

# CHAPTER 4

## PROTECTION OF THE RIGHTS OF CHILDREN WITH DISABILITIES IN NIGERIA: CHALLENGES AND A CONSTITUTIONAL RIGHTS-BASED SOLUTION

*Kolawole Kazeem Oyeyemi\**

---

### Summary

*There are an estimated 240 million children worldwide with disabilities, with many in sub-Saharan African countries lacking access to education, healthcare, transportation, and public facilities. Nigeria, a signatory to the Convention on the Rights of Persons with Disabilities (CRPD), signed the African Disability Protocol in October 2023. The CRPD and its Optional Protocol provide for equal rights for children with disabilities. The African Disability Protocol, in addition to the aforementioned, obliges states to respect and promote the rights of children with disabilities. Nigeria enacted the Discrimination Against Persons with Disabilities (Prohibition) Act in 2019 to address barriers faced by persons with disabilities. The Disability Act provides free and inclusive education, accessible healthcare, and equal access to the physical built environment. Yet, children with disabilities still face barriers in accessing their rights on an equal basis with other children due to several challenges such as systematic exclusion and discrimination of persons and children with disabilities, lack of enforcement and political will to implement disability inclusive policies, funding etc. More so, not all states in Nigeria have adopted the Disability Act into their state's legislation, creating non-existence of disability rights in some states and lack of uniformity in the provisions of specific rights for children with disabilities in Nigeria. The foregoing underscores the need for further ways to entrench the rights of children with disabilities and ensure equal access of their rights. Accordingly, this paper examines the specific international, regional and national laws for the protection of children with disabilities in Nigeria, particularly provisions on free and inclusive education, accessible healthcare, and equal access to the physical built environment. It highlights several challenges on the*

\* LLB (Hons) (University of Ilorin), LLM (University of Ilorin), BL (Abuja University), LL.D (NWU, South Africa); Senior Lecturer, Department of Public Law, Faculty of Law, University of Maiduguri, Borno State, Nigeria; kolawoleoyeyemi@unimaid.edu.ng; orcid.org/0000-0002-1297-0018.

KK Oyeyemi 'Protection of the rights of children with disabilities in Nigeria: Challenges and a constitutional rights-based solution' (2025) 13 *African Disability Rights Yearbook* 71-97  
<https://doi.org/10.29053/adry.v13i4.5529>

*access to these rights of children with disabilities in Nigeria. Finally, some proactive measures, chief among which is a constitutional rights-based approach through amending the Nigerian Constitution to specifically include the rights of persons and especially children with disabilities, are recommended to increase and entrench access to children with disabilities' rights on an equal footing with others.*

## 1 Introduction

An estimated 240 million children worldwide live with disabilities, accounting for one-third of all persons with disabilities.<sup>1</sup> Many of these children live in sub-Saharan African countries, where they face limited access to free and inclusive education, healthcare, transportation, and public facilities.<sup>2</sup> Nigeria, with about 27 million of its population<sup>3</sup> with varying degrees of disabilities, has signed the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (Africa Disability Protocol) into law in October 2023. Prior to the presidential assent, Nigeria is a signatory to the United Nations Convention on the Rights of Persons with Disabilities (CRPD).<sup>4</sup> The CRPD and its Optional Protocol as well as Africa Disability Protocol ensure children with disabilities have equal human rights, that the best interests of children with disabilities are considered in all actions, and children with disabilities' views are given due weight in accordance with their ages and maturity. The Africa Disability Protocol takes cognisance of the peculiarities of children with disabilities in Africa.<sup>5</sup> It obliges states parties to respect and promote children with disabilities' right to enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate children with disabilities' active participation in their community in Africa.<sup>6</sup>

The Nigerian government passed the Discrimination Against Persons with Disabilities (Prohibition) Act in January 2019 (Disability Act) to

- 1 UNICEF 'Using the human rights framework to promote the rights of children with disabilities: Discussion paper - An analysis of the synergies between CRC, CRPD and CEDAW' (2021) <https://www.unicef.org/media/126396/file/Synergies-paper-Web.pdf> (accessed 19 April 2023).
- 2 African Child Policy Forum 'The African report on children with disabilities: Promising starts and persisting challenges' (2014).
- 3 J Ibileke '27.3 million Nigerians living with disability' *TheNews* (Nigeria) 3 December 2018 <https://www.thenewsnigeria.com.ng/2018/12/03/27-3-millionnigerians-living-with-disabilities/> (accessed 25 August 2022).
- 4 UN General Assembly, Convention on the Rights of Persons with Disabilities: Resolution/adopted by the General Assembly, 24 January 2007, UN Doc A/RES/61/106 (2007), which came into force 2008, and was signed and ratified by Nigeria on 30 March 2007 and 24 September 2010 respectively.
- 5 Centre for Human Rights 'Press statement: Centre for Human Rights calls on African States to ratify newly adopted African Disability Rights Treaty' (2018) <https://www.chr.up.ac.za/dru-news/482-press-statement-centre-for-human-rights-calls-on-african-states-to-ratify-newly-adopted-african-disability-rights-treaty> (accessed 15 October 2022).
- 6 African Disability Protocol, art 7(2).

address barriers faced by persons with disabilities. The Disability Act provides for free and inclusive education,<sup>7</sup> accessible healthcare,<sup>8</sup> and equal access to the physical built environment through special facilities in public buildings among others.<sup>9</sup> However, years after the passage of the Disability Act, and the five years' moratorium for compliance with its provisions regarding the alteration of the built environment to improve access of persons with disabilities to public infrastructure in Nigeria, persons and children with disabilities in Nigeria still encounter various barriers. These barriers range from widespread discrimination and systemic exclusion of children with disabilities from access of the aforementioned rights on an equal basis with others,<sup>10</sup> to lack of political will from the government to implement and enforce extant laws on the protection of children with disabilities' rights, inadequate funding towards disability inclusive facilities and services, poverty as well as prejudicial beliefs towards persons and children with disabilities, to mention but a few.<sup>11</sup>

Furthermore, Nigeria is a pluralistic country with multiple laws, norms, and fora.<sup>12</sup> Under the Nigeria law, each state is empowered to make laws, with the federal government making laws on exclusive lists and the state sharing on concurrent lists.<sup>13</sup> Children are considered under the residual lists for the states. Presently, not all states of the federation have adopted the Disability Act,<sup>14</sup> and those that have, do so at their own discretion. This creates a lack of uniformity in terms of the provisions of children's disability rights enacted by some states in their jurisdictions. Consequently, children with disabilities cannot also access their aforementioned rights as provided by the Disability Act, the CRPD, and the African Disability Protocol on an equal basis with others in Nigeria. The foregoing justifies the need to seek further means of promoting national application of the Nigerian Disability Act, which domesticated the CRPD and African Disability Protocol, as fundamental to the uniform realisation of children with disabilities' rights in Nigeria. Perhaps, through

7 Disability Act, secs 17-20.

8 Disability Act, secs 3-8 & 21.

9 Disability Act, secs 9-11.

10 U Prince-Oparaku & N Chuma-Umeh 'Imperatives of securing equitable access to healthcare services for persons with disabilities in Nigeria' (2022) 10 *African Disability Rights Yearbook* 41.

11 See the discussion in part five of this paper on some challenges on specific rights of children with disabilities and the way forward.

12 E Durojaiye, B Okeke & A Adebajo 'Harmful cultural practice and gender equality in Nigeria' (2014) 12 *Gender & Behaviour* 6169.

13 See 1999 Constitution of Nigeria (as amended), sec 4 and 2nd Schedule, Parts I and II.

14 As of 2024, 23 out of 36 states in Nigeria have passed their own disability laws. Despite this, only 15 of those states have established functional agencies to implement the laws. See UN Global Disability Fund 'Situational analysis on the right of persons with disability in Nigeria' (2024) 3 <http://www.globaldisabilityfund.org> (accessed 3 Dec ember 2025); L Adejoro, 'Five years after, 17 states yet to adopt Disability Act' *Punch Healthwise* 8 August 2024 <http://healthwise.punchng.com/five-years-after-17-states-yet-to-adopt-disability-act/#> (accessed 3 December 2025). See also further discussion on this in part 6 of this paper.

a constitutional approach as is the case in other jurisdictions in Africa, such as Ghana, South Africa, Uganda and Rwanda with specific constitutional rights-based provisions on disabilities, demonstrating their governments' efforts to provide equal opportunities for persons with disabilities.<sup>15</sup> The foregoing proposition for Nigeria cannot be overemphasised because of the simple fact that the Constitution, Nigeria's highest law, overrides any inconsistent legislation,<sup>16</sup> among other reasons.

