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AND ADVANCED RESEARCH TECHNIQUES**

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Asphyxiating Impediments in Access to Equal Right to Education for Persons with Disabilities in Africa

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ABSTRACT

Disability does not disqualify a person from the enjoyment of the right to education and other social benefits, but in practice certain impediments limit the access of persons with disabilities (PWDs) to the right to education. Indeed, the right to education is a key that unlocks other rights and therefore has a multiplier effect in terms of its benefits. This article examined how the right to education though provided for in various international, regional and national instruments in recognition of its importance, still eludes many PWDs in Africa due to certain impediments. The methodology for the research is doctrinal and analytical. The result shows that although the various provisions within legal instruments to guarantee equality of the right to education ought to make much more difference to the level of access to education for PWDs, it has not been so especially in Africa, due to several impediments. The impediments, social and physical, include discrimination on grounds of disability, lack of funding, lack of materials in accessible formats such as Braille, sign language or visual representations of verbal information, lack of teacher training programs, occasioning in a scarcity of qualified teachers and support staff. Other impediments include lack of accessible and affordable means of transportation. To ensure that the right to education achieves its goals in the lives of PWDs and the society reaps the benefits thereof, the paper concludes by recommending affirmative action, better funding, deliberate training of qualified teachers and other measures to make equal right to education a reality and not just a paper Tiger for PWDs in Africa.

Keywords: Impediments, Persons with disabilities, equal right to education, legal instruments

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1. INTRODUCTION

Every human being, including people with disabilities, should be able to enjoy their right to lifelong education. States are legally bound to provide people with disabilities the opportunity and support they need to access quality, lifelong education that will maximize the full development of their mental and physical abilities. This means that people with disabilities are entitled to an equal opportunity to participate in inclusive education settings - that is the general education system - along with all other people in the community in which they live.¹

According to the World Health Organisation in 2011, more than a billion people are estimated to live with some form of disability, or about 15% of the world's population (based on 2010 global population estimates), noting that this is higher than previous World Health Organization estimates, which date from the 1970s and suggested around 10%.²

¹ Human Rights. Yes! Action and Advocacy on The Rights of Persons with Disabilities, The Right to Education, p.165.

² WORLD Health Organisation 2011. Summary World Report on Disability, WHO/NMH/VIP/11.01, p. 7.



According to a study, there are 93 million children (5 per cent) aged 14 or younger that live with a moderate or severe disability of some kind, in sub-Saharan Africa while a higher percentage of children (6.4 per cent) have a disability³. Meanwhile, as many as one third of the 58 million children who are out of school globally are children with disabilities, and more than half of these live in sub-Saharan Africa.

The findings children with disabilities are far less likely to access quality education compared to their peers⁴. It is notable that persons with disabilities (PWDs) are not a homogeneous group, as there are various kinds of disabilities. The needs of PWDs vary according to the type and severity of their impairment, alongside personal and social characteristics (for instance, their race) which can also affect their levels of vulnerability⁵. Depending on the type of impairment, different barriers may limit access to basic opportunities and services, such as education, health and employment⁶. Arising from their heterogeneity, policies and strategies aiming to prevent, mitigate or overcome poverty, particularly for PWDs, cannot be the same⁷, neither can those for education.

Education is a human right enshrined in various global and African instruments. In terms of its scope and effect, Takamine has observed that lack of education, remains the key risk factor for poverty and exclusion of all children, both of those with disabilities and those with no disabilities. CWDs are mostly separated from their peers and kept in special schools that have weak capacities, are too small and are often run by NGOs, which is considered to be clearly an evidence of discrimination. This paper examines some impediments to the right to education of PWDs and suggests ways to suffocate them.

The paper is divided into five parts comprising this introduction; a brief consideration of the goals of education in the second part, while the third part examines some international and African instruments which provide for the right to education generally and those of PWDs specifically. The fourth part of the article examines the impediments to the enjoyment of the right to education by PWDs despite the provisions in the various instruments examined in the third part of the paper. The fifth part concludes the paper and makes some recommendations for asphyxiating impediments to the equal enjoyment of the right to education of PWDs in Africa.

2. PURPOSES AND AIMS OF EDUCATION

The Convention on the Rights of the Child (CRC) clearly spells out the purposes of education to include (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential; (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own; (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; (e) The development of respect for the natural environment⁸.

It is expected that state parties should adopt and adapt these provisions into their domestic peculiarities, without losing the intents and purpose of the provisions, which is development of each child's personality, talents and abilities to the fullest. It should encourage children to respect others peoples' human rights and their own and other cultures. Education should as well help children to learn to live peacefully, protect the environment.

