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## PARADIGM SHIFTS IN DISABILITY MODELS AND HUMAN RIGHTS

B.R. Akinbola\*

### ABSTRACT

*Disability law is a recent entrant in the field of legal research and teaching at many universities internationally. The subject has also not been widely acknowledged in many countries around the world prior to the 1990s. This article examines disability from its different developmental phases classified as models of disability, namely the charity model, the medical model, the social model and the human rights model of disability. It evaluates the different models in terms of their historical significance, strengths and defects within the context of human rights theory and practice under International Law as it relates to the rights of persons with disabilities (PWDs). The article considers the human rights model as the outcome of the defects that existed in earlier models and argues that it is a contradiction whenever any entitlements considered as a human right are made contingent upon having a disability or the lack of it, of an individual. It examines the rights of persons with disabilities to human dignity under the United Nations (UN) Convention on the Rights of Persons with Disabilities and its Optional Protocol. It concludes that there is inequality and discrimination where characteristic qualities of disability which are not attributable to a person's action or inaction, or their merits or demerits are applied for the purpose of determining the rights of such a person.*

### I. INTRODUCTION

Persons with disabilities (PWDs) constitute one of the most vulnerable and largest minorities worldwide.<sup>1</sup> Disabilities occur in varying degrees of severity. In terms of population, over 600 million persons in the world are categorized as having a disability<sup>2</sup> and two-thirds of them live in developing countries, including Nigeria. According to Mark, the social conditions in Nigeria present a paradox in which, in spite of the robust

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1. Theresia Degener, *Disabled Persons and Human Rights: The Legal Framework*, in HUMAN RIGHTS AND DISABLED PERSONS (Theresia Degener & Yolán Koster-Dreese eds., 1995), at 11.

2. Theresia Degener, *Disability as a Subject of International Human Rights Law and Comparative Discrimination Law*, in DIFFERENT BUT EQUAL (Stanley S. Herr et al eds., 2003), at 155.

endowment of natural and human resources, the level of poverty in general and those of PWDs in particular contrast sharply with the country's wealth, with socioeconomic development declining in the face of increasing oil revenue.<sup>3</sup> Historically, persons with disabilities in Africa were viewed as the "...deserving poor and were given licenses to be beggars and some were put into institutions in order for them to be rehabilitated, rehabilitated and rehabilitated and then be farmed back into the world of the able-bodied where there are no facilities for disabled people."<sup>4</sup>

According to the world benchmark, 10% of the country's population has disabilities<sup>5</sup> and if this benchmark is applied to a country like Nigeria for instance, based on the current estimated population of 150 million people; it means that at least 1.5 million Nigerians have disabilities. Mark also posits that the deepening incidence and dynamics of poverty in Nigeria have stratified and polarized the society along the lines of the able bodied and the disabled, and between those who have and those who do not have. Disability alone is not as much a problem as the discrimination that society inflicts on PWDs. Most PWDs suffer from intense poverty and discrimination from society.

It has also been noted that disabled people remained excluded from all systems of community services such as transport, education, employment, sports and recreation and others. Disability issues were not part of the economic, political, cultural or social systems.<sup>6</sup> In Nigeria for instance, PWDs suffer exclusion, segregation, discrimination and marginalization as elsewhere and sometimes more intensely. According to Nwazuoke, individuals with disabilities, especially those with intellectual disabilities, were viewed as less human in Nigeria before the advent of Christianity.<sup>7</sup> He believed that as a result, they were denied their reality of existence.<sup>8</sup>

The perception of disability as "deficient" by the mainstream of society has further devalued the worth and integrity of PWDs as human beings and made them

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3. M.M. LERE, *THE ORGANIZATION AND ADMINISTRATION OF SPECIAL EDUCATION IN NIGERIA* (2007), at 7-8.

4. J.T. Malinga, *The Pan African Movement of People with Disabilities, in DISABILITY IN DIFFERENT CULTURES: REFLECTIONS ON LOCAL CONCEPTS* (Brigitte Holzer, Arthur Vreede & Gabirele Weigt eds., 1999), at 274.

5. LERE, *supra* note 3.

6. Malinga, *supra* note 4.

7. I.A. Nwazuoke, *Paradigms, Perspectives and Issues in Special Needs Education* (Inaugural lecture delivered at the University of Ibadan, Nigeria, 2010), at 5.

