

Title

**WOMEN WITH DISABILITIES AND THE RIGHT TO WORK IN NIGERIA:
RECOMMENDATIONS FOR AN INCLUSIVE PUBLIC SERVICE AND LABOUR
MARKET**

by

OMUWA AMEN ANDREW-UPONI (ANDOMU001)

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Supervisors: Professor Waheeda Amien and Professor Debbie Collier-Reed

Department of Public Law

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In loving memory of my late father- Professor Patrick Ehi Oshio, my inspiration even in death.

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ABSTRACT

In Nigeria, as a result of attitudinal, mobility-related, technological, and physical barriers, the employment rates among persons with disabilities are lower than that of the Nigerian general population, women with disabilities constitute a vulnerable part of the disability population in Nigeria and are more impacted by these barriers. Due to the intersection between gender and disabilities, women with disabilities are often victims of double discrimination and encounter a greater degree of stigmatization in accessing open employment than men with disabilities. Although Nigeria ratified major international and regional disability instruments that guarantee equality and non-discrimination to women with disabilities in the context of employment access, little has been achieved for them in that regard. Furthermore, Nigeria's federal disability law positively addresses disability discrimination and reserves specified quota in public sector employment for persons with disabilities, but patriarchy and gender stereotypes rendered implementation of the quotas for women with disabilities difficult to achieve. This research thesis examines the discrimination experienced by women with disabilities in realizing employment participation and focuses on ways to improve their public and open labour market participation in Nigeria. To this end, the thesis recommends hybrid legislation, best practices, and strategic implementation measures to increase access for women with disabilities in Nigeria's employment sector.

ABBREVIATIONS

AHRLR	African Human Rights Law Report
AJICL	African Journal of International and Comparative law
ASCEND	Association for Comprehensive Empowerment of Nigerians with Disabilities
CAL. L. REV	California Law Review
CBR	Community Based Rehabilitation
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CEDAW	Convention on the Elimination of All forms of Discrimination Against Women
CIADDIS	Convention of Elimination of all forms of Discrimination against Persons with Disabilities
DSPD	Division for Social Policy and Development
DESA	Department of Economic and Social Affairs
DAPDA	Discrimination Against Persons with Disabilities (Prohibition) Act
DPO	Disabled People's Organisation
EEA	Employment Equity Act
ESCAP	Economic and Social Commission for Asia and the Pacific
FWLR	Federal Weekly Law Reports
ETS	European Treaty Series
HARV. HUM. RTS. J.	Harvard Human Rights Journal
IACtHR	Inter-American Court on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDA	International Disability Alliance
JONAPWD	Joint National Association of Persons With Disabilities
LA	Los Angeles
LEDAP	Legal Defence Assistance Project
MDPI	Multi-Disciplinary Digital Publishing Institute

NCLR	North Carolina Law Review
NGO	Non-Government Organisation
NWLR	Nigerian Weekly Law Report
OAS	Organisation of American States
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
PULP	Pretoria University of Law Press
PWDs	Persons with Disabilities
REV. FAC. MED.	Revista De La Facultad De Medicina
SLS	Society of Legal Scholars
SSRN	Social Science Research Network
UCLA	University of California, Los Angeles
UN CRPD	United Nations Convention on the Rights of persons with disabilities
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNGA	United Nations General Assembly
UNICEF	United Nations International Children's Emergency Fund
USAID	United States Agency for International Development
USC	University of Southern California
WHO	World Health Organisation
WPA	World Programme of Action
WWDs	Women with Disabilities

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CHAPTER ONE

INTRODUCTION

1.1 GENERAL INTRODUCTION

Persons with disabilities (PWDs) generally encounter discrimination in exercising their fundamental human rights. However, women with disabilities (WWDs) constitute a more vulnerable disability group than men with disabilities due to their gender. In Nigeria, WWDs are further impacted by patriarchy and negative gender stereotypes. The thesis examines the discrimination brought about by the intersection between gender and disability with the barriers it poses for WWDs in terms of gaining access to public employment. Relying on the universally accepted rights-based approach, the thesis provides useful recommendations to tackle the double discrimination and dismantle the barriers to improve employment participation for WWDs in Nigeria.

This chapter explores the concept of disability and its associative social consequences, particularly discrimination. As a premise, the chapter outlines the primary perspectives of disability, tracing the evolution from the charity/welfare approach into a more contemporary and globally recognized rights-based approach. This chapter also examines the prevalence of disability in Nigeria, with a particular focus on the issue of employment discrimination faced by Nigerians with disabilities. Additionally, it addresses gender-based discrimination and its influence on women's participation in the workforce. More importantly, the chapter indicates that WWDs are more impoverished because they encounter unique discrimination and disadvantage in realizing employment participation different than men with disabilities. In addressing the gendered aspect of disability and seeking to change the negative employment narratives for WWDs, this chapter also highlights the research scope, limitation, justification, and methodology to be utilized throughout the thesis.

1.2 Approaches to Disability

Approaches to disability mean the different ways of thinking, conceptualizing or responding to disability. Prior to conceptualizing disability as an issue of human rights, other approaches to disability existed which gradually evolved into becoming the rights-based approach.¹ The United

¹ The Convention on Persons with Disabilities Training Guide (Professional Training Series No. 19) p. 8 available at https://www.ohchr.org/sites/default/files/Documents/Publications/CRPD_TrainingGuide_PTS19_EN_Accessible.pdf accessed on 10 July 2022.

Nations Convention on the Rights of Persons with Disabilities Training Guide recognizes four models as the most dominantly discussed approaches to disability, namely the charity, medical, social, and human rights models.² Each will be briefly analysed.

The Charity approach considers PWDs as deserving of pity and support from persons without disabilities due to their condition and restriction of activity.³ The charity approach to disability also views PWDs as victims or sufferers of life's tragedy that has made them a separate class from the 'abled' ones.⁴ Furthermore, the charity approach stigmatizes PWDs as economic dependents who are incapable to meet their daily needs by themselves.⁵ Therefore it highlights the need to provide PWDs with special support through welfare or charitable means, in any way that may be feasible.⁶ Although the charity approach supports care of PWDs, it disadvantageously reinforces harmful stereotypes and misconceptions against them thereby limiting their participation in all aspects of the society and development.⁷ Treating PWDs as needy or objects of charity does not support their inclusion rather, such practice segregates and labels them as a helpless deficit group.

Next, the medical approach shifts focus to the nature of the illness or impairment, the causes of the disability, and the development of medical interventions or solutions for solving the problem to assist PWDs to live a normal life and fit into the society.⁸ In cases of terminal or permanent diseases, the medical model offers institutionalization or hospice where the basic needs

² Ibid. Apart from the four models, there are other approaches to disability such as: religious/ moral model, functional model, rehabilitation model, biopsychosocial models, interface amongst others, as discussed in Kofi Amponsah-Bediako 'Relevance of Disability Models from the Perspective of a Developing Country: An Analysis' (2013) 3(11) *Developing Countries Studies*, available at <https://core.ac.uk/download/pdf/234681343.pdf> accessed on 12 November 2021.

³ Ibid.

⁴ Marno Ratief and Rantsoa S Letsosa 'Models of Disability: A Brief Overview' (March 2018) 74(1) p. 3 *HTS Theologiese Studies/ Theological Studies* p. 3 available at 4738. <https://doi.org/10.4102/hts.v74i1.4738> accessed on 25 November 2020.

⁵ The Convention on Persons with Disabilities Training Guide (Professional Training Series No. 19) *supra* note 1.

⁶ Ibid.

⁷ Ibid.

⁸ Mary Ann Jackson 'Models of Disability and Human Rights: Informing the Improvement of Built Environment Accessibility for People with Disability at Neighbourhood Scale?' *MDPI* (March 2018) p. 3 available at https://www.researchgate.net/publication/323651614_Models_of_Disability_and_Human_Rights_Informing_the_Improvement_of_Built_Environment_Accessibility_for_People_with_Disability_at_Neighborhood_Scale accessed on 24 November 2020.

of such PWDs will be met as required.⁹ Wallace explains that the medical approach views the impairment or illness of PWDs as the direct reason for their restricted participation in society and development.¹⁰ Similar to the charity approach, the medical approach is also criticized for contributing to the marginalization of PWDs, instead of promoting their inclusion.¹¹ The United Nations Committee on the Rights of Persons with Disabilities observes that apart from reducing PWDs to their impairments, the medical approach permanently tags PWDs as one perpetually dependent group unable to function or thrive without continuous medical assistance and interventions.¹²

Another approach – the social approach to disability – is believed to have been developed by PWDs in the 1970s and 80s in response to the shortcomings of the medical approach, discussed above.¹³ In contrast to the medical approach, the social approach conceptualizes disability as the limitation created by the barriers present in the environment or society in which a person lives.¹⁴ The social approach is focused on the environmental features that hinder PWDs from participating fully and equally in all aspects of society. Furthermore, the social approach requires a dismantling or adjustment of the environmental barriers to accommodate the needs of PWDs and to improve social integration for them.¹⁵ Tacaiochta explains that the social model is preferable to the medical approach because it gives PWDs the right to freely enjoy public services and to have equal access equivalent to able-bodied persons in the society.¹⁶ The social model of disability advocates for equal participation for PWDs in the larger society primarily through the removal of the

⁹ Word Press ‘The History of Attitudes to Disabled People: Developing an Equality Policy in Schools in Medical Model v Social Model’ available at <https://attitudes2disability.wordpress.com/category/medical-model-vs-social-model/> accessed on 6 May 2018.

¹⁰ Jane Wallace ‘The Social Model of Disability’ available at <https://www.croydon.gov.uk/sites/default/files/articles/downloads/thesocialmodelofdisability.pdf> accessed on 9 June 2018.

¹¹ K Pennick ‘What’s Wrong with You? A Critique of the Medical Model of Disability’ available at http://www.seenbutseldomheard.co.uk/wp-content/uploads/2015/02/“What’s_wrong_with_you”_a_critique_of_the_Medical_Model_of_Disability_The_L.pdf accessed on 9 June 2018.

¹² United Nations Committee on the Rights of Persons with Disabilities – General Comment 8 (2018) at General comment no. 6 (2018) on equality and non-discrimination: Committee on the Rights of Persons with Disabilities, available at <https://digitallibrary.un.org/record/1626976?ln=en> accessed 12 July 2021.

¹³ Oliver M ‘A new model of the social work role in relation to disability’ in J. Campling (ed.) *The handicapped person: A new perspective for social workers* (1981) pp. 19–32.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ WHO Action Plan (2014-2021) ‘Better Health for All People with Disabilities’ p.2-3 available at http://apps.who.int/iris/bitstream/handle/10665/199544/9789241509619_eng.pdf;jsessionid=4935F7C562E31E5ABD34DBD7CDBA2749?sequence=1 accessed on 23 June 2018.

environmental barriers.¹⁷ The approach has been criticised as being oblivious of the ‘painful realit[y] of impairment’.¹⁸ According to the critiques of the social model, the separation of impairment from disability is artificial and unsustainable.¹⁹ Despite the criticism of the medical and social models, some statutory definitions of disability blend the elements of both approaches to disability.²⁰ For instance, in the United Kingdom, the Equality Act 2010 (EA)²¹ describes the term ‘disability’ as ‘physical or mental impairment, which has substantial and long-term effects on a person’s ability to carry out normal day-to-day activities’. Similarly, the Americans with Disabilities Act 1990 (ADA) conceptualizes disability as a ‘physical or mental impairment that substantially limits one or more of the major life activities’.²²

As earlier stated, the human rights approach to disability (rights-based approach) forms the premise of this research. While some researchers believe that the new human rights approach was honed out of the social model, and both terms can be used synonymously,²³ others discountenance this view by arguing that the application of the social model is “fraught with difficulties” and must be separated from the human rights approach.²⁴ A third argument indicates that the social and human rights approaches to disability are “complementary and symbiotic” because each employs distinctive strategies to achieve the same result.²⁵ At the global level, the United Nations suggests that the ‘evolution’ from charity, to medical, to social, has moved towards a rights-based model.²⁶ In particular, the United Nations Committee on the Rights of Persons with Disabilities notes that “disability is a social construct and impairments must not be taken as a legitimate ground for the

¹⁷ Supra note 4.

¹⁸ Ibid at p. 5.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Section 6(1)(a)(b) of the UK Equality Act (C. 15) 2010. The Equality Act was adopted by the United Kingdom Parliament on 8 April 2010 available online at www.gov.uk/ukpga/2010/15_20100015_en.pdf accessed on 23 March 2022.

²² Section 3 of the Americans with Disabilities Act 1990, 42 U.S.C. §§ 12101.

²³ Kanter A S ‘The Globalization of Disability Rights Law’ *Syracuse Journal of International Law and Commerce* (2003)30 pp. 241, 247.

²⁴ Miller J ‘The European Disability Rights Revolution’ (2019) 44 (1) *European Law Review* pp. 66, 69.

²⁵ Anna Lawson and Angharad E Beckett ‘The Social and Human Rights Model of Disabilities: Towards a Complimentary Thesis’ (9 July 2020) available at <https://www.tandfonline.com/doi/full/10.1080/13642987.2020.1783533> accessed 4 April 2021.

²⁶ The Convention on Persons with Disabilities Training Guide (Professional Training Series No. 19) p. 8 available at https://www.ohchr.org/sites/default/files/Documents/Publications/CRPD_TrainingGuide_PTS19_EN_Accessible.pdf accessed on 10 July 2022. T Degener ‘A Human Rights Model of Disability’ in Routledge Handbook on Disability Law and Human Rights (eds.) P. Blanck and E. Flynn (Routledge 2017) p. 33.

denial or restriction of human rights”.²⁷ The Committee then urges that laws and policies must mainstream a human rights approach to disability rather than incorporate the charity and medical approaches.²⁸ The rights-based approach to disability essentially promotes ‘substantive equality’ for PWDs.²⁹ Substantive equality connotes the adoption of special measures to guarantee equality for vulnerable groups within the society.³⁰ The rights-based approach is specifically heralded by the United Nations Convention on the Rights of Persons with Disabilities 2006 (UN CRPD) which establishes inalienable rights for PWDs, on the basis of equality and free from all forms of discrimination.³¹ Degener surmises that the UN CRPD is the “codification of the human rights model of disability”.³² The UN CRPD defines PWDs to include persons "who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder full and effective participation in society on an equal basis with others”.³³ Perhaps the most widely accepted definition of disability is offered by the World Health Organization (WHO).³⁴ The WHO defines disability from a three-dimensional perspective as “an umbrella term covering impairments, activity limitations, and participation restrictions. ³⁵ An *impairment* is a problem in body function or structure; an *activity limitation* is a difficulty encountered by an individual in executing a task or action; while a *participation restriction* is a problem experienced by an individual in involvement in life situations”.³⁶

1.3 An Overview of disability, gender, and inequalities in Nigeria’s labour market

(i) Disability prevalence

Nigeria, a country located in West Africa, is estimated to have a current population of about 212 million people – the most populous country in the African region.³⁷ While there is no unified recent

²⁷Supra note 12.

²⁸ Supra note 12 at p. 10.

²⁹ Substantive equality is discussed in detail in 3.6 of chapter three.

³⁰ Balan Sergiu ‘Formal and Substantive Equality of Opportunity’ (2012) IV(4) *Multidisciplinary Research Journal* p. 86.

³¹ Article 1 of the UN CRPD 2006, A/RES/61/106. The UN CRPD was adopted by the United Nations on 13 December 2006 and came into force on 3 May 2008.

³² T Degener, supra note 26.

³³ Article 1 of the UN CRPD 2006.

³⁴ Government of Canada ‘Federal Disability Reference Guide’ available at *Federal Disability Reference Guide - Canada.ca* accessed on 26 September 2023.

³⁵ World Report on Disability 2011 p. 5 available at *World Report on Disability (who.int)* accessed on 22 September 2023.

³⁶ Ibid.

³⁷ United Nations Population Fund (UNFPA) ‘World Population DashBoard: Nigeria’ 2021 available at <https://www.unfpa.org/data/world-population/NG> accessed 28 September 2021.

data on the number of persons living with disabilities in Nigeria, WHO statistics estimate that no fewer than 29 million of the entire Nigerian population live with one or another form of disability.³⁸ It is important to note that some PWDs in Nigeria also have multiple impairments.³⁹ Globally, women have a disability prevalence of 19.2 per cent as against 12.0 per cent for men.⁴⁰ Further WHO report reveals that, of the majority of PWDs who live in low and middle-income countries, 75 per cent are women.⁴¹ Particularly in Nigeria, WWDs make up more than 50 per cent of the disability population.⁴² Poverty, frequent road accidents and the outbreak of preventable diseases have been identified as major root causes of high disability prevalence in Nigeria.⁴³

(ii) Attitude towards PWDs

Historically, some cultures and traditions view PWDs as people who have committed abomination either in their previous or present lifetime and were facing retribution for their sins.⁴⁴ Disability is also frequently believed to be caused by witchcraft and evil spirits.⁴⁵ For fear of stigmatization some women abandon their babies born with disabilities in nearby bushes, streams or close to an orphanage home.⁴⁶ Alternatively, children with disabilities are usually locked and hidden away in homes by their parents because they were regarded as symbols of shame and disgrace to their

³⁸ This data suggests that about one in every eight persons is disabled in Nigeria. WHO Disability Report 2018 in *World Bank. 2020. Disability Inclusion in Nigeria: A Rapid Assessment*. World Bank, Washington, DC. © World Bank available at <https://openknowledge.worldbank.org/handle/10986/34073> License: CC BY 3.0 IGO accessed 30 June 2021. Eleweke C J ‘A review of the challenges of achieving the goals of the African Plan of Action for people with disabilities in Nigeria’ (2013) 28(3) *Disability & Society* pp. 313 – 23; Obiakor, F E & Eleweke C J ‘Special education in Nigeria today’ in A Rotatori, J Bakken, F Obiakor, and U Sharma *Advances in special education: International perspectives*, (2014) 28 p.379-97. London, England: Emerald.

³⁹ Stephen James Thompson ‘Nigeria Situational Analysis for Inclusion Works’ (Institute of Development Studies, Version-II 2020) p.3 available at https://www.researchgate.net/publication/343306107_Nigeria_Situational_Analysis_for_Inclusion_Works accessed on 30 June 2021.

⁴⁰ Mitra S and Sambamoorthi U ‘Disability prevalence among adults: Estimates for 54 Countries and progress toward a global estimate’ (2014) *Department of Economics Discussion Paper Series University of Fordham, New York*.

⁴¹ World Health Organisation Disability World Report available at https://www.who.int/disabilities/world_report/2011/report/en/ accessed 2 August 2018.

⁴² World Disability Report 2011.

⁴³ Mohammed Awaisu Haruna, ‘The Problems of Living with Disability in Nigeria’ (2017) Vol.65 *Journal of Law, Policy and Globalization* p. 103.

⁴⁴ Sango P. ‘Visible but invisible: people living with disability in Nigeria’ Books2africa (2013) available at <https://books2africa.org/visible-but-invisible-people-living-with-disability-in-nigeria/> accessed on 30 October 2020.

⁴⁵ Egundu Grace Ikeatu: ‘The Legal Framework for Persons Living with HIV and other Disabilities in Nigeria: An Appraisal’ (2022) 13(2) *NAUJILJ* p. 98.

⁴⁶ NIALS Discussion Forum, ‘Rights of Disabled Persons in Nigeria’ (17 October 2014), available at <https://nialsng.wordpress.com/2014/10/17/rights-of-disabled-persons-in-nigeria/> accessed on 12 March 2018.

families.⁴⁷ With the advent of education, globalization, and social awareness modernization, negative cultural beliefs and practices have been whittled down.

Section 42 of the Constitution of the Federal Republic of Nigeria (the Nigerian Constitution) promotes equality and non-discrimination for all Nigerian citizens.⁴⁸ However, the current reality of PWDs in Nigeria is predominantly characterized by negative societal attitudes towards them.⁴⁹ PWDs are considered as a minority of lesser humans different from others, and often as objects of pity.⁵⁰ Many PWDs often face discrimination and social exclusion, to the point where some feel that the prejudice they have to endure is more challenging than the disability itself.⁵¹ The discrimination faced by PWDs negatively impacts on their living standards leading to poverty, lack of public access and social stigma.⁵²

The Nigerian government has taken some positive steps to address the discrimination against PWDs in Nigeria. For example, Nigeria ratified the UN CRPD in 2007 and has enacted its own federal disability law, namely, the Discrimination Against Persons with Disabilities Act in 2018 (DAPDA 2018).⁵³ The federal disability law establishes a National Commission for Persons with Disabilities to implement the federal disability law for PWDs.⁵⁴ Several states in the country have also adopted the federal disability law or passed their own state disability state laws to tackle disability discrimination.⁵⁵ It has been noted that the Nigerian disability movement has so far failed to successfully drive forward a rights-based approach to disability.⁵⁶ Currently, disability issues

⁴⁷ Ibid.

⁴⁸ The Constitution of the Federal Republic of Nigeria 2004.

⁴⁹ T Degener, *supra* note 26.

⁵⁰ Ibrahim Imam and M A Abdulraheem Mustapha 'Rights of People with Disability in Nigeria: Attitude and Commitment' (2016) 24(3) *African Journal of International and Comparative Law* (Edinburgh University Press) p. 447.

⁵¹ Ibid p. 446

⁵² *Supra* note 42.

⁵³ For disability definition in Nigeria, see Part IX (Section 57) – Interpretation Section of the Discrimination Against Persons with Disabilities (Prohibition) Act 2018; Nigeria has also ratified the Bill of Rights for Women (CEDAW) since 1985.

⁵⁴ The National Commission for Persons with Disabilities is also established by section 31 of DAPDA 2018.

⁵⁵ The states are as follows: Lagos, Ekiti, Plateau, Bauchi, Jigawa, Nasarawa, Kano, and Kwara, with the Lagos State Special People's Law 2011, Rights of Persons with Disabilities Law 2013, Plateau State Disability Rights Law 2005, Bauchi State Disability Rights Law 2015, Jigawa State Persons with Disabilities Law 2017, Nasarawa State Disability Rights Commission Law 2018, Kano State Persons Living with Disabilities Law 2018, and Kwara State People with Disabilities (Amendment) Law 2017.

⁵⁶ Lang, R.; Kett, M.; Groce, N. and Trani, J. 'Implementing the United Nations Convention on the Rights of Persons with Disabilities: Principles, Implications, Practice and Limitations' (2011) 5 (3) *ALTER, European Journal of Disability Research* pp. 206–20.

are mostly handled through a charity or welfare lens in Nigeria, which can lead to ineffective advocacy, campaigning and implementation strategies.⁵⁷ This approach is often associated with a lack of understanding of the rights-based agenda or the social model of disability.⁵⁸

(iii) PWDs and livelihood/work

The right to work is a fundamental human right which is a veritable strategy for achieving economic progress, poverty reduction, and social integration in any nation.⁵⁹ According to the United Nations, the unemployment rate among PWDs in low-income countries is higher than that of people without disabilities.⁶⁰ There is a significant limitation of data on the employment of PWDs in many countries, including Nigeria;⁶¹ but it has been reported that PWDs face major obstacles and inequalities in accessing the labour market in over 25 countries due to discrimination.⁶² Across the countries where the study was conducted, employment rates for PWDs were significantly lower than the rates for people without disabilities.⁶³ In Nigeria, the situation is the same; PWDs experience discrimination when accessing the right to work resulting in disparities in unemployment rate for PWDs as compared with that of people without disabilities.⁶⁴

Chapter II of the Nigerian Constitution generally promotes the political, economic, socio-cultural and developmental rights of all Nigerian citizens, including the right to work.⁶⁵ Nigeria also has a federal disability law DAPDA 2018 that requires all public organisations to reserve at

⁵⁷ Inclusive Futures ‘Accelerating Disability Inclusive Formal Employment in Bangladesh, Kenya, Nigeria, and Uganda: What are the Vital Ingredients?’ (March 2020) p.22 available at *Accelerating_Disability_Inclusive_Formal_Employment.pdf (ids.ac.uk)* accessed on 8 October 2023.

⁵⁸ Ibid.

⁵⁹ IDA Contribution to the OHCHR thematic Study on Work and Employment of Persons with Disabilities, Office of the United Nations High Commissioner for Human Rights, Geneva. CH 1211 Geneva 10. (2012) available at *IDA.doc – OHCHR* <https://www.ohchr.org/Disability> accessed on 22 January 2022.

⁶⁰ United Nations Department of Economic and Social Affairs Disability ‘Disability and Employment’ available at *Disability and Employment | United Nations Enable* accessed on 28 September 2023.

⁶¹ ILO ‘The employment situation of people with disabilities: towards improved statistical information’ Geneva, International Labour Organization’ (2007) available at *The employment situation of people with disabilities: Towards improved statistical information (ilo.org)* accessed on 15 September 2023.

⁶² OECD, *Sickness, disability and work: breaking the barriers. A synthesis of findings across OECD countries, 2010.* available at *Sickness, Disability and Work: Breaking the Barriers: A Synthesis of Findings across OECD Countries | en | OECD* accessed on 15 September 2023.

⁶³ Ibid.

⁶⁴ C J Eleweke and Jannine Ebenso ‘Barriers to Accessing Services by People with Disabilities in Nigeria’ (2016) 6(2) *JESR* (MCSER Publishing, Rome) p.118.

⁶⁵ Chapter Two of the Constitution of the Federal Republic of Nigeria 1999, particularly Section 23(1) states that: “everyone has the right to work, to free choice of employment. To just and favourable conditions of work and to protection against unemployment”.

least five per cent of employment opportunities for PWDs.⁶⁶ As part of efforts to checkmate unemployment in the country, Nigeria has ratified several international and regional instruments that guarantee equal right to work for all individuals, including PWDs.⁶⁷ Since the passage of the DAPDA 2018, the government embarked on the Industrial Training Fund scheme, the Centre for Financial inclusion scheme amongst other programmes that aim to empower PWDs with job skills and assist them with loans for entrepreneurship.⁶⁸ A few state governments, charitable organizations and individuals have also created empowerment schemes for PWDs in their respective states.⁶⁹

While these initiatives are in place, significant efforts are still required to effectively implement them and enforce disability laws to enhance the living standards of PWDs in Nigeria because they still currently face discrimination in their quest to exercise the right to work and earn a decent means of livelihood.⁷⁰ From the perspective of human rights, employment discrimination against PWDs breaches their right to human dignity and equality as every person, including PWDs, who are willing and able to work should be afforded equal opportunity to seek, obtain and retain decent employment suited to their acquired skills and qualifications.

(iv) Gender discrimination and work

In the context of this thesis, gender connotes “women”. Gender discrimination is a widely discussed topic in global academic debates, conferences, and research.⁷¹ Although the United Nations has adopted strategies to tackle the economic impact of gender inequality, the problem

⁶⁶ Section 28 of the Discrimination Against Persons with Disabilities (Prohibition) Act 2018.

⁶⁷ These will be discussed in chapter four and five respectively.

⁶⁸ The industrial training fund scheme is designed to train 120 people with disabilities with job skills to improve their employability. Also, PWDs can access loan products that are being developed by a collaboration of Accion Microfinance Bank, the Centre for Financial Inclusion and the Central Bank of Nigeria. See ‘Inclusion Works: Nigeria Situational Analysis’ (Version II June 2020) p.60 available at <https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/15487/IW%20SITAN%20Nigeria%20Version%20II%20June%202020.pdf?sequence=1&isAllowed=y> accessed on 25 September 2023.

⁶⁹ For example, Lagos state government has empowered over 2000 PWDs in the state with assistive devices and business loans. Additionally, the government of Anambra state has provided funding to several disability groups within the state (They are, the state Albinism Association, National Association for the Deaf, the young wing of the Blind Students Association of Nigeria and the Association of Women with disabilities). Anambra State government is also partnering with the UNDP to improve the skills of PWDs.

⁷⁰ ILO Disability Information Resources ‘International and Legal Instruments and Policy Initiatives Concerning the Right to Work of Persons with Disabilities’ Decent Work Report (2015) 3 Ed. available at www.dinf.ne.jp/doc/english/resource/employment/ilo2015_01.html accessed 12 May 2017.

