

Ability in Intellectual Disability: The Culture of Inequality in Nigeria and Other Jurisdictions

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ABSTRACT

This paper examines the disputable issue of the culture of inequality in providing legal protection for children living with intellectual disabilities. It argues the disparity in the provision of educational and health services for persons living with intellectual disabilities by the Nigerian Government and identifies the gaps in the provisions of Sections 20 and 21 of the Nigerian Discrimination Act. These deficiencies obscure the ability of children living with disabilities (Down syndrome and Autism), which culminates in a domino effect from delayed intervention. It draws a comparative analysis from the United Kingdom and the United States of America as a standard for innovative legal frameworks in Nigeria. It concludes that non-governmental organisations must collaborate with the government to ameliorate Nigeria's poor education and health care, with a differential detour that rights to free education and health care for those with intellectual disabilities be justiciable for the Act's practicability.

Keywords: Intellectual Disability, Rights to Health, Right to Education, Down syndrome and Autism

INTRODUCTION

Persons with disabilities are often abused and discomfited by society's perceptions of them. The most marginalised groups affected by a growing culture of inequality are those living with disabilities,¹ particularly children with intellectual disabilities whose genuine reality bears the brunt of society's obscurity. The legal perception and its provisional inadequacies lay credence to this imperceptibly.²

¹Noa Cohen and Carmit Katz, 'Preventing Child Maltreatment: Key Conclusions from a Literature Review of Prevention Programs for Practitioners' (2021) 118 *Child Abuse and Neglect* 105138

<<https://www.sciencedirect.com/science/article/pii/S0145213421002118?7>> accessed 5 August 2021.

² *ibid.*

This culture of inequality has limited the ability of those living with intellectual disabilities.³ In the past decades, the problems of children living with intellectual disabilities have heightened the need for a purposeful legal framework to curtail infringements on the fundamental rights of these persons.⁴

Legal scholars in Nigeria have not treated this area in much detail;⁵ the cry for justice, the appeal for what is right and what is due them in society, still stares at the 2 million persons with intellectual disabilities.⁶ The Nigerian Disability Act is still characterised by non-inclusion or non-inclusiveness.⁷ It masquerades inequality disguised as an equitable society for persons with intellectual disabilities.⁸ The Nigerian health and educational systems are rife with non-inclusion.⁹ The public perception of children with intellectual disabilities in the community is substantially inconsistent with other children in Nigeria.¹⁰ Unlike other jurisdictions, viz-a-viz the United Kingdom and the United States, Nigeria's culture of inequality is more evident.¹¹

The importance of this paper is to demonstrate the inadequacies in legal protection for children with intellectual disabilities in Nigeria. It evokes the fact that there is capacity in every child with an intellectual disability. Still, most children affected by intellectual disability are not privileged to access basic special needs in good time,¹² and as such poor-quality education and health care services negatively impact the child's ability. The first section of this work is the introduction and provides the background; the second section describes the nature and scope

³ Judith McKenzie, 'Intellectual Disability in Inclusive Education in South Africa: Curriculum Challenges' (2021) 18 *Journal of Policy and Practice in Intellectual Disabilities* 53 <<https://onlinelibrary.wiley.com/doi/10.1111/jppi.12337>> accessed 20 February 2022

⁴ Salayev, K. A., et al. "Psychiatric and Behavioural Problems in Children and Adolescents with Epilepsy." *East Asian Archives of Psychiatry*, vol. 27, no. 3, Hong Kong Academy of Medicine, Sept. 2017, p. 106.; Wagemaker, E., Hofmann, V., & Müller, C. (2023) and Muideen O Bakare and others, 'Problem and Pro-Social Behavior among Nigerian Children with Intellectual Disability: The Implication for Developing Policy for School Based Mental Health Programs' (2010) 36 *Italian Journal of Pediatrics* 37 <<http://ijponline.biomedcentral.com/articles/10.1186/1824-7288-36-37>> accessed 22 February 2022.

⁵ Edwin Etieyibo and Odirin Omiegbe, 'Religion, Culture, and Discrimination against Persons with Disabilities in Nigeria' (2016) 5 *African Journal of Disability* <<http://www.ajod.org/index.php/ajod/article/view/192>>.

⁶ Augustine Edozor Arimoro, 'Persons with Intellectual Disability and Access to Justice in Nigeria: Challenges and the Way Forward' (2019) 5 *Hasanuddin Law Review* 180.

⁷ Precious Nonye Sango, 'Country Profile: Intellectual and Developmental Disability in Nigeria' (2017) 22 *Tizard Learning Disability Review* 87 <<https://www.emerald.com/insight/content/doi/10.1108/TLDR-07-2016-0019/full/html>> accessed 22 February, 2022

⁸ McKenzie (n 3). accessed 27 May 2021

⁹ Halima Aliyu Doma, *Human Rights and Persons with Disabilities in Nigeria: Laws Policies, and Institutions* (Adonis & Abbey 2021).

¹⁰ Dana K Donohue, Juan Bornman and Mats Granlund, 'Examining the Rights of Children with Intellectual Disability in South Africa: Children's Perspectives' (2014) 39 *Journal of Intellectual & Developmental Disability* 55 <<https://www.tandfonline.com/doi/full/10.3109/13668250.2013.857769>> accessed 15 February 2022

¹¹ Telma Catarina Almeida, Renata Guarda and Olga Cunha, 'Positive Childhood Experiences and Adverse Experiences: Psychometric Properties of the Benevolent Childhood Experiences Scale (BCEs) among the Portuguese Population' (2021) 120 *Child Abuse & Neglect* 105179 <https://www.sciencedirect.com/science/article/pii/S0145213421002520?dgcid=rss_sd_all&utm_source=researcher_app&utm_medium=referral&utm_campaign=RESR_MRKT_Researcher_inbound> accessed 14 February, 2022.

¹² Franzina Coutinho and Sonali Saini, 'Reliability and Validity of the Red Flag App: Encouraging Inclusive Education for Children at Risk in the School System' (2021) 13 *International Journal of Education* 9 <<http://www.macrothink.org/journal/index.php/ije/article/view/18376>> accessed 15 February 2022.

of intellectual disability; the third section explores the legal framework and some aids exerted by Non-Governmental Organisations for children living with intellectual disability, while the fourth section is a comparison of the Nigerian legal framework and that of two developed nations: the United States of America and the United Kingdom and the fifth section concludes with recommendations for Nigerian government.

NATURE AND SCOPE OF INTELLECTUAL DISABILITY

Interest in studying persons with intellectual disabilities in Nigeria is shallow; as indicated above. Legal research in Nigeria on children living with this condition is novel and poorly documented. However, human rights have recently been revolutionised, shifting the borders of fundamental rights. Remarkably, the expansion of law cuts across global terrorism, climate change, population, workplace harassment, war crimes and humanitarian law. These rights have emboldened activists to engender rights for persons with intellectual disabilities in Nigeria.

Usually, a child with an intellectual disability will show signs before 18 years of age. It is the deficiency in intelligence and adaptive functions that cause persons living with intellectual disabilities to have limitations in self-care and live with poor social skills. In addition, children with intellectual disability are slower to learn than other children, and their intelligence quotient is 70-75.¹³ A typical example of delayed milestones in these children is that they may have difficulty talking (delayed speech) or take longer to walk (impaired motor activity). In this paper, the discussion on children with an intellectual disability shall be limited to the early stages of children with Down's syndrome and Autism.

