

# STATE AND FUTURE OF LEGISLATING FOR SPECIAL EDUCATION IN NIGERIA: THE PLATEAU STATE EXPERIENCE

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## **Abstract**

The paper attempts a critical evaluation of the state and future of legislating for special education in Nigeria with particular focus on what has happened in Plateau State. It traces the evolution of legislating for special education in the country to date and identifies the major components of such efforts. Also, with particular attention to Plateau State, the paper provides an insight into efforts made in the state towards providing an encompassing and comprehensive legislation for the benefit of Plateau State indigenes with disabilities. While advocating for legislation that will cater for the educational needs of persons with special needs in Nigeria, the paper makes a case for legislating for these categories of individuals in other areas like rehabilitation, employment and civic rights. Furthermore, it provides a justification for appropriate legislation in favour of persons with special needs.

[**Descriptors:** Legislation; Special Education].

## **Introduction**

A lot has been said and written about the issue of legislation for the provision of most, especially educational services for persons with special needs in Nigeria. A common trend in the various submissions that have been made so far seem to point to the fact that there is a lot to be desired in terms of legislating for individuals with special needs (Oni, 1990; Amwe, 1991; Eleweke and Olaniyan, 1992; Eleweke, Olaniyan and Okeke, 1993; Nwazuoke, 1995; and Okediran, 1995). According to Eleweke (1999) the suggestions of the National Policy on (special) Education (1981) have not been implemented due to the absence of mandatory legislations supporting their implementation. It is pertinent to point out the fact that issues relating to legislation for persons with disabilities must border on the rights carved for human existence and survival in the course of history. Otungban (2003) cited Osborn (1964) as stating that right is an interest recognized and protected by law, respect for which is a duty and disregard of which is wrong. According to Otungban, a right involves.

- A person invested with the right or entitled;
- A person or persons on whom that right imposes a correlative duty or obligation;
- An act or forbearance which is the subject matter of the right;
- An object, that is, a person or thing to which the right has reference; and
- A title or reason for the right becoming vested on the owner (p. 190).

As observed by Otunban (2003) the 1999 constitution of the Federal Republic of Nigeria contains certain fundamental rights for all Nigerian citizens. Among these fundamental rights are the right to life, right to dignity of human persons, right to personal liberty, right to fair hearing and right to private and family life. Section 18 of the same constitution under the Fundamental Objectives and Directive Principles of State Policy dwells on educational objectives where it categorically stated that "Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels". In the same document, it was stated that government shall strive to eradicate illiteracy by providing, when practicable, free, compulsory and universal primary education as well as free secondary and tertiary education.

There is no doubt that these constitutional provisions include education of persons with special needs. However, it is important to note that these provisions do not appear to have resulted in any serious attention being focused on persons with disabilities. Providing an explanation to this rather unfortunate situation, Otunban (2003) suggests that it is because there are no existing rights specifically designed for persons with disabilities in Nigeria. It is against this background that this paper attempts to look at the state and future of legislating for special education in Nigeria with particular reference to Plateau State where mandatory legislation in favour of indigenes with disabilities has been signed into law.

### **Concept of Legislation**

Legislation, according to Hornby (2000) refers to a law or a set of laws passed by a parliament. Hornby also defines legislation as the process of making and passing laws. Ostensibly, legislation denotes all the preparations for and the procedure adopted in an attempt to provide a set of laws that should be considered and passed by any country's parliament which may go by any name. In Nigeria, the process of making and passing laws is vested in the national assembly which comprises the Federal House of Representatives and the Senate with the various State Houses of Assembly functioning at the state level. There are constitutional powers vested in the various tiers of law making bodies in the country and even at the local government level, similar arrangements have been put in place. Laws are passed essentially to prevent a breakdown in the peaceful existence of society in general and to regulate the activities and behaviour of a large majority of a nation's citizens. With such in place, the regular conduct of citizens in a nation would be guaranteed to ensure peaceful co-existence for sustainable development.

### **Benefits and Relevance of Legislation In Special Education**

Going by the Declaration on the Right of Disabled Persons (1975), the Salamanca Statement and Framework for Action (1994), and the National Policy on Special Education (1998), the rights of persons with disabilities in a country like Nigeria, which is based on principles of democracy and social justice, imply

fundamental human rights. These rights as contained in the country's social development policy (1989) centred on the provision that human beings should be treated, catered for, looked after and attended to equally, irrespective of their tribal, ethnic, religious, political, economic or body conditions and difficulties. This, according to Diso (2003) suggests that there should not be any form of segregation or partiality in providing the needs of the people because to deny one his right means inviting problems which can have adverse effect on the society. Diso strongly argues that services to humanity should be provided to those in need and efforts should always be made to improve the quality of lives of the people.

In this respect, the benefits of legislating for special education in Nigeria cannot be over emphasized. Sykes and Ozoji (1992) revealed that based on experience in other countries, one way to ensure better and more appropriate services for persons with disabilities is through mandatory legislation. According to them, appropriate legislation can provide a faster avenue for services than those provided through the implementation of research findings and what they refer to as the ad hoc imitation of services from other lands. Citing example with the United States of America where the passage of public law 94-142 meant that children with disabilities are not denied their right to free and appropriate public education within the least restrictive environment, Sykes and Ozoji rightly posit that legislation can bring about fruitful results of immense benefit.

