

## Evaluation of Opportunities Provided Under the Normative Frameworks for Protection of Persons with Disabilities in Nigeria and Indonesia



Enobong Mbang Akpambang, Ph.D.<sup>1</sup>, Kemisola Busayo Akanle<sup>2</sup>

<sup>1</sup>Department of Public Law, Faculty of Law, Ekiti State University, Ado-Ekiti, Nigeria

<sup>2</sup>Department of Business and Industrial Law, Faculty of Law, Ekiti State University, Ado-Ekiti, Nigeria

**ABSTRACT:** The United Nations General Assembly adopted the Convention on the Rights of Persons with Disabilities (UN CRPD) and its Optional Protocol in 2006 towards the promotion and protection of the rights of persons with disabilities (PWDs) and to support the respect for their innate dignity. Nigeria and Indonesia have signed and ratified the UN CRPD as well as domesticated it in their respective domains. The purpose of this article was to evaluate how the global and relevant national instruments have been implemented in Nigeria and Indonesia to protect the rights of PWDs against discrimination and transform their fortunes. The article adopted library-based doctrinal and comparative research methods. This is in addition to employing some theoretical analytical models of disability to further explicate the perception or attitude of people towards PWDs in these countries. The findings of the article revealed that to certain extents, there have been some prospects and achievements recorded by reason of the extant normative frameworks guaranteeing the rights of PWDs in Nigeria and Indonesia; though the fundamental rights of PWDs have not been entirely fulfilled despite the optimistic clauses in the examined laws. The authors therefore, recommended that a lot more are still required to be done by relevant stakeholders in both countries under reference for the full realisation or accommodation of the protected rights of PWDs in Nigeria and Indonesia.

**KEYWORDS:** Indonesia, Nigeria, Normative Frameworks, Persons with Disabilities

### INTRODUCTION

Prior to the adoption of the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD) and its Optional Protocol in 2006, the major global human rights instruments like the Universal Declaration on Human Rights (UDHR) 1948,<sup>1</sup> the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>2</sup> the International Covenant on Civil and Political Rights (ICCPR),<sup>3</sup> and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),<sup>4</sup> among others, merely made general provisions regarding the inbuilt dignity and value of the human person, equality, inalienable rights, including civil, political, economic, social and cultural rights of every individual. There were no explicit provisions relating to the rights and protection of disabled persons in these prominent international bills of human rights and CEDAW. The UN CRPD and its Optional Protocol therefore, became the foremost binding universal instruments to provide for a wide spectrum of human rights and fundamental freedoms that guaranteed, protected, and respected the rights of persons with disabilities (PWDs) on an equal basis as those enjoyed by individuals who live without disabilities.<sup>5</sup> Nigeria and Indonesia have each signed and ratified the UN CRPD in addition to replicating its provisions as domestic laws to demonstrate their respective national commitments to safeguard the rights of disabled persons. The Nigerian law is regulated by the Discrimination against Persons with Disabilities (Prohibition) Act No. 2 of 2019. On the other hand, the primary legislation on disability rights in Indonesia is the Law on Persons with Disabilities 2016 (Law No. 8 of 2016).

<sup>1</sup> Universal Declaration of Human Rights, GA Res 217A (III), UNGAOR, 3<sup>rd</sup> Session, Supp No. 13, UN Doc A/810 (1948) 71; adopted by the United Nations General Assembly (UNGA) on 10 December 1948.

<sup>2</sup> Adopted by the UNGA Resolution 2200A (XXI) of 16 December 1966 (entered into force on 3 January 1976).

<sup>3</sup> Adopted by the UNGA Resolution 2200A (XXI) of 16 December 1966 (entered into force on 23 March 1976).

<sup>4</sup> Adopted by the UNGA on 18 December 1979 (entered into force on 3 September 1981).

<sup>5</sup> United Nations Convention on the Rights of Persons with Disabilities (UN CRPD), (A/RES/61/106), UNGAOR, 61<sup>st</sup> Sess., Suppl. No. 49 (2006), Article 1, para. 1; adopted by the UNGA on 13 December 2006.

## Evaluation of Opportunities Provided Under the Normative Frameworks for Protection of Persons with Disabilities in Nigeria and Indonesia

Disability, in the perception of the UN CRPD, is a budding notion that results from the intersection between persons with impairments and the attitudinal behaviour as well as unreceptive environmental limitations that impede their complete and effective participation in society on equal basis with others.<sup>6</sup> Joanna Bodio also indicates that disability is not limited to “only a physical, mental and intellectual state that violates the body’s performance, but also hinders, restricts or prevents the playing of social roles as part of participation in society”.<sup>7</sup> The concept of disability is therefore, open-ended as the UN CRPD itself uses the term “include”,<sup>8</sup> which imports that “disability” is not a rigid or watertight term but can be adapted according to the prevailing environment in a given society. Thus, individuals with long or short term physical, mental, intellectual and sensory impairments can benefit from the provisions of the Convention.<sup>9</sup>

Recent research observation regarding disability rights in Indonesia has indicated that the rights of PWDs in that country has not been absolutely actualised regardless the concerted efforts by the Indonesian government, especially as it relates to accessibility to public facilities in the healthcare sector.<sup>10</sup> Another study conducted on the level of financial inclusion in relation to PWDs in Nigeria revealed that PWDs are marginalised in various ways such as inability to access banking facilities and physical structures, despite complaints by disability rights movements.<sup>11</sup> Our present research however goes beyond the limited areas of the mentioned studies in Indonesia and Nigeria.

World Health Organisation (WHO) estimates that more than one billion persons are living with some type of impairments, out of which approximately 200 million encounters significant challenges in functioning; with a caveat that its prevalence was on the increase.<sup>12</sup> However, there is absence of comprehensive data on the actual number of persons with disabilities (PWDs) in either Nigeria or Indonesia. A report indicates that about 25 million Nigerians are living with one type of disability or the other,<sup>13</sup> out of which an estimated 13 million of this population constitutes women and girls.<sup>14</sup> On the other hand, a research conducted by the Australia Indonesia Partnership for Economic Governance in 2017 revealed that at least 10 million people suffered from one form of disability or the other, representing about 4.3% of the Indonesian population.<sup>15</sup> Considering the staggering statistics in the two countries under reference, the article seeks to conduct an in-depth examination of the various normative frameworks recognised by the two countries with a view to discovering how the countries have utilised the possibilities offered by these laws to enhance the rights and protection of PWDs.

The study is divided into some sections. The first part forms the introductory section; the theoretical explanations or models of disability constitute the second part of the study. Some worldwide instruments on disability rights which are ratified by Nigeria and Indonesia are discussed in the third part of the work; while key national disability normative frameworks in Nigeria and Indonesia are examined in the fourth section of the study. Prospects of disability rights in Nigeria and Indonesia are the focus of the fifth section. The study ends with a conclusion and recommendations.

---

<sup>6</sup> *Ibidem*, Preambular para. (e).

<sup>7</sup> Joanna Bodio, “Guardian Appointed for Disabled Person and Guardian Appointed for a Partially Incapacitated Person” (2021) 30:4 *Studia Iuridica Lublinensia* 49 at p. 53.

<sup>8</sup> UN CRPD, *supra* (note 5) at Article 1, para. 1.

<sup>9</sup> United Nations Human Rights Office of the High Commissioner, *The Convention on the Rights of Persons with Disabilities: Training Guide, Professional Training Series No. 19*, HR/P/PT/19, (New York: United Nations Publications, 2014) 1 at 25.

<sup>10</sup> Mohammed Dahlan, Prisca Listiningrum & Dio Priagung Wicaksana, “Rights to Access of Public Facilities in Health Services for People with Disabilities” (2022) 3: 1 *Indonesian Journal of Law and Society* 25-48 at 25.

<sup>11</sup> Kinsley Imandojemu, Akinlosotu Nathaniel Toyosi & Odigie Joseph Ndidi, “Financial Inclusion and People Living with Disabilities (PLWDs) in Nigeria: A Disaggregated Analysis” (2018) 42: 4 *Bullion* 60-82 at 61-62.

<sup>12</sup> World Health Organisation & The World Bank, *World Report on Disability* (Geneva: World Health Organisation, 2011), p. xi. Online: <[https://www.who.int/disabilities/world\\_report/2011/report.pdf](https://www.who.int/disabilities/world_report/2011/report.pdf)> (accessed 24 February 2022).

<sup>13</sup> O. Uduu, “Over 25 million Nigerians excluded due to disability”. Online: <<https://www.daraphyte.com/latest-reports/governance/over-25-million-nigerians-excluded-due-to-disability/>> (accessed 24 February 2022).

<sup>14</sup> Federal Ministry of Health, “National Policy on Sexual and Reproductive Health and Rights of Persons with Disabilities with Emphasis on Women and Girls, June 2018,” p. 2.

