



An appraisal of the international human right protection of disabled person vis a vis Nigeria

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Abstract

One of the fundamental rights of every person accepted globally as stated among the right in the Universal Declaration of Human Rights is the right to respect of human dignity. This right cut across all part of human race, sex, ethnic and not minding the formation of the person involved. The disabled are not exempted from the above mention right. The discrimination on the disabled is not only an act against the natural law but also a violation of the human rights of disabled person adopted in the Constitutions of every domestic state including Nigeria's Constitution issues such as problem of inequality and discrimination meted down on the disabled persons. This act of discrimination is because of lack of enlightenments and the failure to protect the rights of the disabled persons. Although the laws for the disabled persons are being domesticated in the laws of many countries but these laws are not enforced to protect their rights. Most disabled persons also have resolved to live below the standard of normal human due to the discrimination upon them, most of them are not aware of their rights and this calls for the intervention of the international human rights protection of the disabled persons. This study aims at the value of the International Human Protection of Disabled Persons. This study will also offer recommendations on how the rights of the disabled persons will be protected.

Keywords: disabled person, human right, discrimination, violation, protection

Introduction

This study is aimed at enlightening the readers on the international human rights protection of disabled person. A disabled person in this context simply means someone who has a physical or mental impairment that has a substantial and long term adverse effect on his or her ability to carry out normal day to day activities. A person considered to be disabled is said to;

1. Have a mental or physical impairment
2. The impairment has an adverse effect on their ability to carry out normal day to day activities
3. The adverse effect is substantial and long term (ie last more than 12 months)

In our contemporary society; the disabled are treated without adequate care, while most of them are treated in an inhuman manner. I solely believe that these treatments are meted on the disabled due to the fact of non-enlighten of the people towards the right of the disabled persons. The campaign for the protection of human rights of people with disabilities is launched in the Asian and Pacific region and the results were achieved in the convention on the rights of persons with disabilities of 2008, an International Human Right Treaty of the United Nations intended to protect the rights and dignity of persons with disabilities. The convention serves as a major catalyst in the global disability rights movement enabling a shift from viewing persons with disabilities as object of charity, medical treatment and social protection towards viewing them as full and equal member of society with human rights. The convention was the first U.N Human Rights Treaty of twenty-first century.

Human Rights are the first universal acceptable ideology. Although most observers regard the formation of the United

Nations and promulgation of the universal declaration of human rights as the beginning of the modern struggle to protect human rights.

Historical background of International Human Rights Protection of Disabled Persons

Historically, 1970s marked a new approach and awareness the rights of people with disability; the concept of human rights for persons with disabilities became more accepted internationally. Two major declarations on person with disabilities were adopted by the General Assembly in the new decade. These include the Declaration on the Rights of mentally Retarded Persons of 20 December 1971 ^[1] provided a framework for protecting rights through national and international action. The Declaration stated that persons with intellectual disabilities had, to the degrees feasible, the same right as others, including a right to proper medical care and education, to economic security, to a qualified guardian, as required, to protection from exploitation and to access legal procedures. The declaration stated that, if possible, 'persons with intellectual disabilities should live with their families or with foster parents and should participate in various aspect of community life.' ^[2]

Secondly, the Declaration on the right of disabled persons, adopted by the General Assembly ^[3] on 9th December 1975, also encouraged national and international protection of the rights of persons with disabilities. Recognition was to the fact that persons with disabilities were entitled to the same political and civil rights as others, including measures, necessary support and self-sufficiency. The Declaration reiterated the rights of person with disabilities to education, medical services and placement services. It further recognise their right to economic and social security, to

employment, to live with their families, to participate in social and creative events, to be protected against all exploitation, abuse or degrading behaviour and to avail themselves of legal aid.

The United Nations General Assembly adopted the 1971 Declaration on the rights of mentally retarded persons followed by the Declaration of the Rights of Disabled person in December 1975^[4]. 1982 was the International year of Disabled persons, an outcome of the year was the World Programme of action concerning Disabled Persons. In 1987, a global meeting of expert review progress recommended that the U.N General Assembly should draft an International Convention on the elimination of discrimination against persons with disabilities. A draft was proposed by Italy and subsequently Sweden but no consensus was reached. On 3rd of December a United Nations Day of Disabled Persons was proclaimed in 1992 General Assembly Resolution^[5].

