

**REALISING ACCESS TO INCLUSIVE EDUCATION FOR THE  
HEARING-IMPAIRED LEARNER IN NIGERIAN PRIMARY  
SCHOOLS**

**THIS THESIS IS SUBMITTED IN FULFILMENT OF THE  
REQUIREMENTS FOR THE DEGREE LEGUME DOCTOR IN THE  
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## **DEDICATION**

This Thesis is dedicated to my husband and parents, who have always loved me unconditionally and whose good examples have taught me to work hard for things that I aspire to achieve.

## SUMMARY

The hearing-impaired learner as part of a historically segregated and disadvantaged group experiences discrimination within Nigeria's general education system and the socio-political environment. In this study, the focus is on how hearing-impaired learners can access inclusive education, using normative ideas of equality that could inform the understanding and interpretation of the non-discriminatory clause in the Nigerian constitution. Emphasis is on advancing thoughts that are normatively open to the inclusive equality needs of the hearing-impaired in accessing primary education, in order to inspire and be capable of altering existing discriminatory conditions prevalent within Nigeria's general education system.

The study uses a range of analytical skills to probe the inclusiveness of existing arrangements regarding inclusive equality in education for hearing-impaired learners in Nigeria. More broadly, the study makes use of qualitative analysis. However, the study also employs a reasonable part of fieldwork which necessitated the use of quantitative data analysis in order to determine the number of semi-structured questionnaires to be distributed to schools. More generally, the study utilises the social model approach to disability and neo-natural law perspectives as qualitative interpretive tools for appraising understandings of inclusivity in education for hearing-impaired learners. From ideas inspired from the social model and neo-natural law, the study adopts the prescriptive and directive approach as a directing element in the evaluation of the responsiveness of law, policy and practice towards securing inclusive equality in education for hearing-impaired learners.

Additionally, the study employs some aspects of comparative analysis. The purpose was not so much to compare, but to create awareness regarding the equality and non-discrimination agenda in other jurisdictions. Against this backdrop, the Canadian and South African jurisdictions were used. The study contemplates that positive lessons could be learnt from these jurisdictions and mistakes can be avoided. Throughout, the study highlights the hidden nature of law, policy and practice in relation to hearing-impaired learners, which consequently demand the application of practical reasonableness and ideas of substantive justice in the making and implementation of rules and policy. The study situates inclusivity as a flexible approach that should present each learner with an opportunity to access and make choices regarding placement options as a matter of self determination. In the final analysis, the study argues for the establishment of a non-discriminatory educational system, where

hearing-impaired learners are taught in a language that is accessible and comprehensible and with which the learner is familiar right from home at the early age of schooling. The study considers the utilisation of accessible and comprehensible language an operative part of achieving substantive equality in education for hearing-impaired learners.

**Key words:** hearing-impaired learner, primary school, special school, regular school, inclusive equality, discrimination, formal equality, substantive equality, qualitative approach.

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## ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
ASL	American Sign Language
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CRPD	Convention on Rights of Persons with Disabilities
CRA	Child Rights Act
CRC	Convention on the Rights of the Child
EEA	Employment Equity Act
HECDI	Holistic Early Childhood Development Index
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICF	International Classification of Functioning, Disability and Health
ICIDH	International Classification of Impairments, Disabilities and Handicaps
ISCED	International Standard of Education
NPE	National Policy on Education
NSIAS	National Strategy on Screening, Identification, Assessment and Support
PLAI	Promoting Learning through Active Interaction
SUBEB	State Universal Basic Education Board
SENCO	Special Education Needs Coordinator
SEN	Special Education Needs
SERAP	Social Economic Rights and Accountability Project
UBEC	Universal Basic Education Commission



UBE	Universal Basic Education
UDL	Universal Design Learning
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organisation
WFD	World Federation of the Deaf
WHO	World Health Organisation

# Chapter 1

## Introduction and background to study

### 1 Introduction

In 2012, the World Health Organisation estimated that disabling hearing loss in children is worse in South Asia, Asia Pacific and sub-Saharan Africa (which includes Nigeria). According to the report, sub-Saharan Africa has approximately seven million children with disabling hearing loss.<sup>1</sup> Additionally, the World Federation of the Deaf (WFD) global reports<sup>2</sup> show that the current literacy rate of hearing-impaired learners is very low, with the implication that most hearing-impaired learners after going through primary school, both in special and regular schools still tend to find it very difficult to read and write. They also do not do well in achievement scores and there are usually no education programmes or policies underway to modify the compulsory means of assessment to suit the varying needs of hearing-impaired learners. They remain emotionally and economically dependent on other people and find it very difficult to claim constitutionally specified rights as well as participate fully in the society.<sup>3</sup>

The 1999 Constitution of the Federal Republic of Nigeria (Constitution), as amended,<sup>4</sup> provides for the right to education.<sup>5</sup> This is to the extent that the Nigerian government shall ‘as and when practicable’ provide free and compulsory universal primary education, strive to eradicate illiteracy and direct its policies towards ensuring adequate and equal opportunities at all levels.<sup>6</sup> This means that the right to education and the rights in education are implicitly non-justiciable. The non-justiciability of the right to education is also discernable in section 6(6)(c) of the Constitution.<sup>7</sup> It then becomes necessary to explore how inclusive education

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<sup>1</sup> WHO factsheet 2012 <http://www.who.int/mediacenter/factsheets/fs300/en/> (accessed 24 October 2013).

<sup>2</sup> H Hauland & C Allen ‘Deaf people and human rights’ (2009) Report of the World Federation of the Deaf 34.

<sup>3</sup> As above.

<sup>4</sup> Amended here implies that Nigeria is going through a process of ‘Constitutional amendment’. In January 2011, the then President Goodluck Jonathan signed two amendments to the Constitution. Consequently the Nigerian Constitution is believed to be in the middle of major amendments and this is a good opportunity to include specific provisions on grounds of disabilities.

<sup>5</sup> Constitution, Sec 18(1) & (3).

<sup>6</sup> As above.

<sup>7</sup> Under Sec 6(6)(c) of the Constitution, socio-economic and cultural are unenforceable by any court in Nigeria. This has been interpreted to mean that the right to education shall not by any means be the subject of litigation in any court of law in Nigeria as noted in *Attorney General of Borno & Ors v Rev Joshua Adamu & Ors* (1996) 1 NWLR (Pt 427) 68. This argument was also presented by Nigeria in the case of *Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v Federal Republic of Nigeria and Universal Basic Education Commission* ECW/CCJ/APP/08/08.

can be realised for hearing-impaired learners in Nigerian primary schools using normative human rights jurisprudence and ultimately, Nigerian law.

In order to complement Nigeria's jurisprudence towards the realisation of inclusive education for hearing-impaired learners and other persons with disabilities, the study utilises normative principles on inclusive education and some aspects of the comparative approach on equality and non-discrimination. It is important to stress that Nigeria recognises the inclusive education of children with disabilities with respect to its National Policy on Education (NPE) under special education needs.<sup>8</sup> This implies the provision of a segregated/separate system of education for learners with disabilities, including hearing-impaired learners. Recently, however, the understanding behind having two segregated/separate systems of education has been questioned.<sup>9</sup> This thinking developed from the disability field and has had significant influences, not only on special education practice but also on practice in regular education.<sup>10</sup> The contemporary thinking now demands that *all*<sup>11</sup> children which includes children with disabilities must be given inclusive education without discrimination.<sup>12</sup> However, there is a lack of clarity as to what really constitutes inclusive education for diverse learners, including learners with disabilities, and especially, hearing-impaired learners in Nigerian primary schools.

Nigeria is party to a number of international treaties that emphasise compulsory free primary education and inclusive education for all. These treaties include the Universal Declaration on Human Rights (UDHR),<sup>13</sup> the International Covenant on Economic Social and Cultural Rights (ICESCR),<sup>14</sup> the Convention on the Rights of the Child (CRC),<sup>15</sup> the Convention on

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<sup>8</sup> Nigeria National Policy on Education 6th ed. (2013) sec 7, para 11.

<sup>9</sup> J Kisanji 'Historical and theoretical basis of inclusive education' Keynote address for the workshop on Inclusive education in Namibia: The challenge for teacher education 24-25 March (1992); E Winter & PO Raw 'Literature review of the principles and practices relating to inclusive education for children with special educational needs' (2010) 3.

<sup>10</sup> As above.

<sup>11</sup> Emphasis added.

<sup>12</sup> BR Akinbola 'The right to inclusive education in Nigeria: Meeting the needs and challenges of children with disabilities' (2010) 10 *African Human Rights Law Journal* 457; DK Lipsky & A Gartner 'Inclusive education: a requirement of a democratic society' in H Daniels & P Garner (eds) *World Year Book of Education: Inclusive education* (1999) 12.

<sup>13</sup> Adopted 10 December 1948 GA Res. 217 A (III) see art 26.

<sup>14</sup> Adopted 16 December 1966 by United Nations General Assembly Resolution 2200A (XXI) and entered into force on the 3rd of January 1976 in accordance with art 27, see art 34 and 14. Signed and ratified by Nigeria on 29 July 1993.

<sup>15</sup> Adopted by United Nations General Assembly Resolution 44/25 of 20 November 1989 and entered into force on 2 September 1990 in accordance with art 49, see also art 23 and 28. Signed and ratified by Nigeria on 19 April 1991.

the Rights of Persons with Disabilities (CRPD),<sup>16</sup> the African Charter on Human and Peoples' Right (ACHPR),<sup>17</sup> as well as the African Charter on the Rights and Welfare of the Child (ACRWC).<sup>18</sup> The United Nations Committee on Economic Social and Cultural Rights, General Comment 11 on plan of action for realising compulsory free primary education for all is also instructive as an authoritative understanding of the International Covenant on Economic Social and Cultural Rights (CESCR).<sup>19</sup> Nevertheless, access to inclusive education for children with disabilities, especially hearing-impaired learners, still remain quite elusive.

Domestically also, the Nigerian government has promulgated the Child Rights Act of 2003<sup>20</sup> and the Compulsory, Free Universal Basic Education (UBE) Act of 2004. The UBE Act was adopted in order to give effect to Nigeria's National Policy on Education. The aforementioned human right treaties, standards and laws are all closely connected to the realisation of Nigeria's Sustainable Development Goal 4.<sup>21</sup> Nigeria's ratification of the international treaties further gives credence to Nigeria's National Development Goals, which is encapsulated in the National Economic Empowerment and Development Strategy.<sup>22</sup> This is also pursuant to Nigeria's commitment to achieving the Global Education for All initiative.<sup>23</sup>

At a broader level, it has been argued that human right norms are mutually dependent.<sup>24</sup> Taking the argument further, it can be said that the UBE Act derives its validity from the Constitution, and therefore gives effect to the Constitution. The UBE Act provides the legal framework for compulsory access to basic (primary) education for all learners in Nigeria. The

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<sup>16</sup> Adopted 13 December 2006 by General Assembly Res A/RES/61/106 came into force 2008, see art 24. Signed and ratified by Nigeria on 30 March 2007 and 24 September 2010 respectively.

<sup>17</sup> Adopted June 27 1981 OAU DOC CAB/LEG/67/3 Rev. 5, 21 I.L.M. 58 (1982) entered into force October 21 1986, see art 17. Adopted and ratified by Nigeria on 31 August 1982 and 22 June 1998 respectively.

<sup>18</sup> Adopted 1990 OAU Doc CAB/LEG/24.9/49 (1990) entered into force November 29 1999, see art 11 & 13. Adopted and ratified by Nigeria on 13 July 1999 and 23 July 2001 respectively.

<sup>19</sup> See ESCR General Comment No. 11, Plan of Action for Primary Education, UN Doc. E/C.12/1999/4 May (1999).

<sup>20</sup> Child Rights Act 2003 of Nigeria. This came into force in 2003 and provides the legal framework for the protection and care of the Nigerian child. This legislation by virtue of sec 12 of the 1999 Constitution is the domestication of the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

<sup>21</sup> Drawing mainly from the statement made by the then Nigeria's Minister of Education Prof. Ruqayyatu Ahmed Rufa'I and Prof. Godswill Obioma, Executive Secretary, Nigerian Educational Research and Development Council in the foreword and preface of Nigeria's National Policy on Education document (n 8 above).

<sup>22</sup> As above.

<sup>23</sup> As above.

<sup>24</sup> C Scott 'The interdependence and permeability of human rights norms: Towards a partial fusion of the international covenants on human rights' (1989) 27 *Osgood Hall Law Journal* 769; S Liebenberg 'Needs, right and transformation: Adjudicating social rights' (2006) 1 *Stellenbosch Law Review* 155; S Fredman *Human rights transformed: Positive rights positive duties* (2008) 220.

Act acknowledges Universal Basic Education to mean early childhood care and education with nine years of formal schooling, non-formal education, skills acquisition programmes and the education of special groups such as street children and disabled groups.<sup>25</sup> The interpretation section of the Act also describes a child to mean a person of primary school age between the ages of 6 and 16 years whether disabled or not.

The basic question is: What does the Universal Basic Education Act provide regarding the inclusiveness of education of children with disabilities, especially hearing-impaired learners? Where the answer to the above question is positive as to coincide with right reason and thinking, then we are left only with challenges to implementation. However, where the answer is negative and typifies inadequacies, it then raises some fundamental questions. One can begin to question the rationale behind the enactment of legislation that is not purposeful as it did not consider it imperative to make provisions towards ‘objective justice’<sup>26</sup> for all. It also raises questions as to the partial and unequal recognition of the least advantaged in the distribution of basic human goods. These analyses point towards the ideas of the neo-naturalists theorists. Neo-naturalists query practical reasonableness behind laws as posited and administered, as well as the role of law in achieving substantial justice.<sup>27</sup> The neo-naturalist theory in essence is instrumental to this study and forms a salient part of its framework.

In the light of the foregoing analyses and considering the fact that the Constitution does not make the right to education explicit as some jurisdictions have done, realising access to inclusive education for hearing-impaired learners in Nigeria is necessary. South Africa is an example of a domestic legal system that has constitutionally entrenched the right to education. South Africa<sup>28</sup> makes the right to education justiciable and available to everyone and goes further not only to enact legislation, but also adopted policies and programmes in that regard.<sup>29</sup> These signify measures by South Africa to give effect to its constitutional principles and international documents it has ratified in relation to state obligation under international law.

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<sup>25</sup> Compulsory, Free Universal Basic Education Act, 2004 of Nigeria, sec 15.

<sup>26</sup> Objective justice as used should be understood in the light of commitment to realising what is self-evidently good for every individual in the society.

<sup>27</sup> The history and main ideas of the neo-naturalists school of thought is discussed in the Chapter 2 of this study.

<sup>28</sup> See Constitution of the Republic of South Africa, Act 108 of 1996, sec 29(1)(a).

<sup>29</sup> In Chapter 7 the study elaborates on these details.

The South African Constitution has rightly been described<sup>30</sup> as a transformative and enabling constitution. This is basically because of its liberal disposition in aspiring towards an equality approach that is substantive as opposed to Nigeria's formal equality approach. It also recognises human difference, acknowledges socio-economic rights, and encourages participatory citizenship. This is because South Africa is mindful of its past and so aims to ascertain how the law can change to reflect the needs of people in the state. South Africa has also developed commendable equality jurisprudence and policies that animate article 24 of the CRPD on inclusive education.<sup>31</sup> This is reflective of attempts to bring about a distribution and redistribution of basic human goods. It also implicitly portrays an inner morality of aspiration that guides a legal system in the promulgation of its laws, as has been argued.<sup>32</sup>

Again, Canada is another jurisdiction that constitutionally protects the right to education.<sup>33</sup> It has also developed case law in the area of disability and education rights.<sup>34</sup> However, there is need to explore the adequacy or otherwise of some Canadian Court of Appeal and Supreme Court decisions in the light of international obligations with respect to the education of children with disabilities. This is based on the need to ascertain juridical opinions that could assist in strengthening the inclusive equality rights of hearing-impaired learners in Nigerian primary schools.

It becomes pertinent to look at both South African and Canadian jurisdictions in a bid to explore possible opportunities for realising access to inclusive education for hearing-impaired learners in Nigerian primary schools. Thus, it is against the above background that achieving inclusive education for hearing-impaired learners in Nigerian primary school is to be understood.

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<sup>30</sup> K Klare 'Legal culture and transformative constitutionalism (1998) 14 *South African Journal of Human Rights* 146; CG Ngwenya & L Pretorius 'Substantive equality for disabled learners in state provision of basic education: A commentary on *Western Cape Forum for intellectual disability v Government of the Republic of South Africa*' (2012) 28 *South African Journal of Human Rights* 82; Liebenberg (n 24 above) 155-57.

<sup>31</sup> *S v Makwanyane* 1995(3) SA 391 (CC) para 262; *Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa & Another* 2011 5 SA 87 (WCC) paras 26, 29, 46.

<sup>32</sup> L Fuller *The morality of law* (1963) 33-39.

<sup>33</sup> This is recognised as a fundamental responsibility of provincial governments in Canada.

<sup>34</sup> For example, *Eaton v Brant County Board of Education* (1997) 1 SCR 241; *Wynberg v Ontario* 2006 CanLII 22919 (ON CA); *Auton v British Columbia* (2004) 3 S.C.R.657, 2004 SCC 78; *Hewko v British Columbia* 2006 BCSC 1638 (2006); *Moore v British Columbia* 2012 SCC 6I (CanLII).

## 2 Statement of the problem

In 2012 the estimated number of persons with hearing impairment in Nigeria was more than one million.<sup>35</sup> It is also stated that 90 per cent of the children with hearing impairment are excluded from school due to communication difficulties, while as adults they suffer social exclusion and discrimination based on similar reasons.<sup>36</sup> In 2010 the estimated number of persons with hearing impairment in Nigeria was 837 946.<sup>37</sup> It is also indicated<sup>38</sup> that more than 70 000 Nigerians were deaf, and of school age, with less than half actually in school. About 7 000 were revealed to be between 6 and 18 years of age.<sup>39</sup> Sadly, inspite of the upward increase in the number of hearing-impaired individuals, the estimated group assumed to be in school faces certain challenges within and outside the school setting. Part of the reason for this poor situation is attributable to the fact that the methods and approach adopted in the education of hearing-impaired learners in Nigeria do not conform to the values underlying inclusion globally.<sup>40</sup>

In addition, the Nigerian government is yet to acknowledge the relationship between realising inclusive education for hearing-impaired learners and the enjoyment of other human rights as has occurred in some other jurisdictions.<sup>41</sup> This has led to the continuous violation of the hearing-impaired learner's access to inclusive education. Consequently, this study seeks to explore the purport of inclusive education for hearing-impaired learners in the context of regular or special education needs. This shall be done with consideration of the principles of equality and non-discrimination in the light of enhancing access and achieving substantive justice.

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<sup>35</sup> P Ajavon 'A sign language for Nigeria' (2012) *Commonwealth Education Partnership* 37. It is vital however to note that the prevalence of hearing-impairment may be higher than what is indicated in 2012. This is because a large number of hearing-impaired persons are on the streets as destitute while some are hidden in their homes because they are seen as shame on the family.

<sup>36</sup> As above.

<sup>37</sup> *Nigeria National Bureau of Statistics Annual Abstract of Statistics* (2010) 51.

<sup>38</sup> *Gallaudet Encyclopaedia of deaf people and deafness* (1986) 242; C Turkington & AE Sussman 'Encyclopaedia of deafness and hearing disorders' (2004) 151 <http://www.libguides.gallaudet.edu/content-mobile.php?pid=119476&sid=1029158> (accessed 24 October 2013).

<sup>39</sup> As above.

<sup>40</sup> CRPD, art 24; these values are also articulated in most international human rights instruments adopted and ratified by Nigeria. See notes (13-18 above).

<sup>41</sup> As illustrated in para (c) of the Preamble to the CRPD; see also Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, 25 June 1993, UN doc A/CONF 157/24 para 5 part 1.

### 3 Definition/clarification of terms

In advancing the basis for inclusive education for hearing-impaired learners, it is imperative to explain certain key terms as operationally used in this study.

#### 3.1 Hearing-impaired as used

In this study, hearing-impaired is used inclusively for individuals with mild, severe or profound hearing loss. Hearing-impaired persons belong to a heterogeneous community and there are variations in how the members identify. Some identify as 'deaf' or 'hard of hearing', indicating an audiological condition of not hearing and there is usually very little or no residual hearing.<sup>42</sup> Other hearing-impaired individuals identify as 'Deaf', which usually indicates a group of Deaf people who hold a set of beliefs and share a culture, otherwise known as Deaf Culture.<sup>43</sup> Deaf Culture is understood to represent a way of life wherein 'Deaf' individuals find a sense of identity. Members of Deaf culture mainly communicate using visual or signed language and may well use other communicative means to interact with persons who do not know how to use sign.<sup>44</sup>

Against this background, deaf people are to be understood as individuals who experience severe hearing loss little by little and usually have the possibility of using spoken language, speech reading, visual cues and signed language.<sup>45</sup> Hard of hearing on the other hand usually refers to individuals who normally know spoken language and often make use of residual hearing, hearing aids, speech reading visual cues and at times signed language.<sup>46</sup> Furthermore, deaf and hard of hearing, ordinarily have been referred to as 'oral deaf' as they do not often identify as members of a cultural minority.<sup>47</sup> Their communication needs are receptive to wider communicative programmes and assistance.

This study is alive to the fact that most persons with hearing impairment are not comfortable with the term hearing-impaired because it arguably connotes pessimistic stereotypes which

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<sup>42</sup> C Padden & T Humphries *Deaf in America: Voices from a culture* (1990) 2-5.

<sup>43</sup> As above.

<sup>44</sup> M Batchelor 'The teacher experience: Deaf education at Sizwile school: Challenges and strengths' (2010) 155 *American Annals of the Deaf* 498.

<sup>45</sup> As inspired by a reading of HL Bauman et al 'Beyond ableism and audism: Achieving human rights for deaf and hard of hearing students' Report presented to Canadian Hearing Society 4

[http://www.chs.ca/index.php?option=com\\_content&view=article&id=499&Itemid=568&lang=en](http://www.chs.ca/index.php?option=com_content&view=article&id=499&Itemid=568&lang=en) (accessed 12 November 2013); R Shemesh 'Hearing impairment: definitions, assessment and management' in JH Stone & M Blouin (eds) *International Encyclopaedia of Rehabilitation* (2013)

<http://www.cirrie.buffa.ed/encyclopedia/en/article/272/html> (accessed 13 September 2013).

<sup>46</sup> Shemesh in Stone & Blouin (n 45 above).

<sup>47</sup> Bauman et al (n 45 above) 4.



have become a potent means of putting into effect societal control and domination.<sup>48</sup> These stereotypes go as far as shaping policy, law and practice towards hearing-impaired learners. Nevertheless, the term hearing-impaired as used in this study does not personify the lack of biological hearing in a negative way. Rather it is intended to implicate the socio-political environment as the major cause of disability. Its use goes beyond emancipation from societal imposed derogatory names, to elicit political, socio-economic and cultural response to historical and contemporary patterns of discrimination and inequality faced by hearing-impaired individuals.<sup>49</sup> From Ngwena's perspective, part of the scheme of achieving substantive justice and human dignity for an oppressed social group entails 'renaming as a transformative tool for discarding derogatory and condescending epithets and appropriate new epithets that are respectful and enjoy acceptance.'<sup>50</sup> Consequently, it is acknowledged that it is up to a group or people to decide how they would want to be addressed.<sup>51</sup>

However, if the idea as shall be argued in Chapter 2, is that disability for hearing-impaired learners is mainly the inability of the socio-political environment to provide individualised services, then hearing-impaired becomes a convenient term of intervention, intended to bring about change in attitude, belief and practice. The CRPD in its preamble indicates disability as an evolving concept. The Convention also refers to people with disabilities as 'those who have physical and intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society with others'. Thus, the CRPD highlights disability not strictly in bio-medical terms but particularly in terms of exclusion from participation. Of significance is that it is the interaction involving individual impairments and environmental barriers that causes restrictions and thus brings about disability for hearing-impaired learners as persons with sensory impairment. For these reasons, the use of hearing-impaired instead of a person with sensory impairment is in line with the objective of realising substantive justice and inclusive equality for hearing impaired learners.

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<sup>48</sup> ML Murphy 'Defining people: Race and ethnicity in South African English dictionaries' (1998) 11 *International Journal of Lexicography* 1.

<sup>49</sup> D Diniz et al 'Disability, human rights and justice' (2009) 6 *SUR -International Journal on Human Rights* 61.

<sup>50</sup> Unpublished: CG Ngwena 'Disabled people and the search for equality in the work place: An appraisal of equality models from a comparative perspective' unpublished PhD thesis, University of Free State, 2010 249.

<sup>51</sup> In the words of Rogers Slee, 'We must consider the terms we use'. R Slee 'Social justice and the changing directions in educational research: The case of inclusive education' (2010) 5 *International Journal of Inclusive Education* 175.

Seen as a whole, one can conclude that hearing-impaired learners are of different identities and consequently require the provision of varied and individualised support services within the general education system. Arguably, the major needs of hearing-impaired learners are communicative support as well as services. In this regard, facilitating support services must entail the jettisoning of deaf education that is rooted in audism<sup>52</sup> and linguisticism. Audism resonates with the idea that one is 'able' because he can hear, while the other is 'abnormal or 'a tragic victim' because he cannot hear. Audism and linguisticism align with the ideas of ablism and the medical model of disability which emphasises individual impairment as the principal cause of disability.<sup>53</sup> This position is in contradistinction with that of the social model that implicates the socio-political environment. Linguicism<sup>54</sup> refers to the adoption of the language of the majority in the education of the hearing-impaired while relegating to the background their native signed language, which is considered an advantage to their education.

### 3.2 Inclusive education

Inclusive education is a complex concept and there are disagreements over what it means and how inclusive education can be achieved.<sup>55</sup> However, inclusive education as articulated by the UN CRPD Committee is understood to mean a general education reform in all formal and informal educational settings in order to lessen the effect of actual or possible discrimination in different and pervasive forms.<sup>56</sup> Specifically, UN CRPD Committee makes the vital point that the manner of inclusion is to be determined by the individual needs of the learner.<sup>57</sup>

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<sup>52</sup> Audism was originally used by Tom Humphries in his doctoral thesis (1975) to describe the exclusion and domination suffered by deaf persons; see Unpublished: T Humphries 'Communicating across cultures (deaf-hearing) and language learning' unpublished PhD thesis, Union Institute and University Cincinnati, 1977 12; Harlan Lane also reiterated similar views in his work. See L Harlan. *The Mask of Benevolence: Disabling the deaf community* (1992) 43.

<sup>53</sup> M Oliver *Understanding disability: From theory to practice* (1996) 30-32.

<sup>54</sup> A concept captured by Tove & Robert to describe the legitimate use of language to reproduce unequal distribution of power or resources between groups in the society, see SK Tove & P Robert 'Mother tongue: The theoretical and socio-political construction of a concept' in A Ulrich (ed) *Status and Function of Languages and Language varieties* (1989) 455.

<sup>55</sup> R Slee & J Allan 'Excluding the included: A reconsideration of inclusive education' (2001) 11 *International Studies in Sociology of Education* 173; L Barton 'Inclusive education: Romantic, subversive or realistic?' (1997) 1 *International Journal of Inclusive education* 231; L Florian 'Special or inclusive education: Future trends' (2008) 35 *British Journal of Special Education* 202.

<sup>56</sup> See the articulations in General Comment No 4 on inclusive education, adopted by the UN Committee on the Rights of Persons with Disabilities 2 September 2016, CRPD/C/GC/4 paras 9,10, 11 & 12. The UN CRPD Committee's comment on inclusive education is also reinforced in scholarly articles like R Slee 'Beyond special and regular schooling? An inclusive education reform agenda' (2008) 18 *International Studies in Sociology of Education* 99; D Armstrong 'Reinventing inclusion: New labour and the cultural politics of special education' (2005) 31 *Oxford Review of Education* 135; K Runswick-cole 'Time to end the bias towards inclusive education' (2011) 38 *British Journal of Special Education* 112.

<sup>57</sup> General Comment No 4 (n 56 above), para 9.

The normative content of inclusive education focuses on the elimination of barriers to learning and achieving effective participation.<sup>58</sup> The General Comment is an interpretation of the CRPD in terms of normative obligations towards learners with disabilities. Article 24 of the CRPD, and the General Comment Number 4 of the CRPD Committee provide a framework that recognises inclusive education as a basic human right that values supportive environments for diverse learners with disabilities. However, the CRPD and the General Comment do not provide much guidance on how inclusive education can be achieved by state parties. While the CRPD and the General Comment can be seen as facilitating inclusive education for learners with disabilities, the General Comment's interpretation of inclusive education for hearing-impaired learners is not easy to establish. The General Comment does not normatively recognise regular or special schools but insists on schools for rendering inclusive education.<sup>59</sup> Therefore, ensuring the realisation of inclusive education systems require dedicated and permanent efforts by state parties to the CRPD.

Permanent efforts can contribute towards building inclusive education systems. Provided that they are tailored and linked to the prescriptive and directive approach adopted in this study,<sup>60</sup> permanent efforts can help the general education system to progressively respond to divergent needs of hearing-impaired learners and other learners with disabilities. Achieving these features by the state is synonymous with the call by Barton that inclusive education should be considered as a means to an end and not as an end in itself.<sup>61</sup> Barton argues that inclusive education is about achieving real transformation and participation in the society for all learners through adopting a rights approach with respect to policymaking and delivery. Secondly, it involves a critique of socio-political priorities, structures and system. He further argues that inclusive education involves political recognition, celebration of difference and how we value individuals in the society. In summary, Barton re-echoes that inclusive education is about the why, how, when, where and the implication of educating all learners.<sup>62</sup>

Barton's definition of inclusive education presumes an understanding that inclusive education is not just about moving hearing-impaired learners from special schools to regular schools,

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<sup>58</sup> As above.

<sup>59</sup> General Comment No 4 (n 56 above), paras 34(c) & 39.

<sup>60</sup> The prescriptive and directive approach is the interpretive tool adopted in this study to advance the inclusivity of the hearing-impaired learner in education. This approach is further explained as the discourse progresses.

<sup>61</sup> L Barton 'Inclusive education and teacher education: A basis for hope or a discourse of delusion' Inaugural professorial Lecture Series Institute of Education, University of London 3 July (2003) 13.

<sup>62</sup> As above.

neither is it about integrating learners in an unchanged education system. Rather generally, Barton's arguments concerning inclusive education embraces all learners and goes further to consider the varied identities of learners, language used and support services provided. It further questions the curriculum, teaching method, and contexts in terms of achieving positive outcomes regarding individual development and participation.<sup>63</sup>

Normatively, the inclusive education needs of hearing-impaired learners and other learners with disabilities should be met in the general educational system with required accommodations provided rather than in special school.<sup>64</sup> This is probably based on the presumption that learners in special schools do not enjoy equitable access to learning services and facilities as children in regular schools. It is further believed that the individual needs of learners in special schools are not often prioritised.<sup>65</sup> Indeed, these arguments advance support for regular education for learners with disabilities.

However, with respect to hearing-impaired learners in Nigeria, the highlight should be on developing inclusive education systems, not on closing existing special schools. Where special education systems already exist, it will be difficult to substitute such systems with inclusive ones immediately. It is only by continuously making the general education system inclusive in line with the prescriptive and directive approach adopted in this study that focus on segregated special schools will begin to decline. The ultimate goal is to transform and adapt the general education system in order to make schools inclusive.<sup>66</sup> Regular or special school should be a meaningful and inclusive choice for hearing-impaired learners. Mere placement of hearing-impaired learners in regular schools without transformation in law, policy and practice will not comply with the normative value of inclusive education.

Learners with severe or profound hearing-impairment often require personalised services and accommodations that regular schools have not been able to offer either due to lack of commitment or the non-availability of resources (human, structural and financial). Other known factors such as reducing level of background noise or replacing an element of the

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<sup>63</sup> S Carrington & R Robinson 'A case study of inclusive school development: A journey of learning' (2004) 8 *International Journal of Inclusive Education* 141.

<sup>64</sup> See CRPD, arts 7 & 24; General Comment No 4 (n 56 above) paras 13, 18, 34 & 39. In General Comment No 4, general education is interpreted as 'all regular learning environments and the education department'.

<sup>65</sup> U Kilkelly 'Disability & children: The Convention on the Rights of the Child' in G Quinn & T Degener (eds) *Human Rights and Disability* (2002) 198.

<sup>66</sup> G de Beco 'Transition to inclusive education systems according to the CRPD' (2016) 34 *Nordic Journal of Human Rights* 54.

curriculum by an alternative element must be considered. The possibility of hearing-impaired learners preferring a special school instead of a regular school also exists. It has been argued that despite the mainstreaming or integration of education for learners with disabilities, prejudiced attitudes against such learners still exist in regular schools.<sup>67</sup> In as far as hearing-impaired learners are concerned, it is thought that considering their minority language is imperative and this has to be contemplated within ideas of equality in the context of education.

Given the historical marginalisation of hearing-impaired learners and the need to accommodate their different communication needs, achieving inclusive equality in relation to their education lies with how equality analysis deals with the difference of disability. In this regard, integrating and teaching hearing-impaired learners like everyone else will be inadequate by itself, to advance equality where it fails to address the needs of learners.<sup>68</sup> Achieving inclusive equality for hearing-impaired learners will require taking account of difference, which entails focusing on the particular needs and circumstances of individual learners when providing accommodations. Indeed equality demands a recognition of, and response to, diversity while making continuous and dedicated efforts to guarantee hearing-impaired learners participation in the general education system.<sup>69</sup>

Further reflections on how inclusive education can be achieved for hearing-impaired learners evoke memories of the mock judgment presented by Pothier in the reconsideration of *Eaton v Brant County Board of Education* decided by the Supreme Court of Canada in 1997 and the ‘separate but equal’ idea in relation to fundamental assumptions of equality.<sup>70</sup> Even though the Supreme Court of Canada did not mention the phrase ‘separate but equal’, it has been argued that ruling against a constitutional presumption of integration, and finding no breach arising from segregated placement, amounts to an affirmation that ‘separate is equal’.<sup>71</sup> The relevance of ‘separate but equal’ to our discourse lies in giving accent to ‘underlying theories of equality’ and in articulating nuanced arguments aimed at making the equal part genuinely inclusive in principle. While an account of the facts and particulars of *Eaton’s* case is not

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<sup>67</sup> J Fortin *Children’s rights and the developing law* (2003) 373.

<sup>68</sup> General Comment No 4 (n 56 above) para 11.

<sup>69</sup> In the Women’s Court of Canada: *Eaton v Brant County Board of Education* (2006) mock Judgment 1 W.C.R. 124, para 6.

<sup>70</sup> In the Women’s Court of Canada: *Eaton v Brant County Board of Education* (2006) mock Judgment 1 W.C.R. 124.

<sup>71</sup> As above, para 25.

considered necessary at this stage, (as this shall be done in Chapter 3) it is worth noting that reconsideration of *Eaton's* case ultimately highlights the imperative of transforming general school system in order to meet diverse needs.<sup>72</sup>

### 3.3 Special and regular schooling

According to the UN CRPD Committee on the Rights of Persons with Disabilities (the Committee), special schooling is synonymous with educating learners with disabilities in separate and segregated environments designed to respond to specific or different impairments, in isolation from learners without impairments in the regular learning environments.<sup>73</sup> This view presumes that special schools have traditionally been known to be meant for those having special needs or considered 'abnormal', 'inferior' or 'unacceptable' as a result of their body makeup,<sup>74</sup> while regular schools are meant for 'normal' children and has been used also to refer to mainstream schools.<sup>75</sup> The worry however is not just with the labels or naming but with the exclusion and discrimination synonymous with special and mainstream/regular school structures which have created some kind of tension.<sup>76</sup> Special and mainstream/regular school structures inadvertently distract attention from barriers within schools and the socio-political environment and revivify focus on individual deficits.

At the heart of the UN CRPD Committee's indictment of special and mainstream/regular schooling is a rejection of the medical and individual model of disability which considers bodily impairment as the problem of the individual. Equally, it has been argued that special schooling tends to obscure the failures and exclusions within the general school system.<sup>77</sup> Thus, special schooling portrays and attributes the failures of education to learners' bodily impairments. This deficit approach to disability leads to narrow and impoverished curricula content that limits educational opportunities for students in special schools.

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<sup>72</sup> Women's Court of Canada: *Eaton v Brant County Board of Education* (2006) mock Judgment, para 6, 57.

<sup>73</sup> General Comment No 4 (n 56 above) para 11 & 18.

<sup>74</sup> P Engelbrecht 'The implementation of inclusive education in South Africa after ten years of democracy' (2006) 21 *European Journal of Psychology of Education* 253.

<sup>75</sup> CG Ngwena 'Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa: A case study of contradictions in inclusive education' (2013) 1 *African Disability Rights Yearbook* 139; SD Kanga 'Forgotten or included? Disabled children's access to primary education in Cameroon' (2013) 1 *African Disability Rights Yearbook* 27; De Beco (n 66 above).

<sup>76</sup> Florian (n 55 above) 203.

<sup>77</sup> S Tomlinson *A Sociology of special education* (2012) 58; T Booth 'The poverty of special education' in C Clark et al (eds) *Theorising Special Education* (2005) 79.

However, the idea that special education is about responding to diversity and difference has been used to transform the dominance of views which divide learners into normal and abnormal.<sup>78</sup> For instance, the social model perspective regarding disability teaches that the socio-economic environment is the major problem and not individual learners. Accordingly, learners with impairments who require specific provisions are regarded as part of a valued diversity to which the education system should respond.<sup>79</sup> In this regard, there have been efforts to reform special education in order to promote normative improvements in the education of all learners. The shift towards the social model approach to disability is rooted in human rights jurisprudence that challenges traditional ideologies in special education, while criticising exclusionary practices within the regular school system.<sup>80</sup> One major argument is the assertion that for some learners, regular school system may not provide appropriate education and trying to force learners into an unchanged regular school system is just as coercive and segregated as forcing learners into special/segregated education system.<sup>81</sup>

The CRPD on its part advocates a flexible approach where learners and parents are presented with accommodating alternatives within appropriate environments.<sup>82</sup> The CRPD and its General Comment also reaffirm the social model of disability rights based perspective regarding inclusion. In relation to hearing-impaired learners, the CRPD obligates states to provide appropriate individualised support measures in ‘environments that maximise academic and social development’.<sup>83</sup> This requirement is also repeated in relation to hearing-impaired learners in General Comment Number 4.<sup>84</sup> It is thus possible to construe the CRPD provision and the General Comment interpretation as an obligation to equip schools with individualised support measures toward advancing inclusive education systems. This also affirms the possibility that some learners might require and prefer regular or special school provisions which must be provided within the general education system so as not to amount to segregated education.

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<sup>78</sup> Booth ‘The Poverty of special education’ in Clark et al (n 77 above).

<sup>79</sup> As above.

<sup>80</sup> P Farrell & M Ainscow *Making special education inclusive: From research to practice* (2002).

<sup>81</sup> F Bowe *Making inclusion work* (2005); J Evans & I Lunt ‘Inclusive education: Are there limits’ (2002) 17 *European Journal of Special Education* 2; J Kauffman ‘The regular education initiative as Reagan-Bush education policy: A trickledown theory of education of the hard-to -teach’ (1989) 23 *Journal of Special Education* 256.

<sup>82</sup> CRPD, arts 7 & 24; General Comment No 4 (n 56 above) para 34.

<sup>83</sup> See generally CRPD, art 24.

<sup>84</sup> General Comment No 4 (n 56 above) para 34(c).

Apparently, there are inherent tensions between inclusion for the majority of learners in the regular school and the needs of the minority in the special school as Lindsay points out.<sup>85</sup> However, it has been suggested that dealing with significant differences entails finding a balance between values, like labelling versus access to accommodations and learning plans relevant to individual needs.<sup>86</sup> This reinforces the idea that learners with disabilities can be taught in special schools as well as regular schools provided that specific needs are met. The emphasis is on identifying and accommodating learners' needs and removing barriers within the general education system. This human right approach in relation to inclusive education is attainable and demands a reflection on equality and a commitment to diversity.

In practical terms, where special schooling is seen as an alternative option for hearing-impaired learners because of the lack of provisions in regular schools and as a result of existent dominant norms, this amounts to inequality. The implication is that both settings promote discrimination and have, as a result, failed many children with and without disabilities.<sup>87</sup> Although not expressly stated by the Court of Appeal in *Emily Eaton's* case, the duty of domestic jurisdictions to make provisions is implicit in ascertaining the extent to which discrimination has occurred<sup>88</sup> and whether such discrimination can be justified. Achieving inclusive education for hearing-impaired learners resonates with the idea that special school only becomes a better alternative to regular schooling in contemplation of the specific needs of the learner as to objectively conclude chosen consent.<sup>89</sup> Thus in order to achieve substantive justice, equality may entail treating people differently as a way of recognising difference in the varying needs of learners in the context of education

### 3.4 Mainstreaming and Integration

Mainstreaming and integration as used in this study is to be read in line with the UN CRPD Committee definition in General Comment No. 4 on the right to inclusive education. The General Comment makes reference to mainstream educational institutions and has used the

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<sup>85</sup> G Lindsay 'Inclusive education: A critical perspective' (2003) 30 *British Journal of Special Education* 3.

<sup>86</sup> B Norwich 'Education, inclusion and individual differences: Recognising and resolving dilemmas' (2002) 50 *British Journal of Special Education* 482.

<sup>87</sup> Slee (n 55 above) 111.

<sup>88</sup> See also the Human Rights Tribunal decision in *Moore v British Columbia* (n 34 above), it was found that the non provision of intensive support for a child with dyslexia by the school district was discriminatory, and Justice Rowles exemplary dissent at para 25 in relation to the Supreme Court's decision that quashed the Tribunal's decision.

<sup>89</sup> Justice Arbour's advanced opinion on the importance of obtaining consent in the Court of Appeal's decision in *Eaton's* case, para 9. See also the British Columbia Supreme Court precedent on the criteria to meet in respect of consultation in *Hewko v British Columbia* (n 34 above).



term interchangeably to refer to regular schools.<sup>90</sup> Thus mainstreaming is the practice of placing or integrating learners with disabilities in regular schools, as long as the learner is able to adapt to the established requirements of such schools.<sup>91</sup> This implies therefore that mainstreaming and integration are closely related philosophically in practice as learners with disabilities are welcome to regular schools based on their ability and readiness without any structural change in the general education system. Sometimes learners with disabilities are kept in the same class with learners without disabilities in regular schools.<sup>92</sup> There are also situations where learners with disabilities are pulled out of the regular school classes to special classes, in a bid to provide individualised education in regular schools.<sup>93</sup> Thus, it is in this sense that mainstreaming and integration are used in this study.

### 3.5 Access

Access has been used to signify that some rights are implicitly subject to some limitations.<sup>94</sup> Within the disability discourse, the term is a bit more complex as it has been suggested to have different dimensions and no general definition is available.<sup>95</sup> Access is thus a relative term that is synonymous with admitting all as highlighted by the UN CRPD Committee.<sup>96</sup> For the purpose of this study, accessibility demands the provision of facilities and services in recognition of the different needs of the hearing-impaired in order to promote equality and non-discrimination.<sup>97</sup> This implies that accommodations must be made in a manner that meets the diverse needs of learners, in line with Universal Design for Learning (UDL) that provides access to inclusive learning opportunities for all, considers the variability of needs, and offers flexible approaches to learning within the general education curriculum.<sup>98</sup> UDL implementation expects teachers to modify and adapt the curriculum in order to meet

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<sup>90</sup> See General Comment No 4 (n 56 above) para 11.

<sup>91</sup> As above; see also G Landown 'The right of children with disabilities to education: A right-based approach to inclusive education' (2012) Position Paper.

<sup>92</sup> D Lipsky & A Gartner 'Inclusion, school restructuring and the making of American society' (1996) 66 *Harvard Law Review* 762; M Stinson & S Antia 'Considerations in educating deaf and hard of hearing students in inclusive settings' (1999) 4 *Journal of Deaf Studies and Deaf Education* 163.

<sup>93</sup> As above.

<sup>94</sup> S Woolman & M Bishop 'Education' in S Woolman et al (eds) *Constitutional law of South Africa* (2009) 57.

<sup>95</sup> S Iwarsson & A Stahl 'Accessibility, usability and universal design – Positioning and definition of concepts describing person-environment relationships' (2003) 25 *Disability and Rehabilitation Journal* (2003) 57 58-63; G Pirie 'Measuring accessibility: A review and proposal' (1979) 11 *Environment and planning* 299.

<sup>96</sup> See General Comment No 4 (n 56 above) para 21.

<sup>97</sup> As above, paras 21, 22, 23.

<sup>98</sup> K Kelly 'Fostering inclusion with universal design for learning' (2014) 17 *Diversity and Democracy: Campus and Classroom Climate for Diversity* 98; A Meyer et al *Universal design learning: Theory and practice* (2014).

different needs as well as interests, and usually puts the burden of reducing barriers to instruction on the education system.<sup>99</sup>

In the context of hearing impaired learners, it is expected that their education must adapt to services in their native signed language and other options which afford them the opportunity of living a participatory life in the society. In General Comment No 2 and No 4,<sup>100</sup> the CRPD Committee, drawing from other international human rights documents<sup>101</sup> emphasised that states shall take all appropriate measures to ensure that the general education system is designed to foster inclusion and guarantee equality. State parties are also required to eliminate barriers to accessibility of information, communication and other appropriate forms of assistance and support. Hence, the provisions made must be substantial, adjustable, non-discriminatory and must consider the specific individual needs of each learner in the process of providing equal educational opportunity.

### **3.6 Primary school**

Primary school provides a six year basic full time education, and the age of learners usually ranges from 5-11 years.<sup>102</sup> Primary has also been used to mean ‘elementary’ under the Universal Declaration on Human Rights<sup>103</sup> and ‘basic’ under Nigeria’s Universal Basic Education Act.<sup>104</sup> According to the UN Committee on Economic, Social and Cultural Rights (ESCR Committee) on the right to education, primary education refers to ‘the main delivery system for the basic education of children outside the family’.<sup>105</sup> In the view of the Committee, access to basic education contemplates the rendering of primary education which should be free, non-discriminatory and obligatory for everyone.<sup>106</sup>

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<sup>99</sup> Meyer et al (n 98 above).

<sup>100</sup> Committee on the Rights of Persons with Disabilities, General Comment No 2 ‘Accessibility’ UN Doc. CRPD/C/GC/2 11 April 2014; General Comment No 4 (n 56 above) paras 21, 23 & 34.

<sup>101</sup> For instance the International Covenant on Civil and Political Rights ICCPR in art 25(c) and International Covenant on Elimination of All Forms of Racial Discrimination art (f) acknowledge the right of access for everyone as a precedent, though not expressly articulated in the context of education. The Standard Rules also prescribes accessibility in Rule No 5. In General Comment No 9 the Committee on the Rights of the Child also stressed lack of access as a major cause of discrimination.

<sup>102</sup> Nigeria’s Compulsory, Free Universal Basic Education Act sec 15.

<sup>103</sup> Universal Declaration of Human Rights adopted GA RES 217A (111) 10 December 1948, art 26 (1).

<sup>104</sup> Nigeria’s Compulsory, Free Universal Basic Education Act secs 2(1) and 15.

<sup>105</sup> General Comment 13(2) (a), adopted at the 21st session of the Committee on Economic, Social and Cultural Rights, on the 8 of December 1999 doc E/C.12/1999/10, Para 9.

<sup>106</sup> General Comment 13 above, para 10.

It is further expected that there must be a plan for effective implementation<sup>107</sup> and the implementation must give concrete expression to the ideas of availability, accessibility, acceptability and adaptability.<sup>108</sup> Availability relates to the existence of appropriate and supportive educational settings for learners with disabilities.<sup>109</sup> Accessibility requires that educational environments must be designed to foster inclusion for all learners, including those with disabilities.<sup>110</sup> Acceptability requires that education provided is qualitative and meets the requirements, capacities, aspirations and preferences of learners with disabilities.<sup>111</sup> Adaptability refers to the obligation of adjusting education to meet the requirements of every learner by developing flexible and multiple ways to learn.<sup>112</sup> The implication is that these features are closely connected and must be in place within the educational environment in order to ensure opportunities for learners with disabilities at all educational levels. For example, primary education needs to be prioritised as it provides the necessary foundation towards further academic and human development for all and should not be rendered in a discriminatory manner.

#### **4 Research questions**

The main question the study seeks to investigate is:

How can the right to inclusive education be realised for hearing-impaired learners in Nigerian primary schools?

The sub-questions arising from the research question:

- i. What is the underlying value of the duty to provide inclusive education to hearing-impaired learners in Nigeria?
- ii. What is the adequacy of practices adopted in the education of hearing-impaired learners under Nigerian law, policy and practice?
- iii. What lessons can Nigeria learn from other jurisdictions?

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<sup>107</sup> Committee General Comment 11 on Plans of action for primary education, adopted at the 20th Session of the Committee on Economic, Social and Cultural Rights 1999, UN Doc E/1999/23, para 4.

<sup>108</sup> As contained in the report of the Special Rapporteur on the right to education, submitted in accordance with Commission on Human Rights resolution 1998/33, UN Doc E/CN.4/1999/49, paras 51-56. For a detailed understanding of ideas on availability, accessibility, acceptability and adaptability, see the work of K Tomasevski *Human rights obligations in education: The 4-A scheme* (2006).

<sup>109</sup> See General Comment No 4 (n 56 above) para 20.

<sup>110</sup> General Comment No 4, paras 21-23.

<sup>111</sup> General Comment No 4, para 24.

<sup>112</sup> General Comment No 4, para 25.

In summary, this study seeks to contribute to the existing body of knowledge through analysing critically the availability and provision of access to inclusive education to hearing-impaired learners as a legal right in Nigeria, and engaging national and international laws from a social constructionist disability perspective, as well as the neo-naturalist perspective. The employment of a situational analysis of the approach and practices used in the delivery of education to hearing-impaired learners in Nigerian primary schools using field research is also an addition to the body of knowledge in this study. The potential use of comparative law in the equality and non-discrimination field to inform possible lessons that Nigeria can learn in the development of its non-discrimination law and practices also represents an extension of knowledge.

## **5 Aims and objectives**

The aim of this study is not to argue that inclusive education for hearing-impaired learners in Nigeria requires moving them from special schools to regular schools.<sup>113</sup> Admittedly, including hearing-impaired learners in regular schools where they can learn with other children resonates with the principle of inclusive education. This study rather seeks to argue that inclusive education for hearing-impaired learners in Nigeria should contemplate jettisoning, within the general education, systemic ‘audism’ and ‘linguicism’ strategies.

Systemic ‘audism’ and ‘linguicism’ is reflective of using the same standard for everyone. It is dominating and tangentially does not recognise difference and diversity of hearing-impaired learners, but rather tends to eliminate differences by seeking to absorb and assimilate. It does not align with the practical ideas of freedom of expression, non-discrimination and the dignity of the human person aimed towards the process of achieving social justice and equalisation of opportunities as posited under the Nigerian Constitution.<sup>114</sup>

Realising access to inclusive education for hearing-impaired learners principally require the application of a universal design to learning. It entails providing accommodations for diverse learners within the general education system. This resonates with the idea of redistributive equality of opportunity, non-discrimination and equality for all. Equality here refers to ‘equal

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<sup>113</sup> The idea of Inclusive education has been observed as emerging from special education. Consequently inclusive education has become synonymous with having learners with disabilities in mainstream/regular schools, see De Beco (n 66 above) 47; G Thomas ‘A review of thinking and research about inclusive education policy, with suggestions for new kind of inclusive thinking’ (2013) 39 *British Journal of Special Education* 475.

<sup>114</sup> Secs 23, 34, 39, 42 and the Preamble to the Nigerian Constitution are instructive.

distribution among equals and unequal distribution among unequals'.<sup>115</sup> This can be understood as appealing to an idea of substantive equality in the South African Constitution for instance, which goes further than absolute equality.<sup>116</sup> These principles of justice put into consideration the various identities and characteristics of individuals in the society and focuses on circumstances and not just form. The notion of justice which is required to be substantive and redistributive puts the responsibility of making accommodation on the socio-political environment in order to achieve 'equality of outcome'. It is not subtractive in its approach, but is directed towards the development of full human potential, sense of dignity and participation in the society generally.

From the background to the study, it is obvious that hearing-impaired learners have suffered historical exclusion and marginalisation. In as much as education related discrimination is not solely responsible for the exclusion of hearing-impaired persons in the Nigerian society, nevertheless, it remains a fundamental trigger of marginalisation and hardship. As such, this study seeks to explore:

- i. How inclusive education can be realised for hearing-impaired learners in Nigeria by looking at normative principles.
- ii. The value of providing inclusive education for hearing-impaired learners.
- iii. Possible lessons that Nigeria can learn from other jurisdictions in relation to equality and non-discriminatory principles in the context of education for hearing-impaired learners.

## **6 Inspiring literature of reference**

Particularly in the Nigerian context, none of the reviewed literature expressly states the relationship between human rights and disability with specific regard to inclusive education when it concerns hearing-impaired learners. Furthermore it is found that none of the appraised literature specifically highlights how Nigerian laws can be interpreted and strengthened towards enhancing the realisation of inclusive education for hearing-impaired learners in Nigeria. Therefore the crucial need to develop persuasive approaches for

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<sup>115</sup> FE Foldvary *The soul of liberty: The universal ethic of freedom and human rights* (1980) 160; G Stefan 'Equality' in Edward N Zalta (ed) *The Stanford encyclopaedia of philosophy* (2011) <https://plato.stanford.edu/archives/spr2011/entries/equality/> (accessed 3 March 2014).

<sup>116</sup> For a detailed conception of substantive equality discourse, see Ngwena 'Disabled people and the search for equality in the work place' (n 50 above).

interpreting specific laws that provide for inclusive education in Nigeria arises. The equality jurisprudence of South Africa and Canada has been explored in order to learn and derive possibilities for the realisation of inclusive education for hearing-impaired learners in Nigeria.

Akinbola<sup>117</sup> in discussing the right to inclusive education for children with disabilities in Nigeria provided a general discussion on placement in regular schools. She also acknowledged the importance of providing reasonable accommodation for purposes of achieving equal educational opportunities. Her work did not border on the normative value of providing inclusive education for hearing-impaired learner in Nigeria, as a way of bringing an already marginalised group within a threshold of equality towards achieving the basic good.

This study fills the gap by looking at the underlying value of providing access to inclusive education for hearing-impaired learners in Nigerian primary schools. It is necessary to engage in a re-examination of the political value of inclusion. This will show the need for decision-makers to apply practical reasoning in order to achieve substantive justice and the common good for all learners, including hearing-impaired learners. Admittedly, this creates a positive duty on states to provide accommodations.

Maxwell, Leigh, and Marcus<sup>118</sup> in extolling the importance of admitting identity for hearing-impaired learners, concentrated more on its implications on their psychological and mental health. Their study did not focus on the importance of acknowledging the varied identities of hearing-impaired learners. This is in regard to the nature and adequacy of education provided them and its implication towards the realisation of inclusive education for them. This study extends the discourse further in stating that acknowledging identity culturally and linguistically resonates with the idea of making accommodations in the education of hearing-impaired learners.

Eleweke<sup>119</sup> in his work investigated issues affecting the education of hearing-impaired learners under Nigeria's 6-3-3-4 education system. His work emphasises the need for an enabling legislation that will provide legal support towards the implementation of the 6-3-3-4

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<sup>117</sup> Akinbola (n 12 above).

<sup>118</sup> DL Maxwell et al 'Social identity in deaf culture: a comparison of ideologies' (2000) 33 *Journal of the American Deafness and Rehabilitation Association* 14.

<sup>119</sup> JC Eleweke 'A review of issues in deaf education under Nigeria's 6-3-3-4 education system' (2002) *Journal of Deaf Studies and Deaf Education* 74.

education system in Nigerian schools, including schools for deaf persons. However, as it stands, Eleweke's work does not reflect the current position of Nigerian law and education policy with respect to basic education.<sup>120</sup>

The 6-3-3-4 system characterised Nigeria's former system of education as contained in the 1977 Nigeria's National Policy on Education (national Policy). The national policy reflects goals and standards for quality education delivery in Nigeria. Since 1977, successive editions have been adopted. The current edition of the national policy which was published in 2013 was established under the Universal Basic Education (UBE) Act. Under the 2013 edition of the national policy document, the current system of education in Nigeria is the 10-3-4 in line with the provisions of the UBE Act. The 6-3-3-4 education system represents six years of basic primary, three years of junior secondary, three years of secondary and four years of tertiary education. Similarly, one year of kindergarten, six years of primary education and three years of junior secondary education, three years of senior secondary education and four years of tertiary education reflects the 10-3-4 system.

This study seeks to highlight Nigeria's current position with regard to the provision of inclusive education for persons with disability. It will also show that there is now legislation called Compulsory, Universal Basic Education Act in pursuance of Nigeria's national education policy. It is argued that legislation is not enough. This study explores inclusive education in Nigeria's basic education. It goes further to question the extent Nigeria's basic education framework conforms to the provision of inclusive education for persons with disability under international law.

In another work, Eleweke<sup>121</sup> while arguing for inclusive education for deaf students in Nigeria hinged his argument on the need to enhance inclusive education programmes for deaf students by the Nigerian government. This study has moved beyond the scope of his work to examine inclusive education as a means of achieving full participation and inclusive citizenship for Nigeria's hearing-impaired learners.

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<sup>120</sup> Generally, see Nigeria National Policy on Education (n 8 above).

<sup>121</sup> JC Eleweke 'The challenge of inclusion of deaf students in Nigerian schools' (2008) *African Annals of the Deaf* 5.

Ajuwon<sup>122</sup> and Garuba<sup>123</sup> in analysing the problems and prospects of realising inclusive education for children with disabilities echo the inadequacy in the UBE Act. They also stressed the necessity to translate section 7 of Nigeria's National Policy on Education into concrete action. Closely connected to their idea is the issue of access and inadequacy in the delivery of education in Nigeria, especially as it affects children with disabilities. They however did not consider the necessity to resort to the judiciary where the executive and legislature have failed to carry out their duties. The judiciary will need to articulate the reasonableness behind legislative and policy measures where obvious discrimination, marginalisation and disempowerment exist. It becomes imperative for the court to intervene and remedy any unfair distribution towards maintaining fair equilibrium and achieving corrective justice. The development of case law jurisprudence is thus very important in improving access, enhancing sensitisation and in the objective interpretation and application of the UBE Act and section 7 of Nigeria's NPE.

This study has filled the gap by looking at other jurisdictions in relation to the non-discriminatory and equality agenda. This is aimed at providing an insight into possible lessons that Nigeria can learn in the development of Nigeria's equality provisions, particularly in the context of achieving inclusive equality in education for hearing-impaired learners.

The neo-naturalists' theory also relied on in this study developed as a result of the continued quest by humankind for justice. The law as given could not provide justifiable answers to emergent human interests which are varied and competitive in the society. The neo-naturalists principally articulated their approach in their effort to re-interpret and expand Aristotle and Aquinas ideas of natural law principles. Finnis, one of the major scholars of this school of thought, gave credence to natural law as that which is good and conforms to reason.<sup>124</sup> Hence traceable to the days of Aquinas to the present day is the affirmation that the essence of law is justice, and the desire to achieve substantive justice creates objective standards to which all laws and (acts) must conform.<sup>125</sup> Other major scholars who share

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<sup>122</sup> PM Ajuwon 'Inclusive education for students with disabilities in Nigeria: Benefits, challenges and policy implications' (2008) 23 *International Journal of Special Education* 11.

<sup>123</sup> A Garuba 'Inclusive education in the 21century: Challenges and opportunities for Nigeria' (2003) 14 *Asia Pacific Disability Rehabilitation Journal* 191.

<sup>124</sup> J Finnis *Natural law and natural rights* (1980) 33-34.

<sup>125</sup> D Lloyd *Introduction to jurisprudence* (1959) 333.



similar opinion with Finnis include Grisez, Boyle, George and Tollefsen.<sup>126</sup> Neo-naturalists conceive justice in terms of practical reasonableness in the distribution and redistribution of basic goods on the principles of equality, non-discrimination and human dignity. Their conception relates to the idea and content of law in any given legal system as rightly argued.<sup>127</sup>

An articulation of the basic goods shows that it essentially contemplates resources or goods that give meaning to human life in tandem with socio-economic and cultural rights provisions. Accordingly, they have been described as ‘the intrinsic aspects of personal full being’,<sup>128</sup> that direct every human reason implicitly or explicitly.<sup>129</sup> Apparently, from the thinking of the neo-naturalists is the reiteration that socio-economic goods and services impartially concern the welfare of all humans.<sup>130</sup> Drawing from the teachings of the neo-naturalists is an understanding that the impartiality urged does not just border on reproducing formal equality as is the case under the Nigerian Constitution. Rather, it contemplates equality that does not reduce the dignity or personality of others and which is consistent with acknowledging the difference in human diversity.

The ideas of the neo-naturalists sit well with the equality and non-discrimination discourse in this study. The centrality of the neo-naturalists approach is founded on the lived experience of hearing-impaired learners as a result of obvious exclusion and unjustified partiality in the delivery of their education. Neo-naturalists’ ideas usually engage the content and idea of law, policy, decisions and practice on any given group or individuals in the society towards the realisation of justice.<sup>131</sup> Their conclusions somewhat reinterpret the tenets of early natural law principles. Neo-naturalists echo the harmonisation of everyone’s interest in the society through objective and distributive justice.<sup>132</sup> This justice must be seen to preserve the respect and participation of everyone in the society by treating individuals as human beings and not excluding any from the society. They emphasise that any application of the law must of

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<sup>126</sup> C Tollefsen ‘The new natural law theory’ (2009) 10 *Lyceum* 1-17; see generally, S Jensen’s *Knowing the natural law: From precepts and inclinations to deriving oughts* (2015); USF Nnabue *Understanding Jurisprudence and legal theory* (2009) 95.

<sup>127</sup> Nnabue (n 126 above) 96-104.

<sup>128</sup> J Finnis et al *Nuclear deterrence, morality and realism* (1988) 277.

<sup>129</sup> J Finnis ‘Natural law and legal reasoning’ in RP George (ed) *Natural law theory: Contemporary essays* (1992) 134.

<sup>130</sup> F Njoku *Studies in jurisprudence* (2007) 115.

<sup>131</sup> Finnis *Natural law and natural rights* (n 124 above).

<sup>132</sup> Nnabue (n 126 above) 95.

necessity consider context, heterogeneity and variability due to individual differences and identities.<sup>133</sup>

At the same time, neo-naturalists do not support the use of the same standard for everybody and usually call attention to the recognition of difference. Their requirement of justice is for it to be substantial depending on the circumstances of each case.<sup>134</sup> Neo-naturalists contend that law, decisions and the execution of decisions must reflect ‘practical reasonableness’ in order to promote human goodness.<sup>135</sup> They acknowledge the importance of knowledge as one of the basic forms of human good required for individual autonomy in any legal system.<sup>136</sup> These basic goods are considered universal, unchanging and have coordinate value and should be made available for the common good of everyone in the society.<sup>137</sup> Neo-naturalists do not reject the law as posited. Nevertheless, they contend that any legal system must possess a commitment not to disregard the call for the provision of services that can aid towards the achievement of basic goods.<sup>138</sup> They also recognise the necessity of a legal system to aim towards concrete transformation in order to accommodate future circumstances.

However the use of neo-naturalists’ theory is not intended in any way to essentialise or hypostatise<sup>139</sup> the basic goods or to undermine governmental action on account of the incommensurable<sup>140</sup> nature of the basic goods. Rather it is used following Finnis as a ‘method’ or standard for appreciating the human good. It further envisages the possibility of attaining that good also for hearing-impaired learners in Nigerian primary schools through practical decision- making by those who wield authority. Natural law, as conceived by Finnis, is a method for securing human goods. It does not necessarily refer to ‘law’ as a code of higher rules or rights. Neither is ‘natural’ used to denote a mystical or human being, but

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<sup>133</sup> As above; Finnis ‘*Natural law and legal reasoning*’ (n 124 above) 135.

<sup>134</sup> AH Campbell (ed) *Justice: An historical and philosophical essay GD Vecchio* trans L Guthrie (1953) <http://books.goggle.com/books/about/justice.html>? (accessed 3 March 2014).

<sup>135</sup> Practical reasonableness resonates with the idea of political action, judge made decisions, including dominant assumptions by citizens in the society. J Finnis *Natural law and natural rights* (n 122 above) 23.

<sup>136</sup> Other basic goods listed include life, play, aesthetics experience, friendship, religion, practical reasonableness, see Finnis *Natural law and natural rights* (n 124 above) 87; G Grisez et al ‘Practical principles, moral truth and ultimate ends’ (1987) 32 *American Journal of Jurisprudence* 99.

<sup>137</sup> Nnabue (n 126 above) 101.

<sup>138</sup> Fuller (n 32 above) 39; J Finnis ‘The truth in legal positivism’ in RP George (ed) *Autonomy of the law* (1996) 195; KE Himma ‘Natural law’ *Internet Encyclopaedia of Philosophy* <http://www.iep.utm.edu/natlaw/html> (accessed 13 March 2014).

<sup>139</sup> J Porter ‘Basic goods and the human good’ (1993) 47 *Thomist* 27, Porter has challenged neo-naturalists of treating the basic goods as if they are spiritual beings having an autonomous existence of their own.

<sup>140</sup> As highlighted by Hittinger. See R Hittinger *A critique of the new natural law theory* (1989) 75.

denotes concrete reasonableness behind securing basic goods.<sup>141</sup> For in reasoning about human affairs, the need to act in a positive manner usually arises, and we begin to enquire the reason behind acting purposely, which ultimately leads us to the basic human goods.<sup>142</sup> An expansion of the neo-naturalists' perspective in Chapter 2 assists in articulating arguments towards the realisation of inclusive education for hearing-impaired learners in Nigerian primary schools.

## **7 Scope of the study**

The scope of this study is limited to access to inclusive education for hearing-impaired learners in Nigeria with particular reference to issues of justice, equality, and non-discrimination. The study engages national law, policy and practice as features of exclusion which hinder the realisation of inclusive education. This is with a view to making possible recommendations that will assist in providing access to inclusive education of hearing-impaired learners.

## **8 Methodology**

The research methodology is of a qualitative nature that consists of library-based text analysis. Data from quantitative research- such as participants' size, the size of questionnaire to be distributed and percentage of response rate provide important information for the empirical research. The empirical research method involves focus group interviews and discussions and the distribution of a semi-structured questionnaire. The research participants are policy-makers in the Nigeria education sector, teachers of primary schools who are hearing, as well as hearing-impaired. It also involves primary school pupils who are hearing-impaired, as well as those who are hearing. In order to guarantee protection of the privacy and identity of the participants in this survey, the Ethics Research Committee of the Faculty of Law of the University of Pretoria approved all materials and methods preceding the administration of semi-structured questionnaire and holding of focus group discussions.<sup>143</sup> In a similar manner, the consent of the empirical research participants was also secured.

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<sup>141</sup> WB Le Roux 'Natural law theories' in C Roederer & D Moellendorf (eds) *Jurisprudence* (2004) 53; R George 'A response' in M Cromartie (ed) *A Preserving grace: Protestants, Catholics and natural law* (1997) 157.

<sup>142</sup> Grisez et al (n 136 above) 106; Finnis *Natural law and natural rights* (n 124 above) 88, 100-102.

<sup>143</sup> The ethical approval letter is attached as Appendix I to this study.

With respect to empirical research, although the study generally seeks to reflect Nigeria's position in relation to inclusive education delivery to hearing-impaired learners at the primary school level, questionnaire distribution has been limited to schools within states in the south-east and south-south political zones of Nigeria. Nigeria is made up of six political zones with each zone having approximately six states.<sup>144</sup> However, because the primary school system in Nigeria is regulated by the Nigerian Federal Ministry of Education through the Universal Basic Education Commission and overseen by states and local governments, it can be taken that what is found in the case study zones is a reflection of general practice in other zones. Moreover practices assumed to obtain in the other political zones would be addressed during focus group discussions and in the course of interaction with some policy-makers in the primary education sector. Consequently, the two political zones chosen for the study represents two-third of the six political zones of the country.

