

## **Human Rights Model Of Disability: Implications For States' Obligations In Employment For Persons With Disabilities**

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### **Abstract**

*Human rights model of disability provides a more recent approach to issues related to persons with disabilities. Unlike previous models that mainly viewed disability from other approaches (including the medical, social, and moral), the human rights model of disability provides a holistic approach to matters that relates to the rights of persons with disabilities. Therefore, this paper seeks to understand the human rights model of disability in relation to states' obligations for persons with disabilities particularly in the field of employment. This essay argues that the new model of disability has serious implications for states in the realization of employment for persons with disabilities.*

**Keywords: Human Rights, Disability, employment, states.**

### **1 Introduction**

While pre-existing human rights instruments echoed other disability paradigms (such as the social, medical, and moral), the United Nations Convention on the Rights of Persons with Disabilities (CRPD)<sup>2</sup> is the first binding international treaty in the 21<sup>st</sup> century to adopt a 'new human rights model of disability.'<sup>3</sup> Indeed, the coming into force of the CRPD in 2008 heralded a paradigm shift in understanding disability and persons with disabilities within a human rights approach.<sup>4</sup> Unlike pre-existing disability models, this disability human rights framework can better account for the experiences of all persons with disabilities including the more vulnerable members of society such as women and children with disabilities.<sup>5</sup>

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<sup>2</sup> United Nations Convention on the Rights of Persons with Disabilities (Adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3.

<sup>3</sup> Theresia Degener, 'A New Human Rights Model of Disability' in Valentina Della Fina et al (eds), in *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary* (Springer 2017) 41.

<sup>4</sup> Amita Dhanda, 'Constructing a New Human Rights Lexicon: Convention on the Rights of Persons with Disabilities' (2008) 8 SIJHR 42, 45; Michael Ashley Stein and Penelope Stein, 'Beyond Disability Civil Rights' (2006) 58(6) Hastings Law Journal 1203, 1221; Gerard Quinn, 'A Short Guide to the UNCRPD' (2009) 1 EYBDL 89, Michael Ashley Stein, 'Disability Human Rights' (2007) 95 CLR 75, Rosemary Kayess and Philip French, 'Out of Darkness into Light? Introducing the CRPD' (2008) HRLR 8, Paul Harpur, 'Embracing the New Disability Rights Paradigm: Importance of the CRPD' (2012) 27(1) DS 1.

<sup>5</sup> Michael Ashley Stein and Penelope Stein, 'Beyond Disability Civil Rights' (2006) 58(6) Hastings Law Journal 1203.

Although the modern disability human rights paradigm is the new approach to disability and in understanding persons with disabilities, it is however an evolving paradigm that is still not fully understood.<sup>6</sup> Moreover, what a disability human rights approach demands of states is still unclear. Therefore, there is a need to conduct further research to establish the main features of the paradigm and explain its requirements for states in relation to the implementation of employment for persons with disabilities in order to make progress towards achieving the Sustainable Development Goals (SDGs).<sup>7</sup>

This paper examines the disability models, in particular, the disability human rights model and explains its requirements for state obligations in employment. The disability approaches are explained in this study to provide better understanding of the shift in disability perceptions. In particular, understanding the models provides clearer understanding of the tension between the disability models, and why implementation of the rights of persons with disabilities is problematic. While Stein and Stein explained the disability human rights-based approach to development,<sup>8</sup> this study seeks to add to the literature by explaining the disability human rights-based approach to employment as well as its implications for states' obligations. More importantly, this research contributes to the literature by providing understanding of the disability human rights model within the Nigerian context. To achieve this, the paper firstly shows how the disability models evolved by tracing the development of the disability human rights paradigm from pre-existing disability models. It considers the disability models under both disability studies and human rights. Secondly, it examines the disability human rights approach in relation to employment. Finally, it considers the implications for state obligations in adopting a disability human rights model, as well as the framework states can adopt in order to achieve disability human rights approach to employment in practice.

This paper is divided into six sections. Following this introduction (section 1), section 2 traces the shift from pre-existing disability paradigms (medical, moral, and social) to the disability human rights model. Section 3 examines the disability human rights approach in employment. Section 4 considers the implications of the disability human rights model for states' obligations as well as the framework for achieving the disability human rights approach to employment for persons with

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<sup>6</sup> Lucy Series, 'Disability and Human Rights' in Nick Watson and Simo Vehmas (eds), in *Routledge Handbook of Disability Studies* (2nd Edition 2019). Series who after examining the human rights approach to disability suggested further study be conducted on understanding the contours of what a disability human rights approach to disability within the context of what state duties requires, and show how states could comply with the paradigm in practice.

<sup>7</sup> CRPD, Concluding Observations: India, UN Doc. CRPD/C/IND/CO/1 (29 October 2019), para. 7. The Committee on the Rights of Persons with Disabilities requested the Indian state to follow the disability human rights paradigm in order to comply with their duties and effectively implement the rights of persons with disabilities in accordance with the CRPD.

<sup>8</sup> Michael Ashley Stein and Penelope J S Stein, 'Disability, Development, and Human Rights: A Mandate and Framework for International Financial Institutions' (2014) 47 UCD L Rev 1231.

disabilities. Section 5 addresses the subject within the Nigerian context. The final section (section 6) provides some concluding remarks.

## **2 The Shift to the Human Rights Model of Disability**

This part of the paper traces the shift to the human rights model of disability in disability studies and human rights. While there are various disability approaches,<sup>9</sup> the discussion in this section of the article is restricted mainly to the four dominant disability paradigms in disability studies and human rights (the moral, medical, social (British social model and the American minority group model), and human rights paradigms).<sup>10</sup> Thus, the four main disability models are examined in this study because the debate on disability and persons with disabilities revolves around only these four paradigms.<sup>11</sup> Understanding these disability paradigms and the emergence of the disability human rights approach is further important to this research since it will help to provide better understanding on the conceptualization of disability and persons with disabilities from the medieval epoch to contemporary times as well as establishes the theoretical standards of the CRPD. Hence, looking at the disability models, disability and persons with disabilities were initially viewed using the moral model. The framework refers to the attitude that people are morally responsible for their own disability. Afterwards, there was a gradual shift in thinking from the moral to the medical approach. Like the moral model, the medical model also viewed disability as a personal responsibility but viewed disability as a medical condition requiring cure. From the medical perceptions, there was a shift to the social model. The social model provided a social thinking of disability as society was blamed for the exclusion of persons with disability through the existence of barriers. Unlike the pre-existing models, the human rights model promotes a holistic viewpoint, as it accords fundamental human rights to persons with disabilities. Moreover, it imposes more obligations on public and private actors in the realization of the human rights of persons with disabilities.

### **2.1 The Shift from Moral/Medical Models to the Social Model of Disability**

From time immemorial till the 18th century, the moral model of disability (sometimes called the religious model or charity-based model) held sway.<sup>12</sup> During this period, there was a complete absence of disability and persons with disabilities within human rights instruments.<sup>13</sup> This model which is the oldest approach to understanding disability and persons with disabilities is found in a

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<sup>9</sup> There are other disability models including the Capabilities Approach, the Economic Model etc.

