

THE PROTECTION OF THE RIGHTS OF PERSONS WITH DISABILITIES UNDER THE NIGERIAN DISABILITY ACT: WHETHER A FABLE?

Augustine I. Orabueze¹
&
Onyinye K. Omenugha²

Abstract

In this article, the writers considered whether the protection of the rights of persons with disabilities under the Nigerian Disability Act is a fable. This curiosity is predicated on the fact that the most recent legislation - Discrimination Against Persons with Disability Act, 2018 was given an implementation phase of five (5) years. However, we are currently in the fifth year, and little or nothing has been done to properly include, and protect the rights of persons with disabilities in accordance with the dictates of the Act. Hence, it seems the Nigerian government is very good at making laws with zero implementation plans. The article discussed some legal instruments applicable to the protection of the rights of persons with disabilities in Nigeria. Salient provisions of the Disability Act, 2018 and the obligations and responsibilities created under the legal instruments were also highlighted and discussed. The extent of compliance with legal measures on the rights of disabled persons in Nigeria and the challenges of enforcing the rights of PWDs in Nigeria were also expounded. It was found that PWDs are still subjected to widespread discriminations by the society, despite the numerous legislations and the recent Nigerian Disability Act. These shortcomings were due to the usual poor implementation and enforcement mechanisms in Nigeria. The writers thereon proffered solutions on how the rights of persons with disabilities can be protected in line with the Disability Act, and other legislations.

1. Introduction

Persons with disabilities have been subjected to all forms of exclusion, discrimination and denials in all aspects of life, including social, education, economic, cultural, political and environmental spheres, among others. They are not fairly treated in society, hence, several laws have been put in place to protect them, including the recent Discrimination Against Persons with Disabilities Act, 2018.

Over one billion people in the world are disabled - that is 15 percent of the world's population. In Nigeria alone, the World Health Organisation (WHO) estimates that there are about 19 million persons with disabilities ("PWDs") and this number constitutes approximately 20 percent of the nation's total population.³ Hence, persons with disabilities are considered the world's largest minority,⁴ with the most common forms of disabilities being physical, visual, aural and communication impairments.

¹ Department of Public and Private Law, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State, Nigeria. Email: izuorabueze@gmail.com or ai.orabueze@unizik.edu.ng.

² Law graduate, and founder of Lawsanaid - an initiative that provides an enabling platform and access to a better and quality education for law and aspiring law students with disabilities in Africa. Email: onyinyeomenugha@gmail.com.

³ R Lang and L Upah, 'Scoping Study: Disability issues in Nigeria' (2008) DFID Report. <https://www.ucl.ac.uk/lc-ccr/downloads/scopingstudies/dfid_nigeriareport> accessed on 28th September, 2023.

⁴ Council of Europe, *Disability and Disabilism* <<https://www.coe.int/en/web/compass/disability-and-disabilism>> accessed 1st October, 2023.

So far, Nigeria has shown commitment towards safeguarding the rights of these persons with disabilities. This is evidenced by the ratification of key international and regional instruments, and enactment of national legislations prohibiting discrimination against persons with disabilities. However, the subjection of disabled Nigerians to various forms of discriminations, rights violations and denials still persist.

The above anomaly raises the pertinent question as to whether the Nigerian Disability Act, 2018 is a fable or has been a veritable tool ensuring the protection of the rights of persons with disabilities in Nigeria?

2. Conceptual Clarifications

2.1 Rights

Rights in the context of this work shall be used interchangeably with “human rights”. The Black’s Law Dictionary⁵ defined human rights to mean:

The Freedom, immunities and benefits that according to modern values, all human beings should be able to claim as a matter of right in the society in which they live.

In *Mojekwu v. Mojekwu*⁶ Niki Tobi J.C describes human rights as something that is sacred and which no human being should be deprived of without occasioning a great affront to justice.