Another important benefit of mandatory legislation for persons with disabilities in Nigeria would be in the delineation of the roles of service providers, a clear specification of what service beneficiaries are to expect and the determination of the criteria for eligibility for services to be provided. This would no doubt require the development of appropriate procedures and equipment for identification, assessment and subsequent placement of individuals with disabilities in appropriate service settings.

Without any fear of contradiction, therefore, the most significant benefit of appropriate legislation in favour of persons with special needs in Nigeria may well be their being adequately empowered to contribute meaningfully to the sustainable development of the nation in all its ramifications. This is because, as pointed out by Adelowo (2002), it is legislation that binds the different elements of policies together, clarifies ambiguities and prescribes implementation process of legislating for special education.

The process of legislation generally takes a rather long and tortuous route. This is more pronounced when it comes to legislating for special needs persons. Following a thorough process of needs assessment usually carried out by initiating a working convention that would be involved in transition planning for the services to be legislated for, a draft bill is prepared and submitted to a legislature for consideration. The legislative body in turn requests the appropriate committee of the house to examine the document and where necessary, public hearings are conducted. Thereafter, the bill goes through a first and second reading and is finally passed into law for assent by the Governor or President as

the case may be. It is only when it has been signed by the Governor or President that a bill is said to have been deemed to be law.

In the case of legislating for special needs persons, transition planning must be instituted. According to West, Corbey, Boyer-Stephens, Jones, Miller and Sarkees-Wircenski (1998), transition planning is a partnership involving students or persons with disabilities, their families, school and post-school service personnel, local community representatives, employers and other multi-disciplinary professionals. This is because persons with disabilities have different levels of impairment and capabilities and therefore need to be treated in a flexible manner. Transition planning therefore need to be flexible in content and scope as well as to begin early if persons with disabilities are to benefit appropriately from legislation.

Having carried out the needs assessment as a pre-requisite for legislating for special education through the working convention which must have submitted drafts of the proposed bill, there follows the stage when advocacy and intense public awareness commences. This is designed to create adequate public awareness and acceptance of the proposed document as it has been realized that many projects are doomed to failure due to inadequate information about their viability and benefit to society. The legislature, having exhausted all the pre-requisites for the legislative process, passes the bill and it is finally signed into law by the Governor (of a state) or the President (of the country).

Otungban (2003) is of the view that legislative initiatives in relation to persons with disabilities provide the right framework for the provision of services for them. According to Otungban, such initiatives have radically changed the services provided for persons with disability in both scope and number. Quoting Gleason (1989), Otungban posits that early court decisions extended equal civil rights and due process for persons with disabilities with the United State's Supreme Court setting the stage for equal educational opportunities for the handicapped. Giving further proof that the relevance of legislating for special education cannot be over emphasised, Otungban identified some cases (Pennsylvania Association for Retarded Children versus Commonwealth of Pennsylvania, 1971 & Mills versus Board of Education of the District of Columbia, 1971) which established the right to education of the mentally retarded and secured the right to instruction and training for the handicapped.

Thus as pointed out by Hallahan and Kauffman (1991), the relevance of legislation and by implication litigation lies in the fact that laws may have little or no effect on the lives of persons with special needs until courts interpret the meaning of such legislation in terms of what may be required in practice.

### **Problems of Legislating For Special Needs Persons**

Several problems have been associated with legislating for persons with special needs. According to Sykes and Ozoji (1992), the organizing, funding and administration of primary and secondary education, of which special education is a part, is the responsibility of the states who have the primary concern in

determining and improving the quality of education. Thus how well the states take the initiative to legislate for special education depends on the available resources and the level of awareness of special education prevailing in the state machinery.

Other hindrances to effective legislation for special education in Nigeria, according to Sykes and Ozoji, include lack of commitment by those to whom the education of persons with disabilities is entrusted, funding difficulties, low level of technology and lack of awareness in respect of civic rights of individuals with disabilities. Perhaps one of the greatest impediments to appropriate legislation for special needs individuals is the attitude towards persons with disabilities in Nigeria Ozoji (2003) said sometimes, a disabled person who holds equivalent qualification with others and who is more dedicated to his job, is often discriminated against in remuneration. According to him, some certain rights may be denied him on the spurious belief that he does not need them. In the case of attitudes towards legislating in favour of persons with disabilities, some professionals seem to be rather pessimistic towards efforts initiated to uplift the standards of provision of services to persons with disabilities. For example, P. Caswell (Personal communication, May 27, 2005), argued that efforts being made to legislate for persons living with disabilities in Plateau State would be doomed to failure because according to him, too much is being included in the Plateau Indigenes with Disabilities law. The law makes provisions for persons with disabilities in the area of education, employment, rehabilitation and civil rights with a commission (Plateau State Indigenes with Disabilities Rights Commission) to enforce the contents of such a legislation. Indeed, such pessimistic reactions to proposed changes in the existing status quo tend to demoralize efforts since the general consensus is that the journey of a thousand kilometers starts with a single step. However, it is pertinent to note that such pessimism may rightly arise as a result of the enormous amount of resources required to successfully implement such ambitious programmes for the benefit of persons with disabilities. Indeed, there is need to acknowledge the fact that, as pointed out by Caswell, even developed nations like Britain and America had to cut down on some of the provisions of their legislation for persons with disabilities as a result of costs which render them unachievable.

