

# Restatement of International Legal Regimes towards Inclusive Education and Accessibility for Persons with Disabilities in the African Continent

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## Abstract

*This article appraises the framework for inclusive education under the auspices of the International Convention on the Rights of Persons with Disabilities, 2006. It also examines the extant African regime in the context of inclusive education for persons with disabilities under the aegis of the African Charter on Human and Peoples Rights and the Protocol to the African Charter on Human and Peoples Rights on the Rights of Persons with Disabilities in Africa. The discourse reviews theoretical approaches and polemics on the subject of disability particularly within the purview of African pedagogy. The article enunciates strategies that would engender inclusive education and accessibility for beleaguered persons with disabilities in the continent. The article employs the qualitative research methodology. The research finds that persons with disabilities are often marginalized and have limited access to education. The article recommends that the African Charter on Human and Peoples Rights and other relevant instruments should be recalibrated and implemented in order to foster inclusive education and accessibility for the benefit of persons with disabilities in Africa.*

**Keywords:** International legal regime, Inclusive education, Accessibility, Persons with disabilities, African continent.

## 1. Introduction

The demographics of Persons with disabilities (hereafter referred to as PWDs) cannot be ignored in contemporary society. There are

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currently over 600 million PWDs in the world out of which a population of 400 million lives in developing countries whilst 80 million PWDs reside in the African continent<sup>1</sup>. By and large, PWDs in Africa often experience marginalization and a plethora of challenges which patently hinder the enjoyment of their basic human rights. The appalling conditions besetting PWDs in Africa is graphically depicted as follows:

Persons with disabilities are disproportionately likely to live in poverty, and too often across Africa, do not have equal access to education, health care, employment opportunities, housing, social protection systems, justice, cultural expression, and participation in political life. The ability of persons with disabilities to participate in society is often frustrated because physical environment, transportation and information and communication systems are not accessible <sup>2</sup>

Majority of PWDs in Africa are palpably excluded from schools. Educational enrolment in respect of PWDs is egregiously estimated at 5-10 percent. As much as 70 to 80 percent of working aged persons with disabilities has no jobs. Against this backdrop, the present article seeks to appraise the international and regional legal frameworks for inclusive education and accessibility applicable in Africa. The article intends to ascertain the barriers that prevent PWDs in the continent from having unfettered access to education. The article would also explore strategies aimed at enhancing inclusive and accessible educational opportunities for beleaguered students with disabilities in the continent.

## **2. Major approaches and Theories of Disability in the Context of Education**

### ***2.1. The Approach of Segregation of Disabled Persons***

Segregation is the separation of people on the basis of race, religion, sex or social status, in such a manner that they are treated in a different way from others.<sup>3</sup> The approach of segregation is usually

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<sup>1</sup> African Studies Centre, 'Disability in Africa' Available at <[www.ascleiden.nl/content/web/dossiers/disability-africa](http://www.ascleiden.nl/content/web/dossiers/disability-africa)> accessed 25 July 2017.

<sup>2</sup> United Nations, 'Tool Kit on Disability for Africa' Available at <[www.un.org/introducing-the-unitednationsconvention.pdf](http://www.un.org/introducing-the-unitednationsconvention.pdf)> accessed 24 July 2017.

<sup>3</sup> AS Hornby, *Oxford Advanced Learners Dictionary of Current English* (Oxford University Press 2005) 1338.

considered with reference to the distinct or separate treatment of disabled persons in school or other settings. With reference to education, ‘a segregated classroom is simply what the name implies - a self- contained classroom filled with students who have a particular or any number of disabilities. These classrooms are typically referred to as “special ed(education)” classes’.<sup>4</sup> Special education classes are separate entities from regular education classes.<sup>5</sup> Proponents of segregated education posit that students with disabilities require teachers who are trained in the area of special education so as to teach or instruct students who have different types of disabilities. Persons trained in matters of disability possess diverse knowledge and skills which are required for dealing with persons with mental, emotional and physical disabilities.<sup>6</sup>

Advocates of segregated education assert that it provides a more individualized attention for students with disabilities.<sup>7</sup> Another argument stated in favour of segregated education is that students with disabilities are not placed under pressure to perform at par with their non- disabled counterparts.<sup>8</sup> Proponents of segregation also indicate that maintaining a segregated system of education is cheaper than integrating students with disabilities in regular classrooms. They explain that integration of persons with disabilities would involve the reduction of class size which entails the need for larger numbers of teachers and ultimately result in huge expenses.<sup>9</sup>

The philosophy of segregation has been criticized for marginalizing students with disabilities. Critics argue that segregation primarily focuses on the disabilities of students. For instance, they are placed in classrooms because they are blind, deaf, or have autism, cerebral palsy, and the like.<sup>10</sup> A picturesque description of the flipside of segregation is stated as follows:

Children with disabilities are diagnosed, labeled, and then whisked into one set of services or another. In

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<sup>4</sup> S Dixon, ‘Inclusion - Not Segregation or Integration - Is where a student with special needs belongs’ <[www.geocities.ws/every?gratitot/inclusion-Not-segregation.doc](http://www.geocities.ws/every?gratitot/inclusion-Not-segregation.doc)> 14 June 2013 cited in Paul AdoleEjembi, *International and domestic Disability Law: A Nigerian Perspective* ( Jos University Press 2020) 24.