According to Prof G. N. Ezejiolor, ⁷ Human rights are rights which every civilian society must accept as belonging to every person as a human being. Nnamdi J. Aduba⁸ defined human rights as those rights possessed by all persons by virtue of their common humanity to live a life of freedom and dignity.

The term rights has been described by the United Nations as a right inherent to all human beings, regardless of nationality, place of residence, national or ethnic origin, (colour), religion, language, or *any other status*. Everyone is entitled to enjoy his or her human rights without discrimination.⁹

2.2 Disability

There is no universally accepted definition of "disability", although various attempts have been made to produce one.¹⁰ According to the World Health Organization (WHO), “Disabilities” is an umbrella term covering impairments, activity limitations, and participation restrictions”¹¹.

Section 57 the Nigerian Disability Act¹² defines disability to include “*long term physical, mental, intellectual or sensory impairment which in the interaction with various barriers may hinder full and effective participation in society on equal basis with others*” and discrimination

⁵ BA Garner, *Black’s Law Dictionary*, (8th Edition; USA: Thompson West, 2004) p. 758.

⁶ (1997) NWLR (pt. 512) 283.

⁷ G Ezejiolor, *Protection of Human Rights under the Law* (London: Butterworths, 1964).

⁸ JN Aduba, ‘Inquiries on Human Rights Practice in Nigeria Past, Present and Future’ being an inaugural Lecture delivered during the University of Jos Inaugural Lecture Series, 54, on 29th June, 2012. p. 8.

⁹ “What are Human Rights” available at www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx (accessed April 27, 2021).

¹⁰ Council of Europe, *Disability and Disabilism* <<https://www.coe.int/en/web/compass/disability-and-disabilism>> accessed on 1st October, 2023.

¹¹ World Health Organisation’s (WHO) International Classification of Impairments, Disabilities, and Handicaps: A manual of Classification Relating to the Consequences of Disease, WHO Document A29/INFDOCi/1, Geneva, 1976.

¹² Discrimination Against Persons with Disabilities (Prohibition) Act, 2018.

to be “differential treatment and its verbs and infinite form, discriminate, to discriminate have the corresponding signification”.

Persons with disabilities therefore, 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.

2.3 Persons with Disability

A person with a disability is one who has any physical or mental impairment which has substantial and long-term effects on his or her abilities to carry out day-to-day activities.¹³

A disabled person is any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such impairment¹⁴.

The most common forms of disabilities are physical, visual, aural and communication impairments. The means through which disabilities may occur are endless. A person may become disabled from birth (or by circumstances of birth), through neurological or genetic conditions, accidents, infectious diseases, and factory waste exposure, among others.¹⁵

3. Legal Frameworks on the Rights of Persons with Disabilities in Nigeria

Overcoming the difficulties faced by Persons with Disabilities in Nigeria requires interventions to remove environmental and social barriers¹⁶. The interventions in the form of legal frameworks are discussed hereunder:

3.1 International legal Regime

3.1.1 United Nations Declaration on the Rights of Mentally Retarded Persons, 1971 & Declaration on the Rights of Disabled Persons, 1975

The *United Nations Declaration on the Rights of Mentally Retarded Persons, 1971*¹⁷ guarantees *inter alia*, that a mentally retarded person has, to the maximum degree of feasibility, the same rights as other human beings. Similarly, *the Declaration on the Rights of Disabled Persons*¹⁸ provides *inter alia* that “disabled persons have the same civil and political rights as other human beings.”

3.1.2 United Nations Convention on the Rights of Persons with Disabilities

The United Nations Convention on the Rights of Persons with Disabilities and its accompanying Optional Protocol¹⁹, provide that state parties are under the obligation to, “promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.”²⁰

The Convention set out with much greater clarity the obligations on States to promote, protect and ensure the rights of persons with disabilities. Thus, the Convention not only clarifies that States should not discriminate against them, it also sets out the many steps that States must take to create an enabling environment for them to enjoy real equality in society.

¹³ Disability Discrimination Act 1995 of England, section 1 (1).