³ Leila Gharagozloo-Pakkala (2016) EASTERN AND SOUTHERN AFRICA REGIONAL STUDY ON THE FULFILMENT OF THE RIGHT TO EDUCATION OF CHILDREN WITH DISABILITIES. Accessed on 15 October 2018 from: <https://www.unicef.org/esaro/Regional-children-with-disabilities-UNICEF-EDT-2016.pdf>

⁴ Leila Gharagozloo-Pakkala (2016) *Ibid*.

⁵ Mónica Pinilla-Roncancio, Disability and poverty: two related conditions. A review of the literature, *Rev. Fac. Med.* Vol. 63 Supl. 2015, 1: S113-23. Available at <http://www.scielo.org.co/pdf/rfmun/v63s1/v63s1a14.pdf>

⁶ Mónica Pinilla-Roncancio, *Ibid*.

⁷ Mónica Pinilla-Roncancio, *Ibid*.

⁸ See article 29 (2), which requires that while the article 29 (2) of the CRC prohibits the construction of article 29 (1) or 28 in a way that interferes with the liberty of individuals and bodies in order to establish and direct educational institutions, it subjects doing so to the observance of the principle set forth in paragraph 1 of the CRC and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.



Children have a particular responsibility to respect the rights of their parents and education should aim to develop respect for the values and culture of their parents. The goal of education has been stated in several international and other legal instruments. For instance, the Universal Declaration of Human Rights (UDHR) in its article 26 provides explicitly that education should aim at *"the full development of human personality, the respect of human rights and understanding and peace among the nations of the world"*. On its part, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1965) provides that state parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture, information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnic groups, as well as to propagating the purposes and principles of the charter of the United Nations, the Universal Declaration of Human Rights among other. To combat discrimination on racial or any other basis also requires education that targets inculcating core values of non-discrimination, understanding, tolerance and friendship among individuals and ethnic and other groups.

3. INTERNATIONAL AND AFRICAN REGIONAL PROVISIONS FOR THE RIGHT TO EDUCATION

Basically, the protection of the rights of PWDs is hinged upon the provisions for the protection of human rights generally and many African states are parties to such. The adoption of the Universal Declaration of Human Rights (UDHR) emerged, upon the failure of the UN Charter to secure the much desired peace, stability and prosperity for the world. It commenced the emergence of human right in the sense that it is known today, although the journey began with the UN Charter⁹ which had stated that one of the "purposes" of the United Nations is to "promote and encourage respect for human rights and fundamental freedoms for all." It added that no distinction should be made on the grounds of "race, sex, language or religion."

The charter by this specified grounds for non-discrimination and thereby commenced an elaborate clause in a binding human rights treaty. Although the UDHR is not yet a legally binding instrument. Rather two instruments were adopted by the UN, namely, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) respectively¹⁰. These two in conjunction with the UDHR, constitute the International Bill of Human Rights and provides for the right to education¹¹. However, specific protection the rights of PWDs became necessary as a result of persistent discrimination on the basis of disability in almost all spheres of life¹². The Convention on the Rights of Persons with Disabilities (CRPD, 2006) has prohibited discrimination against PWDs and provided for equal right of access to education for PWDs¹³.

3.1 African Region provision of the right to education

At the level of Africa, the African Charter on Human and Peoples' Rights¹⁴ guarantees the right to education and provides that States must ensure that everyone has access to education. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women¹⁵ also guarantees equal access and opportunity for education and training of women and girls and that States must ensure that this right is enjoyed without any discrimination, while the African Charter on the Rights and Welfare of the Child guarantees the right to education for all children in Africa¹⁶. It is doubtless that Africa has enough legal and policy provisions to deal with discrimination against PWDs in educational legal provisions. However, discrimination continues to persist against PWDs in equal access to the right to education in many African countries due to some barriers which will be examined next.

⁹ Article 1 of the UN Charter.

¹⁰ Article 13 of the International Covenant on Economic, Social and Cultural Rights, 1966.

¹¹ Article 26 of the UDHR, 1948;

¹² Article 2 of the CRPD The Convention defines discrimination in article 2 as follows:

"Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.

¹³ Article 24, CRPD, 2006 and its Optional Protocol.

¹⁴ Article 17 of the African Charter on Human and Peoples' Rights

¹⁵ Article 12 of the Protocol to the African Charter on Human and Peoples' Rights.

¹⁶ Article 11 of the African Charter on the Rights and Welfare of the Child.



A regional study of the situation of children with disabilities in Eastern and Southern Africa, and their right to education found that a number of policies and programmes were designed to support education for children with disabilities many of the 21 countries surveyed¹⁷. The study found that political will was obvious with every country in the region having ratified the UN Convention on the Rights of the Child (CRC)¹⁸. In a study of The vast majority (16 countries) have also ratified the Convention on the Rights of Persons with Disabilities (CRPD) and in February 2016 the African Commission on Human and Peoples' Rights adopted the Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa. Article 12 which is on Education requires that State Parties should ensure that inclusive quality education for persons with disabilities is fully realised. Additionally, most countries have incorporated the rights of people with disabilities in constitutions, laws, policies and monitoring frameworks, not only in South and East Africa, but also other parts of the continent.

