

*Full Length Research Paper*

# Legal and ethical issues of persons with special needs in Nigeria

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Persons with special needs have innate abilities and when properly harnessed through proper education would be able to contribute ultimately to their development as well as that of the society they reside in terms of political, social, economic and technological development. Before such group of persons can be properly educated there is the dire need for the resolve of some ethical and legal issues. This paper therefore, chronicles the genesis of legal issues and milestones on the education of persons with special needs before Nigeria's independence in 1960 and present date. Attempts were also made to examine some ethical issues, legal issues and problems which arose during the evolution of legal framework on the education of persons with special needs in Nigeria. Finally, suggestions were made to solve these problems to enable persons with special needs have access to appropriate education, ultimately improve themselves and contribute to the political, economic and technological development of the society they reside.

**Key words:** Impaired, Nigeria, International labour Organization.

## INTRODUCTION

Persons classified as those with special needs abound in every societies. Various labels have been used to classify and identify them. Such labels include disabled, handicapped, impaired and exceptional. The Federal Republic of Nigeria (2004) in the National policy on Education asserts that this group of people may be classified into three categories:

**1. The disabled:** People with impairments (physical, sensory) and because of this impairment/disability can not cope with regular school/class organization and methods without formal special education training. In this category, we have people who are:

1. Visually Impaired blind and the partially sighted.
2. Hearing impaired (deaf and the partially hearing);
3. Physically and health impaired deformed limbs, asthmatic;
4. Mentally retarded (education, trainable, bed ridden);
5. Emotionally disturbed (hyperactive, hypoactive/the socially maladjusted/behaviour disorder);
6. Speech impaired (stammerers, stutterers);
7. Learning disabled (have psychological/neurological educational phobia or challenges).
8. Multiply handicapped.

**2. The Disadvantaged:** The children of nomadic pastoralists, migrant fisher, folks, migrant farmers, hunters, etc

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who due to their lifestyles and means of livelihood, are unable to have access to the conventional education provision and therefore require special education to cater for their particular/peculiar needs and circumstances.

**3. The gifted and talented:** People (children and adults) who have/posses very high endowed with special traits (in arts, creativity, music, leadership, intellectual precocity, etc) and therefore find themselves insufficiently challenged by the regular school/college/university programmes.

However, the following classification would be considered, the visually impaired, speech impaired, hearing impaired, the physically and health impaired, the learning disabled, the gifted and talented, the mentally retarded, and emotionally disturbed (Omiegbe, 1998). There is the dearth of statistics of such group of persons to Nigerian society. However, Adeniyi (2008) noted that the high incidence and prevalence of disabilities in the contemporary world is worrisome. He stated further that, according to an International Labour Organization (ILO) source there are more than 500 million physical challenged people in the world today with a greater percentage from the developing countries. Using the UN's (United Nation's) projection that (1) in every (10) Nigerians has one disability or the other, the population of the disabled persons in Nigeria will be in the region of 14 million persons (Adeniyi, 2008). If it is accepted that students' enrolment into primary and secondary levels of education in Nigeria is about 25 million, there should be at least 2.5 million children of school age in Nigeria (Bakare and Obam, 1992 in Adeniyi 2008).

What are legal and ethical issues? Hornby (2001) defines the word legal as "what is allowed or required by the law" and the word ethical as "what is morally correct and acceptable in a society" and the word issue as an "important topic people are discussing". Therefore, legal and ethical issues as regards special needs education has to deal with the discussion of topics (in special needs education) as allowed or required by the law and accepted to be morally correct. Societies all over the world are governed by ethics and laws. Such laws come into being through bills which are sponsored by individuals, some group of individuals or voluntary organizations. Laws are for the betterment of the society. Persons with special needs also require laws that can make them function effectively in the society. In the education of persons with special needs they require an adapted or modified type of education to suit their learning skill or performing a given task. The underlying reason behind this is that they are handicapped in terms of learning a skill or performing a given task due to the limitation occasioned by their disabilities. To make their education to be functional and worth while there is need to pass into law bills that would remove this handicapping conditions placed on them by their disabilities. This paper therefore succinctly examines

rules, policies, acts, bills and laws enacted for the education of persons with special needs in Nigeria. To explain more about what laws are, Texas Department and Mental Health and Mental Retardation (1978) states:

