# Perception as an Obstacle to the Protection of the Rights of Persons with Disabilities in Nigeria

By
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**Abstract**

Disability exists throughout the world without respect for national, ethnic or cultural boundaries. The systemic exclusion and marginalization of people with disabilities (PWDs) from equal participation in all the major segments of society is a well-documented global phenomenon. In all societies, there has been a clear historical tendency to perceive PWDs in negative light as people that are basically incomplete and imperfect. They often face significant levels of discrimination and stigma in their everyday lives. As a result, many are not visible in society, and are prevented from participating in their communities and families. The steady intensification in the global population of PWDs is also very well documented. The challenges and impediments to the rights of disabled are significant, especially in African States like Nigeria, where such challenges are compounded by the economic situation and the lack of capacity in this region's rural areas. The paper concludes that these issues need to be tackled in order to change the perceptions within law and policy in a bid to create an effective system of rights.

## 1. Introduction

Disability is a relative construct, and what is considered a disability in one country may not be perceived and labelled as such elsewhere because individuals and states define disability in different ways. Disability can be construed in relation to several interpretations and understanding of the phenomenon.

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Accordingly, Grobbelaar-du Plessis & Von Reenen[1] identifies that:

> Negative social concepts about persons with disabilities are not only found within a few African communities, there are a number of prevailing views based on cultural and religious convictions that are prejudicial to persons with disabilities globally.

The point of exacerbation in African states is that there has been limited human rights influence in the area of disabled rights, especially with the entrenchment of traditional religious beliefs marginalising these individuals as a burden on society[2]. The implication of this application is that the African belief and social framework is inherently biased against PWDs. This indicates that there is a need to change the approach not only legally, but also socially[3]. Given this background, this paper examines the interaction between social aspects of disability, and highlights that in order to fully integrate disabled persons into mainstream society, there needs to be a substantive change in perception from viewing disability as a charity issue to a human rights issue in Nigeria.

Thus, there are various definitions of disability, depending on national social legislation and cultural standards, which make it more difficult to establish reliable data on the number of persons affected. The World Health Organization (WHO) defines disability in a three-fold manner that distinguishes between impairment, disability and handicap[4]. The organization defines

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1 Grobbelaar-du Plessis, I. and Van Reenen, T. 'Introduction to Aspects of Disability Law in Africa' in Grobbelaar-du Plessis, I and Van Reenen, T (eds) *Aspects to Disability Law in Africa* (Pretoria University Law Press 2011) p.xvi
World Health Organisation & World Bank (2011) World *Report on Disability* (Washington

2 Biegon, J. "The Promotion and Protection of Disability Rights in The African Human Rights System' in Grobbelaar-du Plessis, I. and Van Reenen, T. (eds) *Aspects to Disability Law in Africa* (Pretoria University Law Press 2011) pp.53-54

3 Urimubenshi, G. and Rhoda, A. 'Environmental Barriers Experienced by Stroke Patients in Musanze District in Rwanda: A Descriptive Qualitative Study' [2011] (11)(3) *African Health Sciences* Journal, p. 404

4 WHO Health Topics: Disabilities< http://www.who.int/topics/disabilities/en/>accessed on 23 October 2015

"impairment" as any loss or abnormality of psychological, physiological or anatomical structure or function. It then defines "disability" as any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being. It also defines "handicap" as a disadvantage for a given individual, resulting from impairment or a disability, that prevents the fulfilment of a role that is considered normal (depending on age, sex and social and cultural factors) for that individual. The term is also a classification of circumstances in which disabled people are likely to find themselves.

The above definition of disability has been criticized by some disability rights activists as being too confusing, and not providing adequate guidance for policy makers since it does not fully reflect contemporary understanding of disability issues – particularly, the requirement to address both individual needs (such as rehabilitation and technical aids) and the shortcomings of society which put obstacles in the way of PWDs from fully participating in society. For instance, Kaplan considers the definition to be aimed at perpetuating the imbalances caused by contemporary social organization, which takes little or no account of people who have physical impairments, and this excludes their activities[5].

In the light of this criticism, the WHO developed the International Classification of Functioning (ICF) in 2002, in an attempt to integrate both the social and medical models of disability[6]. The ICF, which also calls for the elimination of distinctions, explicitly or implicitly, between health conditions that are 'mental' or 'physical,' does not override the original concepts. However, it reworks the definition from being concerned with the consequences of disease to one concerned

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[5] Kaplan, D. 'The Definition of Disability' <http://www.accessiblesociety .org/topics/demographeics-indentiy/dkaplaripaper.htm>.accessed on 22 June 2015. This increase is explained by the fact that Africa is a region endangered by conflicts, poverty, hunger, and diseases. Beyond these causative factors; most African societies, including Nigeria contribute in worsening the plight of PWDs by the way it labels them.

[6] International Classification of Impairments, Disabilities And Handicaps (ICIDH), General World Health Organization, 1980 < http://www.who.int/classifications/icf/en/.> accessed on 25 November 2015

with human functionality and health, thereby emphasizing functional status over diagnoses.The new ICF focuses on analyzing the relationship between capacity and performance. If capacity is greater than performance then that gap should be addressed through both removing barriers and identifying facilitators. Thus, the new system is not just about people with traditionally acknowledged disabilities diagnostically categorized but about all people.

The United Nations Convention on the Rights of Persons with Disabilities, 2006 (CRPD) does not try to define disability. Instead, it explains disability as an 'evolving' concept, and that 'disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others'. Thus:

> Persons with disabilities include those that have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others[7].

