

Reflecting on the Effect of COVID-19 on Access to Tertiary Education for Persons with Disability: Nigerian Colleges of Education in Perspective

Abstract

Persons with disability continue to be marginalized and discriminated against by the trend of non-inclusion of 'special education' in the curriculum of almost all Colleges of Education in Nigeria despite the promulgation of special regulatory frameworks that protect their right to access equal tertiary education. Surprisingly, COVID-19 pandemic has called for reflection on the access to tertiary education for persons with disability in Nigeria. This is as a result of the introduction of new models of e-learning and virtual teaching. Thus, a shift of emphasis to inductive education as against segregated approach is imperative. Arguably, the stigmatization of person with disability in the traditional face-to-face learning will be reduced as the introduction of these models by the pandemic serves as protection against any barrier and discrimination to access tertiary education in Nigeria. Against this background, this article makes an empirical investigation on the extent of compliance of Colleges of education with regulatory frameworks on access to tertiary education for persons with disability with the new teaching strategies/models which COVID-19 has uncovered. The article reveals that the non-inclusion of special education in 112 Colleges of Education in Nigeria out of 113 Colleges is a grave impediment to the achievement of the goal of "Education for All." It concludes that the recent development of mandatory e-learning and virtual teaching will go a long way to enhance equal right to tertiary education for persons with disability in Nigeria as the model holds great potential to be an avenue for their inclusion in learning. The article recommends political will to implement the provisions of the extant regulatory frameworks on 'special education' and the initiation of programmes for the training of support personnel and teachers/lecturers for the Colleges of Education in Nigeria.

Keywords: Access to Tertiary education, Colleges of education, COVID-19 pandemic, Special education, Persons with disability, Regulatory framework

I. Introduction

Globally, the potential of education is increasingly being seen in its ability to transform the life of millions of people, improve the quality of lives and turn people's dreams into reality.¹ However, the minority group such as persons with disability² continue to be marginalised and discriminated against by the trend of

¹ Reddy and Sujathamalini (2006), P. 12

² According to Andzayi, a child is disabled "when his or her impairment or handicap reduces his or her ability to perform in certain task". See CA Andzayi *Introduction to Programmes and Services for Children with Special needs in Nigeria* (Deka Publications Jos 2002) 12 By section 10(94)(i) of the

non-inclusion of ‘special education’³ in the curriculum of all the tertiary institutions in Nigeria, “Colleges of Education” in particular. Thus, the realisation of ‘Education For All’ has remained elusive notwithstanding the promulgation of special regulatory frameworks that protect the right to access equal education for this special class of persons. It should be noted from onset that in this article, discrimination is construed narrowly from the perspective of access to tertiary education in the Colleges of Education in Nigeria.

Meanwhile, reflecting on the effect of Coronavirus 19 (COVID-19) on access to tertiary education in Nigeria may serve a useful purpose for persons with disability. Although, the current restriction of movement, assembly and physical contact with the strategic models of social and physical distancing with total or partial lockdown by the waves of COVID-19 pandemic, has hindered the traditional classroom or face-to-face teaching methods in Nigeria.⁴ The call for utilisation of e-learning and virtual teaching become imperative.

Although, Nigerian government has not seen these models as a form of integration and inclusive education for persons with disability. The adoption of these models is arguably seen by the government as measures to limit the spread and rates of death caused by COVID-19 pandemic. Looking at it from both angles, e-learning and virtual teaching are aspect of information communication technology (ICT) and this is a departure from the traditional/conventional models designed in the curriculum.⁵ These models had the effect of limiting the students, persons with disability inclusive to their respective homes to learn with the aid of ICT as intelligent tools.

Given the importance of education to socio-economic development, this article examines the regulatory framework for the protection of the right to tertiary education of persons with disability and the achievement of the goal of “Education For All”. It specifically answers two interlinked questions. First, what is the extent of compliance of Colleges of education to regulatory framework for persons with disability to equal education. Second, how has the COVID-19 pandemic advance compliance with regulatory framework on persons with disability to access equal tertiary education in Nigeria.

To achieve the set objectives and answering the research questions, this article adopts quantitative and qualitative research methods to gathering data from primary and secondary sources. These methods are used in order to strengthen the overall results that will be greater than either the quantitative or qualitative research. The primary data involves the use of questionnaire and Focus Group

Roadmap for Nigerian Education Sector, Nigeria Educational Research and Development Council Press (2009), refers persons with disability as “people with impairments (physical, sensory) and because of this impairment/disability, they cannot cope with regular school/class organisation and methods without formal special educational training”.

³ Shea, and Baver, (1994), P. 20

⁴ Federal government of Nigeria ‘provides guidelines that put in place measures to curtail the effect of the COVID-19 pandemic by ordering and enforcing social distancing and closure of schools’ (Federal Government Nigeria, 30 March 2020) < <https://www.pwc.com> > accessed 10 April 2020

⁵ Shavinina (2001) p. 9

Sessions⁶ with the stakeholders on inclusive education of persons with disability in Nigerian tertiary institutions, Colleges of Education in particular.

Table 1 shows the background information of the key informants and the Focus Group Sessions. The population size for the study comprises 360 key informants for the questionnaire and 2 Focus Group Sessions comprising 10 participants in the Focus Group Session 1 and 15 participants in Focus Group Session 2.⁷ The survey through the usage of questionnaire as tool is considered by the author as appropriate based on the postulation of Babbie⁸ that “survey is an excellent method for measuring the attitude and opinions of people within a large population”. Securing 25 participants in the Focus Group Sessions was also a normal acceptable sample for all qualitative research as this method requires a lot of labour according to Mark⁹ in his study that “analysing a very large sample can take a lot of time and often unrealistic”.

The cities in which the sampling was drawn are Bauchi in Bauchi State, Enugu in Enugu State, Ilorin in Kwara State, Kaduna in Kaduna State, Lagos, Ekiti and Oyo in Lagos, Ekiti and Oyo States, and Porthacourt in Rivers State respectively. The selection of the cities was based on the zoning of the country into six geo-political zones and these sampling States were founded on the facts that two States (Lagos and Ekiti) have enacted Lagos Special Peoples Law, 2011 and Ekiti State Rights of Persons with Disabilities Law, 2013 which to some extent have resemblance of Discrimination of Persons with Disability (Prohibition) Act, 2018. Three out of the six States (Kaduna, Oyo and Porthacourt) run Federal/State Colleges of Education while the other three States (Bauchi, Enugu and Ilorin) are Private Colleges of Education. Oyo in Oyo States was specifically chosen out of the States in the South-West zone, due to the fact that it is only the College of Education that has ‘special education’ in its curriculum. That is, Federal College of Education, Oyo (Special) has inclusive education. Purposive sampling technique¹⁰ was adopted and frequency distribution with simple percentage were employed.

With the support of research assistance¹¹ during this COVID-19 pandemic era, table 1 shows that 300 filled questionnaire out of 360 administered to the key informants were returned after obtaining approval from the University of Ilorin Research Ethical Review’s Board.¹² The approval shows that the key informants

⁶ Focus Group Session is a discussion with a small group of people on a specific topic. Groups are typically 6 to 10 people with similar background who participate in the discussion for one or two hours. See Quinn (2002) p.385.

⁷ Through the support of the research assistance, the author was able to organise online discussion with the Focus Group Session 1 on April 15, 2020 and Focus Group Session 2 on April 30, 2020. The author is grateful to the research assistance.

⁸ Babbie (2010)

⁹ M Mark, “Sampling and Saturation in PhD Studies Using Qualitative Interviews,” *Forum Qualitative Sozialforschung/Forum: Qualitative Social Research* 11, no.3 Art 8(2010) <<http://www.qualitative-research.net/index.php/fqs/article/view/1428/3027>> accessed 23 March 2020

¹⁰ Purposive sampling technique was adopted primarily because of the non-availability of a sampling frame for the target population.

¹¹ The author is grateful to all the research assistance who made this article possible during COVID-19 pandemic period.

¹² The Research Ethical approval by the Committee was communicated vide a letter dated January

understood that taking part in the survey is optional, their responses were treated with confidentiality and their consents were strictly informed consent. The author analysed the responses of the 300 key informants and considered the number appropriate for the study based on the postulation of Cozby¹³ that “where a population is less than 50,000, then 200 respondents will be appropriate”. The author encountered limitations as to time, finance, space and this COVID-19 pandemic era, otherwise, preference could have been to cover other cities in the Federation. The secondary data comprises of the statutory and case laws, books, journals, periodicals, reports and internet sources. This was garnered in order to facilitate the triangulation of the scattered primary and secondary data. The analysis serves as basis for the research’s findings and recommendations.

