

CONSTRAINTS TO THE RIGHTS AND PROTECTION OF PERSONS WITH DISABILITIES IN NIGERIA

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ABSTRACT

Persons with disabilities (PWDs) have been known to suffer various attitudinal and environmental barriers which hinder them from fully participating in their communities on equal terms with others. To address this predicament, Nigeria signed, ratified, and domesticated a number of global and regional instruments on disability rights, including the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol. The essence of these instruments recognised by Nigeria are restatements of the centrality, inseparability, and correlation of all human rights and the necessity for PWDs to be assured of their full protection and enjoyment of fundamental liberties on an equal basis with others without prejudices. Unfortunately, discrimination and marginalisation against PWDs in Nigeria still persist. The crux of this article is to identify the constraints faced by PWDs in the pursuit of their guaranteed rights in Nigeria. This issue is vital because it is not enough for the Nigerian government to put in place normative framework endorsing the rights and protection of PWDs; such laws must indeed be implemented. The article adopted the normative legal research and analytical methods by examining various legal instruments on the protection of the rights of PWDs in Nigeria. The findings revealed that the inability of PWDs to access physical structures, social, economic, academic, and healthcare facilities are some of the constraints faced by PWDs. It is recommended, *inter alia*, that all laws and governmental policies must align with the endorsement of the rights and protection of PWDs and violators should be sanctioned appropriately.

Keywords: Constraints, Discrimination, Fundamental rights and protection, Healthcare facilities, Nigeria, Persons with disabilities

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INTRODUCTION

The Charter of the United Nations 1945³ recognised the inherent dignity, value, equality and inalienable rights of every member of the human race as the bedrock of liberty, justice and peace in the world.⁴ Similarly, human rights instruments like the Universal Declaration on Human Rights (UDHR) 1948,⁵ the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁶ the International Covenant on Civil and Political Rights (ICCPR),⁷ and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),⁸ among others, made broad clauses for civil, political, economic and cultural rights without distinction of any kind.

Regardless the positive clauses in these human rights instruments, PWDs remained among the most vulnerable in the society and were considered as imperceptible in the global human rights community.⁹ They were subjected to all kinds of discriminations, exclusion and segregation, inhuman and degrading treatments by reason of their disabilities. Deprivation of chances of being empowered to be self-dependent or self-sufficient as “equal members of society” was commonplace.¹⁰ As a matter of fact, PWDs were considered “objects” of welfare and charity or medical treatment instead of being viewed as individuals with rights on equal basis with others in society. The subsequent adoption of some resolutions on the rights of PWDs by the United Nations General Assembly (UNGA), such as Declaration

³ The UN Charter was signed on 26 June 1945 at San Francisco, United States of America at the end of the UN Conference on International Organisation; came into force on 24 October 1945 <<https://treaties.un.org/doc/publication/ctc/uncharter.pdf>> accessed 23 August 2022.

⁴ UN Charter, Preambular para. 1, Articles 1(3) and 2(2).

⁵ Adopted by the United Nations General Assembly (UNGA) Resolution 217A (III) of 10 December 1948.

⁶ Adopted by the UNGA Resolution 2200A (XXI) of 16 December 1966; entered into force on 3 January 1976.

⁷ Adopted by the UNGA Resolution 2200A (XXI) of 16 December 1966; entered into force on 23 March 1976.

⁸ Adopted by the UNGA on 18 December 1979; entered into force on 3 September 1981.

⁹ G Quinn, ‘The United Nations Convention on the Rights of Persons with Disabilities: Towards a New International Politics of Disability’ (2009) 15(1) *Texas Journal of Civil Liberties and Civil Rights* 33; A Kanter, *The Development of Disability Rights under International Law: From Charity to Human Rights* (Routledge, Abingdon and New York 2015) 26.

¹⁰ CRPD, Preambular para. (k).

on the Rights of Mentally Retarded Persons 1971,¹¹ the Declaration on the Rights of Disabled Persons 1975,¹² and the Protection of Persons with Mental Illness and Improvement of Mental Health Care (“IM Principles”),¹³ among others, marked significant turning points towards the protection of PWDs. However, these UN Declarations were not only non-binding instruments but also adopted the medical approach definitions of disability and identified equal rights only to “the maximum degree of feasibility”.¹⁴

Further global cooperation and agitations by PWDs for a more binding legal instrument towards the improvement of the living conditions of PWDs in every country, especially in developing countries,¹⁵ of which Nigeria is a part, resulted in the adoption of the extant Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol (OPCRPD) in 2006. Nigeria has signed and ratified both instruments along with a number of other similar regional instruments, some of which are examined in the work, as well as domesticated their provisions as national and sub-national laws to safeguard the rights of disabled persons as constitutionally mandated.¹⁶

The CRPD, in its preambular paragraph, considers “disability” as an adaptive progressive concept that occurs from the attitudinal and unwelcoming or inaccessible environment¹⁷ which limits PWDs’ involvement in society¹⁸ on equal terms with other individuals without impairments. The Convention identifies persons with long or short-term physical, mental, intellectual, and sensory

¹¹ UNGA Resolution 2856 (XXVI) of 20 December 1971; <<https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-rights-mentally-retarded-persons>> accessed 28 August 2022.

¹² UNGA Resolution 3447 (XXX) of 9 December 1975; <<https://disability-studies.leeds.ac.uk/wp-content/uploads/sites/40/library/united-nations-un.pdf>> accessed 28 August 2022.

¹³ UNGA Resolution 46/119, adopted on 17 December 1991.

¹⁴ Declaration on the Rights of Mentally Retarded Persons., para. 1; Lucy Series, ‘Disability and Human Rights’ in Nick Watson and Simo Vehmas (eds), *Routledge Handbook of Disability Studies*, (2nd edn, Routledge, Taylor & Francis Group, London 2020), 72-88 <<https://doi.org/10.4324/9780429430817-6>>.

¹⁵ CRPD, Preambular para. (1).

¹⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended), section 12.

¹⁷ CRPD, Preambular para. (e).

¹⁸ Joanna Bodio, ‘Guardian Appointed for Disabled Person and Guardian Appointed for a Partially Incapacitated Person’ (2021) 30(4) *Studia Iuridica Lublinensia* 53 <<https://doi.org/10.17951/sil.2021.30.4.49-75>>.

impairments as beneficiaries of the substantive rights spelt out in its Articles 5-30, including the specified rights of women and girls with disabilities.¹⁹ The far-reaching definition or description of “disability” under the CRPD was illustrated by the findings of the Court of Justice of the European Union when it held that morbid obesity can amount to a “disability” within the contemplation of the EU Employment Equality Directive and therefore, qualifies the claimant to seek for protection against discrimination under the EU discrimination law.²⁰

Even with the existence of extant instruments on disability rights, Nigerians living with disabilities still complain of discrimination.²¹ This implies that there are still gaps between the existing disability instruments and their implementations in Nigeria. Actually, the standard for measuring the successful implementation of the examined normative frameworks in Nigeria is the degree to which PWDs have really enjoyed equality of rights on the same basis as others in the society without express or implied barriers as canvassed in the frameworks.

This definitive benchmark is very crucial because even though Nigeria pledges various statutory protections and rights for PWDs, the laws alone are not enough to assure PWDs equal rights and protection for involvement in society on an equal basis as other citizens without the proper removal of impediments by all relevant stakeholders for the full implementation, actualisation, and enjoyment of the rights. PWDs should be accorded effective accessibility to any physical environment, means of transportation, and information or communication without undue restraints, like others without disabilities. Effective accessibility that is devoid of any constraint will enable PWDs to be fully integrated into society.

Against this background, the question arises whether constraints are inhibiting the effective implementation and enjoyment of the protected rights by PWDs in Nigeria on the basis of their disabilities. The article, therefore, seeks to identify the wide-ranging constraints to the actual enjoyment of the protected rights of PWDs

¹⁹ CRPD, Article 1, para. 1; Articles 6 and 7.

