

A Legal Analysis of the Protection of the Rights of Persons with Disabilities During the COVID-19 Pandemic in Nigeria

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Abstract

Persons with disabilities are often discriminated against in society on the basis and/or grounds such as race, ethnicity, cultural beliefs, as well as religious beliefs. Moreover, there is a general negative societal attitude and a negative perception against persons with disabilities globally. For instance, persons with disabilities are negatively treated as a charitable problem of the society in many countries, including Nigeria. This approach could have deliberately or inadvertently led to the omission of the specific rights of persons with disabilities from the list of fundamental rights under the Nigerian Constitution, 1999. However, the recent enactment of the Discrimination Against Persons with Disabilities (Prohibition) Act, 2018, could be a positive step in addressing numerous challenges such as poverty, unemployment, discrimination, and health care problems that are faced by persons with disabilities in Nigeria, especially in the wake of the novel coronavirus (COVID-19) pandemic. Against this background, the article discusses the challenges that are encountered by persons with disabilities in Nigeria during the COVID-19 pandemic. This is undertaken to, *inter alia*, assess the adequacy of the legal and constitutional protection on the rights of persons with disabilities, especially during the ongoing COVID-19 pandemic in Nigeria. Moreover, the flaws and gaps in the current legal and constitutional regime for the protection of the rights of persons with disabilities in Nigeria are discussed. Thereafter, possible recommendations to curb such flaws in Nigeria are provided.

Keywords

persons with disabilities – COVID-19 – social exclusion – legal protection – discrimination

1 Introductory Remarks

Persons with disabilities are often discriminated against in society on the basis and/or grounds such as race, ethnicity, cultural beliefs, as well as religious beliefs. Moreover, there is a general negative societal attitude and a negative perception against persons with disabilities globally. For instance, persons with disabilities are negatively treated as a charitable problem of the society in many countries, including Nigeria. This approach could have deliberately or inadvertently led to the omission of the specific rights of persons with disabilities from the list of fundamental rights under the Nigerian Constitution, 1999, Chapter C 23, Laws of the Federation of Nigeria (Nigerian Constitution). Yet, it is submitted that Nigeria has a population of about 200 million people and from this number, over 25 million persons live with disabilities.¹ The number of persons with disabilities is continually increasing in Nigeria owing to a number of factors such as terrorism, tribal conflicts, unhealthy living conditions, old age, poverty, and illness.² For example, the Islamist terrorist organization called Boko Haram which operates in the North-Eastern part of Nigeria and the herder and farmers' clashes in the middle belt and Southern Nigeria have all culminated into violence and the maiming of the militant and civilian people in Nigeria.³ Furthermore, the Boko Haram terrorises and uses disabled

- 1 World Bank, 'Population, total – Nigeria' (2020) <<https://data.worldbank.org/indicator/SP.POP.TOTL?locations=NG>> accessed 26 August 2020; C Amucheazi and CM Nwankwo, 'Accessibility to infrastructure and disability rights in Nigeria: An analysis of the potential of the Discrimination Against Persons with Disability (Prohibition) Act 2018' (2020) 46/4 *Commonwealth Law Bulletin* 1, 2–22; O Oyegbade 'Next level for disability law in Nigeria' (*The Guardian*, 11 July 2019) <<https://guardian.ng/opinion/next-level-for-disability-law-in-nigeria/>> accessed 26 August 2020.
- 2 Al Ofuani, 'The right to economic empowerment of persons with disabilities in Nigeria: How enabled?' (2011) 11/2 *AHRLJ* 639, 639–40.
- 3 MN Ele, 'Transhumance, Climate change and conflicts: Reflections on the legal implications of grazing reserves and ruga settlements in Nigeria' (2020) 64/2 *J Afr L* 199, 200–13; S Eke, "Nomad savage" and herder – farmer conflicts in Nigeria: The (un)making of an ancient myth' (2020) 41/5 *TWQ* 745, 750–58; I Chilwa and IM Chilwa, "Deadlier than Boko Haram": Representations of the Nigerian herder – farmer conflict in the local and foreign press' (2020) *Media*,

persons as targets, decoy persons in attacks and/or as suicide bombers.⁴ Disabled persons and women are also used in suicide missions of Boko Haram because they are seen as less threatening and they can easily circumvent security measures.⁵ Persons with disabilities are vulnerable, discriminated against, and excluded from many socio-economic activities in Nigeria.⁶ The status *quo* has been exacerbated by the advent of the novel coronavirus (COVID-19)

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- War & Conflict* <<https://journals.sagepub.com/doi/full/10.1177/1750635220902490>> access ed 29 August 2020; J Birchall, 'Overview of social exclusion in Nigeria' (*K4D Helpdesk Report*, 18 November 2019) <<https://www.gov.uk/research-for-development-outputs/legislation-policies-and-social-exclusion-in-nigeria>> accessed 29 August 2020; J Birchall, 'Legislation, policies and social exclusion in Nigeria' (*K4D Helpdesk Report*, 18 November 2019) <https://assets.publishing.service.gov.uk/media/5df7b817ed915d09322e22dc/693_Legislation_policies_and_social_exclusion_in_Nigeria.pdf> accessed 29 August 2020; E Pearson, 'Wilayat Shahidat: Boko Haram, the Islamic State, and the question of the female suicide bomber' in J Zenn (ed), *Boko Haram Beyond the Headlines: Analyses of Africa's Enduring Insurgency* (Combating Terrorism Centre, 2018) 33, 33–35; V Markovic, 'Suicide squad: Boko Haram's use of the female suicide bomber' (2019) 29/4–5 *Women & Criminal Justice* 283, 299; F Doherty-Oduelo, 'Panacea for herdsman – farmers conflicts in Nigeria' (2019) 8/2 *JDVAR* 11–12; N Li 'Nigeria's Fulani herdsman-farmers conflict and peace building' (2018) 6/5 *GJAR* 1, 8; AJ Oluwadare, 'Boko haram terrorism in the Lake Chad Basin region: Implications for sub-regional security' (2016) 8/1 *J of Intl & Global Studies* 41, 49; Amnesty International, 'Amnesty International Report 2016/17: the State of the World's Human Rights' (Amnesty International, 2017) 1, 277; HO Yusuf, 'Harvest of violence: The neglect of basic rights and the Boko Haram insurgency in Nigeria' (2013) 6/3 *Critical Studies on Terrorism* 371; Amnesty International, 'Our job is to shoot, slaughter and kill: Boko Haram's reign of terror in North-East Nigeria' (*Amnesty International Report*, 2015) <<https://www.amnesty.org/download/Documents/AFR4413602015.English.pdf>> accessed 28 August 2020.
- 4 D Searcey, 'They ordered her to be a suicide bomber: She had another idea' (*New York Times*, 13 March 2020) <<https://www.nytimes.com/2020/03/13/world/africa/Nigeria-Boko-Haram-bomber.html>> accessed 30 August 2020; C Daymon, 'The utility of disabled fighters in the Islamic state' (2019) 13/3 *Perspectives on Terrorism* 76, 76–86; A Mbiyozo, 'How Boko Haram specifically targets displaced people' (*Institute of Security Studies*, 2018) <https://reliefweb.int/sites/reliefweb.int/files/resources/policy_brief109.pdf> accessed 30 August 2020; M Pricopi, 'Tactics used by the terrorist organization Boko Haram' (2016) 21/1 *Scientific Bulletin* 40, 41–44.
- 5 Markovic (n 3) 298.
- 6 B Carby, T Ferguson, SL Steele and Z Maiyaki 'An exploration of inclusivity for persons with disabilities in disaster risk management planning at the national and local government levels in Jamaica' (2018) 38/4 *Disability Studies Quarterly*, <<https://dsq-sds.org/article/view/5776/5124>> accessed 26 August 2020; P Harpur, 'Embracing the new disability rights paradigm: the importance of the Convention on the Rights of Persons with Disabilities' (2012) 27/1 *Disability and Society* 1, 2.