Table 1 BACKGROUND INFORMATION OF KEY INFORMANTS AND PARTICIPANTS

Participants	Unit of Analysis	Occupation	Location	Age	Percentage of the Returned Questionnaire
Key Informants 1-360	Academic and Administrative staff and students at Federal and States’ Colleges of Education	Heads of departments, Teaching staff, Typist, Clerical officer, Messenger, Secretary and Representatives of the Students’ Union	Bauchi (Bauchi State), (45), Enugu (Enugu State), (40); Ilorin (Kwara State), (50); Kaduna (Kaduna State), (45); Lagos (Lagos State), (50); Ekiti (Ekiti State), (40); Oyo (Oyo State), (50) and Port Harcourt (Rivers State), (40) Total 360	22 ≤ 65	Bauchi 37 (12.3%), Enugu 30 (10%); Ilorin 46 (15.4%); Kaduna 35(11.7%); Lagos 43 (14.3%); Ekiti 37 (12.3%); Oyo 42 (14%) and Port Harcourt 30 (10%) Total 300 (100%)

8, 2020.

¹³ Cozby (2004) p. 20

Focus Group Session '1'	Heads of Departments and Representatives of Students' Union of (1) Gifted and Talented, (2) Hearing Impairment; (3) Learning Disability; (4) Intellectual Disability; (5) Visual Impairment; (6) Rehabilitation Education; (7) Physical and Health Impairment and Behavioural Disorder	Brailleists, Sign Language interpreters, Speech therapists, Earmold, Low Vision and Diagnostic technicians and Physiotherapist	Federal College of Education, Oyo (10)	22 ≤6 5	
Focus Group Session '2'	Academic and Administrative Staff of Federal and States Colleges of Education and Representatives of Students' Union	Teaching staff, Administrative staff and students	Federal/State Colleges of Education in Ekiti, Kaduna, Lagos, Oyo and Porthacourt (10) Private College of Education, Bauchi, Enugu and Ilorin (3) President and Secretary of the National Students' Union (2) Total 15	22 ≤6 5	

II. Special Education for Persons with Disability in Nigeria: Historical Context

The unequal distribution and access to educational resources and services have great impact on the overall performance of the students. Critical among these educational resources is teachers. Teachers' across countries and systems are tasked with the responsibilities of raising a new generation of children and critical manpower to fulfil the human resources requirements for development. Thus, Colleges of Education in Nigeria are established to build and produce teachers who are trained in training the trainees/learners. Instructively, a teacher is regarded as an artist who moulds and shapes the physical, intellectual and moral powers of children because he/she plays an important role in any educational system.¹⁴ A teacher who trains persons with disabilities is more saddled with responsibility of assessing and having diagnostic measures in identifying the disability conditions by giving them specialised interventions for ensuring actualisation of their potentials in all ramifications.¹⁵ In so doing, a domain of education has been constructed to satisfy the teaching of those persons with disabilities which according to Laura and Ashman referred to as "Special Education".¹⁶

Many studies have been conducted on different aspects of 'special education' in developed and developing countries including Nigeria. The evolution of teaching/training persons with disability in Nigeria is dated back to mid-19th century with the incoming of some missionaries like the Sudan United, the Sudan Interior, the Methodist Church, the Roman Catholic Missionaries, the Christian Missionary Society and the American Southern Baptists Convention.¹⁷ These Missionaries extended their services to persons with disabilities by giving them access to quality education and thus, many vocational rehabilitation centres and special schools were established in Nigeria in order to enhance persons with disabilities educational attainment.¹⁸

In order to achieve the goal of promoting equal educational opportunities in Nigeria, the National Commission for Colleges of Education (NCCE) was established under the NCCE Act, 1989 (as amended). The Act was saddled with achieving this aspiration by targeting one of its cardinal objectives towards producing specialise teachers for 'special education' otherwise known as "Special Needs Education".¹⁹ As at 2013, NCCE has increased and approved 113 Colleges of Education in Nigeria out of which 21 are owned by the Federal

¹⁴ Reddy and Sujathamalini, (2006)

¹⁵ Shea, and Baver, (2006) p. 161-166.

¹⁶ Laura and Ashman,(1985) (Goom Helm, London' in Reddy, G Lokannadha and J Sujathamalini, *Children with Disabilities: Awareness, Attitude and Competencies of Teachers*. 'Special education' was described as "an aspect of education that treats people as individuals hence the use of special equipment and special teaching methods that cater for individual needs".

¹⁷ Oloriegbe, (2011) p. 63-68

¹⁸ *Ibid* 64

¹⁹ By section 7 of the *National Policy on Education Act, 2013*, Nigeria Educational Research and Development Council Press (2014), 'Special education' means an "additional services over and above the regular school programme that are provided for disabled, disadvantaged and gifted children in Nigeria".

Government, 45 are owned by the States government, 38 are owned by the private individuals while 9 are from different Polytechnics, National Teachers Institute and Nigeria Army School respectively.²⁰

Despite the increase in the number of Colleges of Education and the long trend of ‘special education’ in Nigeria, the author observes a disturbing trend of incompatible curriculums, architectural barriers and other more universal challenges. The specific challenge is where only Federal College of Education (Special), Oyo teaches/trains persons with disability on ‘special education’ out of 113 Colleges of Education in Nigeria.²¹

After long years of planning dating back to October 1974, the Federal College of Education (Special), Oyo took off on 5th October 1977 as the Federal Advanced Teachers College for Special Education.²² The College was initially affiliated to the University of Ibadan by the Nigerian Educational Research Council now Federal Ministry of Education for growing, supervision, monitoring and training special education teachers.²³ Its earlier programmes were conjointly developed and produced by the University of Ibadan at the Institute of Education and the Department of Special Education.²⁴ University of Ibadan was initially the awarding institution that award the College certificate despite the enactment of Decree No.4 of 1986. This arrangement continued until the Decree 1986 was amended by Decree No. 6, 1993 which later granted the College autonomous including all other Federal Colleges of Education.²⁵ The Federal College of Education (Special), Oyo now officially awards the National Commission for Colleges of Education (NCCE), certificate.²⁶

Instructively, the Federal College of Education (Special), Oyo is made up of seven departments comprising of Departments of Gifted and Talented, Hearing Impairment, Learning Disability, Intellectual Disability, Visual Impairment, Rehabilitation Education, Physical and Health Impairment and Behavioural Disorder.²⁷ The departments are made up of academics and supporting staff. The duration for the training is three years and teachers are trained in some common areas of special needs such as “visual impairment,” “hearing impairment”; “learning disabilities”; “intellectual disabilities”; “gifted and talented” and “audiology speech pathology”.²⁸

It is of paramount importance to note that the Federal College of Education (Special), Oyo is the only College of Education that trains students in special education and that is why the word ‘special’ is ascribed to the name of the College to indicate ‘specific’ as other Colleges of Education have not designed

²⁰ See National Commission for Colleges of Education <www.ncceonline.edu.ng/NCCE-Digitization/Welcome.html> accessed 30 April 2020

²¹ Oloriegbe, (2011) p. 66

²² Abang, (2003) p. 35-50

²³ *Ibid* 37

²⁴ *Ibid* 39

²⁵ *Ibid* 40

²⁶ *Ibid*

²⁷ See National Commission for Colleges of Education <www.ncceonline.edu.ng/NCCE-Digitization/Welcome.html> accessed 30 April 2020

²⁸ *Ibid*

their curriculums towards ‘special education’. According to the manual thematic analysis carried out in this study, it was discovered from the discussion with the two Focus Group Sessions that the Federal College of Education (Special), Oyo is only the College of Education that has the highest number of trainees in ‘special’ education’ and as such, there is an increase in the numbers of trainees to the extent that programmes are structured in such a way that the year 1 students usually admitted when years two and three students are writing their examinations in order to decongest the institution. It was the belief of the participants in the Focus Group Sessions especially the Focus Group Session 1²⁹ that the skyrocketing ratio of admitted students/trainees as of last 5 years was as a result of non-inclusion of special education in other Colleges of Education in Nigeria.

The participants believe that non-inclusion of ‘special education’ in the curriculums has been connected to disability inequality to education. The two Focus Group Sessions claimed that the College has been labelled as school that trains disabled teachers because of the word ‘special’ attached to the name of the College.³⁰ Hence, the increase in various forms of discrimination against persons with disability. This position was alluded to by Oziji³¹ and Eniola³² that many people do not understand persons with disabilities or appreciate them; sometimes they are stereotyped and discriminated against. To them, “exclusion, disregard and hostility become regular reactions towards persons with disabilities and they suffer low or poor self-esteem as a result of the negative attitude of the society towards them.” Author’ survey in an administered questionnaire shown in table 2 below equally made these assertion where 90% of the key informants hold the view that “attitudinal barriers can take the form of misconception, mythical beliefs and even labelling of persons with disabilities” 88.4% of the key informants in another interval of the questionnaire administered by the author in table 2 further affirmed that “students with disabilities continue to face negative attitudes and stereotypes in the education system” and the same number of the key informants (88.4%) are in agreement that “except the negative attitudes and segregation are ended, inclusiveness of the field and persons with special needs will be greatly jeopardised”.