Rules tell us what we can and cannot do. Rights are special rules that are written in the law to try to make sure that everyone is treated fairly. As a mentally person; you have the same rights all citizens have (such as the right to vote) unless some of your rights have been taken away by a judge in court. If you are 18 years old, or older, you can make your own decisions unless you have a guardian. Before a guardian is named to make decisions for you, you will have a hearing in a court with a judge. You can have a lawyer to protect your rights and help you tell your side of the story. If you don't have enough money for a lawyer, the court may pay for one to help you. Only a judge can give you a guardian. The guardian may be your parent or it may be another adult. No one has the right to hurt you or take advantage of you. You have the right to live in a place where you can make as many of your own decisions as possible, based on your needs and abilities. This may be with your family, with your friends, or where there are people trained to help you. If you are looking for a job, you cannot be denied the right to work just because you are mentally retarded. But you might not get the job if you cannot do the work. If you have a job, you have the right to be paid fairly for the work you do. No one has the right to refuse to sell or rent you a place to live just because you are mentally retarded. You have the right to public support for schooling and training. If you are between the ages 3 and 21, that education is free. It doesn't matter how mentally retarded you are or whether you have other handicaps. Depending on where you live and what you need, this education may be provided at public school, a state school, a community center or some other place.

### Special needs education legal framework

On the evolution of legal framework of special needs education Nigeria National Teachers Institute (NTI) (2011) states:

In the last thirty years Nigeria has become a signatory to a plethora of international conventions, which are all aimed at securing the interest of disabled Nigerians and gifted children. Furthermore, the Nigerian populace in recent times have proactively advocated for the review of the current legislation in order to further safeguard the disabled. Therefore, the goal of this section is to chronologically highlight national and international legislative instruments that regulate the Nigerian education sector particularly the education of special needs children till date. First, these conventions and legislations, the inherent rights and privileges granted in these documents

will be briefly highlighted with its deficiencies fleetingly indicated with the purpose of providing a holistic view of the aforementioned sector. Second, attention will be paid on the provisions of the Nigerians with disabilities decree, 1993 and the Nigeria Disability Bill 2009 (HB 37 and 46) effectively examine their strategic clauses for effective understanding of these legislative instruments. Third, various national education policies will also be examined since it reflects the governments educational objective per time. Finally, recent legal developments will also be highlighted in an attempt to provide the reader with up-to-date information on the rights of special needs children in Nigeria”.

Historically, most Nigerian legislations, policy frameworks and guidelines that exist to protect the interests of Nigerians with disabilities particularly in relation to the special education needs of children with disabilities and/or gifted children have been influenced by international conventions treaties, guidelines, manifestos and directives. Chiefly amongst these are those from the United Nations International Children and Emergency Fund (UNICEF) and the United Nation Educational Scientific and cultural organization (UNESCO) declarations. With the above in mind, the Macpherson Constitution, 1951 (pre-independent Nigeria) placed education on the concurrent list: therefore both the central and regional governments were empowered to legislate on their respective educational needs. Consequently, between 1954 and 1955, the (then) Western Region's Education law was enacted. This law provided that special schools should be made available for children with serious difficulties, while a similar legislation was enacted in northern Nigeria in 1956. Other relevant legislations include the Lagos Education Ordinary, 1957 (Article 61g) and the Northern Nigeria Education Law of 1964. These legislations typified pre-independent Nigeria, which is commonly referred to as the Humanitarian Era. During this time the special education needs of the country were established, operated and managed by private voluntary organizations (PVOS) (that is, Christian missionaries) and private individuals, and later these institutions were granted aids by the government. However, following a declaration by the (then) Head of State Major General Yakubu Gowon, in a nation-wide broadcast in 1974 that “henceforth the Government would provide special education”. The Nation Development plan (1975 to 80) was revised and provisions were made for the training of special education teachers with emphasis on the needs of special education facilities. The aforementioned declaration, the national conference on curriculum development, 1989 and the introduction of the Universal Primary Education (UPE), 1976, monitored by the Universal Basic Education Commission (UBEC) served as a backdrop for the government interaction in the national special education sector. This interaction later cumulated into the introduction of a National Policy in Education (NPE) 1977 and heralded

