

# DISABILITY'S RIGHTS TO HEALTH: AN OBLIGATION TRIGGERED BY CORONA VIRUS PANDEMIC

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**Abstract:** This paper examines the right to health and disabilities rights in the wake of Corona virus pandemic. The objective of this paper is to examine the applicable legal and policy frameworks on the rights of persons with disabilities and how it has adequately protected such persons in the face of Corona virus pandemic. The study adopts analytical, qualitative approach and builds its argument on existing literatures. The paper recommends the existing laws and policies on disability's rights to health be enforced by relevant agencies, whilst Article 25 of the Convention on the Rights of Persons with Disabilities 2006 should be made proactive.

**Keywords:** Right to Health, Disabilities, Rights, Corona Virus, Pandemic.

**Summary:** 1. INTRODUCTION. 2. RESULTS AND ANALYSIS. 2.1. What is the Right to Health?. 2.1.1. Disabilities Rights. 2.1.2. Corona Virus Pandemic. 2.1.3. Application of Rights To Health To Persons With Disabilities. 2.2. Covid-19 Pandemic And The Rights Of Persons With Disabilities. 2.2.1. Obligations On States And Responsibilities Of Others Towards The Rights To Health To Persons With Disabilities. 2.2.2. Notable Gap Between The Approaches To Enforcement And The Human Rights Standard In The Convention On The Rights Of Persons With Disabilities. 2.3. Application of the Principle of Non-Discrimination to the Right to Health. 3. CONCLUSION.

## 1. INTRODUCTION

The number of issues bothering on the rights to adequate health care services to persons with disabilities in the face of Corona virus (Covid-19) Pandemic compels intellectual attention. It is of course, at the heart of this need that this paper evaluates the strength and weaknesses of the human rights issues and developments provoked by the novel pandemic. It sets out principles, standards and norms that states need to be considered when amending or drafting legislations relating to persons with disabilities. In spite of the great strides taken globally in educating people around the world about the health challenge of the novel corona virus (Covid-19) pandemic, persons with disabilities still suffers a great neglect in terms of adequate health care services. Given the vulnerability of persons with disabilities in Nigeria, the Nigerian President Muhammadu Buhari signed into law the Discrimination against Persons with Disabilities (prohibition) Act (Discrimination Against Persons with Disabilities Prohibition Act 2018<sup>3</sup>) following a relentless advocacy by Disabilities Rights Activists. It should be noted that despite the international attention being focused on disabilities rights, the normative bases,

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<sup>3</sup> See Discrimination against Persons with Disabilities (Prohibition) Act 2018.

content, and responsibilities associated with the practical implementation of the existing legislations still remain contested. However, this paper noted that about 15 percent of Nigeria's populations have disability (World Health Disability Report 2011<sup>4</sup>).

In the light of the coronavirus outbreak (COVID-19) Pandemics, the erroneous conceptions on persons with disabilities and lack of strategic coherence in the implementation of the existing legislations, has at times, negatively impacted the practical implementation of protection mandates, with disabilities actors sometimes working at cross purposes. It should be emphasized that the outbreak of the novel coronavirus, otherwise known as Covid-19 Pandemic in Nigeria has therefore led to the suspension or restriction of some of the otherwise guaranteed fundamental human rights of persons with disabilities in the Constitution of the Federal Republic of Nigeria (Constitution of the Federal Republic of Nigeria 1999<sup>5</sup>). Initially, there was apparent public acceptance of the restrictions of the Covid-19 Regulations, signified by a high degree of compliance. But the manner of enforcement of the restrictions in several areas of Nigeria led to reports of human rights abuses. However, in enforcing this state of emergency, citizens' rights as provided for in Chapter Four of the Constitution of the Federal Republic of Nigeria (Chapter 4 of the Constitution of the Federal Republic of Nigeria, 1999<sup>6</sup>) are restricted. Indeed, the coronavirus pandemic reveals the deep-rooted level of marginalization and exclusion faced by persons with disabilities, many of which is occasioned by the gross violation of their rights to health (OHCHR: Covid-19 and the Rights of Persons with Disabilities April 2020<sup>7</sup>). In a similar manner, it is widely acknowledged that persons with disabilities tend to experience lower levels of health care due to not only to their primary and secondary health conditions and comorbidities, but also to the effects of social marginalization, poverty, denial of access to health and social services.<sup>8</sup>

It must be noted that the right to health is guaranteed under the African Charter on Human and Peoples Rights (African Charter on Human and Peoples Rights, 1979)<sup>9</sup> as well as under Chapter 2 of the Constitution of the Federal Republic of Nigeria<sup>10</sup> (as amended), the National Health Insurance Scheme Act (National Health Insurance Scheme 1999).<sup>11</sup> However, the question that remains pertinent is whether these rights can be restricted without necessarily subjecting persons with disabilities to inhuman and degrading treatment? The obvious answer to the poser is in the affirmative. It must be noted that the restriction of the disabilities rights to health is of different variants (Curry et al. 2001, pp. 60-79).

<sup>4</sup> World Health Disability Report 2011 <<https://www.who.int/2011>> accessed 9 June 2020.

<sup>5</sup> See the Constitution of Nigeria (1999).

<sup>6</sup> See Chapter 4 of the CFRN (1999).

<sup>7</sup> See Office of the High Commissioner United Nations Human Rights: Covid-19 and the Rights of Persons with Disabilities, 29 April 2020.

<sup>8</sup> See World Health Organization International Classification of Functioning, Disability and Health, Geneva, Switzerland, 2001).

<sup>9</sup> See African Charter on Human and Peoples Rights (1979).

<sup>10</sup> Chapter 2 of the CFRN (1999).

<sup>11</sup> National Health Insurance Scheme Act (1999).

There are persons who are ordinarily infected by the infectious disease and of course, there are equally persons who, though not infected, however, have their right to health restricted in the guise of “general good”. For these set of persons, the right to health is a constitutional right that should not be taken away lightly. By this very nature, the right to health of persons with disabilities cannot be achieved in isolation. It is closely linked to non-discrimination and other principles of individual autonomy, participation and Social inclusion, respect for difference accessibility, as well as equality of opportunity and respect for the evolving capacities of children (Article 3 CRPD, 2006).<sup>12</sup>

However, Persons with disabilities faces various challenges to the enjoyment of their rights to health. For instance, this paper noted that persons with physical disabilities often have difficulties accessing health care especially during this Covid-19 Pandemic: (Campbell, 2009, pp. 5294-5300). Also, persons with psychological disabilities have difficulty in accessing affordable treatment through the public health system as well as women with disabilities may not receive gender-sensitive health services<sup>13</sup>. Therefore, and in accordance with the Convention on the Rights of Persons with Disabilities, States are required to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities, including their right to health, and to promote respect for their inherent dignity (Article 1 CRPD, 2006).<sup>14</sup> It also corresponds with Article 25<sup>15</sup> regarding the “right to the enjoyment of the highest attainable standard of health without discrimination” for person with disabilities and further elaborates upon measures States should take to ensure that these rights are adequately protected (Oliver, 1996, p. 11).