Online: <[https://health.gov.ng/doc/NATIONAL\\_POLICY\\_ON\\_SRH\\_OF\\_PWD\\_GWD.pdf](https://health.gov.ng/doc/NATIONAL_POLICY_ON_SRH_OF_PWD_GWD.pdf)> (accessed 16 June 2022). See also National Population Commission (NPC)/ICF, *Nigeria Demographic and Health Survey 2018* (Nigeria and Rockville. Maryland, USA: NPC and ICF, 2019) 1 at 457-458.

<sup>15</sup> L. Cameron & D. C. Suarez, *Disability in Indonesia: What can we learn from the Data?* (Australia Indonesia Partnership for Economic Governance, Monash University Business School, August 2017). Online:

<[https://www.monash.edu/\\_data/assets/pdf\\_file/0003/1107138/Disability-in-Indonesia.pdf](https://www.monash.edu/_data/assets/pdf_file/0003/1107138/Disability-in-Indonesia.pdf)> (accessed 12 June 2022).

# Evaluation of Opportunities Provided Under the Normative Frameworks for Protection of Persons with Disabilities in Nigeria and Indonesia

## I. METHODS

The article adopted conceptual-analytical legal research methodology whereby library-based doctrinal and comparative methods were employed to critically examine both primary and secondary sources of information. The primary sources of information included the examined legislative instruments like the global treaties, national laws and case laws. The secondary sources were the available literature, newspaper reports and other related reports by national governments, the World Health Organisation and the World Bank, among others. The methods adopted were able to evoke certain perceptions that are associated with disability rights and aided in supporting the study and the premise it was built upon.

## II. THEORETICAL MODELS OF DISABILITY

Before a discussion on the normative frameworks for protection of the rights of PWDs in Nigeria and Indonesia, it is worth examining briefly some theoretical models of disability which could influence the perception or attitude of people or the government towards persons with impairments.

### A. The Medical Model (MM)

The spotlight of the model is majorly on the individual's impairment which is considered as a basis for inequality.<sup>16</sup> Disability is portrayed as a personal challenge which is caused by disease or other health conditions that makes the victim to constantly depend on medical care from health care professionals or providers.<sup>17</sup> Since MM is perceived as an individual's private problem, it proves ineffective in assisting PWDs to surmount environmental limitations towards the full enforcement of their rights and involvement in political, socio-economic and cultural life of the society.<sup>18</sup>

### B. The Charity Model (CM)

The CM views PWDs as inactive objects that cannot provide for themselves and are in need of welfare rather than as individuals empowered with rights to take active part in the socio-political, cultural life and the development of their societies. Like the MM, no environmental factors are taken into account under the CM. Hence, CM tends to widen the existing gap between PWDs and the society in which they live as the model leaves PWDs at the margins of the society because it fails to support PWDs' dynamic involvements in their communities.<sup>19</sup>

### C. The Social Model (SM)

SM views "disability" as a socially created problem and a subject of total assimilation of individuals into the society. Disability, from the perception of this model, is not a trait of an individual but is a multifaceted collection of situations, many of which are caused by the social environment and correspondingly requires a social approach to address the problem.<sup>20</sup> In other words, since disability is a social construct, it is imperative on the society to put in place restructured policies, practices, attitudes, environmental accessibility, political structures, legal and regulatory frameworks, among others, to eliminate the various restrictions that prevent PWDs from fully participating in their environmental activities.<sup>21</sup> Thus, SM recognises disability as resulting from the societal connection between personal conditions and environmental factors. This view finds support in Katerina Kazou's contention that economic and social oppressive factors cause disability and as a result, the proper response towards its eradication is by removing the disabling difficulties to participation of PWDs in the society.<sup>22</sup>

### D. Bio-Psycho-Social Model (BPSM)

BPSM perceives disability as occurring from the league between an individual's functional constraints and the environment s/he finds himself/herself. For example, an individual may have a mobility impairment, but according to the BPSM, what actually renders the individual disabled is an inaccessible physical environment, lack of assistive devices, and negative mindsets that construct

---

<sup>16</sup> United Nations Human Rights Office of the High Commissioner, *supra* (note 9) at 9.

<sup>17</sup> *Ibidem*, at pp. 8-9. See also Disabled World, "Models of Disability: Types and Definitions." Online: <<https://www.disabled-world.com/definitions/disability-models.php>> (accessed 21March 2022).

<sup>18</sup> Sri Moertiningsih Adioetomo, Daniel Mont & Irwanto, *Persons with Disabilities in Indonesia: Empirical Facts and Implications for Social Protection Policies* (Jakarta Pusat: Demographic Institute, Faculty of Economics, University of Indonesia in Collaboration with the National Team for the Acceleration of Poverty Reduction, September 2014) 1 at 130.

<sup>19</sup> United Nations Human Rights Office of the High Commissioner, *supra* (note 9) at p. 9.

<sup>20</sup> *Ibidem*, at p. 10.

<sup>21</sup> *Ibidem*. See also Jerome E. Bickenbach, "Disability and Equality" (2003) 2:1 Journal of Law & Equality 7 at 11.

<sup>22</sup> Katerina Kazou, "Analysing the Definition of Disability in the UN Convention on the Rights of Persons with Disabilities: Is it Really Based on a 'Social Model' Approach?" (2017) 23 International Journal of Mental Health and Capacity Law 25 at 31.

## Evaluation of Opportunities Provided Under the Normative Frameworks for Protection of Persons with Disabilities in Nigeria and Indonesia

limitations for his/her dynamic involvement in the society.<sup>23</sup> Thus, BPSM does not envisage disability to be equipollent with a medical judgment but considers it as arising from a relationship between a person's functioning and the physical environment. As a matter of fact, the UN CRPD 2006 adopts the BPSM in its definition of PWD to include individuals that "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".<sup>24</sup>

### E. Moral/Religious Model (M/RM)

The M/RM conceptualises disability as a form of punishment from God or a product of supernatural intervention and that PWDs or their family members are ethically accountable for the consequential disability.<sup>25</sup> This line of theoretical explanation is common among religious traditions, including Judeo-Christian tradition. Echoes of this form of thinking, for instance, could be found in the *Holy Bible* when the disciples of Jesus saw a blind man and questioned Jesus, "Master, who did sin, this man, or his parents, that he was born blind?"<sup>26</sup> The response of Jesus to the fact that neither the man nor his parents were morally responsible for his disability<sup>27</sup> supports the view that neither PWDs nor members of their families should be stigmatised by reason of their physical condition.

### F. The Human Rights Based Model (HRBM)

HRBM draws strength from both the SM and BPSM as it advocates that PWDs have fundamental rights and that the State or society has obligations to recognise and protect their rights. Such recognised rights are not anchored on mere ethical empathy but on the inherent dignity and freedoms which PWDs are entitled to. In this way, HRBM tends to make the State or society accountable both in terms of protecting, endorsing and advancing these fundamental rights as well as stopping the infraction of those rights.<sup>28</sup>

The aim of the HRBM is further reinforced by the UN CRPD 2006 which *inter alia*, seeks to "promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity".<sup>29</sup> Thus, this theoretical model does not portray PWDs as mere "passive objects of charitable acts", but provides them with the enabling opportunities to participate in societal activities, in education, in gainful employment, in political and cultural life and to defend their rights through access to justice in the event of any infraction thereof.<sup>30</sup>

Having discussed the above theoretical orientations which account for the society's perception and treatment of PWDs, this article adopts the HRBM (human rights based model) as it is the only possible all-encompassing approach that supports and affords the means through which the guaranteed rights of PWDs could be implemented, advanced and protected on equal basis with other individuals without disabilities (IWDs) in Nigeria, Indonesia and globally.

## III. SOME GLOBAL INSTRUMENTS ON DISABILITY

### A. ILO Discrimination (Employment and Occupation) Convention 1958 (No. 111)<sup>31</sup>

This Convention perceives discrimination as an infringement of the rights recognised under the UDHR 1948<sup>32</sup> which is capable of invalidating or undermining equal advantage or dealings in employment or occupation.<sup>33</sup> ILO member countries are required to design national policy framework that are suitable to their domestic State in order to promote equal opportunity and treatment in relation to the world of work, with a goal of abolishing any form of discrimination in the labour market.<sup>34</sup>

<sup>23</sup> Sri Moertiningsih Adioetomo, Daniel Mont & Irwanto, *supra* (note 18) at p. xiv.

<sup>24</sup> United Nations Convention on the Rights of Persons with Disabilities, 2006, Article 1; Joanna Bodio, *supra* (note 7) at p. 51.

<sup>25</sup> United Nations Human Rights Office of the High Commissioner, *supra* (note 9) at p. 89; Edwin Etieyibo & Odirin Omiegbe, "Religion, Culture, and Discrimination against Persons with Disabilities in Nigeria" (2016) 5: 1 African Journal of Disability 192-197 at 193.

<sup>26</sup> *The Holy Bible, Life Application Study Bible*, Tyndale House Publishers Inc, 2004, The Book of John, Chapter 9: 2 (King James Version).