Still on the premises of recognising the fact that there is only one College of Education that trains teachers on ‘special education’ in Nigeria, all participants in the two Focus Group Sessions expressed that “Federal College of Education (Special) Oyo is located in South-West of Nigeria” and as such in a country of 36 States comprising of six geo-political zones³³ and of population of over 190 million out of which 22 million are living with various form of disability,³⁴ the trainees/learners who are interested in ‘special education’ will be facing a lot of challenges. For instance, the Focus Group Session 1 expressed thus:

²⁹ Online discussion with the Focus Group Session 1 on 15 April 2020

³⁰ Online discussion with the Focus Group Session 1 on 15 April 2020 and Focus Group Session 2 on 30 April 2020

³¹ Oziji (2005)

³² Eniola (1997) p. 21-26

³³ North-East, South-East, North-Central, North-West, South-West and South-South

³⁴ CIA World Fact Book: World Facts and Statistics on Disabilities and Disabilities Issues < <https://www.cia.gov/worldfactbook> > accessed 10April 2020

assuming an interested learner/trainee in 'special education' resides in the far North-East of the six geo-political zones of 1,250 Kilometers to South-West where College of Education (Special), Oyo is situated, such trainees will undergo a stressful journey and at the long run, the aim of being a specialist in disability education will be defeated.

Arguably, with the blatant disregard for Education policy in Nigeria, there is shortage of colleges to accommodate the growing educational needs of persons with disabilities and learners/trainees in Nigeria. The current shift from segregation policy to that of inclusion and mainstreaming has deepened the problem of massive overpopulation in the Federal College of Education (Special) Oyo State, Nigeria. This paper therefore posits that the dangers of congestion in this College are so enormous such that the ultimate goal of teaching and learning could be defeated. Although, the Focus Group Session 1 expressed that:

the specialty of 'special education' is equipment-driven and very expensive as the instructional facilities such as VRS (Video Relay System for Deaf people), JAWS (Job Access with Speed) Application for blind, sign language laboratory and Abacus Application which is a calculator that contains Board and Beads for visually impaired persons to mention but few are not locally made.

Studies have shown that Nigeria has no specific funding for special education but depends on the Ministry of Education for its funding and the available resources are not adequate as the Nigerian government does not consider educational sector a priority.³⁵ Further study shows that in 2010, the Nigerian government spent an average of about 0.7% of its GDP and about 3% of the budget on education which puts Nigeria among the five lowest spenders' country worldwide.³⁶ This is another reason why the author's discussion with the participants in the two Focus Group Sessions opined that, "there is no enough funds to have inclusive education in all Colleges of Education as the only college for 'special education' is also confronted with lack of fund". The President and Secretary of the Federal College of Education (Special), Oyo in the author's discussion during the Focus Group Session 1 hold the views that:

there were backlog payment of staff salaries, trainees/learners were being taught with outdated equipment like "Braille" and there is no enough qualified teachers in the institution as some of them that are deaf and blind were not adequately taking care of due to lack of expert/professional teachers to interpret to students with disability and to train the able trainees on how to impact knowledge after leaving the institution.

One of the participants in Focus Group Session 1 has this to say: "JAWS cost nothing less than \$895 and neither the institution nor any of the students with disability can afford to purchase it."

³⁵ Adebawale and Bolaji, (2011) p. 56-62

³⁶ N El-Rufai *Why education can't wait?* < <http://www.thisdaylive.com/articles/why-education-cant-t-wait/95888/> > accessed 20 March 2019

In table 2, overwhelming majority representing 92% in the author's fieldwork survey are in support of the above views expressed by the Focus Group Sessions when they were asked about the challenges of inclusive 'special education' in all the Colleges of Education in Nigeria. They hold that:

- (a) Unemployment of personnel, training and retraining form the major hindrances to special need education in Nigeria
- (b) The shortage of funds leads to shortage of resources, inadequate facilities, unemployment of personnel
- (c) there is no clear indication of special funding arrangement for the implementation of inclusive education in the country
- (d) Poor or low funding leads to poor implementation of the existing policies on 'special education'
- (e) Lack of knowledge about and sensitivity to disability issues on the part of some educators, staff and students can make it difficult for students with special needs to access educational services equally with the so call 'normal'

It is therefore not a surprise when Oladejo³⁷ and Thani³⁸ in their study stressed in confirmation of the above assertions that:

like the entire education sector, special education is being grossly underfunded especially by governments. It is pathetic to note that special needs education which is costlier to fund when compared to regular education receives far less and has no specific funding formula and source and often it is attended to when there is an overflow of resources from the budgets of regular education.

Thus, this paper posits that the non-inclusion of 'special education' courses into the curriculums of studies of other Colleges of Education hinder the achievement of the goal of "Education for All" in Nigeria. It can also be argued that, the establishment of only one College of Education as special college for teaching 'special education' will limit the number of trained students that will become teachers that will in turn teach persons with disabilities in this field and this results in stretching the available infrastructure in the College of Education, Oyo.

III. Nigeria Responsibility under International and National Legal Instruments on 'Special Education'

The attitude of the international community towards 'special education' has been encouraging by the enactment of certain international and regional legal instruments on elevating the status of persons with disability to equal education opportunities. Notably among these legal instruments are the Universal Declaration of Human Rights (UDHR), 1948; the Convention on Rights of the Child (CRC), 1989; The Salamanca Declaration of 1994; the Education for All Declaration in Dakar in 2000; and the UN Convention on the Rights of Persons with Disability (CRPD), 2008.

³⁷ Oladejo (2002)

³⁸ Thani, (2006), p. 220-227

Similarly, the Salamanca Statement and Framework for Action has the most definitive statement on ‘special education’ when it provides that “ordinary schools should be equipped to accept all children, regardless of their physical, intellectual, emotional, social, linguistic and other conditions”. The Declaration further provides that “educational policies at all levels should stipulate that children with disabilities should attend their neighbourhood school”, that is; the school that would be attended if the child did not have the disability. The Declaration commits that “children with disabilities and special needs must have access to regular schools which should accommodate them within a child-centered pedagogy capable of meeting these needs”. Arguably, these international instruments have shifted emphasis to inductive education as a veritable option for service delivery to persons with disability from the hitherto segregated approach.

The above declaration gained credence from the UN Convention on the Rights of Persons with Disability. It emphasises the need to educate and inclusion of ‘special education’ into the educational curriculum.³⁹ By its Article 24, the rights of persons with disability to equal educational services has been spelt out thus:

- a. Persons with disabilities are not excluded from the general education systems on the basis of disability, and that children with disabilities are not excluded from the free and compulsory primary education or from secondary education on the basis of disability;
- b. Persons with disabilities can access an inclusive, quality and free primary education and secondary education on equal basis with others in the communities in which they live;
- c. Reasonable accommodation of the individual’s requirements is provided;
- d. Persons with disabilities receive the support required within the general education system to facilitate their effective education;
- e. Effective individualised support measures are provided in environments that maximise academic and social development, consistent with the goal of full inclusion.

Significantly, the protection and promotion of rights to education as one of the socio-economic rights in Africa received tremendous support with the adoption of the African Charter on Human and People’s Rights (African Charter).⁴⁰ This Charter neither makes distinction as to the type of rights nor distinction as to which of the rights are less important than others and theoretically made no distinction as to their implementation.⁴¹ Thus, it did not create any hierarchy of rights and this is seen as a leap beyond the ideological cleavages and disputes

³⁹ Article 8 of the United Nations Convention on the Rights of Persons with Disability

⁴⁰ The Charter in its Articles 15 to 24 protects a wide range of socio-economic rights such as the rights to health (Art. 16) and rights to education (Art. 17) among others.

⁴¹ See the African Commission decision in *Purohit and Another v The Gambia* [2003] AHRLR 96. See also, F Viljoen, *International Human Rights Law in Africa* (Oxford University Press, 2007) 240

that led to the subjugation of socio-economic rights as being of lesser value than civil and political rights.⁴² This Charter is supplemented by the African Charter on the Rights and Welfare of the Child. These international and regional legal instruments protect and promote disability rights. However, these instruments mainly focus on providing minimum standards for national governments to follow. These instruments also require sovereign nation governments to take issues regarding the rights of persons with disabilities into consideration while formulating public policy by ensuring the inclusion of persons with disability when considering issues directly affecting them.⁴³

By the combined effects of these international, regional instruments, socio-economic rights, right to education in particular, are free of claw-back clauses⁴⁴ as they are unequivocally justiciable like all other rights enshrined under the legal instruments⁴⁵ and States are enjoined to implement these rights immediately they are party.⁴⁶ The normative content of socio-economic rights especially in Africa has been set out in several decisions of the African Commission on Human and People's Rights (African Commission).⁴⁷

III(A) Domestic Law on 'Special Education' and Persons with Disability in Nigeria

Evidently, Nigeria is signatory and ratified those international, and regional legal instruments. But being a dualist State, treaty obligations do not form part of the Nigerian laws unless expressly incorporated through an Act of the National Assembly. In Nigeria, usually a specific law is required to give a ratified international treaty the force of a national law. In practical terms, the Nigerian government is expected to either change existing laws or introduce new legislations in order for the treaty to be fully effective. The dualist nature of the Nigerian's legal system is that, it is difficult to enforce rights under the various international instruments to which Nigeria is a party. For emphasis, section 12 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides:

12(1) No treaty between the Federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly.

