and other international instruments. It assesses whether the SDGs education- related goals, targets, and indicators truly integrate human rights standards into the international development agenda in a way that is consistent with the obligations for persons with disabilities. Section 4.6 provides some concluding remarks.

4.2 SDGs, Human Rights, and Persons with Disabilities

The 2030 Sustainable Development Agenda acknowledges human rights and persons with disabilities as right holders.⁷ The agenda also supports generally the goals of promoting people, the planet, prosperity, peace, and partnership.⁸ It identifies poverty eradication as a key global challenge and moves the focus from 'economic growth and performance towards human well-being'.⁹ The Sustainable Development Agenda builds on the Millennium Declaration adopted in 2000.¹⁰ The Millennium Declaration renewed the commitments made in the 1945 United Nations Charter,¹¹ in which United Nations member states pledged to promote higher standards of living, full employment, and 'universal respect for, and observance of, human rights'.¹²

The Millennium Declaration also reaffirmed the commitments that states had made at several world summits during the 1990s.¹³ The Millennium Development Goals include eight goals,

⁷ Claire E Brolan, 'A Word of Caution: Human Rights, Disability, and Implementation of the Post-2015 Sustainable Development Goals' (2016) 5 *Laws* 1.

⁸ 2030 Sustainable Development Agenda (n 1).

⁹ Risa E Kaufman, 'Localizing Human Rights in the United States through the 2030 Sustainable Development Agenda' (2017) 49 *Colum Hum Rts L Rev* 99, 102.

¹⁰ Millennium Development Goals: <https://www.sdgfund.org/mdgs-sdgs> accessed 20 February 2021.

¹¹ The United Nations Charter (adopted in 1945).

¹² Article 55 of the United Nations Charter (adopted in 1945).

¹³ Kaufman (n 9) 99. See the World Summit for Children (1990), the United Nations Conference on Environment and Development (1992), the World Conference on Human Rights (1993), the World Conference on Special Needs Education: Access and Quality (1994), the International Conference on Population and Development (1994), the World Summit for Social Development (1995), the Fourth World Conference on Women (1995), the Mid-Term

eighteen targets, and forty-eight indicators.¹⁴ These goals were aimed at improving education, health, gender equality, work conditions, safe drinking water, and other poverty reduction measures. The framework was also designed to unify donors, governments, international organisations, and civil society to focus their expertise, efforts, and funds on achieving specific targets of human development.¹⁵ Indeed, the MDGs served as the action plan for global development from 2001 to 2015.

The MDGs is noted by commentators to have achieved some levels of success. They are of the view that the framework focused on poverty as a global issue with its related problems.¹⁶ The framework has also been credited with increased aid levels as well as promoting improvements in child mortality, education enrolment, and women representation in parliament.¹⁷ As MacNaughton notes the MDGs has been successful in ‘bringing commitment, expertise and funding to key development targets in education, health, gender equality, and other poverty reduction measures’.¹⁸

Despite the successes recorded, the MDGs have been severally criticised on a number of grounds. First, the MDGs has been critiqued for not been universal in nature since the MDGs largely focused on poverty reduction and related issues in developing countries only in contradiction to the human rights principle of universality.¹⁹ Indeed, the MDGs instead of addressing developmental problems worldwide narrowed its attention to matters affecting developing countries such as maternal health and access to primary education without including persons with disabilities.²⁰ Besides, this narrow approach overlooked poverty in middle- and high-income countries. Moreover, most goals included in the MDGs such as access to education, maternal health, poverty reduction are issues associated with developing economies without attention paid to issues related to persons with disabilities.

Meeting of the International Consultative Forum on Education for All (1996), the Fifth International Conference on Adult Education (1997), and the International Conference on Child Labour (1997).

¹⁴ Millennium Development Goals: <https://www.sdgfund.org/mdgs-sdgs> accessed 20 February 2021.

¹⁵ Kaufman (n 9) 99.

¹⁶ Sakiko Fukuda-Parr et al, ‘The Power of Numbers: A Critical Review of Millennium Development Goal Targets for Human Development and Human Rights’ (2014) 15 J. Hum. Dev. and Capabilities 105, 107-108.

¹⁷ Brolan (n 7) 1.

¹⁸ MacNaughton (n 2) 550.

¹⁹ MacNaughton (n 2) 303.

²⁰ Ashwani Saith, ‘From Universal Values to Millennium Development Goals: Lost on Translation’ (2006) 37 Dev. and Change 1167, 1184.

Second, the MDGs has been criticized for its narrow scope and for diverting attention from other critical issues.²¹ Indeed, the agenda failed to tackle issues that had close nexus with poverty eradication. While one of the main objectives of the Millennium Declaration was to reduce poverty in order to achieve peace in the world, it however was unsuccessful in addressing the direct issues contributing to global poverty including unemployment amongst qualified adults with disabilities. In particular, the MDGs failed to consider civil and political issues that directly contributed to the realisation of development such as good governance, free expression, inequality and discrimination amongst persons with disabilities, high unemployment amongst vulnerable groups, and climate change.²²

Third, although the Millennium Declaration included an expressed commitment to human rights standards under international human rights instruments, the MDGs neither aligned with human rights standards nor integrated human rights obligations in its targets and indicators.²³ Many of the targets within the MDGs ignored specific international human rights obligations. For example, the Office of the High Commissioner for Human Rights (OHCHR) has criticized the MDGs for failing to align with human rights standards.²⁴ OHCHR noted that Goal 2 of the MDGs, which called for universal primary education, failed to align with the human rights requirement of free and compulsory primary education of a certain quality.²⁵ Similarly, the MDGs failed to align with core human rights principles of accountability, participation, non-discrimination particularly the advancement of the human rights of persons with disabilities.²⁶

Fourth, some commentators have noted that some of the targets set by the MDGs themselves contributed to rights violations in some countries.²⁷ For example, human rights scholars and advocates have noted that some countries committed rights violation in the process of slum

²¹ Sakiko Fukuda-Parr, MDGs: Facing Up to the Limitations of Global Goal Setting, *The Guardian* (May 20, 2013), <https://www.theguardian.com/globaldevelopmentprofessionalsnetwork/2013/may/20/millenniumdevelopment-goalstargets-global-development> accessed 01 February 2021.

²² Sakiko Fukuda-Parr et al (n 16) 107-108.

²³ Ved P. Nanda, 'Human Rights Must Be at the Core of the Post-2015 International Development Agenda' (2014) 75 MONT. L. REV. 1, 9-10; MacNaughton (n 2) 537.

²⁴ United Nations Office of the High Commissioner for Human Rights, 'Claiming the Millennium Development Goals: A Human Rights Approach', (U.N. Doc. HRIPUB/08/3) (2008) at [4].

²⁵ United Nations Office of the High Commissioner for Human Rights, 'Claiming the Millennium Development Goals: A Human Rights Approach', (U.N. Doc. HRIPUB/08/3) (2008) at [24].

²⁶ MacNaughton and Frey (n 2) 607.

²⁷ Marie Huchzermeyer, 'Slum' Upgrading or 'Slum' Eradication? The Mixed Message of the MDGs', in Malcolm Langford (eds), *The Millennium Development Goals and Human Rights: Past, Present and Future* (Cambridge University Press, 2013) 295, 305-310

clearance which was aimed at achieving target 7(d) of the MDGs, which required countries to achieve significant improvement in the lives of slum dwellers.²⁸ Moreover, some of the MDGs-goals and targets are unambitious. While some of the goals and targets aimed at reducing poverty and had fixed deadlines, others goals of the MDGs were merely symbolic in nature. For example, goal 7 of the MDGs (ensure environmental sustainability) was included as the target to improve the lives of slum dwellers. However, the target date is 2020, rather than the 2015 deadline for most of the other targets.²⁹

Fifth, the MDGs failed to provide for any accountability mechanisms to ensure that states met their commitments and goals.³⁰ In other words, there is an absence of any accountability mechanisms to ensure that international institutions, states, and the private sector meet their commitments and goals. The United Nations human rights mechanisms failed to give the MDGs sufficient attention as it did not include the MDGs in their review of state reports. Besides, the MDGs lacked any formal means for civil society participation in the creation of the goals and in monitoring progress.³¹ In fact, there was no concrete role for civil society organisations in particular, representative organisations of persons with disabilities to participate in the process. Moreover, the process of selection of the MDGs was top-down, with governments acting through the United Nations rather than a broad participation from the people who were to be the beneficiaries of the goals.³²

Lastly, the MDGs failed to address the issue of inequality and its effects on the most vulnerable group of society including those with disabilities.³³ Under the MDGs, some vulnerable members of the community were ignored and no reference was made to their special needs. For example, while the MDGs included education, maternal health and others as means of poverty reduction, it did not mention people with disabilities in relation to any of these goals and targets. Indeed, the

²⁸ Mac Darrow, 'Master or Servant? Development Goals and Human Rights', in Malcolm Langford (eds), *The Millennium Development Goals and Human Rights: Past, Present and Future* (Cambridge University Press, 2013) 67, 88.

²⁹ Kaufman (n 9) 99.

³⁰ Diane F Frey and Gillian MacNaughton, 'A Human Rights Lens on Full Employment and Decent Work in the 2030 Sustainable Development Agenda' (2016) *Journal of Workplace Rights* 1; Kaufman (n 9) 99.

³¹ Philip Alston, 'Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals' (2005) 27 *HUM. RTS. Q.* 755, 792-796.

³² Frey and MacNaughton (n 31) 1; Brolan (n 7) 1.

³³ Kaufman (n 9) 99; Brolan (n 7) 1.

MDGs neither identified persons with disabilities nor considered the human rights of persons with disabilities within the human rights principles.

Before the expiration of the MDGs 2015 deadline, negotiations began for a new development agenda- a successor framework to the MDGs.³⁴ After significant negotiation, in September 2015, the United Nations member states adopted ‘Transforming our World: the 2030 Agenda for Sustainable Development’.³⁵ The agenda builds on the United Nations Compact which was launched earlier in year 2000³⁶ and IMPACT 2030.³⁷ Unlike the MDGs, the post-2015 SDGs agenda originates from a United Nations resolution that enjoyed unprecedented government support.³⁸

The SDGs furthers the achievements of the MDGs in several ways. While the MDGs were drawn up by a group of experts, the SDGs came about after a long and extensive consultative process including civil society organizations.³⁹ Whereas the MDGs had no concrete role for the civil society organizations (CSOs), SDGs acknowledges the right of civil societies to participate in the making of the framework.⁴⁰ From the planning stage, civil society organisations actively participated in the process leading up to the eventual adoption of the SDGs.

Unlike MDGs’ formulation process that involved high level UN technocrats, the adoption of the SDGs document witnessed the participation of organisations of people with disabilities.⁴¹ Whereas the MDG’s vision for development did not identify persons with disabilities nor advance their human rights, the SDGs expressly include persons with disabilities. Indeed, persons with disabilities are explicitly included within goal 4 on quality education, goal 8 on decent work and economic growth, and goal 11 on sustainable cities and communities. Additionally, the scope of the issues covered by the SDGs goes beyond that of the MDGs. The matters addressed by the SDGs expand the MDGs in the areas of health, education, and food, to include crosscutting and

³⁴ Ibid.

³⁵ 2030 Sustainable Development Agenda (n 1).

³⁶ United Nations Global Compact, <<https://www.unglobalcompact.org/>> accessed 09 February 2021.

³⁷ IMPACT 2030, <https://www.impact2030.com/home> accessed 07 February 2021.

³⁸ Brolan (n 7) 1.

³⁹ Kaufman (n 9) 99.

⁴⁰ Ibid.

⁴¹ Brolan (n 7) 1.

interdependent goals that touch on environmental and economic objectives, peaceful societies, and access to justice.

Moreover, unlike the MDGs that mainly focused on issues of poverty in developing countries, the SDGs move further by embracing a universal outlook. In other words, the SDGs are universal in scope, and its goals apply to all countries rather than developing countries only.⁴² While the MDGs mainly targeted developing countries, the SDGs focus on eradicating poverty in all countries across the globe. The 2030 agenda's values and principles apply to all countries including developed countries in terms of eradicating poverty and improving human conditions.

Finally, whereas the MDGs failed to consider human rights even though provided in the Millennium Declaration, the SDGs explicitly embrace a human rights agenda in the implementation of the goals of the framework.⁴³ Indeed, it aligns with the provisions of the Universal Declaration on Human Rights, the International Covenant on Economic, Social, and Cultural Rights, and other international human right instruments. It further aligns with human rights principles such as accountability, transparency, participation, equality and non-discrimination. Unlike the MDGs, the pillars of human development, human rights, and equity are deeply rooted in SDGs and several targets explicitly refer to nondiscrimination.

Despite the positives of the SDGs over the MDGs, the SDGs has been criticized by human rights advocates and scholars. The SDGs has been criticized for 'lacking meaningful global indicators', as well as a 'strong and robust accountability mechanism to oversee and ensure countries' implementation of the SDGs'.⁴⁴ The agenda anticipates that the United Nations High Level Political Forum (HLPF) will enable 'periodic, voluntary, state-led country reviews, as well as thematic reviews'.⁴⁵ In contrast to the HLPF, which 'lacks a means to compel reporting by states,' human rights scholars had anticipated a 'more robust monitoring and review systems'.⁴⁶ In the absence of such a mechanism, human rights experts have suggested 'that the existing U.N. human

⁴² MacNaughton (n 2)537.

⁴³ Frey and MacNaughton (n 31) 1.

⁴⁴ Kaufman (n 9) 109-110.

⁴⁵ General Assembly Resolution 70/1, Transforming our world: the 2030 Agenda for Sustainable Development (Sept. 25, 2015).

⁴⁶ Center for Economic and Social Rights, Accountability for the post-2015 agenda: A proposal for a robust global review mechanism (2015) 1-2, <https://cesr.org/sites/default/files/post-2015_accountability_proposal.pdf> accessed 03 March 2021.

rights mechanisms...play a strong role in examining countries' progress towards achieving the SDGs'.⁴⁷

4.3 SDGs, Education, and Employment for Persons with Disabilities

This part of the chapter assesses whether the SDGs improves on the MDGs in employment and education for persons with disabilities. It is subdivided into two parts. The first section (section 4.3.1) investigates whether or not the SDGs advances the MDGs in education for persons with disabilities. The second section (section 4.3.2) considers if the SDGs are an improvement on the MDGs in employment for persons with disabilities.

4.3.1 SDGs and Education for Persons with Disabilities

Education as a means of poverty reduction is captured in the SDGs. In fact, goal 4 of the SDGs commits every single country to 'ensure inclusive and equitable quality education and promote lifelong learning opportunities for all' through the accomplishment of ten targets.⁴⁸ SDG 4 which is a successor framework to the MDG 2 focuses on quality education, equity in education, lifelong learning, and childhood education. By contrast, MDG 2 mainly focused on attaining universal primary education before 2015. To a great extent, the MDG 2 achieved much in education and has been praised for making progress towards the attainment of universal primary education.⁴⁹

Nevertheless, the MDGs, targets, and indicators that are related to education have been heavily criticized by scholars and advocates of human rights. In particular, MDG 2 has been criticized for failing to incorporate the human rights requirement that states must ensure free and compulsory universal primary education.⁵⁰ While international human rights law requires states not only to provide free primary education, but also education that is compulsory for all, MDG 2 merely provides for universal primary education without the important elements of the obligation.

⁴⁷ The Danish Institute for Human Rights: Human Rights In Follow-Up And Review Of The 2030 Agenda For Sustainable Development, Draft Paper (February 2016) <https://www.un.org/esa/socdev/unpfii/documents/2016/National-HR/DIHR-FuR-paper_final-draft_29_02_16-Danemark.pdf> accessed 03 March 2021.

⁴⁸ 2030 Sustainable Development Agenda (n 1).

⁴⁹ Kaufman (n 2).

⁵⁰ MacNaughton (n 2) 537.

Also, MDG 2 failed to integrate the immediate obligation of providing free and compulsory universal education within a reasonable number of years.⁵¹ Since article 14 of the ICESCR requires states that do not provide free and compulsory universal education ‘within a reasonable number of years’ after becoming a party to the Covenant to submit a plan to do so. Moreover, MDG 2 fails to address the content of primary education. While MDG 2 requires states to achieve universal primary education, it however failed to focus on the elements of primary education including human rights education, as required by article 13(1) of the ICESCR. The MDGs thereby left ‘both the aim and quality of education beyond measuring and monitoring by the MDG institutional arrangements...’⁵²

Furthermore, human rights scholars and practitioners have critiqued MDG 3 and its single education target. While MDG 3 requires states to ‘promote gender equality and empower women’, it was however included in a single education target ‘eliminate gender disparity in primary and secondary education, preferably by 2005, and in all levels no later than 2015’. As MacNaughton argues that MDG 3 ‘reduces a goal of gender equality and empowerment to an education enrollment target with indicators for gender ratios in education, share of women in wage non-agricultural employment, and proportion of seats held by women in parliament’.⁵³

The SDG 4 is an improvement on the MDG 2. Whereas MDG 2 narrowly paid attention to attaining primary education and equity in education, the SDG 4 expands the focus by adopting a universal and lifelong learning approach for all including persons with disabilities. Indeed, SDG 4-Education 2030 is not only broader than MDG 2 and the EFA goals, but also includes other educational areas such as lifelong learning, early childhood education, adult literacy, curriculum content, and disability equity.

Moreover, unlike MDG 2 that failed to specifically mention in its targets and indicators, the need to promote access to higher education, the SDGs in its target 4.8 requires the advancement of access to higher education for all including those with disabilities. Unlike the education related goals and targets under the MDGs, SDG 4 sets targets for achieving quality inclusive learning at

⁵¹ Ibid.

⁵² MacNaughton (n)537.

⁵³ Ibid.

all stages of life, from early childhood (target 4.3) through schooling (target 4.5) to adulthood (4.6).

4.3.2 SDGs and Employment for Persons with Disabilities

While the MDGs included eight goals, eighteen targets, and forty-eight indicators, work surprisingly was not mentioned as one of the means of poverty reduction.⁵⁴ Indeed, the original MDGs did not include a goal on decent work for all as part of the international development agenda from 2000-2015.⁵⁵ Nevertheless, two work related issues were included in the original MDGs, targets, and indicators.⁵⁶ First, one of the indicators for goal 3- ‘promote gender equality and empower women was- ‘share of women in wage employment in the non-agricultural sector’.⁵⁷ Second, one of the targets for goal 8- develop a global partnership was ‘in cooperation with developing countries, develop and implement strategies for decent and productive work for youth’.⁵⁸ This target had the corresponding indicator ‘unemployment rate of young people aged 15-24 years, each sex and total’.⁵⁹

However, in 2007, after much negotiation spearheaded by the ILO, a new target on full employment and decent work for all was added to the MDGs. The target which was subsumed under goal 1- poverty eradication was aimed at- ‘achiev(ing) full and productive employment for all, including women and young people’.⁶⁰ The addition in the MDGs provided an opportunity to not only address the initial omission in the original 2001 MDGs, but also gave greater attention to work as a relevant component of poverty reduction.

On the other hand, there were issues associated with the new work target added to the MDGs. Unlike other MDGs targets that were to be achieved by 2015, there was no deadline for achieving the target of decent work for all. Although the adoption of the new target and indicators on full employment and decent work in 2007 was a major step forward, however, ‘this was primarily symbolic as the infrastructure and plan of action for achievement of the MDGs was finalized in

⁵⁴ Frey and MacNaughton (n 31) 1.

⁵⁵ MacNaughton and Frey (n 2) 607.

⁵⁶ Millennium Development Goals: <https://www.sdgfund.org/mdgs-sdgs> accessed 20 February 2021.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

2005'.⁶¹ Moreover, 'the indicators were wholly inadequate to measure progress toward either the ILO or the human rights concept of full employment and decent work'.⁶²

In contrast to the 2007 MDGs, where decent work was a target, the SDGs elevated the target of full employment and decent work into a goal.⁶³ Goal 8 of the SDGs (SDG 8) implicitly builds on the ILO's Decent Work Agenda and calls for full and productive employment and decent work for all including people with disabilities. It also included a collection of other work rights, including the elimination of the worst forms of child labor, forced labour, and the promotion of safe and secure work environments. Moreover, the key target to measure progress toward achieving this goal sets a deadline of 2030.

The SDGs is an improvement on the MDGs because it highlights the importance of labour rights for persons with disabilities.⁶⁴ Whereas the MDGs did not give specific recognition to the work rights of persons with disabilities, the SDGs not only acknowledge the work right of people with disabilities, but also reiterates states' commitment to the realization of full employment and decent work for persons with disabilities. Unlike the MDGs, the SDG 8 gives recognition to the core labour rights and obliges states to promote inclusive employment for all persons with disabilities in the labour market through job creation, proscription of forced labour and child labour, and the protection of the rights to join and form trade unions.

Despite the positive achievements of SDGs, the framework has been severally criticized by human rights advocates, scholars, and commentators. Goal 8 of the SDGs has been criticized for merging two complex issues- economic growth and decent work in one goal instead of two separate goals. They argue that the bringing together of two developmental goals reduce the chances of realising full employment and decent work for all ⁶⁵ since SDG 8 is mostly economy centred. As MacNaughton and Frey note, goal 8 'does not recognize full employment and decent work as human rights or empower people to hold their governments accountable for their human rights obligations'.⁶⁶

⁶¹ MacNaughton and Frey (n 2)641.

⁶² Ibid.

⁶³ Diane F. Frey, 'Economic Growth, Full Employment and Decent Work: The Means and Ends in SDG 8' (2017) 21(8) *The International Journal of Human Rights* 1164; MacNaughton and Frey (n 2) 607.

⁶⁴ Rai et al, 'SDG 8: Decent work and economic growth – A gendered analysis' (2019) 113 *World Development* 368.

⁶⁵ Frey (n 64) 1165.

⁶⁶ MacNaughton and Frey (n 2) 652.

Goal 8 of the SDGs has also been criticized for failing to fully address the decent work agenda, and for contradicting gender equality in goal 5 of the SDGs. This is because it does not give recognition to the role of women (including women with disabilities) within the labour force, particularly domestic work.⁶⁷ Rai et al, while building on feminist debates on gender and work, argue that SDG 8 on sustainable economic growth and decent work failed to fully address the decent work agenda by neglecting the costs and value of social reproductive work, which in turn generate contradictions with SDG 5 on gender equality.⁶⁸

Thus, some other scholars have advocated for a return to the 2007 MDGs position on promoting decent work as a goal without the inclusion of economic growth.⁶⁹ This thesis supports this viewpoint because the current state of the SDGs, in particular- goal 8 removes focus from the right to work and employment, and instead gives greater attention to economic growth which may hinder the effective actualization of the employment right of people with disabilities.

4.4 States' Obligations for Persons with Disabilities in Employment under the SDGs

International law imposes specific responsibilities on states in the fulfilment of employment for all. In particular, states have obligations under ILO, human rights, and the SDGs in achieving full productive employment and decent work for people with disabilities. But what are these state obligations under the SDGs? Does employment under the SDGs-goal 8 align with ILO and human right standards in line with state obligations for persons with disabilities? Do these obligations align with the disability human rights-based approach? To address these questions, this section of the chapter employs the A4s-accessibility, adaptability, acceptability and availability. This approach is applied in order to explain the specific states' obligations in employment in international law. This methodology is consistent with the arrangement of the CRPD Committee⁷⁰ and the CESCR Committee.⁷¹

This part of the chapter is broadly divided into four sections. Section 4.4.1 addresses the accessibility obligations such as the obligation to proscribe discrimination in access to employment, and obligation to ensure access to the workplace. Section 4.4.2 will consider the

⁶⁷ Rai et al, 'SDG 8: Decent work and economic growth – A gendered analysis' (2019) 113 World Development 368.

⁶⁸ Ibid.

⁶⁹ MacNaughton and Frey (n 2) 607; Frey (n 64) 1164; Frey and MacNaughton (n 31) 1.

⁷⁰ CRPD, General Comment No.4, UN Doc. CRPD/C/GC/4 (2 September 2016).

⁷¹ CESCR, General Comment 13, UN Doc E/C.12/1999/10 (8 December 1999).

availability obligations such as the obligations to promote full and productive employment, and to ensure provision of a social security system. Section 4.4.3 will address the acceptability obligations including the obligations to eradicate forced and compulsory labour, abolish child labour, and to guarantee freedom of association in relation to union rights. Lastly, section 4.4.4 considers the adaptability obligations such as the obligation to ensure provision of reasonable accommodation in the workplace.

4.4.1 Accessibility Obligations

The first obligation is to ensure accessibility to employment and the work environment. This obligation requires states to ensure physical, economic, informational, and communicational access to employment on the basis of equality and non-discrimination. It demands that states adopt positive steps to promote equal participation for people with disabilities in the labour market. It is an important duty since it helps to promote equality of opportunity for gainful employment in the open labour market as well as to combat segregation in employment amongst persons with disabilities. This obligation consists of several interrelated requirements such as the requirements to prohibit discrimination in access to employment, and to guarantee physical access to the workplace.