In December 13 2006, the United Nations General Assembly drafted the rights of a disabled person in their convention which was signed in March 2007 and became effective on 3rd May 2008^[6]. The convention was monitored by the committee on the Rights of persons with disability for which annual conferences of states parties to the CRPD have set guidelines since 2008^[6] about 182 countries participated in the convention and 163 countries gave their signatories to the draft.

Overview of Statutory Provision Protecting Disabled Persons

Nigeria ratified the United Nations Conventions on the Rights of people with disabilities (CRPD) in 2007 and its optional protocol in 2010. Since then, civil society groups and people with disabilities have called on the government to put it into practise. In 2011 and 2015, the National Assembly passed the Discrimination against Persons with Disabilities (Prohibition) Bill 2009. The Bill was signed into law as Discrimination Against Persons with Disability (Prohibition) Act 2018^[7].

The law prohibits discrimination on the basis of disability and imposes sanctions including fines and prison sentences on those who contravene it. It also stipulates a five year transitional period for modifying public building, structures and automobiles to make them accessible and usable for persons with disabilities. The law also made provisions for the establishment of a National Commission for persons with disabilities responsible for ensuring that people with disabilities have access to housing, education and healthcare. The Commission is empowered to receive complaints of rights violation and support victims to seek redress among other duties.

Many other countries have ratified the CRPD and adopted the rights to their Constitution various countries such as Canadian government in their Constitution; Charter of rights and freedom (1982) of every citizen of Canada (including disabled persons) also in the Canadian Human Rights Act^[8]. Consequently, chapter H.6 was enacted as an Act to extend the laws in Canada that prevents discrimination.

Furthermore, United Kingdom also ratified the CRPD, in Disability Right Act 1999 listed the rights of a disable person and also enacted a commission to formally investigate the discrimination against a disabled person. Also the Northern Ireland, Disability discrimination regulation 1996^[9] provides that the right for a disabled

person and also raised a committee to investigate when a disabled persons have been treated unfavourably by a provider of services. In the Disability Discrimination Act 2005 the rights of a disabled person was clearly listed.

Also the United States of America ratified and signed the CRPD. In section 504 of the Rehabilitation Act of 1973^[10] which was the first disability civil war to be enacted in the United States. It prohibits discrimination against people with disabilities in programs that receive federal financial assistance and set the stage for enactment of the American with Disabilities Act. The American with Disabilities Act 1990 which was amended in 2008^[11] prohibits discrimination on the basis of disabilities by employers, public accommodations, state and local government, public and private transportation and in telecommunications.

Challenges and Limitations of Disabled Persons under the Law

Notwithstanding the ratification of these laws by many countries to protect the rights of people with disability, it is observed that disabled people are large minority groups, starved of services and mostly ignored by society. They are often subjected to life in isolation, segregation, poverty, charity and even pity by the society. Due to different forms of discrimination experienced by disabled persons, they seldom shy away from public places and are not free to get those rights which a non-disabled person gets. They are deprived of certain privileges like education and employment.

These impairments of persons with disabilities continue to cause barriers that prevent them from enjoying their full civil, political, economic, social, cultural, and development rights. This is largely due to lack of awareness, ignorance and prejudice in our society. It is also because some legislation fails to protect the rights of persons with disabilities. Nigeria has been played by persistent conflicts, challenges and limitations in recent years, which have claimed lives. Apart from the general impact of the conflict, it has also contributed to an alarming increase in the numbers of persons with disabilities and equally made them more vulnerable^[12].

The World Disabilities Report of 2011 states that in about 25 million Nigerians have at least one disability, while 3.6 million of that figure has significance difficulties in going about their business. Of the 84 million estimated persons with disabilities in Africa, 29% are located in Nigeria. More than 50% are females. Due to the bandit's insurgency, the Northern East has the highest numbers of disabled people in Nigeria^[13].

A report produced by the Grassroots Researchers Association examined the conditions, vulnerability and right of persons with disabilities; Nigeria has a high number of physically challenged people in North Eastern Nigeria faced with discrimination in housing, education, employment and poor access to public transportation. Their needs and concerns are rarely taken into consideration by the state and often have no options, choices or control over their lives their rights are not systematically upheld. Persons with disability routinely face social exclusion within their communities and society at large. Public attitudes and perception towards the group are disheartening with strong underlining superstitious or cultural beliefs that result in discrimination against persons with disability^[14].