(2) The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty.

⁴² Mbazira (2006) p. 338.

⁴³ See Article 17 of the African Charter on Human and People's Rights

⁴⁴ Ibe, (2007) p. 229

⁴⁵ Viljoen, (2007) p. 240

⁴⁶ Mbazira (2006)

⁴⁷ See *Social and Economic Rights Centre and Another v Nigeria* [2001] AHRLR 60, (ACHPR 2001). See also, *Media Rights Agenda and Others v Nigeria* [2000] AHRLR 200 (ACHPR 1998); *Free Legal Assistance Group and Another v Zaire* [2000] AHRLR 74 (ACHPR 1995); *Purohit and Another v The Gambia* [2003] AHRLR 96; *Union Interafricaine des Droits de l'Homme and Others v Angola* [2000] AHRLR 18 (ACHPR 1997); *International Pen and Others (on behalf of Saro-Wiwa) v Nigeria* [2000] AHRLR 212 (ACHPR 1998); *Malawi African Association and Others v Mauritania* [2000] AHRLR 149 (ACHPR 2000)

(3) A bill for an Act of the National Assembly passed pursuant to the provisions of subsection (2) of this section shall not be presented to the President for assent and shall not be enacted unless it is ratified by a majority of all the House of Assembly in the Federation.

Instructively, the above section 12 implies that the 1999 Constitution distilled three lists for operation at the Federal, States and Local levels. This shows that any treaty signed, ratified and domesticated by the Nigerian government which falls within the “Concurrent Legislative List” as provided in “Part II of the Second Schedule” shall not be enforceable unless same is domesticated by all the 36 States of the Federation.⁴⁸

As the awareness of the needs of persons with disability in Nigeria increases. Especially in the area of education, Nigerian government enacted the Disability Decree 1993. However, there is no policy formulated to enable the implementation of the decree to meet the special needs of persons with disability. Even the 1999 Constitution that is the *grund norm* of the country is silent on this. Sparingly, a cursory exposition of the Fundamental Human Rights provided under Chapter IV of the Nigerian Constitution, 1999 which guarantee the rights of citizens generally and without discrimination⁴⁹ reveals that none of the sections is directed at addressing rights of persons with disability. A more disturbing feature arising from the fundamental human rights provisions is that persons with disability cannot enforce their rights within the provisions relying on the specialty of their disability. Arguably, this impediment or weakness still exposed persons with disability to discriminatory treatment.⁵⁰

However, in some jurisdictions, specific provisions under the fundamental human rights bill are dedicated to protecting the rights of persons with disability. This dynamism can be found in the Constitution of the Republic of South Africa where its Section 29 of its Bill of Rights provides that “everyone has the right- (a) to a basic education, including adult education; and (b) to further education, which the State, through reasonable measures, must make progressively available and accessible”.⁵¹

It is argued that a true commitment to the plight of persons with disabilities in Nigeria can be positively pursued if only the country can dedicate specific sections within the fundamental human rights in Chapter IV for the protection of persons with disabilities. Domestication of the International Convention on

⁴⁸ See generally Parts I, II and III of Second Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

⁴⁹ See Nigerian Constitution 1999 (as amended), S 42. See also, A Kehinde, ‘Ability in Disability: the Empowerment of the Disabled’ in JM Coetzee’s *Life and Time of L Michael* (Working paper)

⁵⁰ B Michael, *Stigma, Discrimination and Marginalization: Gateways to Oppression of Persons with Disability* 189

⁵¹ See also, Ghana Constitution 1992, Arts 9(1) and 29(1). See generally, R Marcia. ‘On Second Thought: Constructing Knowledge, Law, Disability and Inequality’ in S Herr, L Gostin and HK (eds), *Human Rights of Persons with Intellectual Disabilities: Different but Equal* (Oxford, Oxford University Press, 2003) 287–317. See further Rwanda Constitution 2003, Art 11 and the Republic of Uganda Constitution 1995, Art 35

the Rights of Persons with Disability by all the 36 States of the Federation is also very important.⁵²

Interestingly, Nigerian government has signed the Discrimination Against Persons with Disabilities (Prohibition) Act (DAPWDA), 2018. The Act in its section 22(1) and (2) recognise the “right to education of persons with disabilities” that is free. It provides for the “right to an unfettered education without discrimination or segregation for persons with disabilities” and makes it the responsibility of National Commission established under this Act to “provide assistive learning devices”. By section 23 of the Act, it is an obligation on the government to “provide trained personnel and facilities for the educational development of persons with disabilities” and 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”.

However, this Act is a Federal Act which is a legislation on issue of persons with disability that is not within the exclusive competence of the Federal government. The Act (with the exception of the Federal Capital Territory, Abuja which has direct application) can only become binding on States if it is approved by a simple majority of all the 36 States of the Federation or alternatively, if all the States pass their own version with or without reference to the Federal Act. It is the argument of the author that notwithstanding the domestication and even if all the 36 States of the Federation domesticate the DAPWDA, enforcement of the right to education of persons with disability cannot solely be effectively achieved under the DAPWDA because in the hierarchy of Nigerian legislations, the Constitution is supreme⁵³ to any Act of the National Assembly. The argument is that, express provision for it in Chapter IV of the Constitution is very germane as it will enhance its enforceability.

Unfortunately, the author has only seen limited effort in this direction by the States of the Federation as at present, only two States have enacted “Special Peoples Law” and the “Rights of Persons with Disabilities Law”⁵⁴ in Nigeria and these laws were enacted before the signing of the DAPWDA of 2018. These States’ legislations represent a mere arrangement of stipulations within the States and they are not directed at “the full development of human potential and strengthening of respect for human rights, fundamental freedoms and human diversity” for all persons with disability in Nigeria as enshrined in Article 24(1)(b) of the Convention on the Rights of Persons with Disability domesticated and signed by the Federal Government in 2018.

⁵² The Supreme Court in *Abacha v. Fawehinmi* [2000] FWLR (pt. 4) 533 held that “an international treaty entered into by the Government does not become binding until enacted into law by the National Assembly; it has no binding force of law as to make its provisions justiciable in Nigerian Courts.” In effect, a specific law is required to give a ratified international or regional treaty the force of a national law.

⁵³ To give credence to the supremacy of the Constitution, the Constitution of the Federal Republic of Nigeria, 1999 (as amended), s 1(3) provides that “If any law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void.”

⁵⁴ See the Lagos State Special Peoples Law, 2011 and the Ekiti State Rights of Persons with Disabilities Law, 2013.

In the same vein, persons with disability are entitled to exercise their civil, political, social, economic and cultural rights on an equal basis with others. In our world today, human equality, and the right to be free from marginalisation due to disability status are among contemporary global benchmarks. During the drafting phase of the Constitution, Nigerians missed the opportunity to specifically include non-discrimination on the grounds of disability, which would have guaranteed every person with disability in Nigeria the full exercise of his or her right to education. As a result, only those rights guaranteed to all Nigerians in the Constitution are applicable to persons with disability. Until Nigeria moves from formal interpretation of ‘equality’ to develop and inscribe in the Constitution the concepts like indirect discrimination, affirmative action, substantive equality and the duty to accommodate in order to develop a conception of substantive equality, persons with disability will remain marginalised. Nigerian courts have failed in this direction as in most decided cases, the courts gave formal interpretation to ‘equality’ and non-discrimination rights of persons with disability in the perspective of education. The cases of *Simeon Ilemona Akubo v. Diamond Bank Plc*⁵⁵ readily come to mind. In this case, the applicant’s case against the bank for denial of access into the bank without his mental crutches when the bank has not provided for alternative mobility aid or any assistive device is discriminatory was overruled by the court when it held that “the applicant’s right to non-discrimination and human dignity were not violated as the applicant was not treated differently from other persons who came to the bank”. From the court’s decision, it shows that the bank has no legal obligation to provide alternative access to applicant’s mobility, rather the applicant has to meet the bank’s procedures and regulations.

Although, the courts in Nigeria have been pivotal in defining the parameters of human rights in the country and have often been the last bulwark against rights violations. Kayode Esho in the case of *Ransome Kuti v. Attorney-General of the Federation*⁵⁶ offered a timeless conceptualisation of what the idea portends when he posited that:

But what is the nature of a fundamental right? It is the right which stands above the ordinary laws of the land and which is in fact antecedent to the political society itself. It is a primary condition to a civilised existence. Also, the court in the case of *Afolayan v. Ogunrinde*⁵⁷ defined rights as an ‘interest recognised and protected by the law’, and in *Uwaifo v. Bendel State*⁵⁸, the Supreme Court held that a legal right is ‘any advantage or benefit conferred upon a person by the rule of law’.