<sup>10</sup> Theresia Degener, 'A New Human Rights Model of Disability' in Valentina Della Fina et al (eds), in *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary* (Springer 2017) 41.

<sup>11</sup> Tom Shakespeare and Nicholas Watson, 'Defending the Social Model' (1997) 12(2) DS 293.

<sup>12</sup> Colin Barnes et al, *Exploring Disability: A Sociological Introduction* (Polity 1999) 17; Mary Ann Jackson, 'Models of Disability and Human Rights: Informing the Improvement of Built Environment Accessibility for People with Disability at Neighborhood Scale?' (2018) 7(10) Laws 3.

<sup>13</sup> Berghs et al, 'Implications for Public Health Research of Models and Theories of Disability: A Scoping Study and Evidence Synthesis' (2016) 4(8) Public Health Research 1.

number of religious traditions including the Christian institution.<sup>14</sup> The framework refers to the attitude that people are morally responsible for their own disability. In fact, disability is viewed as retribution for sin or as manifestation of evil.<sup>15</sup> Although this model is the oldest in understanding disability and the situation of persons with disabilities,<sup>16</sup> the framework is still very relevant in most parts of Asia and Africa.<sup>17</sup> This is because culture and religion influenced how most people view disability and persons with disabilities. For example, in Nigeria, many cultures and religions associate disability with punishment for sin committed in past life. Indeed, mental disability is still mostly viewed by members of Nigerian society as a consequence of a person's past evil deeds. While disability is seen as a form of punishment for sins committed against God by the individual with a disability or the birth parents,<sup>18</sup> it is also viewed as a form of punishment for wickedness committed in past life by a person with impairment.<sup>19</sup> Surprisingly, disability under this approach is further regarded as an 'act of a higher being' and an 'opportunity for miracles to occur.'<sup>20</sup> As the presence of impairment is perceived as a means of testing one's faith in God.<sup>21</sup> As Goodley has explained, a person with a disability under this framework is seen as 'having a special relationship with God.'<sup>22</sup> This latter viewpoint of the paradigm is controversial and is responsible for the continuous existence of the model.

Whereas disability is understood as an individual problem, the human rights model of disability considers disability as a social problem. Unlike the moral model that considers persons with disabilities as passive objects of charity, the human rights approach views persons with disabilities as rights holders.<sup>23</sup> Furthermore, while persons with disabilities under the moral framework are considered objects of pity that are dependent on the benevolence of others,<sup>24</sup> the human rights

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<sup>14</sup> Nicole Reibe, 'The Convent of the Infirm: Teresa de Cartagena's Religious Model of Disability' (2018) 22(2) *Journal of Disability and Religion* 130.

<sup>15</sup> Ibid.

<sup>16</sup> Romel W Mackelprang, 'Disability Controversies: Past, Present, and Future' (2010) 9 *JSWDR* 87; Nicole Reibe, 'The Convent of the Infirm: Teresa de Cartagena's Religious Model of Disability' (2018) 22(2) *Journal of Disability and Religion* 130; Dan Goodley, *Disability Studies: An Interdisciplinary Introduction* (SAGE 2011) 7.

<sup>17</sup> Angi Stone MacDonald, 'Cultural Beliefs about Disability in Practice: Experience at a Special School in Tanzania' (2012) 59(4) *IJDDE* 393.

<sup>18</sup> Nicole Reibe, 'The Convent of the Infirm: Teresa de Cartagena's Religious Model of Disability' (2018) 22(2) *Journal of Disability and Religion* 130.

<sup>19</sup> Marno Retief and Rantsoa Letsosa, 'Models of disability: A brief overview' (2018) 74(1) *HTS Teologiese Studies/Theological Studies* 2.

<sup>20</sup> Louise Humpage, 'Models of Disability, Work and Welfare in Australia' (2007) 41(3) *Social Policy and Administration* 215; Justin Haeghele and Samuel Hodge, 'Disability Discourse: Overview and Critiques of the Medical and Social Models' (2016) 68(2) *Quest* 193.

<sup>21</sup> Nicole Reibe, 'The Convent of the Infirm: Teresa de Cartagena's Religious Model of Disability' (2018) 22(2) *Journal of Disability and Religion* 130.

<sup>22</sup> Dan Goodley, *Disability Studies: An Interdisciplinary Introduction* (SAGE 2011) 7.

<sup>23</sup> Simo Vehmas et al, 'The Unavoidable Alliance of Disability Studies and Philosophy' in Kristjana Kristiansen et al (eds) *Arguing About Disability: Philosophical Perspectives* (Routledge 2009) 2.

<sup>24</sup> Nicole Reibe, 'The Convent of the Infirm: Teresa de Cartagena's Religious Model of Disability' (2018) 22(2) *Journal of Disability and Religion* 130.

model views persons with disabilities as part of humanity with the capacity to contribute to society. A negative feature of the moral framework is that it attributes disability to moral responsibility, which often leads to explicit stigma and discrimination towards both individuals with disabilities and their families. This, in turn, severely limited their access to education and employment opportunities. Society responded by providing charity and welfare-based care and assistance.<sup>25</sup> However, improvements in medical sciences and scientific research gradually shifted attention from the religious/charity/moral based approach to a more scientific-based thinking about disability and persons with disabilities.<sup>26</sup> From the 18<sup>th</sup> Century to the Mid-20<sup>th</sup> Century, the medical thinking about disability dominated the process of understanding disability and people with disability.<sup>27</sup> The medical model of disability (sometimes called the individual model of disability)<sup>28</sup> not only equates impairment with disability, but also views disability as a ‘biological trait in which persons with disabilities need physiological assistance to remediate the effects of disability’...<sup>29</sup> This model also views disability as ‘an impairment that needs to be treated, cured, fixed, or rehabilitated.’<sup>30</sup> The paradigm is rooted in medical diagnosis, which gives a partial view of disability and persons with disabilities.<sup>31</sup> In fact, the social effects of disability is not considered. This viewpoint is in turn entrenched in society through the persistence of negative attitudes, and the domination of medical professionals and other related medical specialists working with persons with disabilities.

On the positive side, the medical model of disability has advantages over the other models of disability in ‘responding supportively to difference, meeting individual needs and practising prevention.’<sup>32</sup> The model can account for the fact that ‘not all people with losses, diseases, and illness experience disability.’<sup>33</sup> Nevertheless, the medical model of disability is ‘not adequate in understanding disabled people’s experiences.’<sup>34</sup> As Shakespeare and Watson contend, the framework cannot address issues related to the protection of the human rights and freedoms of persons with disabilities in society, particularly the issues around their exclusion and continued discrimination in society.<sup>35</sup> In addition, the medical model of disability does not provide a means

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<sup>25</sup> Marno Retief and Rantsoa Letsosa, ‘Models of disability: A brief overview’ (2018) 74(1) HTS Theologiese Studies/Theological Studies 2.