4.4.1.1 Obligation to Prohibit Discrimination in Access to Employment

One aspect of accessibility obligations is guaranteeing protection against discrimination in access to employment. This obligation forms part of the rights at work and is provided in the SDGs,⁷² and relevant ILO,⁷³ and human rights instruments.⁷⁴ In fact, the SDGs target 8.5 has affirmed to, by

⁷² 2030 Sustainable Development Agenda (n 1).

⁷³ Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111); Equal Remuneration Convention, 1951 (No. 100); Equal Remuneration Recommendation, 1951 (No. 90); Workers with Family Responsibilities Convention, 1981 (No. 156); Workers with Family Responsibilities Recommendation, 1981 (No. 165); Violence and Harassment Convention, 2019 (No. 190); and Violence and Harassment Recommendation No. 206; the Vocational Rehabilitation and Employment (Disabled Persons) Convention; ILO Constitution; ILO Declaration of Philadelphia 1944; ILO Declaration of Fundamental Principles and Rights at Work 1998; ILO Decent Work Agenda 1999 and its follow up; ILO 2008 Declaration on Social Justice for a Fair Globalisation.

⁷⁴ Declaration on the Rights of Indigenous Peoples Article 21; International Convention on the Elimination of all Forms of Racial Discrimination (ICERD); Indigenous and Tribal Peoples Convention, 1989 (No. 169); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPMW); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Convention on the Rights of Persons with Disabilities; Standard Rules on the Equalization of Opportunities for Persons with Disabilities; Universal Declaration of Human Rights; International Covenant on Economic, Social and Cultural Rights (ICESCR),

2030, ‘achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value’.⁷⁵

This target is an improvement over the MDGs target on decent work since it is not only time bound, but also specifically mentions persons with disabilities in relation to work right. Whereas, the MDGs target failed to mention persons with disabilities as well as to provide a deadline for achieving decent work, the SDGs target gives recognition to persons with disabilities and aims for states to achieve decent work for all by 2030. As McNaughton and Frey note ‘this target date greatly improves accountability, and the disaggregation into men, women, young people, and people with disabilities provides accountability with respect to distinct vulnerable groups’...⁷⁶

Moreover, this target acknowledges the ILO and human right standards with regards to equal remuneration for work of equal value for all. On the other hand, neither the SDGs target nor its associated indicators provide for the elimination of disability discrimination in employment. Although non-discrimination with regards to pay is mentioned, the SDGs does not go beyond that to accommodate ILO and human right standard of ensuring the proscription of disability discrimination in access to employment. Besides, there are no specific indicators addressing each of the vulnerable groups mentioned in this target including the equal pay aspect of the SDGs target.

4.4.1.2 Obligation to Ensure Access to the Workplace

Another facet of the accessibility obligation is ensuring access to the work environment. This obligation is contained in relevant ILO,⁷⁷ human rights instruments,⁷⁸ and some general comments of UN treaties bodies.⁷⁹ Although the 2030 Agenda for Sustainable Development provide for

Convention on the Rights of the Child (CRC) (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

⁷⁵ 2030 Sustainable Development Agenda (n 1).

⁷⁶ MacNaughton and Frey (n 2) 653.

⁷⁷ Vocational Rehabilitation and Employment (Disabled Persons) Convention, (No. 159), Recommendation (No. 168), the 2002 ILO Code of Practice in Managing Disability at the Workplace.

⁷⁸ The Universal Declaration of Human Rights; the Vienna Declaration and Programme of Action; the Standard Rules on the Equalization of Opportunities for Persons with Disabilities; ICESCR (n 75); CRPD (n 76); The International Convention on the Elimination of All Forms of Racial Discrimination; International Covenant on Civil and Political Rights.

⁷⁹ The Committee on Economic, Social and Cultural Rights in its general comment No. 5 (1994) on persons with disabilities; general comment No. 14 (2000) on the right to the highest attainable standard of health (para. 12); CRC Committee in its general comment No. 9 (2006) on the rights of children with disabilities.

various targets and indicators to ensure implementation of full employment and decent work, the agenda does not include the obligation to ensure access to the workplace.

From a disability human rights perspective, this is rather unfortunate giving the goal of achieving full productive employment and decent work for persons with disabilities require states to ensure that employers make the workplace accessible. Accessibility of the work environment is important for the promotion of full employment. This is because it is one of the ways of ensuring equal participation for persons with disabilities in the open labour market.

4.4.2 Availability Obligation

The second obligation is to promote the availability of employment in the labour market. This obligation requires states to provide dedicated services to assist and support individuals with disabilities to find available jobs opportunities. It also obliges states to promote the right to work of people with disabilities by facilitating the inclusion of a person with disability into the labour market. It further demands that states adopt appropriate measures to promote employment opportunities for people with disabilities. This obligation consists of several facets such as the obligations to promote employment and to ensure the provision of a social security system.

4.4.2.1 Obligation to Promote Employment

One aspect of the availability duty is the requirement to promote full and productive employment. This obligation, which is one of the four pillars of decent work-fostering employment, is drawn from several relevant ILO instruments,⁸⁰ human rights instruments,⁸¹ and related international

⁸⁰ Employment Policy Convention; Employment Policy Recommendation, 1964 (No. 122); Employment Policy (Supplementary Provisions) Recommendation; C159 - Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159); Employment Service Convention, 1948 (No. 88); Vocational Rehabilitation and Employment (Disabled Persons) Recommendation, 1983 (No. 168); Vocational Rehabilitation (Disabled) Recommendation, 1955 (No. 99); Employment Service Recommendation, 1948 (No. 83); Private Employment Agencies Convention, 1997 (No. 181); Private Employment Agencies Recommendation, 1997 (No. 188); Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189); Promotion of Cooperatives Recommendation, 2002 (No. 193); Employment Relationship Recommendation, 2006 (No. 198); Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205); The Employment Service Convention and Recommendation, 1948; the Vocational Guidance Recommendation, 1949; the Vocational Training Recommendation, 1962; and the Discrimination (Employment and Occupation) Convention and Recommendation, 1958; Paid Educational Leave Convention, 1974 (No. 140); Human Resources Development Convention, 1975 (No. 142); Human Resources Development Recommendation, 2004 (No.195); ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, Article 22.

⁸¹ International Convention on the Elimination of all Forms of Racial Discrimination (ICERD); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Convention on the Rights of Persons with Disabilities (CRPD).

instrument.⁸² In fact, the 2030 Agenda on Sustainable Development in several targets of goal 8 have affirmed the obligation to promote employment in the labour market. SDG 8 requires states to encourage employment by: (1) supporting youth employment (target 8.b); (2) providing financial access (target 8.10); (3) promoting sustainable tourism to create jobs (target 8.9); (4) reducing the number of youths not in employment, education and training (target 8.6); (5) promoting policies that support entrepreneurship and decent work creation (target 8.3); (6) promoting full employment and decent work for all (target 8.5); and (7) increasing economic productivity (target 8.2).

From a disability human rights perspective, these targets are substantial additions to the SDGs, which in turn are great improvements on the MDGs. Whereas the MDGs made no mention of these targets, the SDGs provide for various targets to encourage employment creation for all including women, young persons and people with disabilities. On the other hand, these targets in the SDGs are design in ways that are economic-centred rather than people-centred as they mostly focus on economic growth rather than the promotion of the human right to decent work for all. However, economic growth does not necessary lead to greater job creation. Therefore, goal 8 of the SDGs need to pay more attention to issues around employment right of people with disabilities.

4.4.2.2 Obligation to Ensure Provision of a Social Security System

Another facet of the availability duty is the obligation to ensure the provision of a social security system. This obligation is drawn from several relevant ILO,⁸³ and human rights instruments,⁸⁴ and

⁸² 2030 Sustainable Development Agenda (n 1).

⁸³ Security (Minimum Standards) Convention, 1952 (No. 102); Income Security Recommendation, 1944 (No. 67); Social Protection Floors Recommendation, 2012 (No. 202); Medical Care and Sickness Benefits Convention, 1969 (No. 130); Medical Care and Sickness Benefits Recommendation, 1969 (No. 134); Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128); Invalidity, Old-Age and Survivors' Benefits Recommendation, 1967 (No. 131); Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121); Employment Injury Benefits Recommendation, 1964 (No. 121); Equality of Treatment (Social Security) Convention, 1962 (No. 118); Maintenance of Social Security Rights Convention, 1982 (No. 157); Maintenance of Social Security Rights Recommendation, 1983 (No. 167); Maternity Protection Convention, 2000 (No. 183); Maternity Protection Recommendation, 2000 (No. 191); Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168); Employment Promotion and Protection against Unemployment Recommendation, 1988 (No. 176); ILO Constitution; ILO Declaration of Philadelphia 1944; ILO Declaration of Fundamental Principles and Rights at Work 1998; ILO Decent Work Agenda 1999; ILO 2008 Declaration on Social Justice for a Fair Globalisation, Preamble to the ILO Constitution.

⁸⁴ International Convention on the Elimination of all Forms of Racial Discrimination (ICERD); Indigenous and Tribal Peoples Convention, 1989 (No. 169); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPMW); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Convention on the Rights of Persons with Disabilities; Standard Rules on the Equalization of Opportunities for Persons with Disabilities; Universal Declaration of Human Rights; ICESCR, CRC (n 75),

the SDGs.⁸⁵ Indeed, the SDGs implicitly provided this commitment in some of its targets under goal 8. The SDGs require states to: (1) develop policies to support job creation (target 8.3); (2) protect labour rights and promote safe and secure working environment (target 8.7); and (3) work towards achieving full and productive employment and decent work for all (target 8.5). The SDGs is an improvement over the MDGs because it gives recognition to the obligation to ensure the provision of a social security system. Whereas the MDGs made no express or implied reference in any of its targets and indicators to social protection in employment, the SDGs targets 8.3, 8.5, and 8.7 require states to provide for a social security system. On the other hand, the SDGs does not adequately reflect ILO and human rights standards.

4.4.3 Acceptability Obligation

The third obligation is acceptability in employment. This requirement demands the protection of the employment right of persons with disabilities and obliges states to ensure that employment provided are suitable to persons with disabilities. This obligation consists of several parts such as the obligation to eradicate forced labour, obligation to abolish child labour, and the obligation to guarantee the right to freedom of association in relation to union rights.

4.4.3.1 Obligation to Eradicate Forced Labour

One component of the acceptability requirement is the responsibility to eradicate forced labour. This obligation which forms part of the rights at work, was first defined in the ILO Forced Labour Convention⁸⁶ and subsequently provided in several relevant ILO hard⁸⁷ and soft law instruments⁸⁸ as well as human rights instruments.⁸⁹ More recently, states have committed themselves under

Committee on Economic, Social and Cultural Rights, General Comment 19, The right to social security (art. 9) (Thirty-ninth session, 2007), U.N. Doc. E/C.12/GC/19 (2008).

⁸⁵ 2030 Sustainable Development Agenda (n 1).

⁸⁶ Article 2(1) of the Forced Labour Convention 1930 defined forced or compulsory labour as ‘all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily’.

⁸⁷ Forced Labour Convention, 1930 (No. 29); Protocol of 2014 to the Forced Labour Convention, 1930; Abolition of Forced Labour Convention, 1957 (No. 105); Forced Labour (Indirect Compulsion) Recommendation, 1930 (No. 35); Labour (Supplementary Measures) Recommendation, 2014 (No. 203); ILO Constitution.

⁸⁸ The ILO Declaration on Fundamental Principles and Rights at Work (1998), the ILO Declaration on Social Justice for a Fair Globalization (2008); ILO Declaration of Philadelphia 1944; the Decent Work Agenda.

⁸⁹ The Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the ICESCR (1966), the Slavery Convention (1926), the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), the United Nations Convention against Transnational Organized Crime (2000), the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000), the Protocol against the Smuggling of Migrants by Land, Sea and Air (2000),

Sustainable Development Goal 8, particularly target 8.7 to ‘take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking’.

From a disability human rights perspective, target 8.7 of the SDGs appears to incorporate core labour standards since it not only relates to the ILO standards, but also, human rights standards. It follows the legal requirements provided under the ILO, in particular, the Forced Labour Convention and its 2014 Protocol that require states to prohibit all forms of forced labour. Likewise, the SDGs reaffirms the human rights standards as stated in the ICESCR, as states are to give recognition to the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts.

4.4.3.2 Obligation to Eradicate Child Labour

Another part of the acceptability obligation is the duty to eradicate child labour. This obligation is one of the rights at work and is provided in major relevant ILO,⁹⁰ and human rights instruments,⁹¹ as well as the SDGs.⁹² Regarding the SDGs, states have devoted themselves under SDG 8, particularly target 8.7 to, ‘take immediate and effective measures to...secure the prohibition and elimination of the worst forms of child labour...and [to] by 2025 end child labour in all its forms’. Target 8.7 of the SDGs is an improvement over the MDGs because it includes the target of eradicating all forms of child labour. Whereas the MDGs made no reference to the eradication of child labour in any of its targets and indicators, the SDGs target 8.7 requires states to eliminate all forms of child labour.

Moreover, the SDGs target 8.7 incorporate core labour standards since it not only links this target to ILO standard but also, human rights standard. These instruments require states to ensure the prohibition of economic exploitation of children formally and informally as well as hazardous

the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), the Convention on the Elimination of All Forms of Discrimination against Women (1979), and the Convention on the Rights of Persons with Disabilities (2006).

⁹⁰ Minimum Age Convention, 1973 (No. 138); Minimum Age Recommendation, 1973 (No. 146); Worst Forms of Child Labour Convention, 1999 (No. 182); Worst Forms of Child Labour Recommendation, 1999 (No. 190), ILO Constitution; ILO Declaration on Fundamental Principles and Rights at Work (1998); the ILO Declaration on Social Justice for a Fair Globalization (2008); ILO Declaration of Philadelphia 1944; and the Decent Work Agenda.

⁹¹ Declaration on the Rights of Indigenous Peoples Article 17(2); Universal Declaration on Human Rights, ICESCR, CRC (n 75), CRPD (n 76).

⁹² 2030 Sustainable Development Agenda (n 1).

work for children.⁹³ On the other hand, the deadline for the eradication of all forms of child labour in the SDGs is 2025 instead of 2030. There is need for the SDGs to have a uniform cutoff date of 2030, else this target will be lost during implementation.

4.4.3.3 Obligation to Ensure Freedom of Association in Relation to Trade Union Rights

Guaranteeing freedom of association in relation to trade union rights is an additional obligation under the acceptability requirement. This obligation is one of the rights at work, which is fostering tripartite agreement and social dialogue. It can be traced to the 1919 ILO Constitution,⁹⁴ and is subsequently contained in other relevant ILO soft⁹⁵ and hard law instruments.⁹⁶ Likewise, the duty is provided in the UDHR which is the first human right instrument that explicitly protect both the freedom of association in general and the right to form and join trade unions. This duty was subsequently developed in other relevant human rights instruments.⁹⁷ Similarly, the SDGs, particularly in target 8.8 requires states to: ‘protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment’.⁹⁸ Additionally, indicator 8.8.2 requires that states ‘increase in national compliance of labour rights (freedom of association and collective bargaining) based on International Labour Organization (ILO) textual sources and national legislation, by sex and migrant status’.⁹⁹

From a disability human rights perspective, this SDGs’ target and indicator are improvements on the MDGs because it recognises labour rights that may include the freedom of association and the right to collective bargaining. While target 8.8 may not expressly mention the protection of union rights, its associated indicator (8.8.2) however specifically includes the need for states to ‘increase

⁹³ UN Committee on the Rights of the Child (CRC), General comment 16 on State obligations regarding the impact of the business sector on children's rights, 17 April 2013, UN Doc. CRC/C/GC/16, para 35-37.

⁹⁴ The ILO Constitution (adopted 1919).

⁹⁵ ILO Constitution; ILO Declaration on Fundamental Principles and Rights at Work (1998); the ILO Declaration on Social Justice for a Fair Globalization (2008); ILO Declaration of Philadelphia 1944; and the Decent Work Agenda.

⁹⁶ Rural Workers' Organisations Convention, 1975 (No. 141); Rural Workers' Organisations Recommendation, 1975 (No. 149); Workers' Representatives Convention, 1971 (No. 135); Workers' Representatives Recommendation, 1971 (No. 143); Labour Relations (Public Service) Convention, 1978 (No. 151); Labour Relations (Public Service) Recommendation, 1978 (No. 159); Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Collective Bargaining Convention, 1981 (No. 154); Collective Bargaining Recommendation, 1981 (No. 163); Collective Agreements Recommendation, 1951 (No. 91); Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113)

⁹⁷ ICESCR, ICCPR, and the CRPD.

⁹⁸ 2030 Sustainable Development Agenda (n 1).

⁹⁹ Ibid.

compliance with labour rights based on ILO standards, and referenced the freedom of association and collective bargaining'. Union rights and their role in poverty eradication is addressed in the SDGs contrary to views expressed by MacNaughton and Frey who argue otherwise.¹⁰⁰ On the other hand, the indicator unfortunately only makes reference to ILO standards. This indicator needs to be updated to accommodate human rights standards as well, else it will lose its value.

4.4.4 Adaptability Obligation

The fourth obligation is to ensure adaptability of the work environment. This obligation forms part of the rights in employment for workers with disabilities and imposes several duties including ensuring that workers with disabilities receive necessary individualized support in the work environment. It also includes the duty to ensure that appropriate means of communication is provided to encourage and promote the active participation of workers with disabilities in the open labour market such as the provision of communication using sign language and Braille. One of the important requirements is the obligation to ensure the provision of reasonable accommodation in the workplace.

4.4.4.1 Obligation to Ensure the Provision of Reasonable Accommodation in the Workplace

The duty to ensure the provision of reasonable accommodation in the workplace is an important part of the adaptability requirement. This obligation is drawn from several relevant ILO¹⁰¹ and human rights instruments.¹⁰² Although the Sustainable Development Goal 8 requires states to promote inclusive employment, the SDGs targets and indicators do not include the duty to provide reasonable accommodation in the workplace. The SDGs do not provide for the legal requirements under the ILO and human rights. The framework does not recognise the requirements on states to ensure that accommodations are provided by public and private entities as well as make available incentives and support services to employers for workplace adjustments

From a disability human rights perspective, this is unfortunate given the goal of achieving full productive employment and decent work for all requires states to ensure that reasonable

¹⁰⁰ MacNaughton and Frey (n 2) 655.

¹⁰¹ ILO Convention No.159; ILO Recommendation No.168; the ILO Code of Practice in Managing Disability at the Workplace.

¹⁰² ICESCR, International Convention on the Rights of Persons with Disabilities, the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities, The CESCR Committee in its General Comment No.5 on Persons with Disabilities, paragraph 24.

accommodation is provided in the workplace for individuals in need of adjustment. This is one method of ensuring equal participation of persons with disabilities in the open labour market. For the SDGs to adequately reflect the legal requirements under human rights, it must include the requirement to provide reasonable accommodation for persons with disabilities in the work environment. The next section of the chapter examines states' specific obligations for persons with disabilities in education under the SDGs.

4.5 States' Specific Obligations for Persons with Disabilities in Education under the SDGs

Generally, international law imposes specific obligations on states in education. States have agreed to numerous responsibilities regarding achieving inclusive, quality, and equitable education at all levels of education and lifelong learning. But what exactly are these requirements under the SDGs, ILO, human right, UNESCO, and relevant humanitarian laws? Do SDG4 incorporate human right standards? To address these questions, this section of the chapter employs the 4As-accessibility, adaptability, acceptability and availability. This approach is applied in order to explain the specific states' obligations in education for persons with disabilities under the SDGs. This methodology is consistent with the arrangement of the CRPD Committee and the CESCR Committee.

It will broadly be divided into four sections. Section 4.5.1 will examine the accessibility obligations in education such as the obligation to prohibit discrimination in access to education and the obligation to ensure free compulsory primary access to primary and secondary education. Section 4.5.2 considers the adaptability obligation in education such as the obligation to engage qualified teachers with requisite skills, the obligation to ensure the provision of reasonable accommodation in schools, the obligation to provide support in schools, and the obligation to provide appropriate modes of communication and learning environment. Section 4.5.3 addresses the acceptability obligations which include the obligations to eradicate violence, abuse and neglect at schools, and to provide quality inclusive education. Section 4.5.4 examines availability obligation such as the obligation to ensure provision of adequate school facilities and programmes.

4.5.1 Accessibility Obligation

The first obligation is to enable access to schools and programs in a non-discriminatory manner as well as economic and physical access. This obligation forms part of the rights to education¹⁰³ and it obliges states to make the general education system user-friendly. It is an important state responsibility since the duty ensures equality in education for learners with disabilities. It has several components such as the obligation to protect against discrimination in access to education, and the obligation to provide free compulsory accessible primary and secondary education.

4.5.1.1 Obligation to Ensure Access to Education on the Basis of Non-discrimination

The obligation to guarantee access to education in a non-discriminatory manner is one vital aspect of the accessibility requirement. This obligation is drawn from several relevant international instruments within the ILO,¹⁰⁴ UNESCO,¹⁰⁵ and United Nations frameworks.¹⁰⁶ Similarly, the 2030 Sustainable Development Agenda, particularly target 4.5 requires states to eliminate gender disparities in education, to ensure equal access to all levels of education, and to promote vocational training for the vulnerable, including persons with disabilities. This target is an improvement on the MDGs because it adopts a strong equity in education focus. Unlike the MDGs, the SDGs indicator 4.5.1 highlights other equity dimensions, and draws attention to a range of vulnerable groups, including persons with disabilities, indigenous peoples, and children in vulnerable situations.

From a disability human rights perspective, target 4.5 of the SDGs gives specific recognition to the educational right of persons with disabilities and is consistent with the human rights standards including that of the CRPD. It not only ensures non-discrimination in access to education on

¹⁰³ Katarina Tomasevski, 'Right to Education Primers No.3: Human Rights Obligations- Making Education Available, Accessible, acceptable and Adaptable' (2001) <https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Tomasevski_Primer%203.pdf> accessed 06 March 2022.

¹⁰⁴ ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, Article 26.

¹⁰⁵ UNESCO Convention against Discrimination in Education, Articles 1(1) and 3; The Dakar Framework for Action-Education for All: Meeting Our Collective Commitments.

¹⁰⁶ Convention on the Elimination of All Forms of Discrimination against Women Article 10; Convention on the Elimination of All Forms of Racial Discrimination Article 5(v); International Convention on the Rights of Persons with Disabilities Article 24(2)(a); Convention on the Protection of the Rights of All Migrant Workers and Members of their families Article 30; Convention Relating to the Status of Refugees Article 22; Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities Article 4(1); Declaration on the Rights of Indigenous Peoples Article 14(2); Declaration on the Rights of Indigenous Peoples Article 21; ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

several grounds including disability, it explicitly requires the non-exclusion of people with disabilities from the general education system and free compulsory inclusive primary education. It reiterates the commitments of states to adopt measures to remove all types of discriminatory barriers to inclusive education; as well as ensure the provision of school transportation where transportation options are limited due to social or economic barriers.

4.5.1.2 Obligation to Provide Compulsory, Quality, Free and Accessible Primary and Secondary Education

Another important part of the accessibility requirements is the duty to provide compulsory free accessible primary education and secondary education. This obligation is provided in several human rights treaties and declarations of the United Nations,¹⁰⁷ ILO,¹⁰⁸ and UNESCO instruments.¹⁰⁹ Likewise, the SDGs in target 4.1 provides that states: ‘by 2030, ensure that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes’.¹¹⁰ This target is an improvement on the MDGs target because it expands the focus on universal access to primary education to include secondary education. Also, it expressly specifies the role of education to lead to relevant and effective learning outcomes.

However, target 4.1 partially complies with human rights standards. Human rights require states to provide compulsory free primary education but target 4.1 only mentions free primary education. Indeed, this target failed to mention the important element of ensuring that the primary education provided is not only free, but also is compulsory in line with the standards set out in the ICESCR, the CRC, and the CRPD.

4.5.1.3 Obligation to Ensure Access to Quality Tertiary Education, Vocational Training, Adult Education and Lifelong Learning

Aside the obligation to provide free compulsory primary and secondary education is the requirement to ensure access to tertiary education, vocational training, adult education and lifelong learning. This obligation which is an aspect of the accessibility requirements is drawn from several

¹⁰⁷ Universal Declaration on Human Rights Article 26(1); ICESCR Articles 13(2)(a) and 14; the CRC (n 75) article 28(1)(a); CRPD (n 76), article 24(2)(b).