It is noted however, that the above UN definition falls short of being generally acceptable because of the word "long-term'. It fails to take cognizance of the fact that there could always be a short-term disability.

From the foregoing, it is deduced that as legal frameworks are enacted in different ways in different countries resulting in different experiences, so also are the definitions of disabilities. Disability is thus any relatively severe chronic impairment of function resulting from disease, accident or congenital defect[8],

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[7] Article 1 CRPD. Kleintjes, S. and Lund, C. and Swartz, L. 'Barriers to the participation of people with psychosocial disability in mental health policy in South Africa: a qualitative study of perspectives of policy makers, professionals, religious leaders and academics' [2013] (13)(1) *BMC International Health and Human Rights* <http://www.biomedcentral.com/1472-698x/13/17> accessed 27 October 2015

[8] U.S. Department of Justice, *Disability Rights Section*, Civil Rights Division <http://www.usdoj.gov/crt/ada/t3hilght.htm> accessed on 22 February 2014.

and a person has disability when they find it difficult to see, learn, walk, hear or perform other functional activities.

## 2. Types of Disabilities

Disability is an encompassing term, which could be easily understood when categorized. Hence, the need for the following categorization to wit:

### a. Physical Disability

This type of disability occurs when there is a restriction of movement or agility due to neuromuscular disorder of the circulatory, respiratory and nervous system in an individual. It affects a person's ability to use their upper or lower body. Physical disability is a generic term that encompasses a wide range of conditions. Such conditions include spinal bifida, muscular dystrophy or cerebral palsy or it could be a condition acquired at any state including post-accident, tumour or stroke. Spinal bifida and/or Hydrocephalus is a neural tube defect in the development of the spinal column. It can cause nominal or complete paralysis of the spinal cord. About 80% of the people with spinal bifida also have hydrocephalus. Physical Disability also includes limb abnormalities, which may be congenital or traumatic affecting one or more limbs. This can be partial or total. Upper limb abnormalities affect young persons' arms and hands (most young children who suffer from the above abnormalities can hold more objects even when parts of their arms and hands are missing or when mishap happens), while Lower limb abnormalities affects young person's legs or feet thereby requiring adaptive footwear, or the use of a wheel chair, which is usually associated with tiredness[9].

### b. Learning/Intellectual Disability

This is a situation where the affected individual finds it extremely difficult in a normal learning environment. Usually, the individual involved has a very low ability to perform his/her daily life activities, and exhibits a below-average intellectual capacity. It includes intellectual and documental disabilities, which relate to difficulties with thought process, learning, communicating, remembering information and using it

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[9] The UK Loss Information Centre <http://www.himblos informationcentre.com> accessed 20 September 2015

appropriately, making judgments and problem solving[10]. Closely related is the cognitive disability, which affects a person's thought process, personality and memory. This type of disability is usually as a result of a genetic disorder, or brain injury.

**c. Sensory Disability**

This affects vision or hearing of such individual[11]. There are hundreds of thousands of people that suffer from minor to various vision disability or impairment. These injuries can also result into some serious problems or diseases like blindness and ocular trauma, to name a few. Some of the common vision impairment includes scratched cornea, scratches on the sclera, diabetes related eye conditions, dry eyes and corneal graft. Hearing disability affects people that are completely or partially deaf, (Deaf is the politically correct term for a person with hearing impairment). People who are partially deaf can often use hearing aids to assist their hearing. Deafness can be evident at birth or occur later in life from several biological causes, for example, meningitis can damage the auditory nerve or the cochlea.

It is notable that the most common form of disability is the physical. Some people may also have more than one disability, while some may experience additional disadvantages to adequate service provision due to factors such as culturally and linguistically diverse background[12]

## 2.1. Causes of Disability

There are different causes of disability, which include medical history[13], infectious diseases[14], accident and injuries[15], and mental disorder. Disabilities may be genetically or

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[10] Document of Western Australian Disability Services Commission<http://www.health.wa.gov.au/.../training-package/command/disability/pdf> accessed on 22 September 2015

[11] Ibid.

[12] Ibid.

[13] These include chronic-degenerative illnesses like neoplasm, arthritis, spondylitis, diabetes mellitus, and heart diseases.

[14] These are short-term diseases, which could occur as a result of epidemics as the name implies.

[15] These are disabilities that occur a result of road or other types of accidents which could result to damages of parts of the body,

environmentally determined. Hence, a genetically determined disability is usually inherited from the parents while an environmentally determined disability could be as a result of accident, injury, disease or infection, for instance, acquired brain injury, spinal cord injury and diabetes[16]. Poverty is another cause of disability. It limits access to health services, which may result to disability especially in situations where diseases are not adequately treated resulting to one form of disability and another. Ironically, while poverty makes people more vulnerable to disability on one hand, disability deepens poverty on the other.

The dramatic rise in natural disasters and the practice of targeting civilians during conflicts are also prominent and contemporary causes of violence. Both are significant causes of disability from both direct injury and failure to treat injuries. For every child killed through armed violence, 100 are left with permanent disabilities.[17] Mental health complications and psychotic diseases or disturbances are also common among victims of violence. For instance, the current Boko Haram insurgency ravaging the North Eastern States of Nigeria is bound to ultimately increase the population of PWDs in the country.