²⁰ *Karsten Kaltoft v The Municipality of Billund*, C-354/13 ECJ decided on 18 December 2014.

²¹ Evelyn Okakwu, ‘Despite New Law, Nigerians Living with Disabilities Lament Discrimination’ *PremiumTimes* (Lagos, 1 November 2019) <<https://www.premiumtimesng.com/features-and-interviews/360509-despite-new-law-nigerians-living-with-disabilities-lament-discrimination.html>> accessed 10 September 2022.

in Nigeria and to make recommendations for their outright removal or elimination by all relevant stakeholders.

The article is divided basically into six sections. Section one is the introductory part that provides the foundation of the paper and introduces the milieu to the subject under discussion. Section two discusses the research methods adopted in the paper. In section three, the authors examined some global and regional instruments on the rights and protection of PWDs. Section four examines national instruments that have been put in place to enhance the rights and protection of PWDs in Nigeria; the loopholes in the relevant normative frameworks examined are identified. The fifth section is the central theme or thrust of the article and discusses some of the identified constrictions that have limited the full realisation of the rights and protection of PWDs in Nigeria. The work ended in section six with a conclusion and recommendations.

RESEARCH METHODS

The article adopts normative legal research and analytical approaches by exploring applicable global, regional, and municipal legal instruments on the protection of the rights of PWDs in Nigeria. The global and regional instruments examined in the article are the Declaration on the Rights of Mentally Retarded Persons 1971; the Declaration on the Rights of Disabled Persons 1975; the Convention on the Rights of Persons with Disabilities 2006 and its Optional Protocol; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003; and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities. Concurrently, at the national level, the main issue raised in the article is addressed by the 1999 Nigerian Constitution; the Discrimination against Persons with Disabilities (Prohibition) Act 2019; and the Electoral Act 2022. These legal frameworks assisted in identifying the national stakeholders responsible for minimising and/or ending the varied constraints or barriers so as to enhance the protection and rights of PWDs. Also, the article relies on a library-based doctrinal approach by using secondary sources like textbooks, articles in journals, newspapers, governmental or global agencies' reports and internet materials, among others. The adopted research methods aided in supporting the study and the arguments it is established.

SOME INTERNATIONAL AND REGIONAL STANDARDS ON DISABILITY RIGHTS

A number of international and regional instruments have been put in place to protect the rights of persons with disabilities. This section of the study will, therefore, make an attempt at analysing some of the vital provisions of such global and regional standards.

Declaration on the Rights of Mentally Retarded Persons 1971²²

Considerably, this Declaration asserts that mentally retarded individuals enjoy equal rights as other human beings.²³ Such rights include but are not limited to proper medical care and physical therapy, education, training, rehabilitation and guidance;²⁴ economic security and a decent standard of living, performance of productive work, or engagement in any other meaningful occupation;²⁵ as well as protection from exploitation, abuse, and degrading treatment.²⁶ Where curtailment or restriction becomes imperative, it must be with due regard to proper legal procedures.²⁷

Declaration on the Rights of Disabled Persons 1975²⁸

The instrument recognises the rights of disabled persons as set out in the Declaration without discrimination or distinction,²⁹ including the inherent right to respect for their human dignity;³⁰ civil and political rights as other human beings;³¹ economic and social rights that are vital for the growth of their capabilities and skills towards social integration;³² along with the right to private and family

²² UNGA Resolution 2856 (XXVI) of 20 December 1971.

²³ *Ibid*, Para. 1.

²⁴ *Ibid*, Para. 2.

²⁵ *Ibid*, Para. 3.

²⁶ *Ibid*, Para. 6.

²⁷ *Ibid*, Para. 7.

²⁸ UNGA Resolution 3447 (XXX) of 9 December 1975.

²⁹ *Ibid*, Para. 2.

³⁰ *Ibid*, Para. 3.

³¹ *Ibid*, Para. 4.

³² *Ibid*, Para. 6.

life.³³Special needs of PWDs are to be taken into account at every level of economic and social planning.³⁴

Convention on the Rights of Persons with Disabilities (CRPD) 2006³⁵

The Convention is the foremost all-embracing and enforceable worldwide treaty regulating the rights and protection of PWDs.³⁶It radically alters the attitude and notion of PWDs from being perceived as mere “targets” of charity who require medical treatments and social protection to considering them as “subjects” with rights, who are competent to claim those rights and make decisions for their lives on the basis of their free and informed consents as well as being active participants in the society they live in.³⁷ “Discrimination on the basis of disability”, which is expressly outlawed by the Convention,³⁸ is defined as any discrimination, segregation, or exclusion as a result of a disability that can restrict, invalidate or prevent PWDs from enjoying the recognised rights and freedoms on equal terms with others in every spectrum of life.³⁹ The non-discriminatory clause also implies that appropriate steps must be taken to combat possible potential discrimination or covert prejudices in order to enhance equality of opportunity and accessibility.⁴⁰

The eight guiding principles of the Convention provide the trajectory for understanding and realising the protected rights;⁴¹ while the duties’ clauses

³³Ibid,Para. 9.

³⁴Ibid,Para. 8.

³⁵ United Nations Convention on the Rights of Persons with Disabilities (A/RES/61/106), adopted by United Nations General Assembly (UNGA) on 13 December 2006; entered into force on 3 May 2008. Nigeria became a signatory to the Convention on 30 March 2007 and ratified same on 24 September 2010, <<https://bit.ly/UNCRPD-Status>> accessed 26 August 2022.

³⁶ J Kothari, ‘The UN Convention on Rights of Persons with Disabilities: An Engine for Law Reform in India’(2010) 45 (18) Economic and Political Weekly65.

³⁷ UN Department of Economic and Social Affairs, *Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities*<<https://www.un.org/development/desa/disabilities/resources/handbook-for-parliamentarians-on-the-convention-on-the-rights-of-persons-with-disabilitiess.html>> accessed 19 August 2022; Theresia Degener, ‘International Disability Law: A New Legal Subject on the Rise’ in Peter Blanck (ed) *Disability Rights: International Library of Essays on Rights* (Routledge 2005).

³⁸ CRPD, Article 5(2).

³⁹Ibid, Article 2.

⁴⁰Ibid, Article 3.

⁴¹ CRPD.

recognise the “obligation-holders” on whom the responsibilities for meeting the guaranteed rights lies⁴² as well as the required mechanisms to be used in order to attain such obligations.⁴³ Consequently, the CRPD adopts the human rights-based model to disability navigated by respecting the dignity of PWDs and their fundamental freedoms as the model encourages PWDs to *inter alia*, get involved in their respective communities, and seek proper redress for their violated rights through a legal procedure.⁴⁴

The CRPD does not establish new human rights but clearly describes the existing rights in a manner that makes them relevant to PWDs.⁴⁵ The explicit rights enumerated in the Convention are equality before the law;⁴⁶ right to life;⁴⁷ access to justice;⁴⁸ freedom from torture, inhuman, degrading treatment or punishment, including the freedom not to be forced into undergoing medical or scientific experimentation;⁴⁹ right against exploitation, violence or abuse;⁵⁰ rights to dignity⁵¹ as well as freedom of movement and nationality.⁵²

⁴²Ibid, Article 4(1)(e); Article 9(2)(b); Articles 12 and 19; Article 20(d); Article 21(c); Article 24; Article 25(d); and Article 27(1)(h).

⁴³ The monitoring mechanisms are at the domestic and international levels- CRPD, Articles 33(1) and (2); Articles 32, 34-40.

⁴⁴ United Nations Human Rights Office of the High Commissioner, *The Convention on the Rights of Persons with Disabilities: Training Guide*, Professional Training Series No. 19, HR/P/PT/19 (New York 2014) 10.