<sup>26</sup> Jane Campbell and Mike Oliver, *Disability Politics: Understanding Our Past, Changing Our Future* (Routledge 1996) 36.

<sup>27</sup> Michael Oliver, *Understanding Disability: From Theory to Practice* (Macmillan Press 1996) 31.

<sup>28</sup> Ibid.

<sup>29</sup> Jaqueline Nicolaisen et al, ‘Medical and Social Models of Disability; A Tourism Providers’ Perspective’ (2012) 54(3) WLJ 201, 203.

<sup>30</sup> Theresia Degener, ‘A New Human Rights Model of Disability’ in Valentina Della Fina et al (eds), in *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary* (Springer 2017) 42.

<sup>31</sup> Paul Jaeger, *Disability and the Internet: Confronting a Digital Divide* (Lynne Rienner 2012) 10.

<sup>32</sup> Zandi Massoumeh and Jamshidi Leila, ‘An Investigation of Medical Model and Special Education Methods’ (2012) 46 Procedia-Social and Behavioural Sciences 5802.

<sup>33</sup> John Harris, ‘Is There a Coherent Social Conception of Disability?’ (2000) 26 (2) JME 95.

<sup>34</sup> Tom Shakespeare and Nicholas Watson, ‘Defending the Social Model’ (1997) 12(2) DS 293.

<sup>35</sup> Ibid.

to explore social causes of disablement experienced by people with disabilities.<sup>36</sup> This is because the need to fix impairment promotes dependency on medical professionals whose position on impairment are same as the general public in terms of negative attitudes towards persons with disabilities. Moreover, the framework has been heavily criticized for neglecting the role of society in creating disability and its emphasis on treatment and rehabilitation.<sup>37</sup>

At the UN level, the 1940s to the 1960s brought about the adoption of the International human rights instruments such as the Universal Declaration of Human Rights (UDHR),<sup>38</sup> the International Covenant on Civil and Political Rights (ICCPR),<sup>39</sup> and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).<sup>40</sup> However, none of these human rights instruments expressly referenced disability or persons with disabilities except for the non-binding UDHR that mirrors the medical model of disability. As the instrument guarantees adequate standard of living including social protection in the event of disability.<sup>41</sup> Nevertheless, the 1970s witnessed demonstrations for a shift to the social approach to disability.<sup>42</sup> Disability advocates and scholars in North America<sup>43</sup> and in some parts of Europe specially the United Kingdom reasoned that disability was a social construct rather than a medical challenge.<sup>44</sup> Likewise, the period saw the development of various versions of the social approach to disability including the British social model and the American minority group model.

The British social model of disability was developed as a critique to the medical model by disability activists and academics within disability studies.<sup>45</sup> This paradigm contested the expert-led medical treatment of persons with disabilities.<sup>46</sup> This version of the social approach to disability emerged out of the United Kingdom with the influence of scholars such as Colin Barnes, Vic Finkelstein, Michael Oliver, Tom Shakespeare, and Paul Hunt. The model was developed from the ideas expressed in the Fundamental Principles of Disability document, published in the 1970s

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<sup>36</sup> Dan Goodley, *Disability Studies: An Interdisciplinary Introduction* (SAGE 2011) 7.

<sup>37</sup> Michael Oliver, *Understanding Disability: From Theory to Practice* (Macmillan Press 1996) 31.

<sup>38</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III).

<sup>39</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

<sup>40</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

<sup>41</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III), Article 25.

<sup>42</sup> Berghs et al, 'Implications for Public Health Research of Models and Theories of Disability: A Scoping Study and Evidence Synthesis' (2016) 4(8) Public Health Research 1.

<sup>43</sup> Arlene Kanter, 'The UNCRPD and Its Implications for the Rights of Elderly People under International Law' *GSULR* (2009) (25) 527.

<sup>44</sup> Rannveig Traustadottir, 'Disability Studies, the Social Model and Legal Developments' in Oddny Mjoll Arnardottir and Gerard Quinn (eds), *The UN Convention on the Rights of Persons with Disabilities: European and Scandinavian Perspectives* (Martinus Nijhoff Publishers 2009); Harpur, 'Embracing the New Disability Rights Paradigm: Importance of the CRPD' (2012) 1.

<sup>45</sup> Amita Dhanda, 'Constructing a New Human Rights Lexicon: Convention on the Rights of Persons with Disabilities' (2008) 8 *SIJHR* 42.

<sup>46</sup> Paul Harpur, 'Embracing the New Disability Rights Paradigm: Importance of the CRPD' (2012) 27(1) *DS* 1.

by the Union of the Physically Impaired against Segregation (UPIA).<sup>47</sup> The document states that disabled persons are not disabled by their impairments, but rather by the disabling barriers created by society.<sup>48</sup> Michael Oliver, one of the main proponents of this paradigm coined the term ‘social model of disability’ and argued for a social thinking about disability as a means of countering the ‘medicalisation’ of disability by medical experts.<sup>49</sup> Oliver claims that disability is a social construct and that the restriction of persons with disabilities in society is as a result of the existence of environmental, social, and cultural barriers.<sup>50</sup>

The main argument of the social model of disability against the medical approach to disability is that disability is not a product of bodily pathology but of specific social and economic structures.<sup>51</sup> This is because societal structures are responsible for the exclusion of disabled people from full participation in social activities. Under the model, disability is not a matter of personal tragedy as viewed by the medical model approach to disability but a social construct.<sup>52</sup> Moreover, there is a sharp distinction between impairment and disability under the social model of disability unlike the medical model of disability, which merges disability with impairment. This position has been criticized by Riddle who rejects ‘the idea that we can define disability as some sort of medically observable deviation from biomedical norms’...<sup>53</sup> Unlike the medical model of disability, the social model of disability is born out of a struggle against oppression by non-disabled people such as medical experts and professionals working with persons with disabilities.<sup>54</sup> Like the medical model of disability, the social model of disability has also been strongly criticized. One criticism is that the social model of disability does not adequately capture the lived experiences of persons with disabilities.<sup>55</sup> The model fails to correspond to the everyday experience of disabled people, many of whom experience physical and mental difficulties as well as social barriers. The model is equally criticized for being ‘too universalizing and too simplistic to serve as a model for the way in which disability works’...<sup>56</sup> The model’s ‘emphasis on self-advocacy and a rights-based

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<sup>47</sup> The Union of the Physically Impaired against Segregation and the Disability Alliance Discussion on the Fundamental Principles’ <<https://disability-studies.leeds.ac.uk/wp-content/uploads/sites/40/library/UPIAS-fundamental-principles.pdf>> accessed 2 June 2023.

<sup>48</sup> Carol Thomas, ‘Disability Theory: Key Ideas, Issues and Thinkers’ in Collins Barnes et al (eds), *Disability Studies Today* (Polity Press 2002).

<sup>49</sup> Mike Oliver, ‘The Social Model of Disability: Thirty Years on’ D&S (2013) 28(7) 1024.

<sup>50</sup> Michael Oliver, *The Politics of Disablement* (Macmillan Education 1990) 1.

