

## **An Examination of the Rights of Persons with Disabilities in Nigeria**

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### **Abstract**

Rights are diverse and its vistas are wide. Persons with disabilities (PWD) are members of the human race with full rights to the enjoyment of the tenets of human rights. According to global estimates, 15% of the world population over 15 years old are persons with disabilities (PWDs). These persons suffer a great deal of injustice and discrimination as a result of their status. The rights of persons with disabilities are protected at every level of government. The Convention on the Rights of Persons with Disabilities is the legal response of the international government to the injustices suffered by PWDs. Regionally, the African Union responded to this issue by adopting a Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa. While the Nigerian government has since enacted the Discrimination against Persons with Disabilities (Prohibition) Act in 2018, not much can be said about the implementation of the law. Despite these laws, the Nigerian government, policy makers and society perceives issues relating to persons with disabilities as charity and privilege and never as a matter of rights and responsibility. This paper comprehensively examines the provisions that make up the disability rights in Nigeria with a view to assessing the adequacy of the laws by adopting a doctrinal legal method of analysis. The paper finds that not much has been done as regards disability rights in Nigeria and thereby recommends a greater inclusion of disability in the government's national development plan as to how government intends addressing equality and discrimination against people with disability.

**Keywords:** disability, human rights, African Charter, Convention on the Rights of Persons with Disabilities, persons with disabilities.

### **1. Introduction**

According to the World Health Organization (WHO), nearly everyone living will at some point be permanently or temporarily impaired. Those who survive to old age could encounter difficulties in going about their daily activities and it is also true that nearly every family has, or is close to someone who suffers a disability.<sup>1</sup> Of the global population, it is estimated that approximately 3.8% live with severe impairments, such as blindness or paraplegia; 80% of all persons with disabilities live in developing countries. In recent years, the understanding of disability has moved away from a physical or medical perspective to one that takes into account a person's physical, social and political context. Today, disability is understood to arise from the interaction between a person's health condition or impairment and the multitude of influencing factors in their environment. Great strides have been made to make the world more accessible for people living with disability; however, much more work is required to meet their needs.<sup>2</sup>

Disability is a compounding factor that impacts many aspects of a person's life. People with disability experience poorer health outcomes, have less access to education and work opportunities, and are more likely to live in poverty than those without a disability. This can be caused by many factors including a physical lack of access to buildings and transportation, social stigma, lack of service provision and increased likelihood of being left out of decision-making that affects their wellbeing. People with disability experience widespread barriers that other people often take for granted, including barriers in the health system, education, employment, transportation and community space. These gaps are exasperated in poorer or less developed communities.<sup>3</sup> The National Population Commission of Nigeria (NPC) has estimated that no fewer than

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<sup>1</sup> World Health Organisation, *World Report on Disability* (World Health Organisation/the World Bank 2011) 3.

<sup>2</sup> Disability, World Health Organization, available at [https://www.who.int/health-topics/disability#tab=tab\\_1](https://www.who.int/health-topics/disability#tab=tab_1), accessed September 24, 2020.

<sup>3</sup> N.2.

19 million Nigerians are living with disabilities.<sup>4</sup> The national disability prevalence rate is 7,5% in South Africa. Disability is more prevalent among females compared to males (8,3% and 6,5% respectively). Persons with disabilities increase with age. More than half (53,2%) of persons aged 85+ reported having a disability.<sup>5</sup>

Due to the prevalence of discrimination suffered by PWDs as a result of their condition and several injustices meted out on them, the United Nations adopted the Convention on the Rights of Persons with Disabilities (hereinafter ‘CRPD’).<sup>6</sup> The adoption of the Convention is the response of the International community to the injustices suffered by PWDs. Similarly, the African Union also adopted the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa.<sup>7</sup> Although the history of disability rights at the African continental level has been described as (at best) one of ‘benign neglect’,<sup>8</sup> the adoption of the Protocol is a welcome development on the part of the regional government. On January 23, 2018, Nigeria’s President Muhammadu Buhari signed into law the Discrimination against Persons

<sup>4</sup> Premiumtimesng, 19 million Nigerians living with disability – Official, available at <https://www.premiumtimesng.com/news/more-news/288954-19-million-nigerians-living-with-disability-official.html>, accessed September 24 2020.

<sup>5</sup> South Africa Profiles Persons with Disabilities, available at <http://www.statssa.gov.za/?p=3180>, accessed September 24, 2020.

<sup>6</sup> The Convention on the Rights of Persons with Disabilities 2006, is an [international human rights treaty](#) of the [United Nations](#) intended to protect the rights and dignity of persons with [disabilities](#). Parties to the Convention are required to promote, protect, and ensure the full enjoyment of [human rights](#) by persons with disabilities and ensure that persons with disabilities enjoy full [equality under the law](#). The Convention serves as a major catalyst in the global disability rights movement enabling a shift from viewing persons with disabilities as objects of charity, medical treatment and social protection towards viewing them as full and equal members of society, with human rights.

<sup>7</sup> The Protocol is intended to complement the African Charter on Human and Peoples’ Rights and address continued exclusion, harmful practices, and discrimination affecting those with disabilities, especially women, children, and the elderly. The protocol, adopted during the ACHPR’s [19th Extraordinary Session](#), is the culmination of the African Union’s focus on the rights of persons with disabilities, which began in 1999 with the declaration of the [African decade for persons with disabilities](#) and the creation of a [Working Group](#) tasked with drafting this new instrument. The protocol guarantees equal protection of economic, social, cultural, civil, and political rights to individuals with “physical, mental, intellectual, developmental or sensory impairments” and will require States parties to implement affirmative actions to advance their equality.

<sup>8</sup> TP van Reenen & H Combrinck ‘The UN Convention on the Rights of Persons with Disabilities in Africa: Progress after 5 years’ (2011) (14) *SUR International Journal on Human Rights* 153.

with Disabilities (Prohibition) Act, 2018,<sup>9</sup> following 9 years of relentless advocacy by disability rights groups and activists.

This paper starts by generally discussing the concept of disability by making a conceptual clarification of the term. Some other terms used in the work such as Disability, Education and Poverty, Disability and Employment Discrimination and Human rights discourse are clarified. Afterwards, the paper examined the legal framework for the protection of the rights of the PWDs in Nigeria. Thereafter, the paper examined concepts such as Equality and Non-Discrimination as a Right of Persons with Disabilities before proceeding to examine the specific rights of the PWDs. The paper concludes on the note that the Nigerian government has not taken the matter of disability to heart as much as it is being desired.