¹⁰⁸ ILO Convention No. 182 on Worst Forms of Child Labour, Article 7(2)(c).

¹⁰⁹ UNESCO Convention against Discrimination in Education, Article 4(a); The Dakar Framework for Action- Education for All: Meeting Our Collective Commitments.

¹¹⁰ 2030 Sustainable Development Agenda (n 1).

relevant international instruments.¹¹¹ Likewise, the Sustainable Development Goal 4 affirms the obligation to ensure access to technical, vocational, and tertiary education in a number of its targets, in particular, target 4.3. It mandates states to: ‘by 2030, ensure equal access for all women and men to affordable and quality technical, vocational and tertiary education, including university’. Target 4.3 is also closely linked to target 4.4 (youth and adult skills for employment, decent work and entrepreneurship) and target 4.6 (youth and adult literacy and numeracy).

From a disability human rights perspective, this target is an improvement on the MDGs since it focuses on older age groups. Whereas MDG 2 mainly focused on children, the SDGs extend the focus to older persons. Unlike MDG 2, the SDGs addresses access to other levels of education aside primary education. Moreover, indicator 4.3.1 measures the participation rate of adults (25-64-year-olds) in formal and non-formal education and training. By concentrating on this age group, this indicator reveals the aim to measure continuous learning throughout life. Furthermore, it includes both formal and non-formal education, therefore targeting participation in any type of programme that aims to improve knowledge, skills and competencies in line with UNESCO standards. Lastly, it matches the legal requirements under the CRPD standards as it gives recognition to access to general tertiary education, vocational training, adult education and lifelong learning without discrimination and on the basis of equality; the provision of reasonable accommodation, and adoption of affirmative action measures in favour of learners with disabilities.

4.5.2 Adaptability Obligation

The second obligation is to ensure adaptability in education. The term ‘adaptability’ means flexibility. Adaptability in education enjoins the education system to be flexible and responsive to the needs of the society at large and the students within their cultural and social diversities. This obligation forms part of the rights in education and it demands that the general educational system be made adjustable to the individual needs of children with disabilities in terms of what they should

¹¹¹ Universal Declaration on Human Rights (n 101) article 26(1); ICESCR Article 13(2)(b), (c) and (d); the CRC (n 75) article 28(1)(b) (c) and (d); The Dakar Framework for Action-Education for All: Meeting Our Collective Commitments; International Convention on the Rights of Persons with Disabilities Article 24(5); Convention on the Protection of the Rights of All Migrant Workers and Members of their families Article 43(1); UNESCO Convention on Technical and Vocational Education;

learn at school and how the learning process should be organized.¹¹² There is no doubt that making education adaptable to the learning needs of learners is essential to promoting inclusive education since it encourages equality in school participation and helps in the development of the individual potential. It consists of various aspects such as the obligations to ensure the provision of reasonable accommodation in schools, to ensure provision of support in schools, to provide appropriate means of communication and learning environment, and to engage qualified teachers with the required language and mobility skills.

4.5.2.1 Obligation to Engage Qualified Teachers with the Requisite Language and Mobility Skills

One important aspect of the adaptability obligation is the duty to employ qualified teachers with the required language and mobility skills. This obligation is affirmed in numerous relevant international human rights instruments of the United Nations,¹¹³ and UNESCO.¹¹⁴ While both the UNESCO Convention against Discrimination in Education and the ICESCR require states to improve the material conditions of teachers as well as provide teacher trainings in a non-discriminatory manner, the CRPD furthers this standard. Since the Convention obligates states to not only engage competent teachers, but also that teachers engaged must possess the requisite mobility and language skills to accommodate the language and mobility needs of students with disabilities.¹¹⁵ Likewise, the Sustainable Development Agenda provides a nexus between quality inclusive education and quality teachers.

Achieving quality education through the engagement of quality teachers can be linked to at least four of the ten targets of SDG 4 including target 4.1 (achieving quality primary and secondary education), target 4.2 (quality early childhood development and pre-primary education), target 4.7 (acquisition of knowledge and skills) and target 4.c (increment in supply of qualified teachers). However, the most outstanding target related to teachers is target 4.c, which provides that states

¹¹² Katarina Tomasevski, 'Right to Education Primers No.3: Human Rights Obligations- Making Education Available, Accessible, acceptable and Adaptable' (2001) https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Tomasevski_Primer%203.pdf accessed 06 March 2022.

¹¹³ Universal Declaration on Human Rights (n 101); International Convention on the Rights of Persons with Disabilities Article 24(4); ICESCR Article 13(2)(e).

¹¹⁴ UNESCO Convention against Discrimination in Education, Article 4(d).

¹¹⁵ Article 24 of the CRPD.

should, by 2030, ‘substantially increase the supply of qualified teachers, including through international cooperation for teacher training in developing countries’....

From a disability human rights perspective, this target is a great improvement over the MDGs education target because it is focused on achieving quality inclusive education through the engagement of quality teachers at all levels of education and training. Whereas the MDGs target made no reference to quality education and the role of qualified teachers in achieving inclusive education, the SDGs target 4.c is premised on the engagement of qualified teachers in achieving quality education at all levels of education from pre-primary to primary and secondary education. Additionally, target 4.c greatly improves on the MDG 2 because international cooperation in teacher training is mentioned as a means of transferring the requisite teaching skills to teachers in poorer countries.

On the other hand, the target failed to integrate the CRPD standards. The SDGs target failed to mention the need to employ teachers with the skills to work effectively in inclusive education environments and qualified in sign language and braille, orientation and mobility skills. Moreover, no mention is made by the framework on the need to ensure that all teachers are trained in inclusive education framework that is based on the human rights model of disability. Furthermore, the SDGs failed to include the requirement to invest in and support the recruitment and continuous education of teachers with disabilities.

4.5.2.2 Obligation to Ensure the Provision of Reasonable Accommodation in the General Education System

Another component of the adaptability obligation is the duty to ensure that reasonable accommodation is provided in the general education system. This obligation is drawn from several relevant international instruments.¹¹⁶ In fact, the Sustainable Development Goal 4 requires states to ‘ensure inclusive and equitable quality education’ as well as to ‘promote lifelong learning opportunities for all including for persons with disabilities’...

Surprisingly, the Sustainable Development Goals in its targets and indicators on education failed to include the international obligation to provide reasonable accommodation to children with

¹¹⁶ CRPD (n 76) article 24(2)(c), Committee on the Rights of Persons with Disabilities, General comment No. 4 ((n 163).

disabilities in schools in line with CRPD standard. As the SDGs failed to mention the obligations on states to adopt policies that commit to reasonable accommodation at the national, local and educational institution levels, and at all levels of education. It also failed to require states to ensure that independent systems are in place to monitor the appropriateness and effectiveness of accommodations. Moreover, there is no mention on the need for states to provide safe, timely and accessible mechanisms for redress in case of discrimination.

From a disability human rights perspective, this is rather unfortunate giving that the goal of achieving inclusive quality education for persons with disabilities and for ensuring that schools adapt to the individual needs of learners with disabilities is through the provision of reasonable accommodation in the general education system. The non-inclusion of the requirement of reasonable accommodation in schools in the SDGs greatly fails below the human rights requirement.

4.5.2.3 Obligation to Provide Appropriate Communication Modes and Learning Environment

The requirement to provide appropriate communication modes and learning environment is another facet of the adaptability obligation. This obligation is drawn from several relevant ILO,¹¹⁷ UNESCO,¹¹⁸ and United Nations human rights instruments.¹¹⁹ Likewise, the 2030 Agenda on Sustainable Development gives recognition to the obligation to facilitate appropriate means of communication and learning environment. In particular, target 4.7 provides that states should ‘by 2030, ensure that all learners acquire the knowledge and skills needed to promote sustainable development, including, among others, through education for sustainable development and sustainable lifestyles, human rights, gender equality, promotion of a culture of peace and non-violence, global citizenship and appreciation of cultural diversity and of culture’s contribution to sustainable development’.¹²⁰

¹¹⁷ ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, Articles 28, 29 and 30.

¹¹⁸ UNESCO Convention against Discrimination in Education, Article 5(c); The Dakar Framework for Action-Education for All: Meeting Our Collective Commitments;

¹¹⁹ CRC (n 75) article 29(1)(c); CRPD (n 76) articles 24(3) and 30(4); Declaration on the Rights of Indigenous Peoples Article 14(1) and (3); Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities Article 4(2) and (4).

¹²⁰ 2030 Sustainable Development Agenda (n 1).

From a disability human rights perspective, this target is a great improvement over the MDGs education target because it focuses on several spheres that relate to attaining inclusive quality education for all. Whereas the MDGs goal and targets on education made no reference to cultural diversity in education by the promotion of skills language skills acquisition, the SDGs target is on the need to respect cultural diversity among learners through the development of their language and mobility skills which is relevant to achieving inclusive quality education at all levels of education. This target greatly improves the human rights of all learners including those with disabilities since it gives recognition to the right to be taught in an appropriate mode of communication that respects their cultural rights.

Additionally, the SDGs are consistent with the legal requirements under human rights. As it provides for the obligation to ensure provision of appropriate means of communication by facilitating investment in access to appropriate technology and alternative communication systems; access to quality speech therapy services; and access to necessary support to inclusive environments. On the other hand, unless there are indicators addressing each of the elements to the requirement, much of its promise will be lost.

4.5.2.4 Obligation to Ensure the Provision of Support in the General Education System

The obligation to ensure provision of support in the general education system is a related facet of the adaptability obligation. This obligation is affirmed in the SDGs and several relevant UNESCO, ILO, and United Nations instruments.¹²¹ Surprisingly, although the Sustainable Development Goal 4 requires states to ‘ensure inclusive and equitable quality education’ as well as to ‘promote lifelong learning opportunities for all’, the post-2015 Sustainable Development Agenda in its targets and indicators failed to guarantee the provision of support to children with disabilities in schools in line with CRPD standards. As the Convention obliges states to ensure that persons with disabilities receive general and individualized disability-specific support within the general education system

From a disability human rights perspective, this is rather unfortunate given that the goal of achieving inclusive quality education for persons with disabilities and for ensuring that schools adapt to the individual needs of learners with disabilities is through the provision of general and

¹²¹ CRPD (n 76) article 24(2)(c) and (d); CRC (n 75), ICESCR (n 75).

individualized support or assistance in the general education system. The non-inclusion of this requirement in the SDGs falls below human rights standard.

4.5.3 Acceptability Obligation

The third obligation is to ensure that acceptability of education. The term ‘acceptability’ means suitability. Acceptability in education requires that education provided is suitable to learners, parents, and society. This obligation forms part of the rights in education¹²² and it requires states to ensure that the education provided is not only adequate but also, appropriate to the overall academic and personal development of learners. This obligation has different facets such as the obligation to prohibit violence, abuse and neglect in schools and the obligation to provide quality inclusive education.

4.5.3.1 Obligation to Prohibit Violence, Abuse and Neglect in Schools

One aspect of the acceptability requirement is the duty to prohibit violence, abuse, and neglect in schools. This obligation is drawn from several relevant international law instruments.¹²³ Although the Sustainable Development Goal 4 requires states to ‘ensure inclusive and equitable quality education’ as well as ‘promote lifelong learning opportunities for all,’ the SDGs in its targets and indicators failed to include the international law obligation of prohibiting violence, abuse and neglect in schools.

From a disability human rights perspective, this is rather unfortunate giving that the goal of achieving inclusive quality education requires that states provide education that respect the dignity of children with disabilities. The SDGs is not in line with the requirements under human rights since states under the SDGs are not required to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment by adopting all appropriate legislative, administrative, social and educational measures to eliminate them.

¹²² Katarina Tomasevski, ‘Right to Education Primers No.3: Human Rights Obligations- Making Education Available, Accessible, acceptable and Adaptable’ (2001) https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Tomasevski_Primer%203.pdf accessed 06 March 2022.

¹²³ Universal Declaration on Human Rights (n 101), Preamble; International Covenant on Civil and Political Rights, ICESCR (n 75), International CRC (n 75) article 28(2); the Preamble to the United Nations Charter, UN Committee on the Rights of the Child (CRC), General comment 8: The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts. 19; 28, Para. 2; and 37, inter alia), UN Doc. CRC/C/GC/8 (2 March 2007).

4.5.3.2 Obligation to Provide Quality Inclusive Education

An additional component of the acceptability obligation is the duty to provide quality inclusive. This obligation is drawn from the SDGs and numerous relevant international instruments.¹²⁴ Indeed, the Sustainable Development Goal 4 affirms the value of inclusive quality education. Goal 4 in a number of its targets highlight the importance of quality inclusive learning at all stages of life, from early childhood (target 4.2), through schooling (target 4.1) to adulthood (targets 4.3, 4.4 and 4.6). In particular, SDGs target 4.2 commits countries to ‘ensure that all children receive quality early childhood development, care and pre-primary education, so that they are ready for primary education’.

From a disability human rights perspective, these targets are an improvement on the MDGs since it focuses on quality inclusive education. Unlike MDG 2 and its associated targets, SDG 4 adopts a universal and lifelong learning perspective that not only widens the focus from universal primary education, but also, pays attention to quality inclusive education at all levels and programmes outside of compulsory education. While MDG 2 made no mention of pre-primary education, the SDGs indicator 4.2.1 places early childhood education as a global issue. Moreover, it is in line with the legal requirements under human rights. As it gives recognition to the obligation on states to promote inclusive quality education at all levels and lifelong learning.

4.5.4 Availability Obligation

The fourth obligation is to ensure the availability of education. The term ‘availability’ means making something obtainable. This obligation requires that educational institutions and programs be provided in sufficient quantity and quality.¹²⁵ This requirement forms part of the rights to education¹²⁶ and embodies several requirements on states including to permit the establishment of schools by non-state actors, to promote a fully inclusive education system,¹²⁷ to provide funding for the promotion of an inclusive system, and to employ adequate teachers qualified to support

¹²⁴ CRPD, CRC (n 75), the World Declaration on Education for All, the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, the Salamanca Statement and Framework for Action, Committee on the Rights of Persons with Disabilities, General comment No. 4 (n 163).

¹²⁵ Katarina Tomasevski, ‘Right to Education Primers No.3: Human Rights Obligations- Making Education Available, Accessible, acceptable and Adaptable’ (2001) https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Tomasevski_Primer%203.pdf accessed 06 March 2022.

¹²⁶ Ibid.

¹²⁷ CRPD, General Comment No.4, CRPD/C/GC/4 (2 September 2016).

learners with disabilities. It is an important obligation since it requires states to not only promote educational accessibility for learners with disabilities but also, encourage the active participation of people with disabilities in educational activities and programs.

4.5.4.1 Obligation to Provide Adequate Schools and Programmes

The obligation to provide adequate education is an aspect of the availability obligation. This obligation which forms part of the rights to education, is provided in several relevant human right instruments.¹²⁸ Similarly, the SDGs gives recognition to the obligation to provide adequate educational institutions and programmes, in particular target 4.a, provides that states should ‘[b]uild and upgrade education facilities that are child, disability and gender sensitive and provide safe, non-violent, inclusive and effective learning environments for all’.¹²⁹

From a disability human right perspective, the target in the SDGs is an improvement on the MDGs education target because it gives recognition to disability in the provision of education facilities. While MDG 2 failed to mention disability and the duty to provide adequate educational facilities, target 4. A of the SDGs requires states to provide educational facilities are child, disability, and gender sensitive. Moreover, unlike the MDGs, the SDGs- indicator 4.a.1, provides that states will be required to measure amongst others, the proportion of schools with access to ‘adapted infrastructure and materials for students with disabilities’... This is a great improvement on the MDGs and is in line with human rights standard. As it requires states to guarantee a broad availability of educational places for learners with disabilities at all levels throughout the community. Moreover, this indicator in the SDGs will help to improve accountability.

4.6 Conclusion

The 2030 Sustainable Development Agenda acknowledges human rights and persons with disabilities as right holders in line with the human rights model of disability. Likewise, the adoption of the Sustainable Development Goals (SDGs) in 2015 imposes additional obligations on states. While the SDGs add weight to human rights and require states in education and employment to move towards achieving full productive employment and inclusive quality education for persons with disabilities, it however failed to fully integrate the human rights model of disability and

¹²⁸ ICESCR (n 75) Article 13(2)(e); CRPD, Geneva Convention III relative to the Treatment of Prisoners of War, Article 38.

¹²⁹ 2030 Sustainable Development Agenda (n 1).

human rights standards. The SDGs failed to include the requirements to provide free compulsory primary education, to provide support in education, to employ qualified teachers skilled in braille and other skills, and to prohibit corporal punishment and other cruel or degrading forms of punishment. The SDGs also failed to follow human rights requirements as it does not provide for the elimination of disability discrimination in employment, the promotion of employment opportunities, and the provision of reasonable accommodation in employment and education for persons with disabilities.

The next chapter evaluates Nigeria's progress towards achieving the SDGs and if it complies with its international obligations for persons with disabilities in education and employment.

CHAPTER 5

AN EXAMINATION OF NIGERIA'S INTERNATIONAL OBLIGATIONS FOR PERSONS WITH DISABILITIES IN EDUCATION AND EMPLOYMENT

5.1 Introduction

Chapter 2 investigated the disability human rights approach in education and employment and its requirements for state obligations. This investigation is important to the thesis since it provides the theoretical standards by which to evaluate Nigeria's implementation of education and employment for persons with disabilities. It contended that in order for states including Nigeria to comply with their obligations for persons with disabilities in education and employment, they must move towards the disability human rights paradigm. As the model demands that states make procedural, institutional, substantive, and cultural changes. This chapter will show that Nigeria needs to overcome legal, cultural, societal, and religious challenges to comply with the human rights disability model.

Chapter 3 examined states' treaty general obligations in education and employment for persons with disabilities as well as the effects on state obligations in ratifying the CRPD. The examination is necessary to this thesis since it ascertains states' immediate legal obligations for persons with disabilities in education and employment. More importantly, it establishes the general standards to be employed to assess Nigeria's obligations for persons with disabilities in education and employment. It argued that unlike pre-existing human rights treaties, the UN Convention on the Rights of Persons with Disabilities (CRPD)¹ mirrors the human rights model of disability which imposes higher standards on states in the realization of education and employment for persons with disabilities.

Chapter 4 considered states' specific international obligations for persons with disabilities in education and employment under the Sustainable Development Goals (SDGs).² The consideration is vital to this thesis since it establishes the additional obligations imposed on states including

¹ United Nations Convention on the Rights of Persons with Disabilities (Adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3.

² 2030 Sustainable Development Agenda: <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> accessed 20 February 2021.

Nigeria under the SDGs. It employs the 4As framework³ and the human rights disability model to determine these obligations. These frameworks are applied in this chapter (Chapter 5) as criteria to evaluate Nigeria's compliance with its obligations for persons with disabilities in education and employment. Equally, it helps to establish the SDGs requirements and, to assess Nigeria's progress towards achieving goals 4 and 8- (inclusive quality education and decent work) for persons with disabilities.

Nigeria is a signatory to numerous international and regional instruments relevant to persons with disabilities. In particular, the country ratified the CRPD and its Optional Protocol in 2010.⁴ It also has ratified disability-specific ILO Conventions promoting the employment right of persons with disabilities. Furthermore, it has committed to leave no one behind under the SDGs.⁵ Nevertheless, more than a decade after ratification of the CRPD and other related international treaties, this chapter addresses the central question of the thesis whether Nigeria is meeting its international obligations for persons with disabilities in education and employment.

To achieve this, this chapter considers the steps adopted by Nigeria to realise the education and employment rights of persons with disabilities as well as to achieve the SDG goals 4 and 8. It employs the 4As and disability human rights frameworks as criteria to evaluate Nigeria's efforts at achieving the SDGs and its obligations in education and employment. It assesses whether Nigeria is meeting its international (immediate and specific) obligations for persons with disabilities in education and employment. It provides a range of cases in the Nigerian courts and against Nigeria at the regional level. It further considers, if the measures adopted by Nigeria in education and employment are rights-based or consistent with CRPD.

This chapter adds to the literature because there is little written on the rights of persons with disabilities in education and employment in the Nigerian context. Likewise, this study contributes to the literature on the rights of persons with disabilities by collating Nigerian laws and policies relevant to persons with disabilities in education and employment. Moreover, it adds to knowledge

³ Katarina Tomasevski, 'Right to Education Primers No.3: Human Rights Obligations- Making Education Available, Accessible, acceptable and Adaptable' (2001) < https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Tomasevski_Primer%203.pdf> accessed 06 February 2021.

⁴ Ratification Status for Nigeria, < https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=127&Lang=EN> accessed 12 April, 2021.

⁵ Nigeria, < <https://sustainabledevelopment.un.org/memberstates/nigeria>> accessed 12 April, 2021.

of the relevant Nigerian legal framework, what the framework should have been providing, and the gaps existing in the framework. It further adds to the literature on the Nigerian legal framework by analysing the extent to which Nigerian laws and policies meet the international legal framework which Nigeria has accepted.

This chapter is divided into six sections. Following this introduction (Section 5.1), section 5.2 examines the measures taken by the Nigerian government so far to promote and protect the educational and employment rights of persons with disabilities as well as make progress towards achieving the SDG goals 4 and 8. To investigate the measures taken, this section addresses the relevant general and disability specific laws, policies, and practices adopted by the Nigerian government towards attaining education and employment for persons with disabilities. While section 5.3 considers whether Nigeria is meeting its obligations for persons with disabilities in education, section 5.4 examines whether Nigeria is meeting its obligations for persons with disabilities in employment. Section 5.5 provides some concluding remarks.

5.2 Domestic Legislation, Policies, and Practices in Nigeria: Education and Employment of Persons with Disabilities

Nigeria has the largest economy in Africa⁶ and is the seventh most⁷ populous country in the world.⁸ Historically, the country was colonised by the British and gained independence in 1960. However, the country has been plagued by civil unrest, military rule, and separatist agitations since independence.⁹ These challenges has greatly impacted the full realization of education and employment rights of persons with disabilities in the country,¹⁰ with many students with disabilities forming part of the over 10 million out of school children in Nigeria.

⁶ African countries with the highest Gross Domestic Product (GDP) in 2020 < <https://www.statista.com/statistics/1120999/gdp-of-african-countries-by-country/>> accessed 10th April 2021.

⁷ SDG, < <https://sustainabledevelopment.un.org/memberstates/nigeria>> accessed 22 April 2021.

⁸ The World Population and the ten top countries with the highest population <https://www.internetworldstats.com/stats8.htm> accessed 7th April 2021.

⁹ Independence Day: Becoming Nigerian (History) (3 Oct 2010), Al Jazeera <https://www.aljazeera.com/program/africa-states-of-independence/2010/10/3/independence-day-becoming-nigerian> accessed 26 January, 2022.

¹⁰ Human Rights Watch, 'World Report 2022' <https://www.hrw.org/world-report/2022/country-chapters/nigeria#64e4ac> accessed 31 January, 2022.

The entrenchment of human rights in Nigeria can be traced to the 1960 Independence Constitution and those that followed afterwards.¹¹ The Independence and the Republican Constitutions of 1960 and 1963 had provisions for the protection of human rights.¹² While the 1979 and the 1999 Constitutions further provided a bill of rights,¹³ nevertheless, the 1999 constitution which is currently in force in Nigeria, although protects civil rights, it fails to give legitimacy to socio-economic rights since the rights to education and health are not justiciable.¹⁴

Regarding the protection of human rights generally and specifically, the rights of persons with disabilities, there has been little or no attention paid to the realization of these rights¹⁵ as matters related to disability and persons with disabilities as a group are mostly viewed from the perspective of the moral and medical models of disability instead of the rights-based framework. This is mostly influenced by the traditions and cultures of the Nigerian people. For example, in northern Nigeria, as part of Islamic religion, persons with disabilities are viewed from the moral perspective, with encourages alms-giving to persons with disabilities as part of the religion. Since they are viewed within Islam as dependents and seen as objects of charity.

Interestingly, the population of Nigeria is both multi-cultural and multi-faith with hundreds of ethnic groups.¹⁶ Although the social diversity is a strength, it has however led to regional, religious, tribal, and ethnic conflicts over the years.¹⁷ Indeed, the religious intolerance amongst groups in the country has greatly impacted education with separatists attacking schools¹⁸ and preventing children from attending schools as well as generally providing an unsafe environment for business and economic growth.

¹¹ National Action Plan for the Promotion & Protection of Human Rights in Nigeria: Federal Republic of Nigeria (2006) < <https://www.ohchr.org/Documents/Issues/NHRA/nigeria.pdf> > accessed 1 February, 2022.

¹² Ibid.

¹³ This is explained later in this chapter. Attorney General of Ondo State v Attorney General of the Federation & Ors (2002) 9 NWLR (Pt 772) 2.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ 'Ethnicity in Nigeria', PBS NewsHour (April 5, 2007) < https://www.pbs.org/newshour/arts/africa-jan-june07-ethnic_04-05 > accessed 1 February, 2022.