<sup>5</sup> Ibid.

<sup>6</sup> NJ Bauer ‘The Politics of Inclusion: a Dissenting Perspective’ A paper presented at the Annual Conference of the New York State Association of Teacher Educators in Syracuse, New York, on the 21April 1994 cited in Dixon (n4) cited in Ejembi (n4).

<sup>7</sup> Dixon (n4).

<sup>8</sup> Bauer (n6).

<sup>9</sup> Ibid.

<sup>10</sup> Dixon (n4).

general, these services remove children from the natural environments of childhood to segregated settings, where experts work on their bodies and brains, to the detriment of their hearts and souls. Interventions and treatments to “help children reach their full potential” are provided, in the process, our children are dehumanized, reduced to defective body parts. They are known more by their labels than their names.<sup>11</sup>

Another notable disadvantage of segregated education is that students with disabilities lose out of several activities otherwise experienced by other non-disabled students. Typical non-disabled students also lose out on what their counterparts with disabilities have to impact on them.<sup>12</sup> It is posited that advocacy for segregated education, segregated housing, and segregated job placements for people with disabilities would be tantamount to making the diverse nature of human society moribund.<sup>13</sup> It may be inferred that the approach of segregation is applicable in all aspects of human endeavour such as housing, employment, education etc. It is however contended that segregation is predominately practiced in the area of education in most African countries. For instance, it has been observed that ‘segregation and lack of inclusion permeates all levels of South Africa’s educational system and reflect fundamental breaches of the Convention on the Rights of Persons with Disabilities.’<sup>14</sup> The same state of affairs is arguably the case in Nigeria and many African countries.

## ***2.2. The Theory of Integration of Disabled Persons***

The term ‘integration’, ‘mainstreaming’, and ‘open education’ are frequently used to describe the education of disabled and non-disabled children together in Britain, in the United States of America, and in Nigeria respectively.<sup>15</sup> Integrated classrooms might be regarded as a medium between segregated and inclusive classes. In

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<sup>11</sup> K Snow Disability is Natural: Revolutionary Common Sense for raising successful children with disabilities (Braveheart Press, 2001) cited in Dixon (n4).

<sup>12</sup> Dixon (n4).

<sup>13</sup> *ibid.*

<sup>14</sup> Human Rights Watch, ‘Complicit in Exclusion’ <[www.hrw.org/report/2015/08/18/complicit-exclusion/south-africas-failure-guarantee-inclusion-education](http://www.hrw.org/report/2015/08/18/complicit-exclusion/south-africas-failure-guarantee-inclusion-education)> accessed 15 August 2017.

<sup>15</sup> DO Amwe Issues in Special Education and Rehabilitation of the Disabled (Department of Special Education, University of Jos, 1985)1-20.

the integrated system, students with disabilities spend some time with other normal students but part of the scheduled period of study is still spent in segregated classes.<sup>16</sup> Integration or mainstreaming removes students who are not functioning well in general classes and return them when they are able to function better socially and academically.<sup>17</sup>

There are various forms of integration. These include physical integration (which has to do with the location of buildings in relation to ordinary schools for both disabled and normal persons); social integration (which refers to making contacts between disabled and normal persons); societal integration (which has to do with the principle of normalization or creating an environment in which disabled persons live and study with non -disabled persons); and functional integration (which refers to the functional relationship between disabled people and non -disabled people and how the two groups carry out activities together).<sup>18</sup>

Amwe further considered arguments for and against integrating children in ordinary schools.<sup>19</sup> In his analysis of arguments against integration, he posited that ordinary schools are not suitable for disabled children since teachers in these schools pay more attention to the needs of the majority of able-bodied children and the needs of a few children with disabilities are not adequately met.<sup>20</sup> He has shown that it may be of benefit to disabled students to spend part of their formative years as individuals in the company of those similarly disabled as they are more likely to assist and encourage each other.<sup>21</sup> Amwe also stated that special schools are in a position to give greater attention to individual development, better able to assist the disabled person and offer outstanding educational opportunities and help the disabled to do things at their own pace.<sup>22</sup> According to him, proponents of segregation argue that it provides a better opportunity for disabled children because a segregated residential institution is designed to provide specific care to the disabled person. In the same vein, a special school is said to provide education for children with

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<sup>16</sup> Dixon (n4).

<sup>17</sup> L Synder *et al* 'Inclusion Confusion: Putting the Pieces Together' in Teacher and Special Education, 24(3) 198-207 cited in Dixon (n4).

<sup>18</sup> Amwe (n15).

<sup>19</sup> *ibid* 3-13.

<sup>20</sup> *ibid* 3.

<sup>21</sup> *ibid* 4.

