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## CHAPTER 8

### DISABILITY AND THE LAW IN NIGERIA: AN ANALYSIS

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#### **Introduction**

Disability is an all-encompassing word that covers deficiencies in a multitude of ways. For some time now, the disabled have faced one form of discrimination or the other in Nigeria. The equal treatment of unequal poses a question that strikes at the root of our common existence. This work therefore seeks to understand the nature of disability and the status of disability *vis a viz* the extant legislations in Nigeria. In doing this, the authors looked at the term disability holistically and further understand the nature and extent of disability. The thesis statement is that the work reviewed the existing legislations in Nigeria on disability in a bid to find out if there is any need to review same as it affects the disabled persons. Finally the work commends on the suitability or otherwise of the existing legislations on disability *vis a viz* the international scene and concludes with the implications of this work on special needs education.

#### **Nature and Definitions of Disability**

A disability, according to Beatrice Wright year?, is anything that is physically, mentally, or emotionally impairing. The disability can be seen as disabling by the person who has it or by outside parties (Wright:1975). A disability is any condition of the body or mind (impairment) that makes it more difficult for the person with the condition to do certain activities (activity limitation) and interact with the world around them (participation restrictions), Center for Disease Control (CDC). Disability can be:

- related to conditions that are present at birth and may affect functions later in life, including cognition (memory, learning, and understanding), mobility (moving around in the environment), vision, hearing, behavior, and other areas. These conditions may be
  - disorders in single *genes* (for example, Duchenne muscular dystrophy);
  - disorders of *chromosomes* (for example, Down syndrome); and
  - the result of the mother's exposure during pregnancy to infections (for example, rubella) or substances, such as alcohol or cigarettes. (CDC)



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According to World Health Organisation(WHO:2021), disability has three main dimensions. The dimensions are:

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.
3. participation restrictions in normal daily activities, such as working, engaging in social and recreational activities, and obtaining health care and preventive services.

The definition above points to the need to understand the concept of impairment. Impairment on the other hand is an absence of or significant difference in a person's body structure or function or mental functioning. It is however necessary to submit that problems in the structure of the brain can result in difficulty with mental functions or problems with the structure of the eyes or ears can result in difficulty with the functions of vision or hearing. Impairment may be classified into two, Structural Impairment and Functional impairment. Structural impairments are significant problems with an internal or external component of the body. Examples of these include a type of nerve damage that can result in multiple sclerosis, or a complete loss of a body component, as when a limb has been amputated (CDC).

Functional impairments on the other hand include the complete or partial loss of function of a body part. Examples of these include pain that doesn't go away or joints that no longer move easily(CDC).According to the ICF??? Write in full if not previously done so(WHO:2021):

- activity is the execution of a task or action by an individual.
- Pprticipation is a person's involvement in a life situation.

The ICF acknowledges that the distinction between these two categories is somewhat unclear and combines them, although basically, activities take place at a personal level and participation involves engagement in life roles, such as employment, education, or relationships. Activity limitations and participation restrictions have to do with difficulties an individual experiences in performing tasks and engaging in social roles. Activities and participation can be made easier or more difficult as a result of environmental factors, such as technology, support and relationships, services, policies, or the beliefs of others.

Since this work is not categorically discussing the rights of people living with disability but is actually considering the Law as it exists in Nigeria as regards disability, the first port of call requires a valid definition of disability under the Law accordingly. Section 6 of the UK Equality Act of 2010 provides as follows: 1) A person (P) has a disability if – (a) P has a physical or mental impairment, and (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities. The UK Equality Act of 2010 sees as disabled any person who has a physical or mental impairment that has a 'substantial' and 'long-



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term' negative effect on his/her ability to do normal daily activities. Substantial' is more than minor or trivial, e.g. it takes much longer than it usually would to complete a daily task like getting dressed while long term means 12 months or more, e.g. a breathing condition that develops as a result of a lung infection(UK Equality Act, 2010).