## **1.2 Conceptual clarifications Disability**

The CRPD consists of several Articles guaranteeing and protecting the rights of the PWDs. One of the readily cited criticisms against the Convention is that it failed in its entirety to give an outright definition of the word ‘disability’. Article 2 of the Convention contains definition of terms adopted in the Convention but this provision failed to give a definitive meaning to disability. Although Article 1 states the category of persons who could be regarded as PWDs, yet the Convention did not define the term. According to the World Health Organization, disability has three dimensions:

1. **Impairment** in a person’s body structure or function, or mental functioning; examples of impairments include loss of a limb, loss of vision or memory loss.
2. **Activity limitation**, such as difficulty seeing, hearing, walking, or problem solving.

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<sup>9</sup> Prior to the assent of the President to the Discrimination against Persons with Disability (Prohibition) Bill, there was no statute which comprehensively provided for the protection of the rights of persons living with disabilities in Nigeria.

3. **Participation restrictions** in normal daily activities, such as working, engaging in social and recreational activities, and obtaining health care and preventive services.<sup>10</sup>

The Oxford Advanced Learners Dictionary defines disability as a physical or mental condition that means that a person cannot use a part of their body completely or easily or that they cannot learn easily.<sup>11</sup> Defining disability as a health problem (medical model) gives room for continuous perpetuation of discrimination and marginalization simply because the person has difficulty being at par with a non-PWDs in doing everyday things.<sup>12</sup> This can be linked to the social model that emphasizes that disability arises from the attitudinal, physical, and institutional barriers which systematically exclude persons from fully participating in society.<sup>13</sup> In Article 1 of the CRPD, disability is described as the condition in which physical and social barriers prevent a person with impairment from taking part in the normal life of their community on an equal level with others.<sup>14</sup> The United Nations Convention on the Rights of Persons with Disabilities (CRPD)<sup>15</sup> identifies persons with disabilities as people 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.<sup>16</sup>

Similarly, the International Labour Organization (ILO) also adopts a broad definition describing a PWDs as individuals whose prospects of securing, returning to, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognized physical, sensory,

<sup>10</sup> World Health Organization, [International Classification of Functioning, Disability and Health \(ICF\)](#) External icon. Geneva: 2001, WHO.

<sup>11</sup> *Oxford Advanced Learners , Dictionary*, <http://oxford-learners-dictionary.com/dictionary/Disability>.

<sup>12</sup> World Health Organization, *World Report on Disability 2011*, [http://whqlibdoc.who.int/publications/2011/97892\\_40685\\_215\\_eng.pdf](http://whqlibdoc.who.int/publications/2011/97892_40685_215_eng.pdf). accessed on January 20 2021.

<sup>13</sup> A. Harris and S. Enfield, *Disability, Equality, and Human Rights: A Training Manual for Development and Humanitarian Organisations* (Oxford, UK: Oxfam, 2003).

<sup>14</sup> UN Convention on the Rights of Persons with Disabilities (UN CRPD) 2006, <http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>. accessed on January 20 2021.

<sup>15</sup> The CRPD is the first United Nations human rights convention to expressly and exclusively protect persons with disabilities. The Convention was drafted in December 2006, came into force in May 2008 and has been ratified by numerous United Nations member states, including Nigeria.

<sup>16</sup> Article 2 CRPD.

intellectual or mental impairment.<sup>17</sup> Both definitions cover a broad range of people including those with overt impairments (such the blind and deaf) and those with hidden disabilities (such as diabetes, epilepsy, mental health), and even those with progressive and recurring conditions (such as cancer) and also covers past disabilities. These definitions are sufficiently broad to cover millions of people who suffer from a wide range of impairments, many of whom do not necessarily consider themselves to be PWDs. Hence, disability may be physical, mental, developmental, cognitive, emotional, and psychological and/or a combination of the above. It may be present from birth or occur at any point during a person's lifetime. Disability is an umbrella term conveying impairment, activity limitation and participation restrictions. In fact, most people will, at some points in their lives, experience one type of disability or the other<sup>18</sup>

### **Disability, Education and Poverty**

The United Nations estimates that at least 8.7 million children are out of school, making Nigeria the country with the world's largest population of children out of school.<sup>19</sup> Obviously, children with disabilities face even greater challenges enrolling in school and many are never enrolled. Whereas the country lacks specific data on the proportion of children with disabilities or figures on their access to education, UNICEF estimates that 90% of children with disabilities in developing countries are out of school.<sup>20</sup> Justifying this estimate, a policy brief of the Joint National Association of Persons with Disabilities (JONAPWD) states that Kwara State has a population of 270,000 children with disabilities, and only 10,000 are receiving some level of basic education. That represents only 3.7% of children with disabilities enrolled in education.<sup>21</sup> Many of the 8.7

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<sup>17</sup> ILO Publications on Disability: Inclusion of Persons with Disabilities, <http://www.ilo.org/skills/areas/inclusion-of-persons-with-disabilities/lang--en/index.htm> accessed on January 20 2021.

<sup>18</sup> World Health Organisation, 'Understanding Disability' [www.who.int/world\\_report/2011\\_chapter1.pdf](http://www.who.int/world_report/2011_chapter1.pdf), accessed on January 20 2021.

<sup>19</sup> 'Education in Nigeria', World Education News + Reviews, March 7, 2017, <https://wenr.wes.org/2017/03/education-innigeria> accessed on January 20 2021.

<sup>20</sup> UK Parliament Publications and Records, Select Committee on International Development, 'DFID's work on education: "Leaving No One Behind" November 17, 2017 <https://publications.parliament.uk/pa/cm201719/cmselect/cmintdev/367/36706.html> accessed on January 20 2021.

<sup>21</sup> JONAPWD, Inclusive and Accessible Basic Education for Children with Disabilities in Kwara State, 2016.

million children who are out of school are also left out due to poverty, gender, ethnicity, or a combination of these factors.<sup>22</sup>

### **Disability and Employment Discrimination**

People with disabilities seek jobs for much the same reasons as non PWDs. They wish to earn a living, live independently, and make social contacts. As with other job-seekers, finding a job and progressing in it is important for their self-esteem. Like other job-seekers, they differ enormously in age, location and aspirations. They are also more likely to have faced difficulties in getting an education and/or accessing vocational training.<sup>23</sup> Unfortunately, many of the obstacles which PWDs face arise not from the disability itself, but rather from the way society is organized. Barriers which often prevent PWDs from getting jobs include restrictive practices, rules and regulations relating to education, training, recruitment and work practices which are impossible for people with certain disabilities to observe, not to mention inaccessible workplaces. Arguably, the most insurmountable obstacle is the negative attitudes of potential employers about their ability to work and to contribute to the performance of the enterprise.<sup>24</sup>

Nigeria is a signatory to the ILO Convention on the Vocational Rehabilitation and Employment of PWDs<sup>25</sup> which makes provision for employment of persons with disabilities without discrimination. Notwithstanding, employers give several reasons for not recruiting people with disabilities: they perceive people with disabilities as less talented and requiring greater supervision, less able to adapt, prone to requesting paid sick leaves, payment of their hospital expenses and compassionate waivers

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<sup>22</sup> UK Aid, Education Sector Support Program in Nigeria, Inclusive Education Policy Developments Federal Level, 2016, <http://www.esspin.org/esspin-documentation/briefing-notes> accessed on January 20 2021.