⁷¹ Adeosun, O T and Owolabi, K E ‘Gender inequality: determinants and outcomes in Nigeria’ (2021) Vol. 1(2) *Journal of Business and Socio-economic Development* pp. 165-81.

continues to persist across the nations of the world.⁷² Gender inequality can potentially impact the economy of a nation adversely.⁷³ As is the case in most developing societies, Nigeria's traditional society is characterized by patriarchy which deems women as inferior to men and accord more advantages, opportunities and privileges to men than women.⁷⁴ As a result of patriarchy, women in general, face discrimination that limits their participation in all aspects of society and development. Specifically, cultural and religious factors largely influence the relegation of women as an inferior class to men in African societies.⁷⁵ While most cultures in Nigeria elevate men as family heads and leaders in society, ascribing domestic gender roles to women,⁷⁶ religion in Nigeria is also predominantly centred on teachings and doctrines that God created females to be submissive and subordinate to males from the beginning of time.⁷⁷ Tradition, cultural practices and religion which enshrine patriarchy have presented as recurring obstacles for the full realization of gender equality for women.⁷⁸ Unfortunately, some laws in Nigeria contain provisions which support discrimination against women; and this poses further challenge to achieve gender equality in the country. The referenced laws will be examined in the next chapter of the thesis.

Where labour market participation is concerned, several indices in the Nigerian labour market point towards low employment participation rates for women than men as a result of gender inequality. For instance, the Gender in Nigeria Report 2012 reveals that men significantly dominate the employment sector among other sectors of the economy.⁷⁹ Additionally, according to a United Nations Development Report (UNDP), female participation in Nigeria's labour market

⁷² Supra n 35 at p.167.

⁷³ Kleven H. and Landais C 'Gender inequality and economic development: fertility, education and norms' (2017) 84(334) *Economica*, pp. 180-209.

⁷⁴ Mudiare P. E. U. 'The Perception of Gender Roles and its Implication for Spousal Violence in Kaduna State, Nigeria' 2013 9(23) *European Scientific Journal* pp.239-58.

⁷⁵ Urther Rwafa 'Culture and Religion as Sources of Gender Inequality: Rethinking Challenges Women Face in Contemporary Africa' (2016) 32(1) *Journal of Literary Studies* pp.43-52.

⁷⁶ Onyeka C. Okongwu 'Are laws the appropriate solution: The need to adopt non-policy measures in aid of the implementation of sex discrimination laws in Nigeria' (March 2021) 21(1) *International Journal of Discrimination and the Law* pp.26-46.

⁷⁷ Ibid.

⁷⁸ Taiwo Ajala 'Gender discrimination in land ownership and the alleviation of women's poverty in Nigeria: A call for new equities' (2017) 17(1) *International Journal of Discrimination and the Law* pp. 51-66.

⁷⁹ British Council Gender in Nigeria report 2012: Improving the lives of girls and women in Nigeria (2nd ed.) available at <http://www.dfid.gov.uk/Documents/publications1/Gender-Nigeria2012.pdf> accessed on 22 September 2023. The report mentions that men dominate the following sectors: politics, education, science and technology, engineering and employment.

is lower than that for men.⁸⁰ Further research shows that, men are in higher demand in the Nigerian labour market than women are.⁸¹ The indices also support that women dominate the unpaid job sector in Nigeria, twice the figure for men because they have a disproportionate share of domestic responsibilities compared to the men.⁸² Finally, more than half of Nigerians who live below the poverty line are women, as indicated in a report by the Federal Office of Statistics.⁸³

(v) Gender and disability: the double disadvantage of WWDs

Gender and disability can intersect to create a double form of discrimination for women who have disabilities.⁸⁴ Intersectional discrimination can occur where a person, or class of persons experience two or more forms of discrimination so that the situation results in a higher level of prejudice than if these different grounds were treated separately.⁸⁵ As the United Nations Human Rights Committee notes, discrimination against women is “often intertwined with discrimination on other grounds”.⁸⁶ Although men and women with disabilities experience discrimination, that of WWDs is more compounded, with their vulnerability exacerbated by the intersection of gender and disability.⁸⁷ Despite their sizeable proportion within the disability population, WWDs are generally treated less favourably than men with disabilities, a situation which has negatively affected their participation in all aspects of society.⁸⁸ Significantly, in many developing countries, including Nigeria, a lot of WWDs either live isolated, run very small-scale businesses, or adapt to

⁸⁰ United Nations Development Programme (UNDP) (2016a) Human development report 2016: Human development for everyone (United Nations Development Programme 1 UN Plaza) available at *Human Development Report 2016: Human Development for Everyone* (undp.org) accessed on 22 September 2023.

⁸¹ Osunde, O., ‘Labor market, demographic patterns and income inequality in Nigeria’ (2015) 6(3) *Journal of Sociology and Social Anthropology*, pp. 341-354.

⁸² Ibid.

⁸³ Federal Office of Statistics (2015) *Poverty Profile for Nigeria: 1990 – 2010*. Abuja: Nigeria Federal Ministry of Finance.

⁸⁴ Human Rights Committee General Comment No 28: Equality of Rights Between Men and Women (Art 3) (2000) CCPR/C/21/Rev1/Add10 p. 30 cited from Shreya Atrey ‘Comparison in Intersectional Discrimination’ (2018) 38 *S. L. S in Legal Studies* available at [doi:10.1017/1st.2017.17](https://doi.org/10.1017/1st.2017.17) accessed 6 June 2021.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Gertrude Oforiwa Fefoame ‘Bold Women can tackle the Workplace Challenge of Disability’ *World Economic Forum Journal* available at <https://www.weforum.org/agenda/2017/03/bold-women-can-tackle-the-workplace-challenge-of-disability>, accessed on 22 April 2017; United Nations Enable ‘International Norms and Standards Relating to Disability: PWDs and Multiple Discrimination Rights of Special Groups’ available at www.un.org/esa/socdev/enable/comp504.htm accessed 12 March 2018.

⁸⁸ As earlier stated in 1.3 (i) above, WWDs make up over 50 per cent of the Nigerian disability population. S Ortoleva A Egboka and G Jerry ‘NGO Submission to the CEDAW Committee Pre-Sessional Working Group for Nigeria’ October 2016 p. 5.

begging for alms to survive.⁸⁹ Although a majority of PWDs are deprived and live in poverty, WWDs are mostly poorer and more financially dependent than men with disabilities.⁹⁰ It has also been established that men with disabilities are more likely to gain access to formal employment than WWDs.⁹¹

This research uncovered very limited data on the participation of WWDs in the labour market or economic activities in Nigeria. Available data strongly suggest that gender and disability discrimination limit WWDs from equal access to employment in Nigeria, particularly public and open employment.⁹² The Leonard Cheshire survey conducted in 2018 indicates a lower literacy rate of females compared to males with disabilities.⁹³ The same survey report indicates that men with disabilities have higher rate of employment with WWDs dominating the informal employment sector.⁹⁴ More recently too, the 2019 and 2021 reports on Nigeria's labour market assessment suggests low employment participation of WWDs than men with disabilities, as it recommends that the Nigerian government should pay particular attention to WWDs on "recruitment platforms and related platforms".⁹⁵

WWDs have a right to exercise the human right to work without gender and disability-related limitations or discrimination, on equal basis as men with disabilities and people without

⁸⁹ Celine Osukwu 'The place of women with disabilities in Nigeria' (posted March 2010) available at <https://www.worldpulse.com/en/community/users/celine/posts/9591> accessed 12 March 2018.

⁹⁰ UN Women 'The Empowerment of Women and Girls with Disabilities: Towards Full and Effective Participation and Gender Equality' available at https://un.org.np/sites/default/files/doc_publication/2019-06/Empowerment-of-women-and-girls-with-disabilities-en.pdf accessed on 31 October 2021. Pinilla-Roncancio M 'Disability and poverty: two related conditions. A review of the literature' (2015) 63 *Rev. Fac. Med.* S113-23 available at <http://dx.doi.org/10.15446/revfacmed.v63n3sup.50132> accessed on 31 October 2021.

⁹¹ World Bank 'Disability Inclusion in Nigeria: A Rapid Assessment' World Bank 2020 (Washington, DC) available at <https://openknowledge.worldbank.org/handle/10986/34073> License: CC BY 3.0 IGO accessed 30 June 2021. Pawłowska-Cypriasiak, Karolina, Maria Konarska and Dorota Żołnierczyk-Zreda 'Self-perceived quality of life of people with physical disabilities and labour force participation' (2013) 19(2) *International Journal of Occupational Safety and Ergonomics* pp. 185-94.

⁹² UK Aid Disability Inclusion: emerging lessons and future direction for LINKS Nigeria (March 2021) p. 3 available at *Disability inclusion: emerging lessons and future direction for LINKS Nigeria* (links-nigeria.com) accessed 13 September 2023.

⁹³ Disability Data Review: A collation and analysis of disability data from 40 countries' (Leonard Cheshire Report funded by UK Aid) p. 47 available at disabilitydataportal.com/fileadmin/uploads/lcdp/Documents/report-web_version.pdf accessed on 7 September 2023. As shown in the report, the literacy rate of PWDs who are at least 15 years is 21 per cent for females with disabilities and 50 per cent for males with disabilities. For PWDs who are at least 25 years old, the ratio is 22 per cent for females with disabilities and 47 per cent for males with disabilities.

⁹⁴ *Ibid* p. 54-5.

⁹⁵ Inclusive Futures: Inclusion Works Labour Market Assessment – Nigeria (Version 01-July 2019) p. 48 available at *Inclusion-Works-LMA-Nigeria-Version-1.0-FINAL.pdf* (inclusivefutures.org) accessed on 23 September 2023; Inclusive Futures: Inclusion Works Labour Market Assessment-Nigeria (2021 Refresh) p.26 available at *Inclusive Futures template_v1.1* (asksource.info) accessed on 23 September 2023.

disabilities.⁹⁶ Having ratified gender related international conventions, disability and labour instruments, especially the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)⁹⁷ and the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD) in 1985 and 2007 respectively, Nigeria is yet to update its domestic laws and policies to properly reflect a gender dimension of disability to specifically promote rights for WWDs. It is important to note here that Nigeria is a dualist country, and as such the mere ratification of an international norm does not render it enforceable in the country. To confer enforceability after ratification, the National Assembly in Nigeria must legally transpose the international law into domestic law through positive enactments.⁹⁸ This constitutional process is called “domestication” and will be discussed in detail later in Chapter four of the thesis.

The UN CRPD contain salient provisions that recognize that WWDs are susceptible to a higher degree of discrimination than men with disabilities due to gender and disability discrimination.⁹⁹ Particularly, Article 6(2) emphasizes the need to empower, advance and promote rights for WWDs.¹⁰⁰ Nigeria’s Discrimination Against Persons with Disabilities (Prohibition) Act 2018 contains no reference to WWDs despite the call for the incorporation of gender perspectives in all national disability laws and policies by the UN CRPD. As a result, WWDs have been further marginalized in the implementation of programs aimed at including PWDs. The federal and states government initiatives mentioned above are targeted towards inclusion of PWDs as a unified or general group. Nothing was found as direct measures by the government aimed towards

⁹⁶ Article 23 of the Universal Declaration of Human rights and Part III, Article 6 of the International Covenant on Economic and Social Rights, recognize and guarantee that every person has right to engage freely in productive work of his choosing. Article 15 of the African Charter on Human and Peoples’ Rights which is applicable to Nigeria (through domestication), also contains provisions which guarantees the right to work to every individual. Also, 17(3) of the Constitution of the Federal Republic of Nigeria provides for the right to work without discrimination, the right is not justiciable; Halimatou Ceesay ‘SHE SHE SHE: The Woman on the Wheelchair: She Deserves Better: Women with Disabilities Deserve Better’ *The Point* 7 April, 2016 available at <http://thepoint.gm/africa/gambia/article/she-she-she-the-woman-on-the-wheelchair-women-with-disability-deserve-better> accessed 1Sept 2018.

⁹⁷ UN General Assembly adopted CEDAW on 18 December 1979, A/RES/34/180 available at <https://www.refworld.org/docid/3b00f2244.html> accessed on 29 September 2021. CEDAW came into force on 3 September 1981.

⁹⁸ This is required by Section 12(1) of the Nigerian Constitution. Domestication is examined in chapter four of the thesis.

⁹⁹ Article 6(1) of the UN CRPD provides: “States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms”.

¹⁰⁰ Article 6 (2) provides: “States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

empowering WWDs as a uniquely vulnerable group during the research. However new non-governmental organizations specifically focused on promoting the rights of WWDs are emerging in Nigeria such as the Network of Women with Disabilities (NWD) formed in 2019 with the primary objective to empower women and girls with disabilities, enable them, educate them, and advocate for their rights in society”¹⁰¹ and the Advocacy for Women with Disabilities Initiative (AWWDI) formed as a self-help group to develop and empower WWDs with vocational skills.¹⁰²

Research indicates that the Nigerian government has shown a lack of political will to systematically implement the provisions of the existing federal disability law for PWDs, and more particularly for WWDs as relates to the right to work.¹⁰³ The government agency responsible for disability issues in Nigeria is the Ministry of Women Affairs and Social Development (MWASD).¹⁰⁴ Periodically, the Ministry in collaboration with some disability non-governmental organizations (NGOs) and Disabled Persons Organisations (DPOs) engage mostly in the distribution of charity/welfare packages like wheelchairs, food items, small loans, and organising vocational/informal skills training programmes for PWDs, including WWDs.¹⁰⁵ Although some of these gestures support the human rights approach to disability, it is important for the MWASD to prioritize the implementation of programmes and the development of follow-up measures to target the recruitment and hiring of WWDs, properly situating them in Nigeria’s employment sector. Examples of these programmes and measures include: facilitating education and skills training for WWDs; developing affirmative action policies for inclusion of WWDs; organizing disability-inclusive job fairs; developing peer-support groups and mentorship programmes for WWDs, amongst other related measures. These measures are elaborated in Chapter four of the thesis.

¹⁰¹ The NWD was founded and registered by the Corporate Affairs Commission in September 2019. Their website is available at *Who Are We - Network of Women with Disabilities* accessed 3 October 2023.

¹⁰² Advocacy for Women with Disabilities Initiative (AWWDI) operates as one of the community self-help groups in Nigeria that helps to empower women and girls with disabilities in Nigeria through vocational skill acquisition. They are available online at <https://awwdi.org.ng/> accessed 12 April 2021.

¹⁰³ Anwuli Ofuani, *supra* note 65 at p. 655; Edward Ugbada Adie Ph.D and Yusuf Nzim Shamagana ‘Towards Improved Inclusion of Women and Girls with Disabilities in the Development Agenda in Nigeria’ (2018)10(1) *International Journal of Integrative Humanism* 10 No. 1. p.14.

¹⁰⁴ The Federal Ministry of Women Affairs and Social Development (FMWASD) was established by Decree No. 30 of 1989. The broad mandate of the Ministry is to advise the Government on gender and children’s issues and issues affecting PWDs and the elderly.

¹⁰⁵ *Ibid.* There are so many disabled peoples’ NGOs currently operating in Nigeria. In fact, many of the charitable packages, especially small loans extended to PWDs in the country, are sponsored by these NGOs. There are two main DPOs currently operating in Nigeria. These are: the Joint Association of Persons with Disabilities (JONAPWD) and the Association for Comprehensive Empowerment of Nigerians with Disabilities (ASCEND).

1.4 Research question

The research examines the following primary question: To what extent are the existing domestic legislation and policies suitable to address the peculiar discrimination being experienced by WWDs in accessing employment in the public service and labour market in Nigeria? In addressing this primary question, gender gaps in the relevant legal framework and the defective implementation practices that contribute to the discrimination against WWDs in terms of exercising their right to access employment will be analysed.

1.5 Research aim and objectives

This research aims to evaluate the effectiveness of existing domestic legislation and policies in Nigeria in addressing the peculiar discrimination faced by WWDs in terms of accessing employment opportunities in the public service and labour market. The study assesses the extent to which the regulatory framework is adequate for the purpose of promoting equal opportunities for WWDs, identifying any gaps or limitations and proposing recommendations for improvement. The thesis also highlights implementation practices that limit the employment participation of WWDs. To achieve these aims, the research has the following objectives to; conduct a comprehensive literature review to analyse existing studies, reports, and scholarly articles on the intersection between gender and disabilities and the peculiar discrimination it creates for WWDs in accessing employment; analyse the international norms and standards that recognize the intersection between gender and disability and that specifically promote the right of WWDs to access employment; compare and recommend best practices and standards for promoting equal employment access opportunities for WWDs and; evaluate the effectiveness of existing domestic legislation and policies in addressing the peculiar discrimination faced by WWDs in accessing employment.

1.6 Research scope

The research examines the existing regulatory framework and implementation practices to determine their suitability towards achieving equal employment access of WWDs in Nigeria. In so doing, the extent of Nigeria's compliance with international and regional normative requirements which bear significance for ensuring inclusion for WWDs, especially through

employment is assessed. The international standards considered in this thesis are those on gender disability and employment only.¹⁰⁶

Except expressly stated otherwise, all references to employment in this research connote the public service and the labour market. Sheltered employment which involves training and assisting PWDs develop vocational skills to work in a protected environment, usually consisting of PWDs only, and without interaction with non-disabled workers, is excluded from this discourse. The sheltered arrangement is excluded because it contributes to discrimination and social isolation. This research focuses on integrating PWDs, particularly WWDs, in employment that is open and public in competitive environment with non-disabled persons.

In the context of this research, the public service and labour market imply government establishments (public sector employment) and other employment, inclusive of privately-owned establishments, which are in the business of rendering service to the general public. In addition, only PWDs and WWDs who can work despite their disabilities are referred to in this thesis.¹⁰⁷ Furthermore, the right to work referred to in this thesis specifically connotes the right to access employment. Finally, the right to work and the right to employment are used interchangeably throughout the research.

1.7 Research limitations

One major limitation encountered while compiling this research is limited data and literature regarding PWDs, both globally and in Nigeria. Specifically, sparse data on participation of WWDs in the labour market or economic activity was noticed. The data available rarely capture accurate PWD statistics as disaggregated by sex; so, this research had to rely mostly on percentages and estimated population figures relating to PWDs and WWDs in employment. Another constraint

¹⁰⁶ The thesis examines the following international instruments: Declaration on the Rights of Disabled Persons 1975; Convention on the Elimination of all forms of Discrimination Against Women 1979; World Programme of Action Concerning Disabled Persons 1982; Standard Rules for the Equalization of Opportunities for Persons with Disabilities 1993; Beijing Declaration and Platform for Action 1995; Vienna Declaration and Platform for Action 2004; United Nations Convention on Rights of Persons with Disabilities 2006; Discrimination (Employment and Occupation) Convention 1958 (No. 111); Vocational Rehabilitation and Employment (Disabled Persons) Convention 1983 (No. 159); Employment and Decent Work for Peace and Resilience Recommendation 2017 (No. 205) and the ILO Code of Practice on Managing Disability in the Workplace 2002. Additionally, the thesis examines three relevant regional standards, namely: The African Charter on Human and Peoples Rights (ACHPR) 1981; Protocol of the ACHPR on the Rights of Women in Africa (Maputo Protocol) 2003; and the Protocol of the ACHPR on the Rights of Persons with Disabilities in Africa (Disability Protocol) 2018.

¹⁰⁷ This is not to undermine the human rights of PWDs or WWDs whose impairment renders them incapable of working. Every human being, regardless of the extent of their disabilities, must be treated as equal.

encountered is the dearth of case law on enforcement of disability rights in Nigeria to reference in this thesis. Finally, because national laws and disability policies from other jurisdictions rarely contain gender dimensions, there is limited reference to exemplary legislation and implementation strategies for Nigeria to adopt in that regard.

Due to the above limitations, this research leans predominantly towards theoretical foundations, literature review, law and policy considerations, and logical reasoning to justify the arguments and recommendations.

1.8 Research justification

Enhancing equality of employment access for WWDs is required for the realisation of their human rights. Generally, employment should promote inherent human dignity, sense of belonging and financial independence of any individual, regardless of gender or disabilities.¹⁰⁸ Accordingly, the exercise of the right to work is recognized amongst other rights by international law instruments.¹⁰⁹ As earlier mentioned, although WWDs make up a significant part of the total disability population in Nigeria, the field of disability research and the discrimination they experience is yet to be fully appreciated and explored.¹¹⁰ Realistically, WWDs have peculiar needs due to issues regarding gender and disability that exacerbate their vulnerability than men with disabilities; and as such, WWDs ought not to be taken as an invisible part of the disability group.

As indicated earlier in (v) of section 1.3 above, WWDs are significantly poorer than men with disabilities because they have higher global unemployment rates. Many WWDs possess great potential, which has been left idle due to lack of opportunities to harness and showcase their capabilities.¹¹¹ Some PWDs, including WWDs, have been proven to be highly intelligent and to possess innate work talents.¹¹² The economic empowerment of PWDs through participation in employment will provide ample opportunity for them to contribute socio-economically to the nation, instead of becoming burdensome and dependent on social security or disability benefits.¹¹³

¹⁰⁸ European Association of Service Providers for Persons with Disabilities (EASPD) 'Right to Work and Employment' available at <https://www.easpd.eu/en/content/right-work-and-employment> accessed 29 May 2019.

¹⁰⁹ ILO Convention No 159, Convention on the Right of Persons with Disabilities (UN CRPD) and other notable international instruments. These instruments are discussed in depth in the next chapter.

¹¹⁰ Helen Meekosha 'Body Battles: Bodies, Gender and Disability' in the *Disability Reader; Social Science Perspectives* edn. (1998) pp.10-12 (Original Cassell, London).

¹¹¹ Anwuli Ofuani, *supra* note 65 at p. 658.

¹¹² *Ibid.*

¹¹³ *Ibid.*

Also, from the employers' perspective, having employees with disabilities as part of the workforce, generally makes good business sense and publicly portrays non-discriminatory business practices.¹¹⁴ As most customers value employers' commitment to inclusion, this will boost positive reputation for the business, improve patronage and thereby increase profit.¹¹⁵ Another business advantage for the employer is that employees with disabilities will best relate with customers with disability and help to advise their employers usefully on ways to better adapt and market their products or services to customers with disabilities.¹¹⁶ Next, research proves that employees with disabilities, including WWDs, are more likely to be loyal to their employers and remain on the job than those without disabilities.¹¹⁷ Having employees stay on the job saves employers the financial burden required to advertise, recruit and train new employees.¹¹⁸ In addition, when highly motivated and talented employees with disabilities are included and retained in an organization's workforce, the business output increases both in quality and quantum.¹¹⁹ Customers become loyal and the business continues to thrive.¹²⁰

1.9 Research methodology

The primary methods for this research are doctrinal and desktop based. The doctrinal approach is directed towards critically assessing the existing legal framework and institutional practices in Nigeria to achieve open employment for PWDs, with particular focus on WWDs. The research also considers the extent to which Nigeria's international and regional labour obligations towards WWDs are fulfilled. An analysis of selected aspects of constitutional, labour, and disability laws in other jurisdictions, including South Africa, the United Kingdom, America, Canada, amongst other jurisdictions, are explored throughout the research with a view to foregrounding best labour practices for WWDs in Nigeria. The named countries were selected from jurisdictions where some

¹¹⁴ ILO 'Employment: The Win-Win of Disability Inclusion' available at <https://www.ilo.org/infostories/en-GB/Stories/Employment/The-win-win-of-disability-inclusion#everybody-gains-from-disability-inclusion> accessed 11 March 2019.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Rubina Ahmed-Haq 'The Untapped Power of Hiring Workers with Disabilities' *CBC News Canada* available at <https://www.cbc.ca/news/canada/the-untapped-power-of-hiring-workers-with-disabilities-1.4859384> accessed 14 April 2019.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ Ibid.

statistical data, case law, legislative provisions and implementation strategies relevant to realizing employment participation for PWDs, and particularly WWDs, could be accessed.

Desktop-based research entails gathering and analysing data from existing sources. The sources referenced in this research are included in the bibliography and in the footnotes of each chapter. Although the right to employment of PWDs falls within the human rights and employment context, which makes it a legal subject, the research will also utilize a broad spectrum of relevant literature from history, economics, sociology, psychology, urban geography, and socio-legal studies to address the challenges faced by WWDs in accessing and retaining employment in Nigeria.

This research references primary sources of law, including statutes, constitutions, case law, international and regional conventions, declarations, guidelines, recommendations and government policies that are aimed towards realizing a workable legal framework for PWDs generally, and particularly WWDs, to access employment. This research further relies on secondary sources, including books, peer-reviewed journal articles, newspaper publications, reports, resolutions, legal commentaries, and other relevant sources both paper and online that directly relate to disability and employment. Owing to the paucity of data, literature and judicial authorities dealing with disability, and particularly gender perspectives of disability in Nigeria, the thesis includes a consideration of relevant literature and case law from other jurisdictions where these can be found.

1.10 Chapter Outline

This thesis comprises eight chapters. A brief description of each chapter is as follows:

The first chapter introduces the research.

Chapter two provides a contextual background of gender discrimination (discrimination against women) and disability discrimination in Nigeria. Interventions targeted towards the promotion of women's rights and the rights of PWDs are also examined.

Chapter three is an overview of the body of literature on the theory of intersectionality. The chapter illustrates how WWDs experience intersectional discrimination of gender and disability which create barriers to the exercise of their right to employment. Low rate of employment participation by WWDs compared to men with disabilities is indicated in some countries, which

is relatable to the intersectional discrimination intersection brought about by gender and disability. The chapter further provides an overview of substantive equality as a valid tool for addressing intersectional discrimination to promote improved employment participation for WWDs.

Chapter four sets out the human-rights framework in international conventions, labour standards, norms, and policies that contain provisions to address the barriers occasioned by the intersectional discrimination of gender and disability. Also, Nigeria's response as a member of the United Nations, towards implementing the human rights standards relevant to improve employment participation for WWDs is examined in this chapter. The chapter also highlights examples of good practices as possible roadmaps for Nigeria in that regard.

Subsequently, in chapter five, the regional instruments that proscribe gender-based disability discrimination and promote employment access for WWDs in African AU member states, including Nigeria, are considered. The chapter also offers a critique of the enforcement mechanism within the African Union and suggests ways to strengthen compliance from the African member states.

Thereafter, in chapter six, the existing laws and policies in Nigeria including constitutional law, employment policies, education policies, gender policy and other related instruments are critically examined, for the purpose of identifying the legislative gaps which contribute to low employment chances for WWDs. The chapter also highlights few exemplary legislations from other jurisdictions.

Chapter seven offers workable recommendations for the promotion of employment participation for WWDs in Nigeria. The recommendations in this chapter are informed by the need to recognize and address the intersection between gender and disability globally and in Nigeria. The chapter identifies that law reform and other measures will promote substantive equality as it relates to achieving equal employment participation for WWDs in Nigeria, in fulfilment of international and regional obligations.

Finally, Chapter eight summarizes and concludes the research. The chapter also identifies areas for future research.

1.11 Conclusion

This chapter provides a synopsis of the thesis by asserting that PWDs in general, face marginalization in all aspects of social integration in Nigeria. More importantly, the chapter shows that WWDs are a more vulnerable and impoverished part of the disability group. This is because the impact of gender and disability places WWDs in a more uniquely disadvantaged position than men with disabilities, especially in developing countries, including Nigeria. Particularly regarding employment, discrimination due to gender and disability manifestly limit equal participation for WWDs than men with disabilities.

The next chapter explores gender-based discrimination and disability discrimination as two distinct forms of inequality in Nigeria, highlighting the employment challenges associated with each type of discrimination.

