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# **Are they not Nigerians? The obligation of the state to end discriminatory practices against persons with disabilities**

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## **Abstract**

*Despite Nigeria's ratification of international instruments that protect the rights of persons with disabilities and guarantee freedom from discrimination, the country is yet to fully implement the appropriate measures required to achieve this. Similarly, successive administrations since the return to civilian administration in the country in 1999 have not fulfilled the mandate in the 1999 Constitution (as amended) dealing with the rights of disabled persons which, by implication, they swore to preserve and to protect. The passing into law in January 2019 of the Discrimination Against Persons with Disabilities (Prohibition) Act 2018 is a reflection of the pressure on the Federal Government by disability rights advocates to protect the rights of persons living with disabilities. This article aims, to among others, highlight the plight of persons with disabilities in Nigeria and the need to protect disabled persons in the country. To achieve this aim, a review of international and domestic instruments, as well as literature on the subject, is undertaken. In addition, the government should aim towards inclusivity. Instead of special schools for PWD, there should be a design to allow the training of teachers to meet the needs of special children in regular schools.*

**Keywords: Disability Rights; Equality; Non-Discrimination; Access to Justice; Legal Capacity; Nigeria**

## **I. Introduction**

Persons with disability (PWD) are often the subject of discrimination and other forms of unfavourable treatment because of their disability even in developed countries (US Equal Employment Opportunity Commission, 2018). Globally, 'people with disabilities...are regularly excluded from society and, in some jurisdictions, even need to fight for the right to life' (Harpur, 2012: 2). The question that comes to mind is this, do PWD deserve to be treated as less human because of their physical or mental condition? The answer to this question is the reason why state actors and non-state actors agree for the need to entrench equality rights. This

article examines, in the Nigerian context the treatment of PWD in the country by using various themes. These include their access to education, employment, justice and to social amenities. The aim is to bring to the fore, the issue of discrimination against PWD in Nigeria and the need for government at the national and subnational levels to implement a legal and policy regime where the rights of PWD would be protected and where their freedom from discrimination is guaranteed.

The motivation for this study stems from the knowledge that about 16 per cent of the world's population is challenged by one form of disability or the other (Raub, Latz, Sprague, Stein, & Heymann, 2016). In the case of Nigeria, out of a population of 198 million (National Population Commission, 2018), an estimated 28 million persons are living with a disability (Etieyibo & Omiegbe, 2016). This is a significant number of the population. There is, therefore, the need to champion their rights to non-discrimination and equality in the scheme of things in the country. The plight of PWD is becoming of great concern around the world. This has led to proactive steps being taken to address issues ranging from discrimination to deprivation. In advanced countries like the United States and the United Kingdom (UK), legal regimes to ensure the protection and non-discrimination against PWD (Living Water Foundation, 2018). In the UK, for example, the rehabilitation and employment right of PWD are anchored on the Disability Discrimination Act 1995. The Act requires that employers of labour with more than 20 workers must ensure that at least 3 per cent of their workforce are PWD. In the same vein, the Disability Rights Commission Act 1999 establishes the Disability Rights Commission (DRC). The DRC, among others, is charged with working towards the elimination of discrimination against PWD and promoting the equalisation of opportunities for PWD. Unfortunately, Nigeria still lags behind in ensuring equality and non-discrimination against PWD. Therefore, this article attempts to consider whether the situation in Nigeria does not further incapacitate PWD. This article is divided into six sections based on different themes with an aim to address the plight of PWD in Nigeria and to suggest a proactive approach in protecting the rights of PWD.

## **II. Clarification of Key Concepts**

To begin with, it is not out of place to define what “disability” is. Similar to other concepts in the social sciences, no writer has, and none can offer a universal definition for disability that would put to rest every other attempt to define the term. Disability is described as a ‘complex,

dynamic, multidimensional and contested' and nearly everyone alive will one day be temporarily or be permanently impaired (World Health Organization, The World Bank, 2011). . The same way, those who survive old age could encounter difficulties in going about their daily activities. It is also trite that every family has, or has an affinity with a person who is challenged by a disability (World Health Organization, The World Bank, 2011). The term 'disability' has been conceptualised in different forms including medical, socio-political, economic and administrative evaluations. In this article, some definitions under statutes are considered (Ofuani, The right to economic empowerment of persons with disabilities in Nigeria: How enabled?, 2011).

The United Nation's Convention on the Rights of Persons with Disabilities (CRPD) does not provide a definition for the term 'disability' in its Article 2 which contains the definitions of other terms. However, it states under Article 1 as follows:

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

Similar to the above, Article 1 of the Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa defines 'Persons with disabilities' in the following words:

Include those who have physical, mental, intellectual, developmental or sensory impairments which in interaction with environmental attitudinal or other barriers hinder the full and effective participation in society on an equal basis with others.

In the United Kingdom, with the exception of Northern Ireland, the term disability is defined under section 6(1) of the Equality Act 2010 as follows:

A person (P) has a 'disability' if:  
(a) P has a physical or mental impairment, and  
(b) the impairment has a substantial and long-term adverse effect on her or his ability to carry out normal day-to-day activities.