<sup>23</sup> B Murray & R Heron, 'Placement of Job-Seekers with Disabilities', *Journal of Planning, Research & Economics Administration*, <http://www.moital.gov.il/NR/rdonlyres/DB61E5CA-7505-4CC8-B2F8-161F0DE2E03A/0/Discriminationagainstpeoplewithdisabilitiesinthelabormarket.pdf> accessed on January 20 2021.

<sup>24</sup> E. Etiyebo & O. Omiegbe, 'Religion, Culture and Discrimination against People with Disabilities in Nigeria', (2016). 5 (1) *African Journal of Disability*, 192; see also DFID, Development Tracker, Nigeria, May 2018, <https://devtracker.dfid.gov.uk/countries/NG/projects>, Nigeria Country Report to DRF/DRAF Grantmaking Committee Meeting, January 2018.

<sup>25</sup> Convention No. 159 of 1983.

from certain duties.<sup>26</sup> Since employers are interested in taking on the most talented and suitable person for a particular job, it is hardly surprising that when they assess a handicapped candidate in the light of their perception of people with disabilities, they tend to take on a non-handicapped person rather than a candidate with disabilities.<sup>27</sup> The reasons adduced by employers for discriminating against the PWDs may appear reasonable but such reasons are often based on prejudiced misconceptions. It is indeed possible and beneficial to fully integrate persons with disability into the workforce.

### **Human rights discourse**

Since the central thesis of this paper concerns rights, an examination of the notion of rights or human rights will seem to be apposite. There are several descriptions of human rights that have been put forward by scholars. One of such description takes human rights as representing demands or claims which individuals or groups make on society, some of which are protected by law and have become part of some lofty ideals, while others remain aspiration to be attained in the future<sup>28</sup>. Another characterisation, an idealistic and limited view of human rights has been put forward by Cranston<sup>29</sup>. He describes human rights as supremely sacred, as “something which no one may be deprived of without a great affront to justice”. There is a third characterisation of human rights that we should consider, one that is put forward by Nickel<sup>30</sup>.

According to him, rights are construed as “basic moral guarantees that persons in all countries and cultures allegedly have simply because they are persons.” Calling these guarantees ‘rights’, according to him, “suggests that they attach to particular individuals who can invoke them, that they are of high priority, that compliance with them is mandatory rather than discretionary”, and that they “exist and are available as

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<sup>26</sup> M Christianson, ‘Incapacity and Disability: A Retrospective and Prospective Overview of the Past 25 Years’ (2004) *ILJ* 879- 896.

<sup>27</sup> MJ Bjelland *et al*, ‘Age and Disability Employment Discrimination: Occupational Rehabilitation Implications’, (2009) *Journal of Occupational Rehabilitation*, Published online 14 August 10-10-2009 accessed on January 25 2021.

<sup>28</sup> Eze, O.C, *Human Rights Defined in Human Rights in Africa: Some Selected Problems*. (Lagos: Nigerian Institute of International Affairs and Macmillan Publishers 1984).

<sup>29</sup> Cranston M, *Human Rights: Old and New*. In Shridath.S. Ramphal (ed.), ‘Political Theory and the Right of Man’, (London: MacMillan (1980) pp.58-63.

<sup>30</sup> Nickel, J, *Making Sense of Human Rights: Philosophical Reflections on the Universal Declaration of Human Rights*. (Berkeley, CA: University of California Press, 1987).



standards of justification and criticism whether or not they are recognized and implemented by the legal system or officials of a country<sup>31</sup>. The latter author's description of human rights suggests that human rights are something inherent to humans. This description makes it right then to see the target of human rights to be the humanity in every human, that is what makes us distinctively human minus the various contingencies of race, sex and gender, characteristics and abilities.

## **2. The Legal Framework for the Protection of the Rights of Persons with Disabilities in Nigeria**

The Nigerian legal system is made of various laws comprising of international, regional and domestic legislations. This paper examines a plethora of legislations protecting the rights of persons with disabilities in Nigeria.

### **2.1 International Laws**

Convention on the Rights of Persons with Disabilities<sup>32</sup>, the International Convention on Civil and Political Rights<sup>33</sup> and the International Covenant on Economic, Social and Cultural Rights<sup>34</sup> constitute general International Instruments for the protection of the rights of PWDs. International frameworks relevant for safeguarding the right to meaningful labour participation and inclusion for the PWDs straddle a number of instruments across a variety of organisations. These include the United Nations and some of its specialised agencies including the International Labour Organisation (ILO) and the World Intellectual Property Organisation.<sup>35</sup> Human rights are recognised and protected by a number of international human rights instruments (treaties, laws and conventions, etc.) such as the Universal Declaration of Human Rights<sup>36</sup>, the ICCPR and ICESCR, documents that are generally referred to as the International Bill of Rights. Nigeria is a signatory to the instruments and these laws form the backbone of its legal framework on the subject.

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<sup>31</sup> Edwin Etieyibo, 'Rights of Persons with Disabilities In Nigeria', (2020) 33 (1) *AfriKa Focus*, pp. 59-81.

<sup>32</sup> 2006a (CRPD).

<sup>33</sup> 1966a (ICCPR).

<sup>34</sup> 1966b (ICESCR).

<sup>35</sup> In fact, the importance of inter-agency collaboration between these bodies and others such as the World Health Organisation cannot be over-estimated.

<sup>36</sup> (United Nations, 1948)

Rights of persons with disabilities are recognised and protected by the CRPD, which enjoins state parties to “take appropriate measures, including legislation to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against” persons with disabilities<sup>37</sup>. The CRPD and its “Optional Protocol” was adopted on 13 December 2006 at the United Nations Headquarters in New York and entered into force on 3 May 2008. As a key international instrument on the rights of persons with disabilities, it is the first comprehensive human rights treaty of the 21st century<sup>38</sup>. With regard to children, the CRC makes provisions that protect the right of the child. This document sets the standard for how children should be treated around the world. By extension, it recognises and protects the rights of children with disabilities.

Nigeria is a state party and signatory to all of these legal instruments and by implication is bound to follow through on all of their provisions. It can be categorically stated that the rights of persons with disabilities fall within the general category of human rights, even though there are rights that are specific to them. With this understanding, the reference to all humans as contained in the ICCPR and ICESCR likewise applies to persons with disabilities given that, in general, they enjoin states parties to respect the rights (civil, political, economic social and cultural) of all humans.