Accordingly, these measures include ensuring that persons with disabilities have access to and benefit from those medical and social services needed specifically because of their disabilities, including early identification and intervention, services designed to minimize and prevent further disabilities as well as orthopaedic and rehabilitation services, which enable them to become independent, and prevent further disabilities and support their social integration (Committee Reports on Economic, Social and Cultural Rights, General Comments No. 5, 1994).<sup>16</sup> From a scholarly perspective, it is generally acknowledged that while all pandemics are unique in their level of transmission and breadth of impact, the severity and recent policy attention to the Covid-19 Pandemic, which has affected nearly every country globally, offers an opportunity to revisit the literature linking pandemics to disabilities rights and right to health. However, evidence directly examining these linkages is scarce, and a broader body of related literature can, in the short term, provide an evidence-informed understanding of mechanisms linking pandemics to right to health and disabilities rights. The question remains as to how the evolution towards greater provision of adequate health care to persons with

<sup>12</sup> Article 3 of the Convention on the Rights of Persons with Disabilities (2006).

<sup>13</sup> See Covid-19 and the Rights of Persons with Disabilities 2020.

<sup>14</sup> Article 1 Convention on the Rights of Persons with Disabilities (2006).

<sup>15</sup> Article 25 Convention on the Rights of persons with Disabilities (2006).

<sup>16</sup> See Committee on Economic, Social and Cultural Rights, General Comments No. 5 (1994) on People with Disabilities, and Articles 25(b) and 26 of the Convention on the Rights of Persons with Disabilities.

disabilities in the wake Covid-19 Pandemic will unfold. One possibility is a shift in interpretative emphasis from nature to severity of harm. However, it should be noted that disability studies has provided a theoretical knowledge from what we oftentimes termed a paradigm shift from the medical up to the social model of disability (Degener & Quinn 2017, pp. 17-19).

In this sense, Social model of disability consider disability as a social construct that discovers the problem of disability beyond the individual in discrimination policies. In another vein, when it comes to disability, the politics and understanding of social change are not just about the social model (Ibid).

For the purposes of clarity and emphasis, this article is divided into seven parts. The first part succinctly discusses the general notion of the paper. The second part embarks on clarification of concepts. The third part examines the application of the right to health to persons with disabilities. The fourth part considers some of the obligations on states with respect to right to health to persons with disabilities. The fifth part examines the relationship existing between human rights and disability. The sixth part highlights some of the notable gaps between the approaches to enforcement and the human rights standards in the Convention on the Rights of Persons with Disabilities. The seventh part examines the application of the Principle of Non-discrimination to the right to health. In the light of the above, the authors uses the doctrinal method to underscore the essence of the work and draws conclusion to the fact that more efforts need to be put in at the international, regional, and national levels, especially on the negative perception on the persons with Disabilities around the globe.

## **2. RESULTS AND ANALYSIS**

### **2.1. What is the Right to Health?**

Recent challenges and developments have made experts and scholars to examine the conceptual interpretation and meaning of the right to health in order to ascertain its inter-relatedness with other concepts. The right to health is an inclusive right. It includes a wide range of factors that can increase a healthy life.<sup>17</sup> The right to health is the economic, social and cultural right to a universal minimum standard of health to which all individuals are entitled (ICESCR, 1966).<sup>18</sup> However, the concept of the right to health has been enumerated in international agreements which include Universal Declaration of Human Rights (UDHR, 1948),<sup>19</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966),<sup>20</sup> and the Convention on the Rights of Persons with Disabilities (CRPD, 2006).<sup>21</sup> Also, it should be noted that the Preamble of the 1946 World Health

<sup>17</sup> See: *C.E.S.C. Ltd. v Subhash Chandra Bose and others* (1992) I LLJ 475 (SC). 18 (The Indian Court recognized right to health as part of right to live).

<sup>18</sup> See International Covenant on Economic, Social and Cultural Rights (1966).

<sup>19</sup> Universal Declaration of Human Rights (1948).

<sup>20</sup> International Convention on Economic, Social and Cultural Rights (1966).

<sup>21</sup> Convention on the Rights of Persons with Disabilities (2006).

Organization Constitution defines health broadly as “a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity (Constitution of the World Health Organization, 1948).<sup>22</sup>

According to the Constitution of the World Health Organization, the right to Health is defined as:

The enjoyment of the highest attainable standard of health, and enumerates some principles of this right as healthy child development; equitable dissemination of medical knowledge and its benefits; and government-provided social measures to ensure adequate health.

The right to health is a fundamental, and inalienable human rights that government cannot derogate from, but are rather obligated to protect and uphold (Grad, 1948).<sup>23</sup> The World Health Organization Constitution, notably, marks the first formal demarcation of a right to health in international law. Also, the right to health is relevant to all states; every state has ratified at least one international human rights treaty that recognizes the right to health directly or through rights to life and human dignity. This paper seeks to untangle and analyze the following questions on how would the World Health Organization’s Constitutional recognition of the right to health inform the organization’s response to global health challenges? Secondly, how can the World Health Organization reform strengthen United Nation system wide efforts to “mainstream” human rights in public health programming? In this context, this paper noted that when it comes to rights issues in the reform, it is not so much the design of the processes or structures that will make a difference, but it is to ensure that health as a human right is engrained into the mindset and attitudes of staff.

Additionally, the right to health is recognized, internally, in article 5(e) (iv) of the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5(e)(iv) ICERD, 1965),<sup>24</sup> articles 11(1)(f) and 12 of the Convention on the Elimination of All forms of Discrimination against Women,<sup>25</sup> and article 24 of the Convention on the Rights of the child.<sup>26</sup> Also, several regional human rights instruments as well recognize the right to health, such as the European Social Charter, 1961 as revised (article 11),<sup>27</sup> the African Charter on Human and Peoples Rights<sup>28</sup> and the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights.<sup>29</sup> Significantly, the right to health has been proclaimed by the Commission on

<sup>22</sup> See Constitution of the World Health Organization 1948 <<https://www.apps.who.int/gb/bd/pdf/bd47/en/constitution-en.pdf> accessed 9 June 2020>.

<sup>23</sup> F.P Grad, The Preamble of the Constitution of the World Health Organization (1948).

<sup>24</sup> Article 5(e)(iv) of the International Convention on the Elimination of All Forms of Racial Discrimination (1965).

<sup>25</sup> Article 11(1) (f) and 12 of the Convention on the Elimination of All Forms of Discrimination against Women, (1979).

<sup>26</sup> Article 24 of the Convention on the Rights of the Child, (1989) .

<sup>27</sup> Article 11 of the European Social Charter, (1961).

<sup>28</sup> The African Charter on Human and People Rights (1981).

<sup>29</sup> Additional Protocol to the American Convention on Human Rights Article10 (1988).

Human Rights,<sup>30</sup> as well as in the Vienna Declaration and Programme of Action of 1993 and other international instruments.<sup>31</sup>

However, certain gap exists in the drafting of Article 12 of the Covenant. In this sense, the Third Committee of the United Nations General Assembly did not adopt the definition of health contained in the preamble to the Constitution of the World Health Organisation, which conceptualizes health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”. However, the reference in Article 12(1) of the convention to “the highest attainable standard of physical and mental health” is not confined to the right to health care.<sup>32</sup> On the contrary, the drafting history and the express wording of Article 12(2) acknowledge that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can live a healthy life, and extends to the underlying determinants of health; such as food, portable water, adequate sanitation and healthy environment.