¹⁴ UN Convention on the Rights of Persons with Disabilities 2006, article 1.

¹⁵ M Otubu & NE Chinonye, ‘An Examination of the Legal Regime for Guaranteeing Rights of Persons with Disabilities in Nigeria’ (2018) Vol 2 No. 1, *Unilag Law Review*, 64-81.

¹⁶ WHO International Classification of Functioning (ICF, 2002) < <http://www.who.int/topics/disabilities/en/> > accessed on 1st January, 2023.

¹⁷ Proclaimed by the General Assembly resolution 2856 (XXVI) of 20th, December 1971.

¹⁸ Proclaimed by General Assembly Resolution 3447 (XXX) of 9 December 1975.

¹⁹ Hereinafter abbreviated, CRPD.

²⁰ Article 1(1) of the UN Convention on the Rights of Persons with Disabilities 2008.

The Convention specifically provides for right to non-discrimination,²¹ right to equal access to public services²², right to dignity and freedom from degrading treatment²³ and the duty to promote the social and economic integration of disabled persons in society²⁴.

The Convention also places a duty on State parties to raise awareness of and, ultimately, respect for disabled persons within society.²⁵

3.1.3 United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979

The CEDAW generally prohibits all forms discriminatory behaviour and practices against women in all spheres of life. Women with disabilities are usually discriminated against on two grounds: gender and disability, and often they have less access to essential services such as health care, education and vocational rehabilitation.²⁶ General Recommendation 18 by the Committee on the Elimination of All Forms of Discrimination against Women specifically deals with the issue of women with disabilities²⁷.

3.1.4 United Nations Convention on the Rights of the Child, 1989

The Convention on the Rights of the Child specifically and generally addresses the rights of children with disabilities by providing that: 'State Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance, and facilitate the child's active participation in the community.'²⁸

3.1.5 Other International Instruments

Other relevant international instruments in preservation of the rights of persons with disabilities include:

- (a) The Universal Declaration of Human Rights (UDHR), 1948.²⁹
- (b) International Covenant on Economic, Social and Cultural rights 1966 and its optional protocol 2008.
- (c) International Covenant on civil and political rights 1966 and its two optional protocols.
- (d) The International Convention on the Elimination of all forms of Racial Discrimination 1965.
- (e) The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984.
- (f) Declaration on the Rights of Disabled Persons.³⁰
- (g) the World Programme of Action concerning Disabled Persons.³¹

²¹ UN Convention on the Rights of Persons with Disabilities 2008, Article 3(b).

²² *Ibid*, Article 3(e) and (f).

²³ *Ibid*, Articles 15, 16 and 17.

²⁴ *Ibid*, Article 3(c) and (d).

²⁵ *Ibid*, Article 8.

²⁶ For further information on the subject of women with disabilities, visit <http://www.worldenable.net/women/>

²⁷ General Recommendation No.18, 10th Session (1991), Committee on the Elimination of Discrimination against Women. < <http://www.un.org/womenwatch/daw/cedaw/recommendations.htm> > accessed 2nd January, 2023.

²⁸ Convention on the Rights of the Child 1989, article 23.

²⁹ Enshrines the principle of Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction.

³⁰ Proclaimed by General Assembly resolution 3447 (XXX) of 9 December 1975. This Declaration states that disabled persons have the inherent right to respect for their human dignity and they have the same civil and political rights as other human beings". Further, they shall be able to benefit from legal aid when such aid proves indispensable for the protection of themselves and their property. The Declaration also recognizes that organisations of persons with disability may be consulted in all matters relating to the rights of persons with disability.