8. *Id.*

vulnerable to human rights violations.<sup>9</sup> The UN shared and expressed the same concern "... about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status."<sup>10</sup> Different factors therefore gave rise to discriminations and were applied to justify the same. The impacts of these disability based discriminations have been severe in fields such as education, employment, housing, transport, cultural life and access to public places and services.<sup>11</sup> Rosenthal has noted that, throughout history and throughout the world, societies have promoted or acquiesced in discrimination against persons with disabilities.<sup>12</sup> Discrimination on the basis of disability has been defined as:

any distinction, exclusion, or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.<sup>13</sup>

The belief that disability is evil and therefore anyone that has a disability deserves to be treated in a discriminatory manner contradicts the above definition and has come under severe criticism with the emergence of human rights instruments by the United Nations. Quinn and Degener, expert UN consultants on disability rights, have expressed the contradiction thus:

The view that disability is inherently bad and people with disabilities lead blighted, tragic lives ignores and invalidates our actual lives experiences. We have repeatedly asserted that it is not the disability

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9. L. Nyirinkindi, *A Critical Analysis of Paradigms and Rights in Disability Discourses*, 12 EAST AFR. J. PEACE HUM. RIGHTS (2006), at 49.

10. Preamble of the UN Convention on the Rights of Persons with Disabilities and Optional Protocol (UNCRPD), UNGA A/RES/61/106 of 24 January 2007, at ¶ p.

11. UN, Overview of International Legal Frameworks For Disability Legislation, available at <<http://www.un.org/esa/socdev/enable/disovlf.htm>> (accessed 10 June 2006).

12. Eric Rosenthal & Arlene Kanter, *The Right to Community Integration for People with Disabilities Under United States and International Law*, in DISABILITY RIGHTS AND POLICY: AN INTERNATIONAL PERSPECTIVE (Mary Lou Breslin and Sylvia Yee eds., 2001), at 336.

13. UNCRPD, *supra* note 10, art. 2.

so much which restricts equality and full participation in society, but the combination of social stigma, systemic barriers and persistent use of demeaning devaluing language.<sup>14</sup>

The view of Quinn and Degener is shared by disability rights advocates and has progressively gained support as shown by the transformations in the models of disability to date. The second part of this article therefore examines the four models of disability seriatim in relation to human rights. The third part is the conclusion and it recommends that any law, system or institution which makes a human right provision (especially for PWDs) subject to economic conditions, negates the intents of fundamental rights. Such provisions should constitutionally be made free of any attachment to economic convenience in order to ensure that PWDs are able to realize the enjoyment of their rights.

Persons with disabilities have been defined as "...those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."<sup>15</sup> The key issue here is the interaction of PWDs with environmental barriers as the factor that accounts for non enjoyment of rights on equal basis. Barriers erected by society lead to inability of some PWDs to integrate into society or to enjoy certain facilities and programmes for the realization of their full potential. PWDs are therefore put at a disadvantage. Areas of disadvantage suffered by PWDs include unequal or total exclusion from participation in civil, political, economic, social and cultural spheres.<sup>16</sup>

Disability has numerous causes including heredity, birth defects, lack of care during pregnancy, and childbirth, natural disasters, illiteracy due to lack of information on available health services, poor sanitation and hygiene, congenital diseases, malnutrition, traffic accidents, work related accidents, illnesses, sports accidents, and the so-called diseases of "civilization" such as cardiovascular diseases, mental and nervous breakdown or disorders, the use of certain chemicals, change of diet and lifestyle, respiratory diseases, metabolic diseases (diabetes, kidney failure, etc.) poliomyelitis, measles, and others.<sup>17</sup> Factors that cause disability may be classified as

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14. Joan Hume, *Disability, Feminism and Eugenics: Who Has the Right to Decide Who Should or Should Not Inhabit the World?* (Paper delivered at the Women's Electoral Lobby National Conference, University of Technology, Sydney, January 26, 1996).

15. UNCRPD, *supra* note 10, art. 1.

16. *Id.*, Preamble, ¶ y.