<sup>51</sup> Justin Haegele and Samuel Hodge, ‘Disability Discourse: Overview and Critiques of the Medical and Social Models’ *Quest* (2016) 68(2) 193.

<sup>52</sup> Amita Dhandu, ‘Constructing a New Human Rights Lexicon: Convention on the Rights of Persons with Disabilities’ *SIJHR* (2008) (8) 42; Deborah Marks, *Disability: Controversial Debates and Psychosocial Perspectives* (Routledge 1999) 88.

<sup>53</sup> Christopher A Riddle, ‘Defining Disabilities: Metaphysical not Political,’ (2013) 16 MHCP 377.

<sup>54</sup> Michael Ashley Stein and Penelope Stein, ‘Beyond Disability Civil Rights’ (2006) 58(6) *Hastings Law Journal* 1221.

<sup>55</sup> Philip Andrew Scullion, ‘Models of Disability: Their Influence in Nursing and Potential Role in Challenging Discrimination,’ (2010) 66 (3) *JAN* 697.

<sup>56</sup> Tom Shakespeare, ‘Social Models of Disability and Other Life Strategies,’ (2004) 6 (1) *SJDR* 8.

approach' has been condemned because the approach can be used to undermine support practices where individuals with disabilities require assistance in order to participate' in society.<sup>57</sup>

Nevertheless, the 1970s witnessed the gradual influence of the social thinking about disability in international human rights instruments. Although many human rights instruments evidenced a shift to the social model of disability rather than the medical approach to disability, 'yet each persisted to maintain that individuals are disabled due to special medical problems and dependent on social services and institutions.'<sup>58</sup> To illustrate, while both the 1971 Declaration on the Rights of Mentally Infirm Persons<sup>59</sup> and the 1975 Declaration on the Rights of Disabled Persons<sup>60</sup> claim to advance the social thinking about disability, both these human rights instruments infused the medical approach to disability. These instruments provided an understanding of disability and persons with disability from the notions of the body, care, prevention, and rehabilitation instead of the removal of disabling barriers. Still, the 1980s marked a permanent shift to a social model of disability in United Nations policies.<sup>61</sup> The United Nations acknowledged the social thinking about disability as the organization decreed 1981 as the International Year of Disabled Persons.<sup>62</sup> In fact, the resolution accepted negative social attitude towards persons with disabilities as one of the barriers to the realization of the goal of full participation and equality in society.<sup>63</sup> Flowing from the resolution was the 1982 adoption of the World Programme of Action Concerning Disabled Persons<sup>64</sup> which reechoed a global strategy to enhance equalisation of opportunities for persons with disabilities.<sup>65</sup> More importantly, the instrument for the first time acknowledged the need to approach disability from a human rights perspective.<sup>66</sup> At the same time, the United Nations proclaimed 1983-1992 as the Decade of Disabled Persons.<sup>67</sup> Moreover, the social model of disability was a trend in national, regional and international instruments in the 1990s. As Bergh et al state, the period witnessed a 'commitment to disability anti-discrimination legislation.'<sup>68</sup>

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<sup>57</sup> J. A Mckenzie, 'Models of Intellectual Disability: Towards a Perspective of (Poss) ability,' (2013) 57 (4) JIDR 370.

<sup>58</sup> Michael Ashley Stein and Penelope J S Stein, 'Disability, Development, and Human Rights: A Mandate and Framework for International Financial Institutions,' (2014) 47 UCD L Rev 1231.

<sup>59</sup> Declaration on the Rights of Mentally Infirm Persons (Proclaimed by General Assembly resolution 2856 (XXVI) of 20 December 1971).

<sup>60</sup> Declaration on the Rights of Disabled Persons (Proclaimed by General Assembly resolution 3447 (XXX) of 9 December 1975).

<sup>61</sup> Michael Ashley Stein and Penelope J S Stein, 'Disability, Development, and Human Rights: A Mandate and Framework for International Financial Institutions' (2014) 47 UCD L Rev 1231.

<sup>62</sup> International Year of Disabled Persons (General Assembly resolution 31/123, 1981).

<sup>63</sup> Ibid.

<sup>64</sup> World Programme of Action Concerning Disabled Persons (Adopted by the General Assembly on 3 December 1982, by its resolution 37/52).

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

<sup>67</sup> The General Assembly proclaimed 1983-1992 the United Nations Decade of Disabled Persons (General Assembly resolution 37/52).

<sup>68</sup> Berghs et al, 'Implications for Public Health Research of Models and Theories of Disability: A Scoping Study and Evidence Synthesis' (2016) 4(8) Public Health Research 1.



Nationally, the social model of disability which is reflected in the 1990 Americans with Disabilities Act<sup>69</sup> influenced other anti-discrimination legislations around the world including in Australia Disability Discrimination Act of 1992<sup>70</sup> and the United Kingdom 1995 Disability Discrimination Act (which later became the Equality Act of 2010).<sup>71</sup> Regionally, the social model also inspired the European Union's Framework Employment Directive.<sup>72</sup> Importantly, the General Assembly in 1993 upheld the social model of disability with the adoption of the Vienna Declaration and Programme of Action<sup>73</sup> which shaped the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities<sup>74</sup> and other human rights instruments including the Convention on the Rights of the Child (CRC).<sup>75</sup> Indeed, the CRC mirrored the social approach to disability with explicit recognition given to the human rights of persons with disabilities, especially children with disabilities.

## **2.2 Shift from the Social Model of Disability to the Human Rights Model of Disability**

While some scholars within disability studies claim that the social model of disability is a rights-based model of disability,<sup>76</sup> other scholars however contend that the human rights model differs from the social model of disability.<sup>77</sup> Indeed, Degener, a former member of the Committee on the Rights of Persons with Disabilities, argues convincingly that the disability human rights paradigm differs from the social model of disability.<sup>78</sup> As the model builds on the social model of disability and goes further.<sup>79</sup> Moreover, she notes that during the negotiation of the CRPD, the social model of disability was originally the theoretical thinking to be adopted but, at the conclusion of negotiation, the Ad Hoc Committee adopted a 'new human rights model of disability.'<sup>80</sup> This latter position is further supported by other scholars who have consistently claimed that the CRPD echoes a human rights model of disability rather than a social model of disability.<sup>81</sup> For example, Stein and Stein contend that the CRPD echoes the contemporary rights-based approach to

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<sup>69</sup> Americans with Disabilities Act (entered into force on July 26, 1990).

<sup>70</sup> Australia Disability Discrimination Act (entered into force in 1992).

<sup>71</sup> Disability Discrimination Act (entered into force in 1995).

<sup>72</sup> The European Union's Employment Equality Framework Directive (Council Directive 2000/78/EC of 27 November 2000, came into force on 2 December 2000).

<sup>73</sup> The Vienna Declaration and Programme of Action (adopted 14-25 June 1993).

<sup>74</sup> Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (adopted 20 December 1993) Res. 48/96 annex. Rule 19.