³¹ Adopted by the General Assembly on 3 December 1982, by its resolution 37/52. The World Programme of Action (WPA) is a global strategy to enhance disability prevention, rehabilitation and equalisation of

- (h) the Tallinn Guidelines for Action on Human Resources Development in the Field of Disability.³²
- (i) the Principles for the Protection of Persons with Mental Illness;³³ and
- (j) The Standard Rules on the Equalization of Opportunities for Persons with Disabilities.³⁴

3.2 Regional Regime

3.2.1 African Charter on Human and People's Rights

The African Charter on Human and People's Rights 1981 was ratified by Nigeria and transposed into its national law in 1983³⁵. Article 2 of the Charter provides for a general duty of non-discrimination as follows:

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Article 18 of the Charter, specifically states that, "...the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs,³⁶"

Article 28 of the Charter, also states that, "Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.³⁷"

Article 3 of the Charter, which provides that, "Every individual shall be equal before the law..." and that, "Every individual shall be entitled to equal protection of the law..."

3.2.2 African Charter on the Rights and Welfare of the Child 1990

The African Charter on the Rights and Welfare of the Child 1990, contains a special provision on the protection of children who are physically or mentally disabled. The Charter provides as follows:

Every child who is mentally or physically disabled shall have the right to special measures of protection in keeping with his physical and moral needs and under conditions which ensure his dignity, promote his self-reliance and active participation in the community.³⁸

opportunities, which pertains to full participation of persons with disabilities in social life and national development. The WPA also emphasises the need to approach disability from a human rights perspective.

³² Adopted by General Assembly resolution 44/70 of 15 March 1990. The Tallinn Guidelines prioritises the development of the human resources of disabled persons, with specific reference to education, training, employment, science, and technology.

³³ Adopted by General Assembly resolution 46/119 of 17 December 1991. The Principles give information on the fundamental freedoms and basic rights of persons with mental disability, the provision of mental health care and the treatment of involuntary patients and criminal offenders. According to the Principles, everyone has the right to the best available mental health care.

³⁴ Adopted by the United Nations General Assembly, forty-eighth session, resolution 48/96, of 20 December 1993. The Standard Rules represent a strong moral and political commitment of Governments to take action to attain equalisation of opportunities for persons with disabilities. The rules serve as an instrument for policy-making and as a basis for technical and economic cooperation.

³⁵ African Charter on Human and Peoples' Rights (Enforcement and Ratification) Act, Cap 10, Laws of the Federation 2004.

³⁶ African Charter on Human and People's Rights 1981, Article 18.

³⁷ *Ibid*, Article 28.

³⁸ African Charter on the Rights and Welfare of the Child 1990, Article 13(1).

On what constitute the special measures of protection for mentally and physically disabled children the Charter provides thus:

States Parties... shall ensure that the disabled child has effective access to training, preparation for employment and recreation opportunities in a manner conducive to the child achieving the fullest possible social integration [and] shall use their available resources with a view to achieving progressively the full convenience of the mentally and physically disabled person to movement and access to public highway buildings and other places to which the disabled may legitimately want to have access to.³⁹

3.3 Domestic Regime

3.3.1 Constitution of the Federal Republic of Nigeria 1999

Though there are no express provisions on the rights of persons with disability under the Constitution of the Federal Republic of Nigeria, section 42 of the Constitution prohibits discrimination on any account in enjoyment of the rights contained in chapter IV of the Constitution. This implies that persons with disabilities just like every other citizen are entitled to all the fundamental rights guaranteed under the Constitution of the Federal republic of Nigeria.

These constitutional rights include⁴⁰:

- (a) The Right to life;
- (b) Right to dignity of the human person;
- (c) Right to personal liberty;
- (d) Right to fair-hearing;
- (e) Right to privacy and family life;
- (f) Right to freedom of thought, conscience and religion;
- (g) Right to freedom of expression and the press;
- (h) Right to freedom of movement;
- (i) Right to freedom from discrimination; and
- (j) Right to acquire and own immovable property anywhere in Nigeria among others.

3.3.2 Nigerians with Disability Decree 1993

The Nigerians with Disability Decree was enacted in 1993. The Decree generally provides that People with disabilities shall be accorded equal treatment with able bodied Nigerians. Section 2(1) of the Decree specifically states that:

Disabled persons shall be guaranteed treatment as equals to other Nigerians for all purposes in the Federal Republic of Nigeria. Accordingly 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.⁴¹

³⁹ African Charter on the Rights and Welfare of the Child 1990, Article 13(2) and (3).