17. United Nations Enable, *Human Rights and Disabled Persons*, 6 HUMAN RIGHTS STUDIES SERIES (UN Publication Sales No. E.92.XIV.4, 1988).

preventable and non-preventable. The World Health Organization (WHO) has also categorized disabilities and attributed the proportions they contribute to the total level of disability. Although the WHO classification differs from those listed above, it is nonetheless helpful for better understanding of the causes of disabilities and may guide policy makers on the areas of emphasis in any preventive action to be taken. The proportions of contribution of different factors to disability according to the WHO data are as shown in the following table:<sup>18</sup>

<b>Causative Factors</b>	<b>In millions</b>
Non-contagious somatic illnesses	100
Injuries/wounds	78
Malnutrition	100
Functional Psychiatric disorders	40
Chronic alcoholism and drug abuse	100
Congenital diseases	100
Contagious diseases	56

Source: OMS, *La Vaz*, Vol. 1, No. 2, Montevideo, June 1987.

## II. CONCEPTUAL TRANSFORMATIONS IN DISABILITY

Conceptions of disability which are closely linked to specific models of disability have greatly influenced the treatment of PWDs by the mainstream of society. Fortunately, the models of disability have not been static but have been evolving and progressively improving in the last few decades in terms of compliance with human rights standards. This development is not unconnected to the effects of human rights advocacy on the subject of disability. New approaches have been emerging and improving the human rights status of PWDs globally. Waddington opines that a key element of this new approach is the recognition that segregation and exclusion is not a necessary outcome of physical or intellectual impairment, but the result of conscious policy choices based

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18. The WHO data is based on an estimated population of 500 million PWDs in the world.

on false assumptions about the abilities of PWDs.<sup>19</sup> Waddington went further to note that the new approach recognizes the role of discrimination in the form of false assumptions and the failure to adapt inaccessible services and jobs, thereby putting PWDs at a disadvantage.<sup>20</sup>

It is observed that legislation conversely seeks to combat disability discrimination by creating equal opportunity for PWDs and encompassing a civil rights approach to disability.<sup>21</sup> The application of human rights to situations of PWDs has not always been the norm from time immemorial. The four models of disability reflect stages in the development of disability rights. Early programmes on disability were driven by charity, and later, disability was seen as a medical subject and subsequently it became a social issue, and now it is viewed as a human rights subject. Each of the models will be discussed briefly with a view to portray a gradual but improving shift in paradigm from charity to human rights in the disability discourse.

#### A. The Charity Model

This model of disability is linked to charity and welfare towards persons who had the misfortune of either being born with a deficiency or acquiring one in the course of life. It puts PWDs at the mercy of the magnanimity of members of society. Persons with disabilities receive alms and gifts from able-bodied persons for their sustenance under this model. Main caregivers under this model of disability were the family members of PWDs, neighbours and other charitable persons. This model cannot be divorced from the way disability was perceived.

The general perception of disability in societies before and within the charity model maybe summarized throughout history, in the words of Covey when he highlighted a survey of a variety of known social attitudes to people with disabilities and he states that societies 'have believed that people with disabilities were closer to wild animals than humans', have presented people with mental illness 'as being wild men, savages, wild women, or animals', have thought of and labeled people with physical disabilities or deformities 'as monsters or monstrosities,' and have viewed people with developmental disabilities 'as inhuman, sub-human or biological throwbacks.'<sup>22</sup> The medical model put the "blame for disability" on the person with a

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19. Lisa Waddington, *Changing Attitudes to the Rights of People with Disabilities in Europe*, in LAW, RIGHTS AND DISABILITY (Jeremy Cooper ed., 2000), at 33.

20. *Id.*

21. *Id.*

22. C.C. HERBERT, SOCIAL PERSPECTIVES OF PEOPLE WITH DISABILITIES IN HISTORY 10 (1998).

disability and treated such as deserving of exclusion and discrimination. Such a view of disability was contested by Degener and Quinn when they wrote:

Inaccessibility problems are not inevitably raised by mobility, visual or hearing impairments, but instead are a corollary of political decisions to build steps but not ramps, to provide information in printed letter version only, or to forgo sign language or other forms of communication. Instead of viewing disability as an individual problem, the focus finally has shifted to how the environment and society as a whole fails to consider human differences.<sup>23</sup>