<sup>75</sup> Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

<sup>76</sup> Marcia Rioux and Anne Carbert, 'Human Rights and Disability: The International Context' (2003) 10(2) Journal of Developmental Disabilities 1.

<sup>77</sup> Michael Ashley Stein, 'Disability Human Rights' (2007) 95 CLR 75. Michael Ashley Stein and Penelope Stein, 'Beyond Disability Civil Rights' (2006) 58(6) Hastings Law Journal 1203.

<sup>78</sup> Theresia Degener, 'A Human Rights Model of Disability' in Valentina Della Fina et al (eds), *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary* (Springer 2017) 45.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> Michael Ashley Stein, 'Disability Human Rights' (2007) 95 CLR 75.

disability as the paradigm ‘combines the best aspects of the social model of disability, the human rights to development, and the capabilities approach to create a holistic and comprehensive rights theory.’<sup>82</sup>

The human rights model of disability is a paradigm that provides an understanding of disability and persons with disability within the social thinking about disability, but premised on human rights principles.<sup>83</sup> This paradigm signposts persons with disabilities as rights holders rather than objects of welfare.<sup>84</sup> Disability under this perspective, is viewed as a social construct rather than a medical issue.<sup>85</sup> The model accepts that all persons with disabilities are entitled to human rights because they are human beings and cannot be denied these rights based on the mere presence of impairment.<sup>86</sup> In other words, rights cannot be denied to persons with mental disability for instance due to the presumption of lack of mental capacity.<sup>87</sup> Aside the recognition of the rights of persons with disabilities, the paradigm accepts impairment as part of human diversity and humanity.<sup>88</sup> The framework acknowledges that impairment causes pain and may reduce the life expectancy of individuals with disabilities.<sup>89</sup> Moreover, the human rights model of disability acknowledges difference.<sup>90</sup> Unlike the social model of disability where identity politics was not a major concern, the human rights model of disability accepts the politics of identification.<sup>91</sup> Identity politics is a process of recognizing the difference that exist within the same class of persons.<sup>92</sup> For instance, within persons with disabilities, there are several minority groups and cultural differences including deaf persons, deaf-blind persons, and women with disabilities. While the social model of disability viewed persons with disabilities as a unitary group, the human rights disability model values and acknowledges different layers of identification within people with disabilities. Notably, the model accommodates civil rights as well as economic rights.<sup>93</sup> Prior to the shift to the human rights model of disability, disability under the social model was viewed as a social problem rooted in inequality and oppression caused by society.<sup>94</sup> The solution, according to the social thinking

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<sup>82</sup> Michael Ashley Stein and Penelope Stein, ‘Beyond Disability Civil Rights’ (2006) 58(6) *Hastings Law Journal* 1203.

<sup>83</sup> Lucy Series, ‘Disability and Human Rights’ in Nick Watson and Simo Vehmas (eds), in *Routledge Handbook of Disability Studies* (2nd Edition 2019).

<sup>84</sup> Michael Ashley Stein, ‘Disability Human Rights’ (2007) 95 *CLR* 75.

<sup>85</sup> *Ibid.*

<sup>86</sup> *Ibid.*

<sup>87</sup> Article 12 of the CRPD.

<sup>88</sup> Theresia Degener, ‘Disability in a Human Rights Context’ (2016) 5(3) *Laws* 2.

<sup>89</sup> *Ibid.*

<sup>90</sup> Theresia Degener, ‘A Human Rights Model of Disability’ in Valentina Della Fina et al (eds), *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary* (Springer 2017) 45.

<sup>91</sup> *Ibid.*

<sup>92</sup> *Ibid.*

<sup>93</sup> Maya Sabatello, ‘A Short History of the International Disability Rights Movement’ in Sabatello and Schulze (eds), in *Human Rights and Disability Advocacy* (University of Pennsylvania Press 2014) 13.

<sup>94</sup> Michael Ashley Stein and Penelope Stein, ‘Beyond Disability Civil Rights’ (2006) 58(6) *Hastings Law Journal* 1203.

about disability, is the need to reform civil rights and anti-discrimination legislations ignoring economic rights.<sup>95</sup> To address this shortfall in the social understanding of disability, the human rights paradigm extends not only civil rights, but also economic rights to persons with disabilities. As Degener states the human rights paradigm ‘acknowledges the interrelationship of first and second generation rights.’<sup>96</sup> She argues further that the CRPD’s adoption of this model provide a holistic approach to human rights protection which ‘allows the framework to avoid the dichotomous difficulties encountered by the social model of disability.’<sup>97</sup> The CRPD therefore gives value and recognition to the indivisibility of civil, economic, and cultural rights such as the rights to education and employment.

Notwithstanding the positive features of the disability human rights paradigm, the framework has been criticized by academic scholars within and outside human rights.<sup>98</sup> This model has been disparaged for not reflecting an international disability paradigm.<sup>99</sup> Shakespeare for instance argues that the disability human rights model is too restrictive and does not echo an international outlook in understanding disability and the situation of persons with disabilities.<sup>100</sup> Other scholars also suggest that due to the approach’s focus on human rights, the model cannot bring about real social change.<sup>101</sup> Other academic scholars further note that the approach to understanding disability within the human rights context is individualistic and legalistic in approach, and is not a good tool for analyzing disability and understanding the situation of persons with disabilities.<sup>102</sup> As Hurst notes the use of the model as an analytical tool ‘muddle and confuse and inadequately turn human rights into an analysis of a relationship instead of what they really are’.<sup>103</sup> The paradigm has been criticized for its failure to address the root causes of disability as its ‘limited to ensuring same rights to as those to a group granted to the white middle-class males.’<sup>104</sup> Moreover, critics of the contemporary rights-based approach to disability note that the paradigm has not completely adopted the emancipatory research paradigm principles-letting people with disabilities have

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<sup>95</sup> Ibid.

<sup>96</sup> Theresia Degener, ‘A Human Rights Model of Disability’ in Valentina Della Fina et al (eds), *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary* (Springer 2017) 45.

<sup>97</sup> Ibid.

<sup>98</sup> Berghs et al, ‘Implications for Public Health Research of Models and Theories of Disability: A Scoping Study and Evidence Synthesis’ (2016) 4(8) Public Health Research 1.

<sup>99</sup> Ibid.

<sup>100</sup> Tom Shakespeare, *Disability Rights and Wrongs Revisited* (Abingdon: Routledge 2013).

<sup>101</sup> Alison Sheldon, ‘One World, One People, One Struggle? Towards the global implementation of the social model of disability’ in Barnes and Mercer (eds), *The Social Model of Disability: Europe and the Majority World* (The Disability Press 2005) 122.

<sup>102</sup> Ibid.

<sup>103</sup> Rachel Hurst, ‘Disabled Peoples’ International: Europe and the social model of disability’ in Barnes and Mercer (eds), *The Social Model of Disability: Europe and the Majority World* (The Disability Press 2005) 65, 65.