CHAPTER TWO

GENDER AND DISABILITY DISCRIMINATION IN NIGERIA

2.1 Introduction

On the one hand, gender discrimination refers to the unfair treatment of an individual based on their gender identity.¹ Particularly as it relates to women, gender inequality is a significant issue that persists globally.² As stated in chapter one, in Nigeria, gender discrimination is reinforced by patriarchy, custom, religion and discriminatory laws that limit women from freely exercising their right to education, employment, healthcare, and other aspects of society and development. Disability discrimination on the second hand, occurs when an individual is treated unfairly or differently because of their disability status.³ Disability discrimination is also a significant issue in Nigeria with people with disabilities (PWDs) often experiencing marginalization, human rights abuses, and social exclusion because of disability. On the third hand, employment discrimination occurs when a person is treated less favourably than others due to attributes that are unrelated to such person's qualification or competency to work. The ILO has defined discrimination as “any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity and treatment in employment or occupation”.⁴ Workers and particularly job applicants have the right to be treated equally regardless of gender, disability and any other factors.⁵

This chapter contextualizes gender discrimination and disability discrimination as two distinct yet significant forms of marginalization and exclusion. These concepts are examined separately

¹ Human Rights Careers, ‘What is Gender Discrimination’ available at *What is Gender Discrimination? | Human Rights Careers* accessed on 2 April 2024.

² Oluyemi Theophilus Adeosun and Kayode Ebenezer Owolabi ‘Gender inequality: determinants and outcomes in Nigeria’ (2021) 1(2) *Journal of Business and Socio-economic Development*

³ Australian Human Rights Commission (2012), ‘Know Your Rights: Disability Discrimination’ available at *Know your rights about disability discrimination and harassment (humanrights.gov.au)* accessed on 2 April 2024.

⁴ Article 1(1)(a) of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and Recommendation (No. 111). Article 1(1)(b) adds: “such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies”.

⁵ ILO, Advancing Social Justice, Promoting Decent Work: Business Non-Discrimination and Decent Work, Available at *ILO Helpdesk: Business, non-discrimination and equality | International Labour Organization* accessed on October 4, 2024.

because recent reforms in Nigeria have typically focused on promoting women's rights and disability rights as unique social issues. This chapter will highlight the factors that contribute to discrimination against women and PWDs and the reforms made to enhance and promote gender and disability rights. The first part is an overview of what it means to be a female in Nigeria, the impact on employment and the legislative framework and case law that advance women's rights. The second part addresses disability discrimination in Nigeria and its effects on the employment participation of PWDs. Next, it explores the legislative efforts that have been made to combat disability discrimination in Nigeria.

2.2 Overview of gender discrimination in Nigeria

Women constitute approximately half of the Nigerian population.⁶ As previously mentioned, women in Nigeria face a broad spectrum of discriminatory practices that place them in a subordinate position to men across various domains of society and development.⁷ Consequently, they can be aptly classified as a substantial yet overlooked segment of the Nigerian population.⁸ In general, gender perceptions are deeply rooted in patriarchy.⁹ As defined by the Oxford Dictionaries, patriarchy is a social system in which the father or eldest male is head of the family, and descent is traced only through the male bloodline.¹⁰ In modern times, it is referred to as a system of society or government which is characterized by the dominance of men over women and the perception of men being more entitled to material privileges than women.¹¹ Subjugation and discrimination against women by men within the family is known as private patriarchy, while similar patriarchal behaviours in workplaces and other institutions are referred to as public patriarchy.¹² Gender discrimination is a direct consequence of patriarchy and will persist wherever patriarchal systems are present. In Nigeria, patriarchy often relegates women to second-class

⁶ According to *Statista*, the total population of Nigeria in 2021 was approximately 213.4 million. Out of this number, the total number of females was about 105.57 million while the male population amounted to approximately 107.83 million. *Statista* – 'Total Population in Nigeria from 2011-2021 by Gender' available at *Nigeria: total population by gender 2021 | Statista* accessed on 10 October 2023.

⁷ Okafor Amuche C 'Gender Inequality in Nigeria' (2015) 4(1) *Journal of Research in Arts and Social Sciences* p.75.
⁸ Ibid.

⁹ Kelly Bryan Ovie Ejumudo Ph.D. 'Gender Equality and Women Empowerment in Nigeria: The Desirability and Inevitability of a Pragmatic Approach' (2013) 3(4) *Developing Country Studies* p. 62.

¹⁰ Oxford Learner's Dictionary available at *patriarchy noun - Definition, pictures, pronunciation and usage notes | Oxford Advanced American Dictionary at OxfordLearnersDictionaries.com* accessed on 12 October 2023.

¹¹ Uchendu T.C. *Gender issues and economic productivity in Nigeria* Lagos: Gross Dimensions (2014).

¹² Adisa T.A, Cooke F L and Iwowo V 'Mind your attitude: the impact of patriarchy on women's workplace behaviour' (2020) 25(2) *Career Development International* pp. 146-164.

citizenship, treating them as inferior to men.¹³ Some customary laws and cultural practices such as, widowhood rites, wife inheritance, female disinheritance, female genital mutilation, child marriages, among others, are illustrative of the harmful practices that portray patriarchy and violate the right of Nigerian women and girls.¹⁴ Also in Nigeria and in many parts of the world, the stereotype that women belong in the kitchen is a deeply ingrained and harmful gender stereotype that has persisted for centuries.¹⁵

Tradition and culture in Nigeria have shaped gender relations, embedding patriarchy and male dominance into the fabric of social organization and institutions at every level.¹⁶ For instance, in several communities of Southern Nigeria, women cannot own land except through their male relatives.¹⁷ More often, women are regarded as properties capable of being inherited and as such cannot own property themselves.¹⁸ Particularly among the rural igbo tribe, widows are prime suspects of their husband's death and are therefore subjected to endure all manner of dehumanizing treatment to prove their innocence, including drinking the water used to wash the body of their deceased husbands, head shaving rites, and restriction of movement.¹⁹ Additionally, widows and female children are precluded from inheriting properties.²⁰ Also in the Southern part, the Yoruba tradition considers male children to be superior to females regardless of age,²¹ so women are often chided as being lazy and good-for-nothing when they birth a female child, whereas they get celebrated for birthing a male child.²²

¹³ Ejike C Okoroafor and Iwueke Obinna Chukwuma 'Gender Inequality and Women Economic Development in Nigeria' (2019) 2(1) *International Journal of Novel Researches in Humanities, Social Sciences and Management* p.48; Makama, Godiya Allanana 'Patriarchy and Gender Inequality in Nigeria: The Way Forward' (June 2013) 9(17) *European Scientific Journal* pp. 115-44.

¹⁴ Ifemeje S C, Umejiaku N 'Discriminatory cultural practices and women's rights among the Igbos of south-east Nigeria: a critique' (2014) 25 *Journal of Law, Policy and Globalization* p. 18.

¹⁵ Ibid.

¹⁶ Makama, supra n13.

¹⁷ Olutunji Oyelade 'Women's Right in Africa: Myth or reality' (2006) 9(1) *University of Benin Law Journal* p. 100.

¹⁸ Justice Otabor Olubor 'The Legal Rights of the Vulnerable Groups vis-a-vis Customary Practices' *A paper delivered by Justice Olubor, President Customary Court of Appeal, Edo State at the Refresher Course for Judges and Kadis* from 23-27 March 2009.

¹⁹ Durojaye E 'Woman, but not human': widowhood practices and human rights violations in Nigeria (2013) 27(2) *International Journal of Law, Policy and the Family* p. 176-96.

²⁰ Ibid.

²¹ Familusi O.O, Ph.D. 'African Culture and the Status of Women: The Yoruba Example' (March 2012) 5(1) *The Journal of Pan African Studies* p. 301.

²² Ibid p. 300.

In Northern Nigeria, young girls are often coerced into early marriage against their will, as part of the cultural norm because of their parents' fear of pregnancy outside of marriage.²³ UNICEF reports that 15.7 per cent of girls in Nigeria are married before the age of 15 years and 43.4 per cent are married before the age of 18 years compared to 3.2 per cent of boys.²⁴ The girl children in their early years, about 12 or even less, are given out in marriage to friends, benefactors, strangers, visitors, elders, cleric etc.²⁵ Child marriage is a harmful practice that strips girls of their right to choose if, when, and whom to marry, as well as the kind of family they wish to build. It also has severe consequences on their reproductive health, mental well-being, and ultimately hinders the full realization of their human rights.²⁶ Early marriage can also expose the girl-child to severe forms of physical, mental and psychological abuse.²⁷

Apart from cultural and traditional dimensions, religious beliefs and practices often endorse patriarchy and contribute to discriminatory practices against women in Nigeria.²⁸ Generally, individuals are indoctrinated to imbibe views that depict men as naturally superior to women, often framing this as a divine order from God.²⁹ For example, in the Southern part of Nigeria, where Christianity is predominantly practiced, it is believed as written in the Holy Bible that the woman (Eve) was created from the man's (Adam's) rib to serve as his helper.³⁰ Several verses of the Bible admonish females to be subservient to men, emphasizing men's authority as

²³ Alabi T., Bahah M. and Alabi S.O. 'The Girl-Child: A Sociological View on the Problems of Girl-child Education in Nigeria' (2013) 3(2) *Global Research Journal of Education* 3(2) pp.57–65. Nigeria ranks third in the global prevalence of girl-child marriages, according to UNICEF Report 2024. See Nigeria Takes Bold Steps to End Child Marriage and Protect the Rights of Children: Stakeholders commit to End Child Marriage in Nigeria (16 February 2024) available at *Nigeria Takes Bold Steps to End Child Marriage and Protect the Rights of Children (unicef.org)* accessed on 22 May 2024.

²⁴ UNICEF Data Warehouse (2020) available at https://data.unicef.org/resources/data_explorer/unicef_ff?ag=UNICEF&df=GLOBAL_DATAFLOW&ver=1.0&dq=.PT_F_20-24_MRD_U15+PT_M_20-24_MRD_U18+PT_F_20-24_MRD_U18+PT_M_15-19_MRD+PT_F_15-19_MRD.&startPeriod=2016&endPeriod=2020 accessed 5 June 2020.

²⁵ Ibid.

²⁶ Yoosefi Lebni J, Solhi M, Ebadi Fard Azar F, Khalajabadi Farahani F, Irandoost SF. Exploring the Consequences of Early Marriage: A Conventional Content Analysis. Inquiry (Jan-Dec 2023) available at doi: 10.1177/00469580231159963. PMID: 37073489; PMCID: PMC10123900 accessed on 15 June 2024.

²⁷ Ibid.

²⁸ Onyeka C. Okongwu 'Are laws the appropriate solution: The need to adopt non-policy measures in aid of the implementation of sex discrimination laws in Nigeria' (March 2021) 21(1) *International Journal on Discrimination and the Law* p. 26-46. Clifford Meesua Sibani 'Gender Inequality and its Challenge to Women Development in Nigeria: The Religious Approach' (2017) 18(2) *Unizik Journal of Arts and Humanity* 442-439.

²⁹ Ibid.

³⁰ Genesis 2:21-23 of the Holy Bible.

“head” over women.³¹ Consequently, among Christians, boys are raised to believe that God has ordained them to be the heads of their households.³²

The high rate of child marriages in Northern Nigeria is attributable to the Islamic religious teachings that encourage girls to get married before or upon reaching puberty.³³ In Islam, women are not allowed into the mosque or to touch the Qur’an during menstruation or when pregnant.³⁴ Additionally, Islam allows women to inherit from their deceased relative but their share must be half of the inheritance share available to male relatives.³⁵ This law of inheritance from the Qur’an and several other related practices clearly create a distinction between men and women, portraying that they are not the same and can never be the same.³⁶

2.3 Gender perspectives on women's employment in Nigeria

As previously discussed, gender discrimination is widespread in Nigeria, driven by patriarchal norms, customary practices, and religious beliefs. Therefore, women face unequal treatment across all sectors of the economy, including in employment. Research shows that women globally, including in Nigeria, have the added responsibility to balance work with family and caregiving duties, leading to their dominance in the unpaid labour sector, with rates twice as high as those for men.³⁷ Girls’ entry into the workforce in Nigeria is often constrained by early marriage, starting a family, among other factors. According to a 2016 United Nations Development Report (UNDP), female participation in Nigeria’s labour market is only 48.4 per cent compared to 64.0 per cent for men.³⁸ The British Council further acknowledges that men significantly dominate the employment

³¹ The following biblical verses illustrate the role religion plays in supporting gender inequality: “*The Head of every woman is the man, and the Head of every man is Christ and the Head of Christ is God*” (I Corinthians 11:3); “*Let the woman learn to be in silence with all subjection. But I suffer not a woman to teach nor to usurp authority over the men, but to be in silence. For Adam, was not deceived, but the woman being deceived was in the transgression. Notwithstanding, she shall be saved in childbearing if they continue in faith and charity and holiness with sobriety*” (1 Timothy 2:11-15), amongst others.

³² Ibid. (insert a title here)

³³ Fayokun K O ‘Legality of child marriage in Nigeria and inhibitions against realisation of education rights’ (2015) 12 *US-China Law Review* p. 812.

³⁴ Clifford Meesua Sibani, *supra* note 21.

³⁵ Sajo, Abdullahi Muhammad ‘An Islamic Perspective on Gender Equality Controversy in Nigeria’ (2019) 15(6) *African Scholar Journal of Humanities and Social Sciences (JHSS-6)* p.27

³⁶ Ibid.

³⁷ Osunde O ‘Labour market, demographic patterns and income inequality in Nigeria’ (2015) 6(3) *Journal of Sociology and Social Anthropology*, pp. 341-354.

³⁸ United Nations Development Programme (UNDP) (2016a) Human development report 2016: Human development for everyone (United Nations Development Programme 1 UN Plaza) available at *Human Development Report 2016: Human Development for Everyone (undp.org)* accessed on 22 September 2023.

sector, among other sectors of the economy.³⁹ Research proves that labour market demand for women is generally lower than it is for men with more men being more likely to be hired than women.⁴⁰ In addition, employers may exhibit a subjective preference for male workers and often pay women less than men, despite equal levels of productivity.⁴¹ The World Bank reports that 49 per cent out of the 70 per cent who live below the poverty line are women, as indicated by the Federal Office of Statistics.⁴² Educational qualification increases the employability of women in Nigeria.⁴³ Additionally, in 2018, The Leonard Cheshire report revealed that the literacy rate for females in Nigeria is 51 per cent compared to 74 per cent for males.⁴⁴ Gender disparity in education widens significantly from age 17 as girls, particularly those from low-income families, get married, have children, and become economically inactive.⁴⁵ The gender imbalance in educational attainment and qualifications between males and females is reflected in the concentration of women in certain career paths while limiting their significant participation in others.⁴⁶ For instance, typical professions for women include nursing and midwifery, teaching in kindergartens and primary schools, and working as secretaries.⁴⁷ In contrast, professions more commonly associated with men include engineering, banking, veterinary medicine, and university lecturing.⁴⁸

Some of the discriminatory practices against women and girls have been formalized into law in Nigeria significantly affecting women's rights and perpetuating gender inequality. The

³⁹ British Council Gender in Nigeria report 2012: Improving the lives of girls and women in Nigeria (2nd ed.) available at <http://www.dfid.gov.uk/Documents/publications1/Gender-Nigeria2012.pdf> accessed on 22 September 2023. The report mentions that men dominate the following sectors: politics, education, science and technology, engineering and employment.

⁴⁰ Osunde, O *ibid*.

⁴¹ Adejugbe Adeyinka and Adejugbe Adedolapo 'Women and Discrimination in the Workplace: A Nigerian Perspective' (20 August 2018) p.12 available

at <https://ssrn.com/abstract=3244971> or <http://dx.doi.org/10.2139/ssrn.3244971> accessed 20 June 2020.

⁴² Federal Office of Statistics (2015) *Poverty Profile for Nigeria: 1990 – 2010*. Abuja: Nigeria Federal Ministry of Finance.

⁴³ Olowa O and Adeoti A 'Effect of Education Status of Women on Their Labour Market Participation in Rural Nigeria' (2014) 4(1) *American Journal of Economics* pp.72-81.

⁴⁴ Disability Data Review: A collation and analysis of disability data from 40 countries' (Leonard Cheshire Report funded by UK Aid) p. 47 available at disabilitydataportal.com/fileadmin/uploads/lcdp/Documents/report-web_version.pdf accessed on 7 September 2023. The statistics is for adults from age 25 and above.

⁴⁵ World Bank 'More, and more productive, jobs for Nigeria: a profile of work and workers' (2015) World Bank Group Section xvii available at <http://documents.worldbank.org/curated/en/650371467987906739/More-and-more-productive-jobs-for-Nigeria-a-profile-of-work-and-workers> accessed on 23 September 2023.

⁴⁶ *Ibid*.

⁴⁷ *Ibid*.

⁴⁸ *Ibid*.

following highlights some of the problematic provisions within the Nigerian Constitution, the Marriage Act, the Labour Act, the Criminal Code, the Penal Code, and the Police Act.

First, section 26(2) (a) of the Constitution of the Federal Republic of Nigeria 2004, confers citizenship on ‘any woman who is or has been married to a citizen of Nigeria’. This means that a Nigerian man can confer citizenship on a foreign woman by marriage, but there is no such citizenship privilege for foreign men who marry Nigerian women. This constitutional provision is supportive of patriarchy and exemplifies discrimination against women in Nigeria. Despite academic and legislative proposals for constitutional amendment of this section to apply to “any person” married to a Nigerian, it remains valid until such time as it is amended.⁴⁹ Another gender discriminatory provision is found in section 18 of the Marriage Act⁵⁰ which requires the written consent of the father of either party to an intended marriage if he or she is below 21 years of age. The Act stipulates that the consent of the mother will only be asked if the father is dead or of unsound mind or absent from Nigeria. While this requirement is intended to protect minors, it arguably reinforces gender inequality by imposing additional burdens on women who wish to marry. It perpetuates traditional gender roles and assumes that women require male consent, even as adults. Additionally, the Labour Act 2004⁵¹ in section 55 proscribes women from employment in any form of night work,⁵² except for nurses, while section 56 of the Act compounds the problem by prohibiting women from working in underground mines unless in health services, management or training positions. Penalties are prescribed against any employer who contravenes the restrictions in sections 55 and 56.⁵³ These provisions essentially promote discrimination in the workspace by reserving night work only for the men. It is discriminatory and an infringement of human right to exclude women who desire and have the capability to work at night from engaging in such employment.

⁴⁹ Iyabode Ogunniran ‘Gender Issues and the Nigerian Constitution: A Ray of Light, or Twilight on the Horizon?’ (2015) Vol. 3 No.1 *UNISA Press Journals* p.121; *Vayola Sears & Anor v. Attorney General of the Federation & Anor* (Unreported) Suit No: FHC/L/CS/547/2003 discussed in 2.5 below.

⁵⁰ The Marriage Act is the primary legislation that provides for the celebration of marriage in Nigeria. It was enacted on 31 December 1914 and has undergone several amendments since then. The Act stipulates the requirements and conditions for a valid marriage in Nigeria.

⁵¹ Labour Act Cap L1 Laws of the Federation of Nigeria 2004.

⁵² Section 55(3) (a) and (b) provide a definition of what "night" means: (a) as respects industrial undertakings, a period of at least eleven (or, where an order under subsection (4) below applies, ten) consecutive hours, including the interval between ten o'clock in the evening and five o'clock in the morning; and (b) as respect agricultural undertakings, a period of at least nine consecutive hours including the interval between nine o'clock in the evening and four o'clock in the morning.

⁵³ Section 58 of the Labour Act, *supra*.

The status of women is also downgraded by some provisions of the Nigerian Criminal Code,⁵⁴ Penal Code⁵⁵ and Police Act.⁵⁶ For instance, the provisions of the Criminal Code which is applicable in Southern Nigeria considers assault of a woman as a misdemeanour punishable with imprisonment for two years while assault against a man is deemed a felony which attracts a three-year imprisonment term.⁵⁷ The disparity in sentencing under the Criminal code evidently contravenes universal principle of gender equality. Another discriminatory provision can be found in Section 55 of the Penal Code, which applies to Northern Nigeria and permits men to physically discipline their wives provided the beating does not result in "grievous" bodily harm.⁵⁸ Such a provision violates international human rights standards, particularly those concerning gender equality and the protection of women from violence. Apart from being discriminatory, the provision also encourages brutalizing women and domestic violence.

Next, the Nigerian Police Force has been criticized for including gender-discriminatory provisions in its regulations. Section 127 of the Police Act not only prevents married women from enlisting in the Police Force but also provides that a pregnant unmarried policewoman is automatically discharged from the police force.⁵⁹ She can only be reinstated with the approval of the Inspector General of Police.⁶⁰ The Police Act also limits women to secretarial duties⁶¹ and obligates them to officially obtain permission to get married.⁶² Pursuant to the provisions of the Police Act, women are prohibited from marrying until they have completed three years of service, and their intended spouses are required to undergo a criminal record check.⁶³ There are no comparable provisions in the Police Act that impose similar restrictions on police men. These provisions disproportionately affect women and contribute to systemic inequality within the police force.

⁵⁴ Criminal Code Act Chapter 77 Laws of The Federation of Nigeria 1990 (Criminal Code Act).

⁵⁵ Penal Code Act, Federal Republic of Nigeria Cap 53 LFN 1990.

⁵⁶ Police Act Cap P19 LFN 2004.

⁵⁷ Section 353 and 360 of the Criminal Code Act.

⁵⁸ The word "grievous" suggests that men are allowed to inflict injuries on their wives through beating provided it is not grievous.

⁵⁹ Section 127 of the Nigerian Police Force (Establishment) Act 2020 formerly Police Act Cap P19 L. F. N. 2004. Nigerian courts have declared this section as unconstitutional and in violation of the ACHPRA as discussed in 2.5 below in the case of *Omolola Olajide v/ The Nigerian Police Force, Inspector General of Police, & The Police Service Commission* (unreported) NICN/AK/14/2021.

⁶⁰ Ibid.

⁶¹ Section 122 *ibid*.

⁶² Section 124 of the Police Act, *ibid*.

⁶³ Ibid.

The next section analyzes the government's efforts, through legislation, to achieve gender equality and uphold women's rights in Nigeria.

2.4 Legislative efforts and interventions towards protection of women's rights in Nigeria

Advocacy initiatives by both the government and civil society have been vital in promoting equal opportunities for women and girls in Nigeria.⁶⁴ This section highlights the existing legislation in Nigeria that includes provisions for promoting gender equality. In addition to the current laws, it will also analyze pending bills aimed at dismantling laws, customary norms, and practices that are discriminatory towards women. The laws and bills discussed in the section include: the Constitution of the Federal Republic of Nigeria 2004, Convention on the Elimination of Discrimination Against Women 1985, the Violence Against Persons Prohibition Act 2015, Sexual Offences Act 2013, Gender and Equal Opportunities Bill 2003, The Child Rights Act 2003, The Labour Bill 2016 and the Police Bill 2020.

(i) Constitution of the Federal Republic of Nigeria

Section 17(1)(2)(a) of the Constitution of the Federal Republic of Nigeria (the Constitution) promotes the “ideals of freedom, equality and justice” and “equality of rights, obligations and opportunities before the law”. Additionally, section 34(1)(a) of the constitution provides that every individual has a right to dignity of their person and as such shall not be subject to torture, inhuman or degrading treatment amongst others.⁶⁵ In particular, section 42 of the Nigerian Constitution prohibits discrimination on several grounds including based on “sex”.⁶⁶ The wording of section 42 provides as follows:

- (1) A citizen of Nigeria of a particular community, ethnic group, place of origin, *sex*,⁶⁷ religion or political opinion shall not, by reason only that he is such a person:-
 - (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which

⁶⁴ Abendroth A K, Melzer, S., Kalev, A. and Tomaskovic-Devey, D. ‘Women at work: women's access to power and the gender earnings gap’ (2017) 70(1) *ILR Review* pp. 190-222.

⁶⁵ Section 34 of the Constitution of the Federal Republic of Nigeria outlines the rights related to the dignity of human persons. Here are the key provisions:

- 1. Dignity and Respect: Every individual is entitled to respect for the dignity of their person. Accordingly:
 - (a) No person shall be subject to torture or inhuman or degrading treatment.
 - (b) No person shall be held in slavery or servitude.
 - (c) No person shall be required to perform forced or compulsory labour.

⁶⁶ Section 42 of the Constitution is extensively discussed in chapter six of this thesis.

⁶⁷ Emphasis mine.

citizens of Nigeria of other communities, ethnic groups, places of origin, *sex*,⁶⁸ religions or political opinions are not made subject; or

(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, *sex*, religious or political opinions.

(2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

The excerpt above indicates that every citizen has equal rights and opportunities regardless of "sex," among other grounds. Therefore, the discriminatory practices against women in Nigeria violate this constitutional provision and should be rectified to align with its intended purpose.

(ii) Child Rights Act 2003

In 2003, Nigeria passed the Child Rights Act (CRA) to domesticate the Convention on the Rights of the Child.⁶⁹ The CRA prohibits child marriages, betrothal, employment of children as domestic servants among others.⁷⁰ The minimum marriageable age set out by the CRA is 18 years.⁷¹ The CRA primarily enjoins individuals, public and private bodies to ensure that the best interest of the child is the primary consideration in all actions regarding the child.⁷² It also entrenches fundamental rights for the child, including promoting the dignity of the child and guaranteeing access to free and compulsory basic education.⁷³ Commendably, out of the 36 states in Nigeria, 31 states have adopted the Act with five predominantly Muslim northern states refusing to ratify it.⁷⁴ The Supreme Council of Sharia had protested against the CRA on the grounds that it is against the Muslim faith and culture, and that it is unacceptable for a law to seek to establish equal inheritance

⁶⁸ Emphasis mine.

⁶⁹ Child Rights Act No 26 2003.

⁷⁰ Section 21-23 of the Child Rights Act 2003 criminalizes child marriage and betrothal. The sections provide: 21. Prohibition of child marriage: No person under the age of 18 years is capable of contracting a valid marriage, and accordingly a marriage so contracted is null and void and of no effect whatsoever. 22. Prohibition of child betrothal: (1) No parent, guardian or any other person shall betroth a child to any person. (2) A betrothal in contravention of subsection (1) of this section is null and void. 23. Punishment for child marriage and betrothal: A person - (a) who marries a child; or (b) to whom a child is betrothed; or (c) who promotes the marriage of a child; or (d) who betroths a child, commits an offence and is liable on conviction to a fine of N500,000; or imprisonment for a term of five years or to both such fine and imprisonment.

⁷¹ Particularly section 21 *ibid*.

⁷² Section 2, CRA.

⁷³ Section 15 of the CRA promotes education for the child.

⁷⁴ The five states are Adamawa, Bauchi, Gombe, Kano and Zamfara. Ifedayo Ogunyemi 'Five states yet to domesticate Child Rights Act in Nigeria — UNICEF' Nigerian Tribune, 8 August 2022 available at *Five states yet to domesticate Child Rights Act in Nigeria — UNICEF - Tribune Online (tribuneonline.com)* accessed on 6 October 2023.

rights between boys and girls and to accord legitimate and illegitimate children the same rights.⁷⁵ These Northern states oppose the prohibition of child marriage outlined in the CRA, arguing that it contradicts Sharia law and long-standing Islamic practices. Implementation of the CRA in states that have domesticated it remains challenging due to a lack of awareness, insufficient funding, and conflicts with the people's religious beliefs, cultural values, and customs.⁷⁶

(iii) African Charter on Human and Peoples' Ratification and Enforcement Act 2004

The African Charter on Human and People's Rights⁷⁷ (African Charter) is a regional human rights instrument that is intended to promote and protect human rights and basic freedoms in the African continent.⁷⁸ The African Charter was ratified and domesticated by the African Charter on Human and Peoples' Rights (Enforcement and Ratification) Act 1983 (ACHPRA) in Nigeria.⁷⁹ Article 2 of the ACHPRA prohibits discrimination of the individual on the basis of "distinctions of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status". Pursuant to Article 3 of the ACHPRA, member states are urged to take legislative, institutional and other positive measures to combat discrimination against women. Similar to the CRA, Article 21 of the African Charter states that "Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years". The African Charter has had direct and positive impact on women's rights, particularly through its Protocol – the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol) which safeguards women's right to economic empowerment, dignity, reproductive health, access to justice, equal rights to land and property.⁸⁰ The Maputo Protocol complements the equality provisions enshrined in the African Charter to enhance women's protection and urges state parties to enact laws and establish institutions that promote the rights of women and girls in all areas of life, including their right to employment, as a step toward

⁷⁵ Nzarga F D 'Impediments to the domestication of Nigeria Child Rights Act by the states (2016)6 *Research on Humanities and Social Sciences* 123-30.

