

THE RIGHT TO EMPLOYMENT OF PERSONS WITH DISABILITIES IN NIGERIA

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CERTIFICATION

This is to certify that **EMMANUELLA EMOSHIOGUE OKONOPA**, with Matriculation Number **LAW1404100**, duly carried out this essay with reference to other writers and authors which have been duly acknowledged. This entire work is the product of my personal research and that this project has neither in whole nor in part been presented for another degree elsewhere.

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APPROVAL

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DEDICATION

This essay is dedicated to God for the gift of life. It is also dedicated to all persons with disabilities in Nigeria that have been able to stand out and remain outstanding despite their disabilities and the societal discriminations and stereotypes. It is also dedicated to all persons without disabilities that have expanded the horizon of their minds from seeing persons with disabilities as objects of pity and shame, to persons with viable potentials.

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.

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Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD), 2007

Protocol to the African Charter on Human and People's Rights on the Rights of Persons with Disabilities in Africa, 1981

United Nations Convention on the Rights of Persons with Disabilities (CRPD), 2006

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Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)

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Sani Abacha & Others v Chief Gani Fawehinmi(2000) SC 45/1997.

Abbreviations

AU	African Union
CEDAW	Convention on the Elimination of Discrimination Against Women
CFRN	Constitution of the Federal Republic
ICDH	International Classification of Disability and Handicaps
ICESCR	International Covenant on Economic, Social and Cultural Rights
OAU	Organization of African Union
UN CRPD	United Nations Convention on the Rights of Persons with Disabilities
UDHR	Universal Declaration of Human Right
UNGASS	United Nations General Assembly Special Session
UNICEF	United Nation Children’s Fund
PWDs	Persons with Disabilities
WHO	World Health Organisation

ABSTRACT

Disability based on the definition of the medical model is a physical or mental condition that limits a person's movements, senses, or activities. It is an umbrella term covering impairments, activity limitations and participation restrictions. This model views disability as a physical or mental issue which must be treated and cured. Also, the United Nations Convention on Rights of Persons with Disabilities (CRPD), 2006, took a different approach in determining what disability is. Accordingly, the CRPD approached disability from the aspect of human rights; recognising PWDs as right holders and their impairment should not be used as a justification for denial or restriction of their human rights.

The World Health Organization (W.H.O) in its World Report on Disability, 2010, shows that PWDs have poorer health outcomes, lower educational achievements, less economic participation, and higher rate of poverty than their counterparts who are without disabilities. These outcomes are partly as a result of the fact that PWDs experience barriers in accessing certain basic services which they are entitled to; such as healthcare, education, employment, transportation as well as information. These difficulties are even worse for PWDs in poor or less advantaged communities.

This essay examined the right to employment of PWDs as a means of ensuring that they achieve economic and financial independence; thereby assisting them to reach their full potentials. In this regard, there are international and national legislations and policy frameworks with provisions that safeguard the general rights of PWDs in Nigeria. Pertinent questions as to the efficacy, compliance, and implementation of the existing legal frameworks, as well as issues that pose as challenges to the rights of PWDs were examined and the essay finds that the rights of PWDs, especially their right to employment has not been effectively implemented in Nigeria and that more realistic efforts has to be made to see that the rights of PWDs are safeguarded.

CHAPTER ONE

GENERAL INTRODUCTION

1.1. Background

Disability is a global phenomenon that cuts across nations, race, culture, sex, age, religion, social status, political and economic positions. It is not a recent trend, and its existence is almost as old as man's walk upon the earth and persons with disability (PWDs) have always existed among the human population. However, there was little attention paid to disability for centuries until recently and this is due to the high prevalence in the modern-day civilization.¹

According to estimations by the World Health Organization (W.H.O) in the World Report on Disability, about 15% of the world's population live with some form of disability or the other, with about 3.8 % having severe disabilities.² The W.H.O estimates the number of PWDs in Nigeria to be about 25 million based on the data collected by the World Health Survey and the Global Burden of Disease in 2002 – 2004.³ The steady rise in the number of PWDs can be attributed to factors such as an ageing population and in younger persons, global increase in chronic diseases and health conditions that are associated with diabetes, cancer, stroke and cardio-vascular diseases.⁴ Other factors include the frequent occurrences of fatal accidents that cause serious injuries such as paralysis, stroke, brain damage and limb loss alongside rapid increase in infectious diseases such as polio, meningitis, small-pox and tuberculosis.⁵

¹ World Health Organisation, 'World Report on Disability' (2011) page 3 available at <https://www.who.int/disabilities/world_report2011/report.pdf> accessed 4 April 2020.

² Ibid.

³ Ibid.

⁴ World Health Organization, 'World Report on Disability (Summary)' (2011) Retrieved from <www.refworld.org/report/on-disability> accessed 4 April 2020.

⁵ Haruna Mohammed, "The Problems of Living with Disability in Nigeria (2017) 65 Journal of Law, Policy and Globalization, page 109 available at <www.iiste.org/Journals/index.php/JLPG/article/view/39027/40128> accessed 7 June 2020.

The W.H.O through the International Classification of Disability and Handicaps (ICIDH-1) document⁶ describes disability as any restriction or lack of (resulting from impairment) ability to perform an activity in the manner or within the range considered normal for a human being; a description which is fashioned after the medical model of disability⁷. This definition of disability has declined among scholars because of a paradigm shift from such traditional view of disability to the more recent Human Rights model. The Human Rights model focuses on the rights of disabled persons as human beings alone⁸. Human rights are fundamental rights that are inherent to all human beings without discrimination or qualification. They are universal and unconditional. Consequently, PWDs are right holders regardless of their disability.

The right to employment is a foundation for the achievement of other human rights and for life with dignity. The United Nations Convention on the Rights of Persons with Disabilities (CRPD in paragraph (a) and (b) of its preamble, declares that all persons are entitled to the full enjoyment of their rights without discrimination⁹. Also, paragraph (h) of its preamble recognises that discrimination on the grounds of disability is in violation of the inherent dignity and worth of the human person.

In Nigeria, section 1 of the Discrimination against Persons with Disabilities (Prohibition) Act of 2018 prohibits the discrimination of any persons on the grounds of disability in any situation, either by an individual or an institution. The rights of PWDs are also broadly protected by the Constitution of the Federal Republic of Nigeria (CFRN), 1999 (as amended). The right to employment is a right that allows individuals to be employed and freely choose the line of employment without any form of discrimination or bias of any kind.

⁶ World Health Organization, 'International Classification of Impairments, Disabilities and Handicaps (ICIDH-1)' (1980) available at <<https://apps.who.int/Iris/bitstream/10665/41003/1/924/541261.eng.pdf>> accessed 19 April 2020.

⁷ International Classification of Impairment, Disability and Handicaps (ICIDH-1), p. 28.

⁸ Theresia Degner, 'A Human Right Model of Disability', (12 November 2015) available at <<https://www.researchgate.net/publication/283713863>> accessed 13 May 2020.

⁹ United Nations, 13 December 2006, 'Convention on the Rights of a Person with Disabilities', available at <<https://www.ohchr.org>> accessed 13 May 2020.

Despite the existence of these laws PWDs are still marginalized especially in employment with a great majority of them living in abject poverty earning little or no income¹⁰. Employment remains a veritable tool in tackling the issues of poverty and disability in Nigeria and the world if PWDs are guaranteed effective access to this right.¹¹ This long essay seeks to examine the following questions: Are PWDs aware of the laws guaranteeing their rights to employment? Are other individuals in the society and employers in both the private and public sectors aware of these laws as regards the rights to employment of persons with disabilities? Are the provisions of these laws being complied with? How effective are these laws in ensuring compliance?

1.2. Statement of Problem

The obstacles encountered by PWDs in accessing their right to employment in Nigeria poses a serious problem to national economy as well as social development. There are various legislations and policies promoting the rights of disabled persons, such as the Convention on the Rights of Persons with Disabilities (CRPD), 2006 of the United Nations and the Discrimination against Persons with Disabilities (Prohibition) Act 2018 of Nigeria etc. However, the issue of awareness and compliance of these laws and the attitude of government towards tackling the problems pose a serious challenge to PWDs.

1.3. Aims and Objectives

The aim and objectives of this research is to examine the various legal and policy framework that guarantee persons with disabilities a right to employment in Nigeria. It examines the prospects and challenges of the laws in Nigeria in comparison to Ghana, one of the first African countries to ratify the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and to formulate its own national framework on disability using the United Nations Convention as a

¹⁰ Halima Kutigi, Suleiman Okoronkwo and Rilwanu Suleiman “Human Rights of Persons with Disabilities: Challenges of Protection and Enforcement in Nigeria” (1 May 2020) p. 12 available at <www.researchgate.net/publication/341090390> accessed 13 May 2021.

¹¹ Olubukola Adesina, “Unemployment and Security Challenges in Nigeria” (2013) 3(7) *International Journal of Humanities and Social Sciences* 146 available at <www.ijhssnet.com> accessed 13 May 2020.

guide. This essay also seeks to proffer solutions and make recommendations to the challenges examined in Nigeria.

1.4. Scope of Long Essay

This essay focuses on the right to employment, the laws protecting this right, and the challenges encountered by persons with disabilities in securing employment in Nigeria. This essay also proffers some solutions to these challenges.

1.5. Methodology

This essay employs a doctrinal method. It examines primary and secondary sources on the rights of persons with disabilities. The primary sources include international conventions, legislation, regulations and where necessary, case law on the rights of persons with disabilities. Secondary sources include textbooks, journal articles, and other internet-based materials on the rights of persons with disabilities.

1.6. Chapter Overview

Chapter one provides a background for the long essay, alongside the aims and objectives, as well as the methodology employed in the research. Also, some selected international and regional legal frameworks in relation to the right to employment of PWDs are examined in chapter two while the challenges and prospects of the right to employment for PWDs is examined in chapter three. Chapter four examines the right to employment for PWDs in Ghana as a comparative basis for the Nigerian situation. Chapter five is a summary and provides recommendations and concludes the essay.

1.7. Conclusion

Disability is a phenomenon that is not particular to a race or group but affects every group in every nation. The right to work or employment is a fundamental entitlement of every human being and may not be restricted because of disability. The right to employment of PWDs is

protected by various instruments which are discussed in chapter two. The right to employment is a fundamental right belonging to every human being without condition as stated in the provision of Article 23 and Articles 6 of the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights respectively. Disability or no disability is not a pre-condition to be fulfilled to be entitled to work.

CHAPTER TWO

THE LEGAL FRAMEWORK FOR THE RIGHT TO EMPLOYMENT FOR PERSONS WITH DISABILITIES IN NIGERIA

2.1. Introduction

Human rights are a natural and integral element of humankind; they are to be enjoyed by every individual irrespective of opinion or status and health condition. Before the 1970s, there were some international laws and policies on the recognition of the civil rights of persons with disabilities. Although there were a lot of legislations concerned with the provision of some form of social security or public assistance, the 1970s however ushered in a new era in laws governing people with disabilities; with novel changes in law and policies from across Europe.¹ This period also witnessed an amazing rise in the number of civil rights agitations for persons with disabilities (PWDs).²

This chapter examines the various legal frameworks that exist at the international, regional, and national levels that specifically provide for the rights of PWDs; particularly their right to employment.

2.2 Right to Employment

Rights are legal, social or ethical principles of freedom or entitlement, they are the basic normative rules about what is allowed or owed to people.³ Employment can be described as what you do as a paying job. It is also defined as the work in which one is engaged, occupation and

¹ Ibrahim Imam, "Rights of People with Disability in Nigeria: Attitude and Commitment" (2016) 24(3) African Journal of International and Comparative Law <www.eupublishing.com/ajicl> accessed 7 January 2021.

² United Nations "Overview of Legal Frameworks for Disability Legislation" (*Wathinotes*, 4 October 2019) available at <www.wathi.org/overview-of-international-legal-frameworks-for-disability-legislation-united-nations/> accessed 7 January 2021.

³ Standard Encyclopaedia of Philosophy, available at <<https://plato.standard.edu/entries/rights>>, accessed on 4th June 2020.

activity to which one devotes time. Employment in legal language means “the state of working for another under a contract of hire at ones services are subject to the others directional control”⁴.

The right to employment is the legal entitlement or claim an individual possesses that allows him to work or to be engaged in meaningful work for which he is often paid.⁵This right is recognized by various international instruments and is provided for by the constitutions of many democratic nations including Nigeria. The Universal Declaration of Human Rights (UDHR) of 1948 provides that everyone has the right to work and the freedom to choose their line of employment. It also provides for the right to work under favourable working conditions and the protection against unemployment⁶. The International Covenant on Economic, Social and Cultural Rights makes similar provisions though taking it a step further by placing on State parties to the covenant the burden of safeguarding this right as well as the responsibility of ensuring the fulfilment of this right through formulation and implementation of policies for this purpose⁷.