In light of the foregoing, a central question is not only on the specific rights applicable to children with disabilities, such as free and inclusive education, accessible healthcare, adequate transportation, and access to public facilities, but also the challenges on accessing these rights and the way forward for children with disabilities in Nigeria. This question is important as it provides an opportunity to examine the provisions of the laws on the specific rights of children with disabilities as well as the extent to which children with disabilities have access to these rights in Nigeria. It also affords a platform to focus on surmounting barriers to equitable access to free and inclusive education, accessible healthcare, adequate transportation, and public facilities for persons and children with disabilities in Nigeria as well as a national application of laws specific to children with disabilities, perhaps through a constitutional rights-based approach.

Hence, this paper examines the general provisions of the CRPD, the African Disability Protocol, and the Disability Act on children with disabilities and specifically provisions on free and inclusive education, accessible healthcare and access to the physical built environment on an equal basis with other children in Nigeria. It also examines the barriers to children with disabilities' access to these rights in Nigeria. Ultimately, the paper suggests proactive measures towards the realisation of the provisions of laws on children with disabilities, chief among which is a constitutional rights-based approach and protection through amending the Constitution to specifically include the rights of persons and especially children with disabilities in Nigeria.

To achieve the foregoing focus and aims, this paper adopted doctrinal methods of research. It goes, therefore, to say that the paper is based on an analytical and descriptive exposition of all the primary and secondary sources considered.

Furthermore, this paper is structured into seven parts. The first is the introductory part, which highlights the aims and focus of the discussion in the paper. The second part provides some level of clarification on the

15 See later discussion on this in part five of this paper. Take note that the focus this paper is not to make a detailed comparison between Nigeria and these aforementioned countries. However, reference is made to these countries' specific constitutional provisions on persons with disabilities.

16 See 1999 Constitution of Nigeria, sec 1.

protection of human rights under the Nigerian Constitution. The third part provides an overview of the provisions in international and regional instruments such as the CRPD and African Disability Protocol that specifically address the rights of persons and children with disabilities. The fourth part examines the provisions of the Nigerian Disability Act which demonstrate the Nigerian government's commitment to her obligations under the CRPD and African Disability Protocol to adopt all required legal, administrative, and other measures to implement the rights recognised in these instruments. Furthermore, the fifth part addresses specifically provisions on inclusive and free education, equitable access to healthcare services, adequate transportation, and access to public facilities for children with disabilities. It also highlights several challenges on the access to these rights by children with disabilities and suggests the way forward. In the same nexus, part six of the paper advocates for a constitutional rights-based approach and protection through amending the Constitution to specifically include the rights of persons and especially children with disabilities in Nigeria, while part seven is the concluding part.

## **2 Protection of human rights under the Nigerian Constitution**

Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria (as amended) (1999 Constitution) guarantees fundamental human rights to all citizens, including children.<sup>17</sup> These rights include the right to life, dignity, personal liberty, fair hearing, freedom of movement, and unjust discrimination.<sup>18</sup> However, the text does not provide specific rights for children or those with disabilities.<sup>19</sup> At best, section 42 of the Constitution prohibits unjustifiable discrimination on the basis of 'ethnic group, place of origin, sex, religion or political opinion'.

Apart from the Chapter IV provisions, the 1999 Constitution outlines the fundamental objectives and directive principles of the Nigerian state in its Chapter II, aiming to promote and protect the interests of every citizen, including children. Chapter II requires the government to provide free primary, secondary, university, and adult literacy programmes. Section 13 mandates the government to observe fundamental objectives related to

17 See for example, sec 33(1) on rights to life which provides that: 'Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.' See also sec 34(1) on human dignity which provides that: 'Every individual is entitled to respect for the dignity of his person.'

18 See the Nigerian Children's Rights Act, 2003, sec 3(1). See the provisions of secs 33-41 for the rights guaranteed under Chapter IV which includes: the right to life, the right to personal liberty, the right to dignity of human person, the right to fair hearing and the right to freedom of movement.

19 See generally the 1999 Constitution.

socio-political, economic, educational, and cultural matters. Section 14 prioritises the security and welfare of the people, while section 16 focuses on controlling the economy to ensure maximum welfare, freedom, and happiness. Section 17 focuses on the state's social order, ensuring all citizens have equal opportunities for employment, fair work conditions, and adequate facilities for leisure and social, religious, and cultural life.<sup>20</sup> The state must also safeguard the health, safety, and welfare of all employees, provide adequate medical health facilities, and ensure equal pay for all work without discrimination.<sup>21</sup> It also protects children, young persons, and the elderly from exploitation and neglect, and encourages the evolution and promotion of family life.<sup>22</sup>

Although, Chapter II of the Nigerian Constitution outlines the duty and obligations of states to promote and protect children's interests in several areas, these provisions are directive principles of state policy, and their enforcement in a court of law is limited by the Constitution itself.<sup>23</sup> As a consequence, the Supreme Court of Nigeria in *AG Ondo v AG Federation*,<sup>24</sup> held that courts cannot enforce Chapter II provisions until specific laws are enacted by the National Assembly. Furthermore, the objectives and principles of the constitutional policy of governance are mere declarations and disregarding them would only be seen as a failure of duty and responsibilities of state organs.<sup>25</sup> Therefore, the directive principles of Chapter II are regarded as not enforceable in a court of law but can be made justiciable by legislation. This means that where there is a law passed to implement a particular principle, individuals can challenge the government's compliance with that law in court.<sup>26</sup>

Another way of enforcing the Chapter II rights, is by linking such a right, to a provision in Chapter IV, that is the fundamental human rights' chapter, through judicial activism as was the case in *SERAC and CESR v Nigeria*<sup>27</sup> before the African Commission on Human and Peoples' Rights. In *SERAC*, it was argued and the Commission agreed that social and economic rights enshrined in Chapter II of the 1999 Constitution are indivisible from civil and political rights enshrined in Chapter IV of the Constitution, and that any violation of the former would also be a violation of the latter.<sup>28</sup>

20 1999 Constitution, sec 17(3)(a)-(c).

21 1999 Constitution, sec 17(3)(c)-(e).

22 1999 Constitution, sec 17(3)(f)-(h).

23 1999 Constitution of Nigeria, sec 6(6)(c) which provides that the judicial powers vested in accordance with the provisions of the Constitution 'shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution'.

24 (2002) 9 NWLR (Pt 772) 222. See also the earlier case of *Anthony Okojie v AG Lagos state* (1981) 2 NCLR 333, 350.

25 As above.

26 See also *Olafisoye v Federal Republic of Nigeria* (2005) 51 WRN 62.

27 Communication 155/96, 27 October 2001.

Instructively, in the case of *Odafe v Attorney-General*,<sup>29</sup> the Nigeria Federal High Court held that the rights of a prisoner to medical care is enforceable in Nigeria under the African Charter on Human and People's Rights. The Court is of the view that the African Charter entrenched socio-economic rights of persons and the 'Court is enjoined to ensure the observation of these'. The Court went further to state that a dispute regarding 'socio-economic rights such as rights to medical attention requires the Court to evaluate state policy and give judgment consistent with the Constitution'.<sup>30</sup> This means that courts may use Chapter II for interpreting other justiciable laws and fundamental rights but cannot enforce Chapter II provisions independently.<sup>31</sup> The decision of the Federal High Court in *Odafe's* case is progressive in nature and allows for the interpretation of cases on the justiciability of socio-economic rights in Nigeria in a more liberal way.<sup>32</sup>

While the foregoing ways of enforcing Chapter II provisions are viable progressive methods through judicial activism in Nigeria, it is noted that achieving and enforcing these rights through these processes are almost always cumbersome<sup>33</sup> and often hampered.<sup>34</sup> For instance, *SERAC*, though a landmark decision in international human rights law, particularly regarding the enforceability of socio-economic and environmental rights, its impact on Nigerian courts is seen as merely of persuasive influence rather than a legally enforceable precedent.<sup>35</sup> Moreso, the lack of a direct enforcement mechanism for the African Commission<sup>36</sup> and ECOWAS

28 As above.

29 (2004) AHRLR 205 (NgHC 2004).

30 Para 38.

31 See earlier Supreme Court decision in *AG Ondo v AG Federation* (2002) 9 NWLR (Pt 772) 222; *Olafisoye v Federal Republic of Nigeria* (2005) 51 WRN 62; and the decision in *Ogboru v President* (2005) JELR 45299 (CA), where the Court of Appeal per Abba-Aji (JCA) reached the conclusion that when a right does not fall under any of the provisions of Chap IV, no declaration, other determination or judgment can be made in the name of basic rights. No matter how severely a right was infringed, if it is not expressly listed in Chap IV, which contains the fundamental human rights provisions, the court cannot raise it to the level of a fundamental right.