<sup>27</sup> *Ibidem*, The Book of John, Chapter 9:3.

<sup>28</sup> Secretariat for the Convention on the Rights of Persons with Disabilities of the Development of Economic and Social Affairs; United Nations Population Fund; Wellesley Centers for Women, *Disability Rights, Gender, and Development: A Resource Tool for Action* (UN CRPD/DESA, UNFPA, Wellesley Centers for Women 2008), Module 1, p. 4.

<sup>29</sup> UN CRPD, Article 1. It is submitted that HRBM is also adopted in a number of national laws, including under Nigeria's Discrimination against Persons with Disabilities (Prohibition) Act 2018 and the Indonesian Law on Persons with Disabilities No. 8 of 2016.

<sup>30</sup> United Nations Human Rights Office of the High Commissioner, *supra* (note 9) at p.10.

<sup>31</sup> Adopted by the General Conference of the International Labour Organization on 25 June 1958 (entered into force on 15 June 1960). While Indonesia ratified the Convention on 7 June 1999, Nigeria ratified it on 2 October 2002.

<sup>32</sup> *Ibidem*, preambular para. 6.

<sup>33</sup> *Ibidem*, Article 1.

<sup>34</sup> *Ibidem*, Article 2.

## Evaluation of Opportunities Provided Under the Normative Frameworks for Protection of Persons with Disabilities in Nigeria and Indonesia

### B. United Nations Convention on the Rights of Persons with Disabilities (UN CRPD) 2006<sup>35</sup> and the Optional Protocol<sup>36</sup>

This is the first legally binding global agreement that holds national governments answerable to the rights of individuals with impairments.<sup>37</sup> The Convention's clauses marked a clear departure from the paradigm attitude of "medical and welfare" models to perceiving PWDs as rights holders who are capable of claiming those entitlements granted to them by law.<sup>38</sup> The Convention regards discrimination on grounds of disability as any distinction, segregation or constraint by reason of disability which has the effect of limiting or nullifying the acknowledgement, enjoyment or implementation, on equal footing with others, of every protected human rights and fundamental liberties in every sphere of life, including denial of reasonable accommodation.<sup>39</sup> State parties are therefore, required to abolish every form of exclusionary and discriminatory practices against PWDs in all spectrum of life.<sup>40</sup>

While the principles of the Convention provide vital directions towards the interpretation and implementation of the rights and clauses of the treaty,<sup>41</sup> the general obligations identify the "obligation-holders" who are accountable for the fulfilment of the guaranteed rights and the necessary steps to be adopted in order to discharge such responsibilities.<sup>42</sup> Although the duties of implementing the Convention's commitments are obligatory on State parties, a number of clauses in the Convention also mentioned some definite areas for implementation by private entities, professionals and service providers towards the full operation of the rights of PWDs under the Convention.<sup>43</sup> Provisions are also made for national<sup>44</sup> and global<sup>45</sup> monitoring mechanisms; however, the established national framework must adhere to internationally acceptable standards of independence, plurality and operating as stipulated under the Paris Principles.<sup>46</sup>

The specific rights protected under the Convention include the rights to life,<sup>47</sup> equality before the law,<sup>48</sup> liberty and security of the person,<sup>49</sup> freedom from torture or cruel, inhuman or degrading treatment or punishment,<sup>50</sup> freedom from exploitation, violence and abuse,<sup>51</sup> protection of the physical and mental integrity of the individual,<sup>52</sup> freedom of movement and nationality,<sup>53</sup> right to living independently and being included in the community,<sup>54</sup> freedom of expression and opinion, including the right to seek,

<sup>35</sup> As at March 2022, UN CRPD had 164 signatories and 185 State Parties (including European Union that ratified it on 23 December 2010). While Nigeria became a signatory to the Convention on 30 March 2007 and ratified same on 24 September 2010, Indonesia became a signatory on 30 March 2007 and ratified it on 30 November 2011. Online: <[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-15&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-15&chapter=4&clang=_en)> (accessed 31 March 2022).

<sup>36</sup> The Optional Protocol (A/RES/61/106) was adopted by United Nations General Assembly (UNGA) on 13 December 2006 at New York (entered into force on 3 May 2008). As at March 2022, the Optional Protocol to the UNCRPD had 94 signatories and 100 State Parties. Nigeria became a signatory to the Protocol on 30 March 2007 and subsequently ratified same on 24 September 2010. Unfortunately, Indonesia has neither signed nor ratified the Optional Protocol.

Online: <[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-15-a&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-15-a&chapter=4&clang=_en)> (accessed 31 March 2022).

<sup>37</sup> Jayna Kothari, "The UN Convention on Rights of Persons with Disabilities: An Engine for Law Reform in India" (2010) 45:18 *Economic and Political Weekly* 65-72 at 65.

<sup>38</sup> *Ibidem* at p. 67. This is unlike the earlier soft law instruments, for example, the Declaration on the Rights of Mentally Retarded Persons, 1971 and the Declaration on the Rights of Disabled Persons, 1975 that were fashioned after the medical model and consequently made the PWDs to be reliant on social security and welfare thereby constantly requiring isolated services and institutions- see Theresia Degener, "International Disability Law-A New Legal Subject on the Rise" in P. Black (ed.) *Disability Rights: International Library of Essays on Rights* (Hong Kong: Proceedings of the Interregional Experts' Meeting, December 1999) 180-195.

Online: <<https://lawcat.berkeley.edu/record/1117172/files/fulltext.pdf>> (accessed 13 August 2022).

<sup>39</sup> UN CRPD, Article 2.

<sup>40</sup> *Ibidem*, Article 5.

<sup>41</sup> *Ibidem*, Article 3.

<sup>42</sup> *Ibidem*, Articles 8, 9, 11, 13 and 20(d).

<sup>43</sup> *Ibidem*, Article 4(1)(e); Article 9(2)(b); Article 20(d); Article 21(c); Article 25(d); Article 27(1)(h); Article 24; and Articles 12 and 19.

<sup>44</sup> The three identified national mechanisms are: focal point(s) mechanism; coordination mechanism; and independent monitoring mechanism- See *Ibidem*, Articles 33(1) and (2).

<sup>45</sup> See *Ibidem*, Articles 32, 34-40.

<sup>46</sup> The United Nations General Assembly (UNGA) adopted Resolution 48/134 on 20 December 1993 concerning National Institutions for the Promotion and Protection of Human Rights with an annex which sets out the Principles Relating to the Status of National Institutions (the Paris Principles) in which national governments were encouraged to create independent human rights institutions (NHRIs). Online: <<https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris>> (accessed 26 March 2022).

<sup>47</sup> UN CRPD, Article 10.

<sup>48</sup> *Ibidem*, Article 12.

<sup>49</sup> *Ibidem*, Article 14.

<sup>50</sup> *Ibidem*, Article 15.

<sup>51</sup> *Ibidem*, Article 16.

<sup>52</sup> *Ibidem*, Article 17.

<sup>53</sup> *Ibidem*, Article 18.

<sup>54</sup> *Ibidem*, Article 19.

## Evaluation of Opportunities Provided Under the Normative Frameworks for Protection of Persons with Disabilities in Nigeria and Indonesia

receive and impart information and ideas,<sup>55</sup> right to privacy,<sup>56</sup> respect for home and family life,<sup>57</sup> rights to education,<sup>58</sup> health,<sup>59</sup> work and employment,<sup>60</sup> and the right to adequate standards of living and social protection.<sup>61</sup> As could be inferred from the relevant clauses, the UN CRPD is an all-embracing package as it is applicable to all PWDs, inclusive of individuals with protracted physical, mental or psychosocial impairments.<sup>62</sup>

The Convention particularly identifies women and girls with disabilities (WGDs), in addition to children with disabilities (CWDs), as the most vulnerable groups that suffer most from multiple discriminations, abuses and violations of their rights.<sup>63</sup> As a matter of fact, the UN Committee on the Rights of Children with Disabilities, General Comment No. 9 of 2006<sup>64</sup> admitted that CWDs are still facing severe social, cultural, attitudinal and physical obstacles to the full realisation of the rights contained in the Convention on the Rights of the Child (CRC) on daily basis.<sup>65</sup> To protect these vulnerable groups of persons, it would be imperative for State parties to the UN CRPD to employ relevant mechanisms, including but not limited to the utilisation of the clauses of the Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW) and the CRC to defend their rights.<sup>66</sup> Such measures would go a long way in ensuring the total freedom, growth, advancement and empowerment of CWDs and women with disabilities (WWDs) for the purpose of guaranteeing them the exercise and enjoyment of human rights stipulated under the UN CRPD.<sup>67</sup>

On the other hand, the Optional Protocol is a distinct global legal agreement attached to the UN CRPD and requires a separate ratification or accession, though it was adopted on the same date with the Convention. The optional nature of the Protocol implies that State parties are not under obligation to ratify it when they ratify the Convention. Nonetheless, the right to seek for remedy or redress is vital for the total enjoyment of all recognised rights under human rights instruments, including the ICCPR and UN CRPD. Thus, it is a positive step for State parties to ratify the Protocol to ensure that PWDs have comprehensive protection of the guaranteed rights. It is noteworthy that Article 34 of the Convention creates the Committee on the Rights of Persons with Disabilities, a global committee of independent experts, and saddles it with various roles. The Optional Protocol in its Article 6 empowers the Committee to embark on investigations if it receives dependable information which shows serious or systematic infraction of Convention by a State party.