Consequently, the right to employment is available to every human being without discrimination based on religion, sex and political opinions as well as disability. The importance of this right is also emphasized by its inclusion in the constitutions of many democratic nations. The 1999 constitution of the Federal Republic of Nigeria (CFRN) in its Fundamental Objectives and Directive Principle of State Policy⁸ provides for the right of any individual to participate in both major and non-major sectors of the country’s economy without prejudice or discrimination⁹. It also makes similar provisions of the UDHR and the ICESCR on the right to freely choose a line of employment and work under favourable conditions. It also provides that states policies shall be directed towards ensuring that all its citizens have equal opportunities to secure an adequate means of livelihood. However, this provision has been argued to have been rendered of

⁴ Your Dictionary <<https://www.yourdictionary.com>> accessed on 4th. June 2020.

⁵ Standard Encyclopaedia of Philosophy (note 3)

⁶ United Nations General Assembly 1948, Universal Declaration of Human Rights, Article 23, available at <<https://www.un.org>> accessed on 4th. June 2020

⁷ International Covenant on Economic, Social and Cultural Rights, Article 6(1) and (2)

⁸ Chapter II

⁹ Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 16(1) (d).

no effect by the provisions of Section 6(6) (c) of the 1999 constitution, which shall be elaborated in subsequent paragraphs.

2.2.1. The Importance of the Right to Employment for Persons with Disability in Nigeria

In terms of employment and participation in the labour market, PWDs are an underemployed group of the work force. In developing countries, PWDs make up 80 - 90 percent of the unemployed compared to industrialized countries with about 50 - 70 percent of PWDs unemployed¹⁰. Employment is an important tool in reducing poverty. Globally, poverty rates are considerably higher for persons with disabilities, this situation is even worse for them in developing countries including Nigeria. In Nigeria there are majority of PWDs living below the poverty margin¹¹.

The right to employment for PWDS is important in helping them attain better standards of living. The employment or inclusion of PWDs into the work force is also beneficial to the nation's economy. Like everyone else, the right to work is also particularly important for PWDS in breaking from social isolation and helps in developing new skill set and improving existing skills. Research has shown that work has improved the physical and mental health of PWDs whilst also building and improving their self-esteem as human beings¹².

2.3. International Legal Frameworks on the Right to Employment for Persons with Disabilities

There is a growing recognition in contemporary international law that all States should incorporate human rights standards in their national legislation¹³. Although the means chosen to promote full realization of economic, social, and cultural rights of PWDs will differ from one

¹⁰ Katharina Vornholt, Patrizia Villotti and Beate Muschalla, 'Disability and Employment – Overview and Highlights' (2018)1 *European Journal of Work and Organizational Psychology* 27 page 40 available at <www.tandfonline.com/doi/full/10.1080/1359432X.2017.1387536> accessed 4 June 2020.

¹¹ Haruna Mohammed, "The Problems of Living with Disability in Nigeria (2017) 65 *Journal of Law, Policy and Globalization*, page 109 available at <www.iiste.org/Journals/index.php/JLPG/article/view/39027/40128> accessed 7 June 2020.

¹³ Peter Spiro, "The States and International Human Rights" (1997) 66(2) *Fordham Law Review* 567.

country to another, as there is no country in which a major policy or program effort is not required.¹⁴This essay however focuses on the United Nations Convention on the Rights of People with Disability (CRPD) and the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983.

2.3.1. The United Nations Convention on the Rights of Persons with Disabilities (CRPD)

The United Nations General Assembly adopted the Convention on the Rights of Persons with Disabilities (CRPD) on the 13th day of December 2006 during the sixty-first session of the General Assembly. It was subsequently opened for signature in March 2007 and came into force in May 2008, in accordance with Articles 42 and 45(1) of the CRPD, respectively. The CRPD is a human rights treaty designed to protect the human rights and inherent dignity of PWDs and its purpose is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all PWDs, and to promote respect for their inherent dignity¹⁵.

The CRPD provides that PWDs 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.¹⁶The definition of disability in the CRPD is an adoption of the social model of disability.¹⁷ Accordingly, the CRPD recognises that disability is an evolving concept, and that PWDs are often prevented from exercising all their human rights and fundamental freedoms by barriers of attitude and environment which have been placed in their way¹⁸. In other words, the CRPD seeks to alter

¹⁴ Ito Akiko, "International Legal and Policy Framework on Disability" (1999) 93 *Proceedings of the Annual Meeting* (American Society of International Law) 334.

¹⁵ Convention of the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force May 2008) A/Res/61/106 (CRPD) art 1, available at <www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html> accessed 7 January 2021.

¹⁶ Ibid.

¹⁷ International Paralympic Committee "The UN Convention on Rights of Persons with Disabilities" (*Paralympic*, 1 August 2012) available at <www.paralympic.org> accessed 7 January 2021.

¹⁸ CRPD, preamble (e).

social attitudes by ensuring that governments, individuals and organisations recognise PWDs have the same human rights and fundamental freedoms as all other persons¹⁹.

The CRPD provides for diverse salient rights of PWDs which assenting States are obliged to safeguard. However, this essay focuses on Article 27 of the CRPD which in scope covers the right to work and employment of PWDs. The CRPD provides that State parties recognize the right of PWDs to work on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to PWDs. States parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during their employment.²⁰

It is important to state here that the right to work and employment guarantees the access of PWDs to the labour markets and inclusive employments; it deters every form of exclusion and discrimination of PWDs in the mainstream labour market. Importantly, the protection of discrimination covers all forms of employment in the open labour market as well as in sheltered or supported employment schemes.²¹ Article 4 (1) (a) and (b) of the CRPD imposes two general obligations on States parties; firstly, to adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the CRPD related to work and employment; and to take all appropriate measures, including legislation, to modify or abolish laws, regulations, customs and practices that constitute discrimination against PWDs in the areas of work and employment²².

¹⁹ International Paralympic Committee (note 17).

²⁰ CRPD, art 27(1).

²¹ European Association of Service Providers for persons with Disability, "Analysis of the legal meaning of Article 27 of the UN CRPD" (EASPD, 14 April 2012) available at <www.easpd.eu> accessed 7 January 2021.

²² Marco Fasciglione, 'Article 27 of the CRPD and the Right of Inclusive Employment of People with Autism' in Della Finna and Rachele Cera (eds), *Protecting the Rights of People with Autism in the Fields of Education and Employment* (Springer Cham 2015) p. 2.

Although the CRPD mandated its signatories to change the existing domestic laws in relation to the rights of PWDs and bring them in conformity with the CRPD,²³ there is also a resulting challenge of the implementation the principles of the CRPD in individual countries as it is one thing to formulate a legal framework and another thing to effectually implement it.

2.3.2. Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD)

An optional protocol is a legal instrument related to an existing treaty that addresses issues that the parent treaty does not cover sufficiently.²⁴ It is called optional because, countries that ratify the Convention do not necessarily ratify the optional protocol.²⁵ The Optional Protocol is an additional agreement to the United Nations CRPD which establishes an individual complaints mechanism for PWDs who allege that their rights under the CRPD have been denied. The Optional Protocol to the CRPD was drafted on the 13th day of December 2005 and signed on the 30th day of March 2007 and it is one of the communications mechanisms of the United Nations treaty bodies.²⁶

The Optional Protocol enables individuals or groups who claim to have their rights breached under the CRPD to make a complaint to the United Nations Committee on the Rights of Persons with Disabilities.²⁷ The complaints are made in writing and the CRPD Committee first examines them for admissibility. Not all the complaints will be admissible, as they must satisfy several criteria.²⁸ Among these is that the complainant cannot be anonymous and that all the domestic remedies should have been exhausted before bringing a complaint to the Committee. If admissible, the Committee will examine the merits of the complaint and formulate its views and

²³Suresh Bada, 'The Rights of Persons with Disability Act, 2016: Challenges and Opportunities' (2019) 4 Indian Journal of Psychiatry available at <www.ncbi.nlm.nih.gov/pmc/articles/PMC6482682/> accessed 7 January 2021.

²⁴United Nations, 'From Exclusion to Equality- Realizing the Rights of Persons with Disabilities' (2007) Handbook for Parliamentarians on the Rights of Persons with Disabilities and its Optional Protocol p. 31, available at <<https://www.ohchr.org/Documents/Publications/training14en.pdf>> accessed 7 January.

²⁵ Ibid.

²⁶ Ibid.

²⁷Office for Disability Issues, 'Optional Protocol' (ODI, 3 May 2019) available at <www.odi.govt.nz/united-nations-convention-on-the-rights-of-persons-with-disabilities/optional-protocol/#:~:text=The%20Optional%20Protocol%20is%20an,the%20Convention%20have%20been%20denied> accessed 7 January 2021.

²⁸Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities, Article 2

recommendations to the State party in question. It can also ask the State party to report on measures it has taken to remedy human rights violations that have been committed.²⁹

Finally, it should be noted that the Committee's recommendations are not legally binding, but the Committee's decisions represent an authoritative interpretation of the Convention and there are procedures in the Optional Protocol to monitor whether States parties have implemented their recommendations;³⁰ since they consider that by accepting the procedure, States parties have also accepted to respect the Committee's findings.³¹

2.3.3. Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)

The International Labour Organization is a specialized agency of the United Nations dedicated to improving labour conditions and living standards throughout the world. It was established in 1919 by the Treaty of Versailles as an affiliated agency of the League of Nations and it became the first specialized agency of the United Nations in 1946³².

Since the establishment of the International Labour Organization, it has formulated legal frameworks in relation to the rights of PWDs to work. Specifically, the first international instrument containing provisions relating to the vocational rehabilitation of workers with a disability was adopted by the International Labour Conference in 1925 (Recommendation No 22), a few years after the establishment of the International Labour Organization. In 1944, the International Labour Conference adopted a comprehensive Recommendation (No 71).³³ Subsequently, other legal frameworks were formulated by the International Labour Organization such as the Vocational Rehabilitation and Employment (Disabled Persons)

²⁹ United Nations (note 24).

³⁰ Office for Disability Issues (note 27).

³¹ Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities, Article 1.

³² Nobel Media, 'International Labour Organization: History' (*Nobel Prize*, 11 December 1969) available at <www.nobelprize.org/prizes/peace/1969/labour/facts/> accessed 7 January 2021.

³³ Roggero Paola, 'Employment & Youth with Disabilities: Sharing Knowledge and Practices' (*World Bank*, 4 October 2015) available at <<https://documents.worldbank.org/curated/en/675811468313735558/pdf/372740Employment0youth01PUBLIC1.pdf>> accessed 7 January 2021.

Convention (No. 159), which was adopted by the International Labour Organization in 1983. Also, Recommendation No. 168 set out a few fundamental principles to underline vocational rehabilitation and employment policy, and detailed measurements which should be taken to promote equitable employment opportunities³⁴.

Vocational rehabilitation refers to a continuous and co-ordinated process of rehabilitation which involves the provision of vocational services such as vocational guidance, vocational training and selective placement that are designed to enable PWDs to secure and retain suitable employment. It is a means through which PWDs can be reintroduced into society to function socially and economically according to their capability.³⁵ It includes education; training; vocational guidance and counselling; and rehabilitation services such as medical, psychiatric, social and psychological assessments, vocational assessment and restoration, job preparation and placement and assistive technological services, which are aimed at ensuring that PWDs are rightly empowered to secure good employments amongst other benefits.

2.4. Regional Framework and Instruments on the Right to Employment for Persons with Disabilities

Some regional organizations have developed their own human rights legal frameworks, although these legal frameworks vary considerably. This essay however focuses on the framework in Africa. It is important to note that the African human rights approach is traditionally perceived to be premised on a communitarian understanding of humanity, human society, and the individual human being³⁶.

In examining the African regional framework and instruments on the right to employment for PWDs, specific legal frameworks that would be examined include the African Charter on

³⁴ Roggero (note 33).

³⁵ Anwuli Ofuani, 'The Right to Economic Empowerment of Persons with Disabilities in Nigeria: How Enabled?' (2011) *AHRLJ*648 available at <www.scielo.org.za/pdf/ahrlj/v11n2/15.pdf> accessed 7 January 2021.

³⁶ Tobias Pieter, 'The UN Convention on the Rights of Persons with Disabilities in Africa: Progress after 5 years' (2011) 8(14) *SUR IJHL*134 available at <www.sur.conectas.org/en/home/issue> accessed 7 January 2021.

Human and Peoples' Right of 1981, Protocol to the African Charter on Human and Peoples' Rights on the Rights of PWDs in Africa, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, African Youth Charter of 2007, Grand Bay (Mauritius) Declaration and Plan of Action, and the Kigali Declaration.

2.4.1. The African Charter on Human and Peoples' Rights (Banjul Charter)

In 1981 the Organization of African Union (now the African Union) put in place the African Charter on Human and Peoples' Rights (Banjul Charter) to address human rights issues in Africa. The step taken by the Organization was to contribute to the progressive development, promotion and protection of human rights. The Preamble highlights the need to uproot all forms of discrimination particularly those based on race, ethnic group, colour, sex, language, religion, or political opinion. It however does not mention disability³⁷.