<sup>104</sup> Alison Sheldon, ‘One World, One People, One Struggle? Towards the global implementation of the social model of disability’ in Barnes and Mercer (eds), *The Social Model of Disability: Europe and the Majority World* (The Disability Press 2005) 122.

control over the research process.<sup>105</sup> The term ‘emancipatory research paradigm’ was coined by Mike Oliver and requires that disability should be seen as a political problem.<sup>106</sup> It requires that persons with disabilities and their organisations rather than professional academics and researchers be allowed to tell their situation through research.<sup>107</sup> As Barnes states, ‘emancipatory disability research should be judged mainly by its ability to empower disabled people through the research process.’<sup>108</sup> Furthermore, the practical enforcement of the disability human rights model has been criticized by scholars.<sup>109</sup> For example, Lawson suggests that the enforcement of the CRPD will expose the issue of understanding what a reasonable accommodation as a concept actually means in practice.<sup>110</sup> While the notion of reasonable accommodation is complex in implementation due to the involvement of financial resources, it is submitted that Lawson’s contention that there will be issues around understanding the concept of reasonable accommodation is not totally justified. Regarding the implementation of inclusive education for example, schools whether public or private are required to reasonably accommodate the needs of individual learners in schools. Therefore, states are required to promote inclusive education by providing adequate resources to ensure that this duty is achieved in practice.

Despite these criticisms, the disability human rights paradigm is a better instrument for conceptualizing disability and better embodies the CRPD. This is because only the human rights model of disability can better explain the experiences of all people with disabilities. As the social model of disability does not account for the lived experiences of all persons with disabilities. On the other hand, the human rights model of disability specifically recognizes all persons with disabilities. For example, articles 6 and 7 of the CRPD acknowledge the rights of women and children with disabilities. It also gives recognition to the rights of persons with intellectual and psychosocial disabilities to exercise their legal capacity with the necessary support.<sup>111</sup> Unlike the social model of disability that barely challenges the dominance of special segregated education, the disability human rights model requires the promotion of inclusive education at all levels of education.<sup>112</sup> Although the human rights model of disability permits special education for some

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<sup>105</sup> Mike Oliver, ‘Emancipatory Research: A Vehicle for Social Transformation or Policy Development’ (3 December 2002) <<https://disability-studies.leeds.ac.uk/wp-content/uploads/sites/40/library/Oliver-Mikes-paper.pdf>> accessed 13 June 2023.

<sup>106</sup> Ibid.

<sup>107</sup> Colin Barnes, ‘Emancipatory’ Disability Research: Project or Process’ (Public Lecture, 24 October 2001) <<https://disability-studies.leeds.ac.uk/wp-content/uploads/sites/40/library/Barnes-glasgow-lecture.pdf>> accessed 13 June 2023.

<sup>108</sup> Ibid.

<sup>109</sup> Berghs et al, ‘Implications for Public Health Research of Models and Theories of Disability: A Scoping Study and Evidence Synthesis’ (2016) 4(8) Public Health Research 1.

<sup>110</sup> Anna Lawson, *Disability and Equality Law in Britain: The Role of Reasonable Adjustment* (Oxford: Hart Publishing Ltd 2000).

<sup>111</sup> United Nations Convention on the Rights of Persons with Disabilities (CRPD) (Adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3, Article 12.

<sup>112</sup> CRPD, Article 24.

categories of persons with disabilities, however such education must be provided based on choice and within the goal of promoting inclusion. Besides, the human rights model of disability unlike the social model of disability challenges segregated employment, and requires states to prioritise employment in the open employment. For instance, article 27 of the CRPD requires states to promote employment for persons with disabilities in an open inclusive work environment. Whereas the social model of disability fails to consider the issues of compulsory medical treatment and detention without consent, the human rights model of disability addresses these issues by prohibiting compulsory medical treatment and detention of persons with mental disabilities. For instance, article 25 of the CRPD requires medical professionals to seek the consent of persons with mental disabilities before commencing treatment. At the same time, article 14 of the CRPD prohibits the compulsory detention on grounds of impairment of persons with mental disabilities. Unlike the social model of disability's distinction between impairment and disability, the human right model of disability goes further. It does not focus on the distinction between impairment and disability. Rather emphasis is on the fulfilment of the rights of all persons with disabilities as well as the empowerment of their individual talent. This framework recognizes that people with disabilities should speak on matters affecting them through participation in decision-making. Indeed, the disability human rights model unlike the social model of disability highlights the importance of social participation.

The disability human rights paradigm allocates resources to enable preference as a matter of ensuring individual's autonomy and dignity. In contrast to the social model of disability, this model enables the development of the individual talent and acknowledges special needs. The model builds on the social model of disability in acknowledging the amendable nature of social exclusion. However, the model diverges from this scheme by requiring policy makers to provide resources for disability-based inclusion that exceed minimal levels. Unlike the social model of disability, the human rights model of disability recognizes diversity and identity difference. The latter model also respects the linguistic identity of deaf persons. The paradigm requires states to promote the cultural identity of deaf persons through the promotion of the use of sign language as means of communication. For instance, article 24(3) of the CRPD requires states to provide appropriate means of communication to enable learners with disabilities to effectively participate in the school environment and in the society.

For persons with disability, the human rights model requires governments to take more proactive steps to advance the rights of persons with disabilities compared to the general public. For example, government would be required to consult representatives of disability groups in making of laws and policies concerning people with disabilities. The model recognizes impairment as a natural aspect of human diversity. Therefore, the government is required to move beyond the equal opportunity principle by understanding that governments have a responsibility to support persons with disabilities in the actualisation of their rights.

### **2.3 Impact of the Disability Models at the United Nations**

Although the moral model existed from time immemorial up until the 1800s, there was a complete absence of disability and persons with disabilities within international instruments. Nevertheless, the moral model is reflected in practices such as alms begging, exclusion of children with disabilities from schools, and the practice of hiding children with disabilities from society by parents. However, between the 1800s and the 1970s, the United Nations adopted several instruments that mirrored the medical model of disability such as the Universal Declaration of Human Rights,<sup>113</sup> the 1971 Declaration on the Rights of Mentally Infirm Persons,<sup>114</sup> and the 1975 Declaration on the Rights of Disabled Persons.<sup>115</sup> These instruments provided an understanding of disability and persons with disability from the notions of the body, care, prevention, and rehabilitation. Nevertheless, the 1990s witnessed the gradual shift from the medical model to the social model at the United Nations, with the adoption of the Vienna Declaration and Programme of Action,<sup>116</sup> which later formed the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities.<sup>117</sup> Indeed, the UN Convention on the Rights of the Child (CRC)<sup>118</sup> reflects the social model. Likewise, the paradigm is reflected in national and regional laws including the Americans with Disabilities Act 1990 as amended,<sup>119</sup> the Australia Disability Discrimination Act of 1992 as amended,<sup>120</sup> and the United Kingdom 1995 Disability Discrimination Act (which later became the Equality Act of 2010).<sup>121</sup> Regionally, the social model similarly inspired the European Union's Framework Employment Directive.<sup>122</sup> Yet, because of the partial focus of the social model, a new disability model was adopted at the UN in 2006. The adoption of the UN Convention on the Rights of Persons with Disabilities<sup>123</sup> brought about the human rights model of disability which is based on human rights principles and provides a holistic understanding of disability and persons with disabilities. The next part of the paper explains the disability human rights approach to employment.