pandemic.⁷ In this regard, the initial response of the Nigerian government to the COVID-19 pandemic was to lock down the whole country, except for a few essential services.⁸ As a result, the COVID-19 pandemic has negatively affected the livelihood and health of persons with disabilities challenges worse than those that do not have such challenges in Nigeria. Put differently, in Nigeria, persons with disabilities have a higher risk of contracting COVID-19 and related diseases, experiencing abject poverty and even death since they are discriminated against in terms of health, employment, food, palliative care, and other essential socio-economic amenities.⁹ Persons with disabilities in Nigeria are easily abused and used into Boko Haram terrorist activities due to their poor health, power education and higher levels of poverty.¹⁰

Disability is a complex, dynamic, multidimensional condition that is defined and widely contested with many models of disability such as the medical, theological, social, and bio-psycho-social models which directly and indirectly create discrimination problems for persons with disabilities.¹¹ For instance, the medical model of disability creates a dichotomy between 'abled' and 'disabled' or the 'normal' and the 'abnormal' persons in society. Such contradistinction between 'abled' and 'disabled' or the 'normal' and the 'abnormal' places persons with disabilities at a socio-economic, cultural, and political disadvantage which give rise to their marginalisation, social exclusion, and discrimination

7 United Nations Department of Economic and Social Affairs Disability, 'COVID-19 outbreak and persons with disabilities' (*UN DESA DISD*, 2020) <<https://www.un.org/development/desa/disabilities/covid-19.html>> accessed 26 August 2020; United Nations, 'Socio-economic response assessment and framework' <https://reliefweb.int/sites/reliefweb.int/files/resources/TTO_Socioeconomic-Response-Plan_2020.pdf> accessed 29 August 2020; United Nations, 'Global Humanitarian Response Plan COVID-19' (United Nations Office for the Coordination of Humanitarian Affairs, 2020) 1, 8.

8 G Ifijeh and F Yusuf, 'Covid-19 pandemic and the future of Nigeria's university system: The quest for libraries' relevance' (2020) 46/6 *J Acad Librarianship* 1, 2–5.

9 GU Bassey, 'COVID-19 and its impact on at-risk individuals: Embracing a disability inclusive response' (*The Guardian*, 28 July 2020) <<https://guardian.ng/features/law/covid-19-and-its-impact-on-at-risk-individuals-embracing-a-disability-inclusive-response/>> accessed 26 August 2020.

10 *Ibid.*

11 K Kazou, 'Analyzing 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 *Intl J of Mental Health and Capacity Law* 25, 26–28; M Berghs and others, 'Implications for public health research of models and theories of disability: A scoping study and evidence synthesis' (2016) 4/8 *Public Health Research* 1, 26–28; C O'Mahony, 'Legal capacity and detention: Implications of the UN disability convention for the inspection standards of human rights monitoring bodies' (2012) 16/6 *Intl J of Human Rights* 883, 884–86; World Health Organization 'World Report on Disability' (World Health Organization Publications, 2011) 3–13.

from accessing socio-economic rights, socio-economic amenities, and palliative care in the society, particularly in the Nigerian communities during the current COVID-19 pandemic.¹² Therefore, disability is the collective term for impairments, activity limitations, and societal created restrictions which involves the negative aspects of the interaction between an individual and the society. Disabled persons include anybody whose bodily structure or function is permanently impaired and limited from performing certain activities.¹³ Disability transcends mere health challenges because it is a complex phenomenon that involves the interaction between the bodily functions of individuals and societal mores which creates negative attitudes and environmental barriers that hinders the full and effective participation of persons with disabilities in society on an equal basis with others.¹⁴ Moreover, disability may be classified as a physical or mental challenge that limits the ability of the affected persons to perform their duties or any activity in a manner that is considered normal for a human being.

However, it is important to distinguish the terms 'impairment' and 'disability'. Impairment occurs where an individual's body or organ functions are weakened, diminished, or damaged thereby restricting him or her to effectively perform certain functions. Impairment also refers to a set of conditions where an individual's body lacks particular parts and functions, for instance, severed limbs, legs, or arms, poor eyesight, poor hearing, or difficulty in walking. Impairment implies that an individual is unable to live or act independently in the society. On the other hand, disability refers to a physical or mental condition that restricts an individual's movements, senses, or ability to conduct certain activities independently and effectively. Disability is considered as 'a form

12 Berghs (n 11) 32–40; T Siebers, *Disability Theory* (University of Michigan Press, 2008) 4–10; N Thompson and J Campling, 'Discrimination and Oppression' in J Campling (ed), *Promoting Equality* (Palgrave, 2003) 81, 84–113.

13 J Grue, 'Inclusive marginalization? A critical analysis of the concept of disability, its framings and their implications in the United Nations Convention on the Rights of Persons with Disabilities' (2019) 37 *Nordic J of Human Rights* 1, 4; M Baffoe, 'Stigma, discrimination & marginalization: Gateways to oppression of persons with disabilities in Ghana, West Africa' (2013) 3/1 *J of Educational and Social Research* 187; Department for International Development, 'Scoping Study: Disability in Nigeria' (Final Report, DFID, 2008) <<https://studylib.net/doc/13390397/scoping-study-disability-issues-in-nigeria-final-report>> accessed 2 September 2020.

14 United Nations, *Convention on the Rights of Persons with Disabilities* (CRPD), Preamble para (e), adopted by the General Assembly on 13 December 2006, UN Doc. A/RES/61/106, 24 January 2007, which entered into force on 3 May 2008.

of disadvantage which is imposed upon one's impairment by the society'.¹⁵ Therefore, the society's perception on disability contributes to a stigmatised definition of disability.¹⁶ The World Health Organisation (WHO) argues that there is: (a) an impairment which represents 'disturbances at the organ level'; (b) a disability which reflects 'disturbances at the level of the person'; and (c) a handicap which relates to the 'interaction with and adaptation to the individual's surroundings'.¹⁷ From these WHO categories, it appears disability constitutes both impairment and handicap.¹⁸

However, although the Nigerian Constitution does not expressly provide any specific rights for persons with disabilities, the recent enactment of the Discrimination Against Persons with Disabilities (Prohibition) Act, 2018, (Disability Rights Act) could be a positive step in addressing numerous challenges such as poverty, unemployment, discrimination, and health care problems that are faced by persons with disabilities in Nigeria, especially in the wake of the COVID-19 pandemic. Notably, section 57 of the Disability Rights Act defines the term 'disability' to include a long term or temporary physical, mental, intellectual, or sensory impairment on any individual which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others. Section 57 of the Disability Rights Act also defines the term 'discrimination' to include any differential treatment against another person. This definition seems ambiguous as it does not clarify what constitutes differential treatment. Nonetheless, the Equality and Human Rights Commission provides a relatively better definition which stipulates that the term 'discrimination' means treating any person with disabilities unfavourably because of their disabilities, in ways that cannot be objectively justified.¹⁹ For the purpose of this article, a 'disability' occurs when an individual has a difficulty in performing certain functions such as seeing, hearing, talking,

15 S Tremain, *Foucault and the Government of Disability* (University of Michigan Press, 2005) 9; N Priyanti, 'Representations of people with disabilities in an Indonesian newspaper: A critical discourse analysis' (2018) 38/4 *DSQ* <<https://dsq-sds.org/article/view/5818/5139>> accessed 28 August 2020.