⁷⁶ Okoye U O 'Knowledge and awareness of the child's rights act among residents of a university town in Enugu State, Nigeria' (2011) 2(10) *Educational Research* pp. 1595–601.

⁷⁷ African Charter on Human and Peoples' Rights was adopted in Kenya, Nairobi in June 1981 and entered into force on 21 October 1986. All 53 states have adopted the African Charter.

⁷⁸ The African Charter was adopted by the AU on 01 June 1981 and came into force on 21 October 1986.

⁷⁹ African Charter on Human and Peoples' Rights (Enforcement and Ratification) Act 1983 Cap A9 LFN 2004.

⁸⁰ Frans Viljeon *International Human Rights in Africa* (2nd edn,) Oxford University Press 2012.

achieving gender equality in Africa.⁸¹ Although Nigeria has ratified the Maputo Protocol, it remains unenforceable in domestic courts because it has not been incorporated into national law, as required by the country's dualist legal system.

Courts in Nigeria have relied on the ACHPRA provisions to nullify customs, practices and laws that discriminate against women as will be highlighted through case law later in this chapter.

(iv) Violence against Persons (Prohibition) Act 2015

The enactment of Violence against Persons (Prohibition) Act (VAPP Act) is a step toward the right direction to promote rights for women in Nigeria.⁸² The VAPP Act covers most forms of violence women face, such as physical, psychological, sexual and socio-economic violence, and abolishes practices such as female circumcision,⁸³ widowhood rites,⁸⁴ domestic violence,⁸⁵ abandonment,⁸⁶ emotional, verbal and economic abuse.⁸⁷ The VAPP Act addresses not only direct acts of spousal violence but also punishes coercive control, including deprivation, isolation, and emotional abuse.⁸⁸ Under the VAPP Act, victims of domestic violence are entitled to obtain protection orders, providing a unique and effective deterrent against domestic violence in Nigeria.⁸⁹ However, only the High Court of the Federal Capital Territory (Abuja) has the jurisdiction to issue protection orders pursuant to the VAPP Act.⁹⁰ The protection orders are enforceable throughout Nigeria.⁹¹ Two states in Nigeria, namely: Bauchi and Taraba have committed towards the implementation of the VAPP Act provisions in their respective states.⁹²

(v) Gender and Equal Opportunities Bill 2016

To promote gender equality and non-discrimination against women, the Gender and Equal Opportunities (GEO) Bill was introduced in 2016. The GEO Bill contains provisions that deal with prohibition of discrimination, violence, adoption of temporal measures to eliminate

⁸¹ Generally, Article 1 of the Maputo Protocol. The Maputo Protocol is examined in detail in 5.3 of Chapter 5.

⁸² The VAPPA was enacted by the National Assembly of Nigeria and came into force on 23 May 2015.

⁸³ Section 6 of the VAPPA criminalizes female circumcision with penalties.

⁸⁴ Section 15, *ibid*

⁸⁵ Section 42, *ibid*.

⁸⁶ Section 16, *ibid*

⁸⁷ Section 12 *ibid*

⁸⁸ Solomon Ukhuegbe and Anthony Ewere 'Gender-Based Violence/Social-Cultural Discrimination in Nigeria and the fate of the Gender and Equal Opportunities Bill 2015' (2016) *A Paper presented at the International Conference on Strengthening Policy Implementation in a Contemporary World* at the University of Benin, Nigeria.

⁸⁹ Part II of the VAPP Act 2015.

⁹⁰ Solomon Ukhuegbe 'Recent Legislation against Sexual and Gender-Based Violence in Nigeria' (2015) 16(1) *University of Benin Law Journal* p. 304.

⁹¹ *Ibid* p.113.

⁹² *Ibid*.

discrimination in political and public life, establishment of an Equal Opportunities Commission and the enforcement of the National Gender Policy amongst other innovative features.⁹³ The provisions of the bill are aimed to ensure that women and girls are able to “exercise their right to be free from discrimination and be able to enjoy their rights to education, healthcare and to own property without barriers and exclusions because of their gender”.⁹⁴ The Gender and Equal Opportunities (GEO) Bill has faced significant opposition and has yet to be passed into law in Nigeria. A detailed examination of the provisions of the GEO Bill is contained in Chapter six of the thesis.

**(vi) Convention on the Elimination of all forms of Discrimination against Women
Bill 2007**

The Convention on the Elimination of all forms of Discrimination against Women (CEDAW) is a bill of rights for women.⁹⁵ The provisions of CEDAW promote civil and legal rights for women, protecting them against cultural stereotypes, customs, and norms that hinder their progress and advancement.⁹⁶ CEDAW is also aimed towards realizing equality between men and women in all aspects of society and development. Nigeria has signed and ratified CEDAW and its optional protocol as part of efforts to promote women’s rights in the country.⁹⁷ From time to time, the Nigerian government has established panels to align existing domestic laws with the provisions of the CEDAW.⁹⁸ In 2007, a CEDAW Bill was introduced before the National Assembly, but its passage into law failed due to vehement opposition by the majority lawmakers from the Northern states of Nigeria, “citing socio-cultural and Islamic concerns”.⁹⁹ Despite the ratification of CEDAW, the impact of the convention in Nigeria is minimal because it has no force of law in

⁹³ For example, section 4(1)(b)(i) of the GEO Bill states that ‘in the case of political and public sphere, that a minimum of 35 per cent of all offices, positions, or appointments is reserved for women’.

⁹⁴ Amnesty International Nigeria ‘Nigeria: Help end discrimination by passing Gender and Equal Opportunity Bill’ (7 March 2017) available at *Nigeria: Help end discrimination by passing Gender and Equal Opportunity bill* - Amnesty International accessed 11 July 2018.

⁹⁵ UN Women, “United Nations Entity for Gender Equality and the Empowerment of Women: Convention on the Elimination of All forms of Discrimination against Women” available at *Text of the Convention on the Elimination of All Forms of Discrimination against Women (un.org)* accessed on 27 May 2024.

⁹⁶ Onyeka Okongwu, *supra* note 16.

⁹⁷ Nigeria signed the CEDAW on 23 April 1984 and ratified it on 13 June 1985 without any reservations.

⁹⁸ *Ibid.*

⁹⁹ Chinedu Asadu, ‘Nigerian Law Makers Reject Bill Seeking Gender Equality’ (AP News, 16 December 2021) available at *Nigerian lawmakers reject bill seeking gender equality | AP News* accessed on 27 May 2024. The Bill failed because there was a strong opposition to it by some lawmakers who believed it was anti-God, anti-family and as a foreign imposition. It was believed to encourage abortion and sexual indulgence. Imam Ayesha and Adebanye Akinrimisi ‘*Adopting Women’s Human Rights Legislation in Nigeria: A Synthesis Analysis and Report*’ (2010) Nigeria: InfoVision Limited.

Nigeria due to non-domestication.¹⁰⁰ As stated in the previous chapter, Nigeria operates a dualist system that requires ratified treaties to be re-enacted into law by the National Assembly pursuant to Section 12(1) of the Constitution of the Federal Republic of Nigeria through a legislative process called ‘domestication’.¹⁰¹ CEDAW has been criticized as not being adaptable to the peculiarities of the Nigerian society because it was drafted based on western values¹⁰² however some other authors believe that proper domestication of CEDAW will promote women’s rights and improve their overall participation in all aspects of society.¹⁰³ In societies with varying levels of economic development and cultural backgrounds, "temporary special measures," such as incentives and quotas, have proven to be particularly effective in enhancing women's participation in politics, decision-making roles, and the economy generally.¹⁰⁴

(vii) Sexual Offences Bill 2015

The Sexual Offences Bill was introduced and sponsored in the National Assembly of Nigeria by a female legislator.¹⁰⁵ This Bill is influenced by the Kenyan Sexual Offences Act,¹⁰⁶ which in turn is based on the Sexual Offences Act 2003 of the United Kingdom (UK).¹⁰⁷ The Bill introduced some additional sexual offences that are not contained in the Criminal and Penal Codes such as child pornography, incest, indecent exposure, deliberate transmission of HIV or other life threatening sexually transmitted diseases, gang rape, emerging issues like revenge porn and sexual violence in institutions and care facilities.¹⁰⁸ It also contains provisions that proscribe stalking, cultural and

¹⁰⁰ Eghosa Ekhatior ‘Protection and Promotion of Women’s Rights in Nigeria: Constraints and Prospects’ in Michael Addaney (ed) *Women and Minority Rights Law: African Approaches and Perspectives to Inclusive Development* (Eleven International Publishing, Netherlands 2019) p. 17.

¹⁰¹ Section 12(1) provides: “No treaty between the Federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly”.

¹⁰² Akiyode-Afolabi A, Amadi S ‘Examination of the Provisions of the Women’s Protocol to the African Charter and its Relationship to the CEDAW Convention as well as the Interpretation and Implementation of the Protocol in other African Countries in Adopting Women’s Human Legislation in Nigeria’ (ed.) Nigeria 2008 *InfoVision Limited*.

¹⁰³ Attu Vera Felicitas ‘The Impact Analysis of the Convention on The Eradication of All Forms of Discrimination Against Women (CEDAW) Treaty on Women Participation In Nigerian Politics, 2011 -2020 (2022) Vol 3. No 2 *Zamfara Journal of Politics and Development*, p.62. The Sexual Offences Bill is available at <https://www.aneej.org/wp-content/uploads/2016/07/Senator-Chris-Anyanwu-Bill.pdf> accessed on 3 July 2025.

¹⁰⁴ Feride Acar, ‘Recent Key Trends and Issues in the Implementation of CEDAW’ in *Gender and human Rights in the Commonwealth* p.16 available at [9405 \(thecommonwealth-ilibrary.org\)](https://thecommonwealth-ilibrary.org) accessed on 14 September 2024.

¹⁰⁵ Senator Chris Anyawu introduced and sponsored the Sexual Offences Bill. Eghosa Ekhatior, *Women and Minority Rights Law: African Approaches and Perspectives to Inclusive Development* Eleven International Publishing, Netherlands 2019, pp. 17-35.

¹⁰⁶ Kenyan Sexual Offences Act, No. 3 of 2006

¹⁰⁷ UK Sexual Offences Act 2003, c. 42. Omoba Osinuga ‘Nigeria's Sexual Offences Bill 2013, Matters Arising’ (2015)3 available at <https://ssrn.com/abstract=2634134> accessed 11 July 2018.

¹⁰⁸ Section 15. Akiyode-Afolabi supra note 103. The old offences are still recognized under the Criminal and Penal Codes.

religious practices that are discriminatory against women, including sexual harassment.¹⁰⁹ The Sexual Offences Bill repeals the sexual assault provisions of the Criminal Code Act and stipulates life imprisonment for any individual convicted of raping or having sexual intercourse with minors below 18 years.¹¹⁰ Furthermore, the Bill also provides for the establishment of a national sex offenders register, outlines procedures for victim protection, and ensures access to medical, legal, and psychological support services.¹¹¹ The Sexual Offences Bill was formally approved by the Nigerian Senate in 2015 after extensive reviews and debates.¹¹² However, it is yet to be signed into law, as some of its provisions remain under consideration by the House of Representatives.¹¹³ The National Assembly has opted not to enact the bill into law by refraining from overriding the absence of Presidential assent.¹¹⁴

(viii) Labour Act (Amendment) Bill 2016

The bill aims to repeal certain provisions of the Labour Act 2004, which include clauses that hinder employment opportunities for women in Nigeria.¹¹⁵ Some of the offending provisions of the Labour Act which the proposed bill seeks to delete include: Section 55 which prohibits women from engaging in night work; Section 56 which stipulates that ‘no woman shall be employed on underground work in any mine’. The Labour (Amendment) Bill also seeks to delete section 57 and 58 of the Labour Act as described in the previous section. The bill also seeks to mandate the compulsory registration of all foreign employers of labour in Nigeria and update provisions related to fines, which have become outdated. As of 2016, the bill successfully passed through the first

¹⁰⁹ Ekhaton, supra note 105.

¹¹⁰ Omoba Osinuga, supra note 107. Section 7(1)(2)(3)(4) of the Sexual Offences Bill states as follows:

7(1) A person who commits an act which causes penetration with a child is guilty of an offence called defilement.

(2) A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.

(3) A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for life.

(4) A person who commits an offence of defilement with a child between the age of sixteen and eighteen years old is liable upon conviction to imprisonment for life.

A proper interpretation of the above-mentioned subsections, the law uniformly treats sexual activity with minors under 18, punishable by life imprisonment.

¹¹¹ Section 39 *ibid*

¹¹² Mazi Momoh Jimoh and Bridget Chiedu Onochie ‘Senate dumps own rules, passes 46 bills in 10 mins’ (*The Guardian*, 4 June 2015) available at https://guardian.ng/lead-story/senate-dumps-own-rules-passes-46-bills-in-10-mins/?utm_source=chatgpt.com#google_vignette accessed on 6 July 2025.

¹¹³ Gift Chapiodekina, Reps move to extend time limit for prosecution of sexual offence (*Vanguard*, 6 January 2025) available at https://www.vanguardngr.com/2025/01/rep-s-move-to-extend-time-limit-for-prosecution-of-sexual-offences/#google_vignette accessed on July 3 2025.

¹¹⁴ Omoba Osinuga, supra note 107.

¹¹⁵ The bill was introduced on 9 March 2016.

and second reading stages. The bill was then forwarded to the relevant committee – the House Committee on Labour, Employment and Productivity for consideration.¹¹⁶ Currently, there have been no recent updates or developments regarding the progress of the bill. This bill is a welcome advancement and should be passed into law promptly to enhance protections for women. Its provisions aim to allow women to fully exercise their economic rights and engage in any occupation of their choosing without gender-based restrictions.

In addition to the government's legislative efforts to promote and protect women's rights, the judiciary in Nigeria has made significant strides in advancing gender equality. The following section will explore key judicial interventions in this regard.

2.5 Case law interventions

The Nigerian courts have made pronouncements on the legality of some discriminatory customary and religious laws to deter existing inequalities related to women relying particularly on the Nigerian Constitution and the common law repugnancy doctrine.¹¹⁷ For instance, in the case of *Muojekwu v Ejikeme*,¹¹⁸ the Nigerian Court of Appeal declared as inconsistent with the doctrine of equity and against the Nigerian Constitution, the “*Oli-Ekpe*” custom that allowed the nephew of the deceased to inherit property to the exclusion of the biological daughter of the deceased. Similar decision was reached by the Supreme Court of Nigeria in the case of *Onyibor Anekwe & Anor v Mrs Maria Nweke*,¹¹⁹ where a widow was disinherited on grounds that she did not bear the deceased a male child. Here, the Supreme Court declared that the custom of the Awka people (in Anambra state) which denied a woman of her rights to her deceased husband's or father's property was “barbaric and takes the Awka community to the era of cave man. It is repugnant to natural justice, equity and good conscience and ought to be abolished”.¹²⁰ In the same case, the presiding judge – Justice Ogunbiyi also described the custom as “...punitive, uncivilised and only intended to protect the selfish perpetration of male dominance which is aimed at suppressing the right of the womenfolk in the given society”.¹²¹ Also, the Supreme Court held in *Chiwenze v. Masi*,¹²² it

¹¹⁶ Eghosa Ekhaton, supra note 105 at p.12.

¹¹⁷ Eghosa Ekhaton ‘Women and the Law in Nigeria: A Reappraisal’ *Journal of International Women's Studies* (2015) 16(2).

¹¹⁸ *Muojekwu v Ejikeme* (2000)5 NWLR (Pt. 657)402.

¹¹⁹ *Onyibor Anekwe & Anor v Mrs Maria Nweke* (2014) All FWLR (Pt 739) 1154.

¹²⁰ *Per Justice Ngwuta*. Cited in Nwudego Chinwuba ‘Ending Inequality in Nigeria: A Refreshing Approach from the Nation's Judiciary’ (2015) 29(3) *International Journal of Law, Policy and the Family* 341, 342.

¹²¹ *ibid*.

¹²² *Chiwenze v. Masi* 1981 1 NWLR pt.97 p.254.

was held by that a wife has life interest in the property of her deceased husband. Similar decision was reached in the case of *Sanusi v Makinde*,¹²³ where the court held that the surviving male and female children were equally entitled to inherit their deceased parent's property in a dispute involving issues of inheritance under the Yoruba Native law and custom. *Mrs Lois Chituru Ukeje & Anor v Mrs Gladys Ada Ukeje*¹²⁴ is a notable example where the Court of Appeal determined that the Igbo customary practice which deprived children born out of wedlock from sharing the proceeds or benefits of their father's estate violated the non-discrimination/equality provisions of the constitution as the basis of its judgment. In the words of the court, the practice was "...barbaric, the height of insensitivity, shameful, unacceptable and a custom that belonged to the stone age...." The Court of Appeal also awarded damages to the appellant in *Theresa Nwafor Onwo v. Oko*¹²⁵, against the respondent for forcefully shaving her hair, assaulting her, and locking her up as part of widowhood rites for mourning her late husband.

Furthermore, the Federal High Court Regulation in *Women Empowerment and Legal Aid v Attorney-General of the Federation*¹²⁶ unequivocally declared section 124 of the Police Act as illegal, discriminatory and unconstitutional. The facts of that case concerned the above discussed requirement of a female police officer to seek security clearance of her fiancé before marriage, and that she could not marry until after three years in the service. The Court stated that the requirement in the Police Act violates Section 42 of the Nigerian Constitution and Article 2 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, which abolished discrimination based on sex. The court awarded damages to the plaintiff for breach of her fundamental human right to freedom from discrimination. Section 127 of the Police Act was challenged in *Omolola Olajide v. The Nigerian Police Force, Inspector General of Police, & The Police Service Commission*.¹²⁷ In that case, Justice Dashe Damulak of the National Industrial Court delivered a landmark ruling on gender-based discrimination in employment, declaring Section 127 of the Police Act—which mandated the automatic dismissal of unmarried female

¹²³ *Sanusi v Makinde* (1994)5 NWLR Pt. 346 p.214.

¹²⁴ *Lois Chituru Ukeje & Anor v Mrs Gladys Ada Ukeje* (2014) LPELR – 22724 (SC) Electronic Law Reports.

¹²⁵ *Theresa Nwafor Onwo v. Oko* (1996) 6 N.W.L.R. (pt. 456), 584 at 587.

¹²⁶ *WELA v Attorney-General of the Federation* (unreported) Suit No: FHC/IKJ/CS/M128/2010.

¹²⁷ *Omolola Olajide v. The Nigerian Police Force, Inspector General of Police, & The Police Service Commission* (unreported) NICN/AK/14/2021 (NICN Akure, 11 January 2023). The case is also available at <https://nicnadr.gov.ng/judgement/details.php?id=7538> accessed on 3 July 2025; Joelle Nwabueze 'National Industrial Court of Nigeria and the fight against female-based discrimination: Place and Role of International Labour Standards in Book: *New Developments in Gender Discrimination, Harassment, and Violence in Employment and Education* Berkeley Centre on Comparative Equality and Anti-Discrimination Law: University of California, January 4-5, 2024.

officers who became pregnant—as “discriminatory, unlawful, unconstitutional” and in violation of the African Charter on Human and People’s Rights.¹²⁸ The court awarded punitive and aggravated damages to the claimant for wrongful dismissal. Following an appeal by the Police, the Court of Appeal upheld the lower court's decision in 2024, describing the regulation as “unthinkable” and inconsistent with contemporary democratic values. Subsequently, the Nigeria Police Force complied with the ruling and reinstated the officer.¹²⁹

Also, in *Yetunde Tolani v Kwara State Judicial Service Commission & Ors*,¹³⁰ The Court of Appeal ruled that the dismissal of a newly appointed female Magistrate Grade II, based on a petition from an unknown man claiming to be her husband, was illegal and void. The court ordered her immediate reinstatement. In that case, *Sotonye Denton-West, J.C.A* expressed doubt that the same measure would have been applied to a male police officer in similar circumstances.¹³¹ Another case in point is that of *Dr. (Mrs.) Priye Iyalla-Amadi v the Nigerian Immigration Service (NIS)*,¹³² where The Federal High Court of Nigeria ruled that the requirement for a woman to obtain her husband's written consent in order to obtain an international passport, as mandated by the Immigration Services Policy, was unconstitutional and violated the provisions of the African Charter on Human and Peoples' Rights (ACHPR).

The Nigerian courts decisions discussed above confront deeply rooted patriarchal norms and place emphasis on the need to ensure that local customs are aligned with constitutional and international standards. These decisions play a crucial role in promoting women's rights and gender equality in the country. Unfortunately, in *Vayola Sears & Anor v. Attorney General of the Federation & Anor*,¹³³ the Federal High Court declined to confront the gender-discriminatory implications of Section 26(2)(a) of the Nigerian Constitution. Rather, it held that the provision—despite its exclusion of foreign husbands of Nigerian women from the right to citizenship by registration—is consistent with section 42 of the Constitution and cannot be rendered invalid by the African Charter on Human and Peoples’ Rights. This decision reflects a missed opportunity to

¹²⁸ Ibid.

¹²⁹ Ibid (unreported, 2024). The Court of appeal recently delivered judgement on May 24, 2024.

¹³⁰ *Yetunde Tolani v Kwara State Judicial Service Commission & Ors* (2009) LPELR CA/IL/2/2008.

¹³¹ Ibid.

¹³² Unini Chioma ‘Married Women And The Need For Husband’s Consent For International Passport’ available at *Married Women And The Need For Husband’s Consent For International Passport*. - *TheNigeriaLawyer* accessed on 28 September 2023.

¹³³ *Vayola Sears & Anor v. Attorney General of the Federation & Anor* (Unreported) Suit No: FHC/L/CS/547/2003.

harmonize domestic constitutional provisions with Nigeria's international obligations on gender equality and exemplifies how Nigeria's dualist legal framework permits distinct and unequal treatment of spouses of opposite genders, upheld even against constitutional non-discrimination guarantees.¹³⁴ The judiciary is key to promoting equality by protecting women's rights and dignity. Continued advocacy and legal reform are necessary to maintain these advancements and ensure that all women in Nigeria can exercise their rights free from discrimination.

The next section considers the issue of disability discrimination in Nigeria.

2.6 Overview of Disability Discrimination in Nigeria

As mentioned in chapter one, no fewer than 29 million of the entire Nigerian population live with one or another form of disability.¹³⁵ The majority of Nigerians perceive people with disabilities (PWDs) as liabilities—individuals who depend on charity and should be supported through financial aid, assistance, and other forms of humanitarian help.¹³⁶ Similar to gender discrimination discussed above, available literature on disability reveal that tradition, cultural practices and religious beliefs play a dominant role in sustaining discriminatory practices against PWDs in Nigeria.¹³⁷

Among majority of the tribes in Southern Nigeria, disability is believed to be caused by witchcraft, evil spirits and other supernatural forces.¹³⁸ Specifically, the Yoruba ethnic group believe that evil spirits can interfere with a baby while still in the womb, causing disability.¹³⁹

¹³⁴ A comparable provision was struck down as unconstitutional in the Botswana case of *Attorney General of Botswana v. Unity Dow* [1994] (6) BCLR 1.

¹³⁵ This data suggests that about one in every eight persons is disabled in Nigeria. WHO Disability Report 2018 in *World Bank. 2020. Disability Inclusion in Nigeria: A Rapid Assessment*. World Bank, Washington, DC. © World Bank available at <https://openknowledge.worldbank.org/handle/10986/34073> License: CC BY 3.0 IGO accessed 30 June 2021. Eleweke C J 'A review of the challenges of achieving the goals of the African Plan of Action for people with disabilities in Nigeria' (2013) 28(3) *Disability & Society* pp.313–23; Obiakor, F E & Eleweke C J 'Special education in Nigeria today' in A Rotatori, J Bakken, F Obiakor, and U Sharma *Advances in special education: International perspectives*, (2014) 28 p.379-97. London, England: Emerald.

¹³⁶ Chinyere Onalu and Nneka Nwafor 'Social Supports Available to Persons with Disabilities in Nigeria' (2021) in Book: *Evolutionary Psychology Meets Social Neuroscience* p.6 available at (PDF) *Social Supports Available to Persons with Disabilities in Nigeria (researchgate.net)* accessed on 1 October 2023.

¹³⁷ Mary Nyangweso 'Disability in Africa: A Cultural/Religious Perspective' (June 2018) p.7 available at (PDF) *Disability in Africa: A Cultural/Religious Perspective (researchgate.net)* accessed on 8 October 2023.

¹³⁸ Sunday N., and Nneka Justina Eze, 'Stigmatization of Persons with Disability In Nigeria' *Special Needs Education From The Lens Of Interdisciplinary Dialogue: A Festschrift In Honour Of Prof. Emeka D. Ozoji* 2.2 (2023) p. 411. Oبراori N. P. Adiola 'Understanding Disability and Disability Rights in Nigeria (2023) 11(1) *Global Journal of Politics and Law Research* p. 40. Etieyibo, Edwin, and Odirin Omiegbe *Disabilities in Nigeria: Attitudes, reactions, and remediation*. Rowman & Littlefield, 2017.

¹³⁹ Paul M. Ajuwon 'Disability and Disability Services in Nigeria: Past, Present and Future' in Book: Lugard, Frederick *The Routledge History of Disability* (2017) p. 1888.

Among the Igbos of south-east Nigeria, deep-seated negative cultural assumptions about disability continue to persist. In many cultures, disability is viewed as a curse on the family and a form of retribution for offending the local deities.¹⁴⁰ Religion has also played a role in shaping negative societal perceptions of disability in Nigeria. For example, some Christians believe that disabilities are created by God as a manifestation of His wrath and anger towards sin.¹⁴¹ They support their belief with biblical examples where God afflicted individuals with blindness, leprosy, deafness, and other diseases as punishment for disobedience to His laws, instructions, or commandments.¹⁴² It is common for churches to hold healing sessions for people with disabilities (PWDs) as a way to improve their quality of life.¹⁴³ However, it is important to recognize that this belief is not universal among Christians; many Christians view disabilities not as a punishment from God, but as a natural aspect of the experience of being human.¹⁴⁴ Among Muslims, this prejudice regarding disabilities often leads to assumptions about an individual's *iman* (level of faith).¹⁴⁵ This bias particularly affects individuals with invisible disabilities or mental health conditions, whose outward behaviours are sometimes misinterpreted as signs of weakness or laziness.

2.7 Legislative Measures for Promoting Disability Rights in Nigeria

(i) Constitution of the Federal Republic of Nigeria 2004

As mentioned earlier, the Constitution of the Federal Republic of Nigeria guarantees equality and non-discrimination for all Nigerian citizens as represented above. It has been argued that the Constitutional provision in Section 42(2) can be interpreted to include protection for PWDs.¹⁴⁶ Section 42(2) provides that “No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth”. Contrary to this view, there have

¹⁴⁰ Oبراori, supra note 139.

¹⁴¹ Otieno Pauline A ‘Biblical and theological perspectives on disability: Implications on the rights of persons with disability in Kenya’ (2009) 29(4) *Disability Studies Quarterly* 29.4 (2009).

¹⁴² Ibid. “The blindness of the wicked men of Sodom (Wisdom 2:21) and of Elymas, the magician who obstructed the work of Paul in Cyprus (Acts 13:4-12) are specifically attributed to divine punishment. So too the sudden paralysis that afflicted King Jeroboam (1 Kings 13:4). Similarly, in 2 Chronicles 26:16-23, we read the story of King Uzziah who, because of his unfaithfulness to God, was struck by leprosy “because the Lord had afflicted him”.

¹⁴³ Ibid.

¹⁴⁴ Dylan Aclott, ‘Having a Disability is a Natural Normal Part of Society. It can happen to Anyone’ *The Sydney Morning Herald* (1 December, 2017) available at *Having a disability is a natural, normal part of society. It can happen to anyone* (smh.com.au) accessed on 14 October 2024.