⁴⁰ See generally Sections 33 to 46, Constitution of the Federal Republic of Nigeria, 1999 (as amended).

⁴¹ *Ibid*, Section 2(1).

The Decree makes provision for the disabled persons to have access to legal services⁴², voting⁴³, telecommunications⁴⁴, sport and recreation⁴⁵, social services⁴⁶, transportation⁴⁷, housing⁴⁸, vocational training and employment⁴⁹, education⁵⁰ and healthcare⁵¹.

3.3.3 Discrimination Against Persons with Disabilities (Prohibition) Act, 2018

The passage of the Discrimination Against Persons with Disabilities (Prohibition) Act, 2018, herald the new era of substantive national specific legislation on the rights of persons with disabilities in Nigeria.

The Act generally provides for the “full integration of persons with disabilities into the society.”⁵²

3.3.3.1 Salient Provisions of the Disability Act, 2018

a) Prohibition of discrimination Against Persons with Disabilities

Section 1 of the Act prohibits discrimination against persons with disabilities on the grounds of their disabilities by any person or institution in any manner or circumstance.

b) Definition of Disability and Discrimination

Section 57 of the Act defines disability to include “*long term physical, mental, intellectual or sensory impairment which in the interaction with various barriers may hinder full and effective participation in society on equal basis with others*” and discrimination to be “*differential treatment and its verbs and infinite form, discriminate, to discriminate have the corresponding signification*”.

c) Criminalization of Discrimination against Persons with Disabilities

The Act criminalizes the act of discrimination against persons with disabilities, as it is an offence liable upon conviction, to six months’ imprisonment or a fine of ₦100,000 (One Hundred Thousand Naira) or both imprisonment and a fine, for an individual. For a body corporate, it will be liable upon conviction to a fine of ₦1,000,000 (One Million Naira).⁵³

Interestingly, the Act allows for both civil and criminal liability by providing that a victim of the discriminative act can institute a civil action against the offender without prejudice to any acquittal or conviction.

d) Right of Access to Physical Structure for Persons with disabilities

The Act gives a disabled person the right to access the physical environment and buildings on an equal basis with others.

On this, the Act requires all public buildings to be constructed in a manner that will allow disabled persons easy and usable access. Such public buildings are required to be fitted with

⁴² Nigerians with Disability Decree 1993, Section 14.

⁴³ *Ibid*, Section 13.

⁴⁴ *Ibid*, Section 12.

⁴⁵ *Ibid*. Section 11.

⁴⁶ *Ibid*, Section 10.

⁴⁷ *Ibid*, Section 9.

⁴⁸ *Ibid*, Section 7.

⁴⁹ *Ibid*, Section 6.

⁵⁰ *Ibid*, Section 5.

⁵¹ *Ibid*, Section 4.

⁵² See the Explanatory memorandum of the Disabilities Act, 2018.

⁵³ Disabilities Act 2018, Section 1 (2).

ramps, railings, audio signals, reading accessibility and other modifications that will enable ease of use for disabled persons.⁵⁴

The Act also gave a transition period of five (5) years from the commencement of the Act within which the necessary modifications to all public buildings and structures (whether movable or immovable) should be implemented.⁵⁵

e) **Transportation- Road, Seaports, Railways, and Airport Facilities**

The Act prohibits persons who provide goods and services (whether or not for payment) from discriminating against disabled persons by refusing to provide those goods or services, or by providing such goods and services in a different manner or on different terms or conditions than they would otherwise provide to other persons.⁵⁶

The Act further requires facilities with public parking lots to properly mark and reserve suitable spaces for persons with disabilities. The cars of such disabled persons shall be properly marked with the necessary insignia.