<sup>22</sup> *ibid* 5.

special education needs.<sup>23</sup> It has also been argued that integrated classrooms, which merely allows students with disabilities to spend limited time with normal students do not give students with disabilities a sense of belonging neither does it give normal students the chance to truly get to know their peers who are disabled.<sup>24</sup>

In contradistinction, arguments have also been canvassed in favour of integration. Proponents in favour of integration argue that if a disabled child can cope successfully in ordinary school, such a child should go there.<sup>25</sup> It has been noted that many parents are in favour of integration.<sup>26</sup> It is also opined that special schools make children more handicapped, thus worsening their conditions; parents would rather have them in integrated schools.<sup>27</sup>

The Department of Education and Science<sup>28</sup> posit that 'integration, as opposed to segregation, becomes an article of faith: if handicapped and the normal are to understand one another and live together in the adult world, they should not be separated during their formative years.'<sup>29</sup> Integrated education, which is less than full inclusion programmes, is also considered to have the advantage of affording students with disabilities the expertise and individualized attention of segregated education for part of the day but they don't experience the marginalization of being in a segregated classroom on a full time basis.<sup>30</sup>

Furthermore, there are educators who support both integration and segregation. For instance, some educators believe that persons with disabilities, such as blind persons, can be removed from a totally segregated educational programme for a 'cooperative plan'. In the cooperative plan, the blind or disabled student would rely heavily on the special class and its teacher but spend each day in other classes with normal children and learn from regular class teachers.<sup>31</sup>

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<sup>23</sup> *ibid* 9.

<sup>24</sup> Dixon (n4).

<sup>25</sup> Amwe (n15).

<sup>26</sup> *ibid*10.

<sup>27</sup> *ibid*.

<sup>28</sup> Department of Education and Science, 'Integrating Handicapped Children' Information Sheet, London, 1974, n.p, cited in Amwe (n15).

<sup>29</sup> *ibid*.

<sup>30</sup> Dixon (n4).

<sup>31</sup> GD Nappier& DL KappanHandbook on Teachers of Visually Handicappedn.p, 1974 cited in Amwe (n15) 8-9.

### 2.3. *The Inclusion Model*

In recent times, the literature regarding learners with disabilities has shifted from the integration approach to the inclusion model, which stipulate the placement of each learner in general education classes with some programme time in other places.<sup>32</sup> Shea and Bauer<sup>33</sup> defined inclusion as ‘the philosophy that all students, regardless of disability, are a vital and integrated part of the general education system’.<sup>34</sup> They explained that going by the inclusion model, special services may be provided in and outside the general education environment. The authors explained that integration, on the other hand, focuses on the placement of disabled persons in educational programmes serving their peers.<sup>35</sup> They postulated that the basic components of inclusion are as follows:

- (a) all students attend the school to which they would be assigned if they had no disability;
- (b) there are no more or no fewer learners with disabilities in a single school than would be found district wide;
- (c) no student could be excluded from receiving educational services regardless of the disability;
- (d) placement would be age and grade appropriate, with no self-contained special education classes;
- (e) cooperative learning and peer instruction, would be used in general instruction;
- (f) special education supports would be provided in the integrated environment<sup>36</sup>.

The inclusive model requires that schools be seen as unified institution with a shared responsibility for learners with or without disability.<sup>37</sup> Proponents of inclusive education argue that inclusion is not just the placement of students with disabilities into regular classrooms, but rather a philosophy that is beneficial to all categories of students.<sup>38</sup> Advocates of inclusion, as opposed to integration, contend that learning is more authentic when students attend school

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<sup>32</sup> W Sailor, ‘Special Education in a Structural School’ In Remedial and Special Education, 11(6), 1991, 8-22 cited in TM. Shear & Bauer, *Learners with Disabilities: A Social System Perspective of Special Education* (1994) 203-445; also cited in Ejembi (n4) 28. Shea and Bauer (n32 above)

<sup>33</sup> *ibid.*

<sup>34</sup> *ibid.*

<sup>35</sup> *ibid.*

<sup>36</sup> *ibid.* 448.

<sup>37</sup> *ibid.* 448.

<sup>38</sup> Dixon (n4).

together, rather and when disabled students merely attend regular classes and are withdrawn later on to learn elsewhere.<sup>39</sup>

A major advantage of inclusive education is that ‘all students have a variety of abilities and disabilities and an inclusive environment allows students to experience and accept differences and commonalities that make up our diverse society.’<sup>40</sup> It has been observed that an inclusive learning programme fosters collaboration, learning and critical discourse. Students with disabilities learn from competent peers.<sup>41</sup> Proponents of inclusion argue that the inclusive classroom is the most conducive environment for facilitating synergy between disabled students and normal students.<sup>42</sup>

Inclusive education has, however, been criticized. Critics argue that inclusive classrooms would result in the demise of special education with its attendant specialized expertise and individualized teaching techniques.<sup>43</sup> This view is, however rebutted, in that inclusive education can be had along with special education.<sup>44</sup> To this end, ‘inclusion will require that special educators re conceptualize their roles, acting more often as co-teachers or resources than as primary sources of instruction or services.’<sup>45</sup> Thus inclusion does not entail discarding special education. Rather, it involves providing such services within a more inclusive setting devoid of isolation and stigma often associated with special education services.<sup>46</sup>

Inclusive education has also been criticized for attracting huge financial cost.<sup>47</sup> However, advocates of inclusion posit that the gains made by students with disabilities by being placed in an inclusive learning environment will make the system cost effective in the long run.<sup>48</sup> For instance, where a student with disabilities is able to secure employment rather than needing to be supported by the state with all attendant cost; acquiring skills via inclusive learning which helps to

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<sup>39</sup> *ibid.*

<sup>40</sup> *ibid.*

<sup>41</sup> *ibid.*

<sup>42</sup> *ibid.*

<sup>43</sup> *ibid.*

<sup>44</sup> M Sapon-Shevin ‘Full Inclusion as Disclosing Tablet: Revealing the Flaws in our Present System’. *Theory into Practice*, 35(1), 35–41, 1996.