### IV. KEY DISABILITY LEGISLATION IN NIGERIA AND INDONESIA

This section of the work examines some normative frameworks in Nigeria and Indonesia focusing on disability rights with a view to discovering the opportunities offered towards the promotion, advancement and protection of the rights of PWDs.

#### A. Nigerian National Legal Instruments

##### 1. Discrimination against Persons with Disabilities (Prohibition) Act (DPDP Act) 2019<sup>68</sup>

Apparently, the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the domesticated African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1990<sup>69</sup> made broad-spectrum provisions for the guaranteed rights of every

---

<sup>55</sup> *Ibidem*, Article 21.

<sup>56</sup> *Ibidem*, Article 22.

<sup>57</sup> *Ibidem*, Article 23.

<sup>58</sup> *Ibidem*, Article 24.

<sup>59</sup> *Ibidem*, Article 25.

<sup>60</sup> *Ibidem*, Article 27.

<sup>61</sup> *Ibidem*, Article 28(2)(a) (b) and (c)); Article 29 and Article 30.

<sup>62</sup> *Ibidem*, Article 1. See also Katerina Kazou, *op. cit.*, at p. 26.

<sup>63</sup> *Ibidem*, Articles 6, 7 and preambular para. (q).

<sup>64</sup> United Nations Committee on the Rights of the Child, General Comment No. 9 (2006): The Right of Children with Disabilities, CRC/C/GC/9 of 27 February 2007; adopted by the Committee at its 43<sup>rd</sup> Session in Geneva held on 11-29 September 2006. Online: <<https://www.refworld.org/docid/461b93f72.html>> (accessed 25 March 2022).

<sup>65</sup> *Ibidem*, para. 5, page 2.

<sup>66</sup> It is noteworthy that CEDAW and CRC are part of the global treaties recalled under UN CRPD. See UN CRPD, preambular para. (d).

<sup>67</sup> UN CRPD, Article 6(2).

<sup>68</sup> Some Nigerian States' governments have also enacted similar laws to prohibit and prevent discriminatory and harmful practices against PWDs and to expressly accord them with some fundamental rights. Such sub-national statutes have legislative competence only within the domain of such legislating States. See for example, Special People's Law 2010, Cap. S9, Vol. 10, *Laws of Lagos State of Nigeria, 2015*, sections 26-38; Discrimination against Persons with Disabilities (Prohibition) Law No. 3 of 2020 (Ekiti State); Disability Rights Law of Plateau State 2005; Disability Rights Commission Law 2018 (Nasarawa State); People with Disabilities (Amendment) Law 2017 (Kwara State); Disability Rights Law 2010 (Bauchi State); and Disability Rights Law 2018 (Anambra State) These are in addition to governmental policy frameworks like, National Policy on Disabilities 2018; National Policy and Implementation Guidelines on Albinism in Nigeria 2013, among others.

<sup>69</sup> Now Cap. A9, Laws of the Federation of Nigeria 2004.

## Evaluation of Opportunities Provided Under the Normative Frameworks for Protection of Persons with Disabilities in Nigeria and Indonesia

Nigerian citizen without special mention of persons with impairments.<sup>70</sup> Thus, DPDP Act 2019 is the primary legislation that deals expressly with issues bothering on the rights and protection of PWDs in Nigeria. The statute was enacted to fulfil Nigeria's commitment under the UN CRPD and other related global and/or regional treaties.<sup>71</sup> The law outlaws discrimination, either by individuals or organisations, against PWD on account of his/her physical, mental, intellectual or sensory impairment.<sup>72</sup> The protected rights under the statute include the right of access to accessibility of physical structure,<sup>73</sup> rights to goods, services and facilities, including accessibility of vehicles and reserved spaces,<sup>74</sup> ease of access and use of seaports, railways and airport facilities,<sup>75</sup> unfettered right to inclusive education<sup>76</sup> and healthcare facilities<sup>77</sup> along with priorities in queues,<sup>78</sup> first considerations are to be accorded to PWDs in accommodations and risky cases of humanitarian emergencies.<sup>79</sup> PWD enjoys equal right to work<sup>80</sup> with employers of labour in the public sector mandated to reserve a minimum of 5% employment opportunities for PWDs,<sup>81</sup> but the employment of a PWD with the aim of exploiting him/her for solicitation of alms is outlawed.<sup>82</sup>

PWDs are also encouraged to actively participate in politics and public life.<sup>83</sup> The right to political inclusion is further strengthened by the recently enacted Electoral Act 2022 which mandates officials of the electoral body, Independent National Electoral Commission (INEC), to render necessary assistance to PWDs, special needs and vulnerable individuals at polling stations by providing them with relevant means of communication like Braille, large embossed print, electronic devices, sign language or in appropriate situations, off-site voting to enable them perform their civic responsibilities.<sup>84</sup>

However, the DPDP Act 2019 gives a five year transitory period within which public buildings and structures, whether mobile, immobile or automobile could be modified and brought into full conformity with the requirement of the law.<sup>85</sup> Subsequent public buildings which are designed in brazen disregard of the stipulated conditions are to be denied requisite approval and any official who approves same would be sanctioned appropriately.<sup>86</sup> With respect to providers of goods and services, the law prevents them from discriminating against PWDs either in the manner or state for providing such goods or rendering the required services and/or declining in making the facilities available to PWDs.<sup>87</sup> The Act further makes provisions for the full assimilation of PWDs into the society in addition to creating the National Commission for Persons with Disabilities (NCPWD) and saddled it with duties for the education, health care, social, economic and civil rights of PWDs.<sup>88</sup> Violation of the rights or provisions of the statute attracts various sanctions such as jail terms and/or payment of prescribed fees.<sup>89</sup> This is without prejudice to a PWD instituting a civil action in court against the violator of his/her guaranteed rights.<sup>90</sup>

### B. Indonesian National Instruments

#### 1. Law on Persons with Disabilities (Law No. 8 of 2016)

---

<sup>70</sup> Ibrahim Imam & M. A. Abdulraheem-Mustapha, "Rights of People with Disability in Nigeria: Attitude and Commitment" (2016) 24: 3 African Journal of International and Comparative Law 439-459 at 440-441.

<sup>71</sup> Joseph Onyekwere, "Passage of Disability Bill is Fulfillment of Nigeria's Obligation to International Treaties", *The Guardian* (1 May 2018). Online: <<https://m.guardian.ng/features/passage-of-disability-bill-is-fulfillment-of-nigerians-obligation-to-international-treaties/>> (accessed 6 April 2022).

<sup>72</sup> Discrimination against Persons with Disabilities (Prohibition) Act (DPDP Act) 2019, sections 1(1) and 57.

<sup>73</sup> *Ibidem*, sections 3-8.

<sup>74</sup> *Ibidem*, sections 9-12.

<sup>75</sup> *Ibidem*, sections 13-15.

<sup>76</sup> *Ibidem*, sections 17-18.

<sup>77</sup> *Ibidem*, section 21.

<sup>78</sup> *Ibidem*, section 26.

<sup>79</sup> *Ibidem*, sections 25- 27.

<sup>80</sup> *Ibidem*, section 28.

<sup>81</sup> *Ibidem*, section 29.

<sup>82</sup> *Ibidem*, section 16.

<sup>83</sup> *Ibidem*, section 30.

<sup>84</sup> Electoral Act 2022, section 54(2).

<sup>85</sup> DPDP Act 2019, section 6.

<sup>86</sup> *Ibidem*, sections 7 and 8. Unfortunately, no corresponding provision is made in the statute regarding private enterprises. It is common knowledge that individuals with impairments can also be employed by private establishments or visits such places to transact businesses. Thus, the law should have taken such situations into consideration to ensure that PWDs are not confronted with accessibility problems thereat.

<sup>87</sup> DPDP Act 2019, section 9. For detailed special facilities to be provided for ease of accessibility of physical structures, see First Schedule to the Act.

<sup>88</sup> See the Explanatory Memorandum to the DPDP Act 2019.

<sup>89</sup> See DPDP Act 2019, sections 1(2), 7(3), 8(2), 12(3)(4) & (5), 16(2), 23, 26(2) and 28(2) & (3).

<sup>90</sup> *Ibidem*, section 1(3) and section 8.