Flowing from the above conceptualisation, courts in Nigeria have always held that the judiciary remains the proper avenue redress from rights violations and that there are multifarious and multidimensional judicial remedies for victims of human rights violations. According to Oputa, J.S.C:

the law is an equal dispenser of justice, and leaves none without a remedy for his right. It is thus a basic and elementary principle of common law that whenever there is a wrong, legal wrong or

⁵⁵ Unreported Suit No: ID/763M/2010

⁵⁶ *Ransome Kuti v. Attorney-General of the Federation* [1985] 2 NWLR (pt. 6) 211 at 230

⁵⁷ *Afolayan v. Ogunrinde* [1990] 1 NWLR (pt. 127) 369 at 391

⁵⁸ *Uwaifo v. Bendel State* [1982] 7 SC 124 at 273

injuria that is, there ought to be a remedy to redress that wrong. Thus, irrespective of the nature of violation, appropriate remedies exist for it.⁵⁹

Furthermore, section 42(2) of the Nigerian Constitution empowers the High Court in the hearing and determination of any application alleging a breach of any of the guaranteed rights to “make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing and securing the enforcement of any rights to which the person (is) entitled.”

While section 6(1) of the Nigerian Constitution vests judicial powers in courts to entertain suits, section 6(6)(c) circumscribes the courts from hearing any matter which involves the enforcement of a right contained in the second chapter of the Constitution, declaring those rights non-justiciable. Essentially this puts a question mark on education as a right in Nigeria and the ability of court to use the instrumentality of the law to force policy makers to provide access to everyone. In a recent unreported decision of the Federal High Court in Abuja⁶⁰, the court declared that national and sub-national governments have the constitutional duties to provide adequate funding for free education programme. The court held that “By the combined effect of section 18(3)(a) of the 1999 Constitution and section 2 (1) of the Compulsory, Free Universal Basic Education Act, 2004, the right to free and compulsory primary education and free junior secondary education for all qualified Nigerian citizens are enforceable rights in Nigeria.” Where does this leave access to education by persons with disability in Nigerians? This is an evolving jurisprudence that needs to be watched closely.

Against what happens in other jurisdictions (for instance South Africa⁶¹), the judiciary in Nigeria has been unable to develop a normative equality jurisprudence to safeguard the rights of persons with disability in Nigeria and protect their right from discrimination in every form. The Court have restricted itself to strictly expound section 42 of the Constitution which provides that:

(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:- (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions are not made subject; or (b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions.

⁵⁹ Aliyu Bello v. A-G Oyo State [1986] 5 NWLR (pt. 45) 828 at 889-890

⁶⁰ LEDAP v. The Federal Ministry of Education and the Attorney General of the Federation (unreported decision of 2 March 2017)

⁶¹ President of the Republic of South Africa v Hugo [1997] 6 BCLR 708

In *Uzoukwu v Ezeonu*⁶², the Nigerian Court of Appeal held *inter alia* that the right to non-discrimination presupposes that the discrimination complained against must have been recognised by a law; also that the discrimination must be seen as an act of government or its agencies; the discrimination complained against must not apply to other Nigerians. Person with disability in Nigeria can only invoke this right contained in section 42 only if the violations fall within the protected field. This judicial position by the courts in Nigeria essentially limits the opportunities available in courts to challenge the discriminatory educational policies against disabled students.

Apart from the fact that the jurisprudence on discrimination against persons with disability in Nigeria is low, there is no explicit reference to persons with disability in the Nigerian Constitution, thus leaving an obvious lacuna. But in spite of this, the judiciary can rely on existing regional and national frameworks to promote and strengthen the right to education of persons with disability in a non-discriminatory way. There is a particular need for Nigerian courts to adopt a non-restrictive equality interpretation as it relates to the right to education of persons with disability.

The provisions of the Constitution notwithstanding, does not imply that constitutional guarantees would have been adequate, as further steps would be needed to strengthen constitutional guarantees. It is therefore argued that it is very important that the needs of persons with disability and other problems they face on a daily basis be cushioned through the inclusion of disability right to education in the list of protected grounds in the Nigerian Constitution. Their plights with regard to how they have been and continue to be excluded from Nigerian educational opportunity is a critical issue.

III(B) Domestic Policy on ‘Special Education’ and Persons with Disability in Nigeria

Arguably, Nigeria aimed at achieving the purpose set down and in the same standard with UN Convention on the Rights of Persons with Disability (CRPWD) through attempts to establish policy and laws by the enactment of the National Policy on Education Act (NPEA), 1977 (as amended). Section 7 of NPEA is specifically dedicated for ‘special education’ of persons with disabilities. By its paragraph 119 (a) and (b), “access to education should be in an inclusive setting for all persons with disabilities” and “equalised educational opportunities for all persons, irrespective of their genetic composition, social, physical, sensory, mental, psychological or emotional disabilities” are guaranteed.

Generally speaking, paragraphs 119-124 of the NPEA highlighted government intentions concerning improved ‘special education’ for persons with disabilities as part of an inclusive system. The Act broadly emphasised important principles such as “recognition of difference, provision of accommodation for learners, training and retraining of all teachers in regular schools, identification of individual needs of learners, curriculum adaptation and recognition of the

⁶² *Uzoukwu v Ezeonu* II [1991] 6 NWLR (pt.290) 708 CA

potential in every child”. Undoubtedly, these are lofty goals intended to improve the quality of special education services, but much more is needed to translate the goals into concrete action. It was expressed by National President and Secretary of the Students Union in the two Focus Group Sessions that this Act has not been implemented as discrimination has taken a toll on the lives of students with disabilities; that they have been relegated to nothing on the surface of the earth. They further expressed that “all the students with disabilities in the Federal College of Education (Special), Oyo gave up themselves to be educated in special education in a bid to bring out the potentials in them, especially to show to the world that there is ability in disability”. Arguably, coming to study at Federal College of Education (Special), Oyo is only college that persons with disabilities believe that they can attain and achieve the goal of “Education for All.” This argument is similar to both the fieldwork survey phase of the work, as well as the Focus Group Sessions.

Also, NPEA gets more complicated when considering judicial interpretation of justiciability of rights to adequate and equal education opportunities for persons with disability within the context of Chapter II of the Nigerian Constitution, 1999⁶³ which constitutes “fundamental objectives and directive principles of State policy” (DPSP)⁶⁴ not ordinarily justiciable.⁶⁵ This article further argues that the non-inclusion of education specifically as a fundamental human right in the Nigerian Constitution, endangers Nigeria’s ability to align its education system with her current developmental goals and that of the emergent global village. It could be better saved to directly refer to any section in Chapter IV of the 1999 Constitution assuming that right to education is inclusive. Rather than drawing an inference or implied interpretation from other enactments such as the NPEA. Interestingly, there is growing acknowledgment of the indivisibility and interdependency of right to education as one of the socio-economic rights with other fundamental human rights as this acknowledgment has been dated back to the position adopted by world leaders at the 1993 Second World Conference on Human Rights in Vienna, where human rights were described as “universal, indivisible and interdependent and interrelated”.⁶⁶

However, non-enforceability shows a glaring example of discrimination against persons with disability to equal educational opportunity; because education should be accessible and affordable. The ratio of regular teachers produced from other colleges of education with the Federal College of Education (Special), Oyo is ratio 1: 112 and by this, the trained teachers in special education will be relatively low compare to the regular teachers who are not trained in special education, hence, the limited number of students with disabilities with access to teachers. The overall result will be that the special skill and knowledge required

⁶³ See Nigerian Constitution 1999 (as amended), s 18

⁶⁴ The DPSPs are usually used for interpreting the provision of a Constitution. They are “relate to policy or goals or directions rather than to existence or extent of legal rights vested in any individual or group normally subject to the jurisdiction of courts of law.” See BO Okere, ‘Objectives and directives principles of state policy under the Nigerian Constitution’ (The International and Comparative Law Quarterly, 1983) vol. 32, 221

⁶⁵ See Nigerian Constitution 1999 (as amended), s 6(6)(c)

⁶⁶ Vienna Declaration and Programme of Action: UN GABOR world conference on human rights, 40th session, 2nd plenary meeting, part 1, 5: UN doc A/CONF. 157/24 [1993], reprinted in (1993) 32 International Legal Materials 1661.

to teach persons with disabilities in various primary and basic schools will be limited to the few trainees/teachers that are able to gain admission and complete their three years courses at the Federal College of Education (Special), Oyo. Further, non-inclusion of special education in other Colleges of Education curriculums has denied persons with disability to access equal right to education as the ratio of the graduates from the Federal College of Education (Special), Oyo cannot and will not be enough to teach the high ratio of persons with disabilities that are willing to be educated in Nigeria. Thus, this article argues for making the right to education as a fundamental human rights by amending the Nigerian Constitution to reflect same as non-inclusion of 'special education' in all other Colleges of Education posit danger and discrimination against the spirit behind making "Education For All" including persons with disability in Nigeria. This paper therefore advocates for necessary tool for the enforcement of DAPWDA and NPEA because the tool might be needed to "provoke or spur the political system into addressing questions of social exclusion".⁶⁷ The non-enforceability of the provisions of DAPWDA and NPEA calls for re-think of the impact of COVID-19 pandemic which calls for utilisation of e-learning and virtual teaching which is addressed in the next section of this article.