## 3. The Need for Increased Focus on Issues of Disability

The World Bank estimates that 1 billion people globally have disability, and 80 per cent of these people live in developing countries. If families of PWDs are included, then at least 25 per cent of the world is directly affected by disability[18]. Furthermore, PWDs are over-represented among the persistently poor, and are less likely than others to be able to move themselves out of poverty[19]. Thus, out of the world's poorest

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[16] Ibid

[17] Presentation, UN Special Rapporteur on Disability, Tunis October 2007 <www.srdisability.org/presentations/presentation_war_oct07.html > accessed on 3 March 2015

[18] Disability and HIV/AIDS, (World Bank, 2004) <htt://www.worldbank.org > accessed 10 January 2015

[19] A. Elwan, 'Poverty and Disability: A Background Paper for the World Development Report' (World Bank, 1999) Washington DC

people,[20] 20 per cent have some form of disability; in both rich and poor countries.

Again, the British Department for International Development (DFID) in a recent report indicated that the mortality rate for children with disabilities is estimated to be as high as 80 per cent, even in countries that have managed to reduce mortality for children under five to below 20 per cent. In another study, UNESCO estimates that only 2 per cent of children with disabilities in developing countries attend school[21] while it cites prejudices and a lack of knowledge as causes of discrimination of children with disabilities at school[22]. Only around 3 per cent of all adults with disabilities in the world can read and write. The equivalent figure for women with disabilities is 1 per cent. Researchers Ortoleva and Lewis identify disability as being both a cause and consequence of violence against women[23]; hence, women and girls with disabilities are twice as likely to suffer discrimination and exclusion on grounds of both gender and disability. They are also exposed to physical and mental abuse, including sexual violence and abuse mainly because of their high level of social isolation and dependence[24]. Again, PWDs are among those worst affected by armed conflicts and natural disasters while war and catastrophes increase the risk of injuries that can lead to disabilities. For each child killed in war, a further three suffer permanent disabilities[25]. Violence against women and girls is also worsened in time of humanitarian emergency and conflict.[26] There is a close link between ageing

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20 Defined as those living on less than USD 1 per day,

21 D. Filmer, '*Disability, Poverty and Schooling in Developing Countries: Results from 11 Household Surveys*' World Bank Discussion Paper (World Bank, 2005) Washington DC

22 Children with a disability together with children who work are those with the lowest level of access to education.

23 Stephanie Ortoleva and Hope Lewis, 'Forgotten Sisters: A Report on Violence Against Women With Disabilities: An Overview of its Nature, Scope, Causes and Consequences' (2012, Iris School of Law Faculty Publications) <http://iris.lib.neu.edu/cgi/viewcontent.cgi?article=1184&context=slaw_fac_pubs >

24 Op.cit, n.8 above

25 Op.cit, n.21 above

26 DFID briefing paper (2013) Violence Against Women and Girls in Humanitarian Emergencies <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/271932/VAWG-humanitarian-emergencies.pdf > accessed on 3 March 2015

and disability. Older people are disproportionately affected by sensory, mental or physical impairments, and are more likely than others to face a chronic illness. The WHO estimates that 38% of people over the age of 60 have a disability[27].

Perhaps, the most pressing trigger for the call for more focus on disability issues globally is the fact that disability prevalence is likely to increase in the future. The increase in natural disasters and the practice of targeting civilians during conflicts, as well as an ageing population means that people are more likely to experience health conditions that lead to disability[28].

Notwithstanding the staggering statistics above, PWDs are often overlooked by society. This exclusion takes place in all countries and in all social sectors, although a high increase in the number of PWDs is prevalent in developing countries and is compounded by the poor economic situation, lack of health capacity in the rural areas (where majority of the population live), and the entrenchment of traditional religious beliefs marginalizing disabled persons as a burden on society[29]. PWDs are neglected, excluded and forgotten even in matters that directly affect them; for instance, it has been reported that PWDs are often sidelined from HIV/AIDS activities due to the prejudice against them being sexually active.[30]. Many other regulations, programmes and practices that address them are rooted in charity rather than rights, thereby perpetuating dependency rather than promoting independence. This attitude places them at a disadvantage in society because, not only is the individual marginalized, but also there is no proactive adaptation to ensure that the individual functions as part of the society[31]. Where disability is not considered in planning, further harm can be caused. For example, schools that do not include

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27 Op.cit, n.1 above

28 Ibid

29 Op.cit, n.6 above

30 Persons with disabilities have also been marginalised in the work with HIV/AIDS issues. This has often been due to the fact that there is prejudice against persons with disabilities being sexually active.

31 Lansdown, G. 'Disabled Children in South Africa: Progress in Implementing the Convention on the Rights of the Child,' Paper on the Rights of Disabled Children (2002) p.9 <at:http://www.daa.org.uk/uploads/pdf/SA%20Childrens%20report%20.pdf >accessed 27 October 2015

accessible sanitation facilities for children with disabilities hinder school attendance or expose such children to increased health risks; medical facilities which are not physically accessible and which do not include health information in accessible formats exclude PWDs; public institutions such as courts and offices that make no provisions for interpreters, braille, or even romps become completely inaccessible to PWDs, and denying PWDs employment opportunities encourage dependence and poverty.

Ultimately, the effects of disability based exclusion does not stop on the individual or his family, but it extends to the society at large[32], for as long as such exclusion is practiced, PWDs cannot advance and protect their interests within society, nor can they contribute to such society since the options for earning their own living are limited as a result of this lack of education, as well as on the grounds of discriminatory attitudes and prejudices.[33] Nowhere does this ring more true than in Nigeria, where negative perceptions and social beliefs continue to be an obstacle for 25 million Nigerians living with disabilities.[34] . Consequently, they continue to languish in relative poverty, are often impeded in their access to public services and employment opportunities, remain largely ostracized within their communities, and are more likely to be the victims of crimes including sexual abuse[35]. They often face significant levels of discrimination and stigma in their everyday lives. As a result, many are not visible in society, and are prevented from participating in their communities and families.