Majorly, the ICCPR and ICESCR are concerned with general human rights. They take into account rights that are inherent to all human beings, irrespective of race, ethnicity, nationality, sex, religion, language, or any other status. On its part, the CRPD picks out rights that are particular to persons with disabilities. Part of the importance of recognizing these specific rights is so as to offer persons with disabilities more protection and to include, rehabilitate and integrate them more fully into society. The CRPD adopts a very broad categorisation of persons with disabilities, which focuses on the affirmation of all types of disabilities, and the full and equal enjoyment of all human rights and fundamental freedoms for those with disabilities. In addition, it affirms the promotion and respect for the inherent dignity of persons with disabilities and enjoins state parties to

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<sup>37</sup> (CRPD, article 4).

<sup>38</sup> (United Nations, Convention and Optional Protocol Signatures and Ratifications, 2006).

promote and protect their rights as a way of ensuring that they enjoy full equality under the law.

There are eight guiding principles that underlie the Convention (CRPD). These are: (a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons; (b) non-discrimination; (c) full and effective participation and inclusion in society; (d) respect for difference, and acceptance of persons with disabilities as part of human diversity and humanity; (e) equality of opportunity; (f) accessibility; (g) equality between men and women; (h) respect for the evolving capacities of children with disabilities, and respect for the right of children with disabilities to preserve their identities (article 3). The principles and provisions in the CRPD are mutually reinforced by the substantive rights of persons with disabilities that it recognises. Some of these rights are also affirmed in the ICCPR and ICESCR.<sup>39</sup> However, there are certain rights that are specific to the CRPD, and these include the rights to “accessibility including information technology” (article 9), “live independently and be included in the community” (article 19), “personal mobility” (article 20), “habilitation and rehabilitation” (article 26), and “adequate standard of living and protection” (article 28). Furthermore, the CRPD enjoins states parties to raise awareness of the rights of persons with disabilities (article 8), to “adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the convention”, and take “appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities” (article 4). Some of the earliest initiatives to accord recognition to the right of the PWDs to labour participation included the ILO Recommendation adopted in the post-world war era, which provided that PWDs workers

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<sup>39</sup> Some of the rights that are affirmed in the CRPD and ICCPR include the following: the right to “life” (CRPD article 10; ICCPR article 6); the right to the enjoyment of “liberty and security of person” (CRPD article 14; ICCPR article 9); the right to liberty of movement, nationality or residence (CRPD article 18; ICCPR article 12); and the right to “privacy” (CRPD article 22; ICCPR article 17). The right to “education” is one right that is affirmed by both the CRPD and ICESCR (CRPD article 24; ICESCR article 13). In general, many of the rights contained in the CRPD are affirmed by the ICCPR and ICESCR insofar as they are rights that broadly deal with aspects of the physical and mental integrity of persons qua persons. So, for example, many of the civil and political rights in the ICCPR are also affirmed in the CRPD in respect of persons with disabilities, and a number of the economic, social and cultural political rights in the ICESCR are recognised in the CRPD with regard to persons with disabilities.

should be provided with full opportunities for rehabilitation, specialised vocational guidance, training and retraining, and employment on useful work.<sup>40</sup>

In 1983, the first ILO Convention on disability was adopted, alongside its accompanying recommendation.<sup>41</sup> These standards enjoin the provision of measures to promote equitable employment opportunities for the PWDs. The measures include the making of reasonable adaptations to workplaces, job design, tools, machinery and work organisation to make the work environment more amenable to labour participation by the PWDs. Article 1 of the Convention defines a "disabled person" as an individual whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognised physical or mental impairment. The purpose of vocational rehabilitation, as provided under the Convention is to enable PWDs to secure, retain and advance in suitable employment and thereby further such persons' integration or reintegration into society.<sup>42</sup>

Member States are required to formulate, implement and periodically review a national policy on vocational rehabilitation and employment of PWDs, taking account of national conditions, practice and possibilities.<sup>43</sup> This is with a view to providing accessible vocational rehabilitation measures and promoting employment opportunities for PWDs.<sup>44</sup> The attainment of equality resonates throughout the Convention, both with reference to PWD workers and other workers generally, as well as on the basis of gender. In this regard, it is provided that equality of opportunity and treatment for PWD men and women workers shall be respected.<sup>45</sup> Another major landmark in safeguarding the rights of the

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<sup>40</sup> ILO Employment (Transition from War to Peace) Recommendation (No. 71) of 1944. Subsequently, the ILO Vocational Rehabilitation (Disabled) Recommendation (No. 99) of 1955 was adopted.

<sup>41</sup> ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention (No 159) and ILO Vocational Rehabilitation and Employment (Disabled Persons) Recommendation (No 168) both of 1983.

<sup>42</sup> *Ibid.*

<sup>43</sup> Article 2.

<sup>44</sup> Article 3.

<sup>45</sup> Article 4.

PWDs took place in 2006, when the United Nations General Assembly adopted the Convention on the Rights of Persons with Disabilities.<sup>46</sup>

One major way of promoting access to employment, enhancing performance and efficiency at work and leading a productive and independent life is through enhanced educational and training opportunities. Indeed, it has been rightly observed that educational gaps between those who have and do not have a disability accounts, at least partially, for the significant over-representation of the PWDs among the ranks of the poor and unemployed.<sup>47</sup> A major stepping stone towards education is ensuring access to educational materials and training resources. In particular, the importance of adequate access to literary, artistic and scientific works for the use of blind, visually impaired and other reading-disabled persons cannot be over-emphasised. Very relevantly, it has been estimated by the World Blind Union that less than 10% of all published materials can be read by blind or low vision.<sup>48</sup>

An international development which responds to this need is the World Intellectual Property Organisation (WIPO) Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled.<sup>49</sup> Its main goal is to create a set of mandatory limitations and exceptions to copyright laws, in aid of the PWDs. Copyright laws confer exclusive rights on owners of creative works such as literary, artistic musical works, as well cinematograph films, sound recordings and broadcasts.<sup>50</sup>

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<sup>46</sup> See the UN Convention on the Disabled, adopted on 13 December, 2006. The Convention entered into force on 3 May, 2008.

<sup>47</sup> Lynk, S. Michael, 'Disability and Work: The Transformation of the Legal Status of Employees with Disabilities in Canada.' available at <http://www.ssrn.com/abstract=1068403> (2007) accessed on January 26 2021.

<sup>48</sup> See the website of the World Blind Union at <http://www.worldblindunion.org/English/Pages/default.aspx>, accessed on January 20 2021.

<sup>49</sup> The Marrakesh Treaty was adopted on June 27, 2013 in Marrakesh, Morocco, against the background of the need to promote equal opportunity, accessibility and full and effective participation and inclusion in society of visually impaired persons, in the spirit of the United Nations Convention on the Rights of Persons with Disabilities. See the Preamble to the Marrakesh Treaty.