According to Section 57 of Nigeria's the Discrimination Against Persons with Disabilities (Prohibition) Act 2018, the term 'disability' to mean 'includes long term, physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder full

and effective participation in society on equal basis with others.’ The Act defines PWD as follows:

- (a) a person who has received Temporary or Permanent Certificate of Disability to have condition which is expected to continue permanently or for a considerable length of time which can reasonably be expected to limit the person’s functional ability substantially, but not limited to seeing, hearing, thinking, ambulating, climbing, descending, lifting, grasping, rising, and includes any related function or any limitation due to weakness or significantly decreased endurance so that he cannot perform his everyday routine, living and working without significantly increased hardship and vulnerability to everyday obstacles and hazards; and
- (b) a person with long term physical, mental, intellectual or sensory impairment which in interaction with various barriers may hinder their full and effective participation in society on equal basis as others.

With respect, the requirement of a certificate before can be considered as a PWD is rather curious of a country which has no good record system and with many PWD living in parts where they may not have access to government establishments with functions to provide any such certificate.

A person may become disabled from birth through genetic conditions, neurological conditions, infectious diseases, accidents or exposure from exposure to harmful substances amongst others (Nigerian Institute of Advanced Legal Studies, 2014) It is not uncommon, in Nigeria for such persons to suffer from discrimination and stigma.

The term ‘discrimination’ is defined under the Discrimination Against Persons with Disabilities (Prohibition) Act 2018, as ‘differential treatment and its verb and infinite form, discriminate, to discriminate have corresponding signification.’ This definition is ambiguous as it is not clear about what a differential treatment is. A better definition of the term within the context of this article, is provided for in Section 15 of the UK Equality Act 2010. The term is defined as follows:

- (1) A person (A) discriminates against a disabled person (B) if –
  - (a) A treats B unfavourably because of something arising in consequence of B’s disability, and
  - (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
- (2) Subsection (1) does not apply if A Shows that A dis not know, and could not reasonably have been expected to know about the disability.

To put it in its simple form, to discriminate against someone is to exclude that individual from full enjoyment of their political, civic, economic, social or cultural rights and freedoms. (Equality and Human Rights Commission, 2019). Discriminating against PWD means treating PWD unfavourably because of something connected with their disability when this cannot be objectively justified (Equality and Human Rights Commission, 2019). Any form of discrimination contravenes the basic principle of human rights which entails that all humans are equal in dignity and entitled to the same fundamental rights. Therefore, the principle of non-discrimination is to the effect that all human beings irrespective of their race or ability should not be excluded from the enjoyment of their fundamental freedoms.

Equality is both a descriptive and a normative concept (Capaldi, 2001). The term is not defined in Nigeria's Discrimination Against Persons with Disabilities (Prohibition) Act 2018. The term 'equality' has been described as 'equality is about ensuring that every individual has an equal opportunity to make the most of their lives and talents' (Equality and Human Rights Commission, 2019). It is the right of every individual to have similar opportunities and receive same treatment with others.

### **III. Discrimination against Persons with Disabilities**

One of the challenges of being a PWD in Nigeria is that of discrimination. The CRPD defines 'Discrimination on the basis of disability' under Article 2 to mean:

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

Following from this definition, it remains to be stated that any commission or omission that deprives PWD of enjoying the same privileges others enjoy in the society is discriminatory. It is important that the government of Nigeria takes steps to ensure that PWD are not discriminated against through the enactment of laws, policies and in by influencing public opinion (Ofuani, 2017).

Discrimination against PWD compounds their challenges. It further incapacitates them. For example, depriving a qualified PWD of gainful employment means that the person would rely on others not only for help to move around but also the capacity for livelihood. It is understood that in Nigeria PWD are subjected to several kinds of discrimination (Etieyibo &

Omiegbe, 2016). The forms of discrimination against PWD are discussed under various themes below.

## **1. Access to Employment**

There is widespread discrimination against PWD in Nigeria in terms of securing employment (Nwaozor, 2016). It has been noted that the majority of the PWD in Nigeria suffer from unemployment (Smith, 2011). Rule 7 of the 1993 United Nations (UN) Standard Rules on Equal Opportunities for Persons with Disabilities states that PWD must be empowered to exercise their rights especially as it relates to being gainfully employed and are entitled to having equal opportunities with others in the labour market. As a corollary, employers of labour, including the government are duty bound to ensure that there are no discriminatory barriers against PWD (Ofuani, The right to economic empowerment of persons with disabilities in Nigeria: How enabled?, 2011). It is worthy of note that the government in Nigeria has a duty to safeguard and promote the realisation of the right to work by implementing measures to prohibit the discrimination against PWD as far as being gainfully employed is concerned (Art 27(1) CRPD).

The issue of discrimination against the disabled in terms of employment did not receive any positive attention from the federal government of Nigeria until 24 January 2019 when President Buhari gave assent to the Discrimination Against Persons with Disabilities (Prohibition) Bill (News Agency of Nigeria, 2018). However, the Lagos State Government<sup>1</sup> as far back as in 2010 enacted the Lagos State Special Peoples Law 2010 which prohibits discrimination on the basis of an employee's disability. The Law states that employers must reserve a minimum of 1 per cent of their workforce for qualified PWD. Despite this, there is no political will to enforce the objective or an organ of state to check that the law is adhered to.