the social service Era in the history of Nigerian education sector (NTI 2011).

The NPE, 1977 gave tangible meaning to the idea of equalizing educational opportunities for all children, their physical, mental and emotional disabilities notwithstanding. The policy provided that handicapped children and adults would be granted adequate education, with the intention that they would be able to play their roles fully in contributing to the development of the nation, and to provide opportunity for the exceptionally gifted children to develop their skill at their own pace in the interest of the nations economic and technological development. By and large, the NPE 1977, took cognizance of the provisions of the united nation universal declaration of human rights, 1948 which made distinctive provisions guaranteeing a child's universal right to education. Therefore, NPE, 1977 made “innovative” provisions to ensure the integration of children with disabilities and for gifted children into the mainstream of regular schools. Furthermore, the NPE 1977 housed the Universal Primary Education (UPE) scheme and abolished the 6-5-2-3 educational system and introduced the 6-3-3-4 system. However, the NPE, 1977 failed as a result of the hasty, shallow, ill-informed and disjointed planning based on faulty statistics and inadequate funding. Nevertheless, Plateau State, Nigeria following the tenets of the 1981 mandated the compulsory education of children with disabilities vis-à-vis the rehabilitation of their adult counterparts in the aforesaid state.

The Nigerian Government following the adoption and ratification of the African chartered and human rights, enacted the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Chapter A9, No. 2 of 1983 (Chapter 10 LFN 1990) thereby, enshrining principal international provisions which sought to promote human and African people rights particularly the welfare of person with disabilities into the Nigerian laws. Additionally, the Act also safeguards the child with disabilities and/or the gifted child's equal right to quality and education and their protection from all forms of discrimination. Another notable legislation is the education (National Minimum standards and the establishment of institutions) Decree No. 16 of 1985, which sought to regulate and articulate the government's educational policies. However, this decree offered minimal provisions for the special education needs of children with vis-à-vis the gifted Nigerian children. Nigeria also became a signatory to other international conventions like the ILO Convention (No. 15a) concerning vocational rehabilitation and employment (disabled persons), (1983/1985) and the World Programme of Action concerning disabled person (1981) with the combined aim of providing for the protection of the above mentioned categories of persons. These international protocols also stressed the importance of vocational rehabilitation as a means of facilitating their integration or reintegration into the society. However, although Nigeria was a signatory to these conventions,

they were never codified into Nigerian laws therefore its provisions are not enforceable, never the less, future policies affecting the interest of the child with disability and/or the gifted child were drafted with their provisions in mind (NTI, 2011).

The 1990's and 2000's also witnessed a significant contribution from the government in terms of regulatory commitment as well as legislative policy in put. Therefore, in response to the global initiative and in furtherance to Nigeria's ratification of numerous international conventions including the principles for the protection of persons with mental illness and the improvement of Mental Health Care (1991) United Nations Standard Rules on the Equalization of opportunities for Persons with Disabilities, 1993 and declaration on the Rights of Disabled (1995) alongside other international instruments, the Federal Government of Nigeria enacted the Nigerians with Disability Decree, 1993, the first and only legislation aimed at catering for the special needs of the above categories persons. The Disability Decree 1993 was enacted to "provide a clearer and comprehensive legal protection and security for Nigerians with disability as well as establish a standard for the enhancement of their rights and privileges, guaranteed under this decree and other laws applicable to the disabled in Nigeria". In addition, legislative provisions were made in this decree to cater for their right to free education in public educational institutions at all levels, the training of special education personnel to cater for their educational development, vocational training for the disabled to develop economic skills, the adaptation of all educational institution to the needs of the disabled and the equipping of public educational facilities in other to guarantee easy accessibility to these institutions.