The Nigerians with Disability Decree of 1993 did not define disability but defined the term 'disabled' as follows: "Disabled person" means a person who has received preliminary or permanent certificate of disability to have condition which is expected to continue permanently or for a considerable length of time which can reasonably be expected to limit the person's functional ability substantially, but not limited to seeing, hearing, thinking, ambulating, climbing, descending, lifting, grasping, rising, 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. It went further to provide a clear and comprehensive legal protection and security for Nigerians with disability as well as established standard for enforcement of the rights and privileges guaranteed under the decree and other laws applicable to the disabled in the Federal Republic of Nigeria. It is important to state here that possibly this Decree may have been the first attempt at codifying what is seemed as the rights of the disabled in Nigeria. We will eventually get a look at this Decree in the course of this work. In terms of definition, the Discrimination against Persons with Disabilities (Prohibition) Act of 2018 in Section 57 defines disability to include long term physical, mental, intellectual or sensory impairment which in interaction with various barriers may hinder full and effective participation in society on equal basis with others. The same Section defines 'disabled' as disability. In conjunction with the definitions obtainable in the UK Equality Act of 2010 and the definition under the World Health Organization, we have a comprehensive definition of both disabled and disability.

## **Disability Legislations in Nigeria**

### **The Constitution of the Federal Republic of Nigeria 1999**

In a work of this nature, the first port of call when researching on the rights of the disabled is the Constitution of the country involved. This is so because the 1999 Constitution of Nigeria is the beginning and source of all Laws in Nigeria. The Constitution as we know it did not make any special provision for the disabled in Nigeria but the said Constitution made provision against all forms of discrimination. According to Iman and Abdulraheem – Mustapha(Iman et al:2016), 'a very important starting point when discussing fundamental rights is the Constitution, particularly the Nigerian Constitution, but a cursory exposition of the Bill of Rights in Chapter IV under the Constitution would reveal that there is no specific provision dedicated to the protectionof the rights of PWD(Iman et al:2016). In contrast, the chapter only guarantees the rightsof citizens generally and without



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discrimination. This position is common in jurisdictions with written constitutions where a chapter is usually dedicated to the fundamental rights of citizens in general, both able and disabled, without discrimination". (Iman et al:2016) Accordingly since the 1999 Constitution provides only for discrimination to all under Section 42, it might not be adequate for consideration in details in this work. Suffice it to say that the Constitution can be expanded to accommodate the rights of the disabled even though not in specifics.

### **The Nigerian Disability Decree of 1993**

In 1993, the Nigerian Government led by Gen Ibrahim Babangida enacted a Decree on the rights of the disabled in Nigeria which by virtue of a new enactment can be said to have been repealed. It however marks a watershed in the fight for the protection of the rights of the disabled in Nigeria. The Decree which had a total of 14 Sections also attempted to create what was known as National Commission for People with Disabilities. The Decree outlined its purpose under Section 1 as follows:

- a. to provide a clear and comprehensive legal protection and security for Nigerians with disability as well as establish standard for enforcement of the rights and privileges guaranteed under this decrees and other laws applicable to the disabled in the Federal Republic of Nigeria.

It went further under Section 2 to make a policy statement which implies that disabled persons shall be guaranteed treatment as equals to other Nigerians for all purposes in the Federal Republic of Nigeria. It further provides that it shall be the duty and responsibility of organs of government and of all authorities and persons to adopt and promote policies that will ensure full integration of the disabled into the mainstream of the society. On the part of the government, the Decree provides that the government shall ensure within the context of economic, political and social idea and objectives to Nigerians that:

- (a) disabled persons are fully integrated into the national economy.
- (b) disabled persons shall have equal rights, privileges, obligations and opportunities before the law.
- (c) disabled persons are provided equal and adequate education.

In Section 4 of the Decree, the rights and privileges of persons with disability were discussed. The rights relating to health services involve free medical and health services including general medical needs in all public health institutions among others. Still under health rights, the medical practitioners have a duty to issue preliminary certificate of disability which authorizes the carrier to free health services in all public health institutions. In Section 5, the Decree provides the rights available in education which provides for the disabled free education at all levels in all public educational institutions among other provisions. Section 6 discusses vocational rehabilitation and employment of all disabled persons while Section 7 provides that the government must take into consideration the needs of the



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disabled in all policy guidelines relating to housing. It also provides that not less than 10% of all public houses shall be apportioned to the disabled. Under Section 8 the disabled are guaranteed access to public institutions where there shall exist adequate mobility and suitable exits for the disabled. In Section 9, the disabled is entitled to free transportation by bus, rail or other conveyance outside air travel that serves the general public needs. Further priority shall be given to the disabled in all publicly supported transport system. Section 10 provides for supportive social services while Section 11 makes provisions for sports and recreation in such a way that the disabled is not discriminated against in all sporting and rehabilitation facilities. The Section 12 of the decree considers the necessity to provide sign language inset and or substitutes in at least one major newscast programme each day and for all telephone companies to provide special telephone devices for the hearing impaired. Section 13 considers voting access to the disabled and the assistance to be rendered to them by a person of his choice during voting. By Section 14 the Decree imposes funded support for legal clinics for the disabled. The concluding part of the enactment dealt with the Establishment of the National Commission for people with disabilities whose objective will be towards promoting the welfare of the disabled generally. It is important to highlight here that this decree has been repealed impliedly upon the enactment of the latest Act on this issue signed into Law in 2019. Accordingly, we shall now devote our energy towards reviewing the provisions of the 2019 Act.