16 Ibid.

17 World Health Organisation, *International classification of impairments, disabilities and handicaps (ICIDH)*, endorsed in May 1976, Resolution WHA 29.35 of the 29th World Health Assembly (WHO 1980).

18 Kazou (n 11) 32–33.

19 Equality and Human Rights Commission, 'Understanding legal definitions of discrimination and unlawful behaviour in the Equality Act' (Equality and Human Rights Commission, 2019) 1, 2–11 <https://www.equalityhumanrights.com/sites/default/files/ea_legal_definitions_0.pdf> accessed 31 August 2020.

walking, or any activities which another individual without such disability will ordinarily perform easily.

Persons with disabilities face excessive discrimination, poverty, and social exclusion in Nigeria.²⁰ The majority of persons with disabilities in Nigeria are cared for by family or friends since there is little government support for such persons.²¹ In this regard, the existence of a large number of persons with disabilities who are professional beggars, especially in the northern parts of Nigeria, is a case in point of their social exclusion and lack of adequate governmental support. Stigma, discrimination, and negative attitudes against persons with disabilities are major causes of their social exclusion in Nigeria. Persons with disabilities are seen as punished or cursed because of religious beliefs, cultural beliefs, and pervasive superstitions in Nigeria.²² Likewise, people with disabilities, especially mental health conditions, face heightened discrimination and stigma in Nigeria owing to the aforesaid superstitions.²³ However, the different forms of discrimination against persons with disabilities contravene the basic human rights enshrined in the Nigerian constitution, which entails that all human beings have a right to life and must be treated with dignity.²⁴ Therefore, all human beings irrespective of their race or ability should not be unduly discriminated against and excluded from the enjoyment of their fundamental freedoms.²⁵ However, the Nigerian Constitution does not provide adequate and specific protection for persons with disabilities. Such constitutional protection is important since it may be impossible for persons with disabilities to compete with other persons without such disabilities on an equal basis. The vulnerability, abuse, and discrimination of persons with disabilities increased in Nigeria during the COVID-19 pandemic because they are unfairly considered as potential incubators of COVID-19, who must be confined or

20 Birchall (n 3) 7.

21 Ibid.

22 M Retief and R Letšosa, 'Models of disability: A brief overview' (2018) 74/1 *HTS Theologies Studies/Theological Studies* 1, 2; SJ Thompson, 'Nigeria Situational Analysis' (Institute of Development Studies, 2020) 4–6; E Etieyibo and O Omiegbé, 'Religion, culture, and discrimination against persons with disabilities in Nigeria' (2016) 5/1 *African Journal of Disability* 1, 2–6.

23 Birchall (n 3) 8; G Jerry, P Pam, C Nnanna and C Nagarajan, 'What violence means to us: Women with disabilities speak' (*Nigeria Stability and Reconciliation Programme and Inclusive Friends*, 2015) <<http://www.nsrp-nigeria.org/wp-content/uploads/2015/09/What-Violence-Means-to-us-Womenwith-Disabilities-Speak.pdf>> accessed 7 September 2020.

24 Nigerian Constitution, ss 33, 34, 35, 42.

25 AE Arimoro, 'Are they not Nigerians? The obligation of the state to end discriminatory practices against persons with disabilities' (2019) 19/2 *Intl J of Discrimination and the Law* 89, 92.

eliminated to avoid them spreading the virus.²⁶ Consequently, violence, discrimination, and stigmatization through prejudicial comments, hate speech, and conspiracy theories against persons with disabilities have also increased in Nigeria during the COVID-19 pandemic.²⁷ The COVID-19 pandemic is a complex emergency as well as a biological and sanitary disaster in many countries of the world, including Nigeria.²⁸ The COVID-19 is also multidimensional because it has health, security, socio-economic and political dimensions that require the state to implement adequate measures to curb its negative effects on the protection of human rights, especially for the vulnerable persons with disabilities Nigeria.²⁹

Against this background, the article discusses the challenges that are encountered by persons with disabilities in Nigeria during the COVID-19 pandemic. This is undertaken to, *inter alia*, assess the adequacy of the legal and constitutional protection on the rights of persons with disabilities in Nigeria, especially during the ongoing COVID-19 pandemic.³⁰ Moreover, the flaws and gaps in the current legal and constitutional regime for the protection of the rights of the persons with disabilities in Nigeria are discussed. For instance, the socio-economic and political responses to COVID-19 that were adopted in Nigeria seem not to take the plight of vulnerable persons and those with disabilities into consideration. For instance, persons with disabilities are unfairly treated as mere 'charitable objects' in most Nigerian communities. This approach has made persons with disabilities more susceptible to the COVID-19 virus, abject poverty, and unfair discrimination in most Nigerian communities.³¹ In this regard, possible recommendations to curb such flaws are provided in this article.

26 L Chen, 'Human rights and democracy amidst militarized COVID-19 responses in South-east Asia' (*E International Relations*, 13 May 2020) <<https://www.e-ir.info/2020/05/13/human-rights-and-democracy-amidst-militarized-covid-19-responses-in-southeast-asia/>> accessed 4 September 2020; United Nations Population Fund, 'Pandemic heightens vulnerabilities of persons with disabilities' (*United Nations Population Fund News*, 12 May 2020) <<https://www.unfpa.org/news/pandemic-heightens-vulnerabilities-persons-disabilities>> accessed 4 September 2020.

27 Chen (n 26).

28 K Jayaram and others, *Tackling COVID in Africa* (McKinsey & Company, 2020) 2; L Jubilut and CM Cerna 'Opinion – impacts and restrictions to human rights during COVID-19' (*E International Relations*, 30 June 2020) <<https://www.e-ir.info/2020/06/30/opinion-impacts-and-restrictions-to-human-rights-during-covid-19/LILIANA>> accessed 2 September 2020.

29 Ibid.

30 Nigerian Constitution, ss 33–46; Disability Rights Act ss 1–30, 57.

31 United Nations Human Rights Office of the High Commissioner, 'COVID-19 and the rights of persons with disabilities: guidance' (*COVID-19 Newsletter*, 29 April 2020) <<https://www.unhcr.org/refugees/newsletter/covid-19-and-the-rights-of-persons-with-disabilities-guidance>> accessed 4 September 2020.

2 The Advent of Covid 19 and the Nigerian Response

The COVID-19 virus broke out in the Chinese city of Wuhan in December 2019 and destabilised Nigeria and many other countries and their economies globally. COVID-19 has a detrimental effect on the Nigerian economy and as such, her people, particularly those with disabilities have been subjected to abject poverty, unemployment and exclusion from many socio-economic activities of the country.³² The experts at WHO and the Harvard medical school submitted that people must practice social distancing, the use of face masks, hand-washing with soap, clean water, and sanitisers, and avoid contact with physical surfaces, especially in public places, amongst other things, in order to prevent the spread of COVID-19.³³ Nonetheless, some of these measures are difficult to comply with for persons with disabilities. For instance, the visually impaired may constantly depend on other persons to lead them around, with whom they cannot do social distancing, or in the alternative, they may have to feel their way through touching any imposing surface to find their way around. The lame who are too poor to afford wheelchairs must crawl on the floor, making

.ohchr.org/Documents/Issues/Disability/COVID-19_and_The_Rights_of_Persons_with_Disabilities.pdf> accessed 2 September 2020.