DOWN'S SYNDROME

Children with Down syndrome are widely associated with intellectual disability. However, up till now, legal research has tended to focus on children with physical disabilities rather than intellectual disabilities. There is little evidence of legal protection for children with Down syndrome in Nigeria¹⁴. This gap in law provision has led to countless waves of abuse, which rise from the populace's poor orientation to legislation errors.¹⁵

Down syndrome is a chromosome defect caused by extra chromosome 21 (Trisomy 21).¹⁶ Usually, there are 46 chromosomes in each body cell, but this defect results in 47

¹³ James C Harris and Stephen Greenspan, 'Definition and Nature of Intellectual Disability' in Singh N. (ed), *Handbook of Evidence-Based Practices in Intellectual and Developmental Disabilities* (Springer, Cham 2016) <http://link.springer.com/10.1007/978-3-319-26583-4_2> accessed 1 November 2021.

¹⁴ Thelma Chioma Abeku, 'Inclusion Can Make a Big Difference in the Lives of People Living with down Syndrome in Nigeria.' *Daily Trust* (Abuja, 1 May 2022) <<https://dailytrust.com/inclusion-can-make-a-big-difference-in-the-lives-of-people-living-with-down-syndrome-in-nigeria/>> accessed 11 June 2023.

¹⁵ Deborah Levenson, 'Debate Surrounds State Laws for Down Syndrome Fact Sheets: Controversy Revolves around Whether States Are Attempting to Intrude Too Much in the Communication between Patients and Providers.' (2016) 170 *American Journal of medical genetics. Part A* 555 <<http://www.ncbi.nlm.nih.gov/pubmed/26889669>> accessed 14 February 2022.

¹⁶ Emine Ikbali Atli, 'What Causes Down Syndrome?', *Genetics and Etiology of Down Syndrome [Working Title]* (2021).

chromosomes.¹⁷ Persons affected by Down's syndrome are of short stature, short digits, i.e., their hands, fingers, feet, and toes are also short. In addition, they are broad and stubby with weak muscles¹⁸.

There are no laws directly protecting children with Down syndrome in Nigeria, leading to the death of many of these children.¹⁹ Children with Down syndrome are cut short with little or no access to basic needs.²⁰ Discrimination such as neglect,²¹ mental harassment,²² physical brutalisation and degrading and inhuman treatment are an apparent infringement on the dignity of children with Down syndrome.²³ Children living with Down syndrome are still confined in institutions by the rich while the poor confine them at home or with a relative. The evidence buttresses the need for further legal research on protecting children with Down syndrome in Africa.²⁴

AUTISM

Autism²⁵ has been the subject of intense debate within the scientific community.²⁶ In Nigeria, the arguments are behind the times and focus mainly on distinguishing between physical and intellectual disability. This drawback is a reflection of our law provision in this regard.

Autism is a common disorder that becomes apparent in childhood, usually about two and a half years. A child with Autism has difficulties in communication, learning, and interactions or socialisation. Children with Autism are aloof, emotionally detached, and have repetitive

¹⁷J Wishart and others, 'What Is DOWN ' S SYNDROME ?' [2005] National Down Syndrome Society <[http://www.dsscotland.org.uk/Resources/Downs Syndrome Scotland/Homepage Images/what-is-ds.pdf](http://www.dsscotland.org.uk/Resources/Downs%20Syndrome%20Scotland/Homepage%20Images/what-is-ds.pdf)> accessed 14 February 2022.

¹⁸ The types of down syndrome are mosaicism, translocation and trisomy 21(Nondisjunction) but this article is limited to their aids. See: Erin Suellmann, 'About Down Syndrome – Down Syndrome of Greater St. Louis' (Down Syndrome Association of Greater St Louis) <[https://dsagsl.org/about/down-syndrome/#:~:text=There are three types of,nondisjunction\)%2C translocation and mosaicism](https://dsagsl.org/about/down-syndrome/#:~:text=There%20are%20three%20types%20of,nondisjunction)%2C%20translocation%20and%20mosaicism)> accessed 29 June 2023.

¹⁹ J Jansen-van Vuuren, HM Aldersey and J Jarse Van &J.Aldersey Vuurem, 'Stigma, Acceptance and Belonging for People with IDD Across Cultures' (Springer, 1 September 2020) 163 <https://link.springer.com/article/10.1007/s40474-020-00206-w?utm_source=getftr&utm_medium=getftr&utm_campaign=getftr_pilot#article-info> accessed 21 May 2021.

²⁰Katie Williams and others, 'Disparities in Health Supervision for Children with Down Syndrome' (2017) 56 *Clinical Pediatrics*.

²¹Claire Paterson-Young, 'Exploring How Children Subjected to Violence in the Home Cope with Experiences in Secure Training Centres' (2021) 117 *Child Abuse and Neglect* <<https://www.sciencedirect.com/science/article/pii/S0145213421001496?1>>. Accessed 14 February 2022.

²²Daniel Kijo, 'Autism in Africa: Autistic Children Suffer from Stigmas in Tanzania' (2019) <https://news.cgtn.com/news/794d544f31494464776c6d636a4e6e62684a4856/share_p.html> accessed 19 June 2021.

²³Almeida, Guarda and Cunha (n 11).

²⁴ Leilah Schoonraad and others, 'A 5-Year Retrospective Review of the Health Supervision Received by Children with Down Syndrome at a South African Regional Hospital' (2020) 66 *Journal of tropical paediatrics*.

²⁵ It was Eugen Bleuler, a German psychiatrist who conceived the name in 1911. See: Bonnie Evans, 'How Autism Became Autism' (2013) 26 *History of the Human Sciences* 3 (4) <<http://journals.sagepub.com/doi/10.1177/0952695113484320>> accessed 7 June 2023.

²⁶ Morton Ann Gernsbacher and others, 'Do Puzzle Pieces and Autism Puzzle Piece Logos Evoke Negative Associations?' (2018) 22 *Autism* 118 <<http://dsq-sds.org/article/view/1675/1596>>. accessed 14 February 2021

behaviour.²⁷ Medically, it is a neurological and developmental disorder²⁸. Furthermore, it is associated with environmental, genetic and gynaecological factors.²⁹ However, the actual cause of Autism is unresolved and open to debate.³⁰

Children with Autism, like Down syndrome, are vulnerable to abuse and principally neglected by society. They suffer physical abuse, sexual abuse and emotional abuse.³¹ It is perturbing that many of these children cannot express the horror and agony they suffer. Humanity's intrinsic value is lost due to the lack of care for children living with Autism and abuse in Nigeria. Early detection remains one of the best panaceas to manage autistic children better.³²

THE RELATIONSHIP BETWEEN INTELLECTUAL DISABILITY, DOWNS SYNDROME AND AUTISM

The normative social behaviour towards those with intellectual disabilities is mainly discriminatory. This descriptive claim is the general standard for children living with Down syndrome and autistic children in Nigeria. The advocacy for inclusion of children living with an intellectual disability is a perennial issue in developed countries and developing countries.