Rights, Benefits and Discrimination of Disabled Persons

The rights of people with disabilities are grounded in a human rights framework based on the UN charter, the universal declaration of human rights, international covenant on human right, covenant on the rights of persons with disabilities and other related human right instruments [15].

The UN charter affirms the essentiality of ‘A universal respect for all without distinction’ [16]. Thus, persons with disabilities are entitled to exercise their civil, political, social, economic and cultural rights on an equal basis with others under all international treaties, this is because, the full participation of persons with disabilities benefit the society, as their individual contribution enrich all spheres of life and also because, this is an integral part of individual’s and society’s wellbeing and progress with or without disabilities.

The rights of individuals with disabilities have been addressed more generally throughout the development of the international human rights law. Article 6 of the Convention on the rights of disabled persons made declarations on ‘EQUALITY BEFORE THE LAW’. Article 16 of the International Covenant on Civil and Political rights [17] also emphasised on the rights of every person to be recognised as a person before the law. Article 26 [18] develops this statement by stating that the law shall prohibit any discrimination and guarantee effective protection against discrimination. Although disability is not at all expressly stated in all the principle of equality provision set out by all the normative standards of the international human rights laws, it appears to be the foundation of all the rights of individual with disabilities.

Rights to Employment

These rights of disabled persons to work are contained in several instruments such as paragraph 3 [19] declaration on the Rights of Mentally Retarded Persons which states that “persons with disabilities have the right to perform productive work or to engage in any other meaningful occupation to the fullest possible extent of his capabilities.” Article 27 CRPD [20] further affirms that ‘people with disabilities have the right to work, including the right to work in an environment that is open inclusive and accessible...’

Similarly, paragraph 7 Declaration of the Rights of Disabled Persons [21] provides that persons with disabilities have the ‘...rights, according to their capabilities, to secure and retain employment or to engage in a useful, productive and remunerative occupation...’ Rule 7 of the standard Rules on the Equalization of opportunities for persons with disabilities [22] describe under the heading employment that member states ‘...should recognise the principle that persons with disabilities must be empowered to exercise their human rights, particularly in the field of employment’. The above declarations simply affirms that people with disabilities have fundamental right to work and equally benefit from the incentive that goes with the employment.

Rights to skills and vocational Training

The development of work skills is very important for persons with disabilities as it enhances independence and also builds self-esteem. Needless to say, that the development of skills through vocational training increase the opportunities of persons with disabilities in the world of

work.

Thus, paragraph 132 of the world programme of Action concerning Disabled persons [23] provides that government should ensure that disabled persons have equal opportunities for productive and gainful employment. Through a list of services such as vocational assessment and guidance, vocational training, placement and follow up. The Tallinn Guidelines for Action on Human Resources Development in the Field of Disability states in paragraph 33 [24] that ‘Disabled persons have the right to be trained for and to work on equal terms in the regular labour force.’

Paragraph 6 of the Declaration on the Rights of Disabled Persons [25] provides that ‘disabled person have the right to education, vocational training and rehabilitation which will enable them develop their capabilities and skills to the maximum and will foster the processes of their social integration.’ Article 3 (1) of the Convention [26] concerning vocational guidance and vocational Training in the development of Human Resources firmly states that ‘Each member shall extend its system or vocational guidance, including continuing employment information with a view to ensuring that comprehensive information and the broadest possible guidance are available to handicapped and disabled persons.’

Article 27 of the CPRD [27] in the same vein provides that ‘state parties must recognise the right of persons with disabilities to work on an equal basis with others...’

Rights to Fair and Equitable Conditions

In other to realise equitable rights for persons with disabilities, especially in the area of work, it is very necessary to enforce international norms dealing with equitable employment conditions and fair wages. Equitable employment conditions include special measures to ensure that persons with disabilities can perform their work effectively and safely in appropriate conditions.

Paragraph 7 of the Recommendation concerning vocational Rehabilitation and Employment (Disabled persons) [28] provides that ‘disabled persons should enjoy equality of opportunity and treatment in respect of access to retention of and advancement in employment’ Paragraph 10 of the same instrument states that ‘measures should be taken to promote employment opportunities on disabled persons, which conforms to the employment and salary standards applicable to workers generally.’ Also evident in paragraph 25 [29] in provision that ‘Disabled person should not be discriminated against in respect of wages and other conditions of employment if their work is equal to that of non-disabled person.’