¹⁴⁵ Islam and People with Disabilities: Towards a More Inclusive Community

¹⁴⁶ Halima Doma Kutigi ‘Human Rights of Persons with Disabilities: Challenges of Protection and Enforcement in Nigeria’ (May 2002) 1(4) *International Journal of Legal Insights* p.2 available at https://www.researchgate.net/publication/341090390_human_rights_of_persons_with_disabilities_challenges_of_protection_and_enforcement_in_nigeria accessed on 12 July 2020.

been calls for constitutional amendment to expressly insert disability as non-discriminatory ground to deepen their right to equality and non-discrimination.¹⁴⁷ Chapter six of this thesis critically examines Section 42 in detail.

(ii) The African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act

As earlier stated, the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (ACHPRA) domesticated the regional African Charter on Human and Peoples' Rights. Article 2 of the ACHPRA prohibits discrimination due to gender and other grounds; but like the Constitution, the ACHPRA fails to expressly include disability as one of the prohibited grounds for discrimination. The only specific reference to PWDs in the ACHPRA is found in Article 18(4) which provides: "the aged and the disabled shall also have the right to special measures of protection in keeping with their physical and moral needs".

Despite this legislative gap, the African Commission has construed disability as part of a "non-exhaustive list" of prohibited grounds of discrimination.¹⁴⁸ The non-exhaustive list include:

race, colour, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin, gender, sexual orientation, gender identity, disability (including psychosocial and intellectual disability), health status, economic or indigenous status, reason for which one is detained (including accusations of political offences or terrorist acts), asylum-seekers, refugees or others under international protection, or any other status or adverse distinction...¹⁴⁹

Logically, the above provision being a construction of the African Commission signifies that the provisions on discrimination contained in the domesticated Nigerian version – the ACHPRA – can be interpreted to apply and enforce rights for PWDs, including WWDs.

(iii) Discrimination against Persons with Disabilities (Prohibition) Act 2018

Apart from constitutional provisions and the ACHPRA, Nigeria has a federal disability legislation that seeks to guarantee the equal rights of people with disabilities, and which prohibits

¹⁴⁷ Bamidele Aturu 'Discrimination in the Workplace' *Vanguard News*, 3 March 2010; See also: Duru Onyekachi Wisdom Caesar 'The Justiciability of the Fundamental Objectives and Directive Principles of State Policy under the Nigerian Law' available at <http://www.academia.edu/5185441/> accessed on 20 March 2018.

¹⁴⁸ Para 20 of the African Commission General Comment No. 4 on the African Charter on Human and Peoples' Right: 'The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment' p. 6 available at https://www.achpr.org/public/Document/file/English/achpr_general_comment_no._4_english.pdf accessed 3 July 2021. Also see the ruling in *Purohit & Moore v. The Gambia* (2003) AHRLR 96 (ACHPR 2003).

¹⁴⁹ Para 20 of the African Commission General Comment No. 4 on the African Charter on Human and Peoples' Right: 'The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment' p. 6 available at https://www.achpr.org/public/Document/file/English/achpr_general_comment_no._4_english.pdf accessed 3 July 2021. Also see the ruling in *Purohit & Moore v. The Gambia* (2003) AHRLR 96 (ACHPR 2003).

discrimination based on physical or mental disability namely – the Discrimination against Persons with Disabilities (Prohibition) Act, 2018 (DAPDA). The DAPDA was enacted in 2019 following persistent advocacy efforts to recognize and establish rights for PWDs. As a federal law, the DAPDA 2018 grants PWDs in Nigeria equal rights to healthcare, housing, employment, and other areas of society. The law also establishes a National Commission for PWDs, which is responsible for implementing the provisions of the federal disability law and addressing complaints from PWDs who are victims of rights violations.¹⁵⁰ It also stipulates a five-year transitional period for modifying public buildings, structures, and automobiles to make them accessible and usable for PWDs.¹⁵¹ Specifically, sections 28 and 29 promote employment rights for PWDs and prohibits employers from discriminating against individuals with disabilities in the workplace.¹⁵²

There is limited case law on disability in Nigeria. This is attributable to the fact that the disability law is relatively new and has not yet been adequately implemented to be tested in court.¹⁵³ In *Emmanuel Ejiogu Onuhikemi v Smridu*¹⁵⁴ This case involved a civil servant who was dismissed due to a disability (positive HIV status). The court ruled in favour of the plaintiff, emphasizing the need for reasonable accommodations for employees with disabilities. Similarly in the case of *Dorothy Adaeze Awogu v. TFG Real Estate Limited*,¹⁵⁵ the plaintiff faced constant threats of dismissal, mistreatment, and abuse from her supervisor due to her genotype and medical condition (Sickle Cell Anaemia). In March 2013, while she was in the hospital, her supervisor sent her several text messages threatening to fire her because she was "SS." A few days later, her employment was terminated without notice. The National Industrial Court awarded the claimant damages while ruling that the company's actions, constituted a violation of her fundamental rights

¹⁵⁰ Part VII of DAPDA 2018.

¹⁵¹ Section 6, *ibid*.

¹⁵² Section 28 of DAPDA 2018 provides:

—(1) A person with disability has the right to work on an equal basis with others and this includes the right to opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open. (2) A person who contravenes subsection (1), commits an offence and is liable on conviction to nominal damages of a minimum of N250,000 payable to the affected person with disability. (3) Where a company contravenes subsection (1)}— (a) the company commits an offence and is liable to nominal damages of a minimum of N500,000 payable to the affected person with disability ; and (d) any principal officer of the company involved in the violation is liable to N50,000 damages payable to the affected person with disability. 29, All employers of labour in public organisations shall, as much as possible, have persons with disabilities constituting at least 5% of their employment.

¹⁵³ Abiodun Jamiu 'Persons With Disabilities Face Discrimination As Nigerian Law Protecting Them Remains Redundant' (24 April 2022) available at *Persons With Disabilities Face Discrimination As Nigerian Law Protecting Them Remains Redundant - HumAngle* (humanglemedia.com) accessed on 30 October 2022.

¹⁵⁴ *Emmanuel Ejiogu Onuhikemi v Smridu* NICN/LA/265/2015.

¹⁵⁵ *Dorothy Adaeze Awogu v. TFG Real Estate Limited* Suit No. NICN/LA/262/2013.

and were dehumanizing, contradicting the principles of dignity in labor. The enactment of this law marks a significant advancement in protecting the rights of PWDs in Nigeria. Additionally, Nigeria has ratified international labour instruments that promote the human rights of PWDs and ensure their freedom from discrimination namely; the Discrimination Employment and Occupation) Convention 1958 (No. 111); Vocational Rehabilitation and Employment (Disabled Persons) Convention 1983 (No. 159); and the Employment and Decent Work for Peace and Resilience Recommendation 2017 (No. 205). Specifically, regarding employment, these ratified labour treaties are applicable in Nigeria through the jurisdiction of the National Industrial Court, as established by constitutionally amended provisions. These labour treaties will be referenced and extensively examined in chapters four and six of this thesis.

Despite the legislative protections for people with disabilities (PWDs) mentioned above, this population often remains the most marginalized, overlooked, and vulnerable group in Nigeria. The next section will examine how gender and disability discrimination affect the employment opportunities of women and PWDs in Nigeria.

2.8 Perspectives on Employment of PWDs in Nigeria

Where disability is concerned, PWDs are significantly poorer than persons without disabilities. The global unemployment rate among PWDs in low-income countries is estimated to be around 70 per cent, whereas it is as high as 90 per cent for those without disabilities.¹⁵⁶ Nigeria's federal disability law DAPDA 2018, mandates all employers of labour in public organisations to reserve at least five per cent of employment opportunities for PWDs.¹⁵⁷ Unfortunately, the provisions of DAPDA 2018 has not yet been significantly implemented to guarantee the rights of PWDs, including the right to work and earn a decent means of livelihood.¹⁵⁸ Although statistics regarding the employment of PWDs are not systematically available,¹⁵⁹ the Organization for Economic Co-operation and Development (OECD) reports that the employment rate for PWDs across 25

¹⁵⁶ United Nations Department of Economic and Social Affairs Disability 'Disability and Employment' available at *Disability and Employment | United Nations Enable* accessed on 28 September 2023.

¹⁵⁷ Section of Discrimination against Persons with Disabilities (Prohibition) Act 2018.

¹⁵⁸ ILO Disability Information Resources 'International and Legal Instruments and Policy Initiatives Concerning the Right to Work of Persons with Disabilities' Decent Work Report (2015) 3 Ed. available at www.dinf.ne.jp/doc/english/resource/employment/ilo2015_01.html accessed 12 May 2017.

¹⁵⁹ ILO 'The employment situation of people with disabilities: towards improved statistical information' Geneva, International Labour Organization' (2007) available at *The employment situation of people with disabilities: Towards improved statistical information (ilo.org)* accessed on 15 September 2023.

countries is 44 per cent compared to 75 per cent for people without disabilities.¹⁶⁰ The Leonard Cheshire report reveals that PWDs in Nigeria have 62.5 per cent unemployment rate while that of persons without disabilities is 21.5 per cent.¹⁶¹ Negative attitude from employers and general stereotype that PWDs are unproductive, with no potential to contribute to economic advancement by reason of their impairment, are the main causative factors for discriminating against PWDs in their quest for employment.¹⁶² Research shows that sympathy, rather than qualification is the commonest motivation for hiring few individuals with disabilities.¹⁶³

The study by Ihedioha emphasizes “the extent of limitation to access to employment for those who are unemployed; and career development for those already in the employment of these organizations”.¹⁶⁴ As the study indicates, social exclusion of PWDs in the workplace is prevalent, significantly affecting their effective engagement in work environments.¹⁶⁵ This issue, as noted, goes beyond recruitment and placement to encompass accessibility challenges for employees with disabilities, as most organizations lack the necessary accommodations.¹⁶⁶ As there are no social security benefits or financial protection schemes for PWDs in Nigeria except in only one state out of 36 states,¹⁶⁷ most PWDs have become poor, needy and overly dependent on welfare and charity

¹⁶⁰ OECD ‘Sickness, disability and work: breaking the barriers. A synthesis of findings across OECD countries’ 2010. available at *Sickness, Disability and Work: Breaking the Barriers: A Synthesis of Findings across OECD Countries | en | OECD* accessed on 15 September 2023.

¹⁶¹ Disability Data Review: A collation and analysis of disability data from 40 countries’ (Leonard Cheshire Report funded by UK Aid) p. 53 available at disabilitydataportal.com/fileadmin/uploads/lcdp/Documents/report-web_version.pdf accessed on 7 September 2023. This report depicts the unemployment rate for adults between 25-64 years old.

¹⁶² B Cipriani ‘Hiring Blind: The Misconceptions Facing America’s Visually Impaired Workforce’ available at <https://nfb.org/images/nfb/publications/bm/bm13/bm1307/bm130711.htm> accessed 5 May 2018.

¹⁶³ United Nations Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights: Thematic Study on the Work and Employment of Persons with Disabilities (7 December 2012 Report) available A/HRC/22/25 available at <http://www.ohchr.org/EN/Issues/Disability/Pages/UNStudiesAndReports.aspx>. accessed 17 May 2018.

¹⁶⁴ Ihedioha, E. ‘Environmental Barriers and Job Placement of The Physically Challenged in Organizations In Rivers State, Nigeria’ (2015) April 3(4) *Global Journal of Arts Humanities and Social Sciences*, pp.1-13.

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

¹⁶⁷ Section 17(1) of the Jigawa State Disability Law 2017 establishes a trust fund for PWDs in the state. Jigawa is the only state in Nigeria where about 4,000 PWDs earn N7,000 monthly. *The Guardian* Nigeria ‘Jigawa Approves Disability Fund’ *The Guardian*, 18 November 2021 available at <https://guardian.ng/news/jigawa-approves-disability-fund/> accessed on 20 July 2022. S. Thomas ‘Inclusion Works: Nigeria Situational Analysis’ (Version II-June 2020) p. 4 available at <https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/15487/IW%20SITAN%20Nigeria%20Version%20II%20June%202020.pdf?sequence=1&isAllowed=y> accessed on 2 June 2022.

from persons without disabilities.¹⁶⁸ According to a report by the National Institute for Advanced Legal Studies, nine out of ten PWDs live below poverty line¹⁶⁹

Simultaneously, the government, financial institutions, and civil societies have made efforts to economically empower people with disabilities (PWDs) in Nigeria. For example, the Industrial Training Fund aims to train 120 people with disabilities with skills for employment through the Skills Training Empowerment Programme (STEPP-C).¹⁷⁰ Also, the government of Anambra State is working with the United Nations Development Programme (UNDP) Nigeria to implement the Special Target Enterprises Development and Monitor Initiative to improve vocational skills for PWDs, such as shoemaking, hairdressing and computer literacy.¹⁷¹ Furthermore, Accion Microfinance Bank, the Central Bank of Nigeria and the Centre for Financial Inclusion are collaborating to develop loan products for PWDs. It is uncertain how successful these initiatives have been.¹⁷² While many persons with disabilities (PWDs) have benefited from skill acquisition programmes, a significant number do not continue to apply what they have learned because there are usually no follow-up measures in place for them.¹⁷³

2.9 Conclusion

Despite the government's commitment towards promoting gender equality and empowering women in Nigeria, they continue to face injustices, and marginalization due to cultural norms, religion, gender stereotypes, discriminatory laws, low educational levels as discussed above. Many women work in insecure, poorly paid jobs, with few opportunities for advancement. The government needs to do more to create an enabling work-friendly environment for women, expand women's economic and social opportunities, and advance rights for women generally.

Similarly, PWDs are subjected to numerous types of discrimination in accessing basic social services and economic participation. Notwithstanding the recent enactment of the DAPDA 2018, which prohibits all forms of discrimination against PWDs and imposes sanctions on those

¹⁶⁸ Anwuli Ofuani 'Economic Empowerment of Persons with Disabilities in Nigeria. How Enabled?' (2011)11 No. 2 *African Human Rights Journal* p. 640.

¹⁶⁹ Epiphany Azinge 'Nigerian Institute of Advanced Legal Studies Lagos, Nigeria Roundtable on the Unserved Handicapped: Raising Respect and Awareness For The Rights of the Disabled in Nigeria (2010) available at *Communique on Unserved Handicapped (nials-nigeria.org)* accessed on 23 September 2023.

¹⁷⁰ Stephen James Thompson 'Disability Inclusive Development Situational Analysis for Nigeria' July 2020 available at *(PDF) Disability Inclusive Development Situational Analysis for Nigeria (researchgate.net)* accessed on 22 September 2023.

¹⁷¹ Ibid.

¹⁷² Ibid.

¹⁷³ Ibid.

who contravene it, they continue to face a host of barriers and mistreatment. Employers continue to consciously discriminate against PWDs in recruitment, irrespective of their qualification and capabilities resulting in low employment participation rates for PWDS in Nigeria. Implementation of DAPDA provisions, particularly the employment quota requirement, is necessary to boost employment participation of PWDs and integrate them into society and development.

Gender-based discrimination and disability discrimination discussed above can intersect to create a unique form of discrimination for women who have disabilities, making them susceptible to experience a double burden of discrimination. This intersectional discrimination can lead to deepened hardship for WWDs, as they face additional barriers to accessing education, employment, and other services. When streamlined to labour law, gender and disability can impair WWD's access to employment.

The next chapter contains a detailed analysis of the literature concerning the intersection between gender and disabilities, and the barriers to employment it presents for WWDs. As stated in the previous chapter, low employment participation is the current reality for WWDs globally, and this will be illustrated by statistics from selected countries.

CHAPTER THREE

GENDER AND DISABILITY: INTERSECTING CHARACTERISTICS IMPEDING EMPLOYMENT OF WOMEN WITH DISABILITIES

3.1 Introduction

As mentioned in chapter one, women and persons with disabilities (PWDs) have low employment participation rates due to discrimination. In particular, women with disabilities (WWDs) are seldom afforded equal opportunities to freely engage in gainful employment due to sexism and ableism.¹ Generally, the intersection between gender and disabilities produces certain barrier outcomes for WWDs which impedes their employment participation and consequently renders them more impoverished than men with disabilities.² The primary focus of this chapter is to analyse the intersection between gender and disabilities and the challenges it poses for WWDs in their quest for employment. The analysis in this chapter provides a foundation for recommendations on how to support employment participation for WWDs in Nigeria.

The chapter begins with a historical examination of the theory of intersectional discrimination. Thereafter, the intersection between gender and disability is specifically considered. The chapter then proceeds to identify and discuss barriers to employment which are caused by the intersection between gender and disability. Next, the negative economic realities of WWDs as depicted by lower employment participation rates for WWDs compared to that for men with disabilities in South Africa, the United Kingdom (UK), United States of America (U.S.A), Canada, and in Nigeria, are highlighted. The reason for the comparison is to signify that the negative effect of gendered disability on employment is not peculiar to Nigeria but comes across as an issue that needs to be addressed in several countries. The comparison is also meant to stimulate future academic research on the subject in the countries mentioned and beyond. Lastly in this chapter, the application of substantive equality as a tool for addressing employment discrimination WWDs experience due to the intersection between gender and disability is discussed.

¹ Lindstrom Lauren, Bonnie Doren and Jennifer Miesch, 2011 'Waging a living: Career development and long-term employment outcomes for young adults with disabilities' (2011) 77 (4) *Exceptional Children* (published by Council for Exceptional Children) pp. 423-34. Edward Ugbada Adie Ph.D and Yusuf Nzim Shamagaana 'Towards Improved Inclusion of Women and Girls with Disabilities in the Development Agenda in Nigeria' (2018) 10(1) *International Journal of integrative Humanism* p. 4.

² Edward Ugbada Adie, Ibid.

3.2 Origin of Intersectionality Theory

Professor Kimberlé W. Crenshaw first brought the idea of intersectionality to legal theory.³ Intersectional discrimination refers to a situation in which people experience two or more forms of discrimination at the same time so that the situation results in higher level of prejudice than if these different grounds are treated separately.⁴ An analysis of the origin of intersectionality theory is relevant to this research to underpin and explain the overlapping oppression/discrimination experienced by WWDs, particularly as occasioned by gender and disability. The theory of intersectionality is founded on the interaction of various categories of discrimination, including gender, race, age, or physical handicap that may yield multiple grounds of exclusion for a single individual (WWDs).⁴ Crenshaw utilized the decision reached in the case of *DeGraffenreid v. General Motors*⁵ to postulate that gender and race can intersect to create systematic perpetuation of social injustice and discrimination for African-American women in the legal system of the United States of America.⁶ The facts of the case are as described below.

In *DeGraffenreid v. General Motors*, five black women brought a suit against their former employer (Defendant Company) pursuant to Title VII of the Civil Rights Act of 1964,⁷ arguing that the defendant company allegedly practiced industrial policies which were discriminatory against black women. The policies of the defendant company compounded the predicament for black women – ‘black jobs were men’s jobs and the women’s jobs were for whites only.’⁸ In essence, black females were disqualified from working on the floor of the factory while black males could be hired.⁹ In addition, only white females were eligible to work as secretaries in the organization. Overall, black women were regarded as unqualified for either the black jobs or the

³ Kimberlé Crenshaw, Professor of Law at UCLA and Columbia Law School, is a leading authority in the area of Civil Rights, Black feminist legal theory, and race, racism and the law. Her work has been foundational in two fields of study that have come to be known by terms that she coined: Critical Race Theory and Intersectionality.

⁴ Gauthier de Beco ‘Intersectionality and disability in international human rights law’ (2020) 24(5) *International Journal of Human Rights* pp. 593-614.

⁴ Kimberlé Crenshaw ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics’ (1989) *University of Chicago Legal Forum*, p. 139–40. Nadia L Farjood ‘The Harvard Crimson: Crenshaw Talks Identity’ available at <https://www.thecrimson.com/article/2011/2/3/crenshaw-race-black-lecture/> accessed 2 April 2019.

⁵ *DeGraffenreid et al. v. General Motors et al* (1976) 413 F. Supp 412.

⁶ She also criticized two other cases: *Moore v. Hughes Helicopter, Inc.*, (1983) 708 F.2d 475 and *Payne v Travenol Laboratories Inc.* (1982) 673 F2d 798.

⁷ Civil Rights Act 1964 (Pub. L. 88–352, 78 Stat. 241 enacted July 2, 1964).

⁸ *supra* note 5.

⁹ *Ibid.*

women's jobs in the defendant company. Drawing inference from *Mosley et al v General Motors*,¹⁰ the court dismissed the plaintiff's claim on the premise that the grounds of racial and gender discrimination cannot be combined to form a single claim. According to the court verdict, each is required to be sued for and proven as separate grounds of discrimination rather than as overlapping grounds. Since the plaintiffs' complaint was brought as a single claim involving two grounds of discrimination, the action was declared null.¹¹

Crenshaw criticized the decision of the court for failure to recognize that the identity for which black women sought protection was at the intersection of the legally protected categories of race and sex.¹² She graphically illustrated the concept of intersectionality as follows:

Intersectionality simply came from the idea that if you're standing in the path of multiple forms of exclusion, you are likely to get hit by both. These women are injured, but when the race ambulance and the gender ambulance arrive at the scene, they see these women of colour lying in the intersection and they say, "Well, we can't figure out if this was just race or just sex discrimination, and unless they can show us which one it was, we can't help them."¹³

The illustration above describes the disadvantaged situation of black women who are treated less fairly than white women and black men living in the U.S.A.¹⁴ As Crenshaw explained, the U.S.A anti-discrimination law, at the time, defined and categorized the various forms of discrimination in separate water-tight compartments, thereby rendering "combined" discrimination inadmissible.¹⁵ Women of colour were thereby precluded from seeking redress for claims which cut across one or more forms of discrimination, at a time.¹⁶ Crenshaw further argues that racism

¹⁰ The court made reference to *Mosley et al. v General Motors et al* 497F. Supp. 583 – Dist. Court, ED Missouri 1980. In *Mosley's* case, a complaint involving racial discrimination and retaliation for engaging in protests regarding the unlawful working conditions in the defendant company, failed. White workers who had earlier participated in the protests were spared by the defendant company from punishments/retaliation.

¹¹ *supra* note 5 at p.145.

¹² Kimberlé Crenshaw, *supra* n. 4.

¹³ Kimberlé W Crenshaw 'Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color' (1991) 43(6) *Stanford Law Review* available at https://www.researchgate.net/publication/263537621_Mapping_the_Margins_Intersectionality_Identity_Politics_and_Violence_Against_Women_of_Color accessed on 15 January 2019.

¹⁴ Maria Vittoria Onufrio 'Intersectional Discrimination in the European Legal Systems: Toward a Common Solution?' (2014) 14(2) *International Journal of Discrimination and the Law* p. 127.

¹⁵ *Ibid.*

¹⁶ *supra* note 13.

and sexism are “mutually” interlocked, and therefore it is required that laws must be revised to acknowledge the intersection to provide remedies for black women in that regard.¹⁷

The intersectionality theory has attracted some critique despite its popularity in black feminist discourse. While Emily Grabham is concerned that the intersectionality theory is too static to deal with the realistic unending complexities of life,¹⁸ Richard Delgado believes that if not confined to certain defined grounds, the categories of intersection may go on “*ad infinitum*”, thereby creating more complex situations than it seeks to address.¹⁹ Furthermore, Joan Conaghan holds the view that the intersectionality theory is outmoded because it has “reached the limits of its potential for the feminist project in law” because of its focus on the individual and identity formation without necessarily addressing “social processes and relations”.²⁰ Davina Cooper is also of the view that intersectionality acts as a model through which it is possible to exercise more power in one aspect of one’s identity than in another.²¹

Contrary to expressed criticisms however, the intersectionality theory holds promise for inclusivity of WWDs.²² The stance of Supurna Banerjee and Nandini Ghosh about Kimberlé’s theory is preferable.²³ While maintaining that feminism is not defined only by gender and “blind faith in universal sisterhood”,²⁴ they both agree that the theory addresses inequalities on a multifarious basis with great potential for contributing to the social integration of marginalized vulnerable groups,²⁵ such as WWDs. According to Shreya Anasuya, the theory has positively

¹⁷ *ibid.*

¹⁸ Emily Grabham ‘Intersectionality: Traumatic Impressions’ in Emily Grabham, Davina Cooper, Jane Krishnadas and Didi Herman in *Intersectionality and Beyond: Law, Power Politics and the Politics of Location* (Routledge-Cavendish 2009). Jonathan Ow ‘Getting Emotional at the Intersections of Intersectionality, A Review of Intersectionality: Traumatic Impressions, by Emily Grabham’ (2015) 3(1) *Birkbeck Law Review* p. 160.

¹⁹ Richard Delgado ‘Rodrigo’s Reconsideration: Intersectionality and the Future of Critical Race Theory’ (2011) 96 *Iowa L. Review* pp. 1247 and 1264.

²⁰ Joan Conaghan, ‘Intersectionality and the Feminist Project in Law’ in Emily Grabham, Davina Cooper, Jane Krishnadas and Didi Herman (eds), *Intersectionality and Beyond: Law, Power and the Politics of Location* (Routledge-Cavendish 2009) p. 29.

²¹ Davina Cooper ‘Challenging Diversity: Rethinking the Equality and the Value of Difference’ (2004) *Cambridge Cultural Social Studies* p. 48.

²² Anna Carasthatis ‘The Concept of Intersectionality in Feminist Theory’ (2014) 9(5) *Philosophy Compass* p. 309.

²³ Supurna Banerjee and Nandini Ghosh ‘Introduction. Debating Intersectionalities: Challenges for a Methodological Framework’ (2018) 19 *South Asia Multidisciplinary Academic Journal* available at <http://journals.openedition.org/samaj/4745>; DOI: <https://doi.org/10.4000/samaj.4745> accessed 29 September 2021.

²⁴ *Ibid.*

²⁵ *ibid.*

influenced feminist scholarship and also made in-roads to other combinations of discrimination.²⁶ Evidently, Crenshaw's intersectional theory has helped to identify other determinants of the feminist movement like creed, ethnic background, language, religion, political affiliation and a lot more.²⁷ Every theory has its risks but the unifying purpose of the intersectional theory is of superseding importance.²⁸

The intersectionality theory has found acceptance in some domestic legislation with both inferior and superior courts of record being predisposed to admitting and favourably interpreting claims of intersecting grounds of discrimination.²⁹ As regards legislative acceptance for instance, section 4 of the United Kingdom Equality Act 2010³⁰ acknowledges intersectionality as “combined discrimination,”³¹ and section 9(3) of the Constitution of the Republic of South Africa 1996 makes provisions for claims arising from two or more grounds of discrimination.³² Courts in the U.K. and U.S.A. now decide claims based on intersectional grounds of discrimination³³ but such claims are often streamlined to two grounds of intersectional discrimination only.³⁴ Notably, the situation is

²⁶ Shreya A Anasuya ‘Why the Response to a List of Sexual Harassers Has Splintered India’s Feminist Movement’ (29 October 2017) available at <https://www.dailyo.in/politics/sexual-harassment-raya-sarkar-kafila-indian-feminism/story/1/20291.html> accessed 29 September 2021.

²⁷ Ibid.

²⁸ Salla Aldrin Salskov ‘A Critique of Our Own? On Intersectionality and “Epistemic Habits” in a Study of Racialization and Homonationalism in a Nordic Context’ (2020) 28 (3) *NORA - Nordic Journal of Feminist and Gender Research* (2020) pp. 251-65.

²⁹ Colm O’ Cinneide ‘The Potential and Pitfalls of Intersectionality in the Context of Social Rights Adjudication’ in *Book: Intersectionality and Human Rights Law* (Hart Publishing 2020) available at <https://www.bloomsburycollections.com/book/intersectionality-and-human-rights-law/ch3-the-potential-and-pitfalls-of-intersectionality-in-the-context-of-social-rights-adjudication> accessed on 28 March 2022. Also, La Barbera M C and M C López ‘Toward the Implementation of Intersectionality in the European Multilevel Legal Praxis: B. S. v. Spain’ (2019) 53(4) *Law and Society Review* 1167-1201.