Intellectual disability is a dormitory or repository for defects like Down syndrome, Autism, Cerebral palsy, Fragile X syndrome, Fetal alcohol syndrome, Prader-Willi syndrome, etc. However, increasing public concern is in Down's syndrome and Autism. Down syndrome and Autism are serious public health concerns in Nigeria.

A classic problem is the inadequate legal provisions for basic needs and good life for children living with intellectual disabilities in Nigeria. It is this inequality that informs the fulcrum of this paper. Another primary concern is that early detection is critical to children's abilities with intellectual disabilities. However, research has consistently shown inequality between children living with intellectual disability and children without intellectual disability in Africa regarding legal provisions for adequate care.³³ Ability in each child living with an intellectual disability suffers a considerable lack of equality in Nigeria due to the absence of information from parents

²⁷Priya Joon, Anil Kumar and Milind Parle, 'What Is Autism?' (2021) 73 Pharmacological reports : PR 1255 <<https://link.springer.com/10.1007/s43440-021-00244-0>> accessed 20 February 2022.

²⁸ The 5 types of Autism are; Asperger's syndrome, childhood disintegrative disorder, Kenner's syndrome, Rett syndrome, and pervasive developmental disorder – not otherwise specified. Brennan D, 'What Are the 5 Types of Fever?' (2021) <https://www.medicinenet.com/what_are_the_5_types_of_fever/article.htm> accessed 29 June 2023.

²⁹ Ibid.

³⁰Maureen Aarons and Tessa Gittens, *WHAT CAUSES AUTISM?* (2nd Ed., Routledge 2020) <<https://www.taylorfrancis.com/books/9781134720767/chapters/10.4324/9780203019665-7>>accessed 20 February 2022.

³¹Joseph N Roscoe, Bridgette Lery and Doug Thompson, 'Child Safety Decisions and Parental Mental Health Problems: A New Analysis of Mediating Factors' (2021) 120 Child Abuse and Neglect 105202 Child safety decisions and parental mental health problems: A new <<https://www.semanticscholar.org/paper/Child-safety-decisions-and-parental-mental-health-A-Roscoe-Lery/48b727912d381fc380944f2278a19c264ca5efa8>> accessed 8 May 2023.

³² Yewande O Oshodi and others, 'Autism Spectrum Disorder in a Community-Based Sample with Neurodevelopmental Problems in Lagos, Nigeria' (2017) 7 Journal of Public Health in Africa <<http://publichealthinafrica.org/index.php/jphia/article/view/559>> accessed 16 February 2022.

³³ This can be gleaned from the DAPD Act which is unable distinguish between physical and intellectual disability. Secondly, Nigeria is yet to ratify the African Charter.

and the dearth of available resources and skilled persons to provide care,³⁴ which gives way to the suspicion that children living with intellectual disability cannot lead an everyday life or improve considerably.

Down syndrome and Autism are more common forms of intellectual disabilities in Nigeria. Scholars differ for and against³⁵ the categorisation of Autism as an intellectual disability. The World Health Organisation describes intellectual disability thus: The term intellectual disability includes children with Autism who have intellectual impairments.³⁶ It also encompasses children in institutions because of perceived disabilities or family rejection and consequently acquires developmental delays and psychological problems.³⁷

Conversely, Arimomo³⁸ is of the view that Autism does not comprise intellectual disability. While Emily Sohn describes the relationship between Autism and intellectual disability as fused and biological distinctions, not so clear, thus: 'Scientific progress depends on knowing where the conditions intersect-and part ways.'³⁹ However, in law, Children living with Down syndrome and Autism, for ease of legal protection, can be categorised as persons living with intellectual disability. Although medically, Down syndrome and Autism are different defects, they share some common characteristics in presentation, such as insisting on routine, problems with communication, aural issues or difficulty responding to their names, putting objects in their mouth, repetitive language, and delay in development, poor eye contact and sensory issues.⁴⁰ Similarly, children with intellectual disabilities may have a dual diagnosis of Down syndrome and Autism. Likewise, early detection and support significantly improve children with Down syndrome and Autism.⁴¹ Both research findings are inconclusive in Nigeria, thereby creating avenues for further research for legal scholars and practitioners for an inclusive legal and institutional framework.

So far, this paper is focussed on the nature and scope of intellectual disabilities in children living with Down syndrome and Autism. The following section will discuss some legal instruments for children with intellectual disabilities. It will consider their rights to education, rights to health and the impact of some non-Governmental organisations.

³⁴ Thelma Chioma Abeku (n 14).

³⁵ Contra : 'The Arc, Introduction to Intellectual Disabilities' (2011) <www.thearc.org> accessed 7 July 2021 and Arimoro (n 5).

³⁶ WHO/EUROPE, 'WHO_Europe _ Mental Health - Definition Intellectual Disability' (2016) <<https://www.euro.who.int/en/health-topics/noncommunicable-diseases/mental-health/news/news/2010/15/childrens-right-to-family-life/definition-intellectual-disability>> accessed 4 November 2021.

³⁷ Chronic Illness and People with Intellectual Disability. <<https://www.nds.org.au/images/LearnNDevelop/Chronic-Illness-and-People-with-Intellectual-Disability.PDF>> Accessed 5 May 2023.

³⁸ Arimoro (n 6).

³⁹ Emily Sohn, The blurred line between autism and intellectual disability 2020.

⁴⁰ Lina D Patel, 'Down Syndrome Resource Foundation' 2021 <<https://www.dsrf.org/information/>>. Accessed 20 February 2022.

⁴¹ Oshodi and others (n 32).

LEGAL FRAMEWORK AND NON-GOVERNMENTAL ORGANISATION

Orientation for good toward law can create a better society. Nevertheless, the implementation of the law sometimes generates insuperable difficulties undermining the putative intent of the law. At the same time, its absence or obscurity in any legal provision is regressive with an attendant ripple effect on all and sundry, especially to the most vulnerable in society. Intellectual disability is a universal issue of concern and disquiet.⁴² Remarkably, the United Nations instruments are yet to encapsulate specific provisions for intellectual disability. However, this sounds perturbable, and the⁴³ repercussions may lead to confusion about viewing intellectual disability as an abnormal condition instead of reckoning it as a universal issue.⁴⁴

Similarly, the culture of inequality in any society potentially limits children with intellectual disabilities, who are the most vulnerable.⁴⁵ Except there are avenues that lift the sociocultural architecture for a more inclusive culture achievable through the instrumentality of legal provisions, support for children with intellectual disabilities will remain subverted.

CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (2006)⁴⁶

In recent years, researchers have investigated various approaches for the inclusion of persons with disabilities; they have moved from the medical model⁴⁷ to the social model,⁴⁸ which propagates the delimitation of social barriers of non-inclusiveness and inequalities amongst children living with intellectual disabilities.⁴⁹ The beginning part of the Convention on the Rights of Persons with Disabilities is a significant issue, enshrined for the benefit of children with disabilities in any society, and the safeguards are to preserve their human rights and fundamental freedom like any other child, honouring the covenants by State parties on the rights of children.⁵⁰

Furthermore, it canvassed for the promotion of latent capabilities in children with disabilities and preservations of their rights and identities.⁵¹ The combined effect of the above provisions is that children with an intellectual disability enjoy services on equal pedestals as those without intellectual disabilities. A notable example is the United Nations⁵² provision concerning children with disabilities. It buttresses that State parties (on an equal basis with other children) undertake the following, confined to their covenants:

⁴²Michael Ashley Stein, 'Disability Human Rights', *Nussbaum and Law*, vol 95 (2017).