32 EO Ekhaton 'Improving access to environmental justice under the African Charter on Human and Peoples' Rights: The role of NGOs in Nigeria' (2014) 22 *African Journal of International and Comparative Law* 63, 71.

33 For instance, the *SERAC* case took over five years from the date the communication was received by the African Commission (14 March 1996) to final decision on the merits (27 October 2001). For academic commentaries on the length of proceedings and delays that can occur within the Commission's procedure, see TF Yerima 'Over two decades of the African Commission on Human and Peoples Rights: Flying or fledging' (2012) 12 *Global Journal of Human Social Science Arts & Humanities* 1.

34 Ekhaton (n 32) 71-74.

35 See the Supreme Court decision in *AG Ondo* case 222; see also the Court of Appeal decision in *Ogboru* per Abba-Aji (JCA).

36 According to Okolosie, the African Commission is only a quasi-judicial body, hence has no legal status comparable to the African Court as a continental court of law. This arguably accounts for why the decisions and recommendations often are considered as non-binding on states parties. See C Okolosie 'Circumventing obstacles to the implementation of recommendations on human and peoples' rights' (2018) 8 *African Human Rights Law Journal* 31.

Courts's judgments,<sup>37</sup> and absence of political will by the Nigerian Government, are primary challenges in this regard.

Notwithstanding the above, the legal principles espoused in *SERAC* are now a vital part of the human rights jurisprudence in Nigeria. Several scholarly works in Nigeria and beyond have consistently called for a progressive interpretation of Chapter II of the 1999 Constitution.<sup>38</sup> For example, Onuora-Oguno and Silas argued that Chapter II should be treated as a 'guiding principle' for the government rather than strict non-justiciable rights or a 'Greek gift' that appears beneficial but lacks true power to enforce its provisions.<sup>39</sup> Onuora-Oguno and Silas' view aligns with the earlier perspective of Egbewole and Alatise<sup>40</sup> that pushes for a more functional interpretation of Chapter II and advocating for viewing these provisions as essential guiding principles that all arms of government in Nigeria – executive, legislative and the judiciary – have an obligation to pursue. Therefore, the legislature must enact laws to give effect to the principle in Chapter II, and the judiciary must be more active in its interpretations.<sup>41</sup>

In light of the discussion so far, it is evident that the Nigerian Constitution does not provide specific rights for persons and children with disabilities, but specific rights are guaranteed and achievable through national, international and regional legislations like the Nigerian Disability Act, CRPD and African Disability Protocol.

Arguably, the Nigerian Constitution approach aligns with the perspective that the implementation of human rights norms necessitates a flexible approach that takes the particular circumstance of each state into account.<sup>42</sup> The approach may take the form of a comprehensive implementing legislation, various principles in different statutes, policy measures or a combination of them all.<sup>43</sup> Despite the aforementioned

37 Judgments from the ECOWAS Court are not self-enforcing within Nigeria. They must be registered with a Nigerian Federal High Court for enforcement, a process that can be subject to delays and technical challenges by the government.

38 AC Onuora-Oguno & T Silas 'The constitutional obligation to protect the right to education in Nigeria: A call for action' (2024) 24 *African Human Rights Law Journal* 369; AC Onuora-Oguno 'Disorder in the order of the economic and social rights jurisprudence in Nigeria' (2024) 264th Inaugural lecture delivered at the University of Ilorin, Nigeria (August 2024) 6; F Viljoen *International human rights law in Africa* (2nd ed) (2012) 551.

39 Onuora-Oguno & Silas (n 38) 369-384.

40 WO Egbewole & TN Alatise 'Realizing socio-economic rights in Nigeria and the justiciability question: Lesson from South Africa and India' (2017) 8 *International Journal of Politics and Good Governance* 1.

41 Onuora-Oguno & Silas (n 38) 369.

42 L Chenwi 'International human rights law in South Africa' in E de Wet, H Hestermeyer & R Wolfrum (eds) *The implementation of international law in Germany and South Africa* (2015) 353-354; SD Kaplan *Human rights in thick and thin societies: Universality without uniformity* (2018) 16-47; KK Oyeyemi 'Implementation of the right of the child to be heard under article 12(1) of the Convention on the Rights of the Child in Nigeria: Lessons from South Africa' (2024) 24 *African Human Rights Law Journal* 599.

43 As above.

approach in human rights implementation, it does not preclude other significant approaches needed for promoting specific human rights and wellbeing of the citizens,<sup>44</sup> especially children with disabilities. Specific constitutional protection will guarantee the rights of children with disabilities across the board. Thus, a constitutional rights-based approach as a solution for the uniform, national and equal protection of the rights of children with disabilities in Nigeria is proposed later in this paper. The next section of the paper examines the specific international and regional laws on the rights of persons with disabilities.

### **3 International and regional instruments on the rights of persons with disabilities**

This section discusses the general and specific provisions in international and regional instruments such as the CRPD and African Disability Protocol that specifically address the rights of persons with disabilities. Take note that there are no separate international or regional rights instruments specifically addressing children with disabilities. However, there are general and specific provisions in these rights instruments applicable to persons and children with disabilities. Thus, the focus of the discussion in this part of the paper is on these general and specific provisions relating to persons and especially children with disabilities.

#### **3.1 United Nation Convention on the Rights of Person with Disabilities (CRPD)**

The CRPD is the first international treaty to specifically recognise the rights of persons with disabilities, including children with disabilities.<sup>45</sup> It adds new requirements for states parties to promote, protect, and fulfil these rights on an equal footing with others. The CRPD affirms the respect for inherent dignity, individual autonomy, non-discrimination, participation, inclusion, diversity, equality of opportunity, accessibility, equality between men and women, and the rights of children with disabilities to preserve their identities,<sup>46</sup> among other general rights for persons with disabilities.

Furthermore, states parties are obligated to ensure the full realisation of human rights and fundamental freedoms for persons with disabilities

44 Kaplan (n 42) 16-47; Oyeyemi (n 42) 599.

45 However, it is worthy of note that there were soft laws preceding the CRPD, such as the UN General Assembly, *Standard rules on the equalization of opportunities for persons with disabilities: Resolution adopted by the General Assembly*, 20 December 1993, UN Doc A/RES/48/96 (1993), that focused on protection of the rights of persons with disabilities, including children. The rules are a UN set of guidelines for governments to promote the rights of persons with disabilities.

46 CRPD, art 3.

without discrimination. This includes adopting appropriate legislative, administrative, and other measures to implement these rights, modifying or abolishing existing laws, regulations, customs, and practices that discriminate against persons with disabilities, incorporating the protection and promotion of human rights in policies and programmes, refraining from inconsistent acts or practices, eliminating discrimination by individuals, organisations, or private enterprises, promoting research and development of universally designed goods, services, equipment, and facilities, promoting the availability and use of new technologies, providing accessible information about mobility aids, devices, assistive technologies, and training professionals and staff to better provide assistance and services guaranteed by these rights. This commitment to universal design is crucial for promoting the rights of persons with disabilities.<sup>47</sup>

Therefore, states parties are to be committed to utilising their resources and international cooperation to achieve the full realisation of economic, social, and cultural rights, while adhering to immediate obligations in the Convention, without prejudice to international law obligations.<sup>48</sup> In addition, states parties are required to involve persons with disabilities, including children, in decision-making processes related to the Convention and other disability-related legislation and policies. This active involvement fosters a sense of belonging and legitimises decisions, especially for children with disabilities.

Article 7 of the CRPD mandates states parties to ensure equal enjoyment of human rights and fundamental freedoms for children with disabilities.<sup>49</sup> It emphasises the best interests of the child<sup>50</sup> and ensures that children with disabilities have the right to express views freely on all matters affecting them. Moreso, that children with disabilities' views are given due weight in accordance with their ages and maturity, on an equal basis with other children, and they are provided with disability and age-appropriate assistance to realise that right.<sup>51</sup> This provision aligns with article 12 of the Convention on the Rights of the Child (CRC), which also includes provisions on participatory rights.