¹⁷ Ibid.

¹⁸ Human Rights Watch, 'World Report 2022' <https://www.hrw.org/world-report/2022/country-chapters/nigeria#64e4ac> accessed 31 January, 2022.

Moreover, the Nigerian legal system is very complex due to the legal plural nature of the system.¹⁹ Indeed, there are several sources of law including the Nigerian Constitution, legislation, received English law, customary law, Islamic law, and judicial precedent.²⁰ For example, issues related to inheritance is governed by legislation, Islamic and customary laws. In addition, each of the 36 states and the Federal Capital Territory has its own laws. With regards to disability rights in Nigeria, the national assembly makes laws which are required to be domesticated in each of the states of the federation. Indeed, the Discrimination against Persons with Disabilities (Prohibition) Act of 2019 only applies to the Federal Capital Territory.

Although, in the past two decades, the situation of persons with disabilities has improved due to Nigeria's ratification of the CRPD,²¹ efforts at leaving no one behind under the SDGs,²² adoption of positive legislative and policies measures,²³ as well as the work of disability organisations.²⁴ Several challenges continue to impact the realization of human rights generally and the rights of persons with disabilities particularly the lack of a comprehensive human rights framework that is inclusive of a disability paradigm.

While there exist an independent nonjudicial mechanism for the promotion and protection of human rights in the form of the National Human Rights Commission (NHRC),²⁵ however its influence is minimal as the commission serves more in an advisory, training, and advocacy role.²⁶ Although the law establishing the commission provides for recognition and enforcement of NHRC awards and recommendations as court decisions, but it appears that this has not yet happened.

¹⁹ The National Action Plan on the Promotion and Protection of Human Rights: Nigeria, (2021-2025).

²⁰ Ibid.

²¹ Ratification Status for Nigeria, <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=127&Lang=EN> accessed 7th April, 2021.

²² <<https://sustainabledevelopment.un.org/content/documents/16029Nigeria.pdf>> accessed 12 April, 2021.

²³ Anietie Ewang, 'Nigeria Passes Disability Rights Law' Human Rights Watch (January 25, 2019)<<https://www.hrw.org/news/2019/01/25/nigeria-passes-disability-rights-law#:~:text=Nigeria%20ratified%20the%20United%20Nations,to%20put%20it%20into%20practice.>> accessed 7th April 2021.

²⁴ Inclusive and Accessible Basic Education for Children with Disabilities in Nigeria: The Role of Federal and State Ministries of Education <https://www.jonapwd.org/Factsheet%20inclusive%20Education.pdf> accessed 10 April 2021.

²⁵ National Human Rights Commission Act 1995, as amended by the NHRC Act 2010, <<https://www.nigeriarights.gov.ng/>> accessed 1 February, 2022.

²⁶ Ibid.

The Nigerian Constitution guarantees equal rights for all citizens²⁷ and contains specific provisions protecting persons including persons with disabilities from discrimination.²⁸ The principle of equality and nondiscrimination is also contained in a number of laws, including the Discrimination against Persons with Disabilities (Prohibition) Act 2019 (PWDA). These laws, together with other pro-disability policies²⁹ and supportive measures taken by the government, provide a protective framework for the equal enjoyment of rights and opportunities in education, work, and employment for persons with disabilities.

Nigeria is a party to some international human rights treaties³⁰ including the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR). With regards to disability, since the 1980's, Nigeria has committed to the International Year of Disabled Persons, and the United Nations World Programme of Action Concerning Disabled Persons, as well as the Standard Rules on Equalization of Opportunities for Persons with Disabilities. Indeed, Nigeria as part of the African Group contributed to the drafting of the CRPD.³¹ This group during the negotiation of the Convention argued for the adoption of the human right disability model in the realization of the rights of persons with disabilities as well as the need to combat cultural customs and practices that discriminates against persons with disabilities.³²

Nigeria has also ratified major regional human rights instruments³³ and participated in launching the first and second African Decade of Persons with Disabilities,³⁴ as well as the Protocol to the

²⁷ Section 42.

²⁸ Ibid.

²⁹ The National Policy on Inclusive Education (adopted in 2016); and the National Policy on Special Need Education (adopted in 2015).

³⁰ The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families; Convention on the Rights of Persons with Disabilities; Convention on the Rights of the Child; Optional Protocol to the Covenant on Economic Social and Cultural Rights; The Convention on the Political Rights of Women; Convention on Elimination of All Forms of Discrimination Against Women (CEDAW); Optional protocol to the Convention on the elimination of all forms of discrimination against Women; The Convention on the Elimination of All Forms of Racial Discrimination; the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment (Convention Against Torture); Optional Protocol to the Convention against Torture, Cruel Inhuman and Degrading treatment or punishment; The International Covenant on Civil and Political Rights (and its two optional Protocols)

³¹ Equal Rights for Persons with Disabilities International, Inc <https://sustainabledevelopment.un.org/index.php?page=view&type=20036&menu=1561&nr=55262> accessed 10 April 2021.

³² Daily summary of discussions related to Article 4: GENERAL OBLIGATIONS (August 24, 2004) <https://www.un.org/esa/socdev/enable/rights/ahc4sumart04.htm> accessed 31 January, 2022.

African Charter on Human and Peoples' Rights (entered into force in 1986).

³³ African Charter on Human and Peoples' Rights (entered into force in 1986).

³⁴ The Continental Plan of Action of the African Decade on the Rights of Persons with Disability, 1999-2009 which has now been extended to take effect from 2010 to 2019.

African Charter on Human and Peoples Rights on the Rights of Persons with Disabilities in Africa. Nigeria also became a party to the ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention.³⁵ Moreover, in 2002, Nigeria, ratified the ILO Discrimination (Employment and Occupation) Convention (No.111), and other core conventions of the ILO.³⁶ Furthermore, Nigeria has agreed to the commitments for persons with disabilities under the SDGs and has adopted the Economic Recovery and Growth Plan (ERGP)³⁷ to address the SDGs three dimensions of economic, social, and environmental sustainability.

Although Nigeria has demonstrated commitment by accepting a range of relevant treaties, though as chapter 3 indicated, this does not necessarily mean that the rights and freedoms of persons with disabilities are fully implemented or given effect to in the country. While Nigeria appears to take steps to comply with the international obligations and with national legal provisions, but it does not really comply fully. Accordingly, the next part of the chapter examines the measures adopted by the Nigerian government to protect and promote the human rights of persons with disabilities in education and employment. It is broadly divided into two sections. Section 5.2.1 examines the measures adopted by Nigeria to protect and promote the education right of persons with disabilities. The measures taken by the Nigerian government to protect and promote the employment right of persons with disabilities are considered in section 5.2.2.

5.2.1 Domestic Legislation, Policies, and Practices in Nigeria: Education for Persons with Disabilities

At both the federal and state levels, the Nigerian government has taken steps to promote and protect the right to education of persons with disabilities in laws, policies, and practices. Although Nigeria has adopted laws and policies relevant to education for persons with disabilities, in reality the Nigerian legal framework on education is not fully in compliance with human rights' requirements and the human right disability model. The right to education of persons with disabilities in Nigeria is protected by existing domestic laws and policies. These laws and policies are examined hereunder.

³⁵ Ratifications for Nigeria, <
https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103259>
accessed 10 April 2021.

³⁶ The Right to Organise and Collective Bargaining Convention, Convention Concerning Forced or Compulsory Labour, and the Convention Concerning the Abolition of Forced Labour.

³⁷ The Economic Recovery and Growth Plan (adopted in 2017-2020).

5.2.1.1 The Constitution

The right to education is guaranteed by a number of laws, including Nigeria's Constitution.³⁸ The Constitution also contains a non-discrimination provision, prohibiting distinctions based on “place of origin, sex, religion, status, ethnic or linguistic association or ties”³⁹, and mandates the government to provide equal and adequate educational opportunities at all levels.⁴⁰ Recognising the need to eradicate illiteracy amongst its citizens, the Constitution further requires the Nigerian government where practicable ‘to provide free, compulsory and universal primary education; free secondary education; free university education; and free adult literacy programme’.⁴¹

However, these provisions of Chapter 2 of the Constitution are not enforceable by virtue of section 6(6)(b) of the Constitution, since the right to education is an economic, social, and cultural right that falls within the Fundamental Objectives and Directive Principles of State Policy. The Supreme Court in *Attorney General of Ondo State v Attorney General of the Federation & Ors*⁴² established that although the provisions of Chapter 2 of the Constitution are not enforceable by virtue of section 6(6)(b) of the Constitution, however once a legislation is enacted to give effect to any of the provisions of Chapter 2, the right contained in such provision become enforceable under section 6(6)(b) of the Constitution.

This principle was applied in *Legal Defence and Assistance Project (LEDAP) Gte & Ltd v Federal Ministry of Education and Another*,⁴³ where the court reaffirmed the legal principle with regards to section 18(3)(a) of the Constitution. The court held that with the enactment of the Compulsory, Free Universal Basic Education Act 2004, the National Assembly has not only given legal effect to right to free universal primary education, but also the right to free junior secondary education for every Nigerian child contained in section 18 (3)(a) of the Constitution. This means that every child in Nigeria including those with disabilities are not only entitled to free primary education but also, free junior secondary education. Moreover, these rights are now enforceable in Nigerian courts.

³⁸ The Nigerian Constitution (enacted in 1999 and amended on several occasions).

³⁹ Section 15(2).

⁴⁰ Section 18.

⁴¹ Section 18(3)(a)-(d) of the Nigerian Constitution.

⁴² *Attorney General of Ondo State v Attorney General of the Federation & Ors* (2002) 9 NWLR (Pt 772) 2.

⁴³ Suit No: FHC/ABJ/CS/978/15, (March 1st, 2017).

5.2.1.2 Mainstream Laws

The right to education of persons with disabilities is covered by a number of mainstream laws. For example, section 17(1) of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 2004,⁴⁴ which domesticates the African Charter on Human and Peoples' Rights (ACHPR) in Nigeria guarantees a general right to education.⁴⁵ This means that persons with disabilities are guaranteed the legal right to education. This principle was affirmed by the Economic Community of West African States (ECOWAS) Community Court of Justice in *SERAP v. Federal Republic of Nigeria*.⁴⁶ The court held noted that the right to education recognized under article 17 of the ACHPR is independent of that captured under section 18(3)(a) of the Constitution.

As noted above, the Compulsory, Free Universal Basic Education Act 2004 also guarantees the right to education of everyone in line with the Constitution. It requires the Nigerian government to guarantee compulsory free basic education to all children. For example, section 2(1) provides that 'Every Government in Nigeria shall provide free, compulsory and universal basic education for every child of primary and junior secondary, school age'. Likewise, section 3(1) provides that 'services provided in public primary and junior secondary schools shall be free of charge'. Furthermore, education opportunities from early childhood up to adult literacy are guaranteed to all, including special groups, such as "nomads and migrants, girl-child and women, *almajiri*,⁴⁷ street children and disabled".⁴⁸ As discussed in section 5.2.1.1, in the case of *Legal Defence and Assistance Project (LEDAP) Gte & Ltd v Federal Ministry of Education and Another*,⁴⁹ every Nigerian child including the ones with disabilities is guaranteed the legal right to compulsory free basic education up to junior secondary level.

Similarly, the Child Rights Act 2003 obliges the state to provide compulsory free universal basic education to every child including children with disabilities. Section 15(1) of the Act stipulates that 'every child has the right to free, compulsory and universal basic education ...' The Act also promotes the right to dignity of the child by proscribing the application of abuse and violence. This provision is very important for persons with disabilities since it recognizes that every child

⁴⁴ Chapter A9, Laws of the Federation 2004.

⁴⁵ Section 17(1).

⁴⁶ Suit No. ECW/CCJ/APP/0808, 27 of October 2009.

⁴⁷ *Almajiri* are children abandoned on the streets by parents to cater to their needs and are common in Northern Nigeria.

⁴⁸ Section 15(1).

⁴⁹ Suit No: FHC/ABJ/CS/978/15, 1 of March 2017.

including those with disability are right bearer, whose self-dignity should be protected because they are human beings. Regarding education, they should not be humiliated or abused through the application of corporal punishment as means of enforcing discipline. More importantly, section 11 (a) and (b) provides that ‘no child shall be subjected to physical, mental or emotional injury, abuse, neglect or maltreatment... inhuman or degrading treatment or punishment’. Recognising the peculiar needs of children with disabilities and their right to special protection, the Act further provides that:

‘Every child who is in need of special protection measures has the right to such measure of protection as is appropriate to his physical, social, economic, emotional and mental needs and under conditions which ensure his dignity, promote his self-reliance and active participation in the affairs of the community’.⁵⁰

This provision requires the Nigerian government to ensure that children with disabilities have access to the needed assistance and support to participate in the general education system. For example, appropriate modes of communication such as braille, sign language interpreters, and information technologies should be made available in schools for the use of children with disabilities.

5.2.1.3 Disability-specific Legislation: The Discrimination against Persons with Disabilities (Prohibition) Act 2019

In 2019, Nigeria adopted a Discrimination against Persons with Disabilities (Prohibition) Act (PWDA), domesticating the international commitments under the CRPD. The motivation behind the enactment of the Act was to promote inclusion and improve access for persons with disabilities, as there were constant media and public debates by disability rights groups and activists on the need to adopt a disability specific legislation.⁵¹

The Act is of significance to the protection of the rights of people with disabilities. With 57 sections in total, the Act establishes not only general principles of equality and non-discrimination, but also contains specific provisions on education. According to the Act, ‘person with disabilities means a person with long term physical, mental, intellectual or sensory impairment which in interaction

⁵⁰ Section 16(1).

⁵¹Anietie Ewang, ‘Nigeria Passes Disability Rights Law’ Human Rights Watch, (January 25, 2019) <<https://www.hrw.org/news/2019/01/25/nigeria-passes-disability-rights-law>> accessed 20 January, 2022.

with various barriers may hinder their full and effective participation in society on equal basis with others'.⁵²

The Act also recognises that the term 'person with disabilities means a person who has...[a] condition which is expected to continue permanently or for a considerable length of time which can reasonably be expected to limit the person's functional ability substantially but not limited to seeing, hearing, thinking...'⁵³ The Act strangely contains two definitions of the phrase 'persons with disabilities. These definitions of persons with disabilities in the Act mirrors both the medical and social models of disability. Although it adopts the social approach to an extent, it is still primarily based on a medical approach to disability with attention on disability as a personal challenge rather than a social issue, since the presence of disability is seen as reason for the limitation in societal participation.

Most notably, Part V provides a wide range of protection for persons with disabilities in the field of education. Sections 17 to 20 establish general provisions for alternative means of communication, inclusive education, and education on the basis of non-discrimination. For example, the Act provides that 'a person with disability shall have an unfettered right to education without discrimination or segregation in any form'⁵⁴ and their entitlement to free education to secondary school level.⁵⁵ The Act also stipulates that 'all public schools shall be run to be inclusive of and accessible'⁵⁶ and are to have trained personnel and adequate facilities.⁵⁷ The Act further acknowledges the need for learners to be taught in the most appropriate modes of communication and proclaims that 'braille, sign language, and other skills for communicating with persons with disabilities shall form part of the curricula...'⁵⁸ These provisions are important for persons with disabilities as they guarantee their right to education on the basis of equality and non-discriminations. It also guarantees education to be provided in an inclusive education system with trained personnel, adequate facilities, and alternative modes of communication.

⁵² Section 57.

⁵³ Ibid.

⁵⁴ Section 17(1).

⁵⁵ Section 17(2).

⁵⁶ Section 18(1).

⁵⁷ Ibid.

⁵⁸ Section 18(2).

The measures adopted by the Nigerian government in particular the 2019 Act does not reasonably accommodate the CRPD. Although the Act promotes some elements of the treaty, it however does not fully reflect the spirit of the Convention. As the measures adopted under the Act are not reflective of the human rights model of disability.

5.2.1.4 Policies and Practices

This section of the chapter examines the policies and practices adopted by the Nigerian government to promote and protect the education of persons with disabilities including inclusive education, education access, and education quality.

5.2.1.4.1 Inclusive Education

In order to promote inclusive education for all children, including children with disabilities, the PWDA and the National Policy on Inclusive Education⁵⁹ oblige the government to promote education for persons with disabilities through an inclusive education system. In particular, the Act promote the inclusiveness of education. Section 18(1) of the Act requires the government to ensure that ‘all public schools whether primary, secondary or tertiary shall be run to be inclusive of and accessible to persons with disabilities.’ The Act also clarifies that schools whether private or public must have trained personnel and special facilities to cater to the educational development and effective education of persons with disabilities.⁶⁰ The Act further requires educational institutions to provide alternative modes of communication in order to promote inclusion. For example, Section 18(2) requires schools to provide braille, sign language, and other skills for communicating with persons with disabilities to form part of the curricula of primary, secondary, and tertiary institutions. In order to promote inclusive education at all levels and the inclusive education model amongst teachers and other education personnel, the Act establishes that government should subsidise the education of special education personnel.

In practice, the Nigerian government ensures inclusive education through the recruitment and training of special needs teachers at colleges of education; implementation of the Universal Basic Education policy for all children without discrimination with focus on integration of children with disabilities; the promotion of equal access for girls, including girls with disabilities in primary and

⁵⁹ The National Policy on Inclusive Education (adopted in 2016).

⁶⁰ Section 18(1)(a) and (b).

secondary education; increased funding for special needs education; and the review of building codes to require schools to provide disability friendly infrastructure.

5.2.1.4.2 Access to Education

Several domestic legislations and policies,⁶¹ in particular the PWDA, Compulsory, Free Universal Basic Education Act 2004, and the National Policy on Inclusive Education introduce a number of supportive measures in relation to improving access to quality education for all including persons with disabilities, including the provision of free compulsory primary and secondary education.⁶²

Regarding the implementation and enforcement of free compulsory primary and secondary education at all levels, the Universal Basic Education Act 2004, the Child Rights Act 2003, and the decision of the Federal High Court⁶³, free compulsory basic education is guaranteed in public schools to every child including children with disabilities from age 3 to 14. In particular, the PWDA expressly recognises the educational right of persons with disabilities and their right to free education to secondary school level.

About ICTs, and learning materials, the PWDA requires the development of communication skills for persons with disabilities as part of the primary, secondary and tertiary curricula and mandates public and private schools, to ensure the use of Braille and sign language.⁶⁴ Target 8 of the 2017 National Policy on Inclusive Education states that adequate learning materials and assistive devices, including ICT and assistive technologies need to be designed to meet all learners' need.

In 2020, to tackle the challenges of out of school children as well as the issues faced by learners, resulting from dilapidated school infrastructure particularly those damaged during the insurgency in the North-east of the country, the Federal Ministry of Education and its partners have adopted

⁶¹ Nomadic Education (NCNE) Act 1989; National Commission for Adult Education Mass Literacy and Non-Formal Education (NMEC) Act 1990; National Open University of Nigeria (NOUN) Act 1983; Universal Basic Education Act 2004; National Examinations Council Act 2002; National Universities Commission Act 1974; Joint Admission and Matriculation Board Act 1978; National Board for Technical Education Act 1977; National Open University Act 1983; Discrimination Against Persons with Disabilities (Prohibition) Act 2019; West Africa Examination Council Act 2006; National Commission for Nomadic Education (NCNE) Act 1989.

⁶² <https://education-profiles.org/sub-saharan-africa/nigeria/~inclusion> accessed 20 April, 2021.

⁶³ Legal Defence and Assistance Project v Federal Ministry of Education and Another, Suit No: FHC/ABJ/CS/978/15, (March 1st, 2017).

⁶⁴ Section 18.

strategies to ensure improved security and safety of schools, as well as to encourage enrolment and retention.⁶⁵

5.2.1.4.3 Quality Education

Several domestic legislations and policies,⁶⁶ in particular the Universal Basic Education Act 2004 and the National Policy on Education introduce a number of supportive measures in relation to improving the quality of education at all levels oblige the government to promote education for persons with disabilities through an inclusive education system. In particular, the Act promotes the inclusiveness of education. For example, section 18(1) requires the government to ensure that ‘all public schools whether primary, secondary or tertiary shall be run to be inclusive of and accessible to persons with disabilities.’

In practice, to enhance the quality of education provided at various levels of education, the Ministry of Education and the Ministry of Finance, Budget and National Planning, in collaboration with its partners including the National Universities Commission, the National Commission for Colleges of Education, the National Education Technology Centre, the National Education Research and Development Council, UNICEF, and Civil Society Organisations have developed various policies including the National Policy on Education; a Nine-Year Basic Education Curriculum for (2015-2024); and the Education for Change: A Ministerial Strategic Plan (2018-2022). They have also adopted four main means of improving the quality of education in Nigeria: (1) Enhance availability of adequate teaching and learning materials for all; (2) Revise curricula periodically and integrate human rights education; (3) Enhance capacity of educational institutions at all levels to develop, budget and implement policies and plans for delivering quality and equitable education; and (4) Establish and fund Secondary Education Commission to invigorate secondary education in Nigeria.

⁶⁵ 2020 Global Education Monitoring Report < <https://en.unesco.org/gem-report/> > accessed 11 April, 2021.

⁶⁶ Nigerian Educational Research Development Council (NERDC) Act 1988; Universal Basic Education Act (2004); National Universities Commission Act 1974; National Commission for Colleges of Education (Amendment) Act 1993; National Board for Technical Education (Amendment) Act 1993; West African Examination Council Act 1973; Joint Admission and Matriculation Board (Amendment) Act 1989.

5.2.1.4.4 Retention of Children in Schools

In order to improve the retention of children in schools, the Nigerian government have adopted legislations and supportive policies such as Child Rights Act 2003, which have been domesticated at the subnational levels with laws prohibiting the withdrawal of girls from schools, street trading during school hours, and early marriage.

In practice, to enhance improved retention of children in schools especially the girl child, the Federal Ministry of Education and the Ministry of Humanitarian Affairs, Disaster Management and Social Development with its partner including the National Orientation Agency; the Ministry of Women Affairs; the Scholarship Boards; the Media; Civil Society Organisations; and Parents Teachers Association have adopted several strategies to improve the retention of children including children with disabilities in schools. These strategies include expanding access to the Home-Grown School Feeding Programme; adopting and implementing girls' friendly initiatives in education; ensuring implementation of laws promoting retention of children in schools; and creating awareness on importance of education for all children; National Book Policy (Proposed); unity schools for girls only; and scholarship schemes and bursary awards.

5.2.2 Domestic Legislation, Policies, and Practices in Nigeria: Employment of Persons with Disabilities

At both the federal and state level, the Nigerian government has taken steps to promote and protect the right to employment of persons with disabilities. The right to work is guaranteed by a number of laws, including Nigeria's 1999 Constitution. Some national laws, including the PWDA, and the Employees' Compensation Act 2010 also contain specific provisions concerning people with disabilities and the protection of their rights. However, the Nigerian legal framework on employment is not fully in compliance with human rights' requirements, the human right disability model, and the SDGs.

5.2.2.1 Constitution

As stated in section 5.2.1.1, the Constitution⁶⁷ guarantees equality and non-discrimination for all its citizens.⁶⁸ This provision is important in relation to work and employment of persons with disabilities since it recognizes that all citizens including those with disabilities are protected against discrimination in all sphere of life including the field of work and employment. The Constitution also guarantees the right to freedom of association in relation to trade union rights. Section 40 of the Constitution establishes that ‘every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any..., trade union or any other association for the protection of his interests’. This provision is very important since it extends the rights at work to persons with disabilities including the right to freely associate with regards to trade union activities. Moreover, section 34 stipulates that ‘no person shall be required to perform forced or compulsory labour’. The Constitution further obligates the state to take measures and actions to ensure to its citizens, the enjoyment of their rights, opportunities in work, and livelihood. For instance, in section 17(3), it provides that,

The State shall direct its policy towards ensuring that all citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment; conditions of work are just and humane, and that there are adequate facilities for leisure and for social, religious and cultural life; the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused;... there is equal pay for equal work without discrimination on account of sex, or on any other ground whatsoever; children, young persons and the age are protected against any exploitation whatsoever, and against moral and material neglect...’⁶⁹

Unfortunately, the latter provision is not enforceable by virtue of section 6(6)(c) of the Constitution. The provision falls within Chapter 2, since it is an economic right. As will be

⁶⁷ The Nigerian Constitution (enacted in 1999 and amended on several occasions).

⁶⁸ Section 42 stipulates that “No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth”. This provision of the Constitution is of limited value as disability may also arise post-birth.

⁶⁹ Section 17(3) (a)-(f).

discussed later in this chapter, there is need for the Nigerian government to amend and ensure the enforceability of economic, social, and cultural rights under Chapter 2 of the Constitution.