### **Discrimination against Persons with Disabilities (Prohibition) Act**

It is important to state here that Nigeria ratified the United Nations Convention on the Rights of People with Disabilities (CRPD) in 2017 and then its optional protocol was earlier ratified in 2010. Flowing from the above ratifications, rights, groups among others persisted in challenging the government of the day to enact and domesticate the Law the government has ratified its protocol and convention. Between 2011 and 2015, the National Assembly passed the bill but then the government of the day failed to sign same into Law. Subsequently it was resent to the National Assembly which successfully passed the bill in December of 2018 and after a rowdy and controversial protest, the President on the 23<sup>rd</sup> day of January 2019 signed same into Law and hence the existence of the above mentioned Act. It is believed that the enactment of this Act is only a step towards the fulfillment of the Country's obligation under the CPRD. Before we discuss more on the CRPD, it is important that we look at the Disabilities Right and its provisions. The Act consists of 8 parts and we shall take the parts *seriatim*. Part 1 prohibits discrimination and makes provisions for the creation of awareness. Section 1 generally makes it an offence to discriminate against a person with disability and at the same time created a civil action for the same act which is defined as an offence. For corporate persons the offence is punishable by a fine of N1, 000,000.00 (One Million Naira) and for non-corporate persons a fine of N100, 000.00 (One Hundred Thousand Naira) and or imprisonment for a period of 6(six) months or



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both. The second section under Part 1 mandates the Federal Ministry of Information to create the necessary awareness of the rights of the disabled among other things. Part 2 of the same Act considers accessibility of physical structures by the disabled. Indeed Part 2 has only 6 Sections starting from Section 3 to Section 8. Section 3 creates right of access to a public building equally for a disabled person while Section 4 insists that a public building shall be constructed with the necessary accessibility aids that shall make them accessible and usable by the disabled. Section 5 provides for the right of the disabled to road use including sidewalks and pedestrian crossings. Sections 6 considers the newness of the Act and provides a transitory period of 5 years to enable all persons conform and modify same to be accessible and usable for the disabled persons. Sections 7 and 8 insists that the building plans of new buildings must conform to the requirement of this Act and where there is a complaint of inaccessibility by a disabled person, such complaints shall be taken into consideration in further modifications.

Part 3 deals with road transportation and contains Sections 9 to 12. Section 9 provides non-discriminatory clause for road service providers not to discriminate against the disabled among other things. By Section 10, the Act provides for ramps, lifts and other accessibility aids for the disabled especially among government transport service providers. It further provides that audio and visual displays of destinations in the transport vehicles must be complied with within 5 years from the commencement of the Act. Section 11 continues from where Section 10 stops and further encourages the full stopping of a vehicle to accommodate the disabled person among other innovations. It further mandated the authorities to keep the accessibility aids fully functional and duly maintained. What is more relevant is that the Act insists that when a disabled intends to board a vehicle all able bodied persons shall wait until the disabled has fully boarded the vehicle. It is however vital to say that these provisions under Section 11 are not criminalized and one wonders how they will be enforced. Under Section 12, there is a provision for a special parking for the disabled in public parking lots provided that the disabled has the necessary insignia on his vehicle to so indicate. The provision criminalized the non-provision of this parking space at N1, 000 per day of default for a corporate entity and N5, 000.00 fine for an able bodied person who obstructs the disabled parking space.