The problems of PWDs are essentially not the impairments, but discrimination and lack of accommodation from society, leading to exclusion. In such a context, whatever was done or allowed for PWDs in society, the motivating factor was charity rather than acknowledgment of their human persons and therefore subjects of basic rights. In terms of how the charity model was practiced in Nigeria, family members and Christian missionaries played the leading role in caring for PWDs. Nwazuoke opines that the antecedent to the missionary era was that individuals with disability and especially intellectual disabilities were viewed as less than human and denied the right to existence.<sup>24</sup> Notably also, in some parts of Nigeria, PWDs were well treated, but not as a recognition of their human rights, but rather, for charity and religious observances. For instance, “albinos”<sup>25</sup> and persons with “hunched back” were regarded as possessing special spiritual powers among the *Yoruba* of western Nigeria. Ignorance and superstition rather than scientific facts and reasons, informed and were the major factors that shaped attitudes towards PWDs in the era of the charity model. Essentially, PWDs were seen as providing the avenue for philanthropic expressions under the charity model.

#### B. The Medical Model

It is obvious that the medical model of disability presumes disability as a sickness and

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23. THERESIA DEGENER & GERARD QUINN, A SURVEY OF INTERNATIONAL, COMPARATIVE AND REGIONAL DISABILITY LAW REFORM (2000).

24. Nwazuoke, *supra* note 7, at 4 -5.

25. According to the “Encarta” Dictionaries, an *albino* is a person or animal lacking skin pigmentation. The skin and hair lack pigmentation and eye irises are pink because of a hereditary condition called albinism.

therefore PWDs as needing cure. The medical model of disability views disability as a problem within the individual person with a disability, while ignoring the effect of the environment on the ability of PWDs to function. It is perhaps the most applied disability paradigm in the view of Nyirinkindi, as it holds the individual responsible for any related educational problems<sup>26</sup> for instance. In terms of its effects in the field of education, it has been found that often it is not the disability that affects the education of children with disabilities (CWDs), but rather the denial of opportunities to education.<sup>27</sup> Some of these barriers include inaccessibility to transportation, lack of assistive devices, inaccessible schools and lack of teacher support.<sup>28</sup> Usually, emphasis is shifted from such “disabling factors” and ironically, placed on the impairment of a person with disability. The medical model of disability is sometimes referred to as the “defect model” reflecting a disproportionate influence of “medicalization” of disability.<sup>29</sup>

It has been posited that until the late twentieth-century, “disability was viewed through the lens of a medical paradigm of individual pathology.”<sup>30</sup> Impairment was conceptualized as “rooted in bio-medical and genetic traits or some type of dysfunction, and medical treatment focused on the individual, with an attempt to cure the curable and eradicate the “incurable.”<sup>31</sup> In consonance with these views, Braddock and Parish have noted that Darwinian notions of scientific survival, eugenic policies, involuntary sterilization and medical experimentation of persons with disabilities were characteristic qualities of most disability policies during the twentieth century.<sup>32</sup> These notions about disability were challenged by the intensive involvement of persons with disabilities and disability advocates who insist that such views are incorrect, in the last three to four decades.

According to Ballard, the underlying value behind the clinical or biomedical perspective, which is worth noting, is that “disability is a sickness, personal tragedy and

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26. A. NDEEZI, *THE DISABILITY MOVEMENT IN UGANDA* 9 (2003).

27. B. Bekink & M. Bekink *Children with Disabilities and the Right to Education: A call for Action*, 20 *STELL L. REV.* (2005), at 142.

28. *Id.*

29. UNICEF-INNOCENTI RESEARCH CENTRE, *PROMOTING THE RIGHTS OF CHILDREN WITH DISABILITIES* (Innocenti Digest No.13, 2008), at 5.

30. M. Sabatello, *The Human Rights of Persons with Intellectual Disabilities: Different but Equal*, 27 *HUM. RTS Q.* 737 (2003), at 739.

31. M.H. Rioux, *On Second Thought: Constructing Knowledge, Law, Disability and Inequality*, in Herr et al, *supra* note 2, at 290-91.