Furthermore, on the normative content of Article 12, the right to health is not to be understood as a right to be healthy. The right to health contains both freedoms and entitlements. These apply to all persons, specifically; paragraph 34 of the Committee's General Comment No. 5 protects persons with disabilities in the context of the right to physical and mental health. In this regard, the committee stresses the need to ensure that not only the public health sector, but also private providers of health with the principle of non-discrimination in relation to persons with disabilities. On a deeper level, there is a significant but little misconception about the right to health. First, the right to health is not the same as the right to be healthy. This common misconception is that the state has to guarantee good health, but however, good health is influenced by several factors that are outside the direct control of states, such as an individual's biological make-up and socio-economic conditions. In this regard, the right to health refers to the right to the enjoyment of a variety of goods, facilities, services and conditions necessary for the realization of healthy life. This perspective is particularly significant for an understanding of the right to health as the right to the highest attainable standard of physical and mental health, rather than an unconditional right to be healthy. Nevertheless, the rights apply to both the sick and healthy.

Secondly, the right to health is not only a programmatic goal to be attained in the long term. It would be pertinent to state that the fact that the right to health should be a tangible programmatic goal does not mean that no immediate obligations on states arise from it. But rather, states should make every possible effort, within available resources to realize the right to health and to take steps in the direction without delay. Thirdly, it should be noted that a country's difficult financial situation does not absolve it from having to take action to realize the right to health. In this context, it is often argued that states that cannot afford it are not obliged to take steps to realize this right or may delay their obligations indefinitely. Nonetheless, no state can justify a failure to respect its obligations because of lack of resources.

<sup>30</sup> See United Nation Resolution 1989/11.

<sup>31</sup> United Nation General Assembly Resolution 46/119/(1991).

<sup>32</sup> Common Article 3 of the Geneva Convention for the Protection of War Victims (1949).

### 2.1.1. Disabilities Rights

From a scholarly Perspective, it is generally acknowledged that Disabilities Rights are basic human rights of persons with disabilities who are beneficiaries of development and are entitle to adequate protection at all times. According to African Charter on Human and Peoples Rights, disabilities rights is define as “the rights of people with disabilities having certain basic rights to special measures of protection accorded to the aged and disabled persons in keeping with their physical or moral needs.”<sup>33</sup>

In this context, disabilities rights will be better understood from the definition of the word “Disability” as demonstrated by various institutions. However, the Disability Discrimination Act defines a disabled person as someone who has “a physical or mental impairment” that has a substantial and long term adverse effect on his or her ability to carry out normal day to day activities. In a similar note, the World Health Organization (WHO) defines Disabilities as an “Umbrella term covering impairments, activity limitations and participation restrictions.” It is important to underline that disability is a complex phenomenon, reflecting an interaction between features of a person’s body and features of the society in which he or she lives. In a similar fashion, the United Nations Convention on the Rights of Persons with Disabilities recognizes that disability is an evolving concept.<sup>34</sup> It provides thus:

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

In contemporary usage, despite the complex and multi-dimensional approach to the definition of disability, its fluidity accommodates different understanding of disability or impairment, but by defining the concept “disability” as an interaction, makes it clear that disability is not an attribute of the person.<sup>35</sup> In the light of the above definition of disability, it should be noted that the most important rights for a disable person is otherwise called disabilities rights. It is with this in mind that this paper maintained that disability is a human rights issue because people with disabilities experience in equalities, subjects of violations of human dignity and often times denied autonomy. However, this statement is thus connected to potential United Nation obligations to ensure respect for persons with disabilities. Also, while there is real scope for this argument on positive obligation, it is complicated and requires disentangling a range of legal issues which arises within the scope of human rights for the disabled persons. As a normative guide, a range of international documents have highlighted that disability is a human rights issue, including the World Programme of Actions concerning Disable People,<sup>36</sup> and the Convention on the

<sup>33</sup> Article 18(4) African Charter on Human and Peoples Rights (1979).

<sup>34</sup> Article 1 of the Convention on the Rights of Persons with Disabilities (2006).

<sup>35</sup> World Health Organization (WHO) Understanding Disability (2011), P. 5.

<sup>36</sup> See World Programme of Action Concerning Disable People (1982).

Rights of the Child,<sup>37</sup> and more importantly, the Standard Rules on the Equalization of Opportunities for People with Disabilities.<sup>38</sup>

Now, it might of course, be argued that human rights form a central plank on the new understanding and there is now widespread acceptance of the need for a human rights based approach to disabilities rights. It is worth noting however, that in the United Nations context, in order to understand the interpretative approach on disabilities rights from the understanding that the Convention on the Rights of Persons with Disabilities applies human right to disability, in other to make general human rights specific to persons with disabilities or any form of ailments (Megret, 2008, p. 515). In establishing what is particularly the actual definition of disabilities rights which may be seen as a natural development to fulfill obligations of International Human Rights Law, of course, rests heavily on the United Nations Charter and Regional Instruments. Of interest is the fact that this inherent rights of the United Nations informed the Ministerial Declaration<sup>39</sup> on July 2010 to recognize disability as a “Crosscutting” issue essential for the attainment of the Millennium Development Goals (MDG) emphasizes the need to ensure that women and girls with disabilities are not subject to multiple or aggravated forms of discrimination or be excluded from participation in the implementation of the Millennium Development Goals.<sup>40</sup>

As part of the efforts to ensure adequate protection and recognition of disabilities rights, emphasis was laid by the United Nations on Women with disabilities.<sup>41</sup> It should be noted that at the conceptual level article 7 of the Convention on the Rights of Persons with Disabilities (CRPD)<sup>42</sup> however, encourage states parties to take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children on the basis of the above observation, all actions concerning children with disabilities, the best interest of the child shall be a primary considerations. Also states parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.<sup>43</sup>

### **2.1.2. Corona Virus Pandemic**

To understand the term “Covid-19” as used in this paper, it is important to understand that the above term is commonly referred to as “Coronavirus Disease 2019” In other words, Covid-19 is a new disease, and details of its spread are still under investigation.<sup>44</sup>

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<sup>37</sup> The Convention on the Rights of the Child (1989).

<sup>38</sup> The Standard Rules on the Equalization of Opportunities for People with Disabilities (1993).

<sup>39</sup> See the Ministerial Declaration of the United Nations July, 2010.

<sup>40</sup> See the Ministerial Declaration Report on Millennium Development Goals (MDG).

<sup>41</sup> Article 6(1) and (2) of the convention on the Rights of Persons with Disabilities (2006).

<sup>42</sup> Article 7(1), (2) and (3) of the Convention on the Rights of Persons with Disabilities (2006).

<sup>43</sup> Article 3 of the Convention on the Rights of Persons with Disabilities (2006).

<sup>44</sup> World Health Organization, “Coronavirus very likely of animal origin, no sign of lab manipulation” Reuters 21 April 2020 accessed 19 May 2020.