- 32 A Kandola, 'Coronavirus cause: Origin and how it spreads' (*Medical News Today*, 30 June 2020) <<https://www.medicalnewstoday.com/articles/coronavirus-causes>> accessed 2 September 2020; A Zarembaa and others, 'Infected markets: Novel coronavirus, government interventions, and stock return volatility around the globe' (2020) 35 *Finance Research Letters* 1; Ifijeh and Yusuf (n 8); World Health Organization, 'COVID-19 strategy' (*World Health Organization*, 14 April 2020) <https://www.who.int/docs/default-source/coronaviruse/covid-strategy-update14april2020.pdf?sfvrsn=29da3ba0_19> accessed 26 August 2020; D Zhang, M Hu and Q Ji, 'Financial markets under the global pandemic of COVID-19' (*Financial Research Letters*, 16 April 2020) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7160643/>> accessed 26 August 2020.
- 33 Harvard Medical School, 'Preventing the spread of the coronavirus' (*Harvard Health Publishing*, 28 August 2020) <<https://www.health.harvard.edu/diseases-and-conditions/preventing-the-spread-of-the-coronavirus>> accessed 8 September 2020; LL Maragakis, 'How can I protect myself (and others) from the new coronavirus and COVID-19?' (*Johns Hopkins Medical School*, 31 July 2020) <<https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/how-can-i-protect-myself-from-coronavirus>> accessed 8 September 2020; Norwegian Institute of Public Health, 'Hand hygiene, cough etiquette, face masks, cleaning and laundry – Advice and information to the general public' (*NIPH*, 27 August 2020) <<https://www.fhi.no/en/op/novel-coronavirus-facts-advice/facts-and-general-advice/hand-hygiene-cough-etiquette-face-masks-cleaning-and-laundry/>> accessed 8 September 2020; M Goodwin and B Sissons, 'Tips to prevent coronavirus transmission' (*Medical News Today*, 23 March 2020) <<https://www.medicalnewstoday.com/articles/coronavirus-prevention>> accessed 8 September 2020; B Sutton, *How to Protect Yourself and Others* (Avera Health, 2020) 1–28.

them vulnerable to COVID-19 in many countries, including Nigeria. Over and above, most of the persons with disabilities in Nigeria and other countries are illiterate and unable to read, hear, or understand information on COVID-19 advertorials which are often rendered in English on the radio, television, newspapers, or social media, which put them at a grave risk of contracting and spreading COVID-19.

COVID-19 was declared a global pandemic by the WHO on 11 March 2020, having infected over five million persons and killed over three hundred thousand persons globally at the time of the declaration.³⁴ However, the first COVID-19 case in Nigeria was reported on 27 February 2020 when an Italian man came to Lagos and travelled to Ogun state.³⁵ The Nigerian government, through the Federal Ministry of Health and the Nigeria Centre for Disease Control introduced various measures to control and contain the COVID-19 outbreak. These measures include the closure of schools, imposition of curfews, lockdowns, restriction of movement, and the closure of Nigerian borders.³⁶ Despite all these measures, the COVID-19 virus continued to spread in Nigeria.

Although the Nigerian Constitution guarantees certain rights of the citizens,³⁷ these rights may be restricted and derogated from in terms of section 45 of the same constitution, in the interest of defence, public safety, public order, public morality, public health, or protecting the rights and freedom of other persons. Similarly, the President may proclaim a state of emergency for various reasons such as the maintenance of public order and public safety, imminent danger, or the occurrence of a disaster as stipulated in section 305 of the Nigerian Constitution. However, the state of emergency may only be effected if it is ratified by the Nigerian Parliament. Moreover, the state of emergency powers may only be exercised by the President for a period of six months, which is renewable subject to the approval of the Nigerian Parliament. This is probably aimed at curbing possible abuse of the state of emergency powers by the President or the Executive. Nevertheless, President Muhammadu Buhari proclaimed a state of emergency under the colonial law, the Quarantine Act,

34 B Odigbo, F Eze and R Odigbo, 'COVID-19 lockdown controls and human rights abuses: the social marketing' (2020) 2/45 Emerald Open Research 1, 3; M Bessa, 'Africa's disproportionate COVID-19 pandemic' (2020) E-International Relations <<https://www.e-ir.info/2020/06/02/africas-disproportionate-covid-19-pandemic/MARCELLEBESSA>> accessed 26 August 2020.

35 Ifijeh and Yusuf (n 8) 2–5.

36 Nigeria Centre for Disease Control (NCDC), 'Weekly epidemiological report' (NCDC Report, 2020) <<https://ncdc.gov.ng/reports/273/2020-august-week-33>> accessed 8 September 2020.

37 Nigerian Constitution, ss 33–44.

1926 (Quarantine Act).³⁸ The Quarantine Act gives the President sweeping powers to prevent the introduction or spread of dangerous infectious diseases in Nigeria and their subsequent transmission from Nigeria to other countries and allows the President to make appropriate regulations in respect thereof.³⁹ Agbakoba and Odubela argue that President Muhammadu Buhari proclaimed a COVID-19 state of emergency under the Quarantine Act rather than section 305 of the Nigerian Constitution to circumvent the onerous provisions of this section which require prior approval of the state of emergency to be granted by the Nigerian Parliament.⁴⁰ Accordingly, President Muhammadu Buhari issued the first COVID-19 regulations in 2020 which declared COVID-19 as a 'dangerous infectious disease' and made lockdown orders in Lagos, Abuja, and Ogun states. These regulations prohibited movements of people in the affected areas for an initial period of 14 days and security agencies were instructed to strictly enforce the lockdown order. This lockdown and other restrictive measures that were adopted to curb the spread of COVID-19, negatively affect persons with disabilities in Nigeria, who suffer from poverty, lack of jobs, poor health, and unfair discrimination more than those who are able-bodied persons. For instance, most persons with disabilities in Nigeria are unemployed and dependent on charitable contributions from members of the society who are also struggling to find food, jobs, and other essential socio-economic amenities during the COVID-19 lockdown and related restrictions.

3 The Legal Protection of Persons with Disabilities in Nigeria During the Covid-19 Pandemic

While the COVID-19 pandemic threatens all members of society, persons with disabilities are more negatively affected by COVID-19 due to, *inter alia*, negative societal attitudes, socio-economic exclusion, environmental and institutional barriers that are reproduced in the Nigerian COVID-19 response.⁴¹ For

38 Laws of the Federation of Nigeria of 2004, ch Q2.

39 Quarantine Act of 1926, s 4.

40 H Ojelu and D Onozure, 'Nigeria: COVID-19 – lawyers divided over president's power to invoke state of emergency, Quarantine Act' (*AllAfrica*, 2 April 2020) <<https://allafrica.com/stories/202004020172.html>> accessed 2 September 2020; OA Makinde and CO Odimegwu, 'A qualitative inquiry on the status and adequacy of legal instruments establishing infectious disease surveillance in Nigeria' (2018) 31/22 *Pan African Medical Journal* <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6430840/pdf/PAMJ-31-22.pdf>> accessed 2 September 2020.