Rights to Education

The rights to education is of particular importance to disabled persons as basic education is essential for employment in many spheres and a prerequisite to economic independence. Education is also an important part of the rehabilitation process as a person with disabilities develops their capabilities to become more independent and integrated into mainstream society. The most important step for the integration of persons with disabilities into mainstream life is through education. However, a legal provision stating the right for everyone to receive education has little significance if no positive measures are taken to ensure that children, adults and youth with different types and levels of disabilities have access to quality education at

primary and tertiary levels. It is important that no obstacle legal, physical or psychological should exist to hinder the access of disabled person to education.

It is also apposite to point out that the importance of education not only as part of rehabilitation, but also as part of prevention. A high percentage of disability is the direct result of lack of information, poverty and low health standards and can therefore be prevented by means of adequate education. The quality of education should be equal to that of persons without disabilities and should meet the special need of the persons with disabilities. Similarly, the quality of education should be the same irrespective of age, gender or degree of disability.

International instrument stress the need to guarantee high standard for education of all. The Universal Declaration on Human Rights ^[30] Article 26 (2) and the International Convention on Economic, Social and Cultural Rights ^[31] Article 13 (1). States that 'Education shall be directed to the full development of the human personality.' In the same spirits, the Southern Declaration states that 'Education has to promote the self –fulfilment of all disabled persons and their full participation in social life.' Article 6 of the Convention Against Discrimination in Education ^[32] lays down the purpose of education which includes the full development of the human rights and the promotion of understanding, tolerance and friendship among all nation. Rule 6 of The Standard rulers on the Equalization of Opportunities for persons with Disabilities ^[33] provides that '...the quality of education of disabled persons should reflect the same standards as general education and should be closely linked with it.' The Talinn Guidelines for Action on Human Resources Development in the Field of Disability ^[34] in paragraph 27 and 23 provides that 'the content and quality of education should be such as to prepare the disabled student for economic mainstream.'

Electoral Right

The right to vote and be voted for is one of the underlying principles of human right, which are based on equal worth and dignity of all human beings, and has long been included in most international and regional rights instruments. Article 21 ^[35] of the Universal Declaration of Human Rights provided that 'everyone has the right to take part in the government of his country, either directly or indirectly through freely chosen representatives.' Periodic and genuine elections shall be open to every citizen of the country with universal and equal suffrage. Voting stations shall also be fully accessible to disabled persons. Article 23 of the American Convention on Human Rights ^[36] also states the right to participate in government that belongs to every citizen of the country. 23 (2) deals with the law regulation of the exercise of their rights, only in the basis of age, nationality, residence, language, education, civil and mental capacity. Thus, mentally disabled people cannot be legally denied the right to participate in the government following the convention. Article 29 ^[37] on the Right of persons with disabilities elaborates more in the right of persons with disabilities to participate in the political life of their societies and provides specific guidance to states on implementing these rights. Participation in the context of the CPRD extends beyond voting and encompasses the right of persons with disabilities to participate indecision making process on an equal basis with others where their interests are affected. Participation in political and public life as enunciated in

Article 29 which guarantees the right of persons with disabilities; to vote in elections on a non-discriminatory basis; to access an effective, impartial and non-discriminatory procedure for the registration of voters; to have an equal and effective access to voting procedure and facilities in order to exercise their right to vote, including the provision of reasonable accommodation; to cast their ballot in secret and to have assistance in order to exercise their right to vote or to stand for election as a candidate for public office.

Other Accrued Rights

Other rights of disabled person are contained in international instrument such as; the declaration of the rights of disabled person require the states parties to ensure protection of disabled against all forms of discrimination and degrading treatment wherein it states thus; Disabled person have inherent right to respect for their human dignity. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow citizens of the same age, which implies first and foremost the right to enjoy a decent life as normal and as full as possible.

Disabled persons have the rights to economic and social security and to a decent level of living. They have the rights, according to their capabilities, to secure and retain employment in order to engage in a useful, productive and remunerative occupation and to join trade units. They also persons have the right to live with their families or with foster parents and to participate in all social, creative or recreational activities. No disabled person shall be subjected, as far as his residence is concerned, to differential treatment other than that required by his or her condition or by the improvement which he or she may derive there from. If the slay of a disabled person in a specialised establishment and living conditions there in shall be as close as possible to those of the normal life of a person of his or her age. It is pertinent that subject to the enabling laws, disabled persons shall be protected against all form of exploitation, all regulation and all treatment of a discriminatory, abusive or degrading nature.