It must be emphasized that the ongoing Corona Virus Pandemic is caused by severe acute respiratory syndrome coronavirus 2 (SARSCOV.2).<sup>45</sup> The outbreak of this pandemic was first identified in Wuhan, China, in December 2019.<sup>46</sup> The first step taken by the World Health Organization (WHO) in this regard was to declare the outbreak a Public Health Emergency of International concern on 39<sup>th</sup> January 2020, and a pandemic on 11<sup>th</sup> March.<sup>47</sup> However, available research has shown that as at 17 May, 2020. More than 4.66 million case of Covid-19 have been reported in more than 188 countries and territories, resulting in more than 312,000 deaths. More than 1-7 million people have recovered.<sup>48</sup>

The virus is primarily spread between people during close contact, most often via small droplets produced by coughing, sneezing and talking: (Hopkins & Kunar 2020). It is most contagious during the first three days after the onset of symptoms, although spread is possible before symptoms appear, and from people who do not show symptoms.<sup>49</sup> Of course, common symptoms include fever, cough, fatigue, shortness of breath, and loss of smell.<sup>50</sup> Also, complications may include pneumonia and acute respiratory distress syndrome.<sup>51</sup> The time from exposure to onset of symptoms is typically around five days, but may range from two to fourteen days. Although, recent studies have shown that patients from sixty years of age are at higher risk than children who may be less likely to become infected or, if so, may show milder symptoms or even asymptomatic infection. (Valavan & Meyer 2020, pp. 278-280). More importantly, there is no known vaccine or specific antiviral treatment. Thus, the primary treatment is symptomatic and supportive therapy.<sup>52</sup>

As seen above, it is clear that the pandemic has caused severe global economic disruption,<sup>53</sup> including the largest global recession which has led to the postponement or cancellation of sporting, religious, political and cultural events, (Jade, March, 2020),<sup>54</sup> widespread shortages exacerbated by panic buying; (Watts & Kommenda March, 2020), and decreased emissions of pollutants and greenhouse gases (UNESCO, Covid-19 Educational Disruption and Response March, 2020).<sup>55</sup> The further implications of this

<sup>45</sup> World Health Organization, "Novel Corona Virus – China" accessed on May, 2020.

<sup>46</sup> See "The World Health Organization Director – General's Opening Remarks at the media Briefing on Covid-19, 11 March, 2020" accessed may 19, 2020.

<sup>47</sup> See "Covid -19 Dashboard by the Centre for systems science and Engineering at John Hopkins University", Arcegis John Hopkins University accessed 19 May, 2020.

<sup>48</sup> See Centres for Disease Central Spreads", 2 April 2020. Accessed 19 May 2020.

<sup>49</sup> United States Centre for Disease Control and Prevention, "Corona Virus Disease 2019 (Covid-19) Symptoms" 20 March, 2020, accessed 19 May, 2020.

<sup>50</sup> See United States Centres for Disease Control and prevention, "Interim Clinical Guidance for Management of patients with Confirmed Coronavirus Disease. (Covid-19)" 4 April 2020 accessed 19 May, 2020.

<sup>51</sup> United States Centres for Disease Control and Prevention, "Symptoms of Novel Coronavirus (2019-NCOV)" 10 February 2020, accessed 10 May, 2020.

<sup>52</sup> International Momentary Fund Report on Covid-19, "The Great Lockdown: Worst Economic Downturn Since the Great Depression" 2020.

<sup>53</sup> "A List of What's Been Canceled Because of the Coronavirus" The New York Times acceded 19 May, 2020.

<sup>54</sup> S.Jade, "Why there will soon be tons of toilet papers, and what food may be scarce, according to supply chain exports". 18 March, 2020.

<sup>55</sup> United Nations Educational, Scientific, Cultural Organization (UNESCO), "Covid-19 Educational Disruption and Response" 4 March 2020 accessed 19 May, 2020.

pandemic caused the closure of schools, universities, colleges, and churches either on a nationwide lockdown or local basis in 186 countries, affecting approximately 98.5 per cent of the world's student population (Clamp, March 2020).<sup>56</sup> It is important to emphasize that the general notion about this virus has spread online; (Tavenise & Oppel New York Times, March 2020).

### **2.1.3. Application of Rights To Health To Persons With Disabilities**

Over the past decade, an international consensus has developed around the need for a right-based approach to persons with disabilities. However, a human-rights based approach is a conceptual framework for dealing with a phenomenon such as persons with disabilities that is normatively based on international human rights standards and that is operationally directed to promoting and protecting human rights. A key point to note is that, it is only in recent years that persons with disabilities have brought about a paradigm shift in attitudes towards them. This has seen a move away from regarding them as “objects” of charity and medical interventions towards their empowerment as “subjects” of human rights, including but not limited to the right to health.

Similar concerns have already been expressed on the fact that the right to health of persons with disabilities cannot be achieved in isolation, rather it is closely linked to non-discrimination and other principles of individual autonomy, participation and social inclusion, respect for difference, accessibility, as well as equality of opportunity and respect for the evolving capacities of children (Article 1 CRPD, 2006).<sup>57</sup> Given the increasing importance of the disability rights to health, it is not surprising that persons with disabilities face various challenges to the enjoyment of their right to health. For instance, this paper noted that persons with physical disabilities often have difficulties accessing healthcare, especially during this Covid-19 Pandemic when there are lockdowns and restriction of movement.<sup>58</sup> Also persons with psychological disabilities may not also have access to affordable treatment through the public health systems. By way of emphasis, it should be pointed out that medical practitioners sometimes treat persons with disabilities as objects of treatment rather than rights-holders and do not always seek their free and informed consent when it comes to treatments. However, this situation is only degrading, it is a violation of human rights under the Convention on the Rights of Persons with Disabilities and unethical conduct on the part of the medical professional. According to Koch, disability comprised of a notion of and or other status. (Koch 2009, p.73).

Against this background, it is true that persons with disabilities are also disproportionately susceptible to violence and abuse. Nonetheless, while it is true that person with disabilities are victims of physical, sexual, psychological and emotional abuse, neglect and financial exploitation, women with disabilities are particularly exposed to forced sterilization and sexual violence. It must however be borne in mind that violence

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<sup>56</sup> R. Clamp, “Coronavirus and the Black Death: Spread of Misinformation and Xenophobia shows we haven't Learned from our past” 5 March, 2020.

<sup>57</sup> Article 1 of the Convention on the Rights of Persons with Disabilities (2006).

<sup>58</sup> See United Nations Human Rights: COVID-19 and the Rights of Persons with Disabilities (2020).

against persons with disabilities often occurs in a context of systemic discrimination against them in which there is an imbalance of power. On the other hand, the conceptualization of disability as object of charity and medical interventions towards their empowerment, of course, informed the erroneous believe that they should be treated without their free and informed consent, a clear and serious violation of their right to health. Oftentimes, persons with disability face the vulnerability of being locked up in institutions of charity simply on the basis of disability, which can have serious psychological repercussions and overtly impede their enjoyment of the right to health and other rights. However, the implementation of the Covid-19 restriction order has let much to be desired as it relates to the dignity of persons with disabilities. All over Nigeria, instances abound where state actors have subjected persons with disabilities and other citizens to dehumanizing treatments either by flogging them or engaging in corporal punishments all in the guise of implementing the present lock-down. It is noteworthy however that states are required to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms of persons with disabilities including their right to health, and as well to promote respect for their inherent dignity.<sup>59</sup> In addition, this newly adopted convention recognizes the “right to the enjoyment of the highest attainable standard of health without discrimination” for persons with disabilities and further elaborates upon measures states should take to ensure this right.<sup>60</sup>

Consequently, by virtue of the above, article 25 of the convention outlines measures which include ensuring that persons with disabilities have access to and benefit from those medical and social services needed specifically because of their disabilities, including early identification and intervention, services designed to minimize and prevent further disabilities as well as orthopaedic and rehabilitation services, which enable them to become independent, prevent further disabilities and support their social integration.<sup>61</sup> Similarly, the Convention on the Rights of the Child<sup>62</sup> recognizes the right of children with disabilities to special care and to effective access to health-care and rehabilitation services.