41 United Nations Human Rights Office of the High Commissioner (n 31).

instance, during the allocation of scarce resources, the medical officials may prefer to treat a person without disabilities over one that has such disabilities because the likelihood of therapeutic success of the former is perceived to be better than the latter. The Nigerian Constitution does not explicitly prohibit discrimination based on disability. Instead, it prohibits discrimination against anyone on the basis of their ethnic group, place of origin, sex, status, religion, or political opinion.⁴² This suggests that a 'disability' is not regarded as a ground of discrimination since sections 15 and 42 of the Nigerian Constitution do not contain the word 'include' or any possible inference that a 'disability' could constitute a ground of discrimination against any person in Nigeria. In this regard, the Nigerian Constitution differs fundamentally from the wording of the Constitution of South Africa which expressly provides a 'disability' as a discrimination ground against any individual in South Africa.⁴³ Therefore, the Nigerian Constitution is flawed in this regard. These and other related aspects of the Nigerian Constitution and the Disability Rights Act are discussed below.

3.1 *The Disability Rights Act*

The Disability Rights Act was signed into law on 23 January 2019, after over twenty years of intense advocacy by Nigerian disability rights groups and activists.⁴⁴ The Disability Rights Act provides for the establishment of a National Commission for Persons with Disabilities (Disability Commission) to, *inter alia*, oversee the access to housing, education, and healthcare for persons with disabilities in Nigeria.⁴⁵ Section 1(1) and (2) of the Disability Rights Act criminalises the discrimination against any persons with disabilities and, upon conviction, a guilty person is liable to a fine of ₦1 million for a juristic person and ₦100,000 or imprisonment for 6 months or both such fine and imprisonment for individuals. Furthermore, section 6 of the Disability Rights Act provides for a five-year transitional period after which public buildings and structures, whether movable, immovable, or automobile must be made accessible to persons with disabilities in Nigeria. Accordingly, other provisions of the Disability Rights Act that seeks to address the plight of persons with disabilities are discussed under the sub-headings below.

42 Nigerian Constitution, ss 15, 42.

43 Constitution of the Republic of South Africa 1996, s 9(3).

44 M Nnah, 'Presidential seal on Disability Act' (*This Day*, 12 February 2019) <<https://www.thisdaylive.com/index.php/2019/02/12/presidential-seal-on-disability-act/>> accessed 6 September 2020.

45 Disability Rights Act, ss 31–39.

3.1.1 *Access to Healthcare for Persons with Disabilities*

Nigeria's healthcare system is plagued with severe underfunding and limited infrastructure which makes it difficult for many individuals to have access to healthcare facilities in Nigeria.⁴⁶ For instance, in response to the COVID-19 pandemic, it is unfortunate to note that Nigeria has less than 500 ventilators for a population of over 200 million people.⁴⁷ This poor health care system has made the political elite, including the current President, to habitually travel overseas for medical treatment. President Buhari spent at least 217 days in the United Kingdom for medical treatment between 2015 and 2019.⁴⁸ The deplorable condition of the Nigerian health care facilities has been worsened by the COVID-19 pandemic, especially for persons with disabilities. For instance, some persons with mental health conditions end up being unfairly treated at traditional and faith-based 'psychiatric' rehabilitation centers or they merely end up confined at their homes while shackled to heavy objects for several months or even years.⁴⁹ Many of these mental health patients are living in squalor conditions, abused and forced to take questionable Nigerian traditional treatment measures that are not scientifically and medically proven.⁵⁰ Some of these shackled mental health patients are living in crowded facilities, deprived of basic sanitary provisions and are vulnerable to COVID-19 infections. Likewise, other persons with disabilities who live under institutional care have

46 E Ćerimović and A Ewang, 'COVID-19 poses extreme threat to people shackled in Nigeria' (*Human Rights Watch*, 30 March 2020) <<https://www.hrw.org/news/2020/03/30/covid-19-poses-extreme-threat-people-shackled-nigeria>> accessed 4 September 2020; OO Oleribe and others, 'Identifying key challenges facing healthcare systems in Africa and potential solutions' (2019) 12 *International Journal of General Medicine* 395, 395–400; MO Akunne and others, 'Satisfaction of Nigerian patients with health services: a protocol for a systematic review' (2019) 8/1 *Systematic Reviews* 1, 1–6 <<https://doi.org/10.1186/s13643-019-1160-z>> accessed 4 September 2020; MO Welcome, 'The Nigerian health care system: Need for integrating adequate medical intelligence and surveillance systems' (2011) 3/4, *Journal of Pharmacy and BioAllied Sciences* 470, 470–74.

47 F Abowei, 'Nigeria's soft power in the face of COVID-19' (*E-International Relations*, 22 June 2020) <<https://www.e-ir.info/2020/06/22/nigerias-soft-power-in-the-face-of-covid-19/>> accessed 4 September 2020; Transparency International, 'Nigeria, IMF and COVID 19' (*Transparency International Report*, 16 July 2020) <<https://www.transparency.org/en/blog/nigeria-imf-covid-19#>> accessed 4 September 2020.

48 Akunne (n 47) 1–6; T Aworinde, 'COVID-19 exposes Nigeria's wobbling healthcare system' (*Punch*, 10 May 2020) <<https://healthwise.punchng.com/covid-19-exposes-nigerias-wobbling-healthcare-system/>> accessed 4 September 2020.

49 Transparency International (n 46) 1; J Buchanan, 'Protect rights of people with disabilities during COVID-19: Ensure access to information, essential services for those most at risk' (*Human Rights Watch*, 26 March 2020) <<https://www.hrw.org/news/2020/03/26/protect-rights-people-disabilities-during-covid-19>> accessed 7 September 2020.

50 *Ibid.*

a hard time maintaining social distancing measures because most of these facilities are already overcrowded. Moreover, persons with disabilities struggle to practice social distancing because they require care and support from other persons.⁵¹ Thus, persons with disabilities are more prone to COVID-19 infections than other persons who do not have disabilities.⁵² In addition, the lockdown has also compromised the access to life-saving and emergency health services for persons with disabilities since most non-government organizations (NGOs) were forced to close and/or provide limited services to persons with disabilities.⁵³

It is important to note that section 21 of the Disability Rights Act stipulates that the government must provide adequate access to health care facilities to all persons with disabilities as well as free medical services to those with mental disabilities. However, it remains to be seen whether the Nigerian government will be able to consistently comply with section 21 of the Disability Rights Act. This follows the ongoing challenges of inadequate funding of the health care system and corruption that is faced by the Nigerian government. Moreover, the Disability Commission is yet to be established and/or inaugurated in accordance with the Disability Rights Act.⁵⁴

3.1.2 *Access to Employment for Persons with Disabilities*

Sections 28 and 29 of the Disability Rights Act prohibit discrimination on the basis of an employee's disability and provide that employers must reserve a minimum of 5% of their employment workforce for qualified persons with disabilities. This could guarantee the right to work for persons with disabilities in Nigeria. However, there is a general disregard of the law by the Nigerian federal authorities. For instance, the Nigerian Federal Executive Council of Ministers does not even have one person with disabilities. It is also submitted that there is still widespread employment-related discrimination against persons with disabilities in Nigeria and this has been exacerbated by the COVID-19

51 Partners West Africa Nigeria, 'Persons with disabilities and their survival against covid-19' (*Partners Nigeria*, 24 April 2020) <<https://www.partnersnigeria.org/persons-with-disabilities-and-their-survival-against-covid-19/>> accessed 4 September 2020.

52 S Kanu, 'The challenges of persons living with disabilities amid COVID-19 in Nigeria' (*Business Day*, 29 May 2020) <<https://www.businessday.ng/opinion/article/the-challenges-of-persons-living-with-disabilities-amid-covid-19-in-nigeria/>> accessed 4 September 2020.

