

Right to Freedom From Discrimination: The Case of The Disabled in The Context of International Human Rights and The Practice in Nigeria.

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(Received: January -2020; Reviewed: February-2020; Accepted: March-2020;

Available Online: March -2020; Published: March -2020)



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ABSTRACT

One of the very issues in the world today that has always been on the front burner is that of human rights. Nationally and internationally, this issue has been a problem to world leaders. This is because the way and manner human rights is handled by either the government agencies, institutions and even individuals is such in a sorry state. The worst is that of the right of the disabled ones among us. They are inhumanly discriminated against due to their physical or mental state. They are not given access to certain facilities, employment, education, etc. In Nigeria as a case study in this research, this has been played out for a long time despite the laws in place to curb this situation. The disabled are not given equal opportunities to vote, accessing public facilities, equal employment, etc. This work therefore is an examination of the practice of discrimination against the disabled in Nigeria where they are denied their basic rights on the basis of their condition. Looking at this situation, it is believed that if in Nigeria, we have to comply with the legislations on ground as well as the various international laws and treaties that Nigeria is a signatory to, the issue of human rights of the disabled will be well practiced.

Keywords: Discrimination; Disabilities; Human Rights.

INTRODUCTION

It might be useful to go back into the past and to mention the names of Franklin D. Roosevelt, Goya, Fridakahio, Beethoven, Helen Keller and so many other men and women who in addition to their achievements have bequeathed as the living testimony of the fact that even those who had to cope with pain, adversity or particular physical or mental disabilities were also able to move humanity through their art, science and

genius. To support this statement, and to show that it is still valid today, it would suffice to mention the name of Stephen W. Hawking, the well-known author of the best seller, "A Brief History of Time" (1993) who is regarded as one of the world's major theoretical physicists and who despite having suffered from progressive and incurable motor neuron disease for more than 25 years was an active professor for a long time at the University of Cambridge, in the same chair held by Isaac Newton two centuries ago. However, there is no doubt at the mere mention of historical or outstanding figures is not enough to understand fully the Immense problems facing millions and millions of persons who either permanently or for a prolonged period suffer from some type of disability.

More than 600 million persons nearly 10 percent of the world's total population, suffer from some type of disability in the majority of countries, at least one out of 10 persons has a physical, mental or sensory impairment, and at least 25 percent of the entire population are adversely affected by the pressure of disabilities (World Health Organization 2009). These figures show with considerable eloquence the enormous size of the problem and in addition to its universality scope, highlight the well-known impact of the phenomenon among the society as a whole.

However, this qualification alone is not a sufficient basis for evaluating the actual gravity of the problem. Since these persons frequently living in deplorable conditions owing to the presence of physical and social barriers which prevent their integration and full participation in the community. As a result, millions of children and adults throughout the world are segregated and deprived of virtually all their rights and lead to a wretched marginal life (Series 2019). This work is therefore poised to integrate the right to freedom from discrimination, looking at it in the context of International Human Rights generally, and to specifically examine the practice in Nigeria today, despite both the international, regional and national legislations prohibiting this.

MEANING OF DISABILITY

According to the Disability Discrimination Act (DDA) disability is a physical or mental impairment which has a substantial and long term adverse effect on a person's ability to carry out normal day to day activities (Lewis & Pathare 2020). Such impairment conditions or illness may be permanent or transitory in nature.

Development of Disability Policy

In the world today, the disabled are discriminated against, in the employment, access to good services, education, transport and even disposal or management of premises etc (Jongbloed 2003). They are not accorded their rights just like the ordinary or non-disabled members of the society. They are never seen as normal persons capable of doing anything good. Their rights are being trampled upon, even the government do not have their rights at contemplation and protected

Noted therefore, that the disabled also have rights recognized by the law and in order to protect and safeguard these rights and never to be discriminated against, and for persons with disabilities to enjoy and exercise their civil, political, social, economic and

cultural rights on equal basis with others, many instruments are put in place both at the international and national levels (Olaleye 2012). Among these are the followings:

(a) **The United Nation**

- (i) The Universal Declaration on Human Rights (UDHR) was adopted by the General Assembly of the United Nations in 1948 and provides human rights standard accepted by all member states (De Baets 2009). The UDHR represents the normative basis that led to formulating the standards concerning persons with disabilities that exists today. Article 25(1) of the UDHR specifically mention the socio-economic rights of the people with disabilities, the rights to an adequate standards of living including food, clothing, housing, medical care and social services and the rights to security in the event of unemployment, sickness, widowhood, old age. Article 7 guarantees equality before the law and equal protection by the law for all people including against discrimination.