⁴⁵ For instance, the right to education contained in earlier human rights instruments: UDHR- Article 26, ICESCR-Article 13, Convention on the Rights of the Child (CRC)-Article 23; and right to home and family life- UDHR- Article 12, ICCPR- Article 17 and CRC-Article 16. See also United Nations Office of the High Commissioner for Human Rights and the Inter-Parliamentary Union, *From Exclusion to Equality: Realizing the Rights of Persons with Disabilities, Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol* (United Nations, Geneva 2007) 20.

⁴⁶ CRPD, Article 5(1).

⁴⁷Ibid, Article 10.

⁴⁸Ibid, Article 13.

⁴⁹Ibid, Article 15.

⁵⁰Ibid, Article 16.

⁵¹Ibid, Article 17.

⁵²Ibid, Article 18.

State parties to the Convention are to recognise the rights of PWDs to privacy, home and family life;⁵³ freedom of expression and access to information;⁵⁴ right to an inclusive education;⁵⁵ and right to health, along with the aspect of sexual and reproductive health and population-based public health programmes.⁵⁶ Moreover, the right to employment, equal pay for work of equal value in a job-friendly environment that is open and accessible to PWDs, in addition to protection from workplace harassment is preserved;⁵⁷ but the Convention prohibits coerced or mandatory labour.⁵⁸ While the right to an adequate standard of living is identified under Article 28, the rights to partake in political, public and cultural life are protected under Articles 29 and 30.

The principle of equality preached by the CRPD also extends to gender equality of PWDs. In this wise, the Convention appreciates the fact that women and girls with disabilities (WGWDs) are susceptible to manifold kinds of prejudices because of disability and sex, among others.⁵⁹ Thus, State parties are enjoined to adopt appropriate channels to safeguard the equal enjoyment of the protected rights by WGWDs. In order to monitor and supervise the Convention, a Committee on the Rights of Persons with Disabilities (the CRPD Committee) was created with several stipulated responsibilities.⁶⁰

Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities (OPCRPD) 2006⁶¹

The OPCRPD is a separate instrument, although it was adopted at the same time as the CRPD. It recognises the competence of the CRPD Committee created under the CRPD to receive and consider communications and the criteria that must be

⁵³Ibid, Articles 22 and 23.

⁵⁴Ibid, Article 21.

⁵⁵Ibid, Article 24.

⁵⁶Ibid, Article 25(a).

⁵⁷Ibid, Article 27.

⁵⁸Ibid, Article 27(2).

⁵⁹Ibid, Articles 6, 7 and preambular para. (q).

⁶⁰Ibid, Article 34.

⁶¹ The Optional Protocol (A/RES/61/106) was adopted UNGA on 13 December 2006; entered into force on 3 May 2008. Nigeria became a signatory on 30 March 2007 and ratified same on 24 September 2010 <<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>> accessed 26 August 2022.

fulfilled before such communication can be registered or admissible.⁶² OPCRPD is beneficial to both victims of human rights infractions and State parties as it embodies a significant means of defending PWDs and rejuvenating domestic protection mechanisms. For example, the Protocol's procedures clearly elucidate how to apply the Convention to particular cases and this can aid in successfully integrating the Convention into national laws. Thus, the Committee's opinions and recommendations can activate law reforms in a way that would make State parties to comply with the Convention provisions. Decisions made by the Committee in entertaining communications brought before it can also enrich national legal jurisprudence as well as give direction to national courts and other human rights agencies in the interpretation of the guaranteed rights of PWDs.⁶³

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol), 2003⁶⁴

The adoption of the African Women's Protocol was necessitated by lapses and inadequacies in CEDAW and its Protocol, which failed or neglected to effectively contain clauses that had "consideration to the traditional cultural roles women played in African societies".⁶⁵ With specific reference to disability rights, the African Women's Protocol expressly recognised the rights of women with disabilities (WWDs) and required State parties' undertaking to:

- (a) ensure the protection of women with disabilities and take specific measures commensurate with their physical, economic and social needs to facilitate their access to employment, professional and vocational training as well as their participation in decision-making; and

⁶² OPCRPD, Articles 1 and 2.

⁶³ United Nations Human Rights Office of the High Commissioner (n42)at 148-149.

⁶⁴ Adopted at Maputo, Mozambique by the African Union in 2003; entered into force in 2005<<https://www.ohchr.org/Documents/Issues/Women/WG/ProtocolontheRightsofWomen.pdf>> accessed 12 July 2022.

⁶⁵ Louis O. Oyaro, 'Africa at Crossroads: The United Nations Convention on the Rights of Persons with Disabilities'(2015) 30(2) American University International Law Review 347-377 at 354; Johanna E. Bond, 'Gender, Discourse, and Customary Law in Africa' (2010) 83(3) Southern California Law Review 519-520.

- (b) ensure the right of women with disabilities to freedom from violence, including sexual abuse, discrimination based on disability and the right to be treated with dignity.⁶⁶

Violations of the rights of WWDs entitle them to seek appropriate remedy.⁶⁷

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities (The African Disability Protocol)⁶⁸

Failure of the CRPD 2006 to address a number of sensitive African issues confronting PWDs, such as poverty, risk of violence, exploitation, neglect, systematic discrimination, and harmful practices against albinism, most of which are deeply entrenched in “tradition, culture, religion, superstition or other reasons” in various parts of the continent necessitated the adoption of the Protocol.⁶⁹

Reminiscent of the CRPD, the African Disabilities Protocol also contains specific rights of PWDs concerning equality before the law;⁷⁰ freedom from degrading treatment and harmful practices;⁷¹ access to justice;⁷² accessibility;⁷³ education;⁷⁴ healthcare;⁷⁵ participation in political and public life; access to information; family life, including access to family planning, sexual and reproductive health education and service,⁷⁶ among others. The non-discrimination right of PWDs extends to their family members, caregivers, or intermediaries who may possibly be subjected to discrimination by reason of their association with PWDs.⁷⁷ Forced sterilisation

⁶⁶ African Women's Protocol, Article 23(a) and (b).

⁶⁷ *Ibid*, Article 25.

⁶⁸ Adopted at the 30th Ordinary Session of the Assembly of Heads of State and Government held in Addis Ababa, Ethiopia on 29 January 2018 <<https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-persons-disabilities-africa>> accessed 2 April 2022.

⁶⁹ African Disabilities Protocol, Preambular paras. 16, 17, 18, 19 and Article 1, para.10. See also, Sharon Peake, 'Meeting Report of the International Policy Dialogue on HIV/AIDS and Disability' (2009) 12 *Journal of the International AIDS Society* 27-28 <<https://doi.org/10.1186/1758-2652-12-27>>.

⁷⁰ African Disabilities Protocol, Articles 6 and 7.

⁷¹ *Ibid*, Articles 10 and 11.

⁷² *Ibid*, Article 13.

⁷³ *Ibid*, Article 15.

⁷⁴ *Ibid*, Article 16.

⁷⁵ *Ibid*, Article 17.

⁷⁶ *Ibid*, Articles 18-26.

⁷⁷ *Ibid*, Article 5(2)(c).

or any form of invasive procedure without the free, prior and informed consent of a PWD is considered as a degrading treatment under the Protocol.⁷⁸

RELEVANT NIGERIAN LAWS ON DISABILITY RIGHTS

In addition to a few of the universal and regional instruments mentioned above, the research, in this segment of the work, will endeavour to examine some of the relevant legislative measures that are implemented in Nigeria to protect and guarantee the rights of PWDs.

Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended)

Chapter 2 of the Constitution admits that national integration shall be dynamically promoted while all kinds of bigotry shall be banned.⁷⁹ Citizens are entitled to human dignity⁸⁰ and to secure sufficient means of livelihood and suitable employment devoid of any form of prejudices.⁸¹ Unfortunately, the provisions of Chapter 2 are non-justiciable because of section 6(6)(c) of the 1999 CFRN.⁸² The non-justiciability of Chapter 2 clauses is neither absolute nor inviolate as the subsection provides flexibility by using the phrase, “except as otherwise provided by this Constitution”. This entails that where the justiciability of any of the clauses of Chapter 2 is guaranteed elsewhere in the Constitution (or any other legislation), such provisions will become enforceable rights.⁸³

On the other hand, the enforceable rights contained in Chapter 4 of the Constitution are recognised in general terms;⁸⁴ with no direct reference to PWDs⁸⁵ in the corpus

⁷⁸Ibid, Article 10(2)(c).