## 2.2. Covid-19 Pandemic And The Rights Of Persons With Disabilities

From the preceding sections of this paper, it must be acknowledged that the significance of the right to Health to persons with disabilities in the wake of COVID-19 Pandemic cannot be over emphasized. But it must be made succinctly clear, that while Covid-19 Pandemic threatens all members of the society, persons with disabilities are disproportionately impacted due to attitudinal, environmental and institutional barriers that are reproduced in the Covid-19 response.<sup>63</sup> Understandably therefore, during this

<sup>59</sup> Article 25 of the Convention on the Rights of Persons with Disabilities (2006).

<sup>60</sup> See Committee on Economic, Social and Cultural Rights, General Comment No. 5 (1994) – on Peoples with Disabilities. Articles 25(b) and 26 of the Convention on the Rights of Persons with Disabilities (2006).

<sup>61</sup> Article 33 of the Convention on the Rights of the Child (1989).

<sup>62</sup> United Nations Human Rights, “Covid-19 and The Rights of Persons with Disabilities 29 April, 2020.

<sup>63</sup> See Estimates from United Nations Department of Economic and Social Affairs. <<https://www.un.org/development/desa/disabilities/disability-and-ageing.html>> accessed 10 June 2020.

Covid-19 Pandemic, persons with disabilities who are dependent on support for their daily living may find themselves isolated and unable to survive during lockdown measures, while those living in institutions are particularly vulnerable, as evidenced by the overwhelming numbers of death in residential care homes and psychiatric facilities: (Nanni, 2006 pp. 372-9). Specifically, and in the context of the Covid-19 Pandemic, persons with disabilities may have increased risk for exposure, complications, and death such as:

- (i) Persons with disabilities are disproportionately represented among older populations who are known to be at increased risk in the Covid-19 Pandemic. However, it is estimated that more than 46 per cent of the world's population of people over age sixty have disabilities,<sup>64</sup>
- (ii) Children and adults with disabilities may have underlying health conditions that increase their risk of serious complications from Covid-19, and.
- (iii) Persons with disabilities are disproportionately represented among the world's people living in poverty.<sup>65</sup> The impacts of Covid-19 are likely to be worse for people in lower socio-economic groups; (Ibid, 2009 pp. 5294-5300).

It is however necessary to emphasize that while facing increased risk, men, women, boys and girls with disabilities also face obstacles to accessing prevention and response measure.<sup>66</sup> Also, quarantine, health facilities and transport established as part of the Covid-19 response may fail to cater for the requirements of children and adults with disabilities, including with regards to accessibility. From the foregoing, it is essential to examine the following questions as it relates to the Covid-19 Pandemic and the rights of persons with disabilities. Firstly, what is the impact of Covid-19 on the Right to Health of persons with Disabilities? It should be noted that despite being a population that is particularly at risk to Covid-19 persons with disabilities face even greater inequalities in accessing health care during the pandemic due to inaccessible health information and environments, as well as selective medical guidelines and protocols that may magnify the discrimination persons with disabilities face in healthcare provision. These protocols at times reveal medical bias against persons with disabilities concerning their quality of life and social value. In the light of the above question, this paper however advocate that states and other stakeholders should repeal provisions that prevent access to treatment based on disability, level of support needs, quality of life assessments or any other form of medical bias against persons with disabilities, including within guidelines for allocation of scarce resources such as ventilators or access to intensive care. Also a continued supply and access to medicines, persons with disabilities during the pandemic is a good response. Similarly, as a constant practice, the Bioethics Committee of the San Marino Republic has produced Covid-19 guidance on triage, which prohibits discrimination on the basis of disability.

<sup>64</sup> See <<https://social.in.org/publication/UN-Flayship-Report-Disability-Finalpdf>> accessed 10 June 2020.

<sup>65</sup> See, <<https://www.weforum.org/agenda/2020/03/coronavirus-pandemic-inequality-amnd-workers>> accessed 10 June 2020.

<sup>66</sup> See <<https://www.sanita.sm/on-line>> accessed 10 June 2020.

It maintained that:

The only parameter of choice therefore, is the correct application of triage, respecting every human life, based on the criteria of clinical appropriateness and proportionality of the treatments. Any other selection criteria, such as age, gender, social or ethnic affiliation, disability, is unethically unacceptable, as it would implement a ranking of lives only apparently more or less worthy of being lived, constituting an unacceptable violation of human rights.<sup>67</sup>

In the same vein, the office for Civil Rights at the United States Department of Health and Human Services also issued a bulletin to ensure that authorities prohibit discrimination on the basis of disability, stating that:

Persons with disabilities should not be denied medical care on the basis of stereotypes, assessments of quality of life, or judgments about a person's relative worth based on the presence or absence of disabilities or age.<sup>68</sup>

And further, this bulletin also provides guidance to authorities on ensuring outreach and accessibility of information and communications to persons with disabilities for opportunity to benefit from emergency response efforts, including making reasonable accommodations to help ensure that the emergency response is successful and minimizes stigmatization. Another focus on promising practices, more specifically, this paper also noted that in Canada, the Covid-19 Disability Advisory Group was established with the participation of persons with disabilities and their representative organizations to advise the government on disability specific issues, challenges and systemic gaps and strategies, measures and steps to be taken.<sup>69</sup>

Secondly, having examined the impact of Covid-19 on the right to health of persons with disabilities, this paper will look at the second question which is: what is the impact of Covid-19 on persons with disabilities living in institutions? With regard to above question, it is indeed frequently advocated that Covid-19 is having a disproportionate impact in psychiatric institutions, social care institutions such as the orphanages, day-care centres, rehabilitation centres and institutions for older persons, resulting in high rates of infection and death. However, this paper noted that the number of deaths in care homes represented from 42 per cent to 57 per cent of all Covid-19 deaths in those countries: (Comas-Herrera et al. April, 2020 p. 5).

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<sup>67</sup> See <<https://www.sanita.sm/on-line/home/bioethical/commitato-sammerinesedi-biotica/documents-in-english/document2116023.html>> accessed 10 June 2020.

<sup>68</sup> See Office for Civil Rights United States Department of Health and Human Services <<https://www.hhs.gov/sites/default/files/ocr-bulletin-3-28-20pdf>> accessed 10 June 2020

<sup>69</sup> See The Canadian COVID-19 Disability Advisory Group <<https://www.canada.ca/en/employment.social.development/news/2020/04/backgrounder-COVID-19-disability-adviosory-group.html>> accessed 10 June 2020.