<sup>45</sup> *ibid.*

<sup>46</sup> Dixon (n4 above)

<sup>47</sup> *ibid.*

<sup>48</sup> *ibid.*



achieve employment, would be worth the short term expenditure involved in inclusive learning.<sup>49</sup>

Dixon notes that inclusive classrooms do not engender disadvantages of marginalization of students with disabilities experienced in segregated settings or the situation of not having a complete sense of belonging as obtains in an integrated system.<sup>50</sup> It is posited that human beings, no matter how profoundly retarded, are rights-bearers and individuals who are owed respect as fellow beings.<sup>51</sup> Disability scholars suggest that disability is the result of a society constructed exclusively for able bodied persons who walk, see, hear, and so on. However, 'people in wheel chairs are disabled as a result of stairs, curbs, narrow doorways, among others, that would involve painstaking efforts, not by the fact they cannot use their legs'.<sup>52</sup> It is postulated that, as members of society, people with disabilities are entitled to the same rights as other human beings, hence the proposition of inclusive education.<sup>53</sup> Although much emphasis is placed on inclusive approach to educational settings, the inclusive model is also applicable to other fields of human endeavour such as employment, healthcare, and accessibility of the physical environment.<sup>54</sup>

The basic difference between inclusion and integration in the context of education is that, while integration increases the opportunities for the participation of a disabled student within the educational system of a mainstreamed school (with limited opportunity for segregated education) inclusion is the full participation of a student with disability within the educational system of a mainstreamed school (which virtually eliminates segregated education of any kind).<sup>55</sup> It is averred, in principle, that the African educational system, particularly at the primary and secondary levels of education is characterized by segregated education with separate schools for the disabled, such as special

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<sup>49</sup> *ibid.*

<sup>50</sup> *ibid.*

<sup>51</sup> *ibid.*

<sup>52</sup> *ibid.*

<sup>53</sup> *ibid.*

<sup>54</sup> Handicap International 'Inclusive Local Development: How to implement a disability approach at local level' <<http://www.handicap-international.org.uk>> accessed 25 January 2014.

<sup>55</sup> See Advocacy for Inclusion Inc, 'What is the difference between Integration and Inclusion?' <<http://www.advocacyforinclusion.org/publications/publications.sheets/education/inclusionand-integration.pdf>> accessed 25 June 2014 cited in Ejembi (n4) 40-41.

schools for the deaf and dumb. There is, therefore, need to adopt the inclusive model in the domestic laws of African states so as to engender the provision of inclusive education at all levels of education in the continent.

#### **2.4. Critical Disability Theory**

Critical theory evolved from the work of Marxist social researchers, and philosophers originally working in Frankfurt, Germany, such as Max Horkheimer. The theorists built on both Karl Marx's critique of political economy of liberal capitalism and Freud's analysis of the role of the unconscious in the formation of the human psyche to explain the persistent domination of capitalism and to proffer a means to achieve human liberation.<sup>56</sup>

Critical disability theory is derived from critical social theory first posited by Max Horkheimer. The thrust of the theory is that that disability is a social construct and not the result of impairment. The theory views disability as an intricate relationship between impairment, the disabled person's response to that impairment, and the physical, institutional environment. The theory attributes the difficulties faced by persons with disabilities to the failure of the social and political environment to respond adequately to issues of disability. Critical jurisprudence holds that the sources of oppression and marginalization of persons with disabilities is found within the legal system and institutions and it seeks to emancipate persons with disabilities from such oppression. Conversely, it recognizes the positive role of the law and it aims to create new laws, utilize existing laws and statutory institutions, to liberate disabled persons, which is the capital purpose of critical disability theory. The theory posits that rights constitute a powerful tool for the promotion of the wellbeing of persons with disabilities and it is a progressive step when courts of law advocate the interests of persons with disabilities through the application and enforcement of legal rights.

Whilst the utility of the law is recognized as a paramount tool in addressing disability issues, it is contended that there is need to identify and delineate specific rights applicable to disability issues in the African regional and domestic legal frameworks so as to effectively determine their legal claims and enforce their legal rights.

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<sup>56</sup> M Horkheimer, 'Traditional and Critical Theory in Horkheimer, M (ed) Critical Theory: Selected Essays (Toronto: Herder and Herder, 1972) cited in Hosking, DL 'Critical Disability Theory' <[www.lancaster.ac.uk/hosking2008.pdf](http://www.lancaster.ac.uk/hosking2008.pdf)> accessed 23 July 2016 cited in Ejembi (n4) 40.