Part 4 comprising Sections 13 and 15 makes provisions for Seaports, Railways and airport facilities as they pertain to the disabled. It provides that seaports and railways shall be made accessible to the disabled and introduced assistive service to the disabled at the airports. It further requires that any document shall be translated for the ease of reading by a disabled when using either of these means of transportation. Part 5 of the Act seems to contain very crucial provisions for the disabled even as we question the practicability of the very lofty provisions. Section 16 prohibits the use of persons with disability in soliciting for alms and makes it an offence punishable with 6 months imprisonment or an option of fine of N100, 000.00 or both. Section 17 provides a right to free education for the



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disabled up to Secondary School level while also providing for unfettered right to education for the disabled. It also made provision for the provision of assistive educational devices. The question of whether this is operational or applicable is a question or another day. Section 18 talks of inclusive education and insists that all public schools up to tertiary institution shall be inclusive and accessible to the disabled including hiring staffs to cater to the special needs of the disabled. As a follow up to Section 18, the Act provides for the subsidization of the education of special needs personnel.

Section 20 provides for the appropriate mode of education for persons with disabilities by ensuring that their education is delivered in the most appropriate language, mode and means of communication for the individual and in environments which maximize academic and social development. Section 21 mandates the government to free and unfettered health care for the disabled in all public health institutions. One can safely say that some provisions here are certainly so difficult to apply especially in the present Nigeria. Section 22 provides for certificate of disability while Section 23 punishes for unlawful procurement of the said certificate. Section 24 tasks the government to provide special communication gadgets for the disabled in all public health institution while Section 25 charges the government to pay first attention to the disabled in any situation of risk and humanitarian emergencies. Beautiful provisions one will say but then how easy can their applications be?

Section 26 provides for the right of the disabled at queues and empowers them to be attended to first. The same section penalizes the contravention of the right to queue with a penalty of N50, 000.00 or 6 months imprisonment or both. Section 27 provides for selective accommodation for the disabled person by organizations, schools and government agencies. Part VI provides opportunity for employment and participation in politics and public life for the disabled. Section 28 makes provisions for equal right to work. It went further to criminalize same with a fine of N250, 000.00 per person or N500, 000.00 for a corporation whereas the principal officer of the corporation also has a fine of N50, 000.00 for violation of the said statute. Section 29 insists that public organizations shall offer at least 5% of their employment opportunities to the disabled. Section 30 on its own insists that persons with disabilities shall be given opportunity for participation in politics.

Part 7 of the Act established the National Commission for Persons with Disabilities to be under the Presidency and shall be a body corporate with perpetual succession. The segment considers the establishment of the Governing Council of the said NCPD. The governing council shall have disabled members representing each of the geo political zones of the country and as well as representatives from the Federal Ministries of Education, Women Affairs, Health, Sports, Housing, Transport, Environment, Labour and Productivity, Justice, Finance and representatives from the National Human Rights Commission and the National Population Commission among other members. It suffices to say that the remaining provisions of this Part 7 deal with the membership and tenure of office of the



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Commission, their functions and emoluments among other things. Part 8 particularly Section 40 discusses the existence of an Executive Secretary who shall see to the day to day running of the commission and shall be a person with disability. There shall also be other staffs of the commission that may be deployed from the public service of the federation or appointed by the commission. Section 50 insists that the Commission shall submit annual returns of its activities which shall be audited to the National Assembly. Part 9 of the Act simply dealt with miscellaneous provisions which include service of process, payment of debts, indemnity of officers, regulations and interpretations.

### **United Nations Convention on the Rights of People with Disabilities (CRPD)**

A brief review of the United Nations Convention on the Rights of People with Disabilities is in order here. The Convention on the Rights of People with Disabilities came into force on the 3<sup>rd</sup> of May, 2008 while Nigeria signed same on the 30<sup>th</sup> of March, 2007 and formally ratified same on the 24<sup>th</sup> of September, 2010. As at 6<sup>th</sup> of May, 2022, 185 Countries have formally ratified the Convention one of which is Nigeria. There are basically eight guiding principles of the Convention and they are as follows UN, (2008):

- 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.

The Convention according to the United Nations (UN:2008) is intended as a human rights instrument with an explicit, social development dimension. It adopts a broad categorization of persons with disabilities and reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms. It clarifies and qualifies how all categories of rights apply to persons with disabilities and identifies areas where adaptations have to be made for persons with disabilities to effectively exercise their rights and areas where their rights have been violated, and where protection of rights must be reinforced. It is therefore clear that the Act enacted by the Nigerian Government adopted the international instrument on the rights of the disabled in line with the expectations of the UN.