## 4. Historical Perceptions of Disability

The term "perception" is defined by the Cambridge Dictionary as, "A thought, belief, or opinion, often held by many people and based on appearances. It is the awareness of things through

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[32] Groce, N. and Others '*Third World Quarterly*', [2011] (32)(8), 1493-1513

[33] Barnes, C. and Mercer, G., *Disability Key Concepts* (Blackwell Publishers 2013) p.42

[34] World Report on Disability, 2011 <http://www.who.int/disabilities/world_report/2011> accessed 24 March 2016

[35] Children in armed conflict face a particular danger from land mines. They are also particularly vulnerable to attack and sexual violence.

the physical senses, especially sight"[36]. There is no gain saying that disability affects the whole universe[37], therefore, the origin of disability is diverse, with different writers holding contrary views[38]. Throughout history, everything relating to disabilities was attributed to evil; and PWDs were ignored, hidden and cursed[39]. When made visible, they became subjects of exhibitions and objects of ridicule and were labelled with many names such as fools, demons, and animals. Ultimately, they suffered untold trauma stemming from the negative attitude they received from other people, which were mainly shaped by cultural prejudices and traditional stereotype of their various communities[40]. However, today, science has proved wrong the assertions of the past, as people have become aware of different causes of disabilities[41].

Prior to 19th century, PWDs were completely deprived of human love and dignity, and were subjected to inhuman treatment by society. For instance, the Spartans used to leave the handicapped in the wild to be devoured by animals; and among the Greeks, the sick were considered inferior while individuals with special educational needs were excluded from national policy on militarism and total fitness for all[42]. In many European countries, PWDs were not regarded as being fit to live, and those allowed to live were either used as royal jesters, or held solely for the purpose of tasting the food placed before royals to guarantee that such food was poison free[43].

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36 Cambridge Academic Content Dictionary <http://www.cambridge.org/us/cambridgeenglish/catalog/dictionaries/cambridge-academic-content-dictionary>accessed 22 March 2016

37 Op.cit, n.1 above

38 The history of disability across the world has ultimately been characterized by a progressive development of four models namely; medical, charity, social, and human rights models

39 Society has been 'dealing' with the problem of people with disability by placing them in institutions or prisons and by sterilizing women and girls as an acceptable treatment

40 M.K. Avoke and Others, *Issues in Special Education* (The City Publishers 1998)

41 History shows that ignorance, neglect, superstition and fear are social factors that have exacerbated isolation of persons with disabilities.

42 P. Blanck and Others, *Disability Civil Rights And Policy* (Thomson West 2004), p2

43 Ibid

Even the most knowledgeable people then were not devoid of prejudices against PWDs. Often quoted is a discriminatory statement attributed to Aristotle, that "those who are born deaf become senseless and incapable of reason"[44], while Plato recommended that the deformed offsprings of both the superior and inferior be put away in some "mysterious unknown places"[45]. Also, a theologian and sociologist, Eiesland sees disability as denoting an unusual relationship with god and that a person with a disability is either divinely blessed or dammed; the defiled evildoer or the spiritual superhero[46]. The great astronomer, Tycho Brahe[47], was said to have kept persons with mental retardation as close companions in the hope that their muttering would give him divine revelation. The magnitude of hatred towards the disabled by even prominent leaders of thought, explains why societal perceptions on disabilities during this period encouraged rejection, subjection and total neglect of PWDs, even by their immediate families.

The Medieval period witnessed a tremendous relief regarding human attitudes towards PWDs. Early Christian doctrine introduced the view that disease is neither a disgrace nor a punishment for sin but, on the contrary, a means of purification and a way of grace[48]. It brought the message of compassion and protection to PWDs. For instance, it is narrated in the Holy Bible that the disciples saw a man who was blind from birth and asked Jesus, 'Rabbi, who sinned, this man or his parents that he was born blind'. Jesus answered, "Neither this man nor his parents sinned"[49]. It is further narrated that Jesus blessed the deaf and the dumb[50]. The above perspective discredits the claim that disabilities occur as a result of sin as envisaged by some

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[44] Disability History Timeline< http://www.disabilityhistory.org/timeline-newhtml>accessed on 20 August 2015

[45] The Republic, 360 B.C.E

[46] N.L. Eiesland, *The Disabled God: Towards A Liberatory Theology of Disability* (Abingdon Press 1994), p.70

[47] Op.cit, n.40 above

[48] R. G. Barker and Others, *'Adjustment to Physical Handicap and Illness: A Survey of the Social Psychology of Physique and Disability'* (New York: 1953)

[49] John 9:1-3, The Holy Bible (Revised Standard Version) <https://www.biblegateway.com/versions/Revised-Standard-Version-RSV-Bible> accessed 29 March 2016

[50] Ibid, Mark·7:32

people[51]. Islam also preaches compassion and love for PWDs, and encourages giving assistance and protection to the handicapped. It emphasizes the notion of social responsibilities and duties to provide such individuals with their basic needs such as food, safety, care and shelter. As indicated, the Holy Qur'an states:

> There are not upon the blind [any] constraints, nor upon the lame, nor upon the ill, nor upon yourselves when you eat at your [own] houses or the houses of your father or the houses of your mother or the houses of your brothers or the houses of your sisters or the houses of your father's brothers or the houses of your father's sisters...[52]