This study uses neo-natural law theory based on the necessity to highlight the idea of justice as an end of law or policy. This is with regard to the lived experience of a historically marginalised group, which in this sense refers to hearing-impaired learners in Nigerian primary schools. This is made obvious by looking at written texts and the social order which exude structures that tend to ignore a group's disadvantaged position. The study seeks to align itself with the orientation of other theorists who critique the complacent prioritisation of subjective rights in place of the basic good.<sup>145</sup> Neo-naturalists extol the idea of 'universal objective good' and are against dominant social structures and seek to bring about 'normative transformation' for any hitherto marginalised group. They acknowledge knowledge as a basic good that awakens the consciousness of a marginalised group and enables them to take action towards emancipation and inclusive participation in the society.

The purpose of using neo-natural law theory for this study is to explore the link between the lived experiences of hearing-impaired learners, access to inclusive education and the wider socio political and cultural context. The overview of the neo-naturalists perspective has been provided under the literature review section of this chapter. However, the use of neo-naturalists perspectives does not preclude the use of other perspectives that could assist in elucidating arguments in the study.

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<sup>144</sup> These zones were carved out by the Nigerian government based on geo-graphical location which comprises of states with similar cultures and ethnic groups

<sup>145</sup> J Finnis *Natural law and natural rights* (1980); J Keown & RP George (eds) *Reason, morality and law: The philosophy of John Finnis* (2013). G Grisez *The way of the Lord Jesus: Christian moral principles* (1983); T Chappell 'Reason, passion and action: The third condition of the voluntary' (1995) 70 *Philosophy* 453.

In addition to neo-naturalists analysis, the social model of disability approach, which views disability as socially constructed, is also relied on. Furthermore, some aspects of the comparative approach are used in exploring the inclusive equality jurisprudence of South Africa and case law development of Canada with that of Nigeria. Focus is on providing insight into possible lessons Nigeria can learn, as well as mistakes to avoid in order to make progress towards the realisation of inclusive education for the Nigerian hearing-impaired learner.

## **9 Overview of chapters**

Chapter 1 provides the basis and framework of the study. It also outlines the background to the study, its aims and objectives, methodology and analysis of the study's inspiring literature of reference.

Chapter 2 forms the conceptual framework and justifies the philosophy of neo-naturalism and the social model of disability in connection with the normative values underlying the provision of inclusive education for hearing-impaired learners in Nigeria.

Chapter 3 presents a conceptualisation of inclusive primary education for hearing-impaired learners in Nigeria.

Chapter 4 discusses the extent of inclusion of hearing-impaired learners in Nigerian primary schools under Nigerian law and policy framework.

Chapter 5 explores and describes the extent of inclusion of the hearing-impaired learner in primary schools in Nigeria in terms of practice (field work).

Chapter 6 presents an analysis of the field work

Chapter 7 looks at South African and Canadian jurisdictions. This is aimed at providing an insight into possible models that Nigeria can borrow as well as refrain from in order to make progress towards the realisation of inclusive education for hearing-impaired learners. The reason for choosing South Africa and Canada is based on the fact that South Africa has developed equality jurisprudence, while Canada has instructive appellate court decisions on inclusive education with respect to persons with disabilities. Also, South Africa, Canada and

Nigeria share a similar legal culture in that they do not have codified legal systems but instead operate mixed legal systems.

Chapter 8 is the concluding chapter which contains some recommendations.

## Chapter 2

### Conceptual centrality

#### 1 Introduction

This chapter seeks to highlight the centrality of theoretical approaches underlining this thesis. It combines components of neo-naturalism and the social model of disability approaches, and analyses them through a human rights perspective as an evaluative, prescriptive as well as directive approach towards realising inclusive education for hearing-impaired learners in Nigerian primary schools.

To this end, the chapter is divided into six sections. Section one is the introduction. Section two provides the contextual framework necessitating the combined use of neo-naturalism and the social model approaches. Section three presents the neo-naturalists' and the social model of disability perspectives in terms of normative values. Section four discusses the tenets and contents of the social constructions of hearing-impairment that requires remedial attention. Section five provides a justification of the approaches adopted, while section six is the conclusion.

#### 2 Use of neo-naturalism and social model approaches: Underlying basis

The combined approaches, which shall be referred to as the prescriptive and directive approach in this study ultimately advance an inclusivity that contemplates a responsive substantive justice paradigm as against the formal justice status of the 1999 Constitution of the Federal Republic of Nigeria, as amended (Constitution).<sup>1</sup> This is based on the fact that the Nigerian Constitution does not explicitly provide for the right to education, but recognises it as a right to be realised in the future for everyone under the section on the Fundamental Objectives and Directive Principles of State Policy.<sup>2</sup>

Under the Nigerian Constitution, it is true that every citizen is assumed to have equal rights and opportunities before the law.<sup>3</sup> Linked to this is the fact that this provision is contained under the Fundamental Objectives Chapter which is considered non-justiciable under section 6(6)(c) of the Constitution and thus raises a question as to how to effectuate the equality

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<sup>1</sup> The formal justice provision which seeks to apply the same standard to everyone is evident in secs 42 and sec 17(2) of the Constitution as articulated.

<sup>2</sup> Constitution, sec 18.

<sup>3</sup> Constitution, 17(2)(a).

provision. However, it is suggested that a combined reading of section 34 on human dignity and section 42 on non-discrimination goes to show that the Constitution recognises the right to equality that tends to look at individual situations in a neutral way.

Being equal before the law resonates with the rendition of formal justice which assumes equality of status, maintains the same proportion, and withholds concrete equality in the interpretation and distribution of basic goods and services. This approach to equality and justice in Nigeria is further summarised in the statue of justice that adorns the various court houses and law schools in the nation. This statue represents ‘the goddess of justice’, with a blindfold, bearing a sword and a scale which evinces absolute measurement. Justice in this sense suggests the inability to peep through the blindfold so as to recognise difference among individuals. It is also analogous to refusing to tilt the scale of justice when necessary in order to compensate for the discrimination and inequality of a historically under-privileged group like the hearing-impaired learner.

Since the constitutional goal is to promote good government and the welfare of all persons based on the principles of equality and justice,<sup>4</sup> then the way and manner in which we imagine justice in terms of equality and non-discrimination is crucial, especially in relation to vulnerable citizens like persons with disabilities. The Nigerian Constitution can best be described as a transitional one, as the nation is yet to agree on basic matters regarding human existence.<sup>5</sup> The country is still confronted with difficulties in entrenching acceptable prerequisites for the interpretation and implementation of such concepts as non-discrimination and equality.

For instance, Nigerian courts have for so long interpreted the equality clause in the Constitution as identical treatment. In the case of *Uzoukwu v Ezeonu II*,<sup>6</sup> the Court of Appeal held among other things that an action for discrimination can only succeed under section 39 of the Nigerian 1979 Constitution, - (now section 42 of the present Constitution)-, where the discrimination complained against is listed as a prohibited ground, and where the ground

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<sup>4</sup> As contained in the Preamble to the Constitution.

<sup>5</sup> Here I use the term ‘transitional society’ to depict a stage where there are yet no agreed or exemplary rules or norms regarding competing claims of individuals in the society. The term ‘transition’ is not used in terms of a meaning it has acquired which is synonymous with coming out from one political ‘state of affairs’ to another in line with the goals of ‘transitional justice’, See TO Hansen ‘The Vertical and horizontal expansion of transitional justice: Explanations and implications for a contested field’ in S Buckley-Zistel et al (eds) *Transitional justice theories* (2014) 105; J Subotic ‘Bargaining justice: A Theory of transitional justice compliance’ in Buckley-Zistel et al (eds) (above) 127.

<sup>6</sup> (1991) 6 NWLR (pt.290) 708 CA; The criteria for discrimination which the Constitution forbids include ethnic group, place of origin, sex, religion, political opinion or circumstances of birth.



complained against is also applicable to other Nigerian citizens. A similar interpretation was also reached by the Federal High Court in *Festus Odafe and Others v Attorney General of the Federation and Others*,<sup>7</sup> using section 42 of the Constitution.

It is true that the Supreme Court has to some extent, reiterated the importance of the right to non-discrimination in achieving the constitutional goal of equality as justice.<sup>8</sup> But the Supreme Court is yet to evolve and affirm equality interpretations which will further the constitutional goal of achieving inclusive justice for all, including persons with disabilities and specifically for hearing-impaired learners. There is indeed a dearth of judicial method on how to ascertain the content of equality and non-discrimination in terms of group specifics in Nigeria, not the least as it concerns disability issues.<sup>9</sup>

Admittedly, the Nigerian court's interpretation of what purposefully constitutes non-discrimination as well as equality before the law is surely not the only course or direction towards achieving inclusivity. However, the argument is that protection of concrete equality under the law without discrimination is required in ensuring that constitutional legitimacy is not eroded. As observed by Oyeboade, 'the constitution does not hang in the sky but is conditioned by political considerations and social realities'.<sup>10</sup> By extension, it is anticipated that the right to non-discrimination which connotes equality and human dignity employs an integrative approach so as to be inclusive and protective of the individual needs of persons, including historically disadvantaged members of the community.

In Nigeria, persons with disabilities, including hearing-impaired learners are stigmatised and are often hidden by their families. Access to immunisation against disease like measles, mumps and rubella which are known to cause childhood deafness is limited.<sup>11</sup> Access to public health messages which are often announced in the dominant language of those who

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<sup>7</sup> *Festus Odafe & Others v Attorney General of the Federation & Others* (2004) AHRLR 205 (NgHC 2004) High Court.

<sup>8</sup> *Mojekwu v Mojekwu* (1997) 7NWLR (pt 512) 283; *Alajemba Uke & Anor v Albert Iro* (1989) 2 NWLR (pt. 104) 373 S.C.; *Ukeje v Ukeje* (2014) All FWLR (730) 1329.

<sup>9</sup> On the other hand, in South Africa for example, the Constitutional Court has evolved principles for determining equality and unfair discrimination, in their effort to achieve substantive equality as contained in their Constitution. See the South African case of *President of the Republic of South Africa v Hugo* 1977(6) BCLR 708 (CC) para; *Hoffmann v South African Airways* (2000) 12 BLLR 1365 (CC) and the Constitution of the Republic of South Africa Act 108 of 1996.

<sup>10</sup> A Oyeboade 'Constitutional reform and the future of democracy in Nigeria' paper presented at the Action Congress South West Zone Annual Conference held in Ibadan, Thursday 19 March, (2009) 3.

<sup>11</sup> N Smith 'The Face of disability in Nigeria: A disability survey in Kogi and Niger States' (2011) 22 *Disability, CBR and Inclusive Development* 36.

hear are often denied.<sup>12</sup> The state does not make accommodations available. Rather the hearing-impaired child or the family is expected to take full responsibility for the cost of education.

The emergent and institutionalised system of capitalism in Nigeria is considered a contributory factor to the systemic exclusion of persons with disabilities, notably hearing-impaired persons from regular economic, social and political life. These loose ends, taken together, are comparable to the picture painted by Hunt, when he posited that ‘disabled people are set apart from the ordinary in ways which suggest them as posing a challenge to commonly held social values, he is made to appear unlucky, sick and worthless’.<sup>13</sup> By implication, when hearing-impaired learners become disabled by society, they immediately are made to feel devalued as also captured by Charlton.<sup>14</sup>

The oppression suffered by hearing-impaired persons very much parallels the experience and oppression of other persons with other disabilities. The vast majority of hearing-impaired persons are not educationally empowered and so they end up being dependent, powerless and non-integrated in the mainstream of Nigerian society. There is an assumption that they cannot receive education in regular schools because of their impairment and so, they are compelled to attend special or resident schools for deaf persons. They do not get to choose whether they want to be educated in regular schools or special schools. The Nigerian society already considers their impairment a disability even when they have tried to emphasise that they are not under any disability within their own community as has been stated.<sup>15</sup> However, the possibility underpinning the claim of not being under any disability is an implicit acknowledgment of oppressive social norms, ideology and practices which have necessitated a withdrawal into distinctive cultural associations.<sup>16</sup>

In addition, the hearing world’s inability to acknowledge and appreciate signed language, the scarcity of signed language interpreters and other communicative devices in Nigeria

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<sup>12</sup> NB Kiyaga & DF Moores ‘Deafness in Sub-saharan Africa’ (2003) 18 *American Annals of the Deaf* 148; JC Eleweke ‘A review of issues in deaf education under Nigeria’s 6-3-3-4 education system’ (2002) 7 *Journal of Deaf Studies* 74.

<sup>13</sup> P Hunt ‘A Critical condition’ in P Hunt (ed) *Stigma: The experience of disability* (1966) 146.

<sup>14</sup> J Charlton *Nothing about us without us: Disability oppression and empowerment* (1998) 21.

<sup>15</sup> As stated by Ladd and John while exploring the connection between Deaf persons and ‘disabled people’ see P Ladd & M John *Deaf people as a minority group: The political process* (1991) 14-15.

<sup>16</sup> M Coker *Deaf and disabled, or deafness disabled?* (1998) 29-30.

invariably worsen their situation.<sup>17</sup> Thus, disability becomes a condition or experience forced on a social group by society as a result of prejudiced expected criteria of ‘ablism’. The larger irony is that the socio-political environment is not held responsible, in terms of dismantling existing socio-economic and cultural barriers, in order to accommodate hearing-impaired learners. Hearing-impaired learners are usually expected to fit into existing educational arrangements before they can claim recognition.

While Nigeria has signed and ratified the CRPD and its Optional Protocol,<sup>18</sup> its national law, policy and practice with respect to persons with disabilities, do not evince the principles embedded in these instruments. Its law and practice do not appreciate human difference and tend to view impairment as an aberration.<sup>19</sup> The non-acceptance of hearing-impaired learners in regular schools and their ‘exclusion’ in special schools for deaf persons is testament. Furthermore, the delivery of their education in the dominant methods of the hearing is yet another form of oppression and dominance that denigrates the language of hearing-impaired learners. Their impairment is seen as an individual problem and by so doing ensconces the status quo where some persons are seen as normal human beings while others are perceived as not.<sup>20</sup> The simple truth is that the socio-political environment in Nigeria has not provided hearing-impaired learners the needed support in order to attain an inclusive education.<sup>21</sup>

In the final analysis, the argument is that the distinction between hearing people and the hearing-impaired is not so much that the latter cannot speak or hear; rather it is that hearing-impaired persons are an oppressed minority living in a disabling society. Obviously, these specified observations require attention. Predicated on the foregoing premise is the concern that those who pilot the business of the state ought to have necessary and concrete considerations regarding values which any government that assumes authority should contemplate in order to bring about inclusive justice for all. Thus, if we are to become conscious of the situation of vulnerable groups like persons with disabilities, addressing the

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<sup>17</sup> Revealed through participatory observation and oral interview with some teachers of the hearing-impaired, coupled with a reading of ‘Deaf people and human rights’; See H Hauland & C Allen ‘Deaf people and human rights’ Report of the World Federation of the Deaf (2009).

<sup>18</sup> On March 30, 2009 and September 24, 2010 respectively.

<sup>19</sup> There is no national legislation that directly addresses disability issues in Nigeria, apart from the aborted 1993 Nigerians with Disability Decree passed by the Nigerian Military Government in 1993. The Decree is largely an embodiment of social welfare instead of social justice and tends to focus on impairment as the cause of disability. Some states legislation on disability in Nigeria is also steeped in the diminutive fusion of functional limitation with body limitation. See for instance, the Lagos State ‘Special Peoples’ Law’ 2011.

<sup>20</sup> CG ‘Ngwenya Western Cape Forum for Intellectual Disability v Government Republic of South Africa: A case study of contradictions in inclusive education’ (2013) 1 *African Disability Rights Yearbook* 139.

<sup>21</sup> In view of the provisions of CRPD, art 24(2)(a).

presumption of equality of status in the Nigerian Constitution through theoretical approaches consistent with a re-thinking of the constitutional content of equality becomes paramount.

The prescriptive and directive approach parallels the Constitutional Drafting Committee's idea in justifying the inclusion of the Fundamental Objectives and Directive Principles (fundamental objectives) in the Nigerian Constitution.<sup>22</sup> The fundamental objectives implicitly resonate with the idea of rendering socio-economic justice to all. Ideally, this forms the cornerstone of every Constitution. The fundamental objectives have also been described as ideals which Nigeria is expected to achieve, whilst directive principles of state policy lay down the policies which are expected to be pursued in the nation's efforts to realise its goals.<sup>23</sup> However the issue of its justiciability is still ongoing in Nigeria.<sup>24</sup> Most of the commentaries in the final analysis are about the amendment of the Constitution to render the fundamental objectives justiciable. This supposedly tallies in significance with the prescriptive and directive approach adopted in this study.

Suffice it to say that it is the Constitution that provides the litmus test of efficacy and legitimacy of the content and application of substantive justice by law and policy, including practice in any legal system. For a historically marginalised group like hearing-impaired learners, achieving justice suggests the advancement of theoretical approaches that would sensitise legislators, executors and interpreters of the Constitution to see that law evinces understanding for the competing interests of individuals in order to justify its relevance and legitimacy. In a situation of reasonable scarcity, it has been argued that justice can be seen in the distribution of material and legal resources in a society.<sup>25</sup> Within this context, justice is indeed related to ideas concerning human dignity, non-discrimination and equality.

Specifically the prescriptive and directive approach puts focus on hearing-impaired learners in Nigerian primary schools and the realisation of inclusive education in the context of

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<sup>22</sup> 'The Report of Nigeria's Constitution Drafting Committee' (1979) Vol.1 v, the Committee alluded that governments in developing countries have been more concerned with power and its material benefits with little consideration as to how society can be organised to the best advantage of all. By logical analysis, animating the Committee's statement is the centrality of distributing and redistributing of resources along equal and unrestricted lines. Essentially, this is what the combined approach of neo-naturalism and social model of disability seeks to achieve.

<sup>23</sup> 'The Report of Nigeria's Constitution Drafting Committee' (n 22 above) x.

<sup>24</sup> See BO Nwabueze, 'The Fundamental Objectives and Directive Principles of State Policy: Its nature and functions' in W Ofonagoro et al (eds) *The great debate – Nigerians viewpoints on the Draft Constitution* (1977) 49; S Ebobrah 'The future of economic, social and cultural rights' (2007) 1 *Review of Nigerian Law and Practice* 109; S Ibeh 'Implementing economic, social and cultural rights in Nigeria: Challenges and opportunities' (2010) 10 *African Human Rights Journal* 197.

<sup>25</sup> USF Nnabue *Understanding jurisprudence and legal theory* (2009) 279.

justice. While it is conceded that the term 'justice' is an intangible concept,<sup>26</sup> any meaning attached to it must at least imply elements of human dignity, equality and non-discrimination towards the realisation of basic human goods of life. Writing about justice, Ogwurike highlighted that:

Justice would lose its ethical or moral meaning, and sink to a mere charitable treatment of the enslaved and the oppressed by those in power, without the involvement of the people in designing their legal system... it must be conceived of and evaluated in relation to its social purpose, function and the value system, the spirit of the time, the tempo of socio-economic and political developments in other states and above all, the greatest happiness of all.<sup>27</sup>

It therefore means that the securing of basic goods can only be met through law, policy and practice. Contemplating justice as equality under the prescriptive and directive approach serves as a balance, as against a scale used to measure the value of norms, policies and practice. It is about guaranteeing the equal substantive satisfaction of all human rights, without discrimination.

In the same vein, the prescriptive and directive approach seeks to interrogate neutrality in the law with respect to vulnerable groups like hearing-impaired learners. Making use of Friedman's views, the combined approach becomes a 'directing element' in the development of Nigerian law,<sup>28</sup> to question whether the law acknowledges variations in human beings and to what extent the principles of justice are applied. The combined approach seeks to analyse the impact of moral as well as social issues upon considerations of norms, policy and practice in the context of equality and non-discrimination. Indeed, persons with disabilities, especially the hearing-impaired yearn for such an endeavour especially in relation to the enactment of disability-related law. The closest attempt at legislation was the 1993 Nigeria disability decree that never came into existence.<sup>29</sup>

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<sup>26</sup> RW Dias *Jurisprudence* (1985) 67; Divided opinions abound on the concept and conception of justice, for instance see the following ideas of justice, T Aquinas *Summa Theologica* trans Fathers of the English Dominican Province (1981); J Rawls *A theory of justice* (1999); R Nozick *Property, justice and the minimal State* (1991) 10. Aristotle *The ethics of Aristotle: Nichomachean ethics* trans JAK Thomson (1976). The foregoing authors have exemplified the need for a distribution and redistribution in their conceptions of justice in a bid to achieve equality, except Nozick who saw justice as 'entitlements' already held by individuals in the state. Although the concept of justice is difficult to pin down, it is thought that any conception of justice as equality must not assimilate the interest of vulnerable or marginalised minority to that of the majority in the distribution and redistribution of socio-economic goods.

<sup>27</sup> C Ogwurike *Concept of law in English-Speaking Africa* (1979) 194.

<sup>28</sup> W Friedmann *Legal theory* (1967), the idea of directive element was first exemplified by Friedman in his effort to capture the revivifying influence of neo-natural law as an evolutionary ideal.

<sup>29</sup> Known as the Nigerians with Disability Decree 1993, promulgated by Nigeria's former military government. There is also a disability bill referred to as Discrimination Against Persons with Disabilities (Prohibition) Bill, 2014 that was introduced into Nigeria's National Assembly, the Bill was later passed by the Nigerian seventh Senate but could not get presidential assent during President Good luck Jonathan's administration see R Lang &

While the prescriptive and directive with respect to its evaluative components does not claim to be scientific, it nonetheless offers an ample basis for common conclusions to be pulled together, conclusions that hopefully will conventionalise disability issues in Nigeria in a purposeful and unrelenting manner. The prescriptive and directive approach will equally assist in raising awareness as to how appropriate legal and social provisions, including judicial interpretations, can be used to surmount barriers and enable hearing-impaired learners access inclusive education in Nigerian primary schools.

### **3 Neo-naturalism and social model of disability**

#### **3.1 A prescriptive and directive tool**

In this study, the prescriptive and directive approach is used as a conceptual framework to query norms, policies and practices that impinge on the realisation of inclusive education for hearing-impaired learners in Nigeria. This approach is intended to assist in ascertaining whether norms, policies and practices are receptive to the inclusive equality and non-discriminatory rights of hearing-impaired learners to inclusive education. Where the norms, policies and practices are found to be insensitive and non-inclusive, the fusion of the social model and neo-naturalism contemplates a rethinking of measures aimed at ameliorating non-inclusive realities towards what ought to be. In this sense, the framework coincides with the evaluative as well as prescriptive jurisprudence which correlates with the idea of a directive approach as to how to achieve an egalitarian distribution.

#### **3.2 Components of Neo-naturalism relative to inclusive justice**

Neo-naturalism is an incarnation of natural law. Accordingly, neo-naturalists' thoughts have been consistent with the idea of achieving objective good for human beings through practical reasonableness in rule making. This is closely connected to the idea of treating law as an evaluative and prescriptive exercise which obtains its value from a 'purpose' morality, by reference to which law, content and by implication policy and practice may be judged. By extension, neo-naturalists support the rule of law which propagates the idea of objective and substantive equality, non-discrimination and dignified human existence.

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L Upah 'Scooping study: Disability issues in Nigeria' [http://www.ucl.ac.uk/Icccr/download/dfid\\_nigeriareport](http://www.ucl.ac.uk/Icccr/download/dfid_nigeriareport) (accessed 19 February 2015).

As aptly captured by Ogwurike,<sup>30</sup> neo-naturalists' mission is substantiated by contemporary legal phraseologies which take us back to the idea of right and wrong as well as morality. The question of fundamental human rights, principles of natural justice, equity and good conscience, common good and the text of the reasonable man are all vestiges of the natural law.<sup>31</sup> In essence, neo-naturalists' search for justice has assisted us in imagining substantive justice as a value which must be realised for every individual under considerations of variety and diversity.

Thus, when reference is made to 'every individual', we are referring to a human being with flesh and blood; a factual example in nature having a great deal of variations that embody it. Inherent in these human variations are constitutive potential human powers which only begin to manifest in accordance with the patterns of influence and control that are made available in any given society.<sup>32</sup> Fincke reminds us that human power ranges in scale and that there are different ways to effectively realise the powers that constitute us.<sup>33</sup> Extending Fincke's ideas further, Finnis insists that it is this power that is synonymous with the objective good that justifies our having moralities in order to maximise, as much as we can, the maximal amount of effective human realisation of potential human powers.<sup>34</sup>

In articulating the neo-naturalist approach, understanding what moralities are is expedient. Reminiscent of classical naturalism, neo-naturalists' approach has been described as a moral theory and a theory of law.<sup>35</sup> Along this line then, moralities as observed by Fincke draw attention to 'patterns of thinking, valuing and rule making' in relation to human lives. In other words, moralities provide the leverage to habituate decision-makers and citizens into making fair judgments that lead towards personal and social empowerment.<sup>36</sup> This does not however mean that moralities have fixed identities. But it is to say that morality must come within rational justifiable outcomes or rules.

Neo-naturalists' commitment to realising what is self-evidently good for every individual, is a method for looking at law, policy and practice functionally, to see whether it satisfies the

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<sup>30</sup> Ogwurike (n 27 above) 87.

<sup>31</sup> As above.

<sup>32</sup> D Fincke 'Systemic, naturalistic empowerment ethics with application to tyrants, the differently abled and LGBT people' <http://www.patheos.com/blogs/camelswithhammers/2013/09/> (accessed 12 October 2014).

<sup>33</sup> As above.

<sup>34</sup> As above; J Finnis *Natural law and natural rights* (1980) 36.

<sup>35</sup> KE Himma 'Natural law' *The internet encyclopaedia of philosophy* <http://www.iep.utm.edu/natlaw/> (accessed 6 August 2014).

<sup>36</sup> Finnis *Natural law and natural rights* (n 34 above) 36.

common good in resolving society's problems and the need for participatory and emancipatory justice. This extends protection to individuals as well as groups and repositions disability as a universal human variation. Indeed Finnis's project, *Natural law and natural right* has been among the established works.<sup>37</sup>

Even though earlier naturalists did not direct their analysis to disability specifically, in recent years, however, one can argue that a growing number of scholars have tried to question the domination and discrimination of persons with disabilities.<sup>38</sup> Their thoughts most likely set the standard for conceptualising disability. Invariably, neo-naturalists' thoughts as developed relate the same objectives espoused by disability activists by questioning the reasonableness behind the distribution of basic human goods which by extension, call to mind issues of non-discrimination, equality and human dignity. Neo-naturalists are not particularly concerned with the theoretical abstraction of natural law. Rather it is to them an approach which is applicable to a wider range of institutional problems.

Neo-naturalists' return to natural law, and specifically to fundamentals of Thomism, is traceable to the review of the liberal rights idea in the light of economic and social problems and the need for political and legal reformation.<sup>39</sup> Nonetheless, neo-naturalists have been said to differ in their improvements of the relationship between the good and rights.<sup>40</sup> However, neo-naturalists also have a common consensus.<sup>41</sup> This consensus lies in doing what is right and the impact it would have on everybody else. As the study sets out to situate neo-naturalism as a component part of its framework, and a valuable approach for building rules

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<sup>37</sup> As above.

<sup>38</sup> J Finnis 'Natural law theories' in Edward N Zalta (ed) *The Stanford encyclopedia of philosophy*, (2011); G Merriam 'Rehabilitating Aristotle: A virtue ethics approach to disability and human flourishing' in D Ralston & J Ho (eds) *Philosophical reflections on disability* (2010) 133; C Tollefsen 'Disability and social justice: Philosophical reflections on disability' in D Ralston & J Ho (eds) *Philosophical reflections on disability* (2010) 211; H Engelhardt 'The unfair and unfortunate: Some brief critical reflections on secular moral claim rights for the disabled' in D Ralston & J Ho (eds) *Philosophical reflections on disability* (2010) 229; J Keown & RP George (eds) *Reason, morality and law: The philosophy of John Finnis* (2013).

<sup>39</sup> Nnabue (n 25 above) 92-95.

<sup>40</sup> H Rommen *The natural law: A study in legal and social history and philosophy* trans TH Hanley (1998)

<sup>41</sup> For instance, some sustain the idea of rights as the means of intensifying political arguments and nurturing relationships see J Nedelsky 'Reconceiving rights as relationships' (1993) 1 *Review of Constitutional Studies* 1; whereas some seek to reduce the good to the tradition of a given community while rendering the rights of individuals secondary to the good of the community see WB Le Roux 'Natural law theories' in C Roederer & D Mollendorf (eds) *Jurisprudence* (2004) 25. Others like Van der Walt and Finnis assert an objective and universal status for the good. Nevertheless, they also disagree as to how the absolute good should be understood, see Finnis *Natural law and natural rights* (n 34 above); J Van der Walt 'Progressive indirect horizontal application: Towards a cooperative relationship between common law and constitutional law jurisprudence' (2001) 17 *South African Journal on Human Rights* 341.



and policies open to the inclusive equality needs of hearing-impaired learners, it becomes imperative to locate the elements of neo-thomism that are being set apart.

In order to clarify the study's methodology, the research opts for a framework that aspires towards establishing a connection between neo-naturalism, inclusive justice and the social model of disability. As far as this study is concerned, neo-naturalism is merely helpful as far as it assists in redefining disability in the context of providing a rational basis for the action and attitudes of those who wield authority, as well as citizens towards ensuring the inclusion of hearing-impaired learners in all aspects of the society. Within this position, the study locates Finnis's articulation of the basic human goods or values and the methodological requirements of what must be done in order to promote and participate in the basic goods through practical reasonableness.

This is not to imply a rigid application of Finnis's articulations; rather it is at all times compatible with other neo-naturalist thinkers' slightly different lists of basic goods, which invariably point towards a general normative consensus.<sup>42</sup> Basically, one can argue that the different representations suggest the idea of flexibility in approach. In the preface to *Natural law and natural rights*, Finnis delineates his work as introductory, which evidently gives room to further discussions on countless relevant matters. Extending Finnis's opinion means that no list of basic goods works for humans in the same manner, as there is no essential basic good. Rather the basic goods are articulated or expressed as basic purposes of human action.<sup>43</sup> Finnis refers to them as 'the intrinsic aspects of personal full-being.'<sup>44</sup> And any other rationale may directly or in some way have reference to them.<sup>45</sup> Thus, if we must achieve substantive justice, that corresponds by and large to substantive equality under the equality clause of the South African Constitution for instance,<sup>46</sup> then a directive approach

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<sup>42</sup> Drawing from Aristotle and Aquinas, Finnis's basic values of human flourishing are life, knowledge, play, aesthetics, friendship, practical reasonableness, religion. See Finis *Natural law and natural rights* (n 34 above) 86; Germain Grisez lists of basic goods include self integration, practical reasonableness, authenticity, justice and friendship, religion, life, knowledge, appreciation of beauty, play. See G Grisez *The way of the Lord Jesus: Christian moral principles* (1983); Chappell lists his basic good to include friendship, aesthetic value, pleasure and avoidance of pain, health, truth and knowledge of it, the natural world, people, fairness and achievements, see T Chappell 'Reason, passion and action: The third condition of the voluntary' (1995) 70 *Philosophy* 453.

<sup>43</sup> FO Njoku *Studies in jurisprudence: A fundamental approach to the philosophy of law* (2007) 111.

<sup>44</sup> J Finnis et al *Nuclear deterrence, morality and realism* (1988) 277.

<sup>45</sup> Finnis *Natural law and natural rights* (n 34 above) 91.

<sup>46</sup> In Chapter 1, this study alluded to section 9(2) of the South African Constitution as an example of a jurisdiction that has developed an equality jurisprudence that is commendable and transformative. This Chapter draws from this premise in an effort to validate and relate the use of neo-naturalist's perspective and the social model of disability thoughts in achieving substantive justice for the hearing-impaired learner in Nigeria primary schools.

becomes necessary in advancing and aspiring towards an equality approach that will bring about systemic transformation.

In the introductory part of Finnis's book *Natural law and natural rights*, he writes 'there are human goods that can be secured only through the institution of human law and requirements of practical reasonableness that only those institutions can satisfy'.<sup>47</sup> The foregoing statement does not in any way presuppose that law is the only means through which the human good of inclusive education can be realised. It turns out to be that the duty of securing the human good is a knotty issue, as most basic goods and requirements of practical reasonableness can actually be secured through positive law and political decisions within a legal system.<sup>48</sup> Indeed, this is reflective of a difficult correlation between morality and law; or as aptly captured in the title of Finnis's book, a difficult relationship between natural law and natural rights, where natural law points to the method of securing human goods through practical reasoning; and natural rights refer to contemporary tradition of human rights.<sup>49</sup>

This morality suggests that which is largely concerned with people's attitudes in so far as that attitude affects others. It also forbids the kind of action or inaction that impairs others and supports the variety of action that aids them. The implication is that neo-naturalists are not mainly concerned about rights recognised by law; rather they are concerned with the manner in which human goods as a matter of rights can be secured. The securing of these human goods as argued by Finnis actually derives its force from reasonableness because they are manifestly good.<sup>50</sup> When taking or making rules or policies by decision-makers, it is expected that this 'natural law method' is followed in order to realise the basic human goods.

This method in essence remains universally valid even when it is not adhered to by those who wield authority.<sup>51</sup> The basic goods are discernable through reasoning about practical issues.<sup>52</sup> And in reasoning about practical issues, there is usually the tendency to reach basic reasons for acting; which is not usually far from achieving a human purpose.<sup>53</sup> *In Making Men Moral*, George brought in the idea of 'moral ecology' as part of the basic good that a legal system

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<sup>47</sup> Finnis *Natural law and natural rights* (n 34 above) 3.

<sup>48</sup> J Finnis, 'Natural law and legal reasoning' in Robert P George (ed) *Natural law theory: Contemporary essays* (1992) 134.

<sup>49</sup> Le Roux 'Natural law theories' in Roederer & Mollendorf (n 41 above) 48.

<sup>50</sup> Finnis, 'Natural law and legal reasoning' in Robert P George (n 48 above) 138.

<sup>51</sup> As above.

<sup>52</sup> Finnis 'Natural law and legal reasoning' in George (n 48 above) 85.

<sup>53</sup> G Grisez et al 'Practical principles, moral truth and ultimate ends' (1987) 32 *American Journal of Jurisprudence* 99.

exits to provide.<sup>54</sup> Strengthening George's argument further, Tollefsen suggests that the importance of moral ecology as part of basic human good makes clear that, in so far as a state acts with the good in mind, that state is not only permitted, but is from time to time obliged to regulate otherwise individual vices and by analogy, negative attitudes for public ends.<sup>55</sup> This resonates with the idea of being responsive to the fulfilment of human goods on the basis of achieving first, participation of individuals and secondly, on the principle of human dignity.<sup>56</sup>

Grisez et al, further remind us that good should be pursued instead of evil.<sup>57</sup> This is almost synonymous with the principle of having a coherent plan of life which is one of the requirements of practical reasonableness developed by Finnis. In order to appreciate human life rationally a general level of commitment and harmonised decision-making needs to be followed. It suffices to say then, that in line with appreciating human life rationally, Finnis sets out eight other requirements of practical reasonableness, to wit: no arbitrary preferences amongst basic goods while rejecting some as not valuable, no arbitrary preferences among human beings, detachment and openness, commitment, efficiency within reason, respect for every basic good in any decision or act, fostering common good, and following one's conscience.<sup>58</sup> The bottom line is that the basic goods and the requirements for practical reasonableness together provide a method that can be used to objectively follow and realise the human good. It has to do with the application of moral judgment to practical situations.

For instance, one would admit that the assimilation of hearing-impaired learners in the ways of those who hear in the delivery of their education is morally wrong because it fails to recognise human difference and does not encourage participatory citizenship. One could also conclude that this assimilation approach is unreasonable and amounts to a violation of natural law with respect to the good of acquiring information and access to knowledge. According to Harris:

These basic goods and the methodological requirements together constitute the universal and unchanging principles of natural law. Because of them, objective knowledge of morality is possible. Justice consists of the concrete implications of the requirement to foster the 'common good'. People may reasonably differ as to details, and the justice of arrangements varies with circumstances.<sup>59</sup>

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<sup>54</sup> RP George *Making men moral: Civil Liberties and public morality* (1993) 32.

<sup>55</sup> Tollefsen (n 38 above) 219.

<sup>56</sup> J Crowe 'Natural law beyond Finnis' (2011) 2 *Jurisprudence* 293.

<sup>57</sup> Grisez et al 'Practical principles (n 53 above) 99.

<sup>58</sup> Against this backdrop see Finis *Natural law and natural rights* (n 34 above) 105.

<sup>59</sup> JW Harris, *legal philosophies* (1980) 15.

Thus, the basic goods involve all impartially as it defines human essence. Irrespective of human difference, Njoku emphasises that ‘we are responsible for the well-being of all’.<sup>60</sup> Heuristically, it is expected that rules, policies and standards are to apply impartially. The impartiality that is contemplated here does not merely belong with rendering formal justice, but is aimed at recognising that the basic goods are for everyone no matter the person’s colour, status or disability.<sup>61</sup> It is a matter of justice that is responsive to actualising ‘full development of human potential, sense of dignity and self worth’.<sup>62</sup>

As part of achieving social and economic inclusion, Finnis talks about the common good in their different circumstances.<sup>63</sup> We are made conscious of the fact that the state tries to achieve continuance and fulfilment through its members.<sup>64</sup> Yet it does not imply that individuals in the state entirely have similar objectives; for according to him, it entails only that there be some set of conditions (accommodations) which needs to be provided if each of the members is to attain individual objectives.<sup>65</sup> This brings us back to the question or issue of the relationship between laws of a particular society (positive law) and the standards of practical reasonableness.<sup>66</sup> In a sense, when there is an inconsistency between a state law - say a law which did not contemplate the equality needs and aspirations of persons with disabilities or a statute that leans in favour of ‘audism’ as well as ‘linguicism’ in the education of hearing-impaired learners, and the standards of natural law, it only shows that the reasoning behind the making of such a law was non-participatory and by extension unreasonable.<sup>67</sup> It can also be interpreted as being indifferent to the needs of others and without contemplation of the common good.

Finnis reminds us in the Nigerian context that realising substantive justice for all, especially for hearing-impaired learners as a historically disadvantaged and misrecognised group presupposes that any constitutional review of rights or limitation process in respect of statutes or policies should follow the practical reasoning method of natural law.<sup>68</sup> In this respect, constructing the non-discrimination constitutional provision as it concerns hearing-impaired

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<sup>60</sup> Njoku (n 43 above) 114.

<sup>61</sup> As above

<sup>62</sup> CRPD, art 24(1)(a).

<sup>63</sup> Finnis *Natural law and natural rights* (n 34 above) 155.

<sup>64</sup> As above.

<sup>65</sup> As above.

<sup>66</sup> Finnis *Natural law and natural rights* (n 34 above) 281.

<sup>67</sup> In Chapter 1, effort was made towards explaining the import of audism and linguicism in relation to hearing-impaired learners.

<sup>68</sup> Finnis *Natural law and natural rights* (n 34 above) 290.

learners in terms of the limitations of rights facilitates more reasonable decision-making concerning the realisation of the basic good of inclusive justice in their education.

Neo-naturalists' approach to justice is transformative and connects with the idea of achieving substantive justice. Analogous to substantive equality, it provides the standards for reasoning about discrimination and inequality in order to discern realistic methods for realising redistributive socio-economic involvement, and in the end, empowerment. Neo-naturalists' thoughts on rights most importantly implicate the ruling class and citizens in the state by extension. The state and its citizen's have the duty to bring about a redistribution of socio-economic goods through the eradication of discrimination and marginalisation for misrecognised groups and other individuals in the society.

Neo-naturalists' jurisprudence can pragmatically be applied to Nigeria's transitory society where formal equality is typified by inequality in bargaining power and social standing. In spite of the assumption of equality under the Nigerian Constitution, the law, policy and programmes as given, have in most cases been actual tools of oppression and domination in relation to persons with disabilities, including hearing-impaired learners. Thus the neo-naturalists' approach is interested in how issues affecting persons with disabilities, especially hearing-impaired learners are handled, and to a great extent portrays the indifference of the state with respect to pressing concerns of individual needs. Their arguments also find convergence in normative moral values, as they seek to represent and evaluate posited as well as normative features of law. In this sense, the neo-naturalists' approach becomes an evolutionary and veritable tool in prescribing and arguing for the emancipation and empowerment of hearing-impaired learners.

Neo-naturalists' thoughts, by implication, illustrate that there must be a standard for measuring positive law, and these standards quintessentially depend on public opinion, which largely rests on the moral values of the society. These societal values are utterly in agreement with neo-naturalists' idea of preserving humans' natural rights as the end of all political associations in modern times. Conceivably, this is where neo-naturalists' idea of natural law differs from classical natural law and other natural law theories.

Illustratively and as a consequence of the continued search for just law, some theorists like Stammler, who was of the former idealist school in Germany, talked about just law with a

variable content.<sup>69</sup> Fuller's form of naturalism established the theory of procedural naturalism, where he suggests law essential function as achieving social order.<sup>70</sup> Duguit, Erlich and Pound advance the overriding principle of natural law in their discourse on social solidarity.<sup>71</sup> Even Hart talks about the minimum content of natural law in his theory of positive law.<sup>72</sup> These writers certainly are not exponents of neo-naturalism, but embedded in their ideas is the fact that law ought to exist in furtherance of human flourishing and what is good and just in the society. As a matter of fact, it is not doubtful that a number of legal rules are consistent with moral rules.<sup>73</sup>

Nevertheless, the central doubt concerning 'natural law' is the claim that natural law seeks to derive an 'ought' from an 'is' position.<sup>74</sup> This is a Humean Moorean<sup>75</sup> position which suggests that natural law is imprecise as it is based on belief and reason not knowledge, and reason can only assist us in attaining a certain objective, but not what to desire or aspire.<sup>76</sup> Natural law is attacked on the ground that it assumes that the law should take a particular form for the reason that certain state of relationships exists.<sup>77</sup>

In defence, Grisez and Finnis specifically argue that 'theoretical reflections deepen our understanding of basic goods, and knowledge about facts bearing on their instantiation is necessary to pursue them effectively'.<sup>78</sup> They insist that natural law serves normative conclusions of inclusivity by highlighting reflective grasp of what is self evidently good for

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<sup>69</sup> R Stammler 'The idea of justice' (1923) 71 *University of Pennsylvania Law Review* 303.

<sup>70</sup> L Fuller *The morality of law* (1969) 24.

<sup>71</sup> These are some of the leading proponents of the sociological school of jurisprudence. See Friedmann 'Legal Theory' (n 28 above) 95.

<sup>72</sup> HLA Hart, *The concept of law* (1961) 188.

<sup>73</sup> See also the opinion of B Bix *Jurisprudence: Theory and context* (1999) 145; FO Njoku *Philosophy in politics, law and democracy* (2002)137.

<sup>74</sup> WE Morris & CR Brown 'David Hume' in Edward N Zalta (ed) *The Stanford encyclopaedia of philosophy* (2014) <http://www.plato.stanford.edu/archive/sum2014/entries/hume/> (accessed 17 August 2014); H Veatch 'Natural law and the 'is'-'ought' question' (1981) 26 *Catholic Lawyer* 265; J Porter, 'Basic goods and the human good in recent catholic moral theology' (1993) 47 *Thomist* 27, Porter however extends her criticism to the 'hypostatisation' of the basic goods. She claims that the basic goods do not provide a highly satisfactory account of moral life. According to her, Grisez and Finnis treated the basic goods as having an independent existence, unconnected to the human person. However, Bradley & Robert in reply, hold that moral truths put up with what is to be done and direct choice towards the goods that can be realised in human action. See GV Bradley & G Robert 'The new natural law theory: A reply to Jean Porter' (1994) 39 *The American Journal of Jurisprudence*, 304. Nevertheless Porter rebuffs the assertion that practical principles cannot be derived from purely factual premises.

<sup>75</sup> D Hume & GE Moore non-naturalist position is often referred to as the Humean Moorean non-cognitivism, which is close to the understanding that reason cannot move humans to action, only feeling, and that what prompts good action emanates from human intuitions, see Morris & Brown (n 74 above) H Thomas, 'Moore's moral philosophy' in EN Zalta (ed) *The Stanford encyclopaedia of philosophy* (2010) <http://plato.stanford.edu/archives/summer2010/entries/moore-moral> (accessed 17 August 2014).

<sup>76</sup> Thomas (n 75 above).

<sup>77</sup> Morris & Brown (n 74 above).

<sup>78</sup> Grisez et al (n 53 above) 106.

human beings and not on some examination of a definite state of affairs that exists in nature. This relates to being able to discern the real situations to which first principles of practical reasonableness apply. The first principle of natural law which specifies the basic form of good and evil are self evident and highlight that good is to be done and pursued and evil to be avoided.<sup>79</sup>

Describing 'natural law' as imprecise on account of the fact that it confounds the 'is' which is descriptive with the evaluation of law as good or unjust, which is prescriptive is a misnomer.<sup>80</sup> Ultimately, the 'natural law' concerns the 'is and why' of law, as well as consequences. It invariably borders on facts. Prescriptive legal theory has to do with 'ought' and by implication concerns values. Descriptive legal approach gives details as to why law is as it is and the likely effect of legal rules. It explains why such a concept as the fundamental objectives', which concerns socio-economic rights, might be justified by submissions of the court on the limits of its justiciability.

On the other hand, the prescriptive approach being value inclined is concerned with questions as to whether the fundamental objectives ought not to be made justiciable in order to protect and empower every individual in the society. For the reason that the prescriptive approach to law deals with just and unjust law, it is often linked with ethical or political assumptions. In spite of the above features, it is arguable that a prescriptive theory which incorporates the major claims of natural law will have to depend on the 'is' situation in order to advance its ends. It also follows that a legal theorist is also concerned about the vital influence of moral questions on law or policy.<sup>81</sup> A somewhat similar view was expressed by Feldman when he contended that natural law identifies the rights worthy of recognition and realisation, while enforcement can be accomplished through the law as posited.<sup>82</sup>

Given the preceding context, it seems convincing that in an axiological sense, an 'Ought' cannot be deduced from an 'Is' position as it is not important to know that certain statements about human nature are true before acknowledging that certain things are good and hence

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<sup>79</sup> Aquinas *Summa Theologica* trans Fathers of the English Dominican Province (n 26 above).

<sup>80</sup> Morris & Brown (n 74 above).

<sup>81</sup> HLA Hart 'Positivism and the separation of law and morals' (1958) 71 *Harvard Law Review* 598.

<sup>82</sup> D Feldman *Civil liberties and human rights in England and Wales* (2002) 29.

ought to be pursued. Ideologically however, it has been observed that morality has a basis in human nature as it is not possible to have a rigid separation between the 'Is' and 'Ought'.<sup>83</sup>

Thus logically, natural law does not derive values (the law as it ought to be) from purely factual premises (the law as it is) as misrepresented by Hume.<sup>84</sup> Simmonds, further offers a decisive response also when he challenges the Humean Moorean claim by stating that 'desires only make sense by reference to a deeper and more fundamental notion, the idea of objective goods'.<sup>85</sup> In other words, when one is determining or considering what is in existence from what is good, he averts his mind differently in each case.<sup>86</sup> Accordingly, the objective good can be ascertained from individual and common experiences of the good. Securing socio-economic goods for each individual in the society becomes the essence.<sup>87</sup>

Van der Walt and Botha also capture Finnis's ethics of the objective good when they opined that rights should be approached from the perspective of the good in connection with constitutional review.<sup>88</sup> Van der Walt argues against the horizontal application of fundamental rights in post apartheid South Africa, where private law rules sought to serve the private sectional interest of the capitalist and propertied class at the expense of the proletariats and unemployed.<sup>89</sup>

Nonetheless, our task strictly speaking is not to offer arguments for and against neo-natural law. Our task is more fundamental: to advance its useful content and resources in upholding human well being and essential fulfilment. One would reason then, that since natural law is extensive and typifies shifting ideas as to the nature of the good, possibly this burden is what shapes its unanimity and strength.

### **3.3 Social model of disability: Components and value**

Disability has been described as a complex and contested concept.<sup>90</sup> This is also evident in World Health Organisation's (WHO) attempt at providing a universally acceptable definition

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<sup>83</sup> J Finnis, 'Natural inclinations and natural rights: Deriving ought and is according to Aquinas' (1987) in L Elders and K Hedwig (eds) *Lex et libertas: Freedom and law according to St. Thomas Aquinas* (1987) 43.

<sup>84</sup> Finnis *Natural law and natural rights* (n 34 above) 47.

<sup>85</sup> Feldman (n 82 above) 29, 64.

<sup>86</sup> Finnis *Natural law and natural rights* (n 34 above) 33.

<sup>87</sup> Finnis *Natural law and natural rights* 154, 279.

<sup>88</sup> J Van der Walt & H Botha 'Democracy and rights in South Africa: Beyond a constitutional culture of justification' (2000) 7 *Constellations* 341.

<sup>89</sup> J Van der Walt 'The future and futurity of the public-private distinction in view of the horizontal application of fundamental rights' (2002) *Tangible mais Intouchable, La loi du tact, la loi de la loi* 101.

<sup>90</sup> R Traustadottir 'Disability studies, the social model and legal developments' in OM Arnardottir & G Quinn (eds) *The UN Convention on the rights of persons with disabilities: European and Scandinavian perspectives*



of disability, which has been criticised by many disability activists.<sup>91</sup> Different models of disability have often been highlighted - the medical, social and cultural models - as different perspectives of conceptualising disability.<sup>92</sup> These models have been known to represent different thought patterns of understanding disability in order to give expression to them.<sup>93</sup> They also provide insights and attention towards the varied needs of persons with disabilities. Ordinarily, disability has been used to describe individual body impairments in addition to restrictions associated with the effects of such impairments.<sup>94</sup> It has also been used to refer to legal restrictions with respect to power and rights.<sup>95</sup> Disability can further involve such characteristics as mental, physical, intellectual or sensory impairments.<sup>96</sup>

However, some diseases that are not usually of permanent conditions often do not count as a disability because it does not seem to limit the ability to perform activities. Disability can arise also by way of internalised low self perception, by ascription or by cultural implications.<sup>97</sup> To Charlton, such ascriptions and labelling process psychologically affect persons with disabilities such that they have been made to internalise and develop the idea

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(2009) 8; T Shakespeare & N Watson 'The social model of disability: An outdated ideology?' in S Barnnatt & BM Altman (eds) *Research in social science and disability* (2001) 9.

<sup>91</sup> In sub-section 3.4 of this Chapter the tenets of WHO's International Classification of Impairment Disability and Handicap (ICIDH) is made out.

<sup>92</sup> HL Bauman et al 'Beyond ableism and audism: Achieving human rights for deaf and hard of hearing students' Report presented to Canadian Hearing Society 4

[http://www.chs.ca/index.php?option=com\\_content&view=article&id=499&Itemid=568&lang=en](http://www.chs.ca/index.php?option=com_content&view=article&id=499&Itemid=568&lang=en) (accessed 12 November 2013); PJ Devlieger 'Generating a cultural model of disability' paper presented at the 19<sup>th</sup> Congress of the European Federation of Associations of teachers of the deaf October 14-16 (2005). The social and medical impairment models are the two distinct and often juxtaposed models of disability. However, research has shown possibility of sustenance of a (disability) culture by some hearing-impaired persons which have been referred to as the cultural model of disability. This is not to say that these are the only acknowledged models of disability. The CRPD as well as some authors involved in disability research, for instance, Quinn & Degener in their discourse on *The moral authority for change* highlighted the human rights model of disability, see G Quinn & T Degener *The Current Use and Future potential of United Nations Human Rights instruments in the context of disability* (2002) 14; Ngwenya (n 20 above) 145. Likewise Swain and French also discussed an affirmative model of disability which challenges assumptions of normality. Thus, it can be argued that the affirmative model when linked to hearing-impaired learners provides the political and economic leverage to assert a positive identity as against personal tragedy, see J Swain & S French 'Towards an affirmative model of disability' (2000) 15 *Disability & Society* 569.

<sup>93</sup> C Baylies 'Disability and the notion of human development: Questions of rights and capabilities' (2002) 17 *Disability and society* 728.

<sup>94</sup> Baylies (n 93 above) 727; D Wasserman 'Disability: Definitions, models, experience' in Edward N Zalta (ed) *The Stanford encyclopaedia of philosophy* (2013).

<http://www.plato.stanford.edu/archives/fall2013/entries/disability/> (accessed 17 March 2014).

<sup>95</sup> Wasserman (n 94 above).

<sup>96</sup> CRPD, art 1.

<sup>97</sup> M Oliver 'The social model in action: If I had a hammer' in C Barnes & G Mercer (eds) *Implementing the social model of disability: Theory and research* (2004) 18; R Lang 'The development and critique of the social model of disability' (2007) Working paper 3 <http://www.ucl.ac.uk/icccr/centerpublications/workingpapers/ray> (accessed 4 September 2014).

that they are 'less' human.<sup>98</sup> Some scholars have however suggested that multiple identities may arise.<sup>99</sup> This is analogous to situations where, for instance, some hearing-impaired do not want to identify as having a disability because they see themselves as 'normal' within Deaf person's community.<sup>100</sup> On the other hand, some may however wish to identify in order to prioritise socio-political response to their various needs. However, prioritising identity representation is not encouraging when achieving inclusive equality ought to be the norm.

At this juncture, it needs to be pointed out that the term disability is a relative term which cannot be easily categorised.<sup>101</sup> Some have also argued that the human embodiment generally is inherently frail and vulnerable and that everyone has a disability at some point in their life, and how people deal with these impairments is usually influenced by their access to socio-economic resources.<sup>102</sup> Hence, disability in order to make sense must be construed within a particular context. As well, any conceptualisation of disability for hearing-impaired learners must of necessity impugne the socio-political and cultural environment so as to reflect non-consideration of the principles of human dignity and non-discrimination.

The social model of disability is useful in expanding insight into the disabling experience of oppression, discrimination and prejudice faced by the hearing-impaired learner in Nigeria. The social model, as articulated, locates the problem of disability in society's failure to make available appropriate services and adequately ensure that the needs of persons with disabilities are fully taken into consideration in the socio-political environment.<sup>103</sup> It is a model that is interested in upholding human dignity as well as facilitating emancipation. It offers the possibility of bringing about social change by asking questions regarding what can be done in order to empower the hearing-impaired learner and other persons with disabilities.

The values of the social model of disability have progressively swayed academics and disability activists working in the area of disability studies. The tenets of the social model

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<sup>98</sup> Charlton (n 14 above) 27.

<sup>99</sup> T Shakespeare et al *The sexual politics of disability: Untold desires* (1996); C Bartha 'Language ideologies, discriminatory practices and the Deaf community in Hungary' in J Cohen et al (eds) *Proceedings of the Fourth International Symposium on Bilingualism* (2005) 210.

<sup>100</sup> Ladd & John (n 15 above) 14.

<sup>101</sup> M Bury 'Defining and researching disability: Challenges and responses' in C Barnes & G Mercer (eds) *Exploring the divide: Illness and Disability* (1996) 18.

<sup>102</sup> M Priestley *Disability: A life course approach* (2003) 18; C Barnes 'The social model of disability: valuable or irrelevant?' in N Watson et al (eds) *The Routledge handbook of disability studies* (2012) 12.

<sup>103</sup> For instance, see the work of CG Ngwena, Unpublished: CG Ngwena 'Disabled people and the search for equality in the workplace: an appraisal of equality models from a comparative perspective' unpublished LLD thesis, University of Free the State, (2010) 235; MA Stein 'Disability human rights' in D Waissbrodt & M Rumsey (eds) *Vulnerable and marginalised groups and human rights* (2011) 665; M Oliver *The politics of disablement* (1990) 22.

underpin the ‘disability movement’ struggle which is aimed at ensuring that persons with disabilities, including the hearing-impaired learner are not excluded from social and economic activities in the society. In essence the social model perceives that the major problem of disability is traceable to socio-political creations.<sup>104</sup> The different variants of the social model also attest to this fact.<sup>105</sup> But our purpose is not to inquire into the arguments of the different variants, but to locate the social model as a constituent part of this study’s framework, and by implication a useful insight for developing arguments responsive to the inclusive justice needs of hearing-impaired learners. Primarily, social model perspectives envisage a situation whereby undue attention is shifted away from functional ability of individual impairment to interventions that would assist in the elimination of socio-economic and cultural barriers.

The social model does not denounce the significance of appropriate interventions based on individual needs, but highlights limitations with respect to advancing hearing-impaired learner’s emancipation and empowerment. Realistically, the social model of disability is a means with which to provide insights into the ‘subtractive approach’<sup>106</sup> adopted in the education of hearing-impaired persons in terms of lack of access to language as well as technical support, in order to advocate policies, systems and practices that would advance change. It seeks to advance the centrality of access to a variety of communicative support as helpful in the development of communicative skills and facilitation of equal participation for hearing-impaired learners. The failure to provide needed accommodation for hearing-impaired learners is a tremendous barrier to inclusion as far as communication is concerned.

For example, in the social model of dyslexia, Cooper argues that dyslexia does not make one ‘less’, rather it is an experience that manifests as a result of human diversity.<sup>107</sup> Same could be attributed to hearing-impaired learners. Hearing impairment only becomes a difficulty or disability when lessons are taught and designed in ways that suit hearing people. Similarly,

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<sup>104</sup> Oliver ‘The social model in action: If I had a hammer’ (n 97 above) 23; V Finkelstein ‘The social model of disability repossessed’ Paper presented at Manchester Coalition of Disabled People, December 1 (2001); Ngwena (n 103 above) 235.

<sup>105</sup> Oliver (as above); M Oliver ‘A new model of the social work role in relation to disability’ in J Campling (ed) *The handicapped person: A new perspective for social workers* (1981) 19; T Shakespeare & N Watson ‘The social model of disability: An outdated ideology’ (2002) 2 *Research in Social Science and Disability* 9.

<sup>106</sup> The term subtractive approach was used by Cummins to depict a situation whereby a second language to an individual is used at the expense of the first (native) language as well as culture. This in essence devalues the first language and its development. Subtractive approach to education is often juxtaposed with additive approach whereby the first language is valued and developed while the second language is added. See J Cummins *Language, power and pedagogy: Bilingual children in crossfire* (2000) 13; see R Ruiz ‘Orientations in language planning’ (1984) *Journal for the National Association for Bilingual Education* 19.

<sup>107</sup> R Cooper *A social model of dyslexia* (2006) 24.

the environment becomes a disability when appropriate interventions are not made or provided as hearing-impaired persons are disposed to accessing information through speech reading, visual cues, signed language and other communicative devices.<sup>108</sup>

In positive terms, the social model as conceived in this study contemplates inclusive equality for hearing-impaired learners. It leans not just on corrective/retributive justice but emphasises the recognition of human variation and the rendering of substantive justice in order to bring a historically marginalised group within a threshold of equality. It encompasses claims concerning individual flourishing, the elimination of barriers and prohibits discrimination. Consequently, it draws attention to emancipatory and empowering possibilities in tangentially rejecting the sameness principle of formal justice contained in the Nigerian Constitution and as practised by the society. It is not about 'showing that every dysfunction in our body can be compensated for by a gadget, or good design, so that everybody can work an 8-hour day' as hinted by Vasey.<sup>109</sup> Rather, the social model as a framework is a challenge to provide appropriate support that should be able to empower hearing-impaired learners in all ramifications.

Ultimately, the social model perspective is largely instrumental to the adoption of the CRPD and its Optional Protocol. The CRPD has brought about a 'paradigm shift' with respect to human rights for persons with disabilities.<sup>110</sup> It affirms the shifting of much focus from impairment to socio-economic and political barriers. In this sense, it emphasised equal opportunity and a non-discriminatory access to diverse modes and means of communication, facilitating the learning of (indigenous) signed language and the promotion of linguistic identity of hearing-impaired learners.<sup>111</sup> The CRPD does not deny the connection between impairment and disability, rather it recognises impairment as part of natural human diversity and simultaneously calls for a shift away from the individual or medical model of disability which views impairment as being synonymous with inadequacy.<sup>112</sup>

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<sup>108</sup> Summarised from a reading of HL Bauman et al (n 92 above).

<sup>109</sup> S Vasey, 'A response to Liz Crow' (1992) *Coalitia* 42.

<sup>110</sup> As conceptualized by Ambassador Don Mackay, Permanent Representative of New Zealand in the UN and Chair of the ad-hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of PWDs, at a high-level dialogue held in line with the signature ceremony of the Convention, From vision to action: The road to implementation of the CRPD, New York, 2007 <http://www.un.org/disabilities/default.asp?id=160> (accessed 14 October 2010).

<sup>111</sup> CRPD, art 24.

<sup>112</sup> A combined reading of CRPD, art 1 & art 24 evidences this fact.

The individual model of disability does not prioritise the emancipation, empowerment, choice, human dignity and equality for persons with disabilities. In this context, the medical model of disabilities largely becomes a direct opposite of the social model. It becomes necessary to reflect within this study, an overview of the individual model. The intention here is not to provide a full assessment, but to allude to the rejection of the thesis of the individual model by the social model. This is done in the next section.

### 3.4 Individual or medical model of disability

The individual model of disability identifies the problem of disability in the individual and leaves the individual to bear the cost of disability. Additionally, it views functional limitation in the individual as the major cause of disability.<sup>113</sup> Significantly, as put by Bickenbach, disability is thus seen as an aberration which randomly resides in some unfortunate individuals.<sup>114</sup> The medicalisation of disability is often linked to the individual model,<sup>115</sup> and it becomes inappropriate when medical thoughts and beliefs are used to treat disability which has hitherto been stated to be socio-politically constructed.<sup>116</sup>

However, where the medical model in terms of treatment by health officials can have one or two roles to play in the lives of persons with hearing-impairment, for instance, early diagnosis that a child is deaf or profoundly deaf can lead to action being taken quickly to ensure that the child or learner is exposed to the appropriate method of communication. That is acceptable. But using that role as experts to influence society negatively as well as make non-participatory decisions concerning the education and live of hearing-impaired learners is oppressive. Non-participatory decisions as a matter of fact have far reaching effects in relation to the education, employment, integration, and in extreme cases life of the hearing-impaired learner.<sup>117</sup> The underpinning philosophy is to restore persons with disabilities to 'adequacy' or 'near adequacy' at all cost. This gives dominance to society and has left hearing-impaired learners powerless.<sup>118</sup> This is in addition to the negative political, economic and social character of the society wherein we live. In reality, ideologies of the medical

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<sup>113</sup> M Oliver *Understanding disability: From theory to practice* (1996) 31; Oliver 'The social model in action' (n 97 above) 4.

<sup>114</sup> JE Bickenbach *Physical disability and social policy* (1993) 61.

<sup>115</sup> Oliver *The politics of disablement* (n 103 above) 22; Oliver 'The social model in action' (n 97) 4.

<sup>116</sup> Oliver *The politics of disablement* (as above); Finkelstein (n 104 above); Ngwena (n 103 above); Barnes (n 102 above) 13-19.

<sup>117</sup> Here, I remain indebted to Oliver for providing these insights through a combined reading of his works.

<sup>118</sup> M Oliver 'The individual and social model of disability', Paper presented at joint workshop of the Living Options Group and Research Unit of the Royal college of Physicians, July 23 (1990) 6.

model underpin the low priority, continued discrimination, labelling, exclusion as well as oppression of hearing-impaired learners.

The individual impairment model was predominantly maintained in the International Classification of Impairments, Disability and Handicap (ICIDH). Even though ICIDH was developed to harmonise WHO's International Classification of Diseases, by presenting a universally acceptable determination of disability, the ICIDH encompasses vestiges of domination by not involving persons with disabilities in matters concerning them, in the first place. Secondly, the ICIDH in its definition of disability as involving 'impairment', 'disability' and 'handicap' identifies impairment as the major cause of disability and handicap.<sup>119</sup>

Although the ICIDH sought to present at the same time a neutral approach by acknowledging remotely the role played by the social environment by reference to 'any restriction or lack of ability to perform' and 'a disadvantage for a given individual, resulting from an impairment that limits or prevents the fulfilment of a role', this however is not easy to uphold. This is because ICIDH significantly failed to recognise the insensitivity of national governments to regulate the social environment in order to accommodate human difference, as well as dismantle dominant ideologies and prevailing systemic disability. Again, the assumption of inadequacy 'medicalises' disability and strictly portrays the individual and in this case, hearing-impaired persons, as socially and economically abnormal.

On the other hand, the social model can be said to have influenced WHO's replacement of the ICIDH with International Classification of Function and Health (ICF) as it involved perspectives of persons with disabilities.<sup>120</sup> This is not to say that the ICF exactly adopted a social model approach, but it is to highlight a shift towards social dimensions of disability. The ICF like CRPD recognised a symbiotic connection between impairment and individual characteristics as well as the social environment. This in essence is an improvement when compared with previous WHO classification. Bickenbach et al acknowledged WHO's

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<sup>119</sup> For instance, impairment is defined as 'any loss or abnormality of psychological, physiological or anatomical structure or function', disability as 'any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being', Handicap as 'a disadvantage' see World Health Organisation's ICIDH 1980. The writings of Barnes and Ngwena actually shaped my thoughts here. See Barnes (n 102 above) 26; Ngwena (n 103 above) chapter 2.

<sup>120</sup> World Health Organisation International Classification of Functioning, Disability and Health (2001).

modified classification as providing a synthesis of the medical and social models.<sup>121</sup> Also on the modified classification, WHO highlighted that:

The new classification that has been devised by the WHO is an attempt to measure the multifaceted dimensions of disablement. Furthermore, the notion of disablement is not perceived in terms of an attribute of a person, but as a complex collection of conditions, many of which are created by the social environment. Hence, the management of the problem requires social action and it is the collective responsibility of society to make the environmental modifications necessary for the full participation of people with disabilities into all areas of social life. The issue is therefore an attitudinal or ideological one which requires social change, while at the political level it is a matter of human rights.<sup>122</sup>

Thus the current classification appreciates the fact that the lack of access to inclusive education in not recognising indigenous signs and provision of appropriate and individualised support, will affect the ability of hearing-impaired learners to participate in society. By taking the social dimensions into account, the WHO is conscious of the structural, material and attitudinal factors which considerably affect hearing-impaired learners access to education and participation in the society. Nevertheless, it can be argued that the ICF still highlight the medical model by attempting to objectify disability as a deficit and holding on to the initial perception of impairment. At its core, it is not very clear on thoughtfulness regarding the valuable means of empowering persons with disabilities, including hearing-impaired learners. It basically reinforces impairment restrictions relatively, instead of abilities.

In 'Notes from a seeing person', Behan portrays the necessity of substituting focus on the hearing-impairment to the shared intrinsic worth of hearing-impaired persons as a heterogeneous group.<sup>123</sup> Extending the argument, Jokinen observes hearing-impaired persons as a community that can equally be identified through the use of signed language.<sup>124</sup> Behan and Jokinen's observations highlight the visual nature of hearing-impaired persons with emphasis on eyes, body as well as movement and not the mouth or ears. The laying of emphasis on the inability to hear of hearing-impaired learners, presents hearing-impairment as a pathology that needs to be cured.

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<sup>121</sup> JE Bickenbach et al 'Models of disablement, universalism and the handicaps' (1999) 48 *Social Science* 1173; M Schneidert et al 'The role of environment in the International Classification of Functioning, Disability and Health (ICF)' (2003) 25 *Disability and Rehabilitation* 588.

<sup>122</sup> World Health Organisation (1997) 6.

<sup>123</sup> B Bahan 'Notes from a 'seeing' person in Sherman Wilcox (ed) *American Deaf culture: An anthology* (1989) 29.

<sup>124</sup> M Jokinen 'The sign language person'-a term to describe us and our future more clearly?' in L Leeson (ed) *Looking forward: European Union of the Deaf in the 3<sup>rd</sup> millennium-the Deaf citizen in the 21<sup>st</sup> century* (2001) 50.