The pith fall of the critical theory can be gleaned from its failure to substantiate specific rights for persons with disabilities. Nonetheless, the present research adopts the critical theory owing to its unequivocal recognition of the pivotal role of law and the utility of legal principles and regulatory institutions to promote and protect the rights of persons with disabilities.

### **3. An Overview of the Framework for inclusive and Accessible Education under the United Nations Convention on the Rights of Persons with Disabilities, 2006.**

The Convention on the Rights of Persons with Disabilities (CRPD)<sup>57</sup> recognizes that a comprehensive and integral international treaty to promote and protect the rights and dignity of persons with disabilities will make a significant contribution to redressing the profound social disadvantages of persons with disabilities and promote their participation in civil, political, economic, social and cultural spheres with equal opportunities, in both developing and developed countries.<sup>58</sup> The cardinal purpose of the CRPD is 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.<sup>59</sup> The African states that have ratified the treaty include: Algeria, Angola, Burundi, Cameroon, Cape Verde, Congo, Egypt, Ethiopia, Gabon, Ghana, Guinea, Guinea- Bissau, Kenya, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Senegal, Seychelles, Sierra Leone, South-Africa, Sudan, Togo, Tunisia, Tanzania, Uganda, Zambia, and Zimbabwe.<sup>60</sup>

The CRPD, 2006, generally provides for accessibility of persons with disabilities in the society. State parties to the convention are obligated to take appropriate measures to ensure that persons with disabilities have access, on equal basis with others, to the physical environment, to transportation, to information, including communication technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural

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<sup>57</sup> (adopted 13 December 2006, entered into force 3 May 2008) UN DOC. A/16/611. The Convention on the Rights of Persons with Disabilities 2006 was signed and ratified by Nigeria on the 30 March 2007.

<sup>58</sup> See the Preamble to the Convention on the Rights of Persons with Disabilities 2006.

<sup>59</sup> Ibid. Article 1.

<sup>60</sup> Disability World, 'CRPD List of Countries: Convention, Optional Protocol, Signatures, Ratifications' Available at <[www.disable-world.com/disability/discrimination/crpd-milestone.php](http://www.disable-world.com/disability/discrimination/crpd-milestone.php)> accessed 28 July 2017.

areas. The law specifically enjoins state parties to guarantee accessibility of persons with disabilities to buildings, roads, transportation and other indoor and out -door facilities, including schools, housing, medical facilities, and work places<sup>61</sup>.

The convention unequivocally provides for the right of persons with disabilities to education. State parties are obligated to ensure an inclusive education at all levels of learning.<sup>62</sup> In enhancing the right to education, state parties are obliged to ensure that:<sup>63</sup>

- (a) persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not denied free and compulsory primary education, on the basis of disability;
- (b) persons with disabilities can access inclusive, quality and free primary education and secondary education on equal basis with others in countries in which they live;
- (c) reasonable accommodation of individual's requirement is provided;
- (d) persons with disabilities receive the support required with the general education system to facilitate their effective education;
- (e) effective individualized support measures are provided in environments that maximize academic and social development, consistent with the grant of full inclusion.

State parties are required to enable persons with disabilities to learn life and social development skills so as to facilitate their full and equal participation in education. To achieve this, parties to the convention are mandated to take appropriate measures, including facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication, orientation and mobility skills, and facilitating peer support and mentoring; facilitating the learning of sign language and the promotion of linguistic identity of the deaf community; and ensuring that the education of persons who are blind or deaf, is delivered in the most appropriate languages and means of communication for the individual and in environments which maximize academic and social development.<sup>64</sup> State parties are also required to employ teachers, including teachers with disabilities, who are qualified in sign

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<sup>61</sup> *ibid.* Article 9, CRPD, 2006.

<sup>62</sup> *ibid.* Article 24 para 1.

<sup>63</sup> *ibid.* Article 24 para2.

<sup>64</sup> *ibid.* Article 24, para 3.

language and/ or Braille, and to train professionals and staff who work at all levels of education.<sup>65</sup> State parties are further obligated to ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on equal basis with others.<sup>66</sup>

The CRPD provides for the establishment of a Committee on the Rights of Persons with Disabilities.<sup>67</sup> Each state party is required to submit to the Committee, through the Secretary-General of the United Nations, a comprehensive report on measures taken to give effect to its obligations under the CRPD and the progress made in that regard, within two years after the entry into force of the CRPD in respect of the state party concerned. Thereafter, state parties shall submit subsequent reports at least every four years and further reports whenever the Committee so requests. The Committee decides guidelines applicable to the content of the reports.<sup>68</sup> Each report submitted shall be considered by the Committee, which shall make suggestions and general recommendations on the report as it may consider appropriate and shall forward these to the state party concerned. The state party may respond with any information it chooses to the Committee. The Committee may request further information from state parties relevant to the implementation of the CRPD. If a state party is significantly overdue in the submission of report, the Committee may notify the state party concerned of the need to examine the implementation of the CRPD in the state in question, on the basis of reliable information available to the Committee, if the relevant report is not submitted within 3 months following the notification. The Committee is mandated to invite the state party concerned to participate in such examination. Should the state party respond by submitting the relevant reports, such report shall be considered by the Committee, which shall make appropriate suggestions and recommendations on the report.<sup>69</sup> The Secretary-General of the United Nations shall make available, the reports to all state parties.<sup>70</sup> The Committee is under obligation to report every two years to the General Assembly and the Economic and Social Council on its activities, and make suggestions and general recommendations

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<sup>65</sup> *ibid.* Article 24, para 4.