Table 2: Perceptions of the Key Informants on 'Special education' and the Effect of Covid-19 on Access to Tertiary education for Persons with Disability in Nigeria

Perception of the Key Informants	Frequency	%	Perception of the Key Informants	Frequency	%
Students with disabilities are academically better in inclusive educational institutions	170	56.	Insufficient number of required trained and skilled professionals in Science and technology and lack of access to ICT hinder the achievement of e-learning and virtual teaching the Nigeria Colleges of Education	235	78.
Strongly Agree	100	7	Yes	65	3
Agree	15	33.	No		21.
Strongly disagree	10	3	Total	300	7
Disagree	05	5			
Undecided	300	3.3			
Total		1.7			
		100			100
Students with disabilities continue to face negative attitudes and stereotypes in the education system	200	66.	Inclusiveness of the field and persons with special needs will be greatly jeopardised except negative attitudes and segregation are ended	200	66.
	65	7	Yes	65	7

⁶⁷ Whyte (2005)

Yes No Undecided Total	35 300	21. 7 11. 6 100	No Undecided Total	35 300	21. 7 11. 6 100
Attitudinal barriers can take the form of misconception, mythical beliefs and even labelling	150	50	Challenges of inclusive 'special education' in all the Colleges of Education in Nigeria include the following	04	1.3
Strongly Agree	120	40	(a) Unemployment of personnel, training and retraining form the major hindrances to special need education in Nigeria	03	1
Agree	15	5	(b) The shortage of funds leads to shortage of resources, inadequate facilities, unemployment of personnel	05	1.7
Strongly disagree	10	3.3	(c) there is no clear indication of special funding arrangement for the implementation of inclusive education in the country	06	2
Disagree	05	1.7	(d) Poor or low funding leads to poor implementation of the existing policies on 'special education'	06	2
Undecided	300	100	(e) Lack of knowledge about and sensitivity to disability issues on the part of some educators, staff and students can make it difficult for students with special needs to access educational services equally with the so call 'normal'	276 300	92 100
Total			(f) All of the above Total		

e-learning and virtual teaching courses must be designed to be accessible to students with disability from beginning to avoid any discrimination	265	88.	Lack of support services and no established centres with programme and services to meet the numerous challenges of special needs education in the Colleges of Education hinder the achievement of persons with disability to equal right to education	120	40
Yes	10	8.4	Strongly Agree	120	40
No	300	3.3	Agree	20	6.7
Undecided		100	Strongly disagree	25	8.3
Total			Disagree	15	5
			Undecided	300	100
			Total		
e-Learning and virtual teaching technologies are multimedia applications that can help many students with disabilities to attain the education that they richly deserve	280	93.	Domestication of Discrimination Against Persons with Disabilities (Prohibition) Act by all States of Federation will enhance the enforceability of inclusive education in the Nigerian Colleges of Education	265	88.
Yes	20	3	Yes	25	3
No	300	6.7	No	10	8.4
Undecided		100	Undecided	300	3.3
Total			Total		100
Refusal of some States to domesticate Discrimination Against Persons with Disabilities (Prohibition) Act hinder the enforceability of 'special education' in the Nigerian Colleges of Education	250	83.	Lack of implementation of National Policy on Education Act hinder the effective implementation of "Distance Education" in the Nigerian Colleges of Education	275	91.
Yes	35	3	Yes	20	7
No	15	11.	No	05	6.7
Undecided	300	7	Undecided		1.6
Total		5	Total	300	100
		100			

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IV. Analysis of Data from Table 2

The result of data presented in table 2 shows the perception of the stakeholders on ‘special education’ of persons with disability. The result revealed that inclusive educational institutions will enhance the academic performance of persons with disability when all most the stakeholders representing 270 (90%) of them are in agreement with this position as against 30 (10%) of them who disagreed. that students with disabilities are academically better in inclusive educational institutions. However, it is revealed that in achieving full inclusive education for persons with disability, there need to be enough trained and skilled professionals in the field of science and technology. 78.3% of stakeholders agreed with this position as against 21.7% of them who disagreed. From the data presented in table 2, majority of the stakeholders representing 93.3% further agreed that e-learning and virtual teaching technologies are multimedia applications that can help many students with disabilities to attain the education that they richly deserve. This is a good global development ushered into the educational system by COVID-19 pandemic, Nigerian education system inclusive. In another interval of the questionnaire, 80% of the stakeholders strongly agreed that establishment of support services centres with designed programmes for special needs education in all the Colleges of education in Nigeria will enhance the achievement of access to tertiary education for persons with disability. 83.3% of the stakeholders in another phase of the questionnaire are of the view that enforceability of ‘special education’ by persons with disability can only be achieved if all the 36 states federating unit domesticate the Discrimination Against Persons with Disabilities (Prohibition) Act.

The result in table 2 above is in tandem with the studies of Ferguson that persons with disability can function more effectively when school and community environments are made physically and programmatically accessible. This will equally enable others who do not have disabilities to access their environment even more readily.⁶⁸ This is further evidenced in the studies of Heijstra & Rafnsdottir⁶⁹ and Craig, Wozniak, Hyde and Burn,⁷⁰ where they opined that e-

⁶⁸ Ferguson (1997) p. 251-269

⁶⁹ Heijstra and Rafnsdottir (2010) p. 158-163

⁷⁰ Craig et al (2009) p.158-167

learning and virtual teaching “provide a platform to more effectively and cheaply distribution of learning materials especially to a geographically dispersed group of students include persons with disability and potentially provide better learning outcomes”. This assertion in table 2 further gain credence from the views expressed by the Focus Group Session 1 at Federal College of Education (Special) Oyo that “there will be potential benefits of e-learning and virtual teaching for persons with disabilities as these models will offer students with disabilities more opportunities to learn”.

V. Analysis of the Effect of COVID-19 on Access to Tertiary Education of Persons with Disability

By the World Health Organisation (WHO) declaration of January 30th and March 11th, 2020, COVID-19 was regarded as “a public health emergency of international concern” as well as “a pandemic” which has become a public health to the entire world.⁷¹ Report has shown that as at August 11, 2020, more than 19,718,030 number of people have been infected with COVID-19 pandemic in more than 177 countries with 728,013 number of deaths recorded.⁷² Nigeria is one of the infected countries which has recorded 47,157 COVID-19 pandemic cases with 955 deaths as at August 11, 2020.⁷³ Report has also shown that COVID-19 pandemic can be contracted through:

person to person transmission of the virus when coughing and sneezing by the infected person(s) where the virus droplets are deposited in the air or surfaces; it can also be contracted through close contact with infected person(s) when one touches or shakes his or her hands. The virus can be contracted through touching of contaminated surface and touching one’s eyes, nose or mouth with the contaminated hands. It can also occur through airborne transmission in poorly ventilated and non-sanitised spaces or through foecal contamination.⁷⁴

According to a report by the European Centre for Disease Prevention and Control, “80% of Coronavirus is through a respiratory illness with a clinical spectrum of mild to moderate disease while 15% of the virus is a severe disease and 5% is critical illness”.⁷⁵ The report further shows “0.5-2.8% overall fatality rate with much higher rates of 3.7-14.8% in octogenarians”.⁷⁶ It was shown further in the report that the agent of COVID-19 is SARS-CoV-2 which mostly spreads by droplets and its transmission moves faster as one infected person can infect three persons at the same time. COVID-19 virus can also spread to person

⁷¹ See World Health Organisation (WHO) < <https://www.who.int> > accessed 20 May 2020

⁷² *Ibid.*

⁷³ See World Health Organisation (WHO) < <https://www.worldometers.info.ng> > accessed 11 August 2020

⁷⁴ Y Liu et al (2020)

⁷⁵ See European Centre for Disease Prevention and Control *Novel coronavirus disease (2019) (COVID-19) pandemic: increase transmission in the EU/EEA and the UK – sixth update – 12 March 2020.* (Stockholm: ECDC; 2020) cited April 10 2020 < <https://www.ecdc.europa.eu/sites/default/files/documents/RRA-sixth-update-Outbreak-of-novel-coronavirus-disease-2019-COVID-19.pdf>. > accessed 8 August 2020

⁷⁶ *Ibid.*

who is asymptomatic or symptomatic.⁷⁷ The incubation period of the virus according to the report is “five-six days and it takes minimum of two days before the symptoms onset to two weeks after the disease onset in severe cases”.⁷⁸ It is saddened to observe that up till the period of writing this paper, there is no proven therapeutically solution for the treatment of COVID-19. Nevertheless, the strategic models of social and physical distancing with total or partial restrictions/lockdown have been explored globally not as lasting solution for COVID-19 pandemic but at least to limit the spread of the virus.