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<sup>113</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III).

<sup>114</sup> Declaration on the Rights of Mentally Infirm Persons (Proclaimed by General Assembly resolution 2856 (XXVI) of 20 December 1971).

<sup>115</sup> Declaration on the Rights of Disabled Persons (Proclaimed by General Assembly resolution 3447 (XXX) of 9 December 1975).

<sup>116</sup> The Vienna Declaration and Programme of Action (adopted 14-25 June 1993).

<sup>117</sup> Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (adopted 20 December 1993) Res. 48/96 annex. Rule 19.

<sup>118</sup> Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

<sup>119</sup> Americans with Disabilities Act (entered into force on July 26, 1990).

<sup>120</sup> Australia Disability Discrimination Act (entered into force in 1992).

<sup>121</sup> Disability Discrimination Act (entered into force in 1995).

<sup>122</sup> The European Union's Employment Equality Framework Directive (Council Directive 2000/78/EC of 27 November 2000, came into force on 2 December 2000).

<sup>123</sup> United Nations Convention on the Rights of Persons with Disabilities (Adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3.

### **3 Disability Human Rights Approach to Employment**

The disability human rights approach to employment obliges states to promote inclusion in the field of employment. In effect, states are duty-bound to develop inclusive employment in order to comply with their obligations under the human rights model.

#### **3.1 Inclusive Employment**

An exceptional provision among UN human rights treaties, is that contained in the CRPD. The provision requires states to promote inclusive employment for persons with disabilities.<sup>124</sup> Article 27 of the CRPD obliges states to promote employment opportunities, protect employment, and ensure that people with disabilities can access employment in an ‘open, inclusive, and accessible environment’. This provision imposes, amongst others, on governments as employers, the duty to regulate and promote flexible and alternative work arrangement, as well as promote an environment that offers reasonable accommodation. It also requires states to ensure that employers promote the employment right of persons with disabilities. Other provisions in the CRPD expressly or implicitly reference the right of persons with disabilities to inclusive employment. Article 8 (Awareness raising) requires states to combat stereotypes, harmful practices, and prejudices in employment and work environment<sup>125</sup>; article 9 (Accessibility) demands states to ensure access to the work environment and to eliminate barriers and obstacles to accessibility;<sup>126</sup> article 12 (Equal Recognition before the Law) requires recognition for persons with disabilities regarding the enjoyment of their legal capacity in work and employment;<sup>127</sup> article 17 (Respect for Personal Dignity) gives recognition to the right of every person with disability to respect for his physical and mental integrity;<sup>128</sup> article 20 (Personal Mobility) compels states to ensure personal mobility;<sup>129</sup> and article 26 (Habilitation and Rehabilitation) demands the extension of habilitation and rehabilitation services and programmes in the area of employment.<sup>130</sup>

The debate amongst states regarding article 27 of the CRPD centred on the requirement on states to promote employment in an ‘open, inclusive and accessible environment.’<sup>131</sup> During the negotiation, several states including the Russian Federation expressed concern about the terminologies included in the provision and highlighted that the term ‘inclusive’ is ‘superfluous.’<sup>132</sup> While there was no agreement amongst states and other parties as to its exact

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<sup>124</sup> CRPD, Article 27.

<sup>125</sup> CRPD, Article 8.

<sup>126</sup> CRPD, Article 9.

<sup>127</sup> CRPD, Article 12.

<sup>128</sup> CRPD, Article 17.

<sup>129</sup> CRPD, Article 20.

<sup>130</sup> CRPD, Article 26.

<sup>131</sup> Ibid.

<sup>132</sup> See Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, UNITED NATIONS ENABLE, <<https://www.un.org/esa/socdev/enable/rights/ahc6sum10aug.htm>> last visited July 03, 2020).

meaning, there was serious discussion as to whether article 27 of the CRPD prohibited sheltered or assisted employment.<sup>133</sup> During the negotiation sessions leading to the CRPD's adoption, many disability organisations including the World Network of Users and Survivors of Psychiatry and the International Disability Caucus rejected sheltered employment and instead canvassed for the prioritisation of employment in the open labour market.<sup>134</sup> But, at the end of deliberations, a compromise was reached by parties. While priority was given to the full integration of persons with disabilities in the open labour market, the employment of persons with disabilities outside the open labour market was to be kept at a minimum.<sup>135</sup>

Some states have responded to article 27 of the CRPD by raising awareness on the right to work and employment of persons with disabilities. Truly, some states including Peru and Serbia have adopted measures to enlighten employers and the society on the right of persons with disabilities to employment in the open labour market.<sup>136</sup> For example, Peru has initiated state-focused approach aimed at raising awareness among employers on the rights of persons with disabilities with a view to eliminating stereotypes related to the capacity of persons with disabilities to work.<sup>137</sup> The next part of this manuscript explains the effects of the disability human rights model on states' obligations as well as the framework to achieve disability- inclusive employment.

#### **4 Framework for Achieving Disability-Inclusive Employment**

To achieve disability-inclusive employment, states are required to undergo procedural, substantive, institutional, and cultural changes. Procedurally, states should enable the participation of representatives' organisations of persons with disabilities in labour-related matters, mainstream disability programmes particularly in the field of labour, provide adequate budgeting, accountability, as well as ensure research and data collection. Furthermore, states are required to promote rights-based approach to labour matters in addition to encouraging cultural changes.

##### **4.1 Participation**

Participation of persons with disabilities and their representatives is a general principle of the CRPD and a core obligation imposed on states. The Convention in article 4(3) requires that organizations of persons with disabilities be consulted and involved in the development and implementation of the CRPD and in other decisions affecting persons with disabilities. This certainly applies in the area of employment. Similarly, the ILO Vocational Rehabilitation and

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<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

<sup>135</sup> Ibid.

<sup>136</sup> UN High Commissioner for Human Rights, Thematic Study on the Work and Employment of Persons with Disabilities, A/HRC/22/25 (17 December 2012).

<sup>137</sup> Ibid.