³⁰ Equality Act 2010 c. 15 (UK).

³¹ Pt. 2, ch. 2, Section 4(1)-(2) of the Equality Act state:

- (1) “A person (A) discriminates against another (B) if because of a combination of two relevant protected characteristics, A treats B less favourably than A treats or would treat a person who does not share either of those characteristics.
- (2) The protected characteristics are listed in section of the U.K. Equality Act 2010 as: Age, Disability, Gender reassignment, Marriage and civil partnership, Pregnancy and maternity, Race, Religion or belief, Sex, Sexual orientation”.

³² The Constitution of the Republic of South Africa was adopted 8 May 1996 and amended on 11 October 1996. Section 9(3) provides: “The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.”

³³ Shreya Atrey ‘Comparison in Intersectional Discrimination’ (2018) 38 *S. L. S in Legal Studies* available at [doi:10.1017/1st.2017.17](https://doi.org/10.1017/1st.2017.17) accessed 6 June 2021. *Ministry of Defence v. Tilern Bique* (2010) IRLR 471 was favourably decided based on two grounds of intersectional discrimination by the court in United Kingdom.

³⁴ *Jeffrey v. Harris County Council Community Association* (1980) 615 F2d p. 1025 at 1033 (Fifth Cir); *Vasquez v County of LA* (2003) 349 F3d 634.

more liberal in South Africa. In the recently decided South African case of *Mahlangu and anor. v. Minister of Labour and ors.*, the Court took cognizance of intersecting oppressions based on multiple grounds including ‘race, sex, gender, class, among other grounds of discrimination’.³⁵

Similar to the South African case, the Canadian Supreme Court in *Mossop v. Canada (Attorney General)*,³⁶ judicially took note of intersectional discrimination. Additionally, the Canadian Ontario Human Rights Commission (COHRC) published a discussion paper solely on the theory of intersectionality.³⁷ The COHRC discussion paper recognizes and analyses multiple grounds of discrimination including amongst others, race, gender, disability, ethnicity, sexual orientation, creed, age.³⁸ Furthermore, the paper emphasizes that “an intersectional approach is ...necessary to apply a proper analysis, no matter the combination of grounds involved”.³⁹ Professor Crenshaw’s theory serves as the foundation from which other authors have developed several other intersecting grounds in the U.S. and beyond. The intersectionality theory is therefore a “work-in-progress” that is capable of being productively applied to create additional intersectional aspects of discrimination including politics, sexual orientation, religion, disability, education, and culture, and so on.⁴⁰

There appears to be a growing body of academic scholarship/studies using intersectionality as a lens for various aspects / contexts of discrimination in Nigeria. For instance, Kalunta-Crompton writes on how the intersections of patriarchy and national origin impact on violence being experienced by immigrant Nigerian women.⁴¹ Also, more recently, Dosekun examines the

³⁵ *Mahlangu and anor. v. Minister of Labour and ors.* (2020) ZACC 65.

³⁶ *Mossop v. Canada*, Attorney General (1993) 1 SCR 554 at 645.

³⁷ The Ontario Human Rights Commission is responsible for administering the Ontario Human Rights Code. The Commission has published a paper on intersectional discrimination discourse titled: ‘An Intersectional Approach to Discrimination, Addressing Multiple Grounds in Human Rights Claims’ (2001) available at http://www.ohrc.on.ca/sites/default/files/Attachments/An_intersectional_approach_to_discrimination%3A_Addressing_multiple_grounds_in_human_rights_claims.pdf accessed 6 June 2021.

³⁸ *Ibid* at p.4.

³⁹ *Ibid* at p.11.

⁴⁰ Devon W Carbado, Kimberle Williams Crenshaw, Vickie M Mayes and Barbara Tomlinson, ‘INTERSECTIONALITY: Mapping the Movements of a Theory’ (Fall 2013) 10 (2) *Du Bois Review: Social Science Research on Race* available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4181947/> accessed on 4 February 2019.

⁴¹ Kalunta-Crompton Anita ‘Intersections of Patriarchy, National Origin and Immigrant Nigerian Women's Experiences of Intimate Partner Violence in the United States’ (2015) 41(1) *International Journal of Sociology of the Family* pp. 1-29.

intersection between gender and politics in Nigeria.⁴² Other scholarly research on intersectional analyses in Nigeria cut across intersection between gender and healthcare,⁴³ class,⁴⁴ professionalism,⁴⁵ ethnography,⁴⁶ armed conflict⁴⁷ among other grounds. This research aims to contribute to this growing body of knowledge, especially as regards the intersection between gender and disabilities with its employment discrimination outcomes for WWDs in Nigeria.

The next section focuses on gender and disability as intersecting grounds of discrimination, which is the basis of this research.

3.3 Intersection between gender and disability

Recent literature has now situated the intersectionality theory within the context of international human rights law.⁴⁸ For instance, the United Nations Human Rights Committee (the Committee) notes in one of its General Comments that discrimination against women is “often intertwined with discrimination on other grounds”.⁴⁹ The Committee further notes that:

[T]here is strong evidence to show that women and girls with disabilities face barriers in most areas of life. These barriers create situations of multiple and intersecting forms of discrimination against women and girls with disabilities, in particular with regard to: equal access to education, economic opportunities, social interaction and justice; equal recognition before the law; and the ability to participate in politics and to exercise control over their own lives across a range of contexts.⁵⁰

⁴² Simidele Dosekun ‘The problems and intersectional politics of Being Female in Nigeria’ (2022) *Feminist Media Studies*, available at DOI: 10.1080/14680777.2022.2030386 accessed on 22 July 2022.

⁴³ Abdalla S, Katz E G, Hartley A and Darmstadt G L ‘Gender and the Impact of COVID-19 on Demand for and Access to Healthcare: Intersectional Analysis of Before-and-After Data from Kenya, Nigeria, and South Africa’ (2021) *SSRN* available at DOI: 10.2139/ssrn.3940272 accessed on 22 July 2022.

⁴⁴ Panata Sara ‘It Is Not Breasts or Vaginas that Women Use to Wash Dishes: Gender, Class, and Neocolonialism through the Women in Nigeria Movement (1982-1992)’ (2022) 23(1) *Journal of International Women's Studies* available at <https://vc.bridgew.edu/jiws/vol23/iss2/> accessed on 20 July 2022.

⁴⁵ Raji Maryam and Metz Isabel et al. ‘The Single Female Worker: An Intersectional Study of Professional Women in Nigeria’ (2019) 1 *Proceedings of Academy of Management Annual Meeting* (2019) available at doi:10.5465/AMBPP.2019.12060abstract accessed on 24 July 2022.

⁴⁶ Oluwakemi C Amodu, Bukola O Salami, Magdalena S Richter ‘Reproductive Health for Conflict-Affected Displaced Women in Nigeria: An Intersectionality-Based Critical Ethnography Study’ (June 2021) 40(2) *Refugee Survey Quarterly*, pp. 224–38 available at <https://doi.org/10.1093/rsq/hdab009> accessed on 23 July 2022.

⁴⁷ Oluremi Savage ‘Appraisal of the Sexual and Reproductive Health of Women in Nigeria from the Perspective of Internally Displaced Persons’ (2021) 12(2) *NAUJILJ* pp. 129-44.

⁴⁸ Aisha Nicole Davis ‘Intersectionality and international law: Recognizing Complex Identities in a Global Stage’ (2015) 28 *HARV. HUM. RTS. J.* pp. 205-6.

⁴⁹ Human Rights Committee General Comment No 28: Equality of Rights between Men and Women (Art 3) (2000) *CCPR/C/21/Rev1/Add10* p. 30 cited from Shreya Atrey, *supra* note.

⁵⁰ UN Committee General Comment No. 3 (2016) on Women and Girls with Disabilities available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/3&Lang=en accessed 3 November 2020.

The above quote captures the struggles experienced by WWDs with ableism and sexism in several aspects of their daily lives, including in employment. In addition, Shreya Atrey, utilizing the International Covenant on Civil and Political Rights (ICCPR)⁵¹ as a treaty in point, asserts that most international human rights treaties which promote non-discrimination and equality are built on the intersectional theory.⁵²

Particularly as relates to this thesis, the intersectionality theory has been extended to include the daily experiences of individuals with disabilities,⁵³ including WWDs. More specifically, Brown and Moloney acknowledge the existence of discrimination against WWDs arising from the intersections of gender and disability, especially as compared to the challenges faced by women without disabilities and men with disabilities.⁵⁴ However, the research area remains insufficiently investigated.⁵⁵ Years ago, Begum described the global reality for WWDs in comparison with the situation for males with disabilities as follows:

Disabled women are not only more likely to internalize society's rejection, but they are more likely than disabled men to identify themselves as 'disabled'. The disabled male possesses a relatively positive self-image and is more likely to identify as 'male' rather than as 'disabled'. The disabled woman appears to be more likely to introject society's rejection and to identify as disabled. The popular view of women with disabilities has been one mixed with repugnance. Perceiving disabled women as childlike, helpless, and victimized, and non-disabled feminists have severed them from the sisterhood in an effort to advance more powerful, competent and appealing female icons.⁵⁶

Although the quote above is from a journal published about three decades ago, it sufficiently mirrors the current situation for WWDs. As a result of intersectional discrimination due to gender and disability, WWDs are often perceived as a weak and incompetent class, inferior to men with (or without) disabilities.⁵⁷ Moreover, WWDs often face challenges in finding a place within both

⁵¹ The International Covenant on Civil and Political Rights was adopted on 16 December 1966 by the United Nations General Assembly via Resolution 2200A (XXI).

⁵² Supra note 46 p. 221.

⁵³ Bose Christine E 'Intersectionality and global gender inequality' (2012) 26(1) *Journal of Gender & Society* pp. 67-72.

⁵⁴ Robyn Lewis Brown and Mairead Easton Moloney 'Intersectionality Work and Well-Being: The Effects of Gender and Disability' (2019) 33(1) *Journal of Gender and Society* p. 95.

⁵⁵ Ibid.

⁵⁶ Nasa Begum 'Disabled Women and the Feminist Agenda' (1992) 40(1) *Feminist Review* p. 73.

⁵⁷ Peta C, T Wengraff, and J McKenzie 'Facilitating the Voice of Disabled Women: The Biographic Narrative Interpretative Method (BNIM) in Action' (2019) 4 *Journal of the Academy of Social Sciences* p. 515; A Gartrelle, K Baesel and C Berker 'We do not Dare to Love: Women with Disabilities' Sexual and Reproductive Health Rights in Rural Cambodia' (2017) 25 *Reproductive Health Matters* p. 31. Adetokunbo Johnson 'Hush Woman! The Complex

the feminist and disability rights movements. According to Price, the problem is that feminist groups fighting for gender equality overlook the fact that WWDs are also rights bearers and are as much entitled to gender equality rights.⁵⁸ Conversely too, the disability rights movement presents as a single unified group without gender considerations.⁵⁹

The link between intersectionality and human rights law is particularly significant for countries like Nigeria, where discrimination cases are litigated based on constitutional anti-discrimination norms and general human rights principles. As earlier identified, there is some developing body of literature on aspects of intersectional discrimination in the Nigerian context. However, as relates to gender and disability, patriarchal norms and stereotypical beliefs contribute to the exclusion of WWDs from the Nigerian society. Ortoleva et al note in many African cultures, including Nigeria, the issue of disability for men often carries less significance or social stigma compared to women, which adds another layer of complexity to discussions about intersectionality and human rights law in these regions..⁶⁰ So, men with disabilities are awarded some degree of respect as against WWDs because first off, they are men.⁶¹ As earlier expressed by Begum, for men with disabilities, the focus is on the gender and not necessarily on the disability.⁶² Customarily too, many cultures in Nigeria allow men with disabilities to inherit property and make binding family decisions while considering women generally [whether disabled or not], as subordinate and second class to the male folk, including males with disabilities.⁶³ A recent study conducted by UN

'Disabled' Woman in Nigeria's Legal and Human Rights Framework: A Deconstruction' (2020)8 *African Disability Rights Yearbook* p. 18.

⁵⁸ Janet Price 'The Seeds of a Movement: Disabled Women and their Struggle to Organize' Association for Women's Rights in Development' Toronto (2011) p. 3-4. E Heideman 'YesAllWomen, but Not Really: How Feminism Leaves the Disabled Behind' *The Daily Beast* 24 November 2014 available at <https://www.thedailybeast.com/yesallwomen-but-not-really-how-feminism-leaves-the-disabled-behind?ref=scroll> accessed 26 April 2018.

⁵⁹ Mariam Arenas Conejo 'At the Intersection of Feminist and Disability Movement. From Equality in Differences in Disability and Intersecting Statuses' (2013)7; Helen Meekosha 'Body Battles: Bodies, Gender and Disability', in the *Disability Reader; Social Science Perspectives* (1998) edn. Original Cassell, London pp.10-12.

⁶⁰ S Ortoleva, A Egboka and G Jerry 'NGO Submission to the CEDAW Committee Pre-Sessional Working Group for Nigeria' (October 2016) p. 5.

⁶¹ Ibid.

⁶² *supra* note 59.

⁶³ E Durojaye and Y Owoeye 'Equally unequal or unequally equal: Adopting a substantive equality approach to gender discrimination in Nigeria' (2017) 17 *International Journal of Discrimination and the Law* p. 70 at 71. The courts in Nigeria have ruled against customs which discriminate against women. *Mojekwu v Mojekwu* [1997] 7 NWLR 283 1 where the Court of Appeal held that the Nnewi custom of Oli-ekpe is discriminatory and any form of societal discrimination on grounds of sex is unconstitutional and against the principles of an egalitarian society. *Mr. David Chiduluo & Ors v. Mrs. Mary Attansey & Anor* (2019) LPELR-48243(CA) where the Court of Appeal held that the practice in Igbo native law and custom discriminating against a female was "... barbaric, the height of insensitivity, shameful, unacceptable and a custom that belonged to the stone age...."

Women in two Nigerian states (Lagos and Kano) in June 2021, found that WWDs face significant barriers to employment in Nigeria.⁶⁴ The study reports that WWDs are often excluded from the formal labour market due to a lack of education and marginalization from schools and skills acquisition.¹⁷⁴

The next section examines the obstacles created by the intersection of gender and disability. The barriers created by the intersection of gender and disability which hinder WWDs from fully realizing their fundamental right to work.

3.4 Barriers to employment access for WWDs

Intersectional discrimination is often tied to workplace experience.⁶⁵ While employment discrimination creates barriers which apply generally to PWDs, WWDs are most affected by the barriers due to gender and disability discrimination.⁶⁶ Research indicates that the majority of WWDs have no jobs and when employed earn stipends, unlike their male counterparts and women without disabilities.⁶⁷ The United Nations itself, notes that PWDs in general face difficulties in accessing the labour market; but when viewed from a gender lens, men with disabilities are almost twice as likely to get employed than WWDs.⁶⁸ This workplace disadvantage compounds the economic vulnerability of WWDs and renders them more impoverished than men with disabilities. The general barriers to employment access for PWDs that have been identified in the existing body of literature are listed below and will be considered in the next section. They include; widespread negative attitudes, educational barriers, lack of disability-inclusive policies and legislation,

⁶⁴ UN Women ‘No One is Listening : Experiences of Women With Disabilities in Nigeria During Covid-19’ available at [Brief-Experiences-of-women-with-disabilities-in-Nigeria-during-COVID-19-en.pdf \(unwomen.org\)](#) accessed on 23 September 2023.

¹⁷⁴ *ibid*

⁶⁵ *Ibid* at p. 94. Crenshaw’s Intersectionality theory was founded on employment experiences of Black American women.

⁶⁶ Stephen James Thompson ‘Nigeria Situational Analysis for Inclusion Works’ (Version-II 2020) Institute of Development Studies, p.11 available at https://www.researchgate.net/publication/343306107_Nigeria_Situational_Analysis_for_Inclusion_Works accessed on 20 June 2021.

⁶⁷ United Nations, ‘Global Employment Trends for Women’ 2013b, available at http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_195449.pdf accessed 15 September 2018.

⁶⁸ United Nations Department of Economic and Social Affairs: Disability ‘Women with Disabilities Fact Sheet’ available at [Women with Disabilities Fact Sheet | United Nations Enable](#) accessed on 10 October 2023.

inaccessible physical structures and transport, family responsibility/inflexible work arrangements, public information and communication barriers, and limited research/data.⁶⁹

(i) Widespread negative attitudes and discrimination

According to the 2020 World Bank Report on Disability, the attitude of society towards PWDs is generally negative across the globe.⁷⁰ Analysed from a gender perspective, WWDs are subjected to a ‘double form of “othering”’⁷¹ which leads to a higher degree of exclusion.⁷² Eleweke and Ebenso explain that WWDs have additional discrimination to contend with, especially within the Nigerian society due to patriarchy, stigma, customary / traditional practices and stereotypes that are essentially gender discriminatory toward women.⁷³ They are often viewed as falling below society’s conventional beauty standards and less capable of fitting into “wifehood or motherhood”.⁷⁴ The societal perception that WWDs are of lesser value than men with disabilities contributes to the widespread practice of keeping most of them away from public view.⁷⁵ Hadivassiliou identifies this generally negative attitude towards PWDs as a factor that poses problems in their bid to access employment, and discrimination against them is prevalent in the labour market.⁷⁶

⁶⁹ Refilwe E, Morwane Shakila Dada and Yuan Bornman, ‘Barriers to and Facilitators of Employment of Persons with Disabilities in Low- and Middle-Income Countries: A Scoping Review’ (2021) 10 *African Journal of Disability* p. 833.

⁷⁰ World Bank ‘Disability Inclusion in Nigeria: A Rapid Assessment’ (2020) World Bank, Washington, DC. © World Bank available at <https://openknowledge.worldbank.org/handle/10986/34073> License: CC BY 3.0 IGO, accessed 12 June 2021.

⁷¹ Michelle A Travis ‘Gendering Disability to Enable Disability Rights Law’ (June 2017) 105 (3) *California Law Review* p. 841.

⁷² Ibid at p.843.

⁷³ C J Eleweke and Jannine Ebenso ‘Barriers to Accessing Services by People with Disabilities in Nigeria’ (2016) 6(2) *JESR* (MCSE Publishing, Rome) p.118.

⁷⁴ It is also erroneously presumed that WWDs will bear children who also have disabilities.

⁷⁵ Supra note 74.

⁷⁶ Kari P Hadivassiliou, ‘Discrimination and Access to Employment for Female Workers with Disabilities’ (March 2017) Directorate-General for Internal Policy Department A: Economic and Scientific Policy Study on Discrimination and Access to Employment for female workers with Disabilities Case Study: United Kingdom p. 8 available at https://www.researchgate.net/publication/319999703_Discrimination_and_Access_to_Employment_for_Female_Workers_with_Disabilities_DIRECTORATE-GENERAL_FOR_INTERNAL_POLICY_DEPARTMENT_A_ECONOMIC_AND_SCIENTIFIC_POLICY_Study_on_Discrimination_and_Access_to_E/citations accessed 1 August 2021; Foo Gak Sim ‘Integrating Women and Girls with Disabilities into mainstream vocational Training: A Practical Guide’ (ILO East Asia Multidisciplinary Advisory Team ILO Regional Office for Asia and the Pacific Bangkok) p. 3 available at https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/publication/wcms_107918.pdf accessed 21 August 2021.

WWDs are generally believed to lack capacity to function satisfactorily in employment and are thereby stereotyped as economically undesirable, burdensome, and unproductive.⁷⁷ This is because, majority of employers believe that hiring them may be expensive in terms of having to provide reasonable accommodation in the workplace.⁷⁸ In reality however, there are modern and simple assistive aids that can help employees with disabilities work effectively at minimal cost.⁷⁹ While concerns about the affordability of reasonable accommodations may hold some validity, government incentives can be implemented to help minimize these costs for employers.

Apart from the above, Veilleut identifies “fear of the unknown” factor on the part of employers as another reason for employers’ reluctance to hire PWDs.⁸⁰ He explains that many employers are convinced that failure to meet the legal employment demands of PWDs, may provoke workers with disabilities to sue.⁸¹ Marescia believes that the “fear of endless lawsuits” is the reason many employers are hesitant towards employing PWDs generally.⁸² WWDs for instance can either sue on gender grounds, on grounds of disability, or on issues that intersect between gender and disabilities.⁸³

(ii) Limited access to education

Educational barrier contribute to unemployment of WWDs and encourage their engagement in informal employment sector roles that offer lower wages in contrast to men with disabilities and able-bodied persons.⁸⁴ As reported by the United Nations International Children’s Emergency Fund (UNICEF) 90 per cent of children with disabilities in low-income countries, including

⁷⁷ Foo Gak Sim, *ibid.*

⁷⁸ Reasonable accommodation is analysed in detail in the next chapter. There is need for awareness campaigns aimed at sensitizing employers on available assistive technologies and the benefits of employing PWDs.

⁷⁹ United Nations Committee on the Rights of Persons with Disabilities General Comment No. 3 (2016) on women and girls with Disabilities p.4 available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/3&Lang=en accessed on 1 July 2021.

⁸⁰ ILO Newsroom ‘Employing People with Disabilities: It’s Right and Smart’ *Newsroom* 21 March 2014 available at https://www.ilo.org/global/about-the-ilo/mission-and-objectives/features/WCMS_239534/lang--en/index.htm accessed 1 July 2018.

⁸¹ Pam Fessler, ‘Why Disability and Poverty Still Go Hand in Hand 25 Years After Landmark Law’ *National Public Radio Inc.* July 23 2015 available at <https://www.npr.org/sections/health-shots/2015/07/23/424990474/why-disability-and-poverty-still-go-hand-in-hand-25-years-after-landmark-law> accessed on 6 April 2019.

⁸² Gilian Marescia ‘Disabled Hiring Still in Its Infancy’ *Business Day South Africa*, 14 October 2003.

⁸³ *Ibid.*

⁸⁴ United Nations ‘Global Employment Trends for Women’ (2013b), available at http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_195449.pdf accessed 15 September 2018.

Nigeria, do not attend school.⁸⁵ Specifically, girls with disabilities are additionally impacted by the intersection between gender and disability such that they are almost invisible in formal education programmes and hardly benefit from international efforts to improve education access.⁸⁶ As a consequence, gender disparity in educational levels between WWDs and men with disabilities has been reported.⁸⁷ In Nigeria, more males with disabilities are often given preference for school enrollment because they are seen as bearers of the family name.⁸⁸ As shown in the Leonard Cheshire report conducted in 2018, amongst PWDs who are at least 15 years old, the literacy rate for females with disabilities is 21 per cent as against 50 per cent for males with disabilities.⁸⁹ For those who are at least 25 years old, it is 22 per cent for females with disabilities compared to 47 per cent for males with disabilities.⁹⁰ Many girls with disabilities are often prioritized for vocational skills training—such as sewing, weaving, and tailoring—despite their strong enthusiasm for pursuing formal education.⁹¹

Obi and Ashi submit that generally, few special schools for children with disabilities exist in Nigeria, and these are inadequately equipped with special learning facilities and specialized tutors.⁹² However, the international standard of inclusive education has evolved beyond creating special schools or classes for learners with disabilities.⁹³ The modern context of inclusive education and acceptable international practice means tutoring learners with disabilities in normal regular schools with other children regardless of their “physical, intellectual, social, emotional,

⁸⁵ UNICEF ‘Progress in Measuring Global School Enrolment Gaps for Children with Disabilities’ available at <https://blogs.unicef.org/evidence-for-action/progress-in-measuring-global-school-enrollment-gaps-for-children-with-disabilities/> accessed on 12 May 2018.

⁸⁶ Bamidele Chika Agbakuribe and Emmanuel Onyinyechi Agbakuribe ‘Educational Inequality and Gendered Inequality in Nigerian Community: What Guidance Counsellors and Mass Communicators Must Do for Concerned Pupils?’ (2021) 9(1) *International Journal of Education, Learning and Development* (ECRTD-UK) p. 17

⁸⁷ With the overall literacy rate for PWDs at 3 per cent, the United Nations Educational, Scientific and Cultural Organization (UNESCO) estimates that for women and girls with disabilities, it is less than 1 per cent.

⁸⁸ Girls with disabilities are educationally underrepresented than boys with disabilities. Supra note 72.

⁸⁹ Disability Data Review: A collation and analysis of disability data from 40 countries’ (Leonard Cheshire Report funded by UK Aid) p. 47 available at disabilitydataportal.com/fileadmin/uploads/lcdp/Documents/report-web_version.pdf accessed on 7 September 2023.

⁹⁰ Ibid p. 48

⁹¹ Supra note 74.

⁹² Florence Banku Obi Ph.D and Ashi Mary M ‘Inclusive Education in Nigeria: Access and Equity’ (2016) 7(5) *Journal of Education and Practice* p. 169. The lecture theatres in most Nigerian universities are such that the seats are arranged in tight rows and in ascending order. There are also no experts trained in communicating with the deaf, no braille system for the blind, to mention a few. Students with disabilities also find it difficult to adapt to the hostel/lodging facilities alongside other non-disabled students.

⁹³ Omede Andrew A ‘Policy Framework for Inclusive Education in Nigeria: Issues and Challenges’ (2016) 6(5) *Journal of Public Administration and Research* p. 34.

linguistic or other conditions”.⁹⁴ Nigeria is seriously lagging behind in providing inclusive education for pupils with special needs.⁹⁵ Inclusive education for children with disabilities, with due consideration for equal opportunity for women and girls with disabilities will improve their sense of belonging and employability in Nigeria.

(iii) A lack of gender-inclusive perspectives in national legislation and policies

According to the 2020 World Bank Group, the lack of gender-inclusive perspectives in national legislation and policies which promote rights for PWDs constitutes a major employment setback for WWDs.⁹⁶ Recent data shows that only one-fourth of economies worldwide recognize the economic rights of WWDs with or without an existing national disability law.⁹⁷ Mayher emphasizes the importance of including gender perspectives in disability initiatives and policies:

The efforts to make people with disabilities visible and active agents and beneficiaries of activities, programmes and policies, should not be undermined by considering them a homogenous group. Including a gender perspective makes interventions more efficient, as it forces to understand better the target population. As a result, the design will be sharper, guiding to stronger results in implementation.⁹⁸

The United Nations Committee on Women and Girls with Disabilities note that many countries have no laws or policies that specifically promote economic inclusiveness for WWDs, as a separately vulnerable gender group.⁹⁹ Nigeria’s federal disability law is one example that fails to incorporate provisions that consider the unique position of WWDs.¹⁰⁰ As required by international law, formulation of national laws including the constitution, disability-specific law, gender-specific laws and employment policies that contemplate WWDs by prohibiting discrimination

⁹⁴ Ibid. Al-Ghaib O A, Andrae K and Gondwe R ‘Still Left Behind: Pathway to Inclusive Education for Girls with Disabilities’ *Leonard Cheshire Disability Report*, June 2017 available at <https://www.leonardcheshire.org/support-and-information/latest-news/press-releases/still-left-behind-pathways-inclusive-education> accessed 26 June 2018.

⁹⁵ *supra* note 83 at p. 168.

⁹⁶ World Bank Group ‘The Rights of Women with Disabilities: Pilot Research on Women, Disabilities and the Law’ (2020) p. 2 available at <https://thedocs.worldbank.org/en/doc/517421606767152867-0050022020/original/WBL2020DisabilityTopicNote.pdf>. accessed 4 May 2021.

⁹⁷ World Bank Group ‘The Rights of Women with Disabilities, Women, Business and the Law’ (2020) available at <https://openknowledge.worldbank.org/handle/10986/32639> License: CC BY 3.0 IGO.” accessed 10 June 2020.

⁹⁸ Cristina Lopez Mayher ‘The Empowerment of Women and Girls with Disabilities: A Compilation of Implemented Activities and Identified Best Practices 2018-2020’ European Union Bridging the Gap Project Published April 2021 available at <https://bridgingthegap-project.eu/wp-content/uploads/BtG-II-The-Empowerment-of-Women-and-Girls-with-Disabilities.pdf> accessed 1 October 2021.

⁹⁹ UN Committee on the Rights of Persons with Disabilities, General comment No. 3 (2016) on women and girls with disabilities.