Also, institutionalized persons with disabilities faced heightened risk of contracting Covid-19 due to underlying health conditions, difficulty in enforcing social distancing amongst residents and staff, and abandonment by staff. This would suggest that persons with disabilities living in institutions also face greater risks of human rights violations, such as neglect, restraint, isolation and violence. What emerges from the above scenario, however, is that states and stakeholders during the emergency period should ensure continued respect of the rights of persons living in institutions, including freedom from exploitation, violence and abuse, non-discrimination, the right to free and informed consent, and access to justice.<sup>70</sup>

Thirdly, there is thus a critical need to examine the impact of Covid-19 on the right of persons with disabilities to live in the community. All the same, persons with disabilities faces specific barriers in carrying out their daily lives in the community due to Covid-19 response measures in particular, stay at home restrictions that do not consider their needs creates disruptions and new risks to their autonomy, health and lives. It is in this context that some persons with disabilities, such as persons with psychosocial disabilities and autistic persons might not be able to cope with strict confinement at home. Also, public information on Covid-19 measures is not systematically communicated nor disseminated in accessible formats and means to reach all persons with disabilities. Given the impact of Covid-19 on the right of persons with disabilities in the communities, as a promising practices, the new Zealand Ministry of Health has a section of its website dedicated to providing information in accessible formats, including sign language and easy to read.<sup>71</sup> Notably, however, the government of Mexico adopted a similar practice.<sup>72</sup> Also, Argentina,<sup>73</sup> Colombia,<sup>74</sup> Panama,<sup>75</sup> the United Kingdom of Great Britain<sup>76</sup> have all introduced similar measures. Notwithstanding these various promising practices to ensure that information on Covid-19 and related measures is accessible to persons with disabilities through sign language interpretation, captioning, and easy to read formats, and among others. This raises concerns on the implementation when viewed through the lens of international human rights standards (Palmer, 2011, pp. 210-218).

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<sup>70</sup> See The Statement by Regional and International Organization of People with Psychosocial Disabilities with Recommendations in the Context of COVID-19 Pandemic. <<http://dkmedia.s3-amazonaws.com/AA/Ag/chrusp-biz/downloads/357738/COVID-19-and--persons-with-psychosocial-disabilities-fianalversion.pdf>> accessed 10 June 2020.

<sup>71</sup> CARE (2020) Gender Implications of COVID-19 outbreaks in Development and Humanitarian Settings <<https://www.care-international.org/files/files/genderedimplicationsof COVID-19-executivesummary.pdf>> accessed 10 June 2020.

<sup>72</sup> See New Zealand Ministry of Health <<https://www.health.govt.nz/our-work/diseases-and-conditions/COVID-19-novel-coronavirus/COVID-19-novel-coronavirus/COVID-19-novel-coronavirus-resources-new-zealand-sign-language>> accessed 10 June 2020.

<sup>73</sup> See The Government of Mexico <<https://www.coronavirus-gob.mx>> accessed 10 June 20

<sup>74</sup> Article 6(5) Argentina Decree 297/2020

<sup>75</sup> See Colombia <<https://www.minsalud.gov.co/sites/rid/lists/BibliotecaDigital/RIDE/DE/Ps/asif13-personas-con-discapacided- COVID-19-pdf>> accessed 10 June 2020

<sup>76</sup> See SENADIS, Panama Covid-19, 33. (2020)

Fourthly, several human rights defenders and activities oftentimes interrogates the impact of Covid-19 on the right of persons with disabilities as well as the right to health and protection from violence. It is important to note that persons with disabilities are at higher risk of violence, particularly when isolated. In fact, women and girls with disabilities not only faces higher risks of violence compared to other women, they are at higher rates gender, sexual, intimate partner and domestic violence,<sup>77</sup> than with men with disabilities.<sup>78</sup> While information on disability and gender based violence in the context of Covid-19 is not currently available, experience shows that in similar circumstances, people with disabilities are particularly at risk.<sup>79</sup> Fifthly, obviously, within the framework, the question on the impact of Covid-19 on the specific population groups in which persons with disabilities are over represented (persons with disabilities and those without adequate housing of course, is a major concern of this paper. Be that as it may, it is widely agreed that persons with disabilities are over represent among the prison population (Pearce, March 2020),<sup>80</sup> in particular persons with psychosocial disabilities and persons with intellectual disabilities. A further issue that has been raised in respect of prisoners with disabilities is that they are at heightened risk of infection due to the high-risk of infection in crowded and unhygienic conditions where physical distancing is not possible. This paper has argued that the current state of prisoners with disabilities has raised different challenges not only by persons with disabilities in person and pre-trial detention within the criminal justice and penitentiary systems, but also those who are currently under any form of administrative or other detention, including migrants with disabilities in immigration detention.

Indeed, it is also worth mentioning that some countries like the United Kingdom and Northern Ireland have some promising practices wherein prisoners with less than two months to complete their sentence are being released.<sup>81</sup> Also the United States of America have released or in the process of releasing prisoners.<sup>82</sup> In Colombia, persons with disabilities who have functional restrictions that prevent them from autonomously implementing protection measures are included among the beneficiaries of early release.<sup>83</sup> Further, in Argentina, the Supreme Court identified persons with disabilities as beneficiaries

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<sup>77</sup> See United Kingdom of Great Britain and Northern Ireland, Coronavirus Outbreak FAQs: What you can and cannot do, section 15, (2020)

<sup>78</sup> See World Health Organisation, Covid-19 and Violence Against Women what the Health Sector System can do 2020 <<https://apps.who.int/iris/bitstream/handle/10665/331699/WHO-SRH-20.04-eng.pdf>> accessed 11 June 2020

<sup>79</sup> UNDESA, Disability and Development Report, pp. 7,16,113-115,249-252 <[https://social.un.org/publications/UN Flagship-Report-Disabilities-Final.pdf](https://social.un.org/publications/UN%20Flagship-Report-Disabilities-Final.pdf)> accessed 11 June 2020

<sup>80</sup> E. Pearce, Disability Considerations in Gender Based Violence Programming During Covid-19 Pandemic <<https://www.gbvaor.net/sites/default/files/2020-03/disabilitypdf>> accessed 11 June 2020

<sup>81</sup> See Guidance: Covid-19 and Prisons, 29 April 2020 <<https://www.gov.uk/guidance/coronavirus-COVID-19-and-prisons>> accessed 11 June 2020,

<sup>82</sup> Guidance: Covid-19 and Prisons 29 April 2020 <<https://www.prisonpolicy.org/virus/virusresponsehtml>> accessed 11 June 2020

<sup>83</sup> See Colombia, Decreto Legislativo 546, 14 April 2020 <<https://daprepresidencia.gov.co/normativa/Decreto2020pdf>> accessed 11 June 2020.

of prison release efforts.<sup>84</sup> Given the rapid pace of these release and the pressing needs for other countries in Africa, Europe, America and Asia to embrace this changing trends, the National Justice Council of Brazil issued a recommendation to review, reassess and release prisoners with disabilities including those in the Juvenile Criminal System.<sup>85</sup>

It is in light of the above development that this paper propose that: (i) states parties and other stakeholders should implement preventive measures within prisons to reduce infection risks including by identifying prisoners with disabilities and ensuring their access to support food, water and sanitation, applying isolation and physical distancing measures, requiring use of protective equipment, and improving hygiene conditions, and (ii) states parties and other stakeholders should reduce the prison population by releasing at-risk groups of prisoners, including persons with disabilities, applying early release and probation or shortening or commuting sentences and reducing the use of pre-trial detention and prompt ensure provision of support in the community through family and/or informal networks and funding support services by public and private service providers.

### **2.2.1 Obligations On States And Responsibilities Of Others Towards The Rights To Health To Persons With Disabilities.**

As a crucial concern of this paper, it is becoming increasingly clear that states have the primary obligation to protect and promote human rights and right to health of persons with disabilities. However, each state party to the present covenant<sup>86</sup> undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present covenant by all appropriate means, including particularly the adoption of legislative measures.