Also, one of the earliest instrument for regulating the interaction between states is the Universal Declaration of Human Rights which was regarded as the most basic and well known of all human rights instruments provides in Article 1 ^[39] that 'All human beings are born free and that everyone should act towards one another in a spirit of brotherhood.' In same vein, Article 7 stipulates that everyone is equal before the law and that there should be equal protection by law against unnecessary discrimination. The African Charter of Human and People's Right other instrument which is regarded as being specific in nature because, not only did it provide for equality before the law and enjoins equal protection of law without any discrimination. Article 5 ^[40] prohibits all forms of exploitation inhumane, degrading punishment and treatment towards anybody. A similar provision appears in a number of convention and political manifestos such as the International Convention on Economic, Social and Cultural Rights.

Remedies for Violations of Rights of Persons with Disabled Persons

Legislation on disability will be meaningless without

corresponding enforcement mechanisms and remedies for rights violation. The domestic remedies should afford a real opportunity for review and reparation, while basic norms of impartiality and independence of the judiciary and of due process should prevail. If the domestic remedies fail to provide an effective remedy, the individual still have recourse the international complaint procedure can be questioned, but a complaint process itself becomes an advocacy efforts which creates greater awareness on disability rights.

The first place a disabled person, who is a victim of human rights violation may look for recourse in his own country, in to the courts, commissions or the judicial bodies, this right to an effective remedy is recognised in the International Covenant on Civil and Political Rights Article 2 (3) ^[41] which stipulates that ‘each state party must ensure that any person whose rights have been violated shall have an effective remedy before a competent authority provided for by the legal system of the state.’

Individual whose rights have been violated have the right to enforce their rights in court or other relevant authorities? However, persons with disabilities may lack the capacity to effectively prosecute their rights, thus, the rule of *locus standi* should be radicalised to broaden access to courts to those who hitherto could not come before the court due to poverty or physical disability. Also because, persons with disabilities may lack resources required to hire legal aid. The Declaration on the Right of Disabled Persons in Paragraph 11 ^[42], state that ‘... disabled persons shall be able to avoid themselves of qualified legal aid when such aid proves indispensable for the protection of their persons and properties. The state should provide legal aid persons with disabilities, as well as for other vulnerable sections of the society’.

Furthermore, in order to ameliorate the problem of the inability of disabled persons afford legal services, Article 14(3) (a) of the ICCPPR ^[43] provides that a disabled person court proceedings should ‘be held in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of his rights; and to have legal assistance assigned to him, in any case where the interest of justice so required and without payment by him in any such case if he does not have sufficient means to pay for it.’ Many advocacy organisations rely on the human right case of the European court. In *Airey V Ireland* ^[44] the court held that the obligation of states to make access to the court possible and effective includes a right to free legal assistance in civil matters, when the procedure involved is so complex as to require legal assistance in order to ensure access to the court. Positively, bringing such matters to the courts aids victim of disability and see that justice is judiciously done.

Call for Protection and Discrimination of Disabled Persons

The existence of effective remedies to prevent these abuses and the introduction laws penalising such discrimination is of utmost importance. It is the researcher’s view that anti-discriminatory legislations especially in reference to better ways of combating certain reprehensive attitude particularly as regards to the legal enforcement of these rights against violators.

There is an urgent need to improve the daily living of people with disabilities because they have been primarily hinged on

the establishment of institutions and homes which provides vocational training for disabled persons and for the provisions of such amenities like wheelchair and crutches. Person with disabilities who have vocational training need to put their training in use and this can only be possible if there is an enabling environment for them to put in use what they learnt from these vocational institutions which can only be sustained by statute. These statutes should also forbid an employer from terminating his employee’s appointment on the ground of disability once he or she is qualified for the job.

However, it is worthy of note that the issue of eliminating discrimination against disabled people have been a question which is widely discussed in non-government circles but which, with a few exceptions, government have been very slow to take up. Such exceptions include the Canadian Constitution ^[45] which was the first to include a comprehensive equality clause that mention disability. It states that ‘every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination based on race, national or ethnic group, religion physical disability.’ Certain other countries have also passed anti-discrimination laws prohibiting discrimination against persons with disabilities. In addition to the general protection clause, the German Constitution ^[46] include a new phrase thus, ‘No one may be disadvantaged on account of his disability.’