53 JC Young and C Aref-Adib, 'The shadow pandemic: Gender-based violence and COVID-19' (*Overseas Development Institute*, 19 May 2020) <<https://www.theigc.org/blog/the-shadow-pandemic-gender-based-violence-and-covid-19/>> accessed 6 September 2020.

54 Disability Rights Act, s 31.

pandemic.⁵⁵ For example, nine out of ten persons with disabilities in Nigeria live in abject poverty and are unemployed. Therefore, the effectiveness of the enabling policies and programmes to allow persons with disabilities to get employment in Nigeria is limited.⁵⁶ The adult unemployment rate is 62.5% for disabled persons compared to 21.5% for those without disabilities in Nigeria.⁵⁷ With the massive job losses envisaged in the wake of the COVID-19 pandemic, it is very difficult for persons with disabilities to access and/or retain their jobs in Nigeria during and after this pandemic.⁵⁸ Arimoro highlights some key challenges affecting the hiring of disabled persons during the COVID-19 pandemic in Nigeria.⁵⁹ These challenges include the fear that persons with disabilities will create more work for supervisors and stigmatization.

Section 14(3) of the Nigerian Constitution provides that the composition of the government of the federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria. Federal character implies that the conduct of the affairs of the federal government or any of its agencies or states of the federation must represent all the different tribes and ethnic groups. Similarly, section 147(3) of the Nigerian Constitution provides that in the appointment of ministers, the President shall reflect the federal character of Nigeria and must appoint at least one minister from each of the 36 federal states, who shall be an indigene of such state. This could also suggest that the appointment of the Secretary to the Government of the Federation, Head of Service of the Federation, Ambassadors or Permanent Secretary or Chief Executive in federal agencies, or any office of the personal staff of the President as stipulated in section 171 of the Nigerian Constitution must be done by the President with due regard to the federal character of Nigeria. Likewise, the composition and appointment

55 VS Pineda and J Corburn, 'Disability, urban health equity, and the coronavirus pandemic: Promoting cities for all' (2020) 97/3, *Journal of Urban Health* 336, 337–41; OECD, 'COVID-19: Protecting People and Societies' (OECD, 2020) 6–8; Disability Rights Fund, 'COVID-19 and persons with disabilities' (*Disability Funds Newsletter*, 2020) <<https://disabilityrightsfund.org/covid19/>> accessed 7 September 2020; N Smith, 'The face of disability in Nigeria: A disability survey in Kogi and Niger States' (2011) 22/1 *Disability, CBR and Inclusive Development* 35, 38–47; F Nwaozor, 'Ending discrimination against persons with disabilities' (*The Sun News*, 2 December 2016) <<http://sunnewsonline.com/ending-discrimination-against-persons-with-disabilities/>> accessed 6 September 2020.

56 Thompson (n 22) 4, 6.

57 *Ibid* 6.

58 O Mailafia, 'The post-coronavirus global economy and international order (2)' (*The Vanguard*, 7 September 2020) <<https://www.vanguardngr.com/2020/09/the-post-coronavirus-global-economy-and-international-order-2/>> accessed 7 September 2020.

59 Arimoro (n 25) 92.

of senior police officers, military police, and other ranks of the armed forces of the federation should reflect the federal character of Nigeria. Furthermore, section 153 of the Nigerian Constitution established the Federal Character Commission as a federal executive body empowered to oversee and monitor the implementation of its federal character provisions. Nonetheless, all the national character provisions of the Nigerian Constitution do not expressly provide for the employment and recognition of vulnerable groups such as persons with disabilities. Thus, unlike the Disability Rights Act, the Nigerian Constitution does not expressly provide for the equal representation and recognition of persons with disabilities in politics, particularly as independent candidates and in the civil service employment of the Nigerian government.⁶⁰ For instance, the price of obtaining a nomination form for the All Progressives Congress (APC) candidates is ₦1 million for state assemblies, ₦3.3 million for the house of representatives, ₦8.5 million for the senate, ₦22.5 million for the governorship and ₦55.5 million for the presidency in 2019.⁶¹ Thus, most persons with disabilities will not afford this since they are poor and unemployed.

3.1.3 *Access to Public Facilities for Persons with Disabilities*

Arimoro argues that even new public buildings and infrastructure built as recently as 2018 do not make provision for access to persons with disabilities in Nigeria.⁶² The majority of public buildings and infrastructure in Nigeria, such as libraries, stadiums, roads, schools, and bus stops, do not have access facilities for disabled persons. There is also a lack of urgency and serious efforts on the part of the Nigerian government to improve public sanitation facilities and the access to public buildings for persons with disabilities in Nigeria.⁶³ For instance, most public buildings do not have ramps or lifts, and this creates further

60 Nigerian Constitution, ss 65(2)(b), 106(d), 131(c), 177(c); RT Sakariyau, FL Aliu and M Adamu, 'The phenomenon of money politics and Nigeria's democratization: An exploration of the fourth republic' (2015) 2/1 *Journal of Social Economics Research* 1, 4–8.

61 Arimoro (n 25) 96; CG Ameh, '2019: APC aspirants cry out to President Buhari over outrageous cost of nomination forms' (*Daily Post*, 2 September 2018) <<https://dailypost.ng/2018/09/02/2019-apc-aspirants-cry-president-buhari-outrageous-cost-nomination-forms/>> accessed 8 September 2020. Note that ₦383.45 equals \$1 USD on 11 September 2020.

62 Arimoro (n 25) 94.

63 United Nations, 'Disability and development report' (United Nations Publications, 2019) 122–132; S Kumwenda, 'Challenges to hygiene improvement in developing countries' (IntechOpen, 2019) 9. <<http://dx.doi.org/10.5772/intechopen.80355>> accessed 7 September 2020; World Bank, 'A Wake up call: Nigeria water supply, sanitation, and hygiene poverty diagnostic: wash poverty diagnostic' (World Bank, 2017) 30–32.

barriers for persons with disabilities to access such buildings.⁶⁴ Moreover, public transport vehicles and other modes of commercial transport do not provide access facilities to persons with disabilities in Nigeria. For example, about 80% of persons with disabilities in Nigeria are reliant on public transport, yet the transport system and road design do not have access facilities for persons with disabilities.⁶⁵ Furthermore, most automatic teller machines (ATMs) and point of sale machines (POS) in Nigeria are not wheelchair-friendly.⁶⁶

Section 9(1) of the Disability Rights Act prohibits a provider of goods or services from discriminating against persons with disabilities by refusing to provide them with goods and services or creating unnecessary special conditions for them. Additionally, sections 7 and 8 of the Disability Rights Act provide that any public structure or building plan must provide access facilities for persons with disabilities and any barrier or non-compliance in respect thereof will give rise to punitive damages on the part of the offenders. Section 10(1) of the Disability Rights Act provides that 'government transport service providers shall make provision for lifts, ramps and other accessibility aids to enhance the accessibility of the vehicles, parks, and bus-stops to persons with disabilities including those on wheelchairs'. Section 11(1) of the Disability Rights Act provides that private transport service providers should provide access facilities such as lifts and ramps for persons with disabilities. However, section 6 of the Disability Rights Act provides a transitional period of five years from the day of the commencement of this Act, for all public buildings, structures, and transport systems to be conformed to provide access to persons with disabilities in Nigeria. This could imply that the government and other services providers still have some time to comply with section 6 of the Disability Rights Act while persons with disabilities continue to struggle to access most public buildings, structures and transport systems during this ongoing COVID-19 pandemic.