⁴³Carlton F Wells and William Morris, 'The American Heritage Dictionary of the English Language' (1970) 59 *The English Journal* 875.

⁴⁴Stein (n 35).

⁴⁵Donohue, Bornman and Granlund (n 9); See also; Branka Rešetar, 'The Rights of Children with Disabilities - The Rights of Children with Problems of Mental Health' (2017) 45 *Socijalna Psihijatrija*.

⁴⁶hereinafter referred to as CRPD

⁴⁷Aarons and Gittens (n 29).

⁴⁸Stein (n 35).

⁴⁹ibid.

⁵⁰OHCHR | Convention on the Rights of Persons with Disabilities (2006)

<https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx> Accessed 22 February 2022; See also, Aart Hendriks, 'UN Convention on the Rights of Persons with Disabilities 273.

⁵¹ibid. See also CRPD 2006, Article 3 (h).

⁵²CRPD 2006, Article 7(1), (2) and (3).

First, equal opportunities for these children in an identical manner to other children and upholding their human rights and fundamental freedom.⁵³ Secondly, the child's best interest is always accorded priority.⁵⁴ Thirdly, attention must be accorded to their opinion and appropriate assistance maintained in cognisance of their age and maturity.⁵⁵

The above provisions portend that the government or State must be involved in the well-being of children living with disabilities, particularly children with intellectual disabilities. Caring for the well-being of a child with Down syndrome and Autism is substantially expensive for the average family anywhere in the world.⁵⁶ Most families with children living with intellectual disabilities would readily accept support or government intervention to help ameliorate the cost of caring for their children.⁵⁷ Health, education and public space for children with intellectual disabilities are the core primary needs. Article 24, Convention on the Rights of Persons with Disabilities and Optional Protocol, provides for the right to education of disabled children. Bearing that, difficulties in educating children with intellectual disabilities in Africa are extensive though significant to the lifelong ability of these children, especially with early interventions. In other words, requiring a concerted effort to preserve these provisions. It is reckoned that education for children with intellectual disabilities is paramount, and their rights are preserved by State parties to take cognisance of their rights to education, without prejudice to equal opportunities in life, inclusiveness and equal access in all levels of education. A sustainable platform for continuous education targeted towards: the improvement of human capacity, dignity and self-worth as a means of preserving the human rights, freedom and diversity of persons with disabilities and upholding their personality, social well-being, and mental and physical abilities within a liberal civilisation⁵⁸. At the same time, ensuring that persons (children) with disabilities benefit from free and compulsory primary education and secondary education and are not discriminated against due to disability. Unfettered access to inclusive and quality education with other children or persons in the community of residence.⁵⁹ Reasonable accommodation as required by individuals,⁶⁰ support for effective education within the general education system⁶¹ and in countries where education and social development of children living with disabilities are prioritised, and support systems are designed, based on each child's need, to ensure inclusiveness.⁶² In addition to this, learning for persons with disabilities be geared towards full and equal participation in education in society. Significant steps create alternative means for persons with a disability, such as devices and aids like learning braille, alternative script, and argumentative alternative modes. Also, build or design alternative means of communication, orientation, mobility skills and enthusing peer support

⁵³ *ibid* 7(1)

⁵⁴ *ibid* 7(2)

⁵⁵ *ibid* 7(3)

⁵⁶ Dallas Genereaux, Clara DM Van Karnebeek and Patricia H Birch, 'Costs of Caring for Children with an Intellectual Developmental Disorder' (2015) 8 *Disability and Health Journal* 646

<<https://linkinghub.elsevier.com/retrieve/pii/S1936657415000473>>. Accessed 21 February 2022.

⁵⁷ Stewart L Einfeld and others, 'Behavior Problems Increase Costs of Care of Children with Intellectual Disabilities' (2010) 3 *Journal of Mental Health Research in Intellectual Disabilities*.

⁵⁸ CRPD 2006, Article 24(1)(a), (b) and (c)

⁵⁹ CRPD 2006, Article 24(2)(b)

⁶⁰ CRPD 2006, Article 24(2)(c)

⁶¹ CRPD 2006, Article 24(2)(d)

⁶² CRPD 2006, 24(2)(e)

groups and mentoring avenues.⁶³ To pave the way for the use of sign language and linguistic identity of the deaf community.⁶⁴ And secure education and means of communication for children with disabilities in the appropriate manner and according to individual needs and surroundings be the person deaf, blind or deaf-blind be considered.⁶⁵

The purport of Articles 24 (1), (2), and (3) above is to the effect that the right to education of disabled children is inalienable, and as such, education for children with disabilities must be inclusive from primary to the tertiary level to engender latent talents in children with disabilities to its full potential in any child who is disabled. Furthermore, children with disabilities are not to be separated from other children as is the case in Nigeria; instead, support and facilities should be provided in the school or tertiary institution to include persons (children) with disabilities and, by extension, children with intellectual disabilities. In preserving these rights, teachers must be employed, including teachers with disabilities (co-production) with requisite professionals and training in sign language and brail, and to train professionals and staff at every level of education, especially training on disability awareness, format for communication, techniques for education and materials to support persons with disabilities.⁶⁶ Access to inclusive learning, general tertiary education, vocational training, adult education and lifelong learning on an equal basis with others.⁶⁷ This is less strenuous for the adult who had early intervention as a child.⁶⁸

Articles 24 (4) and (5)⁶⁹ imply that the state must take the appropriate care in ensuring that teachers employed are professionals with technical know-how in educating children living with disabilities. Professionals with such know-how are not limited to tertiary education but include vocational training, adult education and learning as they may wish to study.

In a similar vein, Article 25 of CRPD provides for the right to health for children with disabilities. However, the provision is primarily hinged on the State to ensure that persons with disabilities attain the highest quality of health care free from discrimination. Therefore, from the above requirements, persons with disabilities deserve the same standard of care as other persons.⁷⁰ Healthcare provisions must also be specified for those with a disability for early identification and intervention. However, persons with disability are not to sustain an injury or a person disabled due to such care.⁷¹ Furthermore, health services are for all and sundry residents or communities, particularly in rural areas.⁷² Persons with disabilities must be cared for with the same quality of professionals as others while ensuring their human rights, dignity, autonomy and needs and propagating awareness in caring for persons with disabilities in the public and private health sectors⁷³ and furthermore, ensuring that provision by national law for life

⁶³CRPD 2006,Article 24(3)(a)

⁶⁴CRPD 2006,Article 24(3)(b)

⁶⁵CRPD 2006,Article 24(3)(c)

⁶⁶CRPD 2006 Article 24(4)

⁶⁷ CRPD 2006,Article 24(5)

⁶⁸ CRPD 2006,Article 24(4) and (5)

⁶⁹ ibid

⁷⁰CRPD 2006,Article 25(a)

⁷¹CRPD 2006,Article 25(b)

⁷²CRPD 2006,Article 25(c)

⁷³ CRPD 2006,Article 25(d)

insurance and health insurance for all citizens are not marginalised for their disabilities.⁷⁴ State parties must ensure no discrimination regarding the denial of health care or health services, food and fluids based on disability.⁷⁵

Article 28 of CRPD provides that there should be an adequate standard of living and social protection. This provision is a barometer for measuring inequality. Therefore, the standard of living provided for persons with disability, particularly intellectual disabilities and the social protection they acquire in society can be a basis for measuring discrimination. Adequate standard of living shall include adequate food, clothing, housing, continuous improvement in living conditions and ensuring that persons with a disability based on their disability do not suffer discrimination.⁷⁶ In the same way, the social protection of persons with disability ensures that there should be no scintilla of discrimination; instead, it promotes the following rights:⁷⁷

- a) Access to clean water services, appropriate and affordable services, devices and assistance for persons with disability;
- b) Assistance from the State to those with poor backgrounds with disability-related expenses, adequate training, counselling, financial assistance and short-term care;
- c) Access to public housing programme;⁷⁸

The standard of living of persons with an intellectual disability is a yardstick for inequality. When children living with intellectual disabilities are incapable of accessing equal standards of care and equal opportunities as other children, it is tantamount to suppressing the ability of these children who are living with intellectual disability at a critical point of their life where early detection is indispensable.