### **The Status of the Rights of the Disabled under the Law in Nigeria**

Currently, the analysis of existing legislations on the rights of the disabled leaves no room for another legislation. This simply entails that the existing legislation covers the gap. It is important to state that the issue of having beautiful



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legislations is not common to Nigeria. Indeed most countries beautify their legal system with beautiful laws but lack the will to effectively apply the said beautiful Law lying desolate on one side of the official shelf. A review of the Law on disability in Nigeria shows clearly a very elegant legislation designed to incorporate the disabled into the mainstream of the Nigerian society. However the pertinent question remains to what extent has the Law been implemented in Nigeria? A practical analysis of the Act in Nigeria shows that the Law is merely a glorified instrument on paper. It is enabling to arrive at this conclusion because the basic section of the Law which is Sections 1 and 2 are yet to be implemented. It is doubtful if anyone has been convicted in Nigeria for the offence of discriminating against a disabled person. It is doubtful too if there is any decided decision of the Courts in Nigeria on this issue.

Further Section 2 which requires enlightenment campaign as regards the rights of the disabled to be carried out in particular by the Federal Ministry of Information is lacking in all ramifications. It is a possibility that there have been budgetary provisions for that assignment but it is a reality that the assignment is not trending. The question therefore is what is the fate of this beautiful Law when the principal enforcer has failed in her own assignment? Perhaps there may be other provisions currently being enforced so we move further down. In most public buildings in Nigeria, there has not been any provision for the disabled. The approving authorities are yet to insist on the accommodation of the disabled particularly the physically disabled members of the society. It is not uncommon to attend to an airport in Nigeria and not see a wheel chair ramp. The existence of wheel chair ramps in most of our tertiary institutions is doubtful. The issue of free education for the disabled in Nigeria between the primary and secondary school levels is a mirage. It may be a campaign promise but that campaign promise has yet to be implemented. Free health care is also a charade as no public health institutions will accept to offer free health care. Basically too, the commission required to be established by the Government to see to the implementation of this beautiful Act appears not to be in existence. It therefore tells a story of the objective of the government as at the time of enacting this legislation. It appears simply that the enactment was in fulfillment of the UN obligation to enact and nothing more. It therefore leaves a sour taste in the mouth that the disabled in Nigeria are still being discriminated against more than 10 years after Nigeria has ratified the UN Convention on the Rights of People with Disabilities.

It appears further too that the people for whom the Law was made are not aware that they have legislation in their favour. We make this submission because the association of the disabled in Nigeria has a right of action against the government for non-conformity with the provisions of the Law. The question to pose then is; "Are they even aware that the Law exists"? This then brings us to Section 2 of the Law again which assigns the responsibility for creating awareness on the Federal Government through the Ministry of Information.



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## Suggestions

It is obvious that the rights of the disabled in Nigeria are still being violated despite the beautiful legislation made to prevent same. It is believed that as highlighted in the beginning of this work, the rights of the disabled are not uniquely captured in the *fons et origo* of the Country which is the Constitution of the Land. For instance, the Ghanaian Constitution provides the disabled persons with the right to live with their families and to participate in social and recreational activities among other things (Ghana Constitution:1992). A further foray into the Ghanaian Constitution of 1992 will highlight the further provision that forbids the subjection of disabled persons to discrimination. In Uganda, the Constitution also requires the Legislature to take actions to combat disability discrimination. (Art 35) It is pertinent to further add that the Rwandan Constitution of 2003 specifically also forbade discrimination of the disabled persons.(Art 11) It shows here that these African countries understood the importance of non-discrimination of the disabled and incorporated the Law in their *grund norm*. It is believed that, were Nigeria to do so, it will be easier to enforce these rights for the disabled.

Further, It is suggested that the government shall enforce to the latter the letters and spirits of the legislation in the overall best interests of the disabled in Nigeria. The commission created in the Law shall be inaugurated and empowered to work. The promises of free education and free health care implemented for the overall well-being of the disabled in the country. It is believed that where these are done, the disabled in Nigeria will have reasons to contribute their own quota towards the building of a befitting country free from all forms of discrimination.

### 6:0: Implication for the Special Needs Education

The major implication for the Special Needs Education obvious from this work is the need for enlightenment. There should be major enlightenment in such a way that adequate awareness of the existence of this beautiful legislation exists for the welfare of people with special needs. The enforcement of this law certainly signifies a new dawn for the disabled and all men of good will are enjoined to help in pushing the implementation of the legislation to the latter. The government should be pushed to implement same and this can be done through pro bono and public oriented litigation by the disabled association or even by the citizens. Where the provisions are duly implemented, the discrimination currently visible against the disabled will be a thing of the past.

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