5.2.2.2 Mainstream Laws

The employment of persons with disabilities is covered by a number of mainstream laws. For example, although the main labour legislation in Nigeria (the Labour Act 1990) does not contain any provision that generally guarantees the right to work, however section 9(5) of the Labour Act establishes the right to freedom of association relating to union rights. It stipulates that all employees shall not be discriminated against by employers on grounds of union membership. This means that employees with disabilities are also entitled to the right to freedom of association regarding union membership on the basis of non-discrimination. Also, section 54 (dealing with forced or compulsory labour), provides that ‘any person who requires any other person, or permits any other person to be required, to perform forced labour ...shall be guilty of an offence and on conviction shall be liable to a fine not exceeding N1,000 or to imprisonment for a period not exceeding two years, or to both’. This provision of the Act prohibits forced labour by persons with disabilities including alms-begging by children with disabilities.

The right of persons with disabilities to union rights is also guaranteed under the Trade Unions Act, which guarantees the right to freedom of association regarding trade union rights and it stipulates that every worker or employee in Nigeria has the right to, in conjunction with others form a trade union or join an existing one.⁷⁰ This provision of the Act is important as it reinforces the right of people with disabilities to freely join any trade union. Similarly, the Child Rights Act 2003 requires states to adopt measures to prohibit exploitative child labour within the formal and informal settings. For example, section 74 provides that no child should be subjected to any exploitative labour. This provision reiterates the position in the Labour Act 1990 that prohibits exploitative labour including alms-begging for survival.

Likewise, the Employees Compensation Act 2010 as amended contain special provision that guarantee social security in the form of social insurance benefits for work related injuries or occupational diseases. Sections 7-10 provide for compensation for injuries sustained in the work place or occupational diseases picked up in the course of employment whether at the usual place

⁷⁰ Section 2(1).

of employment or outside it. Similarly, the Pension Reform Act 2014 makes provisions for a uniform contributory pension scheme for organisations in both the public and private sectors in Nigeria.⁷¹ Furthermore, the Industrial Training Fund Act 2004 (as amended) establishes the Industrial Training Fund, which promotes the acquisition of relevant skills in industry or commerce with a view to generating a pool of indigenous manpower to satisfy the needs of the economy.⁷² This Act is important for the promotion of employment opportunities for persons with disabilities through the development of skills for self-employment.

5.2.2.3 Disability-specific Legislation: The Discrimination against Persons with Disabilities (Prohibition) Act 2019

The PWDA establishes not only general principles of equality and non-discrimination, but also contains specific provisions on employment. Most notably, Part VI provides a wide range of protection for persons with disabilities in the field of employment. For example, the Act provides that if the rights and interests of persons with disabilities are violated, the person, company, or their agents that committed the offence shall be liable on conviction to damages paid to the affected person with disability.⁷³ The Act also gives recognition to the work right of persons with disabilities on the basis of equality and non-discrimination. According to section 28(1), ‘a person with disability has the right to work on an equal basis with others and this includes the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open’. This is an excellent provision that specifically guarantees the work right of Nigerians with disabilities as well as the need for employment inclusion. Indeed, it promotes the paradigm shift from segregated employment towards employment in an open labour market and work environment for persons with disabilities.

Additionally, this provision is an improvement on the Nigerians with Disability Decree 1993 (the Decree)⁷⁴’s provision of employment.⁷⁵ Unlike the employment provision in the Decree that mainly focused on vocational rehabilitation in line with the Standard Rules on the Equalisation of Opportunities for persons with disabilities. This employment provision under PWDA goes beyond

⁷¹ Section 1.

⁷² Section 6.

⁷³ Section 28.

⁷⁴ The Nigerians with Disability Decree 1993 (Promulgated into Law by the Military Government in 1993).

⁷⁵ Section 6.

the Decree since it provides for the right to work and employment in an open labour market and work environment which is consistent with the CRPD. Nevertheless, the provision still falls short of the CRPD standard as PWDA fails to mention that persons with disabilities have the right to work and employment in a labour market and work environment that is inclusive and accessible. There will be need to amend this provision to include a work environment and labour market that is accessible and inclusive in line with the CRPD.

Moreover, the Act provides for quota system as a means of employment promotion of persons with disabilities in the public sector. Section 29 provides that ‘all employers of labour in public organisations shall as much as possible have persons with disabilities constituting at least 5% of their employment’. This provision is important as it helps to ensure increased employment opportunities for persons with disabilities in the public sector. However, unlike this provision of PWDA, the Decree’s employment better captures the language and intents of the CRPD regarding work and employment for persons with disabilities, since the Decree in addition to 10% employment quota reservation to encourage increased employment,⁷⁶ requires employers to reserve at least 10% of funds allocations to training and personal development for persons with disabilities.⁷⁷

Furthermore, it promotes the employment of persons with disabilities amongst private employers. According to the Decree, section 6(5) states that government shall encourage employment in the private sector through the provision to employers of persons with disabilities, 15% tax deductions of all payable tax. Other provisions relevant to employment provided by the Act include the provision of the accessibility of road transportation⁷⁸ and physical structures open to the public such as public premises.⁷⁹ It is recommended that the National Assembly amend the PWDA to reflect some of the wonderful provisions of the Decree, particularly on employment.

5.2.2.4 Policies and Practices

This section of the chapter considers the policies and practices adopted by the Nigerian government in the field of work and employment to promote decent work for all including

⁷⁶ Section 6(2).

⁷⁷ Section 6(3).

⁷⁸ Sections 9-12.

⁷⁹ Sections 3-8.

individuals with disabilities such as policies to promote gender equality in employment, employment protection against child and forced labour, and to increase employment opportunities.

5.2.2.4.1 Access to Public Road, Buildings, and Transport Infrastructure

In order to ensure access to public buildings and other facilities open to the public for persons with disabilities, the PWDA obliges the Nigerian government to guarantee access to public buildings and facilities open to the public including transportation and road facilities. They have a five-year period to ensure that buildings in Nigeria are accessible to persons with disabilities.

5.2.2.4.2 Protection of the Right to Freedom of Association Regarding Union Rights

In order to ensure protection of the right to freedom of association regarding trade union rights, and to ensure non-interference in the conduct of labour union affairs, the Constitution and the Trade Union (Amendment) Act 2001, oblige the government to guarantee union rights and protect workers' right to join trade unions and from discrimination by employers. For example, section 40 of the Constitution establishes that 'every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any...trade union or any other association for the protection of his interests'.

In practice, to ensure the protection of the right to peaceful protests by labour unions, as well as ensure non-interference in Labour Union elections, the government through the Ministry of Labour and other partners including the National Human Rights Commission, Trade Unions, and Civil Society Organisations are the process of introducing the Trade Unions Act (Amendment) Bill, 2019 before the National Assembly.⁸⁰

5.2.2.4.3 Equality and Non-Discrimination

Equality is the cornerstone of all human rights doctrines, and is inherent in the right to work. The strategy to ensure equality and non-discrimination adopted by the Nigerian Constitution and supported by the PWDA is two-fold. First, discrimination on the grounds of sex, religion, and disability is prohibited in principle. In addition, special measures to address social stigma and discrimination in favor of vulnerable groups, including persons with disabilities, are also guaranteed.

⁸⁰ The National Action Plan on the Promotion and Protection of Human Rights in Nigeria (2021-2025).

Employment discrimination is prohibited by the Act. With regard to disability discrimination, section 1 of the Law provides that ‘a person with disability shall not be discriminated against on the ground of his disability by any person or institution in any manner or circumstance’. Provision of accommodation in employment is provided in the Act. Section 27 obliges that ‘if accommodation is being provided by ...employers for their employees...priority must be given to persons with disability’. This provision requires reasonable accommodation and necessary adaptation in workplaces and related equipment and facilities for work and life of employees with disabilities.

5.2.2.4.4 Protection against Economic Exploitation and Child Labour

In order to ensure protection of children and other vulnerable groups from economic exploitation and worst forms of child labour, the Child Rights Act 2003, and the PWDA oblige the government to eradicate child labour and the exploitation of children with disabilities for economic gains. The Act requires the government to prohibit exploitative employment of persons with disabilities.⁸¹ The law also clarifies the guiding principles with employment in an industrial job. For example, section 28 recognises the need to protect children from exploitative work aside the informal setting.

In order to promote the right to dignity of the human person in the field of employment, the use of a child for the purpose of begging for alms, as slaves, and for hawking are also prohibited under these Acts. For instance, the Child Rights Act 2003 requires the state to ensure that children can access education and that ‘A child shall not be used for the purpose of begging for alms, guiding beggars, ... as a slave or for practices similar to slavery ...or hawking of goods or services ... for any purpose that deprives the child of the opportunity to attend and remain in school...’⁸²

In 2013, to ensure the gradual reduction and elimination child labour and the exploitation of vulnerable persons for economic gains, the Government developed the Initiative on Digital Skill Acquisition, Employability, Entrepreneurship, and Leadership (DEEL). This strategy aims at promoting the acquisition of entrepreneurial and digital skills amongst youths as a means of poverty reduction and promotion of employment opportunities.

⁸¹ Section 28 of the Child Rights Act 2003.

⁸² Section 74.

In practice, in 2015, the Nigerian government through the National Agency for the Prohibition of Trafficking in Persons established a commission with the aim of protecting citizens including children from trafficking, slavery, economic exploitation, and forced child labour. Additionally, Nigeria is actively protecting children with disabilities from economic exploitation and forced child labour through several agencies such as the Ministry of Education as well as Ministry of Labour and Productivity and its related partners by: (1) ensuring full implementation of the Child Rights Act and the PWDA; and (2) improving vocational, technical, and entrepreneurial education at all levels.

5.2.2.4.5 Promotion of Dignity and Protection Against Forced Labour

In order to ensure conducive working conditions and reduce the incidence of forced or compulsory labour particularly in the private sector, the government through the Constitution, the PWDA, and the Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015 (Anti-trafficking Act) address the problem of forced labour and promotes respect for the dignity of the human person in two-fold. First the Nigerian framework proscribe forced labour in law. Second the Nigerian framework prohibit slavery and the trafficking in humans. For example, section 34 (1) of the Constitution establishes that ‘Every individual is entitled to respect for the dignity of his person, and accordingly (a) no person shall be subject to torture or to inhuman or degrading treatment; (b) no person shall he held in slavery or servitude; and (c) no person shall be required to perform forced or compulsory labour. Besides, the Act requires the government to eradicate forced or compulsory labour in the labour market.⁸³

In practice, to promote improved respect for human dignity, the Nigerian government ensured the training and retraining of law enforcement officials to respect the rights and dignity of citizens as well as ensure conducive working conditions and reduce hazardous work, especially in the private sector.

5.2.2.4.6 Quota Policy

An outstanding feature of the PWDA is that a portion of the statute is dedicated to articulating various positive measures to accommodate the special needs of people with disabilities found in all aspects of their life, including employment. In the field of employment, a quota scheme was

⁸³ Section 28 of the Anti- trafficking Act 2015.

introduced as a means to promote employment equality and opportunities for persons with disabilities. In line with this quota scheme policy, all employers, both public and private, are obliged to reserve a specific proportion of job opportunities for persons with disabilities. Section 29 of the Act states that ‘all employers of labour in public organisations shall, as much as possible, have persons with disabilities constituting at least 5 percent of their employment’.

5.2.2.4.7 Employment Promotion

In order to promote equal opportunities for gainful employment for persons with disabilities, the PWDA and the Federal Character Commission Act obliges states to provide preferential treatment in the form of quota for qualified persons with disabilities in the public sector. At the same time, there is a policy by the government of providing equal representation of the federating states in the public service.

In 2014, in order to ensure aggressive implementation of sustainable national, state and local government poverty reduction programmes a small stipend is paid to the most vulnerable in the society through the National Social Investment Programme. To ensure the gradual reduction and elimination of child labour as well as the reduction in the exploitation of vulnerable persons for economic gains, the Nigerian government has adopted several measures including the Government Enterprise and Empowerment Program (GEEP); the N-Power Scheme; North East Development Commission; National Home-Grown School Feeding Program (NHGSFP); National Social Safety Net Coordinating Office; National Social Protection Policy 2013; and the National Youth Investment Fund.

In 2020, in order to improve employment for women and vulnerable groups such as people with disabilities, the government through the Ministry of Labour and other partners adopted the Small and Medium Scale Enterprises (MSME) Support Scheme, which aims to promote skill acquisition and development of persons with disabilities. To further promote employment opportunities through entrepreneurship, the Banks and Other Financial Institutions Act, the Small and Medium Enterprises Development Agency of Nigeria Act, the Central Bank of Nigeria Act, and the National Directorate of Employment Act promote access to credit for individuals and small and medium scale businesses. To promote improved access to loan facilities for startups and existing business, some strategies were adopted such as the Anchors’ Borrowers Programme; Youth Investment Programme; Agri-Business /Small and Medium Enterprise Investment Scheme;

Artisanal and Small-Scale Miners Fund; Graduate Entrepreneurship Fund; Bank of Industry; Bank of Agriculture; Youth Ignite Initiative; MSME Scheme; National Youth Investment Fund; and the Nigeria Incentive-Based Risk Sharing System for Agricultural Lending (NIRSAL).⁸⁴

In practice, to promote increased employment opportunities, the Nigerian government through the Central Bank of Nigeria and its cooperating partners including the National Directorate for Employment; Bank of Agriculture; Small & Medium Enterprises Development Agency; Nigeria Incentive-Based Risk Sharing System for Agricultural Lending; and the Bank of Industry has adopted four main means of increasing access to credit for individuals and small & medium scale businesses: (1) Reduce bottlenecks that inhibit access to credit/loans for individuals, small and medium scale businesses; (2) Increase awareness of credit schemes and physical points of contacts for accessing credit to community levels; (3) Reduce interest rates on loans for individuals, small and medium scale enterprise; and (4) Strengthen existing entrepreneurship programmes to improve access to credit.

The next section of the chapter considers whether Nigeria is meeting its obligations for persons with disabilities in education as well as examine if the measures adopted so far are consistent with the CRPD or rights-based.

5.3 Is Nigeria Meeting its Obligations for Persons with Disabilities in Education?

In order to achieve the full fulfilment of inclusive quality education for persons with disabilities in line with human rights and the SDGs, Nigeria has a duty to ensure that education is available, accessible, acceptable and adaptable. But is the country meeting its international obligations for persons with disabilities in education? Are Nigeria's domestic laws, policies, and practices relevant to persons with disabilities in education rights-based or consistent with the CRPD? Is Nigeria making progress towards leaving no one behind and achieving inclusive quality education for persons with disabilities consistent with the SDGs? To address these questions, this part will be further subdivided into four parts: accessibility, adaptability, availability, and acceptability.

⁸⁴ National Action Plan on Human Rights and Business in Nigeria (2021-2025); The National Action Plan on the Promotion and Protection of Human Rights in Nigeria (2021-2025).

5.3.1 Is Nigeria Meeting its Accessibility Obligation in Education?

As noted in chapter 4, accessibility in education obligates states to enable access to schools and programmes in a non-discriminatory manner, as well as ensure legal, economic, and physical access to education. It consists of the obligations to protect against discrimination in access to education, as well as to provide free compulsory access to primary and secondary education. This segment will outline the key challenges in terms of Nigeria meeting its obligation to ensure accessible education.

5.3.1.1 Legal Right to Free Compulsory Basic Education

While Nigeria has an immediate (general) obligation to ensure that free compulsory basic education is made available, the Constitution does not guarantee a clearly enforceable right to free compulsory basic education.⁸⁵ Although under section 18(3)(a), the Nigerian government guarantees to eradicate illiteracy through the provision of free compulsory basic education at state schools, this provision as discussed earlier in section 5.2.1 is not enforceable in court by virtue of section 6(6)(b) of the Constitution.⁸⁶ This is because the provision falls within the group of economic, social and cultural rights under Chapter 2 of the Constitution. These rights are not justiciable except a legislation is enacted by the National Assembly to give effect to the provisions under Chapter 2 of the Constitution.⁸⁷ There is need for a constitutional amendment to create a substantively enforceable legal right to free compulsory primary and secondary education to children, including those with disabilities in line with Nigeria's general obligation in education. Also, the amendment must follow the human rights model of disability, in order to ensure compliance with international law.

5.3.1.2 Right to be Free from Discrimination in Education

In order to promote more consistency with its (immediate) general obligations in education, amendments are also needed to strengthen legal protections against discrimination under the

⁸⁵ CRC Committee, Concluding observations: Nigeria, UN Doc. CRC/C/NGA/CO/3-4(21 June 2010), para. 71(e); Yinka Olomajobi and Goodnews Osah, 'A Human Rights Based Approach to Education in Nigeria' (2019) 154(4) EJSR 458.

⁸⁶ S. M Tagi, 'Towards an Enhancement of the Legal Regime for Access to Primary Education in Nigeria' (2018) 9 (2) NAUJILJ 142.

⁸⁷ *Olagbegi v. A.G (Ondo State)* (1983) 2 FNR 6; *Archbishop Okogie v. Attorney General of Lagos State* (1981) 2 NCLR 625 HC.

Nigerian Constitution and the PWDA. While section 42 of the Constitution generally prohibits discrimination on a number of grounds, it not only fails to mention disability as one of the prohibited grounds⁸⁸ but also, fails to define the term discrimination. Indeed, the term ‘reasonable accommodation’ is equally not recognized under the Constitution. This interpretation was established in *Simeon Ilemona Akubo v Diamond Bank*.⁸⁹ The court in this case relied on section 42 of the Constitution and held that Diamond Bank was not under any obligation to provide accommodation to the claimant beyond that given to him as the term is not provided for under the Nigerian Constitution. By contrast, in *Simeon Ilemona Akubo v First City Monument Bank Plc*,⁹⁰ the court relied on section 18 of the ACHPR rather than section 42 of the Constitution in finding that the claimant had been discriminated against on ground of disability, when he was denied access to the banking hall. These cases illustrate that the Nigerian Constitution does not specifically prohibit disability-based discrimination. Rather persons with disabilities could approach Nigerian courts using the ACHPR in cases of disability-based discrimination. The Nigerian Constitution in its current form still mostly mirrors the moral/medical models rather than the human rights disability approach. As the Constitution does not define discrimination, provide for the concept of reasonable accommodation, and extends the grounds of discrimination to include disability. The Constitution is still based on pre-existing human rights treaties that completely ignored disability and persons with disabilities.

In addition to the Constitution, although section 1 of the PWDA guarantees protection against disability discrimination,⁹¹ surprisingly, the definition of discrimination as contained in section 57 of the Act does not seem to comply with the CRPD or the human rights model of disability. Likewise, it neither includes the denial of reasonable accommodation as a form of disability discrimination nor mentions intersectional discrimination as a form of discrimination. While Nigerian courts have not yet interpreted these provisions of PWDA, there is need for amendments to these legislations in line with the human rights model of disability in order to fulfil Nigeria’s

⁸⁸ Ngozi Chuma Umeh, ‘Reading ‘disability’ into the non-discrimination clause of the Nigerian Constitution’ (2016) ADRY 4; Ibrahim Imam and M. A Abdurraheem-Mustapha, ‘Rights of People with Disability in Nigeria: Attitude and Commitment’ (2016) 24(3) African Journal of International and Comparative Law 439.

⁸⁹Suit ID/763M/2010, (decided in the High Court of Lagos State of Nigeria), discussed in Ngozi Chuma Umeh, ‘Reading ‘disability’ into the non-discrimination clause of the Nigerian Constitution’ (2016) ADRY 4.

⁹⁰ Suit ID/824M/09 (decided in the High Court of Lagos State of Nigeria), discussed in Ngozi Chuma Umeh, ‘Reading ‘disability’ into the non-discrimination clause of the Nigerian Constitution’ (2016) ADRY 4.

⁹¹ Augustine Edozor Arimoro, ‘Are they not Nigerians? The obligation of the state to end discriminatory practices against persons with disabilities’ (2019) 19(2) International Journal of Discrimination and the Law 89.

immediate (general) obligation in education. Since these legislations currently are not consistent with the disability human rights framework. As discussed in chapter 2, these laws should give recognition to all persons with disabilities and promote persons with disabilities as rights holders with a claim to education. Therefore, these legislations must be amended with the participation of representatives of disability organisations.

5.3.1.3 Legal Right to Free Compulsory Basic Education for Children with Mental Disabilities

A further amendment to the Child Rights Act 2003 is vital in order for the Nigerian government to achieve its general obligation in education. The Act does not guarantee a clearly enforceable legal right to free compulsory basic education to children with mental disability. While section 15 of the Act extends to every Nigerian child, the right to free, compulsory basic education, the same provision however excludes children with mental disabilities from accessing the same right contrary to Nigeria's immediate (general) obligation in education. Section 15(7) of the Act expressly exclude children with mental disabilities from enjoying the legal right to free compulsory basic education. It stipulates that 'the provisions of this section shall not apply to children with mental disabilities...'. Unlike other children with disabilities and those without disabilities, children with mental disabilities are not guaranteed the legal right to compulsory free basic education. This is inconsistent with the human rights model of disability and its goal of promoting inclusive education. The provision of the Act discriminates against children with mental disabilities and does not view impairment as part of human diversity and humanity. Thus, in order to fulfil this obligation and comply with the disability rights-based approach, the Child Rights Act 2003 will require an amendment to extend the legal right to free compulsory education to every child including children with mental disabilities. This will require an amendment to the Act in line with the human rights model of disability to mirror acceptance of barriers within the society rather than personal impairments as responsible for the exclusion of persons with disabilities from the educational system.

5.3.1.4 Substantive Access

Statistics reveal that persons with disabilities are not able to achieve their educational right in practice. In 2018, Leonard Cheshire reported that persons with disabilities have proportionately

lower literacy skills than the general population.⁹² Only 37 percent of adults with disabilities aged 15+ had competent literacy skills, compared with 68 percent of adults without disabilities. Whilst high rates of persons with disabilities completed primary education, the same cannot be said for secondary school, which is much lower for persons with disabilities when compared to persons without disabilities. Only 40 percent of persons with disabilities completed secondary education, compared to 56 percent for persons without disabilities. At the same time, persons with disabilities continue to fall behind regarding participation in early childhood education and in formal and non-formal education and training.

Concerning basic childhood education, children with disabilities are also not able to achieve their educational rights in practice. Moreover, Leonard Cheshire reported that children with disabilities have proportionately lower rates of involvement in early childhood education than the general population.⁹³ Only 12 percent of children with disabilities aged zero to four participated in early childhood education, compared to 57 percent of children without disabilities. Early childhood education is important to the overall educational development of persons with disabilities.

With respect to formal and non-formal education and training, youths and adults with disabilities are not able to realise their right to education in practice. Besides, Leonard Cheshire reported that youth and adults with disabilities have proportionately lower rates of participation in formal and non-formal education and training than the general population.⁹⁴ Only 25 percent of youths with disabilities partook in formal and non-formal education and training, compared with 55 percent of youths without disabilities. Likewise, only 0.5 percent of adults with disabilities participated in formal and non-formal education and training, compared with 4.5 percent of adults without disabilities.

5.3.1.5 Negative Attitudes and Stereotypes

The presence of negative attitudes and stereotypes limit equal access to education for persons with disabilities. Although the PWDA promotes equality and non-discrimination in all fields including

⁹² Leonard Cheshire, 'Disability Data Review: A collation and analysis of disability data from 40 countries' (Leonard Cheshire, UK, 2018) https://www.disabilitydataportal.com/fileadmin/uploads/lcdp/Documents/report-web_version.pdf accessed 11 April, 2021.

⁹³ Ibid.

⁹⁴ Ibid.

education,⁹⁵ in practice, persons with disabilities continue to encounter discrimination in accessing education in the general education system in the form of negative attitudes and stereotypes.⁹⁶ Individuals with disabilities encounter discrimination and prejudice when applying for admission into public schools, due to the negative attitudes of the school authorities, particularly amongst teachers and school proprietors contrary to the human rights model of disability.⁹⁷

While the disability rights approach requires teachers and others that closely work with persons with disabilities to respect them as right holders, instead many students with disabilities are treated as objects of charity or welfare and denied their educational rights due to the presence of impairment in line with the moral and medical models of disability. This is based on religious and culturally deep-rooted perceptions of disability and persons with disabilities amongst members of society. Indeed, these approaches continue to permeate the Nigerian society's thinking on disability and persons with disabilities.⁹⁸ As discussed in chapter 2, under these paradigms, persons with disabilities are seen as not good enough to attend mainstream schools like their counterparts without disabilities and therefore not entitled to the necessary support and assistance to participate in school. Therefore, there is need for substantive and cultural changes amongst members of the public on the right to education of children with disabilities. The Nigerian government would be required to take steps to change negative attitudes and perceptions about disability and persons with disabilities. It could also address this through the promotion of persons with disabilities as rights holders rather than as those to be perceived as dependents or charitable recipients of education. Moreover, changes in attitude can be achieved by awareness raising on the human rights of persons with disabilities through trainings and enlightenment provided to teachers and others in the education sector.