For example, cochlear implantation in spite of its ability to improve access to communication for some hearing-impaired children cannot cure or change a hearing-impaired child to a hearing child. Despite the fact that cochlear implantation is seen to be an undeviating resistance to a Deaf cultural model, members of Deaf culture have been said to still identify and embrace the diversity within the deaf community, as a chance for cultural enhancement and personal identity.<sup>125</sup> This is also in line with their admittance that education and information access multiply when a number of opportunities and options are made available.<sup>126</sup> Shifting away from the medical model which presents hearing-impairment as disease and a personal dysfunction is paramount and the shared values and perspectives of hearing-impaired persons as a cultural group adopted. We shall be considering the values underlying the cultural model of disability in the following section.

### 3.5 The cultural model

In order to appreciate this model as it relates to being hearing-impaired, it is important to bear in mind that the hearing-impaired is a heterogeneous group.<sup>127</sup> The cultural model approach to disability embodies the critical ability of reflecting and applying what exists, as well as considering how what exists affects the lives of others. Lane is of the view that the cultural model involves issues as to language, shared experiences and values of a linguistic minority.<sup>128</sup> Values here implicate the positive value placed on visual language and other avenues of communication.<sup>129</sup>

Historically in the Nigerian context, the deaf community is not committed to the Deaf culture or creating their own 'communities'. Being a member of a deaf association in Nigeria is about survival. It is about coming together to address societal challenges faced by deaf people to the appropriate authorities.<sup>130</sup> The language culture in Nigeria is 'heightened speech' and this has caused hearing-impaired Nigerians to intensify efforts towards assimilatory norms. Their heterogeneous attributes as well as historical experience could be a factor. Thus the

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<sup>125</sup> BS Benedict & J Legg 'Communication considerations: Deaf culture and community' (2009) <http://www.handsandvoices.org> (accessed 9 December 2014).

<sup>126</sup> As above.

<sup>127</sup> In Chapter 1, clarification regarding the hearing-impaired as contemplated in this study has been provided. Community as used here is not synonymous with a place, but refers to group ideologies and shared experiences.

<sup>128</sup> H Lane *The mask of benevolence: Disabling the deaf community* (1992) 17.

<sup>129</sup> As above.

<sup>130</sup> As highlighted during discussions, by the president of Nigerian National Association of the Deaf, Dagbo Suleiman.



cultural model evokes the question of whether hearing-impairment is an inherent disability of an individual or a communicative need of a linguistic minority.

Reflecting in this context, leads us to the historical ramifications of deafness. A good example is an account of what took place on Martha's vineyard. According to Groce,<sup>131</sup> a large percentage of people on the island consisted of deaf people and everyone on the island learned how to sign. People who were deaf signed to people who were deaf as well as those who were hearing. Most deaf people later moved to Massachusetts as the island became unfavourable and less isolated. As a matter of fact, the number of deaf people on the island decreased significantly. On interview with hearing islanders, Groce noticed that they did not indicate whether the person they were speaking about was deaf or hearing. This implied that being deaf or not was not relevant. It wasn't considered an important characteristic for reference purposes or an inherent disability. It is all a matter of perception. It seems reasonable then to question practical issues relating to the self worth and dignity of a human being who lives in a society that lessens and fails to recognise individuals who are hearing-impaired.

It has been suggested that how a society interprets being deaf affects not only how hearing-impaired persons are treated in a particular society, but also affects how hearing-impaired persons view themselves and other members of their community.<sup>132</sup> Significantly, socially determined negative attitudes toward the hearing-impaired have led to the development of strong attachment with Deaf culture by some members of hearing-impaired community in other contexts. This group believes in their ability and that of other deaf people and often does not value being cured or treated like a hearing person. The group has also shown strong disapproval to cochlear implantation for hearing-impaired children. This group that commits to Deaf culture sees cochlear implantation as an attempt at eliminating deafness and as an invasive procedure for children, especially when they are too young to take part in the decision process. Some moderates of Deaf culture within hearing-impaired community however, view cochlear implantation as an opportunity for cultural enhancement as well as an alternative option open to individuals in need of access to communication in the larger society.<sup>133</sup>

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<sup>131</sup> NE Groce *Everyone here spoke sign language: Hereditary deafness on Martha's vineyard* (1985).

<sup>132</sup> JL Pray & IK Jordan 'The deaf community and culture at a crossroad: Issues and challenges' (2010) 9 *Journal of Social Work in disability and rehabilitation* 168.

<sup>133</sup> Benedict & Legg (n 125 above).

Either way, our opinion is that the right and freedom to choose a language or communication option matters. Concentrating on the needs and strengths of individuals on principles of human dignity is more important for the removal of communication barriers, which is considered first to be the primary need of the hearing-impaired learner. Conversely, some hearing-impaired who often use speech, most times resent being seen as members of Deaf culture. This might possibly be connected to mainstreamed internalised negative constructions of hearing-impairment. Thus the two ideologies that have emerged from our discussions immediately above make it necessary to consider a conscious and deliberate shift in thinking.

Accordingly, it is argued that while our goal is the removal of communicative barriers and full access to socio-economic goods on the basis of justice and human dignity, acknowledging positive cultural perspectives that are valued and empowering becomes inevitable. Other necessary practical issues involving whether hearing-impairment will affect one's education and employment is also critical. The social model approach in locating disability with respect to environmental interaction with the individual brings in the adaptation of the environment to individual needs. This calls to mind the imperatives of adapting the physical environment in order to enhance the communicative needs of hearing-impaired learners. Hence, there is little doubt that the cultural model of disability can be described as a seed of the social model germinating towards enlightening development and renewal.

## **4 Social constructions of hearing impairment**

### **4.1 Hearing-impaired learners as a historically and socially oppressed group in Nigeria**

Scholarship has it that hearing impairment is historically and socially constructed.<sup>134</sup> Historically, hearing-impaired learners have not been educationally included to get them where they need to be.<sup>135</sup> Education of hearing-impaired learners in Nigeria originated as a component of the colonial missionary movement for the benefit of the imperial government.<sup>136</sup> Burton notes that these missionaries taught using primarily signed languages

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<sup>134</sup> Pray & Jordan (n 132 above) 174; HL Bauman 'Audism: Exploring the metaphysics of oppression' (2004) 9 *Journal of Deaf Studies and Deaf Education* 239.

<sup>135</sup> Bauman (n 134 above).

<sup>136</sup> Kiyaga & Moores (n 12 above) 18.

from their home countries without giving due regard to indigenous signs.<sup>137</sup> What this demonstrates is a non-dialogical use of foreign sign language despite the linguistic diversity and difference of hearing-impaired learners in Nigeria. Kiyaga and Moores also comment on how schools for hearing-impaired learners tended to serve a small portion of hearing-impaired persons in urban areas and from affluent families, while those in the rural areas were neglected.<sup>138</sup> It is therefore argued that the majority of hearing-impaired children in Nigeria lack access to education.

As time progressed, issues concerning the relative importance of indigenous sign languages and the use of a foreign language like American Sign Language in Nigeria are yet to be resolved.<sup>139</sup> The Nigerian federal government in the face of military coups, constant changes in government, corruption and limited resources could not meet the goal of education for all children.<sup>140</sup> As a result, services for persons with disabilities were not prioritised. The absence of enabling legislation and government emphasis on the education of persons with disabilities by itself hinders access to early identification and intervention for the hearing-impaired learner. Another relative factor is the fact that appropriate accommodations are not provided for hearing-impaired learners who would want to attend regular schools or enrol in programs for hearing-impaired children in special schools.

Most schools for hearing-impaired learners were established by private individuals or charitable organisations with little or no oversight functions from the Nigerian government. This has resulted in inconsistent teaching methods and standards. Teaching and learning materials are often not adapted and are in short supply. Lowered expectations are high, and hearing-impaired learners are often perceived as sick, dependent or requiring pity. This in effect increases the likelihood of discrimination. An instance of the impact of discrimination manifests through audism, linguicism and ablism that is synonymous with the suppression of signed language and prejudicial attitudes towards hearing-impaired learners.

Nigeria is a nation with different ethnic groups, exhibiting multilingual and cultural diversity. This also affects the linguistic and cultural disposition of hearing-impaired learners. Getting rid of the effects of colonial rule and the attendant socio-political, economic and educational

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<sup>137</sup> T Burton 'A deaf person's perspective on third world deaf children's education' Paper presented at 'What does the south really want from the north?' a seminar co-organised by the Deaf Africa Fund and the Enabling Education Network, England June (2002).

<sup>138</sup> Kiyaga & Moores (n 12 above) 19.

<sup>139</sup> As above, 23.

<sup>140</sup> K Mazurek & M Winzer *Comparative studies in special education* (1994).

discrimination of hearing-impaired learners is an ongoing struggle. With the shift in time, a few of the oppressive attitudes have changed, while a lot of it has not. Given the idea that disability with respect to hearing-impaired learners in Nigeria is largely influenced by colonial and socio-political ideologies, responding to the general experience of oppression and exclusion must put into consideration approaches and tactics that would shift focus from impairment, to the material and societal attitudes, in order to hold those who wield authority responsible, and prevent them from escaping responsibility.

Such an approach and complimentary tactics must be ready to value individuals regardless of the degree of hearing loss, beliefs, ethnic background or association. It must also assist in arguing support for the development of sustainable and accessible education that would substantively affect hearing-impaired learners individually. This is because looking only towards the removal of structural barriers might not be representative of the diverse nature and needs of hearing-impaired learners as have been suggested.<sup>141</sup> From this perspective, hearing-impaired learners disability as a social construct can thus be changed and altered. Ultimately this resonates with the observance of human rights principles. Michailakis in support of adopting and implementing human rights principles emphasises the importance of legislation as a necessary foundation for effective advocacy towards structural transformation and redistribution of economic and political power.<sup>142</sup> While many similarities exist with the dynamics of the social model and a human rights approach to disability, the focus on human rights principles warrants that these principles at the very least be highlighted in the context of hearing-impaired learners.

#### **4.2 Human rights approach in relation to the hearing-impaired learner**

A human rights dimension towards disability has been adopted under the CRPD by the United Nations since 2006 in its effort to transform attitudes and approaches towards persons with disabilities, including hearing-impaired learners in article 24. It would also be recalled that in 1989 the United Nations adopted the Convention on the Rights of the Child (CRC) which specifically dealt with the rights of children with disabilities in article 23 and by implication articles 2 and 4. Article 2 of the CRC on non-discrimination spreads out the rights of children with disabilities in a whole range of areas. Article 4 obliges states to take appropriate legislative, administrative and other measures towards implementation of the

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<sup>141</sup> Swain & French (n 92 above) 580.

<sup>142</sup> D Michailakis 'When opportunity is the thing to be equalised' (1997) 12 *Disability and Society* 17.

rights recognised in the CRC to the maximum extent possible. The African Charter on the Rights and Welfare of the Child (ACRWC) also broadly provides for the right of hearing-impaired child to learning under article 13. These international human rights documents at a general level embrace the social model of disability, which is also synonymous with the human rights dimensions to disability.

With respect to hearing-impaired learners, issues of non-discrimination, the right to be heard and to participate as well as best interests of the child as identified by Quinn and Degener are paramount.<sup>143</sup> Concerning the CRPD, its focal point as has been rightly highlighted, is on appreciating disability as a societal experience of limited socio-economic recognition that can be described beyond natural personal impairment.<sup>144</sup> The CRPD and the ACRWC make it imperative on society to accommodate human difference and diversity, by making it the responsibility of society to bear the economic cost of making available individualised provisions for learning for hearing-impaired learners and other learners with disabilities.<sup>145</sup> The best part as Kanter reminds us is not on prioritising personal impairment, but on explaining the intersection between impairment and the society, as well as overcoming institutionalised barriers, so as to provide room for different disabilities.<sup>146</sup>

Underpinning the provisions in these documents are basic human rights principles that need to be applied in the development of statutes, policy and practice in relation to realising access to inclusive education for hearing-impaired learners and other learners with disabilities. This relates to ideas of universality and inalienability which emphasise the application of human rights principles to everyone as an intrinsic entitlement. It also connotes ideas as to the indivisibility and interdependence of rights. Issues relating to equality and non-discrimination are not left out as they reify the inherent dignity of man and the right to freedom of expression. These principles further extend to facts about inclusive participation, empowerment and the rule of law. The import here being to change historical and current oppression and exclusion of hearing-impaired learners hitherto built on the assumptions of inadequacy.<sup>147</sup>

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<sup>143</sup> Quinn & Degener (n 92 above) Chapter 2 & 3.

<sup>144</sup> Ngwena (n 103 above) 144.

<sup>145</sup> See CRPD, art 24 and ACRWC, art 13.

<sup>146</sup> AS Kanter 'The promise and challenge of the United Nations Convention on the Rights of Persons with disabilities' (2007) 34 *Syracuse Journal of International Law & Commerce* 287; CRPD, art 24.

<sup>147</sup> Kanter (n 146 above) 290.

By conceding to the social model of disability, the CRPD tangentially illustrates the need to transform institutionalised barriers to socio-economic and political inclusion of hearing-impaired learners as disabled learners. In this context, ‘disabled learners’ becomes synonymous with ‘hearing-impaired learners’ as used in this study.<sup>148</sup> To a great extent, an attributed social meaning more often shapes the lived experience of a stigmatised person more than the features that cause the individual to meet the attribute.<sup>149</sup> The terms ‘hearing-impaired’ and ‘disabled’ transmit pessimistic social connotations and tend to limit opportunities for hearing-impaired learners.

## **5 Prescriptive and directive approach: Practical utility**

At a more general level, the prescriptive and directive approach advances a purpose towards achieving substantive justice for hearing-impaired learners, by emphasising that the distribution and redistribution of basic goods must involve the application of pragmatic rationality by those who wield authority. From a disability perspective, the application of practical rationality is linked to considerations of individual difference and circumstances. This also extends to group history, dialogic norms, assimilationist practices, as well as accommodation provisions, when interrogating norms, policies and practices that represent obstacles to realising inclusive education and equal participation of hearing-impaired learners in Nigerian primary schools.

The prescriptive and directive approach is considered a reflective way of raising the ‘disability moral value query’<sup>150</sup> in order to guarantee the recognition, inclusion and participation of what has previously been subjugated. It is a fused approach which contends that a legal system must possess a commitment not to disregard the call for the provision of services that can aid towards the achievement of the good.<sup>151</sup> It further recognises the necessity of a legal system to aim towards concrete transformation in order to accommodate future circumstances.

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<sup>148</sup> In Chapter 1, under terminological clarification, an explanation as to the use of the term ‘hearing-impaired’ has been provided in line with the framework of this study at Sec 3 sub-sec 3.1 of Chapter 1.

<sup>149</sup> I remain grateful to Kanter as her writings actually shaped my thoughts in this regard, Kanter (n 146 above).

<sup>150</sup> As have been observed, Neo-naturalists determine moral principles and values which ought to govern positive law and actions in every society. Inherent in their method is an understanding that the end of all political efforts and association is to preserve man’s natural and imprescriptible rights, see Ogwurike (n 27 above) 88; J Finnis ‘positivism and legal rational authority’ (1985) 5 *Oxford Journal of Legal Studies* 74.

<sup>151</sup> J Finnis ‘The truth in legal positivism’ in RP George (ed) *The Autonomy of law: Essays on legal positivism* (1996) 195; Himma (n 35 above).

In this way, the prescriptive and directive approach is a problem-solving approach in philosophically eliciting the advancement of rights from the standpoint of the good and ordering human life towards personal development and communal participation.<sup>152</sup> With the attendant difficulties in establishing the basics for the implementation of non-discrimination and justice for diverse Nigerian citizens, it is expected that confronting legal, political and social arrangements that mitigate the realisation of a socio-economic good, like inclusive education, through a framework that encourages the applicability of the fundamental requirements of morality to everyone regardless of their status becomes paramount.<sup>153</sup>

By implication, the prescriptive and directive approach can be likened to a kind of moral theory with an inclusive approach.<sup>154</sup> This is because it challenges types of education provision that redundantly segregate hearing-impaired learners from their hearing counterparts frequently outside the general education system. It equally challenges the non-provision of individualised accommodations for learners. Limited access and non-inclusive educational opportunities, particularly at the primary school level has made hearing-impaired learners remain vulnerable and susceptible to profound social and economic exclusions.

In a juridical sense, the prescriptive and directive approach signals an obligation towards a constitutional review of non-enforceable socio-economic goods, including the good of inclusive education for hearing-impaired learners in Nigerian primary schools. Centrally, it argues that addressing the inclusive education needs of hearing-impaired learners involves being responsive to their diverse learning needs. It calls for necessary shift in perceptions that demean hearing-impaired learners and the need to eliminate the consequences of ablism, audism and linguicism in the provision of their education.<sup>155</sup> In the end, the prescriptive and directive approach is ‘additive’<sup>156</sup> and demands ethical commitments on the part of everyone towards reorientation and social change.

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<sup>152</sup> Van der Walt (n 89 above) 101; Van der Walt & Botha (n 88 above) 34; G Grisez et al (n 53 above) 107-108; RP George ‘A response’ in M Cromartie (ed) *A preserving grace: Protestants, Catholics and natural law* (1997) 157; G Grisez ‘Natural law, God, religion and human fulfilment’ (2001) 46 *American Journal of Jurisprudence* 3.

<sup>153</sup> The intent here represents a political-economic situation. It implies the exploitation and expropriation of resources by some Nigeria’s indigenous elites at the detriment of the people.

<sup>154</sup> As suggested by BC Nirmal ‘Natural law, human rights and justice: Some reflections on Finnis’s natural law theory’ (2006/7) 35 & 36 *Banaras Law Journal* 72. A moral theory of law recognises that everyone has the capacity to understand and/or appreciate basic moral obligations.

<sup>155</sup> In Chapter 1, the implications of these terms in the context of the hearing-impaired has been explained

<sup>156</sup> The term ‘additive’ is borrowed from Ruiz, see Ruiz (n 106 above) 19. The term presupposes a moral appreciation of the heritage language of learners as an asset to their education.

## **6 Conclusion**

This chapter has so far provided a doctrinal framework of this study. Within the remit of this chapter are insights as to manifestations of disablement of hearing-impaired learners. It confirmed that hearing-impaired learners belong to a socially marginalised group that share a common history of exclusion, discrimination, domination and oppression within the socio-political environment. This is also evident in the provision and delivery of their education. Subsequent chapters shall involve ways of applying the ideas of the prescriptive and directive approach as a practical tool in building arguments towards the realisation of inclusive education for hearing-impaired learners in Nigeria.



## Chapter 3

# Conceptualising inclusive primary education for hearing-impaired learners in Nigeria

## 1 Introduction

This chapter analyses the normative import of inclusive education in relation to hearing-impaired learners in Nigeria primary schools using the prescriptive and directive approach. It probes the idea of universal design learning, formal and informal education as well as the concept of early child learning as constituent parts of how arguments for inclusive education for hearing-impaired learners is developed and conceptualised. As have been highlighted in the previous chapters, article 24 of the Convention on the Rights of Persons with Disabilities (CRPD) inscribes the right to inclusive education of children with disabilities.

This chapter is divided into five sections, including the introductory section. The second section presents a general overview of the meaning of inclusive education for hearing-impaired learners, particularly its normative values. Section three provides contexts within which inclusive education is conceptualised for hearing-impaired learners. The fourth section explores issues of the universal design learning, early child learning and informal learning as part of how arguments for the inclusive education of hearing-impaired learners is conceptualised. The fifth section is the conclusion.

## 2 Conceptualising inclusive education for the hearing-impaired learner: Normative values

In conceptualising the normative import of inclusive education for hearing-impaired learners, the question whether the term 'inclusion' presents the same understanding to every person under considerations of valuing is significant. The idea of inclusion is considered very problematic.<sup>1</sup> Yet it is in the struggle to give meaning to this highly contested term that hope lies. A significant concern is whether irrespective of the diversities in human beings, it is possible to give a general account of inclusion as a human necessity and as that which is generally needed for the human good.

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<sup>1</sup> AC Armstrong et al *Inclusive education: International policy and practice* (2010) 4; C Forlin et al *Inclusive education for students with disabilities: A review of the best evidence in relation to theory and practice* (2013) 6.

In the affirmative sense, inclusion arguably ought not to be limited to specific or particular groups of learners, like learners with disabilities or displaced persons.<sup>2</sup> Rather its focus should be on the diversity of individuals, except when focusing on a particular group assists in distinguishing the group referred to in ‘different ways of being’ and understanding.<sup>3</sup> Consequently, the possibility of engendering different responses to the understanding of inclusion becomes undeniable. However, since this study’s term of reference is on disability-related inclusion, eliciting the import of ‘inclusion in education’ by reference to a specific group of learners – hearing-impaired learners is pursued.

## **2.1 Defining inclusive education for the hearing-impaired learner**

Undoubtedly, scholars, world organisations, national authorities as well as education practitioners have all provided conceptualisations concerning inclusive education in different and varied perspectives. For instance, The United Nations Educational and Cultural Organisation (UNESCO) document conceives inclusive education as

a process of strengthening the capacity of the education system to reach out to all learners and can thus be understood as a key strategy to achieve education for all...it should guide all education policies and practices, starting from the fact that education is a basic human right and the foundation for a more just and equal society.<sup>4</sup>

In General Comment Number 4, inclusive education is seen to underlie changes in values, policy, approaches and strategies for all children, with a conviction that it is the responsibility of the regular education system to educate all children.<sup>5</sup>

Disability rights scholars like Peters et al have argued inclusive education as the education of children with disabilities in regular schools where all children, including children with disabilities learn together.<sup>6</sup> Rieser summarises it as the general school approach.<sup>7</sup> Ainscow et al, consider inclusion as being involved with the identification and removal of barriers to participation in education.<sup>8</sup> Graham and Slee suggest that achieving inclusion resonates with

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<sup>2</sup> See General Comment No 4 on inclusive education, adopted by the UN Committee on the Rights of Persons with Disabilities 2 September 2016, CRPD/C/GC/4, para 9.

<sup>3</sup> As above.

<sup>4</sup> UNESCO ‘Policy guidelines on inclusion in education’ (2009) 8.

<sup>5</sup> General Comment No 4 (n 2 above) para 9; see also UNESCO ‘Guidelines for inclusion: Ensuring access to education for all’ (2005) 15.

<sup>6</sup> S Peters et al ‘A disability rights in education model for evaluating inclusive education’ (2005) 9 *International Journal of Inclusive Education* 139.

<sup>7</sup> R Reiser *Implementing inclusive education: A Commonwealth guide to implementing article 24 of the UN Convention on the Rights of Persons With Disabilities* (2008) 28.

<sup>8</sup> M Ainscow et al *Developing equitable education systems* (2011) 1.

the removal of the dichotomy and barriers in special education and regular education.<sup>9</sup> Slee further considers that reformation in the structures of education is necessary if inclusive education is to be achieved.<sup>10</sup> All these perspectives indeed provide to a certain extent some explanations that are critical towards an understanding of inclusion in this study, as they are implicitly anchored on the CRPD's expected commitment of states to the goal of inclusiveness in education.<sup>11</sup>

The UNESCO position echoes a process towards recognising human worth, diversity and human flourishing within a legal system. It builds an enquiry around the provision of inclusive education in relation to the ethical responsibilities of the state in taking care of its citizens. It becomes apparent, then, that the education of hearing-impaired learners is but one of the aspects of human diversity that must be included. Thus conceptualising inclusive education for hearing-impaired learners must take issues of social justice, democracy and the recognition of difference seriously.<sup>12</sup>

Philosophically, it sits well with precepts that are consistent with making people feel valued. This parallels conditions set out by Bernstein in relation to aspirations for inclusive schooling and social justice which are considered pertinent to this discussion. For Bernstein, individuals in the society must be made to feel that they have a stake (which connotes the good or ends) in the society.<sup>13</sup> Again, individuals must also have confidence in the political system by trusting that political arrangements and distribution will enable them achieve their ends.<sup>14</sup> These precepts are further linked to issues of individual enhancement, socio-cultural inclusion and general participation.<sup>15</sup>

At a general level, it can be taken that the content of the CRPD concerning inclusive education builds on the UNESCO's articulation concerning inclusive education in positively making it the responsibility of the state to make available an education system directed

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<sup>9</sup> LJ Graham & R Slee 'An illusory interiority: Interrogating the discourse/s of inclusion' (2008) 40 *Educational Philosophy and Theory* 247.

<sup>10</sup> R Slee *The irregular school: Exclusion, schooling and inclusive education* (2011) 164.

<sup>11</sup> Convention on the Rights of Persons with Disabilities see art 24(2)(b). This also calls for change within the general education system.

<sup>12</sup> I align with Slee here in suggesting that the general school system needs to change in order to accommodate the diversity of learners needs. See R Slee 'Social justice and changing directions in educational research: The case of inclusive education' (2010) 5 *International Journal of Inclusive Education* 167.

<sup>13</sup> B Bernstein *Pedagogy, symbolic control and identity: Theory research critique* (1996) 6.

<sup>14</sup> As above.

<sup>15</sup> As above.

towards developing human potential, sense of dignity and human worth.<sup>16</sup> The CRPD, coupled with General Comment Number 4 of the CRPD Committee went further to implicate regard for human rights, freedoms and diversity.<sup>17</sup> Flowing from UNESCO's understanding regarding inclusive education is the idea highlighted in the CRPD and in General Comment Number 4 that persons with disabilities can be included and developed towards participation in the society.<sup>18</sup> The goal of inclusive education as laid down by the CRPD requires the exhibition of inclusive equality in the provision of education and in the distribution of educational services as well as facilities for children with disabilities.<sup>19</sup> In General Comment Number 4, the CRPD Committee sustained the idea that children with disabilities are not to be excluded or segregated from the general education system based on their disability.<sup>20</sup> The CRPD as well as General Comment Number 4 of the CRPD Committee also highlight the necessity for individualised accommodations for learners and the provision of support within the general education system.<sup>21</sup>

Under the CRPD the state through its education department is obliged to make available individual support measures 'in environments that maximise academic and social development in line with the goal of inclusion'.<sup>22</sup> Similar obligation is also required for persons who are blind, deaf or deafblind.<sup>23</sup> There is however divided opinion as to whether the forgoing obligation under the CRPD provides an avenue for state parties to the CRPD to maintain special/segregated schools.<sup>24</sup> It has also been argued that the maintenance of special/segregated schools is against international standards requiring states to work towards providing the education of all children with disabilities in inclusive schools.<sup>25</sup> Nonetheless, it is possible to argue that the provisions in articles 24(2)(e) and 24(2)(c) of the CRPD and General Comment Number 4 of the CRPD Committee, allude to the maintenance of special

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<sup>16</sup> CRPD, art 24(1)(a).

<sup>17</sup> As above; see also General Comment No 4 (n 2 above) para 10.

<sup>18</sup> CRPD, arts 24(1)(b) and 24(1)(c); General Comment No 4, paras 9 & 10(b) & (c).

<sup>19</sup> CRPD, art 24(2)(b).

<sup>20</sup> CRPD, art 24(2)(a); General Comment No 4, para 3.

<sup>21</sup> CRPD, art 24(c) and (d); General Comment No 4, paras 17 & 32. In the opinion of the CRPD Committee General education is synonymous with all regular learning environments and the education department, in this regard see General Comment No 4, para 18.

<sup>22</sup> CRPD, art 24(2)(e).

<sup>23</sup> CRPD, art 24(3)(c).

<sup>24</sup> B Byrne 'Hidden contradictions and conditionality: Conceptualisations of inclusive education in international human rights law' (2013) 28 *Disability & Society* 232.

<sup>25</sup> EM Chilemba 'The Right to primary education of children with disabilities in Malawi: A diagnosis of the conceptual approach and implementation' (2013) 1 *African Disability Rights Yearbook* 3.

schools that are not segregated or isolated from the general education system.<sup>26</sup> This is in view of certain impairments that require particular needs and support.<sup>27</sup>

Usually it is the extent of learner's needs that should determine placement. This means that a regular or special school placement can be both protective and violative of equality depending upon learner's needs and the context. Where a learner is already in an existing special school or prefers a special school due to certain factors like prejudiced attitudes. Keeping the learner in a regular school which does not readily accommodate the needs of the learner becomes a form of absorption. Evidently, this constitutes the imposition of disadvantaged situation on the learner.

Hence, the main objective as argued earlier should be ensuring transition to inclusive education systems by transforming the general education system and making it inclusive for all learners with disabilities.<sup>28</sup> The spotlight should not be on closing existing special schools, but on combating segregation in special schools. De Beco rightly notes that the best way to achieve inclusive education is to incrementally make the general education system inclusive, the success of which will reduce reference to special/segregated schooling.<sup>29</sup> Indeed, the requirement to deliver education 'in environments that maximise academic and social development' means that learning for hearing-impaired learners for instance must be in environments where individual needs are met within the general education system.

In *Eaton v Brant County Board of Education*,<sup>30</sup> the Supreme Court of Canada confirmed that in some cases, special education might be a necessity for some persons with disabilities based on the reasoning that it enables access to the required learning environment that is needed in order to achieve an equal opportunity in education.<sup>31</sup> While schools for rendering inclusive education is recognised as the norm, schools focused on the needs of 'blind or deaf' indicate the positive aspects of special education based on required personalised and intensive attention.<sup>32</sup> The accent at all times is that education in special settings where they exist must be maintained within the general education system. Learners in such settings are expected to

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<sup>26</sup> General Comment No 4 (n 2 above) para 11.

<sup>27</sup> CRPD, arts 24(2)(e) and 24(2)(c); General Comment 4 as above.

<sup>28</sup> As argued earlier in chapter 1 of this study.

<sup>29</sup> G de Beco 'Transition to inclusive education systems according to the CRPD' (2016) 34 Nordic Journal of Human Rights 54.

<sup>30</sup> (1997) 1 S.C.R. 241.

<sup>31</sup> As above, para 69.

<sup>32</sup> As above.

enjoy equal priority standards with their counterparts in regular schools in relation to accommodation provision as a way of recognising difference and instantiating participatory democracy.<sup>33</sup>

The CRPD recognises the importance of chosen language, augmentative and alternative modes and means of communication for hearing-impaired learners.<sup>34</sup> The Convention further encourages the learning of life skills and social development skills as a process towards inclusive participation in education and as members of the society.<sup>35</sup> Certainly, this directs towards the idea of a universal learning design that accommodates flexibility and creativity in teaching in line with local contexts in order to cover a variety of learning needs. The CRPD also draws a link between early child care and education programmes, curriculum adaptation, non-formal education, enabling alternative means of assessments and training teachers as well as professionals in these aspects.

The premise that could be deduced is the understanding that the problem of disability is the outcome of the relationship or interaction with the socio-economic and political environment which impose restrictions on persons with disabilities, including hearing-impaired learners. Hence the need to surmount these barriers through necessary provisions, interventions and attitudinal change is recognised as crucial. In this way article 24 demonstrates responsiveness to human difference and aligns its commitment to securing social change constructed somewhere near inclusive equality and substantive justice. Consequently, conceptualising inclusive education for hearing-impaired learners, raise questions that demand honest answers. As suggested by O'Brian,<sup>36</sup> the questions are about where and how a pupil learns best.

The expediency of the prescriptive and directive approach adopted in this study situates inclusive education as a value, and this underscores the need to reflect on the type of education that we value and the type of society that we really want to build.<sup>37</sup> In the interest

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<sup>33</sup> Bernstein (n 13 above) 6; Graham & Slee 'An illusory interiority' (n 9 above); The decision of the Court in the South African case of *Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa & Another* 2011 5 SA 87 (WCC) is also instructive.

<sup>34</sup> CRPD, arts 24(3)(b) and (c).

<sup>35</sup> CRPD, art 24(3).

<sup>36</sup> T O'Brien *Enabling inclusion: Blue skies...dark clouds?* (2001) 49.

<sup>37</sup> J Evans & I Lunt 'Inclusive education: Are there limits?' (2002) 17 *European Journal of Special Needs Education* 1.

of hearing-impaired learners, we need to balance different kind of needs.<sup>38</sup> This idea regarding need is based on the understanding that each learner is different.<sup>39</sup> Hence, the general education system is expected to be committed to strategies that can help learners who function in a different way and at different speed. We have to bear in mind that hearing-impaired learners belong to a heterogeneous group and the approach and form of inclusion has to be dictated by the needs of each learner.

So long as children with hearing impairment are concerned, the requirement for individualised and intensive support may entail teaching such learners in a special school as the nature of services they may need may require a specialised facility. Indeed, as have been observed, there are limits to regular school placement,<sup>40</sup> which are but not limited to parental choice, learner's choice, and resourcing difficulties.<sup>41</sup> Thus, inclusive education for hearing-impaired learners becomes synonymous with a step by step adaptation and removal of barriers in both regular and special schools. This includes equipping schools with individualised support measures advancing the move towards inclusive education systems. Graham and Slee in their discourse on inclusive education also argued for the mobilisation and provision of required support in either setting.<sup>42</sup> In view of this, support measures taken by state parties should not amount to segregated education, but must be in line with the objective of developing inclusive education systems as indicated by the CRPD and General Comment Number 4. Contexts for conceiving inclusive education for hearing-impaired learners within regular or special schools will be highlighted in the next section.

### **3 Regular or special schools: Implications for the hearing-impaired learner**

It is acknowledged that article 24 of the CRPD, General Comment Number 4 and other international documents on persons with disabilities advocate support for the education of children with disabilities, including hearing-impaired learners in inclusive schools.<sup>43</sup> However, in demanding the inclusiveness of education for hearing-impaired learners, the content of these international documents did not insist that education for hearing-impaired

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<sup>38</sup> B Norwich 'Special needs education or education for all: Connective specialization and ideological impurity' (1996) 23 *British Journal of Special Education* 100.

<sup>39</sup> As above, 103.

<sup>40</sup> Evans & Lunt (n 37 above) 7.

<sup>41</sup> As above.

<sup>42</sup> Graham & Slee 'An illusory interiority' (n 9 above); Slee 'The Irregular school' (n 10 above).

<sup>43</sup> See the Standard Rules on the Equalisation of opportunities for Persons with Disabilities, UN General Assembly Resolution 48/96 adopted on the 18 of December 1992, Rule 6; The Salamanca Statement and Framework for Action on Special Needs Education, UNESCO, adopted on the 10 of June 1994.

learners must take place in a regular or special setting.<sup>44</sup> This could be taken to signify an understanding by the drafters of these documents that inclusive education goes beyond placement to consider transformative values which relates to the kind of ‘learning activity’ that suits a learner most.

Considering the heterogeneous nature of hearing impairment, education for hearing-impaired learners must be delivered using the ‘most appropriate languages and modes and means of communication’ for each learner and in *environments* which maximize academic and social development’.<sup>45</sup> The diversity of hearing-impaired group was discussed in Chapter 1 of this study and the groups’ different communicative need was also highlighted.<sup>46</sup> Along these lines, there is a strong supposition that their varied needs will also determine the choice of placement they or their families would want to make. Learners with mild or moderate hearing loss for instance, who often make use of residual hearing and other communicative devices may prefer to go to an adapted and transformed regular school.

On the other hand, learners with profound hearing loss who require additional ‘personalised’ intervention may prefer to attend an adapted and transformed special school.<sup>47</sup> The outcome possibly will not amount to segregated education; it is also not the same with sustaining two systems of education because meaningful options exist within the general education system for learners. Furthermore, the approach can be considered as being consistent with the goal of full inclusion of article 24(2)(e) because the general education system is adapted to the varied needs of learners and provides an opportunity for true participation.

It is thought that the fundamental idea under normative standards regarding inclusiveness is for the state to ensure that no hearing-impaired learner is excluded or segregated from the general education system, whether the learner is in a regular school or special school. Segregation here is not being interpreted literally, rather it has to be situated in the context of equality in the distribution of educational materials and services in furtherance with the ‘goal of full inclusion’. The equality contemplated here calls for the recognition of the relationship

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<sup>44</sup> See CRPD art 24(3)(C); Standard Rules (n 43 above) Rule 6 paras 8 & 9; The Salamanca Statement (n 43 above) paras 9, 10 & 21.

<sup>45</sup> CRPD, art 24(3)(c); General Comment No 4, para 34.

<sup>46</sup> See Chapter 1 of this study, Section 3.

<sup>47</sup> HL Bauman et al ‘Beyond ablistm and audism: Achieving human rights for deaf and hard of hearing citizens’ Report presented to the Canadian Hearing Society 4 [http://www.chs.ca/index.php?option=com\\_content&view=article&id=499&Itemid=568&lang=en](http://www.chs.ca/index.php?option=com_content&view=article&id=499&Itemid=568&lang=en) (accessed 12 November 2013); S Liebenberg *Socio-economic rights: Adjudication under a transformative constitution* (2010) 51.



between equality and human dignity.<sup>48</sup> It is a kind of equality that is synonymous with substantive equality which has been found to attend to systematic inequality in putting into consideration individual circumstances and historical experience.<sup>49</sup> This is in recognition of the fact that disability for hearing-impaired learners has to be explained beyond body impairment to implicate the social and academic environment.<sup>50</sup>

The highlight is on putting emphasis on the removal of environmental barriers against inclusion. Reasonable measures must be taken to meet the learning needs of hearing-impaired learners in both settings even if it means treating them differently in a positive manner in order not to impair their dignity. Respect for the dignity of hearing-impaired learners entails respecting their individuality, choice and taking into account their own thinking as well as that of their family in order to accommodate local contexts and affinity.

The decision of the court in the South African case of *Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa & Another*<sup>51</sup> assists us in giving meaning to the import of inclusive education analogous to that of hearing-impaired learner. The case illustrates that the state established regular schools for learners who were not classified as having intellectual disabilities. The state also established special schools for learners with mild to moderate intellectual disabilities, but failed to establish schools for learners with severe or profound disabilities on the assumption that they are not 'educable'.<sup>52</sup> The state further provided unfavourable financial support to learners with severe and profound intellectual under circumstances which were not comparable to that of their counterparts in regular and special schools.

The court in reaching its decision made reference to placement options, this is included in the body of the court's opinion but did not form a necessary part of the court's decision.<sup>53</sup> The court did not prescribe in detail what placement option that best meets the needs of the learners. Certainly, the issue of placing learners in a special or regular school for learners was not before the court, nonetheless, it is a fact which is implied in view of the court's reasoning regarding equality. It would be recalled that the state directly provided funding for children

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<sup>48</sup> Liebenberg (n 47 above) 51-52.

<sup>49</sup> CG Ngwena 'Western Cape Forum for Intellectual Disability v Government Republic of South Africa: A case study of contradictions in inclusive education' (2013) 1 *African Disability Rights Yearbook* 139.

<sup>50</sup> UNESCO 'Guidelines for inclusion: Ensuring access to education for all' (n 5 above); CRPD, art 24(4).

<sup>51</sup> *Western Cape Forum* case (n 33 above).

<sup>52</sup> As above, paras 3.9-17.

<sup>53</sup> As above, para 45.

admitted to mainstream and special schools, however, the state failed to fund the education of children with severe or profound disabilities in ‘special care centres’. The state merely provided indirect funding (subsidy) through the department of health of a lesser amount than the funding for children in mainstream and special schools. The obligation to provide accommodation is connected to the general equality and non-discrimination principle.<sup>54</sup> It has been recognised that achieving equality may require accommodating people differently in order to realise equality instead of rendering same treatment.<sup>55</sup> Ultimately, the court in *Western Cape Forum for intellectual Disability v Government of the Republic of South Africa & Another* was interested in finding out the basis for the differentiation that was made during distribution to mainstream schools, special schools and special care centres. Emphasis is on identifying why learners with severe and profound disability should get a lesser priority during the allocation of financial resources compared to what their counterparts got. The court’s reasoning was that education of children with disabilities should be conceived in more holistic terms and in terms wider than purely achieving academic objectives.<sup>56</sup>

Embedded in the Court’s decision is an understanding that failure to provide an education that embodies knowledge and skill for wider socio-economic participation of children with severe and profound intellectual disabilities, constitute neglect by the state of its obligations under the South African Constitution and under international law, irrespective of whether the setting is a regular or special setting.<sup>57</sup> The decision of the Court in *Western Cape Forum for intellectual Disability v Government of the Republic of South Africa & Another* undoubtedly shifts emphasis on learner’s impairments to barriers to access. According to Ngwena, an unresponsive physical environment can be just as disabling as actual bodily impairment.<sup>58</sup> This implicates a direction that requires the state to identify and facilitate the education of children with disabilities so they can pursue their own basic good within the larger society.

As earlier highlighted in the Canadian case of *Eaton v Brant County Board of Education*,<sup>59</sup> the Canadian Supreme Court demonstrated an acknowledgment that some learners may

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<sup>54</sup> CRDP, art 5(3).

<sup>55</sup> See *Mec for Education: Kwazulu-Natal & Others v Pillay* 2008 (2) BCLR 99 (CC) para 103.

<sup>56</sup> As above paras 19-25; The Court implicitly acknowledged the importance of informal and non-formal learning, and its import shall be examined in the conceptualisation of inclusive education for the hearing-impaired learner as the discourse progresses in this chapter.

<sup>57</sup> *Western Cape Forum* case (n 33 above) paras 20-23.

<sup>58</sup> CG Ngwena ‘Equality for people with disabilities in the workplace: An overview of the emergence of disability as a human rights issue’ (2004) 29 *Journal of Juridical Science* 167; see also General Comment No 4 (n 2 above) para 11.

<sup>59</sup> *Eaton* ‘s case (n 30 above).

require special education placement to achieve equality.<sup>60</sup> The reasoning here is that hearing-impaired learners must be provided with the opportunity to attend either a regular school or a special school as a matter of choice. The facts in *Eaton's* case indicate that Emily Eaton's parents could not agree with the Ontario School Board or the Divisional Court that their child should be placed in a special school, except the Ontario Court of Appeal decision that held in favour of a constitutional presumption of integrated or regular education. The decision at the Court of Appeal was subsequently quashed by the Supreme Court of Canada. Emily Eaton's parents wanted a regular school placement for their child Eaton and she was eventually accommodated in a regular catholic school system.

The significance of the *Eaton's* case to our discourse lies in the reasoning put forward by Pothier in relation to the general equality and non-discrimination principle in that case.<sup>61</sup> The essence is whether equality and non-discrimination have any basis on the choice between a regular setting and special school setting. In answer to the question immediately posited, this study follows Pothier's<sup>62</sup> reasoning in the mock reconsideration of the Supreme Court's decision in *Eaton's* case. Thus, choosing between a regular and a special school setting for the hearing-impaired learner must involve the consideration of the nature of the regular or special school environments. In order for a regular or special environment to advance equality, both must accommodate the differing needs and circumstances of each learner.<sup>63</sup> It is not just about providing a regular or special school placement.

Indeed, a special school placement should not be the result of insufficiencies prevalent in regular school placement for hearing-impaired learners.<sup>64</sup> Likewise regular school placement should not be foisted on the learner who requires special school placement. This is linked to the understanding that both special school and regular school settings ought to be conceived as integral, not separate, and as part of the general education system. Basically, this is not synonymous with the sustenance of two systems of education. The caveat is to avoid the imposition of special school placement on the learner because the general education system has failed in its obligation to make the regular school accommodative of the needs of the learner. The disposition anticipated here should reflect opportunities and possibilities for the

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<sup>60</sup> As above para 69.

<sup>61</sup> See Dianne Pothier's moot reconsideration of the Supreme Court's decision in *Eaton's* case (2006) 1W.C.R. 124.

<sup>62</sup> Women's Court of Canada: *Eaton v Brant County Board of Education* (2006) 1 W.C.R. 124 paras 14, 16, 24 & 35.

<sup>63</sup> See General Comment No 4 (n 2 above) para 11.

<sup>64</sup> Women's Court of Canada: *Eaton v Brant County Board of Education* (n 62 above) para 18.

learner to be able to have access to particular needs under considerations of a presumption of inclusion within the general education system always.<sup>65</sup>

It is true that the history of special school education for hearing-impaired learners and other persons with disabilities have never had inclusive undertones. Nonetheless, Pothier rightly argues that ‘separate but equal as a matter of principle’ does not merely amount to hierarchy of difference in every context or situation. There are circumstances when it becomes inevitable in order to achieve equality. Special school placement for hearing-impaired learners becomes a good case in point in relation to group heterogeneity, linguistic minority and choice. In such contexts, pretending about the realities of impairment by insisting on regular school placement becomes assimilatory and unreasonable.

For hearing-impaired learners, there is no way of circumventing differential treatment. It would amount to unfair discrimination if they are to be treated like hearing learners. Their difference must be taken into account. Formal equality cannot apply. Consequently, substantive equality principles become the answer. It is simply not possible to ask for the closure of already established special schools for hearing-impaired learners within the Nigerian environment. But we can prescribe that substantive equality principles should guide the taking into account of the difference in hearing-impaired group.

The formal justice approach usually applied in the education of hearing-impaired learners in Nigerian primary schools insists on uniform treatment and can be likened to the ‘one cap fits all’ teaching mentality. The implication is that the same rules and regulations apply neutrally to everyone without minding the eventual outcome with regard to certain groups or individuals, especially when the group or individual has hitherto suffered historical marginalisation and oppression. This may have informed Tollesfsen’s idea when he cautioned that persons with disabilities should not be regarded as afterthought, but should be seen as capable of citizenship so as to be entitled to some measure of human well-being.<sup>66</sup>

Formal equality with its attendant insistence on uniform treatment would be an inappropriate approach in redistributing social and economic inequalities for hearing-impaired learners as a means of realising equality for everyone as it were. Within the general education system, a formal equality approach would not allow the development and execution of rules, policies

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<sup>65</sup> Implicit in General Comment No 4 (n 2 above) paras 11 & 34.

<sup>66</sup> C Tollesfsen ‘Disability and Social Justice’ in DC Ralston & J Ho (eds) *Philosophical reflections on disability* (2009) 214.

and practices that would assist in the removal of systemic barriers, in order to enhance access to inclusive education for hearing-impaired learners. In this sense, formal equality is antithetical to the difference principle which intends the arrangement of social and material goods to the benefit of everyone, provided the arrangement portrays a difference in expectation which is advantageous to the individual or group who is worse off.<sup>67</sup>

On another dimension, conceptualising access to inclusive education for hearing-impaired learners envisages the adoption of rules, policies and practices that acknowledge that hearing-impaired learners having their own uniqueness cannot achieve substantive justice based on uniform treatment.<sup>68</sup> Ultimately, this aligns with the uneven application of rules and response to prejudiced socio-political and cultural assumptions as well as consequential unequal treatment.<sup>69</sup> Uneven application of rules and regulations towards the inclusiveness of education for the hearing-impaired learner takes cognisance of systemic inequalities in the education system and then aims at remedying the situation.

Accordingly, the inclusive education environment for hearing-impaired learners is one where every learner's communicative needs are catered for within the general education system. This implicitly involves the utilisation of hearing-impaired adult teachers and role-models, utilisation of educators fluent in signed language, access to other necessary communicative devices and the use of the bicultural approach.<sup>70</sup> The bicultural approach involves a teaching approach that makes use of signed language in a language the learner is familiar with as first language and spoken English language (due to its acceptance as Nigeria's formal language) as a second language.<sup>71</sup> This is connected to the reasoning that hearing-impaired persons has been recognised as having different communicative as well as conversation patterns which demonstrate the desire to facilitate visual connection.<sup>72</sup>

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<sup>67</sup> The difference principle was formulated by Rawls in 1971 in 'A theory of justice' and was further reinforced in 2001 'Justice as fairness: A restatement'. See J Rawls *A theory of justice* (1971); J Rawls *Justice as fairness: A restatement* (2001).

<sup>68</sup> C Albertyn & B Goldblatt 'Facing the challenge of transformation: The difficulties in the development of an indigenous jurisprudence of equality' (1998) 14 *South African Journal of Human Rights* 248.

<sup>69</sup> MT McCluskey 'Rethinking equality and difference: Disability discrimination in public transport' (1988) 97 *Yale Law Journal* 863.

<sup>70</sup> Articulated from a reading of Karamicheal's work see Unpublished: JP Karamicheal 'Experiences of a deaf learner in a mainstream high school' unpublished PhD thesis, University of Johannesburg 2004 20.

<sup>71</sup> R Takushi 'Deaf culture and language: Concerns and considerations for mainstream teachers' (2000) [http://www.american.edu/tesol/Ruth\\_Takushi](http://www.american.edu/tesol/Ruth_Takushi) (accessed 19 January 2015).

<sup>72</sup> As above.

Research further indicates that the use of visual communication and other forms and modes of communication has the tendency to convey information.<sup>73</sup> And it especially does so where the learner is biculturally disposed prior to receiving academic information.<sup>74</sup> Accordingly, the bicultural approach has been said to assist hearing-impaired learners in having a reading and writing level comparable to that of their hearing counterparts.<sup>75</sup> Holistically, the adoption of these communicative inputs provides an entry point for the recognition of hearing-impaired learner as full partners in socio-economic participation. It would also prove beneficial in preparing hearing-impaired learners for life within their hearing-impaired community and the larger society.

Interestingly, it could be deduced that the facts which cut across the conceptualisation of inclusive education for hearing-impaired learners so far relate to issues pertaining to the use of universal design learning, integration of informal and non-formal learning approaches, and early child learning and language development. Early child intervention services have particularly been implicated in the development of communication skills for hearing-impaired learners for purposes of achieving inclusive education.<sup>76</sup> A number of scholars emphasise that lack of early identification of hearing loss as well as delay in providing accommodations, to a greater extent affect the linguistic, social and educational development of hearing-impaired learners.<sup>77</sup>

Accordingly, the conceptualisation of inclusive education for hearing-impaired learners in this study promotes the appreciation of learner diversities as a way of enhancing and democratising learning opportunities. It further combines the strong points of core universal concepts like the universal design learning, early child care and education, and informal and non-formal learning in soliciting personalised approaches in connection with the need of every learner. Personalised approaches as conceived are expected to happen within the general education system. This is in connection with the call that the major aspect of

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<sup>73</sup> RE Johnson et al *Unlocking the curriculum: Principles for achieving access in deaf education* (1989).

<sup>74</sup> H Hauland & C Allen 'Deaf people and human rights' Report of the World Federation of the Deaf (2009) 28; F Grosjean 'The right of the deaf child to grow up bilingual' (2001)1 *Sign Language Studies* 110.

<sup>75</sup> Karamicheal ( n 70 above) 23.

<sup>76</sup> D Chen et al L 'Lessons from project PLAI (Promoting Learning through Active Interaction) in California and Utah: Implications for early intervention services to infants who are deaf-blind and their families' (2000) 7 *Deaf-Blind Perspectives* 1.

<sup>77</sup> Karamicheal ( n 70 above) 25; C Padden 'Early bilingual lives of deaf children' in I Parasnis (ed) *Cultural and language diversity: Reflections on the deaf experience* (1996) 99; T Humphries et al 'Language acquisition for deaf children: Reducing the harms of zero tolerance to the use of alternative approaches' (2012) 9 *Harm Reduction Journal* 1.

inclusion is not the individualisation but the diversification of educational provision and the personalisation of common learning experiences.<sup>78</sup> Indeed the idea tilts towards universal concepts that contemplate diversity in the education of learners within the general education system right from the proposal stage.<sup>79</sup> These universal concepts with inherent inclusive underpinning will be addressed in turn.

## **4 Universal concepts with inclusive values**

### **4.1 Universal design learning**

Under universal design learning, the general school system foundationally makes provision for the diverse personal needs of all learners.<sup>80</sup> This principally relates to the idea of appropriating the fundamental requirements of morality to everyone irrespective of class, status or body characteristics. This is highly significant as it draws attention to consideration of things that are good, advocates for the realisation of the good and expects people to play a part in them. Undeniably, there is an imperative presumption that government and citizens have the tendency to capture the essential characteristics of morality in relation to human beings in the society.<sup>81</sup> In this respect, Finnis tells us that ‘natural law’ is the set of values of practical reasonableness which direct human life and human community.<sup>82</sup> By implication, Finnis’s point is that an inclusive society is one which apart from being a political society, coalesces a whole diversity of relationships and relates it to law, policy and practice in a purposive sense.

Kisanji has argued that universal design learning is respectful of indigenous African principles of education in connection to shared common values.<sup>83</sup> Within the African context, education as described is democratised, universalised, culturally relevant and functional.<sup>84</sup>

This universal nature is often reflected in the accessibility of education to all community

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<sup>78</sup> BR Guijarro ‘Conceptual framework of inclusive education’ in Acedo C, Amadio M, & Operti R (eds) *Defining an inclusive education Agenda: Reflections around the 48<sup>th</sup> session of the International Conference on Education* (2009) 11.

<sup>79</sup> As above.

<sup>80</sup> General Comment No 4 (n 2 above) para 21; see also M Isreal et al ‘Universal design for learning: Recommendations for teacher preparation and professional development’ (2014) *Document No. IC-7* <http://www.ceedar.education.ufl.edu/tools/innovation-configurations> (accessed 16 March 2016).

<sup>81</sup> R Cotterrell *The politics of jurisprudence* (2003) 141.

<sup>82</sup> J Finnis *Natural law and natural rights* (1980) 287.

<sup>83</sup> J Kisanji ‘The relevance of indigenous customary education principles in the formulation of special needs education policy’ Paper presented at the fourth International Special Education, Congress, Birmingham, 10-13 April (1995) 6.

<sup>84</sup> As above; The term universalised suggests that education is meant for all in line with the needs and aspirations of the people.

members. There was no form of differentiation or segregation and the content of what is taught is often an expression of the social and natural environment which is usually diversified, and purposefully attaches existing convictions of the people.<sup>85</sup> This process increases learning outcomes as it seeks to meet the learning needs of all learners.<sup>86</sup>

Likewise, universal design learning being a progressive movement towards transformation in education shares what has been described as normative and principled beliefs, which provides value-based rationale for socio-political action.<sup>87</sup> This is why the attainment of accessible environments, products and services is inscribed in the CRPD as part of the disability rights movement which has without doubt become a fundamental right for everyone. It is to be noted that under the CRPD, state parties are expected to take appropriate measures to ensure persons with disabilities access on an equal basis to the physical environment, to transport, information and communication technologies and to other services open to the general public.<sup>88</sup> The state is also expected to develop and monitor the implementation of minimum standards for the accessibility of facilities and services provided to the general public.<sup>89</sup> Against this backdrop, it could be argued that universal design learning is about operationalising accessibility from the beginning. It can also be conceived as part of the roadmap to realising least standard access and equal participation in education and society for everyone and not just persons with disabilities.

The term universal as a feature of the universal design learning represents the importance of responding to the common good through ‘universal policy’ or law so as to ensure the egalitarian distribution of basic public goods and services. This inevitably falls in line with the directive of achieving social justice and equality as an antithesis to the ‘construction of hierarchical citizenship’ and insensitivity to human differences. Its significance in relation to hearing-impaired learners lies in its appreciation that people having different impairments experience exclusion due to the manner in which accommodations are provided.

This understanding can best be described as a response to the realisation that hearing-impaired learners as persons with disabilities are placed in situations of discrimination and domination by socio-attitudinal practices which are not sensitised to the diverse intricacies of

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<sup>85</sup> MB Adeyemi & AA Adeyinka *The principles and content of African traditional education* (2003).

<sup>86</sup> As above.

<sup>87</sup> P Haas ‘Introduction: Epistemic communities and international policy coordination’ (1992) 46 *International Organisation* 3.

<sup>88</sup> CRPD, art 9(1).

<sup>89</sup> CRPD, art 9(2)(a).



hearing impairment. Hearing-impaired learner's functioning is generally determined by the recognition of their visual disposition and availability of auditory enhancement needs as well as quality of services. This enables them to function in the manner that they prefer and connotes a response to flexibility and human variations. Principles of universal design regard this much as its starting point emphasises the imperative of making provisions to align to the complexity of the human body in such a manner that anyone, irrespective of bodily impairment, is able to have access to designs within the social and educational environment.<sup>90</sup>

Significantly, universal design learning is not particular with respect to any group of vulnerable persons, as its principles underscore universally acceptable accommodations to be made use of by the 'widest range of learners'. This means that accommodations must not be provided in a manner that categorise learners as negatively different and separate.<sup>91</sup> According to Florian, it is always fundamental that support is provided under a general idea of including all learners. This signifies respect and value for different human characteristics.<sup>92</sup>

However, the words 'without the need for adaptation or specialised design' usually included in defining what constitutes universal design have been contended by some scholars as essentialising and ambivalent, in seeking to eliminate specialised interventions from universal design principles.<sup>93</sup> There is also the assertion that the universal design disproportionately focuses on expert opinion as well as technological innovation rather than individual experiences.<sup>94</sup> Consequently issues arise as to how universal design principles can respond to

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<sup>90</sup> Articulated from a reading of the 'Principles of universal design' compiled by the Centre for Universal Design (2011); R Imrie 'Designing inclusive environments and the significance of universal design' in J Swain et al (eds) *Disabling barriers, enabling environments* (2013) 287.

<sup>91</sup> Isreal et al (n 80 above) 6; R Mace *Universal design: Housing for the lifespan of all people* (1988); R Duncan 'Universal design' in *Conference proceedings of the National Disability Authority's in Universal Design for the 21<sup>st</sup> century: Irish and international perspectives* (2007) <http://www.universaldesign.ie/what-is-Universal-Design/Conference-proceedings/Universal-Design-for-the-21st-Century-Irish-International-Perspective/Universal-Design/html> (accessed 3 March 2016).

<sup>92</sup> L Florian 'The concept of inclusive pedagogy' in G Hallett & F Hallett (eds) *Transforming the role of the Special Education Needs Coordinator (SENCO): Achieving the national award for SEN coordination* (2010) 61.

<sup>93</sup> Disability Act 2005 (Ireland); R Mace (n 88 above); Duncan (n 88 above); P Welch 'What is Universal Design' in P Welch (ed) *Strategies for teaching design* (1995) 1.

<sup>94</sup> J Tibias 'Universal design: Is it really about design' (2003) 9 *Information Technology and Disabilities Journal* 5.

cultural differences given the complexity of impairments and their interaction in the social environment.<sup>95</sup>

Without doubt, the forgoing concerns raise tensions with respect to universal design learning as an inclusive approach. However, the phrase ‘without the need for specialised design’ ought not to be interpreted literally as suggesting an ouster of approaches that could incorporate and respond to a variety of impairments in order to make a wide range of access possible.<sup>96</sup> The jurisprudence of universal design principle pragmatically anticipates that inclusive features of separate designs must come within the general design from the beginning, so as not to over-emphasise individual impairments that are often amenable to segregated settings or designs.<sup>97</sup>

It must be in recognition of the above facts that Zola argued against the ‘specialness’ of impairment or designs, but extolled its universality as a natural part of human existence.<sup>98</sup> For Preiser, universal design learning is a ‘design paradigm of the twenty-first century that has established itself as a potent factor in improving the quality of life for everybody, on a global basis.’<sup>99</sup> Nevertheless, it is important to ask: assuming universal design idea does not provide answers to the ‘without the need for adaptation or specialised design’ or ‘without specific or segregated design’ argument, should we expect anything less from education practitioners and policy-makers? In a philosophical sense, much of the concerns can be ameliorated when evaluated within understandings of ethical and humanistic provisions.<sup>100</sup> In order to provide answers to the question raised, there must be some understanding that it is people that make things happen. Universal design learning should be seen as a moral endeavour, especially in giving conscientious consideration about the people for whom the accommodations are intended.

Normatively, we must be reminded that universal design thinking emanated as an emancipatory concept interested in changing the conditions of oppressed and marginalised

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<sup>95</sup> On this, see R Imrie ‘Perspectives in rehabilitation: Universalism, universal design and equitable access to the built environment’ (2012) 34 *Disability & Rehabilitation* 873; WF Preiser ‘Paradigm for the 21<sup>st</sup> century: The challenge of implementing universal design’ in T Vavik (ed) *Inclusive buildings, products and services: Challenges in universal design* (2009) 28; G Pullin *Design meets disability* (2009) 11.

<sup>96</sup> See General Comment No 4 (n 2 above) para 21

<sup>97</sup> See Duncan (n 91 above); IK Zola ‘Toward the necessary universalising of a disability policy’ (2005) 83 *The Milbank Quarterly* 1.

<sup>98</sup> Zola (n 97 above).

<sup>99</sup> WF Preiser ‘Universal Design: From policy to assessment research and practice’ (2008) *International Journal of Architectural Research* 78.

<sup>100</sup> Derived from a reading of A Mclean et al ‘Designing as a moral enterprise: Technology Research for Independent Living researchers’ in *Conference proceedings Universal Design for the 21<sup>st</sup> century: Irish and international perspectives* (n 88 above).

persons in society.<sup>101</sup> Such a ‘prescriptive and directive approach’ ought to be demonstrated through a universal design idea in order to transform systemic historical disadvantage. ‘Prescriptive and directive paradigm’ involves probing socio-political and cultural realities, and understanding that these factual realities must be attributable to historical and recent social structures. These perspectives in essence demonstrate the need to apply moral reasoning to political values for the different segments of the society. In this sense, it is argued that universal design learning pursues an objective moral theory in its formation and flexibility and can thus respond to cultural differences.

Lawton argues that individual needs inspire the making of needed provisions.<sup>102</sup> This also agrees with the idea of introducing flexibility with regard to the provision of accommodations.<sup>103</sup> Flexibility as used entails making available options of use in order to accommodate wider access, adapting same to the user and facilitating the user’s potential capacity.<sup>104</sup> To achieve transformation, people must work out answers to human conflicts. They must bring their values into actuality by determining impediments and mutually work for harmony. People of different cultures and orientation must of necessity work out agreement. We have the means – the process of reasonable reflection and the socio-political environment is the vital hand in building this understanding. This means dealing with stakeholders’ interests and power, issues of non-discrimination, as well as committing to a national plan of action towards a more inclusive society as Finnis urges.<sup>105</sup> Hence commitment creates a balance between dedication and indifference. It further widens one’s outlook to new horizons and offers better ways of instantiating the practical principles of reasonableness.

The prescriptive and directive approach of this study which is a process of applying practical reasonableness to life issues and challenges, becomes a helpful framework for reflecting and establishing valuable ends. When used properly, it can produce results or it can lie idly by while state officials and education personnel continue in ignorance. For hearing-impaired learners, the significance of the universal design lies in its being responsive to linguistic differences and competing claims of what inclusivity entails within hearing-impaired

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<sup>101</sup> General Comment No 4 (n 2 above) para 30; N D’Souza ‘Is universal design a critical theory?’ in S Keates et al (eds) *Designing a more inclusive world* (2004) 3.

<sup>102</sup> P Lawton ‘Designing by degree: Assessing and incorporating individual accessibility needs’ in WF Preiser & E Ostroff (eds) *Universal design handbook* (2001) 7.

<sup>103</sup> Souza (n 101 above) 5.

<sup>104</sup> As above.

<sup>105</sup> Finnis *Natural law and natural rights* (n 82 above) 103 .

community. The underlying basis for universal design learning is the promotion of equality and forestalling of discriminatory practices that over emphasise personal impairment.

Essentially, the phrase ‘without special or separate design’ highlights considerations of the ‘love thy neighbour as oneself’ ultimate principle of morality<sup>106</sup> which directs that you do unto others what you want them to do unto you. As exemplified by Finnis, this ultimate principle directs one towards a morally bound obligation to others and even to oneself.<sup>107</sup> It could be inferred from Finnis’s argument that moral obligation to oneself can be drawn from the ultimate principle in the course of reflecting about the good of others.<sup>108</sup> Along the same line of thought, Finnis insists in a later book that:

The basic good of practical reasonableness summons one to treat the good of other people as reason for action in one’s own practical deliberation and choosing. For: the direction the first practical principles give one’s deliberations is towards goods one can share in along with others, and it has no rational stopping-place short of a universal common good: the fulfilment of all human persons. The rational, normative content of that defectiveness is adequately articulated in the principle of love of neighbour as oneself.<sup>109</sup>

In other words, the ultimate principle of universal morality is consistent with the universal design concept in its conception of human good, respect for dignity and equality in advocating recognition for the supreme moral value of anyone. This presupposes that the socio-political environment should apply reason, legitimacy and integrity in their dealings, so as to reflect a unity of values.

## **4.2 Early childhood care education**

On considerations of morality, no one category of learner is better than the other, rather every child possesses the potential to learn and will learn differently from other peers. However, it needs to be stated that early childhood care and education is considered a critical step in equipping hearing-impaired learners for lifelong learning and development, as it increases self-sufficiency and diminishes a child’s risk of social-emotional academic challenges.<sup>110</sup> Early identification (from zero to six months) and early intervention are closely related and are part of the same process towards natural language development for hearing-impaired

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<sup>106</sup> This according to Finnis is also referred to as the golden rule. It is traceable to Thomas Aquinas thoughts and is similar in content to Kants ‘categorical imperative’. See J Finnis *Aquinas: Moral, political and legal theory* (1998) 132.

<sup>107</sup> Finnis (n 82 above) 126.

<sup>108</sup> Finnis (n 82 above) 127.

<sup>109</sup> Finnis ‘*Aquinas: Moral, political and legal theory*’ (n 106 above) 132.

<sup>110</sup> See General Comment No 4 (n 2 above) paras 12(c) & 65; S Philpot ‘Too little, too small? The CRPD as a standard to evaluate South African legislation and policies for early childhood development’ (2014) 2 *African Disability Rights Yearbook* 51.

learners.<sup>111</sup> Childhood usually extends from zero to the age of compulsory primary education which is about the age of five.<sup>112</sup> Consequently early childhood screening and education assists in exploring different facets of child development as well as learning in order to gain understanding on how to support infants and pre-school learning before the start of formal or informal schooling.<sup>113</sup>

Early child care and education can be understood as providing education in learner's most determinative years. This is in line with 'facilitating integral human fulfilment' as it encompasses shaping lives and directing choices as reason requires.<sup>114</sup> A child at this stage has been identified as steadily discovering different avenues to personal fulfilment.<sup>115</sup> The child then uses language not only to explain what he wants but to choose what he wants. Research has shown that early child care and education increases a child's IQ scores by 4-11 points, improves childhood performance, increases vocabulary acquisition, improves cognitive skills as well as the ability to interact and work with classmates.<sup>116</sup> Likewise, from zero to two years has been stated to be a very significant period for cognitive and language development of every child.<sup>117</sup> It is also within this period that a hearing-impaired learner is possessed or dispossessed of practices and processes that advance and facilitate healthy language development.<sup>118</sup>

Philosophically, the terms 'early' and 'care' considerably imply something additional to education in the sense of identifying the strength in every child, and moving the state and other stakeholders to adopt policies and practices that incorporate each learner's needs and interests within the general education system soon enough. In effect, lack of early language development and limited exposure to necessary communicative skills/modes consequently result in low academic performance and difficulties for hearing-impaired learners at the primary and other levels of schooling.<sup>119</sup>

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<sup>111</sup> C Yoshinaga-Itano & ML Apuzzo 'The development of deaf and hard of hearing children identified early through the high risk registry' (1998) 143 *American Annals of the Deaf* 416.

<sup>112</sup> International Standard of Education (ISCED) (1997) para 46; UNESCO *Holistic Early Childhood Development Index (HECDI) framework: A technical guide* (2014) 12.

<sup>113</sup> Philpot (n 110 above) 55.

<sup>114</sup> Grisez et al 'Practical principles, moral truth and ultimate ends' (1987) 32 *American Journal of Jurisprudence* 119.

<sup>115</sup> S Neaum *Child development for early childhood studies* (2013) 23

<sup>116</sup> SW Barnett 'Long term effects of early childhood programs on cognitive and school outcomes' (1995) 5 *The Future of Children* 25; Neaum (n 115 above) 24.

<sup>117</sup> Humphries et al (n 77 above) 45.

<sup>118</sup> As above.

<sup>119</sup> See general Comment No 4 (n 2 above) para 34(b)&(c).