THE AFRICAN CHARTER

The African Union is alive to equal opportunity amongst Member States. However, the United Nations Convention on the Rights of Persons with Disabilities and Optional Protocol (2006) was criticised by African nations primarily for not taking cognisance of African locality.⁷⁹ The African Charter on Human and Peoples Rights on the Rights of Persons with Disabilities, 2018, was therefore drafted. It came into effect as soon as 15 members of the African Union sign it. It is a framework for disability rights in Africa. Article 28 provides for children with disabilities. Disabilities will also encompass those with intellectual disabilities⁸⁰. The African Charter dispenses equal rights for children with disabilities and other children,⁸¹ that state parties shall

⁷⁴CRPD 2006,Article 25(e)

⁷⁵CRPD 2006,Article 25(f)

⁷⁶CRPD 2006,Article 28(1)

⁷⁷CRPD 2006,Article 28(2)

⁷⁸ ibid Article 28(a)(c) and(d)

⁷⁹ Grace Antwi-Atsu, 'The African Disability Protocol: A Call to Leave No One behind | Blogs | Sightsavers' (2021) <<https://www.sightsavers.org/blogs/2021/08/the-importance-of-the-african-disability-protocol/>> accessed 22 February 2022.

⁸⁰African Union (AU), Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa, 29th January 2018. < <https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-persons-disabilities-africa>> accessed 20 February,2022.(Hereinafter known as African Charter)

⁸¹ 'Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (2016)' (2016) 5 International Human Rights Law Review 146 <https://brill.com/view/journals/hrlr/5/1/article-p146_6.xml>. African Charter(2018),Article 28(1)

preserve the identity of children with disabilities and ensure they are protected.⁸² Primarily, the best interest of the child at all times and the welfare should be considered.⁸³ Their welfare⁸⁴ as children with disabilities under the African Charter is accorded with rights to express themselves considering their age and maturity with other children⁸⁵, and other welfares are to ensure children with disabilities are given assistance to realise their rights,⁸⁶ their survival and development.⁸⁷ Ensure they are registered immediately after birth,⁸⁸ and they are not used for sexual exploitation or child labour harvesting organs,⁸⁹ abuse and forced labour.⁹⁰ It provides that these children should not be separated from their parents, caregiver or guardian on the bases of their disability⁹¹ and special care is accorded to children requiring intensive support.⁹² They must achieve the fullest inclusion⁹³ and regard to every children with disabilities.⁹⁴ These children must be protected from various cases of abuse within the family, institutionally and in other settings,⁹⁵ and not be sterilised on any account.⁹⁶

THE RIGHT TO EDUCATION UNDER THE AFRICAN CHARTER

The right to education for children with intellectual disabilities cannot be understated. The revolutionary significance of education to children with intellectual disabilities lies in State parties⁹⁷ and the commitment of each teacher, and the priority they accord to the invaluable importance of this priceless obligation to children in severe need. No responsible nation underestimates learning or knowledge and its impact on a child and, more so, on any child with an intellectual disability. Education is like a mental elixir to a child with an intellectual disability. Empowered with education, they cannot mistake them as evil, idiots or vagabonds.

The genesis of inclusive education for special needs children and the attitude towards educating children living with intellectual disabilities is captured by Kathryn and Gillian thus:

Inclusive education as a service delivery model arose out of disability activism and critiques of special education. However, to understand the essence of inclusive education in early

⁸² *ibid.* African Charter(2018),Article 28(2)

⁸³ *ibid.* African Charter(2018),Article 28(3)

⁸⁴ *ibid.* African Charter(2018), Article 28(4)

⁸⁵ African Charter(2018), Article 28(4) (a)

⁸⁶ *ibid.* African Charter(2018), Article 28(4)(b)

⁸⁷ *ibid.* African Charter(2018), Article 28(4)(c)

⁸⁸ *ibid.* African Charter(2018), Article 28(4)(d)

⁸⁹ *ibid.* African Charter(2018), Article 28(4)(e)

⁹⁰ *ibid.* African Charter(2018), Article 28(4) (f)

⁹¹ *ibid.* African Charter(2018), Article 28(4) (g)

⁹² *ibid.* African Charter(2018), Article 28(4) (h)

⁹³ *ibid.* African Charter(2018), Article 28(4) (i)

⁹⁴ *ibid.* African Charter(2018), Article 28(4) (j)

⁹⁵ *ibid.* African Charter(2018), Article 28(4) (k)

⁹⁶ *ibid.* African Charter (2018), Article 28(4) (l). See also DAPD Act (2018) and CRPD (2006). The obligation of implementation is on state parties.

⁹⁷ *ibid.*

childhood, one must also engage with broader questions of difference, diversity, and social justice as they interest in childhood studies.⁹⁸

It also accords with earlier observation on Article 24 of the United Nations (CRPD). Article 16 of the African Charter also follows in this direction that children with intellectual disabilities have the right to education⁹⁹ on equal basis,¹⁰⁰ which must attract inclusive quality education and skill training¹⁰¹ from basic to secondary education¹⁰² and be accessible to general tertiary education, voluntary training, adult education and lifelong learning.¹⁰³ There must be a reasonable accommodation¹⁰⁴ and the environment in tune with effective education.¹⁰⁵ Government must ensure appropriate schooling choices¹⁰⁶ and they must be open to life learning skills and social development for easy integration into society.¹⁰⁷ Furthermore, professionals need regular assessments to determine particular support for learning, early intervention, and certification for learners.¹⁰⁸ The State should provide learning materials and kits in schools,¹⁰⁹ and professionals must be trained on some particular need, including persons with disabilities.¹¹⁰ Emphasis should be on the promotion and preservation of sign language¹¹¹ Article 16(4) provides that: 'The education of persons with disabilities shall be directed to: a) improvement of their human capacities while upholding their dignity and self-worth'¹¹² and given consideration to their, personality, latent talents, social well-being and be able to explore their physical and mental abilities to the fullest¹¹³ without prejudice¹¹⁴ but as a means of reinforcing the African values.¹¹⁵

The most striking theme to emerge is that education of persons with disabilities is driven by the State and achievable with better policies.¹¹⁶ For instance, duty-free importation of equipment, devices and materials for children with intellectual disabilities will automatically lead to the availability of commodities for their care in society. On the other hand, the State may be characterised by a weak policy or approach towards education (such as poor funding), as in