32. D.L. Braddock & S.L. Parish, *Social Policy Towards Intellectual Disabilities in the Nineteenth and Twentieth Centuries*, in Herr et al, *supra* note 2, at 90-91.

object of charity."<sup>33</sup> Consequently, special needs may not be met as a right, but only on application for special help within a context that privileges some human characteristics over others.<sup>34</sup> There is obvious inequality where characteristic qualities which are not attributable to a person's action or inaction, merits or demerits are applied for the purpose of determining the rights of such a person. The extension of such a practice is that a person may be punished for doing no wrong but possessing or lacking certain qualities which are beyond the control of the individual. The medical model creates an avenue for such injustices against persons with disabilities.

The wave of disability advocacy was highly influenced and inspired by the feminist movement, to challenge the traditional perception of the male "abled" body as the "normal" body for observation.<sup>35</sup> The disability advocacy movement drew attention to the inappropriateness of scientific knowledge about sicknesses and diseases in the context of disabilities.<sup>36</sup> The paradigm of disability gradually drifted from viewing disability as a subject of medical anomaly calling for repair by doctors, as disability advocacy persisted and intensified, leading to the emergence of the social model of disability.

In terms of its human rights implications, the medical model of disability contradicts basic principles of human rights. The philosophy of the medical model of disability reflects in early notions and instruments on disability. The Declaration on the Rights of Disabled Persons, for instance, defines a disabled person as "any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of deficiency, either congenital or not, in his or her physical or mental capabilities."<sup>37</sup> Such definitions laid emphasis on deficiency and abnormality as indices of disability and turn focus away from the individual to the disability. The nomenclature "disabled person" clearly attests to this by introducing the 'disability' before the person! By this, rights are attached to ability, implying that where there is disability, there is no right. What can be further from the truth? This perspective contradicts the spirit behind the inalienable character of fundamental rights, which are inherent in all human beings, including those with disabilities.

Fortunately, the later instruments, especially by the UN reflect obvious changes in paradigm as portrayed by the UN instruments such as the Standard Rules on

33. K. Ballard, *Inclusion, Paradigms, Power and Participation*, in *TOWARDS INCLUSIVE SCHOOLS?* (C. Clark, A. Dyson & A. Millward eds., 1995).

34. *Id.*

35. T. Shakespeare, *Cultural Representation of Disabled People: Dustbins for Disavowal?* 9 *DISABILITY & SOCIETY* (1994), at 292-293.

36. QUINN RHODA, *WHAT PSYCHOTHERAPISTS SHOULD KNOW ABOUT DISABILITY* (1999), at 10.

37. Article 1, Declaration on the Rights of Disabled Persons (1975).

Equalization of Opportunities for Persons with Disabilities (Standard Rules) that decries the use of terminologies such as “disability” and “handicap,” as denoting a medical diagnostic approach that ignores the deficiencies of the surrounding society.<sup>38</sup> The Standard Rules chose to emphasize the “person” rather than the disability by describing its subjects as “persons with disabilities” rather than “handicapped” or “disabled persons,” thus, contradicting the medical model.

### C. *The Social Model*

Consequent upon severe criticisms of the charity and medical models of disability as well as intense advocacy for disability rights, the social model of disability evolved. This model of disability, in contradistinction to the two previously discussed models, emphasizes the disabling environment on the individual whether it is built or natural. In consonance with the social model, the Standard Rules identify the interaction of disability and the shortcomings in the environment and organized activities in society as factors that prevent the participation of PWDs on equal basis with others.<sup>39</sup> Recognizing the limiting factors in the society and the physical environment, the American National Council on Disability has called for a “reframing” and “reorientation” of the interaction between PWDs and societies<sup>40</sup> as appropriate responses towards redressing inequalities and injustices which were occasioned by the charity and medical models of disability.

In terms of its human rights implications, while the progression in the disability discourse from a charity model, to a medical model and then to a social model is commendable, the social model lacks the necessary legal binding force to achieve the necessary changes for PWDs to be accorded due legal rights. The social model of disability reflects the emphasis that international human rights instruments place on

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38. UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, UNGA Res 48/96, 20 December 1993, at 119.

39. *Id.* The UN Standard Rules lays down preconditions for equal participation as follows:

Rule 1 on Awareness raising

Rule 5 on Accessibility

Rule 6 on Education

Rule 7 on Employment

Rule 8 on Income maintenance and social security

Rule 9 on Family life and personal integrity

Rule 10- 12 on Culture, Recreation and Sports and Religion respectively.