In the African context, societal perceptions and treatments of PWDs within cross- cultural settings is a mixture of varying sentiments that reflect intolerance, hatred, love, fear, reverence, and devotion. In many traditional African societies, disabilities were and are still considered as a sin visited upon the family by the gods or ancestors as a result of past offences committed against the gods. Hence, in those societies, PWDs were generally treated poorly.[53] Some of these negative treatments start from birth, with the parents and the traditional birth attendants' plan to silently eliminate handicapped babies. In some communities in Northern Nigeria, PWDs are expected to beg for a living and society is encouraged to be charitable towards them, while in the Eastern Ibo part of the country, persons stricken with leprosy are treated as outcasts. In some parts of Kenya and Zimbabwe, a child with a disability is a symbol of a curse befalling the whole family. Such a child is considered a "shame", hence, the rejection of the child by the

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[51] However, during the 16th century, Christians such as Martin Luther and John Calvin (both leaders of the 16th Century Reformation) suggested a contrasting view by preaching that evil spirits possessed the mentally retarded and other persons with disabilities. Thus, these men and other religious leaders of the time often subjected people with disabilities to mental and/or physical pain as a means of exorcising 'evil spirits'.

[52] Quran 24:61, The Holy Quran (English Translation by Muhammad Alli) <http://www.aaiil.org/text/hq/trans/ma_list.shtml>accessed 29 March 2016

[53] Chomba Wa Munyi, 'Past And Present Perceptions Towards Disability: A Historical Perspective,' [2012] (32) (2) *Disability Studies Quarterly*

family, and the rejection of the family by the community. As for the Ashanti of Central Ghana, traditional beliefs precluded men with physical defects, such as amputations from becoming chiefs. This is evident in the practice of dethroning a chief if he acquires epilepsy[54]. To the Lobis in the Wa district of Ghana, blindness was considered as an offence against the gods. Such people were mocked and disregarded in the society.

By contrast, among the Alago people of North Central Nigeria, the wellbeing of a disabled person becomes the collective responsibility of all his family members, and such an individual does not lose any rights or privileges within the family on the basis of disability[55]. Among the Chagga in East Africa, the physically disabled were perceived as pacifiers of the evil spirits. Hence, care was taken not to harm them. Among the citizens of Benin Republic, constables were selected from those with obvious physical handicaps, and in some communities, children born with anomalies were seen as protected by supernatural forces, and were believed to bring good luck to the community[56]. Also, the Ga from Accra region in Ghana treated the feeble-minded with awe, owing to the belief that the retarded were the reincarnation of a deity.

The foregoing paragraphs have revealed that historically, the most consistent feature in the treatment of PWDs in most societies was the fact that they were categorized as "deviants rather than inmates by the society."[57] Consequently, many persons living with one form of disability or the other as well as their families were ostracized and excluded from mainstream community life. Worse still, they were not allowed to marry or be married in many African societies, as it was believed that such restrictions would limit the level of contamination since disability was considered a curse. The reasons for these impervious treatment meted on PWDs in the past were orchestrated by superstitious belief, ignorance and fear of

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[54] P Sarpong, *Ghana in Retrospect: Some Aspects of Ghanaian Culture* (Tema Publishing Corp,1974)

[55] Interview with Madaucin Doma, elder Ali Akwe on 15 March 2016 in Doma Town

[56] B.A. Wright, *Physical Disability: A Psychological Approach*, (Harper and BON, 1960)

[57] Lippman, *UNESCO Braille Courier*, (1972) p.89, UNESCO

contamination. Again, since human beings were valued for their economic input, PWDs were regarded as incapable of economic participation and contribution, hence, their neglect by the society[58]. One might ask, has there been a considerable attitudinal change towards PWDs in the modern era? A cursory look at contemporary African society, including Nigeria, indicates that PWDs are still looked down upon. Many people, including family members and friends feel uncomfortable relating to PWDs. This is in spite of the fact that like many countries, Nigeria is signatory to various international treaties and domestic regulations which seek to promote and safeguard the rights and interests of PWDs. For instance, the African Charter on Human and People's Rights 1981 was ratified by Nigeria and enacted in 1983[59]. Various provisions of this Charter can be interpreted as conferring on Nigeria a duty to protect disabled persons from discrimination[60]. Nigeria is also a signatory to the African Charter on the Rights and Welfare of the Child 1990, which in addition to echoing the non-discrimination provisions of the African Charter on Human and People's Rights 1980 discussed above, also provides a specific duty to introduce special safeguards to protect children who are physically or mentally disabled[61]. These positive obligations extend to ensuring access to education, employment, recreation, social life and public highways and buildings.[62]

Pursuant to its international legal obligations, the Nigerian government enacted the *Disability Act 1993, which establishes a comprehensive framework for the protection of the rights of PWDs and the promotion of access to safeguards and services*[63]. *It also provides a policy restatement of the government's duty to prohibit discrimination on grounds of disability and to promote*

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58 Dube A., *Disability Right Protection Under the African Human Rights System* (Lambert Publishing Co., 2007) p.1

59 African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1983.

60 Perlin, M.L., *International Human Rights and Mental Disability Law: When the Silenced are Heard* (Oxford University Press) p.55.

61 African Charter on the Rights and Welfare of the Child 1990, Article 13(1).

62 Ibid, Articles 13(2),and (3)

63 *This statute promotes access to legal services, voting, telecommunications, sports and recreation, social services, transportation, housing, vocational training and employment, education, and healthcare.*

*the social and economic integration of persons with disabilities.*[64] Interestingly, it is noted that this law is not included in the 2004 Laws of the Federation, which is the authoritative compendium of laws validly enacted in Nigeria as at 2000. Consequently, the decree remains a subject of controversy among writers with some arguing that it was never passed in the first place[65]. This writer is however of the view that the complete exclusion of this law from the Laws of the Federation further confirms the general perception by the Nigerian society (including policy makers) that disability issues are not important.