⁹⁸ Kathryn Underwood and Gillian Parekh, 'Inclusion in Early Childhood: Difference, Disability, and Social Justice, *Education* (Oxford University Press 2020) <<http://oxfordbibliographiesonline.com/view/document/obo-9780199756810/obo-9780199756810-0265.xml>> accessed 20 February 2022

⁹⁹ Articles 16(1) of African Charter (2018)

¹⁰⁰ *ibid.* African Charter(2018), Article 16(2)

¹⁰¹ *ibid.* African Charter(2018), Article 16(3)

¹⁰² *Ibid.* African Charter(2018), Article 16(3)(a)

¹⁰³ *ibid.* African Charter(2018), Article 16(3)(b)

¹⁰⁴ *ibid.* African Charter(2018), Article 16(3)(c)

¹⁰⁵ *Ibid.* African Charter(2018), Article 16(3)(d)

¹⁰⁶ *ibid.* African Charter(2018), Article 16(3)(e)

¹⁰⁷ *ibid.* African Charter(2018), Article 16(3)(f)

¹⁰⁸ *ibid.* African Charter(2018), Article 16(3)(g)

¹⁰⁹ *ibid.* African Charter(2018), Article 16(3)(h)

¹¹⁰ *ibid.* African Charter(2018), Article 16(3)(i)

¹¹¹ Should be encouraged. *ibid.* Article 16(3)(j)

¹¹² *ibid.* African Charter(2018), 16(4)(a)

¹¹³ *ibid.* African Charter(2018), Article 16(4)(b)

¹¹⁴ *ibid.* African Charter(2018), Article 16(4)(c)

¹¹⁵ *Ibid.* African Charter(2018), Article 16(4)(d)

¹¹⁶ See: CRPD and African Charter, emphasis on state parties.

the case of Nigeria. Another weakness in the African Charter is its inability to distinguish between education for intellectual disability and physical disability.

THE RIGHT TO HEALTH UNDER AFRICAN CHARTER

Healthcare practices in Nigeria rely on the existing structure of inadequate health facilities and substandard services. As a result, health provision for children in Nigeria generally is poorly funded and a quagmire.¹¹⁷ Consequently, the fate of health for children living with intellectual disabilities is bleak if it remains the sole responsibility of the State.

The African Charter provides that every child with a disability has the right to the highest standard of health.¹¹⁸ The provision also portends that equal health standards are provided to all children with disabilities,¹¹⁹ including children with intellectual disabilities, in terms of quality and must be free.¹²⁰ It must also prevent further disabilities by providers of health services,¹²¹ and insurance should not be found wanting, discriminating against children with disability.¹²² The other part of the article has to do with prior and informed consent,¹²³ health care in the community where children with disability live,¹²⁴ accessibility by the provider of health services to children with disabilities,¹²⁵ ensuring support is given to persons with disability in making health decisions,¹²⁶ campaigns for specific needs while avoiding stigmatising children with disability.¹²⁷ Moreover, the training of health providers must take cognisance of particular needs while being mindful of their rights.¹²⁸

The right to health in Africa, particularly in Nigeria, is fraught with issues stemming from a lack of a database.¹²⁹ There is no database to elicit a thorough feasibility study on providing free health services for children with disabilities. Children with Down syndrome and Autism, amongst other intellectual disabilities, have no data in this respect.¹³⁰ This drawback casts a shadow on the African Charter and any future provision or policy in this respect.

¹¹⁷ Ijeoma Nkem Okedo-Alex and others, 'Identifying Advocacy Strategies, Challenges and Opportunities for Increasing Domestic Health Policy and Health Systems Research Funding in Nigeria: Perspectives of Researchers and Policymakers' (2021) 19 Health Research Policy and Systems.

¹¹⁸ (n 70). See: African Charter (2018), Article 17(1)

¹¹⁹ *ibid.* African Charter (2018), Article 17(2)

¹²⁰ *ibid.* African Charter (2018), Article 17(2)(a)

¹²¹ *ibid.* African Charter (2018), Article 17(2) (b)

¹²² (n 70). African Charter (2018), Article 17(2)(c)

¹²³ *ibid.* African Charter (2018), Article 17(2)(d)

¹²⁴ *ibid.* African Charter (2018), Article 17(2)(e)

¹²⁵ *ibid.* African Charter (2018), Article 17(2)(f)

¹²⁶ *ibid.* African Charter (2018), Article 17(2)(g)

¹²⁷ *ibid.* African Charter (2018), Article 17(2)(h)

¹²⁸ (n 70). African Charter (2018), Article 17(2)(i)

¹²⁹ Oshodi and others (n 32).

¹³⁰ Erliana, F., & Kalalo, R. (2021). Psychotic disorder in intellectual disability. *International Journal of Child and Adolescent Health*, 14(3), 241. Bolajoko O Olusanya and others, 'Developmental Disabilities among Children Younger than 5 Years in 195 Countries and Territories, 1990-2016: A Systematic Analysis for the Global Burden of Disease Study 2016.' (2018) 6 *The Lancet Global Health* e1100 <<http://www.ncbi.nlm.nih.gov/pubmed/30172774>> accessed 22 February 2022.

DISCRIMINATION AGAINST PERSONS WITH DISABILITIES (PROHIBITION) ACT OF 2018

The purpose of this sub-section is to synthesise the attainability of the Discrimination Against Persons with Disabilities (Prohibition) Act of 2018 (Hereinafter referred to as DAPD *vis-à-vis* other provisions as per the right to education and right to health as mentioned above.

Nigeria is a signatory to the United Nations Convention on the Rights of Persons with Disabilities (CRPD) of 2006 and the African Charter of 2018. However, the African Charter does not lay credence to complaints and the need for an African provision for disability. It is instead a replica of the CRPD.

The DAPD is impracticable regarding the right to education and health. The Act provides the Nigerian government with an appropriate education for persons with disabilities. Enforcement remains a bane apart from distinguishing intellectual disability from physical disability. The Act captures it thus:

Government shall ensure that the education of persons with disabilities, particularly children who are blind, deaf or with multiple disabilities, is delivered in the most appropriate language, mode and means of communication for the individual and in an environment that maximises academic and social development.¹³¹

On the other hand, the Act provides free health care for persons who have disabilities without discrimination in any form.¹³² For instance, rights to education and the right to health are not justiciable. In Nigeria, two kinds of rights are enshrined in the constitution, i.e., those under Chapter 2 and those under Chapter 4 of the 1999 Constitution, respectively. The former is where the right to education and health are categorised, and they are not justiciable by virtue of Section 6(6) (c) of the 1999 Constitution of the Federal Republic of Nigeria as amended and, therefore, a setback. ¹³³However, some progressive scholars pursue its enforcement due to growing poverty and societal inequality.¹³⁴

It is clear that the CRPD (2006), the African Charter (2018), and DAPD (2018) do not distinguish intellectual disability from physical disability. The African Charter advocated that due to limitations owing to African *locale* on disability, it was to cover African settings in her provisions. Still, it failed to achieve the same as the condition replicates the United Nations CRPD provisions. Furthermore, the provisions that the responsibility for children living with intellectual disability rests squarely on the Nigerian government apart from parents and *guardian ad litem*. Also, its membership in the United Nations CRPD, African Charter and DAPD. One finding is that these provisions are not practicable except with the aid of Non-Governmental Organisations.