Article 2 of the African Charter provides for the right against discrimination; it specifically provides that: 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, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status. It is important to point out that in as much as the African Charter was a welcome development for Africa at the time it was entered into; it has very minimal reference to the specific needs of PWDs as well as disability rights. At best, it reaffirmed the inalienable rights of all men in society. In relation to the right of employment, Article 15 provides that “every individual shall have the right to work under equitable and satisfactory conditions and shall receive equal pay for equal work”. This provision attractively covers the right of every individual to work, without any explicit reference to the rights of PWDs to good employment.

³⁷ Angelo Dube, 'Protection of the Rights of Persons Living with Disabilities under the African Human Rights System' (1 September 2014) p. 27, available at <<https://www.researchgate.net/publication/242235445>> accessed 7 January 2021.

Article 30 established the African Commission on Human and Peoples' Rights. The functions of the African Commission were provided under Article 45 of the African Charter and includes promoting human and peoples' rights and in particular; ensuring the protection of human and peoples' rights under conditions laid down by the present Charter; interpreting all the provisions of the present Charter at the request of a State party, an institution of the OAU or an African organization recognized by the OAU; and performing any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.

2.4.2. Protocol to the African Charter on Human and Peoples' Right of the Rights of Persons with Disabilities in Africa.

The Protocol to the African Charter on Human and People's Rights on the Rights of Persons with Disabilities in Africa (African Disability Protocol) was adopted by the African Union (AU) on 29 January 2018. It is an important step towards the protection of the rights of persons with disabilities in Africa; standing alongside the United Nations CRPD in setting out human-rights standards in respect of persons with disabilities in the African region.³⁸The significance of the African Disability Protocol cannot be overemphasized because within the African States widely recognized as egregious human right violators³⁹and the living standard of PWDs is often reported to be dismal⁴⁰.

The African Disability Protocol provides for diverse rights for PWDs. Specifically, Article 19 of the African Disability Protocol, provides for the right to work and states that; every person with a disability has the right to decent work, to just and favourable conditions of

³⁸ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa, adopted on 29 January 2018 available at <<https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-persons-disabilitiesafrica>>accessed 7 January 2021.

³⁹ Makau Mutua, 'The African Human Rights Court: A Two-Legged Stool?' (1999) 21 *Hum Rts Q* 343, available at <www.researchgate.net/publication/228163732_The_African_Human_Rights_Court_A_Two-Legged_Stool> accessed 7 January 2021.

⁴⁰ Louis Oyaro 'Africa at crossroads: The United Nations Convention on the Rights of Persons with Disabilities' (2015) 30 *AUILR*, p.367, available at <<https://digitalcommons.wcl.american.edu/auilr/vol30/iss2/8/>> accessed 7 January 2021.

work.⁴¹ Article 4 imposes a general obligation on State Parties to the Protocol and goes further to proffer specific steps by which they can effectively carry out the obligation imposed upon them. Upon closer inspection, the inclusion of certain steps to be taken by states parties in the African Disability Protocol shows a clear intent to contextualise the realisation of the rights of PWDs on the African continent.⁴²

2.5. National Legal Frameworks on the Right to Employment for Persons with Disabilities

Apart from international and regional legal frameworks on the rights of PWDs in relation to their right to employment and good work discussed above, there are diverse legal national frameworks on this subject matter. Some of these national legal frameworks were generally enacted to protect the rights of every person in a State, while others were specifically enacted to safeguard the rights of PWDs in a State. It is important to underscore that, these national legal frameworks on the general rights and specific right to employment for PWDs vary from across national systems. While some jurisdictions have well developed and far-reaching domestic laws protecting the rights of PWDs within their territories, others are yet to have well developed domestic laws in this area.

This essay however focuses on the existing framework for promoting and protecting the rights of PWDs to employment in Nigeria. These are the Constitution of the Federal Republic of Nigeria, 1999; National Commission for Rehabilitation Act of 1969; National Provident Fund Act of 1961; and the Discrimination against Persons with Disabilities (Prohibition) Act, 2018.

2.5.1. The Constitution of the Federal Republic of Nigeria, 1999 (as amended)

The Constitution of the Federal Republic of Nigeria⁴³ is the grundnorm of the Nation and other legal frameworks revolve around it. Accordingly, the constitution is supreme and its provisions

⁴¹ Lawrence Mute and Elizabeth Kalekye, 'An appraisal of the Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa' (2016) 68 *East African Law Journal* 86, available at <www.rodra.co.za> accessed 7 January 2021.

⁴² Ibid.

⁴³ Constitution of the Federal Republic of Nigeria (Promulgation Act) C23, Laws of the Federation of Nigeria, 2004.

shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.⁴⁴ The binding effect of the Constitution was clearly pointed out in the cases of *AG Lagos v AG Federation*⁴⁵ where it was established that even the President is bound by the provisions of the Constitution. Similarly, in *Inakoju v Adeleke*⁴⁶ the Supreme Court reiterated that Acts which contravene the provisions of the Constitution will be declared null and void because the constitution is supreme and shall have binding force on all persons and authorities throughout Nigeria. Furthermore, if any law is inconsistent with the provisions of this Constitution, the Constitution shall prevail, and that other law shall to the extent of the inconsistency be void.⁴⁷

The Constitution of the Federal Republic of Nigeria confers certain rights that are fundamental to the existence for all its citizens, including PWDs; and except in circumstances provided by the Constitution, the rights are inalienable and cannot be deprived. These rights include the right to life,⁴⁸ right to dignity of human persons;⁴⁹ right to personal liberty;⁵⁰ right to fair hearing;⁵¹ right to private and family life;⁵² right to freedom of thought, conscience, and religion;⁵³ right to freedom of expression and the press;⁵⁴ right to peaceful assembly and association;⁵⁵ right to freedom of movement;⁵⁶ right to freedom from discrimination;⁵⁷ and the right to acquire and own immovable property anywhere in Nigeria.⁵⁸

It must be emphasised that the 1999 Constitution as amended does not directly and expressly make any reference to PWDs in Nigeria but contains some provisions that indirectly

⁴⁴ CFRN 1999, section 1(1).

⁴⁵ (2003)12 NWLR 833.

⁴⁶ (2007)1 All N.L.R. 65.

⁴⁷ CFRN 1999, Section 1(2).

⁴⁸ Ibid, Section 33.

⁴⁹ Ibid, Section 34.

⁵⁰ Ibid, Section 35.

⁵¹ Ibid, Section 36.

⁵² Ibid, Section 37.

⁵³ Ibid, Section 38.

⁵⁴ Ibid, Section 39.

⁵⁵ Ibid, Section 40.

⁵⁶ Ibid section 41.

⁵⁷ Ibid, Section 42.

⁵⁸ Ibid, Section 43.

address the issue of the rights of PWDs in Nigeria.⁵⁹ Accordingly, apart from the fact that the rights of citizens as provided for in the Constitution also relates to any PWD who is a citizen Nigeria, there are sections in the Constitution that indirectly refer to PWDs. For example, section 42 (2) of the Constitution provides that “no citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth”. Umeh however argues that the right to non-discrimination as provided for in the Constitution does not exemplify the inclusive equality of all persons in Nigeria as posited under the Constitution as well as other relevant international instruments adopted by Nigeria.⁶⁰ According to Umeh, Nigeria admits to the imperative of rendering equality to everyone in its constitutional preamble, but without substantially illustrating same in relation to vulnerable people, such as PWDs.⁶¹ Similarly, although Nigeria has adopted and ratified the United Nations CRPD, its provisions regarding the right to non-discrimination in the Constitution subtly assumes similarity of equality needs for all persons.⁶²

The Nigerian Constitution enjoins the State to carry out its social objectives without discrimination on any group; and to provide equal opportunities towards securing adequate means of livelihood as well as adequate opportunity to secure suitable employment.⁶³ Also, the State shall direct its policy towards ensuring that conditions of work are just and humane⁶⁴ and there is equal pay for equal work without discrimination on account of sex, or any ground whatsoever.⁶⁵ These are laudable social and economic objectives which presumably seek to protect the rights of all citizens including PWDs.

⁵⁹ Halima Doma, ‘Human Rights of Persons with Disabilities: Challenges of Protection and Enforcement in Nigeria’ p. 12 (1 May 2020) available at <www.researchgate.net/publication/341090390> accessed 7 January 2021.

⁶⁰ Ngozi Umeh, ‘Reading ‘Disability’ into the Non-discrimination Clause of the Nigerian Constitution’ (2016) 4 African Disability Rights Yearbook page 54 <www.saflii.org/za/journals/ADRY/2016/> accessed 7 January 2021.

⁶¹ Ibid.

⁶² Ibid.

⁶³ CFRN 1999, Section 17(3)(a).

⁶⁴ Ibid, Section 17(3)(b).

⁶⁵ Ibid, Section 17(3)(e).

Unfortunately, by virtue of the provisions of section 6(6) (c) of the same Constitution, the entire provisions of Chapter II on the Fundamental Objectives and Directive Principles of State Policy are non-justiciable, thus the provisions cannot be enforced in a court of law.⁶⁶ In the case of *Archbishop Anthony Olubunmi Okogie & Others v Attorney-General of Lagos State*⁶⁷, it was held that the directive principles of state policy as enshrined in the Constitution must conform to and run subsidiary to the fundamental rights provisions in Chapter IV of the Constitution, and that the said directive principles are subject to the legislative powers of the State.

Finally, regardless of the fact there are no express and specific provisions for disability rights in the 1999 Constitution of the Federal Republic of Nigeria as amended, it is important to accentuate that Nigeria is a signatory to major international human rights treaties that extol the fundamentals of non-discrimination and has ratified other international and regional legal frameworks such as the United Nations CRPD and its Optional Protocol. Nigeria also incorporated the African Charter into Nigerian law⁶⁸ by the enactment of African Charter on Human and Peoples' Rights (Enforcement and Ratification) Act 2 of 1983.⁶⁹

The provision of this legislation has been judicially noticed in several cases. Specifically, the Nigerian Supreme Court in the case of *General Sani Abacha & Others v Chief Gani Fawehinmi*⁷⁰ held that, where a treaty is enacted into law by the National Assembly, it becomes binding and our courts must give effect to it like all other laws falling within the judicial power of the courts.⁷¹ This decision therefore implies that any international treaty, regardless of how significant it is needs to be enacted into law in Nigeria for it to be binding in the country. Thus, the rights as provided under the African Charter, such as the right to employment of all individuals provided under Article 15 of the African Charter are therefore enforceable in Nigeria.

⁶⁶ Umeh (note 60).

⁶⁷ (1981)1 NCLR 218.

⁶⁸ CFRN 1999, Section 12.

⁶⁹ Which came into effect on 17 March 1983, but is now contained in Cap A9, Laws of the Federation of Nigeria, 2004.

⁷⁰ (2000) SC 45/1997.

⁷¹ Umeh (note 60) 68.

However, since the African Charter did not specifically mention the rights of PWDs there is a greater need for Nigeria to enact specific international legal frameworks such as the Protocol to the African Charter on the subject matter of the right to employment of PWDs.⁷²

2.5.2. *Discrimination Against Persons with Disabilities (Prohibition) Act 2018*

The Discrimination Against Persons with Disabilities (Prohibition) Act, 2018, was signed in 2018 following 9 years of relentless advocacy by disability rights groups and activists.⁷³ This follows years after Nigeria ratified the United Nations CRPD in 2007 and the Optional Protocol in 2010. Since then, civil society groups and people with disabilities called on the government to put it into practice⁷⁴.

The Act amongst other rights which it aims to safeguard prohibits discrimination based on disability and imposes sanctions including fines and prison sentences on those who contravene it.⁷⁵ Section 1(2) of the Act provides for one million naira (N1,000,000) only as fine for corporate bodies and five hundred thousand (N500,000) only as fine for individuals or a term of six months imprisonment or both. It also stipulates a five-year transitional period for modifying public buildings, structures, and automobiles to make them accessible and usable for people with disabilities. Section 1(3) goes further to guarantee the right to maintain civil action for damage by the person injured against any defaulter. Section 2 vests the Federal Ministry of information with the responsibility to make provisions for promotion of awareness regarding the rights, respect and dignity of PWDs. This must also include the capabilities, achievements and contributions of PWDs to the society.⁷⁶

⁷² Umeh (note 60) 68.

⁷³ Aniete Ewang, 'Nigeria Passes Disability Rights Law' (Human Rights Watch, 25 January 2019) available at <www.hrw.org/news/2019/01/25/nigeria-passes-disability-rights-law> accessed 7 January 2021.

⁷⁴ Ibid.

⁷⁵ The Discrimination Against Persons with Disabilities (Prohibition) Act, 2018, section 1(1).