It is pertinent to note that any person, organisations or corporate bodies that fail to provide the designated disabled parking spaces commit an offence and will be liable on conviction to a fine of ₦1000 (One Thousand Naira) for each day of default. It is also an offence for persons without a disability to park in the disabled parking space or for any person to intentionally obstruct the reserved space, and such persons shall be liable to a fine of ₦5000 (Five Thousand Naira) upon conviction.

Seaports, railways and airport facilities are also required to be accessible to disabled persons and are afforded a five (5) year transition period to comply. Particularly, airlines must ensure that⁵⁷:

- ✓ their aircrafts are accessible to persons with disabilities;
- ✓ they make available presentable and functional wheelchairs;
- ✓ they provide assistance for getting on and off board in safe and reasonable comfort; and
- ✓ disabled persons are given priority when boarding and disembarking from the aircraft.
- ✓ for safety procedures to be translated in an accessible format appropriate for disabled persons present.

f) **Right to Education**

Sections 17 and 19 of the Act provide for the rights of disabled persons to free education and subsidised education for special education personnel.

g) **Right to Free Healthcare**

Sections 21 and 24 of the Act provide for the rights of disabled persons to free health care and provision of special communication at hospitals.

⁵⁴ Disabilities Act 2018, section 6.

⁵⁵ *Ibid.*

⁵⁶ *Ibid*, section 9.

⁵⁷ *Ibid*, section 14.

h) Other Rights and Privileges

Other rights and privileges afforded persons with disabilities under the Act include the following:

- ✓ Persons with disabilities to be afforded priority in queues,⁵⁸
- ✓ Prohibition of use of persons with disabilities in soliciting for alms and Penalty,⁵⁹
- ✓ Government should protect them in light of their vulnerability in risky situations and humanitarian crisis,⁶⁰
- ✓ Priority in the provision of accommodation where this is provided by schools, employers, service providers, government, organisations, etc.⁶¹
- ✓ Disabled persons have “*the right to work on an equal basis with others and this includes the right and opportunity to gain a living by work, freely chose or accepted in a labour market and work environment that is open*”⁶²,
- ✓ Establishment of the National Commission for Persons with Disabilities with the major mandates⁶³ of liaising with the public and private sector and other bodies to ensure the peculiar interests of disabled persons are taken into consideration in every government policy, programmes and activity. They are also empowered to receive complaints from persons with disabilities on the violation of their rights; issue insignia of identification for disabled persons; support a disabled person’s right to seek redress in court, investigate, prosecute and/or sanction in appropriate cases violations of the Act and ensure research, development and education on disability issues and disabled persons.

4. Obligations and Responsibilities Created under the Legal Instruments Discussed

Nigeria’s legal obligations and duties with respect to disabled citizens as deduced from the legal instrument discussed are as follows:

- (a) The duty to prevent discrimination and promote equal treatment;
- (b) the duty to promote respect for the dignity of disabled persons and raise awareness of their plight and their needs;
- (c) the duty to protect disabled persons from cruel or degrading treatment or punishment;
- (d) the duty to promote access to healthcare; the duty to promote access to education;
- (e) the duty to promote access to employment opportunities, the duty to promote access to housing;
- (f) the duty to promote access to transportation; the duty to promote access to social services; the duty to promote social integration including access to sport and recreation;
- (g) the duty to promote access to telecommunications;
- (h) the duty to promote access to voting and political processes; and,
- (i) the duty to promote access to legal services among others.

5. Compliance with Legal Measures on the Rights of Disabled Persons in Nigeria

Notwithstanding the legal frameworks on the rights of persons with disabilities developed both at international and national levels, to ensure the inclusion and integration of persons with disabilities into the society - PWDs still face numerous challenges such as denials, lacks and discriminations in different aspects of life.

⁵⁸ Disabilities Act 2018, section 26.

⁵⁹ *Ibid*, section 16; the Act provides that a person who contravenes this provision will be liable on conviction to a fine of N100,000 or a term of six months imprisonment or both.

⁶⁰ *Ibid*, section 25.

⁶¹ *Ibid*, section 27.