### **Legislating for Special Education in Plateau State: The Journey So Far**

Adelowo (2002) is of the view that the special education environment in Nigeria is not under any specific control. Citing the UNESCO Review (1988), Adelowo noted that most states or countries like Nigeria had policies of a kind, classifying children with special needs as mere extensions of those referred to in a general education law. According to Adelowo, the Educational laws of Western Nigeria Cap 34 (1962) and the National Policy on Education (1981) are glaring cases of such generalizations. He argues that rather than articulating unique provisions on a national scale for special children in a separate law, borrowing or learning from the success stories of others, special education policies have

remained too dependent on general education policy while interpretation, compliance with or implementation of the provisions is left to each state or stakeholder with power of discretion.

There is no gain saying the fact that there seem to be a zero legislative base for special education in Nigeria. In 1993, the Nigerians with Disability Decree which provided a clear and comprehensive legal protection and security for people with disabilities in Nigeria was enacted. The decree also established standards for enforcement of the rights and privileges guaranteed under the decree and other laws applicable to individuals with disabilities in the country. The Plateau State Handicap Education Bill of 1981, patterned after the United States PL 94-142 was passed but never signed into law. Noting that there is a growing belief that legislation in Nigeria where available is only on paper and not implemented, Diso (2003) said conscious efforts are needed to practicalise the contents of such documents.

The latest efforts in legislating for persons with disabilities in Plateau State is the signing into Law by the Governor, a Bill to make provision for the establishment of the Plateau State Indigenes with Disabilities Law (2005, December 14), in the areas of education, employment, rehabilitation and civic rights. In addition, the 2005 document which is a culmination of the collective efforts of a broad spectrum of stakeholders who adopted the transition planning strategy, made provisions for a commission to take charge of the implementation and enforcement of the outcome of this latest effort. It is gratifying to note that the blue-print for its implementation has been produced and is in the process of actualization.

### **Towards a Comprehensive Legislation for Persons with Special Needs**

The data base for special education planning in Nigeria is so obsolete that it might be better to regard it as non-existent (Adelowo, 2002). As a result, many parents and indeed children deserving of special educational support are un-informed about their roles and rights under the law and encounter a lot of difficulties finding appropriate services. According to Adelowo, this situation is made worse because there are no places or legal officers to lodge complaints with. As a matter of fact, experience indicates that there has not been enough efforts to address the diverse needs of special children and what or how professional attention should be accorded them. Thus, as concluded by Adelowo, special education provision is nothing “but an organizational approach rather than a body of professional expertise together with its ethics that should not be toyed with” (p. 102). In this respect, Sykes and Ozoji (1992), Adelowo (2002), Ozoji (2003) and Otungban (2003) all agreed that a robust body of legislative acts in favour of persons with disabilities are needed now and that if such legislation must derive from an outlined policy, the various reference committees, stakeholders and government should place the need for special education reform high on their priorities.

Otungban (2003) is optimistic that the right of people with disabilities to free basic education is practicable in every local government area of the country. According to Otungban, the National Primary Education Commission (NPEC) and the State Primary Education Board (SPEB) of each state in collaboration with the Local Education Authorities (LEAs) should ensure that every child with disability enjoys the right to free education. This, according to Otungban, can be achieved if the following are adhered to:

- Persons with disabilities who should enjoy the right to free appropriate public education shall include all children “who have learning difficulty because of different sorts of handicaps; blindness, partial sightedness, deafness, hard of hearing, mental retardation, social maladjustment, physical handicap etc. due to circumstances of birth, inheritance, social position, mental and physical health pattern, or accident” (FRN, 1981: Sect. 8 (53)).
- Every local government council shall embark on an intensive process of screening, identification and registration of persons with disabilities by District, Age, Sex and Type. This will give a clear picture of what provisions to make for these children and how.
- All children so identified and registered shall be issued with a qualification document – a certificate to show that the person is entitled to free education to be provided by government.
- The three tiers of government (Federal, State and Local) shall be responsible for the funding of their education.
- Government shall clearly define and adopt this right as well as enact appropriate mandatory legislation which will serve as a basis for litigation in case of any violation of rights (p. 192).

## **Conclusion**

The state and future of legislating for persons with special needs in Nigeria with particular focus on what happened in Plateau State has been critically evaluated. As Amwe (1991) pointed out, legislation is an instrument used in modern societies to protect the interests and rights of citizens and that for such individuals; it is a means of ensuring that they are provided with services at public expense to offset the effects of disability.

Even though a lot leaves to be desired in terms of the state of legislating for persons with special needs in Nigeria, much is being done to ensure that the future of special education in Plateau State is appropriately secured.

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