⁷⁶ Yekeen Akinwale, 'Six Things You Must Know About the Disability Act, 2018' (*ICIR*, 25 January 2019) available at <www.icirnigeria.org/six-key-things-you-must-know-about-disability-act-2018/> accessed 7 January 2021.

Section 28 of the Act provides for the equal right to work for persons with disabilities in Nigeria. It provides that PWDs have the right to work on an equal basis with others and this includes the right to opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open. A person who contravenes subsection(1), commits an offence and is liable on conviction to nominal damages to minimum of N250,000 payable to the affected person with disability; where a company contravenes subsection (1), the company commits an offence and is liable to nominal damages of a minimum of N500,000 payable to the affected person with disability; and any principal officer of the company involved in the violation is liable to N50,000 damages payable to the affected PWD.

Finally, apart from the equal right to work recognised in the Act, section 29 of the Act also provides for opportunity for employment; mandating all employers of labour in public organizations to as much as possible, have PWDs constituting at least 5% of their employment. Section 31(1) of the Act establishes the National Commission for Persons with Disabilities, responsible for ensuring that PWDs have access to housing, education, and healthcare. The Commission will be empowered to receive complaints of rights violations and support victims to seek legal redress amongst other duties.

2.6. Conclusion

The chapter examined some international, regional and national legal frameworks which recognise and provides for the rights of PWDs. From these legal instruments it can be inferred that the needs of PWDs are given some consideration⁷⁷. However, the significance of most of these legal frameworks as already discussed are being undermined by problems such as the failure of many States to ratify the international and regional legal frameworks providing for the rights of PWDs and even after ratification there is also the problem off effective enforcement. For instance, Nigeria that has ratified some of the international and regional legal frameworks

⁷⁷ Yekeen (note 76).

and even established a domestic legislation is still unable to effectively implement and safeguard the rights of PWDs.⁷⁸

In Nigeria, although the enactment of the Discrimination Against Persons with Disabilities (Prohibition) Act, is remarkable, it is only a first step in the fulfilment of Nigeria's obligations under the United Nations CRPD. There is need for government to put effective measures, including policies and regulations in place for its full implementation to ensure equal treatment and participation of PWDs across Nigeria. PWDs are capable of being actively integrated into our societies. Therefore, there is need for relevant stakeholders to take active steps towards eliminating all forms of discrimination against PWDs. In fact, the desire to be productive but the absence of opportunities and the resulting lack of resources prevents PWDs from achieving their goals, from acquiring needed assets, challenge their dignity, and frustrate any hope that they may have of empowerment.⁷⁹

⁷⁸ Yvette Basson, 'The Right to an Adequate Standard of Living in the Protocol to the African Charter on Human and Peoples Rights on the Rights of Persons with Disabilities in Africa' (*Researchgate*, 12 May 2020) page 249 <www.researchgate.net/publication/341313553> accessed 7 January 2021.

⁷⁹ Lex Frieden, 'Perspectives on the Status of People with Disabilities Internationally' (*Lexfrieden*, 30 June 2003) <www.lexfrieden.com/_lfrieden/lfriedenperspectives0603.html> accessed 7 January 2021.

CHAPTER THREE

THE CHALLENGES AND PROSPECTS FOR THE RIGHT TO EMPLOYMENT OF PEOPLE WITH DISABILITIES IN NIGERIA

3.1. Introduction

The Nigerian government has continued to support the United Nations standard rules on the equalization of opportunities for PWDs. This is exemplified in the recent Discrimination Against Persons with Disabilities (Prohibition) Act enacted in 2018. This show of support on the part of the Nigerian government stands out as a major prospect in protecting the rights of PWDs in Nigeria. However, certain factors are limiting the effective implementation and enforcement of disability rights in the country. It is important to state here that most of these challenges are not peculiar to PWDs in Nigeria alone, as similar challenges are evident in other parts of the developing countries.¹

As a result of these challenges, PWDs in Nigeria are still marginalized and excluded despite visible efforts in the establishment of a national legal framework for the enforcement of disability rights and the proper integration of PWDs in Nigeria.²A clear review of disability issues in Nigeria reveals the diverse factors limiting the effective enforcement of rights of PWDs in Nigeria. This chapter focuses on selected factors limiting the inclusion of PWDs in economic activities and especially the limitations encountered with the implementation and enforcement of the right to employment of PWDs in Nigeria.³

3.2. Challenges of the Rights to Employment of PWDs in Nigeria

¹ Nurudeen Amusat, "Disability Care in Nigeria: The Need for Professional Advocacy" (2009)1(1) *African Journal of Physiotherapy and Rehabilitation Sciences*30-36 available at <www.ajol.info/index.php/ajprs/article/view/51313>accessed 23 February 2021.

² Ibid.

³ Lang Raymond and Upah Lucy, "Scoping study: Disability issues in Nigeria" (2008) available at <http://www.ucl.ac.uk/lcccr/downloads/dfid_nigeriareport>accessed 23 February 2021.

In Nigeria, the challenges against the right to employment of PWDs can be grouped into factors such as; political factors, social factors, and economic factors.⁴ It is important to reiterate that these challenges do not only limit the right to employment of PWDs in Nigeria but they also act as militating factors against the enforcement and protection of the general disability rights of PWDs in Nigeria.⁵ Some of these challenges include; lack of information and awareness of the disability rights in Nigeria, lack of lucrative job opportunities and employments in Nigeria, discrimination and disadvantage in employment participation, poverty, illiteracy and lack of education, ineffective enforcement of disability rights and lack of political will in Nigeria.

3.2.1. Lack of Information and Awareness of the Disability Rights in Nigeria

This is one of the greatest challenges in the effective enforcement and protection of the rights of PWDs in Nigeria, especially the right to employment.⁶ The lack of information and awareness of disability rights in Nigeria has continued to subsist with a resulting negative consequence, regardless of the various national, regional and international legal frameworks aimed at protecting the rights of PWDs in Nigeria⁷. What this means is that a great number of people; including employers of labour have little or no knowledge of the disability rights and are unaware of the fact that the same rights that protect them also protect PWDs.⁸

It is one thing for laws to be enacted and another for the laws to be within the knowledge of the persons for which they are enacted. Thus, the enforcement of the rights of PWDs generally and particularly the right to employment of PWDs is also connected to the knowledge or awareness of these rights.⁹

⁴ Halima Kutigi, Suleiman Okoronkwo and Rilwanu Suleiman “Human Rights of Persons with Disabilities: Challenges of Protection and Enforcement in Nigeria” (1 May 2020) p. 12 available at <www.researchgate.net/publication/341090390> accessed 13 May 2021.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Nurudeen (note 1).

⁹ Kutigi, Okoronkwo and Suleiman (note 4).

The significance of proper knowledge and awareness of disability rights in Nigeria cannot be overemphasized. It creates a conducive environment for peaceful coexistence of PWDs and their counterparts in Nigeria; fostering a more inclusive society for all individuals.¹⁰ An examination of the Constitution of the Federal Republic of Nigeria reveals that there is not a single provision making specific reference to PWDs, even though it can be argued that the provisions of the constitution applies to them just as it applies to every other persons in Nigeria.¹¹

Unfortunately, both Section 42(2) of the Constitution, which specifically prohibits discrimination on the basis of the circumstances of a person's birth; and Section 14, 16(1) and 17 which guarantees the right to equality and fundamental rights for all, make no specific reference to PWDs.¹² The implication of this is that many persons in Nigeria; including PWDs may not understand the scope of the rights as contained in the Constitution and the issue as to whether or not the legislation protects the rights of PWDs becomes subject to argument.

The enactment of the Discrimination Against Persons with Disabilities Act 2018 does little to address this challenge. In Nigeria, many laws are enacted but afterwards not much is effectively said or done about educating the people on the existence and legal intricacies of such laws.¹³ When people are not educated or sensitized as to the existence of laws and their rights and obligations enshrined in such laws; abuse and contraventions of such laws without remedies may be occasioned and at best such laws become subject to academic reference only with limited real life practical enforcement¹⁴. This appears to be the situation with the Disability Act 2018 and the

¹⁰ Narmeen Shigri, 'The Importance of Disability Awareness' (*Medium*, 20 January 2018) available at <www.medium.com/arise-impact/the-importance-of-disability-awareness-home-and-school-ead2276f349> accessed 23 February 2021.

¹¹ Kutigi, Okoronkwo and Suleiman (note 4).

¹² Ibid.

¹³ Joseph Ogunbiyi and Olukunle Oludeyi, "Citizenship Education for Liberation in Nigeria" (2014) 6(1) *Makerere Journal of Higher Education* 67-78.

¹⁴ Ibid.

implication is that many PWDs are unaware of their rights and because of this they cannot seek for remedy when any of their rights is breached or contravened.¹⁵

Finally, this lack of information and awareness happens within the justice enforcement system in Nigeria and stands out as a challenge and impedes the full participation of PWDs in the justice system.¹⁶ This means that the information on court forms, processes and procedures are not available in versions such as Braille, which PWDs can easily access. Furthermore, Kutigi points out that, the courts in Nigeria do not employ professionals such as psychiatrists or sign language interpreters to effectively meet the needs of PWDs as court users in Nigeria.¹⁷ Thus, PWDs may not be able to effectively seek redress in the occasion of a breach of their right to employment in Nigeria.

3.2.2. *Lack of Job Opportunities and Employment in Nigeria*

Unemployment is a global phenomenon whereby the eligible workforce of a nation is disengaged in the service of the nation. It is not only a serious economic issue but has social implications that affect almost all countries and all people either directly or indirectly¹⁸. The rapid rise in the country's unemployment rate has become a major source of concern. Currently in Nigeria, many graduates and school leavers are unable to secure good employments and unlike what obtains in most developed countries, in Nigeria, there is no social security system in place to cater for the unemployed¹⁹.

The lack of job opportunities and employment in Nigeria generally stands out as another major challenge to the right to employment of PWDs in the country. Reason being that, regardless of the agitations for the inclusive employment of PWDs in Nigeria and the enactment

¹⁵ Augustine Arimoro and Abba Elgujja, "Persons with Intellectual Disability and Access to Justice in Nigeria: Challenges and the Way Forward" (9 September 2019) available at <www.researchgate.net/publication/335014366> accessed 23 February 2021.

¹⁶ Ibid.

¹⁷ Kutigi, Okoronkwo and Suleiman (note 4) page 11.

¹⁸ Olubukola Adesina, "Unemployment and Security Challenges in Nigeria" (2013) 3(7) *International Journal of Humanities and Social Sciences* 146 available at <www.ijhssnet.com> accessed 13 May 2020.

¹⁹ Ibid.

of the Disability Act 2018, which provides specifically for the rights of PWDs to employment and mandating all employers of labour in public organizations to as much as possible, have PWDs constituting at least 5% of their employment,²⁰ this is unattainable regarding the high rate of unemployment of individuals, with or without disabilities.²¹

According to Thompson in his situational analysis for inclusion works in Nigeria, there are nearly 105 million people of working age in Nigeria²². It was further recorded in the report that the labour force participation rate in Nigeria is 56.3%. However, it was posited that 69.1% of the employed masses in Nigeria do not enjoy proper remuneration and are either underemployed or underpaid in their employment which makes them little or no better than the unemployed populace in Nigeria.²³ With regards to PWDs in Nigeria, regardless of the restatement of their right to employment, the lack of lucrative job opportunities and employment in the country generally reduces the employment participation of PWDs.²⁴ It is important to reiterate, that this factor affects all PWDs in Nigeria; regardless of the level of education and expertise in different fields of human endeavours just as it affects other eligible and skilled members of the work force in Nigeria who are without any form of disability²⁵.

3.2.3. Discrimination and Disadvantage in Employment Participation

This is another major challenge to the right to employment of PWDs in Nigeria. This discrimination and disadvantage in the employment participation of PWDs in Nigeria is an attitudinal and stereotype problem amongst employers of labour²⁶. Unlike the lack of job and

²⁰ The Discrimination Against Persons with Disabilities (Prohibition) Act, 2018, section 29.

²¹ Haruna Mohammed, "The Problems of Living with Disability in Nigeria (2017) 65 *Journal of Law, Policy and Globalization*, page 109 available at <www.iiste.org/Journals/index.php/JLPG/article/view/39027/40128> accessed 7 June 2020.

²² Stephen Thompson, "Nigeria Situational Analysis for Inclusion Works" (, 30 July 2020) available at <www.researchgate.net/publication/343306107> accessed 23 February 2020.

²³ Ibid.

²⁴ Ibid.

²⁵ Haruna (note 21).