More specifically, this paper noted that Article 2(1) of the International Covenant on Economic, Social and Cultural Rights under lines that states have the obligation to progressively achieve the full realization of the rights under the covenant. However, this is an implicit recognition that states have resource constraints and that it is necessarily takes time to implement the treaty provisions. Consequently, some components of the rights protected under the covenant, including the right to health are deemed subject to progressive realization. While the role of international assistance and cooperation is reflected in other instruments as well, such as the Charter of the United Nations, the Universal Declaration of Human Rights and the Convention on the Rights of the Child,<sup>87</sup> that arguably, does not amount to a substitute for domestic obligations, but however, comes into play in particular if a state is unable to give effect to economic, social and cultural rights on its own, and/or

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<sup>84</sup> Guidance: Covid-19 and Prisons Argentina, National Supreme Court of Justice, Acordada 10/2020 and Complementary regulation, Federal Court of Criminal Appeal, Acordada 9/2020 <<https://www.cnpt.gol.ar/wp-content/uploads/2020/04/Acordada-9-20CFCP.pdf>> accessed 11 June 2020

<sup>85</sup> Guidance: Covid-19 and Prisons Brazil, National Justice Council, Recommendation 62, 17 March 2020. <<https://www.cnj.jus.br/wp-content/uploads/2020/03/62pdf>> accessed 11 June 2020.

<sup>86</sup> Article 2(1) and (2) of the International Covenant on Economic, Social and Cultural Rights (1966)

<sup>87</sup> See General Comment 27(67) (1999) Para. 4



requires assistance from other states to do so. With regards to the above, states should thus have an active programme of international assistance to enable other states to meet their obligations in relation to the right to health.<sup>88</sup> It should be pointed out that the most feasible measures to implement the right to health will vary from state to state, international treaties do not offer set prescriptions of particular relevance is the provisions of Article 2(1) of the International Convention on Economic, Social and Cultural Rights which provides that the full realization of the rights contained in the treaty must be achieved through “all appropriate means, including particularly the adoption of legislative measures.” However, a state needs a device to monitor and measure these variable dimensions of the right to health this right must be exercised in accordance with international law. Moreso, the International Covenant on Civil and Political Rights (ICCPR) unlike other Treaties such as Convention on the Elimination of Discrimination Against Women (CEDAW) or the Child Rights Convention (CRC) does not focus on specific population group. Drawing from the statement in the preamble of the Covenant that “recognition of the inherent dignity and of the equal and individual rights of all members of the human family is the foundation of freedom, Justice, and peace in the world” can certainly be interpreted to include persons with disabilities. (Quinn et al 2002, p. 64). With respect to the right to health, it is important to stress that the Committee on Economic, Social and Cultural Rights has stressed that states have a core minimum obligation to ensure the satisfaction of minimum essential levels of each of the rights under the covenant.

### **2.2.2 Notable Gap Between The Approaches To Enforcement And The Human Rights Standard In The Convention On The Rights Of Persons With Disabilities**

From a legal perspective, states parties under the convention requires to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities (Stein & Lord, 2009 p. 32).<sup>89</sup> However, this requires state parties to take active steps to alter customs and practices that are based upon outdated paradigms which prevent survivors with disabilities from exercising their rights to be free from violence at home. This paper noted that prejudice against survivors with disabilities remains a significant barrier to their capacity to obtain protection and justice. It is important to understand that despite the existence of the Convention on the Rights of Persons with Disabilities and Public Policy models that perceives persons with disabilities as citizens entitled to exercise all their human rights, while in some contexts, there is an extreme reaction to persons with disabilities with hatred and acrimony. It is important to note that the core human rights treaties and soft- law instruments appears insufficient in addressing the particular need of person's with disabilities. However, the Convention on the Rights of Persons with Disabilities has been criticized as been “superfluous” and parallel to charges leveled against the Convention on the Elimination of Discrimination Against Women.

<sup>88</sup> Article 4(1)(b) of the Convention on Persons with Disabilities (2006)

<sup>89</sup> M.A. Stein & J.E. Lord “Future Prospects for the United Nations Convention on the Rights of Persons with Disabilities” in the United Nations Convention on the Rights of Persons with Disabilities, 2009, p. 32.

This stems from the fact that law influences one's behavior and also alter a wide social perceptions or practices (Ibid).

Approaching the issue from the medical angle, this paper noted that under the medical model, medical professionals construct themselves as the gatekeepers of what constitutes a normal ability and when a person's ability means they are characterized as abnormal (Article 2(2) ICESCR, 1966).<sup>90</sup> This brings to fore that if a person's ability does not meet the medically constructed standard of normality, then under this model, the person is regarded as defective and often excluded from mainstream culture (Article 2(1) CRC, 1989)<sup>91</sup> for mainstream humanitarian approaches, under the medical model, a person with disability is constructed as a patient that has reduced capacity and may require their affairs be managed on their behalf. In this sense, it is submitted that the medical model, and its problematising of disability, continues to influence public policy debates in this twenty – first century, which has led to the wrong perception of persons with disabilities being cast as passive recipients of care and support.

### **2.3. Application of the Principle of Non-Discrimination to the Right to Health**

Obviously, it is argued that the principle of non-discrimination applies to the right to health of persons with disabilities. Before examining the pros and cons of the application of the principle of non-discrimination to the right to health, it is important to underscore that state of discrimination vis-à-vis the application of this principle in the protection of the rights of the persons with disabilities. However, the term Discrimination means:

any distinction, exclusion or restriction made on the basis of various grounds which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise of human rights and fundamental freedom.

It is argued that discrimination provides a link to the marginalization of specific population groups and is generally at the root of fundamental structural inequalities in society. However, the impact of the above makes these groups more vulnerable to poverty and ill-health; traditionally, discriminated and marginalized groups such as persons with disabilities often bear a disproportionate share of health problems.

Also, it is an acknowledged fact that non-discrimination and equality are fundamental rights principles and critical components of the right to health. Thus, in the area of legislative competence, the International Covenant on Economic, Social and Cultural Rights,<sup>92</sup> and the Convention on the Rights of the Child,<sup>93</sup> appears to have identify the following non-exhaustive grounds of discrimination: race, colour, sex, language, religion,

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<sup>90</sup> Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (1966)

<sup>91</sup> Article 2(1) of the Convention on the Rights of the Child (1989)

<sup>92</sup> Article 5 of the Convention on the Elimination of All Forms of Racial discrimination (1965)

<sup>93</sup> See General Comment of the Committee on Economic, Social and Cultural Rights No. 14 (1916) Para. 18

political, national or social origin, property, disability, birth or other status according to the committee on Economic, Social and Cultural Rights, other status may include health status (e.g. HIV/AIDS) or sexual orientation. It is important to note also that the International Convention on the Elimination of All Forms of Racial Discrimination<sup>94</sup> also stresses that states must prohibit and eliminate racial discrimination and guarantee the right of everyone to public health and medical care.