The CRPD text asserts that individuals with disabilities should have the right to access and share information on an equal basis with others, regardless of their communication method, in all aspects of political, cultural, and national/community life.<sup>52</sup>

47 CRPD, art 4(1)(a)-(i).

48 CRPD, art 4(3).

49 CRPD, art 7(1).

50 CRPD, art 7(2).

51 CRPD, art 7(3).

52 CRPD, art 21.

Furthermore, the CRPD mandates states parties to provide accessible information to persons with disabilities in various formats and technologies, including sign languages, braille, and alternative communication.<sup>53</sup> It also mandates states to encourage private entities to provide accessible services, including the internet, to ensure equal access to public information for children with disabilities.<sup>54</sup> This ensures that individuals with disabilities have the freedom to choose their preferred communication methods.

The CRPD mandates states to ensure an inclusive education system and lifelong learning without discrimination.<sup>55</sup> It also mandates the accessibility of relevant materials and services for persons with visual disabilities.<sup>56</sup> Furthermore, it guarantees the right to be informed and participate in elections, public administration, public affairs, and decision-making processes.<sup>57</sup> This obligation is crucial for children with disabilities in developing countries, as access to equal opportunity in education is a daily challenge.

Notably, the CRPD by its several ground-breaking provisions of rights set the perfect template for states parties in their obligations towards the protection of persons and children with disabilities. As discussed later in this paper, the Nigerian Disability Act includes specific provisions such as inclusive and free education, equitable access to healthcare services, adequate transportation, and access to public facilities among others for children with disabilities. The inclusion of these specific provisions demonstrates the Nigerian government's commitment to her obligations under the CRPD to adopt all required legal, administrative, and other measures to implement the rights recognised in the Convention.

Before proceeding to discuss the Nigerian Disability Act, the next part of the paper examines the regional instrument, that is the African Disability Protocol. Again, the focus of the discussion is on the general and specific provisions relating to children with disabilities.

### **3.2 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (African Disability Protocol)**

As stated in the introduction, the primary goal of this instrument is to provide an Africanised perspective on disability rights that takes 'into account the lived realities of persons with disabilities while maintaining the

53 CRPD, art 21(a) & (b).

54 CRPD, art 21(c).

55 CRPD, art 24.

56 CRPD, art 30.

57 CRPD, art 29.

core values and principles on disability as set out in the CRPD.<sup>58</sup> The African Disability Protocol thus provides more promise in a disability-specific context. A notable distinction is that, unlike the CRPD, the African Disability Protocol includes separate provisions for girls/women, children, and youth with disabilities, addressing the long-standing issue of unique rights for a variety of persons with disabilities.

Furthermore, the African Disability Protocol actively advocates for children with disabilities to have equal access to all human rights and fundamental freedoms as other children,<sup>59</sup> as well as prioritising the child's best interests in all actions affecting the child.<sup>60</sup> More importantly, it actively promotes the right of children with disabilities to freely express opinions on all matters affecting them, with their opinions given due weight in accordance with their ages and maturity, on an equal footing with other children, and to be provided with disability and age-appropriate assistance to exercise that right.<sup>61</sup> The aforementioned rights of children with disabilities will be implemented through state actions, whether policy, legislative, administrative, or otherwise, to promote their rights.

Article 7(3) of the African Disability Protocol is groundbreaking for a variety of reasons. First, it mimics in words and content the articles of the CRC,<sup>62</sup> which states that children have the right to autonomous involvement in decision-making that affects them.<sup>63</sup> Second and most importantly, for the first time, a right to participation in decision-making affecting children with disabilities is not inferred from a broad reading of provisions, nor is it alluded to by way of general comments and recommendations, as was the case under some earlier African regional children's rights instruments.<sup>64</sup> Instead, it is officially stated in a regional document. So far, the instrument has received positive feedback, with the Special Rapporteur on the Rights of Persons with Disabilities welcoming this trailblazing instrument in the belief that it will result in a much greater inclusion of persons with disabilities' concerns in laws, policies, and

58 Centre for Human Rights (n 5).

59 CRPD, art 7(1).

60 CRPD, art 7(2).

61 CRPD, art 7(3).

62 United Nations Convention on the Rights of the Child adopted and opened for signature, ratification and accession by GA Resolution 44/25 of 20 November 1989, 1577 UNTS 3, entered into force 2 September 1990 (CRC).

63 For a detail discussion on the provisions of art 12(1) of the CRC, see R Stern 'The child's right to participation – Reality or rhetoric?' Doctoral dissertation, Uppsala University, 2006 161; KK Oyeyemi 'Cultural and traditional practices and the implementation of the rights of child to be heard under article 12 of the CRC' Doctoral dissertation, North-West University, South Africa, 2022 98-104; G Lansdown 'The realisation of children's participation rights: Critical reflections' in B Percy-Smith & N Thomas (eds) *A handbook of children and young people's participation: Perspectives from theory and practice* (2010) 12.

64 See for example Organisation of African Unity (OAU), African Charter on the Rights and Welfare of the Child, 11 July 1990, AU Doc CAB/LEG/24.9/49 (1990) (ACRWC).

budgets because it ensures increased accountability and closer oversight of how states implement their human rights obligations.<sup>65</sup>

However, as with all early regional rights instruments, some critics believe that ‘autochthonous standard setting’ for regional rights instruments would ‘not guarantee an improvement in the plight of persons with disabilities’, even though the articulation of a regionalised disability rights treaty ‘may raise greater awareness and assist states in the process of crafting appropriate domestic laws and policies’.<sup>66</sup> They also claim that without a clear rationale identifying substantive weaknesses or omissions (within the CRPD), the drafting and adoption of an African pendant would amount to an exercise in ‘reinventing the wheel’.<sup>67</sup>

Regardless of the preceding cautions, it is argued that the value of articulating and recognising the rights of children with disabilities in regional and municipal instruments is indisputable. At the core of the standardised children’s rights in the African Disability Protocol – for example, article 7(3) – is a close connection between rights and dignity as well as rights and respect, a connection critical not least for children with disabilities in their often-vulnerable position in relation to adults and society. Stern correctly observed that a person who is not given ‘dignity and respect is very easily reduced to an object of intervention, a commodity, or someone’s property’.<sup>68</sup> Moreso, children’s participation rights under article 7(3) of African Disability Protocol are linked to respect and dignity, as well as the development of children with disabilities. Consequently, the African Disability Protocol’s articulation of these rights as standards addressed substantive weaknesses or omissions in most African countries’ domestic disability legislation.<sup>69</sup>

Having discussed the international and regional instruments, that is the CRPD and the African Disability Protocol in terms of general and specific rights applicable to children with disabilities, the next part of the paper examines strictly the provisions of Nigerian Disability Act. Again, take note that the discussion is on the general provisions of the Disability Act, while highlighting the specific provisions on inclusive and free education, equitable access to healthcare services, adequate transportation, and access to public facilities for children with disabilities in Nigeria. Part five of the paper focuses specifically on these rights as well as

65 OHCHR ‘African states affirm the rights of persons with disabilities in a new landmark Protocol’ (15 February 2018) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22661&LangID=E> (accessed 15 February 2022).

66 F Viljoen & J Biegon ‘The feasibility and desirability of an African Disability Rights Treaty: Further norm-elaboration or firmer norm-implementation?’ (2014) 30 *South African Journal on Human Rights* 345, 364.

67 Viljoen & Biegon (n 66) 352.

68 Stern (n 63) 81.

69 For instance, there is no specific equivalent provisions of art 7(3) of the African Disability Protocol in the Nigerian Disability Act.

the challenges of access to these rights by children with disabilities and the way forward.

#### **4 Nigerian Discrimination Against Persons with Disabilities (Prohibition) Act 2019 (Disability Act)**

The Disability Act, which has 58 sections, includes provisions that demonstrate the Nigerian government's commitment to her obligations under the CRPD to adopt all required legal, administrative, and other measures to implement the rights recognised in the Convention. In many respects, the Nigerian Disability Act is similar to the CRPD.

Part I of the Disability Act prohibits discrimination on grounds of disability in any manner or circumstance and imposes a fine of N1 000 000 for corporate bodies and N100 000 for individuals or a term of six months' imprisonment for violation.<sup>70</sup> The Disability Act mandated the federal Ministry of Information to promote awareness regarding the rights, respect, dignity, as well as the capabilities and achievements of persons with disabilities in society.<sup>71</sup> It also guarantees the right to maintain civil action for damage by the person injured against any defaulter.