The Nigerians with disability decree, 1993 also integrated the resolutions and declarations of international legislative protocols like the (UNESCO), the Salamanca statement; principles, policy and practice in special needs education, 1994 and the Jomtien Declaration on Education for all, 1990, Convention on the Right of the Child 1990 so as to protect the right off special needs children. However, this decree was characterized by large classes, ineffective joint resource mobilization, planning, implementation, and monitoring systems, inadequate quality assurance systems and the lack of training of special need personnel alongside other reasons. Furthermore, the decree was promulgated without the requisite polities to enable its implementation to meet the special needs of people with disabilities. Therefore, it was imperative that the National special needs framework be revised to provide a more robust system to cater for the needs of special needs children in tandem with international best practices. Consequently, following the advent of democracy and the passage of the 1999 constitution of the Federal Republic of Nigeria, more cogent provisions were included to cater for the rights of the Nigerian child and this is encapsulated in chapter ii and iv of the constitution.

While sections 13 to 24 of chapter ii [FRN 1999] provides for the fundamental objectives and directives principles of state policy with section 18 stating that the "Government shall direct its policy towards ensuring that there are equal and adequate educations opportunities at all levels" etc", section 33 to 46 chapter iv of the same constitution mandates the protection of human rights. However, the above-mentioned section 18 [FRN 1999] which guarantees a special needs child right to education is not enforceable as a result of provisions of section 6(6) (FRN, 1999). Furthermore, Section 15 of CFRN, 1999 which prohibits discrimination does not expressly mention disability as basis for such discrimination. Thus, while there is an inexplicable dearth of adequate legal framework for education in post-independence Nigeria. The CFRN (1999) which is the supreme of the land equally makes every discourse on the legal framework "a nonsense on a stilt" save the provisions of the Nigerians with Disability Decree 1993 (NTI, 2011).

Following the adoption of the Convention on the Rights of the Child (CRC) in 1989 and the enactment of the Child's Right Act 2003, alongside other international instruments like the World Education Forum: Dakar Framework for Action, 2000, the Nigerian national policies on the education of children with disabilities become largely influence by those legislative provisions and formed the coherent force that influenced the adoption of national policies going forward. In 1999, the federal government adopted the Universal Basic Education (UBE) policy and enacted the UBE Act, 2004. Whilst the expanded vision of UBE comprises the universalizing of access and promotion of equity, focusing on learning and enhancing the environment of learning and strengthening partnerships, the Act provides the enabling framework through which the government supports states towards the delivery and achievement of uninterrupted Universal Basic Education for the Nigerian child in line with its international commitments by offering basic education for "all children" from age 5 to 16. This Act influences and resulted in the review of the National Policy on Education. The National Policy an Education (2004) accorded prominence to the concept of inclusive education as an integral part of the UBE policy as a result, inclusive education became the norm rather than the exception for the education of special needs children in Nigeria. These policies specifically provide for equal educational opportunities to all Nigerian children irrespective of any real or imagined disabilities. The policies further states that education of children with special needs shall be free at all levels and all necessary facilities that would ensure easy access to education shall be provided via inclusive education of special class and units into ordinary/public classes under the Universal Basic Education (UBE) programme.