To highlight how PWD are discriminated against in terms of securing employment in Nigeria, there is a case of a disabled person was told that she could not be employed as a front desk officer as whoever sits at the front desk is the image of the company (Ashi, Olayi, & Ikwem, 2015). Some obstacles have been identified as the key challenges to hiring PWD. First is the fear that PWD will create more work for supervisors. Secondly, is the lack of external

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<sup>1</sup> At the subnational level.

hiring support or the fact that employers will find little or no resources on the outside to help recruit PWD and thirdly, the fear of PWD to apply for jobs because they feel they may be rejected (Wharton, 2013). This writer, however, considers that in the case of Nigeria, employers shy away from employing PWD mostly from fear of having to take on more responsibilities and stigmatisation.

## **2. Access to Public Facilities**

It is unfortunate that even for new public buildings and other facilities even as recent as 2018 in Nigeria are not built with PWD in mind. In the Indian case<sup>2</sup> of *Rajive Raturi v Union of India and Others* (2006) the Court per AK Sikir, J and A Bhushan J held that proper access to public facilities to the visually impaired is a statutory obligation of the central and state governments in India.

In the case of Nigeria, public buildings like libraries, stadia, banking halls, schools and bus stops lack disabled access. There is also a lack of conscious effort on the part of the public authority in Nigeria to improve on sanitation as well as disabled access to public sanitation facilities (UNICEF, 2008).

It is important that in the design and building of all government buildings including streets, sidewalks and walkways that PWD are considered to ease their movement. Banks, cinemas, stadia, theatres, schools, hospitals should be redesigned to enable disabled access. There is also the need to provide for sitting arrangements for PWD in public vehicles and other modes of transport so as to ameliorate the hardship PWD go through accessing public transport services. There is also the need to have wheelchair friendly Automatic Teller Machines (ATM) and Point of Sale Machines (POS) services in the country. In the current situation, PWD has to seek the assistance of others to make use of such facilities and have to reveal sensitive information like their personal identification numbers (PIN) to those helping them. This article acknowledges the attempt by one of the banks in the country to introduce wheelchair friendly ATMs in Lagos (ENCA, 2015).

## **3. Access to Education**

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<sup>2</sup>, This is of persuasive authority in Nigeria.



Education is one of the fundamental rights enshrined in the 1948 Universal Declaration of Human Rights. In Nigeria particularly, education is one of the fundamental objectives and directive principles of state policy of the national and sub-national governments (section 18 and Second Schedule, Part II of the 1999 Constitution (as amended)). As such, all children whether disabled or abled should not be deprived of access to education (Matera, 2014). Unfortunately however, the right to education in Nigeria is not justiciable (section 6(6) of the 1999 Constitution (as amended)). The Constitution does not recognise the right to education explicitly but rather requires the government to direct its policy towards ensuring that there is equal opportunity for all citizens at all levels (Umeh N. C., 2018). It is common knowledge that several Nigerian disabled children do not attend school because there is a lack of the option for them especially when they cannot attend regular schools (Ofuani, The right to economic empowerment of persons with disabilities in Nigeria: How enabled?, 2011) It has been noted that ‘there are few educational institutions, a limited number of adequately trained teachers and a lack of facilities in Nigeria..’ (Ofuani, 2011: 656) to meet the needs of children with disabilities. It is noteworthy that many disabled children reside in rural areas where there are no special schools for PWD. In addition, many parents lack information with regards to what options are available for their children. In the same vein, older children have no information regarding vocational training for PWD, if at all there are any (Hicks, 2011). It is sad to note that children with disabilities continue to be left out of school. It has been noted that one out of three children in the world who do not have access to primary education have a disability (Hicks, 2011).

Even where special schools have been established by the authorities, the schools continue to grapple with the problem of funding and from the scarcity of trained personnel to teach special children (Eskay, Eskay, & Uma, 2012). Another challenge is the lack of sufficient materials for the training of children with disabilities for example braille text and computers. This is against the backdrop of section 7 of the revised National Policy on Education (2008) which explicitly recognises that children and youth with special needs shall be provided with inclusive education services (Ajuwon, 2008). It is worthy of note that some Africa countries including South Africa and Kenya have taken proactive steps in inclusive education (Ofuani, The right to economic empowerment of persons with disabilities in Nigeria: How enabled?, 2011). In Nigeria, the federal government designed a National Policy Programme known as “Special Education” (Adetoro, 2014). Special education was designed to cater for three categories of persons i.e. PWD (including those with physical, visual, hearing, mental, emotional, social, speech, learning and multiple impairments); the disadvantaged

(including children of nomadic pastorals, migrant fisher folk, migrant farmers and hunters); and the gifted and talented (involving children and adults who have high intelligent quotient and endowed with special traits) (Adetoro, 2014). It is pertinent to note however, that this policy is contradictory as separating children with special needs from others does not promote inclusivity in the first place (Adetoro, 2014).

#### **4. Involvement in Politics**

It is sad to note that PWD are noticeably absent as far as politics and public offices are concerned in Nigeria (World Pulse, 2013) A close examination of the present administration of President Muhammadu Buhari shows that there is no disabled person appointed to the Cabinet. The same goes for nearly all the state executive councils making the federation (US Mission Nigeria, 2018). There have been calls to support the involvement of PWD in politics in the country especially as the country prepares for the general elections in 2019 (US Mission Nigeria, 2018).