⁷⁹ CFRN 1999, section 15(2).

⁸⁰Ibid, section 17(2)(b).

⁸¹Ibid, section 17(2)(a) and (3)(a) & (e).

⁸²*Okogie v. Attorney- General, Lagos State* (1981) 2 NCLR 337 at 350.

⁸³*Re: Chief Adebisi Olafisoye* (2004) All FWLR (Pt. 198) 1106 at 1153, a decision of the Nigerian Supreme Court; *Socio Economic Rights and Accountability Project (SERAP) v Federal Government of Nigeria and Universal Basic Education Commission* Suit No. ECW/CCJ/APP/08/08, decided by the ECOWAS Court of Justice on 27 October 2009 (Unreported) <<https://ihrda.uwazi.io/en/entity/7gagjpfq9a?page=>> accessed 29 August 2022.

⁸⁴ See sections 33-45 of the CFRN 1999 for a detailed justiciable rights protected under the Constitution.

⁸⁵ Ibrahim Imam, and M. A. Abdulraheem-Mustapha, ‘Rights of People with Disability in Nigeria: Attitude and Commitment’ (2016) 24(3) *African Journal of International and Comparative Law* 439-459 at 440.

of the Nigerian “supreme law”.⁸⁶For example, section 42(1) of the 1999 CFRN guarantees freedom against discrimination. Perhaps, a person with a congenital birth condition may rely on sub-section (2) of section 42 which declares that no Nigerian citizen “shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth”.⁸⁷

Discrimination against Persons with Disabilities (Prohibition) Act 2019(DPDP Act 2019)⁸⁸

This is the leading legislation that regulates the rights and protection of PWDs in Nigeria. It was conceivably promulgated in satisfaction of Nigeria’s obligation under the CRPD and other allied universal and/or regional treaties.⁸⁹ Besides, since Nigeria operates a dualist legal system, a ratified treaty cannot become legally enforceable unless it has been domesticated by the national parliament as constitutionally required,⁹⁰ though it may have persuasive force in domestic courts of law where municipal laws are uncertain or lacking in the area.⁹¹The law permits the full integration of PWDs into Nigerian society; but frowns at any

⁸⁶ CFRN1999, section 1; Kayode. Eso, *Nigerian Grundnorm*, (Lagos: Law Publications Ltd 1986) 1-92.

⁸⁷**Query:** Since disability can occur at any time in an individual’s life and by reason of various circumstances such as sickness/disease, old age, indoor or outdoor accident, armed conflicts etc, can a person with disability whose impairment or disability was not congenitally originated rely on this constitutional clause to enforce his/her right against discrimination?

⁸⁸Act No. 2 of 2019; available from <<https://gazettes.africa/archive/ng/2019/ng-government-gazette-supplement-dated-2019-01-21-no-10.pdf>> accessed 2 September 2022). Sub-national laws enacted by some States on the subject include: Special People’s Law 2010, Cap. S9, Vol. 10, *Laws of Lagos State of Nigeria, 2015*, sections26-38; Discrimination against Persons with Disabilities (Prohibition) Law No. 3 of 2020 (Ekiti State); Disability Rights Law of Plateau State 2005; Disability Rights Commission Law 2018 (Nasarawa State); People with Disabilities (Amendment) Law 2017 (Kwara State); Disability Rights Law 2010 (Bauchi State); and Disability Rights Law 2018 (Anambra State). Governmental policy frameworks include: National Policy on Disabilities 2018; National Policy and Implementation Guidelines on Albinism in Nigeria 2013, among others.

⁸⁹ J Onyekwere, ‘Passage of Disability Bill is Fulfilment of Nigeria’s Obligation to International Treaties’ *The Guardian* (Lagos, 1 May 2018) <<https://m.guardian.ng/features/passage-of-disability-bill-is-fulfillment-of-nigerians-obligation-to-international-treaties/>> accessed 6 April 2022.

⁹⁰ CFRN 1999, section 12.

⁹¹ Lucy Series (n 12).

discrimination directed by individuals or institutions towards PWDs by reasons of their disabilities.⁹²

An Individual with impairment has the right to accessibility to the physical environment and buildings like others without disability. Public buildings are to be constructed with relevant accessibility aids to enable PWDs to gain access to them.⁹³ Failure to remove environmental constraints after due notification by a PWD gives the latter a right of action.⁹⁴ Providers of goods, services and facilities, including varied transportation operations are to make such accessible to PWDs.⁹⁵ Where necessary, functional audible and visual displays of their destinations as well as other essential accessibility aids are to be fixed.⁹⁶ A duty of care is on a driver to make sure that the vehicle comes to a total halt before a PWD board or alights from it.⁹⁷

Other enforceable rights recognised under the Nigerian disability law include the right to education;⁹⁸ unhindered access to health care;⁹⁹ equality of work with public employers mandated to reserve at least five percent of employment vacancies for PWDs.¹⁰⁰ The right to participation in politics and public life by PWDs is recognised, with an obligation placed on the government to provide the enabling environment for their active involvement.¹⁰¹ In order to properly cater to the welfare of PWDs, the statute creates the National Commission for Persons with Disabilities (NCPWDs) and saddles it with various functions.¹⁰²

⁹² DPDP Act 2019, section 1.

⁹³Ibid, sections 3-5. For detailed list of accessibility aids or special facilities to be provided, see the First Schedule to the Act.

⁹⁴Ibid, section 8(1)(2).

Ibid, sections 9, 10 and 13-15.

⁹⁶Ibid, sections 10(2) and 13(3).

⁹⁷Ibid, sections 11(4) (5).

⁹⁸Ibid, sections 17 and 18.

⁹⁹Ibid, section 21.

¹⁰⁰Ibid, section 16.

¹⁰¹Ibid, section 30.

¹⁰²Ibid, section 38.

Electoral Act 2022¹⁰³

The legislation encourages more inclusivity of PWDs in the Nigerian electoral process. A voter with visual impairment, who has difficulty in differentiating signs or suffers from other kinds of physical disability, may be accompanied into the polling centre by a trusted individual of his/her choice for necessary assistance at the polling booth, including assisting him/her to indicate the preferred candidate on the voting paper. However, for this to happen, the chosen aide or physically challenged voter is statutorily required to inform the relevant polling unit's presiding officer of the disability of the intended disabled voter.¹⁰⁴ The electoral body, Independent National Electoral Commission (INEC), is mandated to provide at the polling stations relevant means of communication like braille signs, large embossed print, electronic devices, sign language or in appropriate situations, off-site voting to enable PWDs to perform their civic responsibilities.¹⁰⁵

CONSTRAINTS TO THE RIGHTS AND PROTECTION OF PWDs IN NIGERIA

The section addresses the substantive issue raised in the introductory part of the article. An attempt would, therefore, be made to scrutinise some of the constrictions suffered by PWDs in Nigerian society.

Absence of Accurate Data

Article 31 of the CRPD requires State parties to obtain appropriate information, including statistical and research data, to assist them to formulate and implement policies to give effect to the Convention's provisions. However, Nigeria, like most countries of the world, lacks such accurate, comprehensive and disaggregated data on PWDs.¹⁰⁶ Bearing in mind these inadequacies, can the Nigerian government effectively plan and execute policies towards the protection of the rights of PWDs? The fact remains that in the absence of accurate data, there will be a problem of

¹⁰³ Electoral Act No. 13 of 2022.

¹⁰⁴ Ibid, section 154(1).