⁶² *Ibid*, section 28.

⁶³ *Ibid*, section 37.

For instance, despite the enactment of the Discrimination Against Persons with Disabilities (Prohibition) Act, 2018 and its attractive provisions, it is evident that nothing concrete has been done to implement the provisions of the Act. To date, Persons with Disabilities in Nigeria do not have access to free education, free health care, equal opportunity for employment and participation in public life. Transport is not free for the disabled, national news and official broadcasts do not provide sign language for interpretation, and it has been difficult in the circumstance of our electoral process for the disabled to exercise their rights to vote and be voted for; public buildings are yet to be fitted with ramps, railings, audio signals, reading accessibility and other modifications that will enable ease of use for disabled persons.

In spite of the rights guaranteed under the legal frameworks on the rights of persons with disabilities, most PWDs live off begging on the city streets, because access to employment continues to be a problem even where the disabled applicants are more qualified than their non-disabled counterparts.⁶⁴

6. The Challenges of Enforcing the Rights of PWDs in Nigeria

The challenges of enforcing the rights of PWDs in Nigeria are discussed hereunder:

6.1 Lack of Awareness of the Existence of Disability Rights

Despite the plethora of rights, national, regional and international, on the rights of persons with disabilities, society has not come to terms that they have the same rights as others. A great number of people are unaware of the fact that the same rights that protect them also protect PWDs.

The National Commission for Persons with Disabilities with the major mandates of championing the enforcement of the rights of PWDs in Nigeria, liaising with the public and private sector, and other bodies to ensure the peculiar interests of disabled persons are taken into consideration in every government policy, programmes and activities have not done anything proactive in creation of awareness of the rights of PWDs.

Regrettably, many PWDs are unaware of their legal rights, and those who know about their rights cannot access them because of lack of enforcement mechanisms.

6.2 Lack of Enforcement Mechanism

The bane of the majority of legislation in Nigeria is lack of poor implementation and enforcement mechanism. The legal instruments fail to provide for an enforcement mechanism, and the enforcement institutions established under the enabling Act stand to do nothing. Furthermore, government development programmes are not structured in a way that embraces the realisation of the dictates of our laws. There is also a lack of cooperation between rights enforcement institutions.

6.3 Cultural, Religious and Societal Beliefs

A report prepared by the Vietnamese Hanoi Independent Living Center found that of 50 families of persons with disabilities interviewed, half do not believe persons with disabilities need to vote because they “do not need to be concerned about political issues.”⁶⁵ The perception

⁶⁴ MAARDEC, ‘The Plight of Disabled Nigerians and the Need for Mass Enlightenment’ <<http://www.maardec.net/THE%20PLIGHT%20OF%20DISABLED%20NIGERIANS%20AND%20THE%20NEED%20FOR%20MASS%20ENLIGHTENMENT.html>> accessed on 29th April, 2023.

⁶⁵ IFES & NDI, *How to Include Persons with Disabilities in Election and Political Processes* (IFEX Publication, 2014) p. 63. See also *Election Access for Persons with Disabilities in Vietnam*. Hanoi Independent Living Center. AGENDA. 2013.

that the disabled person is not a full member of society pervades the entire system, which leads to social exclusion and isolation.⁶⁶ The level of abuse and social exclusion perpetuates from childhood all the way through adult life. For instance, the disabled child may be excluded from education, because he/she is seen as incapable of benefitting society.⁶⁷ The same problem is experienced if the disabled person desires gainful employment. This is because his disability is deemed as undermining his capability for employment. Consequently, employment is deemed to be inappropriate, and when employment is given, reasonable adaptation is not even considered.⁶⁸

Cultural and religious beliefs also form barriers to the enforcement of the rights of PWDs in Nigeria. Some cultures ascribe persons with disabilities as evil, carriers of evil, bad luck, ill luck, misfortune, death and curse bearers and carriers.⁶⁹ In some Nigerian cultures, if a child is born deformed, such a child is thrown into evil forests and the gods are appeased for the cleansing of that family.