At the moment, barriers exist with regards to PWD aspiring to elective positions in the country. This is not unconnected to the huge financial resources required to contest elections in Nigeria (Ameh, 2018). For example, the ruling party the All Progressive Congress (APC) proposed initially to sell forms to aspirants for political positions in the following order N1million for state assembly, N3.3 million for the house of representatives, N8.5 million for Senate, N22.5 million for the governorship and N55.5 million for presidential nomination forms respectively (Ameh, 2018). It is difficult to see how PWD can afford such a cost in an environment such as Nigeria. It is of the essence that PWD are given the equal right to vote and be voted for in the country (Lord, Stein, & Fiala-Butora, 2014). In the next section of this article, the stigmatisation against PWD in Nigeria is discussed.

### **IV. Stigmatisation against Persons with Disabilities in Nigeria**

Related to discrimination which is discussed above, is the stigmatisation against PWD in Nigeria. In his seminal work on stigma, Goffman postulates that stigma is a feature that is deeply discrediting and makes the person experiencing it different from others and of a less pleasant kind (Goffman, 1963). Stigma is a sign of disgrace or dishonour and separates a person from others (Dako-Gyeke & Asumang, 2013).

It is averred that the Greeks were the originators of the term stigma (Haruna, 2017). They used the term to refer to bodily signs designed to expose something unusual and bad about the moral status of the signifier (Goffman, 1963). The term stigma was used to describe a mark or scar left (Haruna, 2017). While there is no universal definition of the term stigma, it has been described as ‘a severe social disapproval due to believed or actual individual characteristics, beliefs or behaviours that are against norms, be they economic, political, cultural and social’ (Lauber, 2008). In Nigeria, the case is that as soon as a PWD is stigmatised, she suffers from a change of identity as she is no longer referred to as Ms A but as Ms A the blind lady or the deaf (Haruna, 2017). In this section of the article, an attempt is made to examine the causes of stigmatisation against PWD in Nigeria.

### **1. Religion and Stigmatisation against Persons with Disability**

Unfortunately, religion has played an adverse role in promoting stigmatisation against PWD in Nigeria (Etieyibo & Omiegbe, 2016). Religion is defined as ‘a personal set or institutionalised system of religious attitudes, beliefs, and practices’ (Merriam-Webster, 2018). Religion is the process of revelation and contains the concept of the faithful receiving a message(s) from a Supreme Being (Arimoro, 2018).

As a result of religious practices in Nigeria, several persons are subjected to stigmatisation. There are beliefs especially amongst adherents of traditional religions in the country that view disability as evil. There is the belief that anyone suffering from epilepsy, for instance, is possessed by evil spirits or is serving a retribution for offences committed by that person's ancestors or parents (Sango, 2013). Many disabled persons are prevented, as a result of practices associated with traditional religions from participating in social activities during festivals.

The stigmatisation against PWD is not limited to adherents of traditional religion alone. Some Christian groups are known to view disability as a curse or a product of witchcraft (Thisday, 2017). A lot of sermons have been preached in many churches based on the lack of understanding of the causes of disability and due to ignorance. As a result of stigma, disabled persons are prevented from participating in certain services and hardly given responsibilities to perform in church (Thisday, 2017).

### **2. Culture and Stigmatisation against Persons with Disabilities**

The term ‘culture’ as used in this article refers to tradition passed on from one generation to another. Culture is a way of life of a people transmitted over time. A remarkable difference between religion is that while religions have more spread, cultures tend to be localised. For example, while the Yoruba marriage rites in southwestern Nigeria applies to Yoruba people of Nigeria, saying *salat* five times a day is a religious rite among Muslims universally (Arimoro, 2018).

It is important to distinguish between religious and cultural stigmatisation even though they are related. For example, the practice of making disabled children beg for alms in northern Nigeria, even though is common in among Muslims in the north is not a religious practice but a cultural one (Etieyibo & Omiegbe, 2016). As such, begging is considered lucrative in northern Nigeria due to the culture and not because it is an Islamic practice (Etieyibo & Omiegbe, 2016).

There is a common cultural opinion that considers that PWD are inferior to others and can be used in sacrifices to bring about wealth or good fortune (Etieyibo & Omiegbe, 2016). This explains why PWD such as albinos and persons with ‘hunchbacks’ are sometimes hunted and killed (Etieyibo & Omiegbe, 2016). However, it needs to be noted that this practice is not widespread in the entire country. Furthermore, in Nigeria, male suitors are reluctant to marry women with albinism; the proportion of those married is very low (Ojilere & Saleh, 2019). Albinism is a natural birth defect caused by lack of melanin pigment that causes changes in the colour of the skin, eyes and hair texture, and sometimes causes blurred or impaired vision due to high sensitivity to the sun (Ojilere & Saleh, 2019). In some communities, there is the belief that mentally ill persons are either suffering from a curse or that it is a sign of witchcraft. There was a case of a middle-aged woman who suffered from mental illness in Benin. She was burnt to death by a mob who insisted that she was responsible for several problems in their community (Etieyibo & Omiegbe, 2016). Persons with angular kyphosis are mostly killed for rituals (Omiegbe, 1995). In the next section, the article discusses the legal regime for the prevention of discrimination against PWD and the need to ensure equality for all as well as promote inclusivity.