¹⁰⁰ The Discrimination Against Persons with Disabilities (Prohibition) Act 2018 contains no gender perspectives throughout its provisions.

against them as a separate, more vulnerable group are essential to enable them to enjoy full and equal human rights, particularly in employment.¹⁰¹ This is called the twin-track or hybrid approach.¹⁰²

(iv) Inaccessible physical structures and transport

Appropriate measures that prioritize public access for PWDs, including WWDs, on an equal basis with others, into the physical environment, transportation system, and other public services are essential.¹⁰³ Inaccessible physical structures and transport pose a major setback that affects not only the right to access employment but also other aspects of daily life for PWDs in Nigeria. Approximately 80 per cent of PWDs are reliant on public transport.¹⁰⁴ Yet, Nigeria's public transport system (along with most public spaces) remains inaccessible to PWDs.¹⁰⁵ Additionally, structures that facilitate movement, such as ramps, wheelchairs, and other assistive devices, are rarely provided for PWDs to access public buildings and transportation systems in Nigeria.¹⁰⁶ Furthermore, the discriminatory attitudes of drivers and fellow passengers in public transportation toward commuters with disabilities form a significant part of the problem.¹⁰⁷ This situation has forced many WWDs to prefer handicraft and "piece-work" which they can conveniently sell cheaply in their environment with less need for mobility and transport.¹⁰⁸ The difficult reality of lack of transportation and inaccessible public buildings, especially in many low-income nations, is aptly explained by Braimah as follows:

In developing countries and even in some developed countries, transportation is not made easily accessible to persons with disabilities. Where buses may be easily available, there may not be provisions for people in wheelchairs, no access ramps or other necessary facilities. ...Most, if not all public buildings and facilities in poor countries do not have

¹⁰¹ This will be discussed in the next chapter.

¹⁰² United Nations OHCHR Policy Guidelines for Inclusive Development Goals 'Gender Equality' (2020) available at <https://www.ohchr.org/Documents/Issues/Disability/SDG-CRPD-Resource/policy-guideline-gender-equality.pdf> accessed 1 October 2021.

¹⁰³ Article 9 UN CRPD 2006, A/RES/61/106 adopted by the United Nations on 13 December 2006 and came into force on 3 May 2008. The right of PWDs to accessibility is discussed in chapter three.

¹⁰⁴ Ipingbemi, O. (2015) 'Mobility Challenges and Transport Safety of People with Disabilities (PWD) In Ibadan, Nigeria', *African Journal for the Psychological Study of Social Issues* 18.3: 15–28.

¹⁰⁵ Umeh, N. and Adeola, R. 'Nigeria' *African Disability Rights Yearbook* (2013) 1 pp. 277–90.

¹⁰⁶ World Bank 'Disability Inclusion in Nigeria: A Rapid Assessment' (2020) World Bank, Washington, DC. © World Bank available at <https://openknowledge.worldbank.org/handle/10986/34073> License: CC BY 3.0 IGO, accessed 12 June 2021 at p. XI.

¹⁰⁷ Ibid. It is also been reported by the World Bank Group that airport and airline staff also discriminate against

¹⁰⁸ Rao I 'Equity to Women with Disabilities in India: A Strategy Paper Prepared for the National Commission for Women, India' available at <http://vl.dpi.org/lang-en/resources/details.php?page=90> accessed 12 October 2017.

disabled lifts and access ramps. This makes access to high-rise buildings literally impossible. In cases where persons with disabilities have to access such buildings as a matter of necessity, they do so with extreme difficulty, and that is even when a generous “abled” colleague decides to offer a generous helping hand.¹⁰⁹

The Nigerian federal disability law (DAPDA) prescribes measures which should be put in place to afford accessibility to all PWDs to easily access buildings and utilize transport facilities.¹¹⁰ Pursuant to section 7 of Discrimination Against Persons with Disabilities (Prohibition) Act (DAPDA), a building plan which is not structured to grant accessibility to PWDs will be denied approval by the appropriate planning authority – the Ministry of Physical Planning and Urban Development. In practice, however, PWDs, including WWDs can hardly access disability-friendly means of transport to commute to work or seek employment opportunities.¹¹¹ Regarding access into physical structures, DAPDA provides for a transitory period of five years within which all public buildings and transportation vehicles are to be made accessible to all individuals with disabilities.¹¹² Although the Nigerian government has launched a National Mass Transit policy to create ramps, tactile pavements and other features to improve accessibility for PWDs, thorough implementation is yet to materialize.¹¹³

(v) Family responsibility and inflexible work arrangements

Family or caring responsibility may also limit WWDs from fully participating in paid employment. Women generally, with or without disabilities, are caregivers either to children or other family members including their aged parents.¹¹⁴ Fawcett observes that one of many excuses WWDs give for not being able to participate fully in public employment is that they have to look after their

¹⁰⁹ Braimah S ‘Addressing the Welfare & Rights of the Disabled: With Equal Access and Opportunities, No Persons Will Be Disabled’ available at http://activism.suite101.com/article.cfm/addressing_the_welfare_rights_of_the_disabled#ixzz0fyVF2AOH accessed July 2016.

¹¹⁰ Part III of the Discrimination Against Persons with Disabilities (Prohibition) Act 2018 (DAPDA 2018) deals with access to public buildings, Part IV – Access to transportation, Part V – Access to seaports and railways, Part VI – Access to Airport facilities. The recommendations for improved accessibility and transport are discussed in chapter six.

¹¹¹ World Bank Group 2020 report, p.106.

¹¹² Specifically, Section 6 and 10 of the DAPDA respectively.

¹¹³ Viktorija Mickute and Sarah Kim ‘Nigeria’s Lagos-Life with a disability in the African megacity: A close look into the state of accessibility in Nigeria’s largest city’ (30 March 2022) available at *Nigeria’s Lagos: Life with a disability in the African megacity | Inequality | Al Jazeera* accessed 10 October 2023.

¹¹⁴ Studies confirm that women make up about 57-81 per cent of informal caregivers, globally. See Del-Pino-Casado R, Frias-Osuna A, Palomino-Moral PA, Ramón Martínez-Riera J ‘Gender differences regarding informal caregivers of older people’ (2012) 44 (4) *Journal of Nursing Scholarship* pp.349-57.

young children or elderly dependents.¹¹⁵ Commonly, women, whether disabled or not, are unable to keep stable jobs until their children become of school age.¹¹⁶ Also, it is commonplace for African women to be socialized into care-giving roles.¹¹⁷ The Nigerian Equality and Human Rights Commission reports that men with disabilities hardly cite family responsibilities as a barrier for being unemployed in the labour market regardless of the age of their children or wards.¹¹⁸ Particularly for WWDs, the stress of managing the disability combined with family responsibilities may exclude them from paid public employment.¹¹⁹ The United Nations highlights that providing flexible working arrangements can help improve, encourage, and balance the daily lives of WWDs, thereby enhancing their economic participation and productivity in employment..¹²⁰

(vi) Inaccessible public information and communication media

When public information and communication media are unsuited to accommodate PWDs, it may pose a barrier to employment. The inability of PWDs, particularly WWDs, to access information through communication and technological systems, especially with respect to suitable employment, limit equal economic participation for them.¹²¹ Nelson explains that rigid dissemination of information and inflexible recruitment methods are unsuited to the demands of

¹¹⁵ Gail Fawcett, 'Bringing Down the Barriers-Women with Disabilities Australia' p.22 available at <http://wwda.org.au/wp-content/uploads/2013/12/bringingdownbarriers1.doc> accessed 1 April 2019.

¹¹⁶ Ibid at p. 24.

¹¹⁷ Ekaete Francis Asuquo and Paulina Ackley Akpan-Idiok 'The Exceptional Role of Women as Primary Caregivers for People Living with HIV/AIDS in Nigeria, West Africa' (Peer-Reviewed Chapter) published in Book: *Suggestions for Addressing Clinical and Non-Clinical Issues in Palliative Care* available at <https://www.intechopen.com/chapters/73369> accessed 1 October 2021.

¹¹⁸ Nick Coleman, Wendy Sykes and Carola Groom 'Barriers to Employment and Fair Treatment at Work: A Quantitative Analysis of Disabled People's Experience Equality and Human Rights Commission (Manchester, U.S.A)' Report No 88 available at <https://www.equalityhumanrights.com/sites/default/files/research-report-88-barriers-to-employment-and-unfair-treatment-at-work-disabled-peoples-experiences.pdf> accessed 1 October 2021.

¹¹⁹ supra note 109 p. 22.

¹²⁰ United Nations ESCAP 'Strengthening Employment Prospects for Persons with Disabilities in the Asia and Pacific' (Disability At A Glance 2015) available at https://www.unescap.org/sites/default/files/SDD%20Disability%20Glance%202015_Final.pdf accessed 1 November 2020. Rachelle Bosua and Marianne Boet 'Access to Flexible Work Arrangements for People with Disabilities: An Australian Study' available at https://www.researchgate.net/publication/344600237_Access_to_Flexible_Work_Arrangements_for_People_With_Disabilities_An_Australian_Study accessed 5 May 2022.

¹²¹ Article 9(1) United Nations Convention on the Rights of Persons with Disabilities provides:

"To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas".

applicants with disabilities and present an employment hurdle for them.¹²² For instance, job advertisements exhibited in newspapers, websites or other modern media outlets, may shut out WWDs who may otherwise be qualified for the job, including the visually impaired, illiterate, or those who lack digital literacy.¹²³ In Nigeria for instance, it is common practice for public offices and establishments to operate websites where job vacancies are published, and through which online applications are received from time to time.¹²⁴ Additionally, Many interview processes overlook disability-friendly strategies, such as hiring sign language experts for deaf applicants or providing Braille facilities for blind applicants, along with other recruitment assistive measures.¹²⁵ It is crucial for employers to implement measures that address the needs of applicants with disabilities at every stage of the recruitment and hiring process.¹²⁶

(vii) Limited research and data on WWDs

There is a growing body of research on disability issues in Nigeria, including research on intersectional discrimination. Concerning data however, *Ewepu* has reported moves to compile accurate disaggregated data on PWDs in Nigeria.¹²⁷ Currently, the actual statistics and peculiar living situation of WWDs have not been fully determined and understood in Nigeria, as in most countries.¹²⁸ Particularly too, the lived employment experiences of WWDs are left inadequately investigated and undocumented.¹²⁹ Budgetary allocations or scholarships for research and data generation regarding PWDs and particularly WWDs, are seldom prioritized leading to their exclusion from the benefits of social integration measures.

The employment barriers discussed above have manifestly impacted the economic participation of WWDs in public employment and the labour market. The consequence of the employment barriers, as they negatively affect WWDs is evident in lower rates of employment

¹²² Holly O'Mahony 'Disabilities in the Workplace: Are We Failing Our Disabled Workforce?' *The Guardian Newspaper*, 17 April 2017.

¹²³ Ibid.

¹²⁴ World Bank Report 2020 *supra* note 106 at p. X.

¹²⁵ *ibid.*

¹²⁶ *ibid.*

¹²⁷ Gabriel Ewepu 'Institute Initiates Moves to Gather Accurate Data on Persons with Disabilities' *Vanguard News*, 17 June 2021 available at <https://www.vanguardngr.com/2021/06/institute-initiates-moves-to-gather-accurate-data-for-pwds-in-nigeria/> accessed 12 September 2021.

¹²⁸ Ibid. There is some statistics but they are largely inaccurate and unreliable.

¹²⁹ Edward Ugbada Adie Ph.D and Yusuf Nzim Shamagana 'Towards Improved Inclusion of Women and Girls with Disabilities in the Development Agenda in Nigeria' (2018) 10(1) *International Journal of integrative Humanism* p.14.

participation as compared with that of their male counterparts. The next section highlights low employment participation rates for WWDs in South Africa, United Kingdom, Canada, and the United States of America. These countries are specifically chosen to demonstrate that WWDs even in more thriving economies than Nigeria, experience employment barriers with its outcomes, and to stimulate research interests on improving employment for WWDs in those countries.

3.5 Employment participation rates of WWDs: Comparative perspectives

Barriers to employment, as discussed above, are a global phenomenon. In several countries, WWDs are more impacted by the employment barriers due to the intersection of gender and disabilities than men with disabilities. The United Nations estimates that 75 per cent of WWDs are unemployed globally.¹³⁰ Furthermore, research has consistently shown that WWDs encounter their own uniquely different forms of discrimination in accessing employment compared to men with disabilities.¹³¹ The barriers produced by the intersection of gender and disability discussed above are proven by low employment participation rates of WWDs compared to men with disabilities in some countries across the world. This section will illustrate the situation in South Africa, the United Kingdom, Canada and the United States of America to promote scholarly research studies on the topic in the countries mentioned below and beyond, and to address the anomaly.

(i) South Africa

In South Africa reports show that about 7.5 per cent of the population has disability, which is approximately 2.87 million people, 41 per cent of whom are reported as male and 59 per cent female.¹³² Although the Constitution of South Africa prohibits discrimination due to disability,¹³³ the country still struggles with disability discrimination issues, including unemployment.¹³⁴ PWDs

¹³⁰ USAID ‘Advancing Women and Girls with Disabilities’ (May 2019) available at <https://www.usaid.gov/what-we-do/gender-equality-and-womens-empowerment/women-disabilities#:~:text=Unemployment%20rates%20are%20highest%20among,disparities%20also%20exist%20in%20education> accessed 1 November 2020; Also, 55% of PWDs in Canada are women.

¹³¹ Arthur O’Reilly ‘Employment Barriers for Women with Disabilities’ in *The Right to Decent Work of Persons with Disabilities IFP/Skills* (ILO 2003) Working Paper No. 14.

¹³² South African Census Statistics 2011; Statistics South Africa. (2014). *Census 2011: Profile of persons with disabilities in South Africa*. Pretoria: Statistics South Africa available at <http://www.statssa.gov.za/publications/Report-03-01-59/Report-03-01-592011.pdf> accessed 9 June 2021.

¹³³ Section 9(3) of the Constitution of the Republic of South Africa. The section provides: “The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth”.

¹³⁴ Integrated National Disability Strategy, ‘White Paper Office of the President: Prevalence of Disability in South Africa 1997’ available at <https://www.independentliving.org/docs5/SANatIDisStrat1.html> accessed 20 February 2021.

in South Africa have limited access to education and less than two per cent of them are gainfully employed.¹³⁵ In addition, patriarchy and gender stereotypes negatively affect WWDs in South Africa as is the case in most parts of the world.¹³⁶ Although South Africa's Employment Equity Act¹³⁷ contains provisions that aim to ensure economic participation for women and persons living with disabilities, particularly through affirmative action, WWDs and other vulnerable groups still suffer employment discrimination with regard to implementation.¹³⁸

(ii) United Kingdom (UK)

The UK situation is similar to that of South Africa discussed above. In the UK, 13.3 per cent of the UK population have one form of disability or another.¹³⁹ Also, fewer PWDs are in formal employment in the UK as compared with people without disabilities, and WWDs are less likely to have employment access than men with disabilities due to intersectional disadvantage, which negatively affects their labour value.¹⁴⁰ The employment rate for WWDs in the UK is 51.3 per cent while that of men with disabilities is 53.1 per cent.¹⁴¹ The thin margin is due to the fact that there are more WWDs that are of working age than men with disabilities in the UK.¹⁴² As earlier mentioned in 2.2 above, the UK Equality Act¹⁴³ recognizes “combined discrimination” of which WWDs form a part; but the provision is seldom implemented as regards realising equal employment participation for WWDs.¹⁴⁴ The current situation remains that WWDs are paid far less than men with disabilities in employment, work mostly part-time (fewer hours), have limited

¹³⁵ Pragashnie Govender ‘Employing People with Disabilities in South Africa’ (2011) 41(1) *S A Journal of Occupational Therapy* p.2.

¹³⁶ Shanaaz Madjet and Adeline Africa ‘Women with Disabilities in Leadership: The Challenges of Patriarchy’ (2015) 29(2) *Journal of Disability and Gender* p. 103. Fine M and Asch A ‘Disabled women: Sexism without the pedestal’ In M. J. Deegan (Ed.) *Women and disability—The double handicap* (2018 Ed) pp. 6–22 (New York: Routledge).

¹³⁷ Employment Equity Act No. 55 of 1998.

¹³⁸ Section 15 of the Employment Equity Act provides for Affirmative Action measures to be taken by employers in respect of designated groups in all categories of the workforce in addition to prohibiting discrimination due to sex, disability and other factors in section 6 of the Employment Equity Act. Designated groups mean blacks, women and people with disabilities.

¹³⁹ Family Resources Survey 2015/2016 available at www.gov.uk/government/uploads/system/uploads/attachment_data/file/600465/family-resources-survey-2015-16.pdf accessed 15 April 2019.

¹⁴⁰ World Report on Disability 2011 available at https://www.who.int/disabilities/world_report/2011/report.pdf accessed 15 April 2019.

¹⁴¹ Andrew Powell ‘People with Disabilities in Employment’ Briefing Paper No 7540, 30 May 2021 available at <https://commonslibrary.parliament.uk/research-briefings/cbp-7540/> accessed 10 June 2021.

¹⁴² Ibid.

¹⁴³ Section 9(3) of the UK Equality Act c. 15 2010.

¹⁴⁴ Section 14 of the Equality Act (UK); See *ibid* n 20.

career pathways, and are confined to traditional gender roles.¹⁴⁵ In the UK, there are wide pay gaps between men and women with disabilities with the overall disability pay gap being 13 per cent for men and 7 per cent for women.¹⁴⁶

(iii) Canada

In Canada PWDs constitute 13.7 per cent of the population.¹⁴⁷ More specifically, one in every five women in Canada lives with disability.¹⁴⁸ WWDs in Canada are victims of prejudice in all respects, including employment.¹⁴⁹ As a consequence, labour market participation for WWDs in Canada is significantly lower than that of men with disabilities, leaving them poorer than their male counterparts.¹⁷⁵ For example, only 58.6 per cent of WWDs are in the labour force compared to 75.3 per cent of women without disabilities.¹⁷⁶ Many WWDs who are qualified are unemployed in Canada.¹⁷⁷ Also, the Canadian Community Health Survey has shown that WWDs in employment receive an average total income of \$24,000 while men with disabilities have \$41,200 and women without disabilities have \$32,100.¹⁷⁸ In Canada, aside from a collection of disability legislation, policies, programmes, and regulations that vary by province, there is no single, comprehensive national disability law or policy.¹⁷⁹ Therefore, PWDs in Canada are relegated to the “margins of the labour market” with WWDs in a more disadvantaged position.¹⁸⁰ Additionally,

¹⁴⁵ Frances Ryan ‘We know About the Gender Pay Gap But What About the Disability Pay Gap?’ (*The Guardian News*, 11 April 2018) available at <https://www.theguardian.com/commentisfree/2018/apr/11/gender-pay-gap-disability-disabled-people-job> accessed 13 February 2019.

¹⁴⁶ Dr Malcolm Brynin and Dr Simonetta Longhi ‘Causes of Gender, Disability and Ethnic Pay Gaps’ available at <https://www.iser.essex.ac.uk/research/projects/gender-disability-ethnic-pay-gaps> accessed 17 April 2019.

¹⁴⁷ This figure is 13.7 per cent of the Canada’s population.

¹⁴⁸ Statistics Canada, Participation and Activity Limitation Survey (PALS), 2006. Canada currently has a total population of about 38 million people, according to Worldometer Statistics 2021 available at <https://www.worldometers.info/world-population/canada-population/> accessed 12 October 2021.

¹⁴⁹ Fiona Sampson ‘Globalization and the Inequality of Women with Disabilities’ (Spring 2003) 2(1) *Journal of Law and Equality*.

¹⁷⁵ Supra note 139 p. 294.

¹⁷⁶ Ibid.

¹⁷⁷ Laurie Hill MSW ‘Women with Disabilities: The Employment Connection’ (28 May 2012) available at <https://www.neilsquire.ca/women-disabilities-employment-connection/> accessed 17 April 2019.

¹⁷⁸ Community Health Survey, Canada 2009.

¹⁷⁹ Andre Picard ‘It’s Well Past Time For A Canadians With Disabilities Act’ (Globe and Mail Publication) available at <https://www.theglobeandmail.com/opinion/its-well-past-time-for-a-canadians-with-disabilities-act/article25904732/> accessed 15 April 2019.

¹⁸⁰ Ibid.

disability benefits linked to work earning history tend to be higher for men with disabilities than for WWDs.¹⁸¹

(iv) United States of America

In the United States of America (USA) it is estimated that about 40 million people living with disabilities comprise 12.5 per cent of the population.¹⁸² The USA Bureau of Labor Statistics reveal that the unemployment rate for PWDs stands at 8.0 per cent compared to 3.7 per cent for persons without disabilities.¹⁸³ Further, the Bureau reveals that only 28 per cent of WWDs in the USA were employed in 2018 compared to 31.7 per cent of men with disabilities, and 68.6 per cent of women without disabilities.¹⁸⁴ The existing policies against disability discrimination in America, especially the Americans with Disabilities Act 1990 (ADA),¹⁸⁵ have failed to recognize or address the employment barriers of WWDs as a uniquely disadvantaged group.¹⁸⁶ Overall, little attention is given to the intersectional discrimination of gender and disability in the USA, with the issue largely ignored in public debates by both mainstream feminist movements and successive governments.¹⁸⁷ Similar to the prevailing state of WWDs in Canada and in the UK, WWDs in the USA are “significantly poorer” than men with disabilities.¹⁸⁸ The majority of women in the USA, WWDs inclusive, are caregivers both to other PWDs and the elderly and this takes a toll on their already dwindling finances, making them even poorer.¹⁸⁹

¹⁸¹ Human Rights Watch ‘Women and Girls with Disability’ available at <https://www.hrw.org/legacy/women/disabled/html> accessed 21 March 2018.

¹⁸² Mia Mercado ‘How Many Americans Have Disability? A New Survey Indicates the Number Is Higher Than You Think’ *Bustle News*, 2017 available at <https://www.bustle.com/p/how-many-americans-have-a-disability-a-new-survey-indicates-the-number-is-higher-than-you-think-74308> accessed 6 April 2019.

¹⁸³ US Bureau of Labour Statistics ‘Persons With A Disability: Labour Characteristics-2018’ *News Release* 26 February, 2019 available at <https://www.bls.gov/news.release/pdf/disabl.pdf> accessed 4 March 2019.

¹⁸⁴ US Bureau of Labour Statistics, *Economic News Release* available at <https://www.bls.gov/news.release/empsit.t06.htm> accessed 4 April 2019. This data includes only PWDs who are willing and able to work.

¹⁸⁵ Americans with Disabilities Act 1990 42 U.S.C. §§ 12101 et seq.

¹⁸⁶ Sarah Kim ‘Why No One Talks About The High Unemployment Rate Among Women With Disabilities’ *Forbes News*, 20 Feb 2019 available at <https://www.forbes.com/sites/sarahkim/2019/02/20/women-with-disabilities-unemployment/#47f0987158a1> accessed 8 April 2019.

¹⁸⁷ *Ibid.*

¹⁸⁸ US Department of Labor: Office of Employment of Disability Policy (OEDP) ‘Women’ available at <https://www.dol.gov/odep/topics/women.htm> accessed 2 March 2019.

¹⁸⁹ *Ibid.*

(v) Nigeria

The World Disability Report indicates that over 25 million Nigerians have at least one disability, with women accounting for more than 50 per cent of this population.¹⁹⁰ Although the past decade has witnessed some improvement towards the recognition of disability rights, the present circumstances for WWDs in Nigeria has hardly changed.¹⁹¹ As noted in Chapter one, there is a lack of reliable data on disability issues in Nigeria. During the course of writing this thesis, data on employment participation of WWDs disaggregated by sex was not found. As earlier mentioned in Chapter one, various stakeholders are working to provide accurate data for planning, but progress is still moving at a very slow pace.¹⁹² The United Nations has reported that, globally, WWDs are mostly poorer and more financially dependent than men with disabilities and men with disabilities are more likely to gain access to formal employment than WWDs.¹⁹³ Available research strongly suggest that gender and disability discrimination limit WWDs from equal access to employment in Nigeria, particularly employment that is open and public.¹⁹⁴ The Leonard Cheshire survey indicates that men with disabilities have higher rate of employment and they occupy 0.9 per cent of managerial positions in the Nigerian labour market as against zero per cent WWDs.¹⁹⁵

3.6 From intersectional discrimination to substantive equality

Sergiu conceptualizes equality of opportunity as a “formal” notion that guarantees equal chances for all, without discrimination arising from any grounds.¹⁹⁶ However, formal equality cannot be

¹⁹⁰ The World Disability Report was produced by the WHO and the World Bank. Full text is available at <https://gsdrc.org/document-library/world-report-on-disability-summary/> accessed on 12 October 2020.

¹⁹¹ Seun Durojaiye ‘Women with Disabilities are the Most Vulnerable in Nigeria But the System doesn’t Care’ available at <https://www.icirnigeria.org/women-and-girls-with-disabilities-in-nigeria-are-the-most-vulnerable-groups-but-the-system-doesnt-care/> accessed 1 November 2020.

¹⁹² Yinka Olaito ‘Without Data Women with Disabilities Will Suffer Untold Hardship’ in Centre for Inclusion and Disability in Nigeria: Women With Disabilities in Nigeria *Women with Disabilities in Nigeria – Centre for Disability and Inclusion Africa* (cdinclusionafrica.org) accessed on 16 October 2024.

¹⁹³ UN Women ‘The Empowerment of Women and Girls with Disabilities: Towards Full and Effective Participation and Gender Equality’ available at https://un.org.np/sites/default/files/doc_publication/2019-06/Empowerment-of-women-and-girls-with-disabilities-en.pdf accessed on 31 October 2021. Pinilla-Roncancio M ‘Disability and poverty: two related conditions. A review of the literature’ (2015) 63 *Rev. Fac. Med.* S113-23 available at <http://dx.doi.org/10.15446/revfacmed.v63n3sup.50132> accessed on 31 October 2021.

¹⁹⁴ UK Aid Disability Inclusion: emerging lessons and future direction for LINKS Nigeria (March 2021) p. 3 available at *Disability inclusion: emerging lessons and future direction for LINKS Nigeria* (links-nigeria.com) accessed 13 September 2023.

¹⁹⁵ *Ibid* p.62

¹⁹⁶ Balan Sergiu ‘Formal and Substantive Equality of Opportunity’ (2012) IV(4) *Multidisciplinary Research Journal* p. 86.

applied to cure all forms of disadvantage.¹⁹⁷ He adds that there is another notion of equality in human rights law – substantive equality.¹⁹⁸ While substantive equality lacks a single, unified definition, it refers to a deeper form of equality than formal equality. It provides special protective measures for vulnerable groups to help them fully exercise their fundamental human rights in all areas of society and development.¹⁹⁹ For instance, on the one hand, in the context of employment, formal equality ensures that all applicants who are suitably qualified for a particular job position are recruited based on merit, through the formal recruitment processes. On the other hand, the substantive approach guarantees that specific actions are implemented to achieve equality of employment opportunities for qualified applicants from groups deemed vulnerable, such as WWDs.

Fredman's approach to substantive equality develops a concept of equality – and hence non-discriminatory – comprising four elements ('dimensions').²⁰⁰ The first element portrays substantive equality as asymmetrical, enabling redress for social and economic disadvantage.²⁰¹ Next, substantive equality addresses stigma / prejudice being experienced by vulnerable groups.²⁰² Third, it facilitates participation; and finally, substantive equality accommodates differences by promoting structural and institutional changes.²⁰³ If applied effectively, the concept of substantive equality could be instrumental in shaping human rights-based responses to intersectional discrimination, especially concerning gender and disability. Special employment measures, such as affirmative action, quota systems, awareness-raising campaigns about the unique vulnerabilities faced by WWDs, and job fairs, can help inform the public and significantly address the societal stigma that WWDs encounter due to the intersection of gender and disability.²⁰⁴ The application of substantive equality to the intersection of gender and disability could help deter discrimination experienced by WWDs by ensuring that they have equal access to the same opportunities as their male counterparts and providing additional resources or support services when needed will directly improve the visibility of WWDs, give them a voice and foster their participation in employment

¹⁹⁷ Catherine A MacKinnon 'Substantive Equality Revisited: A Reply to Sandra Fredman' (2016)14(3) *International Journal of Constitutional Law* p. 741.