5.3.1.6 Accessible Road and Transport Infrastructure

As discussed in chapter 4, persons with disabilities cannot exercise their right to education due to lack of accessible transport and road infrastructure. Article 24 of the CRPD proclaims the right of

⁹⁵ Section 1 of the Discrimination against Persons with Disabilities (Prohibition) Act.

⁹⁶ Rosa Maria Martinez and Varalakshmi Vemuru, 'Social inclusion of persons with disabilities in Nigeria: Challenges and opportunities' Nasikiliza (September 29, 2020) < <https://blogs.worldbank.org/nasikiliza/social-inclusion-persons-disabilities-nigeria-challenges-and-opportunities>> accessed 4 April 2021.

⁹⁷ Jonah Eleweke and Jannine Ebenso, 'Barriers to Accessing Services by Persons with Disabilities in Nigeria: Insights from a Qualitative Study' (2016) 6(2) JESR 113, 120.

⁹⁸ Eskay et al, 'Disability Within the African Culture' (2012) B 4 US-China Education Review 47.

children with disabilities to access education in the community in which they live and therefore imposes on states the duty to ensure that facilities open to the public such as roads and transportation are accessible.⁹⁹ The existence of accessible infrastructure such as road and transport aid the effective movement to and from school of persons with disabilities. However, in practice, there is a mobility challenge since the road environment and transport in the form of vehicle design are not accessible to persons with disabilities.¹⁰⁰ A 2015 study into mobility challenges and transport safety of people with disabilities found that the issues facing people with disabilities are being worsened by poor and inadequate transport facilities.¹⁰¹ While public transport facilities is remote and limited, most Nigerian roads are not motorable and accessible to people with disabilities.¹⁰² To meet its specific obligation, improvements are needed in the provision of accessible transport and road infrastructure to enable increased access to education for persons with disabilities.

5.3.1.7 Existence of Fees

While the Compulsory Free Basic Education Act 2004 makes primary education and the first three years of junior secondary school free,¹⁰³ in practice, primary and junior secondary education is not effectively free and compulsory for all children including children with disabilities.¹⁰⁴ Since fees are collected in most public schools from parents and guardians in order to cover the running costs of schools contrary to Nigeria's immediate (general) obligation to make basic education free and compulsory.¹⁰⁵ Evidence suggest that these fees act as barrier to accessing education by children with disabilities.¹⁰⁶ The existence of fees prevent some parents with disabled children from enrolling their children in mainstream schools or keeping their children with disabilities in

⁹⁹ Article 9 of the CRPD.

¹⁰⁰ Raymond Lang and Leah Upah, 'Disability Scoping Study in Nigeria' (Department for International Development, London 2008) < <https://studylib.net/doc/13390397/scoping-study--disability-issues-in-nigeria-final-report>> accessed 12 April, 2021.

¹⁰¹ Olusiyi Ipingbemi, 'Mobility Challenges and Transport Safety of People with Disabilities (PWD) In Ibadan, Nigeria' (2015) 18(3) African Journal for the Psychological Study of Social Issues 1.

¹⁰² Stephen Thompson, 'Nigeria Situational Analysis, Version II (June 2020, Institute of Development Studies), Disability Inclusive Development, < <https://opendocs.ids.ac.uk/opendocs/handle/20.500.12413/15561>> accessed 11 April, 2021.

¹⁰³ Section 2(1) the Compulsory Free Basic Education Act 2004.

¹⁰⁴ Olalekan Olatunji, 'The Theory and Practice of Free Education in Nigeria: A Philosophical Critique' (2018) 4(1) 135.

¹⁰⁵ Eze Thecla Amoge, 'The Nine – Year Compulsory Basic Education Programe in Nigeria: Problems and Prospects of Policy Implementation' (2016) 4(2) International Journal of Education and Research 1.

¹⁰⁶ CRC Committee, Concluding observations: Nigeria, UN Doc. CRC/C/NGA/CO/3-4(21 June 2010), para. 82.

schools.¹⁰⁷ In order to comply with its obligation, the Nigerian government must ensure that basic education is effectively free and compulsory for all children without discrimination, including abolishing school fees and related levies in mainstream education system.

5.3.1.8 Gender Inequality in Education

Statistics reveal that girls with disabilities are not able to access education on an equal basis with others in practice. In 2018, Leonard Cheshire reported that girls with disabilities had lower completion rates in secondary education, compared with males with disabilities and males without disabilities.¹⁰⁸ Unfortunately, 0 percent girls with disabilities completed secondary school, compared to 50 percent for boys with disabilities and 57 percent for boys without disabilities. Although primary school completion rates for females with disabilities was same as males with disabilities at 100 percent. However, girls with disabilities have proportionately lower literacy skills than the general population. only 21 percent of girls with disabilities aged 15+ had competent literacy skills, compared to 50 percent for boys with disabilities and 78 percent for boys without disabilities.

5.3.2 Is Nigeria Meeting its Adaptability Obligation in Education?

Adaptability obligation obliges states to ensure that the educational system is flexible and responds to the needs of the individual learner within their cultural and social diversities. As stated in chapter 4, this obligation comprises the duties to provide reasonable accommodation in schools, general or disability-specific support in schools, appropriate means of communication, and qualified teachers and support personnel with the requisite language and mobility skills. However, inadequate alternative modes of communication, lack of support services, and lack of physical adaptability of school environment are the greatest shortfalls in fulfilling this obligation.

5.3.2.1 Communication

Educators are not providing individual learners with alternative means of communication in educational institutions. Article 24 of the CRPD asserts the right of students to learn using other

¹⁰⁷ Michael M. Kretzer, 'Free Education: Origins, Achievements, and Current Situation' in Walter Leal Filho et al (eds) Quality Education, Encyclopedia of the UN Sustainable Development Goals, (2020, Springer).

¹⁰⁸ Leonard Cheshire, 'Disability Data Review: A collation and analysis of disability data from 40 countries' (Leonard Cheshire, UK, 2018) https://www.disabilitydataportal.com/fileadmin/uploads/lcdp/Documents/report-web_version.pdf accessed 11 April, 2021.

modes of communication. The PWDA regulates the development of communication skills for persons with disabilities as part of the primary, secondary and tertiary curricula.¹⁰⁹ However, in practice, educators do not provide learners with the opportunity to learn using different modes of communication such as braille, sign language, and the use of assistive technology.¹¹⁰ The 2020 Global Education Monitoring Report found that in Nigeria, there is a limited use of assistive technology including assistive hardware and software in public and private schools.¹¹¹ Indeed, where assistive technology were being used by students with disabilities, it was mainly limited to people with hearing impairment and people with learning disabilities.¹¹² Even if these devices were provided by public schools, power supply was a major challenge to the use of these devices.¹¹³ In order to fulfil its specific obligation of ensuring the provision of appropriate communication modes, there is need to ensure that educational institutions provide learners with alternative means of communication through the provision of financial assistance to schools whether private or public.

5.3.2.2 Support

In order to better comply with its specific obligation in education, there is also the need to provide more financial aid to schools to ensure support services to individual learners. Although the National Policy on Special Needs Education (NPSNE)¹¹⁴ mentioned the duty of the Federal Ministry of Education to make available the use of individualised education plan for gifted and talented students, including learners with disabilities,¹¹⁵ in practice, however, many educational institutions do not provide learners with the needed assistance to participate actively in mainstream education.¹¹⁶ In the absence of support services in schools, there is a serious risk that education

¹⁰⁹ Section 20 of the Discrimination Against Persons with Disabilities (Prohibition) Act 2019.

¹¹⁰ Patrick Ishaya, and Baba S Aduku, 'Adaptive Technologies for Library and Information Services for Physically Challenged in Special Education Schools of Kaduna State' (2015)15(1 & 2) Samaru Journal of Information Studies 23.

¹¹¹ 2020 Global Education Monitoring Report < <https://en.unesco.org/gem-report/>> accessed 11 April, 2021.

¹¹² Abiose Adelaja Adams, 'Left out: How official policies force special needs children out of Nigerian classrooms' The Regulators Monitoring Programme, (January 25, 2018) < <http://wscij.org/remop/left-out-how-official-policies-force-special-needs-children-out-of-nigerian-classrooms/>> accessed 11 April, 2021.

¹¹³ Stephen Thompson, 'Nigeria Situational Analysis, Version II (June 2020, Institute of Development Studies), Disability Inclusive Development, < <https://opendocs.ids.ac.uk/opendocs/handle/20.500.12413/15561>> accessed 11 April, 2021.

¹¹⁴ National Policy on Special Needs Education.

¹¹⁵ Paragraph 4.0.

¹¹⁶ Rufus Olanrewaju Adebisi, 'Barriers to Special Needs Education in Nigeria' (2014)2(11) International Journal of Education and Research 451.

provided by educational establishments may not be beneficial to persons with disabilities. This may limit their learning experience and restrict their educational participation in schools. If the implementation of inclusive quality education is going to succeed at the federal, state, and local levels in Nigeria, there is need to provide needed support to all students with disabilities in need of assistance within mainstream schools. This would require also the provision of substantial funding as well as awareness raising in the form of training teachers, school proprietors, and education related staff on the provisions of the NPSNE and the human rights model of disability.

5.3.2.3 Physical Adaptability of the School Environment

To promote further consistency with the adaptability obligation, the physical environment of educational establishments require adaptation. The PWDA's access provisions positively frame the obligation, stating that adaptation should be provided by schools.¹¹⁷ Nevertheless, in practice, most Nigerian schools, are not physically adapted to the needs of learners.¹¹⁸ Indeed, many schools lack ramps, accessible toilets, and playground for children with disabilities.

5.3.3 Is Nigeria Meeting its Acceptability Obligation in Education?

Acceptability in education mandates states to ensure that education provided are not only adequate, but also appropriate to the academic and personal development of learners. It comprises different facets such as the obligations to prohibit violence and abuse in schools as well as to provide quality education. However, the existence of corporal punishment in law and practice, as well as the lack of quality education for children with disabilities are the major gaps in achieving this obligation.

5.3.3.1 Corporal Punishment in Law

The Nigerian framework does not proscribe abuse, violence, and degrading treatment in school setting by teachers and school proprietors.¹¹⁹ Indeed, the framework does not prohibit corporal punishments in educational institutions, in violation of the right to promote respect for human dignity.¹²⁰ The Criminal Code 1990 and the Penal Code 1990 provide for corporal forms of

¹¹⁷ Section 3.

¹¹⁸ Jonah Eleweke and Jannine Ebenso, 'Barriers to Accessing Services by Persons with Disabilities in Nigeria: Insights from a Qualitative Study' (2016) 6(2) JESR 113.

¹¹⁹ Country Report for Nigeria: Summary of necessary legal reform to achieve full prohibition, (May 2019) <<https://endcorporalpunishment.org/reports-on-every-state-and-territory/nigeria/>> accessed 11 April, 2021.

¹²⁰ Article 16 of the CRPD.

punishment in educational institutions as a form of correction to students.¹²¹ While section 295 of the Criminal Code 1990 provides that a ‘blow or other force, not in any case extending to a wound or grievous harm, may be justified for the purpose of correction’, section 55(1)(b) of the Penal Code 1990 provide for the use of corporal punishment as a form of correction. In order to comply with this specific obligation, there is need for an amendment to these legislations in line with human right.

5.3.3.2 Existence of Corporal Punishment in School Settings

In order to better comply with its specific obligation, the Nigerian government also needs to create awareness on the effect of violence and abuse against students including learners with disabilities. This is because in practice, educational institutions are not providing students including those with disabilities with education that respect their human dignity.¹²² Article 13 of the ICESCR asserts the right of students to receive education that not only promote their rights, but respect their dignity as humans. However, in practice, abuse and violence are established means of correction in educational institutions which disproportionately affect learners with disabilities than the general population.¹²³ Many learners do not have official diagnosis and their situation make them vulnerable to abuse by teachers and children without disabilities. The utilization of corporal punishment in educational institutions is accepted in Nigerian society as a form of discipline since the practice is not only root-deep in tradition and religion but also, acknowledged as norm in Nigerian society amongst teachers, guardians, and parents. Therefore, aside the need to amend laws, is the need for cultural changes in line with the disability human rights paradigm. Therefore, there is need to reorientate society against the application of violence and abuse in school settings, particularly against persons with disabilities in order to fulfil this obligation.

5.3.3.3 Quality Education

To further comply with its specific obligation in education, there is need for more improvements in the quality of education provided to persons with disabilities. This is because many students

¹²¹ Section 295 of the Criminal Code, and Section 55(1)(b) of the Penal Code.

¹²² Nwamaka Iguh and Onyeka Nosike, ‘An Examination of the Child Rights Protection and Corporal Punishment in Nigeria’ (2011) 2 Nnamdi Azikiwe University Journal of International Law and Jurisprudence 97.

¹²³ Ibid.

with disabilities do not receive quality education.¹²⁴ In fact, many children in the northeast and northwest regions of the country are out of school due to Boko Haram insurgency. According to the United Nations Children’s Fund (UNICEF), in northeastern Nigeria, 2.8 million children are in need of education-in-emergencies support in three conflict-affected States (Borno, Yobe, Adamawa).¹²⁵ In these states, at least 802 schools remain closed and 497 classrooms are listed as destroyed, with another 1,392 damaged but repairable.¹²⁶ The political instability in the country has adversely affected the quality of education provided to children in the country. Moreover, the Nigerian education curriculum is obsolete and based on the outdated Universal Basic Education Programme adopted in 1981, which limits the digital skills that many students are able to receive via formal education.¹²⁷ In fact, there is no unified curriculum for teaching learners in the Nigerian educational system.¹²⁸ Although many public schools are owned and funded by the Nigerian government, but these schools lack quality facilities and learning tools.¹²⁹ As many schools lack proper toilets, libraries, and playgrounds.¹³⁰ While there are few properly qualified teachers and a lot of less qualified ones to teach learners with disabilities,¹³¹ the few qualified ones are not well paid with many abandoning the profession.¹³² Besides, there is no national recognized teacher hiring guidelines while private school teaching is hardly regulated.¹³³ Besides, in primary and secondary schools, there have been reports of teachers sexually and physically abusing students

¹²⁴ Florence Banku Obi and Mary Ashi, ‘Inclusive Education in Nigeria: Access and Equity’ (2016)7(5) *Journal of Education and Practice* 168.

¹²⁵ UNICEF, ‘Education under attack in Borno’ (29 September 2017) <https://www.unicef.org/nigeria/stories/education-under-attack-borno> accessed 12 April, 2021.

¹²⁶ Akindare Okunola, ‘5 Issues Nigeria Must Address to Ensure Every Child Can Access a Quality Education’ (September 11, 2020) < <https://www.globalcitizen.org/en/content/issues-nigeria-must-address-quality-education/>> accessed 31 March 2021.

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Yusuf et al, ‘Availability of Assistive Technologies in Nigerian Educational Institutions’ (2012)2(1) *International Journal of Social Sciences and Education* 5; Shayera Dark, ‘For children with disabilities in Nigeria, educational opportunities remain scant’ *Devex*, (30 November 2018) < <https://www.devex.com/news/for-children-with-disabilities-in-nigeria-educational-opportunities-remain-scant-93819>> accessed 12 April, 2021.

¹³⁰ Ibid.

¹³¹ Jonah Eleweke and Jannine Ebenso, ‘Barriers to Accessing Services by Persons with Disabilities in Nigeria: Insights from a Qualitative Study’ (2016) 6(2) *JESR* 113.

¹³² Rufus Olanrewaju Adebisi, ‘Barriers to Special Needs Education in Nigeria’ (2014)2(11) *International Journal of Education and Research* 451.

¹³³ Ibid.

with disabilities;¹³⁴ while many Nigerian schools generally allow teachers to flog children in schools.¹³⁵ Indeed, in some regions of the country, flogging is encouraged culturally.¹³⁶

Furthermore, the lack of a disaggregated data on the number of people with disabilities in Nigeria is another challenge. Although the Nigerian government is making some progress towards attaining the SDGs and the human rights model of disability, there is the absence of a comprehensive disaggregated data on the number of persons with disabilities in Nigeria, it is not doing enough to meet the needs of more vulnerable groups within persons with disabilities. For example, there are no concrete data to prove that the country is not leaving anyone behind.

5.3.4 Is Nigeria Meeting its Availability Obligation in Education?

Availability covers the establishment and funding of educational institutions. Availability in education demands that states fund inclusive, high quality and free education for all children in state schools within the compulsory age bracket. Availability also involves the employment of sufficient teachers that are qualified to support learners with disabilities as well as provision of sufficient educational facilities. Nigeria fails to meet its availability obligation in two key ways: through inadequate provision of a fully inclusive education system; and by insufficient funding for learners requiring additional educational support.

5.3.4.1 Inclusive Education

Nigeria has not yet fulfilled its specific obligation of providing education for persons with disabilities within an Inclusive system.¹³⁷ The CRPD Committee recommended that states should ensure the realization of the right of persons with disabilities through an inclusive education system at all levels.¹³⁸ While Inclusive education has been desired, it is yet to be achieved in Nigeria since the adoption of the National Policy on Special Needs Education (NPSNE), and the National Policy

¹³⁴ Akindare Okunola 'Issues Nigeria Must Address to Ensure Every Child Can Access a Quality Education'(Global Citizen, September 11, 2020) < <https://www.globalcitizen.org/en/content/issues-nigeria-must-address-quality-education/>> accessed 31March 2021.

¹³⁵ Ibid.

¹³⁶ Mohammed Haruna 'The Problems of Living with Disability in Nigeria' 65 (2017) Journal of Law, Policy and Globalization 1.

¹³⁷ Joint National Association of Persons with Disabilities, 'Report of the Baseline Survey and Stakeholders Mapping on Inclusive Basic Education in Akwa-Ibom State, Kwara State and the Federal Capital Territory Abuja' (September 2015) < http://www.jonapwd.org/report_of_baseline_survey_.pdf> accessed 04 January 2021.

¹³⁸ CRPD, General Comment No.4, CRPD/C/GC/4 (2 September 2016).

on Inclusive Education (NPIS), and the PWDA. While these measures are laudable, the Federal Ministry of Education and the respective State Ministries of Education have failed to raise awareness among stakeholders and the general public on the existence of these laws and policies.¹³⁹ Special education for persons with disabilities is still actively promoted by the three tiers of government despite the consistent philosophy in the domestic law and policies.¹⁴⁰ In order to meet its specific obligation, there is need for the Federal Ministry of Education to develop a transition strategy to transform the education system from segregated to a fully inclusive one in line with the human rights model of disability. It is also important that the Compulsory Free Universal Basic Education Act 2004 be amended to provide for a right to inclusive education for persons with disabilities.

5.3.4.2 Funding

Insufficient funding and budgeting also limit the availability of education to persons with disabilities. The Committee on the Rights of Persons with Disabilities suggests that states parties in order to implement and sustain an inclusive education system for all persons with disabilities must commit sufficient financial resources towards the process.¹⁴¹ However, in practice, education is seriously underfunded in Nigeria contrary to the Convention.¹⁴² According to the Budget Office of the Federation, in 2020, only 6.7 percent of the national budget was allocated to education.¹⁴³ In fact, during the 2020 Voluntary National Review of the High- Level Political Forum on Sustainable Development, the country was advised to increase the resources to provide quality education as only 1.6% of its GDP was currently devoted to education.¹⁴⁴ Aside that, the Federal Ministry of Education and States Ministries of Education receive little or no funding to support inclusive education since budgets are not allocated to strategies and plans for the implementation

¹³⁹ Oladele Akogun et al, 'A Study of the Management and Implementation of the Policy on Special Education Needs and Disability for Improving Access of Persons with Disabilities to Nigeria's Basic Education' (EDOREN, May 2018) < <http://www.nigeria-education.org/edoren/wp-content/uploads/2018/08/EDOREN-SEND-Final-report.pdf> > accessed 10 April 2021.

¹⁴⁰ Ibid.

¹⁴¹ Committee on the Rights of Persons with Disabilities, General comment No. 4 (2016) on the Right to inclusive education, UN Doc. CRPD/C/GC/4 (2 September 2016), para. 67.

¹⁴² Akindare Okunola 'Issues Nigeria Must Address to Ensure Every Child Can Access a Quality Education' (Global Citizen, September 11, 2020) < <https://www.globalcitizen.org/en/content/issues-nigeria-must-address-quality-education/> > accessed 31 March 2021.

¹⁴³ Abdussalam Amoo, 'Nigeria Allocates 6.7% of 2020 Budget to Education Ministry' (EDUCELEB, 11 October 2019) < <https://educeleb.com/nigerian-2020-budget-education-ministry/> > accessed 20 April 2021.

¹⁴⁴ Nigeria: Voluntary National Review 2020 < <https://sustainabledevelopment.un.org/memberstates/nigeria> > accessed 10 May 2021).

of the rights of persons with disabilities.¹⁴⁵ Besides, available funds are poorly match to the needs of the schools and there is a failure to monitor expenditure to the education sector.¹⁴⁶ For the effective promotion of inclusive quality education in Nigeria, the national, state, and local authorities need to make procedural changes. By making planning changes such as allocating budget to strategies and plans for the implementation of the rights of persons with disabilities. It would also require the provision of adequate budgetary allocation to education as well as monitoring expenditure. Moreover, the Nigerian government would have to commit sufficient resources in the implementation of inclusive education that follows the principle of progressive realization.

5.3.4.3 Teachers

To promote further consistency with its specific obligations in education, public and private educational institutions need to engage qualified teachers with the requisite language and mobility skills. Article 24 of the CRPD obliges states to employ teachers and personnel with the required language skills such as sign language and braille. However, in practice in Nigeria, many public and private schools do not have sufficient teachers skilled and qualified to teach learners using appropriate modes of communication such as sign language and braille.¹⁴⁷ Besides, teacher training colleges produce graduates that are unsuited to work with learners with disabilities.¹⁴⁸ Moreover, there is little or no training for existing teachers on inclusive education.¹⁴⁹ Furthermore, the few trained teachers with the requisite language skills have abandoned the teaching profession due to poor remuneration and lack of motivation.¹⁵⁰ The next section of this chapter evaluates whether Nigeria is meeting its obligations for persons with disabilities in employment.

¹⁴⁵ Oladele Akogun et al, 'A Study of the Management and Implementation of the Policy on Special Education Needs and Disability for Improving Access of Persons with Disabilities to Nigeria's Basic Education' (EDOREN, May 2018) < <http://www.nigeria-education.org/edoren/wp-content/uploads/2018/08/EDOREN-SEND-Final-report.pdf>> accessed 10 April 2021.

¹⁴⁶ Ibid.

¹⁴⁷ Jonah Eleweke and Jannine Ebenso, 'Barriers to Accessing Services by Persons with Disabilities in Nigeria: Insights from a Qualitative Study' (2016) 6(2) JESR 113

¹⁴⁸ Ibid.

¹⁴⁹ 2020 Global Education Monitoring Report< <https://en.unesco.org/gem-report/>> accessed 20 April, 2021.

¹⁵⁰ Eskay Michael et al, 'A Review of Special Education Services Delivery in the United States and Nigeria: Implications for Inclusive Education' (2012) 9 US-China Education Review 824.

5.4 Is Nigeria Meeting its Obligations for Persons with Disabilities in Employment?

In order to achieve the full fulfilment of full productive employment and decent work for persons with disabilities under international instruments and the SDG goal 8, Nigeria has a duty to ensure that employment is available, accessible, acceptable and adaptable. But is the country meeting these obligations in its employment-related domestic laws, policies, and practices for persons with disabilities? Are these employment-related domestic measures disability rights-based? Is Nigeria making progress towards achieving full productive employment for persons with disabilities in line with the SDG goal 8? To address these questions, this part will be further subdivided into four parts: accessibility, adaptability, availability, and acceptability.

5.4.1 Is Nigeria Meeting its Acceptability Obligation in Employment?

Acceptability obligation regarding employment demands that states ensure that people with disabilities are respected as right holders and their dignity as humans protected in the work environment. Therefore, states are required to guarantee protection against forced labour, child labour, as well as guarantee freedom of association regarding trade union rights. However, ineffective sanctions in legislation, lack of a comprehensive list defining hazardous work for children in the law, the prevalence of alms begging, and restriction on the establishment and activities of trade unions are the main deficits in achieving this obligation.