6.4 Non-inclusion of Health Challenges in the Definition of Disability under the Act

The non-inclusion of Health Challenges in the definition of disability under the Nigerian Disability Act, 2018 also created a lacuna in the Act and posed a great challenge to the applicability of the Act. It has been widely acknowledged that disability and health have a complex relationship as long term health conditions might cause disability and disability can contribute to health problems.⁷⁰

Some health problems which have been classified as disability include; heart diseases, cancer, organ failure, asthma, cerebral palsy, down syndrome, depression among others. Heart disease also referred to as cardiovascular diseases has been observed as a leading cause of disability.⁷¹

6.5 Other Challenges

Other challenges hindering the protection of the rights of PWDs in Nigeria are as follow:

- ✓ Lack of Political Will on the part of the Nigerian governments, policy makers, and government ministries.
- ✓ Non-involvement of PWDs in policies and matters affecting them, among others.
- ✓ Corruption.

⁶⁶ I Babik & ES Gardener, 'Factors Affecting the Perception of Disability: A Developmental Perspective' (2021) Vol. 12 *Front. Psychol.*, <<https://www.frontiersin.org/articles/10.3389/fpsyg.2021.702166/full>> accessed on 11th July, 2023.

⁶⁷T Chataika, JA McKenzie, E Swart, & M Lyner-Cleophas, 'Access to Education in Africa: Responding to the United Nations Convention on the Rights of the Persons with Disability' (2012) Vol 27, Issue 3, *Disability & Society*, 385-398 at 387.

⁶⁸ AS Kanter, 'The Promise and Challenge of the United Nations Convention on the Rights of Persons with Disabilities' (2006-2007) Vol. 34, *Syracuse Journal of International Law and Commerce*, pp. 287-321.

⁶⁹ This is contrary to Article 3 of CRPD, which enjoins the State to take measures that will promote, protect and uphold the cultural rights of persons with disabilities, and the right to enjoy access to participation in cultural life.

⁷⁰ Australian Institute of Health Welfare, 2019, *People with Disability in Australia*. Cat.no.Dis 72 Canberra: AIHW

⁷¹ Center for Disease Control and Prevention (CDC), 'Disability and Health Related Conditions' <<https://www.cdc.gov/ncbddd/disabilityandhealth/relatedconditions>> accessed on 22nd July, 2023.

7. Conclusion and Recommendations

It is true that disability affects the lives of everyone at some point in life. It is also manifestly right to assert that PWDs have, since ancient times, been victims of human rights violation and social exclusion⁷². Disability rights as contained in the legislations discussed are not new rights per se but rather a re-affirmation that PWDs have unique rights needs like every other human, and should be accorded adequate legal protection as equal members of the society. An assessment of the Nigerian social framework with respect to PWDs shows that PWDs are still subjected to widespread discrimination by the society, despite the numerous legislations. Hence, the recent Nigerian Disability Act, 2018 seems to be business as usual. In Nigeria, instead of more legislation, we need to work around our implementation and enforcement mechanisms. The government must ensure that the provisions of the existing legislation are effectively implemented and enforced.

For the way forward, the following recommendations are proffered:

1. There is a need to change the approach to disability issues not only legally, but also socially through awareness and reorientation of the masses to change the negative attitude and perception of disability.
2. Satisfaction of the basic right needs of the PWDs should be made part of the Government development goals.
3. The Nigerian government should take positive steps to empower persons with disabilities to enhance their contribution to national development.
4. Amendment of Section 54 of the Disability Act and other relevant sections of the Act to include health challenges in the definition of disability.
5. Strengthening of the social protection and empowerment systems and programmes to cater for the need of PWDs.

⁷² A Dube, *Disability Rights Protection under the African Human Rights System in the Light of the Convention on Persons Living with Disabilities*. (Deutschland: LAP Lambert Academic Publishing GMBH & Co. KG, 2012) p. 1