## Evaluation of Opportunities Provided Under the Normative Frameworks for Protection of Persons with Disabilities in Nigeria and Indonesia

Law No. 8 of 2016 was enacted to domesticate the UN CRPD 2006 which was ratified by the Indonesian government in 2011 vide Law No. 19 of 2011 on Ratification of the UN CRPD and to further repeal Law No. 4 of 1997 on Handicapped Persons.<sup>91</sup> Akin to the UN CRPD and Nigeria's similar statute, the extant Law No. 8 of 2016 identified PWDs to comprise of those with physical, intellectual, mental and sensory disabilities.<sup>92</sup> The statute targets the exercise and fulfilment of the rights of PWDs towards *inter alia*, realising the respect, progress, protection and implementation of human right and fundamental freedom of persons with disabilities in complete and equal manner as well as ensure that the exercise of respect, advancement, protection and commensurate with the rights of PWDs to develop themselves and utilise all their potentials according to the their talents and interest so as to enjoy, participate and contribute maximally in a safe, flexible and dignified state and to fully integrate into every area of the society.<sup>93</sup>

The rights acknowledged under Law No. 8 of 2016 include the right to life;<sup>94</sup> freedom from harassment and stigmatisation;<sup>95</sup> right to privacy, including respect for family life and protection on confidentiality of personal data, correspondence and other medium of private communication, inclusive of medical data and information;<sup>96</sup> right to justice and legal protection with equality before the law, including access to banking and non-banking services.<sup>97</sup> Other rights include the rights to education, either in inclusive or special schools,<sup>98</sup> employment, entrepreneurship and cooperative (including career development), whether by the government or with private individuals without discrimination.<sup>99</sup> The right to health covers the right to obtain accessible health care information and communication, equal opportunity and access to affordable, safe and quality health services along with protection from medical experimentation.<sup>100</sup> The right to politics by PWDs entitles them to vote and be voted for and to access all facilities and infrastructures in relation to elections.<sup>101</sup>

Moreover, the right to accessibility under the legislation include the utilisation of public facilities and reasonable accommodation as means of ensuring accessibility for PWDs.<sup>102</sup> In situations of disasters or emergencies, PWDs are to be prioritised and evacuated as well as sheltered in refugees' facilities or infrastructures.<sup>103</sup> They are likewise entitled to freedom from discrimination, abandonment, abuse and exploitation, whether psychologically, economically and/or sexually.<sup>104</sup> PWDs have a right to social welfare, inclusive of social rehabilitation, insurance, empowerment and protection.<sup>105</sup> The statute creates a National Commission on Disability (KND) as an independent non-structural body with the responsibilities of *inter alia*, monitoring, evaluating and advocating for the respect, protection and actualisation of the rights of PWDs<sup>106</sup> as well as formulation of activities plan and liaising with other related stakeholders in issues connected with PWDs.<sup>107</sup>

### 2. Law Concerning Human Rights (Law No. 39 of 1999)

The equal right to dignity recognised under this law covers the right of everyone, including PWDs, to be protected and treated fairly before the law and without any form of discrimination.<sup>108</sup> Every PWD has the right to demand and obtain equal treatment and protection before the law as befits his/her human dignity. Consequently, the law postulates that all members of disadvantaged group in the Indonesian society such as children, the underprivileged and the disabled individuals are entitled to more protection of human rights.<sup>109</sup> All relevant provisions stated in global human rights instruments, to which the Indonesian government has ratified, such as UN CRPD, CRC, CEDAW and Beijing Platform for Action, are recognised under the law and are legally binding on Indonesia.<sup>110</sup>

---

<sup>91</sup> Law No. 8 of 2016, preambular para (d) and Article 151.

<sup>92</sup> *Ibidem*, Article 4.

<sup>93</sup> *Ibidem*, Article 3(a) & (e).

<sup>94</sup> *Ibidem*, Articles 5(a) & 6.

<sup>95</sup> *Ibidem*, Articles 5 & 7.

<sup>96</sup> *Ibidem*, Articles 5 & 8.

<sup>97</sup> *Ibidem*, Article 9.

<sup>98</sup> *Ibidem*, Article 10.

<sup>99</sup> *Ibidem*, Article 11.

<sup>100</sup> *Ibidem*, Article 12.

<sup>101</sup> *Ibidem*, Article 13.

<sup>102</sup> *Ibidem*, Article 18.

<sup>103</sup> *Ibidem*, Article 20.

<sup>104</sup> *Ibidem*, Article 26.

<sup>105</sup> *Ibidem*, Article 17.

<sup>106</sup> *Ibidem*, Article 131.

<sup>107</sup> *Ibidem*, Article 133.

<sup>108</sup> Law No. 39 of 1999, Article 3.

<sup>109</sup> *Ibidem*, Article 5.

<sup>110</sup> *Ibidem*, Article 7.



## Evaluation of Opportunities Provided Under the Normative Frameworks for Protection of Persons with Disabilities in Nigeria and Indonesia

Law No. 39 of 1999 also recognises that children's rights are human rights and correspondingly accords them the rights to protection by their parents, family, society and the government.<sup>111</sup> In the case of CWDs, the law entitles them to the right to special care, education, training and assistance at the expense of the government. CWDs have the right of existence that is worthy of their human dignity and capable of building their self-esteem and the capacity to be fully integrated into the Indonesian society at any level.<sup>112</sup> The law goes further to create the National Commission on Human Rights (NCHR) with the primary goal of developing conditions suitable for the execution of human rights in compliance with the provisions of the 1945 Indonesian Constitution and global human instruments.<sup>113</sup> Human rights violations are to be entertained by the Human Rights Tribunal (HRT) established under Law the legislation.<sup>114</sup>

### V. PROSPECTS OF DISABILITY RIGHTS IN NIGERIA AND INDONESIA

The article has shown that both in Nigeria and Indonesia, the domestication of the UN CRPD crystallised in the recognition of a number of identified rights in the spectrum of civil, political, economic, social and cultural rights of PWDs in addition to general clauses and punishments for infractions of the examined statutes.

In relation to Indonesia, Law No. 8 of 2016 seeks to translate governmental efforts in actualising the rights of PWDs by *inter alia*, reinforcing legal mechanism towards actions that hinder or deny PWDs of their rights; contribute towards the re-direction of the focus of policy makers, governmental authorities and law enforcement agencies from viewing issues bothering on disabled persons from charity or medical-based perceptions to rights-based approach in order to empower them and to ensure that they are fully integrated into the society.<sup>115</sup> In this way, the law ensures that there is collaborative machinery between national and local governments in its implementations.<sup>116</sup> This synergy has the tendency of enabling governmental agencies at all levels to execute programmes capable of improving the regulatory and institutional framework, implementation mechanisms, monitoring and evaluation of policies for PWDs.<sup>117</sup>

The establishment of the Indonesian National Commission for Disability (KND)<sup>118</sup> has also contributed significantly towards the actualisation of the mandate of Law No. 8 of 2016. Recently in February 2022, the KND, in an attempt to provide an inclusive world of work in Indonesia signed a joint commitment with the International Labour Organisation (ILO) towards the respect, protection and fulfilment of the rights of PWDs at workplace.<sup>119</sup> The joint commitment underscored seven areas towards the achievement of inclusivity at work environment in the spirit of implementation of Law No. 8 of 2016, namely, (a) partnership with relevant stakeholders;<sup>120</sup> (b) promotion of rights; (c) abolition of discrimination; (d) equal opportunity and treatment; (e) focus on all kinds of disabilities; (f) sharing of information; and (g) active involvement of PWDs. No doubt, the joint executed declaration is not only a welcome development as it seeks to support coordinated attempts to establish all-encompassing decent work environment in Indonesia but is also in agreement with Indonesia's G20 Presidency in 2022 which buttresses the inclusion of PWDs in every area of live, including in the world of employment.<sup>121</sup>

---

<sup>111</sup> *Ibidem*, Article 52.

<sup>112</sup> *Ibidem*, Article 54.

<sup>113</sup> *Ibidem*, Article 75.

<sup>114</sup> *Ibidem*, Article 104.

<sup>115</sup> See, United Nations Committee on the Rights of Persons with Disabilities, *Initial Report Submitted by Indonesia under Article 35 of the Convention, due in 2013*, CRPD/C/IDN/1(8 March 2019), paras. 3-5. Online: <<https://www.ecoi.net/en/file/local/2005785/G1906297.pdf>> (accessed 15 March 2022).

<sup>116</sup> For example, the national and local governments are mandated to *inter alia*: provide accessible pedestrian facilities that can be easily accessible by PWDs (Law No. 8 of 2016, Articles 101-102); facilitate accessible residence for PWDs (Article 104); provide accessible public services by PWDs based on prevailing laws (Article 105); facilitate or provide habilitation and rehabilitation services for PWDs (Article 110); guarantee access to information and information centres for PWDs and rapid response units for WGWDs as well as special protection for WGWDs based on existing laws (Articles 123, 125 and 126).