## **V. Legal Regime for the Protection of the Rights of Persons Living with Disability**

In this section of the article, the protection provided for under international instruments as well as the provisions in domestic Nigeria legislation are discussed. Further, the article considers the recent passing into law of the delayed Disability Bill as well the creation of a Disability Commission to support the achievement of equality and inclusion of PWD in Nigeria a step in the right direction. It is imperative to point out that the Supreme Court of Nigeria in *Abacha v Fawehinmi* (2006)<sup>3</sup> has held that where a conflict arises between a national legislation implementing an international human rights instrument and a domestic piece of legislation, the court should interpret the conflict so that the legislation implementing the international instrument prevails, as it should be presumed that the legislator does not intend to breach its international obligations.

### **1. Protection of Persons with Disability under the CRPD**

The CRPD consists of 50 Articles that address the full array of civil, political, economic, social and cultural rights as it relates to PWD (Harpur, 2012). The CRPD is a tool that can be used to drive change and enhance the protection of the rights of PWD and it is a convention that will require states to think strategically about accessibility and reasonable accommodation for PWD (Harpur, 2012). It was adopted in 2006 and came into force two years later. The overriding purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities. The CRPD has been described as a paradigm shift in relation to how human rights are to be understood in the 21<sup>st</sup> century (Clifford, 2011). It has since been ratified by over 160 countries including Nigeria (Appelbaum, 2016). States who ratify the CRPD commit to reducing barriers and increasing opportunities for PWD with the aim of ensuring that PWD fully participate in the society. It is the first comprehensive international legal document that specifically makes provisions for PWD. The CRPD is an international human rights convention that promotes the fundamental rights of PWD. It consists of two documents namely, the human rights provisions expressed in several Articles and the Optional Protocol to the CRPD which is itself, a more narrower document that sets up an individual complaints procedure.

Article 3 affirms the principles of the CRPD which includes respect for inherent dignity, individual autonomy including freedom to make one's own choices, and independence of persons; non-discrimination; full and effective participation and inclusion in society; respect

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<sup>3</sup> 6 NWLR (Pt 600) 228.

for difference and acceptance of PWD as part of human diversity and humanity; equality of opportunity; accessibility; equality between men and women; and respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

Under Article 4 of the CRPD, state actors that ratify the Convention are obliged to adopt legislative and administrative measures for the implementation of the rights recognised by the CRPD. Furthermore, state actors must ensure equality and non-discrimination against PWD. Article 5 specifically states under (2) that states parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds. The Convention reckons with the fact that women and girls with disabilities are subject to multiple discrimination. In this regard, the CRPD provides that state actors are to adopt measures to ensure that such persons enjoy full and equal human rights and fundamental freedoms. Article 5(3) of the CRPD mandates state actors to take the appropriate measures to ensure reasonable accommodation is provided to PWD so as to promote equality and eliminate discrimination. The Convention specifically requires state parties to reasonable accommodation in relation to the right to liberty and security of the person, the right to education as well as the right to work and employment. Article 2 of the CRPD defines the term ‘reasonable accommodation’ in the following words:

‘Reasonable accommodation’ means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.

Another area that is of importance in equality rights is that of ‘accessibility.’ This has to do with the ease with which PWD can access public infrastructure facilities. In recognition of this, Article 9 of the CRPD states as follows:

To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications technologies and systems, and to other facilities and services open or provided to the public both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply, *inter alia*:

- (a) buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
- (b) information, communications and other services, including electronic services and emergency service.

From the above, it is noteworthy that states are obliged to take steps to redesign public facilities to ensure that that PWD have equal access to those facilities like others.

Article 12 of the CRPD emphasises on the legal capacity of PWD. It provides that state parties shall recognise that PWD enjoy legal capacity on an equal basis with others in all aspects of life. The right of PWD to make choices and to also exercise their legal capacity must be protected at all times. The concept of legal capacity deals with the ability to make choices i.e. where they want to live, to vote at elections, to consent to medical treatment, to sign a lease, to have access to public facilities and other leisure facilities (Council of Europe, 2012).

Access to justice for PWD is provided for under Article 13. It provides that states parties shall ensure effective access to justice for PWD on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses in all legal proceedings, including at investigative and other preliminary stages. It is worthy of note that even in developed societies access to justice for the disabled is still evolving especially with regards to those with intellectual disabilities and for those with speech impairments or the deaf.

Under Article 14 of the CRPD, state parties are obliged to ensure that PWD on an equal basis with others enjoy the right to liberty and security of person. The same Article 14 in (1)(b) mandates that PWD must not be deprived of their liberty unlawfully or arbitrarily.

Article 17 stipulates that every PWD has the right to respect for his or her physical and mental integrity on an equal basis with others. Other notable provisions include the right to liberty of movement and nationality (Article 18), the right to living independently and being in the community (Article 19), the right personal mobility, the right to freedom of expression and opinion, and access to information (Article 21), respect for privacy (Article 22), respect for home and the family (Article 23), the right to education (Article 24), the right to health (Article 26) and the right to work and employment (Article 27).

It remains to be stated that as much as possible, the CRPD caters to the rights of the PWD. Compliance with the provisions of the CRPD would not only ensure that the rights of PWD are protected it will also guarantee their freedom from discrimination. It is one thing to ratify or adopt the Convention, the crux of the matter, however, is with having the political will to ensure that the Convention is implemented. In the case of Nigeria, the ratification of the CPRD by the federal government and the seemingly lacklustre attitude towards passing the delayed Bill on disability rights in the country is worrisome.