3.1.4 *Access to Justice for Persons with Disabilities*

Prior to the enactment of the Disability Rights Act, there was no legal protection for persons with disabilities in Nigeria. This lack of legal protection, coupled with abject poverty, lack of empowerment for the majority of the disabled persons and the negative societal perceptions against persons with disabilities have to date culminated into gross abuse of disabled persons in Nigeria. However, there are very few cases involving disability rights that have been decided in the Nigerian courts to date. The only case that could relate

64 Thompson (n 22) 4, 8.

65 Birchall (n 3) 8; Amucheazi and Nwankwo (n 1) 14.

66 Arimoro (n 25) 94.

to discrimination although it does not relate to a specific disability is *Mrs Georgina Ahamefule v Imperial Medical Centre and Dr Alex K Molokwu*,⁶⁷ where the defendant, who was also a medical doctor and employer of the plaintiff, conducted a human immunodeficiency virus (HIV) test on the plaintiff without her consent and found out that she was HIV positive and terminated her employment thereafter. The High Court held, *inter alia*, that the purported termination of the plaintiff's employment by the defendant was unlawful and the plaintiff was awarded ₦5 million (approximately \$25,000 USD) damages for the termination of her employment and ₦2 million (approximately \$10,000 USD) for the HIV testing which was done without her consent.

Nevertheless, the Disability Rights Act does not expressly guarantee access to justice for persons with disabilities and this could still impede the effective enforcement of the rights of persons with disabilities in Nigeria.⁶⁸ Accordingly, access to justice remains difficult and expensive for persons with disabilities in Nigeria, especially during the COVID-19 pandemic. For instance, under the Rules of the Federal High Court (Order 53(1)) and Appendix 2 of the Federal High Court Civil Procedure Rules, 2000, for a claim of ₦10 million, the litigant must pay a filing fee of over ₦50,000.⁶⁹

4 Educational-Related Policies and the Right to Education for Persons with Disabilities

The National Policy on Special Needs Education in Nigeria was launched in 2015 to create an inclusive and less restrictive environment for pupils with special educational needs.⁷⁰ However, very few Nigerian schools have adequate capacity to provide special education needs to persons with disabilities.⁷¹ Similarly, the National Employment Policy was adopted in 2017 to, *inter alia*, promote

67 [2012] Unreported Suit No. ID /1627/2000.

68 UW Nwosu, 'The impact of corruption on the administration of justice in Nigeria' (2018) 4/1 *Journal of Good Governance and Sustainable Development in Africa* 1, 4–12; K Odeku and S Animashaun, 'Poverty, human rights and access to justice: Reflections from Nigeria' (2012) 6/23 *African Journal of Business Management* 6754, 6757–64; D Reiling, 'Technology for Justice, how Information Technology can Support Judicial Reform' (Leiden University Press, 2009) 1, 81–152; NS Okogbule, 'Access to justice and human rights protection in Nigeria: Problems and prospects' (2005) 3/2 *International Journal of Human Rights* 94, 99–108.

69 Arimoro (n 25) 89, 105.

70 Federal Ministry of Education, 'National Policy on Special Needs Education in Nigeria' (Federal Ministry of Education, Policy Report, 2015) 1, 2–31; Thompson (n 22) 4.

71 *Ibid* 5.

the employment of persons with disabilities, curb all forms of discrimination against persons with disabilities and provide access to inclusive educational and vocational training to persons with disabilities.⁷² However, many persons with disabilities are still to get vocational training and formal employment in Nigeria.

Apart from the Disability Rights Act, which is a federal law, four of Nigeria's 36 states, namely, Plateau, Ekiti, Lagos and Bauchi have state disability laws which seeks to remove discrimination and barriers to accessing basic and essential services for persons with disabilities in Nigeria. However, compliance with these state and federal laws is still problematic and low.⁷³ The low compliance, or non-compliance with the laws that encourage and promote basic education for persons with disabilities has increased illiteracy and ignorance among persons with disabilities and made them more vulnerable to COVID-19 infections in Nigeria to date. It is submitted that about 90% of children with disabilities in Nigeria are out of school.⁷⁴ Barriers to education for persons with disabilities include long and difficult journeys to school, poverty and unaffordable school fees, negative attitudes and stigma, inaccessible infrastructure, and lack of professional support services.⁷⁵ As a result, the majority of persons with disabilities in Nigeria are illiterate and more prone to COVID-19 infections. Sections 17–20 of the Disabilities Rights Act obliges the government and other relevant persons to provide free, adequate, inclusive, appropriate, and subsidised special access to education for persons with disabilities in Nigeria. However, it remains to be seen whether the government and other relevant persons will effectively comply with sections 17–20 of the Disabilities Rights Act.

5 The Provision of Financial Services for Persons with Disabilities

Financial services include professional services involving the investment, lending, and management of securities, financial instruments, money, and related assets. Financial services also include products, facilities, and services including savings, credit, insurance, payment services, leasing, and similar services which are provided by banks, credit unions and financial institutions,

⁷² Federal Republic of Nigeria, 'National employment policy' (Federal Republic of Nigeria, Policy Report, 2017) 37–38 <https://www.labour.Gov.ng/Doc/NATIONAL_EMPLOYMENT_POLICY.pdf> accessed 7 September 2020.

⁷³ Thompson (n 22) 5.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

governments, and NGOs.⁷⁶ Nonetheless, persons with disabilities are usually financially excluded from accessing basic financial services and financial products in many countries, including Nigeria.⁷⁷ Financial exclusion refers to the inability of the affected persons, in this case persons with disabilities, to formally access and use financial services and financial products at affordable costs.⁷⁸ Thus, financial exclusion could refer to the removal, disqualification, or prohibition of certain persons from accessing financial products and financial services such as loans, credit, bank accounts and insurance cover from relevant financial services providers.⁷⁹ Most persons with disabilities are excluded from accessing basic financial services and financial products in Nigeria because they are not able to meet the rigorous requirements of the formal financial sector.⁸⁰ Persons with disabilities are wrongly considered unbankable, hence providing them with financial services and financial products is not considered cost-effective by most financial institutions in Nigeria.⁸¹ Consequently, most socio-economic needs of persons with disabilities in Nigeria are not easily met. The Nigerian government has not done enough to promote financial inclusion of persons with disabilities because a majority of them do not have bank accounts and it is difficult for them to receive financial help through banks and related financial institutions, especially during this ongoing COVID-19 pandemic.⁸² Persons with disabilities that have successfully completed

76 Ofuani (n 2) 639.

77 *Ibid.*

78 H Chitimira and M Ncube, 'Legislative and other selected challenges affecting financial inclusion for the poor and low income earners in South Africa' (2020) *Journal of African Law* <<https://doi.org/10.1017/S0021855320000182>> accessed 9 September 2020.

79 *Ibid.*

80 E Zuehlke, 'A new path to financial inclusion for people with disabilities in Nigeria' (*Centre for Financial Inclusion*, 26 October 2015) <<https://www.centerforfinancialinclusion.org/a-new-path-to-financial-inclusion-for-people-with-disabilities-in-nigeria>> accessed 9 September 2020; Ofuani (n 2) 649.

81 Chitimira and Ncube (n 78) 9; M Bratt, 'The disability market: an untapped and bankable segment' (*The Media Online*, 4 September 2019) <<https://themedialonline.co.za/2019/09/the-disability-market-an-untapped-and-bankable-segment/>> accessed 9 September 2020.