40. NATIONAL COUNCIL ON DISABILITY, UNDERSTANDING THE ROLE OF AN INTERNATIONAL CONVENTION ON THE HUMAN RIGHTS OF PEOPLE WITH DISABILITIES (2002), at 27.

non-discrimination. The model rejects the long established idea that obstacles to the participation of PWDs are primarily due to impairment. It focuses rather on the environmental barriers, including:

1. prevailing attitudes and preconceptions, leading to underestimation;
2. the policies, practices and procedures of local and national government;
3. the structure of health, welfare and education systems;
4. the lack of access to buildings, transport and to the whole range of community resources available to the rest of the population; and
5. the impact of poverty and deprivation on the community as a whole and more specifically on persons with disabilities and their families.<sup>41</sup>

International legal instruments such as the Standard Rules on the Equalization of Opportunities which promoted the social model are classified as “soft law.” They were more of standard setting and persuasive instruments and carried no enforceable sanctions against defaulters. In contrast to the charity and medical models of disability however, the social model represents both a liberating and an empowering view which emphasizes the positive contribution that PWDs can make in the removal of the barriers to their participation.<sup>42</sup> On the other hand, the social model of disability emphasizes the role of government and civil society in the removal of obstacles and barriers to enable PWDs to participate on equal basis in society.<sup>43</sup>

It is notable that the social model of disability does not deny or reject the need for medical support, but argues that medical intervention must promote empowerment and independence,<sup>44</sup> acknowledging the rights of PWDs as humans. The progression in the emergence of human rights for PWDs did not end with the social model of disability, but continued with the emergence of the human rights model of disability which forms the focus of the next part of this article.

#### *D. The Human Rights Model*

Attempts to open up employment, education, housing, and goods and services for persons regardless of their disabilities have accompanied the growing understanding that disability issues belong in a social, rather than a medical category. A notable

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41. UNICEF-INNOCENTI RESEARCH CENTRE, *supra* note 29.

42. *Id.*

43. *Id.*

44. *Id.*

element of this new concept is the recognition that exclusion and segregation of people with disabilities do not logically follow from the fact of impairment, but rather result from political choices based on false assumptions about disability.<sup>45</sup> Some countries eventually made attempts to take a more integrative and inclusive approach to disability policy, as a result of which major legal reforms have resulted. The Americans with Disabilities Act (ADA) is of great importance in leading and influencing many other nations to provide legal backing for human rights of persons with disabilities.

Generally, the human rights model of disability conforms most to the current human rights' trends and standards in the global community. This model deals with "power relations and reorients the focus away from need to right,"<sup>46</sup> from exclusion to inclusion, from discrimination to equality and from marginalization to equalization of opportunities.<sup>47</sup> These statutes on equality of rights have been greatly promoted by international law, which articulates them. Some of the rights are specifically stated to address disability, while other international instruments only cover disability impliedly. Prohibition and elimination of discrimination are key concerns of the human rights model. Another concern is the equalization of opportunities for PWDs and their 'able-bodied' peers in all spheres of life on equal basis. In the area of education for instance, the Declaration on the Rights of Disabled Persons,<sup>48</sup> provides for the rights of PWDs to education.

Generally, the role of the UN in providing for and articulating the rights of PWDs is pivotal. Progressively, UN human rights instruments conferred rights on PWDs first by implying them and later by outright and express conferment of such rights or by specific prohibition of discriminations or discriminatory practices. It is notable that the Child Rights Convention (CRC) was the first binding instrument to be specifically concerned with children with disabilities.<sup>49</sup>

To achieve the application of human rights in the context of disability, the application of the UN Bill of Rights [Universal Declaration of Human Rights (UDHR),<sup>50</sup> the International Covenant on Economic, Social and Cultural Rights

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45. Degener & Quinn, *supra* note 23.

46. Report submitted to the Commission on Human Rights by Katarina Tomasevski, Special Rapporteur on the right to education mission to the United States of America, 24 September – 10 October 2001, E/CN.4/2002/60/Add.1, 28.