## **2. Protection of the Rights of Persons with Disabilities under the African Charter on Human and Peoples' Rights (ACHPR)/Draft Protocol on the Rights of Persons with Disabilities**

The African Charter on Human and Peoples' Rights (ACHPR) on the Rights of Persons with Disabilities in Africa is also referred to as the Banjul Charter. It was adopted at the 19<sup>th</sup> Extra-Ordinary Session of the African Commission on Human and Peoples' Rights held between 16 -25 February 2016 at the Islamic Republic of Gambia. The Draft Protocol is pursuant to Article 66 of the 1981 African Charter on Human and Peoples' Rights which provides that special protocols or agreements, if necessary, may supplement the provisions of the African Charter (African Union, 2016). In this subsection, the article discusses those rights that directly deal with discrimination against PWD.

The Protocol consists of 33 Articles setting out the rights of PWD on the African continent. Article 2 of the Protocol stipulates that state parties shall take measures to protect and promote the dignity of PWD without discrimination on the basis of disability. Significantly, Article 2 lists 10 measures that African states are to take to ensure that the aim of the Protocol is achieved. These include *inter alia* mainstreaming disability in policies and legislation, criminalising any harmful practice against PWD, eliminating discrimination and more importantly, providing in their constitutions and other legislative instruments measures to abolish existing policies, laws, customs and practices that are discriminatory against PWD.

Article 3 provides for equality and non-discrimination against PWD. State parties are mandated to prohibit all discriminatory practices on the basis of disability. They are to take steps to ensure that specific measures are taken to promote equality. In the same way, state parties are required to protect parents, children, caregivers or intermediaries of PWD from discrimination. By this provision, the Protocol notably also extends the right to freedom from discrimination against PWD to those who are associated with PWD. This provision is commendable especially in the African context where there are prejudices against not only PWD but also against persons who are associated with them.

The right to life of PWD is enshrined under Article 4 of the Protocol. State parties are to protect the life, physical and mental integrity and the dignity of PWD on an equal basis with others.

Other notable Articles in the Protocol that deal with freedom from discrimination for PWD include equal recognition before the law (Article 8), right to access justice (Article 9), right to live in the community (Article 10), accessibility (Article 11), right to education (Article



12), rehabilitation and habitation (Article 14), right to work (Article 15), right to adequate standard of living and right to social protection (Article 16), right to participate in political and public life (Article 17) and the right to participate in sports (Article 20).

The Protocol also takes special recognition of women and children with disabilities. This is not unconnected to the fact that these categories of PWD are the most vulnerable to discrimination and abuse. Article 22 requires state parties to ensure that women with disabilities enjoy their human rights on an equal basis with others. The women have the right to retain and control their fertility. As for children with disabilities, Article 23 mandates state parties to respect the evolving capacities of children with disabilities and their right to preserve their identities. The states are to promote self-reliance and facilitate the active participation of such children in the community.

A very important insertion in the Protocol is Article 29. It deals with remedies for PWD who have suffered a violation of their right(s). According to Article 29 of the Protocol, state parties shall (a) provide appropriate remedies to any PWD whose rights or freedoms under this Protocol have been violated; (b) ensure that such remedies are determined by competent judicial, administrative or legislative authorities or by other competent authority provided for by law. In the next subsection, this paper discusses the framework to protect PWD from discrimination in Nigeria.

### **3. Protection of Persons with Disabilities under Nigerian Legislation**

To start with, it is imperative to state that despite the provisions of the 1999 Constitution of the Federal Republic of Nigeria (as amended) that frown at discriminatory practices and the recently passed Discrimination Against Persons with Disabilities (Prohibition) Act, 2018 which was signed into law by President Muhammadu Buhari in the eve of the February 2019 Presidential Elections. It appears that the Act which the President denied assent to was only hurriedly signed to appease a section of the voting public. Since the law is new, it is difficult to access its application given that it has only been recently signed into law. The National Commission for Persons with Disabilities which is the organ of state established under Section 31 of the Act is yet to come into being. Therefore, the assessment of the Act will be based on its provisions and not necessarily on its application so far.

PWD in the country faces a plethora of barriers that impede against their inclusion in the society. These barriers include attitudinal, institutional and environmental difficulties. As

a result, PWD in the country are viewed as 'dependent', 'helpless' and 'in need of charity' (Lang & Upah, 2008).

There are provisions in the 1999 Constitution under which the rights of PWD can be anchored on. These provisions are contained in chapter II and IV respectively. Chapter II of the Constitution deals with the Fundamental Objectives and Directive Principles of State Policy. Sections 16, 17 and 18 provide a basis for the anchoring of disability rights in the country. Section 16(2) of the Constitution provides as follows:

The State shall direct its policy towards ensuring:

- (a) the promotion of a planned and balanced economic development;
- (b) that material resources of the nation are harnessed and distributed as best as possible to preserve the common good;
- (c) that the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or a group; and
- (d) *that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.* (emphasis supplied)