Part II of the Disability Act provides for the right of persons with disabilities to access the physical environment and public buildings on an equal basis with others, as well as the provisions of accessibility aids in public buildings such as lifts, ramps, and other facilities that will make easy accessibility for persons with disabilities into a public building.<sup>72</sup> This also includes accessibility to roadside walks, pedestrian crossings, and other special facilities made for public use.<sup>73</sup> A five-year transitional period (already lapsed) is stipulated within which public buildings, structures, or automobiles are to be modified to be accessible to and usable by persons with disabilities, including those on wheelchairs.<sup>74</sup>

Moreover, it is henceforth mandatory that before any public structure is erected, it must conform to the new building code. A government or government agency, body, or individual responsible for the approval of building plans shall not approve the plan of a public building if the plan does not make provision for accessibility facilities in line with the building code.<sup>75</sup>

70 Discrimination Against Persons with Disabilities (Prohibition) Act, 2018 (Disability Act), sec 1(1)-(2).

71 Disability Act, sec 2(a)-(b).

72 Disability Act, secs 3-4.

73 Disability Act, sec 5.

74 Disability Act, sec 1(3). See also CJ Eleweke & J Eboenso 'Barriers to accessing services by people with disabilities in Nigeria: Insights from a qualitative study' (2016) 6 *Journal of Educational and Social Research* 25.

75 Disability Act, sec 7(1).

An officer who approves or directs the approval of a building plan that contravenes the building code commits an offence and is liable on conviction to a fine of at least N1 000 000 or a term of imprisonment of two years or both.<sup>76</sup>

Under Part III of the Disability Act, discrimination is prohibited in public transportation facilities, and service providers are to make provision for persons with physical, visual, and hearing disabilities and all persons, however challenged. This applies to seaports, railways, and airport facilities.<sup>77</sup> There is a provision that suitable space properly marked with signs be reserved for persons with disabilities at public parking lots and makes it an offence punishable with a fine per day of default for any person, corporate bodies, or organisation that fails to provide a parking space for persons with disabilities. This also includes anyone without a disability who parks his/her vehicle in the reserved space or intentionally obstructs the reserved space for a person with a disability.<sup>78</sup>

Part IV of the Disability Act provides persons with disabilities the right to free and inclusive education and healthcare, the right of first consideration in queues, accommodation, and emergencies, and condemns the act of using a person with disabilities for begging.<sup>79</sup> This part of the Disability Act is of utmost importance, bearing in mind that free and inclusive education and healthcare are rights that majorly affect children with disabilities in Nigeria. The challenges on the accessibility of these provisions are discussed in the subsequent section.

Furthermore, under the Disability Act, all public organisations shall, as much as possible, have persons with disabilities constituting at least five per cent of their workforce.<sup>80</sup> The Act also encourages their participation in politics and public life.<sup>81</sup> Part VII of the Disability Act provides for the establishment of a National Commission for Persons with Disabilities, which shall be vested with the responsibility for the education, healthcare, social, economic, and civil rights of persons with disabilities.<sup>82</sup>

Ordinarily, the foregoing provisions of the Disability Act should be ample basis for providing special facilities to improve accessibility and sanction discrimination against the person with disability, and in the context of this paper, children with disabilities; however, the peculiar circumstances existing in Nigeria bring to the fore several challenges that impact accessibility to these laudable rights for persons and especially children with disabilities.

76 Disability Act, sec 7(2)-(3).

77 Disability Act, secs 9-11.

78 Disability Act, sec 12(3)-(6).

79 See generally Disability Act, Part IV, secs 19-27.

80 Disability Act, sec 29.

81 Disability Act, sec 30.

82 Disability Act, secs 31-39.

## 5 Some challenges on specific rights of children with disabilities and the way forward

It was expected that the Disability Act would spur the development of effective measures for the full realisation of disability rights in Nigeria, including inclusive and free education, equitable access to healthcare services, adequate transportation, and access to public facilities for children with disabilities. Persons with disabilities, on the other hand, continue to face widespread discrimination and are systemically excluded,<sup>83</sup> among other challenges. The discussion that follows specifically addresses the above-mentioned rights applicable to children with disabilities in Nigeria, as well as the challenges of accessing these rights and the way forward.

### 5.1 Free and inclusive education for children with disabilities

Sections 17, 18, 19, and 20 of the Disability Act, in accordance with article 24 of the CRPD, establish free and inclusive education as the primary mechanism for implementing the right to education for persons with disabilities. Inclusive education systems in this spectrum can be defined as all people learning together in mainstream classrooms in their locality or community, regardless of ability or disability, with teaching methods, materials, and school environments that address the needs of all children, gender aside.<sup>84</sup> Inclusive education systems are built on a rights-based framework that may empower students, celebrate diversity, oppose discrimination, and foster a more inclusive society.<sup>85</sup> This can be an effective technique for addressing inequities. It can also tackle discrimination by challenging widely held attitudes and behaviours and helping us to celebrate and embrace the diversity in our societies.

In addition, there are certain distinctions in disability; for example, some people have physical disabilities as well as issues with intelligence, emotional maturity, or social development. These disparities account for variations in their overall development, which special education is intended to address.<sup>86</sup> Hence, school systems are striving to enhance standards, develop social and personal skills, extend curricula, prioritise fair educational opportunities, and prepare students for a quickly changing

83 Prince-Oparaku & Chuma-Umeh (n 10) 41-61.

84 N Chuma-Umeh & AC Onuora-Oguno 'Inclusion of gender sensitivity into Nigeria primary education system: Implications functional development' (2018) 5 *Journal of Comparative Law in Africa* 98; Onuora-Oguno (n 38) 10-11.

85 Onuora-Oguno & Silas (n 38) 376-377; Onuora-Oguno (n 38) 11-12.

86 MA Oladejo & SA Oladejo 'Educating students with disabilities in Nigeria: Some challenges and policy implications' (2011) 3 *European Journal of Humanities* 127.

society.<sup>87</sup> Interestingly, the global trend is turning towards addressing the educational problems of children with one or more disabilities in order to improve their lives. The rationale for this is based on the assertion that persons with disabilities have vital roles to play in national development. To be able to accomplish this successfully and meaningfully, their educational requirements must be addressed appropriately.<sup>88</sup>

In terms of the link between education and national development, Umeh and Onuora-Oguno,<sup>89</sup> observe that including gender sensitivity in Nigeria's primary education system is crucial for national development. They argue that a gender-sensitive approach is needed to address gender disparities, ensure equal opportunities for boys and girls, and create a more equitable society. The authors highlight how this inclusion impacts various aspects of functional development, such as social, economic and political progress.<sup>90</sup> Therefore, optimal national development requires full integration of the female population into the education system, this includes female children with disabilities.

Furthermore, General Comment 13 of the UN Committee on Economic, Social and Cultural Rights (CESCR) on the Right to Education,<sup>91</sup> sets out the requirement for the characteristics and features of free and inclusive education. These requirements are availability,<sup>92</sup> accessibility,<sup>93</sup> acceptability,<sup>94</sup> and adaptability<sup>95</sup> that apply to education in all its forms and at all levels.<sup>96</sup> Hence, for free and inclusive education to be properly implemented for children with disabilities, it must meet the above laid-down minimum thresholds. Moreso, each state has an obligation to protect the right of children with disabilities to education in all these dimensions.

Despite the Nigerian government's efforts to address inequality in education for persons with disabilities, these efforts have yet to yield any positive results in alleviating the plight of persons with disabilities in Nigeria.<sup>97</sup> There is evidence that impaired children in segregated school environments perform poorly academically when compared to non-

87 RN Osakwe 'Education for people with special needs in Nigeria: Challenges and way forward' in MI Atinmo and others (eds) *Education for sustainable development* (2010) 33-43.

88 Osakwe (n 87) 36.

89 Chuma-Umeh & Onuora-Oguno (n 84) 98-116.

90 As above.

91 UN Committee on Economic, Social and Cultural Rights (ESCR Committee), General Comment 13: The Right to Education (art 13 of the Covenant), 8 December 1999, UN Doc E/C.12/1999/10 (1999) <https://www.refworld.org/legal/general/cescr/1999/en/37937> (accessed 3 December 2025).

92 General Comment 13, para 6(a).

93 General Comment 13, para 6(b).

94 General Comment 13, para 6(c).

95 General Comment 13, para 6(d).

96 For a detail analysis on content of rights to education see Onuora-Oguno & Silas (n 38) 376-377.

97 UN Global Disability Fund (n 14); Oladejo & Oladejo (n 86) 15-24.

disabled children in regular courses.<sup>98</sup> Much of the additional education provided to pupils with disabilities focusses on 'social training' and 'general living skills'.