¹³¹ S.20 of the DAPD Act (2018)

¹³² *ibid.* S.21(1) and (2)

¹³³ Mack Agbamosa, 'Combating Governance Crises through Justiciability of Chapter 2' *The Guardian* (Lagos, 2021).

¹³⁴ Festus Ogun, 'Non-Justiciability of Chapter Two of the 1999 Constitution: A Hindrance to Nigeria's Development' [2020] SSRN Electronic Journal <<https://www.ssrn.com/abstract=3663868>>. <https://www.ssrn.com/abstract=3663868> > accessed 21 February 2022.

This section has demonstrated that these provisions are not practicable in Nigeria except with the aid of Non-Governmental Organisations. Therefore, it is now necessary to explain in a nutshell the role of non-governmental organisations in Nigeria.

NON-GOVERNMENTAL ORGANISATIONS AND INTELLECTUAL DISABILITY

The non-governmental organisation (NGO) is sometimes called a civil society organisation. The far-reaching effect of NGOs ameliorates the weaknesses in implementation of government policies and strategies. NGOs, are a critical fabric in the development of any society and are indispensable in Nigeria for the well-being of persons living with intellectual disabilities.

NGOs provide significant support to the government, especially in low-income groups or rural areas. They support provision of educational facilities and materials like *Fundacion Carulla-aeioTU*, which has spread across Colombia, Latin American countries and Africa.¹³⁵ Most of the challenges encountered by children with intellectual disabilities are due to the environmental factors. Studies conducted by the United Nations Children's Fund (UNICEF) on the struggles of children with disabilities captures it thus:

Children with disabilities constantly experience barriers to enjoying their fundamental human rights and their inclusion in society. The abilities of children with disability are overlooked, underestimated, and their needs accord low priority. Nevertheless, the barriers they face are more frequently due to the environment in which they live than as a result of their impairment.¹³⁶

NGOs usually align with government policies, international law instruments and local provisions within their country. Health Care is another area where the NGOs role is indispensable as support to government policies. Recent reports about Nigeria on the role of NGOs explain it thus:

Medical missions can play a critical role in closing gaps in care and improving healthcare access for vulnerable populations. However, long-term sustainability is difficult to achieve without deliberate community engagement from planning to evaluation.¹³⁷

Difficulties in accessing health care in Nigeria are perennial. However, Section 21 of the DAPD Act provides that persons with disabilities can access free health services. Yet, Nigeria pays lip service to this provision, and rural areas are worse affected. The following excerpt is a recent work by some scholars depicting the Nigerian perspective on providing health services:

¹³⁵ Nathalia Mesa, Milagros Nores and Hilda Vega, 'Reaching Thousands of Children in Low-Income Communities With High-Quality ECED Services: A Journey of Perseverance and Creativity (2021) 9 Frontiers in Public Health.

¹³⁶ The United Nations Children's Fund (UNICEF), *Promoting the Rights of Children with Disabilities* (2007) <<http://www.unicef-irc.org/publications/pdf/digest13-disability.pdf>> accessed January 2022.

¹³⁷ Ukamaka Oruche and others, 'Engaging Communities to Improve Healthcare for Non-Communicable Diseases' (2020) 1 ENGAGE! <<https://journals.iupui.edu/index.php/ENGAGE/article/view/24148>> accessed 22 February 2022.

Nigeria is a low-and middle-income country (LMIC) in West Africa, with a healthcare workforce concentrated in urban tertiary healthcare centres, contributing to inequity of healthcare services in rural areas and poor management of non-communicable diseases.¹³⁸

NGOs provide medical services in Nigeria, where there is difficulty in accessing health care, especially amongst low-income people in rural Nigeria. Article 17 of the African Charter provides free health care for disabled children to the same standard and quality as other children, but this is only achievable with the same standard for other children. Professor Oruche Ukamaka depicts the Nigerian scenario below:

In rural communities in ... Nigeria, healthcare is a patchwork of healthcare services. Only a tiny portion of the healthcare provision in Nigeria comes from a unified health system. Therefore, remote and rural communities receive zero to minimal preventive health services.¹³⁹

This paper asserts that free education for persons with disabilities up to secondary school as provided under Section 20 of the DAPD Act and accessible health care provided in Section 21 of the DAPD Act is not fully implemented. Equally, the CRPD, which Nigeria is a signatory to, provides free education under Article 25 of CRPD and Health Care under Section 25 of the CRPD, but these are mere paper tigers. Similarly, it is the case with the African Charter and a replica of the CRPD. In addition, Article 16 provides for education while Article 17 provides for health services, but these are yet to see the light of day.

This paper argues that education and health care for children with Down syndrome and Autism, are integral to the development of modern society. In the case of Nigeria, NGOs are a factor in society if the above provisions are to be measurably attainable.

COMPARATIVE STUDY OF INTELLECTUAL DISABILITY IN THE UNITED KINGDOM AND THE UNITED STATES OF AMERICA

This comparative study intends to uncover the practices in the United Kingdom and the United States of America, both of which are signatories ¹⁴⁰to the CRPD. This comparative analysis aims to elicit the practice of providing education and health care in the developing world, such as the United Kingdom and the United States of America and draw a distinction with the practice in Nigeria.

UNITED KINGDOM

The United Kingdom, like Nigeria, is a signatory to CRPD, and it ratified the United Nations provision on 8 June 2009. The United Kingdom has one of the best legal frameworks for children with intellectual disabilities. It is shifting from health care provisions to community care.

¹³⁸ *ibid.*

¹³⁹ *ibid.*

¹⁴⁰ Countries of the global south have ratified the CRPD while those of the global west are reluctant to ratify same.

¹⁴¹Child and Adolescent Mental Health Services (CAMHS) handle mild cases of children with intellectual disability, and Paediatricians diagnose moderate or severe intellectual disability.¹⁴²

PROVISION FOR EDUCATION

The Education Act of 1996 inspired the teaching of a wide range of subjects and topics, therefore creating a broad and balanced education, and the introduction of the National Curriculum made additional positive aid to pupils and schools. It helped solve the issue of children with particular needs in the United Kingdom; basically, it provides free education. It ensures pupil progress in learning, quality education, leadership management and behaviour safety. The United Kingdom tends to be more flexible concerning the welfare of children with intellectual disability than Nigeria. Apart from the CRPD, which Nigeria is a signatory to, it has no other Acts preceding the CRPD¹⁴³, which are *pari materia* with some existing provisions in the CRPD. Whereas Nigeria relies on the CRPD and the DAPD, there has been no legislation within Nigeria apart from the DAPD.

The 1981 Education Act also created a means of integration for children with particular needs in the United Kingdom. Furthermore, child care, apprenticeship and training were covered by the Education Act of 2011. Childcare Act 2006 provides 15 hours of early years free education for all three and four-year-old children and two-year-olds identified as disadvantaged. An observation in the above provisions for children with intellectual disability shows deliberate steps at taking education to the child. In contrast, no government-sponsored school in Nigeria provides free education for persons with intellectual disabilities from ages three to four years.