Studies have concluded that signed language is equivalent to spoken language in certain respects.<sup>120</sup> Hence language deprivation as Humphries *et al* teach is the disadvantage that hearing-impaired learners suffer where they do not obtain adequate language input to acquire or learn, or be eagerly disposed to grow cognitive abilities early enough.<sup>121</sup> Early exposure to signed language from date of birth however diminishes this disadvantage.<sup>122</sup> Research has further indicated that early exposure to local/home signs and access to substantial language background developed along the line of language conversant to a hearing-impaired child enhances early vocabulary build up and increases opportunities for learning.<sup>123</sup> Another study has shown that children who are bilingual do not experience delays in the achievement of early language goals when they use their respective native/local languages.<sup>124</sup> More so, Berens *et al*, Jasinska and Petitto provide the understanding that the age of first language and first bilingual language exposure (a process of linking the first language and the second language) also influences to a greater extent hearing-impaired learner's ability to develop reading skills.<sup>125</sup> Consequently, it could be taken that visual learning if developed alongside early acquisition of local signed language contributes to hearing-impaired learner's literacy development.

Furthermore, research has shown that early visual language environment affects visual processing and increases skill in joint-attention that assists children to shift eye gaze which facilitates vocabulary development.<sup>126</sup> Early visual language exposure (home/local signs), together with early visual attention developed by a hearing-impaired child has also been

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<sup>120</sup> LA Petitto et al 'Speech-like cerebral activity in profoundly deaf people processing signed languages; Implications for the neural basis of human language' (2000) 97 *Proceedings of the National Academy of Sciences* 13961; WFD Policy 'WFD Statement on the Unification of Sign Languages' January 2007 [http://www.wfdeaf.org/wp-content/uploads/2011/04/statement-on-the-unification-of-sign-languages-january-2007\\_1.pdf](http://www.wfdeaf.org/wp-content/uploads/2011/04/statement-on-the-unification-of-sign-languages-january-2007_1.pdf). (accessed 19 December 2015).

<sup>121</sup> As above.

<sup>122</sup> As above.

<sup>123</sup> PA Ajavon 'An overview of deaf education in Nigeria' (2006) <http://www.deafchildworldwide.info/document.mr?id=2875> (accessed 11 May 2015).

<sup>124</sup> LA Petitto & S Holowka 'Evaluating attributions of delay and confusion in young bilinguals: Special insights from infants acquiring a signed and a spoken language' (2002) 3 *Sign Language Studies* 4.

<sup>125</sup> M Berens et al 'Learning to read in two languages; Should bilingual children learn reading in two languages at the same time or in sequence? Evidence of a bilingual reading advantage in children in bilingual schools from English-only homes' (2013) 36 *Bilingual Research Journal* 35; KK Jasinska & LA Petitto 'How age of bilingual exposure can change the neural systems for language in the developing brain: A functional near infrared spectroscopy investigation of syntactic processing in monolingual and bilingual children' (2013) 6 *Development Cognitive Neuroscience* 87.

<sup>126</sup> National Association of the Deaf 'Position statement on early cognitive and language development and education of deaf and hard of hearing children' <https://www.nad.org/position-statement-early-cognitive-and-language-development-and-education-dhh-children> (accessed 11 May 2014).

found to contribute to reading and language development.<sup>127</sup> Studies in bilingual education further exemplify that cognitive advantage, the ability to manipulate languages, problem-solving, attention control and task exchange can be derived from learning two languages.<sup>128</sup> In addition, children that are bilingual have been found to have greater intellectual flexibility and understanding to language meanings than those who are monolingual.<sup>129</sup> At the risk of repetition, bilingual language exposure as stated earlier in this chapter is synonymous with the use of signed language in a language the learner is familiar with as first language and another spoken language as a second language. This approach has also been noted as not confusing to learners.<sup>130</sup>

These findings illustrate that hearing-impaired learners in Nigeria can also experience analogous academic benefits from learning local Nigerian signs as well as spoken/written language through print, visual processing and listening (depending on the individual learner's disposition).<sup>131</sup> Moreover, it has been demonstrated that early signed language acquisition does not inhibit hearing-impaired children from adopting or learning speech, rather early signed language acquisition enhances the possibility of spoken language development for children who prefer to use spoken language.<sup>132</sup> Accordingly, learning to read and write language is a very necessary educational component for hearing-impaired learners in Nigeria, and early exposure to signed language and other communicative modes has implications for cognitive and literacy development.

Hence a connection between local signed language and language of instruction in the pre-school and early stage of primary school is very fundamental. It is at this stage that support for families and support for the learner between the home and the school begins. It reasonably

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<sup>127</sup> C Chabernain & R Mayberry 'Theorising about the relationship between sign language and reading' in CJ Morford & R Mayberry (eds) *Language acquisition by eye* (2000) 221.

<sup>128</sup> K Hakuta *Mirror of language: The debate on bilingualism* (1986); J Cummins *Negotiating identities: Education for empowerment in a diverse society* (2001); P Hauser et al 'Development of deaf and hard of hearing students executive function' in M Marschark & P Hauser (eds) *Deaf cognition: Foundations and outcomes* (2008) 286.

<sup>129</sup> As above.

<sup>130</sup> T Humphries 'Schooling in American Sign Language: A paradigm shift from a deficit model to a bilingual model in deaf education' (2013) 4 *Berkeley Review of Education* 7; P Crume 'Teachers' perception of promoting sign language phonological awareness in an ASL/English bilingual program' (2013) 18 *Journal of Deaf Studies and Deaf Education* 464.

<sup>131</sup> Inspired from a reading of S Easterbrooks & S Baker *Language learning in children who are deaf and hard of hearing: Multiple pathways* (2001).

<sup>132</sup> K Davidson et al 'Spoken English language development among native signing children with cochlear implants' (2014) 19 *Journal of Deaf Studies and Deaf Education* 238; R Swanwick 'The demands of a sign bilingual context for teachers and learners: An observation of language use and learning experiences' (2001) 3 *Deafness and Education International* 62.

starts with sensitising families and the society to appreciate the necessity for a holistic development approach for every learner in terms of substantial language exposure before school age.

All children have a right to language<sup>133</sup> and that of hearing-impaired learners cannot be an exception. Signed language as visual language is an accessible language for most hearing-impaired learners and timely exposure to this language as early as possible is critical to education and academic success. Thus any hope for improvement in the education of hearing-impaired learners lie in timely advancement of signed language and other communicative skills and modes. Achieving meaningful participation within Nigeria's socio-economic and political environment for hearing-impaired learners will require appropriate early visual language input, visual learning and spoken/written English language. Here, spoken English language is considered necessary because of its use in Nigeria as formal language.

Early child care and education is a practical approach that enhances lifelong learning for a child from cradle and has to be realised through policy and practice for every learner in Nigeria, particularly hearing-impaired learners and other learners with disabilities. It is also an augmentative process.<sup>134</sup> The state has the responsibility to ensure that its institutions, agencies and policy-makers in education recognise the importance of early visual language needs of hearing-impaired learners, which has been noted to enhance progressive development for hearing-impaired learners on a level commensurate with learners who hear.<sup>135</sup> In fact, this parallels Stein's 'disability human rights paradigm' which like the prescriptive and directive approach, argues for the development of individual talent based on individual worth and value.<sup>136</sup> Stein further lays emphasis on the society's role in creating disability and its responsibility to compensate disability based marginalisation.<sup>137</sup> Admittedly, Nigerian citizenship belongs to us all and it is the responsibility of the Nigerian government to provide safeguards through regulations and policy in order to ensure that each hearing-impaired learner is accessing an education comparable with hearing learners' academic outcomes. This is based on the moral imperative that every individual is entitled to the means necessary to develop individual potential.

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<sup>133</sup> CRPD, arts 21, 24(3)(a) & (b); National Association of the Deaf 'Position statement' (n 126 above).

<sup>134</sup> CRPD, art 24(3)(a).

<sup>135</sup> National Association of the Deaf 'Position statement' (n 126 above).

<sup>136</sup> MA Stein 'Disability human rights' in D Weissbrodt & M Rumsey (eds) *Vulnerable and marginalised groups and human rights* (2011) 665.

<sup>137</sup> As above.



### 4.3 Informal and non-formal learning

Along the line of lifelong learning and social development for children with disabilities as emphasised under the CRPD, informal and non-formal education is considered relevant under formal primary education within the general education system.<sup>138</sup> In construing informal and non-formal education as part of how inclusive education for the hearing-impaired learner is conceptualised in this study, it is pointed out that the idea is not to provide a detailed discourse or explore the assumptions underlying the concepts of informal and non-formal education. Rather the centrality lies in establishing linkages with the different forms of learning (formal primary education, non-formal and informal learning) while highlighting the priorities of inclusive equality.

As a result, informal and formal learning as used in this context basically refers to the system of continuous learning, where the curriculum is expanded in line with capacity and confidence building, using various sources of communication, and where every learner is patiently motivated towards attitudes, principles and skills that are inclusion oriented.<sup>139</sup> In this light, there is the understanding that each learner is welcomed and is considered unique in terms of learning needs.<sup>140</sup>

Critically people see non-formal or informal learning as education for persons we perceive as 'other'. But it is a legitimate form of education that is also for all and needs to be incorporated into formal education curriculum so that its benefits can be universalised.<sup>141</sup> To participate fully in the society is not only a struggle for vulnerable groups like persons with disabilities, including hearing-impaired learners.<sup>142</sup> It is about human development and it is the struggle of any human person as has been aptly stated.<sup>143</sup> Historical evidence demonstrates that within and even outside the Nigerian context, individuals gain frequently from non-formal or informal learning.<sup>144</sup>

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<sup>138</sup> General Comment No 4 (n 2 above) paras 8-9.

<sup>139</sup> See General Comment No 4 (n 2 above) para 12(g); M Omolewa 'The practice of lifelong learning in indigenous Africa' in Carolyn Medel- Aonuevo (ed) *Integrating lifelong learning perspectives* (2002) 13.

<sup>140</sup> As above; RM Torres 'Lifelong learning in the north, education for all in the south' in Medel- Aonuevo (n 139 above) 3-12.

<sup>141</sup> Torres (n 140 above) 3-12.

<sup>142</sup> As above.

<sup>143</sup> As above.

<sup>144</sup> Omolewa (n 139 above) 14.

Kisanji argues that several approaches and methods believed to facilitate learning in contemporary schools have been the natural part of African indigenous education.<sup>145</sup> African indigenous education was considered informal but was collaborative, continuing and substantially diversified.<sup>146</sup> The wider community as well as the age grade and apprenticeship system encouraged learning practices which were woven around the political, financial, religious and physical life of the people.<sup>147</sup> Learning was responsive, democratised as well as remedial in emphasising relevance, respect for all, fairness and socio-economic and political justice. Within this process, individuals implicitly derive a purpose as it promotes skills acquisition and encourages self reliance. It also facilitates the development of participatory values as well as basic standards of justice.<sup>148</sup>

Nigeria as an African state can still adapt and integrate these indigenous practices in the interest of primary school learners and especially for hearing-impaired learners in order to promote learning. Formal education has been found to be unable to cater for the need of every learner as its curriculum is often directed at responding to the academic needs of the dominant majority.<sup>149</sup> Discriminatory attitudes and practices that promote unequal treatment in the education of persons with disabilities including hearing-impaired learners constitute a major challenge that limits opportunities for them. Consequently, our values as a nation as well as socio-economic and cultural contexts ought to inform what learners are taught and how they are taught.

While appreciating the benefits of informal and non-formal education as an inclusive part of how hearing-impaired learners should learn, it is necessary to emphasise that informal and non-formal learning should not become a substitute or an excuse for not abating discriminatory laws and practices inherent in formal education delivery for hearing-impaired learners. It must also not be seen as an alternative towards making the needed accommodations which are significant for the formal education of hearing-impaired learners. In other words, we must try to create a balance. This balance lies in having the necessary

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<sup>145</sup> J Kisanji 'Historical and theoretical basis of inclusive education' Keynote address for the workshop on *Inclusive education in Namibia: The challenge for teacher education* March (1999) 11.

<sup>146</sup> As above; UNESCO *Special needs in the classroom: Teacher resource pack* (1993).

<sup>147</sup> Omolewa (n 139 above) 13.

<sup>148</sup> As above.

<sup>149</sup> K Somtrakod 'Lifelong learning for a modern society' in Medel- Aonuevo (n 139 above) 30.

knowledge and being creative as well as flexible in the classroom.<sup>150</sup> The imperative of exemplifying commitment within the general education system is also implicated.<sup>151</sup>

Facilitating inclusive learning, imagining a feasible future and developing skills and potentials towards actualising what has been learnt is considered an objective good. By thinking about a feasible future for learners, we need to imagine a society that promotes integral human flourishing, appreciates difference and values human dignity and respect. This must be why Ferreira da Cunha in her natural law theory of social justice insisted that every citizen, not being a slave has a right to free development of his person in recognition of his dignity. The scholar explains it thus:

A person, citizen A, B, C, etc with no discrimination has a general right to the free development of his/her personality and to the real, effective, practical recognition of his/her dignity. This obligates that those among A, B, C, etc., who have nothing or almost nothing by the strict iron logic of the juridical title should be helped (of course, being not a slave, one has at least some recognisable rights to himself or herself: it seems that nobody is absolutely deprived of everything...). They should not however, be helped by charity, but by solidarity, and not through the mere free will of private philanthropies, but through a political means: Social justice. Namely this help must be given by means of social security.<sup>152</sup>

Ferreira da Cunha's perception reinforces the understanding of transforming the society and the general education system through supportive practices, culture and structures that accommodate diversity as many have accentuated.<sup>153</sup> Hence, it supports the normative directive that the general school system must be restructured so as to accommodate all learners, including learners with disabilities.<sup>154</sup>

The school system is expected to focus on training the abilities of children with disabilities, including hearing-impaired learners instead of highlighting deficits. Other responsibilities involve awakening the interest of learners within friendly environments, improving teachers' commitment towards all learners and the curricula content made learner centred. The removal of labels like 'onye ogbu' which means 'a dumb person' as a hearing-impaired is popularly referred to in the Igbo language is also considered necessary. As a nation, there is need to have insights concerning the future and the situations that individuals face so that

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<sup>150</sup> See General Comments No 4 (n 2 above) para 25.

<sup>151</sup> For these thoughts, I am grateful to Robert Dinerstein, of the American University Washington College of Law for providing these insights during discussions with him at the Disability Rights in an African Context Short Course 14-18 March 15, 2016.

<sup>152</sup> PF Ferreira da Cunha *Rethinking natural law* (2013) 53.

<sup>153</sup> A Dyson et al 'Making space in the standard agenda: Developing inclusive practices in schools' (2003) 2 *European Educational Research Journal* 228 244; Ngwena (n 49 above) 142.

<sup>154</sup> See CRPD art 24, para 1; General Comment No 4 (n 2 above) para 8.

committed plans and coordinated decisions can be made in order to harmonise individual opportunities.

## **5 Conclusion**

From the foregoing discussions, it can be drawn that inclusive education for a hearing-impaired learner does not lie merely in placement options. Realising inclusive education for hearing-impaired learners in Nigeria must happen within the general education system. It is argued that equality and non-discrimination principles underscore any choice between a regular school and special school placement for hearing-impaired learners. Ideas of the universal design learning, early child education and informal and non-formal learning are constituent parts of how inclusive education is to be conceived for hearing-impaired learners in Nigeria. Article 24 of the CRPD in demanding for the inclusive education of the hearing-impaired learner does not affirm the promotion of hierarchical difference.

Valuing the dignity and personhood of hearing-impaired learners require the socio-political and cultural environment to respond positively to human diversity. Respect for diversity extends towards acknowledging that hearing-impaired learners are not lesser humans, rather their constraint towards interaction is as a matter of barriers in the society not designed in response to their visual and aural improvement requirements. What is good or bad does not refer to the nature of man, but to reasonableness which directs any pursuit that is worthwhile. As such, committing to a fundamental change with respect to implicit judgements of inadequacy requires appreciating each human being as an end in himself in order not to reduce any person's personhood irrespective of personal characteristics.

## **Chapter 4**

### **Protection of inclusive education of hearing-impaired learners in Nigeria: Analysis of the legal and policy framework**

## 1 Introduction

This chapter examines Nigeria legal framework as it concerns the protection and promotion of the inclusive education right of hearing-impaired learners as persons with disabilities in Nigerian primary school. This is done in the belief that persons with disabilities, including hearing-impaired learners ought to have access to an inclusive education programme in order to flourish like every human person. It shall be espoused in this chapter that Nigeria has not made much progress in so far as the protection and promotion of the inclusive education rights of hearing-impaired learners are concerned.

The application of the prescriptive and directive analysis thinking will bring an appreciation as to how the Nigerian legal system has come to reinforce as normal, the discrimination and bias in policy formulation and delivery of education for persons with disabilities, including hearing-impaired learners. Nigeria's education system prioritises regular school education over special education.<sup>1</sup> Cultural beliefs and attitudes have also allowed negative assumptions to be made about the capabilities and functioning of persons with disabilities. Nigeria's educational framework, starting from the period of colonial control to present day government, is embedded in discrimination against persons with disabilities, including hearing-impaired learners.

The Nigerian government and policy-makers in the education sector seem ignorant of these exclusionary approaches and its inadequacy towards the realisation of inclusive education for hearing-impaired learners. Merely providing for the education of hearing-impaired learners' in segregated settings and hoping for their needs to be provided by individuals and charity organisations will not be enough to secure inclusive education. The normative focus is on providing inclusive equality in education for persons with disabilities. In this sense, Nigeria is enjoined to jettison the welfare approach to issues concerning disabilities and adopt a right-based approach. The state is required to take positive measures to provide individualised accommodations for learners with disabilities on an equal basis with others.<sup>2</sup>

Apart from highlighting the inadequacy of legal and policy provisions regarding access to primary education for hearing-impaired learner in Nigeria, the study also explores and identifies some challenges regarding practice in the delivery of education to the hearing-

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<sup>1</sup> A reading of Nigeria's Compulsory, Free Universal Basic Education Act, 2004 attests to this fact.

<sup>2</sup> Convention on the Rights of Persons with Disabilities (CRPD), arts 24(2)(b) & (d).

impaired as part of a field study. The study however presents the findings of the interviews and focus group discussions that were conducted in the next chapter.

This chapter is divided into six sections. The present section is the introduction. The second section provides a brief history of the education of hearing-impaired learners in Nigeria in order to reflect exclusionary practices that are traceable to the non-prioritisation of special education under the colonial education system. The third section provides an overview of Nigeria's legal framework in relation to the education of persons with disabilities, including hearing-impaired learners. The fourth and fifth sections respectively appraise the legal and policy framework for the protection of right to inclusive primary education for hearing-impaired learners in Nigeria as persons with disabilities. The sixth section is the conclusion.

## **2 A brief history of the education of hearing-impaired learners in Nigeria**

It is essential to present an outline on the history of education in Nigeria with emphasis on discriminatory practices against hearing-impaired learners. Nigeria as one of the countries in sub-Saharan Africa experienced the influence of colonial imperialism for many years and much of its education approach was influenced by their former colonisers.<sup>3</sup> With the growth of colonial economic interest, the colonial administrators became interested in establishing schools at the primary school level in parts of Nigeria. However, they were more interested in teaching a select few in order to facilitate their commercial interest, and the schools were mainly male-dominated.<sup>4</sup> Educating children with disabilities was not considered a main concern. The coming of the first education ordinance of 1882 within the same period also evidenced the non-prioritisation of education of children with disabilities as the ordinance did not formally provide for or refer to special needs education.<sup>5</sup> The content of 1882 education ordinance was greatly influenced by the provisions of the British Education Act of 1844.<sup>6</sup>

Education of hearing-impaired learners in Nigeria started in the 19th century and was championed by the colonial missionaries.<sup>7</sup> The cardinal objective of the colonial missionaries was not the facilitation of the education needs of persons with disabilities as a matter of priority, but to make education compliant to colonial influence and purpose. The missionaries

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<sup>3</sup> NB Kiyaga & DF Moores 'Deafness in sub-Saharan Africa' (2003) 148 *American Annals of the Deaf* 18-24.

<sup>4</sup> As above; Unpublished: HP Senu-oke 'A genealogy of disability and special education in Nigeria: From the pre-colonial era to the present' unpublished PhD thesis, University of the Witwatersrand 2011 42.

<sup>5</sup> 1882 Education Ordinance for British West African Territories; See also M Fabunmi 'Historical analysis of educational policy formulations in Nigeria: Implications for educational planning and policy' (2005) 2 *International Journal of African and African American Studies* 2.

<sup>6</sup> IO Osokoya *History and policy of Nigerian education in world perspective* (2002) 63.

<sup>7</sup> above; Senu-oke (n 4 above) 22-2

focused mainly on imparting Christian religious education and vocational training.<sup>8</sup> At issue also is the fact that most of the missionaries followed the examples of schools in Great Britain and insisted on the use of oral communication method.<sup>9</sup> Burton however, notes that some missionaries taught using foreign signed languages that were not relevant to the immediate environment of hearing-impaired learners.<sup>10</sup> Either way, there are negative implications. The insistence on oral communication and the enforced use of foreign signed languages in teaching the Nigerian hearing-impaired learner portrays an educational delivery that may not be meeting learners' needs. This position is reinforced by the fact that early colonial missionaries did not focus on maximising academic gains for persons with disabilities, including hearing-impaired learners.

Research further indicates that philanthropic individuals, charitable organisations and teachers of hearing-impaired learners later established schools for deaf persons in Nigeria from the 1950s to the early 1970s.<sup>11</sup> However these schools could only serve a small proportion of hearing-impaired population mostly situated in the urban areas and probably from enlightened homes.<sup>12</sup> As a result, most hearing-impaired learners in the rural communities were not given the opportunity of accessing education. In this way, foreign missionaries and colonial administrators subtly laid the foundation of an educational system that is unresponsive to the principles of non-discrimination for all learners. They also failed to provide access to equal educational opportunity for hearing-impaired learners in Nigeria.

The year 1975 is said to have brought a decisive change in the education of hearing-impaired learners and other learners with disabilities.<sup>13</sup> The Nigerian federal government for the first time recognised in an official document the need to make provisions regarding the education needs of learners with disabilities.<sup>14</sup> The first Nigerian National Policy on Education (1975-1980) specified as follows:

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<sup>8</sup> PA Abang 'The hearing-impaired' in TB Abang (ed) *Handbook of special education for developing countries* (1995) 150

<sup>9</sup> Kiyaga & Moores (n 3 above) 19.

<sup>10</sup> T Burton 'A deaf person's perspective on third world deaf children's education' Paper presented at 'What does the South really want from the North' a seminar co-organised by the Deaf Africa Fund and the Enabling Education Network at Birmingham, England, June (2002).

<sup>11</sup> PA Ajavon 'An overview of deaf education in Nigeria' <http://www.deafchildworldwide.info/document.rm?id=2875> (accessed 11 May 2015); Kiyaga & Moores (n 3 above) 19.

<sup>12</sup> Kiyaga & Moores (n 3 above).

<sup>13</sup> Ajavon (n 11 above) 2; E Ojile 'Education of the deaf in Nigeria: An historical perspective' in Carol Erting et al (eds) *The deaf way: Perspectives from the international conference on Deaf culture* (1994) 268.

<sup>14</sup> As above.

The problem for providing for children who are handicapped as a result of disabilities such as blindness, deafness, and dumbness has become more complex with growing awareness of need in this area. The current level of effort has proved inadequate in meeting its need and argues for a change in improving the situation both *qualitatively and quantitatively*.<sup>15</sup>

For this reason, between 1978 and 1985, several states in Nigeria made efforts towards the establishment of schools for deaf persons or other learners with disabilities in furtherance of the national policy statement.<sup>16</sup> According to Ojile, twelve schools that admitted deaf students were established in Nigeria within one year. Compulsory free education was made available for persons with disabilities, and trained teachers of deaf persons were provided.<sup>17</sup> Prospective teachers were also trained under special education in teacher training programmes.<sup>18</sup>

However, in spite of the good intentions and significant efforts recorded in respect of the provision of education for hearing-impaired learners under the national policy statement, inherent discriminatory limitations still remain. The Nigerian federal government in compliance with the ‘quantitative’ components of the policy statement established schools for deaf persons, and increased access to schooling through compulsory education for hearing-impaired learners and other learners with disabilities that may not have had the opportunity to go to school. At the same time, the current inability to provide needed facilities in the schools for the deaf, due to continuous increase in the number of hearing-impaired learners, and lack of teaching personnel is an indication that there was no committed plan of action *ab initio*.

It is to be noted that the policy statement failed to provide directives concerning the curriculum specifications, language, assessment mode, as well as communication methods to be adopted in the education of hearing-impaired persons. This omission is considered very significant in the light of the fact that the policy statement brought sensitivity to the inadequacies in the provision of education for hearing-impaired learners in Nigeria. More so, the policy statement also acknowledged the resultant need to transform the learning situation of learners with disabilities ‘qualitatively and quantitatively’. In this sense, it can be argued that the issue of curriculum content adaption, mode of assessment, language of instruction and method of communication are considered important aspects of the ‘qualitative’ component. Therefore, failure of the policy statement to specifically provide a detailed

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<sup>15</sup> Federal Ministry of Information, Republic of Nigeria, 1977 cited in Ojile in Erting et al (n 13 above); emphasis mine.

<sup>16</sup> Ojile ‘Education of the deaf in Nigeria: An historical perspective’ in Erting et al (n 13 above) 268.

<sup>17</sup> As above.

<sup>18</sup> Ajavon (n 11 above) 2.



system of intervention and direction in relation to these ‘qualitative components’ is considered unhelpful.

Research has also shown that textbooks and teaching methods often used to teach the Nigerian learner are reflective of culture obviously alien to a hearing-impaired child who has just started school.<sup>19</sup> This further demonstrates a non-specific mandate towards a reform in line with the ‘qualitative’ components of the national policy statement. On closer analysis, it confirms the maintenance of the same status quo and implementation becomes synonymous with allowing an inherent discriminatory system of education for hearing-impaired learners. The by-product is that hearing-impaired learners continue to experience frustration with the education and learning process, not because of individual impairment, but because the education system has failed to facilitate effective education in relation to what is to be taught and how it is to be taught. Hence, the learner is left to deal with a lot of discriminatory barriers and communication problems.

In this general sense, our discussion brings sensitivity to the plight of hearing-impaired learners who require personalised services within Nigeria’s general education system, but is not receiving the required accommodation services due to practices and assumptions traceable to colonial education policy and practices. For example, most of the issues raised regarding the inadequacies in the policy statement of 1975 are still prevalent in the current universal basic education national policy.<sup>20</sup> Consequently a tradition of discrimination against hearing-impaired learners and other learners with disabilities seem officially acceptable under Nigeria’s current legal system. To further explore this argument, the next section presents an overview of Nigeria’s existing legal framework in the area of education for hearing-impaired learners and other learners with disabilities.

### **3 Nigeria’s framework for the education of hearing-impaired learners: An overview**

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<sup>19</sup> AB Fafunwa ‘Afrian education in perspective’ in AB Fafunwa & JV Aisiku (eds) *Education in Africa: A comparative survey* (1982) 14; Senu-oke (n 4 above) 42.

<sup>20</sup> Under Nigeria’s current National policy on education known as Nigeria National Policy on Education, 2013 6th edition, there is no evidence that the highlighted inadequacies in the 1975 national policy has been engaged with.

It is noteworthy that Nigeria has signed and ratified the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol.<sup>21</sup> This in essence signifies willingness to be bound by the stipulations and values that make the CRPD for the most part a responsive disability rights treaty. The ratification of the CRPD and its Optional Protocol allow for a peer review which requires Nigeria to submit periodic reports to the Committee on the Rights of Persons with Disabilities on how rights under the treaty are being implemented in Nigeria.<sup>22</sup> The ratification of the CRPD and its Optional Protocol further give room for individual complaints on the violation of rights contained under the CRPD, like the right to inclusive education. In effect, the CRPD Committee apart from having the right of review in respect of submitted periodic reports, also has the competence to hear individual complaints in respect of rights contained under the treaty that has been violated.

The legal framework for the protection and promotion of rights in Nigeria is the 1999 Constitution of the Federal Republic of Nigeria, as amended (Constitution). The Constitution in spite of not specifically providing for disability rights protection and promotion, remains the foundation for gleaning the rights of persons with disabilities.<sup>23</sup> Apart from the Constitution, there are other Acts which make reference to children with disabilities and their right to education. These are the African Charter on Human and Peoples Right Ratification and Enforcement Provisions Act,<sup>24</sup> the Universal Basic Education Act<sup>25</sup> and the Child Rights Act.<sup>26</sup>

As highlighted in chapter two of this study, there is yet no recognised domestication of the CRPD in Nigeria. However two states in Nigeria have enacted state legislation on disability.<sup>27</sup> The provisions under the states' legislation and their implementation are largely influenced by the medical model approach to disability. The respective state legislation also remains applicable within the particular states and represents a mere arrangement of stipulations within the states. Thus the respective state legislation is not directed at 'the full

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<sup>21</sup> On 30 March 2007 and 24 September 2010 respectively, Consolidated disability findings from the 2010 US State Department Country Reports on Human Rights practices.

[http://www.usicd.org/doc/africa\\_disability\\_references1.pdf](http://www.usicd.org/doc/africa_disability_references1.pdf) (assessed 15 April 2013).

<sup>22</sup> United Nations Human Rights: Office of the High Commissioner for Human Rights Committee on the rights of persons with disabilities <http://www.ohchr.org/EN/HRBodies/CRPDIndex.aspx> (accessed 28 January 2015).

<sup>23</sup> The Constitution remains the Supreme law By virtue of sec 1(3), and it is for this reason that the provision of the Constitution concerning human rights is considered significant.

<sup>24</sup> Ratification and Enforcement Act 2004.

<sup>25</sup> Compulsory, Free Universal Basic Education Act, 2004 of Nigeria.

<sup>26</sup> Child Rights Act of 2003.

<sup>27</sup> For example in Lagos State there is the Lagos State Special peoples law of 2011 and in Ekiti State, The Rights of Persons with Disabilities Law, 2013.

development of human potential and strengthening of respect for human rights, fundamental freedoms and human diversity for all persons with disabilities in Nigeria.<sup>28</sup>

On policy framework, there is a national policy on education that recognises the inclusive education of children with disabilities under special needs education.<sup>29</sup> Evaluation of these frameworks shall be done in the section that follows.

## **4 Evaluating the legal framework for protecting the inclusive education rights of hearing-impaired learners in Nigeria**

### **4.1 Nigerian Constitution**

The Nigerian Constitution does not explicitly provide for the right to education,<sup>30</sup> neither does it specifically recognise the rights of persons with disabilities, including hearing-impaired learners. This renders the recognition and protection of the right to education of persons with disabilities including hearing-impaired learners at the wide-ranging discretion and understanding of the general non-discriminatory constitutional provision.<sup>31</sup> While it is true that the Constitution does not list disability as a protected ground of discrimination,<sup>32</sup> it does not however follow that the listed grounds are exhaustive. This position finds support in the European Court of Human Right case of *Glor v Switzerland*.<sup>33</sup> In *Glor's case*, it was held that the grounds referred to, upon which discrimination is proscribed under article 14 of the European Convention on Human Rights (ECHR) is not exhaustive but inclusive of disability as a prohibited ground.<sup>34</sup>

A similar position was also taken on the Gambian case of *Purohit & Moore v Gambia*<sup>35</sup> where the African Commission on Human and Peoples Rights held that the non-listing of disability as a prohibited ground of discrimination under the African Charter on Human and Peoples' (African Charter) does not preclude a finding for discrimination. The commission

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<sup>28</sup> CRPD, art 24(1)(b).

<sup>29</sup> Nigeria National Policy on Education, 2013 6th edition.

<sup>30</sup> The right to education is provided under sec 18 which is found under the chapter on Fundamental Objectives and Directive Principles of State Policy, and by virtue of sec 6(6)(c) has often been conceived as making the right to education not unenforceable in any Nigerian court.

<sup>31</sup> See the Constitution, sec 42.

<sup>32</sup> As above.

<sup>33</sup> Application 13444 (2004) ECHR.

<sup>34</sup> Under article 14 of the ECHR the grounds listed are sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

<sup>35</sup> Comm. No 241/2001 (2003).

posited that the provision of the African Charter regarding discrimination also extends to other analogous ground.

In the Nigeria context, it can be argued that the right to non-discrimination applies to every citizen of Nigeria.<sup>36</sup> Consequently every Nigerian citizen, including hearing-impaired learners is expected to have access to primary education without discrimination. Ultimately, the right to non-discrimination in the education of persons with disabilities is protected under the general provisions of the Constitution regarding non-discrimination. Given that the right to education under the Constitution is considered non-justiciable and is further made subject to available resources.<sup>37</sup>

It must be stated however, that the blanket condition on availability of resources is not at all encouraging as it has the possibility of withdrawing progressive obligation on the part of the Nigerian government to carry out its responsibilities. This will not complement article 4 of the CRPD which requires parties to the treaty to take ‘such measures to the maximum extent of their available resources’ with regard to the implementation of socio-economic and cultural rights.<sup>38</sup> It also goes against the CRPD Committee and UN Economic, Social and Cultural Committee (ESCR Committee) stipulations concerning inclusive education delivery at a domestic level.<sup>39</sup>

Nigeria has signed and ratified the International Covenant on Economic Social and Cultural Rights (CESCR).<sup>40</sup> The ESCR Committee makes the realisation of basic education a right that is immediately realisable.<sup>41</sup> The Committee further emphasises that basic education should receive priority over other socio-economic rights during resource distribution.<sup>42</sup> Acting for human good involves willing and avoiding that which is opposed or not compatible with basic human accomplishment. It further calls to mind the application of the

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<sup>36</sup> See the Constitution, sec 42(1).

<sup>37</sup> See the Constitution, sec 18(3) .

<sup>38</sup> CRPD, art 4(2).

<sup>39</sup> General Comment No 4 on inclusive education, adopted by the UN Committee on the Rights of Persons with Disabilities 2 September 2016, CRPD/C/GC/4, para 27; UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No.13: The right to education (art.13 of the CESCR) adopted by the Committee on Economic, Social and Cultural Rights at the 21st session, UN Doc E/C.12/1999/10, December 1999.

<sup>40</sup> Adopted 16 December 1966 by United Nations General Assembly Resolution 2200A (XXI) and entered into force on the 3 of January 1976 in accordance with article 27, see arts 34 and 14. Signed and ratified by Nigeria on 29th July 1993.

<sup>41</sup> General Comment 13 (n 39 above) para 51.

<sup>42</sup> General Comment 13 (n 39 above) para 14.

Rotarian moral principles of what we think, say or do with respect to dignifying the human being.

The provisions of the Constitution relating to education and availability of resources do not portray the government as dedicated to the promotion of the common good. Similarly, the non-listing of disability as a prohibited ground of discrimination under the Nigerian Constitution is not desirable. Aquinas in his theory of natural justice considers that government should foster whatever leads people to their ultimate value and forbids whatever deflects them from it.<sup>43</sup> It is true that normative jurisprudence acknowledges that prohibited grounds of discrimination are not exhaustive, however it presents a challenge for individuals and disability activists to hold the courts accountable for compliance. In particular, the broad discretion of the courts regarding the interpretation of the general non-discriminatory constitutional provision represents a challenge in this respect.<sup>44</sup> Kayess and French have argued that:

[T]raditional human rights paradigm is based on 'able-bodied norm. In most cases it is not self sufficient how traditional rights are to be interpreted and applied in a manner that will penetrate to the specific human rights violations to which persons with disability are subject.<sup>45</sup>

What Kayess and French aim to highlight is that integrating the rights of persons with disabilities, in a general provision will not improve the recognition and respect of their rights. One could therefore argue that the non-specific inclusion of the rights of children with disabilities to the progressive access of free primary education as provided in the Nigerian Constitution enhances their disregard and further places them in a vulnerable position. It will definitely not motivate action towards the full participation of hearing-impaired learners in the society.

Data released in April 2013 by World Inequalities Database on Education has it that Nigeria has the world's highest number of out-of- school children.<sup>46</sup> This of course includes hearing-impaired children and other children with disabilities. As a result, there are obvious consequences in the non-specific position adopted by the Constitution in respect of basic education protection for persons with disabilities. It portrays the Constitution as not recognising difference and respect for human diversity. Failing to provide specific

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<sup>43</sup> T Aquinas *Summa Theologica* trans Fathers of the English Dominican Province (1981)

<sup>44</sup> See the Constitution, sec 42.

<sup>45</sup> R Kayess & P French 'Out of Darkness into light? Introducing the Convention on the Rights of Persons with Disabilities' (2008) 8 *Human Rights Law Review* 114.

<sup>46</sup> Ten Million, of whom 2.5 million are children with disabilities, see UNESCO – *World Data on Education*, 6th edition – Nigeria.

constitutional recognition of the right of persons with disabilities, including hearing-impaired learners' access to education, renders these learners susceptible to continuous marginalisation and invisibility. In the same vein, lack of access to inclusive education for hearing-impaired learners render any hope of recognising their linguistic and communicative realities required for full development of human potential and dignity neglected and unrealisable.

Undeniably, the recognition and realisation of language rights for hearing-impaired learners have been associated with the opportunities to widen socio-emotional, communication and cognitive skills in relation to education and human development.<sup>47</sup> The recognition of the rights of persons with disabilities, including hearing-impaired learners in a broad provision will not serve equal opportunity for them in dismantling the obstacles that prevent them from accessing quality education. It has also not assisted in the distribution of educational goods for hearing-impaired learners and will likely not assist in redistribution if the status quo is maintained.

The situation is further made worse by the fact that the Nigerian Constitution has always construed equality as sameness.<sup>48</sup> This presumption of equality status has maintained formal justice for all regardless of its consequences to some individuals or groups. As the *grund norm*, from where other norms in the Nigerian society derive their validity, the Constitution ought to serve as a point of reference for other legislation. As a matter of fact, the issue of recognition of disability rights has been really slow to come in the Nigerian context. A bill titled 'Discrimination against Persons with Disabilities (Prohibition) Bill' has been passed several times,<sup>49</sup> but this bill failed to get presidential accent. The content of the bill as it affects the education of persons with disabilities and especially hearing-impaired learners is discussed elsewhere in this chapter.<sup>50</sup>

In view of the foregoing observations, Nigeria should at a minimum think about revising its constitutional provisions on education to involve justiciable free compulsory primary education for every child on an equal opportunity basis. And the content must essentially

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<sup>47</sup> T Suppalla et al 'World Federation of the Deaf, Report on the status of sign language by the WFD Scientific Commission on Sign Language' (1993); S Philpott 'Too little, too late? The CRPD as a standard to evaluate south African legislation and policies for early childhood development (2014) 2 *African Disability Rights Yearbook* 51.

<sup>48</sup> See the Constitution, sec 42(1).

<sup>49</sup> Since 2009, the Nigeria Disability Bill has been waiting for the president's consent to make it a legal document. This was during President Goodluck Joenathan's administration. The implication is that the Nigerian National Assembly will have to start the process of passing the Bill de novo. This is however predicated on the magnanimity of any member of the Senate to sponsor the Bill.

<sup>50</sup> See in particular sec 5.2 below.

articulate the basic educational needs of every child with a disability. This is based on the fact that primary education is the foundation of all educational pursuit. It is expected that Nigeria should extend its provisions on non-discrimination to specifically include disability.

Such reasonable act will definitely be instrumental in instantiating the basic good of inclusive education for hearing-impaired learners. This comes very close to securing the whole ensemble of material and other conditions that will favour and facilitate the realisation of individual objectives.<sup>51</sup> Morality has to do with shared objective reasoning. It follows that while government has authority to make deliberations, the moral principles by virtue of which their deliberations affect their subjects must be reasonably justifiable.<sup>52</sup>

#### **4.2 African Charter Ratification and Enforcement Act**

In the Nigerian celebrated case of *General Sani Abacha v Gani Fawehinmi*,<sup>53</sup> the Supreme Court of Nigeria held that the African Charter Ratification and Enforcement Act by virtue of its domestication<sup>54</sup> possess equality and parity of status with domestic legislation apart from the Constitution. This being the case, a careful reading of African Charter Ratification and Enforcement Act manifests recognition of the right to education of children with disabilities, including hearing-impaired learners.<sup>55</sup> In this regard, the use of ‘such as’ and ‘other status’ to refer to the prohibited grounds of discrimination, demonstrates that the list can be extended.<sup>56</sup> Also, reference to respect for the cultural life of every individual under the right to education implicitly underscores an acknowledgement of the importance of the cultural and linguistic needs of hearing-impaired learners in the context of education.<sup>57</sup>

Noteworthy is the fact that the African Charter Ratification and Enforcement Act adopts a formal equality measure in the enjoyment of the rights guaranteed under the Act by the use of the term ‘every individual’.<sup>58</sup> However the African Charter Ratification and Enforcement Act sought to remedy this neutral measure by specifically mentioning that women, the aged, *children* and the *disabled* shall be entitled to special measures of protection in keeping with their physical and moral needs.<sup>59</sup> This in essence portrays an acknowledgement of an uneven

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<sup>51</sup> J Finnis *Natural law and natural rights* (1980)147.

<sup>52</sup> J Finnis *Human rights and common good: Collected essays* (2013) 87.

<sup>53</sup> (2000) 6 NWLR (Pt.660) 228.

<sup>54</sup> See the Constitution, sec 12.

<sup>55</sup> A combined reading of arts 2, 17 and 18 (4) is instructive.

<sup>56</sup> African Charter Ratification and Enforcement Act, art 2.

<sup>57</sup> African Charter Ratification and Enforcement Act, art 17.

<sup>58</sup> African Charter Ratification and Enforcement Act, art 2.

<sup>59</sup> African Charter Ratification and Enforcement Act, art 18, emphasis mine.

handed distribution of socio- economic goods *ab initio* for these vulnerable groups, thus requiring the taking of positive steps. That said, it needs to be pointed out that the use of the term *disabled* without explicit interpretation under the Act is problematic as it could carry with it negative consequence and disadvantage. Nonetheless, It could also be argued that implicit in the use of the term *disabled* by the drafters is an understanding that it is the socio-economic and political environment that impede access to participation in the society. This position is reinforced by the fact that states are required to take special measures of protection in keeping with the physical and moral needs of persons with disabilities.

As Finnis points out, the central function of law in any legal system is to ‘secure a whole ensemble of material and other conditions that tend to favour the realisation of each individual in the community, of his personal development’.<sup>60</sup> It follows that the African Charter Ratification and Enforcement Act ought to be interpreted to reflect a sum total of rules that protect the general good by harmonising the different goods in the interest of individuals in the state. However this opportunity is yet to be given effect by the judiciary, especially in connection with persons with disabilities or even the aged. No doubt Finnis argues that a complete legal system is one apart from being a political system unites a complete variety of relationships and appropriates it to true purpose of the law.<sup>61</sup> In the case of Nigeria, the African Charter Ratification and Enforcement Act has a huge potential for promoting and protecting disability rights. But its prospects for promoting and protecting the rights of persons with disabilities generally are not seriously considered within Nigeria’s socio-political environment which is evidenced in the continuing indifference and inaction on the part of government.

In theory, the African Charter on Human and Peoples’ Rights<sup>62</sup> could be taken to have set the stage towards the slow appreciation of the rights of persons with disabilities in subsequent Nigerian legislation, in particular, the Nigerians with Disability Decree (Disability Decree), the Child’s Rights Act and the Universal Basic Education Act. But unfortunately, the Decree never came into effect. It suffices to say that a textual reading of the Disability Decree evidences a conceptualisation of disability as a medical problem that resides in the individual which requires medical solution. Under the interpretation section, the aborted Decree defined a ‘disabled person’ as

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<sup>60</sup> Finnis *Natural law and natural rights* (n 51 above) 157, 279.

<sup>61</sup> As above.

<sup>62</sup> Adopted June 27 1981 OAU DOC CAB/LEG/67/3 Rev. 5, 21 I.L.M. 58 (1982) entered into force October 21 1986, see art 17. Adopted and ratified by Nigeria on 31 August 1982 and 22 June 1998 respectively



A person who has received preliminary or permanent certificate of disability to have condition which is expected to continue permanently or for a considerable length of time which can reasonably be expected to limit the person's functional ability substantially, but not limited to seeing, hearing, thinking, ambulating, climbing, descending, lifting, grasping, rising, any related function or any limitation due to weakness or significantly decreased endurance so that he cannot perform his everyday routine, living and working without significantly increased hardship and vulnerability to everyday obstacles and hazards.<sup>63</sup>

The decree significantly, failed to acknowledge the role of the socio-political environment in constituting disability as well as inequality, as it manifestly labelled persons with disabilities as incapable and inadequate. Labelling Nigerians with disabilities as 'disabled persons' in all sections of the decree carries with it 'negative social meaning' as to what persons with disabilities cannot do. As have been observed, the social meaning of a term over and over again controls the lived experience of a labelled person (or group) more than the features that bring the person or group within the categorised condition.<sup>64</sup> Terms, like culture, inherently encompass the beliefs and values of a people, it is therefore a matter of reason that the socio-political environment should use names that represent a group's values and ideology.

### **4.3 Child Rights Act**

The Child Rights Act is Nigeria's specific legislation that is aimed at reflecting the principles contained in the Convention on the Rights of the Child (CRC)<sup>65</sup> and the African Charter on the Rights and Welfare of the Child (ACRWC).<sup>66</sup> The Child Rights Act sets out the rights and responsibilities of the Nigerian child and further provides a system of child justice administration. The Act has provisions on 'free, compulsory and universal primary education' as the right of every child in Nigeria.<sup>67</sup> Even though there is no specific mention of children with disabilities in the Act, the rights guaranteed under the Act, like the right to compulsory education and the right to non-discrimination<sup>68</sup> may be used to protect the inclusive education rights of hearing-impaired learners and other children with disabilities. Regrettably, the Act is yet to have full implementation status in all the states in Nigeria and as

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<sup>63</sup> Nigerians with Disability Decree 1993, sec 3.

<sup>64</sup> HL Bauman et al 'Beyond ablist and audism: Achieving human rights for deaf and hard of hearing citizens' Report presented to the Canadian Hearing Society 12 [http://www.chs.ca/index.php?option=com\\_content&view=article&id=499&Itemid=568&lang=en](http://www.chs.ca/index.php?option=com_content&view=article&id=499&Itemid=568&lang=en) (accessed 12 November 2013); L Nyirinkindi 'A Critical analysis of paradigms and rights in disability discourse s' (2006) 12 *East African Journal of Peace and Human Rights* 49.

<sup>65</sup> Signed and ratified by Nigeria on 19 April 1991.

<sup>66</sup> Adopted and ratified by Nigeria on 13 July 1999 and 23 July 2001 respectively.

<sup>67</sup> Child Rights Act, sec 15.

<sup>68</sup> Child Rights Act, sec 10.

such adversely affects the national recognition and protection of inclusive equality rights in education for hearing-impaired learners.<sup>69</sup>

Additionally, the provisions of the Child Rights Act regarding free and compulsory basic education clearly exclude children with intellectual disabilities.<sup>70</sup> This in essence forecloses the right of children with intellectual disabilities to education. It shall be argued here that the Act ought to be an enabling legislation in implementing the right to education of every child in Nigeria. Consequently, any drawback in the Act negatively affects the education rights of Nigerian children, including children with disabilities. The exclusion of children with intellectual disabilities under the Act do not satisfy the requirements of justice by reference to how a person or group has a right to be treated and what the state is obligated to do. It is not morally right for the state to ignore or deny recognition in legislation, those values that instantiate the complete pursuit of education for children with disabilities holistically. For as rightly pointed out by Weinreb, acknowledging rights by making deliberate interventions carry out the agenda of restoration of individuals as responsibility requires.<sup>71</sup> To do otherwise somewhat portrays a conception of hierarchical citizenship or first citizenship for some groups or individuals as has been highlighted.<sup>72</sup>

Excluding children with intellectual disabilities from access to education under the Child's Rights Act can be compared to the provisions of the South African White Paper 6 policy<sup>73</sup> which excluded learners with severe and profound intellectual disabilities in the provision of schools and in the funding of their education in the South African case of *Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa & Another*.<sup>74</sup> In that case, a High Court found the state policy (White paper 6) as inter alia violating the children's right to human dignity and amounting to stigmatisation.<sup>75</sup> In determining the case, the Court noted that the right to education of children with disabilities apart from being a fundamental right under South Africa's law was an international human right which is

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<sup>69</sup> In the Nigerian Constitution, education is on the concurrent legislative list and so, any federal law on education must be legislated upon by the different state houses of assembly before it can be implemented. This is specified under Part II of the Second Schedule of the Nigerian Constitution.

<sup>70</sup> Child Rights Act, sec 15(7).

<sup>71</sup> L Weinreb 'Natural law and rights' in Robert P George (ed) *Natural law theory: Contemporary essays* (1992) 278.

<sup>72</sup> A Chaskalson 'The third Bram Fischer lecture: Human dignity as a foundational value of our constitutional order' (2000) 16 *South African Journal on Human Rights* 193.

<sup>73</sup> Department of Education, *Education White Paper 6: Special needs education: Building an inclusive education and training system* (2001).

<sup>74</sup> *Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa & Another* 2011 5 SA 87 (WCC).

<sup>75</sup> As above, para 46.

recognised under United Nations, the CRPD and other regional treaties that South Africa has ratified.<sup>76</sup> The Court also affirmed that education for children with disabilities must be conceived in broader terms than just academic objectives.<sup>77</sup>

Apart from the foregoing provisions, it should be noted that even though the Child Rights Act has been enacted at the federal level,<sup>78</sup> it only becomes effective if the state legislative assemblies also enact it. At the time of writing, which is more than 16 years after the enactment of the Act, 24 states out of the 36 states in Nigeria have enacted the Act.<sup>79</sup> This illustrates that the Act is yet to be translated as providing full legal protection throughout Nigeria for every child. It further shows a lack of commitment to basic aspects of children's flourishing. As Finnis points out, commitment widens one's horizon to new and better ways of carrying out responsibilities, it instantiates the duty to be open to 'all the changing circumstances of a lifetime'.<sup>80</sup> Finnis's point applies to Nigeria as it involves the call for states to be responsive to emergent needs by educating all learners.

However, the basic question is, in the majority of states where the Act has been enacted, to what extent are the educational rights of children with disabilities, including hearing-impaired learners protected and implemented? It is one thing to provide for the right to free and compulsory education of every child, and another to consider individual differences and democratic learning in the delivery of their education. In the context of the hearing-impaired learner specifically, the Act failed to articulate the facilitation of early signed language learning and the linguistic identity of hearing-impaired learners as a primary means of access to quality education. It is possible to argue that the influence of the Child's Rights Act in enhancing educational opportunity for the hearing-impaired learner as a child with disabilities is limited, as it did not adequately respond to the specific needs of hearing-impaired learners. The same can be said of the right to education of children with intellectual disabilities which was clearly and explicitly excluded under the Act.

Against this backdrop, the Child Rights Act does not show a commitment towards fulfilling the best interest of the child in all actions as emphasised in section 1 of the Act. A further interpretation could mean that the Act does not consider the education of children with disabilities which includes the hearing-impaired learner beneficial. The implication is that

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<sup>76</sup> *Western Cape Forum's case* (n 74 above), paras 20-24.

<sup>77</sup> *Western Cape Forum's case* paras 18-25.

<sup>78</sup> It is to be noted that Nigeria operates a federal system of government.

<sup>79</sup> 'The Nigerian child and the Child Rights' Act *Vanguard* 3 February 2015 6.

<sup>80</sup> Finnis *Natural law and natural rights* (n 51 above) 110.

these children would have to predominantly depend on their families for their education and skill acquisition, instead of the socio-political environment. This in essence runs counter to the common good of distributive justice in providing each individual his fair share of social stock of instrumental goods and in securing same.<sup>81</sup>

#### **4.4 Universal Basic Education Act (UBE Act)**

The UBE Act recognises the compulsory, free and universal basic education of ‘disabled children’ and defines universal basic education broadly to include early childhood care and education and nine years of formal schooling, non-formal education, skills acquisition programmes and the education of special groups like disabled groups.<sup>82</sup> The UBE Act is the framework through which the federal government supports states and local governments towards the provision of basic education for Nigerian learners. It is also not a disability specific legislation, rather the Act sought to give accent to the provision of ‘uniform and qualitative basic education in Nigeria’.

However, the articulations under the UBE Act seem discouraging. The Act does not make any reference to inclusive education nor does it contain any specific provision on non-discrimination or on the provision of accommodations. There are also no practical guidelines for meeting the basic education needs of diverse learners. The drafters ought to have considered that individuals differ in their strengths as well as weaknesses and must be accommodated in order to promote the values of participation in the society. Adapting the education system to respond to the needs of learners within their diverse and cultural environments assists in maximising academic and social development.<sup>83</sup> It will also remedy systemic marginalisation and facilitate the creation of socially assured improvements.<sup>84</sup>

It is therefore safe to submit that the UBE Act contradicts the acronyms ‘universal’ and ‘basic’ as its content fails to specifically demonstrate understandings of human diversity and the fundamentals of providing necessary accommodations in line with individual needs in education delivery. Indeed this is the foundation for acquisition of any form of education.<sup>85</sup>

The drafters may argue that as at the time the UBE Act was adopted, Nigeria had not signed

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<sup>81</sup> R Wright ‘The principles of justice in Symposium Propter Honoris Respectum: John Finnis’ (2000) 75 *Notre Dame Law Review* 1859.

<sup>82</sup> Nigeria’s Compulsory Universal Basic Education Act, secs 2 and 15.

<sup>83</sup> CRPD, art 24(2)(d) & (e).

<sup>84</sup> P Uvin *Human rights and development* (2004) 163.

<sup>85</sup> EN Eddy & ME Akpan ‘The prospects of UBE Programme in Akwaibom State, South-South Nigeria’ (2009) 4 *International NGO Journal* 46.

and ratified the CRPD. But then, what about other human rights treaties that have been signed, ratified and even domesticated. Surely, these previous human rights documents contain human rights principles closely linked to ideas of the social model of disability under the CRPD.

It is commendable that UBE Act incorporates early childhood care and education as inextricably linked to beginning successful education for every child. However progress in aligning this provision of the Act to education services available to children with disabilities, especially hearing-impaired learners is yet to happen in the Nigerian socio-political environment. Anecdotal evidence indicates that early child education is not the norm in Nigeria in terms of practice. Most often very few early child education centres have been found to be run by private individuals in Nigeria. Most parents of children with disabilities in Nigeria due to lack of awareness, poverty and lack of effective implementation strategy by the state keep their children at home until about the age of five years, when some of these children are cast off to special schools on lowered expectation assumptions.

From the Act, it is arguable that even though children with disabilities are expected to benefit from the entirety of the rights to free and compulsory primary education on an equal basis with other children, there is no specific focus on the needs of hearing-impaired learners and indeed other children with disabilities. They are labelled as ‘disabled groups’ under the interpretation section of the Act which is potentially damaging and dehumanising, especially as the Act failed to provide the context within which the language ‘disabled groups’ is used.<sup>86</sup> It offends the principle of distributive justice that the state as a major means of realising basic human good and in this instance the good of inclusive education, neglects some group or individuals, thereby imposing a burden on them. This is morally unacceptable.

Nevertheless, notwithstanding the shortcoming of the Universal Basic Education Act regarding the accommodation of hearing-impaired learners and other learners with disabilities, the Act has steadily influenced the review of Nigeria’s National Policy on Education.<sup>87</sup> The Universal Basic Education Commission (UBEC) is the body in charge of the implementation of the national policy on education with regard to basic primary education in Nigeria. For instance the Act gives prominence to the concept of inclusive

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<sup>86</sup> CC Asiwe & O Omiegbe ‘Legal and ethical issues of persons with special needs in Nigeria’ 9 *Educational Research and Reviews* (2014) 516.

<sup>87</sup> Nyirinkindi (n 64 above) 51.

education as an integral part of the Universal Basic Education Policy.<sup>88</sup> An overview of the National policy on Education will be discussed in the following section.

## **5 Evaluating the policy framework for promoting the inclusive education rights of hearing-impaired learners in Nigeria**

### **5.1 National Policy on Education (national Policy)**

Nigeria's National Policy on Education has undergone many revisions since after the first Nigerian policy on education that came within 1975-1980.<sup>89</sup> Without doubt, the revisions have been necessitated by the need to address obvious gaps in content and to give sufficient consideration to new opportunities, concerns and challenges.<sup>90</sup> Thus, the national policy recognises the education of hearing-impaired learners within special needs education and articulates a number of policy statements that aim to promote easy access to educational materials, signed language and other assistive devices.<sup>91</sup>

Of particular interest, the national policy aspires towards the provision of equal educational opportunity, inclusive education and designing of appropriate diversified curriculum for all learners with disabilities.<sup>92</sup> It further emphasises the training and retraining of all categories of teachers for effective implementation of inclusive education.<sup>93</sup> It also recognises the importance of signed language/total communication speech technique in the education of the hearing-impaired and fosters the use of latest teaching techniques for other categories of disabilities in a bid to further the full participation of these learners in the development of the nation.<sup>94</sup>

At the same time, the Nigerian government is obliged under the education policy to provide the necessary funding, services and facilities required for easy access to education of children with disabilities, including that of hearing-impaired learners. It could be argued that this provision illustrates the idea of providing accommodations, even though the policy did not expressly refer to the concept of making accommodation as contained in article 24 of the

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<sup>88</sup> As above.

<sup>89</sup> The first edition was in 1977, the second was in 1981, the third was in 1988, the fourth was in 2004. There was also a draft 2007 5th edition before the current 6th edition of 2013.

<sup>90</sup> Nigeria National Policy on Education, see the preface to the 6th edition of 2013.

<sup>91</sup> Nigeria National Policy on Education, sec 7 para. 122.

<sup>92</sup> Nigeria National Policy on Education, para 119.

<sup>93</sup> Nigeria National Policy on Education, para 123.

<sup>94</sup> Nigeria National Policy on Education, paras 122.

CRPD. Under article 24(2)(c) of the CRPD, the duty to provide accommodations require taking into consideration the individual needs of each learner in order to equalise outcome.

Furthermore, the education policy recognises the components of early identification, intervention, nurturance and early child care and education in realising access to inclusive education for learners with disabilities, including hearing-impaired learners.<sup>95</sup> It strategically puts the teacher/pupil ratio in special schools to 1:10, and in regular schools 1:35.<sup>96</sup> In essence, the national policy can be seen as recognising the diversity of children with disabilities and the need to make provisions in respect of their individual needs.

However, it is observable that Nigeria commonly uses the concept of special needs education in the provision of education for children with disabilities.<sup>97</sup> Historically as shown in section 2 of this chapter, the education of children with disabilities was the responsibility of missionaries and non-governmental organisations. State intervention only started not too long ago and special needs education is usually provided through segregated special schools. The idea that the ‘special needs’ of learners can as well be taken care of in regular schools, provided that accommodations are provided within the general education system is yet to be conceived and appreciated under Nigeria’s general education system.

Thus, aspirations under the policy towards inclusive education for children with disabilities including hearing-impaired learners seem only in theory. The implication is that children with disabilities, especially hearing-impaired learners do not have the choice to decide whether to go to a regular school or a special school. It is true that inclusion for most hearing-impaired learners must consider the varied identities and preferences within deaf person’s community, as some deaf people might prefer special schools, while some may prefer regular schools.

Another important thought has to be given to the fact that hearing-impaired persons do not have a society of their own, at least in the Nigerian context and must of necessity interact with non-hearing and hearing persons. If we have to assume that only special education is preferable for hearing-impaired learners, what becomes of those hearing-impaired that might chose to attend school under a regular school setting? Another question is: can inclusive practices be found within the special and regular school environments?

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<sup>95</sup> Nigeria National Policy on Education, sec 2 para 20, sec 7 para 121, 123(c).

<sup>96</sup> As above.

<sup>97</sup> Nigeria’s National Policy on Education recognises the education of children with disabilities under special needs education, see sec 7.

The bottom line is, for us not to overemphasise special education and regular school placement under assumptions of ablism and over and above inclusive practices in education. For hearing-impaired learners, what should be considered critical should be the availability of accommodations, adaptation of education content and the method of delivery (recognition of their unique language needs) whether in a special school or in a regular school. The existence of an opportunity to choose is always very critical. Consequently, the national policy has to be restructured in this direction. In all, there must be the application of practical reasonableness by the state and a show of commitment towards the project of inclusion as underscored by Finnis.<sup>98</sup>

On the other hand, it would be fair to state that Nigeria's national education policy has followed the approach of CRPD in reflecting the imperatives of providing accommodations with respect to hearing-impaired learners. Without doubt, this is traceable to Nigeria's adoption and ratification of the CRPD and its Optional Protocol in 2008 and 2010 respectively. Hence, the policy comes close to mirroring the realisation of access to inclusive education for hearing-impaired learners within Nigerian primary schools.

Alas, the provision of the national policy regarding special needs has not been used to judicially enforce the right to inclusive education of hearing-impaired learners in spite of the fact that its content constitute legislative obligation. As set out in the UBE Act, the Universal Basic Education Commission (UBEC) is the body responsible for the implementation of the national policy on education with respect to basic education in Nigeria.<sup>99</sup> Thus it may be argued that the provision of the national policy regarding special needs remains at best an official affirmation which slowly saw disability concerns being structured within human rights ideas and language. The progressive thrust towards the promulgation of the Nigeria's Disability Bill attests to this shift. The Discrimination against Persons with Disabilities (Prohibition) Bill at least is a dynamic legislative document which caters for some of the lapses identified so far and seeks to align Nigeria with the provisions of the CRPD which it has signed and ratified.

The CRPD in article 4(1) obligates state parties to among other things "undertake to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability". In this regard

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<sup>98</sup> Finnis *Natural law and natural rights* (n 51 above) 88.

<sup>99</sup> Nigeria's Compulsory Universal Basic Education Act, secs 7 and 9.



Nigeria is expected to show more commitment towards the promulgation of the Discrimination against Persons with Disabilities (Prohibition) Bill by channelling resources and time in that direction. It requires the Nigerian government to specifically take positive action in respect of the individual concerns and needs of persons with disabilities. The Discrimination against Persons with Disabilities (Prohibition) Bill as have been described is a more robust legislative instrument on some of the needs and rights of persons with disabilities.<sup>100</sup> The next section shall examine the content of the proposed Bill to see the extent to which it conforms to international standards of protection in education for children with disabilities and especially the hearing-impaired learners.

## **5.2 Discrimination against Persons with Disabilities (Prohibition) Bill, 2014**

As aforementioned, the Bill sought to capture the provisions of the CRPD regarding persons with disabilities in Nigeria. The definition of disability under the Bill is consistent with its definition under the CRPD. As such the Bill sees disability through the lens of the social model of disability approach. Amongst other provisions, clause 22 of the Bill recognises the right to an education that is free for persons with disabilities. It provides for the right to an unfettered education without discrimination or segregation for persons with disabilities and makes it the responsibility of a proposed National Commission (to be established under the Bill) to provide assistive learning devices.<sup>101</sup>

The Bill also provides for the inclusiveness of education which would be accessible to persons with disabilities including hearing-impaired learners in all schools.<sup>102</sup> The obligation to provide trained personnel and facilities for the educational development of persons with disabilities is also required under the Bill.<sup>103</sup> Clause 23 further provides that the use of Braille, signed language and other skills for communicating with persons with disabilities should form part of the curricula within the general education system.<sup>104</sup> Clause 25 of the Bill recognises that the education of hearing-impaired learners ‘should be delivered in the most appropriate language, modes and means of communication for the individual and in environments that maximises academic and social development’.

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<sup>100</sup> Asiwe & O Omiegebe (n 86 above) 520; As opined by DO Anyanele Executive Director, Centre for Citizens with Disabilities (CDC) Nigeria at a press conference on ‘Access to justice, 2015 general elections and Nigerians with disabilities’ at Elomaz hotel Maryland Lagos, 16 february (2015)

<sup>101</sup> Discrimination Against Persons with Disabilities (Prohibition) Bill, 2014 clause 22 (1) & (2).

<sup>102</sup> Discrimination Against Persons with Disabilities (Prohibition) Bill, clause 23.

<sup>103</sup> As above.

<sup>104</sup> As above.

At a glance, the provisions of the Bill could be described as having the huge potential for promoting and protecting the inclusive education of hearing-impaired learners in Nigeria primary schools and could measure up to international standards to some extent. The content of the Bill in essence echoes the provisions of the CRPD.<sup>105</sup> However, the Bill did not make reference to compulsory education that will be immediately realisable as well as early child education or lifelong learning for children with disabilities. This is a bit problematic as realising the right to inclusive education demands that compulsory education, early child learning and lifelong learning ought to be legally protected.

Again, there is no direction regarding the obligation to provide within the general education system, personalised accommodations and educational assistive devices as a necessary element towards realising the right to inclusive education of persons with disabilities. The only obligation under clause 22(2) of the Bill requires the National Commission for persons with disabilities to provide educational assistive devices. An assistive device was defined under the interpretation section ‘as any device that assists, increases or improves the functional capabilities of a person with disabilities. Invariably, this could be taken to mean the responsibility of providing personalised support as required under the provision of accommodations. In light of this, it is necessary to enquire, whether it is advisable to leave the responsibility of providing assistive devices for the National Commission on persons with disabilities as provided under the Bill<sup>106</sup> in view of other functions it is expected to perform under the bill and considering its composition.<sup>107</sup> This is considered necessary in view of the deep-rooted systemic mismanagement of public resources in Nigeria that is embedded in political alliances and focuses upon inputs as against impact. It is unlikely that within such an environment, the National Commission would effectively facilitate and promote the procurement of assistive devices and individualised support for persons with disabilities.

The National Commission as initiated by the present Bill is not cost effective. It is believed that the Commission will turn out like the Ministry of Women Affairs and Social Development which has been the lead government department handling disability issues in Nigeria. The Ministry’s approach to disability is based on the charity/welfare model of disability where demand for assistive devices is often met by massaging the ego of the

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<sup>105</sup> CRPD, art 24(3).

<sup>106</sup> Discrimination Against Persons with Disabilities (Prohibition) Bill, clause 40(r).

<sup>107</sup> The Bill in clause 40 itemised about 18 major functions to be carried out by the Commission through a Governing Council to be made up of members that will be appointed based on political affiliations.

official in charge of distributing these devices.<sup>108</sup> However it would be necessary for the Bill to be reviewed in line with the understanding that failure of the state to provide accommodations within the general education system amounts to discrimination for learners with disabilities.

Furthermore, the provision of inclusive primary education for children with disabilities including hearing-impaired learners should be articulated as compulsory and immediately realisable as provided in General Comments No. 13 on the right to education.<sup>109</sup> There is need to deal with the issue of compulsory and immediate realisation of inclusive basic education for children with disabilities under a disability legislation. This will require parents and guardians of children with disabilities to ensure that these children are not excluded from admission to schools. It has been noted that primary education as an important part of basic education is the key to emancipating and empowering persons with disabilities considering the important function it plays in further education and human development.<sup>110</sup> Also, it is suggested that in place of the proposed National Commission, a small agency made of persons with disabilities from urban and rural areas which would be cost effective and less bureaucratic should be established.

It is imperative that these reviews are made before the said Bill becomes law. And with the Bill becoming law, the prospects of protecting the rights of persons with disabilities including hearing-impaired learners will no longer be limited. As a matter of fact, it would assist in advancing the right to inclusive education for hearing-impaired learners. It is vital that Nigeria's National Assembly as well as civil society organisations and disabled people organisations continue to sincerely and enthusiastically solicit, advocate and lobby for the passage of the Bill again in the present Nigeria's 8th senate. The signing of the bill into law did not happen after its passage by the 7th senate in the past administration.

Now, on the failure of the bill becoming law,<sup>111</sup> it is anticipated that the judiciary as another arm of government can as well advance the inclusive education rights of the hearing-impaired learner as well as other persons with disabilities through progressive pronouncements.