The government's efforts<sup>99</sup> in this regard have had some difficulties. These include inadequate educational financing as well as a lack of appropriate educational resources, facilities, and equipment that would allow persons with disabilities to access educational opportunities without discrimination.<sup>100</sup> For instance, Nigeria still relies heavily on special schools, which are poorly resourced, have inadequate learning materials and assistive technology and suffer from poor infrastructure and untrained teachers. Learners with intellectual and developmental disabilities are most marginalised due to a lack of skilled teachers and appropriate learning resources.<sup>101</sup> Most Nigerian educational institutions' architectural designs fail to reflect the needs of persons with disabilities. These losses are compounded by the difficulty of inadequate and ineffective implementation of programmes, legislative and policies measures aimed at improving education for persons and children with disabilities.<sup>102</sup>

In terms of legislative and policy measures, the Universal Basic Education (UBE) Act, 2004 is a legislative effort by the Nigerian government to ensure access to education for all children including children with disabilities. UBE was a rebirth after the failure of the earlier Universal Primary Education (UPE).<sup>103</sup> The UBE Act comprises 16 sections and deals with the issues of quality education and fundamental nature of education.<sup>104</sup> Notably, section 2 of the UBE Act establishes the rights of every Nigerian child to free, compulsory, and universal basic education, and imposes a duty on both the government and parents to ensure these rights are fulfilled. However, this remains unachieved in Nigeria with education still very poorly funded.<sup>105</sup> It is, therefore, imperative to ensure adequate budgetary funds towards the UBE Act provisions if the right of children with disabilities to free and inclusive education must be advanced.

98 As above.

99 See generally Nigerian government efforts such as the Nigerian National Policy on Inclusive Education (2023), Universal Basic Education Act, 2004. See also UN Global Disability Fund (n 14); Onuora-Oguno (n 38) 10-11.

100 Onuora-Oguno (n 38) 10.

101 UN Global Disability Fund (n 14) 9-10.

102 A Garuba 'Inclusive education in the 21st century: Challenges and opportunities for Nigeria' (2003) 14 *Asia Pacific Disability Rehabilitation Journal* 74; Onuora-Oguno (n 38) 10.

103 Onuora-Oguno (n 38) 10.

104 See UBE Act, 2004, secs 1-2.

105 Onuora-Oguno (n 38) 10.

In addition to the foregoing, the Nigerian National Policy on Inclusive Education (2023)<sup>106</sup> seeks to transform at least one special school per state into a resource centre for inclusive education. However, the transitioning to inclusive education has been difficult, again, due to lack of trained teachers in inclusive practices.<sup>107</sup> Also, the 2023 Policy does not allow separate deaf education, sparking debates about inadequate accommodations in inclusive schools.<sup>108</sup> Moreso, there is no reliable data on the prevalence of children with disabilities in schools, which affects planning and intervention. Most efforts focus on primary education, with little support for secondary-to-tertiary transition. Once more, there is inaccessible school infrastructure and learning materials, especially for students with visual and intellectual disabilities.<sup>109</sup>

In light of the foregoing discussion, it is proposed that providing children with disabilities with fair and quality education will assist them to secure additional rights throughout their lives, such as improved access to jobs, healthcare, and other services. To perform this function as 'an enabling right', education must be of high quality, offered equitably, designed to combat discrimination, and allow each child to grow based on their own talents and interests.

## 5.2 Equitable access to healthcare services

Section 21 of the Disability Act provides for unhindered access to healthcare for persons with disabilities. In the same vein, sections 3 to 8 address the need to ensure that all elements of healthcare are accessible. Section 21 and sections 3-8 make it clear that persons with disabilities have the right not only to accessible and acceptable healthcare services, but also to equality and non-discrimination in all aspects of their right to health, as articulated in articles 9 and 25 of the CRPD.

CESCR General Comment 14 on the Right to the Highest Attainable Standard of Health,<sup>110</sup> sets out the requirements for equitable access to healthcare. This requirement includes availability, accessibility, and acceptability. Accessibility is linked to availability, which refers to the public's access to a sufficient quantity of operating healthcare services, facilities, and programmes.<sup>111</sup> Acceptability, on the other hand relates to the necessity for health services to be respectful of professional ethics and

106 See generally Federal Republic of Nigeria *Nigerian National Policy on Inclusive Education in Nigeria* (7th ed) (2023).

107 UN Global Disability Fund (n 14) 10.

108 As above.

109 As above.

110 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment 14: The Right to the Highest Attainable Standard of Health (art 12 of the Covenant), 11 August 2000, UN Doc E/C.12/2000/4 (2000) <https://www.refworld.org/docid/4538838d0.html> (accessed 10 August 2023).

111 General Comment 14, para 12(a).

sensitive to the cultural preferences of people involved,<sup>112</sup> whereas quality necessitates that health facilities, goods, and services be medically suitable and of a high standard.<sup>113</sup>

Notably, accessibility is one of the CRPD's guiding principles.<sup>114</sup> The CRPD Committee's discussion of accessibility includes access to the physical environment, transportation, information and communication, as well as other public facilities and services. This indicates that without the aforementioned interconnected factors, persons with disabilities would not have equitable access to adequate healthcare.<sup>115</sup> In light of the foregoing, accessibility implies that facilities, goods, and services must be available to everyone, without prejudice. Therefore, physical access, information access, communication access, and attitudinal access are all essential characteristics to consider when determining access to healthcare.

Despite the existence of some state disability laws in Nigeria<sup>116</sup> that offer free healthcare for individuals with disabilities, as well as a number of national and subnational health sector regulations,<sup>117</sup> persons with disabilities continue to face widespread discrimination and institutional exclusion.<sup>118</sup> In principle, state laws and national health sector policies appear to advance the provision of services to persons with disabilities; however, these laws/policies have entrenched the notion of simply supporting persons with disabilities rather than a rights-based policy for disability programmes as envisaged under international treaties.<sup>119</sup> Furthermore, the majority of government players lack political commitment and a clear knowledge of the implications of promoting disability inclusion in the health sector through a rights-based approach and government institutions and the majority of Nigerians continue to have a medical understanding of disability, making complete articulation

112 General Comment 14, para 12(c).

113 General Comment 14, para 12(d). For further discussion on unfettered access to healthcare facilities and services, see Prince-Oparaku & Chuma-Umeh (n 10) 54-58.

114 CRPD, art 3(f).

115 CRPD, art 9(1).

116 Examples include Lagos State Special People's Law, 2011; Plateau State Indigenes with Disabilities Rights and for Other Matters Ancillary thereto, 2005; Kano State Persons with Disability Law, 2017 (1439AH); Jigawa State Persons with Disabilities Law, 2017; Bauchi State Persons with Disabilities Law, 2015; Ogun State persons with Disabilities Law, 2018; Ekiti State Rights of Persons with Disabilities Law, 2013 etc.

117 Such as National Policy on Sexual and Reproductive Health for Nigerian Women and Girls with Disabilities (2018); National Health Promotion Policy (2019); National Strategic Plan for Health Promotion (2020-2024).

118 Prince-Oparaku & Chuma-Umeh (n 10) 41-61.

119 These treaties include the UN General Assembly, Universal Declaration of Human Rights, 217 A (III), 10 December 1948; UN General Assembly, International Covenant on Economic, Social and Cultural Rights, United Nations, Treaty Series, vol 993, p 3, 16 December 1966; UN General Assembly, International Covenant on Civil and Political Rights, United Nations, Treaty Series, vol 999, p 171, 16 December 1966; CRPD; and Organisation of African Unity (OAU), African Charter on Human and Peoples' Rights (Banjul Charter), CAB/LEG/67/3 rev. 5, 21 ILM 58 (1982), 27 June 1981. See Prince-Oparaku & Chuma-Umeh (n 10) 50.

and implementation of policies and services based on the social model values of disability a suitable target.<sup>120</sup>

Consequently, this lack of political will and knowledge gap in promoting disability inclusion prevents persons with disabilities from accessing essential healthcare services. For instance, most persons with disabilities in Nigeria lack access to healthcare services from teaching, orthopaedic, and specialist hospitals due to not being included in the National Health Insurance Scheme.<sup>121</sup> Most health programmes are run by development partners/CSOs, with limited government involvement.<sup>122</sup> Those who do access public or private hospitals face negative attitudes and unsuitable facilities.<sup>123</sup> Again, health infrastructure is inaccessible, and health communication is not provided in accessible formats (for example, braille, sign language).<sup>124</sup> While women with disabilities face higher risks of sexual exploitation, their access to sexual related health education and services is extremely limited.<sup>125</sup>

A situational analysis by the Disability Rights Advocacy Centre (DRAC) revealed that women and girls with disabilities face numerous challenges in accessing healthcare, including inaccessible public transport, lack of accessible facilities, poverty, negative attitudes of healthcare personnel, and few skilled medical providers.<sup>126</sup> These gaps continue to exist and have not been addressed in most states and national hospital in Nigeria, denying persons and children with disabilities access to basic health services. The absence of adequate policy framework further exacerbates the issue.<sup>127</sup>

In light of the foregoing, it is, therefore not enough to sign and ratify the CRPD, African Disability Protocol as well as enact a national Disability Act, there is an urgent need to advance administrative infrastructure and commitment for the effective implementation of the Disability Act. The CRPD, African Disability Protocol and the Disability Act, require a directing framework to prevent discrimination against children with disabilities in Nigeria. The government is responsible for

120 Prince-Oparaku & Chuma-Umeh (n 10) 50.

121 Y Osibanjo 'NHIS: Osibanjo says FG working to accommodate PWDs' *The Sun* 9 December 2021 <https://www.sunnewsonline.com/nhis-osibanjo-says-fg-working-to-accommodate-pwds/> (accessed 9 December 2021). Note that NHIS has been renamed as NHIA.