<sup>66</sup> *ibid.* Article 24, para 5.

<sup>67</sup> *ibid.* Article 34.

<sup>68</sup> *ibid.* Article 35.

<sup>69</sup> *ibid.* Article 36, para 1 and 2

<sup>70</sup> *ibid.* Article 36 para 3

based on the examination of reports and information received from the state parties. Such recommendations shall be included in the report of the Committee, if any from state parties.<sup>71</sup> It is, however, contended that the Committee on the Rights of Persons with Disabilities, like many others established by the international treaties, is not a court with the power of binding decisions on the merits of cases.<sup>72</sup> The foregoing presupposes that there is no mechanism for the enforcement of recommendations or suggestions or decisions made by the Committee within the purview of the extant provisions of the CRPD. Notwithstanding the quandary of enforcement at the international level, by virtue of Article 4 of the CRPD; it is incumbent on state parties, to adopt appropriate domestic legislative and administrative frameworks for the implementation and enforcement of the rights recognized in the Convention. At any rate, it is submitted that even without enforcement machinery, this at least, has provided a compass for state parties including African states that are parties to the treaty to follow in a bid to protect the rights of persons with disabilities.

#### **4. Protocol to the African Charter on Human and Peoples' Rights on The Rights of Persons with Disabilities in Africa**

The Protocol to the African Charter on Human and Peoples Rights on the Rights of Persons with Disabilities in Africa<sup>73</sup> is essentially aimed at promoting, protecting and enhancing the full and equal enjoyment of all human rights of PWDs.<sup>74</sup> The Protocol defines 'Persons with Disabilities' as 'those who have physical, mental, psycho-social, intellectual, neurological, developmental or other sensory impairments which in interaction with environ mental, attitudinal or other barriers hinder their full and effective participation in society on equal basis with others.'<sup>75</sup> It defines 'reasonable accommodation' as 'necessary and appropriate modifications and adjustments where needed, in a particular case, to ensure to persons with disabilities the enjoyment or exercise on equal

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<sup>71</sup> *ibid.* Article 39

<sup>72</sup> Malcolm N. Shaw *International Law* (5<sup>th</sup>edn, Cambridge University Press 2003) 298.

<sup>73</sup> (adopted 29 January 2018, yet to enter into force)  
see<<https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-persons-disabilities-africa>> accessed 16 October 2019.

<sup>74</sup> The Protocol to the African Charter on Human and Peoples Rights on the Rights of Persons with Disabilities in Africa, 2018, art 2.

<sup>75</sup> *ibid* art 1.

basis with others of all human and peoples rights.’<sup>76</sup> The Protocol defines ‘universal design’ as ‘the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation as specialized design, and shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.’<sup>77</sup> The Protocol is predicated on these general principles:<sup>78</sup>

- (a) Ensuring respect for and protection of the inherent dignity, privacy, individual autonomy including the freedom to make one’s own choices, and
- (b) Non-discrimination;
- (c) Full and effective participation and inclusion in society;
- (d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) Equality of opportunity;
- (f) Accessibility;
- (g) Reasonable accommodation;
- (h) Equality between men and women;
- (i) The best interests of the child;
- (j) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

States Parties are obliged to take appropriate and effective measures, including policy, legislative, administrative, institutional and budgetary steps, to ensure, respect, promote, protect and fulfill the rights and dignity of PWDs, without discrimination on the basis of disability, including the following specific measures:<sup>79</sup>

- (a) Adopting appropriate measures for the full and effective implementation of the rights enshrined in the Protocol;
- (b) Mainstreaming disability policies, legislation, development plans, programmes and activities and in all other spheres of life;
- (c) Providing in their constitutions and other legislative instruments and taking other measures to modify or abolish existing policies, laws, regulations, customs and practices that constitute discrimination against persons with disabilities;

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<sup>76</sup> *ibid.*

<sup>77</sup> *ibid.*

<sup>78</sup> *ibid* art 3.

<sup>79</sup> *ibid* Art 4.

- (d) Modifying, outlawing, criminalizing or campaigning against, as appropriate, any harmful practice applied to persons with disabilities;
- (e) Promoting positive representations and empowerment of persons with disabilities through training and advocacy;
- (f) Taking measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;
- (g) Refraining from engaging in any act or practice that is inconsistent with the present Protocol and ensuring that public authorities, institutions and private entities act in conformity with the Protocol;
- (h) Providing assistance and support as necessary and appropriate to enable the realization of the rights set out in the Protocol;
- (i) Putting in place adequate resources, including through budget allocations, to ensure the full implementation of the Protocol;
- (j) Ensuring effective participation of persons with disabilities or their representative organisations including women and children with disabilities, in all decision making processes including the development and implementation of legislation, policies and administrative processes in conformity with the Protocol; and
- (k) Ensuring, where persons with disabilities are lawfully deprived of any rights of freedoms contained in the Protocol,<sup>80</sup> that they are on equal basis with others, entitled to guaranties in accordance with international human rights law and the objects and principles of the Protocol.