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<sup>108</sup> R Lang & L Upah 'Scooping study: Disability issues in Nigeria' 6

[http://www.ucl.ac.uk/lcccr/download/dfid\\_nigeriareport](http://www.ucl.ac.uk/lcccr/download/dfid_nigeriareport) (accessed 19 February 2015).

<sup>109</sup> As provided in para 51 of the UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No.13: The right to education (art.13 of the CESCR) (n 40 above).

<sup>110</sup> J Pfumrodze & CM Fombad 'Protecting the disabled in Botswana: An anomalous case of legislative neglect' in Ilze Grobbelaar-du Plessis & Tobias van Reenen (eds) *Aspects of disability in Africa* (2011) 85.

<sup>111</sup> Considering that President Good luck Jonathan of the past administration withheld his assent based on the purported federal government's plan to rationalise its agencies in order to reduce the cost of governance.

Progressive court decisions have the possibility of advancing the recognition of the inclusive rights of persons with disabilities, including that of hearing-impaired learners. There is also a likelihood of awakening public interest and change of attitude towards persons with disabilities generally, and this can enhance thrust near the promulgation of the Bill into law. Ferreira da Cunha observes that the vast majority of people acknowledge that a right is only a right where positive law endorses it and further if we call for it and fight for it in juridical terms. Ferreira argues that

There are those who lay their trust in the generality and abstraction of the law, and there are those who believe in the most enlightened prudence of the judge. There are some who believe that the law has the final say on legal issues and others who consider that even the law, even the last and highest law-constitutional law, even the divine law, if it is the case- needs judicial interpretation, or a theological one. And this interpretation, according to new trends and devoid of any naivety, is intimately linked to the interpretation of standards creation: basically, any interpretation is a creation.<sup>112</sup>

The foregoing perspective promotes the understanding that progressive judicial decisions are capable of changing the culture of indifference and exclusion into that of respect and recognition of hearing-impaired learners and other persons with disabilities. It is anticipated that a court can use its advisory, supervisory and contentious jurisdiction to give normative interpretations to disability matters that come before it. This in turn will restore confidence, increase access to justice and bring renewed hope to persons with disabilities, including civil liberty organisations in promoting efforts towards disability awareness. The next section presents a brief summary of how Nigeria's judiciary can assist in making interpretations of any given situation with respect to disability matters.

### **5.3 Significance of judicial intervention**

Usually when a court makes a pronouncement, it becomes a judicial precedent which can only change in the face of unusual reasons. Hence these decisions have long lasting effects. Nigeria is party to a number of international human rights instruments that recognise and uphold protection with regard to education for persons with disabilities including hearing-impaired learners. It has been observed that once an international instrument is signed, it serves as a strong persuasive instrument before local courts whether or not it has been ratified or domesticated. In the Botswana case of *Attorney General v Unity Dow*<sup>113</sup> the learned judge at the Court of Appeal made reference to the decision of the trial judge with regard to

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<sup>112</sup> PF Ferreira da Cunha *Rethinking natural law* (2013) 47.

<sup>113</sup> (2001) AHRLR 99 (BwCA 1992).

Botswana's obligations under treaties it has signed. The learned Judge endorses the decision of the trial judge in the highlighted case by stating that:

Even if it is accepted that those treaties and conventions do not confer enforceable rights on individuals within the state until parliament has legislated its provisions into law of the land, in so far as such international treaties and conventions may be referred to as aids to construction of enactments, including the Constitution, I find myself at a loss to understand the complaint made against their use in that manner in the interpretation of what no doubt are some difficult provisions of the Constitution. The reference made by the learned judge a quo to these materials amounted to nothing more than that.<sup>114</sup>

Here, there seems to be a special connection between acting to benefit an individual or group and acting rationally. It also pales with the objective theory of moral goodness which is intrinsically linked to reasons for action as observed by Foot.<sup>115</sup> Indeed, the learned judge could be said to have acted as his conscience directed in relation to doing right with respect to circumstances prevalent at that time in the history of Botswana's development.<sup>116</sup>

Undoubtedly, this must be what prompted Fombad to also state that:

First, the mere fact that a human rights instrument has not been incorporated through an Act of parliament does not mean that courts in Botswana should pay no regard to it. Courts must consider them seriously when interpreting statutory language and wherever possible reach a conclusion that is consistent with Botswana's international obligations, unless of course, it is absolutely clear that parliament wanted to disregard or break these treaty obligations. Secondly, one could go further to posit that the importance of international human rights instruments is such that courts should not only consider their provisions but should also take account of their philosophy and the practice that has emerged, as the Court of Appeal did in the Dow case. Unforeseen situations could thus be resolved in an imaginative and creative manner by the judges without waiting for parliament to enact implementing legislation and in this manner the courts can reflect the changing perceptions when dealing with an old Constitution like Botswana's.<sup>117</sup>

Drawing from the foregoing, the Nigerian judiciary can and should be creative when interpreting disability related matters. At a minimum, efforts reflecting the paradigm shift in so far as international standards concerning the promotion and protection of the rights of persons with disabilities globally ought to be considered. Any interpretation regarding disability should place a responsibility on the state to provide accommodations. This by and large contemplates judicial interpretations that align with substantive equality perspectives.

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<sup>114</sup> As above, para 108.

<sup>115</sup> P Foot *Natural goodness* (2010) 64.

<sup>116</sup> For instance, given the level of economic and political instability and the level of human rights promotion and protection at that time in Botswana.

<sup>117</sup> CM Fombad 'The protection of human rights in Botswana: An overview of the regulatory framework' in Fombad CM (ed) *Essays on the law of Botswana* (2007) 11.

Substantive equality which has been captured as an inclusive approach to justice makes it the responsibility of states to eradicate systemic inequalities through the provision of opportunities for marginalised individuals or groups in resource redistribution.<sup>118</sup> It recognises that individuals and groups who are not similarly situated cannot compete equally.<sup>119</sup> It also supports treating people differently to bring about equality of opportunities.<sup>120</sup> For Nigeria's present purpose, a shift of emphasis from a formal equality interpretive mode to the substantive equality model in order to provide the significant support for legislation and a cultural mind shift regarding disability issues is needed.<sup>121</sup>

## 6 Conclusion

This chapter has attempted an analysis of the legal and policy framework within which the inclusive education of hearing-impaired learners is protected in Nigerian. It is necessary to point out that Nigeria is yet to specifically address the issue of access to the inclusive education rights of children with disabilities and in particular hearing-impaired learners in Nigerian primary schools. This lack of commitment is reflected in its education policy and enforceable law as can be observed. One cannot deny traces of low expectation that tend to erroneously assume and portray hearing-impaired learners as having a learning difficulty.

However all hope is not yet lost as Nigeria has signed and ratified the CRPD which has brought about a slow shift of emphasis from the charitable and welfare model of disability to the human rights model. Efforts of the judiciary to consolidate disability decisions in this direction are critical as this will indeed reflect a subtle move towards the prescriptive and directive perspective of this study. The process of signing the Discrimination against Persons with Disabilities (Prohibition) Bill into law has taken too long and the need for strong advocacy towards the improvement and enactment of the Bill cannot be overemphasised.

Making the Bill become law is to endorse an important directive about what is good for humans and to contribute towards the realisation of inclusive education for hearing-impaired learners and other learners with disability. According to Finnis, civic virtue calls for the

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<sup>118</sup> CG 'Ngwena Western Cape Forum for Intellectual Disability v Government Republic of South Africa: A case study of contradictions in inclusive education' (2013) 1 *African Disability Rights Yearbook* 156.

<sup>119</sup> C Albertyn & B Goldblatt 'Facing the challenge of transformation: The difficulties in the development of an indigenous jurisprudence of equality' (1998) 14 *South African Journal of Human Rights* 248.

<sup>120</sup> CG Ngwena 'Equality for people with disabilities in the workplace: An overview of the emergence of disability as a human rights issue' (2004) 29 *Journal for Juridical Science* 167.

<sup>121</sup> Overview as to the distinctions regarding the formal and substantive equality jurisprudence has been presented in Chapter 2 of this study.

respect for diversity among humans.<sup>122</sup> The Nigerian state should be able to acknowledge this at least.

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<sup>122</sup> Finnis *Human rights and common good* (n 52 above) 110.

## Chapter 5

### **Practices found in the education of hearing-impaired learners in Nigerian primary schools**

#### **1 Introduction**

This chapter presents data generated with respect to the field study conducted. The aim of the fieldwork is to ascertain the adequacy of practices adopted in the education of hearing-impaired learners in Nigerian primary schools using collected data. In essence, the chapter describes findings relating to Nigeria's practices and approaches to primary education delivery for hearing-impaired learners. An analysis of data collected is presented in chapter six. In all, this chapter discusses objectives of the fieldwork, ethical considerations, data source, fieldwork methodology, collection of data/questionnaire design and presentation of findings.

#### **2 Objectives of the fieldwork**

The fieldwork is considered imperative because very few empirical studies have been done in the area of inclusive education with respect to persons with disabilities in Nigeria. Particularly, empirical works regarding the adequacy of approaches adopted in the delivery of education to hearing-impaired learners in Nigeria seem scarce. It then became necessary to explore current facts and information that would be integrated in this study, in making realistic arguments towards the realisation of inclusive education for hearing-impaired learners in Nigeria. Fieldwork was conducted between 31 July and 9 of September, 2015.

It is notable, that questionnaire distribution is limited to a survey of identified state special schools for deaf persons and random sampling of state regular primary schools within two political zones out of the six political zones that exist in Nigeria.<sup>1</sup> Fieldwork could have covered all the state special schools and regular schools in Nigeria in order to ascertain the adequacy of the approaches used in the delivery of education to hearing-impaired learners in Nigerian primary schools. However, the case study is limited to primary schools in the South-South and South-East political zones of Nigeria. This is based on the vastness of the geographical spread of the country. Again, the entire size of the population is large, and the time

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<sup>1</sup> These zones were carved out based on geographical spread/location and each location comprises of states with similar culture, language and ethnic group.



of completion of this research is of essence. The huge financial cost of administration was also considered.<sup>2</sup>

It is hoped that the findings in the case study can be generalised to the rest of Nigeria. It is also hoped that the study will provide valuable insight from which all states in Nigeria, policymakers and teachers will begin to embrace the prescriptive and directive philosophy in promoting the inclusive education needs of hearing-impaired learners and other learners with disabilities.

### **3 Ethical considerations**

In order to guarantee protection of the privacy and identity of the participants in this survey, the Ethics Research Committee of the Faculty of law of the University of Pretoria approved all materials and methods preceding the administration of semi-structured questionnaire and holding of focus groups discussions.<sup>3</sup> Before focus group interviews, all participants were shown a copy of this approval letter, it was also explained to them that they are at liberty to withdraw from participating in the discussions at any time they deem fit. Eventually, the participants gave their consent. A copy of the approval letter is shown in the appendices as indicated in the methodology section of chapter one.

In a similar manner, the permission of heads of schools, chief executives of establishments/institutions was also sought before the distribution of semi-structured questionnaire in the various schools and Education Boards. The education authorities also gave their consent. During focus group discussions, some participants felt uncomfortable with the tape recorder. Consequently, the tape recorder was not used.

### **4 Data source**

The study essentially used primary data derived from the distribution of semi-structured questionnaire, focus group discussions, participatory observation and interviews. Prior to data collection, a pilot study was carried out with specific interest on gathering information regarding hearing-impaired learners and state special schools for deaf learners within the

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<sup>2</sup> The foregoing are conditions usually considered before studying a sample of a population. See OC Nwana *Introduction to educational research* (2005) 60.

<sup>3</sup> The ethical approval letter earlier highlighted in Chapter 1 is attached as Appendix I to this study.

states selected. The process involved site visitation of identified schools in order to determine the number of possible research respondents. Interviews with education secretaries and special education unit staff of the State Primary Education Board in the selected states were also conducted.

Responses from the interviews assisted in gaining direction as to the location of state special schools for deaf learners in the four states sampled. Responses also indicated that Universal Basic Education Commission (UBEC) is the statutory body under the Federal Ministry of Education charged with the responsibility of implementing policies, management and supervision of primary education in Nigeria.<sup>4</sup> The Universal Basic Education Commission is represented in states in Nigeria as State Universal Basic Education Board (SUBEB). Responses from staff of the special education unit of the State Universal Basic Education Boards in Anambra, Imo, Delta and Rivers States particularly indicated that the possibility of finding hearing-impaired learners in regular schools in the states is rare. However, staff of the special education unit at Delta State Basic Education Board indicated that Delta State has inclusive regular schools for hearing-impaired learners.

Documents reviewed in relation to educational programs for hearing-impaired learners in Nigeria include the National Policy on Education and documents relating to curriculum content.<sup>5</sup>

## **5 Fieldwork methodology**

The approach adopted in conducting this research generally is of a qualitative nature. This is because it affords an opportunity of gaining in-depth information from research participants concerning the adequacy of approaches adopted in the education of hearing-impaired learners in Nigerian primary schools. A qualitative method also affords the opportunity to use various research data gathering and forms of data analysis.<sup>6</sup> The study acknowledges that the method of data generation should illustrate transparency and accuracy in order to instantiate valuable results. Consequently, methods used in generating data in order to provide acceptable results are explained in the following sub-sections.

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<sup>4</sup> The pilot study further confirmed that the respective State Universal Basic Education Boards is the statutory body responsible for the supervision of primary education in the States.

<sup>5</sup> Nigeria National Policy on Education 6th edition (2013).

<sup>6</sup> As drawn from a reading of D Silverman *Interpreting qualitative data* (2004) 4.

However, it must be stated at this stage that an aspect of quantitative method was integrated in order to assist in the determination and justification of the population size in respect of questionnaire distribution in schools.

### **5.1 Selection of survey areas/participants**

Nigeria is made up of six political zones.<sup>7</sup> Out of the six zones, two zones were selected for the study through simple random sampling (that is balloting). The two zones that were selected were South-South and South-East and they cover eleven states in Nigeria.<sup>8</sup> Again, through cluster sampling technique, Delta and Rivers States were selected from the South-South zone, while Anambra and Imo were selected from the South-East zone. The research participants generally, include hearing-impaired learners, hearing learners, their teachers, specialists in special education and policymakers.

Regarding the distribution of semi-structured questionnaire, the response of officials of the State Universal Basic Education Board- SUBEB<sup>9</sup> in the sampled states was sought. Furthermore, the response of some learners in the identified state special primary schools for the deaf in each of the states sampled was obtained, and the need for conducting random sampling at this stage did not arise. It was considered that the study can accommodate all the identified state special schools for the deaf due to their small population.

However, three government regular primary schools were selected in Anambra, Delta, Imo and Rivers States through random sampling in a bid to ascertain comparable inclusivity of hearing-impaired learners in Nigerian regular schools. It is to be noted that in Delta State, the existence of six 'inclusive primary schools' were indicated by the Delta State Universal Primary Education Board, out of which three were randomly selected for the study.

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<sup>7</sup> They are North-Central (Nigeria), North-East (Nigeria), North-West (Nigeria), South-East (Nigeria) South-South (Nigeria), South West (Nigeria)

<sup>8</sup> South-South (Nigeria) - include Akwa-ibom State, Cross-River State, Rivers State, Bayelsa State, Delta State and Edo State. South-East (Nigeria) - include Abia State, Anambra State, Ebonyi State, Enugu State, and Imo State.

<sup>9</sup> The Universal Basic Education Commission is located in the various states that we have in Nigeria as State Universal Basic Education Boards (SUBEB) for example, Rivers /Anambra/ Enugu/ Delta State Universal Basic Education Boards. It is a Federal Ministry of Education Parastatal responsible for primary and junior secondary education in Nigeria. Notably, the states and local governments are expected to partner with Universal Basic Education Commission as a federal agency responsible for basic education delivery in Nigeria.

This representative sample was to ensure effective focus, coverage and precision. Nevertheless, questions might arise concerning the generalisation of outcome to the rest of the primary schools within the states. It is considered that concentrating on small areas instead of large areas often provides a sharper focus to the study.<sup>10</sup> The use of focus group discussions further assists in widening coverage and accuracy of the data from the perspective of the experiences and position of most of the discussants as learners, parents, teachers, head teachers and policymakers in primary education.

With regard to focus group discussions, the focus group comprised mainly of hearing-impaired teachers, hearing-teachers, three hearing-impaired learners and their parents, five head-teachers: one from a regular school and three from special schools for deaf learners and one from an 'inclusive school', two professionals with hearing impairment, special education teacher educators, officials of the Nigeria Ministry of Education and a sign language interpreter.

Effort was made to solicit some policymakers in the focus group from the top hierarchy of the Unit responsible for primary education at the Federal and State levels, that is, the Universal Basic Education Commission (UBEC) and State Universal Basic Education Board (SUBEC) in order to ascertain how they conceptualise inclusive education. It was considered essential to involve policymakers because if Nigeria does not conceptualise the appropriate legal, policy and institutional framework that corresponds with normative values on the right to inclusive education, children with disabilities, including hearing-impaired learners will not be able to access inclusive education.

The individuals in the focus group were chosen based on the reasoning that they most likely have the experience and background knowledge regarding practices and approaches being used in the education of hearing-impaired learners in Nigerian primary schools. The parents of hearing-impaired learner participants were made part of the group in order to encourage the learners to feel free while sharing their experience. Secondly, getting the parents' views concerning their children's experiences and needs is also necessary. The service of an interpreter with expertise in sign language was also engaged to assist in interpreting communication from hearing-impaired teachers and learners where the need arises.

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<sup>10</sup> J Mason *Qualitative researching* (2005) 122.

## 5.2 Sampling technique

A process of picking with replacement was done until two states were picked from each of the political zones - Anambra, Delta, Imo and Rivers States. This process was to ensure that all the states in the two zones have equal chances of being selected.

Anambra State has two state special primary schools for deaf learners - Onitsha Special School for the Deaf and Beeden Memorial Special Education Centre, Isulo.<sup>11</sup> Delta State has three - Special Education Centre, Asaba, Special Education Centre, Agbor, and Alderstown School for the Deaf, Warri.<sup>12</sup> Imo State has three - Owerri Special School for the Deaf, Special Education Centre Orlu (School for the deaf and mentally challenged) and Special School for the Deaf, Okigwe.<sup>13</sup> While Rivers State has one state special primary school for deaf learners known as Special School for the Disabled.<sup>14</sup> The sampled state special primary schools are specified in Table 2 of sub-section 5.5.

Having indicated earlier<sup>15</sup> the necessity of ascertaining the extent of inclusion of hearing-impaired learners in regular primary schools as well, it was found that Imo State has 1 275<sup>16</sup> regular primary schools, Anambra State has 1 041.<sup>17</sup> Rivers State has 947,<sup>18</sup> and Delta State has 1 277.<sup>19</sup> Deriving data from this large list of primary schools can be time consuming and expensive. Consequently a representative sample was drawn from primary schools located within the state capital/urban areas of the selected four states using random sampling method.

Of the four states that were selected, three state regular primary schools located within each of the states' capital were picked. This is based on the reasoning that inclusive schools are likely to be located in state capitals and urban areas (high density areas) where they tend to serve elite families that might have demand for them. Delta State was found to have six

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<sup>11</sup> One is located at Onitsha, within the Onitsha Zone, while the other one located at Isiulo is a residential school for the deaf.

<sup>12</sup> Located at Asaba, Agbor and Warri respectively.

<sup>13</sup> This is located within the three zones in the state, which is, Owerri zone, Orlu zone, Okigwe zone. The special school at Orlu is residential.

<sup>14</sup> Located at Creek Road Port Harcourt, Rivers State.

<sup>15</sup> See sub-section 5.1 of this chapter.

<sup>16</sup> Universal Basic Education Commission Basic education profile facts and figures: South-East Region (2012) 2.

<sup>17</sup> As above.

<sup>18</sup> Universal Basic Education Commission Basic education profile facts and figures: South-South Region (2012) 2

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<sup>19</sup> As above.

‘inclusive’ state primary schools, but three were randomly selected. The sampled regular and ‘inclusive’ state primary schools are specified in Table 1 of sub-section 5.5

### 5.3 Population size

Put together, nine state special primary schools for deaf learners were selected for questionnaire distribution. They have a population of 144 teachers and a population of 972 learners. Twelve state regular primary schools were selected and they have a population of 289 teachers and 7 775 learners. Here, sample size was considered too large. However, the next sub-section provides an explanation as to how the survey sample for investigation in schools was determined.

Semi-structured questionnaire was also administered to 28 officials of the Ministries of Education (State Universal Basic Education Board- SUBEB) in the sampled states. The officials who answered the semi-structured questionnaire included Chairpersons of SUBEB, Education secretaries, staff of the special education unit, curriculum unit and the inspectorate. With regard to focus group discussions, a total of 26 discussants participated in the focus group.

### 5.4 Sample Size Determination

The population of the study is 9 234 which comprise of - nine special schools identified in the study, with a population of 144 teachers and 972 learners. Twelve state regular primary schools selected for the study with a population of 289 teachers and a population of 7 775 learners. Officials of States Universal Basic Education Board - SUBEB that responded to the semi-structured questionnaire were 28 and 26 focus group participants. To obtain the sample size which enabled us draw inferences about the population size for questionnaire distribution in schools, the study used the YaroYammen formula as quoted by Alugbuo, et al,<sup>20</sup> stating the formula as:

$$n = \frac{N}{1 + N(e^2)}$$

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<sup>20</sup> CC Alugbuo et al *Research methodology with SPSS* (2012) 26.

Where

n= Sample Size

N= Number of items in the universe or population, and

$e^2$ = square of maximum allowance for sampling error or level of significance.

In this regard N = Number of the population is 9180 that is: 289+7775+144+972

Thus the sample size for this study is computed as follows:

(i) Size of teachers in the selected state regular schools to be considered:

$(n1) = \frac{289}{1+289 \times (0.05^2)} = 167.78$  (i.e.: 168 teachers in the selected regular government schools to be studied)

(ii) Size of learners in the selected state regular schools to be considered:

$(n2) = \frac{7775}{1+7775 \times (0.05^2)} = 380.43$  (i.e.: 380 learners from the selected regular government schools to be studied)

(iii) Size of teachers in the state special schools to be considered:

$(n3) = \frac{144}{1+144 \times (0.05^2)} = 105.88$  (i.e.: 106 teachers in the selected special schools to be studied)

(iv) Size of learners in the state special schools to be considered:

$(n4) = \frac{972}{1+972 \times (0.05^2)} = 283.38$

(i.e.: 283 learners from the selected special schools to be studied)

Consequently, a sample of 168 teachers and 380 learners from the state regular government schools was used, while a sample of 106 teachers and 283 learners from the state special schools was used to determine the sample size for school survey. To further ensure adequate representation and to determine how large the sample will be, the simple random sampling technique with replacement was used to select the participants/respondents that will be in the sample size. The number of respondents/participants included in the sample size from each of the nine state special schools and the twelve state regular primary schools in the two zones was determined through proportional allocation from the computation of sample size proportion as shown below.

### **5.5 Computation of the sample size proportion**

To compute the sample size proportion the study drew from a statistical technique, thus:

$$k = \frac{W_i}{N} \times n$$

Where

$k$  = *sample size proportion,*

$w_i$  = *no. of respondents for individual school*

$N$  = *population size*

$n$  = *sample size*



**Table: 1**

List of the selected state regular and ‘inclusive’ primary schools in the South-East and South-South zones with teachers and learners strength and the proportion size considered

State primary schools	Population of teachers (wi)	Sample size proportion for teachers (k)	Population of learners	Sample size proportion for learners
<b>Imo state</b>				
Aladinma primary school	32	18.6021	960	46.9196
Ikenegbu primary school	24	13.9516	520	25.4148
Imo city primary school	28	16.2768	754	36.8514
<b>Anambra state</b>				
Ezechima primary school	22	12.7889	628	30.6932
Udoka primary school	18	10.4637	722	35.2875
Unity primary school	23	13.3702	568	27.7608
<b>Rivers state</b>				
State primary school, Olanada	27	15.6955	624	30.4977
State primary school, Rumueme	23	13.3702	576	28.1518
Model primary school Nkpolu-Oroworuku	26	15.1142	643	31.4264
<b>Delta state</b>				
Eke model primary school/special education centre	28	16.2768	688	33.6257
Oharisi model primary school/special education centre	20	11.6263	576	28.1518
Owhara primary education centre	18	10.4637	516	25.2193
<b>Total</b>	<b>289</b>	<b>168</b>	<b>7 775</b>	<b>380</b>

**Table: 2**

List of the identified state special schools in the South-East and South-South zones with teachers and learners strength and the proportion size considered

S/no.	Special schools	Population of teachers	Sample size proportion for teachers	Population of learners	Sample size proportion for learners
Imo state					
1	Special school for the deaf, Owerri	16	11.7778	95	27.6595
2	Special school for the deaf, Orlu	25	18.4028	103	29.9887
3	Special school for the deaf, Okigwe	1	0.73611	4	1.16461
Anambra state					
4	Special school for the deaf, Onitsha	12	8.83333	158	46.0021
5	Special school for the deaf Isulo	45	33.125	220	64.0535
Rivers state					
6	Special school for the disabled, Port-Harcourt	10	7.36111	79	23.001
Delta state					
7	Special education centre, Asaba	11	8.09722	147	42.7994
8	Special education centre, Agbor	8	5.88889	68	19.7984
9	Alderstown school for the deaf, Warri	16	11.7778	98	28.5329
TOTAL		144	106	972	283

To ensure adequate representation, the simple random sampling technique with replacement has been used to select the participants that constitute the sample size. Accordingly, the sampling technique used for the present determination is the non-probability sampling technique with proportional allocation of sample units.

Table 3 and 4 show respectively, the proportional allocation of the sample size of 168 teachers and 380 learners from the selected state regular and 'inclusive' primary schools, as

well as the proportional allocation of 106 teachers and 283 learners from the state special schools under study.

**Table: 3**

Selected state regular and ‘inclusive’ primary schools in the South-East and South-South zone of Nigeria with teachers and learners strength and their sample size according to proportional allocation

State primary schools	Population of teachers	Sample size proportion for teachers	Population of learners	Sample size proportion for learners
<b>Imo State</b>				
Aladinma primary school	32	19	960	47
Ikenegbu primary school	24	14	520	25
Imo city primary school	28	16	754	37
<b>Anambra state</b>				
Ezechima primary school	22	13	628	31
Udoka primary school	18	10	722	35
Unity primary school	23	13	568	28
<b>Rivers state</b>				
State primary school Olanada	27	16	624	30
State primary school Rumueme	23	13	576	28
Model primary school Nkpolu-Oroworukwu	26	15	643	31
<b>Delta state</b>				
Eke model primary school/special education centre	28	16	688	34
Oharisi model primary school/special education centre	20	12	576	28
Owhara primary education centre Isoko	18	10	516	25
<b>TOTAL</b>	<b>289</b>	<b>168</b>	<b>7 775</b>	<b>380</b>

**Table: 4**

Selected government owned special schools in the South-East and South-South geo-political zones of Nigeria with their teacher's and learner's strength and their sample size according to proportional allocation.

S/no.	Special schools	Population of teachers	Sample size proportion for teachers	Population of learners	Sample size proportion for learners
Imo state					
1	Special school for the deaf, Owerri	16	12	95	28
2	Special school for the deaf, Orlu	25	18	103	30
3	Special school for the deaf, Okigwe	1	1	4	1
Anambra state					
4	Special school for the deaf, Onitsha	12	9	158	46
5	Special school for the deaf, Isulo	45	33	220	64
Rivers state					
6	Special school for the disabled, Port-Harcourt	10	7	79	23
Delta state					
7	Special education centre, Asaba	11	8	147	43
8	Special education centre, Agbor	8	6	68	20
9	Alderstown school for the deaf, Warri	16	12	98	29
TOTAL		144	106	972	283

## 6 Questionnaire design/collection of data

Three different sets of semi-structured questionnaire were used at different times for the different respondents. There were also questions that guided focus group discussion. In order to realise the set goals of the survey, the questions were structured in such a manner as to allow the respondents the freedom of filling in their own answers/opinion in the open spaces provided. The introductory sections of the different questionnaire were designed to obtain the

personal details of the respondents. Subsequent sections were clustered into themes aimed at realising the objectives of the survey.

The first set of questionnaire was for hearing-impaired and hearing learners. Considering the age and level of the learners, the classroom teacher and a sign language interpreter assisted in carefully reading, explaining and signing to the learners, to make sure they understand the content of the questionnaire. Some of the learners, especially hearing-impaired learners, needed more time in filling out the questionnaire. The questions were explained one after the other, at their own pace. Respondents were drawn from each school according to the sample size proportion for learners reflected in tables 3 and 4 using random selection. The semi-structured questionnaire used for this group is attached as Appendix II to this study.

The second set of questionnaire was for hearing-impaired teachers and regular school teachers. Respondents were drawn from each school according to the sample size proportion for teachers reflected in tables 3 and 4. The semi-structured questionnaire used for this group is attached as Appendix III to this study.

The third set of questionnaire targeted officials of the Ministries of Education (States Universal Basic Education Board- SUBEB) within the selected states. The semi-structured questionnaire used for this group is also attached as Appendix IV. There were also questions that guided focus group discussion. This is attached as Appendix V to this study.

The focus group was divided into three groups, resulting in one group for the two hearing-impaired learners with their parents, one hearing-impaired teacher, one special school head teacher, one inclusive school head teacher, a special education teacher educator, a professional with hearing impairment, two officials of the Universal Basic Education Board and the sign language interpreter.

The second group had one special school head teacher, one hearing-impaired teacher, one regular school head teacher and one special education teacher educator and officials of the Universal Basic Education Board. While the third group consisted of a special education teacher educator, a professional with hearing-impairment, one special education teacher, one special school head teacher, a hearing-impaired learner, a parent and two officials of the Universal Basic Education Board.

The three groups held morning sessions which lasted for about two and half hours on different dates. The purpose of dividing the focus group was to facilitate effective

understanding and management of the group. It was thought that this would enhance the possibility of successful outcome.

Finally, responses and insights from semi-structured questionnaire and focus group discussions were subsequently transcribed. The transcripts were carefully analysed in response to the research question regarding the adequacy of practices adopted in the education of the hearing-impaired learner and coded into related themes and categories which is presented in subsequent sections of this chapter.<sup>21</sup>

## 6.1 Quality of data

Semi-structured questionnaire was administered and collected on the spot so as not to give room for external influences, loss of questionnaire and to keep reliability and accuracy at a satisfactory level. In the process of gathering data, the study also engaged in participatory observation of participants, sought clarifications where there were inconsistencies and made notes that were later transformed into related themes and categories.

The combination of data sources was for purposes of logical triangulation in order to make for validity as learned.<sup>22</sup> Along these lines, tentative research reports were taken back to the research subjects/participants (hearing-impaired learners and their teachers) in a bid to confirm validity of the study's findings.

## 6.2 Data background: Clarification

In a bid to explain the data used for analysis, presenting the size of questionnaire distributed as well as respondents' background is relevant. Tables 5, 6, 7 and 8 clarify data used for the study.

**Table: 5**

**Number of respondents sampled for the study based on school type**

School Type	Teachers	(%)	Learners	(%)
Regular School	168	61	380	57
Special School	106	39	283	43
Total	274		663	

<sup>21</sup> See section 5 of this study. According to Kirk and Miller, this satisfies the demand for proper documentation of procedures. See J Kirk & M Miller *Reliability and validity in qualitative research* (1986) 72.

<sup>22</sup> N Denzin *The research act in sociology* (1970) 186; NG Fielding & JL Feilding *Linking data* (1986) 35.

**Table: 6****Total number of respondents sampled**

Number of respondents sampled	Teachers	(%)	Learners	(%)
Regular School	168	61	380	57
Special School	106	39	283	43
Total	274	29	663	71
Sub-total for sampled teachers and learners		937		
SUBEB Officials		28		
Grand total sampled for the study		965		

**Table: 7****Questionnaire Distribution**

Item	N	(%)
No. of questionnaire properly filled and returned	899	93.2
No. of questionnaire not properly filled and returned	66	6.84
No. of questionnaire distributed	965	100

**Table: 8****Total number of properly filled responses used in the study**

Responses properly filled and analysed	Teachers	(%)	Learners	(%)
Regular School	136	50	378	57
Special School	93	34	264	40
Total	229	26	642	74
Sub-total for teachers and learners for the study		871		
SUBEB Officials		28		
Grand total properly filled and returned		899		

As will be apparent from the tables, the total number of questionnaire distributed and collected for the schools is 937 (168+380+106+283) and 28 with respect to officials of the State Universal Basic Education Board in the sampled states (see table 6). This brings the sample size regarding questionnaire distribution to 965, which is 28+168+380+106+283. However, the responses to 66 copies of the questionnaire were poorly filled and incoherent (see table 7). The errors were mostly consistent with those filled by hearing learners, few hearing-impaired learners and few teachers. Consequently, the 66 copies had to be removed and the remaining 899 copies of the questionnaire were subsequently used for analysis (see

table 8). Additionally, 26 discussants participated in the focus group on scheduled dates. The sample is considered large enough for the study.

## 7 Presentation of findings

### 7.1 Responses of participants

This sub-section discusses findings with regard to approaches adopted in the education of hearing-impaired learners. In presenting the research findings, the research used qualitative content analysis.<sup>23</sup> This involved analysing each unit of data for purposes of clustering and identification of common themes. Clustering the data assisted in grouping the data into common themes and categories revealed during the collection of data. The statistical analysis was carried out with the assistance of a data analysis consultant of the Imo State University Consultancy Services.<sup>24</sup> From this segment therefore, the themes and categories are presented.

#### 7.1.2 Background information: Characteristics of respondents

With respect to background information of respondents, the questionnaire revealed that the age of the learners fall within 10-13 years. Apart from the learners, the other respondents identified as adults. The percentage of respondents that identified as adults and learners is illustrated in Table 9:

**Table: 9**

#### Age of respondents

<b>Respondents</b>	<b>N</b>	<b>(%)</b>
Adults	257	29
Learners (ranging from 10 – 13 years)	642	71
	899	

<sup>23</sup> E Henning et al *Finding your way in qualitative research* (2004) 104.

<sup>24</sup> AJ Eriama B.Sc Degree in Statistics, consultant of the Imo State University Consultancy Services.



Educational qualification of teachers is represented in table 10 as:

**Table: 10**

**Qualification of Teachers**

Qualification of Teachers	Special School	(%)	Regular School	(%)
FSLC/ SSCE	9	10	0	0
NCE	73	79	8	6
B.Ed.	6	6	68	50
Master	5	5	60	44
	93		136	

Detail from the table 10 shows that 79 per cent of special school teachers hold National Certificate of Education, 6 per cent hold Bachelors degree, while 5 per cent hold Masters Degree in special education. It is also shown that less than 10 per cent of the special school teachers do not have higher degrees or further training in special education. Information in the table indicates that more than 50 per cent of the regular school teachers hold either a Bachelor of Education Certificate, or a Bachelor of Arts Certificate or a Bachelor of Science in Education Certificate. About 44 per cent hold Masters Degree in Education, while the remaining percentage holds a National Certificate of Education. None of the teachers found in the regular schools hold a professional qualification in special education.

The educational levels of respondents from the State Universal Basic Education Boards range from Bachelor of Education, Bachelor of Arts /Bachelor of Science with a Post Graduate Diploma in Education, Masters Degree and Doctoral Degree in Education. The Chairpersons of the State Universal Basic Education Boards occasionally hold higher degrees, but they are often political office holders, appointed by the state governor. They are usually not professionals in education.

Teacher's years of experience is represented in the table 11 below. The study found that 46 per cent of the special school teachers fall in the category of 1-5 years, 20 per cent fall within 6-10 years, while less than 20 per cent fall within 11-15 and 16 years and above. Years of experience of more than 60 per cent of the regular school teachers fall in the category of 11 - 15 years and 16 years and above.

**Table: 11****Teachers years of experience**

Teachers' Years of Experience	Special School	(%)	Regular School	(%)
1-5	43	46	27	20
6-10	19	20	18	13
11-15	19	20	82	60
>=16	13	14	10	7
	93		136	

Years of experience of respondents from the State Universal Basic Education Boards in the commission fall within 6 years and above.

In respect of focus group discussion, aspects that were considered relevant and important regarding respondents personality principally had to do with the experience and background of the participants in relation to practices and approaches usually applied in the delivery of education to hearing-impaired learners in Nigerian primary schools.

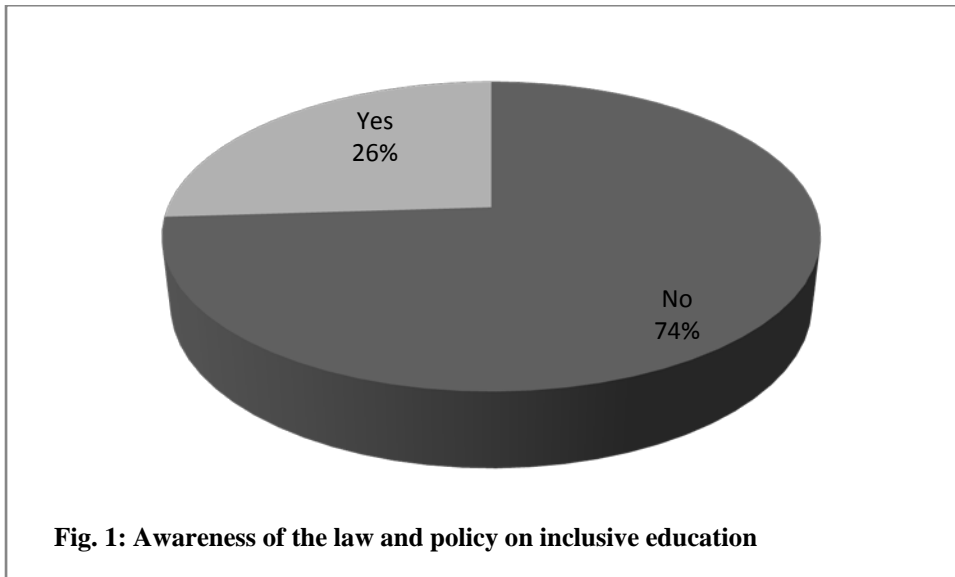
**7.2 Special school teachers****7.2.1 Knowledge of existence of law or policy on inclusive education.**

Close to 74 per cent of the special education teachers stated that they are not aware of any law or policy on inclusive education in Nigeria, while 26 per cent said that they are aware. See table 12 and figure 1 below:

**Table: 12****Special school teachers responses concerning awareness on law and policy on inclusive education**

Special education teachers awareness of the law and policy on inclusive education	N	(%)
No	69	74
Yes	24	26
Total no. of special education teachers	93	100

**Figure 1 showing percentage response rate of special school teachers awareness of law and policy on inclusive education as indicated in table 12**



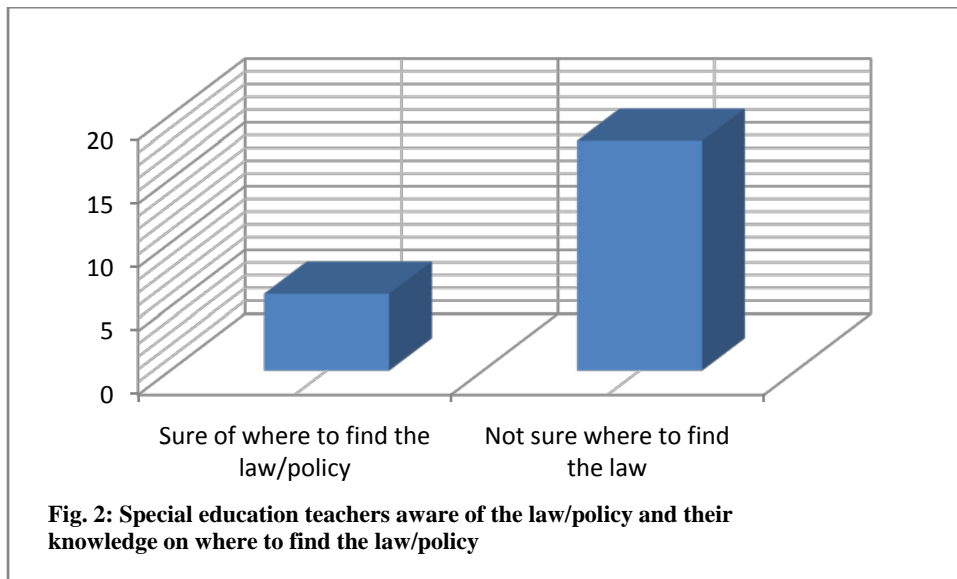
As illustrated in tables 13 and figure 2 below, from the 26 per cent of the teachers who said they were aware of law/policy on inclusive education. It was observed that most of the teachers indicated that they are not sure where to identify the law or policy in Nigeria. They also pointed out they are familiar with the principle on inclusive education which require that learners with disabilities need to be included in ‘regular schools’ in age appropriate general education classes. However, they emphasised that this understanding is yet to translate into reality in most state primary schools in Nigeria.

**Table: 13**

**Special school teachers responses on where to find law/policy on inclusive education**

Responses on where to find the law/policy	N	(%)
Sure of where to find the law/policy	6	26
Not sure where to find the law	18	74
Special education teachers aware of the law/policy	24	

**Figure 2 is the percentage response rate of respondents awareness of the law and where to find law or policy on inclusive education as shown in table 13**



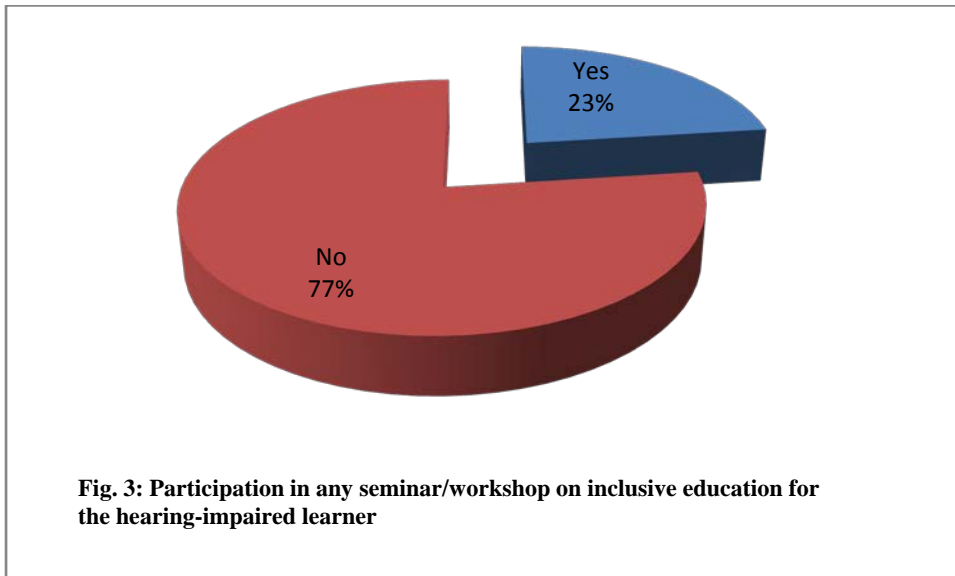
Furthermore, in the sampled special schools, 77 per cent indicated that they have not attended or participated in any workshop on inclusive education, rather they were trained in house by the school's head-teacher with regard to signing and finger spelling. They stated that a resource person is invited sometimes by the head teacher to assist teachers become fluent in signed language. This information is reflected in the table 14 and figure 3 below as

**Table: 14**

**Special school teachers response concerning participation in seminars/workshops on inclusive education for hearing-impaired learners**

Participation in any inclusive education seminar/workshop for the hearing-impaired learner	N	(%)
Yes	21	23
No	72	77
	93	

**Figure 3 showing the percentage of responses in table 14 regarding special school teachers participation in workshops on inclusive education for hearing-impaired learners:**



As will be seen in table 15 and figure 4 below, about 99 per cent of teachers further indicated that the government does not sponsor them for seminars and workshops on inclusive education which affords them the opportunity of exchanging ideas with others in the area of inclusive education. Most of the teachers specified that they are not very sure of their tasks regarding the implementation of inclusive education for the hearing-impaired learner.

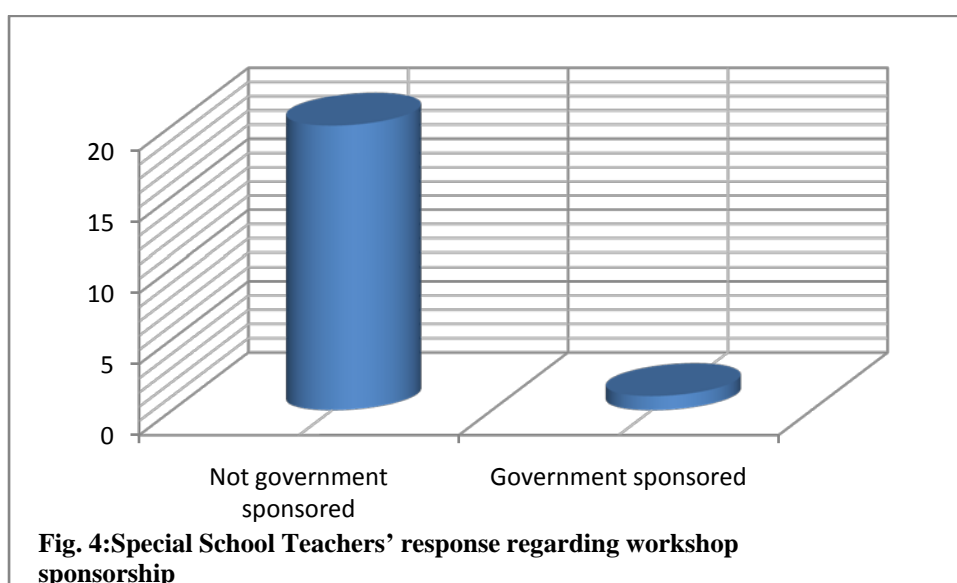
Significantly, one of the head teachers stated that she has just six months to retire from active service like most of her associates and contemporaries, and finding replacements might be difficult in terms of lack of commitment in training teachers in order to improve their expertise. For instance, the head teacher pointed out that she was supposed to attend a workshop on special education/inclusive education, but that the state failed to approve funding in spite of several applications made in that regard. She further highlighted that during such trainings and workshop, only one teacher from each special school often gets funding, depending on the disposition and magnanimity of the State Universal Basic Education Board.

**Table 15**

**Special school teachers response regarding workshop sponsorship**

Seminar/Workshop participants and their opinion of the organisers	N	(%)
Not government sponsored	19	95.2
Government sponsored	1	4.76
Teachers that participated	73	100

**Figure 4 shows percentage response rate of special school teachers’ response regarding workshop sponsorship as reflected in table 15:**



The special school head teachers who participated in the focus group discussions complained of a dearth of qualified hearing and hearing-impaired special education teachers skilled in signed language and inclusive education. They also confirmed that a greater percentage of the teachers found in special schools for the deaf or in ‘inclusive schools’ do not have a professional qualification or skill in special or inclusive education. They attributed this to less emphasis on the education of the hearing-impaired learner by the government. The failure of government to provide some form of motivation for special education teachers was also implicated.

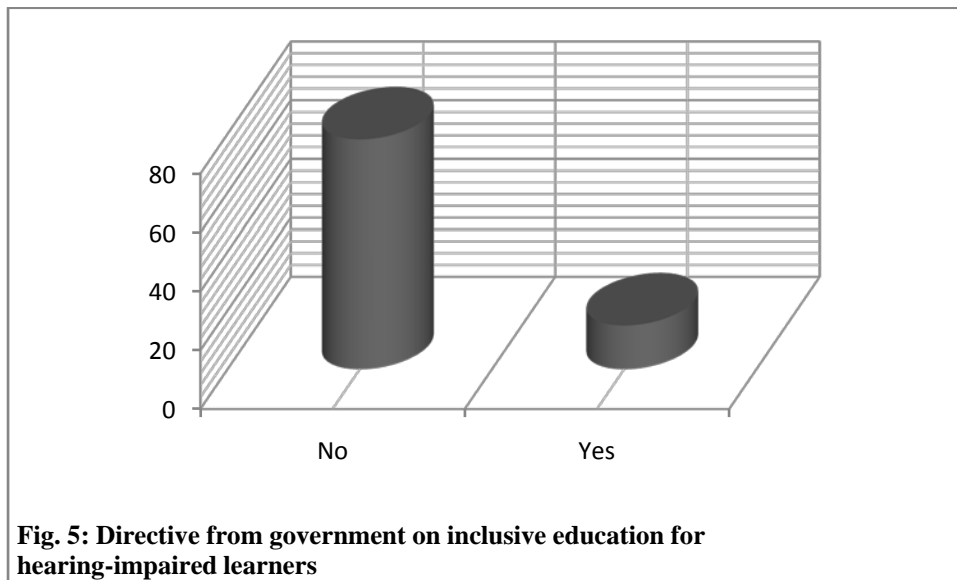
Table 16 and figure 5 below, represent that 84 per cent of the teachers also indicated that they have not seen any directive or document from government emphasising inclusive education for hearing-impaired learners or other learners with disabilities.

**Table 16**

**Special school teachers responses with respect to directives from government emphasising inclusive education for hearing-impaired learners**

Any directive from government on inclusive education for the hearing-impaired learner	N	(%)
No	78	84
Yes	15	16
	93	100

**Figure 5 illustrates percentage response concerning directives from government emphasising inclusive education for hearing-impaired learners as presented in table 16:**



**Fig. 5: Directive from government on inclusive education for hearing-impaired learners**

In all, it can be seen that there is divided opinion among the teachers concerning the existence of law, policy and directive on inclusive education for hearing-impaired learners. There is little doubt that the divided opinions could be attributed to serious lack of sensitisation by the Nigerian education authorities.

**7.2.2 Educational practices**

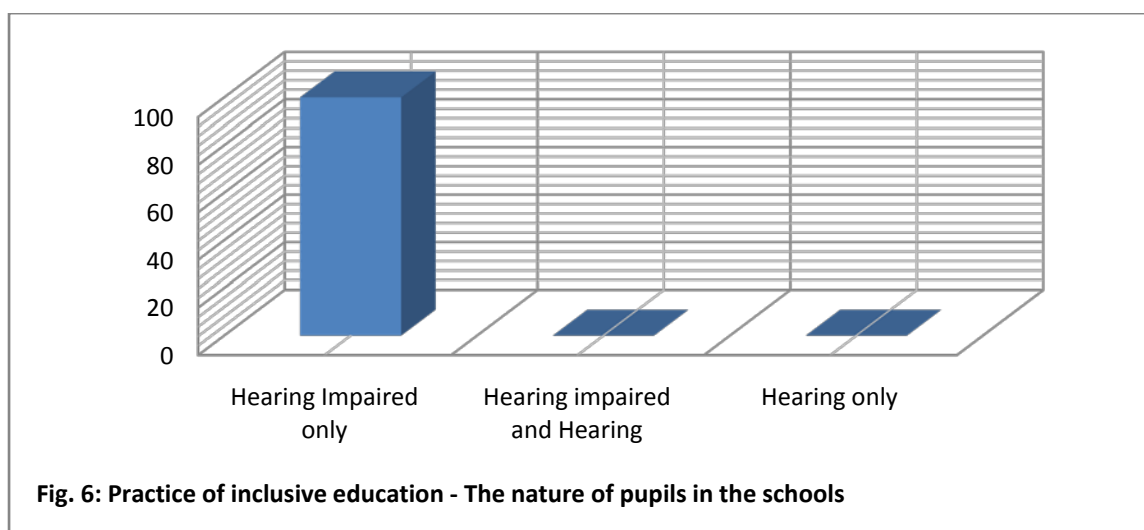
In the sampled special schools for the deaf, the teachers stated that there were no hearing learners. This is represented in table 17 and figure 6 below:

**Table 17**

**Table showing the characteristics of learners found in sampled special school for the deaf**

<b>Pupils in schools are:</b>	<b>N</b>	<b>(%)</b>
Hearing Impaired only	93	100
Hearing impaired and Hearing	0	0
Hearing only	0	0

**This is represented in as figure 6**



Most of the teachers understanding regarding inclusive education practice referred to the education of learners with disabilities and learners without disabilities in a regular school, without emphasis on the need to accommodate individual differences. Majority of the teachers said that inclusive education for the hearing-impaired learner is not practicable. Approximately, 89 per cent holding a National Certificate of Education (NCE) in special education expressed limited knowledge and doubts concerning the practice of inclusive education for the hearing-impaired learner. About 11 per cent of the teachers stated that inclusive education is achievable for hearing-impaired learners, provided the government prioritises support. Majority of the special school teachers emphasised that placing hearing-impaired learners in regular classrooms will create difficulties for the hearing-impaired learner and will drag other learners behind. They attributed these difficulties to lack of skilled teachers of the hearing-impaired in regular schools and the negative attitudes of regular school teachers who already have lowered expectations of hearing-impaired learners as



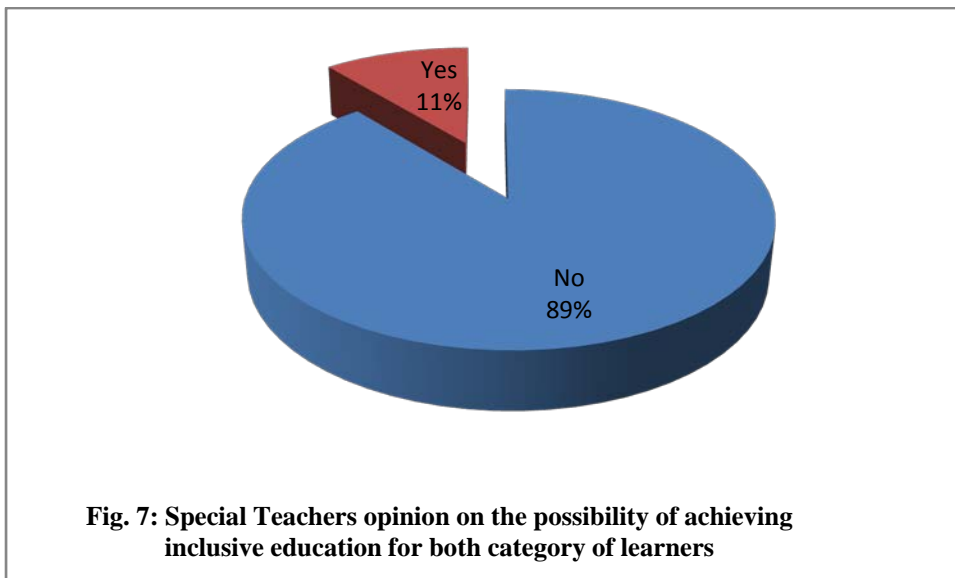
persons with disabilities. The response of the teachers is represented in table 18 and figure 7 below as:

**Table: 18**

**Special school teachers response on the possibility of achieving inclusive education for hearing learners and hearing-impaired learners:**

Special school teacher's opinion on the possibility of achieving inclusive education for both category of learners	N	(%)
No	83	89
Yes (but support has to be prioritized)	10	11
	93	100

**Figure 7 is a representation of the percentage of teachers response on the possibility of achieving inclusive education for hearing learners and hearing-impaired learners as presented in table 18:**



On instructional strategies, 31 per cent of the teachers responded that they deliver lessons and administer assignments and examinations using total communication,<sup>25</sup> while 22 per cent of

<sup>25</sup> Total Communication involves the use of every means of communication like speech, sign language, lip-reading, writing, gesture, visuals. It also encourages the use of residual hearing through amplifications like hearing aids, cochlea implants. While total communication uses signs, the signs used are believed to be spoken

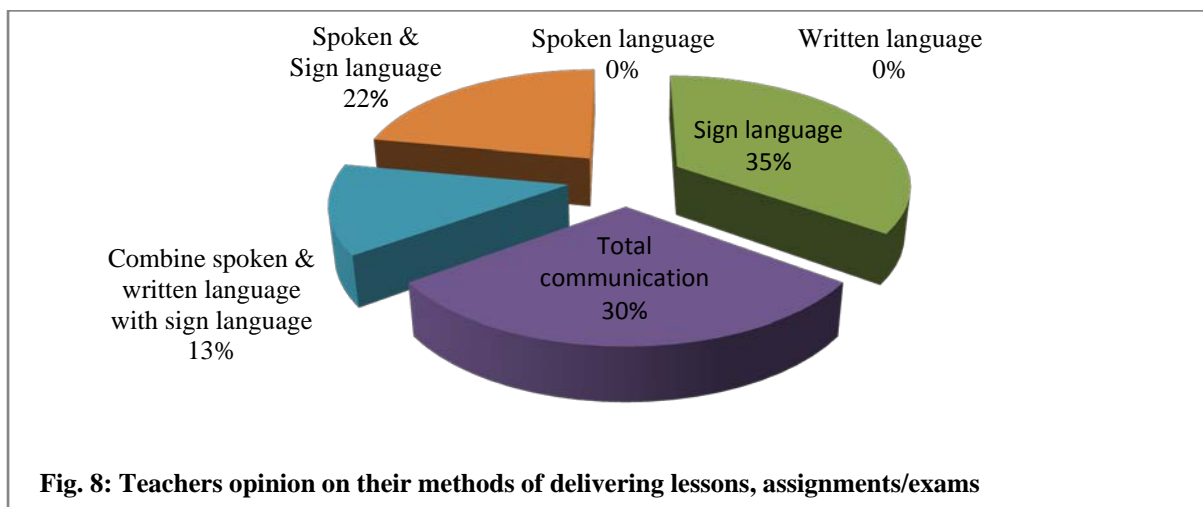
the teachers indicated they do so using spoken and American Sign Language. Nearly 35 per cent said they use only American Sign Language. Additionally, 13 per cent of the teachers highlighted that they combine spoken and written language with Sign Language. This is shown in table 19 and figure 8 below:

**Table: 19**

**Special school teachers opinion on methods of delivering lessons, assignments/exams**

	N	(%)
Spoken language	0	0
Written language	0	0
Sign language	33	35
Total communication	28	30
Combine spoken & Written language with sign language	12	13
Spoken & Sign language	20	22
	93	100

**Figure 8 is a representation of the percentage of teachers response on methods of delivering lessons, assignments/exams as presented in table 19:**



English language followed by simultaneous American language signs. See PA Ajavon 'An overview of deaf education in Nigeria' <http://www.deafchildworldwide.info/document.rm?id=2875> (accessed 11 May 2015). Even though this approach is seen to have enhanced general communication between teachers and the hearing-impaired and may improve the learning process, it has been found that learners who follow this approach solely, experience difficulties with their language skills especially in connection with reading, writing and the reception of knowledge due to lack of exposure to language development using the language of the immediate environment. See E Smuts 'Schools-Deciding on a school for the deaf' in Hugo & Blumberg (eds) *Challenges and choices* (2002) 54; RE Johnson et al 'Unlocking the curriculum: Principles for achieving access in deaf education' (1989) 89-3 *Gallaudet Research Institute Working Paper 5*.

The representations on figure 8 suggest the non-existence of a recognised directive with regard to best practices or ‘least restrictive’ practices in the education of the hearing-impaired.

Discussion with special education educators and professionals with hearing-impairment specifically highlighted the use of written tests without using signing alternatives in the evaluation and assessment of the hearing-impaired learner as disadvantageous. They further drew attention to the non-recognition of signed language under the Nigerian Constitution. There is an argument that recognising signed language legally would enable users of the language to demand and use it as a matter of right in all areas of life within the Nigerian society. According to the participants, signed language is only mentioned in the national policy,<sup>26</sup> but efforts towards a formal recognition of signed language or sign language dictionaries to improve and advance the status of signed language in Nigeria are lacking. They also condemned the non-development of signed language in Nigeria as well as the use of American Sign Language in teaching the Nigerian hearing-impaired learner at the expense of Nigerian local language. This they insisted does not meet the local language needs of the hearing-impaired learner.

The World Federation of the Deaf has also argued that signed language like spoken language carries with it a mirror of accepted usages and heritage of deaf people.<sup>27</sup> Recognising Nigerian signed language is also a way to promote and dignify the linguistic and cultural legacy of the Nigerian hearing-impaired social group.<sup>28</sup> This idea is apparent in the national policy on education which demands the use of the mother tongue of a particular region in training the low levels of primary schools,<sup>29</sup> even when English language is the medium of instruction in Nigeria.

Furthermore, the majority of the focus group participants highlighted that most hearing-impaired learners do not have the necessary foundation needed for learning and development because parents are ignorant of their early academic needs. Most of the learners according to the participants know few words and do not know how to sign early enough. In the three

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<sup>26</sup> Nigeria National Policy on Education, sec 7 para 123.

<sup>27</sup>WFD Policy ‘WFD Statement on the Unification of Sign Languages’ January 2007

[http://www.wfdeaf.org/wp-content/uploads/2011/04/statement-on-the-unification-of-sign-languages-january-2007\\_1.pdf](http://www.wfdeaf.org/wp-content/uploads/2011/04/statement-on-the-unification-of-sign-languages-january-2007_1.pdf). (accessed 19 December 2015).

<sup>28</sup> WFD Policy ‘WFD Statement on Standardised Sign Language’ May 2014 <https://vimeo.com/95959851> (accessed 19 December 2015).

<sup>29</sup> Nigeria National Policy on Education, sec 2 para 20 (b).

special schools for the deaf within the three zones in Imo State, the teachers highlighted that government is yet to establish early child language development centres. Special education teachers in the only government special school in Rivers State reiterated the same. The case is also the same in Delta State. According to the Imo State special school teachers, the special education department of the Imo State Ministry of Education has always insisted that hearing-impaired learners can only be enrolled in the state's schools for the deaf at the age of six. As such, the hearing-impaired child only gets the opportunity to attend privately established language centres early, where the parents are enlightened.

It has been presented in Chapter three that early child education plays a central role in timely identifying each learner's potentials and weaknesses.<sup>30</sup> Indeed, early child development and acquisition of language have been found to assist in successful school performance, confidence and psychosocial development which are vital for socio-economic pursuits in life.<sup>31</sup> Yet this essential activity has been reported to be missing for the hearing-impaired learner. However, in Anambra State, hearing-impaired special school teachers (9 per cent) in the Onitsha zone responded that they have early child education programme in the school, although they lack adequate facilities and specialists for language development. The programme according to them is a very recent project.

On student-teacher ratio, all the teachers highlighted that the number of learners usually outnumber the teacher(s) per class. Observations further revealed that the number of learners in a particular classroom is against the stipulated teacher/pupil ratio of 1:10 under the Nigerian national policy on education.<sup>32</sup> The situation will not enhance academic performance and will make it very difficult for the teacher to easily identify the unique needs of each learner.

When asked whether education authorities from the State Universal Basic Education Board (SUBEB) come in to supervise their teaching from time to time, 97 per cent of the teachers responded in the negative as illustrated in table 20 and figure 9 below:

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<sup>30</sup> See sub-sec 4.2 of Chapter 3.

<sup>31</sup> C Mathers et al *Global burden of hearing loss in the year 2000* (2000); BO Olusanya et al, 'The hearing profile of Nigerian school children' (2000) 55 *International Journal of Paediatric Otorhinolaryngology* 173.

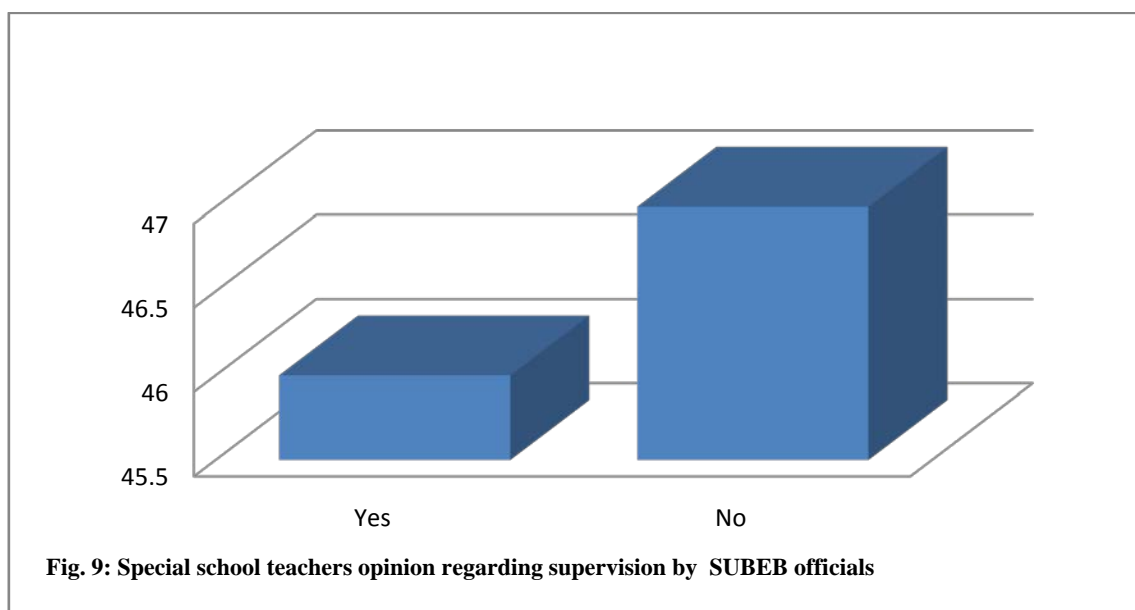
<sup>32</sup> Nigeria National Policy on Education, sec 7, para 123(c).

**Table 20**

**Special school teachers responses on SUBEB officials coming for the supervision of hearing-impaired teachers**

SUBEB come to supervise schools teaching hearing-impaired learners	N	(%)
Yes	46	49
No	47	51
	93	100

**Figure 9** represents percentage of teachers response regarding SUBEB officials coming for the supervision of hearing-impaired teachers as presented in table 20:



Teachers in Imo and Rivers State special schools for the deaf also highlighted that the SUBEB Chairperson for instance, has never visited their schools in order to see the environment where the learners receive education.

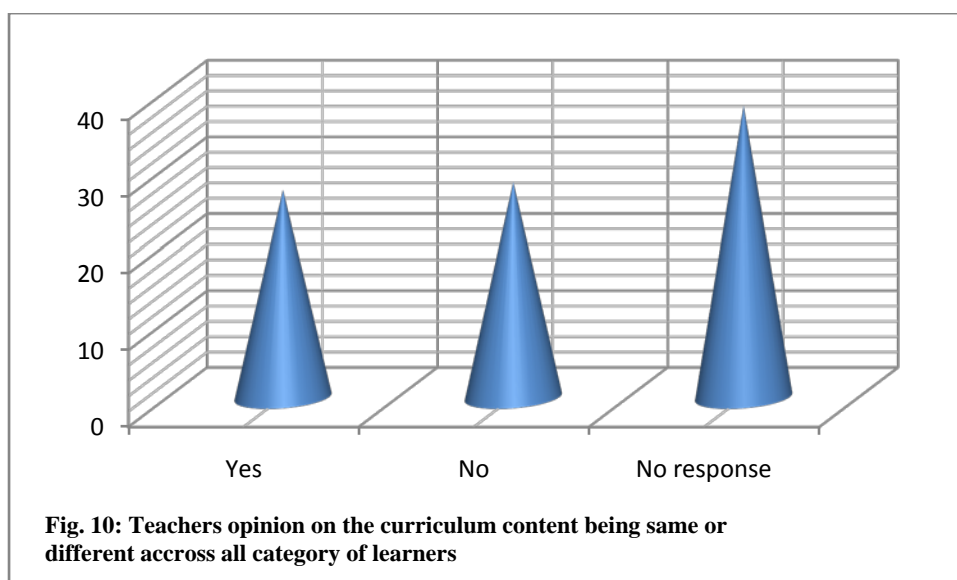
In terms of curriculum content, opinions were divided in the different special schools visited. Nearly 30 per cent of the teachers responded that the curriculum of hearing-impaired learners is not the same with those in the regular schools. About 41 per cent could not respond and 29 per cent responded that they have the same curricula with hearing students. See table 21 and figure 10 below:

**Table 21**

**Special school teachers response regarding curriculum content for learners**

<b>Respondents' Opinion</b>	<b>N</b>	<b>(%)</b>
Yes	27	29
No	28	30
No response	38	41
	93	100

**Figure 10 illustrates the percentage of teachers response regarding curriculum content for learners as presented in table 21:**



Information shown as Table 21 and figure 10 signifies absence of a systemically planned and relevant curriculum adaptation for primary school learners in Nigeria. However, further research revealed that the national policy document provides a common curriculum for all primary school learners in Nigeria, including special schools.<sup>33</sup> This is reflected below as Table 22:

<sup>33</sup> Nigeria National Policy on Education, sec 2 para 26.1.