<sup>50</sup> See Section 6 of the Nigerian Copyright Act, Cap C28 Laws of the Federation of Nigeria 2004.

These exclusive rights consist, *inter alia*, of economic rights to profit from the reproduction, publication, adaptation, distribution and other dealings in protected works.<sup>51</sup> Any violation of the law constitutes infringement of copyright, and entitles the right owner to a number of remedies.<sup>52</sup> However, the Marrakesh Treaty creates international standards to limit the ambit of exclusivity, by permitting the reproduction, distribution and making available of published works in formats designed to be accessible to visually impaired persons.<sup>53</sup> The limitations aim to address some of the challenges that are prejudicial to the well-being of persons with visual impairments or with other print disabilities, which limit their freedom to seek, receive and impart information and ideas, their enjoyment of the right to education, and other rights. This is by creating exceptions to copyright protection where the reproduction of a work is carried out for the purpose of making it available in accessible formats for persons with visual impairments or with other print disabilities.<sup>54</sup> It further provides that accessible formats of copyright works may be exported, imported and otherwise transmitted across borders by organisations that serve the PWDs, who are the main beneficiaries.<sup>55</sup>

Article 3 clarifies that beneficiary persons are those affected by a range of disabilities that interfere with the effective reading of printed material. The broad definition includes persons who are blind, visually impaired, or reading disabled, or persons with a physical disability that prevents them from holding and manipulating a book. To facilitate the implementation of the provisions, the roles of authorized entities are clearly defined as the organisations in charge of performing the cross-border exchange of the published works.<sup>56</sup> These may consist of both non-profit and government entities, provided they are either specifically authorised or recognised by the government as entities that provide many functions including education and information access to beneficiary persons.<sup>57</sup> The Treaty therefore aims to maintain a balance between the effective protection of the rights of copyright owners on one hand, and the facilitation of effective and timely access to works for the benefit of persons with visual

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<sup>51</sup> N.50.

<sup>52</sup> Sections 15&16 of the Nigerian Copyright Act.

<sup>53</sup> Article 4 of the Marrakesh Treaty.

<sup>54</sup> N.53.

<sup>55</sup> Articles 5,6 & 9.

<sup>56</sup> Article 2(c).

<sup>57</sup> N.56.

impairments or with other print disabilities on the other hand. The Marrakesh Treaty is complemented by the Accessible Books Consortium (ABC), a multi-stakeholder partnership, comprising WIPO; organisations that serve people with print disabilities; and organisations representing publishers and authors.<sup>58</sup>

The ABC aims to increase the number of books worldwide in accessible formats - such as braille, audio and large print - and to make them available to people who are blind, have low vision or are otherwise print disabled. One of the major initiatives of the Consortium is the inclusive publishing project through which it is promoting technologies and industry standards that support the production of new books in such a way as to be usable by both sighted people and people with print disabilities. This is with a view to promoting the actualisation of the right to education and ultimately meaningful labour participation by the PWDs.

## **2.2 Regional Laws**

In Africa, it has been estimated that the PWDs constitute about 10% of the total population.<sup>59</sup> In a bid to address the socio-economic and other needs of this group, a number of approaches-legal, policy and institutional, have evolved, notably under the auspices of the Africa Union and its precursor, the Organisation of African Unity (OAU). Of particular importance is the African Charter on Human and Peoples Rights,<sup>60</sup> which provides for equality and non-discrimination in the enjoyment of the rights and freedoms recognised and guaranteed in the Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.<sup>61</sup> Although disability is not specifically mentioned, it is submitted that the open-ended nature of the provision, as represented by the term “other status” gives room for extending the umbrella of the Charter to cover the PWDs. Beyond the general nature of the equality

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<sup>58</sup> See the ABC website at <http://www.accessiblebooksconsortium.org/portal/en/index.html> accessed on January 20 2021.

<sup>59</sup> See Secretariat of the African Decade of Persons with Disabilities, *The Architecture for an Africa Disability Rights Mechanism 2* (2013) online at <http://www.panusp.org/wp-content/uploads/2013/04/Architecture-for-an-African-Disability-Rights-Mechanism.pdf>, accessed on January 20 2021.

<sup>60</sup> African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, Laws of the Federation of Nigeria 2004.

<sup>61</sup> Article 2, ACHPR.

provision, Article 18(4) of the Charter specifically provides that the aged and the PWDs shall have the right to special measures of protection in keeping with their physical or moral needs. There are also on-going efforts targeting the protection of the PWDs and the aged by arrangements towards a Protocol to the African Charter on the Rights of Older Persons and People with Disabilities.<sup>62</sup>

Some initiatives to respond to the needs of the PWDs have been undertaken by the African Union,<sup>63</sup> the Agreement for the Establishment of the African Rehabilitation Institute (ARI) adopted in 1985, charged primarily with the task of undertaking manpower development, including the area of rehabilitation of the PWDs. A further initiative by the OAU was the declaration of the years 2000-2009 as the African Decade of Disabled Persons.<sup>64</sup>

In furtherance of this, a Plan of Action for the Decade was adopted, which tasked member States and Governments on the importance and urgency of formulating measures to promote equality of opportunities, full participation and the independence of the PWDs in society.<sup>65</sup> More relevantly, the Plan of Action highlighted the importance of putting in place measures to encourage the full participation of persons with disabilities in social and economic development; promote more efforts that encourage positive attitudes towards children, youth, women and adults with disabilities, and the implementation of measures to ensure their access to rehabilitation, education, training and employment; as well as develop programmes that alleviate poverty amongst PWDs and their families.<sup>66</sup> There is need for evidence-based research to assess the outcomes and impacts of the Decade, and determine the extent to which some of the laudable issues articulated in the Plan of Action have been actualised.

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<sup>62</sup> For an overview of the developments in this regard, see SA Kanga 'A Call for a Protocol to the African Charter on Human and Peoples Rights on the Rights of Persons with Disabilities in Africa' (2013) 21 *African Journal of International and Comparative Law*, 219.

<sup>63</sup> The Organisation of African Unity (OAU) now African Union (AU).

<sup>64</sup> See the United Nations Enable, at <http://www.un.org/esa/socdev/enable/disafricadecade.htm>, accessed on January 20 2021.

<sup>65</sup> Resolution 7 of the Executive Council of the African Union, First Ordinary Session of 9-10 July 2002, EC/AU/AEC/Regl. (I) at [http://www.au2002.gov.za/docs/summit\\_council/aureg.pdf](http://www.au2002.gov.za/docs/summit_council/aureg.pdf), accessed on January 26 2021.