Furthermore, by ratifying the United Nations Convention on the Rights of Persons with Disabilities[66], Nigeria has the duty to, "promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.[67]" Like the other instruments discussed above, this Convention provides for a general duty of non-discrimination[68] (accompanied by a carefully crafted and highly detailed definition or test for discrimination[69]), the right of equal access to public services[70], the right to dignity and freedom from degrading treatment[71] and the duty to promote the social and economic integration of disabled persons in society[72]. This Convention also introduces a duty for signatory States to raise awareness of and, ultimately, respect for disabled persons within society.[73] A new Bill was passed in 2012 making it a criminal

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64 *Disability Act 1993 Section 2(1)*

65 See Ayodele Atsenuwa, 'Legal And Institutional Merchanisms For Protecting Persons With Disabilities In Nigeria', in E. Azinge And C. Ani (Eds), *The Rights Of Persons With Disabilities*, NIALS 2001, P.127

66 Which entered into force on 3rd May 2008

67 *UN Convention on the Rights of Persons with Disabilities 2008, Article 1(1)*

68 *Ibid, Article 3(b)*

69 Ibid, Article 2

70 Ibid, Article 3(e) and (f)

71 Ibid. Articles 15, 16 and 17

72 Ibid Article 3(c) and (d)

73 Ibid. Article 8

offence for employers (whether individual or corporate) to discriminate against disabled employees or applicants[74].

Nevertheless, there appears to be a gap between law and practice resulting in gross inability of PWDs to realize these rights at present. Evidence suggests that the vast majority of PWDs in Nigeria continue to live in relative poverty and are unable to access important public services and opportunities including education and healthcare[75]. Likewise, access to employment continues to be a problem even where the disabled applicants are more qualified than their non-disabled counterparts[76]. There is also evidence that the Nigerian criminal justice system routinely ignores the needs of PWDs and disregards the rights of mentally ill detainees to dignity and freedom from degrading treatment or punishment[77]; and contrary to the ethos of the African Charter on the Rights and Welfare of the Child 1990, disabled children in Nigeria are more exposed to abuse than their non-disabled counterparts[78].

Fortunately, there is no existing law anywhere in the world that excludes PWDs from the enjoyment of rights as human beings. Rather, what we are witnessing is simply denial of such rights. In other words, persons with disabilities are simply deprived of their rights, especially in developing nations of the world, including Nigeria[79].

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74 GAATES, Nigeria Passes Law on Discriminating against Persons with Disabilities (30 April 2012), <http://globalaccessibilitynews.com/2012/04/30/nigeria-passes-law-on-discriminating-against-persons-with-disabilities>accessed 1 May 2013.

75 Smith, N., 'The Face of Disability in Nigeria: A Disability Survey in Kogi and Niger States' [2011] (22) (1) *The Journal of Disability, CBR and Inclusive Development,* pp. 35-46.

76 MAARDEC, The Plight of Disabled Nigerians and the Need for Mass Enlightenment (2013) <http://www.maardec.net. >accessed 11 May 2013

77 Equal Rights Trust, 'Developing Resources and Civil Society Capacities for Preventing Torture and Cruel, Inhuman and Degrading Treatment of Persons with Disabilities' (September 2012) <http://www.equalrightstrust.org/torture_indianigeria/index.htm,>accessed 11 May 2013

78 Ibid

79 Doma H. and Anigbogu B., 'An Appraisal of the Legal Framework for the Protection of the Rights of Persons With Disabilities in Nigeria' [2014] (5) (1) Benue State University Law Journal

## 5. Perception as an Obstacle to Substantive Human Rights Protection

The perception of disability is still highly problematic in Nigeria, and indeed most African States. Abosi and Ozoji[80] hold that it is the desire to avoid whatever is associated with evil that affects people's attitudes towards people with disabilities simply because disability is associated with evil. Most of these negative attitudes are mere misconceptions that stem from lack of proper understanding of disabilities and how they affect functioning. "These misconceptions stem directly from the traditional systems of thought, which reflect magical-religious philosophies that can be safely called superstition. Presently, the notion that PWDs are not full members of society pervades the entire system and the common understanding held by the public including policy makers, is that PWDs and issues that concern them are matters of charity and welfare. This understanding creates a situation where a disabled person is at best seen as a burden or object of pity and at worst seen as wicked or even unclean.[81]These attitudes place the disabled at a disadvantage in society. This is because, not only is such individual marginalized, but also there is no proactive adaptation to ensure that the individual functions as part of the society[82]. The perception that the PWDs are not full members of society pervades the entire system and the common understanding held by the public including policy makers, is that PWDs and issues that concern them are matters of charity and welfare. Accordingly, Lang and Uppah[83] have aptly observed the manifestation of this viewpoint thus:

> Firstly, at national level, there is no disability discrimination legislation that has been enacted within Nigeria, Secondly; there is no form of

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80 Abosi, C. O., and Ozoji, E. D., *Educating the Blind: A Descriptive Approach* (Spectrum Books 1985)

81 Op.cit, n.6 above

82 Lansdown, G. 'Disabled Children in South Africa: Progress in Implementing the Convention on the Rights of the Child' (2002: Paper for Rights for Disabled Children), p.9 <http://www.daa.org.uk/uploads/pdf/SA%20Childrens%20report%20.pdf >accessed March 29, 2016

83 Lang, R. and Upah, L., 'Disability Scoping Study in Nigeria' (DFID, Nigeria 2008) 31

> social protection for disabled people in Nigeria, which exacerbates the level of poverty that they encounter. Thirdly, the Ministry of Women Affairs and Social Development is the lead government department for disability issues in Nigeria. However, the services that they provide are based on a charity/welfare approach to disability issues, with demand for such services far outstripping supply. There are some international NGOs that do supply services to disabled people, but their geographical coverage is very limited. Consequently, for the vast majority of disabled people living in Nigeria, particularly those living in rural areas, there is no access to disability services.