²⁶ Roggero Paola, 'Employment & Youth with Disabilities: Sharing Knowledge and Practices' (*World Bank*, 4 October 2015) available at <<https://documents.worldbank.org/curated/en/675811468313735558/pdf/372740Employment0youth01PUBLIC1.pdf>> accessed 7 January 2021.

employment opportunities, discrimination in employment comes to play regardless of the availability of a work or job opportunity and the skills and educational backgrounds of PWDs.²⁷ This factor mars the access of PWDs in Nigeria to the labour market and the economic empowerment of PWDs²⁸. It should be noted here that economic empowerment is key to social integration, effective socialization, self-expression and self-identity and realization in every society.²⁹

In Nigeria, employers fail to provide opportunities for PWDs, and this is traceable to the recruitment practices of the employers³⁰. This has resulted in the exclusion of many eligible PWDs in Nigeria, because the employment processes in private organizations are substantially governed by the perspectives and personal judgments of on the part of the employers and they determine suitability and acceptability during recruitment.³¹ There is need for employers to be duly orientated to adopt more liberal and accommodating recruitment practices during recruitment process³² and what constitutes fair selection for any form of employment should be based on the prospective employee's ability to do the job.³³ This implies that, PWDs should not be discriminated against if they have the necessary skills and expertise for an employment.

In Nigeria, PWDs are pitied and stigmatised in their endeavours.³⁴ This issue of pity and stigma is closely tied to the charity approach to disability in many societies, whereby PWDs are unduly separated or segregated from the rest of the labour force even when they are eligible, capable and willing to be employed and participate in economic activities.³⁵ Many employers see

²⁷Roggero (note 26).

²⁸ Tijani Abdulhakeem and Ejere Dennis, "Legal Regime on Disability Rights in Nigeria" (2015) 5(1) *Sacha Journal of Human Rights*. 65-81 available at <www.sachajournals.com> accessed 23 February 2021.

²⁹ Ibid.

³⁰ Brading Jean and Curtis John, "Disability Discrimination: A Practical Guide to the New Law" (London: Kogan Page, 2nd Edition; 2000) 52.

³¹ Tororei, S. K, 'The Right to Work: A Strategy for Addressing the Invisibility of Persons with Disability' (2009) 29(4) *Disability Studies Quarterly* 4 available at <www.dsqsds.org/article/view/973/1174> accessed 23 February 2021.

³² Tijani and Dennis (note 28).

³³ Brading and Curtis (note 30).

³⁴ Thompson (note 22).

³⁵ Waddington Lisa and Diller Matthew, 'Tensions and Coherence in Disability Policy: The Uneasy Relationship Between Social Welfare and Civil Rights Models of Disability in American, European and International

PWDs as incapable of being efficient in their work environment if they are employed, less productive compared to their counterparts who are without any form of disability and that they are highly prone to accident in the work environment³⁶. In some circumstances, when PWDs are considered for employments, it usually appears to be based on pity rather than merit and professional competence.³⁷

Lastly, it is important to point out that this issue of discrimination goes further than limiting the right to employment of PWDs in Nigeria but also affects employed PWDs. Put more succinctly, there are other circumstances where employed PWDs are being marginalized in their workplaces.³⁸ Marginalization in this regard is likely to result to redundancy in the full and effective inclusion and participation of PWDs in their workplace and the productivity of PWDs in their work environment, where they have the potential and can strive effectively if such discrimination and marginalization were to be absent.

3.2.4. Poverty, Illiteracy and Lack of Education of PWDs in Nigeria

Poverty and lack of education as challenges to the right to employment of PWDs in Nigeria is examined jointly here because there is a nexus between both factors. To be gainfully employed in any field of human endeavour there must be a required level of skill and educational background which a prospective employee must possess. For PWDs, cost of education and skill acquisition is expensive as PWDs may require specialized trainings and attentions which may

Employment Law' (*DREDF*, 12 March 2020) available at <www.dredf.org/news/publications/disability-rights-law-and-policy/tensions-and-coherence-in-disability-policy/> accessed 23 February 2021.

³⁶ Anwuli Ofuani, 'The Right to Economic Empowerment of Persons with Disabilities in Nigeria: How Enabled?' (2011) *AHRLJ*648 available at <www.scielo.org.za/pdf/ahrlj/v11n2/15.pdf> accessed 7 January 2021..

³⁷ Tijani and Dennis (note 28).

³⁸ Lehman Anthony, Goldberg Richard and Dixon Lisa, "Improving Employment Outcomes for Persons with Severe Mental Illnesses" (2 February 2002) available at <www.researchgate.net/publication/11535426_Improving_Employment_Outcomes_for_Persons_With_Severe_Mental_Illness> accessed 23 February 2021.

not be readily accessible to the poor.³⁹ It has been posited that, disability can stand out as both a cause and a consequence of poverty.⁴⁰

Thus, in Nigeria it is evident that most PWDs are poor and are unable to live comfortably as their counterparts.⁴¹ According to Oliver, an ideal educational system must feature a balanced and broadly based curriculum which promotes the spiritual, moral, cultural, mental and physical development and prepares pupils, irrespective of abilities, for opportunities, responsibilities and experiences of adult life,⁴² the truth of this assertion is quite indisputable. Accordingly, for a balanced and standard educational system, individuals need to have access to materials; resources and equipment which would enable them to attain a high standard of education.⁴³ Availability of a good educational system would most likely enable benefitting individuals to maximize their potentials and harness opportunities.

Flowing from the above, it is clear that education is important for everyone in a society. In relation to the education of PWDs, they require special equipment and resources⁴⁴ unlike their counterparts that are without any form of disability. The special needs of PWDs vary depending on the nature of disability;⁴⁵ It is important to point out that there is a semblance improvement in the aspect of education for PWDs in many countries including Nigeria, however, the educational system in Nigeria seems extremely far from sufficiently meeting the educational needs of PWDs as a result of the absence of the special equipment, facilities and educational resources needed for the proper education of PWDs in Nigeria.⁴⁶ There is no provision in the extant national legal

³⁹ Rebecca Branstetter, 'How Parents can Support Children with Special Needs During Distance Learning' (*Greater Good Magazine*, 20 October 2020) available at www.greatergood.berkeley.edu/article/item/how_parents_can_support_children_with_special_needs_during_distance_learning accessed 23 February 2021

⁴⁰ Haruna (note 21).

⁴¹ Ibid.

⁴² Oliver Michael "Understanding Disability: From Theory to Practice" (1996) 23(3) *The Journal of Sociology & Social Welfare*. 193 available at www.scholarworks.wmich.edu/jssw/vol23/iss3/24 accessed 23 February 2021.

⁴³ Ibid.

⁴⁴ Convention of the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force May 2008) A/Res/61/106 (CRPD) art 2 <www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html> accessed 7 January 2021.

⁴⁵ Tijani and Dennis (note 28).

⁴⁶ Ibid.

framework on disability which provides for the provision of special facilities and equipment to meet the educational needs of PWDs in the country. This has resulted in the exclusion of many PWDs from proper education circle, which has an extremely high propensity of instilling the level of social integration, belongingness, and confidence that PWDs need in our society.⁴⁷

Lastly, because of the high rate of poverty amongst PWDs and the abysmal nature of the educational system in relation to PWDs, they are either unable or find it difficult to acquire the right set of skills and knowledge to help them secure and sustain good employments even if other issues such as lack of job and employment opportunities and discrimination and disadvantage in employment were to be sorted out in our Nigerian situation.⁴⁸

3.2.5. Ineffective Enforcement of the Disability Laws in Nigeria and Lack of Political Will

The whole essence of the enactment of a law is rooted in its enforcement. The problem of ineffective enforcement of laws in Nigeria is a challenge to the right to employment of PWDs in Nigeria. This issue of non-enforcement exists in different pedestals such as the inability of the bodies and agencies established by to see to the enforcement of the legislation. In relation to the right of PWDs to employment in Nigeria, it was earlier mentioned that the Discrimination Act 2018 established the National Commission for Persons with Disabilities (the Commission).⁴⁹

The Governing Council (the Council) of the Commission is vested with the power to amongst other things⁵⁰liaise 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; support a disabled person's right to seek redress in

⁴⁷ Tijani and Dennis (note 28).

⁴⁸ Haruna (note 21)..

⁴⁹ Discrimination Act 2018, Section 31.

⁵⁰ Ibid, Section 37.

court, investigate, prosecute and/or sanction in appropriate cases violations of the Act and ensure research, development and education on disability issues and disabled persons⁵¹.

3.3. Prospects for the Rights to Employment of PWDs in Nigeria

The enactment of domestic laws for the protection of the rights of PWDs is a significant and laudable development as there cannot be an enforceable right when there are no laws prescribing for same and protecting persons in the circumstances of a possible breach of the right.⁵² Therefore, the most significant prospect in the enforcement of the right of PWDs in Nigeria is predicated on the national legislation recently enacted in Nigeria as well as other international and regional legal frameworks in force in Nigeria.

The Discrimination Act criminalizes discrimination of PWDs in Nigeria. Specifically, there is the provision of a fine of N250, 000 (Two Hundred and Fifty Thousand Naira) for individuals who are liable and found guilty of contravening the provision of the Act on the equal participation and right to employment of PWDs in Nigeria.⁵³ The fine is to be paid to the PWD who is the victim of such discrimination. There is also a fine of N500,000 (Five Hundred Thousand Naira) for corporations liable and convicted for contravening the provision of the Act in relation to the same right to employment.⁵⁴ Where principal officers of such a company are involved in contravening the right to employment, they are liable to fine of N50,000 (Fifty Thousand Naira), which is also to be paid to the PWD.

The Act also creates an employment threshold for employers of labour in public organizations, as it is provided under the Act that they must ensure to have at least 5% of their employment opportunities occupied by PWDs in Nigeria.⁵⁵ The following appears to increase the prospects of the right of PWDs in Nigeria to employment, as employers of labour can no longer

⁵¹ Discrimination Act 2018, Section 37.

⁵² George Smith, 'Jeremy Bentham's Attack on Natural Rights' (*Libertarianism*, 26 June 2012) available at <www.libertarianism.org> accessed 23 February 2021.

⁵³ Discrimination Act, Section 28(2).

⁵⁴ Ibid, Section 28(3)(a).

⁵⁵ Ibid, Section 29.

exercise their discretion indiscriminately on suitability and acceptability during recruitment to the detriment of PWDs who apply for such employment opportunities; especially in circumstances where the PWDs are qualified and capable of effectively working and being productive in such areas.⁵⁶ Thus, employers of labour are now compelled by law to allow PWDs to apply and be employed without being marginalized or segregated.

Recently, the Nigerian government in a bid to ensure that the rights of PWDs are effectively implemented inaugurated the Governing Council of the National Commission for PWDs⁵⁷. The Governing Council has diverse duties, such as the managing of the affairs of the Commission⁵⁸ and of receiving complaints of PWDs on the violation of their rights.⁵⁹ The inauguration of the Commission increases the prospects of the right to employment, as PWDs can now readily utilize the mechanism of the Governing Council when seeking redress in the occasion of a breach or contravention of their right to equal employment.⁶⁰ In fact, the Council is vested with the power to support PWDs in seeking redress in court, investigating and prosecuting violations of the provision of the Act, including the right to employment⁶¹, thereby aiding the effective integration of PWDs in employment.

The agitation for equal access to employment by PWDs in Nigeria has never been as intense as it currently, due to diverse factors. One of the factors is the increased rate of the education of PWDs in Nigeria, which also fosters the prospect of the right to employment.⁶² Many PWDs now have access to a good level of education as stakeholders have devised diverse means of effectively educating PWDs. This seems to be because of the advent

⁵⁶ Haruna (note 21).

⁵⁷ Joseph Erunke, 'Farouk Inaugurates Governing Council of National Commission for Persons with Disabilities' (*Vanguard*, 5 December 2020) available at <www.vanguardngr.com/2020/12/farouq-inaugurates-governing-council-of-natl-commission-for-persons-with-disabilities/> accessed 23 February 2021.

⁵⁸ Disability Act 2018, Section 37(a).

⁵⁹ *Ibid*, Section 37(n).

⁶⁰ Erunke, (note 57).

⁶¹ Disability Act 2018, Section 37(o).

⁶² Roggero (note 26).

of technological innovations.⁶³ For instance, visually impaired persons now have better means of being educated regardless of their disability. It is important to point out that education and increased awareness is a powerful tool in fostering a more inclusive society for PWDs; and the more Nigeria can advance in these areas, the greater the chances of adequately effecting the right to employment of PWDs in the country by eliminating stereotypes, misconceptions and discrimination in relation to their work and employment.⁶⁴

Furthermore, another prospect of the right to employment of PWDs in Nigeria can evidently be deciphered on one hand from the willingness and readiness of many PWDs in the country to be adequately engaged in gainful employment and be productive in diverse areas of human endeavours⁶⁵ and the other on the basis that many persons no longer see PWDs as objects of pity and sympathy. This progress could be inferred from the records in Nigeria where a good number of PWDs have achieved a lot and are creating good marks in diverse areas of human endeavours, even surpassing their counterparts without any form of disability.⁶⁶ For instance, there is the Nigerian Cobhams Asuquo, a singer, songwriter and producer who is well known around the globe for the marks he has created and the feat he has and still achieve in his field and career⁶⁷ amongst other PWDs who are lawyers, Judges and professionals in other fields.