Furthermore, the Fifth Amendment Constitution of the United States of America ^[47] also provides that “No person shall be deprived of life, liberty, without due process or law.” And the American Disability Act ^[48] prohibits discrimination against people with disabilities in employment, public services and transportation and places of public accommodation. In the employment context, the Act essentially prohibits discrimination against qualified individuals with a disability who can perform the essential function of the position held or desired with or without reasonable accommodation, which does not impose an undue hardship on the employer. In alignment the Constitution of the Portuguese Republic ^[49] states that “Citizens who are physically or mentally disabled shall enjoy all the rights and be subject to all the duties embodied in the Constitution.” Also the Uganda Constitution ^[50] provides that ‘society and state shall recognise the rights of persons with disabilities to respect human dignity.’

Similarly in 2014, the Nigerian senate passed into law the Discrimination against Person with Disabilities which seeks to protect the fundamental human rights of person living with disabilities. These laws prescribe financial penalties as well as jail terms for those who violate these laws whether corporate bodies or individuals. The above cited legislations are all work to implement the rights of persons with disability however, it is not sufficient to protect persons with disability since there are little or no prosecuted cases on violation of this rights, a legislation in meaningless without proper enforcement.

Rights of Persons with Disability in Nigeria

In Nigeria, the human rights of people with disabilities (PWD) is enshrined in the 1999 Constitution, other local legislations, international and other human rights instrument adopted by Nigeria such as Millennium Development Goals Vision 20:2020.

One of the stated objectives of the vision 20:2020 project is

empowering persons with disability. The plan of action as contained in the policy document is to address the problems of persons with disability (PWD) by reviewing the educational system and laws on discrimination as well as awareness creation for establishing self Help Group (SHG) and cooperative societies.” The Nigeria vision 20:2020 programme was developed by Nigerians for Nigerian people through a process of thorough engagement with all stakeholders across all levels of government and society. The vision is a rallying point for all Nigerians, regardless of ethnicity, political leaning, economic status or religion. From this stated objectives, it is evident that PWDs are certainly not left out in the implementation of the vision 20:2020 project. The program strategy is simply to empower the PWDs to enable them to contribute their quota towards the fulfilment of the overall objectives of the vision 20:2020 project.

The attention of the rights of persons with disabilities at the national and state levels has not been quite encouraging in Nigeria. There appears to be a palpable apathy on the path of successive administrations towards the plight of this vulnerable group. Little wonder therefore that the PWDs themselves have taken up the gauntlet to champion their own cause.

It is critically important to engage in the discussion of the legal and institutional mechanism for protecting persons with disabilities in Nigeria to review the scope and dimension of disabilities in Nigeria. Unfortunately, there is a general dearth of accurate and reliable statistics on disability globally. Suffice to say that if the situation globally is so poor, it can only be poorer in Nigeria. We are all too familiar with the problem of obtaining accurate and up-to-date statistics in Nigeria; a fact that to our mind represent the starting point of the problems of development planning and programming in Nigeria. Yet, the critical importance of obtaining reliable disability statistics for effective planning and programming for the protection of persons with disabilities cannot be overemphasized but we remain a long way off from this goal.

The challenges notwithstanding, we have endeavoured for our purpose to use available national and global data to derive some insight into the scope of the problem of special needs in Nigeria. The United Nations (UN) estimates that there are about 600 million of the world’s 6.5 billion people who are persons with disabilities of various types and degrees. This puts the total percentage of persons living with disability in the world at 10% ^[51].

It is said also that the day-to-day life of around 25 per cent of the world’s population is affected by disability often compounded by other social problems. For example, poverty disproportionately affects persons with disabilities as 80 per cent of the world’s persons with disabilities live in low-income countries, where the majority are poor and unable to access basic services. Only 2 per cent of children with disabilities in the developing world receive any education or rehabilitation. When it comes to intellectual and physical disabilities more than 40 per cent of countries have policy in this regard and over 30 per cent have no mental health programme. Even in Europe where we some of the highest level stay of guarantee social protection for disabilities, in relation to employment, about 17 per cent of the general population and about 15 per cent of the working population suffer from disability or chronic illness. People with disability are reported to have twice the rate for non-

participation in the labour market as compared to persons with disabilities. The unemployment rate for persons with severe disability is about three times the level for persons without disabilities. Workers with disability typically receive a lower wage than others and segregation begins at an early stage with children being placed in parallel education network. These appalling global situations reports on persons with disability provide an insight to what must be the situation in Nigeria, which usually is at the lowest rungs of the different development index.