United Nations Committee on the Rights of Persons with Disabilities, *Initial Report Submitted by Indonesia under Article 35 of the Convention, due in 2013*, *supra* (note 115) at paras. 6-7.

<sup>118</sup> The Commission is further strengthened by the Presidential Regulation No. 68 of 2020 on National Committee for Disabilities (NCD).

<sup>119</sup> See Declaration of Joint Commitment to Promote Inclusive Decent Work for People with Disabilities in Indonesia (Deklarasi Komitmen Bersama Untuk Mempromosikan Kesempatan Kerja Untuk Penyandang Disabilitas). The document was signed on 8 February 2022 by the Country Director of the ILO in Indonesia, Michiko Miyamoto and the Head of KND, Dante Rigmalia. See, "ILO and Indonesia's National Commission for Disability join forces to promote inclusive workplaces". Online: <[https://www.ilo.org/jakarta/info/public/pr/WCMS\\_837289/lang--en/index.htm](https://www.ilo.org/jakarta/info/public/pr/WCMS_837289/lang--en/index.htm)> (accessed 16 June 2022).

<sup>120</sup> For example, the government at all levels, private sector, trade unions, PWDs to improve their capacity, the society/community, and educational institutions.

<sup>121</sup> ILO and Indonesia's National Commission for Disability join forces to promote inclusive workplaces, *supra* (note 119).

## Evaluation of Opportunities Provided Under the Normative Frameworks for Protection of Persons with Disabilities in Nigeria and Indonesia

Thus, the Indonesian normative frameworks on disability rights have provided the government with the solid base and opportunity to put together superior national legal instruments and policies aimed at positively altering the mindsets of policy makers and the society as a whole towards PWDs. As a matter of fact, the government now mainstreams a right-based approach in its developmental planning and in the execution of applicable policies and programmes in order to surmount obstacles and exclusionary or discriminatory practices against PWDs as well as contain the rights and protection of persons with impairments.<sup>122</sup>

In the same way, the enacting of explicit disability laws by the Nigerian government at the national and sub-national levels has recorded some gains in the country. In an attempt to combat conventional or stereotypes discriminations and harmful practices against PWDs, the government and other relevant stakeholders, including Non-governmental Organisations (NGOs) have organised sensitisation and educational campaigns to create awareness and educate people on disabilities, capabilities and skills of PWDs.<sup>123</sup> PWDs have also been educated on their human rights and guaranteed fundamental freedoms to empower them to maintain positive self image.<sup>124</sup>

Such efforts have strengthened the campaigns of civil societies and disabled persons' organisations as well as enhanced government attempts to tackle related issues that constantly hamper the protection of the rights of PWDs.<sup>125</sup> With this in place, the Nigerian government has a strong foundation to devise better regulatory and policy frameworks on disability. A case in point is the earlier mentioned amendment introduced to the Electoral Act 2022 which saddles the Nigerian national electoral body, INEC, with the responsibility of rendering necessary assistance to enable PWDs discharge their civic obligations at voting units.<sup>126</sup>

Also, the Nigerian national statute creates the National Commission for Persons with Disabilities (NCPWD) which is placed under the Presidency and charged with the responsibility of ensuring that PWDs have access to housing, education and healthcare.<sup>127</sup> The NCPWD is empowered to also receive complaints of rights infractions and support PWDs who may be victims of such infringement to seek legal remedy in the court as well as liaise with the media to make information available in accessible manner for PWDs and to procure assistive devices for all kinds of disability.<sup>128</sup> Perhaps, with a view to keeping the Nigerian President abreast of issues relating to PWDs, President Buhari recently appointed some persons as senior special aides on disability matters.<sup>129</sup> And to further encourage PWDs to get involved in Nigerian politics, some political parties have encouraged PWDs to pick up party nomination forms to contest for positions under the party's platform free of charge.<sup>130</sup> These are salutary developments that were not common before the enactment of the disability statute in Nigeria.

Regardless of the above mentioned positive contributions that have taken place in Nigeria and Indonesia as a result of the examined legal frameworks, the fact remains that the rights and protection of PWDs in both countries have not been entirely attained. Segregated and prejudiced practices against PWDs still persist in various forms. For instance, architectural designs of most academic institutions fail or neglect to take into account the challenges such structures pose to PWDs.<sup>131</sup> Buildings and physical structures that are inaccessible to PWDs are required to be modified in a manner that makes them accessible to and usable by PWDs.<sup>132</sup> This requirement has not been complied with by most public institutions although the five years transitional period granted under the Nigerian disability law is running out in 2024. This is highly discriminatory against PWDs or CWDs.<sup>133</sup>

---

<sup>122</sup> United Nations Committee on the Rights of Persons with Disabilities, *Initial Report Submitted by Indonesia under Article 35 of the Convention, due in 2013, supra* (note 115), paras. 1-2.

<sup>123</sup> S. Omolaoye, "INEC Assures Persons with Disabilities of Full Participation", *The Guardian* (29 January 2022). Online: <<https://guardian.ng/news/inec-assures-persons-with-disabilities-of-full-participation/>> (accessed 13 August 2022).

<sup>124</sup> See, National Human Rights Commission, "Human Rights Council Resolution 37/22 Concerning the Rights of Persons with Disabilities- Input by National Human Rights Commission". Online: <<https://www.ohchr.org/Documents/Issues/Disability/Article8/NHRI/Nigeria.docx>> (accessed 16 June 2022).

<sup>125</sup> Kemi Falodun, "Nigerians with Disabilities seek Inclusion in Electoral Process", *Al Jazeera* (8 June 2022). Online: <<https://www.aljazeera.com/features/2022/6/8/nigerians-with-disabilities-seek-inclusion-in-electoral-process>> (accessed 27 June 2022).

<sup>126</sup> Electoral Act 2022, section 54.

<sup>127</sup> DPDP Act 2019, Explanatory Memorandum; section 31.

<sup>128</sup> *Ibidem*, section 37.

<sup>129</sup> Johnbosco Agbakwuru, "Buhari re-appoints Ankeli, Garba as aides on Disability Matters", *Vanguard* (21 January 2020). Online: <<https://www.vanguardngr.com/2020/buhari-re-appoints-ankeli-garba-as-aides-on-disability-matters/>> (accessed 5 July 2022).

<sup>130</sup> Yekini Jimoh, "PWDs Appreciate APC, Buhari, Yahaya Bello for Free Nominations, Appointments", *Nigerian Tribune* (4 June 2020). Online: <<https://tribuneonline.ng/pwds-appreciate-apc-buhari-yahaya-bello-for-free-nomination-forms-appointments>> (accessed 5 July 2022).

<sup>131</sup> Edwin Etieyibo, "Rights of Persons with Disabilities in Nigeria" (2020) 33: 1 *Afrika Focus* 59-81 at p. 70. See also Ibrahim Imam, M. A. Abdurraheem-Mustapha, *supra* (note 70) at p. 451. See also Bukola Ruth Akinbola, "The Right to Inclusive Education in Nigeria: Meeting the Needs and Challenges of Children with Disabilities" (2010) 10 *African Human Rights Law Journal* 457 at 474, 476.

<sup>132</sup> DPDP Act 2019, sections 3-8; Law No. 8 of 2016, Articles 97 and 98.

<sup>133</sup> Richard Rieser, "Disability Equality: Confronting the Oppression of the Past," in Mike Cole (ed.) *Education, Equality and Human Rights: Issues of Gender, 'Race', Sexuality, Disability and Social Class*, 2<sup>nd</sup> ed. (Routledge, 2006) at 118.

## Evaluation of Opportunities Provided Under the Normative Frameworks for Protection of Persons with Disabilities in Nigeria and Indonesia

Similarly, in Indonesia the right of every citizen, including PWDs, to access quality education without discrimination or exclusion, is clearly stated in the 1945 Constitution of the Republic of Indonesia (as amended);<sup>134</sup> Law No. 20 of 2003 on National Education System;<sup>135</sup> and Law No. 8 of 2016.<sup>136</sup> However, according to the Indonesian Ministry of Education, Culture, Research and Technology (MoECRT), about 70% of CWDs lacked access to education.<sup>137</sup> Hidayatulloh has also lamented that Indonesians with severe disabilities (PWD-severe) only attend schools for 2.8 years on average and 4.4 years for people with moderate disabilities (PWD-moderate), which by far is lower than the required national mean years of schooling being 8 years.<sup>138</sup> Besides, special schools in Indonesia are mostly situated in urban areas which make them inaccessible to CWDs in rural areas.<sup>139</sup> The high costs of attending tertiary institutions along with lower educational rewards in the labour market for PWDs also discourage them from pursuing higher education.<sup>140</sup>

Significantly, the MoECRT has encouraged inclusive education in order to tackle concerns confronting children with impairments. This has resulted in raising inclusive schools from 3,610 to 28, 778 between the period of 2015 and 2020.<sup>141</sup> This is a major breakthrough because as at 2016, it was reported that there were only about 9,130 inclusive schools at the primary to senior secondary schools levels and 2,186 special need schools in Indonesia.<sup>142</sup> This does not mean that the difficulties connected with inclusive education have been fully settled in Indonesia. In actual fact, inclusive education in the country is still confronted with the problem of lack of qualified teachers who are trained in inclusive education. It is reputed that below 13 per cent established inclusive schools have trained educators in the field of inclusive education and are willing to educate and provide needed supports to children with disabilities. This is apart from lack of facilities and support mechanisms in the communities.<sup>143</sup>

Another associated hindrance to school enrolment in Indonesia is the problem of securing birth certificates for CWDs which is a basic requirement for school admission and for accessing other services in Indonesia.<sup>144</sup> Without birth registration, CWDs are unrecognisable by law and are “invisible in government statistics.”<sup>145</sup> Appropriate measures should therefore, be adopted by the Indonesian government for effective system of birth registration of CWDs, including opening mobile birth registration bureau and registration units in schools. Also failure of the Indonesian government to sign and ratify the Optional Protocol to the UN CRPD implies that the clauses of the treaty may not be binding on it.