Nigeria also join other countries to adopt exceptional measures to limit the spread and rates of death with closing down of all the primary, secondary and tertiary institutions thus, calling for the utilisation of e-learning and virtual teaching in all the institutions. The closure of institutions by the Nigerian government is in tandem with the Imperial College COVID-19 Response Team position where the team called for: -

travel restrictions, case finding, contact tracing, isolation of confirmed cases and quarantine of exposed individuals, lockdown measures, social distancing, school and educational institutions closures and postponement or cancellation of large-scale public gatherings as viable options to control COVID-19 pandemic pending the availability of an effective vaccine.⁷⁹

According to Seufert et al., e-learning is “a technology-supported learning and the delivery of content through all electronic media”.⁸⁰ This model of teaching is not new globally as many countries including Nigeria have e-learning environments. It has been reported for instance that “a large majority of British higher education institutions have virtual learning environments”.⁸¹ Also, in Nigeria, due to large number of graduating students from secondary schools who are unable to secure admissions into the tertiary institutions, the Nigerian government established the “National Open University”⁸² in order to close the gap of admissions with a distance learning education to make use of e-learning method. Impliedly, distance learning has been used in Nigeria to describe learning through telecommunications which serves as education received by the students without physical appearance of the teachers but with the aid of one or more instructional media such as mobile phone, television, radio and so on.⁸³ Thus, according to Shavinina, this method involves the usage of information communication technologies (ICT) which includes:

Computer, scanner, printer, telephone, internet, digital satellite system (DSS), direct broadcast satellite (DBS), pocket-

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ See Imperial College COVID-19 Response Team. Impact of non-pharmaceutical interventions (NPIs) to reduce COVID-19 mortality and healthcare demand cited April 10 2020 < <https://www.imperial.ac.uk/media/imperial-college/medicine/sph/ide/gida-fellowships/Imperial-COVID19-NPI-modelling-16-03-2020.pdf> > accessed 8 August 2020

⁸⁰ S Seufart, A Back and M Hauster *E-Learning, Cochbook for Internet-based Learning*, Smartbook (Zeurich 2001)

⁸¹ Becker and Jockivirta,(2001).

⁸² MO Yusuf *A Conceptual Framework for the Establishment of Open University in Nigeria* 19 (Ilorin Journal of Education 1999) 136 - 144

⁸³ See Paragraphs 114 and 115 of Section 6 of the National Policy on Education Act (NPEA), 2013

switching, fiber optic cables, laserdisc, microwaves, and multi-media systems for collection, processing, storage and dissemination of information all-over the world.⁸⁴

This therefore calls for evaluation of the effect of COVID-19 pandemic on the access to equal right to education of persons with disability. Students with disabilities under the e-learning and virtual teaching model will be confronted with the use of many e-learning applications and educational technologies such as the virtual learning environment, learning management system and web-based trainings among others. These applications have to be accessibility by them in order to have equal and full participations in education. This position gains support of 88.3% responses of the key informants in the author's fieldwork survey shown in table 2 where they expressed that "e-learning and virtual teaching courses must be designed to be accessible to students with disability from the beginning in order to avoid any discrimination".

Arguably, persons with disability should be those that e-learning and virtual teaching should favour mostly when considering the advantages brought forth by the model. This assertion can be deduced from the challenges that persons with disability faced in the traditional/face to-face model of teaching where issues of structural/architectural barriers and stigmatisation are among the challenges faced. The traditional model of teaching has been seen to ostracise and marginalise or ignore persons with disability to have access to equal right to education. Evidences are abounded on lack of support services for persons with disability in the regular schools. For instance, study of Adeniran cited by Akinpelu shows that "many students with disabilities enrolled into the colleges and universities in Nigeria were frustrated out of their programmes or perform poorly because of the nonexistence of support services".⁸⁵ The study further revealed inadequate hearing and vision aids and electronically adapted mobility devices as continuous barriers on accessibility of equal right to education of persons with disability. This is because persons with disabilities will ordinarily have access to e-learning tools if they are learning remotely as this will solve the problem encountered in the traditional face-to-face learning. The study of Adeniran has the support of 80% of the key informants in an administered questionnaire by the author as shown in table 2 where they strongly agree and agreed that "lack of support services and non-established centres with programme and services to meet the numerous challenges of special needs in the Colleges of Education hinder the achievement of persons with disability to equal right to education".

The Millennium Development Goals, "Education for All" in particular can only be realised and achieved through e-learning as this model provides educational opportunities that may not be present at the conventional institutions for persons with disabilities. Instructively, e-learning and virtual teaching are practical and convenient ways that overcomes time and place challenges for the delivery of content and value-added education services which can assist persons with disability to access equal right to education in Nigeria. According to Heijstra &

⁸⁴ Shavinina (2001) p. 10

⁸⁵ Akinpelu (1999) p. 41-50

Rafnsdottir⁸⁶ and in the studies of Craig, Wozniak, Hyde and Burn,⁸⁷ the adoption of e-learning to them “allows greater flexibility for both students and staff”.

The overall benefits of e-learning as to disclosure, accessibility and flexibility provide greater potential for persons with disabilities to engage in a higher education learning environment. This model can also be used as a means to circumvent overcrowded institutions that can place stigma on the persons/learners with disabilities. These positions have also been applauded by many experts in the education industry such as Groff, Howells and Grammar cited in Onovo & Okorie⁸⁸ that “through the proper usage of ICT in this technological age, the adoption of e-learning as instructional delivery media will give ample and exceptional opportunities to students including learners with disabilities to develop capabilities for high quality learning and increased innovative abilities”. Thus, e-learning is arguably transcending the limits of geography to provide access to quality education regardless of the location of the teachers and learners. In table 2, the overwhelming majority of the key informants representing 93.3% in the author’s fieldwork survey affirmed the above assertions when they expressed that “e-learning and virtual teaching technologies are multimedia applications that can help many students with disabilities to attain the education that they richly deserve”.

According to Galway, the use of e-learning is “seen to overcome the challenges of traditional teleconferencing and print-based distance education as well as high costs inflexibility, scheduling problems and the inability to accommodate large numbers of students and those students with disabilities”.⁸⁹ In other words, persons/learners with disability will acquire equal access to robust, viable and user-friendly training platform through e-learning delivery tools as this model provides a number of affordances to students and teaching staff with disabilities. For instance, persons with print impairments can easily access course notes and handouts that are digitally available on e-learning training platform and this model can also promotes inclusion for students who are unable to attend class. Similarly, electronic text can be read aloud and translated to braille, audio files can be electronically transcribed as text and visual students can benefit from applications in PowerPoint and Flash Multi-Media technology.⁹⁰ The model also has great potential to assist students with disabilities in their studies which will facilitate a more equitable for their representation in the institutions.

It is pertinent to state that e-learning will reduce stigmatisation on the persons with disability as these class of persons can choose not to disclose their identity which is one of the benefits of e-learning. For instance, e-learning will reduce the impact of physical environments for person with disability such as a wheelchair student who may be stigmatised and stereotyped because of his or her impairment. This assertion is connected with the study conducted by

⁸⁶ Heijstra and Rafnsdottir (2010) p. 158-163

⁸⁷ Craig et al (2009) p. 158-167

⁸⁸ Onovo and Okorie (2017) p. 35

⁸⁹ Galway (2017) p. 35

⁹⁰ Shavinina (2001) p. 10

Dobransky and Hargittai⁹¹ which revealed that “access to digital communications technology can increase a sense of independence and self-determination for persons with disabilities which allow people to take advantage of e-learning support without leaving their homes”.

In the study of Guo, Bricout and Huang,⁹² observation was made to the effect that “the internet can remove barriers inherent in the physical environment and reduce discrimination towards disabled people”. This is very much aligned with the study of Sachs and Schreuer⁹³ who found that “success or failure in the performances of persons with disabilities in the school physical environments depends on the perception and attitude of the people or other abled students and staff of the school”. The attitude of people according to these scholars will also affect the likelihood of students with disabilities particularly those with invisible disabilities as they may not be willing to disclose and request any necessary accommodation. The views of the majority representing 66.7% in the author’s fieldwork in table 2 also confirmed that “students with disabilities continue to face negative attitudes and stereotypes in the education system”. Arguably, these barriers will be reduced to the barest minimum with the adoption of e-learning model if the appropriate ICT tools are readily available to the persons with disability.

It is therefore the argument in this article that the impact of COVID-19 pandemic which expose the mandatory and enforceable use of e-learning and virtual teaching provides numerous opportunities for persons with disabilities to overcome some physical impairments such as visual deficiencies, hearing problems, difficulties resulting among others. These opportunities also provide ability to persons with disabilities to break the isolation that they feel in their life by reinstating their social identity. With the mandatory e-learning and virtual teaching in tertiary institutions, Colleges of Education in particular, learners with disabilities will achieve equal right to education as all the students both ‘normal’ and with disabilities will be at their respective homes to learn. Although, there are challenges for the achievement of e-learning and virtual teaching in Nigeria when considering the fact that “open and distance education” provided under the National Policy of Education Act (NPEA), 2013 analysed earlier is not ordinarily enforceable.