**Table: 22**

**Curriculum for primary schools in Nigeria:**

English studies
One Nigerian language
Mathematics
Basic science & technology: Information technology, Physical & health education
Religion and national values: Christian religious knowledge, Islamic studies, Social studies, Civic education, Security education.
Pre-vocational studies: Home economics, Agriculture
Cultural and creative arts
Arabic (optional)

**Source: Nigeria National Policy on Education sec 1 para 20**

Research also shows the directive that special needs education should aim towards a diversified and appropriate curriculum for the different target groups.<sup>34</sup> The said directive under the national policy that special needs education should aim towards a diversified and appropriate curriculum for different learners manifestly appears as promoting inclusion. At the same time, it can be frustrating for some states as it may never really take root. More so, it may never happen in some states as a result of lack of interest and limited efforts towards implementation. For instance, in the various special schools for the deaf visited within the two regions, there were no identifiable flexible modification practices or directives regarding hearing-impaired learners' curricular development in order to reflect their different educational needs as required. There is indeed need to adopt a holistic approach and this should be led by Federal Ministry of Education through the Universal Basic Education Commission.

During focus group discussion, the head teachers of the special schools and regular schools, as well as teachers and teacher educators held the federal and state governments responsible

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<sup>34</sup> Nigeria National Policy on Education, sec 7 para 119 (e).

for not developing teachers' skills. The government was also criticised for not initiating systematically a progressively regulated curriculum approach adaptable to learners, in order to instantiate notions of individualised lesson plan for every learner right from the start. They pointed out that the practice of individualised education plan has provided meaningful education as well as inclusive outcomes in some countries and have even been made a matter of law in some other countries.<sup>35</sup>

According to the teachers, individualised education plan is usually flexible so as to attract change and relevance to the socio-economic environment for every learner, especially learners from different socio-cultural milieu like hearing-impaired learners. It is further simplified to reflect accommodations needed for each learner, language of instruction, one to one/group teaching methods (co-operative learning), barriers to learning, goals to be achieved, methods to be used as well as parental input.

Further discussion reveals that curricular modifications are usually left to the classroom teacher who is not sufficiently trained on how to modify the curriculum. In this regard, it is possible to argue that the input of these participants explains why teachers' responses while answering the semi-structured questionnaire regarding approaches to curriculum content were inconsistent.

Discussions further revealed that there were no identifiable regulations or relationship specifying a systemic link between schools for the deaf, the Universal Basic Education Commission and the State Education Boards. For instance, the special school head teachers stated that the Universal Basic Education Commission in collaboration with the Federal Ministry of Education sends regulations to regular schools, while there is no such regulatory or monitoring approach in special schools for the deaf who require such motivated concern in education as well. The head teachers and teachers saw this as discriminatory and consequently called for innovative regulations that would articulate the relationship between special schools, the Universal Basic Education Commission and the State School Boards. Further clarifications on the responsibility of teachers and all involved in the education of the hearing-impaired learner were also suggested.

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<sup>35</sup> In General Comment No 4 on inclusive education, adopted by the UN Committee on the Rights of Persons with Disabilities 2 September 2016, CRPD/C/GC/4, the CRPD Committee in para 32 highlights the importance of providing individualised education plan for each learner. Focus group participants also mentioned that Sweden, South Africa, Tanzania, Tunisia and Ethiopia have embarked on this process of development.



### 7.2.3 Educational materials and facilities

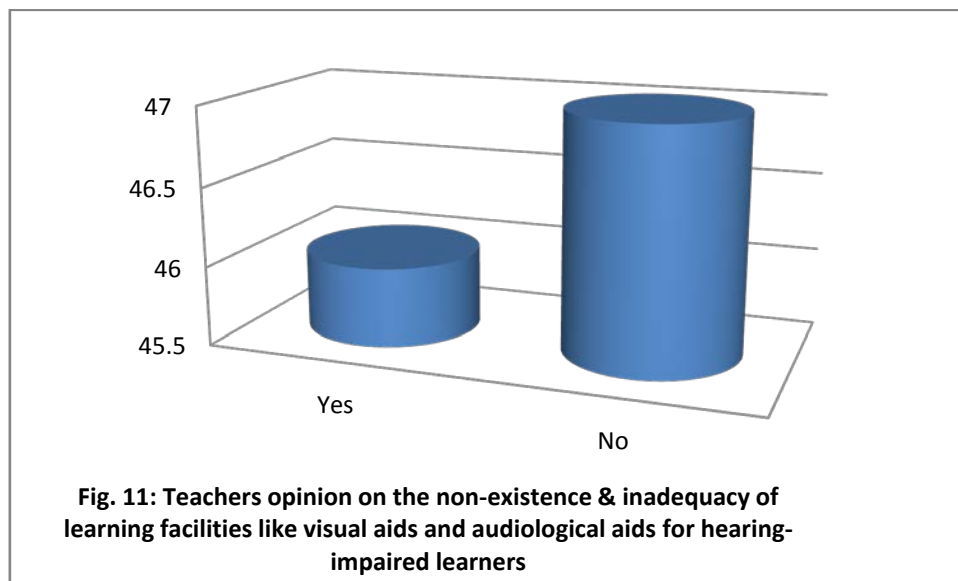
The teachers generally affirm the inadequacy and almost non-existence of learning facilities like visual aids and audiological aids for hearing-impaired learners in all the schools sampled. This is represented in table 23 and figure 11 below as:

**Table 23**

#### Special school teachers responses on non-existence and inadequacy of learning facilities

There is non-existence & inadequacy of learning facilities like visual aids and audiological aids	N	(%)
Yes	47	51
No	46	49
	93	100

**Figure 11 illustrates the percentage of teachers response with respect to non-existence and inadequacy of learning facilities as presented in table 23:**



Really, it is not insignificant that the head teacher of one the sampled special schools in Imo State indicated the provision of hearing aids five years ago by the state government. She said that the provisions were done without considering maintenance or effectiveness of the hearing aid to the specific needs of each learner, consequently the hearing aids are hardly put to use.

Personal observation further confirms the absence of visual aid equipment and facilities in the classrooms. No audiometers were seen in the special schools for the deaf in the three zones

visited in Imo State. There were also no interpreters. There was no presence of electricity in the schools/classrooms. This means that electronic learning facilities cannot be used in the school. It was also noticed that the learners share a common hall with other children with disabilities. The buildings were also dilapidated.

In Anambra State, the special school for the deaf at Onitsha has good structural facility, with television, audiometers, chairs, reading tables and televisions provided by a private individual. However, the school has no electricity which could be used to power visual equipment, and so some of the visual equipments were not in use. At the resident Special School for the deaf at Isiulo, Orumba-north Anambra State, instructional facilities were also lacking and the road to the school became accessible only in the recent time. In Rivers State, the only government special school has limited structural and learning facilities in spite of its expansion to include the secondary arm. The classroom seats are broken and children are made to sit on the floor while learning. In Delta State as well, the special schools for the deaf have insufficient learning facilities and the existing ones are also in a very poor state.

The lack of appropriate facilities raises concern regarding financial allocation for basic education, which also involves primary special education. It also raises concern with respect to government priorities and the value of governance. Could it be that some governmental funding is not provided, or that the funds are purportedly secured but end up in private pockets, or that governmental funding for this group is grossly inadequate? Indeed, whichever seems to be the position in relation to the foregoing concerns, demands pro-active measures. Ethically, the provision and distribution of resources relates to availability of qualified teachers, learning facilities and enhanced performance of learners.

During focus group discussions, officials of the State Universal Basic Education Board attributed limited facilities to funding issues within the education sector. They explained that the pattern of allocation is such that the primary level often gets the least allocation which usually does not correspond to the number of primary schools in existence. Other discussants reiterated that most primary schools for the deaf in Nigeria are not properly designed and equipped. They highlighted that virtually all the schools exist in structures intended for meeting halls and do not have the required facilities and accommodations for teaching the hearing-impaired learner.

The special education educator and the hearing-impaired professionals particularly indicated concerns about the sitting arrangements of hearing-impaired learners in classrooms. They

stated that the sitting arrangement of hearing-impaired learners in classrooms necessitate semicircle arrangement so that each learner will be able to see the class teacher and devices used during learning instructions. The opinion was that, sitting hearing-impaired learners like hearing learners will make it difficult for teachers to arrange and manage their sitting arrangements as a result of the nature of the school building. This they said is also counterproductive in addressing the educational needs of the hearing-impaired learner.

Interactions also highlighted that most schools for the hearing-impaired having been situated in urban areas, are usually overpopulated and the number of admissions for the hearing-impaired is therefore limited. This means that some hearing-impaired who are ready and willing to go to learn are compelled to stay at home as a result of lack of educational facilities.

### **7.3 Regular school teachers**

Interestingly, the Chairperson of the State Universal Basic Education Board in Delta State pointed out that the state is already involved in the process of 'inclusive' education delivery for hearing-impaired learners who though not completely deaf, have serious difficulties with their hearing which makes learning difficult. The officials of the special education unit of the Delta State Board highlighted that in the 'inclusive' classroom setting, hearing-impaired learners study in regular classroom with hearing learners. They stated that hearing-impaired learners in 'inclusive' settings performed higher than those in special schools settings in the state, but lesser when compared to the academic performance of hearing learners.

In one of the 'inclusive schools' however, it was observed that the number of learners in one of the 'inclusive classrooms' was large, even though three teachers were present in the class. The necessary supportive materials for learning were lacking and the instructional method was spoken English and American Sign Language. The teachers in the classroom appeared not to be very familiar with signed language as the instructing teacher frequently consulted an American Sign Language (ASL) book placed on a table in the class. There were no paintings or drawings on the wall or chalkboard and there were no captioned visual equipment. The same books used by hearing learners were used, without any form of adaptation for the hearing-impaired learner. The class activity was teacher-centred and this failed to sustain learners' interest and concentration, even for hearing learners. In the other 'inclusive classrooms', a similar approach to teaching found in the previous 'inclusive classroom' within the same 'inclusive school' was also in use. There were also no visual learning

materials or equipment. Hearing-impaired learners were few compared to hearing learners, however a special education teacher was seen in each of the classrooms.

In the second 'inclusive school', hearing-impaired learners were not seen in the classrooms, but learners with other category of impairments were present.

At the third 'inclusive school', it was found that hearing-impaired learners were in the school, but in separate and segregated classrooms. It was also found that all the learners played together during school break hour. Within the separate classrooms, the teachers indicated that the major language of instruction was ASL. The learners had teachers who are hearing-impaired as well as hearing teachers with higher degrees in special education. The teachers made effort at adapting the subjects taught to suit the varied needs of hearing-impaired learners by giving them flexible personalised examples and encouraging them to give their own examples. The classrooms had few drawings on the wall and television sets. It was noticed that the learners were eager to learn and excited to make contributions.

The response of the teachers in the 'inclusive schools' indicated that the State Universal Basic Education Board hardly come in to supervise their teaching. It was also found that the number of special needs education teachers and hearing-impaired teachers in the 'inclusive schools' were much less when compared with the number of regular school teachers in the 'inclusive schools'. Findings from this study also reveal the teaching qualification of the teachers found in the 'inclusive school' as inadequate.<sup>36</sup> From the responses of the teachers within the 'inclusive settings' it could be inferred that ideas concerning the use of oral approach in teaching the hearing-impaired still has considerable influence. All these factors affect successful learning for hearing-impaired learners who is not exposed to inclusive practices in an 'inclusive school'. This might also be part of the reasons why hearing-impaired learners in the 'inclusive schools' performed lower than their hearing counterparts.

In the regular primary schools visited in Imo, Anambra and Rivers States, regular school teachers indicated the absence of hearing-impaired learners in the schools. They however specified the presence of few learners with other category of disabilities (mobility disabilities). They indicated that they mainly use the oral method educational approach in delivering lessons. All the regular school teachers' specified that curriculum content is same for all categories of learners. The teachers also responded that services and facilities

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<sup>36</sup> See table 10 of sub-sec 7.1.2 of this Chapter.

necessary for facilitating the learning needs of the hearing-impaired learner are non-existent in the regular schools.

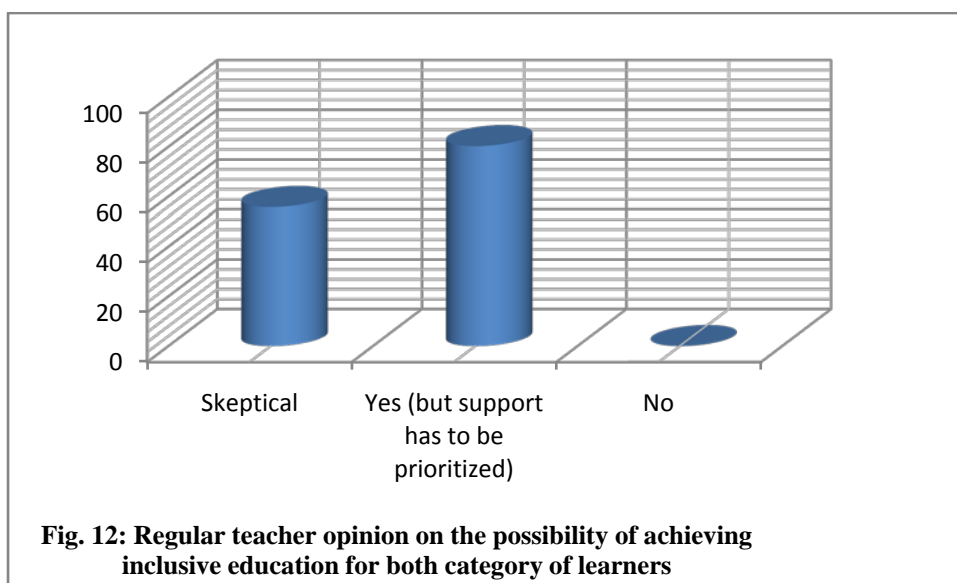
Regular school teachers expressed different views concerning inclusive education practices. From their responses, it was noticed that 59 per cent indicated that it is possible to have hearing-impaired learners and other learners with disabilities in the same class, provided teachers are provided with the opportunity to develop skills, practices and expertise required for teaching learners with varied learning needs. None of the regular school teachers said it was not possible to have hearing and hearing-impaired learners in the same class however, 41 per cent were sceptical. See table 24 and figure 12

**Table 24**

**Regular school teachers response on the possibility of achieving inclusive education for hearing and hearing-impaired learners**

Regular school teacher's opinion on the possibility of achieving inclusive education for both category of learners	N	(%)
Skeptical	56	41
Yes (but support has to be prioritized)	80	59
No	0	0
	136	100

**Figure 12 shows percentage of teachers response regarding the possibility of achieving inclusive education for hearing and hearing-impaired learners as presented in table 24:**



## **7.4 Hearing-impaired learners**

### **7.4.1 Personal data/characteristics**

The age of hearing-impaired learners that formed part of the sample size fall within 10 - 13 years.<sup>37</sup> They were selected from primary four, five and six. Hearing-impaired learners in the four states visited stated that they do not have the necessary support and facilities they require. Almost all the learners indicated that they did not attend early child learning and language development classes.

### **7.4.2 The school**

In Delta State, hearing-impaired learners found in 'inclusive' settings, said that they were in regular schools because they were in the same class with hearing-learners. They indicated that they enjoy learning with hearing learners because they play together, and hearing learners support them by reading aloud to them and making gestures and signs concerning what is written on the board by the teacher. They also highlighted that the class teacher uses spoken English to deliver lessons, while the special education teacher signs. The learners also responded that they do the same assignments and examinations with hearing learners using written texts. The responses recorded indicated that the learners really struggle to read and understand written texts especially when guidance is not provided.

In Imo, Anambra, and Rivers States Special Schools for the deaf, learners responded that they were in special schools, when they were asked to state the kind of school they attended. They also affirmed willingness to attend the same school with hearing learners provided they go along with their classroom teacher, and visual learning materials are made available. As presented in table 25 and figure 13 below, About 35 per cent of hearing-impaired learners indicated that they would not want to be in the same class with hearing learners because of fear of negative attitudes by hearing learners and teachers. In the end, the learners pointed out that they enjoy going to school because they wanted to learn. They also exhibited concern on the non accommodation of their individual learning needs.

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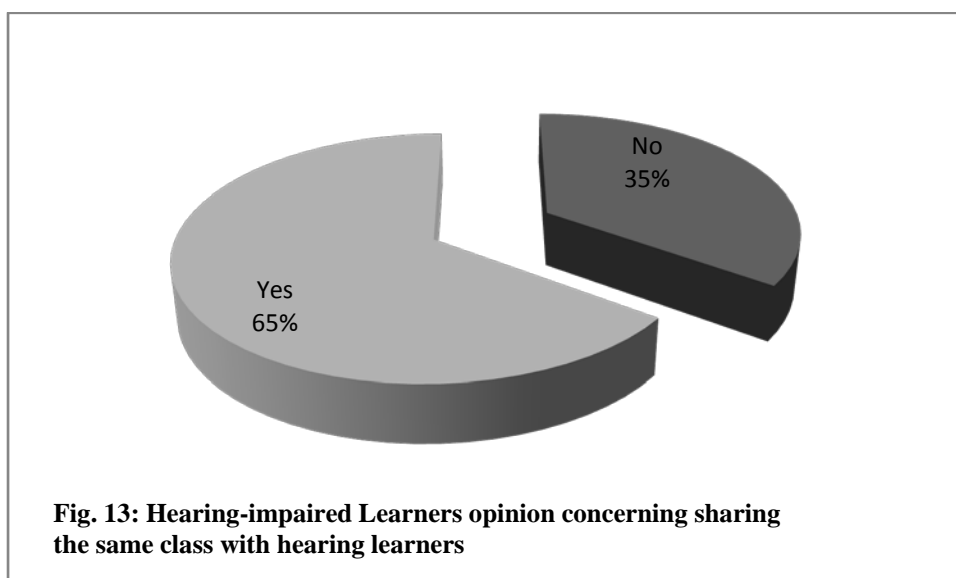
<sup>37</sup> As presented in table 9 sub-section 7.1.2 of this chapter.

**Table 25**

**Hearing-impaired learners responses on willingness to be in the same class with hearing-learners**

Hearing-impaired Learners' willingness in being in the class with hearing learners	N	(%)
No	225	35
Yes	417	65
	642	100

**Figure 13 illustrates the percentage of learners response in connection with being in the same class with hearing learners as presented in table 25:**



**7.4.3 Learning and evaluation activities**

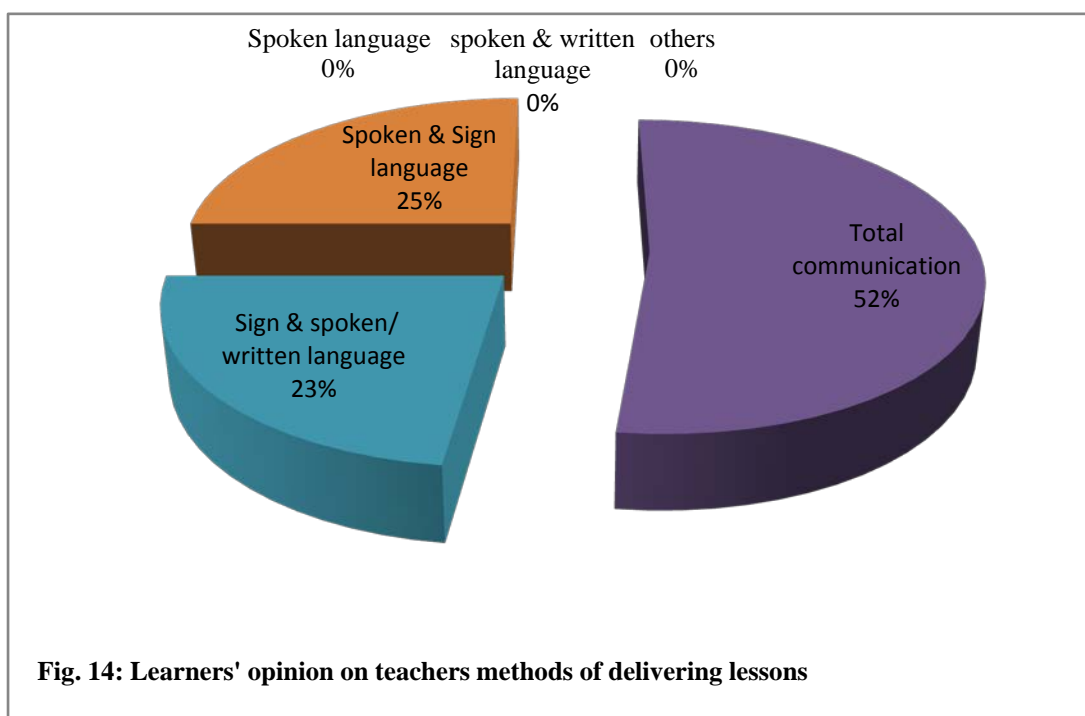
Hearing-impaired learners in the special schools responded that teachers deliver lessons using total communication, spoken English, and signs and gestures common with spoken English. They also indicated that assignments and examinations are given using spoken language and written texts. See the illustrations on tables 26, 27, 28 and figure 14, 15 and 16 below:

**Table 26**

**Hearing-impaired learners responses on teachers method of lesson delivery**

Learners' opinion on teachers methods of delivering lessons	N	(%)
Others (specify	0	0
Spoken and written language	0	0
Only spoken language	0	0
Total communication	334	52
Sign & spoken/written language	148	23
Spoken & Sign language	161	25
	642	100

**Figure 14 shows the percentage of learners response with respect to teachers method of lesson delivery presented in table 26**



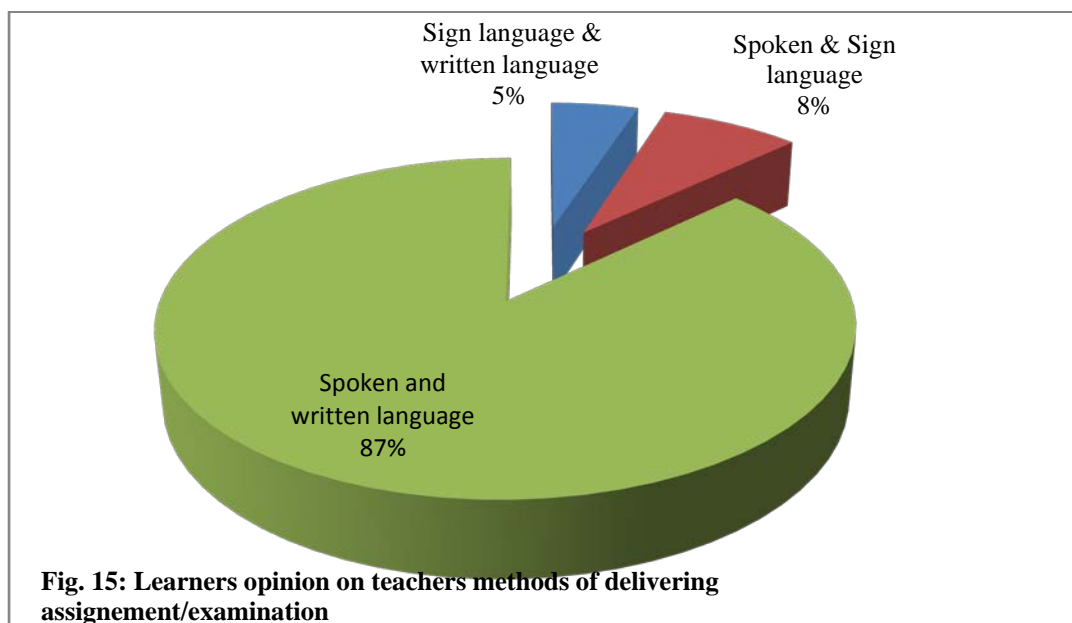


**Table 27**

**Hearing-impaired learner responses on teachers method of assignment/examination delivery**

Learners' opinion on teachers methods of delivering assignments	N	(%)
Others (specify)	0	0
Only Spoken language	0	0
Total communication	0	0
Sign & spoken/written language	32	5
Spoken & sign language	51	8
Spoken and written language	559	87
	642	100

Figure 15 shows the percentage of learners response with respect to teachers method of assignment/examination delivery presented in table 27

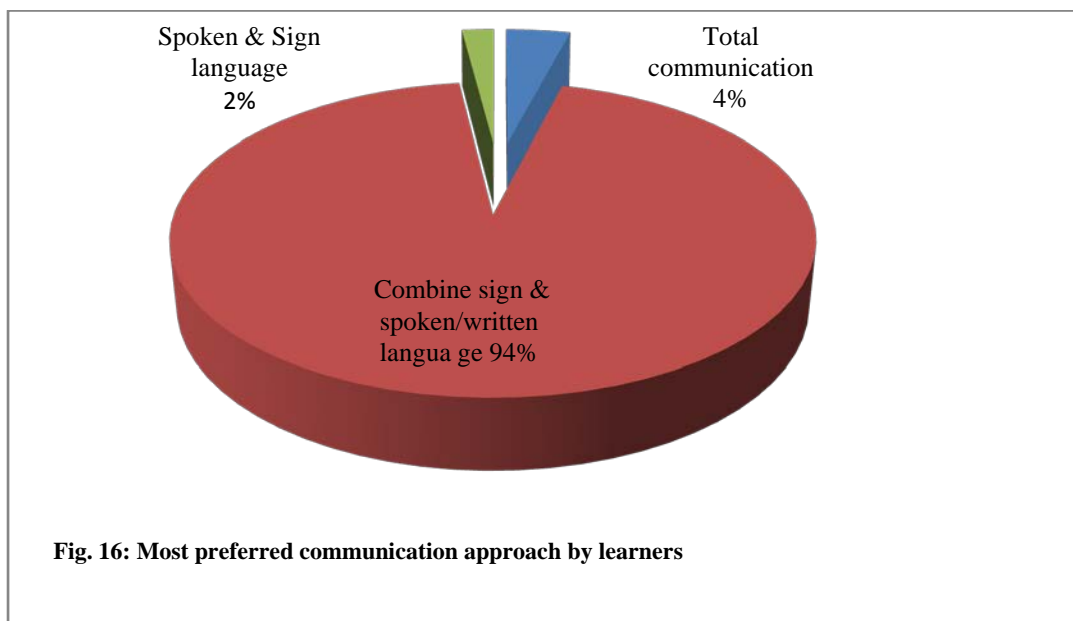


**Table 28**

**Hearing-impaired learners responses on preferred communication method**

Most preferred communication approach by learners	N	(%)
Only spoken language	0	0
Spoken and sign language	12.8	2
Total communication	25.7	4
Sign & spoken/written language	603	94
Spoken & written language	0	0
Others (specify)	0	0
	642	100

**Figure 16 shows the percentage of learners response on the preferred communication method while learning as presented in table 28**



During focus group discussions, hearing-impaired learners that were present identified the absence of audio-visuals that complement oral language as a major barrier to their learning. They further exhibited concern about the use of spoken English and written exams as the only means of evaluation used by their teachers to evaluate them. They said that this approach makes it difficult for them to develop themselves fully. Their parents particularly emphasised the need for the education system to incorporate in the curriculum, vocational and creative

arts periods that can awaken learners' interests. They also highlighted that teachers should dedicate more time to teaching the learners in a language and manner that they understand.

The head teachers also highlighted that non-parental involvement in the education of the hearing-impaired constitutes a huge barrier because it slows down the pace and process of learning for hearing-impaired learners. They stated that parental involvement assists with discovering aspects of the curriculum they believe is imperative for the child and helps in directing the child at home. On further enquiry as to what efforts have been made towards involving the parents of the hearing-impaired, the head teachers of hearing-impaired learners responded that they often send invitations to parents, but they hardly come, except very few who come during Parents-Teachers Association meetings. They also complained that some of the parents usually send representatives like their domestic workers or extended family members.

### **7.5 Regular school learners**

In Delta State, learners in 'inclusive' schools indicated the presence of learners with hearing-impairment in the different classes. In Anambra, Imo and Rivers State, learners in the regular schools confirmed the absence of hearing-impaired learners in their various classes. When asked whether they would want to be in the same class with hearing-impaired learners, they answered in the affirmative.

### **7.6 Policymakers (Officials of the Universal Basic Education Board)**

Responses with regard to policymakers include the views and opinions of the state Chairpersons of the Universal Basic Education Board in Anambra, Delta, Imo, and Rivers State, selected staff of the special education units/departments and other relevant education officials like School Inspectors and Education Secretaries. Their responses are found below.

#### **7.6.1 Awareness of policy and law on inclusive education**

Policymakers recognise the existence of a national policy on inclusive education. They also indicated that they have attended seminars and workshops on inclusive education organised by the government.

On whether hearing-impaired learners have access to inclusive education, it is not also clear whether all the respondents have a valuable understanding of what inclusive education generally entails. Access to inclusive education for hearing-impaired learners was reported to

be in the affirmative by the majority of the respondents, even when available facts from this study indicated otherwise. Some answered that access to inclusive education for the hearing-impaired learner is sufficiently available. However, most of the respondents decided to feign ignorance by not responding to the question.

### 7.6.2 Provisions for inclusive education

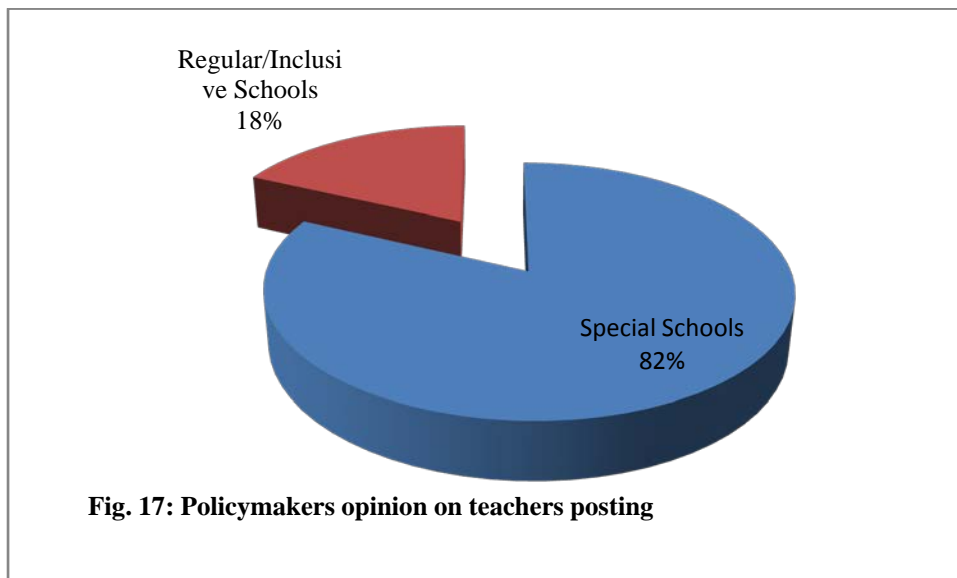
As will be apparent from table 29 and figure 17 below, from the 28 officials sampled, 82 per cent indicated that special education teachers are sent mainly to special schools. However 19 per cent of the responses especially from Delta State, show that special education teachers are sent to special schools and the ‘inclusive schools’.

**Table 29**

#### Responses of policymakers regarding teachers postings

Board/ Commission post teachers with special skills to:	N	(%)
Special Schools	23	82
Regular/Inclusive Schools	5	18
	28	100

**Figure 17** represents the percentage response rate of policymakers response concerning teachers’ postings as shown in table 29



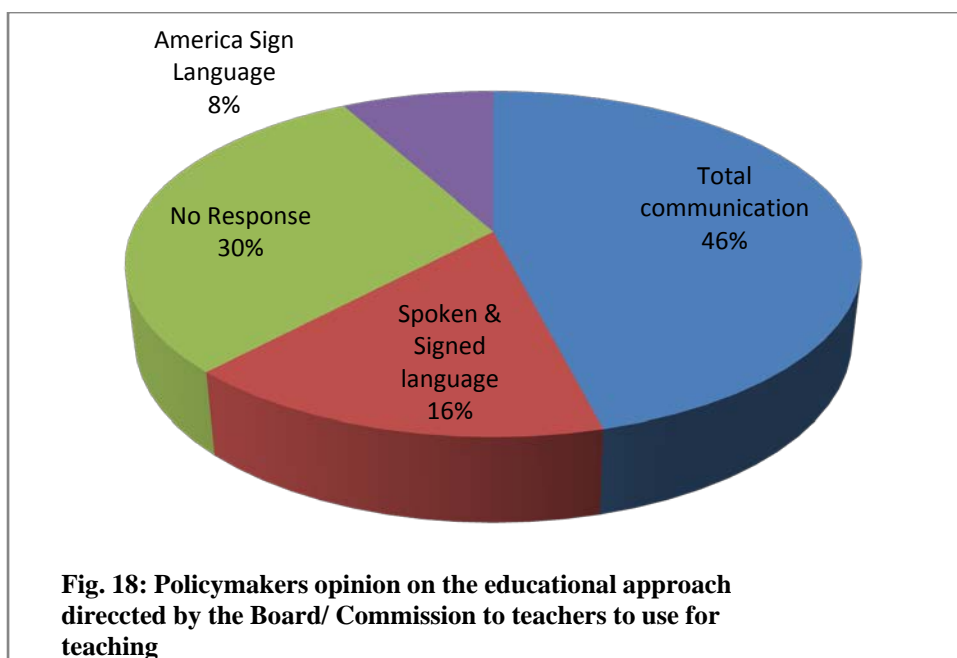
Responses from 46 per cent of the officials in respect of directives concerning educational approaches used in teaching hearing-impaired learners indicated that total communication, speech technique/signed language is the national guideline. Just about 2 per cent said American Sign Language, 16 per cent of the officials described the educational approach as total communication, while the remaining percentage demonstrated a lack of knowledge. See table 30 below and figure 18 below.

**Table 30**

**Responses of policymakers in respect of directives on educational approaches to be used by teachers**

Educational approach directed by the Board/ Commission to teachers to use while teaching:	N	(%)
Total communication	13	46
Spoken & Signed language	4	16
No Response	8	30
America Sign Language	2	8
	28	100

**Figure 18 represents percentage of response from policymakers on directives regarding educational approaches to be used by teachers while teaching hearing-impaired learners as shown in table 30**



Policy makers' responses on the educational approach directive given by the board to teachers indicate irregularities with regard to communication strategies to be used. This demonstrates that committed efforts are not directed at training officials as stakeholders in order to expand their knowledge and equip them with the needed leadership for monitoring implementation. It further explains why teachers adopt any method of their choice in delivering lessons and conducting evaluations for hearing-impaired learners.

On the issue of supervision of teachers of hearing-impaired learners while teaching and the overall assessment of the performance of hearing-impaired students, the respondents indicated that it is often the responsibility of the special education unit. In their responses, personnel from the special education unit indicated that they find it difficult to conduct supervisions due to lack of project vehicles and funding. However, they highlighted that primary schools, including special schools are not usually prioritised when it comes to monitoring and supervision by the State Basic Education Board. Further responses specified that head teachers are often directed to conduct supervisions and inspect teachers' lesson plan.

However, it needs to be stated that the modality of supervision is considered inappropriate and unprofessional as it is devoid of the expertise of a qualified supervisor. More so, motivating supervision involves more than going over teachers' lesson notes. Achieving inclusive education is partly dependent on professional update of teachers' knowledge and reorientation regarding practice.

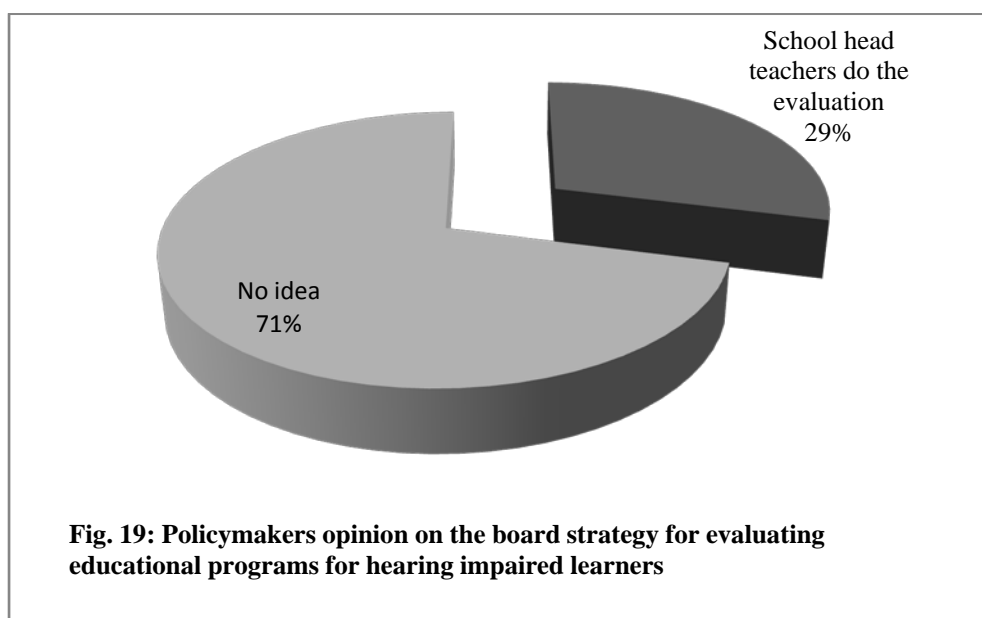
On the question whether the commission evaluates the educational programs of hearing-impaired learners in order to guarantee quality services, almost 88 per cent of the answers were in the affirmative. But regarding how the evaluations are conducted, more than 79 per cent of the respondents left the response space blank, while nearly 20 per cent indicated that it is through the schools or the teachers. See table 31 and figure 19

**Table 31**

**Policymakers responses regarding the evaluation of educational programs for hearing-impaired learners**

Board strategy for evaluating educational programs for hearing-impaired learners	N	(%)
School head teachers do the evaluation	8	29
No idea	20	71
	28	100

**Figure 19** represents percentage of response from policymakers regarding evaluation of educational programs for hearing-impaired learners shown in table 31



From the information in table 31 and figure 19 above, it could be taken that the Basic Education Boards do not evaluate the educational programs of hearing-impaired learners by assessing successful and non-successful outcomes in the various schools. Consequently the prospect for feedback and progress is held back.

### **7.6.3 Curriculum specification**

Responses with respect to curriculum content specification of regular schools and special schools were excessively varied to form any consistent conclusion. Nearly 35 per cent of the respondents said the curriculum is different, about 34 per cent said it is the same, while 11

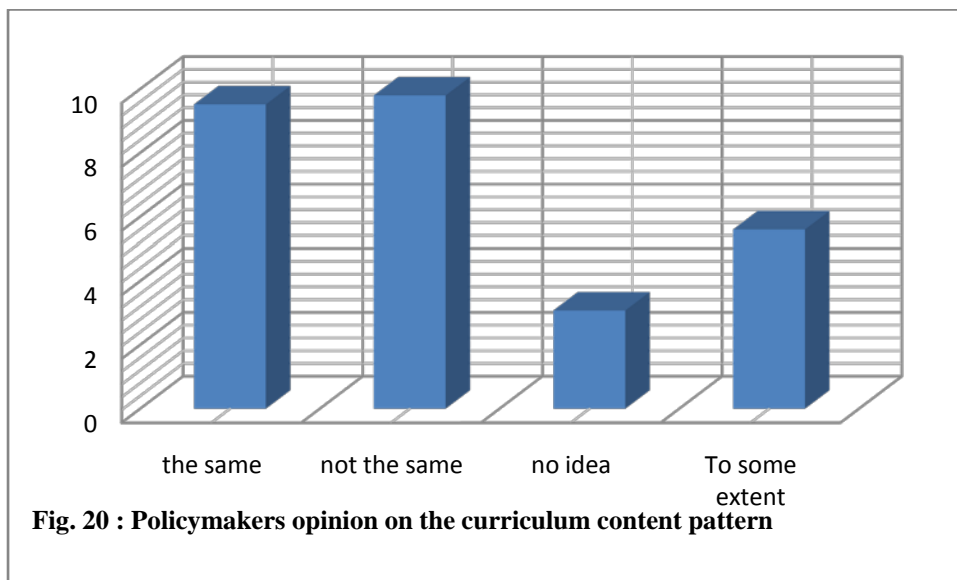
per cent of the respondents could not give a particular answer. Almost 18 per cent of the respondents used the term 'to some extent'. See table 32 and figure 20 below:

**Table 32**

**Policymakers response on curriculum specification**

Policymaker opinion on curriculum content	N	(%)
The same	10	34
Not the same	10	35
No idea	3	11
To some extent	6	20
	28	100

**Figure 20 is a representation of the percentage response of policymakers on curriculum specification as presented in table 32.**



A possible conclusion to draw from table 32 and figure 20 above is that the educational authorities seem to portray ignorance as to the importance of their responsibility in knowing, designing and redesigning the educational content for both categories of learners for purposes of achieving quality education. Curricula design ought to be the responsibility of the general education system.

On the question whether the same books are provided in terms of the same subject for regular schools and special schools, a considerable majority (86 per cent) answered yes and nearly 12 per cent answered no as illustrated in table 33 and figure 21 below:

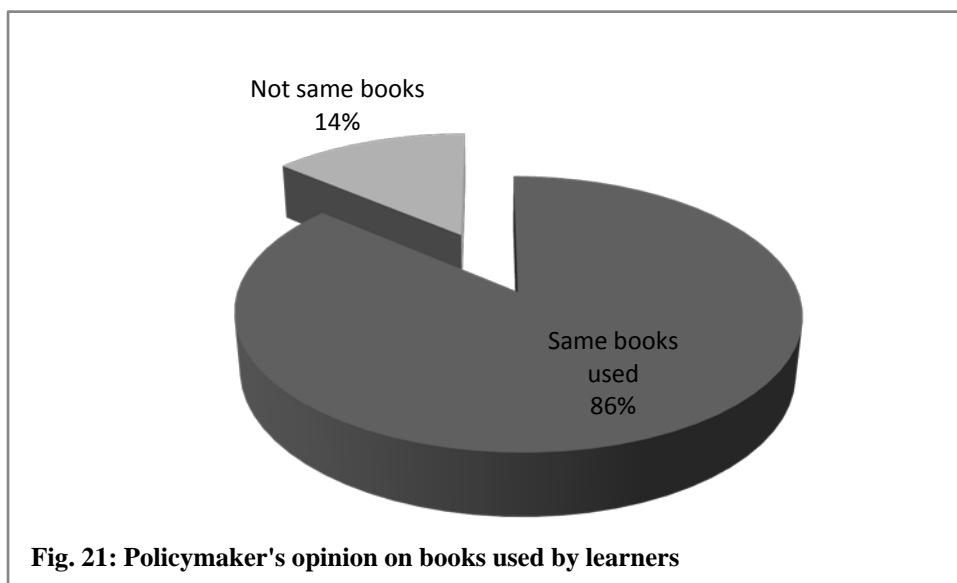


**Table 33**

**Responses of policymakers on books used by hearing-impaired learners**

Policy maker's opinion on books used by learners	N	(%)
Same books used	24	86
Not same books	4	14
	28	100

**Figure 21 represents the percentage response of policymakers with respect to books used by hearing-impaired learners as presented in table 33**



On further clarifications as to the reasons why the same books are used for both regular and special books without modifications for hearing-impaired learners, one of the education secretaries indicated that Nigeria has more than 200 indigenous Nigerian languages and many of the minority languages have no acceptable written representation and this makes the production and modification of the books quite difficult. But convincing as the respondent's explanations may sound, it still does not reflect a commitment to the necessary challenges that must be overcome if inclusive education is to be realised for hearing-impaired learners.

The main fact really appears to be that modifying the books in line with local signs have been consistently ignored, and nothing stops collaborations towards the emergence of Nigeria Sign Language out of the signs and gestures already in use by hearing-impaired learners in

Nigeria.<sup>38</sup> Systemic development of ‘an age appropriate language’ for hearing-impaired learners in the classroom according to Ajavon ought to be prioritised for hearing-impaired learners, rather than insisting on English language learning which they know nothing about.<sup>39</sup> In this regard, an age appropriate language can be acquired through the facilitation of home signs which have been identified as the major means of communication accessible to a hearing-impaired child before school enrolment.<sup>40</sup> Enabling inclusive endeavours as identified has never been an easy task.<sup>41</sup>

It was found that the content of most of the textbooks/materials used in special schools for the deaf and even in the ‘inclusive schools’ in Delta State was not adapted to the sign language needs and local conditions of hearing-impaired learners in order to enhance accessibility in understanding and learning. During focus group discussions, the non-adaptation of the curricula, as well as reading materials and failure to introduce new skills were identified as part of the reasons why many learners complete their primary education and still lack the motivation to advance academically.<sup>42</sup> Special education educators and head teachers particularly highlighted that majority of the stakeholders in Nigeria’s education system are not knowledgeable regarding the full import of inclusive education for hearing-impaired learners and other learners with disabilities. According to them, this accounts for the non-clarity of purpose and commitment of government officials charged with the responsibility of implementing Nigeria’s national policy of universal basic education from the outset. The participants recounted the non-articulation of flexible curriculum guidelines, teaching strategies as well as lack of emphasis for the adoption of learners’ individual lesson plans by teachers as facts that support their contention.

In the end, all the participants in the focus group shared the consensus of a strong lack of orientation training on inclusive education for all major stakeholders involved in primary education in Nigeria. Emphasis was laid on undertaking supervision of education programs of

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<sup>38</sup> Ajavon (n 25 above) 1, Paulina Ajavon is an example of an individual that has done extensive research on Nigerian local signing for the hearing-impaired. She has also produced the first dictionary on Nigerian signs. Sincere and committed efforts by the state should seek the expertise of such individuals and other interest groups in order to form collaborations. Such individuals and specialists in ‘deaf education’ abound in Nigerian universities.

<sup>39</sup> PA Ajavon *The incorporation of Nigerian Signs in Deaf Education in Nigeria: A pilot study* (2003).

<sup>40</sup> As above.

<sup>41</sup> L Mariga et al *Inclusive education in low-income countries: A resource for teacher educators, parent trainers and community development workers* (2014) 14.

<sup>42</sup> As mentioned by special education educators and the hearing-impairment professionals during focus group discussion.

hearing-impaired learners and evaluating what has been identified in order to determine success, and then strategise towards making improvements.

## **8 Conclusion**

This chapter has presented the fieldwork dimension of the study in terms of practices used in the delivery of education to hearing-impaired learners in Nigerian primary schools. It sought to explore current facts regarding the adequacy or otherwise of approaches used in educating hearing-impaired learners in Nigerian primary schools. Findings revealed that education of the hearing-impaired learners in Nigeria basically takes place in special schools for deaf learners, while in some states they are also found in special units or 'inclusive settings'. However, irrespective of placement options, responses provided point to inadequacies in the methods and approaches adopted in the education of hearing-impaired learners under Nigeria's education system. Responses regarding the quality of services and provision of education facilities serving hearing-impaired learners in the special schools, special units and in the 'inclusive settings' were also not encouraging.

The next chapter presents a discursive interpretation of the findings presented in line with prescriptive and directive approach adopted as the study's conceptual framework. Discussion also incorporates the CRPD Committee's General Comment Number 4 on inclusive education.

## Chapter 6

### Qualitative analysis of findings: Discursive interpretation

#### 1 Introduction

This chapter analyses the data generated from the field study. It discursively interprets research findings relevant to Nigeria's practices and approaches in relation to primary education delivery for hearing-impaired learners as described and presented in chapter 5 of this study. It grounds the discussion in the prescriptive and directive approach of this study which has deep roots in the neo-naturalists and social model of disability perspectives. This basically alludes to ideas connected to the CRPD Committee General Comment Number 4 on prescribed standards of inclusivity that are responsive to substantive ethical justice for everyone.<sup>1</sup>

In situations when governments tend to ignore the well-being of a segment of the population, there is always a need to remind us that humans generally have inherent rights. According to Nielsen, human beings owe 'certain absolute correlative responsibility' towards their fellow individuals.<sup>2</sup> When one carefully reflects about human situations as well as diversity and begins to consider what ought to be done or not to be done, appreciating realistic propositions that life and health, education and lasting peace with fellow individuals are good for oneself and other individuals readily manifests.<sup>3</sup> Such understanding is often foundational in practical reasoning which motivates humankind towards dispositions, arrangements and actions that advance essential human flourishing.<sup>4</sup>

We are reminded that in a natural state of moderate scarcity, justice in any given legal system can best be appreciated in the distribution of material and legal resources.<sup>5</sup> Realising such state of affairs imagines that institutions of government, that is the executive, legislature and the judiciary articulate and implement values inclined towards the promotion of the general

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<sup>1</sup> See General Comment No 4 on inclusive education, adopted by the UN Committee on the Rights of Persons with Disabilities 2 September 2016, CRPD/C/GC/4.

<sup>2</sup> K Nielsen 'An examination of the thomistic theory of natural moral law' (1959) 44 *Natural Law Forum* [http://scholarship.law.nd.edu/nd\\_naturallaw\\_forum/39](http://scholarship.law.nd.edu/nd_naturallaw_forum/39) (accessed 15 December 2015).

<sup>3</sup> Implicit in General Comment No 4 (n 1 above) para 2; J Finnis 'Natural law theories' in EN Zalta (ed) Stanford encyclopaedia of philosophy (2015) <http://plato.stanford.edu/archives/win2015/entries/natural-law-theories> (accessed 15 December 2015).

<sup>4</sup> As contended by Finnis's in his natural law and human flourishing perspective, see J Finnis *Natural law and natural rights* (1980) 33.

<sup>5</sup> USF Nnabue *Understanding jurisprudence and natural theory* (2009) 279.

human good. These values which include but are not limited to the common good of life, committed investment in education, honesty in government service, equitable access to resources and redistribution in order to compensate for past wrongs ought not to be restricted or destroyed inadvertently. The reason is that restricting these values not only affects those that society so disables, but also affects the state in some way.<sup>6</sup>

Typically, the state is the most influential when individuals in the state are presented with the opportunity to thrive. Among the main concerns in the world at present are socio-economic and political developments. To these according to Ogwurike is added the general education of vulnerable persons like the hearing-impaired learner as a basis for the establishment and beginning of new values that will help advance social progress.<sup>7</sup> Education has been noted to occupy a vital role in the socialisation process, in citizen formation, in raising consciousness about intellectual and cultural legacy of a society, in the provision of resources as well as creativity and in advancing individual occupational opportunities.<sup>8</sup> All these components indeed reflect a directing element to the significance of education in the development of individuals and the society.

In essence, the state is expected to advance a society inclusive of all by upholding the acceptance of human difference and individual worth. Negative assumptions of difference endorse discrimination and detract from the common good of all. Negatives tell a 'single story' about those whom we perceive as 'other' or 'not normal'. The danger here is that attaching labels stigmatises people and gives negative impressions about groups or individuals which often rob them of their individuality and dignity. It makes the appreciation of our equal humanity difficult. It emphasises negatively how we are different. To insist on negative stories or labels about people, for instance the assumptions that the hearing-impaired are uneducable, is to flatten their experience of acquiring life skills (both academically and in other endeavours) and to overlook the need to provide appropriate accommodations for diverse learners.<sup>9</sup>

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<sup>6</sup> See General Comment No 4 (n 1 above) para 2.

<sup>7</sup> C Ogwurike *Concept of law in English speaking Africa* (1979) 77.

<sup>8</sup> This pales with the normative content of inclusive education as contained in the CRPD and as interpreted in General Comment No 4 (n 1 above); See also P Isaacs 'Disability and the education of persons' in C Cristensen and F Rizvi (eds) *Disability and the dilemmas of education and justice* (1996) 27.

<sup>9</sup> KP Meadow-Orlans *Deafness and child development* (1980) 160; S Plann 'Pedro Ponce de Leon: Myth and reality' in JV Van Cleve (ed) *Deaf history unveiled: Interpretations from the new scholarship* (1999) 6; B Aribiyini *The story of Bode* (2009) 17.

Negative assumptions create stereotypes and the problem with stereotypes is not that they are incorrect but that they are not impartial.<sup>10</sup> They make negative assumptions become the only story. For hearing-impaired learners for instance, being hearing-impaired is of course a bodily impairment that makes it difficult to learn and communicate using the mouth and the ears. But that should not obscure other positive stories regarding their various communication needs, and it is just as important to reason, enforce and raise consciousness about them within the Nigerian socio-political environment. Evidence about their ability to learn using other means of communication abound in many academic literature.<sup>11</sup> It is considered impracticable to engage properly with an individual or a group, without engaging with all of the stories of that individual or group.

Maintaining disempowering practices that tend to treat individuals in the same manner is morally wrong, the reason being that it denies the diversity of mankind. As Fincke indicates, 'we are all limited in some powers and greater in others', and there is nothing contemptible regarding the fact that some people do not have the same ability as others to the same degree.<sup>12</sup> Fincke's point is a confirmation that persons with disabilities are naturally just like everyone else in a different way. The major constraints that exist are obstacles that limit choices towards the maximisation of their potential.

From the highlighted perspectives, we can begin then to examine and interpret research findings into approaches adopted in the education of hearing-impaired learners in Nigerian primary schools in order to determine issues relative to adequacy or inadequacy.

## 2 Discursive interpretation

Drawing on responses from the field research provides us an opportunity for raising critical scrutiny with respect to the material conditions prevalent in the education of hearing-impaired

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<sup>10</sup> S Green et al 'Living stigma: The impact of Labelling, stereotyping, separation, status loss and discrimination in the lives of persons with disabilities and their families' (2005) 75 *Sociological Inquiry* 197; E Kimble 'Stereotypes of disabled in society: A call for change' (2015) 2 *Line by Line: A Journal for Beginning Student Writing* 6.

<sup>11</sup> HL Bauman et al 'Beyond ableism and audism: Achieving human rights for deaf and hard of hearing students' Report presented to Canadian Hearing Society [http://www.chs.ca/index.php?option=com\\_content&view=article&id=499&Itemid=568&lang=en](http://www.chs.ca/index.php?option=com_content&view=article&id=499&Itemid=568&lang=en) (accessed 12 November 2013); RE Johnson et al 'Unlocking the curriculum: Principles for achieving access in deaf education' (1989) 89-93 *Gallaudet Research Institute Working Paper*; Y Bat-Chava 'Diversity of deaf identities' (2000) 145 *American Annals of the Deaf* 420.

<sup>12</sup> D Fincke 'Empowerment ethics' (2014) *Camels with hammers: Philosophy, atheism, ethics and Nietzsche* <http://www.patheos.com/blogs/camelswithhammers/2014/05/empowerment-ethics-what-is-empowerment-ethics/> (accessed 30 March 2016).

learners within the Nigerian primary education sector. Analyses here, seek to give prominence to issues of inclusivity in education for hearing-impaired learners as a demand for non-discrimination, justice and citizenship. Participants' responses reveal key issues relevant to approaches adopted in the process of education for hearing-impaired learners in Nigeria. Components of the responses are coordinated and presented as follows: educational level as well as years of experience of teachers and insufficient personnel, teaching approaches and practices, lack of facilities, funding problems and other connected issues.

Background findings reveal that the education of hearing-impaired learners in Nigeria takes place mainly in segregated special schools for the deaf, while some states are only beginning to try out educating some hearing-impaired under different 'inclusive settings' either by educating hearing-impaired learners alongside hearing learners and learners with other education needs, or establishing deaf units within a regular school environment.<sup>13</sup> What this demonstrates is that until now, special/segregated schooling was seen more as the educational possibility that is available to hearing-impaired learners in Nigerian primary schools. The recent gradual move towards 'inclusive placement' for hearing-impaired learners as exemplified in some schools sampled in Nigeria could be considered a mental shift from the default position of separate schooling as was the norm. What is important about this shift is that it philosophically represents the beginning of an appreciation of the possibility of a connection with hearing-impaired learners as human equals.

However, we need not be entirely immersed in this shift in respect of placement and then forget that within the 'inclusive schools' inclusive education practices were found lacking as hearing-impaired learners were restricted to the dominant education of the majority.<sup>14</sup> Making hearing-impaired learners fit in and not 'disturb' the method of education of the hearing majority is assimilatory. It depicts an experience where inclusion means placement. As exemplified by Campbell in *Contours of Ableism*, it still mirrors 'ableist assumptions' entrenched within the Nigerian socio-political environment in respect of disability issues.<sup>15</sup>

Thus a mental shift towards inclusive education for hearing-impaired learners in Nigeria must be made to tag along realistic perspectives to inclusion which contemplates a transformation

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<sup>13</sup> As revealed in Section 7.2 of Chapter 5.

<sup>14</sup> As above.

<sup>15</sup> FK Campbell *Contours of ableism* (2009).

in both the regular and special school classrooms within the general education system<sup>16</sup> This implies that the regular school and special school classrooms must be ‘disturbed’ and changed in order to accommodate the individual needs of each hearing-impaired learner. Teachers must be able to structure the classroom and their teaching in a manner that will reflect recognition of the diversity in the learners within the classroom.

## **2.1 Educational level as well as years of experience of teachers and insufficient staff**

Findings revealed that the number of qualified special education teachers is inadequate. Academic qualifications and years of experience of most teachers of hearing-impaired learners appear discouraging.<sup>17</sup> Less than 15 per cent of the special school teachers do not have higher degrees or training in special education. Similar findings were reflected with respect to special education teachers in the ‘inclusive schools’. It was found that 46 per cent of the special school teachers’ years of experience fall in the category of 6-10 years and above. New teachers with less experience were found teaching without supervision. They were also not paired with experienced teachers in the same class in order to enhance meaningful learning. Findings from the study also show that teachers are not motivated towards the development of individual lesson plan for learners.

The situation raises further concern when capacity building as was found is not regular and continuous through enlightenment programmes like seminars, workshops and further professional training. The findings show that the teachers and head-teachers require regular training and orientation in the field of inclusive education to enable them develop their teaching performance and output. What this means is that these teachers need support from the government. It thus becomes obvious that those responsible for educating learners with disabilities, including hearing-impaired learners in Nigeria primary schools are not capable of teaching them in response to their inclusive needs in education.

Ultimately, placing unqualified and inexperienced teachers in the classroom affects the quality of learning delivery and productivity. The non-availability of skilled and experienced special education teachers will definitely affect efforts towards realising inclusive education for hearing-impaired learners. This reasoning is based on the understanding that background knowledge in special education must of necessity be integrated in the practice of inclusive

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<sup>16</sup> This is a point I explained in Chapter 1 and 3 which logically indicates in a nuanced way the standards articulated by the Committee on the Rights of Persons with Disabilities regarding inclusive education.

<sup>17</sup> See Section 6.2 of Chapter 5.



education for hearing-impaired learners.<sup>18</sup> It has also been asserted that there is always correlation between teachers' academic qualification, years of experience and learners' performance.<sup>19</sup> A teacher's years of experience is a measure of quality and very vital in assisting learners accomplish more from the teacher. This raises political as well as ethical questions about education authorities who employ teachers and manage primary education delivery in Nigeria. It also signifies the need for the provision of training and re-training for teachers in the field of special education within the general educational system.

In a practical sense, a teacher who does not understand the normative jurisprudence of inclusive education will definitely find it difficult to work towards that goal. Training teachers to appreciate the underlying significance of realising inclusive education for every learner, including hearing-impaired learners will provide direction for delivery. Consequently, government as the major stakeholder in the education of its citizens has a responsibility to train teachers to understand the normative principles and processes of inclusive education.<sup>20</sup> They are also expected to provide interested teachers with the basic training and skills required for inclusive education development in all primary schools and especially in special schools for the deaf.<sup>21</sup> This training must also involve teaching teachers how to use technological aural and visual equipment. The training should also leverage the education of teachers on how to develop individual lesson plan for each learner, how to manage disruptive behaviour of learners, how to adjust and adapt the curriculum, and how to monitor the progress of each learner.<sup>22</sup>

Encouraging teachers to mobilise co-operative learning and tutoring as observed by Mariga *et al* in *Inclusive Education in Low Income Countries*, will also bring wider benefits for purposes of realising inclusive education as a competent learner in a subject can be paired with one having a complexity in that particular area of study.<sup>23</sup> Without doubt, these aspects will improve teachers' performance and output. It would also assist teachers in becoming pioneers with respect to imparting positively on the learners and other teachers during exchange of ideas. These aspects indeed, form a basic moral reason for action for the

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<sup>18</sup> L Mariga et al *Inclusive education in low-income countries: A resource for teacher educators, parent trainers and community development workers* (2014) 28.

<sup>19</sup> AO Akinsolu 'Teachers and students academic performance in Nigerian secondary schools: Implications for planning' (2010) 3 *Florida Journal of Educational Administration & Policy* 86.

<sup>20</sup> Insights from the CRPD Committee proposal in General Comment No 4 (n 1 above) paras 12(d), 35, 36, 69 & 70.

<sup>21</sup> As above.

<sup>22</sup> As above.

<sup>23</sup> Mariga et al (n 18 above) 99.

government. Moral norms according to George constitute reasons for choice and action and they usually guide choices in circumstances and situations where one has reasons to act.<sup>24</sup> Being interested in the well-being of each and every member of a society entails acting in a politically responsible manner.

Where a moral norm declares a certain course of action for instance, it is considered a convincing reason for that action and it overwhelms whatever reasons one may have for doing what it forbids or for not undertaking what it obliges.<sup>25</sup> It would therefore be considered an immoral choice if the government chooses to do otherwise. In this light, it can be argued that the lack of sufficient hearing-impaired and hearing teachers in special needs education in schools for deaf and in the ‘inclusive schools’ regrettably illustrates a denial of the performance of this moral duty on the part of senior education officials in the primary education sector, government ministers and even members of the national assembly towards facilitating the process of inclusive education for persons with disabilities, including the hearing-impaired learner.

This also calls our minds back to the basic reasons for acting as offered by Finnis et al.<sup>26</sup> Finnis, Grisez, Boyle and George remind us that human beings are rationally motivated towards action for purposes which provide for intelligible benefit, and not ‘mere possibilities’.<sup>27</sup> In this connection, pursuing the good of education (inclusive) for the hearing-impaired learner is an act of the practical intellect which provides intelligible benefits. Actions towards the realisation of this good are not pointless, rather they are based on rational judgement that the good in question is intrinsically valuable and constitutes an aspect of the common good. Leaning on the teachings of Aquinas and Finnis provides further justification that the good of inclusive education is self evident and a fundamental aspect of human well being.<sup>28</sup>

In this context, talking about the common good and aspects of human well-being presupposes that there is a difference between private good and common good. Grisez and Boyle argue that the standard for distinguishing between common goods and private goods was the

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<sup>24</sup> RP George *In defense of natural law* (2001) 124.

<sup>25</sup> As above.

<sup>26</sup> G Grisez et al ‘Practical principles, moral truth and ultimate ends’ (1987) 32 *American Journal of Jurisprudence* 99; Finnis *Natural law and natural rights* (n 4 above); A counterpart view was also expressed by George *In defence of the natural law theory*, see George (n 24 above) 18.

<sup>27</sup> As above.

<sup>28</sup> T Aquinas *Summa Theologica* trans Fathers of the English Dominican Province (1981); Finnis *Natural law and natural rights* (n 4 above) 86.

effectiveness of state actors in pursuing the goods in question.<sup>29</sup> In order to orient us with ideas of the common good as discussed in Chapter two of this study, it is the sense of a requirement of practical moral responsibility and commitment that is intended to further the well-being of members of a community.<sup>30</sup> Extending the idea further, Grisez and Boyle regard the ensemble of common good as ‘goods which the political society as such can effectively pursue’.<sup>31</sup> Private goods they insisted provide reasons for action but not political action.

## 2.2 Teaching approaches and related practices

In General Comment Number 4, the CRPD Committee recognised the curriculum of any given education system as an important aspect of advancing a more inclusive society.<sup>32</sup> In this respect, the UNESCO guidelines further exemplify the curriculum as ‘the central means by which the principle of inclusion could be put into action within an education system, respectful of cultural, religious, gender and other differences in line with common shared values’.<sup>33</sup> The implication is that achieving transformation within the education sector in any state is for the most part dependent on the state’s curriculum approach.

From this standpoint, it becomes obvious that inclusive curricula is realisable and implementable only within educational systems that provide teachers, teacher educators and schools with the relevant direction, orientation and monitoring supportive of inclusive practices. Nigeria’s education policy directives to states to aim towards the adaptation of learners curriculum for different target groups is considered ambiguous because it may not be able to meet the demand of learners with special needs including hearing-impaired learners.<sup>34</sup> This is significantly so when findings in this study have revealed that qualified and experienced teachers in special education are insufficient. Majority of teachers were found to lack the necessary skills and knowledge required in adjusting the curriculum to meet the diverse needs of hearing-impaired learners.<sup>35</sup>

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<sup>29</sup> G Grisez & JM Boyle *Life and death with liberty and justice* (1979) 36.

<sup>30</sup> Finnis *Natural law and natural rights* (n 4 above) 155.

<sup>31</sup> Grisez & Boyle (n 29 above) 37.

<sup>32</sup> General Comment No 4 (n 1 above) paras 15 & 25; See also L Florian ‘The concept of inclusive pedagogy’ in G Hallett & F Hallett (eds) *Transforming the role of the special educational needs coordinator* (2010) 61; L Florian ‘Special or inclusive education: Future trends’ 35 *British Journal of Special Education* 202; R Operti et al ‘Inter regional discussions around a conceptualisation of an inclusive curriculum in light of the 48th International Conference on Education’ (2009)13.

<sup>33</sup> United Nations Educational, Scientific and Cultural Organisation (2009a) *Policy Guidelines on Inclusion in Education*.

<sup>34</sup> Nigeria National Policy on Education 6th edition (2013), sec 7 para 119(e).

<sup>35</sup> See Section 6.2 of Chapter 5.

More so, findings illustrate that teachers use the same mode of assessment for both hearing and hearing-impaired learners without accommodating individual difference. Teachers are not often encouraged as well as supervised to adopt a beneficial approach within the classroom and across schools generally on the needed communication strategies for the hearing-impaired learner. Thus the tendency for teachers to adhere strictly to an existing curriculum without attaching importance to the need to make adjustments to fit individual learners' need is very high. An entirely unadjusted curriculum could affect hearing-impaired learners negatively and can lead to a lack of interest towards learning in the long run.

Nigerian educational authorities are obligated to work out a systematic, legally directed flexible curriculum and evaluation practice within and across schools.<sup>36</sup> The curriculum content of a state's general education system ought to reasonably address the educational need of every learner. Particularly, an inclusive curriculum values diversity as it continuously contemplates better ways of strengthening the general education system to inclusively engage with human difference.

Identifying different learning needs means that the state is eager to remedy the application of same treatment to everyone, hence, moving away from formal equality. From the South African case of *President of the Republic of South Africa v Hugo*,<sup>37</sup> Nigerian state officials can learn the necessity of going beyond the sameness treatment provision under the Nigerian Constitution. In the highlighted case, the Constitutional Court insisted that;

To develop a concept of unfair discrimination which recognises that although a society which affords each human being equal treatment on the basis of equal worth and freedom is our goal, we cannot achieve that goal by insisting upon identical treatment in all circumstances before that goal is achieved. Each case, therefore, will require a careful and thorough understanding of the impact of the discriminatory action upon the particular people concerned to determine whether its overall impact is one which furthers the constitutional goal of equality or not.<sup>38</sup>

Neo-naturalists' ideas in connection with the prescriptive and directive approach adopted in this study also appreciate and accentuate the South African Constitutional Court's jurisprudence regarding achieving equality. This is signalled in the acknowledgement that diversity can foster learning and fortify societies towards the realisation of an inclusive and a unified social order.<sup>39</sup> The common good as articulated goes beyond the general welfare of

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<sup>36</sup> In line with General Comment No 4 (n 1 above) para 25.

<sup>37</sup> 1997 (6) BCLR 708 (CC).