## VI. CONCLUSION

Findings of the article support the view that the UN CRPD offers hopes and opportunities as binding global treaty for the protection and promotion of the rights of PWDs in Nigeria and Indonesia, more so, as it has been domesticated by both countries.<sup>146</sup> The examined national laws equally offer firm bedrock for the formulation of enhanced national policies and plans for action on disability

---

<sup>134</sup> See Article 31.

<sup>135</sup> Article 5 of Law No. 20 of 2003 endorsed the rights of PWDs to education, inclusive of education which concerns their peculiar needs in relation to their interest and ability.

<sup>136</sup> Law No. 8 of 2016, Article 10.

<sup>137</sup> Sri Moertiningsih Adioetomo, Daniel Mont and Irwanto, *supra* (note 18) at p. 58.

<sup>138</sup> Muhammad Ammar Hidayatulloh, *Making Real the Rights of Persons with Disabilities in Indonesia: Issues, Policies and Future Policy Recommendations* (Australia: Proceedings of International Conference of Indonesian Students, 17-18 April 2020), pp. 64-73. Online: <[https://www.researchgate.net/publication/350104245-Making\\_Real\\_the-Rights\\_of\\_Persons-with\\_Disabilities\\_in-Indonesia\\_Issues-Policies\\_and-Future\\_Policy-Recommendations](https://www.researchgate.net/publication/350104245-Making_Real_the-Rights_of_Persons-with_Disabilities_in-Indonesia_Issues-Policies_and-Future_Policy-Recommendations)> (accessed 16 June 2022).

<sup>139</sup> *Ibidem* at p. 66.

<sup>140</sup> International Labour Organisation, *Final Report-Mapping Persons with Disabilities (PWD) in Indonesia Labour Market*. Online: <[https://www.ilo.org/jakarta/whatwedo/publicationa/WCMS\\_587669/lang--en/index.htm](https://www.ilo.org/jakarta/whatwedo/publicationa/WCMS_587669/lang--en/index.htm)> (accessed 16 June 2022).

<sup>141</sup> See, The World Bank, “Realizing Schools that Unlock the Potentials of Indonesian Children with Disabilities.” Online: <<https://www.worldbank.org/en/news/feature/2021/10/19/realizing-schools-that-unlock-the-potentials-of-indonesian-children-with-disabilities>> (accessed 23 November 2022).

<sup>142</sup> See, United Nations Committee on the Rights of Persons with Disabilities, *Initial Report Submitted by Indonesia under Article 35 of the Convention, due in 2013, supra* (note 115) at para. 145.

<sup>143</sup> The World Bank, “Realizing Schools that Unlock the Potentials of Indonesian Children with Disabilities,” *supra* (note 141).

<sup>144</sup> L. Cameron & D. C. Suarez, *supra* (note 15) at p. 14.

<sup>145</sup> General Comments No. 9 of 2006 on the Rights of Children with Disabilities, *supra* (note 64) at para. 35.

<sup>146</sup> Noor Sidharta, “Laws of Ratification of an International Treaty in Indonesian Laws Hierarchy” (2017) 3:2 Constitutional Review 171-188 at pp 178-181; Simon Butt, “The Position of International Law within the Indonesian Legal System” (2014) 28: 1 Emory International Law Review 1-28 at p. 28. See also F. A. Onomrherhinor, “A Re-Examination of the Requirement of Domestication of Treaties in Nigeria” (2016) 7 Nnamdi Azikiwe University Journal of International Law and Jurisprudence 17-25; M. O. Okome, “Domestic, Regional, and International Protection of Nigerian Women against Discrimination: Constraint and Possibilities” (2002) 6: 3 African Studies Quarterly 33-63; CFRN 1999, section 12; *The Registered Trustees of National Association of Community Health Practitioners of Nigeria & 2 Ors. v. Medical & Health Workers Union of Nigeria* (2008) All FWLR (Pt. 412) 1013 at 1056-1057 (decided by the Nigerian Supreme Court on 11 January 2008).

## Evaluation of Opportunities Provided Under the Normative Frameworks for Protection of Persons with Disabilities in Nigeria and Indonesia

rights. Undertaking such legislative task at the national and sub-national levels have assisted in reshaping the mindsets of the government, decision makers, educationists, the society and PWDs, among others, from the hitherto “charity and medical” theoretical orientations to considering PWDs as individuals who have bundle of fundamental rights and inherent dignity but are limited by the oppressive social and environmental barriers.

The Nigerian and Indonesian governments still need to take more proactive steps to actualise the full implementation of the rights of PWDs. Strict adherence to the clauses of the laws on disability would go a long way to assist in this wise. On the part of Nigeria, there is also need for a constitutional amendment to incorporate clear provisions relating to the rights and protection of PWDs as are obtainable under the Ugandan,<sup>147</sup> Rwandan<sup>148</sup> and South African<sup>149</sup> Constitutions, among others. On the other hand, the Indonesian government should promptly take steps towards signing and ratifying the Optional Protocol to the UN CRPD. This is because both administratively and considerably, the Optional Protocol constitutes a potential significant instrument for defending PWDs and for reinforcement of national capacities. Similarly, the Optional Protocol requires the Convention’s Committee to authenticate or question rulings of national courts as well as provide appropriate guidance to national courts.

### CONFLICTING INTERESTS

The authors declare that they have no conflicts of interest.

### REFERENCES

- 1) Agbakwuru, Johnbosco, “Buhari re-appoints Ankeli, Garba as aides on Disability Matters”, *Vanguard* (21 January 2020). Online: <<https://www.vanguardngr.com/2020/buhari-re-appoints-ankeli-garba-as-aides-on-disability-matters/>> (accessed 5 July 2022).
- 2) Akinbola, Bukola Ruth, “The Right to Inclusive Education in Nigeria: Meeting the Needs and Challenges of Children with Disabilities” (2010) 10 *African Human Rights Law Journal* 457 at 474, 476.
- 3) Bickenbach, Jerome E., “Disability and Equality” (2003) 2:1 *Journal of Law & Equality* 7 at 11.
- 4) Bodio, Joanna, “Guardian Appointed for Disabled Person and Guardian Appointed for a Partially Incapacitated Person” (2021) 30:4 *Studia Iuridica Lublinensia* 49 at p. 53.
- 5) Butt, Simon, “The Position of International Law within the Indonesian Legal System” (2014) 28: 1 *Emory International Law Review* 1-28 at p. 28.
- 6) Cameron, L. & D. C. Suarez, *Disability in Indonesia: What can we learn from the Data?* (Australia Indonesia Partnership for Economic Governance, Monash University Business School, August 2017). Online: <[https://www.monash.edu/\\_data/assets/pdf\\_file/0003/1107138/Disability-in-Indonesia.pdf](https://www.monash.edu/_data/assets/pdf_file/0003/1107138/Disability-in-Indonesia.pdf)> (accessed 12 June 2022).
- 7) Dahlan, Mohammed, Prisca Listiningrum & Dio Priagung Wicaksana, “Rights to Access of Public Facilities in Health Services for People with Disabilities” (2022) 3: 1 *Indonesian Journal of Law and Society* 25-48 at 25.
- 8) Degener, Theresia, “International Disability Law-A New Legal Subject on the Rise” in P. Black (ed.) *Disability Rights: International Library of Essays on Rights* (Hong Kong: Proceedings of the Interregional Experts’ Meeting, December 1999) 180-195. Online: <<https://lawcat.berkeley.edu/record/1117172/files/fulltext.pdf>> (accessed 13 August 2022).
- 9) Disabled World, “Models of Disability: Types and Definitions.” Online: <<https://www.disabled-world.com/definitions/disability-models.php>> (accessed 21 March 2022).
- 10) Etieyibo, Edwin & Odirin Omiegbe, “Religion, Culture, and Discrimination against Persons with Disabilities in Nigeria” (2016) 5: 1 *African Journal of Disability* 192-197 at 193.
- 11) Etieyibo, Edwin, “Rights of Persons with Disabilities in Nigeria” (2020) 33: 1 *Afrika Focus* 59-81 at p. 70.
- 12) Falodun, Kemi, “Nigerians with Disabilities seek Inclusion in Electoral Process”, *Al Jazeera* (8 June 2022). Online: <<https://www.aljazeera.com/features/2022/6/8/nigerians-with-disabilities-seek-inclusion-in-electoral-process>> (accessed 27 June 2022).