Flowing from the above, it is evident that PWDs have potentials just like every other Nigerians without disabilities; and they can still be effectively engaged in our social and economic activities. This is one reason why a good number of activists have continued to agitate for the continuous rehabilitation and empowerment of PWDs in Nigeria so as to effectively

⁶³ Gregory Sullivan, Cryal Miller and Chester Goad, 'Helping Students with Visual Disabilities' (*Accredited Schools Online*, 24 November 2020) available at <www.accreditedschoolsonline.org/resources/helping-blind-low-vision-students/> accessed 23 February 2021.

⁶⁴ Katrijn Dekoninck, 'Awareness Raising on the Rights of Persons with Disabilities' (*Council of Europe*, 1 June 2017) <www.coe.int/disability> accessed 23 February 2021.

⁶⁵ Haruna (note 21).

⁶⁶ Esther Ijewere, 'I Want to be a Ray of Hope for People Living with Disability' (*Guardian Woman*, 25 July 2020) <www.guardian.ng/guardian-woman/i-want-to-be-a-ray-of-hope-for-people-living-with-disability/> accessed 23 February 2021.

⁶⁷ Shayera Dark, 'Nigerians with Disabilities are Tired of Waiting for an Apathetic Government' (*Bright*, 27 February 2018) available at <<https://brightthemag.com/health-nigeria-disability-rights-activism-96aa2cfef5f2>> accessed 23 February 2021.

reintegrate them in the society and also assist them reach their commendable potentials.⁶⁸ Many parents of children with disabilities now see the need to care for their children with disabilities just as their counterparts, who are living without any disability.⁶⁹ Prior to this time, the segregation and discrimination of PWDs usually began from their family and home as they were most usually seen in earlier times as liabilities.

3.4. Conclusion

From an examination of the challenges and prospects of the right to employment of PWDs in Nigeria, it can be observed that the right to employment is clogged with more challenges than prospects. This in no way undermines the gradual progress that is made in Nigeria in relation to the protection of the rights of PWDs. However, this shows that there is more to be done if the objects of the Discrimination Act 2018 as well as the provisions of the Constitution of the Federal Republic of Nigeria will be actualised.

Disability rights are not new rights per se; rather, they are restatements of what are already contained in human rights legal frameworks. Thus, disability rights reaffirm that people with disabilities are entitled to the respect of their inherent dignity and of all human rights and fundamental freedoms on an equal basis with others.⁷⁰ For there to be a record of great progress in the protection of the rights of PWDs in Nigeria, the government and the people of Nigeria must understand their obligations and their respective roles. Government should create adequate facilities for the adequate education of PWDs in the country and facilitate the sensitization of PWDs on their rights as contained in the different legal frameworks.

Sensitization programs should also be channelled to persons without disabilities; reason being that the discrimination and misconception in relation to disability and the rights of PWDs is an attitudinal problem which varies amongst individuals. However, with the right information

⁶⁸ Emmanuel Okon, "The Path to Inclusive Growth in Nigeria: Are People with Disabilities Carried Along?" (2018) 2(1) *American Economic & Social Review*. 6 available at <www.cribfb.com> accessed 23 February 2021.

⁶⁹ Rebecca (note 39).

⁷⁰ Kutigi, Okoronkwo and Suleiman (note 4).

this problem can be curtailed to an extent. People without disability should realize that PWDs have potentials and can realize same regardless of whatever disability. PWDs should not be seen as objects of pity but care can still be had as to their specialized needs. It is worthy to note that vocational rehabilitation programmes play a vital role in social, economic, and physiological well-being of PWDs.⁷¹

⁷¹ Andrew Omede and Joy Okpe “Vocational Rehabilitation Programmes for Disabled People in Nigeria: Problems and Prospects” (2006) 4(6) International Journal of Economics, Commerce and Management p.846<<http://ijecm.co.uk/>> accessed 23 February 2021.

CHAPTER FOUR

THE LEGAL FRAMEWORK FOR DISABILITY RIGHTS: A COMPARATIVE PERSPECTIVE

4.1. Introduction

As stated earlier, the need to protect the rights of PWDs in the society has always been a concern for many countries of the world¹. The reason is not farfetched from the fact that there is no society without PWDs. Thus, it is important to reiterate that disability is a natural phenomenon which cannot be wiped out of existence and since PWDs constitute a part of the people and population in any society, there is the need for every society to protect the rights of PWDs.² It is this need that has resulted in the formulation of legal frameworks with focus on disability rights in different countries and jurisdictions.

There is a compelling evidence of abusive practices that threaten the existence of PWDs in both developed and developing countries.³ The extent of the protection of PWDs varies amongst countries and jurisdictions. This chapter provides a comparative analysis of disability rights in Ghana. It examines the existing legal frameworks in Ghana in relation to disability rights and specifically the right to employment of PWDs with a view to make suggestion on improving the Nigerian disability framework as it relates to their rights to employment. Furthermore, the extent of enforcement and challenges encountered in enforcing the rights of PWDs in Ghana is examined in this chapter.

4.2. The Legal and Regulatory Framework on Disability Rights in Ghana

¹ Ibrahim Imam, "Rights of People with Disability in Nigeria: Attitude and Commitment" (2016) 24(3) African Journal of International and Comparative Law <www.eupublishing.com/ajicl> accessed 7 January 2021.

² Ibid.

³ Priestley Mark, "Disability and Life Course: Global Perspective" (3 June 2015) available at <www.researchgate.net/publication/242718833> accessed 2 March 2021.

Disability in Ghana is considered both as a human rights concern and a developmental issue due to its strong links to exclusion, discrimination, and poverty.⁴ To this end, several legislative and policy initiatives have been undertaken, aimed at improving the standard of living of PWDs, as well as to promote the integration and participation of PWDs in social, political and economic activities.⁵ Despite these initiatives, PWDs in Ghana have continued to be faced with some barriers that result in lack or redundant productivity, societal exclusion and marginalization, lack of access to education and healthcare, and limited employment opportunities amongst other rights which PWDs ought to enjoy.⁶

The Government of Ghana has propagated different initiatives to secure the rights that guard against abuses of all citizens and PWDs specifically. Article 12-30 of the 1992 Constitution of Ghana guarantees the rights of all citizens, including PWDs which are specifically provided for under Article 29. The Constitution specifically imposes an obligation on Parliament to enact legislation to protect and promote the rights of PWDs,⁷ and the Persons with Disability Act 715 which was enacted in 2006 in Ghana makes salient provisions for the protection of the rights of PWDs.⁸ In addition to the Persons with Disability Act, other legal frameworks such as the Children's Act, 1998 (Act 560) and Labour Act, 2003 (Act 651) include provisions targeting the needs of PWDs.⁹ Ghana is also a signatory to several international treaties such as the United Nations Convention on the Rights of Persons with Disabilities and the African Charter on Human and People's Rights that seek to safeguard the rights of PWDs. Thus, the 1992 Constitution of Ghana as well as the Persons with Disability Act, 2006 would be examined respectively.

4.2.1. The 1992 Constitution of Ghana

⁴ Ahmed Kuyini, Alhassan Kuyini and Mahama, Fati, "The Ghana Community-Based Rehabilitation Program for People with Disabilities: What Happened at the End of Donor Support?" (2011) 10(4) *Journal of Social Work in Disability & Rehabilitation*, 247–267, available at <<https://doi.org/10.1080/1536710X.2011.622981>> accessed 2 March 2021.

⁵ Ibid.

⁶ Ibid.

⁷ Derek Asuman, Charles Ackah and Frank Agyire-Tettey, "Disability and Household Welfare in Ghana: Costs and Correlates" (7 December 2020) available at <<https://doi.org/10.1007/s10834-020-09741-5>> accessed 2 March 2021.

⁸ Persons with Disabilities Act, Section 1-8.

⁹ Ibid.

Article 29 of the 1992 Constitution of Ghana spells out the rights of disabled people. What is notable in the Constitution of Ghana is that aside from the rights of all citizens enshrined in the constitution, the legislators went further to make specific provisions for the rights of PWDs.¹⁰ In contrast with Nigeria, the position in Ghana in this regard is laudable, because disability rights are not specifically contained in the Constitution of Nigeria. Article 29(1) of the Constitution of Ghana provides that PWDs have the right to live with their families or with foster parents and to participate in social, creative or recreational activities.

However, an examination of the Constitution of Ghana would reveal that there are no elaborate provisions on disability rights.¹¹ With regards to the economic rights of PWDs and specifically the right to employment, the closest reference is that special incentives shall be given to PWDs engaged in business and to business organisations that employ PWDs in significant numbers¹². Though the significance of the provision of Article 29(7) cannot be undermined, it is not thorough enough to protect PWDs from discrimination in employment as well as other economic activities and ensure their inclusive engagements and participations.¹³

Flowing from the above, the Constitution of Ghana provides that; Parliament shall enact such laws as are necessary to ensure the enforcement of the provisions of this article.¹⁴ It may appear by the provision of Article 29(8) that the legislators in Ghana envisaged that the specific provisions in the Constitution with regards to disability rights were not elaborate enough to ensure the protection and enforcement of the rights of PWDs necessitating the enactment of further legislations and legal frameworks for the protection and enforcement of disability rights.¹⁵ It is important to note that a couple of years after the enactment of the Constitution of

¹⁰ The Constitution of the Republic of Ghana, 1992, Chapter 5, Article 29.

¹¹ Ibid.

¹² Ibid, Article 29(7).

¹³ Zanetor Rawling, 'Parliament Empathizes with PWDs on International day of Persons with Disabilities' (*Parliament of Ghana*, 3 December 2019) available at <www.parliament.gh/news?CO=68> accessed 2 March 2021.

¹⁴ Constitution of Ghana, Article 29(8).

¹⁵ Andrews Nartey Michel Tchiakpe, Isaac Owusu, "The Disability Act of Ghana: Building Accessibility of Visually Impaired Persons in Two Districts in the Ashanti Region of Ghana" (2018) 8(1) *Advances in Ophthalmology & Visual System* 4-9, available at <www.medcraveonline.com/AOVS/AOVS-08-00257.pdf> accessed 2 March 2021.

Ghana; the Persons with Disability Act, 2006 was also enacted in Ghana to meet the needs of PWDs.

Finally, the Constitution of Ghana provides that in any judicial proceedings in which a disabled person is a party, the legal procedure applied shall take his physical and mental condition into account¹⁶. This strikingly appears to ensure that PWDs can seek redress and enforce their rights effectively and judiciously in the courts of law in Ghana because it is one thing for a disabled person to have a right and another thing to be able to enforce or seek redress or recompense with regards to same right; in the occasion of a breach.¹⁷

4.2.2. *The Persons with Disabilities Act, 2006 (Act 715)*

The Persons with Disabilities Act was implemented in 2006 by the Parliament in Ghana with the aim of providing a legal framework for PWDs in Ghana. It sought to fulfil the constitutional obligation of enacting laws to protect and promote the rights of PWDs¹⁸ as well as fulfilling other international obligations.¹⁹

The Act has eight major sections. The first major section throws light on the rights of PWDs. It gives PWDs the right to live with their families or participate in any gathering open to the public. The second section highlights issues of employment of PWDs. It states that the state shall establish public employment centres to assist PWDs in securing a job.²⁰ The third major section of the Act concentrates on education of PWDs while the fourth section talks about transportation for PWDs. The fifth section focuses on healthcare and facilities and the sixth section contains some miscellaneous provisions such as the provision that any person or organization that manufactures technical aids or appliance for use by PWDs shall be exempted

¹⁶ Constitution of Ghana, Article 29(5).

¹⁷ Narmeen Shigri, 'The Importance of Disability Awareness' (*Medium*, 20 January 2018) available at <www.medium.com/arise-impact/the-importance-of-disability-awareness-home-and-school-eead2276f349> accessed 23 February 2021.

¹⁸ Constitution of Ghana, Article 29(8).

¹⁹ Commonwealth Human Rights Initiative, "A Simplified Version of Disability Rights in Ghana" (*CHRI- Africa*, May 2007) available at <www.humanrightsinitiative.org/publications/ghana/disability_rights_in_ghana.pdf> accessed 2 March 2021.