<sup>38</sup> As above para 41.

<sup>39</sup> J Finnis *Human rights and common good* (2013) 109; George (n 24 above) 238.

people in the society to embrace respect for the diversity and integrity of persons or groups who find themselves as belonging to a minority.

Achieving ‘universal common good’ requires that government should not only recognise and permit different groups to be involved in issues that concern them, but should also respect the right of such groups to preserve their unique language and culture.<sup>40</sup> This study found that American Sign Language (ASL) is the sign language most teachers of the hearing-impaired adopt in schools for teaching and evaluating hearing-impaired learners from the first year of primary school.<sup>41</sup> It was also found that ASL dictionaries were also scarce within special schools for ‘the deaf’, in the ‘inclusive schools’ and in almost all the regular schools visited during field research. At the same time, the textbooks used were English textbooks that are not contemplative of the Nigerian context and culture.<sup>42</sup>

Hence, the learner is left to battle with communication difficulties which have unhelpful consequences for implementing the curriculum. There is also a greater chance of hearing-impaired learners experiencing exclusion from learning not because of the hearing impairment or inability to learn, but because the language of instruction is not familiar to the learner. According to Bernstein, language has been stated to include varied and complex communication systems for acquiring and imparting knowledge that covers phonology, semantics and codes used by community members to share ideas and create meaning.<sup>43</sup> It has also been pointed out that language disorder happens when there is a disruption in the process of early language acquisition.<sup>44</sup>

In Chapter three of this study, the importance of an approach which involves a teaching approach that makes use of relevant visual language acquisition as first language, and other kinds of language as second language, was acknowledged as enhancing the practice of inclusive education for hearing-impaired learners.<sup>45</sup> The local background language of hearing-impaired learners ought to be given priority. Considering that the learner is going

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<sup>40</sup> Reflections influenced from a reading of General Comment No 4 (n 1 above) paras 32 & 34; George’s *In defense of natural law* and Finnis’s *Human rights and common good*, See Finnis (n 4 above) & George (n 24 above).

<sup>41</sup> See Section 7.1.4 of Chapter 5.

<sup>42</sup> See Section 7.2 of Chapter 5.

<sup>43</sup> B Bernstein *Class, codes and control: The structuring of pedagogic discourse* (2003) 118.

<sup>44</sup> U Clark ‘Bernstein’s theory of pedagogic discourse: Linguistics, educational policy and practice in the UK English/literacy classroom’ (2005) 4 *English Teaching: Practice and Critique* 32; Unpublished: HP Senu-Oke ‘A genealogy of disability and special education in Nigeria: From the pre-colonial era to the present’ unpublished PhD thesis, Miami University, 2011 47.

<sup>45</sup> See Section 2.4.1 of Chapter 5.

through a learning and development process, it makes sense that the individual moves from a more conversant language to a less conversant one gradually.

It is true that signed language may vary depending on a learner's ethnicity, and this can influence an individual's language because of people within that environment.<sup>46</sup> However, this satisfies hearing-impaired learners need for support regarding specific cultural and linguistic identity and 'natural and accessible language existing within a social context'.<sup>47</sup> Thus it is possible that the learner would have picked basic signs at home and these efforts need to be built on by the teacher and the school gradually. Therefore, local signs should not be disregarded but ought to be encouraged.<sup>48</sup> Such an endeavour might unconsciously give birth to a Nigerian sign language drawn from signs used by the learners and teachers steadily. Other signing variants can be introduced gradually.

Accordingly, a combined use of visual centred communication involving signing, pictures, lip-reading and finger spelling in the language that the learner appreciates has the tendency to get information across to the hearing-impaired learner easily. Consequently, the use of ASL in Nigerian primary schools for the deaf from the outset is not free from criticism. Its use is ultimately traceable to western colonialism and subsequent establishment of schools for the deaf as part of 'assimilation efforts' by the church missionaries from the United States and other European countries. These missionaries taught using signed language and spelling alphabets peculiar to their country of origin without regard to Nigerian indigenous signs and local circumstances.

Fafunwa speaks of how the Nigerian educational policy approaches before and after independence has been paternalistic in the structuring of the educational system which also extended to exclusionary practices against children with disabilities.<sup>49</sup> Kiyaga and Moores observe that some schools in Africa that follow the example of schools for deaf learners in Europe prohibit the use of any kind of visual communication which involves

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<sup>46</sup> R Sutton-spence & B Woll *The linguistics of British sign language: An introduction* (1999) 29.

<sup>47</sup> In line with the standards provided by the CRPD Committee in General Comment No 4 (n 1 above) para 34; see also L Mitchell *Language, emotion and politics in South India: The making of a mother tongue* (2009) 19.

<sup>48</sup> PA Ajavon 'A sign language for Nigeria' (2011) *Commonwealth Education Partnerships* 37.

<sup>49</sup> AB Fafunwa *History of education in Nigeria* (2004). Illustratively, Nigeria's first education ordinance of 1882 was largely influenced by the British Education Act of 1844, in this regard see IO Osokoya *History and policy of Nigerian education in world perspective* (2002) 63.

signing or finger spelling.<sup>50</sup> Burton also notes how foreign sign languages were introduced in Africa without regard to African indigenous signs.<sup>51</sup>

From Fafunwa, Kiyaga, Moores and Burton's comments, there is the possibility that the American and European missionaries that established deaf schools in Nigeria failed to consider the linguistic diversity of deaf learners from the various ethnic groups in Nigeria. Typically, the establishment of deaf schools in Nigeria was not the result of an 'egalitarian dialogue'. The failure to facilitate the use of Nigerian indigenous signs in order to encourage easy communication among groups depicts assumptions of self-insufficiency. The opportunity for valid arguments presented by various community members regarding dialogic learning was not provided.<sup>52</sup> In other words, egalitarian dialogue would have involved suggestions from community members, families, learners and the teachers regarding the content and process of learning, with the aim of helping every learner develop progressively.

Along this line, the 'monologic' and enforced use of ASL in Nigerian primary schools for the deaf is perceived as dominating and oppressive. Like our socio-economic and political worlds, it still demonstrates power structures of colonialism and conventional neo-colonialism. Elements of power constitute the ability not just to dispossess a people of their valued claims and identity but to also inculcate ideas of self-insufficiency and dependency.

While it is acknowledged that some African American missionaries contributed to the education of deaf Nigerians,<sup>53</sup> underlying patterns of power claims cannot be entirely ruled out. The pervasive unintended consequence was the permeation of normalising practices into Nigeria's current education system.<sup>54</sup> An instance is the adoption of English language as the official language of learning in Nigerian schools when the primary language spoken in local and home environment is not English. According to

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<sup>50</sup> NB Kiyaga & DF Moores 'Deafness in Sub-saharan Africa' (2003) 148 *American Annals of the Deaf* 18.

<sup>51</sup> T Burton 'A deaf person's perspective on third world deaf children's education' Paper presented at 'What does the South really want from the North' a seminar co-organised by the Deaf Africa Fund and the Enabling Education Network at Birmingham, England, June (2002).

<sup>52</sup> S Racionero & R Valls 'Dialogic learning: A communicative approach to teaching and learning' in JK Kincheloe & RA Horn (eds) *The Praeger handbook of education and psychology* (2001) 548.

<sup>53</sup> Kiyaga and Moores (n 50 above) 20; E Ojile Education of the Deaf in Nigeria: A historical perspective in C Erting et al (eds) *The Deaf way: perspectives from the international conference on Deaf culture* 268; C Carroll & SM Mather *Movers and shakers: Deaf people who have changed the world* (1997).

<sup>54</sup> In a Foucauldian sense, this represents a discourse concerning the relationship between social institutions, language, subjectivity, dominance and power which sometimes bring about challenge to existing practices. See M Foucault *Discipline and punish* (1979).

Fafunwa and Aisiku, the major aim of the British in establishing schools in Nigeria was to programme for compliance to colonial supremacy.<sup>55</sup> In effect, a practice of inequality in education has been firmly laid and entrenched through the adoption of colonial practices after Nigeria became independent. Remedying the Nigeria's education system in order to achieve inclusive equality in education for hearing-impaired learners require among other efforts decolonising the education system. The American or English sign languages most teachers in Nigerian primary schools for the deaf use are foreign sign languages that were rather forced on them. Writing in the context of language and literature, Ngugi stresses that:

The language of the coloniser is often a truly foreign one: segments of society understand it badly, if at all, and so certain audiences cannot be reached by works in these imposed language.<sup>56</sup>

From the foregoing observation, there is a possibility that the relation of individuals to any imposed language is quite different from the language the same individual is conversant with.

Usually children learn their family language or indigenous language at the earliest stage of their development.<sup>57</sup> Availability of access to language and early signing to learners as early as the first year of life also improves acumen and language development.<sup>58</sup> Lane further argues that parents, who are deaf, just like any other minority group, hope to have deaf children whom they can share their language and unique experiences with.<sup>59</sup> On balance, Benedict & Legg tell us that recently hearing parents seeking to establish early communication with their hearing babies make use of home signs before they are able to speak.<sup>60</sup>

A hearing-impaired child picks up home signs usually reflective of the child's indigenous language and it is asserted that success in the classroom is enhanced where

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<sup>55</sup> AB Fafunwa & JV Aisiku *Education in Africa* (1982) 270.

<sup>56</sup> Ngugi wa Thiong'o *Decolonising the mind: The politics of language in African literature* (1986) 13.

<sup>57</sup> As acknowledged by the CRPD Committee in General Comment No 4 (n 1 above) para 65.

<sup>58</sup> E Garcia *Understanding and meeting the challenge of student diversity* (1994); L Acredolo & S Goodwyn *Baby signs: How to talk with your baby before your baby can talk*. (2009); Senu-Oke (n 44 above) 47; S Goodwyn & L Acredolo 'Symbolic gestures versus word: Is there a modality advantage for onset of symbol use?' (1993) 64 *Child Development* 688; S Goodwyn et al 'Impact of symbolic gesturing on early language development' (2000) 24 *Journal of Non Verbal Behaviour* 81.

<sup>59</sup> H Lane 'Constructions of deafness' (1995)10 *Disability and society* 171.

<sup>60</sup> BS Benedict & J Legg 'Communication considerations: Deaf culture and community' (2009) <http://www.handsandvoices.org> (accessed 9 December 2014).



the child is exposed to an ‘age appropriate language’ through home signs.<sup>61</sup> In other words, when the child enters school, the indigenous language is also required to be the language of communication in the first three years of primary education – which should often be preceded by early child training and development, while during the last three years of primary school, when learners are expected to be attaining literacy skills, English language signs can then be gradually introduced as the language of instruction.<sup>62</sup> This is based on the acceptance of English language as Nigeria’s formal language in the society and as the official medium of instruction in which the child will finally learn to read and advance academically<sup>63</sup>

Ultimately, the intention behind specifying that learners use the language of immediate environment for instructions at the start of schooling is to make education accessible in the language the child is conversant with right from the home. The use of ASL as the language of instruction at the outset of schooling, when the learner is only beginning to develop interest in learning skills is not synonymous with the language of immediate environment of hearing-impaired learners as specified under the national policy on education.<sup>64</sup>

Allowing the predominant use of ASL or English signs in Nigeria primary schools from the first year to the sixth year contributes to the low literacy level of hearing-impaired learners. It is also responsible for the non-development of Nigerian sign language. Furthermore, it is argued that this ‘imported’ ASL predominance in Nigerian primary schools for deaf learners does not align with the ‘most appropriate language, mode and means of communication’ for the Nigerian hearing-impaired learner suggested for use in schools as well as society.<sup>65</sup> Using ASL at the beginning of school age as have been noted, places emphasis on learning English instead of building ‘an age appropriate language’ that is consistent with local circumstances.<sup>66</sup>

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<sup>61</sup> As highlighted in a study carried out by Ajavon, see PA Ajavon *The incorporation of Nigerian signs in deaf education: A pilot study* (2003); Fafunwa (n 49 above).

<sup>62</sup> National Policy on Education, sec 2, para 20(c).

<sup>63</sup> National Policy on Education, sec 2 paras 10, 14 & 20(b).

<sup>64</sup> National Policy on Education, sec 2 para 20(b).

<sup>65</sup> Convention on the Rights of Persons with Disabilities (CRPD), art 24(3)(c).

<sup>66</sup> PA Ajavon ‘An overview of deaf education in Nigeria’ <http://www.deafchildworldwide.info/document.rm?id=2875> (accessed 28 June 2015).

In spite of the fact that Nigeria's national policy on education makes provision concerning the training and re-training of all categories of teachers on the use of total communication speech technique/sign language,<sup>67</sup> it failed to specifically motivate systematically, consistent standards in the linguistic details served hearing-impaired learners. In essence, there is no inclusive uniformity underlying the linguistic details used in teaching hearing-impaired learners. This implies that each teacher is left to use whatever sign language that is convenient for him or her regardless of the individual needs of the learner.

Failure to make reference to signs drawn from language of the immediate environment of hearing-impaired learners is not conducive to language acquisition and integration towards the national language. Indeed the approach and methods of communication used in teaching matter a lot as they determine the level of sustainability of the learner's interest while learning.<sup>68</sup> Thus, teacher-centred strategies ought to be replaced with learner-centred strategies.

Even though it can be argued that Nigeria has several ethnic groups with various languages, it is still possible to develop, as a starting point and learning experience, Nigerian sign language along the widely spoken language among ethnic groups in Nigeria.<sup>69</sup> Once this is done, it can further be adapted and reproduced to suit the local needs of other smaller ethnic groups. This idea resonates with the argument that no nation or state ever gets developed by using or adopting other people's language to educate its citizens.<sup>70</sup>

The policy specifications on the use of total communication speech technique or sign language to teach hearing-impaired learners appear impressive considering the heterogeneity and diversity of hearing-impairment. At the same time, its vague provisions regarding application and implementation monitoring demonstrates total non-commitment and failure of access to the language of communication. It further illustrates that the state has failed to provide the needed environment supportive to the progressive development of hearing-impaired learners in Nigeria. This in part ascribes to Chaskalson's comments on state reinforcement of hierarchical citizenship even though

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<sup>67</sup> National Policy on Education, sec 7 para 123 (v).

<sup>68</sup> BT Danmole 'Emerging issues on the universal basic education curriculum in Nigeria: Implications for the science and technology component' (2011) 8 *Pakistan Journal of Social Sciences* 67.

<sup>69</sup> The three widely spoken languages in Nigeria are Igbo, Hausa and Yoruba.

<sup>70</sup> IO Amali et al 'An assessment of pre-primary school programme activities in Kwara state Nigeria' (2012) 6 *Journal of Education and Practice* 103.

his discourse referred more to the consequences of apartheid in South Africa.<sup>71</sup> Chaskalson's views can as well be extended to the situation of hearing-impaired learners within Nigeria's education system as it implicitly underscores experiences of historical marginalisation and domination. For example, hearing-impaired learners will find it very difficult to access inclusive education in Nigerian primary schools where the education system is unconcerned about their communicative or language needs, the teachers' skills, and the school curriculum.

The right to language as articulated under the Universal Declaration of Human Rights (UDHR)<sup>72</sup> and lately, under the Convention on the Rights of Persons with Disabilities (CRPD)<sup>73</sup> encourages the recognition and acceptance of the people's cultural and linguistic distinctiveness generally. We can therefore take the non-legal recognition and failure of the Nigerian government to systemically develop, implement and popularise local sign language as an indication that respect for the communication needs of the hearing-impaired learner in Nigeria is yet to be secured. It is also an indication that signed language is not considered equal to spoken language as hearing-impaired learners continue to experience discrimination in school and in other areas of life.

Bearing in mind Finnis, Grisez & Boyle's expressions of the common good, and applying their thoughts to the communication/language needs of hearing-impaired learners with regard to education, supports an understanding of equitable distribution and creation of opportunities for every member of the society.<sup>74</sup> It does not necessarily mean that all the citizens must have a particular goal or need, rather it means that certain prerequisites are considered necessary if we must create an environment that will be conducive for every individual member in the state to achieve a desired end or objective.<sup>75</sup>

What is important is that each basic good (like the good of inclusive education)<sup>76</sup> be treated with every sense of commitment. Accomplishing such a commitment is an expectation of reason. Considering what is good for humanity demands an intelligibility

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<sup>71</sup> A Chaskalson 'The Third Bram Fischer lecture: Human dignity as a foundational value of our constitutional order' (2000) 16 *South African Journal on Human Rights* 193.

<sup>72</sup> See the Universal Declaration on Human Rights, art 2.

<sup>73</sup> As exemplified under the CRPD, arts 3(g), 2, 21, 24 & 30.

<sup>74</sup> Finnis *Natural law and natural rights* (n 4 above) 155; Grisez et al (n 26 above) 99.

<sup>75</sup> Finnis (*as above*).

<sup>76</sup> The good of anything relates to that which belongs to the fullness of being which all things seek after according to Aquinas's notion of the good, see R Duska, 'Aquinas's definition of good: Ethical-theoretical notes on De Veritate, Q 21' (1974) 58 *Monist* 151.

that yields a distinct understanding from considering what the situation is.<sup>77</sup> Also such considerations must of necessity be exercised according to the rule of law, which presupposes the application of the fundamental principles of human rights and justice in order to promote the common good and its human flourishing component.

Following Grisez, Boyle and Finnis line of reasoning, it could be understood that the good of education ought to serve as a justifiable reason for committed initiatives by way of systematic changes that aim to provide equality of opportunities for every individual in the state. Such a disposition is undeniably a basic reason for action. The wish of hearing-impaired learners to have access to education that is inclusive unarguably is applicable to everyone because everyone has an interest in acquiring knowledge. Thus it is an example of a general or common basic good. What can be deduced from Finnis, Grisez & Boyle's idea is that the common good is not particular to the individuals in whom they are instantiated, but a component part of human well-being and fulfilment which is capable of being enjoyed by everyone irrespective of personal condition or circumstances.<sup>78</sup> One might therefore say that inclusion in this sense is both inherently and instrumentally valuable as it serves as an end in itself and as a channel to other worthwhile ends.<sup>79</sup>

George notes that the clarity of instrumental goods depends upon the inherent/basic goods whose recognition by choice and action they make possible.<sup>80</sup> This suggests that, if education is not an intrinsic basic good, there will be no practical reason to pursue it. More so practical reason would be reduced to the Humean postulate of being purely instrumental, and reasonably inspired action would be unattainable, and will be regarded as mere desires/emotions and therefore meaningless.<sup>81</sup> By implication, intrinsic goods provide basic reasons for action as it rationally motivates the political authority towards the realisation of worthy human ends which may in addition be instrumentally desirable as every other end may allude to them. Intrinsic goods which provide basic reasons for action are different from wholly instrumental goods, that is, goods that are sought after strictly as a means to other

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<sup>77</sup> Finnis *Natural law and natural rights* (n 4 above) 105.

<sup>78</sup> J Finnis et al *Nuclear deterrence, morality and realism* (1988) 277; Finnis *Natural law and natural rights* (n 4 above) 107.

<sup>79</sup> As endorsed by the CRPD Committee in General Comment No 4 (n 1 above) paras 10 & 42.

<sup>80</sup> George (n 24 above) 128; Grisez et al (n 26 above) 99.

<sup>81</sup> D Hume *A treatise of human nature* (1740) book 3 with central notions rewritten more popularly in *An enquiry concerning the principles of morals* (1751).

ends, and thus require intrinsic goods in order to manifest or show deeper reasons for action.<sup>82</sup>

Hume in his thinking has argued that ‘reason is, and ought only to be, the slave of the passions and can never pretend to any office, other than to serve and obey them.’<sup>83</sup> For him, there is no rational method for objectively determining what is morally right or wrong. Notwithstanding what we discover by reason, we still go contrary to it by allowing our emotions and passions to prevail. Hume seemed not to appreciate the position that human goods are grounded in nature but definitely not derived from our prior knowledge of human nature.<sup>84</sup>

As usefully drawn from Gisez and Boyle’s discourse, the principal function of government is to set up and sustain a just as well as an inclusive society.<sup>85</sup> As such, it is expected that those who bring to bear government policies and functions must encourage certain provisions and acts in line with the demands of substantive ethical justice. Political authorities will be failing in their duties when they deny people of goods that are rightly theirs. In this regard, Aquinas asserts that the proper matter of justice has to do with consciously and consistently rendering to individuals what they deserve.<sup>86</sup> To this end, laws and policies made by the government are also implicated.

In as much as the Nigerian government has to regulate the society according to laws and policies as given within the state, it does not mean that these laws or policies as given or in their making will be indifferent to moral questions concerning what ought to be the law.<sup>87</sup> Such moral questions could involve; whether the existing law or policy can reasonably and efficiently secure the common good in furtherance of the true function of law or policy, whether the law or policy is capable of distributing available resources efficiently, how the existing law addresses the common good in relation to inclusive principles and the issue of difference or whether the existing law or policy requires transformation in order to advance

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<sup>82</sup> George (n 24 above) 127.

<sup>83</sup> Hume (n 81 above) kb.2, pt. 3, s. III.

<sup>84</sup> Finnis defends this position usefully in natural inclinations and natural rights, see J Finnis ‘Natural inclinations and natural rights: Deriving “ought” from “Is” according to Aquinas’ in LJ Elders and k Hedwig (eds) ‘*Lex et libertas*’ *Studi Tomistici* (1987) 45-58.

<sup>85</sup> As above.

<sup>86</sup> Aquinas (n 28 above).

<sup>87</sup> This is in line with law’s source-based character as identified by Finnis as being central to law’s ability to further the common good, protect human rights as well as govern with integrity. See J Finnis ‘Positivism and legal rational authority’ (1985) *Oxford Journal of Legal Studies* 74; J Finnis ‘The truth in legal positivism’ in P George (ed) *The autonomy of law: Essays on legal positivism* (1996) 287.

changes in practice. Hence it can be argued that achieving general justice directs the state towards realising the common good while particular justice directs and controls individual relations within the state. Certainly, the existence of law or policy creates obligations synonymous to moral duties due to the trust citizens have regarding implementation by the state.<sup>88</sup> When this is done, the assumption one makes is that the performance of these duties by the state is a fundamental and necessary part of instantiating the general good.

In this light, the good of inclusive education pertains to legal justice (general justice) as much as particular justice as it eventually affects individual duties to the state, individual duties to one another as well as duties of government officials to citizens in the state.<sup>89</sup> One can then say that access to inclusive education for every learner, and of course hearing-impaired learner creates an impression about a particular society value, its education system and then its future.<sup>90</sup>

Talking about the future here inevitably grounds an understanding involving among other things learners allegiance to the state which is made possible as a result of inclusive outcomes. A further characteristic is that realising inclusive education for hearing-impaired learners and other learners with disabilities, will limit dependency level as the learner becomes enlightened to understand that some people are ‘differently abled to make the most of potentials that constitute them’.<sup>91</sup> While it is acknowledged that some may lack this capability, but we must be mindful not to overstate incapacity.

Consequently, making ‘the most of potentials that constitute them’ should not be literally interpreted to imply that achieving inclusive education for learners and especially for hearing-impaired learners should focus extensively on considerations regarding their usefulness or beneficial ability. Indeed, human worth should not be based on personal attributes. Stein argues that considerations of functional or beneficial capacity should not be what qualify a person with disability, including hearing-impaired learners to have an equal claim of right with respect to common distribution. Rather it is the fact of being a human person.<sup>92</sup>

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<sup>88</sup> This argument is supported by the CRPD Committee opinion regarding the obligation of state parties to implement inclusive education, see General Comment No 4 (n 1 above) paras 38 - 41.

<sup>89</sup> As inspired and articulated from Cajetan’s (Thomas de vio,) Commentary on Aquinas’s *Summa Theologiae* (1518) in II – II, q. 61, a.1 cited in J Finnis *Natural law and natural rights* (n 4 above); see also H Rommen *The natural law* (1947) 67.

<sup>90</sup> J Evans & I Lunt ‘Inclusive education: Are there limits’ (2002) 17 *European Journal of Inclusive Education* 3

<sup>91</sup> Fincke (n 12 above).

<sup>92</sup> MA Stein ‘Disability human rights’ (2007) 95 *California Law Review* 75.

Essentially Stein's argument reinforces the thinking that the 'common good' ought to be considered substantively in the system of distribution and redistribution of material and human resources.<sup>93</sup> Here, due to the fact that hearing-impaired learners are also members of the human society, they deserve equal protection of their rights like every other member of the society. However, in view of their different circumstance and historical disadvantage the need to balance their interest against the interest of other members of the society, by making substantive provisions in their education becomes imperative. Such provisions ought to target the creation of equal opportunities.

Furthermore, in the South African case of *Khosa & Others v Minister of Social Development & Others*<sup>94</sup> the Constitutional Court enunciated that the assessment of entitlement to a socio-economic good and the entitlements to equality and human dignity sustain and strengthen each other. What this means in effect is that in the scheme of distribution, human value ought to be considered first. However, allegiance and commitment to the state of hearing-impaired learner as a person with disability is premised on the moral understanding or duty that, every human being has something to offer to humanity, and the socio-economic environment should be made inclusive with human empowerment as a major objective. In positive terms, this moral duty can be grounded in persons with disabilities instantiating the awareness that each individual is worthy of respect, then unbiased treatment can be extended to all. Transforming instances of discrimination and the removal of barriers has been noted to benefit not just persons with disabilities but all other persons in the society.<sup>95</sup> For instance the provision of sidewalk slopes, accessible walkways and pedestrian crossings is an example of a universal design which benefits not just persons with disabilities but also the aged, parents with baby carriages, bicyclists and other pedestrians.<sup>96</sup>

With reference to individual duties towards another in relation to general and particular justice, this has to be understood in terms of a deep-seated change in societal attitudes, values and human stratification. The society is to demonstrate its readiness in accepting the hearing-

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<sup>93</sup> Recall that the concept of redistribution as used in this study is not restricted to 'individual jural relations' but extends to applying changes in human interactions by reference to justice that rectifies or remedies inequalities. It is attributable to Thomas Aquinas's attempt at covering the whole field of human endeavour in order to resolve what dealings are good among individuals in a society. It thus seeks to rectify Aristotle's corrective justice which is restricted to dealings that arises when one person carries out his contractual obligation and the other fails or one when one party harms another, see Aristotle *Nichomachean Ethics* trans. JAK Thomson (1976)

<sup>94</sup> 2004 (6) BCLR 569 (CC).

<sup>95</sup> Bauman et al (n 11 above) 6.

<sup>96</sup> As above.

impaired, including other persons with disabilities as equal members of the society. As have been identified, there exist notions that persons with disabilities, including hearing-impaired learners represent a punishment for past sins, are worthless, a curse and are dangerous to other learners.<sup>97</sup> By implication, these myths reinforce discrimination for hearing-impaired learners and most times reinforces the belief that they cannot learn and as a result investing in their education is of no significance.

Turning now to the duties of state officials to individuals in the state, it is argued that it is an interconnected process or practice, which produces new potentials and values for everyone in the society. It further confirms the social model understanding that thoughts, beliefs, teaching approaches, curricula and in fact, the environment increases the possibility of discrimination further than the impairment itself.<sup>98</sup> If taken seriously, the state here summarily has duties of general legal justice as well as particular justice in directing its subjects towards reasonable legal provisions and practices in furtherance of opportunities for all. This duty demands respect and non-discrimination in the enjoyment of goods and social services, like the good of inclusive education, that aim principally at diminishing barriers to learning for all learners, including hearing-impaired learners and other learners with disabilities.<sup>99</sup>

Consequently, it is considered a moral responsibility of the political authority to guide every citizen to appropriate worth or value. To this end, furthering the well-being of individuals in the society require definite acts and reasonable directives towards what is morally good and right in attaining the common good. Law and policy made by government which favour and protect the interest of some citizens over others whether directly or indirectly, influence practice and amounts to a denial of the common good. In this context, moral justice demands that a rational level of respect for every basic good is expected to be pursued by government officials. Thus, strategising efficient and appropriate means of allocation of state resources becomes an imperative duty in unifying these values. This position finds support in Finnis work where he states that

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<sup>97</sup> In terms of General Comment No 4 (n 1 above) paras 4(b) & (c); R McConkey et al 'Educating teachers in developing countries about disabilities' (1999) 9 *Exceptionality Education Canada* 15.

<sup>98</sup> See in this regard General Comment No 4 (n 1 above) paras 4(a).

<sup>99</sup> As emphasised by Justice O' Regan J in the South African case of *MEC for Education: KwaZulu-Natal & Others v Pillay* 2008 (2) BCLR 99 (CC) para 121.



The basic features of human flourishing are discernable only to one who thinks about opportunities, and thus are realisable only by one who intelligently directs, focuses, and controls his urges, inclination and impulses.<sup>100</sup>

The implication is that inclusive education for hearing-impaired learners can be realised with efficient and effective plan by government, its officials in the ministry of education and other relevant stake holders and policy-makers in education. Committing to the value of inclusive education as evidence of a general good is transformative in approach and serves to protect vulnerable persons like hearing-impaired learners from systemic prejudice. Exhibiting this commitment as Finnis apparently acknowledges call for

Both direction and control of impulses, and the undertaking of specific projects, but they also require the *redirection of inclinations, the reformation of habits, the abandonment of old and adoption of new projects, as circumstances require*, and overall, the harmonisation of one's deep commitments- For which there is no recipe or blueprint, since basic aspects of human good are not like the definite objectives of particular projects, but are participated in *every action meaningfully*.<sup>101</sup>

### **2.3 Lack of facilities, inadequate funding and other connected issues**

From field interviews and focus group discussion, indications point to the fact that hearing-impaired learners face other barriers with respect to educational services. These impediments include marginal funding, inaccessible built environment, late identification and intervention, non-existence of early child language development centres in nursery schools, as well as lack of orientation and sensitisation of the needs of hearing-impaired learners in the home, school and society.

Most of the schools for deaf persons sampled require structural changes as the field study reveal.<sup>102</sup> Other areas that call for attention in order to improve accessibility are electricity, good lighting, indicator lights for sensitisation, tap water, rest rooms, safe play grounds, emergency exits, in case of fire outbreak. Other necessary learning facilities include visual and text based alternatives like overhead projectors, hearing aids as well as other technologies that might facilitate learning. It is also thought that better sitting arrangements into a semi-circle will enable learners see the teacher and other learners and this enhances concentration.

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<sup>100</sup> Finnis *Natural law and natural rights* (n 4 above) 103.

<sup>101</sup> Finnis *Natural law and natural rights* 104 (emphasis mine).

<sup>102</sup> See sub-section 7.1.5 of Chapter 5.

Non-existence of early child language development centres in schools for deaf persons as findings reveal in this study constitute barriers to learning and development for the hearing-impaired learner.<sup>103</sup> Hearing-impaired learners are better equipped when they have been exposed to an ‘empowering’ language background early enough. In the opinion of the CRPD Committee, such early intervention serves to strengthen the capacity of the hearing-impaired to benefit from education and promotes their enrolment and attendance.<sup>104</sup> The Committee further suggests that early childhood interventions assist young children with disabilities to transit smoothly into pre-primary and primary schools.<sup>105</sup> Unfortunately, in Nigeria, it has been found that hearing loss is often not diagnosed early and routine hearing-screening examinations are not carried out at birth or during a child’s early years.<sup>106</sup> Responses from the learners and officials of State Universal Basic Education Board as presented in this study further confirm that the Universal Basic Education Commission and the State Universal Basic Education Board have no such programmes for nursery or primary learners.

Often, lack of awareness and late diagnosis prevent early identification and intervention. Systematic diagnostic capacity at birth ought to be prioritised and sensitisation of families, schools and community members on the need for early identification and intervention launched. Parents and families require information as to available options open to a hearing-impaired child and the need for the child to attend early language development pre-school.<sup>107</sup> In spite of the use of home signs to communicate with their hearing-impaired child, families find it difficult to provide the necessary language environment required at the early stage of language development.<sup>108</sup> Thus, the establishment of early language development centres in Nigerian primary schools in order to provide support for parents and learners is critical.

These concerns imply a lack of consideration towards the prioritisation of equal educational opportunity for the Nigerian hearing-impaired learner and other learners with disabilities by the Nigerian government. Further exposition of the plight of hearing-impaired learners in Nigerian primary schools raise questions as to what is reasonable in treating other people the way we would like to be treated.

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<sup>103</sup> See sub-section 7.1.4 of Chapter 5.

<sup>104</sup> See General Comment No 4 (n 1 above) para 65.

<sup>105</sup> As above.

<sup>106</sup> Ajavon (n 66 above) 4.

<sup>107</sup> In line with General Comment No 4 (n 1 above) para 65.

<sup>108</sup> Ajavon (n 66 above) 4.

Finnis admonishes that in the realisation of any basic good, personal feelings and self-centred considerations should not be allowed to govern our choices.<sup>109</sup> Finnis could be taken indirectly as emphasising that ideas of ableism, linguicism and audism should not obscure the judgement or actions of the state in its contemplation of inclusive education delivery to hearing-impaired learners. Ablism, linguicism and audism as indicated in Chapter 1 of this study, refers to a correlation of discriminatory practices and prejudicial mindset towards persons with disabilities.<sup>110</sup> Some scholars have actually insisted that it is ablism, linguicism and audism that continually deny hearing-impaired learners of their right to essential services with regard to literacy development.<sup>111</sup> To this end, consequences of ablism, linguicism and audism follow hearing-impaired learners throughout school life and later life.

It would be recalled that the social model thoughts on disability as demonstrated in Chapter two, call attention to the considerable effects attitudinal as well as non-elimination of barriers within the socio-economic and political environment can have on the inclusive education discourse in respect of hearing-impaired learners.<sup>112</sup> Accordingly, in the South African cases of *MEC for Education: KwaZulu-Natal and Others v Pillay*,<sup>113</sup> and *Lesbian and Gay Equality Project and Others v Minister of Home Affairs*<sup>114</sup>, as well as in the Canadian case of *Eaton v Brant County Board of Education*,<sup>115</sup> it was stated that the state must be ready to accommodate human difference through the provision of accommodations. From the highlighted cases, judicial opinion clearly suggest that accommodating difference is considered useful in that it has universal undertones with regard to equality and human dignity. As illustrated by the Constitutional Court of South Africa in *Pillay's case*, making accommodations might require that:

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<sup>109</sup> Finnis *Natural law and natural rights* (n 4 above) 120.

<sup>110</sup> For a detailed discourse on ableism, linguicism and audism see; S Levi 'Ableism' in G Albrcht (ed) *Encyclopedia of disability* (2005) 1-4; D Lennard *The disability studies reader* (2010); FK Campbell *Contours of ableism: The Production of disability and abledness* (2009); T Humphries *The making of a word: Audism* (1975); H Lane *The mask of benevolence: Disabling the deaf community* (1992).

<sup>111</sup> HL Bauman 'Audism: Exploring the metaphysics of oppression.' (2004) 9 *Journal of Deaf Studies and Deaf Education* 239; HL Bauman, 'Introduction: Listening to deaf studies' in HL Bauman (ed) *Open your eyes: Deaf studies talking* (2008); The Canadian Hearing Society 'Position paper on discrimination and audism' (2007).

<sup>112</sup> See the CRPD, art 24; G Quinn & T Degener 'Human rights and disability: The current use and future potential of United Nations human rights instruments in the context of disability' (2002); AC Armstrong et al *Inclusive education: International policy and practice* (2010) 27.

<sup>113</sup> *MEC for Education: KwaZulu-Natal & Others v Pillay* (n 99 above).

<sup>114</sup> (2005) ZACC 20; See also *Minister of Home Affairs & Another v Fourie & Another* (2005) ZACC 19.

<sup>115</sup> (1997) 1 SCR 241, para 67.

Sometimes the community, whether it is the state, an employer or a school, must take positive measures and possibly incur additional hardship or expense in order to allow all people to participate and enjoy all their rights equally. It ensures that we do not relegate people to the margins of society because they do not or cannot conform to certain social norms.<sup>116</sup>

The Canadian Supreme Court had prior to the South African Constitutional Court decision in *Pillay's case*<sup>117</sup> expressed similar views in relation to state responsibility to provide accommodation when considering matters of disability. In *Eaton's case* the Canadian Supreme Court emphasised that:

Exclusion from the mainstream of society results from the construction of a society based on 'mainstream attributes to which disabled persons will never be able to gain access. Whether it is the impossibility of success at a written text for a blind person, or the need for ramp access to a library, the discrimination does not lie in the attribution of untrue characteristics to the disabled individual. The blind person cannot see and the person in a wheelchair needs a ramp. Rather it is the failure to make reasonable accommodation, to fine-tune society so that its structures and assumptions do not result in the relegation and banishment of disabled persons from participation, which results in discrimination against them.<sup>118</sup>

Much as the articulations of the Canadian Supreme Court in *Eaton's case* are agreeable in the context of hearing-impaired learners, it is considered necessary to indicate that the term reasonable accommodation as proposed by the Court ought to be engaged in a more than merely formal appreciation. The use of 'reasonable' is not to be used by the state as an excuse to claim undue hardship in the provision of accommodations for hearing-impaired learners in the school. The idea or standard in the implementation of reasonable accommodation is expected at all times to reflect a 'more than mere negligible effort' as highlighted in the case of *Central Okanagan School District No 23 v Renaud*<sup>119</sup> by the Canadian Supreme Court. In essence, any approach in line with the duty of providing reasonable accommodation must be compatible with values and principles underlying the application of substantive equality under the CRPD.<sup>120</sup> It must be seen to affirm and address human diversity and circumstances.

Under the Convention, the duty to provide reasonable accommodation is considered a non-discrimination duty.<sup>121</sup> As will be seen from the observation made by the CRPD Committee in General Comment 4, reasonable accommodation seeks to embrace

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<sup>116</sup> *MEC for Education: Kwazulu-Natal & Others v Pillay* (n 99 Above) Para 73.

<sup>117</sup> As above.

<sup>118</sup> *Eaton v Brant County Board Of Education* (n 115 above) Para 67.

<sup>119</sup> (1992) 2 SCR 970.

<sup>120</sup> CRPD, arts 2 & 24(2)(c).

<sup>121</sup> As above

inclusive equality in education for all.<sup>122</sup> Even more significantly, the state is enjoined to make adjustments that will enable hearing-impaired learners learn effectively.<sup>123</sup> The duty to reasonably accommodate requires that the general education system takes positive measures to provide modifications that are needed by hearing-impaired learners in the context of education in order to ensure equal access. Satisfying the test of reasonableness in this context is connected to the maximum use of existing and future resources by the state to provide effective accommodations for learners in order to foster equality. This resonates with the understanding that persons with disabilities due to their inherent self-esteem have a stake in as well as a claim on society that must be respected as different from contemplations of economic usefulness.<sup>124</sup>

All in all, persons with disabilities want to be recognised on their moral worth and provided the substantive support they require to put their rights into effect. In this regard, the logic and spirit behind the ethic of reasonable accommodation demands a reasonableness which calls on states to have an attitude of openness as instructed by Tollefsen.<sup>125</sup> The goal here, is mainly to provide what is needed to enable each individual participate fully to the extent possible in a non disabling environment.

Ideally, a political authority should attend to the common good of humanity by promoting human flourishing through the protection of human rights, for instance the advancement of the right to education and the rights in education. The political authority is expected to appreciate that access to language and an inclusive curriculum for example, can only be resourcefully developed and achieved within an education system that provides education personnel with the necessary accommodations, monitoring, directives, as well as re-orientating guidelines concerning curriculum designs, adaptation and implementation. This in turn indicates that inclusive education for learners, including the hearing-impaired learner depends on the stability of committed and exemplary governance that is answerable to citizens.

Much of this basically relates to inculcating political morality in leadership. Political morality can be inculcated in educational and governance institutions through encouraging support for moral norms by the political authority. The support for moral

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<sup>122</sup> See CRPD Committee in General Comment No 4 (n 1 above) para 27.

<sup>123</sup> As above..

<sup>124</sup> Quinn & Degener (n 112 above) 13.

<sup>125</sup> C Tollefsen 'Disability and social justice' in D Ralston & J Ho (eds) *Philosophical reflections on disability* (2010) 211.

norms must be seen in the private and public life of those in leadership positions. Their way of life has to reflect a prudent way of life, shunned embezzlement of public funds and non-abuse of public office. In the process, concerns about restoring human dignity and how to achieve individual justice in pursuance of the common good have to be made their personal ethics. In the long run, these values become instilled among public servants and even private sector workers as ‘shared values’ and in turn set the tone for government policy and legislation.

Little wonder, in the case of *Unokan Ent. LTD v Omovwie & Anor*<sup>126</sup> the Nigerian Court of Appeal, in search of justice raised a significant question ‘but will it be just?’ The learned Justice reiterated that courts have an obligation to render justice to all manner of people without showing favour to one party or disfavour to the other side in line with public interest. This intimates us that societal values parallel collective judgement which does not encourage society to stand neutral in issues bordering on morality. Embedded also in the decision is the idea that society can use the law to enforce morals to a very great extent. Indeed, this should be the true purpose of law in justifying the existence of any legal system as aptly captured by Finnis.<sup>127</sup>

Considering the important role education plays in the life of individuals, the initiation of an all inclusive system of education in Nigeria for primary school learners, including hearing-impaired learners require significant efforts as it is still fraught with gaps and inconsistencies. The gaps and inconsistencies presented in chapter 5 of this study demonstrate that realising inclusive education for hearing-impaired learners has political, economic and socio-cultural implications. The lack of political will in motivating directions and making systemic changes to the existing achievements in the provision of educational services for hearing-impaired learners can be improved.

It is problematic when schools are not made accessible to learners who have disabilities and this fosters systemic discrimination against hearing-impaired learners and other learners with disabilities. This informs the need to make objective investments in the education of the hearing-impaired learner and other persons with disabilities. While Nigeria has a national policy on education which recognises special education, there is

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<sup>126</sup> (2005) 1 NWLR (pt 907) 293.

<sup>127</sup> Finnis *Natural law and natural rights* (n 4 above) 154, 279.

yet no national legislation that directly gives effect to it. Thus, there is need for this policy prescription to be re-modelled in line with ethical norms and then codified into legislation in order to encourage implementation. Here, too the task of the judiciary in giving progressive interpretations regarding legislative provisions is inevitable.

### **3 Conclusion**

This chapter drew upon the prescriptive and directive conceptual approach associated with this study in interpreting findings relating to practices adopted in the education of hearing-impaired learners in Nigerian primary schools. Responses regarding the quality of services and provision of education facilities serving hearing-impaired learners in the special schools, special units and in the inclusive settings as shown are not encouraging. There are basic inadequacies in the formulation and implementation of the Nigeria's national education policy as it relates to the educational needs of hearing-impaired learners and other learners with disabilities.

Likewise, the practice in most schools surveyed is that teachers exemplify a routine approach by using speech technique and American Sign Language without blending and aligning their efforts towards the language of the child's immediate environment.<sup>128</sup> Very little provision is made at encouraging an age appropriate language and trying out different communication approaches in the classroom based on the heterogeneity of hearing-impaired group. Nigeria's National Policy on Education provides no system of supervisory mechanisms. Certainly, these do not portray an understanding and appreciation of the heterogeneous nature of the hearing-impaired group.

In reality, hearing-impaired learners communication needs differ, and teachers must be guided to offer communication strategies meeting individual learning needs. This in essence heightens the need to reduce teacher-learner ratio to the barest minimum so that every learner can receive attention. Consequently, the directive to use total communication, speech technique/sign language under the national policy document can become meaningful where teachers are sensitised that it involves the use of more than one approach in the 'most appropriate language, modes and means of communication' suitable to each learner. What is

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<sup>128</sup> It has been found that most times teachers fail to make a distinction between the acquisition of language by the hearing-impaired and the acquisition of English. Insistence on learning English instead of a most appropriate language often confuses the hearing-impaired learner. The situation is made worse when some teachers insist on the acquisition of English. See Ajavon (n 66 above) 4.

important at the end is that there is effective communication between the teacher and the learner, so that understanding and learning can be enhanced.

The continued disregard of the needs of hearing-impaired learners could only mean that the Nigerian Federal Ministry of Education and members of the Universal Basic Education Commission (UBEC) have not followed the spirit and content of their responsibilities under the Universal Basic Education Act in relation to hearing-impaired learners. Their powers and responsibilities as policymakers entail prescribing the minimum standards for basic education delivery throughout Nigeria in line with the National Policy on Education and ensuring effective monitoring of these standards.<sup>129</sup> They also have a duty to collate and prepare periodic master plans based on consultations from the state and relevant stakeholders for a balanced and co-ordinated development of basic education in Nigeria.<sup>130</sup> This invariably extends to identifying areas of possible intervention in the provision of adequate basic education facilities.

The Nigerian Federal Ministry of Education and members of the Universal Basic Education Commission (UBEC) also have the responsibility of presenting periodic reports on the implementation of universal basic education to the President through the education Minister.<sup>131</sup> Their responsibility also include supporting national capacity building for teachers and managers of basic education in Nigeria as well as curricula development and distribution of instructional materials for basic primary education in Nigeria.<sup>132</sup> Furthermore, they have the responsibility to carry out mass mobilisation and sensitisation of the general public and partnering with all stakeholders in basic education in order to achieve the general objectives of Compulsory Free Universal Basic Education in Nigeria.<sup>133</sup>

Despite the powers and responsibilities vested in members of the Universal Basic Education Commission (UBEC) under the UBEC Act, findings in this study show that the federal, state and local government education authorities have not been able to carry out the obligation of monitoring, planning and providing for the needs of learners with disabilities, including hearing-impaired learners at the primary level of education.<sup>134</sup> Without doubt, primary

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<sup>129</sup> See Nigeria Compulsory, Free Universal Basic Education Act, 2004, sec 9.

<sup>130</sup> As above.

<sup>131</sup> As above.

<sup>132</sup> As above.

<sup>133</sup> As above.

<sup>134</sup> See CRPD Committee in General Comment No 4 (n 1 above) paras 72 & 73 calling for a comprehensive national plan of action for all learners.



education for hearing-impaired learners' falls within basic education delivery, and the Nigerian Universal Basic Education Commission as the major intervention and monitoring agency are obligated to carry out their responsibilities in this regard.

Consequently, findings made in this study ought to be considered and engaged with if inclusive education is to be realised for hearing-impaired learners. On this basis, Nigeria's Universal Basic Education Commission must work closely with head teachers and other teachers because they are the key executors of inclusive education process. Secondly, the appointment of State Universal Basic Education Commission chairperson and headship of units in the various states should prioritise the selection of professional educationists whose ideas can enhance development for primary school learners in the states. These must be people that have risen within the ranks in the education ministry and must have gained the requisite experience for all-round delivery and monitoring. Finally, tension free communication practice must be established between Universal Basic Education Commission as policymakers and other stakeholders like teachers, parents and the learners themselves. This will surely open a window of opportunity for vital information exchange regarding needs, implementation plans and goal attainment.

In the prescriptive sense, it is hoped that the discursive interpretation that this chapter has applied to findings relating to approaches adopted in the education of hearing-impaired learners in Nigerian primary schools will motivate changes within Nigeria's general education system. It is also hoped that the analysis provided will prompt the appreciation of every learner as a human being irrespective of capability or bodily impairment. Closely related to the fact stated immediately above is a direction that Nigeria's educational system ought not to segregate learners based upon embedded judgements of abnormality.

Discursive interpretation speaks to the necessity of transforming existing exclusionary approaches adopted in the delivery of education of hearing-impaired learners through practices open to the power of reason. It lends itself to the analysis of issues relating to the ethical commitment of the state, socio-cultural attitudes, the lived experiences of the hearing-impaired learner in the Nigerian school system, and the need to provide accommodations. It also facilitated discussions on the discrimination and inequalities that have become 'normalised' and adopted in the education of hearing-impaired learners in Nigeria as a result

of historical power relations. Indeed, the discussion of historical power relations as it affects the hearing-impaired may not permit us to undo the past, but it motivates us to develop the rationality base to discern the basic forms of good, act towards them and exclude mere bias.<sup>135</sup>

The discernment to act indeed has to do with a ‘proposal to do such and such in order to bring about a state of affairs or an end’.<sup>136</sup> This in practice requires the forming of honest obligations and other exacting actions that will enable the promotion of the good of inclusive education for hearing-impaired learners and other learners with disabilities. What this demonstrates is that the Nigerian educational system, especially policymakers can no longer assume that approaches adopted in the education of all primary school learners in Nigeria are adequate. This reasonably reinforces the understanding that the state should be responsible for instantiating the good of inclusive education since the state is seen as the ‘community co-operating in the service of a common good’.<sup>137</sup> Ideally, the state as the political authority subject to law is indispensable in the pursuit of all basic goods as against individuals, families or organisations that lack the social coordination and other conditions decisively necessary to competently pursue the basic goods.

Accordingly, the state is encouraged to ensure that hearing-impaired learners and other learners with disabilities are provided inclusivity in education as a matter of justice. Practically, this consists of paying expressive testimony to Nigeria’s national pledge and national anthem. Nigeria’s national anthem in the second stanza talks about ‘guiding our leaders’ right in building a nation where peace and justice shall reign’. Guiding our leaders towards building a nation where peace and justice shall reign, contemplates treating individuals in the society with some measure of fairness without oppressing anyone. Allowing acts or practices that hinder or damage the realisation of inclusive education for hearing-impaired learners by the state is incompatible with respecting the noble objectives of the Nigerian anthem and the normative value of inclusive education. Thus the question that must be raised is, in view of the philosophical interpretation of inclusive education rendered so far, what kind of complementary jurisprudence does Nigeria need? This idea will be discussed in the next chapter

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<sup>135</sup> Finnis *Natural law and natural rights* (n 4 above) 108.

<sup>136</sup> C Tollefsen ‘Natural law theory and modern meta-ethics: A guided tour’ in M Cherry (ed) *Natural law and the possibility of a global ethic* (2004).

<sup>137</sup> J Finnis ‘Is natural law theory compatible with limited government?’ in RP George (ed) *Natural law, liberalism and morality* (1996) 5.

## Chapter 7

### **Achieving inclusive justice in education for hearing-impaired learners: Lessons from Canada and South Africa**

#### **1 Introduction**

This chapter seeks to explore the non-discriminatory and equality agenda in the Canadian and South African jurisdictions, with a view to impart future development of Nigeria's equality provisions, particularly in the context of achieving inclusive equality in education for hearing-impaired learners. It has been observed that a correlation exists between equality and non-discrimination.<sup>1</sup> As a result, appreciating the non-discriminatory provision under Nigerian law invites an examination of equality characteristics *vis a vis* acceptable legal standards and present day democratic states.<sup>2</sup> This is intended to communicate possible insights that Nigeria can borrow, as well as refrain from, in order to make progress towards the realisation of inclusive equality in education for hearing-impaired learners.

The premise is that the equality and non-discrimination provisions under the 1999 Constitution of the Federal Republic of Nigeria as amended (Constitution), is largely conceived in terms of formal justice that diminishes equality in the scheme of distribution and redistribution of community goods and services.<sup>3</sup> Also Nigeria's legislators, executive and judiciary are still confronted with difficulties in effecting and entrenching the fundamentals for the establishment, interpretation and implementation of concepts like non-discrimination and equality for its diverse citizens. At the same time, looking at jurisdictions with seemingly developed jurisprudence in the area of inclusive equality is considered relevant due to the rarity of Nigerian courts jurisprudence on equality and non-discrimination. It is the position of this thesis that aside the lack of eagerness by the courts to entertain equality and non-discrimination questions, little or no awareness, among the polity, influences such inabilities.

Invariably, the courts can only do as much as is before them. As a result, the need to look at other jurisdictions, particularly those that have developed equality jurisprudence in the area

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<sup>1</sup> G Evadre 'Dignity and equality' (2007) 7 *Human Rights Law Review* 300; C McCrudden 'Equality and non-discrimination' in D Feldman (ed) *English public law* (2004) 581.

<sup>2</sup> United Nations equality jurisprudence is considered instructive and the equality jurisprudence of states like Canada, South Africa, and Ireland.

<sup>3</sup> Nigerian Constitution, sec 42.

of disability and education is considered.<sup>4</sup> This is contemplated in order to explore in a prescriptive and directive sense, possible opportunities towards the realisation of inclusive education for hearing-impaired learners in Nigeria.<sup>5</sup> The prescriptive and directive approach as argued in preceding chapters, and especially in Chapter two, were arguments for the interpretation and execution of justice in a manner that is inclusively responsive and relational to individuals in the society.<sup>6</sup>

It is acknowledged that the equality and non-discrimination agenda has to be situated within each jurisdiction's historical circumstances and cultural context. At the same time, building upon aspirations of providing a constitution for the purpose of promoting the good government and welfare of all persons in Nigeria on the principles of freedom, equality and justice ought to be concretised.<sup>7</sup> This is premised on the idea drawn from Finnis postulations which suggest that underlying justifiable inquiry in any normative political philosophy are concerns as to whether specific principles, law and practices are 'sound, true, good, reasonable, decent, just, fair, compatible and the like'.<sup>8</sup> The basic rationale for exploring other jurisdictions equality jurisprudence is not so much to compare but awareness raising. This will enable courts and other institutions in Nigeria to be aware of the potential of equality and non-discrimination clauses if interpreted with inclusive equality in mind. As derived from Freund and Markesinis thoughts, comparative law is not intended here as 'simplistic' reliance on foreign jurisprudence,<sup>9</sup> rather it is intended to discover the manner in which relevant jurisdictions have dealt with related experiences and constitutional legal concept.

The reason for choosing South Africa and Canada is based on the fact that both jurisdictions have developed progressive equality jurisprudence. In short, South Africa has borrowed much of its equality sensitivity from Canada.<sup>10</sup> Canada also has instructive appellate court

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<sup>4</sup> See Section 1 of Chapter 1 of this study.

<sup>5</sup> The prescriptive and directive approach was explained in Chapter 2 as the conceptual framework of this study which suggests the path the Nigerian state can follow towards the transformation of its equality and non-discriminatory laws in the context of education for hearing-impaired learners.

<sup>6</sup> See Section 3.1 of Chapter 2.

<sup>7</sup> As posited in the Preamble to the Nigerian Constitution.

<sup>8</sup> See J Finnis *Human rights and common good* (2011) 94.

<sup>9</sup> B Markesinis 'Our debt to Europe: Past, present and future' in B Markesinis (ed) *The coming together of the common Law and civil Law* (2000) 49; O Kahn-Freund 'On uses and misuses of comparative law' (1974) 37 *Modern Law Review* (1974) 1.

<sup>10</sup> J Sarkin 'The effect of constitutional borrowing on the drafting of South Africa's Bill of Rights and interpretation of human rights provisions borrowing' (1998) 1 *University of Pennsylvania law School Journal of Constitutional Law* 177; CG Ngwena 'Western Cape Forum for Intellectual Disability v Government of the

decisions on inclusive education with respect to persons with disabilities. Canada's inclusive disposition has been influenced by the need to achieve linguistic justice for minority indigenous language groups, colonisation of the indigenous people and 'modern cosmopolitanism'.<sup>11</sup> For South Africa, its equality disposition has been essentially influenced by the history of apartheid and the need to make reparations.<sup>12</sup> Canada and South Africa like Nigeria have equality guarantees in their different Constitutions that have emulated the Fourteenth Amendment in the US Constitution adopted in 1870. There was a time when, the United States of America had provided first-hand experience on constitutional theory and practice. However, Canada and South Africa have gone ahead to augment and expand the equality provisions in their existing Constitutions.<sup>13</sup> Canada and South Africa, unlike Nigeria, have strengthened older and limited interpretations of equality to read in not just the general equality guarantee of equality before and under the law. It also includes the right to equal protection and equal benefit of the law, the approval of affirmative action and anti-discrimination provisions as well as an expanded wording of prohibited grounds of discrimination.<sup>14</sup>

What is important therefore is to highlight normative imperatives the Nigerian legislature, executive and the judiciary can practically act upon in comparable circumstances. Set against the background of a prescriptive and directive approach, the question asked is whether the Canadian and South African contexts regarding access to inclusive equality in education can inform inclusive responses to the education of hearing-impaired learners in Nigeria. In determining this issue, the chapter is divided into four sections. The present section is the introduction. Section two examines the content of the equality and non-discrimination laws within the two jurisdictions and analyses it in the context of education for learners with disabilities. Section three highlights the differences between Nigerian law and the two jurisdictions discussed, by highlighting Nigeria's non-discrimination and education laws,

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Republic of South Africa: A case study of contradictions in inclusive education' (2013) 1 *African Disability Rights Yearbook* 139.

<sup>11</sup> S Fredman 'Comparative study of anti-discrimination and equality laws of the US, Canada, South Africa and India' Report submitted on the authority of the European Network of Legal Experts in the non-discrimination field to European Commission (2012) 17; P Kruger 'A critical appraisal of *Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa*' (2015)18 *Potchefstroom Electronic Law Journal* 757.

<sup>12</sup> As above.

<sup>13</sup> In the case of Nigeria, its Constitution drew from the American model of federalism, the presidential system of government and the process of constitutional amendment(s). For Canada and South Africa, a comparative study of their jurisdictions provides foundation regarding this perspective, see Fredman (n 11 above) 14.

<sup>14</sup> See the Constitution Act 1982 Canadian Charter of Rights and Freedoms, sec 15 and the South African Constitution,1996 (Act 108 of 1996), Sec 9.

protected grounds, Nigeria's equality content and the idea of progressive realisation of the right to education. Section four is the conclusion.

## **2 The content of inclusive equality provisions within the two jurisdictions: Implications for the education rights of learners with disabilities**

Within the Canadian and South African jurisdictions, it could be gleaned that the value attached to equality and non-discrimination is that based on substance and purpose.<sup>15</sup> Within the two jurisdictions, there have been important insights that equality goes beyond sameness treatment.<sup>16</sup> Courts within these jurisdictions have tended to conceive equality in terms of what is fair and acceptable in any given situation concerning the formulation and application of law. This they have also conceived as substantive equality or fairness. In the Canadian case of *Andrew v Law and Society of British Columbia*,<sup>17</sup> the Supreme Court was of the opinion that the Canadian Charter does not protect equality in an abstract sense, rather it is concerned with the application of the law under discernable conditions by comparing the situation of people in the socio-political environment.<sup>18</sup> Likewise in *Law v Canada*<sup>19</sup> the Supreme Court of Canada took a substantive disposition towards the development of equality law.

Similarly, the South African jurisdiction has consistently framed equality in terms of substantive stipulations. As may be observed from the Constitutional Court's interpretations in *Harksen v Lane NO*,<sup>20</sup> and *Prinsloo v Van der Linde*,<sup>21</sup> ascertaining fairness is very essential in developing substantive equality. Accordingly, relating substance with equality points towards a rational consciousness regarding the real social and economic conditions of individuals or groups in determining equality in the society.<sup>22</sup> It becomes necessary that the social environment must be adapted to accommodate historically vulnerable groups, like learners with disabilities.

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<sup>15</sup> This is evidenced from an entire reading of sec 15 of the Canadian Charter and sec 9 of the South African Constitution.

<sup>16</sup> As above.

<sup>17</sup> (1989) 1 SCR 143.

<sup>18</sup> *Andrew's case* (n 17 above) per McIntyre J.

<sup>19</sup> (1999) 1 SCR 497.

<sup>20</sup> 1998 (1) SA 300 (CC).

<sup>21</sup> 1997 (6) BCLR 759 (CC).

<sup>22</sup> Ilze Grobbelaar-du Plessis & Stefan van Eck 'Protection of disabled employees in South Africa: An analysis of the constitution and labour legislation' in Ilze Grobbelaar-du Plessis & T van Reenen (eds) *Aspects of Disability law in Africa* (2011) 239.

Indeed it has been highlighted that the obligation to accommodate is an important aspect of substantive equality.<sup>23</sup> This is also reiterated in the Canadian case of *Eldridge v British Columbia*<sup>24</sup> and *Emily Eaton v Brant County Board of Education*<sup>25</sup> where the Supreme Court posited that preventing discrimination on grounds of disability is synonymous with making distinctions, and fine-tuning society in line with the actual personal characteristics of persons with disabilities.<sup>26</sup> Under Canadian law, the duty to accommodate is considered part of the objectives of the Canadian human rights law. Within the South African jurisdiction, the constitutional provision regarding the duty to accommodate has also been developed statutorily and extends to disability issues. Further, the Constitutional Court enunciated in the case of *MEC for Education: KwaZulu-Natal and Others v Pillay*,<sup>27</sup> that the South Africa Constitution values dignity, equality, as well as freedom and therefore requires people to act positively to accommodate diversity.<sup>28</sup>

On the approach adopted with respect to protected grounds of discrimination, the two jurisdictions allow judges the room to expand the list to include analogous grounds.<sup>29</sup> Also, the two jurisdictions expressly mention disability as a protected ground constitutionally and by way of legislation.<sup>30</sup> This exemplifies the importance the jurisdictions attach to protected grounds, including disability. It also signifies a rational endeavour towards empowering vulnerable persons like persons with disabilities, including hearing-impaired learners.

Within the Canadian and South African jurisdictions, it is noted that all distinctions or differentiation may not be considered unfair or discriminatory.<sup>31</sup> The Canadian case of *Andrew v Law and Society of British Columbia*<sup>32</sup> and the South African case of *Harksen v*

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<sup>23</sup> Ngwena (n 10 above) 157; Fredman (n 11 above) 55.

<sup>24</sup> (1997) 3 SCR 624 para 63.

<sup>25</sup> (1997) 1 SCR 241.

<sup>26</sup> *Eldridge's case* (n 24 above) para 65, *Emily Eaton's case* (n 25 above) Per Justice Sopinka. The decision in *Emily Eaton's case* is deemed antithetical to the decision in *Eldridge's case*, because in the final analysis, the Canadian Supreme Court in *Emily Eaton's case*, rejected a presumption in favour of integration, this shall be discussed as the chapter progresses.

<sup>27</sup> 2008 (2) BCLR 99 (CC).

<sup>28</sup> *MEC for Education case* above para 73.

<sup>29</sup> See section 15(1) of the Canadian Charter that uses the words 'in particular...' and sec 9(3) of the South African Constitution that used the term 'including...'

<sup>30</sup> At statutory level, it has been found that Canadian statutes have a closed but broadened list of protected grounds of discrimination. This is unlike South Africa where protected grounds of discrimination contained in legislations are synonymous with what is obtainable at the constitutional level. See Fredman (n 11 above) 36-37.

<sup>31</sup> *President of the Republic of South Africa v Hugo* 1997 (6) BCLR 708 (CC).

<sup>32</sup> *Andrew v Law and Society of British Columbia* (n 17 above).

*Lane NO*<sup>33</sup> are instructive in this respect due to the guidelines for determining unfair discrimination developed therein. The decisive factor as gathered has to do with the impact of the discrimination on the dignity of the complainant. Centrally, focus is on the social and economic condition of the injured party in the society, the underlying intent regarding the discrimination, the extent to which the interests of the injured party have been affected, including whether the discrimination has affected the dignity of the injured party.<sup>34</sup>

*Harksen v Lane NO* further articulated stages in which questions regarding unfair discrimination must be considered. The stages have been summarised to reflect: (1) whether the particular act differentiates between people or categories of people (2) If it does, whether the differentiation amounts to unfair discrimination (3) if the unfair discrimination is ascertained, whether it can be justified in terms of the limitation clause under the South African Constitution.<sup>35</sup> These stages were also recognised and reiterated by the South African Constitutional Court in *National Coalition for Gay & Lesbian Equality v Minister of Justice*.<sup>36</sup>

From the case law highlighted, it could be gathered that the recognition of each individual's dignity is indeed crucial in determining unfair discrimination for purposes of achieving equality. This implies that determinations regarding equality and unfair discrimination must inevitably be context specific so that the approaches set out, for example in *Andrew v Law and Society of British Columbia*<sup>37</sup> and *Harksen v Lane NO*,<sup>38</sup> can become useful in providing the jurisprudential basis for realising the constitutional guarantee of education as well. The role of the courts in building this all-important jurisprudence has greatly improved the delivery of various social services within these jurisdictions and especially in South Africa. It is consequently, the aspiration of this thesis to proffer viable recommendations that will set the growth of the Nigerian jurisprudence in this area.

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<sup>33</sup> *Harksen v Lane NO* (n 20 above) para 53.

<sup>34</sup> As exemplified in the Canadian Supreme Court cases of *Andrew v Law and Society of British Columbia* (n 17 above); *Law v Canada* (n 19 above) as well as the South African case of *Harksen v Lane NO and Others* (n 20 above) paras 50-53 and *Hoffman v South African Airways* 2006 (3) BCLR 355 (CC); See also the comments of Ngwena (n 10 above) 154.

<sup>35</sup> Ngwena (n 10 above) 153.

<sup>36</sup> 2000 (1) BCLR 39 (CC).

<sup>37</sup> *Andrew's case* (n 17 above).

<sup>38</sup> *Harksen's case* (n 20 above).



Constitutionally, another accepted aspect of equality within the two jurisdictions is affirmative action.<sup>39</sup> This is based on the understanding that equality goes beyond sameness of treatment and that affirmative action can be used to achieve substantive equality. Within the Canadian jurisdiction, it was held in *R v Kapp*<sup>40</sup> that affirmative action complements the vision of substantive equality under section 15(1).<sup>41</sup> Likewise, in the South African case of *Minister of Justice v Van Heerden*,<sup>42</sup> it was stated that affirmative measures do not deviate from the right to equality guaranteed under the Constitution.<sup>43</sup> In all, the chances are that affirmative action could be used to contemplate the educational interest of learners with disabilities as a group. Sadly, the road seems far for Nigeria in following this pathway. Only recently Nigerian legislatures shut down a bill proposing affirmative action for women in the National Assembly.<sup>44</sup>

At a more general level, it is of importance that the equality content of the Canadian and South African jurisdictions as well as interpretations by their courts, have resulted in the building of a body of normative jurisprudence relevant to the education of learners with disabilities. However, for purposes of comparative law, the extent to which these normative principles have been implemented and interpreted in the context of education for learners with disabilities in certain instances within the two jurisdictions is considered discouraging. It remains possible that such an approach cannot inform future practice and development of Nigeria's equality and non-discrimination paradigm.

As alluded to in the introduction of this chapter, the purpose of engaging in comparative law is to illuminate and illustrate appropriate models that Nigeria can borrow in order to make progress towards the realisation of inclusive education for the hearing-impaired learner and other learners with disabilities. The study shall now examine the extent the learning needs of learners with disabilities are accommodated within the two jurisdictions by leaning on their apex court's equality jurisprudence. For purposes of brevity, the study shall particularly consider selected current leading cases in this regard. In addition, highlighting certain challenges could be important. This would involve proposing means of navigating or

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<sup>39</sup> Canadian Charter, sec 15(2); South African Constitution, sec 9(2).

<sup>40</sup> 2008 SCC 41.

<sup>41</sup> *R v Kapp* as above, para 16.

<sup>42</sup> 2004 (11) BCLR 1125 (CC).

<sup>43</sup> *Minister of Justice v Van Heerden* as above, para 30.

<sup>44</sup> 'Northern Senators reject bill on gender equality' *The Vanguard* 16 March 2016 3.

ameliorating them in order to ensure that Nigeria embraces the hybrid system for better efficiency.