In Nigeria as the rest world, it is estimated that persons with disabilities make up about 10% of the country’s population which is about 15 million people. Higher estimates however put the number of persons with disabilities at 25 million.

Statutorily, Article 4 of the Convention made provisions to ensure and promote full realisation of all human rights and freedom of all persons with disability without discrimination and to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disability. It also provides that states should take into account the protection and promotion of human rights of persons with disabilities in all policies and programmes and equally refrain from engaging in any act or practices that is inconsistent with the convention and to ensure that public authorities and institutions act in conformity with the convention.

The Gap on Protection of Disabled Persons Rights

The protection of fundamental rights of persons with disability in Nigeria is found under the Constitution ^[52] in the chapter titled ‘fundamental objectives and directive principle of state policy’ which affirms that every citizen bears equal rights to all legal rights and protections found in existing legislation, however, the non-justice ability of the provision of the section renders it weak and inefficacious for assuring equality in fact. In turn, section 42 which affirms a justiciable right to non-discrimination does not include disability as one of the prohibited grounds of discrimination. In other words, if a person with disability suffers discrimination on the basis of his or her disability whether government agent or individuals acting in their private capacity, in the public sphere or in the private sphere, he or she has no clear cut enforceable legal protection. While an activist lawyer might be inclined to institute a test case to determine how far the court will be willing to stretch the interpretation of section 42 (arguably on the lookout for court such as the supreme court of the united states of America in renowned case of *Brown v Board of Education*) ^[53] there is no certainty that he or she will find one different from the federal high court sitting in Port-Harcourt in the case of *Festus Odafe & Ors v Attorney General of the Federation & Ors* ^[54].

Conclusion

Globally, various declarations and instruments on human rights have shown that fundamental rights of every person is paramount irrespective of the person’s gender, race or body formation. And disabled persons are not left out; therefore, there is a need for a global sensitisation of people, government officials and institution to minimise the discrimination on disabled persons. Awareness on the various instrument protecting their rights will help disabled persons interact freely in the society and equally participate

in activities such as sports, employment, politics and so on. Thus, assurance of legal protection and enforcement of their rights will reduce the discrimination meted on disabled persons.