However, these policies have been characterized by an inadequate early detection and identification mechanism, a limited number of monitoring and evaluation specialists,

a derisory implementation structure nationwide, the lack of opposite funding to procure equipment and train specialists in special needs education and the lack of accurate data on the categorical proportions of students with disabilities in public schools in Nigeria. Additionally, these policies, at best are unenforceable official declarations. These lapses have resulted in current thrust towards the passage of the Nigeria Disability Bill, a more robust legislative instrument which caters for some of the needs and rights of persons with disabilities in Nigeria. The bill remedies some of the lapses observed thus far and aligns Nigeria and other African nations, such as South Africa and Ghana, which have already enacted similar legislation to protect persons with disabilities. The bill further aligns Nigeria with its international obligations particularly the provisions of the United Nations Convention on the Rights of Persons with Disabilities (CRPD), 2010 which obligates parties to fully realize the right of persons with disabilities through the adoption of "all appropriate legislative, administrative and other measures of the implementation of the rights recognized in the present convention. The bill, in tandem with article 4(1) CRPD, also seeks to "ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability".

Additionally, section 33 of the Bill, in agreement with the provisions of section 1 Child's Right Act (CRA), 2003, also states that "in all matters concerning children with disability, the best interest of the child shall be the primary consideration. The bill also incorporates national and international mandate which obliges the equal treatment of persons with disability and the protection of same from discrimination as contained in the constitution, the CRA, the African Charter Act and CRPD to mention a few. Adequate provisions are also made in the bill to guarantee their right to health and education without discrimination or segregation. The bill also proposes the establishment of a commission to be tasked with the responsibility of formulating and implementing the government's policies and guidelines for the education and social development of persons with disability. Section 87 of the bill, broadens the statutory definition of disability by recognizing that:

1. Discrimination can occur in relation to mental, intellectual, sensory or physical impairments.
2. By incorporating the social model of disability (endorsed in the CRDO) by referring to disability as the interaction between the person with impairment and external barriers.
3. By focusing on the promotion of equality rather than on the categorization of various disabilities; and
4. By establishing an inclusive rather than an exclusive definition, which respects disability as an "evolving concept", (NTI, 2011).

On 24<sup>th</sup> June, 2011, the Lagos State Governor, Mr.

Babatude Raji Fashola (Senior Advocate of Nigeria) signed into law the special people law (SPL), 2011 following the successful passage of the Lagos State special peoples' Bill by the Lagos State House of Assembly. Thus, making Lagos State the First State in Nigeria to promulgate a law specifically aimed at demonstrating the CRPD and similar normative standards. The signing of the law will not only advance the inclusion of persons with disabilities into the socio-economic environment of Lagos State, but will also further ensure Lagos-Nigeria's adherence to the provision of CRPD alongside its optional protocols. The Special Peoples Law, 2011 incorporates many of the obligations under the CRPD, including the non-discrimination, education, health and data collection provisions. Furthermore, section 23(1) SPC, 2011 states that "all levels of government shall take appropriate steps to ensure that persons living with disability have good standard of living for themselves and their families including adequate food, clothing and housing, and continuous improvement of living conditions" Section 24(3) of the law also mandates the modification of accommodation so as to provide access to such property for persons with disability. The law also establishes the office of Disability Affairs in compliance with the provision of CRPD (NTI, 2011).

## CONCLUSION

The discussion has shown the evolution of legal framework of special needs education in Nigeria. However, despite how laudable the achievements are on the journey of enacting laws on persons living with disabilities there are some knotty issues that are yet to be resolved and they are discussed as follows:

**1. Labeling:** Label is a word or phrase that is used to describe somebody or something in a way that seems to general, unfair or not correct (Hornby, 2001); labels such as disabled, deaf, mentally retarded, emotionally disturbed, stammerers, learning disabled, etc are found in some of these policies, bills and laws on persons with special needs. "Labels and classification are important tools of administration. It is helpful for budgeting especially at the point in time when accountability is being demanded by school systems and parents. Labels and classification are potentially lethal and dehumanizing. Evidence abounds in mental health and psychiatry and even in special education that individuals that are labeled and classified are on these bases are denied of their Fundamental Human Rights. Right to function and associate freely can become a vanishing reality to the person labeled and classified. The limits of the damaging potential of labels and classification have not been successfully defined by physiatrists and sociologists yet: in their stigmatic effects labels are pervasive. (Adima et al., 1988). Moss (1974) observes that "one of the most volatile issues the emerged during the decade was the