¹⁰⁵ Ibid, section 54(2).

¹⁰⁶ G Ewepu, 'Institute Initiates Moves to Gather Accurate Data for PWDs in Nigeria' *Vanguard*(Lagos, 17 June 2021) <<https://www.vanguardngr.com/2021/06/institute-initiates-moves-to-gather-accurate-data-for-pwds-in-nigeria/>> accessed 31 August 2022.

sufficient planning and formulating policies for PWDs by the government and other relevant stakeholders.¹⁰⁷ Statistical data has been identified as a vital instrument for undertaking comparative investigations of unfair treatments under discriminatory enactments.¹⁰⁸ Hence, there is a need for improvement in the capacity to generate, analyse and evaluate data on disabilities for the formulation of policies and programmes on disabilities in Nigeria.

Healthcare Constraints

The CRPD,¹⁰⁹ Nigeria's DPDP Act 2019,¹¹⁰ and the African Disability Protocol¹¹¹ elaborately recognise the rights of PWDs to receive the highest standard of health without prejudice. PWDs are frequently confronted with considerable constraints in accessing healthcare services and facilities which can seriously affect their enjoyment of the right to healthcare. Thus, in reality, the right to health appears like a mirage to PWDs due to a number of reasons like attitudinal,¹¹² physical,¹¹³ communication¹¹⁴ and financial¹¹⁵ constraints which hinder them from accessing healthcare services.¹¹⁶ Research findings have indicated that a combination of these barriers and other systemic environmental constraints

¹⁰⁷ International Labour Organisation, *Inclusion of people with disabilities in Indonesia* <http://www.ilo.org/wcmsp5/group/public/@ed_emp/@ifp_skills/documents/publication/wcms_210477.pdf> accessed 12 June 2022.

¹⁰⁸ S Freeman, *Discrimination Law*, (2nd edn, Clarendon Press, Oxford 2011) 183.

¹⁰⁹ CRPD, Article 25.

¹¹⁰ DPDP Act 2019, section 26.

¹¹¹ African Disability Protocol, Article 17.

¹¹² This could take the form of stereotypes, prejudices, stigmatisation and discriminatory practices by health service providers.

¹¹³ For example, having tall hospital buildings and staircases at the entrance of healthcare facilities without functional elevator may constitute serious mobility challenges to PWDs.

¹¹⁴ For instance, failure to make provisions for special communication in hospital facilities where patients with communicational disabilities are medically attended violates the provision of section 24 of DPDP Act 2019.

¹¹⁵ To address financial and affordability problem, the government can increase its healthcare budgetary allocations to enable it provide free medical services to PWDs. Also financial incentives can be used to motivate healthcare service providers to make their services accessible to PWDs. Another option is by way of providing affordable health insurance schemes by the government, private sector and/ or partnership between the government and the private sector for the benefit of PWDs.

¹¹⁶ World Health Organisation and The World Bank, *World Report on Disability* (World Health Organisation 2011) 57-83.

portend serious risks for patients with disabilities and that the resultant effects were more devastating in hospitals.¹¹⁷ For instance, patients diagnosed with intellectual disabilities have been discovered to find it difficult to convince their doctors to accept complaints about their state of health.¹¹⁸ Such attitude by medical professionals is an attack on the right to dignity and mental integrity of a PWD as preserved under the CRPD.¹¹⁹

D. Habrat asserts that human dignity is intrinsically connected with the entire mechanism of civil freedoms and devoid of any human attribute, including disability or intellectual fitness.¹²⁰ The right to human dignity also embraces the right to make informed decisions regarding the state of one's health, including that of PWDs,¹²¹ and without undue intrusion.¹²²

Moreover, there are some abuses in the form of standard clinical practices such as conducting medical examinations on the bodies of PWDs without their prior informed consent or in utter disregard of their right to privacy and dignity.¹²³ Significantly, the CRPD Committee has interpreted the Convention as banning all kinds of mental health detention, forced treatment, limitations on legal capacity, and proxy decision-making,¹²⁴ though this interpretation is still a subject of

¹¹⁷ Akeem Olalekan Ayub and Anifowose Jimoh Rasaki, 'Barriers in Accessing Healthcare Services by Patients with Disabilities in Nigerian Hospitals' (2021) 4(1) *Gusau International Journal of Management and Social Sciences* 280-296.

¹¹⁸ David M. Perry, 'How Hospitals Mistreat Disabled Patients' *Pacific Standard* (California, 29 June 2018), <<https://psmag.com/social-justice/how-hospitals-mistreat-disabled-patients>> accessed 18 June 2022.

¹¹⁹ CRPD 2006, Article 17.

¹²⁰ Dorota Habrat, 'Protections of Human Dignity as a Basis for Penalization of Hate Speech against People with Disabilities in Polish Criminal Law' (2021) 30(4) *Studia Iuridica Lublinensia* 259, 262 <<https://doi.org/10.17951/sil.2021.30.4.259-279>>.

¹²¹ *Ibid* at 276.

¹²² CRPD, Article 2.

¹²³ Pargan Sanghera, 'Abuse of Children with Disabilities in Hospitals: Issues and Implications' (2007) 19(6) *Paediatric Nursing* 29-32 <<https://doi.org/10.7748/paed.19.6.29.s28>>.

¹²⁴ See Guidelines on Article 14 of the Convention on the Rights of Persons with Disabilities; adopted during the Committee's 14th session held in September 2015, <<https://www.ohchr.org/Documents/HRBodies/CRPD/14thsession/GuidelinesOnArticle14.doc>> accessed 31 August 2022). See also General comments No. 1 (2014) Article 12: Equal recognition before the law, adopted on 19 May 2014, UN Doc CRPD/C/GC/1 <<https://daccess-ods.un.org/tmp/1877808.71987343.html>> accessed 31 August 2022.

continuing discussions and arguments as some individuals consider this peremptory stance debatable.¹²⁵

At this point, it is pertinent to ask: how best can the identified healthcare problems be tackled if the PWDs must enjoy their rights to health and healthcare services? Addressing these associated challenges would require a multi-dimensional approach including the improvement of physical accessibility to healthcare facilities, provision of financial support to indigent PWDs, combating discriminatory practices by healthcare providers, expanding specialised training and services in disability-allied healthcare matters in addition to promoting healthcare information and communication methods for easy accessibility by PWDs, among others.

Stigmatisation and Socio-Cultural Barriers

Social and cultural obstacles still affect changes in the mindsets of individuals on disability issues despite the existence of the examined normative frameworks. A disabled Nigerian female senior magistrate recently alleged that her fiancée jilted her on the wedding day because of her physical deformity.¹²⁶ Such discriminatory attitude and stigmatisation is a grave concern to the enjoyment of the rights of PWDs relating to issues of “marriage, family, parenthood, and relationships on an equal basis with others”.¹²⁷

¹²⁵ See for example: Paul S. Appelbaum, ‘Protecting the Rights of Persons with Disabilities: An International Convention and Its Problems’ (2016) 67(4) *Law & Psychiatry*366<<https://doi.org/10.1176/appi.ps.2016600050>>; Melvyn C. Freeman *et. al.*, ‘Reversing Hard Won Victories in the Name of Human Rights: A Critique of the General Comment on Article 12 of the UN Convention on the Rights of Persons with Disabilities’ (2015) 2(9) *Lancet Psychiatry*844; N Jones& M Shattell, ‘Beyond Easy Answers: Facing the Entanglements of Violence and Psychosis’ (2014) 35(10) *Issues in Mental Health Nursing*809.

¹²⁶ B Edokwe, “Magistrate Narrates How Her Fiancée Abandoned Her on Wedding Day [Video],”*BarristerNG.Com*, (Nigeria, 1 February 2022) <<https://barristerng.com/magistrate-narrates-how-her-fiancee-abandoned-her-on-wedding-day/>> accessed 18 June 2022.