²⁰ Persons with Disabilities Act, Section 9.

from the payment of tax and makes it an offense for any person to call PWDs derogatory names because of their disability.²¹

4.3. Right to Employment of Persons with Disabilities in Ghana

In relation to the right of PWDs to employment in Ghana, the Persons with Disabilities Act provides that the Ministry responsible for social welfare shall through the public employment centres, assist to secure jobs for PWDs.²² Generally, the Act prohibits the discrimination of PWDs by employers on the ground of their disability.²³ It provides that any employer who discriminates PWDs commits an offence and shall be liable to a fine not exceeding fifty penalty units or a term of imprisonment not exceeding three months.²⁴ Such an employer may also be liable for both fine and imprisonment as the court may deem fit.²⁵

Furthermore, the Government is obligated to grant a person who employs PWDs an annual tax rebate of the taxable income in respect of each disabled person employed as shall be prescribed in Regulations made under the Act.²⁶ Government shall also grant special incentives to PWDs engaged in business and also to business organizations that employ PWDs.²⁷ Employers are also to make sure they provide PWDs with the requisite tools or facilities to enable them carry out their duties as employees.²⁸ The Act also prohibits an employer from posting or transferring a PWD to a department or place where he/she would not be able to perform his/her duties as an employee.²⁹ This appears to be a safeguard for PWDs in employment and it's a laudable provision to ensure the productivity of PWDs in the course of their employment.

²¹ Lewis Asante and Alexander Sasu, "The Persons with Disability Act, 2006 (Act 715) of the Republic of Ghana: The Law, Omissions and Recommendations" (2015) 36 *Journal of Law, Policy and Globalization* 62-68, available at <www.iiste.org/journals>ISSN: 2224-3259 accessed 2 March 2021.

²² Persons with Disabilities Act, Section 9.

²³ Ibid, Section 4(2).

²⁴ Disabilities Act, Section 8.

²⁵ Ibid.

²⁶ Ibid, Section 10(1).

²⁷ Ibid, Section 10(2).

²⁸ Ibid, Section 11.

²⁹ Disabilities Act, Section 12.

The Act provides that unemployed PWDs who remain on the job list for more than two years shall be taken off the list, given appropriate training³⁰ and equipped with necessary tools, materials³¹ and loan capital to assist them become self-employed.³² However, it is an offence under the Act for PWDs in this circumstance to sell the tools and materials given to them to empower them to be self-employed.³³ Thus, any PWD that sells or any other person that buys such tools and materials shall be liable on summary conviction to a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment not exceeding one year or to both.³⁴ Finally, the state is under an obligation to establish rehabilitation centres in all regions, districts and communities in Ghana and ensure that PWDs are rehabilitated in order to foster the proper integration of PWDs in the society³⁵.

Remarkably, by the provisions of the Act, it can clearly be observed that the government of Ghana is vested with a wide range of obligations. It is important to point out that the Act also fosters other significant relative rights, such as the right to education of PWDs which goes a long way in facilitating the right to employment of PWDs in Ghana. Parents, guardians, or custodians of children with disability are obligated to enrol their children in a school.³⁶ The state shall provide the necessary facilities and equipment to enable PWDs benefit from school and the Government shall provide free education of PWDs³⁷; also establishing special schools for PWDs.³⁸

Despite the specific provisions of the Persons with Disabilities Act protecting the rights of PWDs in Ghana there are still diverse factors standing out as challenges to the rights of PWDs

³⁰ Disabilities Act, Section 13(1)(1).

³¹ Ibid, Section 13(1)(2).

³² Ibid, Section 13(1)(3).

³³ Ibid.

³⁴ Ibid, Section 13(2).

³⁵ Ibid, Section 14.

³⁶ Ibid, Section 16(1).

³⁷ Ibid, Section 18 (1).

³⁸ Ibid, Section 18(2).

in the country.³⁹It is important to point out here that some of the challenges to the rights of PWDs in Ghana cuts across other countries and jurisdictions; including Nigeria. Focus here will be on the challenges and enforcement of the right to employment of PWDs in Ghana.

One of the major challenges of right to employment of PWDs in Ghana is the stereotypical disability culture prevalent in Ghana. Historically, the attitude of many persons towards disability was tied to superstition and misconception.⁴⁰ Many persons in Ghana saw PWDs as lesser humans and there have been cases of the killing of PWDs as a result of the stereotypical and superstitious belief.⁴¹ Regardless of the rise of education and the enactment of domestic laws aimed at protecting the rights of PWDs in Ghana, trace of this stereotypical disability culture has continued.⁴² For instance, there is the case of Dr. Henry Seidu Danaa a disabled person who was appointed as Ghana's Minister designate for Chieftaincy and Traditional affairs; this was recorded as the first time in Ghana a PWD was appointed in such a prominent position.⁴³ However, the negative disability culture in Ghana came to play by the following protest against his appointment by the traditional heads and chiefs on the erroneous basis that their tradition in Ghana does not allow for a direct contact with PWDs.⁴⁴

The lack of awareness of the disability rights and the subsisting traditional stereotypical disability culture in Ghana has continued to result in the marginalization, segregation and abuse of many PWDs in Ghana making their integration and participation in the social, economic and

³⁹ Divine Group International Foundation and Center for Employment of Persons with Disabilities, "Rights of Persons with Disabilities" (2017) 3rd Cycle Universal Periodic Review available at <www.upr-info.org/sites/default/files/general-document/pdf/disability_factsheet.pdf> accessed 2 March 2021.

⁴⁰ Mabel Oti-Boadi, "Exploring the Lived Experiences of Mothers of Children with Intellectual Disability in Ghana" (October 2017) available at <www.researchgate.net/publication/321709711_Exploring_the_Lived_Experiences_of_Mothers_of_Children_With_Intellectual_Disability_in_Ghana> accessed 2 March 2021.

⁴¹ Alexander Kassah, Bentekassah and Tete Agbota, "Abuse of Disabled Children in Ghana" (8 November 2018) available at <www.researchgate.net/publication/254245159_Abuse_of_disabled_children_in_Ghana> accessed 2 March 2021.

⁴² Clifford Afoakwah, "Employment Status and Educational Attainment Among Disabled Ghanaians" (12 May 2016) available at <www.researchgate.net/publication/302963421> accessed 2 March 2021.

⁴³ Ghana News Agency, "Dr Danaa Nominated as Minister of Chieftaincy and Traditional Affairs (22 January 2013) available at <<https://www.modernghana.com/news/441148/dr-daannaa-nominated-as-minister-of-chieftaincy-and-traditio.html>> accessed 2 March 2021.

⁴⁴ Sackey Emmanuel, "Disability and Political Participation in Ghana: An Alternative Perspective" (2015) 17(4) *Scandinavian Journal of Disability Research* 366-381 available at <<http://doi.org/10.1080/15017419.2014.941925>> accessed 2 March 2021.

political sphere of the society quite difficult.⁴⁵ In this respect, it is important to point out here that another contributory factor to the continuous segregation and marginalisation of PWDs in Ghana is the weakness in aspects of the legal frameworks meant to protect them. The laws have been designed to challenge the stereotypical disability culture, as well as other superstitious and traditional beliefs however, as the stereotypes and traditional beliefs appear to be subduing the essence of the legal framework on disability rights.⁴⁶

Flowing from the above, it is posited here that the stereotypical disability culture in Nigeria is largely founded on the ignorance of the status of PWDs as persons of equal rights as their counterparts who are without disabilities and the lack of awareness of the rights of PWDs in Ghana.⁴⁷ In Ghana just as in other developing countries, the discrimination and abuse of the rights of PWDs starts from within the family and home of the PWDs.⁴⁸ The knowledge of the general rights of PWDs in Ghana and particularly their right to employment is lacking both on the part of many of the employers of labour as well as the PWDs themselves. Unfortunately, the Persons with Disabilities Act do not make any provision for awareness-raising in relation to the rights of PWDs which is enshrined in it unlike what is contained in the United Nations CRPD.⁴⁹

Thus, the implication of the lack of awareness is that there is a limitation to the efforts by the government and other non-governmental organizations in implementing and safeguarding the right to employment of PWDs.⁵⁰ Furthermore, other evident challenges to the specific right to employment of PWDs in Ghana also include the high rate of illiteracy and the unavailability of job opportunities in Ghana. Thus, even if the right of PWDs to employment were to be effectively implemented there are hardly enough employment opportunities sufficient for the

⁴⁵ Mabel, (note 40).

⁴⁶ Joseph Ocran, "Exposing the Protected: Ghana's Disability Laws and the Rights of Disabled People" (2019) 34(4) *Disability & Society* 663-668 available at <<https://doi.org/10.1080/09687599.2018.1556491>> accessed 2 March 2021.

⁴⁷ Ibid.

⁴⁸ Alexander and Tete (note 41).

⁴⁹ United Nations CRPD, Article 8.

⁵⁰ Esther Gyamfi, "Ghana (Country Reports)" (2013) 14 (1) *African Disability Rights Yearbook* 221-243 available at <www.saflii.org/za/journals/ADRY/2013/14.html> accessed 2 March 2021.

eligible workforce in Ghana.⁵¹This is in addition to discrimination in inclusive employment; PWDs find it more difficult to secure good employment in the society.

With regards to the enforcement of the rights of PWDs in Ghana, it is observed that many years after the enactment of the Persons with Disabilities Act, much progress has not been made in relation to the enforcement.⁵² This is evident from the continued discrimination of PWDs on the grounds of their disabilities, and the poor living conditions of living of PWDs who most times are subjected to different inhumane and degrading treatments. It was reported that PWDs are still killed in many parts of Ghana on the basis of the traditional belief that PWDs are not human despite a purported ban on the practice.⁵³Some PWDs in Ghana are of the opinion that some of the government officials and persons in power who are supposed to protect the interests of PWDs as encapsulated in the Act are still guilty of the abuse and discrimination of PWDs.⁵⁴ The truth of this may not be farfetched, as the stereotypical approach towards the disability has its foundation deeply rooted in the culture and tradition of most regions in Ghana.⁵⁵

Finally, although the government of Ghana is obligated to create rehabilitation and job opportunities for PWDs in Ghana, it has been argued that nothing much has been done in this respect.⁵⁶ Put more succinctly, the supposed jobs and empowerment opportunities are still fictional.⁵⁷The rehabilitation and empowerment systems established by the government in Ghana appear not to be sufficient. In fact, it has been argued that PWDs do not get sufficiently empowered in the rehabilitation centers established in Ghana for PWDs reason being that they are not trained on very viable skills.

⁵¹ Anaamlie Agulijam, 'Why Many Don't Have Jobs in Ghana' (18 June 2020) available at <www.theghanareport.com/why-many-dont-have-jobs-in-ghana/> accessed 2 March 2021.

⁵² Ibid.

⁵³ Doreen Ajiambo, 'Ghana Sister Rescues Disabled Children Viewed as Bad Omens in Their Villages' (18 November 2019) available at <www.globalsistersreport.org/news/people/ministry/news/ghana-sister-rescues-disabled-children-viewed-bad-omens-their-villages> accessed 2 March 2021.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Sackey, (note 44).

⁵⁷ Gyamfi, (note 50).

PWDs who have participated in the empowerment schemes only have access to meager skills which are not capable of elevating them to the status of financial independence and self-reliance.⁵⁸ According to some of the beneficiaries of the empowerment scheme, the PWDs are usually trained on dressmaking and shoemaking etc.⁵⁹ Also; there are insufficient training materials and equipment in the training centers for the effective training of the PWDs. Even after the training; there are usually no subsequent aids to establish the PWDs after the training.

4.4. Contrasting the Disability Rights System of Ghana and the Nigerian System

There are few distinctive sections in Ghana's Disabilities Act from which Nigeria could draw insights from in improving the implementation of the right to employment of PWDs. Firstly, with regards to the right to employment in Ghana, the level of commitment of the government is strengthened by the Ministry of social welfare through established public employment centers, assisting PWDs to secure jobs⁶⁰. Unfortunately, a similar provision to this effect is absent in our disability legislation here in Nigeria. In fact, the social welfare system in Nigeria is in an abysmal state, regardless of the deteriorating standard of living of many Nigerians in the country.⁶¹ In the disability rights legislation in Nigeria, there is the establishment of the National Commission for Persons with Disabilities.⁶² However, the mandate of the Ministry of Social Welfare and the establishment of Public Employment Centers are evidently absent and not within the scope of the National Commission's functions in Nigeria.

Secondly, within Ghana's Disabilities Act, it provides for annual tax rebate which is aimed at also promoting the employment of PWDs in Ghana. Thus, employers who grant employment to PWDs shall be entitled to annual tax rebate of the taxable income in respect of

⁵⁸ Naomi Adjei, 'Putting Decision into Action: The Disability Act of Ghana, Six Years Down the Line' (MPA thesis, University of Bergen 2013) available at <www.core.ac.uk/download/pdf/30925277.pdf> accessed 2 March 2021.

⁵⁹ Ibid

⁶⁰ Disabilities Act, Section 9.

⁶¹ Peter Elias, "Why Nigeria's Efforts to Support Poor People Fail" (20 May 2020) available at <<https://theconversation.com/why-nigerias-efforts-to-support-poor-people-fail-and-what-can-be-done-about-it-137122>> accessed 26 May 2021.