122 UN Global Disability Fund (n 14) 9.

123 FB Grema and others 'Camping condition and casual status of insurgency survivors living with disability in Internally Displaced Persons Camp in North-Eastern Nigeria: A case series' (2017) 3 *Bayero University Journal of Evidence-Based Physiotherapy* 28, 29.

124 UN Global Disability Fund (n 14) 9.

125 As above.

126 Disability Rights Advocacy Centre 'A situation analysis on access to sexual and reproductive health services by women and girls with disabilities in Nigeria' (May 2020) [https://web.facebook.com/DRACNigeria/photos/women-and-girls-with-disabilitieswgwd-experience-many-difficulties-in-accessing/2978651835516968?rdc=1&\\_rdr](https://web.facebook.com/DRACNigeria/photos/women-and-girls-with-disabilitieswgwd-experience-many-difficulties-in-accessing/2978651835516968?rdc=1&_rdr) (accessed 2 April 2022).

127 Prince-Oparaku & N Chuma-Umeh (n 10) 50-54.

ensuring equal opportunity in health systems, which are affected by other human rights. Thus, cross-sector collaboration is crucial for public sector reform and transformation, with disability sector experts working with government institutions to address challenges to disability issues.

### **5.3 Adequate transportation and access to public facilities for children with disabilities**

The Disability Act prohibits discrimination in public transportation facilities, ensuring accessibility for physically, visually, and hearing-impaired individuals and all persons with disabilities. This applies to seaports, railways, and airports facilities.<sup>128</sup> Transportation includes services offered by the government through policies for children with disabilities and their families. Public transport systems, therefore, must adapt vehicles to accommodate disability needs, with priority given to persons with disability in all publicly supported transport systems.

Furthermore, the Disability Act ensures equal access to public facilities for individuals with disabilities, including public buildings, sidewalks and other special facilities, and ensures that persons and children with disabilities are not denied access due to lack of necessary aids.<sup>129</sup>

Despite the above provisions in the Disabilities Act, and the standards set in the Persons with Disabilities (Accessibility) Regulations, 2023, limited enforcement and inadequate awareness among planners and builders result in widespread non-compliance, especially in rural and resource-constrained areas.<sup>130</sup> It goes, therefore, that there is inadequate commitment towards ensuring adaptable and accessible transportation for children with disabilities and their families. Hence, the structural design of most buildings in Nigeria, both public and private, does not consider accessibility for disabled individuals. Most public transport, including buses, trains and airports, lacks accessibility features such as ramps, priority seating and visual/audio information. This means that persons with disabilities are largely excluded from accessing many public services.<sup>131</sup> Consequently, persons with disabilities often go out of their way to find accessible facilities, which can be dangerous, uncomfortable, or restrict their movement. The government's failure to provide and enforce the implementation of accessible transport services and accessibility aids for public facilities exposes persons and children with disabilities to discrimination and neglect, leading to hardship such as missed health appointments, school attendance, and denial of public facilities on equal basis with others.

128 Disability Act, secs 9-11.

129 See Disability Act, secs 3-5 and generally the provisions under Part III.

130 UN Global Disability Fund (n 14) 10.

131 As above.

In light of the above, there is the need for government renewed commitment towards public transportation services and alternatives to assist individuals with disabilities. There is a need for a comprehensive mobility management programme to assist persons with disabilities to use all types of transportation, and the need to ensure that new buildings are built according to accessibility codes and guidelines in all states of the federation and the Federal Capital Territory, Abuja. Also, government should adapt road construction and transportation to suit the unique circumstances of persons and children with disabilities.

Finally, the Disability Act grants the Disability Commission broad powers,<sup>132</sup> including the right to sue for violations and receive complaints from persons with disabilities, managing the Commission's affairs, promoting rehabilitation centres, and collaborating with public and private sectors to ensure disability interests are considered in government policies.<sup>133</sup> It is further suggested that the Nigerian government should strengthen work with the Disability Commission to implement policies, assess programmes, and ensure free and inclusive education, healthcare access, transportation, and public facilities for persons and children with disabilities in Nigeria.

In light of the discussion so far, and the need to further entrench the rights of children with disabilities, the next discussion advocates for specific constitutional rights-based protection of children with disabilities in Nigeria.

## **6 Towards a constitutional rights-based approach for the protection of children with disabilities in Nigeria**

As earlier noted, Nigeria is a multicultural state with multiple laws, norms, and fora.<sup>134</sup> Under the Nigerian Constitution, each state is empowered to make laws, with the federal government making laws on exclusive lists and the state sharing on concurrent lists.<sup>135</sup> This leaves the state House of Assembly to legislate exclusively on residual matters not included in either

132 Disability Act, secs 31-39.

133 Disability Act, secs 37-39.

134 Durojaiye, Okeke & Adebajo (n 12) 6169-6181.

135 See 1999 Constitution of Nigeria (as amended), sec 4 and 2nd Schedule, Parts I and II.

the exclusive or concurrent lists. Children are considered under residual lists.<sup>136</sup>

The Nigerian Federal Government has enacted the Disability Act, a first step towards fulfilling its legal obligations under the CRPD. The enactment imposes positive obligations on the various state governments to adopt and pass the same. However, not all states have enacted disability laws.<sup>137</sup> For the states with disability laws, the main concern is that their laws on disability are influenced by other factors<sup>138</sup> rather than a rights-based approach<sup>139</sup> and the laws are only applicable and represent a mere arrangement of stipulations within the states.<sup>140</sup> This results in most state legislation not focusing on the full development of human potential and strengthening respect for human rights and dignity,<sup>141</sup> particularly for children with disabilities in Nigeria. Moreover, there are discrepancies in the state enactments, lack of functional agencies to implement state laws on disability, coupled with the non-existence of children with disability laws in some states.<sup>142</sup> In light of the foregoing, alternative means of promoting national application of the Disability Act for the benefit of all children with disabilities in Nigeria is apposite.

To address the lack of consistent and non-existence of children with disability laws in some states, constitutional protection with specific provisions that guarantee the rights of persons and especially children with disabilities is proposed. This proposition cannot be overemphasised. The Constitution, Nigeria's highest law, overrides any inconsistent legislation,<sup>143</sup> and the inclusion of specific provisions for children with

136 It is only two of the lists, the exclusive and concurrent lists, that are recognised in the 1999 Constitution, while the third list, the residual list, is consequential and recognised by the Nigerian constitutional law theory. See *Attorney-General Abia State & 35 Others v Attorney-General of the Federation* (2002) 3 SC 106. See also KK Oyeyemi 'Nationwide Application of the Nigerian Child's Rights Act; 2003: Constitutional thought and possibilities' (2023) 5 *International Journal of Law, Policy and Social Review* 146; ES Nwauche 'Child marriage in Nigeria: (Il)legal and (un)constitutional' (2015) 15 *African Human Rights Law Journal* 422.

137 As of late 2024, 23 out of 36 states in Nigeria have passed their own disability laws. See Adejoro (n 14). Example includes, Lagos State Special People's Law, 2011; Plateau State Indigenes with Disabilities Rights and for Other Matters Ancillary thereto, 2005; Kano State Persons with Disability Law, 2017 (1439AH); Jigawa State Persons with Disabilities Law, 2017; Bauchi State Persons with Disabilities Law, 2015; Ogun State Persons with Disabilities Law, 2018; and Ekiti State Rights of Persons with Disabilities Law, 2013, among others.

138 For a discussion on several factors that influence the adoption of children's rights at states levels, see KK Oyeyemi & LA La-Kadri 'Realizing the rights of child under the Nigerian Child's Rights Act, 2003: An exploratory critique' (2017) 2 *Unimaid Journal of Private and Property Law* 22.