¹²⁷ CRPD Article 23(1); African Disability Protocol, Article 26.

Sexual and Reproductive Health Exclusionary Barriers

PWDs, like other individuals without disabilities, have sexual and reproductive health (SRH) needs;¹²⁸ though they encounter difficulties in meeting those needs¹²⁹ despite their rights of access to sexual and reproductive health.¹³⁰ A study revealed that Nigeria's national health policies and plans often neglect to mainstream issues of disability or make provisions for PWDs, even when they may be mentioned among the target groups.¹³¹ One possible reason for this is because of the assumption that PWDs are not sexually active.¹³² The misconception has rendered PWDs more vulnerable to abuses¹³³ as professional healthcare service practitioners, and even disability rights' groups, have frequently overlooked the need of providing sexual health information and support to individuals with disabilities.¹³⁴

On the contrary, research findings indicate that PWDs are not sexually inactive, and thus, their ability to have access to sex education and enjoy SRH rights will considerably enhance their sexual health and relationships.¹³⁵ Studies have also

¹²⁸ World Health Organisation and The World Bank (n 114) at 61. See also Federal Ministry of Health, *National Policy on Sexual and Reproductive Health and Rights of Persons with Disabilities with Emphasis on Women and Girls*, June 2018, p. i <http://health.gov.ng/doc/NATIONAL_POLICY_ON_SRH_OF_PWD_GWD.pdf> (accessed 31 August 2022).

¹²⁹ World Health Organisation, United Nations Population Fund, *Promoting Sexual and Reproductive Health for Persons with Disabilities* (World Health Organisation, Geneva 2009) 5-8.

¹³⁰ CRPD, Article 12(3), 23(1)(b) and 25; CEDAW, Article 12; African Disability Protocol, Article 17(2) & 26(2)(a).

¹³¹ Federal Ministry of Health (n 126) at 3-4.

¹³² GD Giulio, 'Sexuality and People Living with Physical or Developmental Disabilities: A Review of Key Issues' (2003) 12 *The Canadian Journal of Human Sexuality* 53-69; CM Tilley, 'Sexuality in Women with Physical Disabilities: A Social Justice or Health Issue?' (1996) 14 *Sexuality and Disability* 139-151.

¹³³ United Nations Committee on the Rights of the Child, *General Comment No. 9 of 2006: The Right of Children with Disabilities*, CRC/C/GC/9 of 27 February 2007, at para. 42(e). Adopted by the Committee at its 43rd Session in Geneva held on 11-29 September 2006 <<https://www.refworld.org/docid/461b93f72.html>> accessed 25 March 2022.

¹³⁴ Sharon Peake (n 67) at 27-28.

¹³⁵ S Maart and J Jelsma, 'The Sexual Behaviour of Physically Disabled Adolescents' (2010) 32 *Disability and Rehabilitation* 438-443 <<https://doi.org/10.3109/09638280902846368>>; X Hunt and others, 'The Sexual and Reproductive Rights and Benefits Derived from Sexual and Reproductive Health Services of People with Physical Disabilities in South Africa: Beliefs of Non-Disabled

noted that there are cases of involuntary sterilisation being employed to limit the fertility of PWDs, particularly women and girls with mental impairments¹³⁶ along with sexual abuse and rape because of their defenceless conditions.¹³⁷ Coerced or involuntary sterilisation infringes on the fundamental rights of PWDs to rights to health, information, privacy, freedom to found a family and to determine the figure and spacing of children, freedom from discrimination, and freedom from torture, cruelty and inhuman or debasing treatment.¹³⁸

With respect to involuntary sterilisation, it is suggested that reporting, enforcement and professional sanctions¹³⁹ could be put in place to make sure that on every occasion where sterilisation is required, the rights of PWDs are always respected and their decisions override other rival interests. Also, in addressing the challenges associated with SRH exclusionary barriers, there is a need to train healthcare providers and encourage all-inclusive sex education programmes that takes account of information applicable to PWDs. This is because the dearth of inclusive sex education can cause gaps in knowledge and proper understanding of the sexual health and rights of PWDs.

People' (2017) 25(50) Reproductive Health Matters 66-79 <<https://doi.org/10.1080/09688080.2017.1332949>>.

¹³⁶ CERMI Women's Foundation, European Disability Forum, *Ending Forced Sterilisation of Women and Girls with Disabilities*, May 2017 <https://www.edf-feph.org/content/uploads/2020/12/edf_forced-sterilisation_8-accessible_6.pdf> accessed 18 June 2022); Alison J. Stansfield, Anthony J. Holland, and Isabel C. H. Clare, 'The Sterilisation of People with Intellectual Disabilities in England and Wales during the Period 1988-1999' (2007) 51(8) *Journal of Intellectual Disability Research* 569-579 <<https://doi.org/10.1111/j.1365-2788.2006.00920.x>>.

¹³⁷ NE Groce and R Trasi, 'Rape of Individuals with Disability: AIDS and the Folk Belief of Virgin Cleansing,' (2004) 363 (9422) *Lancet* 1663-1664 <[https://doi.org/10.1016/S0140-6736\(04\)16288-0](https://doi.org/10.1016/S0140-6736(04)16288-0)>; D Sobsey, *Violence and Abuse in the Lives of People with Disabilities: The End of Silence Acceptance?* (Paul H. Brookes Publishers, Baltimore 1994).

¹³⁸ African Disability Protocol, Article 10(2)(c); CRPD, Articles 3, 5, 12, 23 and 25. See also World Health Organisation, *Eliminating Forced, Coerced and Otherwise Involuntary Sterilisation: An Interagency Statement*, OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO (World Health Organisation, Geneva 2014) 1, 5-7.

¹³⁹ O Dyer, 'Gynaecologist is Struck out for Sterilising Women without Their Consent' (2002) 325(7375) *British Medical Journal* 1260 <<https://doi.org/10.1136/bmj.325.7375.1260>>.

Educational Constraints

G. Devenish has posited that education is of great significance in relation to human rights because it sets individuals free from the oppression of ignorance, superstition and fear. It provides them self-worth and confidence and is a fundamental right on which the fulfilment of countless other rights depends.¹⁴⁰ Education is also an empowering instrument for participating in employment and other spheres of social activity. In some cultures in Nigeria, attending school is part of becoming a complete individual.¹⁴¹ B. Akinbola estimates that about 140 million children globally do not attend school because of disability;¹⁴² with about three million CWDs in Nigeria locked out of schools because “school environments are not inclusive and accessible” to them.¹⁴³ Nigerian disability law requires that all public schools should be inclusive of and accessible to PWDs.¹⁴⁴

Inclusive education has been shown to be a useful means of educating CWDs as it results in improved social interactions and enhanced academic performances.¹⁴⁵ However inclusive education has some setbacks, such as inadequate trained personnel to cater to the needs of CWDs/PWDs and the reluctance of some schools’ administrators to admit students with special needs into their schools because of their disabilities.¹⁴⁶ Besides, architectural drawings of most Nigerian

¹⁴⁰ GE Devenish, ‘Aspects of the Right to Education in the Constitution (1998) 31 De Jure 224-225.

¹⁴¹ World Health Organisation and The World Bank (n 114) at205.

¹⁴² Bukola R. Akinbola, ‘The Right to Inclusive Education in Nigeria: Meeting the Needs and Challenges of Children with Disabilities, (2010) 10 African Human Rights Law Journal 457-477 at 458.

¹⁴³ Edwin Etieyibo, ‘Rights of Persons with Disabilities in Nigeria’ (2020) 33(1) Afrika Focus 69.

¹⁴⁴ DPDP Act 2019, sections 18-19. **Query:** Since section 18 of the Act expressly failed to mention the applicability of inclusive and accessible educational system to cover private schools, can PWDs/CWDs seek for the enforcement of that right in private educational institutions of learning?