Also, non-specific provision to protect persons with disabilities aside the general provisions in section 42 of the Constitution together with the inability of the regulatory framework to keep pace with technological development will equally hinder the impact of e-learning and virtual teaching on access to equal right to education of persons with disability in Nigeria. Similarly, the benefits of e-learning arising from the fast-growing ICT which have earlier been analysed as an empowerment for education which creates very sophisticated environment for persons with disabilities will also be hindered as accessibility of these

⁹¹ Dobransky and Hargittai (2006) p. 309-311

⁹² Bricout and Huang (2005) p. 49-66

⁹³ D Sachs, & N Schreuer *Inclusion of Students with Disabilities in Higher Education: Performance and Participation in Student Experiences* 31(2) (Disability Studies Quarterly 2011)

technologies by persons with disabilities have not been achieved because little attention has been devoted by the stakeholders in the education industry.

VI. CONCLUSION AND RECOMMENDATIONS

From the above, the findings revealed that persons with disability have been marginalised and discriminated against with the non-inclusion of ‘special education’ in the curriculums of 112 Colleges of Education in Nigeria. This is largely as a result of lack of political will to implement the provisions of the extant legal instruments on the right of persons with disability to access to tertiary education in Nigeria. ‘Special education’ encompasses assessment and diagnostic measures for the purposes of identification of persons with disability. Quality service⁹⁴ to remediate and specialise in learning interventions as well as counselling and evaluation activities for ensuring the efficacy of profession efforts are needed in Nigeria as gateway to global competitiveness. Non-inclusion of special education in 112 Colleges of Education in Nigeria as observed in this paper is a grave impediment to the achievement of the goal of “Education for All.”

Participants views have been revealed in this paper that the non-inclusion of ‘special education’ in the framework of services delivered by 112 Colleges of Education is a deviation from the acceptable global standards of inclusiveness in educational provision and the spirit and letters of the 21st Century. To participants, inclusion of ‘special education’ in the curriculum of all the Colleges of Education in Nigeria will enhance students with disabilities to grow and develop like normal students. It will provide equal educational opportunity and it will lead to acceptance of persons with disability by the society.

The law, as a tool for social change has been discussed in this paper to be the only instrument to aid and assist persons with disability in Nigeria. Despite the fact that in Nigeria, there exist a National legislation which is the Constitution of the Federal Republic of Nigeria, providing as it is, non-discriminatory practice against anyone, discrimination against persons with disability in Nigeria is still rampant. Since, disability is not included as one of the prohibited grounds of discrimination as the enforceable rights enshrined in section 42 of the 1999 Constitution, this paper therefore recommends a constitutional amendment to include disability as one of the prohibited grounds of discrimination. This amendment will be in consonance with the Bill of Rights of almost all the African countries especially those countries analysed in this paper. Nigerian government as a matter of necessity should make specific provisions under Chapter IV of the Constitution that will cater for the health, education, social welfare, removal of stigma, negative attitudes and other barriers that will enable social inclusion of persons with disability in Nigeria.

Further, findings in this article show that Nigeria has made out legal instruments for inclusion of ‘special education’ in the Colleges curriculum by the enactment

⁹⁴ Shea, and Baver, (1994)

of NPEA and DAPWDA, such instruments have not been implemented by 112 Colleges of Education as findings in this study show that only Federal College of Education (Special), Oyo has implemented the instruments. This may also be connected to the fact that right to education is not enforceable in the Nigerian Courts as it is within the ambit of Chapter II of the Constitution which is merely cosmetic provisions to garnish Nigerian Constitution as postulated by the Supreme Court in the case of *Archbishop Anthony Olubunmi Okogie & Others v Attorney-General of Lagos State*⁹⁵ that:

the directive principles of state policy as enshrined in the Constitution have to conform to and run subsidiary to the fundamental rights provisions in Chapter IV of the Constitution and that the said directive principles are subject to the legislative powers of the State.

It is therefore argued that, these DAPWDA and NPEA are seen for now as the only legal documents guaranteeing the rights and aspiration of persons with disability to equal education opportunity and they are recommended to be implemented and persons with disability should rise up to enforce their right to education since Nigeria has incorporated the provisions of African Charter into her municipal law as decided by the Supreme Court in *Abacha v Fawehinmi* where it was held that “...the African Charter which is incorporated into our municipal law becomes binding and our courts must give effect to it like all other laws falling within the judicial powers of the courts”.

Interestingly, the provision of section 6(6)(c) of 1999 Constitution which declared the directive principle as unenforceable is said not to be sacrosanct as the effect is if the Constitution otherwise provides in another section, which makes a section or sections of Chapter II justiciable, then it will be so interpreted by the courts.⁹⁶ This gain credence in the decided case of *Federal Republic of Nigeria v Alhaji Mika Anache & Others*⁹⁷ that “the non-justiciability of section 6(6)(c) of the Constitution is neither total nor sacrosanct as the subsection provides a leeway by the use of the words ‘except as otherwise provided by this Constitution’”.

It is therefore recommended that Nigerian courts should endeavour to recognise and apply international norms and standards in the protection of human socio-economic right in Nigeria. The Nigerian Courts should not be stifled by over-adherence to judicial precedent but should act assertively in order to ensure that socio-economic rights in Nigeria, education in particular are sufficiently protected. This is important not only for the protection of these rights in Nigeria

⁹⁵ *Archbishop Anthony Olubunmi Okogie & Others v Attorney-General of Lagos State* [1981]1 NCLR 218

⁹⁶ This position is in tandem with the constitutional provision under item 60(a) of the Exclusive Legislative List in the Second Schedule to the Constitution that places responsibility on the Federal government to “establish and regulate authorities for the Federation or any part thereof- to promote and enforce the observance of the Fundamental Objectives and Directive Principles contained in this Constitution.” This provision changes the equation to the extent that the legislature can enact any specific legislation seeking to implement Chapter II of the Constitution which the enactment of NPEA by the Nigeria National Assembly sort to fill in the gap.

⁹⁷ *Federal Republic of Nigeria v Alhaji Mika Anache & Others* [2004] 14 WRN 61

but also for the legitimacy of the courts as a judicial pronouncement will command more respect if it is in line with international norms acceptable by many jurisdictions.⁹⁸ In addition, it is recommended that, Nigeria, as a sovereign nation, aside from signing the DAPWDA, all States of the Federation should be encouraged to enact and implement the Discrimination Against Persons with Disability Law. Lagos and Ekiti States that have related enactments should amend their legislations to be in-line with DAPWDA in order to ensure adequate and effective protection of the right to education of persons with disabilities. The implementation of DAPWDA in Nigeria, together with strict compliance with the provisions of NPEA will create a new status for persons with disability to equal education opportunity.

It is revealed in this paper that in Nigeria, the societal attitude is largely negative due to the high level of illiteracy while the educated ones remain skeptical of the success of inclusive education in the curriculum. It is therefore recommended that the word ‘special’ attached to the Federal College of Education (Special), Oyo should be removed in order to avoid further stigmatisation of students/learners with disabilities in that institution. More importantly, Nigerians should have a proper re-orientation through education at all levels and law enforcement so that they begin to see persons with disabilities as equals, not as outcasts.

It is further recommended that there should be adequate funds and competent teachers with multi-talents⁹⁹ in order to use innovative strategies effectively to educate the students/learners who are able and who are with diversified needs in the Colleges of Education in Nigeria in order to meet up with the current global trend of ‘special education’. Also, in order to ensure the success of an inclusive education, a collaboration with other jurisdictions to train experts/professionals and collaboration between the mainstream and special education experts/professionals in Nigeria are recommended.

It is also interesting to find out in this paper that the exposure of mandatory e-learning and virtual teaching by the outbreak of COVID-19 is not new in the Nigerian education system as “Open and Distance Education” which is *pari materia* with e-learning and virtual teaching has been recognised. Its implementation has also been hindered as the Policy formulated as regulatory framework is equally not ordinarily enforceable.

The findings in this paper have answered the research questions to show that survival of tertiary education institutions, Colleges of Education in particular during this COVID-19 pandemic will warrant the use of various forms of electronic delivery and communication that will make education to be equally accessible and flexible. COVID-19 has brought a reflection on how to overcome many problems of students with disabilities through e-learning and virtual teaching. Using e-learning tools will enhance access to equal education by persons with disabilities as communication between them and the lecturers will

⁹⁸ AR Gubbay, *The protection and enforcement of fundamental human rights: The Zimbabwean experience* (Human Rights Quarterly, 1997) 227-254

⁹⁹ Competent teacher is classified as teacher that has “planning activities, interactive teaching activities and post-instructional activities.” *Ibid*.

be easier essential if e-learning applications and educational technologies are simplified and made as user friendly.

The recent development of mandatory e-learning and virtual teaching will go a long way to enhance equal right to education for persons with disability in Nigeria. This model holds great potential to be an avenue of inclusion for persons with disabilities in learning. COVID-19 has a positive implication on access to equal right to education for persons with disability if the required equipment is readily available to them for use as the advantages of e-learning and virtual teaching have been documented in the literature. This article therefore recommends the initiation of programmes for the training of support personnel and teachers/lecturers for the Colleges of Education in order for the students with disabilities to have access to equal right to education.

It is finally recommended that all the stakeholders such as the students with disabilities, technologists, e-learning developers, managers and supporting staff in all the Colleges of Education must consider sharing responsibilities on accessibility to equal right to education for students with disabilities.

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