Employment (Disabled Persons) Convention No. 159<sup>138</sup> calls for consultation with persons with disabilities and their representative organisations in the development of national policies on vocational rehabilitation and employment.<sup>139</sup> Moreover, trade unions have a role in the protection and promotion of the rights of workers with disabilities in the work environment through their representation. Therefore, persons with disabilities and their representative organizations must partake in trade unions.<sup>140</sup> Moreover, the interest of workers with disabilities should be represented in collective bargaining and other employment-related negotiations at the national level through trade unions in collaboration with representative organisations of persons with disabilities.<sup>141</sup> Therefore, in order to attain inclusive employment, states should initially ensure that the adoption of all policies regarding the right of persons with disabilities to work and employment is taken in consultation with the involvement of representative organizations of persons with disabilities.<sup>142</sup> Moreover, states should ensure that labour policies are adopted seeking to guarantee access to employment for persons with disabilities.<sup>143</sup> Furthermore, states need to develop the capacity of representative organisations of persons with disabilities in the negotiation process.<sup>144</sup>

## **4.2 Substantive Changes**

To achieve disability-inclusive employment, states need to ensure that employers of labour adopt a rights-based approach in the work environment and in the process of employment. States should ensure that employers do not discriminate against persons with disabilities due to the presence of impairment during the recruitment process.<sup>145</sup> Also, it requires employers to respects the rights of persons with disabilities to seek employment. On the part of states, they must promote employment for persons with disabilities within inclusive settings rather than in separate segregated workshops.<sup>146</sup> States are also required to make the work environment inclusive through the provision of accessible transportation and environment.<sup>147</sup> Moreover, states should adopt measures prohibiting disability discrimination in all the processes of recruitment.<sup>148</sup> It should adopt legislative measures to ensure employers provide necessary accommodations in the workplace.<sup>149</sup>

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<sup>138</sup> Convention concerning Vocational Rehabilitation and Employment (Disabled Persons) (adopted 20 June 1983, entered into force 20 June 1985).

<sup>139</sup> Convention concerning Vocational Rehabilitation and Employment (Disabled Persons) (adopted 20 June 1983, entered into force 20 June 1985), Article 5.

<sup>140</sup> UN High Commissioner for Human Rights, Thematic Study on the Work and Employment of Persons with Disabilities, A/HRC/22/25 (17 December 2012).

<sup>141</sup> *Ibid.*

<sup>142</sup> *Ibid.*

<sup>143</sup> *Ibid.*

<sup>144</sup> *Ibid.*

<sup>145</sup> *Ibid.*

<sup>146</sup> *Ibid.*

<sup>147</sup> *Ibid.*

<sup>148</sup> *Ibid.*

<sup>149</sup> *Ibid.*

### **4.3 Cultural Changes**

There is need for states to change the perceptions of employers in the labour market in order to achieve inclusive employment. Under the framework, persons with disabilities should be seen as citizens that can contribute to society rather than as recipients of charity. In fact, they should be valued as rights holders and empowered. States should therefore educate employers on the need to view impairment as part of human diversity and humanity. At the same time, workers with higher support needs should be encouraged through the provision of support and other assistance in order to fit into the work environment. Therefore, to achieve disability-inclusive employment, states should as part their obligations promote persons with disabilities as rights holders. Changes in negative attitudes can be achieved by awareness raising on the rights of persons with disabilities in the labour market.<sup>150</sup> Indeed, article 4(1) of the CRPD imposes as part of the general obligations, the duty to promote training on these rights to public officials within the labour ministry and related ministries. Also, it requires enlightening employers on the need to forsake the negative stereotypes about persons with disabilities particularly against minorities and those with cultural identity such as deaf persons, persons with intellectual disabilities, and women with disabilities.

### **4.4 Information Gathering**

One of the general obligations on states is to conduct research and gather information on the situation of persons with disabilities. States are required as part of their duties to understand the employment situation of persons with disabilities as well as design indicators to monitor progress in the implementation of the right to work based on ILO indicators.<sup>151</sup> States also should undertake systemic collection of disaggregated data in compliance with article 31 of the CRPD. At the same time, the data collected by states should be disaggregated by type of work and disability.<sup>152</sup>

### **4.5 Accountability**

To achieve disability-inclusive employment, states should ensure there is an independent mechanism responsible for employment protection of persons with disabilities.<sup>153</sup> Article 33 of the CRPD imposes a general obligation on states to establish an independent monitoring mechanism to promote, protect, and monitor the implementation of the Convention. Such a mechanism should promote employment of persons with disabilities as well as monitor progress.<sup>154</sup> Furthermore, persons with disabilities who, individually or as a group, are victims of violation of their right to work should have access to effective judicial or other appropriate remedies at the national level.<sup>155</sup>

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<sup>150</sup> Ibid.

<sup>151</sup> Ibid.

<sup>152</sup> Ibid.

<sup>153</sup> Ibid.

<sup>154</sup> Ibid.

<sup>155</sup> Ibid.

#### **4.6 Mainstreaming Disability Policies**

States should ensure policies and programmes are inclusive and incorporate disability perspective in the field of employment.<sup>156</sup> This can be achieved by ensuring non-discrimination, accessibility, and support provisions in employment policies and programmes.<sup>157</sup> To achieve disability-inclusive employment, states should adopt labour related disability-specific programmes. It also should ensure that persons with disabilities are included in 'general skills development as well as in enterprise and employment-related services and programmes on vocational training and employment.'<sup>158</sup>

#### **5 The Nigerian Context**

The adoption of the human rights model of disability has major implications for Nigeria in the realization of employment for persons with disabilities. Disability and issues related to employment must be viewed from the human rights approach rather than the current situation wherein the Discrimination against Persons with Disabilities (Prohibition) Act<sup>159</sup> perceives disability and people with disabilities from the moral/medical models of disability. For instance, Section 57 addresses disability and the definition of person with disabilities from a medical based model. Likewise, the Act provides a clear lack of understanding of the concept of reasonable accommodation for people with disabilities more particularly within the employment sphere.<sup>160</sup> While the Act recognizes the equal right to work of persons with disabilities,<sup>161</sup> people with disabilities are still supported within segregated work settings and still viewed as dependent members of society. In order to realize its obligations, Nigeria must view people with disabilities as right holders who can contribute to nation building. Moreover, persons with disabilities should be supported to work in inclusive settings with necessary accommodations. Additionally, the provision of reasonable accommodation in the workplace should be addressed amongst private employers to encourage the recruitment of qualified persons with disabilities.

#### **6 Conclusion**

This paper considered the disability human rights approach to employment as well as its effects on states' obligations. It found that states as part of their duties are required to promote inclusive

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<sup>156</sup> Report by Catalina Devandas- Aguilar, Special Rapporteur of the Human Rights Council on the Rights of Persons with Disabilities, UN Doc A/71/314 (9 August 2016).

<sup>157</sup> UN High Commissioner for Human Rights, Thematic Study on the Work and Employment of Persons with Disabilities, A/HRC/22/25 (17 December 2012).

<sup>158</sup> Ibid.

<sup>159</sup> Discrimination against Persons with Disabilities (Prohibition) Act (Enacted in 2018).

<sup>160</sup> Discrimination against Persons with Disabilities (Prohibition) Act, Section 27.

<sup>161</sup> Discrimination against Persons with Disabilities (Prohibition) Act, Section 28.

employment in line with the human rights model of disability. Therefore, in order to make progress towards the Sustainable Development Goals (SDGs) and achieve inclusive employment, states are encouraged to make practical, substantial, institutional, and cultural changes. Practically, states are required to mainstream disability policies in the field of employment; gather data and information on the employment situation of persons with disabilities; promote the participation of representative organisations of persons with disabilities in labour-related matters; as well as promote accountability. Furthermore, states are mandated to make substantive, institutional, and cultural changes in employment.