<sup>66</sup> N.65



### **2.3 Local laws**

Historically, most laws and policy guidelines concerning the PWDs are culled from international human rights conventions, treaties and protocols. For instance, the United Nations Educational, Scientific and Cultural Organisation 1946 (UNESCO) and the Universal Declaration of Human Rights 1948 (UDHR) strongly influenced Nigeria's 1977 National Policy in Education. The policy stated that the PWDs, the disadvantaged and the gifted/talented, be they children or adults, would be granted adequate education to enable them contribute meaningfully to the development of the nation.<sup>67</sup>

The 1999 Constitution of the Federal Republic of Nigeria (CFRN) with its lofty ideals in Chapter II<sup>68</sup> and its robust fundamental human rights provisions in Chapter IV, appeared to give credence to disability rights. Section 17(2) and (3) of the CFRN provide thus:

- (2) In furtherance of the social order-
  - (a) every citizen shall have equality of rights, obligations and opportunities before the law;
  - (b) the sanctity of the human person shall be recognised and human dignity shall be maintained and enhanced;
- (3) The State shall direct its policy towards ensuring that-
  - (a) all citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment;
  - (b) provision is made for public assistance in deserving cases or other conditions of need;

The Nigerians with Disabilities Decree of 1993 was the first indigenous legislation specifically targeted at backing the PWDs in various facets of life: education, healthcare, transportation, accommodation, employment and freedom from all shades of discrimination. The Act was heavily influenced by the Convention on Rights of the Child (1990), the United Nations Standard Rules on the Equalization of Opportunities for Persons

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<sup>67</sup> National Education Policy 1977, s.10.

<sup>68</sup> Chapter II of the 1999 Constitution contains the Fundamental Objectives and Directive Principles of State Policy.

with Disabilities (1993) and the Declaration on Rights of the Disabled (1995). The Disability Act declared the responsibility of government and other authorities and persons to adopt and promote policies that would ensure full integration of the PWDs into the mainstream of the society.<sup>69</sup> Mainstreaming and adequate education under the Act entailed the right of the PWDs to free primary and tertiary education, the adaptation of educational facilities to be accessible, the training of special educational personnel to handle their unique learning needs, vocational training and accessibility to public institutions, infrastructure and employment. There was also what may be referred to as affirmative action as the Act requires all employers of labour to reserve for the PWDs not less than 10% of the work force.<sup>70</sup>

A key problem with the Disability Act is that its definition of ‘PWDs’ was restricted to only those who had obtained a preliminary or permanent certificate of disability.<sup>71</sup> Therefore, the majority of PWDs who had no knowledge of such a certificate, or were unable to obtain it were not eligible for the protections contained in the Act. The major problem however, had to do with enforcement of the Act. A regulatory body known as the National Commission for People with Disability was to have been established alongside the Disability Act.<sup>72</sup> It was meant to promote the welfare of the PWDs in general and play a coordinating role between government and PWD Nigerians in eliminating those social and cultural practices which tend to discriminate against and dehumanize the PWDs. However, the Commission was not adequately funded or staffed, neither was it empowered to request recruitment data from employers in order to monitor recruitment. It could not institute legal actions in cases of alleged disability discrimination. In practice therefore, the Commission was ineffectual and died before it could live. And so, the responsibility for

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<sup>69</sup> S. 2(1) and (2).

<sup>70</sup> Section 6(2).

<sup>71</sup> According to Article 3 of the Disability Act, a ‘Disabled person’ means a person who has received a preliminary or permanent certificate of disability to have a 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, 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.

<sup>72</sup> Article 14, Disability Act.

disability-related issues has remained an addendum in the Rehabilitation Department of the Ministry of Women and Social Affairs.<sup>73</sup>

The failure of the third attempt to pass the revised disability bill sparked national protests from DPO's and concerned citizens across the country. The fact that president Buhari had appointed a person with disability as Senior Special Assistant on Disability Matters in 2016 to promote disability rights and in governance and society had raised the hopes of the populace that the President was indeed sympathetic to the cause. DPOs approached the Senate for assistance.<sup>74</sup> The issue continued to heat the polity until the bill received presidential assent on the 23rd of January 2019, just a few weeks before the 2019 national elections.<sup>75</sup>

The new Disability Act prohibits discrimination on grounds of disability in any manner or circumstance and imposes a fine of N1, 000,000 for corporate bodies and N100, 000 for individuals or a term of six-month imprisonment for violation. It also guarantees the right to maintain civil action for damage by the person injured against any defaulter.<sup>76</sup> It is henceforth mandatory that before any public structure is erected, it must conform to the new building code. A government or government agency, body or individual responsible for the approval of building plans shall not approve the plan of a public building if the plan does not make provision for accessibility facilities in line with the building code. An officer, who approves or directs the approval of a building plan that contravenes the building code, commits an offence and is liable on conviction to a fine of at least N1,000,000 or a term of imprisonment of two years or both.<sup>77</sup>

Moreover, discrimination is prohibited in public transportation facilities and service providers are to make provision for the physically, visually and hearing impaired and all persons howsoever challenged. This applies

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<sup>73</sup> CJ Eleweke & J Ebenso, 'Barriers to Accessing Services by People with Disabilities in Nigeria: Insights from a Qualitative Study', (2016) Vol 6 (2) *Journal of Educational and Social Research*, 25-40.

<sup>74</sup> Uwadima, P. 'As NASS Sets to Transmit Disability Bill to PMB for Assent', *Leadership*, March 4, 2018, <https://leadership.ng/2018/03/04/nass-sets-transmit-disability-bill-pmb-assent/>, accessed on February 5 2021

<sup>75</sup> J Agbakwuru, 'Buhari signs Disability Bill into Law', *Vanguard Newspaper*, January 24, 2019, [www.vanguardngr.com/2019/01/buhari-signs-disability-bill-into-law](http://www.vanguardngr.com/2019/01/buhari-signs-disability-bill-into-law) accessed on February 10 2021.

<sup>76</sup> Discrimination against Persons with Disabilities (Prohibition) Act 2018, s.1.

<sup>77</sup> N.76 at ss. 3 – 8,

to seaports, railways and airport facilities.<sup>78</sup> A five-year transitional period is stipulated within which public buildings, structures or automobiles are to be modified to be accessible to and usable by persons with disabilities, including those on wheelchairs.<sup>79</sup> The Act also gives persons with disability the right to free and inclusive education and healthcare, the right of first consideration in queues, accommodation and emergencies and condemns the act of using a person with disability for begging. All public organizations shall, as much as possible, have persons with disabilities constituting at least 5% of their workforce. The Act also encourages their participation in politics and public life.<sup>80</sup> Finally, the Act provides for the establishment of a National Commission for Persons with Disability which shall be vested with the responsibility for the education, healthcare social, economic and civil rights of persons with disabilities.<sup>81</sup> Ordinarily, the above sections should be ample basis for providing special facilities to improve accessibility and sanction discrimination against the PWDs but unfortunately, these laudable provisions are mere aspirations of the government which are not legally enforceable.<sup>82</sup> Again, nowhere in the Constitution are the PWDs mentioned, barring a vague allusion of ‘public assistance to deserving cases.’