5.4.1.1 Ineffective Sanctions

The Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015 (Anti-Trafficking Act) does not provide effective sanctions for the offences of forced labour, trafficking in slaves, and trafficking in persons, which disproportionately affect persons with disabilities. The Anti-Trafficking Act provides a detailed list of offences including forced labour, trafficking in slaves, and trafficking in persons.¹⁵¹ It also provides penalties for each offence.¹⁵² However, the sanctions provided for these offences are not effective, since the punishment for the offence of forced labour consists only of a small fine or in some situations, very short prison sentence. For example, section 27 establishes that ‘Where a person is charged with any of the offences under this Act and the evidence establishes an attempt to commit that offence, he may be convicted of

¹⁵¹ Section 22-24 of the Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015.

¹⁵² Section 32 of the Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015.

having attempted to commit that offence and shall be liable on conviction of 12 months imprisonment or a fine of N 50,000,00 or both'. The CEACR Committee notes that related provisions of the Anti-Trafficking Act of 2015 provide for penalties of imprisonment without an option of fines or together with fines.¹⁵³ Likewise, in its concluding observations on Nigeria in 2017, the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) expressed concern that, 'although the Anti-Trafficking Act of 2015 removed judges' ability to impose a fine in lieu of a prison sentence for trafficking offences, the courts continue to penalize traffickers with only fines in certain cases'.¹⁵⁴ There is a need for a statutory amendment to create effective sanctions against these offences under the Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015.

5.4.1.2 Work that Should not be Performed by Children

In order to promote better compliance with international obligation, amendments are also needed to strengthen legal protections against the worst forms of child labour under the Labour Act 1990 and the Child Rights Act 2003. Although the Nigerian legal framework contains relevant provisions eradicating the worst forms of child labour, these legislations lack a comprehensive list determining the types of work that should not be performed by children, including children with disabilities under 18 years of age.¹⁵⁵ There is need for an amendment to these legislations to include a list determining works that are hazardous to children under 18 years, in order to fulfil this obligation.

5.4.1.3 Restriction on the Establishment and Activities of Trade Unions

A further amendment is needed to strengthen legal protection of the right to freedom of association in relation to trade union rights. While the Trade Union (Amendment) Act 2001 gives recognition to collective bargaining and guarantees the freedom of association of workers in Nigeria, the Act limits the formation and functions of trade unions.¹⁵⁶ In particular, section 3 (1) and (2) unduly

¹⁵³ The CEACR Committee, Observation (CEACR) - adopted 2018, published 108th ILC session (2019) <https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3955791:NO> accessed 05 March 2021.

¹⁵⁴ The UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), in its concluding observations of 2017, (CMW/C/NGA/CO/1), paragraph 55.

¹⁵⁵ CRC Committee, Concluding observations: Nigeria, UN Doc. CRC/C/NGA/CO/3-4(21 June 2010), para. 82.

¹⁵⁶ Human Rights Committee, Concluding observations on Nigeria in the absence of its second periodic report, UN Doc. CCPR/C/NGA/CO/2 (29 August 2019), para. 46.

restricts the establishment and activities of trade unions. There is a need for a statutory amendment to undo the restriction on the establishment and activities of trade unions under the Trade Union (Amendment) Act 2001.

5.4.1.4 Existence of Child Labour: Alms-Begging

While the Nigerian legal framework contains provisions proscribing the worst forms of child labour in the PWDA, the Labour Act 1990, and the Child Rights Act 2003, in practice however, children with disabilities are economically exploited within and outside home settings. For example, the CRC Committee in its recommendations on Nigeria expressed concern ‘at the very high number of children engaged in worst forms of child labour’.¹⁵⁷ This disproportionately affects children with disabilities who are economically exploited to engage in alms-begging by parents, guardians, and relatives.¹⁵⁸ As Etieyibo and Omiegbe note ‘parents or guardians of children with disabilities, who send their children out for alms-begging, compare what they do with parents or guardians that send out their children as street traders’.¹⁵⁹ There is a need for re-orientation on the dangers of street begging amongst guardians, parents, and the public as well as the need to promote compulsory free education at basic education for all children including those with disabilities.

5.4.2 Is Nigeria Meeting its Availability Obligation in Employment?

Availability obligation demands that states ensure that work and employment opportunities are available in sufficient quantity. It requires that states adopt measures to encourage employment creation in the private and public sectors. However, limited employment opportunities and high unemployment rates, limited access to employment training and education, and the existence of poverty and limited social protection are the main deficits in fulfilling this obligation.

5.4.2.1 Employment Opportunities

Statistics reveal that persons with disabilities are not able to fulfil their right to work and employment in practice. In 2018, Leonard Cheshire reported that persons with disabilities have limited access to employment opportunities and proportionately experienced higher rates of

¹⁵⁷ CRC Committee, Concluding observations: Nigeria, UN Doc. CRC/C/NGA/CO/3-4(21 June 2010), para. 82.

¹⁵⁸ Tina Nweze et al, ‘An assessment of the trainability of beggars and the destitute in Abakaliki Nigeria: implication for policy on their health, vocational rehabilitation and social reintegration’ (2019) 19(3) African Health Sciences. 2728.

¹⁵⁹ Edwin Etieyibo and Odirin Omiegbe, ‘Religion, Culture, and Discrimination Against Persons with Disabilities in Nigeria’ (2016)5(1) African Journal Disability 192.

unemployment than the general population.¹⁶⁰ Unemployment rates of youths was 77.3 percent for persons with disability compared to 49.2 percent for persons without disability. Unemployment rates of adults were 62.5 percent for persons with disabilities compared to 21.5 percent for persons without disabilities. Additionally, only 62.5 per cent of adults with disabilities were unemployed, compared with 21.5 of adult without disabilities. Whilst the proportion of people employed in informal sectors was 13 percent for persons with a disability compared to 30 percent for persons without a disability, the proportion of persons with disabilities in managerial roles is zero percent, compared to 0.9 percent for persons without disabilities. In order to achieve its obligation, there is need for the Nigerian government to comply with the disability human rights framework by making substantive changes through investing more in job creation amongst persons with disabilities and promoting employment opportunities in inclusive settings through encouraging the private sector employers to engage qualified individuals with disabilities.

5.4.2.2 Access to Employment Training and Education

To more consistently meet its availability obligation, it also needs to promote more access to education, training, and employment, since the Nigerian government is not taking adequate measures to promote youths with disabilities in education, training or employment. Although evidence reveals that unemployment rates for youths with disabilities was lower, compared to youths without disabilities, however, 61 percent of youths with disabilities are not in education, training or employment, when compared to 23 percent for persons without disabilities.¹⁶¹

5.4.2.3 Poverty and Limited Access to Social Protection

Statistics reveal that persons with disabilities had less access to social protection programmes than the general population. Leonard Cheshire reported that only 1.4 percent of persons with disabilities had access to health benefit, compared to 2.4 percent for persons without disabilities.¹⁶² Although the National Health Insurance Scheme Act provides health insurance benefits to entitled insured persons and their dependents, in practice, persons with disabilities have limited access to this social insurance since most persons with disabilities are unemployed while those employed are outside

¹⁶⁰ Leonard Cheshire, 'Disability Data Review: A collation and analysis of disability data from 40 countries' (Leonard Cheshire, UK, 2018) https://www.disabilitydataportal.com/fileadmin/uploads/lcdp/Documents/report-web_version.pdf accessed 11 April, 2021.

¹⁶¹ Ibid.

¹⁶² Ibid.

the formal sector.¹⁶³ While the federal government through the Nigeria Social Insurance Trust Fund (NSITF) provides disability and pension benefits for federal employees, it is limited to federal employees.¹⁶⁴ Where available at state level, the social protection programmes are mostly ‘uncoordinated, fragmented and inefficient’.¹⁶⁵

5.4.3 Is Nigeria Meeting its Accessibility Obligation in Employment?

Accessibility in work and employment obliges states to ensure that individuals with disabilities can access work and employment in the labour market in a non-discriminatory manner. It further expects states to ensure that workers with disabilities have access to physical work environment. This part will outline the main challenges in terms of Nigeria meeting its obligation to ensure accessible work environment and employment.

5.4.3.1 Legal Right to Equal Remuneration

The Nigerian Constitution does not adequately guarantee a legal right to equal remuneration for men and women. Section 17(3)(e) of the Nigerian Constitution provides for equal pay for equal work without discrimination on account of sex, or any other ground. Nevertheless, this legislation does not fully reflect the principle of equal remuneration for men and women for work of equal value, allowing for the comparison not only of equal, the same or similar work but also of work of an entirely different nature. As the CEACR Committee notes in its observation on Nigeria, the wording of such provision unduly restricts the scope of comparison of jobs performed by men and women and does not reflect the concept of “work of equal value” as provided for under international law.¹⁶⁶ There is a need for a constitutional amendment to create a substantively enforceable legal right to equal value for equal work under the Nigerian Constitution.

5.4.3.2 Legal Right to Equal Pay for Work of Equal Value

¹⁶³ Leonard Cheshire, ‘Disability Data Review: A collation and analysis of disability data from 40 countries’ (Leonard Cheshire, UK, 2018) https://www.disabilitydataportal.com/fileadmin/uploads/lcdp/Documents/report-web_version.pdf accessed 11 April, 2021.

¹⁶⁴ Ibid.

¹⁶⁵ Aiyede et al, ‘The Practice and Promise of Social Protection Policies in Nigeria’ (2017) 15(1) Journal of International Politics and Development 1.

¹⁶⁶ Observation (CEACR) - adopted 2019, published 109th ILC session (2021) <https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4025360,103259,Nigeria,2019> accessed 8 April, 2021.

In order to promote more consistency with its international obligation, amendments are also needed to strengthen legal protections against discrimination with regards to the legal right to minimum wage for persons with disabilities under the Nigerian Wages Board and Industrial Councils Act 1973. While the Act promotes the payment of minimum wages, it however, permits employers in the formal sector with the approval of Minister of Labour and Productivity to pay workers with disabilities below the minimum wage. In particular, Section 13 permits the exemption of workers affected by ‘infirmity’ or ‘physical injury’ from enjoying minimum wage based on disability.

5.4.3.3 Legal Right to Reasonable Accommodation

A further amendment would be needed to the PWDA in order to fulfil its general obligation in employment. Although the Act mentions accommodation in relation to individual employees with disabilities in employment, it however fails to define the term ‘accommodation’. In order to fulfil this obligation, the PWDA will need an amendment to provide a definition to the notion of reasonable accommodation and what constitutes reasonableness within the law in order to guide employers of labour.

5.4.3.4 Negative Attitudes and Stereotypes in Employment

While the PWDA prohibits the discrimination of persons with disabilities with regards to employment, in practice however, persons with disabilities experience discrimination in employment. Persons with disabilities face negative attitudes particularly from employers, which present barriers to their securing jobs in the labour market.¹⁶⁷ In situations where they are employed, they experience inappropriate job placement or lower expectations at work.¹⁶⁸ In other instances, people with disabilities are limited to certain jobs due to misconceptions and stereotypes, regardless of skills and education.¹⁶⁹ In some instances, also, people with disabilities are employed as token gestures or to fill employment quotas. Unlike men with disabilities, women with disabilities encounter additional problems in finding employment due to the patriarchal society,

¹⁶⁷ Ibrahim Iman and M. A Abduulraheem-Mustapha, ‘Rights of People with Disability in Nigeria: Attitude and Commitment’ (2016) 24 AJICL 439.

¹⁶⁸ Ebuanyi et al, ‘Barriers to and facilitators of employment for people with psychiatric disabilities in Africa: a scoping review’ (2018)11(1) Global Health Action 1.

¹⁶⁹ Jonah Eleweke and Jannine Ebenso, ‘Barriers to Accessing Services by Persons with Disabilities in Nigeria: Insights from a Qualitative Study’ (2016) 6(2) JESR 113.

prejudice opinions about image, and the level of education. A report by Inclusive Friends' Association, exploring violence against women with disabilities and their employment experiences, reveals that more women with disabilities found it difficult to gain employment in the labour market because of the 'misconception that women with disabilities have lower intellect'.¹⁷⁰ The persistence of cultural barriers and prejudices against persons with disabilities, especially women with disabilities is an upshot of the general perception of the public towards persons with disabilities, underpinned by the moral/medical disability models. If Nigeria intends to meet its general obligation and be rights-based, it needs to ensure substantive and cultural changes by ensuring that employers of labour adopt a rights-based approach to the process of employment through the prohibition of discrimination in the recruitment process as well as respect the right to seek employment of persons with disabilities. Also, there must be changes made with regards to employers' perception of persons with disabilities as rights holders. Besides, workers with support needs are required to be provided with the necessary support and assistance in the workplace.

5.4.3.5 Accessible Workplace

In order to meet its specific obligation and comply with the disability human rights approach, the Nigerian government has a duty to make the work environment accessible through the provision of accessible environment and transportation. Although the PWDA access provisions requires that physical structures and transport facilities be made accessible,¹⁷¹ in practice however, most public and private buildings are inaccessible to people with disabilities.¹⁷² There is also information and communication barriers that prevent persons with disabilities from seeking, obtaining and maintaining work.¹⁷³ Furthermore, transport related barriers are additional challenges limiting access to the work environment for persons with disabilities.¹⁷⁴

¹⁷⁰ Inclusive Friends and Nigeria Stability and Reconciliation Programme, 'What Violence Means to us: Women with Disabilities Speak (2015) < <http://www.nsrp-nigeria.org/wp-content/uploads/2015/09/What-Violence-Means-to-us-Women-with-Disabilities-Speak.pdf>> accessed 26 March, 2021.

¹⁷¹ Sections 3-15.

¹⁷² Atinuke Akande, 'The Need for Access: Is Nigeria failing persons living with disabilities?' Nigeria Health Watch (December 3, 2019) < <https://nigeriahealthwatch.com/the-need-for-access-is-nigeria-failing-persons-living-with-disabilities/>> accessed 8 April, 2021.

¹⁷³ Katharine Hanifen, 'Living with Disabilities in Nigeria' The Borgen Project, (July 18, 2019) < <https://borgenproject.org/disabilities-in-nigeria/>> accessed 8 April, 2021.

¹⁷⁴ Mohammed Awaisu Haruna, 'The Problems of Living with Disability in Nigeria' (2017) 65 Journal of Law, Policy and Globalization 103.

5.4.3.6 Gender Equality in Employment

Statistics reveal that women with disabilities are not able to realise their employment right in practice. In 2018, Leonard Cheshire reported that women with disabilities proportionately experienced higher rates of unemployment, compared to men with disabilities.¹⁷⁵ Seventy-eight percent of adult women with disabilities aged 15+ are unemployed, compared to seventy-seven percent of adult men with disabilities and 42 percent of adult men without disabilities. Unemployment rates were similar for adult males and females with walking difficulty. Nevertheless, adult women with disabilities particularly those with hearing and self-care difficulties proportionately experienced higher unemployment rates than adult men with disabilities. While 65 percent of women with hearing difficulty aged 15+ are not employed, compared to 50 percent of men with hearing difficulty, 100 percent of women who had difficulty with self-care aged 15+ are not employed, compared to 50 percent of men with self-care difficulty.

5.4.4 Is Nigeria Meeting its Adaptability Obligation in Employment?

Adaptability in employment requires states to ensure that the needs of workers with disabilities are accommodated in the workplace. As discussed in chapter 4, states are to guarantee protection of the employment right through ensuring that reasonable accommodations are made available by employers to enable prospective individuals or employees with disabilities to fit into the work environment. However, the Nigerian government have consistently failed to meet this general obligation due to lack of provision of reasonable accommodation in the workplace.

5.4.4.1 Reasonable Accommodation in the Workplace

One of the immediate (general) obligations of the Nigerian state is to ensure that employers are providing individual workers with the needed adjustments in the employment process and in the workplace. Article 27 of the CRPD asserts the right of workers with disabilities to work with necessary accommodations in the workplace. Indeed, section 27 of PWDA mandates employers to reasonably accommodate the individual needs of employees with disabilities in the workplace. However, in practice, most employers in both the private and public sectors in Nigeria do not

¹⁷⁵ Leonard Cheshire, 'Disability Data Review: A collation and analysis of disability data from 40 countries' (Leonard Cheshire, UK, 2018) https://www.disabilitydataportal.com/fileadmin/uploads/lcdp/Documents/report-web_version.pdf accessed 11 April, 2021.

provide prospective individuals with disabilities with the required adjustments during the stages of employment.¹⁷⁶ Indeed, where a person with disability is qualified for a particular position, employers particularly in the private sector do not employ them since majority of these employers do not want to spend additional funds making adjustments to their workplaces, which are usually physically inaccessible to people with disabilities.¹⁷⁷

More importantly, most Nigerian employers refuse to engage qualified individuals with disability because disability and persons with disability are viewed still from the moral/medical approaches to disability rather than a human rights disability perspective. As discussed in Chapter 2, disability and persons with disabilities, especially women with disabilities are still seen from the moral and medical approaches as objects of charity. They are refused jobs due to the presence of impairments and the societal belief system that regards persons with disabilities as not members of society.

In order to meet this general obligation, Nigeria will need to make cultural and substantive changes consistent with the human rights model of disability. Persons with disabilities should be seen as citizens that can contribute to society rather than as recipients of charity. In fact, they should be valued as rights holders and empowered to contribute to society. The Nigerian government needs to make changes to the perceptions of employers, promote employment in inclusive setting, and adopt measures prohibiting disability discrimination in recruitment.

In Nigeria, measures so far adopted in education and employment for persons with disabilities are still mostly based on the moral and medical perspectives. As noted in Chapter 2, persons with disabilities under these paradigms are viewed as objects of welfare/subjects of pity, while disability is seen as a disease that needed cure and divine intervention. Within fields of education and employment in Nigeria, disability and persons with disabilities are still seen more as objects of charity and denied rights due to the presence of impairment. As disability is viewed as a personal problem rather than as a societal challenge.

Indeed, the medical and moral models still apply in Nigeria because of several factors. One of such factors is the deep-rooted cultural beliefs amongst members of Nigerian society. Most cultures in

¹⁷⁶ Oyewunmi and Folarin, 'International Standards on Protection of the Disabled at Work: Wither Nigeria' (2016) 2 CILR 156.

¹⁷⁷ Jonah Eleweke and Jannine Ebenso, 'Barriers to Accessing Services by Persons with Disabilities in Nigeria: Insights from a Qualitative Study' (2016) 6(2) JESR 113.

Nigeria encourage the segregation of persons with disabilities from society because of the presence of impairment. For example, persons with mental disabilities in Nigeria are encouraged to seek unorthodox treatment with spiritualists as the prevalence of mental illness is attributed to the presence of demonic spirits or due to the person's past evil doings.

These models also apply in Nigeria due to the perceptions of society about disability and persons with disabilities. Members of society view a person with a disability as different from the norm. In other words, society looks at what is wrong with the person and not what the person needs. This continues to entrench negative attitudes and stereotypes against persons with disabilities in education and employment. With the Nigerian government encouraging segregated special schools for certain categories of persons with disabilities. The medical and moral models further apply in Nigeria rather than the human rights model of disability because of religious reasons. Due to the religious nature of the country (with Christianity and Islam as the two dominant religions), disability and persons with disabilities are encouraged to be supported and encouraged. As they are seen as dependents and people in need of charity. Indeed, the Christian and Islamic faiths encourage the giving of alms to persons unable to care for themselves.

Acceptance of the medical model for instance in Nigeria is influenced greatly by the attitude of society which bases disability as a disease that should be cured and those with disabilities grant assistance and support to live an acceptable life. Indeed, the Nigerian medical professionals view persons with disabilities as in need of lots of treatment and that they belong in places like institutions where doctors and other specialists can fix them. While the medical professionals believe that persons with disabilities are sick and in need of orthodox treatment, most members of the general public equally view disability as a medical situation but prefer unorthodox treatment by spiritualists in spiritual homes. This is mostly due to the cost implications of medical treatment and the viewpoint that most disabilities are the direct result of spiritual attack requiring spiritual solutions.

Although the human rights model of disability is the paradigm that Nigeria ought to adopt, the rights-based paradigm might not be a workable model in Nigeria since the country do not currently have a human right framework that holistically promote and protect the rights of all people

including persons with disabilities. For instance, the Nigerian Constitution still does not give recognition to economic, social, rights, and cultural rights. Indeed, the Nigerian framework focuses on civil rights and anti-discrimination legislation ignoring economic rights.

Additionally, there are other challenges that might work against the implementation of the disability human rights model in Nigeria. Firstly, the plural nature of the Nigerian legal system is a challenge and is problematic for the realization of the model in Nigeria. Since laws made at the federal level are required to be further duplicated at the subregional levels which are both cumbersome and capital intensive. Besides, the cost implication of actualizing the model is another challenge, with finance a major drawback to the realization of the human rights disability model in Nigeria. Coupled with that is the issue of religion where further north in the country, Sharia is applied in some parts of the country. Sharia practice promotes disability and persons with disabilities using the moral model, as persons with disabilities are viewed as dependents rather than rights holders. This practice might hamper the implementation of the framework in Nigeria as alms-begging amongst persons with physical disability for instance is an acceptable practice in northern Nigeria.

Similarly, the cultural beliefs of most Nigerians may present another challenge to the successful realization of the disability model in Nigeria. This is because Nigerians are cultural inclined and follow greatly cultural beliefs handed to them from their fore fathers. It might be very difficult to change their attitude or perception of disability and persons with disabilities. Finally, the dominance of special segregated education and employment is a challenge to the realization of the human rights model. As the education and employment for persons with disabilities is still promoted within the special paradigm, in which education and employment for persons with disabilities are promoted within segregated settings rather than inclusive settings.

5.5 Conclusion

Nigeria has adopted some domestic disability legislation and policies, including the PWDA, and is continuing its efforts at formulating more specific regulations on the promotion of rights enshrined in the Constitution, including drafting specific policies on education and employment of persons with disabilities. Yet, in reality, Nigeria is not fully in compliance with its human rights'

obligations. Although some progresses have been made towards achieving the SDG goals 4 and 8, more work needs to be done towards leaving no one behind and achieving inclusive quality education and promoting employment opportunities for persons with disabilities. As there are no concrete data to prove that the country is not leaving anyone behind. Moreover, it is currently not meeting its obligations for persons with disabilities in making education and employment accessible, adaptable, available, and acceptable. It was also discovered that the approach adopted by the Nigerian government in implementing employment and education for people with disabilities is within the realm of the medical/moral models of disability. For Nigeria to make progress towards the SDGs and comply with its international obligations for persons with disabilities in education and employment, the Nigerian government must move towards the disability human rights model in its laws, policies, and practices.

The next chapter provides a summary of the thesis' main findings and recommend ways Nigeria can better meet its international obligations for persons with disabilities in education and employment.

CHAPTER 6

CONCLUSION AND RECOMMENDATIONS

6.1 Introduction

This thesis sought to examine whether Nigeria is meeting its international obligations for persons with disabilities in education and employment. Chapter 1 provided an overview of the thesis including the research questions, terms definitions, methodology, contributions to knowledge, and thesis structure.

Chapter 2 established the conceptual standard (the disability human rights framework) which was one of the criteria employed later in chapter 5 to evaluate Nigeria's implementation of persons with disabilities in education and employment. It found that states needed to make procedural, institutional, cultural, and substantive changes in order to comply with the disability human rights model.

Chapter 3 examined states' general treaty obligations for persons with disabilities in education and employment as well as the effects on state obligations in ratifying the CRPD. This examination established the legal state obligations and the general standards for the implementation of education and employment for persons with disabilities. It showed that the CRPD imposes higher standards on states in the realisation of the rights of persons with disabilities in education and employment.

Chapter 4 investigated states' obligations for persons with disabilities in education and employment under the SDGs. This investigation established the moral state obligations and the specific standards for the implementation of education and employment for persons with disabilities under the SDGs and other related international instruments particularly the ILO and human rights Instruments.

Chapter 5 evaluated the main research question whether Nigeria is meeting its international obligations for persons with disabilities in education and employment. This chapter applied the disability human rights framework (discussed in chapter 2) and the 4As (discussed in chapter 4) as yardsticks to address the question. The evaluation showed that although Nigeria had adopted measures to improve the situation of persons with disabilities, the country is not meeting its obligations for persons with disabilities in education and employment. Indeed, the Nigerian

government is not meeting its immediate and specific obligations to make education and employment accessible, adaptable, available, and acceptable. Moreover, the measures adopted by the Nigerian government relevant to persons with disabilities in education and employment still mirrors the medical/moral disability models instead of the disability human rights paradigm. More importantly, Nigeria is at risk of not meeting the goals for education and employment for persons with disabilities under the SDGs.

This chapter (chapter 6) recommends how Nigeria can comply with its international obligations and make progress towards achieving the SDGs for persons with disabilities in education and employment. To achieve this, it will summarise this study, by presenting the overall conclusion and recommendations of the thesis. To this end, it presents key findings in the thesis, and makes recommendations on ways Nigeria can better meet its obligations for persons with disabilities in education and employment. The next section provides a summary of the key findings.