(b) **International Covenant on Civil and Political Rights**

This treaty lists several rights that are relevant to disability. Article 26 states that all people are equal before the law and have right to equal protection of the law (Joseph & Castan 2013).

(c) **International Covenant on Economic, Social and Cultural Rights.**

The Covenant does not explicitly refer to disability though, but however, disability can be included under “other status” in Article 2(2) which calls for non-discrimination on any grounds such as race and colour and other status (Chapman 2017). To be elaborate more fully on the strategies for implementation of the rights set forth in the covenants, the committee on economic, social and cultural rights – the monitoring body of the covenant issued the following:

- General comment 5 - This general comment by the committee formulates obligations of state to eliminate discrimination of persons with disabilities in the areas of equal rights for men and women (double discrimination). The following Articles provides for the various areas of non-discrimination, Article 3 work, Articles 6-8 social security, Article 9, protection of the family, Article 10, adequate standard of living, Article 11, right to education, Articles 13 and 14 rights to take part in cultural life and enjoy the benefit of scientific progress, Article 15.

(d) **Declaration on the Rights of Mentally Retarded Persons.**

The declaration was protected by the UN General Assembly and states that: the mentally regarded person has to the maximum degree of feasibility, the same rights of other human beings (United Nations 1971);

- (e) **Declaration on the Rights of Disabled Persons.**
 This declaration adopted by the UN General Assembly is the first international document that tried to define the term “disability.” The declaration includes 6 number of social and economic rights as well as civil and political rights (United Nations 1975).
- (f) **Declaration on the Rights of Deaf / Blind Persons.**
 Article 1 of the Declaration states that “... every deaf / blind person is entitled to enjoy the universal rights that are guaranteed to all people by the Universal Declaration of Human Rights and the rights provided for all disabled persons by the declaration of the rights of disabled persons” (Iyer 1982, p. 55).
- (g) **Convention on the Elimination of Discrimination Against Women.**
 The Convention on the Elimination of Discrimination Against Women usually abbreviated as (CEDAW) does not include any specific article on disability rights but aims at protecting the rights of all women, whether disabled or not. Disabled women face double discrimination based on their gender and secondly on their disability (Freeman et al., 2012). Therefore, recommendation 18 of (CEDAW) posits that government should ensure that women with disabilities have equal access and social security, and to ensure that they can participate in all areas of social and cultural life.
- (h) **Convention No 159 concerning Vocational Rehabilitation Employment**
 This treaty of the International Labour Organisation (ILO) obligates states to formulate, implement and periodically review a national policy on vocational rehabilitation and employment of disabled persons (Welti 2018). This treaty also emphasizes the principles of equal opportunity, positive measures aimed at effective equality of opportunity and treatment between dual workers and other workers which shall be regarded as discrimination against other workers (Welti 2018).
- (i) **Convention on the Rights of a Child**
 This treaty lists disability as one of the grounds. And discrimination is prohibited especially in Article 2. In addition, Article 23 directly addresses the rights of children with disabilities stating that disabled children are entitled to a full and decent life of dignity and participation in the community (Unicef 2007).
- (j) **Principle for the Protection of Persons with Mental Illness and the Improvement of Mental Healthcare.**
 This document adopted by the UN General Assembly sets detailed standards for the protection of persons with mental disabilities (Kutcher

& McDougall 2009). It emphasizes that all persons have the right to the best available mental healthcare and that persons with mental illness shall be treated with humanity and respect for the inherent dignity of the human person.

(k) **Beijing Declaration on Rights of People with Disabilities**

The declaration was adopted at the world NGO Summit on disability and calls for a higher standard of living, equal participation and the elimination of discriminatory attitudes and practices (Declaration 1995).