Nevertheless, these shortfalls can be remedied by recourse to Section 42(3) which is not only legally enforceable, but also wide enough to cover all forms of discrimination: ‘No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.’<sup>83</sup> Unfortunately, Nigerians are painfully unaware or have a *laissez-faire* mentality over their rights in this area, therefore the judicial waters remain largely untested. From its early days, the Nigerian government would ratify various specific disability related Convention like the ILO Convention No 15a on Vocational Rehabilitation and Employment of Disabled Persons (1983/85) and the World Program of Action Concerning Disabled Persons (1981). However, Nigeria, being a dualist country which requires further domestication of ratified international instruments before

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<sup>78</sup> N.76 at Parts III and IV.

<sup>79</sup> N. 76 at s.6.

<sup>80</sup> N. 76 at Parts V and VII, ss. 16 – 30.

<sup>81</sup> Discrimination against Persons with Disabilities (Prohibition) Act 2018, s.33.

<sup>82</sup> Section 6(6)(c) of the 1999 Constitution makes it clear that these and other directives/objectives contained in Chapter Two are not legally enforceable.

<sup>83</sup> *Badejo v Federal Ministry of Education &Ors*, (1996) 8NWLR (464) 15 at 41, (1996) 9-10 SCNJ 51.

they can become legally enforceable, these conventions did not carry the force of law. It was not until the African Charter on Human and Peoples' Rights (1982) was domesticated<sup>84</sup> (re-legislated by the national assembly) that Nigeria enshrined key international human rights provisions which could be legally enforced to promote the rights of citizens<sup>85</sup> and potentially, the PWDs.

It is gratifying to note that Lagos State is a pioneer of the issues of persons living with Disabilities by the enactment of the Lagos State Special Peoples Law of 2010. The objective of the Law is to safeguard people living with disabilities in the state against all forms of discrimination and equalize their opportunities in all aspects of life<sup>86</sup>. Section 35 of the Law defines disability as a state of substantial impairment of the physical, visual, vocal, auditory, sensory or mental capabilities of a person at birth or by injury, sickness or its effect or congenital deficiency.<sup>87</sup> Section 21 of the Law specifically provides that no person living with disability shall be discriminated against on the ground of his disability by any person or institution. More particularly, the Law prohibits any employer from discriminating against PWD job seekers in form of job application procedure, terms and conditions of employment. Dismissal mainly on the ground of disability, and denial or limiting of PWD employees access to opportunities for promotion are also prohibited.<sup>88</sup> Other states in Nigeria that domesticated and or enacted the Disability Act into law are Kano, Jigawa, Anambra, Kogi, Ondo, Ekiti, Plateau, Kwara and Bauchi.

### **3. Equality and Non-Discrimination as a Right of Persons with Disabilities**

Equality and non-discrimination are the key concepts when considering the human rights of persons with disabilities. Ultimately, all issues arising in the lives of persons with disabilities can be framed within the context of equality and non-discrimination. It will then depend on the scope and

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<sup>84</sup> African Charter on Human and Peoples' Rights (Ratification and Enforcement Act) Chapter A9 No 2 of 1983.

<sup>85</sup> *Abacha v Fawehinmi* (2000) LPELR-SC 45/1997.

<sup>86</sup> Adejoke Oyewunmi and Philip Folarin, 'International Standards on Protection of the Disabled at Work: Wither Nigeria', available at: <http://ssrn.com/abstract=2813243> accessed on February 22 2021.

<sup>87</sup> Section 35 of the Law also defines multiple disability to mean more than one disability occurring in a person's life.

<sup>88</sup> Lagos State Special People's Law 2010, s.29 (2).

substance of the actor's approach to equality and non-discrimination whether these norms will deliver or not. This is why the domain of disability rights is so devoted to promoting equality and non-discrimination, although it of necessity addresses other substantive and procedural issues as well<sup>89</sup>. Entering the discourse on equality and non-discrimination, we are immediately confronted with the question on the relationship between the concepts of 'equality' and 'non-discrimination'. Are they symmetrical counterparts or do they differ in some regard? At first sight, it appears logical to use these two concepts as interchangeable, as they basically refer to the same matter, the notion of equal treatment of human beings. If one wants to make a distinction, it is possible to argue that equality represents an ideal, while non-discrimination rests on particular forms of actions. Within this distinction, the positive counterpart for 'non-discrimination' would be 'equal treatment'. When thinking about achieving equality, equal treatment does not necessarily lead to equality.<sup>90</sup>

Herein lies one of the primary objectives of this work, to demonstrate the need to consider non-discrimination (also) outside the scope of equal treatment, including the notion of positive measures that aim at achieving equality. In the context of this paper, equality is considered as an ideal, which is pursued through conduct of non-discrimination by different actors. Acknowledging the need to address both direct and indirect discrimination serves both the academic needs of differentiation between concepts and the examination of the practical significance of the concepts, well. The recognition of positive measures in achieving equality takes us to the distinction between formal and substantive equality, which is the foundation for the whole domain of treating different cases differently.

Formal equality means treating similarly situated individuals in an equal (same) manner. Substantive equality means treating all individuals

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<sup>89</sup> Jukka Kumpuvuori and Martin Scheinin, *Treating the Different Ones Differently – a Vehicle for Equality for Persons with Disabilities? Implications of Article 5 of the Convention on the Rights of Persons with Disabilities: (United Nations Convention on the Rights of Persons with Disabilities – Multidisciplinary Perspectives) the Center for Human Rights of Persons with Disabilities in Finland (VIKE) (Publications Series of VIKE No. 5).*

<sup>90</sup> D. Schiek et al, *Introductory Chapter. A Comparative Perspective on Nondiscrimination Law*, in D. Schiek et al (eds.), *Cases, Materials and Text on National Supranational and International Non-Discrimination Law* (Hart Publishing, Oxford, 2007), pp. 1-32, p. 26.

equally, even if they are in fact different, i.e not equal.<sup>91</sup> Substantive equality recognizes the wide spectrum of human diversity. Thus, it triggers the possibility for positive measures, not only making them acceptable but mandatory in cases of factual inequality. As to terminology, direct discrimination can be seen mostly functioning in the context of formal equality and being based on treating every similar case in the same way, without paying attention to differences that may be relevant.