¹⁴⁵ P Hunt and others, ‘Evaluating the Effects of Placement of Students with Severe Disabilities in General Education Versus Special Classes’ (1994) 19(3)Journal of the Association for Persons with Severe Handicaps 200-214.

¹⁴⁶ FB Obi, ‘Institutionalization, Mainstreaming or Inclusion: Challenges for Special Education in Nigeria’(2007)3(2) International Journal of Educational Research267-273 at 268; IO Iyioha, ‘Exclusion as Problem of Children with Disabilities *The Guardian* (Lagos, 7 December 2015) <<https://guardian.ng/opinion/exclusion-as-problem-of-children-with-disabilities/>> accessed 31 August 2022.

schools do not take into consideration the difficulties PWDs encounter in accessing them.¹⁴⁷

Buildings and physical structures that are not accessible to PWDs are mandated to be altered in a way that makes them functional to PWDs.¹⁴⁸ Three years after the DPDP Act 2019 came into existence, most public schools in Nigeria have not complied with this statutory obligation despite the fact that the five-years transitory period granted under the said law terminates in 2024. Such subtle discriminatory practices in the form of physical and social barriers deprive PWDs or CWDs of the right to education.¹⁴⁹

Employment Exclusionary Barriers

It bears repeating that the Nigerian disability law guarantees a PWD the right to work and earn a living in the labour market and work environment bereft of impediments to employment.¹⁵⁰ Employers of labour in public organisations are to retain 5% of employment slots in their establishments for PWDs¹⁵¹ and any violator, including a corporate entity and principal officers of the organisation, are liable to criminal prosecution and payment of prescribed nominal damages to the affected PWD upon conviction.¹⁵² However, there is no reported case where any individual or organisation has been held accountable for such violation despite employment marginalisation faced by PWDs in the Nigerian labour market. A recent protest by some visually impaired persons for the implementation of the 5% job allocation to PWDs by a government department, the Federal Civil Service Commission, bears credence to this discriminatory tendency.¹⁵³

¹⁴⁷ Edwin Etieyibo (n 141) at 70; Ibrahim Imam, MA Abdulraheem-Mustapha (n 83) at 451.

¹⁴⁸ DPDP Act 2019, sections 3-8.

¹⁴⁹ Bukola R. Akinbola (n 140) at 458-459; Richard Rieser, 'Disability Equality: Confronting the Oppression of the Past' in Mike Cole (ed) *Education, Equality and Human Rights: Issues of Gender, 'Race', Sexuality, Disability and Social Class*, (Routledge, 2006) 118 <<https://doi.org/10.4324/9780203002698-15>>.

¹⁵⁰ DPDP Act 2019, section 28(1).

¹⁵¹ Ibid, section 29.

¹⁵² Ibid, section 28(2).

¹⁵³ T Babatunde, 'Federal Commission Guards Brutalised Blind Jobseekers, Several Hospitalised' *Punch* (Lagos, 21 June 2022) <<https://punchng.com/federal-commission-guards-brutalise-blind-jobseekers-several-hospitalised/?amp>> accessed 21 June 2022.

Job exclusionary barriers have compelled most PWDs to resort to self-employment because personal businesses pose fewer challenges to them as they can fashion out their work schedules and suitable environments that would not subject them to prejudiced practices prevalent in the public sector.¹⁵⁴ Women with disabilities (WWDs) are also at greater risk as they have lower participation in the labour market and are saddled with heavy domestic chores than their male counterparts.¹⁵⁵

Accessibility to Public Space and Transportation Barriers

As earlier stated, public spaces, vehicles, parks, bus stops, seaports, railways, and airports are to be made accessible to PWDs.¹⁵⁶ Airline operators are to make available functional and presentable wheelchairs, as well as assist PWDs to go on and off-board in safety and comfort.¹⁵⁷ In realism, this is hardly the case in Nigeria. A case in point is a newspaper account of a disabled Nigerian woman, Gloria Nwogbo, who was denied entry into a plane because she was disabled and could not board the plane unaccompanied with a helper, even though she had bought her air ticket and was given her boarding pass.¹⁵⁸

The aggrieved passenger subsequently instituted a lawsuit to challenge the discriminatory action of the airline operator, Dana Air Limited.¹⁵⁹ To address this legal dilemma, it is vital to understand the position of the Nigerian disability statute in the given situation. In other words, does the national legislation impose an obligation on the part of a PWD to travel with an aide? It is instructive to note that

¹⁵⁴ S Mizunoya and S Mitra, 'Is There a Disability Gap in Employment Rates in Developing Countries?' (2012) 42(1)World Development 28-43 <<https://doi.org/10.1016/j.worlddev.2012.05.037>>.

¹⁵⁵ MA Hidayatulloh, 'Making Real the Rights of Persons with Disabilities In Indonesia: Issues, Policies and Future Policy Recommendations' (International Conference of Indonesian Students, Australia, 17-18 April 2020) <https://www.researchgate.net/publication/350104245-Making_Real_the-Rights_of_Persons-with_Disabilities_in-Indonesia_Issues-Policies_and-Future_Policy-Recommendations> accessed 16 June 2022, p. 67.

¹⁵⁶ DPDP Act 2019, sections 3-5.

¹⁵⁷ *Ibid*, sections 9-14.

¹⁵⁸ F Olorok, 'CSO Sues Dana for Barring Wheelchair-Board Passenger from Boarding, Demands N550m' *ThePunch* (Lagos, 8 February 2022) <<https://punchng.com/cso-sues-dana-for-barring-wheelchair-bound-passenger-from-boarding-demands-n550m/>> (accessed 15 June 2022).

¹⁵⁹ *The Registered Trustees of Disability Rights Protection Initiative v Dana Air Limited*, Suit No. FHC/EN/CS/181/2021. Federal High Court, Enugu, before Hon. Justice F. O. Giwa-Ogunbanjo. As at the time of writing this article, the suit had not been determined.

Nigerian law does not require the claimant or any physically challenged person to travel with an accompanied aide. It is, on the contrary, the duty of the airline operators to render assistive services to PWDs by ensuring that a PWD is assisted to get on and off board in safety and reasonable comfort as well as ensuring that PWDs are accorded priority while boarding and disembarking from the aircraft.¹⁶⁰ Given the positive stance of the law, the present authors foresee a possible settlement of the case out of court or in the alternative if the case goes into a full trial and is ably conducted by the claimant's learned counsel, the trial court would likely sanction the airline operators for their discrimination against the claimants.

Two decided cases on the need for accessibility of a transport system are worth mentioning. First is the decision in *Robert Ross v Ryanair Ltd., & Anor.*¹⁶¹ The claimant suffered from restricted mobility caused by cerebral palsy and arthritis which prevented him from walking long distances and standing. This created a problem for him when queuing to pass through the airport's security check-points; he did not own a wheelchair but had to hire one from the defendants' agents as that was required by the defendants' policy. The court ruled that the defendants' action in requiring the claimant to pay for a hired wheelchair amounted to unlawful discrimination outlawed under the UK Disability Discrimination Act (DDA) 1995. It was further held by the appellate court that it was the responsibility of the airline and the airport authority to offer reasonable substitute methods or auxiliary aid by providing the use of a free wheelchair to enable disabled passengers to get to the plane.

The second case is in relation to *Roads v Central Trains Ltd.*¹⁶² The claimant was a disabled person and relied on an electric wheelchair for mobility. This prevented him from having access to the railway station through the footbridge. It was the argument of the claimant that the defendant company owed him the statutory duty

¹⁶⁰ DPDP Act 2019, section 14.

¹⁶¹ [2005] 1 WLR 2447,

<https://www.casemine.com/judgement/uk/5a8ff71a60d03e757ea78cd/amp> (retrieved: July 12, 2022).