82 IO Eranga, 'COVID-19 pandemic in Nigeria: Palliative Measures and the politics of vulnerability' (2020) 9/2 *International Journal of Maternal and Child Health and AIDS* 220, 221–2; BBC News, 'Coronavirus: Why Nigeria's rice handouts aren't going down well' (*BBC*, 30 April 2020) <<https://www.bbc.com/news/world-52488923>> accessed 9 September 2020; D Okon, 'Lamentation still trails Lagos, FG's palliative package as middlemen hijack programme' (*Business Day*, 19 April 2020) <<https://businessday.ng/features/article/lamentation-still-trails-lagos-fgs-palliative-package-as-middlemen-hijack-programme/>> accessed 9 September 2020; U Orizu, 'Nigeria: opposition parties kick against govt's method of sharing COVID-19 palliatives' (*This Day*, 3 April 2020)

their education or vocational training should be encouraged to easily access financial services and financial products in Nigeria.⁸³ Indigent persons with disabilities should also be considered for financial aid such as bursaries, grants, scholarships, or student loans from the government to enable them to access basic education in Nigeria, especially during this COVID-19 pandemic. However, the Disability Rights Act does not have any specific provisions that promote access to financial services and financial products for persons with disabilities in Nigeria. However, it is interesting to note that the use of persons with disabilities to solicit money, funds, or alms from any persons is prohibited in section 16 of the Disability Rights Act.

6 The Distribution and Provision of Palliative Medical Care for Persons with Disabilities

Persons with disabilities are not given priority in the distribution of palliative services and goods during the lockdown in Nigeria.⁸⁴ Although the Nigerian government introduced a few palliative medical packages, the distribution of such packages is highly politicised and corruptly managed to the detriment of persons with disabilities.⁸⁵ Giving palliative care to persons with disabilities in Nigeria is difficult because the majority of them do not have traceable addresses, phone numbers, bank accounts, and bank verification numbers (BVN).⁸⁶ The government did not prioritise the needs of the persons with disabilities and this approach violates section 25 of the Disability Rights Act, which states that in all situations of risk, violence, emergencies, or natural disaster, the government should take all the necessary steps to ensure the safety and protection of persons with disabilities taking cognizance of their peculiar vulnerability.

<<https://allafrica.com/stories/202004030123.html>> accessed 9 September 2020; ND Chukwunyere, 'Palliative Care: The Nigerian Perspective' (IntechOpen, 2019) 1–9 <<http://dx.doi.org/10.5772/intechopen.85235>> accessed 9 September 2020.

83 Ofuani (n 2) 649.

84 G Ewepu, 'Nigeria: Coalition of disability organizations demand inclusion in PTF on COVID-19' (*Vanguard*, 20 April 2020) <<https://allafrica.com/stories/202004200522.html>> accessed 6 September 2020.

85 Eranga (n 82) 221–22; O Agbede and others, 'FG's COVID-19 palliatives: why Nigerians are not feeling the impact' (*The Guardian*, 8 August 2020) <<https://guardian.ng/saturday-magazine/fgs-covid-19-palliatives-why-nigerians-are-not-feeling-the-impact/>> accessed 6 September 2020.

86 D Onwe, 'COVID-19 and application of disability laws in Nigeria' (*The Guardian*, 16 June 2020) <<https://guardian.ng/features/covid-19-and-application-of-disability-laws-in-nigeria/>> accessed 6 September 2020.

7 Recommendations

The COVID-19 pandemic has negatively affected all members of the Nigerian communities, especially those with disabilities, in various ways as discussed above.⁸⁷ Therefore, palliative medical packages of various forms are reportedly being distributed by the government, corporate organizations, and philanthropists to curb the negative effects of the COVID-19 pandemic in Nigeria. Nevertheless, despite these efforts, it appears that persons with disabilities are yet to enjoy their rights that are enshrined in the Disability Rights Act. Consequently, it is submitted that the provisions of the Disability Rights Act should be carefully and consistently enforced by the federal government and the Disability Commission to effectively promote and protect the rights of persons with disabilities in Nigeria. The Disability Commission should be established urgently so that it oversees the enforcement of the provisions of the Disability Rights Act in Nigeria, particularly during the ongoing COVID-19 pandemic, and any other pandemics that may arise in the future. The Disability Commission and the federal government should ensure that persons with disabilities have adequate access to public buildings, roads, public transport, palliative care, health care, justice, and education in accordance with the Disability Rights Act. The Disability Rights Act and the Nigerian Constitution should be amended to enact adequate provisions that outlaw diabolical traditional and faith-related psychiatric institutions that shackle and abuse persons with mental disabilities with treatments that are not scientifically and medically proven in Nigeria.

The Disability Commission and the federal government should ensure that persons with disabilities are not discriminated against and have adequate access to employment and financial services and financial products in Nigeria in accordance with the Disability Rights Act. The relevant financial institutions, the federal government, and the Disability Commission should come up with viable measures that provide bank accounts and financial literacy programmes to persons with disabilities in order to promote financial inclusion of such persons in Nigeria. The Disability Commission and the federal government must ensure that the modification of roads, public buildings, commercial vehicles, public transport systems, and public structures is timeously effected within the five-year transitional period as stipulated in the Disability Rights Act to enable persons with disabilities to have easy access to such facilities in Nigeria. The Nigerian Constitution should be amended to enact specific provisions that outlaw the discrimination of persons with disabilities and oblige

87 *Ibid.*

the federal government and employers to reserve at least 5% of their employment workforce for persons with disabilities. The Disability Rights Act should be amended to grant tax exemption incentives to those that employ persons with disabilities so as to encourage more recognition and employment of persons with disabilities in the Nigerian private sector. The Disability Commission and the federal government should adopt and impose severe penalties against those that do not comply with the provisions of the Disability Rights Act. The provision and distribution of emergency, palliative medical goods and humanitarian aid for the COVID-19 pandemic in Nigeria should be depoliticised and those that corruptly manage such aid, goods, and/or services to the detriment of persons with disabilities must be severely punished in terms of the Disability Rights Act and the Nigerian Constitution.

8 Concluding Remarks

The article has highlighted various challenges that are faced by persons with disabilities in Nigeria. For instance, the lack of constitutional protection, poverty, discrimination, social exclusion, stigma, negative societal perceptions, financial exclusion, lack of access to justice, lack of employment, lack of access to public buildings and public transport, lack of palliative care, and the lack of access to health care facilities are some of the challenges faced by persons with disabilities in Nigeria. It was further noted that there was no legal protection of the rights of persons with disabilities in Nigeria prior to the enactment of the Disability Rights Act. Furthermore, it was noted that these challenges that are faced by persons with disabilities in Nigeria were exacerbated by the ongoing COVID-19 pandemic. Over and above, it was noted that most persons with disabilities are not given any recognition or priority by the federal government of Nigeria, with regard to their access to basic and essential goods and services during the COVID-19 pandemic.⁸⁸ As discussed above, although more still needs to be done, it is submitted that the enactment of the Disability Rights Act should be welcomed as a positive move to curb the challenges affecting persons with disabilities in Nigeria during and after a global health pandemic such as the COVID-19 pandemic. Lastly, it is hoped that the recommendations stated above will be carefully utilised by the relevant persons to enhance the recognition and protection of the rights of persons with disabilities in Nigeria.

88 The World Bank, 'Pivoting to Inclusion: Leveraging Lessons from the COVID-19 Crisis for Learners with Disabilities' (World Bank Publications, 2020) 7.

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