Indirect discrimination can be seen to function mostly in the context of substantive equality, and it requires paying particular attention to the differences of the elements at hand.<sup>92</sup> Under that notion, it logically follows that ignorance of the differences of the elements at hand inevitably amounts to indirect discrimination. Different cases must be treated differently in order to achieve substantive equality.<sup>93</sup>

#### **4. Specific Rights of Persons with Disabilities**

##### **4.1 Rights of Persons with Disabilities to Equity in Employment Opportunity**

Disability is both a cause and a consequence of poverty. There is a strong relationship between disability and poverty and a cyclical tendency in which poverty makes people more vulnerable to disability and disability reinforces and deepens poverty. Access to employment for people with disability is inadequate, with the attendant economic and social implications if the status quo is maintained. Instructively, the vicious cycle

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<sup>91</sup> M . Stein, 'Same Struggle, Different Difference: ADA Accommodations as Antidiscrimination', (2004) 2 (53) *University of Pennsylvania Law Review*, pp. 589-590.

<sup>92</sup> However, Schiek pinpoints that also the recognition of direct discrimination may require acknowledging social reality in practice, see D. Schiek, 'Chapter Three. Indirect Discrimination', in Schiek et al (eds.), supra (pp. 323-475) p. 328. Thus, also direct discrimination works partly in the framework of substantive equality.

<sup>93</sup> The judgment by the European Court of Human Rights in the case of *Thlimmenos v. Greece* of 6 April 2000 illustrates well the development of the jurisprudence on the notion of the obligation to treat different cases different. In the ruling, the Court states: "The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different." (paragraph 44). De Schutter points out that the European Court of Human Rights has not yet affirmed an obligation to provide PWDs people with effective accommodations but that nevertheless there are signs that the Court is moving towards such an affirmation, see O. de Schutter, *Reasonable Accommodation and Positive Obligations in the European Convention on Human Rights*, in A. Lawson and C. Gooding (eds.), *Disability Rights in Europe. From Theory to Practice. Essays in European Law* (Hart Publishing, Oxford, 2005, pp. 35-64) p. 61.

of disability and poverty has been recognised, which led the United Nations to promulgate rules for equal opportunities for people with disability, with rehabilitation as one of the tenets for achieving an optimal level of independence.<sup>94</sup>

However, despite many disability initiatives, accessibility to employment opportunity is far from being achieved for people with disability in Nigeria. The poor perception of disability and people living with it has fuelled the lackluster attitude of governments in terms of policy direction and action on the provision of equal employment for PWDs. This is unfortunate because the extent to which a society provides the means of sustenance is probably not a good measure of how much interest it has in and attaches to the well-being of its PWDs.

Employment is crucial for every individual's economic and social well-being; yet nigerian attitudes and practices still demonstrate elements of discrimination against PWDs in the realm of employment which are well entrenched in the labour market. Some of these elements are conspicuous in: the policies of employers against PWD workers; employment agencies, both public and private, when they direct PWD workers into low-status occupations; the provision of employment quotas for the PWDs in society; the accessibility and compatibility of workplace facilities for the PWDs. In most of the organisations specialising in the employment of PWDs in Nigeria such as schools for the handicapped and even ministries responsible for the PWDs, management positions are held by non-disabled people. This level of inequality accelerates the discriminatory spiral into which the majority of PWDs find themselves. This is in contradistinction with South Africa which has the most comprehensive disability legislation and policy that address integration and employment opportunity for the PWDs.<sup>95</sup>

#### **4.2 Rights of Persons with Disabilities to Equity in Transportation to the Workplace**

Part 3 of the Nigerian Disability Act 2018 is dedicated to the transportation of persons with disabilities. However, the attitude and commitment of Nigeria to transportation still demonstrates clear

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<sup>94</sup> United Nations Standard Rules in Equalization of Opportunity.

<sup>95</sup> See, generally, the Employment Equity Act 1998 (South Africa).



discrimination against people with disability. Essentially transportation and mobility plays a key role in the struggle to meet employment requirements and equal opportunities in the workplace environment to prevent discrimination against people with disability in Nigeria. It must be noted that affordable and reliable transportation allows people, and especially those with disability access to important opportunities in education, employment, healthcare, housing and community life.

Due to Nigerian's lackadaisical attitude to the rights of people with disability in this realm, transportation infrastructure have remained disproportionately inaccessible to people with disability who more often than not, lack viable transportation options. Importantly, people with disability particularly need accessible, affordable transportation options that bring employment, healthcare, education, housing and community life within reach. However, transportation choices for people with disability are still limited and account for the persistent gaps in compliance that continue to create significant barriers for people with disability.

In Nigeria, there is no evidence of a commitment from the government through policy formulation in this area to provide adaptable and accessible transportation as an essential means of mobility to the workplace. When people with disabilities cannot access a station or bus stop, they may be forced to go out of their way to find one that is accessible, which in some cases may make travel prohibitive. Adequate and adaptable transport services are crucial for those individuals with disability who rely on it to get around. Therefore, the failure of the Nigerian government to show commitment in providing accessible transport services not only causes frustration but can also cause missed health appointments and employment problems for those with disability. It is argued that there is need for a programme of and support for new public transportation services and alternatives to assist individuals with disability with their transportation needs to the workplace. There ought to be mobility management programmes utilising a comprehensive and holistic approach to assist people with disability to use all types of transportation to meet their transportation needs.

#### **4.3 Rights of Accessibility to Public Facilities**

Another important area which inappropriately exposes people with disability to discrimination and neglect is in the realm of accessibility to

public facilities. This is despite the fact that the whole part 2 of the Nigerian Disabilities Act 2018 guarantees the rights of the PWDs to public facilities. However, the existing structural design of buildings in Nigeria, in both the public and private sectors and communities, do not take into account, making them accessible for people with disability. In order to secure the rights of people with disability (the lame, crippled and blind), the government should ensure through the town planning departments in all the states of the federation and the Federal Capital Territory, Abuja, that new buildings are constructed in accordance with codes and guidelines for accessibility while old buildings should be remodeled to meet the codes.

Similar efforts are required in the area of road construction and transportation that are adaptable to the particular circumstances of the PWDs person in society.

##### **5. Conclusion and Recommendations**

The passing of the Discrimination against Persons with Disabilities (Prohibition) Act 2018 is indeed commendable and a step in the right direction. However, it is common knowledge that without enforcement, this Act will remain a paper tiger, just like its predecessor (the Disability Decree of 1993). The pitfalls that engulfed previous efforts at disability legislation should be avoided so as to be able to harness the prospects of this laudable Act. There should be a greater inclusion of disability in the government national development plan as to how government intends addressing equality and discrimination against people with disability. People with disabilities should be empowered in all possible ways and be given equal benefits in the working sector. Government needs to constantly monitor the progress made by employers to accommodate and employ people with disabilities including management positions. Nigeria needs to take the issue of disability seriously and work towards eliminating any form of discrimination against people with disabilities. Labour laws need to be amended to include a greater protection on disabilities. Perchance, it is time that we have a single Act dealing specifically with disability management. There is a mammoth challenge with the current labour laws; as a result, the country cannot afford to shirk its responsibility with regard to addressing the issue of disability discrimination.