Consequently, this perception is a significant, entrenched factor that seriously militates against their social inclusion within the country. It gives room for abuse and social marginalization, which can perpetuate from childhood all the way through adult life of a disabled person. For example, the disabled child may be excluded from education, because he/she is seen as incapable of benefitting society[84]. The same problem is experienced if the disabled person desires gainful employment. This is because his/her disability is deemed as undermining his/her capability for employment. Consequently, employment is considered as inappropriate, or if employment is given, then reasonable adaptation is not even considered[85]. Thus, the perceptions of disability have a negative effect on the individual's capability of engaging within a fulfilled life.

Globally, many standards have been put in place to protect the rights and interests of PWDs in form of international, regional, and domestic instruments. However, they have not solved the problems of marginalisation. This is primarily due to the

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[84] T Chataika and Others, 'Access to Education in Africa: responding to the United Nations Convention on the Rights of the Persons with Disability' [2012] (27) (3) *Disability & Society*; p.387

[85] . Kanter AS, 'The Promise and Challenge of the United Nations on the Rights of the Persons with Disabilities' [2007] (34) *Syracuse Journal of International Law and Commerce*; p. 289

cultural myths of disability that pervade the social psyche[86]. For instance, the United Nations Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (1993) provides that:

> Persons with disabilities must not be denied the opportunity to experience their sexuality, have sexual relationships and experience parenthood. Persons with disabilities must have the same access as others to family planning methods, as well as to information in accessible form on the sexual functioning of their bodies.

However, the individual with HIV/AIDS and other disabilities will have limited rights to this effect even though in the current modern medicine and contraception these activities are possible[87]. This simply means that social attitudes to disability are clouding the reality. The deduction here is that even when the state does support fundamental human rights, this does not mean that the PWDs will benefit from an effective model of legal protections. The rationale for this is that the disabled persons require other individuals to genuinely appreciate why such protections have to be entrenched in the social psyche. [88] Unfortunately however, the entrenched bias against the disabled seems to be overwhelming.

## 6. Perceptions and International/Regional Human Rights Law

Across Nigeria, many PWDs are made to feel useless and the very few that struggle for achievement identify how the social psyche and perceptions are limiting their basic human rights[89]. These social psyche and perceptions clearly go against the human rights norms of the region. For example, the African Charter of Human Rights (ACHR) under Article 18(4) states that: "The aged and the disabled shall also have the right to

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[86] Maja PA and Others, 'Employing People with Disabilities in South Africa' [2011] (41) (1) *South African Journal of Occupational Therapy*; pp. 24-25

[87] South African National Aids Council (SANAC). '*Breaking Down the Barriers: Disability and HIV in South Africa*' (2011; SANAC), pp.3-4

[88] Ibid, p.7

[89] Kwenda S, 'Africa's Disabled will not be Forgotten' (April 2010) *African Renewal*, p. 18

special measures of protection in keeping with their physical or moral needs." Going by international standards, this special protection should include equal access to services, education, health care and employment[90]. Yet, this standard of protection is not being afforded to disabled Nigerians, even if they are enshrined in the law, because there are negative social perceptions present.[91]

The treatment of PWDs in Africa has been tested in two key international human rights cases, involving African states. The first is *Congo v. Ecuador* [92], where Congo was the claimant with respect to improper treatment of disabled persons in treatment facilities. This case held that the deprivation of medical treatment to a Congolese citizen was an abuse of his human rights. This was compounded by the fact that the individual was starved, placed in isolation and kept naked. The result was the death of a disabled person, which Ecuador was held liable for. The interesting factor about this case is that the African state is using international human rights law in order to hold Ecuador accountable. Consequently, there should be a similar approach to the protection of African disabled persons across the region. However, this is not always the case, especially with respect to the mentally ill who are deemed as deviants[93].

The case of *Purohit & Moore v. The Gambia*[94] illustrates the problems that are faced with the mentally ill. The perceptions of deviance across African states connect to the belief that the mentally ill are possessed or somehow evil[95]. The Gambian domestic law of the Lunatic Detention Act illustrates how such

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[90] Ibid

[91] Kleintjes S and Lund C and Swartz L, 'Barriers to the Participation of People With Psychosocial Disability in Mental Health Policy in South Africa: A Qualitative Study of Perspectives of Policy Makers, Professionals, Religious Leaders and Academics' [2013] (13) (1) BMC *International Health and Human Rights* < http://www.biomedcentral.com/1472-698X/13/17> accessed March 29, 2016

[92] Case 11.427, Inter-Am. Comm'n H.R., Report No. 63/99, OEA/Ser.L./V/II.95 doc. Para 7 6-27 (1999).

[93] . Perlin ML, 'Striking for the Guardians and Protectors of the Mind: The Convention on the Rights of the Persons with Mental Disabilities and the Future of Guardianship Law' [2013] (117) (4) *Penn State Law Review*, pp. 1182

[94] Afr. Comm'n Hum. & Peoples' Rts., Comm. No. 241/2001, para 85 (2003)

[95] Op.cit, n.6

perceptions have been translated into the legal system[96]. This act gave arbitrary power to deprive the liberty of the mentally ill under a presumption that these individuals were somehow a threat to the fabric of society. The African Commission on Human and Peoples Rights (African Commission) held that this was a breach of Article 6 ACHR (i.e. the prohibition on the deprivation of liberty). The rationale for the African Commission was that the authorised detention had to be proportionate, deemed necessary by the medical profession and be regularly reviewed. This application by the African Commission is reflective of the requirements at an international level; however, due to social perceptions of the mentally ill, the Gambian law was introduced.