¹⁶²[2004] EWCA Civ. 1541; (2005) 21 Const L. J. 456,

<https://www.casemine.com/judgement/uk/5a8ff7af60d03e7f57eb1328/amp#aoh=16574830503384&referrer=https%3A%2F%2Fwww.google.com&_tf=From%20%251%24s> accessed 12 July 2022.

of providing a suitably wheelchair-accessible vehicle, as an alternative way or assisting aid to convey him by the station lane route in his wheelchair. Failure of the parties to reach a consensus resulted in the claimant instituting an action under the UK DDA 1995. The court held the company liable and awarded damages in favour of the claimant. It was held that the service provider was under obligation to take practicable steps towards the provision of alternative means of making the required services accessible to a disabled individual; and that in situation of competing solutions, the availability of the one solution when assessing the practicability of the others would be the better option.

Non-domestication Constraint

It is worrisome that only a few sub-national governments have domesticated the national disability law in their respective areas. As of December 2022, only about 19 out of the 36 States of the Nigerian federation replicated the national law as a State legislation. The implication of this is that the national law becomes inoperative in 17 States and the rights of PWDs cannot be guaranteed in such non-domesticating States.¹⁶³ This is a tacit endorsement by the non-domesticating States that discriminatory and other forms of oppressive harmful practices against PWDs are acceptable or encouraged in their jurisdiction.

Financial Exclusionary Barriers

This could be manifested in various ways. Like in the educational sector, the physical structures of most banking buildings in Nigeria are constructed in a manner that makes them inaccessible to PWDs. This is further compounded by the erection of metal detectors and mantrap or access control vestibule doors at bank

¹⁶³The sub-national governments that have passed disability legislation include: Abia, Anambra, Bauchi, Cross River, Edo, Ekiti, Jigawa, Kaduna, Kano, Kogi, Kwara, Lagos, Nasarawa, Niger, Ondo, Oyo, Plateau, Sokoto, and Zamfara States. The States that are yet to adopt the disability legislation include: Akwa Ibom, Adamawa, Bayelsa, Benue, Borno, Delta, Ebonyi, Enugu, Imo, Ogun, Osun, Katsina, Kebbi, Gombe, Rivers, Taraba and Yobe States – see, Nancy Okenwa, ‘Group Rallies 16 States to Domesticcate Disability Inclusion Laws’ *The Guardian* (Lagos, 25 August 2023) <<https://guardian.ng/news/group-rallies-16-states-to-domesticatre-disability-inclusion-laws/>> (accessed 6 February 2024). See also W Musa, ‘31 Million PLWDs Suffer as 23 States Neglect Disability Rights’ *The Guardian* (Lagos, 3 December2021) <<https://guardian.ng/news/31-million-plwds-suffer-as-23-states-neglect-disability-rights/>> accessed 21 June 2022.

halls' entrances for security reasons. Such security doors do not permit wheelchair or crutches users or other means of mobility assistance to gain access to the banking halls. Most times, PWDs have to spend long hours waiting outside to be attended to by bank officials, who often feel that they are doing favours to PWDs rather than rendering normal banking services to them.¹⁶⁴

Alternative banking amenities like automated teller machines (ATMs) and online banking facilities are also problematic to PWDs. Most ATMs are constructed in a way that users of wheelchairs cannot easily access them because of their height and location. There is also a problem of how visually impaired customers can personally use the machine without Braille signage and other assistive devices. The possible option would be to seek the assistance of other persons, thereby compromising their personal identification numbers (PINs) which they may have to disclose to such third parties.¹⁶⁵ PWDs are also denied access to credit facilities like loans for a number of reasons, including the fear that they may not be able to repay and the lack of requisite collateral security to access the credit facilities.¹⁶⁶ This is common among PWDs who are not employed by the government.¹⁶⁷

We recommend that for purposes of financial inclusion, a bank should deem it vital to make its physical structures, facilities, and services readily accessible to PWDs by providing such essential devices like installation of ATMs with Braille display/keyboards, and sign language, automatic security doors openers to give access to PWDs on wheelchairs and crutches, assistive technological devices like text and image magnification for blind customers, audio and tactile devices for blind and deaf customers, screen magnifiers and speech synthesisers, among others. PWDs can also seek the enforcement of the right to financial inclusion by notifying their bankers to remove every existence of a state of inaccessibility or

¹⁶⁴ K Adebajo, 'How Banks in Nigeria, Ghana Deny People with Disabilities Services' *Premium Times* (Lagos, 23 April 2022) <<https://www.premiumtimesng.com/news/headlines/525180-how-banks-in-nigeria-ghana-deny-people-with-disabilities-services.html>> accessed 28 June 2022.

¹⁶⁵ K Imandojemu, AN Toyosi, and OJ Ndidi, 'Financial Inclusion and People Living with Disabilities (PLWDs) in Nigeria: A Disaggregated Analysis' (2018) 42(4) *Bullion* 59-82; O Tade, 'Solving Financial Exclusion of People Living with Disabilities' *Vanguard* (Lagos, 28 April 2021) <<https://www.vanguardngr.com/2021/04/solving-financial-exclusion-of-people-living-with-disabilities/>> accessed 28 June 2022.

¹⁶⁶ K Imandojemu, AN Toyosi and OJ Ndidi (n 163) at 61.

¹⁶⁷ O Tade (n 163).

barriers to accessing the bank's services or risk court litigation as required by law.¹⁶⁸

CONCLUSION

The significance of accessing physical structures, social, economic, and cultural environment, educational and healthcare facilities as well as information and communications, among others, in a manner that will allow PWDs to completely enjoy all human rights and basic liberties on equal terms with individuals without disabilities, cannot be overemphasised. The CRPD and the other examined regional and national instruments are important milestones for disability and human rights protection. These instruments offer the undercurrent and rhythm for a complete comprehension of what the rights entail in relation to PWDs as "right-bearers" and the obligations imposed on the Nigerian government, relevant private enterprises along the global community in order to promote, protect, and guarantee those rights.

The article has demonstrated that the CRPD has generally been identified as representing a paradigm shift from the old "welfare/medical" approach to a human rights-based attitude towards disability, though this new approach is far from being achieved in the Nigerian context. Certainly, despite the legal and institutional mechanisms created in the examined normative frameworks to protect the rights of PWDs against discriminatory and oppressive actions, there are still a number of practical constraints and environmental barriers. Existence of such constraints serves as clogs to the full and valuable potential involvement of PWDs in their communities on equal foundation with others.

The Nigerian government has taken the right stride by having normative frameworks on disability rights and protection. The national, sub-national governments and relevant stakeholders must go a step further by demonstrating strong commitments towards the implementation of the legal instruments. Such a proactive approach will help in bridging the existing gaps in discrimination and marginalisation as well as the removal of exclusionary barriers often encountered by PWDs in every spectrum of Nigerian society. New and existing laws and policies must be consistent with the advancement of the rights and protection of

¹⁶⁸ DPDP Act 2019, section 8.

PWDs as enjoined by the CRPD. One of the ways to achieve legislative consistency is by dynamically engaging PWDs in the legislative processes at the national and sub-national levels.

The examined primary Nigerian disability law tends to focus more on public institutions, like schools, public transport systems, and public workplaces. The non-discrimination provisions purview in this law should be made applicable to private enterprises, particularly as the CRPD mandates State parties to regulate the private sectors. Hence, such private establishments that provide facilities and services that are accessible to members of the public must ensure that they are made easily open to PWDs without constraints. Similarly, PWDs as “rights-bearers” under the extant laws must take bold steps to enforce their guaranteed rights each time they are violated by either individuals and/or the government. This will entail effective access to justice by PWDs, including accessibility to the physical structures of the courtrooms and means of information/communication. Finally, effective education and/or awareness campaigns for PWDs, officials associated with access to justice, employers of labour, relevant agencies, and the larger society on disability protection and rights must constantly be carried out. If the recommendations made in the article are executed by the Nigerian government and other relevant stakeholders, the recognised rights and protection of PWDs will not remain as mere rhetoric decorating our statute books but will be fully implemented and enjoyed by PWDs in Nigeria.

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