⁶² Discrimination Act, Section 31.

each person with disability employed.⁶³ Any employer who discriminates PWDs commits an offence and is liable on summary conviction to a fine not exceeding fifty penalty units or to a term of imprisonment not exceeding three months or to both.⁶⁴ This is a provision that can be integrated in Nigeria's disabilities rights legislation to encourage and motivate employers of labour to employ PWDs.

Thirdly, Ghana's Disabilities Act provides for the needs of the PWDs as prospective employees before employment.⁶⁵ That is, the recruitment processes, and after their employment.⁶⁶ Put more succinctly, employers are obligated by the Act in Ghana to provide the working tools, materials as well as the necessary facilities required by the employed PWDs for the performance of their jobs.⁶⁷ Furthermore, employers are prohibited from transferring or posting PWDs under their employment to sections or for job areas in their establishments not suitable for the employed PWDs.⁶⁸ Employees are obligated to re-train and re-deploy PWDs under their employment to best suited job areas or sections alongside with good relief and compensation.⁶⁹ Unfortunately, similar provisions are absent in our disabilities rights legislation in Nigeria and this can be detrimental to the effective implementation of the right to employment of PWDs in the country.

Lastly, the Ministry of social welfare in Ghana is also obligated to train PWDs who have remained in the job search list for a period more than two years; equipping them with necessary working tools and helping them start up their personal businesses.⁷⁰ The Act in Ghana also went further to criminalize acts of selling or buying such equipment given to PWDs in Ghana.⁷¹ This is also closely related to the progressive establishment of rehabilitation centers by the Ministry of

⁶³ Disabilities Act, Section 10.

⁶⁴ Ibid, Section 9.

⁶⁵ Ibid, Section 4(1) (2).

⁶⁶ Ibid, Section 11(a) (b).

⁶⁷ Ibid.

⁶⁸ Ibid, Section 12(1).

⁶⁹ Ibid, Section 12(2).

⁷⁰ Disabilities Act, Section 13(1).

⁷¹ Ibid, Section 13(2).

social welfare in Ghana aimed at training and guiding PWDs who are unable to enter into the mainstream of social life in the country.⁷² Unfortunately, a provision to the abovementioned effect is absent in Nigeria's Discrimination Act.

4.5. Conclusion

Flowing from the above examination of the disability rights, their challenges and enforcement in Ghana, it can therefore be seen in contrast with the status quo in Nigeria that the rights of PWDs in many countries are yet to be properly implemented and safeguarded because of the outstanding challenges of the rights. It is suggested here that there is still so much to be done than the enactment of disability legislation. Except active and realistic moves are made in solving or curbing the challenges of the implementation of disability rights in different countries, the rights of PWDs would not still be safeguarded no matter how beautifully drafted a disability law is.

There also appears to be so much work for African States in this regard, due to the existence of a lot of superstitious and stereotypical traditional beliefs in many African cultures that have continued to foster the contravention of the rights of PWDs; specifically, their right to employment which is the subject focus of this work. It should also be noted that some of the domestic legislation providing for disability rights are either tainted with some ambiguities or contain provisions which are not elaborate enough to cover some issues, or there are some omissions in the legislations which can also stand out as challenges to the rights of PWDs.⁷³

⁷² Disabilities Act, Section 13(2).

⁷³ Ocran (note 46).

CHAPTER FIVE

SUMMARY, RECOMMENDATIONS AND CONCLUSION

5.1. Summary

The significance of disability rights cannot be overemphasized, and it is a topic that should be given much consideration. This essay recognizes that disability is a natural phenomenon,¹ and countries should ensure that the rights of persons with disability (PWDs) are effectively protected. This essay examined several legal frameworks established internationally, regionally and in Nigeria to protect PWDs with specific focus on the right of PWDs to employment. This right extends to their inclusion and participation in the economic and social sphere of society.

While chapter one sets a general background for the subject matter of the long essay and the aims and objectives, chapter two examines what the right to employment of PWDs entails and its importance in Nigeria. In addition, in chapter two, selected international and regional legal frameworks in relation to the right to employment of PWDs such as the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol, Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), the African Charter on Human and Peoples' Rights (Banjul Charter) and its Protocol were examined. Also, specific national legal frameworks on the rights of PWDs in Nigeria such as the Constitution of the Federal Republic of Nigeria and Discrimination Against Persons with Disabilities (Prohibition) Act 2018 were discussed.

In Chapter three, the challenges of the right to employment of PWDs in Nigeria were discussed. Some of the challenges discussed include; lack of information and awareness of the disability rights in Nigeria, lack of lucrative job opportunities and employments in Nigeria, discrimination and disadvantage in employment participation, poverty, illiteracy and lack of

¹ World Health Organisation, 'World Report on Disability'(2011) page 3 available at <https://www.who.int/disabilities/world_report2011/report.pdf> accessed 31 May 2021.

education, ineffective enforcement of disability rights and lack of political will in Nigeria. Also, the prospects for the right to employment of PWDs in Nigeria were discussed.

In chapter four, there was a comparative analysis and examination of the disability rights legal frameworks in Nigeria and Ghana, respectively. However, this essay finds that the right to employment of PWDs in Nigeria has not been effectively implemented regardless of the domestic legislation enacted to provide for the rights of PWDs.² Thus, it was concluded that PWDs are still subject to discrimination, societal stereotypes, and exclusion in Nigeria despite the international and regional efforts being made.

5.2. Recommendations

From the discussions in the previous chapters of this essay, the following recommendations are suggested to foster the right to employment of PWDs in Nigeria. Firstly, the Nigerian government should strive to provide job and employment opportunities for every citizen in the country.³ Job and employment creation in this context has the capacity to foster the right of PWDs to employment as the current increased rate of unemployment as earlier identified brings to nullity any further agitation and effort for the provision of the right to employment.⁴

Secondly, it is recommended that the Nigerian government should put in more efforts in enforcing the Discrimination Against Persons with Disabilities (Prohibition) Act, 2018. This can be done by the implementation of effective measures, including policies and regulations to foster the proper integration of PWDs in the Nigerian society. The Nigerian government should strive to ensure that the country is conducive enough for PWDs to co-exist with their counterparts without disabilities. The effective measures, policies and regulations suggested here could be in the form of restructuring or improving the educational system in Nigeria and the provision of

² Yekeen Akinwale, 'Six Things You Must Know About the Disability Act, 2018' (*ICIR*, 25 January 2019) available at <www.icirnigeria.org/six-key-things-you-must-know-about-disability-act-2018/> accessed 7 January 2021.

³ Olubukola Adesina, "Unemployment and Security Challenges in Nigeria" (2013) 3(7) *International Journal of Humanities and Social Sciences* 146, available at <www.ijhssnet.com> accessed 31 May 2021.

⁴ Haruna Mohammed, "The Problems of Living with Disability in Nigeria (2017) 65 *Journal of Law, Policy and Globalization* page 109, available at <www.iiste.org/Journals/index.php/JLPG/article/view/39027/40128> accessed 23 February 2021.

educational facilities to accommodate the effective training of PWDs. This could be implemented by; the provision of adequate relevant equipment to aid the educational training of PWDs in schools at different levels and the formulation of student assistant schemes and other social welfare schemes for PWDs such as bursaries and scholarship programmes to help PWDs access good and quality education with less financial burden. With regards to the education of PWDs, it is also suggested that the Nigerian government through the Ministry of Education and other relevant bodies can make the special education of PWDs completely free by the establishment of well-equipped special schools and educational institutions for PWDs in the country. This is similar to the provision in Ghana's Disability Act that provides that government of Ghana shall provide the necessary facilities and equipment to enable PWDs benefit from school⁵, including providing free education to PWDs⁶ and establishing special schools for PWDs who cannot be enrolled in formal schools⁷. Ghana's Disability Act even goes further to make it an offence for any parent, guardian or custodian of child with disability for failing or refusing to enrol the child in school⁸.

Thirdly, vocational rehabilitation of PWDs in Nigeria⁹ should be encouraged. It is suggested here that, improving the rehabilitation of PWDs in the country can be done by the establishment of Rehabilitation Centres in the different States of Nigeria like the establishment of rehabilitation centers by the Ministry of social welfare in Ghana aimed at training and guiding PWDs. The Nigerian government should also take stringent steps towards getting the data of PWDs in the country. In this regard, data is generally important for targeting and the development of policies and schemes towards solving social problems in the

⁵ Disability Act, Section 17.

⁶ Ibid, Section 18(1).

⁷ Ibid, Section 18(2).

⁸ Ibid, Section 16(2).

⁹ Anwuli Ofuani, 'The Right to Economic Empowerment of Persons with Disabilities in Nigeria: How Enabled?' (2011) *AHRLJ*648 available at <www.scielo.org.za/pdf/ahrj/v11n2/15.pdf> accessed 7 January 2021.

country.¹⁰Specifically, a good and comprehensive data of PWDs is particularly important to ascertain an estimate of PWDs in Nigeria and their disabilities, aimed at providing their unique and basic needs. Accordingly, a detailed disability data will help in targeting PWDs as well as monitoring the effective implementation of disability rights in the country.¹¹

Fourthly, the extant Discrimination Against Persons with Disabilities (Prohibition) Act of 2018 should be re-examined by the legislators in Nigeria and necessary amendments should be made to sufficiently conform with the United Nations CRPD and efficiently provide for the disability rights of PWDs in the country. The Disabilities Act should be amended to provide for other important needs of PWDs in the country which are also significant to actualising the right to employment. This includes the provision of public housing schemes for PWDs as contained in the United Nations CRPD.¹²Regardless of the general provisions on disability rights for all genders in Nigeria's Discrimination Against Persons with Disabilities (Prohibition) Act, the Act should be amended to provide specifically for women with disabilities, as they are subject to multiple discrimination and abuse.¹³ It should be noted that, this will also be in conformity with the provisions of the United Nations CRPD.¹⁴

In addition, the provision of the Discrimination Against Persons with Disabilities (Prohibition) Act of 2018 in relation to the right to employment and the non-discrimination of PWDs should also be amended to provide for strict liability and compliance by their counterparts in the society who are without disabilities, especially employers of labours. This is similar to the provision of 'disability hate crime' in some jurisdictions such as the United Kingdom which is applicable to everybody in different spheres of life that discriminates, harasses or is hostile to

¹⁰ Augustina Naami, Magnus Mfofo-M'Carthy, "Covid-19: Vulnerabilities of Persons with Disabilities in Ghana" (2020)10 (3) *African Journal of Social Work* 9, available at <www.ajol.info/index.php/ajswl/issue/archive> accessed 31 May 2021.

¹¹ Naami and Mfofo-M'Carthy (note 10).

¹² CRPD, Article 28(2d).

¹³ Naami and Mfofo-M'Carthy (note 10).

¹⁴ CRPD, Article 6

PWDs on the ground of their disability¹⁵ and the specific punishment of employers¹⁶ and other persons¹⁷ in Ghana that discriminates PWDs.¹⁸ An effective mechanism should be put in place in Nigeria to ensure that employers of labour and other members of the public who are in breach of the non-discrimination provisions in the Act be judiciously brought to book and this can be done by the establishment of an enforcement committee or body to receive complaints from PWDs in Nigeria and speedily enforce compliance whenever the need arises.

Furthermore, incentives should be made available to all employers of labour for employing PWDs in their businesses. The proposed incentives suggested here can be in form of annual tax rebate or any other scheme aimed at promoting the employment of PWDs in the country. This is similar to the annual tax rebate of the taxable income for employers who grant employment to PWDs¹⁹. Also, a provision should also be included in the Act for the sensitization of PWDs and the public on the disability rights to foster the enforcement of them in situations where there is a breach.

5.3. Conclusion

From the discussions in this essay, the extent of the implementation of the right to employment of PWDs in Nigeria is still minimal, regardless of the establishment of the Discrimination Against Persons with Disabilities (Prohibition) Act, 2018. PWDs in Nigeria are still greatly challenged with respect to securing gainful employments and the government must therefore take active steps towards safeguarding and implementing the general rights of PWDs and specifically their right to employment in the country.

It must be emphasized that, a lot must be done in Nigeria with regards to the disability rights especially the right to employment. This is because, in as much as PWDs have great

¹⁵ Linda Piggot, "Prosecuting Disability Hate Crime: A Disabling Solution?" (*Research Gate*, 9 November 2015) <www.researchgate.net/publication/266166592> accessed 31 May 2021.

¹⁶ Disability Act, Section 4(2).

¹⁷ Ibid, Section 4(1).

¹⁸ Ibid, Section 8.

¹⁹ Ibid, Section 10.

potentials as their counterparts without disabilities, a continuance in the discrimination, societal stereotypes, and exclusion will prevent PWDs from reaching and achieving their full potentials and reduce them to be objects of pity in the society. If nothing is done about safeguarding the rights of PWDs, they will continue to suffer untold hardship and abuse because of the stereotypical attitudes and discrimination of PWDs prevalent in Nigeria.

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