The judicial attitude towards disability in Nigeria has also been tested. In *Obere v Board of Management Eku Baptist Hospital*[97], the plaintiff who worked as a boiler and operator in the defendant company was obliged to operate a defective machine, which the defendants failed to replace despite several complaints made by the plaintiff. While in the course of the said employment at the hospital, the plaintiff had his right thumb chopped off by the same defective machine and thereby suffered damage, which resulted to long-term impairment. For three years after the injury, the plaintiff remained in the service of the defendant. He brought this action when his employment was terminated claiming special damages for the disability suffered. The learned trial judge awarded only nominal damages holding that the plaintiff had waived any rights to special damages as he brought the claim only because his employment was terminated. The court failed to take into consideration his diminished capacity to work as well as his inability to get other jobs, as he was now considered partially "disabled" by prospective employers. The Supreme Court based on this fact increased the amount of damages awarded to the plaintiff. This is a clear case where legislation on the rights of the disabled would have better served the interest of the plaintiff. To start with, the plaintiff was made to work with defective equipment and when he suffered injury (long lasting and permanent) as a result, he was

[96] Ibid
[97] (1978) 6-7 SC REPRINT 12

victimised by being made redundant. In the absence of any clear law to uphold his rights, he was left only to claim damages[98]. Similarly, in R.O. Iyere v Bendel Feed and Flour Mill Limited[99], the appellant, the plaintiff in the respondent's mill at Ewu, the servant of the respondent sent the appellant underground to clear the blockings in the factory. The servant switched on the plant without notifying the appellant he sent to clear the fault. In the process, the appellant's right hand was fractured and twisted. His permanent disability was accessed at 60%. He sued claiming the sum of 5 million naira for special and general damages. The learned trial judge dismissed the claim mainly on the ground that the appellant did not join the duty operator, an employee of the respondent who was responsible for the injury. The court of appeal affirmed the decision. On further appeal to the Supreme Court, the court held that the failure of the appellant to join the respondent's operator as a defendant in the action against his master is not fatal to the claim. The court was in favour of granting a fair compensation to the appellant to reduce the rigour of life for him and in order not to render him to be a street beggar. These two decisions are indicative of the approach of courts in Nigeria towards disability matters. Being constrained by the absence of clear legislation on disability (which would adequately provide for the needs of disabled litigants), they are left at best to benevolently award damages that are essentially fluid and based on the facts of each particular case.

The inference from the cases above is that there are varying approaches being taken across Africa concerning human rights protections of the disabled. Nevertheless, the growing theme is that there must be adequate legal protection in place in order to protect disability rights. The main obstacle that remains, however, is how to overcome the negative perceptions of disability.

## 6. Conclusion

This paper has carefully examined the public perception of disability and draws the conclusion that it determines not only

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[98] Animi Awah, 'Legislation for the disabled ' in Epiphany Azinge and Chinyere Ani (eds), *The Rights of Persons With Disabilities* (NIALS, 2011), p. 168

[99] (2008) 7-12 SC, p. 151

the rights of PWDs, but also the extent to which they can enjoy such rights. Negative perception remains a major obstacle for PWDs globally though it has a worse effect in developing countries like Nigeria. Thus, the general perception in mainstream Nigerian society that disability is mainly an issue of charity (rather than rights) is so deeply rooted that it has relegated the disabled population and rendered human rights protection for this group almost ineffective. The irresistible conclusion to draw here is that it does not matter the extent of legislative protection, because if the protection implemented cannot change social attitudes, then the law will have little or no effect[100].

Development agencies and practitioners have repeatedly recognized disability as a key issue, inexorably linked to poverty, the extension of human rights, and citizenship. Accordingly, in 2002, James Wolfensohn, former President of the World Bank, stated that unless disability issues were addressed, the UN Millennium Development Goal targets would not be met[101]. While there is no doubt that much can be gained from enacting a federal disability law in Nigeria[102], it is doubtful if legislative provisions on disability rights alone can generate the much-desired change towards the plight of PWDs. However, through re-orientation and advocacy, individuals and communities (including policy makers) will appreciate that PWDs are equal to everyone in society and therefore entitled to the same freedoms and rights as others. They can also be a benefit to society, if given the same opportunities for growth and development as others. The advantage of a re-orientation

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[100] This is illustrated in the poor application of the AHRC's disability protections within African states, such as Gambia, and the failure for the CRDP to change the attitudes in South Africa.

[101] Metts, *Disability Issues, Trends and Recommendations for the World Bank*, 15-23 cited in Metts, R., ' Disability And Development', Background Paper Prepared For The Disability And Development Research Agenda Meeting, November 16, 2004, World Bank Headquarters, Washington, D.C.

[102] Which specifically tackles all challenges bedevilling persons with disabilities (such as discrimination, accessibility, education, housing, healthcare, etc.) would provide the best protection for the disabled. Consequently, Nigeria should (as a matter of urgency) complete the process of domesticating the Convention on the Rights of Persons with Disabilities.

approach is that services and education will be equally available. Every responsible society is obliged to protect and provide for its dependent disabled citizens; however making them socially and economically self-sufficient will be of immense benefit, not only to them, but also to any society that truly aspires meaningful development, and total eradication of poverty.