Generally, non- discrimination and equality further imply that states must recognize and provide for the differences and specific needs of groups that generally face particular health challenges, such as higher mortality rates or vulnerability to specific diseases. Also the obligation to ensure non- discrimination requires specific health standards to be applied to particular population groups, such as women, children or persons with disabilities. In the light of the foregoing, the committee on Economic, Social and Cultural Rights further provides that there is no justification for the lack of protection of vulnerable members of society from health-related discrimination, be it in law or fact. It also indicates that even if times are hard, vulnerable members of society must be protected, especially through the adoption of relatively low-cost targeted programmes.<sup>95</sup>

### 3. CONCLUSION

This paper has addressed the issue of the impact of inadequate healthcare services on persons with disabilities in the wake of corona virus (Covid-19) pandemic. Therefore considering the devastating effects of corona virus pandemic against persons with disabilities, the health rights of persons with disabilities would be seen to deserve serious attention towards adequate provisions of health care services. Efforts should be made by government and non-governmental agencies to ensure that persons with disabilities are adequately catered for as well as live in stable and responsible homes. No doubt, disabilities rights to health are absolutely guaranteed under both international law and international human rights laws. However, the International Covenant on Economic, Social and Cultural Rights, widely considered as the central instrument of protection for the right to health, recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Also, other human rights instruments such as the International Convention on the Elimination of All Forms of Racial Discrimination,<sup>96</sup> the Convention on the Elimination of All Forms of Discrimination against Women,<sup>97</sup> the Convention on the Rights of the child,<sup>98</sup> the International Convention on the Protection of

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<sup>94</sup> Article 5(e)(iv) of the International Convention on the Elimination of All Forms of Racial Discrimination (1965).

<sup>95</sup> Articles 11(i)(f), 12 and 14(2)(b) of the Convention on the Elimination of All Forms of discrimination against women (1979)

<sup>96</sup> Article 24 of the Convention on the Rights of the Child (1989)

<sup>97</sup> Articles 28, 43(e) and 4(c) of the Protection of the Rights of All Migrants Workers and Members of their Families (1990)

<sup>98</sup> Article 25 of the Convention on the Rights of Persons with Disabilities (2006)

the Rights of All Migrants Workers and Members of their families,<sup>99</sup> and the Convention on the Rights of Persons with Disabilities.<sup>100</sup> Moreover, the right to health is also recognized in several regional instruments such as the African Charter on Human and Peoples Rights (1981), the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, known as the Protocol of San Salvador (1988), the European Social Charter (1961) and the European Convention for the Promotion of Human Rights and Fundamental Freedoms (1950) all contained provisions related to health, such as the right to life, the Prohibition on Torture and other Cruel, Inhuman and Degrading Treatment, and the right to family and private life.

Despite these legal achievements, the reality on ground is appalling, persons with disabilities and those living in emergency shelters and informal settlements are particularly vulnerable to contracting COVID-19 on account of overcrowded living conditions, lack of access to water and sanitation, and due to their pre-existing health conditions. In order to fill the gap between the law and the reality, there is an urgent need to strengthen the implementation of the International Convention on the Rights of Persons with Disabilities and prosecution of violators of this rights both at the domestic and international levels. It is based on the above wholistic analysis that the following recommendations are made:

- 1) Actions need to be taken to ensure that people with disability can always access the health-care services, water and sanitation services and public health information that may be useful to them during the Covid-19 outbreak.
- 2) Persons with disabilities and their household should adhere strictly to the World Health Organization guidance on basic protection measures during the Covid-19 outbreak.
- 3) All health-care workers should ensure that Covid-19 health care is accessible especially ensuring that all clinics providing testing and services related to Covid-19 are completely accessible.
- 4) There should be immediate action to reduce potential exposure to Covid-19 in institutional settings by identifying those mostly at risk and work with them, their families and staff to implement infection control measures.
- 5) Basic protection measures should be adopted by the general public where possible, implement flexible working arrangements that will allow people with disabilities to tele-work.
- 6) Physical distancing, self-isolation and other emergency measures need to take into account the needs of persons with disabilities who rely on support networks essential for their survival.

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<sup>99</sup> Articles 1(3), 55 and 56 of the Charter of the United Nations 1945, Articles 22 and 28 of the Universal Declaration of Human Rights, (1948) and Articles 4 and 24 of the Convention on the Rights of the Child (1989)

<sup>100</sup> General Comment No. 3 Committee on Economic, Social and Cultural Rights on the Nature of States Parties Obligation and General Comment No. 14 (1990) Paras 38 – 42.

**REFERENCES**

- Campbell, V.A (2009), "Preparing For and Responding to Pandemic Influenza: Implications For People With Disabilities", *American Journal of Public Health*, 99 Suppl 2, 5294-5300, <https://doi.org/10.2105/AJPH.2009.162677>.
- Comas-Herrera, A. et al. (2020), "Mortality Associated with COVID-19 out Break in care homes: Early International Evidence", *International Long Term care Policy Network*, 12 April, p. 5.
- Curry, M. et al. (2001), "Abuse of Women with Disabilities", *An Ecological Model and Review, Violence Against Women*, 7(1) 60-79, <https://doi.org/10.1177/10778010122182307>.
- Degener, T. & Quinn, G (2017), "A New Human Rights Model of Disability", *Springer Journal*, pp.17-19, [https://doi.org/10.1007/978-3-319-43790-3\\_2](https://doi.org/10.1007/978-3-319-43790-3_2).
- Hopkins, C & Kunar, N (2020), Loss of sense of smell as marker of COVID-19 Infection, *Ear, Nose and Throat Surgery Body of United Kingdom*. [Accessed 19 may, 2020].
- Koch, I.E (2009), "From Invisibility to Indivisibility", in *The United Nations Convention on the Rights of Persons with Disabilities*, 2009, pg. 73.
- Megret, F (2008), "The Disabilities Convention: Human Rights Of Person's With Disabilities Or Disable Rights", *Human Rights Quarterly Journal*, 30: 515, <https://doi.org/10.1353/hrq.0.0000>.
- Nanni, A (2006), "Sexual Assault Patterns Among Women With and Without Disabilities, Seeking Survivor Services", *Women's Health Issues*, 16(6): 372-9, <https://doi.org/10.1016/j.whi.2006.10.001>.
- Oliver, M. 1996, *Understanding Disability: From Theory to Practice*, Palgrave MacMillan; p.11.
- Palmer, M (2011), "Disability and Poverty: A Conceptual Review", *Journal of Disability Policy Studies*, 21(4), 210-218, <https://doi.org/10.1177/1044207310389333>.
- Quinn, T. et al. 2002, *Human Rights and Disability: The Current Use and Future Potential of United Nations Human Rights Instruments in the Context of Disability*, United Nations, New York and Geneva, p. 64.
- Stein, M.A & Lord, J.E (2009), "Future Prospects For The United Nations Convention On The Rights of Persons With Disabilities" in the *United Nations Convention on the Rights of Persons with Disabilities*, p.32, <https://doi.org/10.2139/ssrn.1551945>.
- Tavernise, S & Oppel, R.A (2020), "Spit on, Yelled at, Attacked: Chinese Americans Fear for Their Safety", *The New York Times*, (New York, 23 March 2020), <https://www.nytimes.com/2020/03/23/us/chinese-coronavirus-racist-attacks.html>.
- Valavan, T.P & Meyer, C.G (2000), "The COVID-19 Epidemic", *Tropical Medicine and International Health Journal*, 25(3), pp. 278-280, <https://doi.org/10.1177/1044207310389333>.

Watts, J & Kommenda, N (2020), "Coronavirus Pandemic Leading To Huge Drop in Air Pollution", *The Guardian Newspaper*, London, 23 March.

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