(l) **Convention on the Rights of Persons with Disabilities**

This treaty was adopted and entered into force in May 2008.

IMPLEMENTATION AT WORLD REGIONAL LEVEL

- 1) African Union: African Charter on Human and People's Rights - The Charter in Article 18(4) states that every individual shall have this right to enjoy the best attainable state of physical and mental health
- 2) Council of Europe: The Council of Europe is a regional inter-governmental organisation consisting of 45 countries (Musila 2013). Its aim is to defend human rights, parliamentary democracy and the rule of law. The Council has not adopted any specific human rights treaty on persons with disabilities, but created two important treaties that include the protection of disabilities rights.
 - (a) European Convention on the protection of Human Rights and Fundamental Freedoms (Coblentz & Warshaw 1956). Article 5 of the convention states that the rights to liberty and security can be infringed upon on ground of mental disability. Thus, no one shall be deprived of his liberty save as in the cases prescribed by law.
 - (b) European Social Charter. This Charter works as a counterpart to the Convention addressing social and economic rights, such as the right to work or the right to social security. This charter was the first human rights treaty to explicitly mention disability. Further to this, the Parliamentary Assembly of the Council of Europe adopted several recommendations about policies regarding persons with disabilities (Agbaba 2020). These are: (i) Recommendation (818) on the situation of the mentally ill, Recommendation (1185) on rehabilitation policies for the disabled, Recommendation (92) on a coherent policy for the rehabilitation of people with disabilities (Agbaba 2020).
- (3) European Union: The European Parliament adopted several resolutions referring specifically to the protection of disability rights. The resolution on the human rights of disabled people urges the European Commission, the executive branch of the European Union to take steps to ensure equal opportunities for disabled persons (Sacco 2018). The resolution on threat to the right to life of disabled persons seeks to protect the right to life and states that the

European Parliament is “opposed to the active killing by doctors of patient in a persistently vegetative state and disabled newborn children”. Finally, the resolution on the commission on equal opportunity for persons with disabilities recognizes that “there are 37 million disabled people in the European Union who do not enjoy full civil and human rights,” and reminds member states of their responsibility to implement disability protection laws on national level (Sacco 2018). In December, 2000, the Council of Ministers of the European Union adopted a (binding) general framework directive on equal treatment in employment prohibiting direct and indirect discrimination on the grounds of religion or belief, age, disability or sexual orientation (Sacco 2018).

- (4) Organisation of American States (OAS)
 - (a) American Convention on Human Rights. The Convention does not explicitly address the subject of disability but contains the classical human rights guarantees. For example, Article 24 states the rights to equal protection (Trindade 1982).
 - (b) Additional protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (protocol of San Salvador). This treaty specifically provides that a person with disabilities are entitled to receive special attention in order to achieve the greatest possible development of his or her personality. It also obliges governments to implement special measures to facilitate the full integration of persons with disabilities (Trindade 1982).
 - (c) Inter-American Convention on the elimination of all forms of discrimination against persons with disabilities – This Convention aims to prevent and eliminate all forms of discrimination against disabled persons and to promote their full integration into the society.

(5) National Protection and Service Agencies

Several countries such as Australia, Canada, Hong Kong, United Kingdom United States of America, India and Pakistan etc have passed and implemented national anti-discrimination laws, guaranteeing full participation in the society by persons with disabilities. In Australia for instance, the Disability Discrimination Act was passed in 1992 (Boeke et al., 2015). The objective of the Act is to eliminate as far as possible, discrimination against persons on the ground of disability in the area of work, accommodation, education, access to premises, clubs and sport and the provision of goods, facilities, services and lands and also equality before the law (Archibong et al., 2016; Adoga-Ikong & Inyang 2017; Adoga-Ikong & Takim 2020).

In India, two national instruments were passed, the Rehabilitation Council on India Bill and the persons with disabilities (equal opportunities, protection of rights and full participation) Act.

In the United Kingdom, the Disabilities Discrimination Act, and Equality Act aims to end the discrimination which many persons with disabilities face (Boeke et al., 2015). The Acts enumerate rights in the areas of employment, access to goods, facilities and services and beginning or renting landed property.