References

1. UN Declaration on the Rights of Mentally Retarded Persons Proclaimed by General Assembly Resolution 2856(xxvi) of 20 December 1971.
2. Section 4, UN Declaration on the Rights of Mentally Retarded Person Proclaimed by General Assembly Resolution 2856(xxvi) of December 1971.
3. UN Declaration on the Rights of Disabled Person adopted by General Assembly Resolution 3452(xxx) of 9 December 1975
4. UN Declaration on the Rights of Disabled Persons Adopted by General Assembly Resolution 3452(xxx) of 9 December 1975
5. United Nations General Assembly Resolution 47/3. 1992
6. United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol (A/RES/61/106)
7. United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol (A/RES/61/106)
8. Discrimination Against Persons with Disabilities (prohibition) Act, 2018.
9. Canadian Human Rights Act, RSC 198, CH-6.
10. Disability Discrimination (service and premises) Regulations (Northern Ireland) 1996
11. Rehabilitation Act of 1973
12. American with Disabilities Act of 1990. Public law 101-336. 10th Congress, 2nd session(july 26, 1990)
13. [HTTP://Grassrootresearchers.org/challenges-of-persons-with-disabilities-in-northern-nigeria/](http://Grassrootresearchers.org/challenges-of-persons-with-disabilities-in-northern-nigeria/)
14. [Http://en.m.wikipedia.org/wiki/disability-in-nigeria](http://en.m.wikipedia.org/wiki/disability-in-nigeria) accessed on 5/06/2021
15. [Http://Grassrootresearchers.org/challenges-of-persons-with-disabilities-in-northern-nigeria](http://Grassrootresearchers.org/challenges-of-persons-with-disabilities-in-northern-nigeria)
16. Adoption of General Assembly 217 A (iii) on 10 December, 1984.
17. Signed on 26th June and entered into force 26th October 1945
18. Article 16, United Nations, Treaty series, 999, 171
19. Article 26, United Nations, Treaty series, 999, 171
20. Paragraph 3, UN General Assembly, Declaration on the Rights of Mentally Retarded Persons, 20 December 1971, A/RES/2856(XXV)
21. Article 27, Convention on the Right of Person with Disabilities (2007) A/RES/61/106
22. Paragraph 7, UN General Assembly Declaration on the Rights of Disabled Persons, 9 December 1975, A/RES/3447 (XXX)
23. Rule 7, UN General Assembly, standard rules on the equalization of opportunities for persons with disabilities: resolution/adopted by the General Assembly, 20 December 1993, A/RES/48/96
24. Paragraph 132 UN General Assembly implementation of the world programme of action concerning disabled person and the United Nations decade of disabled persons: Resolution/adopted by General Assembly, 14 December 1990.
25. Paragraph 33 The Tallinn Guidelines for Action on Human Resources Development in the field of Disability. 1989.
26. Paragraph 6 UN General Assembly, Declaration on the Rights of Disabled Persons. 9 December 1975, A/RES/3447(XXX)
27. Article 3(1) UN Educational, Scientific and Cultural Organisation (UNESCO), Convention on Technical and Vocational Education, 10 November, 1989.
28. Article 27 United Nations Convention on the Rights of Persons with Disabilities and its Optimal Protocol (A/RES/61/106)
29. Paragraph 7 United Nations Convention on Vocational Rehabilitation and Employment (disabled persons) Convention, 1983.
30. Paragraph 25 United Nations Convention on Vocational Rehabilitation and Employment (disabled persons) Convention, 1983.
31. Article 26(2) UN General Assembly, Universal Declaration of Human Rights, 10 December 1948. 217 A (III)
32. Article 13(1) UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series vol. 993,p.3
33. Article 6, UN Educational, Scientific and Cultural Organisation (UNESCO), convention Against Discrimination in Education. 14 December 1960
34. Rule 6 UN General Assembly, Standard Rules Equalisation of Opportunities for Persons with Disabilities: resolution /adopted by the General Assembly 20 December 1993, A/RES/48/96
35. Paragraph 27 & 23 The Tallinn Guidelines for Actions on Humans Resources Development in the Field of Disability. 1989
36. Article 21 UN General Assembly, Universal Declaration of Human Rights, 10 December 1948 217 A(III)
37. Article 23 Organisation of American States (OAS), American Convention on Human Rights, "Pact of San Jose", Costa Rica, 22 November 1969
38. Article 29 UN General Assembly, Convention on the Rights of Persons with Disabilities: resolution/adopted by General Assembly, 24 January 2007 A/RES/61/106
39. Article 1 UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III)
40. Article 5 Organisation of African Unity (OAU), African Charter on Human and Peoples Right (Banjul Charter), 27 June 1981, CAB/LEG/67/3 rev.5, 21 I.L.M 58 (1958)
41. Article 2(3) UN General Assembly, International Convention on Civil and Political Rights, 16 December 1960, United Nations Treaty Series, vol. 999, p 171
42. Paragraph 11 UN General Assembly, Declaration on the Rights of Disabled Persons, 9 December 1975, A/RES/ 3447 (XXX)
43. Article 14 para 13(a) UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999 p 171
44. Airey v Ireland 32 Eur ct HR Ser A (1979): (1979) 2 E. H. R.R. 305
45. The Constitution Act, 1867 (uk), 30 & 31 Victoria,13.
46. Basic Law for the Federal Republic of Germany (as amended July 2002) (Germany) 23 may, 1949

47. United States of America Constitution, Amendment V
48. American with Disabilities Act of 1990, Public law 101-336. 108th congress, 2nd session (July 26, 1990)
49. Constitution of the Portuguese Republic (Portugal), 25 April 1976
50. Uganda: Constitution of the Republic of Uganda, 22 September 1995
51. <http://Un.org./development/desa/disabilities/resources/factsheet-on-persons-with-disabilities.html> accessed on 17/09/2021
52. 1999 Constitution (as amended)
53. 347 U.S 483 (1954)
54. (2004)AHRLR 205 (NgHC 2004)