## 2.1 Canada: discouraging signs

In spite of the existing Canadian Charter, the Provincial Human Rights Codes and Education School Acts advancing the inclusion of learners with disabilities, there are still indications that Canadian school boards have been passive in promoting equality and inclusion.<sup>45</sup> This has led to occurrences where learners with disabilities are merely allowed to stay in schools without adequate accommodating services.<sup>46</sup> Yet these concerns have been lightly and unpredictably evaluated in Canadian judicial reviews.<sup>47</sup> For example in *Eaton v Brant County Board of Education*,<sup>48</sup> a case involving a child learner with disabilities. The Ontario School Board's Identification, Placement and Review Committee maintained that Emily was best suited for special school education without consulting Emily's parents as well as providing needed accommodations.<sup>49</sup>

Emily's parents appealed to the Education Appeal Board and Special Education Tribunal respectively, but the Board and the Tribunal confirmed the decision of the Ontario School Board's Identification, Placement and Review Committee.<sup>50</sup> The Tribunal argued that special school education was appropriate for Emily, as the adapted curriculum was not in parity with the curriculum used by the regular students and that schooling in an integrated, mainstream or regular setting would only serve to exclude Emily.<sup>51</sup> Similarly, it found that Emily's needs required individualised attention that could only be provided in a segregated setting because she still found it difficult to effectively communicate through sign language.<sup>52</sup> Among other things, the Tribunal concluded that it is in evidence that Emily's emotional, physical and intellectual needs were not met in the integrated, mainstream or regular setting that she attended for three years.<sup>53</sup> The Tribunal therefore held that neither the Ontario Human Rights

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<sup>45</sup> R Malhotra & RF Hansen 'The United Nations Convention on the Rights of Persons with Disabilities and its implications for the equality rights of Canadians with disabilities: The case of education' (2011) 29 *Windsor Yearbook of Access to Justice* 91.

<sup>46</sup> N Hansen 'Spaces of education: Finding a place that fits' (2005) 3 *Review of Disability Studies* 24; R Malhotra & M Rowe *Exploring disability identity and disability through the narratives: Finding a voice of their own* (2014).

<sup>47</sup> Malhotra & Hansen (n 45 above) 91

<sup>48</sup> *Eaton's case* (n 25 above).

<sup>49</sup> As above, paras 6-7.

<sup>50</sup> *Eaton's case*, para 8.

<sup>51</sup> *Eaton's case*, para 17.

<sup>52</sup> *Eaton's case*, para 18.

<sup>53</sup> *Eaton's case*, paras 21-22.

Code nor the Canadian Charter was breached by the Board's decision to place Emily in a segregated setting in spite of the lack of consent from her parents.<sup>54</sup>

Emily's parents took the matter to the Divisional Court. The Court also found that the Canadian Charter was not violated as there was no presumption in favour of integration of students with disabilities under the Canadian Charter according to the Court.<sup>55</sup> However the matter went to the Ontario Court of Appeal and the Court allowed Emily's appeal and set aside the Tribunal's order.<sup>56</sup> The Ontario Court of Appeal found a violation of section 15 of the Canadian Charter and the Education Act, 1990. It held that section 8 of the Education Act ought to be read as including a direction that least exclusionary option should be selected as a last resort. According to the Court, this should be synonymous with an environment that is capable of accommodating the learner's needs, except where the parents give consent to a segregated placement.<sup>57</sup> The Court of Appeal concluded that section 15 is in favour of integration in a regular school.

The School Board then appealed to the Supreme Court of Canada. The Court allowed their appeal and found that the Tribunal's order did not violate section 15 of the Canadian Charter. The Court stated that a presumption of integration would work to the disadvantage of pupils who would have benefitted more from special education placement.<sup>58</sup> It then concluded that the best interests of the student with a disability should not be burdened with a presumption in favour of integration.<sup>59</sup> Thus the Court seemed not to consider the non-provision of accommodation for learners with disabilities in integrated or regular settings as equally important in achieving inclusive equality. Regular or special schools ought to provide meaningful options for learners. The focus should be on guaranteeing learners with disabilities full participation within the general the general education system. The Court also failed to consider that special education placement is a choice that must be consented to by the learner or his parents as implied under Ontario's Education Act.<sup>60</sup>

The main issue in this case can be linked to the effect of equality and non-discrimination provisions in the choice between regular education and special education for learners with

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<sup>54</sup> *Eaton's case*, para 23.

<sup>55</sup> *Eaton's case*, paras 24-29.

<sup>56</sup> *Eaton's case*, para 34.

<sup>57</sup> *Eaton's case*, para 40-41.

<sup>58</sup> *Eaton's case*, paras 79-80.

<sup>59</sup> As above.

<sup>60</sup> See sec 8(3) of Education Act, R.S.O. 1990, c. E.2.

disabilities. The Supreme Court's decision rejecting a constitutional presumption of integration is unhelpful. As aptly noted by Pothier,<sup>61</sup> it evokes a memory of 'separate but equal' doctrine that acquired negative reputation after it was used by the US Supreme Court in *Plessy v Ferguson*,<sup>62</sup> which involved a challenge to racial segregation.<sup>63</sup> Against a historical backdrop where segregation has been used to exclude and stigmatise a group, a presumption of integration is required in order to counteract the continuing harm and forestall the creation of hierarchical difference.<sup>64</sup>

On the other hand, it is acknowledged that 'separate but equal' as a principle, is not always harmful, particularly in contexts where it is required by a linguistic or cultural minority in respect of education rights protected under section 24 of the CRPD to achieve equality. This is acceptable provided it is not used as a label of inferiority,<sup>65</sup> or imposed by a dominant majority.<sup>66</sup> As Pothier argues, a segregated education should not be relied upon as an alternative to the shortfall of integrated education.<sup>67</sup> The unreliable nature of the Supreme Court decision further lies in the fact that Emily was later integrated in a catholic school board even while the Supreme Court had confirmed that she was more appropriately suited to special education classes. Therefore in spite of the legal decisions against her integration, she was actually accommodated and integrated in a regular school setting.

In *Auton (Guardian ad litem of) v British Columbia (Attorney General)*,<sup>68</sup> the Supreme Court of Canada had to determine whether section 15 of the Canadian Charter was breached by the British Columbian government's refusal to provide a specialised treatment for pre-school autistic children.<sup>69</sup> But before the case got to the Supreme Court, the trial court and the British Columbian Court of Appeal found a violation of section 15 on the ground that failure to fund the treatment to support the complaints amounts to further marginalisation of an

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<sup>61</sup>See Diane Pothier of the Women's Court of Canada in the moot reconsideration of *Eaton v Brant County Board of education* - D Pothier 'The Women's Court of Canada: *Eaton v Brant County Board of Education*' (2006) 1 W.C.R. 124. This is a mock reconsideration of the decision of the Supreme Court of Canada in *Eaton v Brant County Board of Education* para 25-35.

<sup>62</sup> 163 U.S 537 (1896).

<sup>63</sup> *Plessy v Ferguson* as above, para 25.

<sup>64</sup> *Plessy v Ferguson* (n 62 above) para 27.

<sup>65</sup> As suggested by C Lawrence 'One more river to cross', recognising the real injury in *Brown*: A prerequisite to shaping new remedies' in D Bell (ed) *Shades of brown: New perspectives on school desegregation* (1980) 49 at 52. In *Emily Eaton's* case, the Ontario Court of Appeal at para 6, alluded to *Brown v Board of Education of Topeka, Kansas* 347 U.S. 483 (1954) that overruled the decision in *Plessy's* case (n 62 above) as a bearing for sanctioning a constitutional presumption of integration.

<sup>66</sup> As highlighted by Justice Arbour of the Court of Appeal in *Eaton's* case, (n 25 above) at 15.

<sup>67</sup> Pothier (n 61 above) 18.

<sup>68</sup> 2004 SCC 78.

<sup>69</sup> *Auton (Guardian ad litem of) v British Columbia (Attorney General)* as above, paras 1-13.

already underprivileged group.<sup>70</sup> The Supreme Court of Canada decided that the denial of funding is not a breach of section 15 as the claim by the complainants is not prescribed under the law. The Supreme Court posited that the law only made provisions for core services and for which ABA/IBI treatment is not included. It further held that there was no discrimination under the law as the comparator group would be non-disabled or none mentally disabled individual seeking medical treatment that is not core. As the complainants could not provide evidence regarding the comparator group, their claim must fail according to the Supreme Court.

The Supreme Court's ruling seems to suggest an understanding of a non-existent obligation to provide accommodation in line with necessary medical needs. By maintaining that the Canadian Health Act and the British Columbia Medicare Protection Act is not intended to meet all medical needs, the Court implicitly absolves the state of the positive obligation to support inclusive equality and to accommodate all. This in essence amounts to a conception of the disability of the autistic children as their personal problem in line with the medical model of disability. It also connotes a formalistic view of section 15 of the Charter. What is provided for under a law is quite different from what is needed. When a law is under inclusive, it is expected that a court should seek to rectify such systemic inequality at least through its decisions.

Similar Canadian cases involving educational services for learners with autism that are also discouraging are *Wynberg v Ontario*<sup>71</sup> and *Hewko v British Columbia*<sup>72</sup>. In *Wynberg's case*<sup>73</sup>, the Ontario Court of Appeal allowed the appeal of the trial court's decision that found a violation of section 15 by the Ontario government. An appeal to the Supreme Court of Canada was not allowed and the Court of Appeal held that there was no Charter violation as the impact of the denial to provide intensive early intervention program for children over six years was relatively minimal.<sup>74</sup> The Court opined that the age limit was rationally linked to the objectives of the intensive early intervention program in line with expert's suggestion that the program benefited children less than six years. In this case, consideration was also given to the Court's 'historic policy' of deference to the intention of the legislature in issues

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<sup>70</sup> *Auton (Guardian ad litem) v British Columbia (Minister of Health)*, 2000 BCSC 1142 (2000) BCJ 1547 per Justice Allen at 140-152.

<sup>71</sup> 2006 82 O.R (3d) 561 at 10-13, 79-80.

<sup>72</sup> 2006 BCSC 1638.

<sup>73</sup> *Wynberg's case* (n 71 above).

<sup>74</sup> As above paras 75-77.

relating to complex distributive programmes.<sup>75</sup> Thus, it is worth highlighting that this deference of the Court to the intention of the legislature diminishes future prospects of actualising the common good of all and is thus detrimental.

In *Hewko 's case*,<sup>76</sup> the claimants had partial success regarding a breach of a statutory duty to consult with parents in relation to learners' educational programmes, but the British Columbia Supreme Court had to hold that the duty to provide accommodation cannot be held against the school district.<sup>77</sup> The ruling of the Court was however not appealed by any of the parties. Indeed, the ruling of the British Columbia Supreme Court absolves the school district from making positive adjustments to accommodate learners with disabilities. In effect, this serves to deny the value of education as well as dignity of learners that tangibly require the taking of difference into consideration. Thus far, Canadian courts' restrictive approach in the foregoing cases ought to be avoided, if Nigeria is to complement the philosophical interpretation of inclusive education rendered so far in this study. This is based on the reasoning that the highlighted decisions do not have the capacity to respond to a philosophy of inclusive education for Nigerian learners with disabilities, including hearing-impaired learners.

## **2.2 South Africa: discouraging signs**

South Africa like Canada has made serious efforts towards fulfilling its obligations regarding inclusive equality in education for learners with disabilities under international human rights instruments like the International Covenant on Civil and Political Right, International Covenant on Economic Social and Cultural Right, Convention on the Rights of the Child and most currently CRPD. This it has done in its Constitution, legislation, policy document and developed equality jurisprudence as we have seen. However, South Africa as has been observed, is yet to *collectively* realise the constitutional right to basic education for everyone, including learners with disabilities.<sup>78</sup> Particularly challenging for learners with disabilities is the capricious attitude and approach surrounding the accommodation of their educational needs by the state.

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<sup>75</sup> *Wynberg 's case* (n 71 above) paras 174-186.

<sup>76</sup> *Hewko 's case* (n 72 above).

<sup>77</sup> As above, para 380.

<sup>78</sup> D Isaacs 'Interpreting, litigating and realizing the right to education in South Africa: Lessons from America' (2010) 26 *South African Journal of Human Rights* 356, emphasis mine.

As highlighted in the submissions made in *Western Cape Forum for intellectual Disability v Government of the Republic of South Africa & Another*,<sup>79</sup> notions of ableism and unequal citizenship still persist.<sup>80</sup> The facts of the case disclose the non-provision of schools and unfavourable financial distribution for learners with severe and profound disabilities based on a screening assessment.<sup>81</sup> The state further made educational provision for learners with severe and profound intellectual disabilities dependent on a future date.<sup>82</sup> However, the state assumed that such learners could get services from special care centres run by voluntary organisation indirectly funded by the state through the health department. The most the education department could do for learners with severe and profound disabilities was to provide an amount less than what learners classified as having moderate to mild intellectual disabilities and those in the regular received through the health department.

Not surprising, the *Western Cape High Court* found a breach of the constitutional right to education.<sup>83</sup> The Court also condemned certain provisions of the White Paper 6 that were unfairly discriminatory and constituted a breach of the right to human dignity of the learners with severe and profound disabilities.<sup>84</sup> Particularly, the Court found that the state education policy treated children with severe or profound intellectual disability differently in the provision of quality education and financial support. The Court also highlighted that the state education policy had the effect of reducing the dignity of children with severe or profound intellectual disability as well as labelling them.<sup>85</sup> It further held the state accountable for negative discrimination and the inability to meet the learning needs of such learners with severe and profound intellectual disability.

The Court's approach certainly aligns with the Constitutional Court's equality jurisprudence. Yet, while the ruling of the *Western Cape High Court* is commendable, there are concerns that the Court seemed to agree that the right to basic education is not immediately realisable. This is in view of its ruling that allows the state to take reasonable measures to realise the

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<sup>79</sup> 2011 5 SA 87 (WCC).

<sup>80</sup> Insights gathered from a reading of Chaskalson's work, see A Chaskalson 'The Third Bram Fischer lecture: Human dignity as a foundational value of our constitutional order' (2000) 16 *South African Journal on Human rights* 193.

<sup>81</sup> *Western Cape Forum for Intellectual Disability* case (n 79 above) paras 3-19.

<sup>82</sup> As articulated in South African Department of Education 'White Paper 6: Special needs education: Building an inclusive education and training system' (July 2001).

<sup>83</sup> See South African Constitution, sec 29.

<sup>84</sup> In view of the provisions articulated in the South African Constitution, secs 9 and 10.

<sup>85</sup> *Western Cape Forum for Intellectual Disability* case (n 79 above), para 46.

right to basic education for learners with severe and profound disabilities.<sup>86</sup> The nature of the right to basic education requires that the state take *all* reasonable measures to realise the right *with immediate effect*.<sup>87</sup> This entails that all necessary conditions for the immediate realisation of the right to basic education be accommodated and provided. Indeed, the approach of the *Western Cape High Court* contradicts the right to basic education as provided under section 29(1)(a) of the South African Constitution. Basic education as posited under section (29)(1)(a) is an immediately realisable right as against further education which is conceived as a progressive right. Similar construction regarding basic education as an immediately realisable right is found in the United Nations Economic, Social and Cultural Rights Committee General comments on education.<sup>88</sup>

In the recent case of *Tripartite Steering Committee and Another v Minister of Basic Education and Others*,<sup>89</sup> the validity of the decisions of the Eastern Cape Department of Education to refuse learners who live a distance from their school transportation to school and back was also under probe. The issue was whether access to school, which is a necessary aspect of the right to basic education guaranteed to everyone under section 29 of the South African Constitution, is a *Sine qua non* for the realisation of the right to education.<sup>90</sup> As anticipated, the Court in its decision held the state accountable. Though the case does not expressly involve learners with disabilities, it is considered significant for the education of learners with disabilities. This is because it involves an important aspect of the right to basic education in light of what might be the consequences of denial of transportation services to learners with disabilities who may require mobility in order to access basic education.<sup>91</sup>

Where government does not provide transport, the implication is that it has not carried out its obligation to provide accommodation, consequently many learners, including hearing-

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<sup>86</sup> As above, para 52;

<sup>87</sup> See South African Constitution, sec 29; See also UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No.13: The right to education (art.13 of the CESCR) adopted by the Committee on Economic, Social and Cultural Rights at the 21st session, UN Doc E/C.12/1999/10, para 51; See also the opinion of Goosen, J in *Madzodzo & Others v Minister of Basic Education & Others* (2014) 2 All SA 339 (ECM) paras 15, 16 & 17.

<sup>88</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No.13: The right to education (art.13 of the CESCR) adopted by the Committee on Economic, Social and Cultural Rights at the 21st session, UN Doc E/C.12/1999/10, para 51; Woolman & Bishop have also argued in this connection, see S Woolman & M Bishop 'Education' in S Woolman et al (eds) *Constitutional law of South Africa* (2009) 57.

<sup>89</sup> (2015) 3 ALL SA 718.

<sup>90</sup> As above, para 2.

<sup>91</sup> As acknowledged by the CRPD Committee in General Comment No 4 on inclusive education, adopted by the UN Committee on the Rights of Persons with Disabilities 2 September 2016, CRPD/C/GC/4 para 67.



impaired learners as learners with disabilities would simply find it difficult to go to school.<sup>92</sup> Such denials negate the principle of equal concern and respect which, to a large extent, affects the human dignity of the learners.<sup>93</sup> In *MEC for Education: KwaZulu-Natal & Others v Pillay*,<sup>94</sup> the Constitutional Court made it clear that the duty to provide accommodation implies taking positive measures in order to allow every individual equal participation. Indeed valuing dignity expects people to act positively so as to accommodate diversity.<sup>95</sup>

### **2.3 Canadian and South Africa jurisdictions: Excluding practices and implications**

In the Nigerian context, the foregoing practices and decisions within the Canadian jurisdiction do not inform inclusive equality lessons that can be learned in response to the education of hearing-impaired learners. Formalistic practices and reasoning have been exemplified in the facts and decisions rendered, thus denying tangible equality to learners with disabilities as entrenched under the Canadian Charter and Human Rights Codes. The Canadian courts tend to make excuses for the government, which encourage them to be passive, without inspired search for effective remedies. The main misgiving concerning Canadian courts' deference is that it assists to continuously use financial constraints as an excuse to avoid obligation to promote equality and human dignity for all. What is significant in the decisions is the inability of the superior courts to make positive deference to the developed equality jurisprudence set out for instance in *Andrew v Law and Society of British Columbia*,<sup>96</sup> and *Law v Canada*.<sup>97</sup> Majority of the courts decisions poignantly failed to aver to international human rights purpose concerning education for learners with disabilities which is usually considered in broad terms<sup>98</sup>

On the other hand, South African courts have recently made efforts to advance equality and non-discrimination in education for learners with disabilities even though there are still gaps to be filled in order to realise the constitutional target of substantive equality.<sup>99</sup> The major problem within the South African response is with implementation and conduct of the state officials as can be observed from facts surrounding highlighted cases. White Paper 6 and

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<sup>92</sup> *Tripartite Steering Committee and Another v Minister of Basic Education and Others* (n 89 above) implicit in para 19.

<sup>93</sup> As highlighted by the Constitutional Court in *Khosa & Other v Minister of Social Development & Others* 2004 (6) BCLR 569 (CC) paras 39-43.

<sup>94</sup> *MEC for Education v Pillay* (n 27 above) para 73.

<sup>95</sup> *MEC for Education v Pillay*, para 75.

<sup>96</sup> *Andrew's case* (n 17 above).

<sup>97</sup> *Law v Canada* (n 19 above).

<sup>98</sup> For example see art 23 of the CRC and Preamble to the CRPD as well as art 24 of the CRPD.

<sup>99</sup> As earlier exemplified in the decision handed down by the court in *Western Cape Forum's Case* (n 79 above).

National Strategy on Screening, Identification, Assessment and Support as implemented did not completely embrace the transformative shift in the conceptualisation of education for the diverse learning needs of all learners with disabilities in order to increase their potential to participate equally in the society.<sup>100</sup> Rather than identifying barriers to enhance inclusion, White paper 6 tended to exclude certain learners due to their personal characteristics.<sup>101</sup> This approach is indeed morally subtractive to substantive equality.

However, the focus on Canadian and South African jurisdictions does not lie upon an understanding that they convey perfect systems, rather the approaches of both jurisdictions and the equality principles in their Constitutions illuminate the need to take positive steps to include learners with disabilities. This position is reinforced by UN CRPD Committee in its concluding observation on state party reports in respect of Canada and by implication South Africa.<sup>102</sup> The CRPD Committee adopted an approach that leans heavily towards the understanding that the constitutional and statutory framework of Canada and South Africa subscribes to the social model of disability, prohibits discrimination based on multiple grounds.<sup>103</sup> However, there is concern that both Canada and South Africa have tended to ignore the recognition of previously excluded learners, including hearing-impaired learners.<sup>104</sup> Another issue of concern relating to education includes the need for the two jurisdictions to relate to inclusive education as education within the general education system for all learners with disabilities.<sup>105</sup> Other issues of concern include lack of accommodations and accessible school environment, non-removal of barriers to sign language learning environments and inadequate number of teachers trained in sign language and other accessible formats of information and communication.<sup>106</sup>

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<sup>100</sup> See the provision in Department of Education white paper 6 (n 82 above) 5.

<sup>101</sup> Arguing in this direction, Ngwena had earlier observed that the use of National Strategy on Screening, Identification, Assessment and Support (NSIAS) to exclude some learners instead of identifying learners needs amount to identical treatment which negates the principle of substantive equality, Ngwena (n 10 above) 158.

<sup>102</sup> This is because South Africa has also submitted a baseline report to the UN CRPD Committee, see Baseline Country Report to the UN on the Implementation of the CRPD in South Africa (2013) however, it is difficult to ascertain whether the Committee has also released its concluding observation in this respect as the study was unable to find the document.

<sup>103</sup> CRPD Concluding Observation: Canada CRPD/C/CAN/1 (2017) para 4; Baseline Country Report to the UN on the Implementation of the CRPD in South Africa (2013) para 23, 25, 26, 27, 28, 29, 31, 194 & 195.

<sup>104</sup> CRPD Concluding Observation: Canada CRPD/C/CAN/1 (2017) para 43; Baseline Country Report to the UN on the Implementation of the CRPD in South Africa (2013) para 198, 211

<sup>105</sup> CRPD Concluding Observation: Canada CRPD/C/CAN/1 (2017) para 43; Baseline Country Report to the UN on the Implementation of the CRPD in South Africa (2013) para 212.

<sup>106</sup> CRPD Concluding Observation: Canada CRPD/C/CAN/1 (2017) para 43; Baseline Country Report to the UN on the Implementation of the CRPD in South Africa (2013) para 237, 238.

In its recommendation, the CRPD Committee reminds Canada to provide education within an inclusive system for learners with disabilities on an equal basis with other learners.<sup>107</sup> Invariably, the CRPD Committee expects Canada and South Africa to ensure that learners with disabilities, including hearing-impaired learners are not excluded from the general education system.<sup>108</sup> Accommodating the differing needs of individual learners in order to remove barriers is also emphasised.<sup>109</sup> Additionally, ensuring that teachers are trained in inclusive education approaches, sign language and other accessible communication formats is also recommended.<sup>110</sup> Therefore, the key focus particularly lies in illustrating approaches that can be emulated and disappointments that must be avoided. Comparatively, openness regarding context and how it should be used ought to be cultivated. The next section of this chapter examines comparatively the present situation in Nigeria and lessons that can be learned.

### **3 Towards an enhanced equality regime for disability education in Nigeria**

The general framework within which non-discrimination laws are protected in Nigerian is contained in the Nigerian Constitution under section 42, and under article 2 and 3 of the African Charter on Human and Peoples' Right (African Charter Ratification and Enforcement Act) - an international instrument that has become part of Nigerian law by virtue of its domestication under the Nigerian Constitution.<sup>111</sup> It is also necessary to explain that Nigeria has few enactments that have some bearing on equality and non-discrimination of persons on other subjects not relevant to our purpose. Nigeria is yet to have national legislation on disability issues. Furthermore, in cases where there are non-discriminatory laws, they are considered inadequate in the protection of the equality and non-discriminatory rights of learners with disabilities to education. Nigeria has however signed and ratified some international instruments relevant to equality like CESC, the ICCPR, the CRC and the CRPD. In spite of the fact that Nigeria is a dualist state, these instruments should be able to influence Nigeria's domestic enactment and construction of statutes.

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<sup>107</sup> CRPD Concluding Observation: Canada CRPD/C/CAN/1 (2017) para 44; See also the concluding statements and recommendations in the Baseline Country Report to the UN on the Implementation of the CRPD in South Africa (2013).

<sup>108</sup> As above.

<sup>109</sup> As above.

<sup>110</sup> As above.

<sup>111</sup> African Charter on Human and Peoples' Right Ratification and enforcement Act, Cap 10 Laws of the Federation of Nigeria, (1990). See also the Nigerian Constitution, sec 12.

Under the Nigerian Constitution, unlike in the Canadian and South African jurisdictions, there is a fixed list of protected grounds, while the African Charter Ratification and Enforcement Act has a wider range of protected grounds by using the terms ‘such as’ and ‘other status’ which allow for expansion. Conspicuously absent from the constitutional protected ground on discrimination is disability. In terms of equality definition, the Nigerian law, unlike the jurisdictions of Canada and South Africa, adopts a formal equality approach. There is a presumption of equality status under section 42 of the Nigerian Constitution. Concepts like, indirect discrimination, affirmative action, substantive equality and the duty to accommodate are not inscribed or provided for in the Nigerian Constitution. In simple terms, Nigeria is yet to move from formal equality in order to develop a conception of substantive equality like Canada and South Africa. There is yet no Nigerian superior court decision relating to the interpretation of the equality and non-discrimination rights of persons with disabilities, including learners, in the context of education.<sup>112</sup>

However, even if there were a superior decision, it probably would have followed the liberal view of equality as formal equality under the Constitution.<sup>113</sup> In the case of *Simeon Ilemona Akubo v Diamond Bank PLC*<sup>114</sup> for instance, the applicant complained that his right to non-discrimination and human dignity was violated. Specifically, the applicant argued that he was denied access into Diamond bank’s banking hall because of his metal crutches. The respondent bank required the applicant to leave his walking crutches outside the bank and failed to provide an alternative mobility aid or any other assistive device for the applicant even after the claimant had asked for an alternative.

The applicant complained that the denial of access into the bank necessarily violated his right to human dignity and non-discrimination as the denial had the effect of impairing his dignity based on negative assumptions. However, the court found that the applicant’s right to non-discrimination and human dignity was not violated as the applicant was not treated differently from other persons who came to the bank. The court in reaching its decision emphasised that the bank has no legal obligation to provide alternative access to the applicant, rather it is for

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<sup>112</sup> From anecdotal evidence.

<sup>113</sup> Most Nigerian decisions relating to non-discrimination has interpreted equality as formal equality, for example in *Uzoukwu v Ezeonu* (1991) 6 NWLR (pt. 200) 798, the Nigerian Court of Appeal held that rights protected under the section on discrimination can only be raised when: the discrimination is based on law, does not apply to other Nigerians and has to be an action against the government or his agents.

<sup>114</sup> Unreported Suit No: ID/763M/2010.

the applicant to do all that was within his own abilities to meet bank procedures and regulations.

Additionally, unlike in the Canadian and South African jurisdictions, the right to basic education under the Nigerian Constitution is constructed in progressive realisation terms.<sup>115</sup> Under the African Charter Ratification and Enforcement Act, the right to education as provided appears vague. There are no detailed provisions as to basic education and the exact nature of the implementation.<sup>116</sup> However the African Charter Act went a step further than the Constitution by identifying persons with disabilities as a protected group in need of *special measures of protection in keeping with their physical and moral needs*.<sup>117</sup> This subtly connotes requirements for differential treatment instead of same treatment. It further calls for the provision of accommodation within the socio-economic environment as an important means of achieving substantive equality.<sup>118</sup> Despite the above position, it is noted that the jurisprudence of the African Commission and scholars like Viljoen have elaborated that the concept of progressive realisation should be embraced in a positive light and not used as a means of renegeing on the realisation of socio-economic rights.<sup>119</sup> Under the African Charter Act, the duty to accommodate is restricted to the aged and persons with disabilities as against other protected grounds. However, this obligation is yet to develop into practice for persons with disabilities in Nigeria.

Apart from the constitutional and African Charter provisions, Nigeria has enacted legislation and policy to give effect to the right to basic education. These are the Child Rights Act,<sup>120</sup> the Universal Basic Education Act (UBE Act),<sup>121</sup> and the National Policy on Education (NPE).<sup>122</sup> The Child Rights Act provides for the right of every child to a free and compulsory education without discrimination.<sup>123</sup> However the legislation expressly excludes children with intellectual disabilities from the enjoyment of this right.<sup>124</sup> The Child Rights Act defined a

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<sup>115</sup> Nigerian Constitution, sec 18.

<sup>116</sup> See African Charter Ratification and Enforcement Act (n 110 above) sec 17.

<sup>117</sup> African Charter Ratification and Enforcement Act (n 110 above) sec 18(4), emphasis mine.

<sup>118</sup> *MEC for Education v Pillay case* (n 27 above) para 103.

<sup>119</sup> F Viljoen *International human rights law in Africa* (2007) 516; see generally the jurisprudence of the African Commission in *Purohit & Moore v Gambia* (2003) AHRLR 96 (ACHPR 2003).

<sup>120</sup> Nigeria Child Rights Act (2003).

<sup>121</sup> Compulsory, Free Universal Basic Education Act (2004) of Nigeria.

<sup>122</sup> Nigeria National Policy on Education, 6th Edition (2013).

<sup>123</sup> Child Rights Act, a combined reading of secs 10 & 15.

<sup>124</sup> Child Rights Act, sec 15(7).

child to mean a person under the age of 18 years.<sup>125</sup> It is also evident that the legislation lays down a dissimilar standard for compulsory education for children with disabilities at special schools where they are to be provided with services and facilities within available resources.<sup>126</sup> Therefore, it would not be wrong to argue that the Act follows the Constitution in the progressive realisation of compulsory basic education for learners with disabilities. It also means that accommodations are not expected to be provided in regular schools for learners with disabilities, which also implies that inclusive education for learners in the special schools is postponed to a future date until it is convenient for the government to provide needed services. This is disadvantageous and raises questions as to the manner of distribution of socio-economic services in order to achieve justice in line with the purpose of the Constitution

The Universal Basic Education Act (UBE Act) is the main legislation governing basic education for purposes of a uniform and quality basic education in the states and local governments throughout Nigeria. The Federal Government of Nigeria is expected to provide free, compulsory and universal basic education for every learner, including learners with disabilities.<sup>127</sup> In terms of section 9 of the UBE Act, an education policy is to be formulated for the ‘successful operation’ of the UBE programme in Nigeria. Thus Nigeria’s current national policy on education reflects and responds to the UBE Act and incorporates other sector policies to reflect global development.

Nigeria education policy provides for the special education needs of learners with disabilities.<sup>128</sup> It aims at providing access to education for all persons in an inclusive setting.<sup>129</sup> The policy highlights government intentions concerning improved special education for learners with disabilities, as part of an inclusive system.<sup>130</sup> Inclusive education is conceived somewhat broadly under the national policy on education. It includes important principles like: recognition of difference, the provision of accommodation for learners, training and retraining of all teachers in regular schools, identification of individual needs of

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<sup>125</sup> Child Rights Act, sec 277.

<sup>126</sup> Child Rights Act, sec 16.

<sup>127</sup> See Nigeria’s Compulsory, Universal Basic Education Act, sec 2 as well as its interpretation sec.

<sup>128</sup> Nigeria National Policy on Education, sec 7. As earlier highlighted in Chapter one, Nigeria has had several editions of the NPE since 1977. The 2013 is the 6<sup>th</sup> edition of the Nigeria’s National Policy on Education.

<sup>129</sup> Nigeria National Policy on Education, para 119.

<sup>130</sup> Nigeria National Policy on Education, para 118.

learners, curriculum adaptation and the recognition of the potential in every child.<sup>131</sup> As set out in the UBE Act, the Universal Basic Education Commission (UBEC) is the body responsible for the implementation of the national policy on education with respect to basic education in Nigeria.<sup>132</sup> In order to enhance the efficiency of UBEC, the UBE Act also established State Basic Education Boards and Local Government Education Authority.<sup>133</sup> Unfortunately, the provisions of the national policy regarding special education needs are not yet implemented in spite of the fact that they amount to legislative obligation.

#### **4 Conclusion**

So far, it can be seen that Nigeria's approach when compared with that of Canadian and South African approaches regarding equality and non-discrimination in the context of education for learners with disabilities follows a pattern that is not facilitative. The Canadian and South African Constitutions provide favourable insights with respect to equality and disability conceptions in their respective constitutions in relation to which every statute and decision is situated and read. The two jurisdictions when compared with that of Nigeria go beyond formal equality that presumes equality of status to suggest a substantive approach to equality. Indeed, Canadian and South African constitutional jurisprudence as have been observed share similarities in respect of substantive equality approaches irrespective of slight differences in terms of interpretive output.<sup>134</sup> The two jurisdictions have also formulated useful enquires for determining unfair discrimination by incorporating the effect of the discrimination on the complainant(s). As well, possible violation of the complainant(s) human dignity is also implicated in considering supposed discrimination.<sup>135</sup>

Thus the approaches of both jurisdictions demonstrate the need for Nigeria to take positive steps regarding the inclusive equality needs of hearing-impaired learners and other learners with disabilities. Indeed, the Nigerian society should be transformed to give effect to substantive equality. Admittedly, it may be argued that the texts of Nigeria's Constitution and the two foreign jurisdictions are not similar. However, considering that Nigeria is still a

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<sup>131</sup> Nigeria National Policy on Education, paras 119-124.

<sup>132</sup> Nigeria's Compulsory, Universal Basic Education Act, secs 7 and 9.

<sup>133</sup> Nigeria's Compulsory, Universal Basic Education Act, secs 12 and 13.

<sup>134</sup> Unpublished: CG Ngwena 'Disabled people and the search for equality in the workplace: An analysis of the equality models from a comparative perspective' unpublished PhD thesis, University of Free State, 2010 296. As we have seen, the differences, so to say, relate to domestic interpretations and inconsistencies that seem to negate their respective constitutional equality provisions and human rights law.

<sup>135</sup> Ngwena (n 134 above).

transitional society with its Constitution seemingly passing through a deliberative process,<sup>136</sup> looking towards salient and relevant constitutional equality jurisprudence is fundamental in order to build complementary equality jurisprudence for Nigeria. Learning from the foundational experiences of the two highlighted jurisdictions in relation to their transformative contents regarding disability inclusivity in education is considered valuable.

Apart from the forgoing observations, it is contemplated that law and policy alone may not bring about the required change.<sup>137</sup> It is also necessary that goodness and practical reasoning be promoted in the articulation of laws and at the implementation stage. At the heart of this comparative perspective is the search for workable solutions. Collective mobilisation must be able to align with aspirational legal process that has concrete meaning for the vulnerable and the dominant majority. Yes, as suggested by Skelton, the court can make redistributive rulings but it becomes meaningless where the state is ambivalent to changing entrenched status quo.<sup>138</sup> Conversely, the court may also want to immunise the government by deference to political decisions. Emphasis therefore is on some kind of ethical agreement.

It becomes necessary that government agents and institutions realise that all individuals have aims and objectives, and on this pedestal, Finnis highlights that one requires practical reasonableness to actualise this objective.<sup>139</sup> Finnis then went ahead to draw a parallel between ‘certain basic forms of human flourishing’ and that which guards humans towards an objective.<sup>140</sup> This he situates in rationally choosing right over wrong and by preferring truth over false assumptions.<sup>141</sup> Consequently, it can be taken that rational intelligence assists in the assessment of the people’s experiences, personal reflection, and the ethical commitment to influence change.<sup>142</sup>

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<sup>136</sup> As explained in Chapter 2 note 5 of this study, ‘transitional society’ as used depicts a stage where there are yet no agreed or exemplary rules or norms regarding competing claims of individuals in the society. The term ‘transition’ is not used in terms of a meaning it has acquired which is synonymous with coming out from one political ‘state of affairs’ to another in line with the goals of ‘transitional justice’, See TO Hansen ‘The Vertical and horizontal expansion of transitional justice: Explanations and implications for a contested field’ in S Buckley-Zistel et al (eds) *Transitional Justice Theories* (2014) 105;

<sup>137</sup> The likeliness can be noted through experiences gathered from the jurisdictions of Canada & South Africa; this is also recognised in paras e, k and p of the preamble to the CRPD.

<sup>138</sup> A Skelton ‘The role of courts in ensuring the right to a basic education in a democratic South Africa: A critical evaluation of recent education case law’ (2013) 1 *De Jure* 2.

<sup>139</sup> J Finnis *Natural law and natural rights* (2011) 99.

<sup>140</sup> As above.

<sup>141</sup> Finnis *Natural law and natural rights* (n 139 above) 86-98; see also J Finnis *Aquinas: Moral, political and legal theory* (1998) 90.

<sup>142</sup> Finnis *Natural law and natural rights* (n 139 above) 98-100.



Being rational thus becomes instrumental in realising inclusive equality in education for hearing-impaired learners. This understanding demands good judgement and moral norms to be followed to be able to make moral decisions in connection with the distribution and redistribution of resources.<sup>143</sup> Here, what is expected to be the collective disposition becomes synonymous with Fincke's empowerment ethics.<sup>144</sup> Fincke's point is that the socio-political environment can only maximise its full powers when it realises the empowerment of others through its abilities.<sup>145</sup> What is desirable is that the socio-political environment makes its norms and actions the sort that empowers all. It is for this reason that Grisez's prescription that the state and individuals should constantly contribute to integral communal well-being and avoid intentionally impeding or detracting from integral communal fulfilment ought to be followed.<sup>146</sup>

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<sup>143</sup> This idea follows Finnis's conception of what is good in any given situation.

<sup>144</sup> D Fincke 'Empowerment ethics' (2014) *Camels with hammers: Philosophy, atheism, ethics and Nietzsche* <http://www.patheos.com/blogs/camelswithhammers/2014/05/empowerment-ethics-what-is-empowerment-ethics/> (accessed 30 March 2016).

<sup>145</sup> As above.

<sup>146</sup> G Grisez 'The true ultimate end of human beings: The kingdom, not God alone' (2008) 69 *Theological studies* (2008) 38 57.

## Chapter 8

### Concluding reflections

#### 1 Introduction

This chapter reaffirms the central idea which guided the study and seeks to consolidate answers to the research questions raised, and justification regarding approaches used by the study. It also seeks to highlight the limitations of the study as well as suggest directions for further research.

#### 2 Central features

Against the background of hearing-impaired learners as a historically excluded and segregated group that experience discrimination within Nigeria's general education system and the socio-economic and political environment. The major point has been on how access to inclusive equality in education can be realised for hearing-impaired learners in Nigerian primary schools given the non-justiciable clause, and the formal equality provisions under the Nigerian Constitution.

The aim of the study has neither been to argue that hearing-impaired learners must be included in regular schools in line with the popular idea of inclusive education, nor to argue for the sustenance of a parallel or segregated education system. Rather, the aim of the study has been to argue that inclusive education for hearing-impaired learners in Nigerian primary schools is a continuing obligation of the general education system to adapt to the varied needs of learners either in regular schools or special schools. Surely, the outcome would not amount to segregated education or the sustenance of two systems of education because accommodation of individual learner needs is in line with the goal of full inclusion. Accommodating individual needs of learners engenders a comprehensive transformation of the general education system, and ensuring the transition to inclusive education systems. Such transformation seeks to apply a universal design to learning by adopting principles of non-discrimination and substantive justice in connection with the provision of the educational needs of each learner.

Furthermore, the study does not seek to present a perfect interpretive model of inclusivity that gives expression to the realisation of access to inclusive education for hearing-impaired learners. The accent has been on engaging qualitatively and pragmatically with inclusivity,

using thoughts that are normatively responsive to the inclusive equality needs in education of hearing-impaired learners, in order to influence change within Nigeria's general education system. It has been reflected that Nigeria's education policy and enforceable law are yet to specifically address the issue of access to inclusive education for learners with disabilities, including the hearing-impaired learner. The study's contention has been that lack of commitment in this direction is based on held low expectations and labelling traceable to colonial times.

At a more general level, the study is of a qualitative nature. However, a relatively small part of field study necessitated the use of quantitative data analysis to determine the number of semi-structured questionnaire to be distributed in schools. In terms of the fieldwork, the study uses different sources of data gathering to explore the responsiveness of current practices and approaches adopted in the education of hearing-impaired learners in Nigerian primary schools. As well, the adequacy of such approaches towards the realisation of access to inclusive education for hearing-impaired learners was also explored. The sources used include interviews, focus group discussion, semi-structured questionnaire and participatory observation. Findings from the fieldwork reveal that regardless of placement options, responses from participants cumulatively indicated inadequacies in the methods and approaches adopted in the education of hearing-impaired learners under Nigeria's education system.

The study further employs some aspects of comparative analysis. The aim of the comparative analysis is not so much to compare, but to create awareness regarding the equality and non-discrimination agenda in other jurisdictions. In this instance, Canada and South Africa jurisdictions were explored. The underlying intent was to instantiate reasonably the future development and interpretation of Nigeria's non-discrimination provisions in the context of achieving inclusive equality in education for hearing-impaired learners and other vulnerable learners. It is thought that exploring and revealing the substantive equality content in the Constitutions of Canada and South Africa, can morally influence change regarding Nigeria's constitutional formal equality disposition. This is targeted at making Nigeria responsive to the non-discriminatory aspirations of hearing-impaired learners, and other learners with disabilities in the enjoyment of the right to education. The study considers that positive lessons could be learnt from these jurisdictions and mistakes can be avoided.

In addition, the study centrally employs the social model of disability perspectives and neo-natural law thoughts as the major qualitative interpretive tool for exploring existing approaches of inclusiveness ideals to be pursued for hearing-impaired learners. From thoughts influenced and developed from the social model of disability and neo-natural law thoughts, the prescriptive and directive approach was formulated as a 'directing element' in the evaluation of the responsiveness of law, policy and practice towards achieving inclusive equality in education for hearing-impaired learners. The prescriptive and directive approach has been the study's primary interpretive tool. It has assisted in making sure that the evaluation of relevant laws, policies and practices appreciated the heterogeneity and experiences of hearing-impaired learners, and the need to effect inclusively, normative systemic changes within the general educational arrangements. Nevertheless, it is necessary to point out that the study has not the intention to portray the prescriptive and directive approach as a scientific innovation or as the only perfect framework in respect of achieving inclusive equality in education for hearing-impaired learners in Nigeria.

However, it bears emphasis that the significance of the prescriptive and directive approach lies in its contribution to continuing understandings of inclusivity that is responsive to the inclusive equality needs of hearing-impaired learners in education. Its addition to knowledge is further exemplified in the fact that its approach is not only preoccupied with what the law, policy or practice is, but it also engages reasonably with the more fundamental enquiry of what law, policy and practice ought to be. This is demonstrated by the study's evaluation of law and practice using social and ethical standards which emanated from the prescriptive and directive approach, and remain beneficial in terms of understanding and appreciating law and practice throughout the study.

For instance, the prescriptive and directive approach has been used to highlight the latent partial content of the law as given with respect to vulnerable groups like hearing-impaired learners. This as a logical consequence underscored the need to apply transformative ideas of practical reasonableness, recognition of human difference, substantive justice, dignified living and ethical commitment in the making, implementation as well as interpretation of rules, policy and practice. Evidently, this exemplifies the acknowledgment and appreciation that access to inclusive equality in education for hearing-impaired learners cannot be secured by merely using law and policy as posited. Rather securing access to inclusive equality in education for hearing-impaired learners is predicated on the application of practical

reasonableness to legislative enactments, judicial determinations, political as well as socio constructions of hearing-impairment.

The prescriptive and directive has been helpful in discursively interpreting research findings relating to approaches and practices adopted in the education of hearing-impaired learners in Nigerian primary schools. It also lent itself to the necessity of transforming existing unhelpful approaches in the delivery of education to hearing-impaired learners. In this light, the prescriptive and directive approach can be seen as generally concerned about using responsive normative interpretations to give reality to law, policy and practices that are believed to constitute impediments to the realisation of inclusivity in education for hearing-impaired learners in Nigeria.

Using the prescriptive and directive approach, and drawing from the history of deaf education in Nigeria and the cultural model of disability, the study situates the prioritisation of American Sign Language and the non-facilitation of Nigerian sign language in contemporary Nigerian schools for the deaf, as traceable to colonial education policy and practices. It demonstrates that the establishment of schools for the deaf in Nigeria was characteristically paternalistic and non-participatory, due to the fact that it was not the result of an egalitarian dialogue. Throughout, the study argues that colonial masters and the church missionaries that came with them did not consider the linguistic disposition of hearing-impaired learners in Nigeria. As a result, the facilitation and development of Nigerian indigenous signs were not prioritised. This compliance to colonial supremacy with respect to language denigration is shown as manifest in existing Nigerian deaf schools.

Finally, the study argues for hearing-impaired learners to be taught in a language that is accessible and comprehensible language and with which the learner is familiar right from home, at the early age of schooling. The study considers the requirement of an accessible and comprehensible language as an operative part of achieving substantive equality in education for hearing-impaired learners as it tilts towards respect for language and human difference.

### **3 Limitations of the study**

First, considering the fact that persons with disabilities constitute a heterogeneous group, the study focuses essentially on hearing-impaired learners as persons with disabilities. It is consequently impracticable for this study to claim detailed representative analysis of all types of impairments and the normative response required. However an attempt is made to reflect

at a minimum the idea of justice, equality and non-discriminatory aspirations of persons with disabilities generally.

Another limitation of this study concerns the system of education in Nigeria. The current system of education in Nigeria is the 10-3-4 system of education. The idea is for learners to have one year of early childhood education, six years of basic primary education, three years of junior secondary education, and additional three years of secondary or technical education. The last four years of the 10-3-4 system is for tertiary education. It follows then that basic education in Nigeria covers the first 10 years of a child's formal school life which is so fundamental to the developmental needs of the child. This study in essence limits its scope to the six years of primary education in Nigeria. Nevertheless an examination of court decisions from other jurisdictions may make the use of case law relating to pre primary and post secondary education or the general populace unavoidable. This is as a result of a dearth of case law development on disability issues in Nigeria.

Generally, the study does not claim to provide a complete account of ideas or principles relating to the realisation of inclusive equality in education for hearing-impaired learners in Nigerian primary schools. It also does not claim an absolute identification of the problems that exist as well as clarifications as to issues of inclusive equality in education for hearing-impaired learners. As reflected in the title of the study, the term 'realising' is used as a verb and is synonymous with a process of giving reality to a situation or condition, which impliedly does not connote an understanding about all that there is to know about a given concept or situation. Thus there is still room for further investigations.

### **3.1 Methodological limitations**

One of the limitations of this study is the constitution of the sample with respect to the target population of the study. It would be recalled that the study generally sought to reflect Nigeria's position in relation to inclusive education delivery for hearing-impaired learners in Nigerian primary schools. However, field research is limited to schools in states within the South-South and South-East political zones of Nigeria. This is basically due to vastness in the geographical spread of the country and the required time for the completion of this study. The field research in essence is not representative of the entire target population. Therefore findings might not generalise to other deserving populations in the North-Central, North-East, North-West, and South-West political zones of Nigeria. The study considers that additional

research should be conducted in this direction, in order to represent a total study of the population when pulled together.

Participants' opinion and responses during interviews, focus groups, or on semi-structured questionnaire were self reported. As a result, the data collected is assumed to be honest responses on the basis that they cannot be independently authenticated. Although traces of bias were evident in some of the responses provided as they were not compatible with data from other sources.

On the composition of the group, putting together teachers, parents, children and policy makers seemed appropriate because the different participants were encouraged to speak freely. However, it is possible that the quality of contributions may have been affected due to power dynamics. This can be modified by future research because findings and interpretation of findings in this research may emerge in a different way if the focus group were homogeneous in terms of age, education and occupational position.

The study also reveals that some semi-structured questionnaires were filled in improperly to the extent that the contents are incomprehensible. Such questionnaire had to be rejected as a result. Most of the participants that filled in the semi-structured questionnaire incorrectly were found to be the hearing-impaired learners and hearing learners, in spite of the explanations and clarifications made by the class teachers and the interpreter. It is possible that the learners have a relatively low level of education or that they did not quite understand the instructions given. Most of the learners were local language users, and they may have misunderstood the explanations done in English language and American Sign Language.

Some semi-structured questionnaires filled in by teachers in the special schools for the deaf were also filled incorrectly. It is also possible that the teachers may have misconstrued the instructions or not have read them carefully enough. These problems have implications for future research. It is considered that in the future, research employing the use of questionnaire should first present to the participants an example of the correct way of responding from the outset. Meanwhile, the researcher in this study assumed that the participants can do so on their own. This assumption was to avoid the possibility of bias.

Lack of fluency in signed language by the researcher is a limitation to the study. The researcher depended completely on the interpreter throughout the entire communication process between the researcher and hearing-impaired teachers as well as learners. Information

sometimes may have been distorted based on various reasons, in spite of repetitive explanations. This, to some extent, might have led to marginal judgement and interpretation errors, and therefore may affect the study to that extent.

As a result of difficulty in accessing top officials of the Universal Basic Education Boards due to their tight schedules, the focus group discussion was held consecutively within a relatively short period of time. More space and time between focus groups in order to read, reflect and analyse would have been useful in providing more insights. It would also have allowed additional officials from the top hierarchy of the Universal Basic Education Commission at the federal level to participate and make comments or elaborate on what has been said.

### **3.2 Common study limitations**

Over and above the fieldwork limitations, the study's main contribution from Chapters 1 to Chapter 7 aligns with making conscious effort to give reality to discriminatory and exclusionary forces within the school and the socio-political environment. In addition, the study sought to device jurisprudentially what ought to strengthen and influence practical thinking towards realising inclusivity in education for hearing-impaired learners in Nigerian primary schools. This thinking finds philosophical expression in ideas of morality and substantive justice that is open to the prescriptive and directive approach. It is through the framing of the prescriptive and directive approach, basically derived from neo-naturalism and the social model of disability, that the study sought to give reality to the formal equality disposition of the non-discriminatory clause in the Nigerian Constitution. Throughout, the study considers it an inherent limitation towards realising inclusivity in education for hearing-impaired learners in Nigeria.

The study imagines that inclusive equality embedded in notions of morality and substantive justice, tilts towards a more inclusive society than formal equality even though inclusive equality has its challenges and dilemmas. These challenges relate to how to deal with elites whose 'difference' is situated in the fact that they have different understandings regarding equality, coupled with economic failures and income disparity.<sup>1</sup> The study has presupposed that a government dedicated to inclusive equality would be amenable to rational thoughts that coalesce with the prescriptive and directive approach, regarding the right to non-

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<sup>1</sup> See Withcher's discourse on the relationships between equality, diversity and inclusion; S Withcher *Inclusive equality* (2013) 214.



discrimination. Nevertheless, the components of moral rational thoughts situated in the study as a 'directing element' acquired no rigid parameters, but was made amenable to the conscience of the state and those who wield authority in the state. Hence it seems possible from the imperfect nature of man<sup>2</sup> that moral thoughts might not be advanced at all times.

Notwithstanding, the argument has been that moral principles are unchangeable.<sup>3</sup> Individuals know in conscience what is good and what is bad. It is therefore assumed that those who wield authority in the state ought to do that which is good and eschew that which is bad in order to secure the common good of individuals in the society. Besides, since man is unpredictable, it is considered that rules and courts be put in place to check man's limitation and excesses. Likewise, rules that do not satisfy the general good should also be subject to change always.

All the same, it is acknowledged that the idea of providing for the common good through substantive distribution or redistribution for purposes of achieving inclusivity comes with its own limitations as development in this direction might be hampered, due to competing interests premised on the different understandings of justice. For instance, some individuals in the society perceive goods as entitlements already owned by individuals in the state. Consequently, they consider it immoral for the state to appropriate individual goods to the benefit of others who have not contributed directly to the earnings thereof due to unfounded design of equality.<sup>4</sup> Some also proclaim justice as equal basic liberties but emphasises the arrangement of socio-economic inequalities to the greatest benefit of the least advantaged.<sup>5</sup> While inclusive equality concerns genuine dialogue between the differing perspectives, it seems so too that a substantially administered idea of inclusive equality without dialogue will be imperialistic and can result in social conflict and breakdown.

Yet that does not validate a dismissal of arguments in favour of inclusive equality, but only shows that the study has not provided options near the reconciliation of conflicting interests. It cannot then be maintained that the study is an encompassing discourse about realising inclusive equality. In other words, the study has not presented conclusive arguments about realising inclusive education for hearing-impaired learners in Nigerian primary schools.

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<sup>2</sup> Man as used here, contemplates both male and female.

<sup>3</sup> Other scholars have also alluded to this understanding, for instance see C Ogwurike *Concept of law in English-speaking Africa* (1979) 14; USF Nnabue *Understanding jurisprudence and legal theory* (2009) 85.

<sup>4</sup> This finds substance in Nozick's approach to justice as entitlement. He considers the notion of distributive justice in any form as anarchism. See R Nozick *Anarchy, state and utopia* (1974).

<sup>5</sup> On this idea, see JA Rawls *Theory of justice* (1999).

Rather its enquiry is directed more on the articulation of practical arguments in the process of actualising inclusive equality as a matter of course.

The study contemplates that it is the responsibility of any democratic state to ethically manage public resources to the benefit of individuals in the state. Nigeria is assumed to have the resources and raw materials needed and often utilised for global economic development. Hence, the availability of adequate resources towards the provision of accommodations has been assumed. The underlying argument therefore has been that accomplishing inclusive equality lay in the practical application of moral judgements and reasonableness to practical situations. However, additional research may be required in this direction as the availability of resources matter and the availability of accommodations really matter. Based on conflicting interests regarding the distribution or redistribution of resources to enhance equality and fairness, alternatives to free enterprise of means of production may be sought.

In the end, the study considers that inclusive education is a human right and hearing-impaired learners are a part of humanity that deserves flourishing. Attempt has been made in this study to identify discriminatory rules and practices in Nigerian primary schools and in the socio-political environment that are inconsistent with the principles of inclusion for hearing-impaired learners. And in moving towards the realisation of inclusive education for hearing-impaired learners, conscious effort has been made to exemplify and devise moral arguments to combat these discriminatory forces.

What is considered important about this discourse is that it represents a possibility of ethically responding to the individual education needs of hearing-impaired learners within the general education system in recognition of our equal humanity. Secondly, it emphasises how we are different and at the same time similar. Finally, it stirs our imagination as to the imperatives of having a mental shift in our perceptions regarding the adoption of varied communication approaches due to the heterogeneity in hearing-impaired learners. Also, the facilitation of local contents in relation to signed language acquisition for hearing-impaired learners has been advocated.

Sharing similar thoughts with this study regarding inclusiveness, an Australian writer Connell in *Making a difference* wrote concerning the vital need to focus on educational inclusiveness and how the educational enterprise can be made more fully inclusive without segregation and

exclusion.<sup>6</sup> Connell insists that teachers are confronted with the responsibility of educating diverse learners.<sup>7</sup> Inherent in Connell's observation is the idea that achieving inclusive thinking and practices require the existence and appreciation of justice and rights in education where equality principles and the reasons why they are valued are clearly spelt out. This inevitably involves a public rejection of exclusionary law and practice in education. Connell also emphasises the need for general school transformation programmes based on state participation and curricular justice.<sup>8</sup> This he describes as a continual process of commitment and development to inclusiveness. Such change in thinking and practice also advances reflections on the need to revisit teacher education and in-service provisions.<sup>9</sup>

In this regard, I would like to conclude with this thought, that realising inclusive education for hearing-impaired learners in Nigerian primary schools is a process of empowerment, restoration and recognition of human diversity.

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<sup>6</sup> RW Connell 'Making the difference, then and now' (2002) 23 *Discourse: Studies in the cultural politics of education* 319-327.

<sup>7</sup> As above.

<sup>8</sup> As above.

<sup>9</sup> As above.

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## **International human rights instruments, declaration guidelines and other statements**

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## Appendix I



UNIVERSITEIT VAN PRETORIA  
UNIVERSITY OF PRETORIA  
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Faculty of Law

RESEARCH ETHICS COMMITTEE

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MS NGOZI CHUMA UMEH  
CENTRE FOR HUMAN RIGHTS  
FACULTY OF LAW  
UNIVERSITY OF PRETORIA  
PRETORIA  
0002

10 July 2015

Dear Ms Ngozi Chuma Umeh

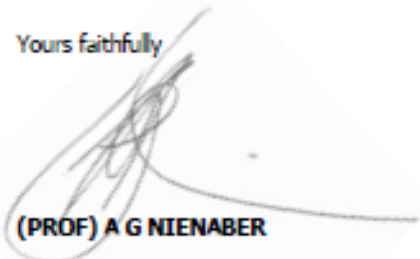
### **ETHICS CLEARANCE CERTIFICATE**

The Research Ethics Committee of the Faculty of Law at the University of Pretoria has reviewed your application for ethics clearance entitled "Realising access to inclusive education for hearing-impaired learners in Nigerian primary schools" and granted ethics approval.

Please note that you need to keep to the protocol you were granted approval on – should your interview and focus group questions be amended in due course, you will once again need to submit the amended version to us.

We wish you success in your research project.

Yours faithfully



(PROF) A G NIENABER

CHAIR: RESEARCH ETHICS COMMITTEE (FACULTY OF LAW)

## **Appendix II**

### **Hearing-impaired and Hearing only pupils questionnaire**

**\*Hearing-impaired as used in this study include those who are deaf and cannot speak, culturally and linguistically deaf, hard of hearing, and the deafened.**

#### **Section A: Personal data/ characteristics**

**Tick [x] as it concerns you**

1. How old are you\_\_\_\_\_
2. You are in primary\_\_\_\_\_
3. Are you hearing-impaired (a) Yes \_\_\_\_\_ or (b) No\_\_\_\_\_?
4. If you are hearing-impaired, do you have the necessary aid (a) Yes\_\_\_\_\_ or (b) No\_\_\_\_\_?
5. If you have the necessary aid, who provided it \_\_\_\_\_?
6. Did you attend to early child development school (a) Yes \_\_\_\_\_ or (b) No\_\_\_\_\_?
7. In the school did you undergo language development (a) Yes \_\_\_\_\_ or (b) No\_\_\_\_\_?
8. Have you ever gone through hearing-screening in your school (a) Yes \_\_\_\_\_ or (b) No\_\_\_\_\_?

#### **Section B: The School**

1. Which kind of school do you attend, Special School, inclusive school or Regular School \_\_\_\_\_?
2. In your school are the hearing-impaired and hearing learners in the same class or Separate classes \_\_\_\_\_?
3. If you are hearing-impaired would you like to be in the same school and class with hearing learners \_\_\_\_\_?
4. If you are not hearing-impaired would you like to be in the same school and in the same class with hearing-impaired learners \_\_\_\_\_?
5. If yes why (please specify)\_\_\_\_\_
6. If No why (please specify)\_\_\_\_\_

### Section C: Learning and Evaluation Activities

1. Teachers deliver lessons using

- (i) Only spoken language [       ]                      (ii) Spoken and written language [       ]  
(iii) Spoken and sign language [       ]    (iv) Sign and written/spoken language [       ]  
(v) Total communication (iv) Others (specify)\_\_\_\_\_

2. Teachers give assignments using

- (i) Only spoken language [       ]                      (ii) Spoken and written language [       ]  
(iii) Spoken and sign language [       ]    (iv) Sign and written/spoken language [       ]  
(v) Total communication (iv) Others (specify)\_\_\_\_\_

3. In your school examinations are given in

- (i) Only spoken language [       ]                      (ii) Spoken and written language [       ]  
(iii) Spoken and sign language [       ]    (iv) Sign and written/spoken language [       ]  
(v) Total communication (iv) Others (specify)\_\_\_\_\_

4. Which communication method/approach do you prefer/understand most?

- i) Only spoken language (ii) Spoken and written language, (iii) Spoken and sign language, (iv) Sign and written/spoken language, (v) Total communication  
(iv) Others (specify)\_\_\_\_\_

5. How do you feel about going to your school\_\_\_\_\_?

## **Appendix III**

### **Special and regular school teachers questionnaire**

**\*Hearing-impaired as used in this study include those who are deaf and cannot speak, culturally and linguistically deaf, hard of hearing, and the deafened.**

**Please respond to the following**

#### **Section A: Background Information**

1. In what kind of school do you teach? Regular school or special school
2. What qualifications do you have? Please specify \_\_\_\_\_
3. What special training did you undergo/ what special skill (s) do you have for doing your job, please specify \_\_\_\_\_
4. Your years of experience in teaching, please specify \_\_\_\_\_?

#### **Section B: Knowledge of existence of the law and policy on inclusive education**

1. Are you aware of any law or policy on inclusive education in Nigeria for children with disabilities, (Please specify) \_\_\_\_\_?
2. In what books/document/papers could the law/policy be found (specify)\_\_\_\_\_?
3. Have you attended/participated in any seminar/workshop on inclusive education for the hearing-impaired learner\_\_\_\_\_?
4. If yes, who organised the Workshop (specify)\_\_\_\_\_?
5. Have you any circular/document/directive from government on inclusive education for the hearing-impaired learner\_\_\_\_\_?

#### **Section C: Practice of inclusive education**

1. In your school, are there pupils who are (i) Hearing-Impaired only (ii) Hearing-impaired & Hearing or (iii) Hearing only (please specify)\_\_\_\_\_
2. If your response is (i) or (iii), do you consider it possible to achieve inclusive education for both category of learners (please specify)\_\_\_\_\_
3. You deliver lessons using (i) Only spoken language [        ] (ii) Spoken and written language [        ] (iii) Spoken and sign language [        ] (iv) Sign and

written/spoken language [ ] (v) Total communication (iv) Others (specify)\_\_\_\_\_

4. You administer assignments using (i) Only spoken language [ ] (ii) Spoken and written language [ ] (iii) Spoken and sign language [ ] (iv) Sign and written/spoken language [ ] (v) Total communication (iv) Others (specify)\_\_\_\_\_

5. You administer exams using (i) Only spoken language [ ] (ii) Spoken and written language [ ] (iii) Spoken and sign language [ ] (iv) Sign and written/spoken language [ ] (v) Total communication (iv) Others (specify)\_\_\_\_\_

6. Where we have both HI & H pupils what is the curriculum content like, is it same or different, others (please specify)

7. Where we have HI only, what is the curriculum content, is it same with that of H pupils (please specify)\_\_\_\_\_

8. Does the Special Education unit of State Universal Basic Education Board come in to supervise what and how you teach hearing-impaired learners (please specify)

9. What is the teacher/pupil ratio in your class (please specify)

10. Do you have early child development centres in your school (please specify)

#### **Section D: Equipment and facilities**

What equipments and facilities are available for the hearing-impaired learner's use in your school?

## **Appendix IV**

### **Questionnaire for policy makers in Nigeria's education sector**

**\*Hearing-impaired as used in this study include those who are deaf and cannot speak, culturally and linguistically deaf, hard of hearing, and the deafened.**

**Please respond to the following**

#### **Section A: Background information**

1. What qualifications do you have? Please specify \_\_\_\_\_
2. Your years of experience in the commission, please specify \_\_\_\_\_?

#### **Section B: Existence and knowledge of policy and law on inclusive education**

1. Are you aware of any law or policy on inclusive education \_\_\_\_\_?
2. In what books/document/papers could the law/policy be found (specify) \_\_\_\_\_
3. Have you attended/participated in any seminar/workshop on inclusive education \_\_\_\_\_?
4. What does it entail \_\_\_\_\_?
5. Is it possible to say that the hearing-impaired learner has access to inclusive education \_\_\_\_\_?
5. Who organised the seminar /workshop (specify) \_\_\_\_\_

#### **Section C: Provisions regarding the promotion of inclusive education**

1. Does the Board/Commission post teachers with special skills on inclusive education to regular schools, special schools or both (specify) \_\_\_\_\_
2. Do you have teachers with special skills on the hearing-impaired in regular schools, special schools or both (specify) \_\_\_\_\_
3. What educational approaches or methods are teachers directed to use while teaching hearing-impaired learners \_\_\_\_\_?
4. How often does State Universal Basic Education Board supervise what and how hearing-impaired learners are taught in school \_\_\_\_\_?
5. Does the Board evaluate the educational programs of the hearing-impaired learner \_\_\_\_\_?

6. How does the Board evaluate educational programs for hearing-impaired learners\_\_\_\_\_?

**Section D: Provision of educational facilities and equipments (please specify)**

1. Which of facilities does State Universal Basic Education Board make available to regular and special schools?

**Section E: Curriculum content**

1. The curriculum content of regular schools is the same with the curriculum content of special schools \_\_\_\_\_?

2. The same books are provided in terms of the same subject for Regular Schools and Special Schools\_\_\_\_\_?

## **Appendix V:**

### **Undertaking the focus group: A guide**

#### **1 Introduction**

The researcher as the facilitator steered discussions:

Conducts introductions and exchanges pleasantries with the participants:

My name is Ngozi Chuma Umeh, an LLD candidate at the University of Pretoria. I want to thank you all for making yourselves available for this group discussion in spite of your tight schedules. Some of you had to travel a long way, thank you for your time, understanding and sacrifice. I am also grateful to the parents for consenting to come with their children.

Introductions will go round now, please tell us who you are, how you want to be addressed and what you do.

#### **2 Provide outlines for discussions**

The discussion is intended to last for One hour 30 minutes. The discussions are meant to be focused so that we all can move along. During discussions, please feel free to express your views. I am only a facilitator and do not represent the interest of any person or group of persons. I am here to gain your individual perspectives which will add to the body of knowledge in the study. The discussion will be audio-taped to ensure that no detail or information is missed. You may prefer to use your first names of last name, but be rest assured that no names will be included in the final report.

#### **3 Provide explanations regarding the aim of the focus group**

As earlier explained when I visited you individually, our discussions today centres on how to realise inclusive education for the hearing-impaired learner in Nigeria primary schools. Particularly, we want to know the approaches adopted in the education of the hearing-impaired, its adequacy and inputs for improvements were inadequate. I also want to explain that hearing-impaired as articulated in the study include those who are deaf and cannot speak, culturally and linguistically deaf, hard of hearing, and the deafened.



#### 4 Focus group discussions

##### \*General questions

-Let's hear your views concerning inclusive education one after the other?

-is it possible to relate these views to the hearing-impaired learner.

-in your opinion is inclusive education beneficial to the learner, learner's family and the society at large?

-Are these views on inclusive education reconcilable with what or some things you have seen in the education of the hearing-impaired learner in the schools?

\*Significantly, the views of the learners, their parents, the head teachers and the teachers, teacher educators in special education and the hearing-impaired professionals were considered central with regard to the following questions:

-What education materials and equipments are available to aid hearing-impaired learner's learning?

-Can learners tell us about their experience in school, pertaining to teachers teaching techniques, attitudes and learning environment?

-should we consider parents-teachers-school relationship an important aspect in realising inclusive education for the hearing-impaired learner

-Do you consider the curriculum content, teacher attitude, training, and level of experience important aspects in providing access towards the inclusion of hearing-impaired learners?

-what other aspects stand out or must be leveraged if we are to achieve inclusive education for the hearing-impaired learner?

\*Significantly, the views of the head teachers, the teachers, and officials of the ministry were considered central with regard to the following questions:

-what resources and directives are usually made available from the ministry to teachers to enhance teaching?

-Do you consider the curriculum content, teacher attitude, training, and level of experience important aspects in providing access towards the inclusion of hearing-impaired learners?

- Is the curriculum content of hearing-impaired learners similar or different with that of the regular learners?

- How often does the government train or organise workshops and seminars on inclusive education for special school teachers/regular teachers?
- Does the government conduct or facilitate the supervision of teachers of the hearing-impaired learner in the classroom?

\*Significantly, the following questions emerged from answers and insights provided by some of the participants.

-Do you consider the curriculum content, teacher attitude, training, and level of experience important aspects in providing access towards the inclusion of hearing-impaired learners?

-what other aspects stand out or must be leveraged if we are to achieve inclusive education for the hearing-impaired learner?

-Special education expert have emphasised the necessity of equipping teachers to implement individual education plans (IEP) in classrooms, what is IEP and what does it entail?

-Do you honestly believe that training teachers to implement IEP will be easy considering policy makers interjection that it is expensive and a waste of valuable time, are there sustainable suggestions around these mentioned barriers.

## 5 Ending the discussions

Thank you for your various inputs and patience. We have almost spent 2 hours without realising it. It actually shows some level of commitment and we are grateful for this. The discussions have been quite engaging and will definitely add to the body of knowledge. I do not know if anyone has last observations to make?

Thank you all.

Further questions concerning the study can be directed to Ngozi Chuma Umeh and my phone number is 08033274194.