47. Nyirinkindi, *supra* note 9, at 57.

48. Declaration on the Rights of Disabled Persons, UN General Assembly Resolution 3447 (XXX) 9 December 1975.

49. Article 23 of the CRC puts an obligation on States to recognize the rights of children with mental or physical Disabilities to full and decent lives.

50. UNGA Res. 17 A III, adopted on 10 December 1948.

(ICESCR)<sup>51</sup> and the International Covenant on Civil and Political Rights (ICCPR)<sup>52</sup>] and later, the Convention on the Rights of the Child (CRC)<sup>53</sup> containing provisions which have been appropriately extended to cover the rights of PWDs against discrimination and inequalities, have been used even though the Bill of Rights did not make specific mention of disability.

The process of shift in the paradigm of disability models later necessitated specific recognition of the rights of PWDs, in addition to extending the application of the UN Bill of Rights to disability. The Declaration on the Rights of Mentally Retarded Persons,<sup>54</sup> the Declaration on the Rights of Disabled Persons,<sup>55</sup> the World Programme of Action Concerning Disabled Persons,<sup>56</sup> the Vienna Declaration and Programme of Action for Disabled Persons<sup>57</sup> and later the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities,<sup>58</sup> which provide detailed guidelines for policy development and implementation in international law, represent efforts at disability specific provisions of human rights. However, not having binding force is a great limitation to the impact of most of these instruments in making human rights a reality for PWDs.

### III. THE RIGHT TO HUMAN DIGNITY AND THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

The UN expressed concern over the continued discrimination suffered by PWDs over the years, inspite of the provisions made to protect them under the UN Human Rights Bill of Rights and other human rights instruments. Thus there were several demands for an international disability specific Convention. The human rights of PWDs received a great leap when the demands were concretized in the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol<sup>59</sup> at the 61<sup>st</sup>

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51. ICESCR, GA. Res. 2200 (XXI), adopted on December 19, 1966, UNGA OR 21<sup>st</sup> Session, Supplementary Doc. A/6316 (1966).

52. ICCPR, GA Res. 2200A (CCI) UNGAOR, 21<sup>st</sup> session, No. 16A/6316, Adopted on December 19, 1966.

53. UN CRC 1989.

54. UN GA Res. 119 (XXIV) 20 December, 1971.

55. UNGA Res. 3447 (XXX) 9 December 1975.

56. UNGA Res. 35/52, 3 December 1982.

57. UN. Doc. A/CONF. 157/23, 12 July 1993.

58. UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, 1994.

59. UNGA Res. A/RES/61/106, adopted on 13 December 2006 and entered into force on 03 May 2008.

Session of the General Assembly.<sup>60</sup> The CRPD represents the climax in the recognition of the rights of PWDs to date. The proposal for a new disability convention first met some opposition based on the argument that the rights of PWDs were naturally to cover everyone, including PWDs.

Notwithstanding this, advocates of PWDs pressed for a disability specific convention, arguing that PWDs are often overlooked in the process of implementation of existing human rights instruments. The adoption of the CRPD introduced new vigour and the much needed legal enforceability to the human rights of PWDs in the realms of international law in the global community. It has aided the growth of national legislations and policy formulation at national levels of several countries.

In terms of its human rights implication, the CRPD is a human rights instrument with an explicit social development dimension. It adopts a broad categorization of PWDs. It reaffirms that all PWDs of whatever type, must enjoy all human rights and fundamental freedoms, for instance the right to education.<sup>61</sup> The CRPD describes and clarifies how all categories of rights apply to PWDs. It further identifies areas where adaptations must be made for PWDs to fully and effectively exercise their rights. This convention also earmarks areas where protection of the rights of PWDs need reinforcement. The CRPD has been described as:

the culmination of the process initiated over two decades ago by the United Nations, of moving from the treatment of persons with disabilities as 'objects' of charity, medical treatment and social protection towards viewing persons with disabilities as 'subjects' with rights and making decisions for their lives based on their free and informed consent, as well as being active members of society.<sup>62</sup>

The CRPD reflects a "paradigm shift" in attitudes and approaches to persons with disabilities.<sup>63</sup> The convention has ushered in an era of rights as against charity and privilege in the perception of services and programmes for PWDs. It now confers legal rights which are enforceable in the courts of law, making it easier for the judiciary to decide cases in favour of the human rights of PWDs in jurisdictions where it is now applicable. Any country that ratifies the convention is expected to reflect elements of its provisions in its national laws and development agenda, including its poverty

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60. UN Treaty Series, Vol. 2515.