6.2 Summary of Key Findings

The main aim of the thesis was to examine whether Nigeria is meeting its international obligations for persons with disabilities in education and employment. To address this question, this thesis considered the following interrelated research questions:

- What does a disability human rights model entail in relation to state obligations in education and employment?
- What are states' general treaty obligations in education and employment and the effects of ratifying the CRPD for state obligations?
- What are states' specific obligations for persons with disabilities in education and employment under the SDGs?
- Is Nigeria meeting its international obligations for persons with disabilities in education and employment?

The thesis concludes by asserting that Nigeria is not currently meeting its international obligations for people with disabilities in education and employment. Although the Nigerian government has taken positive steps to improve the employment and education situation of people with disabilities, nevertheless significant challenges remain. The Nigerian government has accepted by ratifying core human rights treaties, especially the CRPD the duties to ensure the inclusion of persons with

disabilities within mainstream education and the open labour market. Yet, the implementation of inclusive education and employment for persons with disabilities in Nigeria still falls short of international standards. As the country has failed to meet its immediate legal obligations as well as make education and employment for persons with disabilities accessible, adaptable, available, and acceptable. More importantly, due to defects in the existing Nigerian framework and practices, and the continued promotion of the medical and moral models of disability in law, policies and practices in the fields of education and employment.

Chapter 2

To determine how states can comply with the disability human rights framework in practice, chapter 2 addressed the research question on the disability human right model and its implications for states' obligations in education and employment. To address this question, it traced the development of disability human rights model in relation to other disability models. It examined the disability human rights approach in relation to employment and education and considers its implications for state obligations. The chapter found that unlike other pre-existing disability paradigms, the disability human rights framework better mirrors the CRPD. Since the paradigm builds on the social model of disability, and goes further. Moreover, for states to comply with the theoretical standards of the CRPD in the implementation of the rights of persons with disabilities, they need to move towards the disability human rights paradigm that demands institutional, substantive, cultural, and procedural changes to be made by states in education and employment. As the conceptual framework to be engaged to assess Nigeria (later in chapter 5) had been established in this chapter, it became necessary to ascertain states' treaty obligations for persons with disabilities in education and employment.

Chapter 3

Chapter 3 focused on the twin questions of states' general treaty obligations in education and employment and the effects of ratifying the CRPD for states obligations. The chapter started by considering states' general treaty obligations for persons with disabilities in education and employment. To achieve this, it considered how states can realise progressively education and employment for persons with disabilities. It also investigated the effects of ratifying the CRPD on states obligations. This chapter showed that states have immediate legal obligations in the implementation of education and employment. Besides, unlike pre-existing human rights treaties,

the CRPD imposes higher standards regarding the fulfilment of the rights of persons with disabilities in education and employment. Additionally, that ratification of the CRPD had great impact on states' obligations since states would be required amongst others to be more proactive on disability issues, provide more financial resources, and support the participation of organizations of persons with disabilities in the development and enforcement of laws and policies concerning them.

Chapter 4

Having established states' general treaty obligations for persons with disabilities in education and employment, and the impact of ratifying the CRPD for states' obligations, the next concern was to ascertain the specific standards for the implementation of education and employment for persons with disabilities under the SDGs. The SDGs are considered in this chapter because they add weight to the obligations on states from treaties. Chapter 4 examined two questions- states' specific obligations for persons with disabilities in education and employment under the SDGs and, if the SDGs incorporate the human rights and ILO standards in a way that is consistent with the international obligations for persons with disabilities in education and employment. To achieve this, it applied the 4As framework (accessibility, adaptability, acceptability and availability) and the human rights model of disability to elaborate on states' obligations in education and employment. It argued that while the SDGs add weight to human rights and require states in education and employment to move towards achieving full productive employment and inclusive quality education for persons with disabilities, it however failed to fully integrate the human rights model of disability and human rights standards.

Chapter 5

To understand the employment and education situation of people with disabilities in Nigeria, the thesis in chapter 5 assessed the question- whether Nigeria is meeting its obligations for persons with disabilities in education and employment. To address this question, it employed the disability human rights paradigm and the 4As framework as criteria to evaluate Nigeria's efforts at achieving the SDGs and its international obligations. It assesses whether Nigeria is meeting its international (immediate and specific) obligations for persons with disabilities in education and employment; and if the measures adopted are disability rights-based or consistent with CRPD. The thesis contended that Nigeria was currently not fulfilling its obligations for persons with disabilities in

education and employment. Although Nigeria had adopted positive measures to promote and protect the education and education rights of persons with disabilities, it is still not in reality meeting its human rights' obligations to ensure that education and employment are available, accessible, acceptable, and adaptable. Also, the measures adopted by the Nigerian government are still based on the moral/medical approaches to disability. Moreover, although there is some progress made towards achieving the SDGs, particularly goals 4 and 8, more work needs to be done by the Nigerian government towards achieving inclusive equality education and employment for persons with disabilities.

6.3 Ways Nigeria can Better Comply with its International Obligations for Persons with Disabilities in Education

6.3.1 Accessibility Obligation in Education

There are insufficient measures within the current framework to improve access to education for persons with disabilities. Substantial changes are needed for Nigeria to better fulfil its accessibility obligation in education. Amendments to the Nigerian Constitution is necessary, which requires the Nigerian government to provide a legal right to free compulsory primary education as well as expand the prohibited grounds against discrimination to include disability and other status, and the inclusion of a definition for discrimination. Likewise, discrimination explanation under the PWDA requires a review, and the insertion of the provision that the denial of reasonable accommodation as a form of disability discrimination. A further amendment needs to be made to the Child Rights Act to extend the legal right to free compulsory basic education to all children including learners with mental disabilities. More comprehensive awareness raising on the contribution of persons with disabilities in the education field and the human rights approach to disability to educators could also provide meaningful solution to the negative attitude faced by persons with disabilities. While encouraging girls' education including girls with disabilities through the provision of more scholarship and bursaries could further increase access to education for this vulnerable group, the abolishment of fees at public schools as well as the provision of accessible road and transport infrastructure would lead to increase participation of persons with disabilities in mainstream education. Nigeria's failure to meet the accessibility requirement highlights the need for the government to collate more comprehensive data of persons with disabilities' educational

experiences. This would inform government strategies, thereby effectively remedying identified shortfalls in its international obligations.

6.3.2 Acceptability Obligation in Education

The measures within the current framework to adequately improve the acceptability of education for persons with disabilities is scarce. Substantial changes are needed for Nigeria to better fulfil its acceptability obligation. Amendments to the Criminal and Penal Codes is necessary, which currently require educators to employ corporal punishment as a means of correction in school settings. More improvement in the quality of education provided to students through the provision of qualified teachers, accessible learning materials, school buildings, and support could help reduce the very large out of school children with disabilities in Nigeria. Training on the human rights model of disability to teachers and workers in the education sector on the need to respect the dignity of the human person as well as avoid violence and abuse is a necessity. Nigeria's failure to meet the acceptability requirement highlights the need for government to financially invest more into security, awareness raising, teacher training, and in the provision of accessible materials and functional curriculum.

6.3.3 Adaptability Obligation in Education

Educators must be more proactive in using assistive technologies in schools, appropriate language, building adapted environments, and providing support services to fulfil Nigeria's obligation in line with the 4As standards. The PWDA and other related educational policies such as the National Policy on Inclusive Education offer many solutions which schools should utilise. Limited access to assistive technologies shows that many schools must make greater efforts to apply for financial supports on behalf of their students with disabilities. Furthermore, the provision of accommodation by schools and the physical adaptability of school environment has been introduced in the PWDA. This must be promoted to prospective students with disabilities as an opportunity to create greater awareness. Support services and teachers with requisite language skills should urgently be given in schools in order to allow more students to access quality education.

6.3.4 Availability Obligation in Education

Current inclusive education practices, funding and teacher quality fall short of meeting the availability obligation under international law. Availability of education for persons with disabilities could be improved under the current framework through more effective mainstreaming practices, awareness training for teachers, and increased funding. Remedies currently available under the legislative framework will now be explained in the context of accessibility. Having discussed possible solutions, it is clear that the current framework does not satisfactorily fulfil Nigeria's obligations. Key changes, vital to improving the right to education of persons with disability, will now be outlined.

6.3.5 Recommended Changes in Education

A disability human rights approach in government decision-making is essential to provide greater accountability in the provision of education to persons with disabilities under international law. The proposed changes necessitate co-operation between the National Assembly, the Federal Ministry of Education, States' Ministries of Education, Judiciary, teaching professionals, disability organisations, and the public. The CRPD requires states to ensure a better right achievement through the active participation of organisations of persons with disabilities. As rights-holders, persons with disabilities are best placed to inform legislation and policy changes.

This part will outline important changes required to the Nigerian Constitution 1999 as amended, the Criminal Code 1990, the Penal Code 1990, the PWDA, and the Child Rights Act 2003. These changes will ensure an equal right to education for persons with disabilities in Nigeria. Article 24 of CRPD will be used as a framework for reform to collect quantitative and qualitative data, and to ratify international and regional instruments.

6.3.5.1 Amendments to the Nigerian Constitution (1999 as Amended)

The right to be free from discrimination under the Nigerian Constitution is restrictive in its list of prohibited grounds. Following ratification of the CRPD, the National Assembly made no amendments to provisions which encapsulate the right to freedom from discrimination. Nigeria operates under a dualist system of international law; international treaty provisions must be incorporated into domestic legislation in order to be legally enforceable. It is submitted that the

National Assembly should expand the grounds protected against discrimination to include disability under the Nigerian Constitution, thereby giving domestic recognition to disability discrimination provided in article 24 of the CRPD. This will benefit all learners, not only those with disabilities. The Nigerian Constitution would also benefit from an amendment recognising a right to free compulsory primary education, although including economic, social and cultural rights in this legislation is less likely and would require significant constitutional overhaul.

6.3.5.2 Amendments to the Discrimination against Persons with Disabilities (Prohibition) Act 2019 (PWDA)

An amendment to provisions on prohibition of disability discrimination would enhance the PWDA. This amendment will fulfil Nigeria's obligation to enact legislative measures, giving effect to articles 5 and 24 of the CRPD. The National Assembly must ensure that legislation clarifies the denial of reasonable accommodation as equivalent to an act of disability-based discrimination. Therefore, this will show to the judiciary that legislation should be interpreted in accordance with both the letter and spirit of the CRPD. Early childhood education providers and schools will be able to identify their responsibilities more willingly to reasonably accommodate learners with disabilities.

Section 1(1) should have further paragraphs inserted to prohibit direct and indirect disability discrimination.

Direct disability discrimination

(2) For the purposes of this Act, a person (the discriminator) discriminates against another person (the aggrieved person) on the ground of a disability of the aggrieved person if, because of the disability, the discriminator treats, or proposes to treat, the aggrieved person less favourably than the discriminator would treat a person without the disability in circumstances that are not materially different.

(3) For the purposes of this Act, a person (the discriminator) also discriminates against another person (the aggrieved person) on the ground of a disability of the aggrieved person if: (a) the discriminator does not make, or proposes not to make, reasonable adjustments for the person; and (b) the failure to make the reasonable adjustments has, or would have, the effect that the aggrieved person is, because of the disability, treated less favourably than a person without the disability

would be treated less favourably than a person without the disability would be treated in circumstances that are not materially different.

Indirect disability discrimination

(4) For the purposes of this Act, a person (the discriminator) discriminates against another person (the aggrieved person) on the ground of a disability of the aggrieved person if: (a) the discriminator requires, or proposes to require, the aggrieved person to comply with a requirement or condition; (b) because of the disability, the aggrieved person does not or would not comply, or is not able or would not be able to comply, with the requirement or condition; and (c) the requirement or condition has, or is likely to have, the effect of disadvantaging persons with the disability.

(5) For the purposes of this Act, a person (the discriminator) also discriminates against another person (the aggrieved person) on the ground of a disability of the aggrieved person if: (a) the discriminator requires, or proposes to require, the aggrieved person to comply with a requirement or condition; and (b) because of the disability, the aggrieved person would comply, or would be able to comply, with the requirement or condition only if the discriminator made reasonable adjustments for the person, but the discriminator does not do so or proposes not to do so; and (c) the failure to make reasonable adjustments has, or is likely to have, the effect of disadvantaging persons with the disability.

These amendments would increase educational providers' awareness of a clear obligation to reasonably accommodate learners with disabilities. Amendments to section 1(1) incorporate CRPD definitions, specifically referring to direct and indirect forms of disability discrimination which, remarkably, is not currently mentioned in the PWDA. The current definition of disability under section 57 is consistent with the CRPD definition and can be read in conjunction with the newly inserted direct and indirect forms of discrimination in order to ascertain whether discrimination has occurred against persons with disabilities.

6.3.5.3 Amendments to the Child Rights Act 2003

It is recommended that further amendments be made to the Child Rights Act in order to prevent the exclusion of children with mental disability from free compulsory basic education. This amendment will fulfil Nigeria's obligation to enact legislative measures, giving effect to article 24

of the CRPD. The National Assembly must ensure that legislation clarifies the non-exclusion of students from education on the basis of having impairment.

6.3.5.4 Gathering Data

To comply with its international obligations in education, Nigeria needs to undertake a comprehensive study of the education situation of persons with disabilities. It should gather disaggregated data on persons with disabilities that are consistent with the human rights model of disability. As discussed in chapter 4, in order to ensure that persons with disabilities are not left behind in line with the SDGs and human rights, Nigeria needs to adopt a disaggregated data on the education situation of persons with disabilities. The process should be done in consultation with organizations of people with disabilities. For the process of data collection, a universal definition of disability has to be adopted at the national and state levels as well as across all government departments to ensure that statistics are comparable. The government should adopt the rights-based approach to disability in the definition provided under Article 2 of the CRPD. The Federal Ministry of Education, States Ministries of Education, National Bureau of Statistics, and organisations of persons with disabilities must regularly collect and report relevant data on the experience of persons with disabilities in accessing education.

6.4 Ways Nigeria can Better Comply with its International Obligations for Persons with Disabilities in Employment

6.4.1 Acceptability Obligation in Employment

There are insufficient measures within the current framework to adequately improve the acceptability of work and employment for persons with disabilities. Substantial changes are needed for Nigeria to better fulfil its acceptability obligation. Amendments to the Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015, the Labour Act 1990, the Child Rights Act 2003, and the Trade Union (Amendment) Act 2001 are necessary, which require effective sanctions against the offence of forced labour; inclusion of a comprehensive list determining the types of hazardous work that should not be performed by children under 18 years of age, and the non-restriction on the activities of trade union. More improvement in the implementation of these Acts could help reduce the incidence of forced labour, child labour as well as help protect the right

to freedom of association regarding trade union rights. Nigeria's failure to meet the acceptability requirement stresses the need for the government to pay more attention to persons with disabilities in employment situations.

6.4.2 Accessibility Obligation in Employment

Substantial changes are needed for Nigeria to better fulfil its accessibility obligations, since the current measures are inadequate to protect the work and employment right of persons with disabilities. Amendments to the Nigerian Constitution is necessary, which requires the Nigerian government to provide a legal right to equal remuneration for work of equal value. An additional amendment needs to be made to the Nigerian Wages Board and Industrial Councils Act 1973, which permits the payment of wages below the minimum wage to people with disabilities by employers. A further amendment needs to be made to the PWDA regarding the notion of reasonable accommodation or adjustment. More comprehensive awareness raising on the contribution of persons with disabilities in the world of work and the human right approach to disability to employers could also provide meaningful solution to the negative attitude faced by persons with disabilities, particularly women with disabilities. Likewise, workplace should be made accessible. Nigeria's failure to meet the accessibility requirement highlights the need for the Government to collate more comprehensive data of persons with disabilities' employment and work experiences. This would inform government strategies, thereby effectively remedying identified shortfalls in its international obligations.

6.4.3 Adaptability Obligation in Employment

Employers must be more open to understanding the concept of reasonable accommodation as well as making adjustment in the workplace to fulfil Nigeria's obligation in line with the 4As framework. The PWDA provides solutions which employers can adopt. The lack of provision of reasonable accommodation to employees with disabilities shows the need for the Nigerian government to encourage employers, through the provision of financial support to help increase the employment of qualified individuals with disabilities. Moreover, the accommodation of the individual needs of employees with disabilities in the workplace by employers has been introduced in the PWDA. This must be promoted to prospective employers, the general public, and persons

with disabilities, as an opportunity to create awareness on the existence of the concept and its implications under the Act.

6.4.4 Availability Obligation in Employment

Current measures to promote social protection as well as increase employment opportunities, and employment training and education fall short of meeting the availability obligation under international law. Availability of work and employment for persons with disabilities could be improved under the current framework through more effective awareness training for employers and funding. To better fulfil its obligations, it is recommended that the social security system be overhauled, employment training be encouraged, and education be made free and compulsory to reduce poverty. Remedies currently available under the legislative framework will now be explained in the context of accessibility, adaptability, and acceptability. Having discussed possible solutions, it is clear that the current framework does not adequately fulfil Nigeria's obligations. Key changes, vital to improving the right to work and employment for persons with disabilities, will now be delineated.

6.4.5 Recommended Changes in Employment

A disability human rights approach in government decision-making is essential to provide greater accountability in the protection and promotion of the right to work and employment of persons with disabilities under international law. The anticipated changes require co-operation between the National Assembly, the Federal Ministry of Labour and Productivity, the judiciary, employers, labour unions, disability organisations, and the public. Article 4 of the CRPD requires states to ensure a better realisation of rights are developed "by and not on behalf of oppressed people". As rights-holders, persons with disabilities are best placed to inform legislation and policy changes.

This part will outline essential changes required to the Nigerian Constitution; the PWDA; the Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015; the Labour Act 1990; the Child Rights Act 2003; and the Trade Union (Amendment) Act 2001. These changes will ensure an equal right to work and employment for persons with disabilities in Nigeria. Article 27 of CRPD and ILO Conventions will be used as a framework for reform to collect quantitative and qualitative data and ratify ILO Conventions.

6.4.5.1 Amendments to the Nigerian Constitution (1999 as Amended)

The right to equal remuneration under the Nigerian Constitution does not fully reflect the principle of equal remuneration for men and women for work of equal value. Following ratification of the CRPD, the National Assembly made no amendments to provisions which does not reflect the concept of “work of equal value” as provided for under the international law, but rather unduly restricts the scope of comparison of jobs performed by men and women. Nigeria operates under a dualist system of international law; international treaty provisions must be incorporated into domestic legislation in order to be legally enforceable. It is submitted that the National Assembly should ensure the enforceability of Chapter 2 of the Constitution including section 17(3)(e) to reflect the principle of equal remuneration for men and women for work of equal value, allowing for the comparison not only of equal, the same or similar work but also of work of an entirely different nature. This will benefit all workers, not only those with disabilities.

6.4.5.2 Amendment to the Nigerian Wages Board and Industrial Council Act 1973

Likewise, it is recommended that amendments be made to the Nigerian Wages Board and Industrial Council Act in order to guarantee the right to equal remuneration of work of equal value. Section 13 which permits the exemption of workers affected by ‘infirmity’ or ‘physical injury’ from enjoying minimum wage based on disability should be removed from the Nigerian framework. Section 13 should be amended to guarantee the right to equal remuneration on the basis of non-discrimination.

6.4.5.3 Amendments to the Discrimination against Persons with Disabilities (Prohibition) Act 2019 (PWDA)

It is also recommended that amendments be made to the PWDA to proscribe disability discrimination in employment, and reasonable accommodation or adjustments in line with the CRPD. This amendment will fulfil Nigeria's obligation to enact legislative measures, giving effect to Articles 5 and 27 of the CRPD. The National Assembly must ensure that legislation clarifies the duty on employers to provide accommodation for persons with disabilities in the workplace. Section 57 should be amended to read:

57 Interpretation

“Reasonable Accommodation or Adjustment” means an adjustment to be made by a person is a reasonable adjustment unless making the adjustment would impose an unjustifiable hardship on the person”.

Section 28(1) should have further paragraphs inserted to read that:

(2) It is unlawful for an employer or a person acting or purporting to act on behalf of an employer to discriminate against a person on the ground of the other person’s disability: (a) in the arrangements made for the purpose of determining who should be offered employment; or (b) in determining who should be offered employment; or (c) in the terms or conditions on which employment is offered.

(3) It is unlawful for an employer or a person acting or purporting to act on behalf of an employer to discriminate against an employee on the ground of the employee’s disability: (a) in the terms or conditions of employment that the employer affords the employee; or (b) by denying the employee access, or limiting the employee’s access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment; or (c) by dismissing the employee; or (d) by subjecting the employee to any other detriment.

6.4.5.4 Amendments to the Labour Act 1990 and the Child Rights Act 2003

In order to meet its obligations, the Labour Act 1990 and the Child Rights Act 2003 equally need amendments to provide a comprehensive list determining the types of hazardous work that should not be performed by children, including children with disabilities under 18 years of age in line with ILO Convention. These amendments will provide robust protect against child labour and exploitative work.

6.4.5.5 Data Gathering

To comply with its obligations in employment, Nigeria needs to undertake a comprehensive study of the employment situation of persons with disabilities. It should gather disaggregated data on persons with disabilities in employment that are consistent with the human rights model of disability. As noted in chapter 4, in order to leave no one behind and make progress towards achieving full productive employment for persons with disabilities under the SDGs, a disaggregated data is needed. Disaggregated data is important to show the section of the population that is more in danger of being left behind in terms of human rights protection and the SDGs. The

process of data gathering should be done in consultation with organizations of people with disabilities. For the process of data collection, a universal definition of disability has to be adopted at the national and state levels as well as across all government departments to ensure that statistics are comparable. The government should adopt the rights-based approach to disability in the definition provided under Article 2 of the CRPD. The Federal Ministry of Labour and Productivity, State Ministries of Labour, National Bureau of Statistics, Nigeria Labour Unions, and organisations of persons with disabilities must regularly collect and report relevant data on the experience of persons with disabilities in accessing employment.

6.5 General Recommendations

Furthermore, for Nigeria to make progress towards achieving the SDGs and to comply with its obligations for persons with disabilities in education and employment, this thesis suggests that the Nigerian government must move towards a human rights model of disability from the current moral/medical approaches to disability. Presently in Nigeria, disability and persons with disabilities are still viewed within the moral/medical paradigms. Disability is seen from a traditional/ religious/charity-based perspective in which persons with disabilities are seen as objects of charity and in need of traditional or religion-based cleansings. In practice, this has entrenched in society, the common practice of alms begging amongst children with disabilities, parents' refusal to allow children with disabilities attend schools, and the persistence of discrimination by school proprietors, teachers, employers, and society in general. To reduce these challenges, particularly, the attitudinal barriers, the government needs to make cultural changes through awareness raising on the contributions of persons with disabilities in society at the grassroot levels and in local dialects in the public media. Therefore, a shift towards a human rights model of disability by Nigeria will significantly contribute to alleviating the plights of Nigerians with disabilities. It is imperative that Nigeria adopts the human rights model of disability else, it will continue to be in violation of its international obligations relating to the rights of persons with disabilities to education and employment.

In addition to that, Nigeria needs to ensure that education and employment for persons with disabilities are accessible, adaptable, available, and acceptable. Although the Nigerian government is currently not meeting its obligations in education and employment, it is suggested that it ensures that education is accessible through the complete abolishment of fees in public schools and the

provision of resources to enable the provision of assistance and support to individual learners in need of additional support to participate in the general education system. Moreover, it should promote employment opportunities through investment in the acquisition of practical vocational skills for self-employment.

Moreover, although it has adopted measures to promote and protect the education and employment rights of persons in line with its treaty obligations, however, in reality the measures adopted are not fully in compliance with international standards. Besides, the country needs to address the loopholes in its domestic laws relevant to persons with disabilities in education and employment. Firstly, it needs to address the Child Rights Act 2003 and its present provision on children with mental disabilities and the right to free compulsory basic education. There is need to expunge the discriminatory provision that denies children with mental disabilities access to free compulsory basic education. Secondly, PWDA should be amended to specifically include that the denial of reasonable accommodation to persons with disabilities is a form of disability discrimination in line with the CRPD since, the Act does not currently provide for such. Besides, the definition of discrimination in the Act is not consistent with the CRPD, while the notion of reasonable accommodation is also not defined to be in line with the disability treaty. Likewise, there is need for an amendment of the definition of disability in the PWDA to reflect the human rights model of the CRPD.

Nigeria is not yet fully realising the potential of persons with disabilities due to cultural and religious issues, and societal attitudes more in line with the moral/medical models and legal and policy protections weakened by poor enforcement opportunities. Nevertheless, it is not too late for the Nigerian government to recommit to promoting and protecting the rights of persons with disabilities in fulfilment of the country's human rights obligations and in furtherance of the country's commitment to the SDGs and leaving no one behind.

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