Although, Chapter II of the Constitution is generally regarded as non-justiciable in Nigeria i.e. one cannot institute a claim in a court based on the rights provided therein. This writer believes that this is the least that any responsible government can do for its citizens, especially for PWD. Furthermore, section 17(1) affirms that the State social order is founded on ideals of freedom, equality and justice. Sub-section (2) further states that every citizen shall have equality of rights, obligations and opportunities before the law. Based on the foregoing, it is important that the government of Nigeria proactively live up to its obligation by instituting the appropriate measures to end all sorts of discriminatory practices against PWD. There are also further grounds to call for the protection of the rights of PWD under sub-section (3) which stipulates that the State shall direct its policy towards ensuring as follows:

- (a) all citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as an adequate opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment;
- (b) conditions of work are just and humane, and that there are adequate facilities for leisure and for social, religious and cultural life;
- (c) the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused;

- (d) there are adequate medical and health facilities for all persons;
- (e) there is equal pay for equal work without discrimination on account of sex, or on any other ground whatsoever;
- (f) children, young persons and the elderly are protected against any exploitation whatsoever, and against moral and material neglect;
- (g) provision is made for public assistance in deserving cases or other conditions of need; and
- (h) the evolution and promotion of family life are encouraged.

The current situation in the country is in contrast to the provisions of the Constitution as far as the welfare, rights and protection for PWD are concerned. The prejudices against PWD already discussed above indicate a failure on the part of the government of Nigeria to fulfil its obligation even under the Constitution leaders swear to protect.

In Section 18 of the 1999 Constitution, the government is obligated to provide (a) free, compulsory and universal primary education; (b) free secondary education; (c) free university education; and (d) free adult literacy programme. While the government may claim that education is free at the various levels stated above in federal government-owned institutions, the question remains, how many of the existing institutions, if they are free, cater to the needs of PWD? Although it has been acknowledged that special education now serves students at different levels in the country (Abang, 1992), the special schools are inadequate. More so, children with disabilities in rural areas have no access to special schools and only a few tertiary institutions in the country that cater to the needs of PWD.

Significantly, all the rights contained in Chapter IV of the 1999 Constitution (as amended) from sections 33 to 44 apply to PWD. Special note is taken of sections 34 (right to dignity of the human person) and 42 (freedom from discrimination) Indeed, Section 42(2) of the 1999 Constitution (As amended) provides as follows:

‘No citizen of Nigeria shall be subjected to any discrimination or deprivation merely by reason of the circumstances of his birth.’

These rights are regarded as justiciable and can be the basis upon which an action for a claim can be sort in the courts in the country by way of enforcement of fundamental human rights.

***The Discrimination Against Persons with Disabilities (Prohibition) Act, 2018***

This Law was initially passed by the National Assembly in Nigeria in 2013 and preceded the administration of President Muhammadu Buhari. However, neither President Muhammadu Buhari nor Dr Goodluck Jonathan whom the former succeeded gave assent to the Bill (Chadwick, 2016). Fortunately, President Muhammadu Buhari assented to the Bill on 24 January, 2019 (Nnah, 2019). The provisions of the Act are examined below.

The Act is divided into eight parts under the following sub-heads: prohibition of discrimination; accessibility of physical structure; road transportation; seaports, railways and airport facilities; liberty, rights to education, health and first consideration in queues, accommodation and in emergencies; opportunity for employment and participation in politics and public life; establishment of the National Commission for Persons with Disabilities; and appointment and duties of the executive secretary and other staff.

According to section 1(1) and (2) of the Act, a person shall not be discriminated against on the ground of his disability by any person or institution in any manner or circumstance. The discrimination against PWD has been criminalised under the Act, and upon conviction, a guilty person can be liable to a fine of N1,000,000 for a body corporate and N100,000 or a term of imprisonment for six months with or without the fine. Section 2 of the Act mandates the Federal Ministry of Information to promote awareness regarding the rights and respect of PWD.

Importantly, Section 3 of the Act deals with accessibility of physical structure. It states, and rightly so, that a PWD has the right to access the physical environment and buildings on an equal basis with others. As expected, the Act states in section 6 that from the date of commencement of the Act, there shall be a transitory period of five years within which all public buildings and structures, whether immovable, movable or automobile, which were inaccessible to PWD shall be modified to be accessible to and usable by PWD including those on wheelchairs. Since the Act was signed into law in 2019, it is expected that this provision will become effective in the year 2024.

The Act in section 9 stipulates that PWD shall not be discriminated against in the provision of goods and services or in the provision of facilities for road transportation. In section 12, the Act provides that public parking lots, suitable spaces shall be properly marked and reserved for PWD. In order to use any such reserved spaces, the car of a PWD shall be properly identified with necessary insignia.

Under section 13 of the Act, seaports and vessels shall be made to be accessible to PWD. Section 14 states that all airlines operating in Nigeria shall ensure the accessibility of their aircraft to PWD.

The law prohibits the use or employment of a PWD in begging or parading of such a person with the intention of soliciting for alms (section 16). It is difficult to see how this provision will be enforced especially in the northern part of the country where the culture seems to encourage begging by PWD. A PWD is entitled to have unfettered right to education without discrimination or segregation in any form (section 17). A notable provision in the Act is the right to a PWD to free education up to secondary school level (Section 17(2)). The challenge in this regard however, is with the shortage of special schools especially in the rural areas. It is difficult to see how this objective will be achieved without a corresponding plan by the government to build more special schools. If this is not pursued aggressively then the children with disabilities will be deprived of this right.