In the United States, civil rights law regarding persons with disabilities based on a number of laws among which the Americans with Disabilities Act (ADA) is the most important one. The ADA prohibits discrimination on the basis of disability in the area of employment, state and local government, public accommodation, commercial facilities, transportation and telecommunications.

NIGERIA AND THE RIGHTS OF THE DISABLED PERSONS

Just like many other jurisdictions, Nigeria has a good number of legislations under which Nigerians disabilities can be protected. Among these are: The Ordinance for the Protection of Persons with disabilities (Chiyea 2019). This law places emphasis on rehabilitation, accessibility measures. Nigeria adopted the Convention on the Rights of Persons with Disabilities (Oluwabunmi & Oluwatosin 2013). Today Nigeria has a national legislation on disabilities named; Discrimination Against Persons with Disabilities (prohibition) Act 2018. This legislation which is an offshoot of the Bill passed by the National Assembly on March 2009 by the Senate of the Federal Republic of Nigeria was assented by the President, Mohammed Buhari.

In order to make the laws work, Nigeria did not only adopt a policy but also set up a commission for persons with disabilities and make a penalty of N1 million against any person who is found guilty of the law (Oluwabunmi & Oluwatosin 2013). Despite the above, there are cases of discrimination recorded against the disabled in Nigeria up to today. On the basis of this, a one time Executive Secretary of Human Rights Commission in Nigeria Prof. Bemangwe has this to say; “Opinion poll reveals that Nigeria has not complied with the United Nations Charter which requires provisions of access for persons with disabilities.” He went further; “the report clearly showed that Nigeria had discriminatory policy against people with disabilities as far as access to public building is concerned.”

Some of the practical situations of discrimination against persons with disabilities in Nigeria are:

- (i) Victor Oloche, a 52 year old man, said he had never voted in his life. The reason being that he had his two hands amputated in an accident
- (ii) Mohammed Afegbua said in Nigeria, many of the designs of public places precludes disabled persons from accessing social services in the society. He continued, people moving with wheel chair find it difficult to access banking halls due to the security doors placed at the entrance. He further lamented, “the environment is not friendly to us in many aspects, a valuable road walk are not properly maintained and many of the disabled have at many times fallen into ditches.”
- (iii) Another disabled Adegoke Adesola who is physically challenged said, unemployment situation in the country is taking a toll on them. She said, “many of us struggled to acquire education and skills in order to breakaway from the vicious circle of poverty, but our dreams and aspirations have been shattered as we cannot find any suitable employment to sustain us.”
- (iv) Yet, another disabled, Mary Adedokan, a visually impaired student said “the visually impaired persons usually have difficulties in getting the results of

public examination they sit for” she lamented further, “the results are usually delayed and we have difficulties accessing our results. What about access to Automated Teller Machine (ATM) in Nigeria, disabled find it difficult if not impossible accessing ATM in Nigeria to transact business. The list is endless. With this, one can buttress the assertion made by the then Executive Secretary of Human Rights Commission in Nigeria. Prof. BemAngwe that “Nigeria is not complying properly with the anti-discrimination laws against the disabilities.” We can therefore conclude that there are actually legislations in place anti-discrimination against the disabled in Nigeria, just like other jurisdictions, but the problem here is that of complying with the laws which will make the disabled enjoy their rights just like any other ‘normal’ citizen.

CONCLUSION

It might appear elementary to point out that persons with disabilities are human being and they are even more human than us in most cases. The daily effort to overcome impediment and the discriminatory treatment they regularly receive usually provide them with special responsibility features, the most obvious and common which is integrity, perseverance and deep spirit of comprehension and patience in the face of understanding and intolerance. Since the beginning of the new multilateral concern with disability as adopted by the General Assembly of the United Nations on 9th December, 1975 and its subsequent declaration against the disabled in the society, the proclamation of 1981 as the international year of disabled persons, it is pertinent to state that the world has explicitly recognized the right of human beings as equal and also have put it into practice.

In the light of the above, it is important that Nigeria also actively join the band wagon to project the human right of the disabled persons in our society. After all, persons with disabilities are person and human like ourselves they have the right to live with us and we do, we should respect their rights. We also have obligations to do what is necessary to enable them enjoy the effective exercise of their human rights on equal footing with others.

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