PROVISION FOR HEALTH

Article 25 of CRPD provides the right to health for children with disabilities. The provision is primarily hinged on the State to ensure that persons with disabilities attain the highest standard of health care free from discrimination. In the same vein, an adequate standard of living includes adequate food, clothing, housing, continuous improvement as to living conditions and ensuring that persons with disability are not discriminated against on the basis of disability and equal opportunity given to children with intellectual disability and non-disability¹⁴⁴. The United Kingdom Provision on Children Act of 1989 is proactive; it identified children with disabilities as 'children in need' and conceptualised 'children-first', better-integrated service as a deliberate measure towards providing all-inclusive school. By contrast, Nigeria relies on Articles 24 and 25 of the CRPD, Article 16 and Article 17 of the African Charter and Section 20 and Section 21 of DAPD, which deals with rights to education and right to health, respectively. Corruption creates a high demand for better education, so free education is impracticable. Hence, a demand for free education for children with intellectual disabilities is a far cry and unfeasible today as Nigeria still battles its justiciability.¹⁴⁵In the same vein, free

¹⁴¹Mary Lindsey Uk, 'Overview of Learning Disabilities in Children Intellectual Disability and Health' (University of Hertfordshire, 2019) <<http://www.intellectualdisability.info/family/articles/overview-of-learning-disabilities-in-children>>. Accessed 22 February 2022.

¹⁴² *ibid*.

¹⁴³ As of March 2022, Nigeria has not ratified the African Charter while Mali, Kenya and Rwanda had cuddled this concept. Nigeria's measuredly posture is a reflection on its checkered history on the passage of the DAPD.

¹⁴⁴ Equal standard

¹⁴⁵ Aisosa Jennifer Isokpan and Ebenezer Durojaye, 'The Child's Right to Basic Education in Nigeria: A Commentary on the Decision in *Serap v. Nigeria*' (2018) 26 African Journal of International and Comparative Law 639.

health care for children with particular needs lacks immediate and equal access to health care.¹⁴⁶

UNITED STATES OF AMERICA

The United States has not ratified the CRPD but is a signatory. Therefore, the implication is that the CRPD does not bind it. Historically, the United States has poorly ratified human rights treaties.¹⁴⁷ One of the legal frameworks for protecting children with intellectual disability in the United States of America is the Rehabilitation Act of 1973 (hereinafter referred to as RA), the American Disability Act of 1990 (hereinafter referred to as ADA) and the Individuals with Disabilities Education Improvement Act of 2004. (Hereinafter referred to as IDEA)¹⁴⁸ and The Individual with Disabilities Education Act 2004 (hereinafter referred to as IDEA)

THE PROVISION FOR EDUCATION

Children with intellectual disabilities are amongst those listed for free education under IDEA. IDEA determines a child with a disability, and such disability is linked adversely to the child's education. In contrast, Nigeria has no listing for free education for children with intellectual disability apart from the DAPD, which in S.20 provides the right to free education for those with disability. Conversely, the United States has an internal mechanism that is very robust in its execution. For instance, some of the components of IDEA include the referral process, evaluation process, eligibility determination and parents, student evaluation and quarterly process monitoring. Apart from offering assistance for the education of all children with disabilities, it also provides for infants and toddlers with disabilities, including children from birth to age three.¹⁴⁹ In Nigeria, there are no explicit provisions covering toddlers with a disability where the DAPD states that it shall provide free education from primary to secondary. Section 504 of ADA states:

No otherwise qualified individual with a disability in the United States shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...¹⁵⁰

ADA is against inequality in American society and portends an equal opportunity for children living with disability with other children. Therefore, equal treatment for children with

¹⁴⁶ Rufus Olanrewaju, Adebisi Corresponding and Jummai E Jerry, 'Barriers to Special Needs Education in Nigeria' (2014) 2 *International Journal of Education and Research* 451.

¹⁴⁷ Arlene S. Kanter, 'Let's Try Again: Why the United States Should Ratify the United Nations Convention on the Rights of People with Disabilities' (2019) 35 *Touro Law Review* 301.

¹⁴⁸ 'National Council on Disability: Chapter 3 Disability Law Framework' (2022)

<<https://ncd.gov/publications/2012/Sep272012/Ch3>> accessed 22 February 2022.

¹⁴⁹ Individuals with Disabilities Education Act.

https://en.wikipedia.org/wiki/Individuals_with_Disabilities_Education_Act; Sheida K Raley and others, 'Age of Majority and Alternatives to Guardianship: A Necessary Amendment to the Individuals With Disabilities Education Improvement Act of 2004' [2020] *Journal of Disability Policy Studies* 104420732093258

<<http://journals.sagepub.com/doi/10.1177/1044207320932581>> accessed 22 February 2022

¹⁵⁰ American Disability Act of 1990.

intellectual disabilities as those living with non-disability.¹⁵¹ ADA applies to every citizen of the county except churches and private clubs.

THE PROVISION FOR HEALTH

S.501 of the RA also prohibits federal executive branch agencies from discriminating against individuals with disabilities, and under S.508, this can be enforced. The RA covers disabilities and mental illness. Mental illness is considered a disability that includes intellectual disabilities. The Helping Families in Mental Health Crisis Act (2016) enshrines aid to families with mental disabilities, and there are ongoing efforts to protect the rights of persons and children with disabilities.¹⁵² Whereas in Nigeria, S.21 states that the government shall provide free health care, which shall apply to all public institutions. There are no practical steps to enforce this where it is breached.

It is submitted that even though CRPD does not bind the United States, it has laudable education and healthcare provisions. Its major setback is that it is applied for, and one must be qualified, which is prone to discrimination. Again, there are agitations for the country to ratify its membership of the CRPD with the United Nations to make it subject to scrutiny.

CONCLUSION

This paper examines the nature of intellectual disability; it describes the nature and scope of intellectual disability and the legal and institutional framework applicable to Nigeria. This paper has also highlighted that the United Kingdom and the United States of America could be used as a standard for implementing the Discrimination Against Persons with Disabilities Act of 2018 (DAPD) in Nigeria.

Furthermore, inequality in the education and health care sector for those with disabilities in Nigeria is a militating factor to the potential of children with intellectual disability. Sadly, the right to free education and health care is not justiciable in Nigeria, implying that the government cannot be held accountable for its inaction despite its membership with the United Nations (CRPD).

Notably, the nature of intellectual disability requires that Down syndrome and Autism are identified at an early stage of a child's life; otherwise, as studies have shown, the child's ability in the future is impacted negatively.

Finally, non-governmental organisations and all stakeholders must collaborate to ameliorate the poor services rendered by the Nigerian government. It is recommended that free education and health for those with intellectual disabilities be made justiciable for the practicability of the DAPD Act.

¹⁵¹ Arlene S.Kanter (n 136).

¹⁵² Jennifer Mathis, 'The Importance of Framing Federal Mental Health Policy within a Disability Rights Framework' (2017) 42 Human Rights 14 <[Services for Science and Education – United Kingdom](https://ehu.idm.oclc.org/login?url=https://www.proquest.com/trade-journals/importance-framing-federal-mental-health-policy/docview/1922806121/se-2?accountid=17248%0Ahttps://ehu.on.worldcat.org/atoztitles/link?sid=ProQ:&issn=00468185&volume=42&issue=4&titl> accessed 22 February 2022.</p></div><div data-bbox=)

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