The Protocol to the African Charter on Human and Peoples Rights on the Rights of Persons with Disabilities in Africa, 2018, expressly prohibits discrimination against PWDs on the grounds of race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.<sup>80</sup> States Parties are obligated to prohibit discrimination on the basis of disability and guarantee to PWDs equal and effective legal protection against discrimination on all grounds.<sup>81</sup> The Protocol recognizes a cornucopia of human rights of PWDs such as right to equality,<sup>82</sup> right to equal recognition before the law,<sup>83</sup> right to

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<sup>80</sup> *ibid* Art 5(1).

<sup>81</sup> *ibid* Art 5(2) (a).

<sup>82</sup> *ibid* Art 6.

<sup>83</sup> *ibid* Art 7.



life,<sup>84</sup>right to liberty and security of person,<sup>85</sup>and freedom from torture or cruel, inhuman or degrading treatment or punishment.<sup>86</sup>Other rights enshrined in the Protocol include right to access to justice,<sup>87</sup>right to live in the community,<sup>88</sup>right to accessibility,<sup>89</sup>right to education,<sup>90</sup>right to health,<sup>91</sup>right to habilitation and rehabilitation,<sup>92</sup>right to work,<sup>93</sup>right to adequate standard of living,<sup>94</sup>right to participation in political and public life,<sup>95</sup>right to self-representation (this includes right to form and participate in the activities of organisations of and for PWDs, right to build relationships and networks, right to form and participate in NGOs, etc.),<sup>96</sup>right to participate in sports, recreation and culture,<sup>97</sup>and right to family.<sup>98</sup>The Protocol also recognizes individual and collective rights such as the rights of women and girls with disabilities,<sup>99</sup> right of children with disabilities,<sup>100</sup>right of youth with disabilities,<sup>101</sup>and right of older persons with disabilities.<sup>102</sup>

States Parties are mandated to take appropriate measures to assist victims of harmful practices through legal sanctions, educational and advocacy campaigns, to eliminate harmful practices perpetrated on PWDs, including witchcraft, abandonment, concealment, and ritual killings.<sup>103</sup>States Parties are required to take steps to discourage stereotypes about the capabilities, appearance or attitude of PWDs and prohibit the use of derogatory language against PWDs.<sup>104</sup>The Protocol also mandates States Parties to ensure the protection and safety of PWDs in situations of risk such as during armed conflict,

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<sup>84</sup> ibid Art 8.

<sup>85</sup> ibid Art 9.

<sup>86</sup> ibid Art 10.

<sup>87</sup> ibid Art 13.

<sup>88</sup> ibid Art 14.

<sup>89</sup> ibid Art 15.

<sup>90</sup> ibid Art 16.

<sup>91</sup> ibid Art 17.

<sup>92</sup> ibid Art 18.

<sup>93</sup> ibid Art 19.

<sup>94</sup> ibid Art 20.

<sup>95</sup> ibid Art 21.

<sup>96</sup> ibid Art 22.

<sup>97</sup> ibid Art 25.

<sup>98</sup> ibid Art 26.

<sup>99</sup> ibid Art 27.

<sup>100</sup> ibid Art 28.

<sup>101</sup> ibid Art 29.

<sup>102</sup> ibid Art 30.

<sup>103</sup> ibid Art 11(1).

<sup>104</sup> ibid Art 11(2).

forced displacements, humanitarian emergencies and natural disasters.<sup>105</sup>

A unique feature of the Protocol which distinguishes it from other regional instruments is that besides privileges, entitlements, and rights, PWDs are mandated to perform duties enshrined in the African Charter on Human and Peoples Right on equal basis with others.<sup>106</sup> States Parties are obligated to ensure systematic collection, analysis, storage and dissemination of national statistics of data in respect of disability in order to facilitate the protection and promotion of the rights of PWDs.<sup>107</sup> States Parties are mandated to ensure the implementation of the Protocol and indicate the legislative and other measures undertaken to engender the full realization of the rights of PWDs in their periodic reports required to be submitted to the African Commission pursuant to the provisions of Article 6 of the African Charter on Human and Peoples Rights.<sup>108</sup> States are also required to establish national mechanisms to monitor the implementation of the rights of PWDs.<sup>109</sup> The African Commission is mandated to interpret the provisions of the Protocol.<sup>110</sup> It also has the latitude to refer matters of interpretation and enforcement or any dispute arising from the application and implementation of the Protocol to the African Court on Human and Peoples Rights.<sup>111</sup>

Article 38 (1) of the Protocol to the African Charter on Human and Peoples Rights on the Rights of Persons with Disabilities in Africa, 2018, stipulates that: ‘This Protocol shall enter into force thirty (30) days after the deposit of the fifteenth (15<sup>th</sup>) instrument of ratification by a Member State.’ However, it is pointedly observed that although 35 African countries have signed the Protocol, only Togo has ratified the treaty so far.<sup>112</sup> To all intents and purposes, the Protocol is yet to be in force and it is therefore bereft of any binding legal effect, *ipso facto*.