4. IMPEDING FACTORS AGAINST THE REALIZATION OF THE EQUAL RIGHTS TO EDUCATION

The African Commission on Human and Peoples' Rights at its 58th Ordinary Session¹⁹ considered the existence of laws and policies, as well as deep-rooted harmful social and cultural practices such as early and forced marriages and preference for boys' education (which continue to contribute to social, economic and political exclusion), part of the impediments to the right to education. Other impediments identified by the African Union (AU), include the prevalence of internal conflicts, political crisis and instability in some African countries²⁰ as well as the fact that adequate resources have not been made available by States in their budgets to realise the right to education. It is submitted that PWDs are much more also affected than others. Besides those identified by the AU, others include infrastructural barriers which can limit access to school of PWDs,²¹ occasioning multiple exclusion as they cannot access the physical building nor the intellectual content of education offered in such inaccessible contexts.

Societal attitudinal barriers also play major but negative role in the context of education for example, because parents believe that physical impairment also translates to learning disabilities, or they would rather invest in the education of another child, some disabled children are not even registered in school. In addition, school staffs often assume that they are not able to teach a child with disabilities. Lack of accessible transportation to educational facilities is a further factor that impedes the education of PWDs²². Additionally, there is a dearth of materials in accessible formats for learning, including Braille, sign language or visual representations of verbal information. Also, not all teachers are skilled to teach PWDs. Poverty is an obvious impediment to the education of PWDs. In the context of disability, research has shown that the likelihood of poverty increases with different personal and social characteristics²³. PWDs are often omitted from development agenda which have now moved from a needs-based approach to a human rights approach²⁴.

¹⁷ Leila Gharagozloo-Pakkala (2016) EASTERN AND SOUTHERN AFRICA REGIONAL STUDY ON THE FULFILMENT OF THE RIGHT TO EDUCATION OF CHILDREN WITH DISABILITIES. Accessed on 15 October 2018 from: <https://www.unicef.org/esaro/Regional-children-with-disabilities-UNICEF-EDT-2016.pdf>

¹⁸ *Ibid.*

¹⁹ Held in Banjul in the Republic of the Gambia, from the 6 to 20 April 2016.

²⁰ Children with disabilities are particularly affected by these impediments.

²¹ Particularly for those who have sight impairments, limited mobility or are wheelchair bound, do not easily access high rise buildings or any building with staircases, unless there is a ramp or elevator. In developing countries like Nigeria however, where power supply is often a challenge even where elevators are provided, they may not be functional due to power outage and their purpose is thereby defeated.

²² While public transportation is not generally friendly in Nigeria in terms of availability, accessibility and comfort, PWDs are more affected in the sense that they cannot rush for the limited vehicles and they are often made to pay more fares to cover their mobility accessories and gadgets such as wheelchair.

²³ Chronic Poverty Advisory Network. Chronic poverty report 2014-2015: The road to zero extreme poverty. Manchester: Chronic Poverty Advisory Network; 2014.

²⁴ Chronic Poverty Advisory Network. *Ibid.*



Scholars generally agree that there is no unique strategy that will reduce the risk of poverty and consequently, PWDs need to be fully and explicitly included in all strategies aiming to reduce poverty in developing countries²⁵. Poverty and disability relate in a cycle of cause and effect as poverty can cause disability and disability in turn, can cause poverty²⁶. PWDs were an invisible group, until the publication of the document on Disability, Poverty and Development by the Department for International Development (DFID)²⁷, when their importance increased.

5. CONCLUSION AND RECOMMENDATIONS

The full development of the human personality is in no way less needed for PWDs than those without. It is suggested that the need for understanding and respecting human rights implies that human right education is also imperative, in order to enable everyone and particularly PWDs to know and enforce their rights both to education and other rights, as well as respect the rights of other people. Thus, states parties to the CRPD have the obligation to lead others to guarantee human rights, to reduce discrimination and to improve the life conditions of PWDs by removing all barriers to the right to education.

To achieve the purpose of the convention on the rights of persons with disabilities, especially as it relates to equal right to education, mainstreaming is essential. Mainstreaming is the process by which Governments and other stakeholders ensure that PWDs participate equally with others in any activity and service intended for the general public, such as education, health, employment, and social services. Barriers to participation need to be identified and removed. The process of dealing with the impediments may require changes to laws, policies, institutions, and environments. Teacher training programs therefore need to include trainings to equip every teacher to offer some minimum skilled teaching to PWDs, while others may specialize in teaching PWDs. Absence of such provisions in the teacher-training curriculum to date, has given rise to shortage of qualified teachers and support staff²⁸.