61. Article 24, UN CRPD 2006.

62. UNICEF-INNOCENTI RESEARCH CENTRE, *supra* note 42.

63. *Id.*

reduction strategy and the UN Development Assistance Framework.<sup>64</sup> For guidance and assistance in the implementation process, the UN and other international actors are expected to be involved.

With the advent of the CRPD, drastic shift in paradigm on disability models is not in any doubt, as best practices in human rights are now being endorsed globally. It is notable that "Paramount attention has been given to legal aspects and approaches, exploring how these coincide with the goals of the international disability movement – equality, non-discrimination, self determination, inclusion and social justice."<sup>65</sup> The emphasis on the legal aspects of disability is a reflection of a belief in the key role that international and national laws play in the construction of social conventions and realities.<sup>66</sup>

It has further been noted that emphasis on the legal dimension in disability paradigm shift, "also corresponds to contemporary discourse on legal transplants and on the impact of globalization on human rights, assuming that the flow of legal ideas, institutions and models play a prominent role in the development of legal systems around the world."<sup>67</sup> The international disability rights revolution offers opportunities for open, cross-cultural dialogue and cross-fertilization of ideas. It gives opportunity to the PWDs to assert their rights with more ease as they seek to enforce their rights with the aid of the CRPD and other international human rights instruments as well as national legislations which have benefitted from the global changes in disability paradigm discussed in this article.

#### IV. CONCLUSION

This article has examined the different models of disability in terms of stages and dispensations through which disability has been perceived and consequently how PWDs have been denied their human rights. It examined the charity model of disability which located disability in the individual and treated individuals with disabilities as objects of charity rather than subjects of rights. The medical model also was examined and it also locates disability within the individual, perceiving PWDs as "defective and needing to be fixed," while ignoring the "disabling barriers" in the environment. The medical

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64. *Id.*

65. Sabatello, *supra* note 30, at 742.

66. *Id.*

67. ALAN NATSON, LEGAL TRANSPLANTS: AN APPROACH TO COMPARATIVE LAW 22 (1993). See generally also, Sally Engle Merry, *From Law and Colonialism to Law and Globalization*, 28 L. & SOC. INQUIRY 571 (2003), at 578; William Twining, *A Post-Westphalian Conception of Law*, 37 L. & SOC. REVIEW (2003), at 211.

model also ignored the human rights and dignity of PWDs.

The social model of disability however, brought a great deal of improvement to the human rights status of PWDs. It pointed out the role of the natural and built barriers in the environment that make it impossible for PWDs to enjoy equal access and rights with other members of society. It helped to set standards through various instruments as one of its merits. However, it failed to create enforceable laws to back up the standards for optimum benefits of PWDs and this was its defect.

The fourth model examined is the human rights model which entailed the application of human rights to disability through the application of the UN Bill of Rights and other international human rights instruments such as the CRC and the CEDAW. The CRPD and its Optional Protocol were also examined as the climax of making PWDs subjects of human rights rather than objects of charity and medical interventions. The paradigm shift in disability models from charity to enforceable human rights provisions is a welcome one. Although it has taken long to come, so far it is worthwhile. The influence of globalization in the process of the shift in disability paradigms and the current state of disability discourse cannot be underestimated.

To realize the opportunities offered by the change in disability rights paradigm, it is important for countries to enact national legislations on the subject, reflecting the shifts that have occurred at the global level and ensuring the full implementation of the provisions contained in the CRPD as well as all other relevant international instruments. In countries like Nigeria where illiteracy level is very high, public education is a necessary measure for the realization of the rights of Nigerian citizens and others who have disabilities within its jurisdiction. National programmes for development may not be fully realized without mainstreaming of disability in such initiatives. Federal/National governments are encouraged to mainstream disability in all development programmes. Sanctions contained in national laws that result from domestication of the CRPD and its Optional Protocol, need to be strictly enforced to serve as deterrence for disability rights violators, including governments.