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<sup>105</sup> *ibid* Art 12 (a).

<sup>106</sup> *ibid* Art 31.

<sup>107</sup> *ibid* Art 32

<sup>108</sup> *ibid* Art 34(1)

<sup>109</sup> *ibid* Art 34 (2)

<sup>110</sup> *ibid* Art 34 (3)

<sup>111</sup> *ibid* Art 34 (4) and (5)

<sup>112</sup> African Union, ‘OAU/AU Treaties, Conventions, Protocols and Charters’ <<https://au.int/treaties>> accessed 17 October 2019.

## 5. The Framework for Inclusive and Accessible Education under the African Charter on Human and Peoples Rights, 1986

The African (Banjul) Charter on Human and Peoples' Right<sup>113</sup> articulates specific rights and duties for individuals and groups.<sup>114</sup> Article 5 of the African Charter on Human and Peoples' Rights, hereinafter referred to as the Charter; provide that every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. The Charter stipulates that every individual has a right of access to public property and services in strict equality of all persons before the law.<sup>115</sup> The Charter specifically states that every individual has the right to education.<sup>116</sup>

Although the statutory provisions enunciated above do not explicitly mention disabled persons, it is submitted that a necessary inference may be drawn to the effect that the rights of all individuals to human dignity; right to access to public services on equal basis with others, and the right to education,<sup>117</sup> as articulated in the Charter, can be invoked by persons with disabilities in protecting their individual and collective group rights. Article 56 of the Charter gives individuals the latitude to file complaints before the Commission of Human and Peoples' Rights in respect of any violations of the provisions of the Charter provided domestic remedies have been duly exhausted. Furthermore, legal disputes, which warrant the interpretation and application of the African Charter on Human and Peoples' Rights, may also be brought to African Court of Justice and Human Rights (currently referred to as the African Court on Human and Peoples Rights).<sup>118</sup>

Notwithstanding the exposition of relevant provisions of the Charter in the context of the protection of the rights of persons with disabilities, as earlier indicated above, no elaborate provisions were

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<sup>113</sup> OAU.DOC.CAB/LEG/67/3 REV. 5, 21 I.L.M. 58 (1982). The Charter was adopted on the 27<sup>th</sup> of June, 1981 by the Assembly of Heads of State and Government of the Organization of African Unity (now called African Union – AU). It entered into force on 21 October 1986. The Charter was enacted into Nigerian law by the National Assembly in 1983. The Charter is widely recognized as a regional framework for the protection of Human Rights in Africa.

<sup>114</sup> African (Banjul) Charter on Human and Peoples' Rights., articles 1-29.

<sup>115</sup> *ibid* article 13, para 3.

<sup>116</sup> *ibid* article 17, para 1.

<sup>117</sup> *ibid*; See generally articles 5, 13, 16 and 17.

<sup>118</sup> Protocol on the Statute of the African Court of Justice and Human Rights - Assembly/AU/DEC/.12, art 28 (III). Adopted by the Assembly of the African Union respectively at its second and third ordinary sessions held in July 2003 in Maputo, Mozambique and 2004 in Addis Ababa, Ethiopia.

made for the protection of persons with disabilities. It is accordingly submitted that the extant provisions of the Charter are grossly insufficient to address the plethora of legal rights generally required to effectively guarantee rights of persons with disabilities to inclusive education in the African continent. This inadequacy as highlighted herein would become glaring and palpably manifest if the African Charter on Human and Peoples' Rights is juxtaposed with the multifarious provisions regarding accessible and inclusive education guaranteed in the Convention on the Rights of Persons with Disabilities 2006.

## **6. Conclusion**

Persons with disabilities are human beings and are therefore entitled to human rights on equal basis with their able-bodied counterparts. This article has pertinaciously indicated that persons with disabilities do not enjoy unfettered access to education in Africa. Although the International Convention on the Rights of Persons with Disabilities, 2006, makes elaborate provisions for accessibility of persons with disabilities to public amenities and inclusive education, its provisions are egregiously attenuated by the absence of a sustainable and efficient enforcement regime at the international level. The enforcement of the potent legal provisions is mainly left at the whims and caprices of state parties to the convention in the domestic plane. Furthermore, the major regional instrument for the protection of human rights in Africa is the African Charter on Human and Peoples Rights, 1986, established under the auspices of the Organization of African Unity, presently called African Union. The efficacy of the Charter is, however, undermined by the fact that it lacks elaborate provisions for inclusive and accessible education for persons with disabilities. It is therefore imperative for African states to establish and implement a specific protocol in order to cater for the lacunae in the extant treaty. It is posited that this will engender a robust regional frame work that would invariably enhance inclusive education and foster access to education for the prime benefit of persons with disabilities in the African continent.