139 NC Umeh 'Realising access to inclusive education for hearing-impaired learners in Nigerian Primary Schools' Doctoral thesis, University of Pretoria, 2017 97-98.

140 As above.

141 As above.

142 As of late 2024, 23 out of 36 states in Nigeria have passed their own disability laws. Despite this, only 15 of those states have established functional agencies to implement the laws. See Adejoro (n 14).

143 1999 Constitution of Nigeria, sec 1.

disabilities signifies a commitment to a rights-based approach for disability, as envisioned by the CRPD.

South Africa,<sup>144</sup> Uganda,<sup>145</sup> Ghana,<sup>146</sup> and Rwanda<sup>147</sup> have specific constitutional rights-based provisions on disabilities, though not specifically on children with disabilities,<sup>148</sup> demonstrating their governments' efforts to constitutionally provide equal opportunities for persons with disabilities. Nigeria lacks this synergy, highlighting the need for constitutional protection for persons with disabilities. Accordingly, it is strongly submitted that the Nigerian federal government should adopt a constitutional rights-based approach on disabilities, similar to these African countries, by amending the Constitution through the National Assembly to include specific provisions for persons and especially children with disabilities.

The foregoing submission is considered necessary because making provisions for children's rights in the Constitution 'is just a starting point; the extent to which it takes a genuine child's rights approach depends on the quality of the constitutional provisions in question'.<sup>149</sup> O'Mahony provides a typology for assessing the approach to protecting children's rights, based on visibility, agency, and enforcement spectrums.<sup>150</sup> Visibility indicates the extent of explicitly protecting children's rights,

144 For example, secs 9(3), (4) and (5) of the Constitution of the Republic of South Africa, 1996 forbids unfair discrimination directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. See Constitution (South Africa), secs 9(3)-(5).

145 For example, art 35 of the Uganda Constitution directs the legislature to take affirmative action to combat disability discrimination. It provides that persons with disabilities have a right to respect and human dignity, and the state and society shall take appropriate measures to ensure that they realise their full mental and physical potential; and parliament shall enact laws appropriate for the protection of persons with disabilities. See art 35, Constitution 1995 (Republic of Uganda).

146 For example, art 29(1) of Ghana Constitution, 1992 is another example of constitutional protection of disabilities rights as it guarantees persons with disabilities the right to live with their families or foster parents and to participate in social, creative or recreational activities. The section further forbids the subjection of disabled people to differential treatment in respect of residence other than that required by his or her condition or by the improvement which he or she may derive from the treatment. See Constitution 1992 (Ghana), arts 29(1)-(8); see, generally, M Rioux 'On second thought: Constructing knowledge, law, disability and inequality' in S Herr, L Gostin & H Hongju Koh (eds) *The human rights of persons with intellectual disabilities: Different but equal* (2003) 287-317.

147 For example, art 11 of the Rwanda Constitution, 2003, provides that all Rwandans are born and remain free and equal in rights and duties. Discrimination on the basis of physical or mental disability or any other form of discrimination is prohibited and punishable by law. See the Rwanda Constitution, 2003

148 With the exception of the South African Constitution that provides for a comprehensive children's rights. See South African Constitution, secs 2, 6(2) & 28.

149 C O'Mahony, 'Constitutional protection of children's rights: Visibility, agency and enforceability' (2019) 19 *Human Rights Law Review* 401; KK Oyeyemi 'Constitutional protection of children's rights: A study of Nigerian, South African and Australian Constitution' (Forthcoming 2026) 33 *African Journal of International and Comparative Law* 1 at 17-19.

150 O'Mahony (n 149) 403-432.

agency determines whether children are autonomous rights-holders or need protection, and enforcement specifies the extent of enforcement through various remedies.<sup>151</sup> The foregoing classification of constitutional protection of children's rights allows for a multiple dimension analysis,<sup>152</sup> indicating that merely mentioning children in the Constitution is insufficient if they are viewed as 'objects' needing protection rather than individuals with agency, and rights are seen as symbols without adequate remedies.<sup>153</sup>

In light of the above, the Nigerian Constitution rates children with disabilities low due to its lack of visibility and agency. Agency is a measure of the extent to which the Constitution treats children as autonomous rights-holders, not objects in need of protection.<sup>154</sup> The explicit provision relating to children in the Nigerian Constitution does not convey agency.<sup>155</sup> Although, as indicated earlier, the Constitution provides fundamental rights applicable to every citizen, but these are limited and not absolute.<sup>156</sup> The directive principles of Chapter II on promoting and protecting children's interests in social, religious, cultural life, and family promotion are also not enforceable 'directly' in a court of law.<sup>157</sup> Moreso, the other ways and process of enforcing the non-justiciable Chapter II constitutional provisions can be cumbersome and often hampered.<sup>158</sup> The inevitable consequence is that some constitutional provisions on rights applicable to everyone are merely 'aspirational or declaratory and could be

151 O'Mahony (n 149) 402-434.

152 For other typologies of children's constitutional rights, see J Tobin 'Increasingly seen and heard: The constitutional recognition of children's rights' (2005) 21 *South African Journal on Human Rights* 86; J Habashi and others 'Constitutional analysis: A proclamation of children's right to protection, provision, and participation' (2010) 18 *International Journal of Children's Rights* 267. Tobin in his analysis uses the categories of 'invisible child', 'special protection' and 'child rights' constitutions, which is considered as a more rudimentary typology when compared to measuring the spectrums of visibility and agency. Furthermore, while Tobin mentions 'justiciability, access to justice, judicial conservatism and social legitimacy', when discussing enforcement, the component of enforcement is not well developed in his typology. Habashi and others on their part uses linguistic content analysis to give quantitative statistics on the prevalence of protection, provision and participation rights in constitutions of countries with a high, medium and low Human Development Index. For the sake of present discussion, this methodology is considered as too basic.

153 M Freeman 'Why it remains important to take children's rights seriously' (2007) 15 *International Journal of Children's Rights* 8.

154 O'Mahony (n 149) 402-434.

155 1999 Constitution, sec 17(3)(f)-(h). This section provides that the State shall ensure that: 'Children and young persons and the aged are protected against any exploitation whatsoever, and against moral and material neglect; and that provision is made for public assistance in deserving cases or other conditions of needs; and that the evolution and promotion of family life is encouraged.'

156 See generally 1999 Constitution, sec 45.

157 1999 Constitution, sec 6(6)(c). See also earlier discussion in part 2 of this paper.

158 See earlier discussion in part 2 of this paper on this issue. See also the case of *AG Ondo; SERAC and CESR v Nigeria*, Communication 155/96, African Commission on Human and Peoples' Rights (27 October 2001).

limited in scope'.<sup>159</sup> Therefore, it is essential to indicate the extent these rights specifically apply to children, particularly those with disabilities.

It is submitted that enumerating specific rights for persons and children with disabilities in a separate chapter in the Nigerian Constitution will not only serve as a tool for rights-based approach advocacy but also as a guiding implementation and for developing policies<sup>160</sup> towards protecting children with disabilities from abuse within the family, society, and across board. For instance, article 7(3) of the CRPD recognises children's vulnerabilities in power hierarchies and children with disabilities' autonomy rights. The inclusion of this provision in the Constitution will guarantee the protection of the rights of children with disabilities and serve as a powerful tool for guiding a uniform implementation in various states of the federation than general provisions on discrimination or equality in the constitution.

## **7 Conclusion**

The CRPD and its Optional Protocol, the African Disability Protocol as well as the Disability Act, clearly identify children with disabilities as rights holders who should be included in all government policies and programming. Despite the presence of disability regulations, Nigeria is not on pace to satisfy its international, regional, and national obligations. Commitments such as access to inclusive and free education, health services, appropriate transportation, and related amenities, as well as a 'lapsed' five-year moratorium on accomplishment, have yet to be met in any significant way. Furthermore, Nigeria's disability laws and policies, which are mostly federal in nature with some state involvement, lack a consistent, uniform and specific focus on children with disabilities. Bridging this gap requires a constitutional rights-based approach to disabilities, as well as policies that link child disability rights with societal requirements and ensure successful policy implementation. The CRPD's articles 7, 8, and 23 provide guidelines for comprehensive childhood disability policies. Addressing policy gaps, supporting uniform and timely implementation throughout Nigerian states, and harmonising with international standards are critical for the proper inclusion of children with disabilities alongside others on an equal footing.

159 R Hodgkin & P Newell *Implementation handbook for the Convention on the Rights of the Child* (2002) 187.

160 The South African Constitution is an example in this regard, since it explicitly bestows children the right to participation. See South African Constitution, sec 28.