labeling of children. The fluency which surrounds the issues of labeling brought forth advocates from every possible point of view. There were those against labeling in any form. There were those rushing to defend the use of labels. There were those who considered the use of the term mentally retarded in bad taste. The labeling or mislabeling of children will continue to be an "issue" in special education as long as new programmes are developed which are more precisely designed to meet the particular needs of particular subgroups of children. Children are labeled and grouped according to today's knowledge and programme. As new programmes are developed the old categories and programmes will not fit all children. Therefore, in order for these issue of labeling which affects the fundamental human rights of persons with special needs to be addressed there is the need for professionals in the field of human endeavour such as medical doctors, special teachers, guidance counselors, sociologists, psychologists, clinical psychologists, psychiatrists, and lawyers to meet and come up with a more "decent and dignified" labels for persons with special needs so as not to encroach on their fundamental human rights.

**2. Inclusive education:** The policies, bills and laws on persons with special needs favours inclusive education. Stout (2001) observes that "inclusion remains a controversial concept in education because it relates to educational and social values, as well as to our sense of individual worth. Any discussion about inclusion should address several important questions:

1. Do we value children equally?
2. What do we mean by inclusion?
3. Are there some children for whom "inclusion" is inappropriate?

There are advocates of both sides of the issue. James Kauffman of the University of Virginia views inclusion as a policy driven by an unrealistic expectation that money will be saved. Furthermore, he argues that trying to force all students into the inclusion mold is just as coercive and discriminating as trying to force all students into the mold of special education class or residential institution. On the other side are those who believe that all students belong in the regular education classroom, and that 'good' teachers are those who can meet the needs of all the students, regardless of what those needs may be between the two extremes are large group of educators and parents who are confused by the concept itself. "They wonder whether inclusion is legally required and wonder what is best for children. They also question what it is that schools and school personnel must do to meet the needs of children with disabilities". These issues parents and professionals concern with the education of children with special needs should meet to resolve so as not encroach on the rights of children with special needs and other children who are not classified as children with special needs. These issues have to be resolved too so

as to meet the needs of all students because in an inclusive class some of these special needs students will have learning difficulties placed on them by their disabling condition and in addition such a condition disturbs/interferes with other students.

**3. Laws for persons with special needs:** It should be noted that policies and bills are 'toothless bull dog'. They are mere statements of intent that are not blinding. It should be noted that it is only Lagos State Government that has signed into law the Special Peoples Law (SPL) 2011. To what extent is the law implemented? One may rightly say that the implementation is a 'tip of an ice berg'. Since 2009, the Nigeria Disability Bill is waiting for assent by the president before it can be legal. Last year during the World Disabled Day in October, persons with disability made a clarion call to all Nigerians to literally beg the president to pass into law the Nigeria Disability Bill. The bill is yet to see the light of the day. One fact that should be known is that, government is not prepared to pass into law the Nigerian Disability Bill. Before the bill is passed into law certain issues have to be addressed and they are:

**1. Finance** – To implement the law required huge financial involvement example, schools have to be built with such group of persons in mind, such as building of ramps and other facilities to suit their learning. In addition, schools that are already in existence have to be modified to suit this group of persons.

**2. Logistics** – Teachers (both regular and special teachers) have to be trained on how to implement these laws. Indeed much is involved apart from these two reasons which are beyond the scope of this paper. It is hoped that these and some other issues should be resolved quickly as possible so as to pass into law the Nigerian disability bill of 2009.

Conclusively, it is hoped that the issues raised here would be addressed because when persons with special needs rights are met and have access to appropriate education, they would ultimately improve themselves and contribute to the political, social economic and technological development of the society they reside.

### Conflict of Interests

The authors have not declared any conflict of interests.

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