---

<sup>147</sup> See the Ugandan Constitution 1995, Article 35, which states that “Persons with disabilities have a right to respect and human dignity, and the State and society shall take appropriate measures to ensure that they realise their full mental and physical potential; and Parliament shall enact laws appropriate for the protection of persons with disabilities.”

<sup>148</sup> See Rwandan Constitution 2003, Article 11.

<sup>149</sup> See South African Constitution 1996, sections 9(3)-(5).

## Evaluation of Opportunities Provided Under the Normative Frameworks for Protection of Persons with Disabilities in Nigeria and Indonesia

- 13) Federal Ministry of Health, "National Policy on Sexual and Reproductive Health and Rights of Persons with Disabilities with Emphasis on Women and Girls, June 2018", Online: <[https://health.gov.ng/doc/NATIONAL\\_POLICY\\_ON\\_SRH\\_OF\\_PWD\\_GWD.pdf](https://health.gov.ng/doc/NATIONAL_POLICY_ON_SRH_OF_PWD_GWD.pdf)> (accessed 16 June 2022).
- 14) Hidayatulloh, Muhammad Ammar, *Making Real the Rights of Persons with Disabilities in Indonesia: Issues, Policies and Future Policy Recommendations* (Australia: Proceedings of International Conference of Indonesian Students, 17-18 April 2020), Online: <[https://www.researchgate.net/publication/350104245-Making\\_Real\\_the-Rights\\_of\\_Persons-with\\_Disabilities\\_in-Indonesia\\_Issues-Policies\\_and-Future\\_Policy-Recomendations](https://www.researchgate.net/publication/350104245-Making_Real_the-Rights_of_Persons-with_Disabilities_in-Indonesia_Issues-Policies_and-Future_Policy-Recomendations)> (accessed 16 June 2022).
- 15) Imam, Ibrahim & M. A. Abdulraheem-Mustapha, "Rights of People with Disability in Nigeria: Attitude and Commitment" (2016) 24: 3 African Journal of International and Comparative Law 439-459 at 440-441.
- 16) Imandojemu, Kinsley, Akinlosotu Nathaniel Toyosi & Odigie Joseph Ndidi, "Financial Inclusion and People Living with Disabilities (PLWDs) in Nigeria: A Disaggregated Analysis" (2018) 42: 4 Bullion 60-82 at 61-62.
- 17) International Labour Organisation, *Final Report-Mapping Persons with Disabilities (PWD) in Indonesia Labour Market*. Online: <[https://www.ilo.org/jakarta/whatwedo/publicationa/WCMS\\_587669/lang--en/index.htm](https://www.ilo.org/jakarta/whatwedo/publicationa/WCMS_587669/lang--en/index.htm)> (accessed 16 June 2022).
- 18) Kazou, Katerina, "Analysing the Definition of Disability in the UN Convention on the Rights of Persons with Disabilities: Is it Really Based on a 'Social Model' Approach?" (2017) 23 International Journal of Mental Health and Capacity Law 25 at 31.
- 19) Kothari, Jayna, "The UN Convention on Rights of Persons with Disabilities: An Engine for Law Reform in India" (2010) 45:18 Economic and Political Weekly 65-72 at 65.
- 20) National Human Rights Commission, "Human Rights Council Resolution 37/22 Concerning the Rights of Persons with Disabilities- Input by National Human Rights Commission". Online: <<https://www.ohchr.org/Documents/Issues/Disability/Article8/NHRI/Nigeria.docx>> (accessed 16 June 2022).
- 21) National Population Commission (NPC)/ICF, *Nigeria Demographic and Health Survey 2018* (Nigeria and Rockville. Maryland, USA: NPC and ICF, 2019) 1 at 457-458.
- 22) Okome, M. O., "Domestic, Regional, and International Protection of Nigerian Women against Discrimination: Constraint and Possibilities" (2002) 6: 3 African Studies Quarterly 33-63
- 23) Omolaoye, S., "INEC Assures Persons with Disabilities of Full Participation", *The Guardian* (29 January 2022). Online: <<https://guardian.ng/news/inec-assures-persons-with-disabilities-of-full-participation/>> (accessed 13 August 2022).
- 24) Onomrerhinor, F. A., "A Re-Examination of the Requirement of Domestication of Treaties in Nigeria" (2016) 7 Nnamdi Azikiwe University Journal of International Law and Jurisprudence 17-25.
- 25) Onyekwere, Joseph, "Passage of Disability Bill is Fulfilment of Nigeria's Obligation to International Treaties", *The Guardian* (1 May 2018). Online: <<https://m.guardian.ng/features/passage-of-disability-bill-is-fulfillment-of-nigerians-obligation-to-international-treaties/>> (accessed 6 April 2022).
- 26) Rieser, Richard, "Disability Equality: Confronting the Oppression of the Past," in Mike Cole (ed.) *Education, Equality and Human Rights: Issues of Gender, 'Race', Sexuality, Disability and Social Class*, 2<sup>nd</sup> ed. (Routledge, 2006).
- 27) Secretariat for the Convention on the Rights of Persons with Disabilities of the Development of Economic and Social Affairs; United Nations Population Fund; Wellesley Centers for Women, *Disability Rights, Gender, and Development: A Resource Tool for Action* (UN CRPD/DESA, UNFPA, Wellesley Centers for Women 2008), Module 1, p. 4.
- 28) Sidharta, Noor, "Laws of Ratification of an International Treaty in Indonesian Laws Hierarchy" (2017) 3:2 Constitutional Review 171-188 at pp 178-181.
- 29) Sri Moertiningsih Adioetomo, Daniel Mont & Irwanto, *Persons with Disabilities in Indonesia: Empirical Facts and Implications for Social Protection Policies* (Jakarta Pusat: Demographic Institute, Faculty of Economics, University of Indonesia in Collaboration with the National Team for the Acceleration of Poverty Reduction, September 2014).
- 30) The World Bank, "Realizing Schools that Unlock the Potentials of Indonesian Children with Disabilities." Online: <<https://www.worldbank.org/en/news/feature/2021/10/19/realizing-schools-that-unlock-the-potentials-of-indonesian-children-with-disabilities>> (accessed 23 November 2022).
- 31) Uduu, O., "Over 25 million Nigerians excluded due to disability". Online: <<https://www.daraphyte.com/latest-reports/governance/over-25-million-nigerians-excluded-due-to-disability/>> (accessed 24 February 2022).
- 32) United Nations Committee on the Rights of Persons with Disabilities, *Initial Report Submitted by Indonesia under Article 35 of the Convention, due in 2013*, CRPD/C/IDN/1(8 March 2019), paras. 3-5. Online:

## Evaluation of Opportunities Provided Under the Normative Frameworks for Protection of Persons with Disabilities in Nigeria and Indonesia

<https://www.ecoi.net/en/file/local/2005785/G1906297.pdf> (accessed 15 March 2022).

- 33) United Nations Committee on the Rights of the Child, *General Comment No. 9 (2006): The Right of Children with Disabilities*, CRC/C/GC/9 of 27 February 2007. Online: <https://www.refworld.org/docid/461b93f72.html> (accessed 25 March 2022).
- 34) United Nations Human Rights Office of the High Commissioner, *The Convention on the Rights of Persons with Disabilities: Training Guide, Professional Training Series No. 19*, HR/P/PT/19, (New York: United Nations Publications, 2014).
- 35) World Health Organisation & The World Bank, *World Report on Disability* (Geneva: World Health Organisation, 2011). Online: [https://www.who.int/disabilities/world\\_report/2011/report.pdf](https://www.who.int/disabilities/world_report/2011/report.pdf) (accessed 24 February 2022).
- 36) Yekini, Jimoh, "PWDs Appreciate APC, Buhari, Yahaya Bello for Free Nominations, Appointments", *Nigerian Tribune* (4 June 2020). Online: <https://tribuneonlineng.com/pwds-appreciate-apc-buhari=yahaya-bello-for-free-nomination-forms-appointments> (accessed 5 July 2022).



There is an Open Access article, distributed under the term of the Creative Commons Attribution – Non Commercial 4.0 International (CC BY-NC 4.0) (<https://creativecommons.org/licenses/by-nc/4.0/>), which permits remixing, adapting and building upon the work for non-commercial use, provided the original work is properly cited.