²⁵ See generally Kett M, Lang R, Trani J. Disability, development and the dawning of a new convention: A cause of optimism? *Journal of International Development*. 2009;21(5):649-661. <http://doi.org/bkqrp6>;

Groce N, Kett M, Lang R, Trani J. Disability and poverty: the need for a more nuanced understanding of implications for developing policy and practice. *Third World Quarterly*. 2011; 32(8):1493-1513. <http://doi.org/cv6msn>;

Kett M. Global issues in disability and inclusivity in developing countries/International health: Opportunities for challenge-led innovation. *Horizontal 2020 Expert Paper*; 2012.

²⁶ This is due to the high cost of taking care of PWDs draining resources while preventable (such as polio Myelitis) disability can result from inability to afford basic care like timely and appropriate medical attention for children especially in terms of immunization, thus leading to a disability.

²⁷ Department for International Development. *Disability, poverty and development*. London: DFID; 2000.

²⁸ Human Rights. *Yes! Action and advocacy*, op.cit., p. 166.



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- ¹ Human Rights. Yes! Action and Advocacy on The Rights of Persons with Disabilities, The Right to Education, p.165.
- ² WORLD Health Organisation 2011. Summary World Report on Disability, WHO/NMH/VIP/11.01, p. 7.
- ³ Leila Gharagozloo-Pakkala (2016) EASTERN AND SOUTHERN AFRICA REGIONAL STUDY ON THE FULFILMENT OF THE RIGHT TO EDUCATION OF CHILDREN WITH DISABILITIES. Accessed on 15 October 2018 from: <https://www.unicef.org/esaro/Regional-children-with-disabilities-UNICEF-EDT-2016.pdf>
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- ⁵ Mónica Pinilla-Roncancio, Disability and poverty: two related conditions. A review of the literature, Rev. Fac. Med. Vol. 63 Supl. 2015, 1: S113-23. Available at <http://www.scielo.org.co/pdf/rfmun/v63s1/v63s1a14.pdf>
- ⁶ Mónica Pinilla-Roncancio, *Ibid*.
- ⁷ Mónica Pinilla-Roncancio, *Ibid*.
- ⁸ See article 29 (2), which requires that while the article 29 (2) of the CRC prohibits the construction of article 29 (1) or 28 in a way that interferes with the liberty of individuals and bodies in order to establish and direct educational institutions, it subjects doing so to the observance of the principle set forth in paragraph 1 of the CRC and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.
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- ¹¹ Article 26 of the UDHR, 1948.
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"Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.
- ¹³ Article 24, CRPD, 2006 and its Optional Protocol.
- ¹⁴ Article 17 of the African Charter on Human and Peoples' Rights
- ¹⁵ Article 12 of the Protocol to the African Charter on Human and Peoples' Rights.
- ¹⁶ Article 11 of the African Charter on the Rights and Welfare of the Child.
- ¹⁷ Leila Gharagozloo-Pakkala (2016) EASTERN AND SOUTHERN AFRICA REGIONAL STUDY ON THE FULFILMENT OF THE RIGHT TO EDUCATION OF CHILDREN WITH DISABILITIES. Accessed on 15 October 2018 from: <https://www.unicef.org/esaro/Regional-children-with-disabilities-UNICEF-EDT-2016.pdf>
- ¹⁸ *Ibid*.
- ¹⁹ Held in Banjul in the Republic of the Gambia, from the 6 to 20 April 2016.
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- ²² While public transportation is not generally friendly in Nigeria in terms of availability, accessibility and comfort, PWDs are more affected in the sense that they cannot rush for the limited vehicles and they are often made to pay more fares to cover their mobility accessories and gadgets such as wheelchair.
- ²³ Chronic Poverty Advisory Network. Chronic poverty report 2014-2015: The road to zero extreme poverty. Manchester: Chronic Poverty Advisory Network; 2014.
- ²⁴ Chronic Poverty Advisory Network. *Ibid*.
- ²⁵ See generally Kett M, Lang R, Trani J. Disability, development and the dawning of a new convention: A cause of optimism? Journal of International development. 2009;21(5):649-661. <http://doi.org/bkqrp6>; Groce N, Kett M, Lang R, Trani J. Disability and poverty: the need for a more nuanced understanding of implications for developing policy and practice. Third World Quarterly. 2011; 32(8):1493-1513. <http://doi.org/cv6msn>; Kett M. Global issues in disability and inclusivity in developing countries/International health: Opportunities for challenge-led innovation. Horizontal 2020 Expert Paper; 2012.
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- ²⁷ Department for International Development. Disability, poverty and development. London: DFID; 2000.
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