Interestingly, the Act requires a person with mental disability to obtain a permanent certificate of disability from the Disability Commission on the recommendation of a doctor (section 22). To check cases of fraud, any person who unlawfully issues a certificate of disability commits an offence and is liable to fine of N200,000 upon conviction (section 23).

The Act guarantees PWD the right to work on equal basis with others and this includes the right to opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open (section 28). There is a stipulation that all employers of labour in public organisations shall, as much as possible, have PWD constituting at least five per cent of their employment (section 29).

The National Commission for Persons with Disabilities (NCPD) is established under section 31 of the Act. The NCPD is a body corporate with perpetual succession and a common seal with head office in Abuja. In addition, the Act also creates a Governing Council for the NCPD. Section 39(1) of the Act lists the powers of the NCPD to include contracting for the education and welfare of PWD; purchasing or acquiring any assets considered necessary for its functions, undertake and sponsor research, training of managerial, technical or other category of staff of the NCPD. Unfortunately, it appears that the Commission is just established for the sake that a Disability Act is now in force. The Act does not clearly define what role the NCPD is to fulfil in terms of the protection of the rights of the PWD. One would have expected that the NCPD would be empowered to monitor the compliance with the Act by all stakeholders including government ministries and departments and other employers of labour.

#### 4. Nigerian Courts and Disability Rights

There is a dearth of cases dealing on disability rights in Nigeria (Umeh & Adeola, 2013). This may not be unconnected with the cost of litigation in the country (Okogbule, 2005). For example, under the Rules of the Federal High Court (Order 53(1)) and Appendix 2 of the Federal High Court Civil Procedure Rules, 2000, for a claim of N10 million, the litigant must pay a filing fee of over N50,000. This is also very discouraging to PWD who may wish to approach the courts to address a wrong. Going by the decision in *Fawehinmi v Abacha*, it is expected that in a case before the courts in Nigeria, will uphold international human rights instruments in favour of a litigant who seeks to enforce a right.

Considering that an impairment to the immune system is now considered a disability (US Department of Justice, 2012), or at least considered in the prevention of discrimination against PWD and with HIV/AIDS, the case of a litigant in the Lagos High Court of Nigeria seeking is worthy of consideration. In *Mrs Georgina Ahamefule v Imperial Medical Centre and Dr Alex K Molokwu* (2012)<sup>4</sup>, the plaintiff tested positive to HIV in a test conducted without her knowledge by her employer and had her employment terminated. The court per YO Idowu, J, held among others that the purported termination of Mrs Ahamefule's employment by the defendant is illegal, unlawful and was done in extreme bad faith. The court awarded the plaintiff N5 million general damages for wrongful termination of employment.

## VI Conclusion

PWD in Nigeria even in the 21<sup>st</sup> century, are made to face challenges that compound their disabilities. Despite ratifying international instruments that specify the obligations of state parties that ratify the documents, the Nigerian state has not made proactive efforts to comply with the commitment. Even though, the present administration of President Muhammadu Buhari in early 2019 signed the Disability Bill into law, the impact of the new law will not begin to be felt in the absence of structures to ensure that the law is complied with. For example, the Disability Commission (NCPD) created by the Act will take some time to be functional. Again, the lack of clear roles for the NCPD to ensure that the rights of PWD is a lacuna in the Act that needs to be addressed as soon as possible. Furthermore, compliance with the Act in terms of making public facilities accessible to PWD is expected to take effect after five years

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<sup>4</sup> Unreported Suit No. ID./1627/2000

from the commencement of the Act. The question therefore, is what happens in the period between the commencement of the Act and the period when full compliance is expected? What measures are to be in place to ensure at least some degree of compliance with the Act?

Often, political leaders in a bid to assuage the feelings of PWD make pronouncements which are not followed with action. It is difficult to imagine why successive governments that swear to protect and defend the Constitution fail to make efforts to ensure that they keep to this promise especially as it affects PWD.

PWD in Nigeria suffers from various kinds of discrimination. The multiple barriers include discrimination in employment, the lack of facilities to support the conditions of PWD, lack of care by society at large, lack of adequate provision for access to justice and the deprivation of legal capacity. In short, for the PWD in Nigeria is further incapacitated by the non-provision of adequate facilities that will meet their needs in the country.

Having discussed the discrimination and stigmatisation against PWD above, it is glaring that the practice in Nigeria does not favour PWD. It is unfortunate that even in this era of civilisation, PWD are deprived of their basic rights. The continued discrimination against PWD further incapacitates such persons and makes them perpetually dependent of help from others.

It is recommended that Nigeria fulfils its obligations as stipulated under the international instruments ratified by the country. While this writer considers the signing into law of the Discrimination Against Persons with Disabilities Act 2018 as a step in the right direction, there is need for the authorities to show commitment and the political will to implement the law. Furthermore, leaders at all levels should take proactive steps to end all forms of discriminatory practices against PWD especially in terms of employment opportunities and education. The national and subnational governments should make provisions for the training of more teachers to handle special children Nigeria. There is the need also to have inclusive education rather than having special schools which separate children with disabilities from others as this negates inclusivity. In order to ensure the inclusion of PWD in the scheme of things in the country, PWD should be included at the Cabinet at all levels of governance. PWD should be encouraged to stand elections and vie for political offices in the country at all levels from the wards to the federal government level.

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