¹⁹⁸ *ibid.*

¹⁹⁹ *Ibid.*

²⁰⁰ Sandra Fredman *Discrimination Law*, 2nd ed. Oxford: Oxford University Press, 2011 pp. 25–33.

²⁰¹ *Ibid.*

²⁰² *Ibid.*

²⁰³ *Ibid.*

²⁰⁴ The workings of these measures are discussed in chapters three and five of the thesis; workings of affirmative action are discussed in detail in chapter four of the thesis.

among other aspects of society. Finally, structural and institutional change or adjustments such as reasonable accommodation is particularly relevant to generally improve accessibility and inclusion for WWDs.

Particularly, Section 42 of the Constitution of the Federal Republic of Nigeria which embodies the principle of equality and non-discrimination is founded on formal equality.²⁰⁵ The section lists some groups that may be considered vulnerable, including women which is an important step in the right direction.²⁰⁶ Gender based claims can certainly be an important route to addressing intersectional (sex and disability) discrimination. Indeed, in cases involving gender discrimination examined in Chapter two, namely: *Mojekwu v Ejikeme*,²⁰⁷ *Mojekwu v Mojekwu*,²⁰⁸ *Mrs. Lois Chituru Ukeje (and their Son) v Mrs. Cladys Ada Ukeje*,²⁰⁹ *Mr. David Chiduluo & Ors v Mrs. Mary Attanse & Anor*,²¹⁰ *Onyibor Anekwe & Anor v Mrs Maria Nweke*²¹¹ and in several other cases, the formal equality in Section 42 was applied to declare custom's discriminatory acts towards women as a violation of their constitutional rights.

Concerning PWDs, the Nigerian constitution omits to mention 'disability' as one of the potential grounds of discrimination; neither do the provisions of the constitution recognize the intersection between grounds of gender and disability.²¹² Durojaiye and Owoeye observe that courts in Nigeria are inclined towards applying formal rather than substantive equality to interpret

²⁰⁵ Constitution of the Federal Republic of Nigeria Cap C24 L.F.N 2004. Section 42 (1)-(3) of the Constitution reads:

(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:

“(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions are not made subject; or

(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions.

(2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth”.

²⁰⁶ Section 42(1), *ibid*.

²⁰⁷ (2000) 5 NWLR 402

²⁰⁸ [1997] 7 NWLR 283 1

²⁰⁹ (2014) LPELR – 22724 (SC)

²¹⁰ (2019) LPELR-48243(CA),

²¹¹ (*unreported*) available at *Omolola Olajide -Vs- The Nigeria Police Force. & 2 ORS - National Industrial Court of Nigeria* (nicnadr.gov.ng) accessed 23 September 2023.

²¹² The Constitution of the Federal Republic of Nigeria Cap C24 L.F.N. 2004. Chapter five discusses Section 42 of the Nigerian Constitution in detail.

Section 42 of the Nigerian Constitution.²¹³ This is the reason why discriminatory barriers towards PWDs, including WWDs, still persist within the Nigerian society. As earlier indicated, the substantive equality approach requires special measures for vulnerable groups such as WWDs and is more suited to addressing issues of intersectionality, rather than the formal equality mode. Nigerian courts ought to adopt the substantive equality approach to fulfil Nigeria's international obligations towards promotion of rights for WWDs and other vulnerable groups within the country.²¹⁴

3.7 Conclusion

As seen from the discussion above, *Crenshaw's* intersectionality theory has been instrumental in construing the interaction between gender and disability and its barrier implications for WWDs. As also analysed in this chapter, WWDs are more severely impacted by the barriers in all aspects of daily life, particularly as regards employment, than men with disabilities. The situation for WWDs in Nigeria is the same in other nations as signified by low employment rates highlighted in South Africa, UK, Canada, USA. The concept of substantive equality is discussed in the chapter as a theoretical framework for law and policy interventions to address the intersectional discrimination of WWDs due to gender and disability. Since having PWDs in employment, apart from guaranteeing financial independence and improving their self-worth, is advantageous to the employer, the government, and the economy (as shown in chapter one); all measures towards improving employment participation for PWDs, including WWDs in Nigeria and in the global economy are required.²¹⁵ As *Mark Priestly* acknowledges, 'access to resources by PWDs is highly gendered and the life and chances of disabled women [requires] special attention'.²¹⁶

The next chapter discusses the international law instruments relevant for the promotion of human rights for WWDs, particularly their right to work. At the international level, the intersection between gender and disability is significantly accorded legal recognition. As will be shown in the

²¹³ Elizabeth Durojaiye and Yinka Owofe 'Equally unequal or unequally equal: Adopting a substantive equality approach to gender discrimination in Nigeria' (2017) 17(5) *International Journal of Discrimination and the Law* p.

²¹⁴ Ibid. The Courts in Nigeria have applied the formal equality to several cases to declare that customs, laws and practices that are gender discriminatory are void. *Chiduluo & Ors v. Mrs. Mary Attansey & Anor* (2019) LPELR-48243(CA) *Mojekwu & others v Ejikeme & others* (2000) 5 NWLR 402 *Mrs Lois Chituru Ukeje & Anor v Mrs Gladys Ada Ukeje* (2014) LPELR – 22724 (SC) *Electronic Law Reports* *Mojekwu v Mojekwu* [1997] 7 NWLR 283 1

²¹⁵ These measures are discussed in chapters three and five of this thesis.

²¹⁶ Mark Priestly *Disability and the Life Course: Global Perspectives* (Cambridge University Press) 2001 available at <https://books.google.com.ng/books?id=hrrpeMGQCLgC&printsec=frontcover#v=onepage&q&f=false> accessed 9 March 2018.

next chapter, special provisions exist in international instruments that promote the right of WWDs and girls with disabilities to work, as a special, more vulnerable group within the disability group. Essentially, member states of the United Nations, including Nigeria are bound to perform certain obligations towards fulfilling rights for WWDs within their respective countries. Compliance with the international norms and standards should substantially solve the problems WWDs confront.

CHAPTER FOUR

INTERNATIONAL LAW FRAMEWORK AND BEST PRACTICE: PROMOTING EMPLOYMENT FOR WOMEN WITH DISABILITIES

4.1 Introduction

There has been a paradigm shift from viewing persons with disabilities (PWDs) as objects of compassion to subjects of human rights in the international context.¹ The rights-based approach to disability discussed in the introductory chapter of this thesis qualifies all PWDs as equal rights bearers. In furtherance of the human rights approach, the United Nations (UN)² has developed several instruments aimed to guarantee human rights for all categories of PWDs, including women with disabilities (WWDs). Chapter three analysed the intersection between gender and disability with its employment outcomes for WWDs. Building on this, chapter four examines the relevant international law framework for promoting employment for WWDs. Specifically, the chapter provides an overview of the international law provisions that have developed over time to support the human rights approach of disability, and that increasingly recognise the intersectional discrimination experienced by WWDs.

This chapter emphasizes that the intersection between gender and disability has gained impetus in international law, levelling WWDs to the status of rights holders, particularly with the advent of the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD).³ By the provisions of the UN CRPD, member states are urged to formulate and implement laws and policies that duly recognize and guarantee the human rights of WWDs in all aspects of society.⁴ Despite this, several nations including Nigeria, a member state of the United Nations, have failed

¹ Paul 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* pp. 1-14.

² The United Nations was formed in 1945 with the United Nations Charter as its founding document signed on 26 June at the end of the UN Conference on International Organization held in San Francisco. The UN Charter came into force on 24 October 1945. Other purposes for establishing the UN are listed in Article 1 of the UN Charter.

³ United Nations Convention on the Rights of Persons with Disabilities 2006 A/RES/61/106 adopted by the United Nations on 13 December 2006 and came into force on 3 May 2008; UN CRPD Committee, Draft General Comment No 3: Article 6 'Women with disabilities' UN Doc CRPD/C/14/R.1 (22 May 2015) para 2; Sandra Fredman and Beth Goldblatt 'Gender Equality and Human Rights' No. 4 (July 2015) p.1 available at <http://www.ungei.org/goldblatt-fin.pdf> accessed 1 September 2019.

⁴ Article 4-6 UN CRPD.

to utilize the global standards to improve the overall status of WWDs, specifically in terms of their right to work.⁵

This chapter examines the international human rights instruments and labour standards that have set a blueprint for – and bear direct relevance to – the economic empowerment of WWDs globally. This chapter also assesses the level of Nigeria’s compliance towards the implementation of the provisions of the relevant international human rights norms and standards for WWDs. The first section provides an overview of the initiatives leading to the international recognition of disability rights, and eventually, the gendered aspects of disability. Next, the international human instruments and standards that bear direct relevance for promoting the right to employment for WWDs are examined, and Nigeria’s response towards implementation through its periodic country reports, where available, is assessed. Proper implementation of international instruments for WWDs in Nigeria, particularly as concerns the exercise of the right to employment, will help improve awareness about their double-disadvantaged status and foster their socio-economic integration.⁶

4.2 Overview of international efforts for advancing the rights of WWDs

Disability rights are grounded in a human rights framework.⁷ The United Nations Charter,⁸ the Universal Declaration on Human Rights (UDHR) and the international covenants on human rights⁹ are the earliest international instruments proclaimed by the United Nations to establish the rights to equality and non-discrimination to which all peoples of the world are deemed entitled.¹⁰ International recognition of disability rights specifically began around the 19th century.¹¹ By 1971,

⁵ Nigeria was admitted as the 99th member of the United Nations. Prime Minister Alhaji Tafawa Balewa led the Nigerian delegation to the fifteenth Regular session of the United Nations General Assembly during which he made the country’s maiden speech to the World body on 7 October 1960. Louis Oyaro ‘Africa At Crossroads: The United Nations Convention on Persons with Disabilities’ (2015) 30(2) *American University International Law Review* p. 358.

⁶ World Bank Group ‘The Rights of Women with Disabilities Pilot Research on Women, Business and the Law 2020 p.12 available at <https://openknowledge.worldbank.org/handle/10986/32639> accessed 13 January 2021.

⁷ United Nations Enable, ‘The Rights of Persons with Disabilities’ available at *UN Enable - Promoting the rights of Persons with Disabilities - Human Rights of Persons with Disabilities* accessed 13 March 2024.

⁸ The United Nations Charter was signed on 26 June 1945 at a conference held in Mexico in which representatives from 50 countries were in attendance.

⁹ The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were both adopted by the UN General Assembly Resolution 2200 A (XXI) on 16 December 1966

¹⁰ UDHR was adopted by a UN General Assembly resolution 217 A (III) on 10 December 1948.

¹¹ Sabatello Maya ‘A Short History of the International Disability Rights Movement’ In Book: *Human Rights and Disability Advocacy* (Ch.1) edited by Maya Sabatello and Marianne Schulze, Philadelphia: University of Pennsylvania Press, 2013 p. 13.

the UN adopted the first-ever disability-related declaration regarding the rights of people with mental disabilities, the UN Declaration on the Rights of Mentally Retarded Persons.¹² The Declaration was restricted to persons who have mental health challenges, and the provisions of the declaration aimed to promote disability rights through national and international action, but without recourse to a gender approach.¹³ Shortly after the 1971 Declaration, initiatives for bringing gender issues to the forefront globally emerged, some of which have direct employment implications for the rights of women. One such initiative was the First World Women Conference (Mexico Conference) convened by the United Nations in 1975.¹⁴ Part of the outcomes of the Mexico Conference was the declaration of 1975 as the International Year of Women.¹⁵ The Mexico Women Conference had no significance for WWDs as they were not mentioned throughout the conference nor in the report of the conference.¹⁶

The next declaration, Declaration on the Rights of Disabled Persons 1975¹⁷ was adopted in the same year that the Mexico Women Conference was held. The 1975 Declaration incorporated a gender perspective to disability in deliberate terms.¹⁸ In addition, the provisions of the Declaration expressly promoted their right to work.¹⁹ As part of the initiatives for realizing equal rights for women, which were also premiering alongside the development of disability rights, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) was adopted in 1979 by the UN.²⁰ CEDAW did not contain any provisions for WWDs but the

¹² The United Nations Declaration on the Rights of Mentally Retarded Persons was adopted by the United Nations General Assembly in 1971 via resolution 2856 (XXVI) of 20 December 1971.

¹³ Article 3 of the Declaration *ibid*, guarantees the right to work.

¹⁴ The first United Nations World Conference on Women was held in Mexico City from 19 June to 2 July. Declaration on the Equality of Women and their Contribution to Development and Peace was promulgated at the Mexico Women Conference.

¹⁵ Report of the World Conference of the International Women's Year, Mexico City, 19 June – 2 July 1975, United Nations Publication, Sales No. E.76.IV.1.

¹⁶ United Nations Enable 'Women with Disabilities: Lessons of Reinforcing the Gender Perspective in International Norms and Standards' available at <https://www.un.org/esa/socdev/enable/women/wwdis1.htm> accessed 1 October 2021.

¹⁷ Declaration on the Rights of Disabled Persons statement adopted by the United Nations (UN) General Assembly on 9 December 1975.

¹⁸ Principle 1 &2, *ibid*.

¹⁹ Principle 7 of the Rights of the Declaration on Disabled Persons further provides: "Disabled persons have the right to economic and social security and to a decent level of living. They have the right, according to their capabilities, to secure and retain employment or to engage in a useful, productive and remunerative occupation and to join trade unions".

²⁰ UN General Assembly adopted CEDAW on 18 December 1979 A/RES/34/180 available at <https://www.refworld.org/docid/3b00f2244.html> accessed 29 September 2021. CEDAW came into force on 3 September 1981.

Committee on CEDAW²¹ added a general recommendation to CEDAW that explicitly referenced WWDs.²² Details of the recommendation are discussed in the next section. Soon after the CEDAW was adopted, the United Nations convened another world conference on women to tackle gender issues.

The Second World Women's Conference (Copenhagen Conference) which was organized by the United Nations was held in Copenhagen, Denmark in 1980.²³ This conference served as a mid-decade evaluation of the successes and failures of the First World Women Conference.²⁴ WWDs were duly acknowledged at the Copenhagen conference. During the conference, the general needs of WWDs, including their labour needs, were specifically addressed as important global issues.²⁵ The resolution and decision of the Copenhagen conference on "Improving the Situation of Disabled Women of All Ages" while recalling United Nations efforts toward integrating PWDs into society, requests governments to "give special attention to disabled women in order to promote their full participation and integration in all fields of normal life."²⁶

²¹ The Committee on the Convention on the Elimination of all forms of Discrimination Against Women was established to interpret and implement the provisions of CEDAW.

²² UN Committee on the Elimination of Discrimination Against Women (CEDAW) CEDAW General Recommendations Nos. 16, 17 and 18, adopted at the Tenth Session, 1991 (contained in Document A/46/38), 1991, A/46/38, available at: <https://www.refworld.org/docid/453882a322.html> accessed 16 June 2021.

²³ The Copenhagen Women's Conference was held from 14 July to 30 July 1980. The Copenhagen Women's Conference was themed: 'World Conference of the United Nations Decade for Women: Equality, Development and Peace'.

²⁴ Martha Alter Chen 'Endangering World Conferences: The International Women's Movement and the United Nations' (Sep. 1995) 16(3) *Third World Quarterly Non-governmental Organizations, the United Nations and Global Governance* p.61.

²⁵ Ibid p. 61-3.

²⁶ Emphasis is mine. The Second Resolution and Decision of the Copenhagen Conference which was titled, 'Improving the Situation of Disabled Women of All Ages':

"2. Requests Governments, the United Nations and other concerned United Nations organizations, in order to ensure the implementation of the Plan of Action for the International Year of Disabled Persons, to give special attention to disabled women in order to promote their full participation and integration in all fields of normal life, and to provide them with recreational activities;

3. Requests that programmes of all Member States of the United Nations for the International Year of Disabled Persons should explicitly take into consideration the special needs of disabled women of all ages for medical, social, and vocational rehabilitation with the object of:

...(b) providing general, vocational and health education for disabled women, including adequate assistance, care and guidance; (c) Enlarging the scale of vocational skills and training facilities in order to enable disabled women to perform jobs requiring qualifications, including non-traditional jobs;

(d) Providing conveniently situated training and employment facilities, wherever possible in the proximity of the family's home, in order that parents may more easily arrange for the training of disabled children, and that disabled women with family responsibilities can participate in such programmes and activities; (e) Providing technical and financial support and social services to assist disabled persons in their domestic responsibilities and to enable disabled mothers to bring up their children; (f) Acknowledging the special needs of women who have disabled children or provide full-time care for disabled relatives for appropriate support services, including relief programmes; (g)

Specifically, the resolution of the Copenhagen Conference contained detailed provisions that advance the right to employment of WWDs through numerous assistive mechanisms, including helping with domestic and family responsibilities in order to improve the participation of WWDs in the open labour market.²⁷ Despite being recognized by the resolution, WWDs were not well represented at the Copenhagen Conference.²⁸ The year following the Copenhagen Conference (1981) was declared the International Year of Disabled Persons (IYDP).²⁹ The IYDP aimed to realize equal rights and opportunities for the full integration of PWDs in all aspects of society, including improving their ‘opportunities for suitable work’ both at the international and national levels.³⁰ The IYDP has major significance for the rights of WWDs. In observance of the IYDP, an international non-governmental body was formed which was called the Disabled Persons International (DPI) consisting of several disability coalitions of PWDs, including WWDs.³¹ WWDs seized the opportunity to properly organize themselves to participate in the Third World Women’s Conference held in 1985 (Nairobi Conference)³² to press for recognition of their human rights under the auspices of the DPI. As an outcome, the ‘Nairobi forward-looking Strategy for the Advancement of Women’³³ adopted at the Nairobi Conference recognized and included ‘women with physical and mental disabilities’ as part of the vulnerable group requiring special attention.³⁴ Nigeria, as member state of the United Nations, has an obligation to implement the strategies and

Encouraging special attention to the particular problems of disabled women of all ages in study and research projects designed to facilitate their practical participation in daily life as well as in training and on the labour market; (h) Facilitating the immigration and care of disabled refugees and disabled displaced persons; (i) Encouraging and supporting research on appropriate technological aids needed by disabled women with the aim of making these aids available at low cost;

4. Requests the specialized agencies, in particular the World Health Organization, the United Nations Educational, Scientific and Cultural Organization, the International Labour Organization, the High Commissioner for Refugees, and other United Nations Bodies and programmes concerned to take into consideration, the needs of disabled women of all ages and the necessity to improve their situation through preventive and rehabilitative measures, and to co-ordinate their activities in this area...”.

²⁷ Ibid. Also at the Copenhagen conference, the United Nations declared 1975-1985 as the International Decade for Women to further promote equal human rights for women in general.

²⁸ *supra* note 20.

²⁹ UN General Assembly ‘International Year of Disabled Persons, 16 December 1976’ A/RES/31/123, available at: <http://www.un-documents.net/a31r123.htm> accessed 15 June 2021.

³⁰ Paragraph 2(b) *ibid*.

³¹ Disabled People International (DPI) was formed in 1981. The activities of the DPI are available at <http://www.dpi.org> accessed 16 June 2021.

³² Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace, Nairobi. 15-26 July 1985, *United Nations Publication*, Sales No. E.76.IV.1.

³³ *Ibid*.

³⁴ Para 296, *ibid*.

recommendations that were adopted by the World Conferences. However, since the world conferences, Nigeria has taken considerable steps to recognize inclusivity for WWDs. For instance, in 2021, focus group discussions and individual interviews were held in Lagos and Kano states to determine the unique impact of COVID-19 crisis on WWDs specifically.³⁵

The Women's Committee of the DPI (Women Committee) was consequently formed with the responsibility to advocate for WWDs.³⁶ The Women Committee actively introduced WWD-related issues through oral and written statements presented at the expert meetings (organized by the Division for the Advancement of Women) and annual sessions of the Commission on the Status of Women.³⁷ The activism of the Women Committee eventually located WWDs within the long-term programme of the Commission on the Status of Women.³⁸ Also as an outcome of the activities of the Women Committee, the United Nations Economic and Social Council organized a 'Seminar on Disabled Women' at which more than 70 recommendations were reached regarding WWDs.³⁹ Further, in drafting the United Nations Standard Rules for the Equalization on Opportunities for Persons with Disabilities (Standard Rules), the Commission on the Status of Women, influenced by the Women's Committee of the DPI, urged for the inclusion of a gender dimension to the Standard Rules, which was accepted.⁴⁰ Thereafter, the United Nations convened the Fourth World Women Conference (China Women Conference) which greatly influenced the inclusion of WWDs and girls with disabilities in most international human rights documents.⁴¹ The Beijing Platform

³⁵ UN Women, 'No One is Listening' Experiences of Women with Disabilities in Nigeria During Covid-19' available at *Brief-Experiences-of-women-with-disabilities-in-Nigeria-during-COVID-19-en.pdf* (*unwomen.org*) accessed 12 March 2024.

³⁶ Anneli Jonecken of Sweden was the Chairperson of the Women's Committee when it was established in 1987. It began operations in 1988.

³⁷ The UN Commission on the Status of Women is a subsidiary of the United Nations Economic and Social Council formed for handling issues regarding the rights of women. Prior to this time, the UN Commission on the Status of Women had never handled any issues relating to WWDs.

³⁸ In 1991, the Division for the Advancement of Women, which prepared background papers for the Commission, had decided to deal with each of five groups of 'women with special concerns' identified in the "Strategies" individually. One of these groups was 'women with disabilities'.

³⁹ The Seminar for Disabled Women held from 20-24 August 1990 in Vienna. The full report of the Seminar is available at <https://www.un.org/esa/socdev/enable/women/wwdsem0.htm> accessed 16 June 2021.

⁴⁰ Supra note 12.

⁴¹ Committee on the Elimination of Discrimination Against Women: General Recommendation No 18 on Disabled Women, Committee on the Rights of the Child: General Comment No. 9. The rights of children with disabilities, 13 November 2007, CRC/C/GC/9/ Corr. 1; Committee on Economic, Social and Cultural Rights; General Comment No. 5, Persons with Disabilities, E/1995/22;

for Action of the China Women Conference recognized the additional barriers to the enjoyment of their human rights faced by women due to their gender, disability, amongst other factors.⁴²

The next section analyses the international normative framework, with reference to the existing provisions for ensuring employment access for WWDs.

4.3 International Normative Framework for WWDs

The initiatives discussed above metamorphosed into the development of disability and employment standards for women and PWDs. As this research is predicated on non-discrimination in employment of WWDs as a means of enhancing their social inclusion, the following international instruments are directly relevant: the United Nations Charter 1945; Universal Declaration on Human Rights (UDHR) 1948; International Covenant on Civil and Political Rights (ICCPR) 1966; International Covenant on the Economic Social Cultural Rights 1966 (ICESCR); Declaration on the Rights of Disabled Persons 1975; Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) 1979; World Programme of Action Concerning Disabled Persons 1982; Standard Rules for the Equalization of Opportunities for Persons with Disabilities, 1993 (Standard Rules); Convention on the Rights of Persons with Disabilities (UN CRPD) 2006; Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159); and the ILO Code of Practice on Managing Disability in the Workplace, 2002. Each of them is discussed in sequence.

(i) United Nations Charter 1945

In response to the damaging effects of World War II, there was a need to reaffirm faith in international co-operation, maintain peace and security and safeguard human rights and freedoms. The United Nations Charter became the earliest international document adopted to realize universal respect for and realization of equality, human rights and fundamental freedom of all peoples “without distinction as to race, sex, language, or religion”.⁴³ Article 55 of the Charter provides:

⁴²Chapter IV, Article 46 recognises that women “...face barriers to full equality and advancement because of factors such as their (...) *disability*”. Paragraphs 31 and 32 of the Beijing Declaration and Platform for Action aims to: “31. ...promote and protect all human rights of women and girls; 32. Intensify efforts to ensure equal enjoyment of all human rights and fundamental freedoms for all women and girls who face multiple barriers to their empowerment and advancement because of such factors as their race, age, language, ethnicity, culture, religion, or disability....”

⁴³ Article 1 of the UN Charter.

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”

The Charter underscores the dignity and worth of the human person and the equal rights of men and women. Although the UN Charter does not specifically mention disability, it makes mention of “sex” as one of the grounds of non-discrimination. The principles of equality and the concept of human rights which its provisions acknowledge have contributed immensely to the growth of the recognition of PWDs as subjects of human rights. Nigeria, as a member of the United Nations, participated in the United Nations Conference on International Organization held in San Francisco where the UN Charter was established.

(ii) Universal Declaration of Human Rights 1948

The UDHR is a milestone development in the realization of equality and non-discrimination for all humans without distinction. The UDHR affirms the principles of the UN Charter including equality and non-discrimination and explicitly outlines the inalienable rights to which every person without distinction is deemed entitled to exercise.⁴⁴ Article 2 of the UDHR provides that: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status...”.

Like the United Nations Charter, the UDHR does not explicitly mention PWDs, however, the phrase “other status” above can be expanded to afford protection for other categories of persons

⁴⁴ The rights set out in the UDHR include: The right to equality, right to life, liberty and security; freedom from slavery, right to education, right to organize, right to be treated fairly, right to freedom of opinion, expression, thought and religion; right to seek asylum, right to liberty and privacy, right to freedom from torture, inhuman treatment or degrading treatment or punishment, right to recognition as a person before the law; right to remedy by a competent tribunal, freedom from arbitrary arrest and exile, right to fair public hearing; presumption of innocence, freedom of movement, right to nationality, right to marriage and family, right to own property, right to peaceful assembly and association, right to participate in government and equal access to public service; right to social security, right to work and free choice of employment, right to adequate standard of living, right to participate in cultural life, right to a social and international order, and freedom from state interference in the exercise of these rights.

which are not specifically listed in the Charter, including PWDs.⁴⁵ In addition to promoting equality and non-discrimination, the right to employment is listed in Article 23 of the UDHR. Accordingly, it provides:

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

The provisions in the UDHR have greatly influenced the realization of rights for PWDs. Based on the rights created therein, several national, regional, and international treaties and instruments have evolved which specifically promote equality and non-discrimination for specific groups, including PWDs. The UDHR, together with two other covenants – the International Covenant on Civil and Political Rights,⁴⁶ and the International Covenant on the Economic Social and Cultural Rights 1966⁴⁷ – are regarded as the international bill of rights.

(iii) International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights 1966

While building on the rights guaranteed in the UDHR, the International Covenant on Civil and Political Rights (ICCPR) specifically acknowledges the right to equality between men and women in the exercise of their civil and political rights. Pursuant to Article 2 of the ICCPR, “each State party undertakes to respect and ensure the rights provided by this Covenant to everyone that comes under its jurisdiction without any distinction of any kind such as race, gender, caste, sex, language, religion, political or other opinion. Nigeria ratified the ICCPR on June 29, 1993. The International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes the inherent dignity of the human person and re-emphasizes the principles of equality and non-discrimination while

⁴⁵ United Nations Office of the High Commissioner, ‘30 Articles on the 30 Articles: The Universal Declaration on Human Rights at 70: Still working to Ensure Freedom, Equality and Dignity for All’ available at *UDHR70-30on30-article2-eng.pdf (standup4humanrights.org)* accessed 17 March 2024.

⁴⁶ The ICCPR was United Nations General Assembly Resolution 2200A (XXI) on 16 December 1966 and entered into force on 24 March 1976.

⁴⁷ The ICESCR was also adopted by the UN General Assembly resolution 2200A (XXI) of 16 December 1966 and entered into force on 3 January 1976.

urging state parties to promote and fulfil economic, social and cultural rights. Article 2 of the ICESCR states:

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Again, the ICESCR prohibits discrimination based on a person's sex, amongst other grounds, in the exercise of their economic, social and political rights. Furthermore, in the ICESCR state parties are committed "...to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant". The right to work is one of the important rights safeguarded under the ICESCR. Remarkably, Articles 6, 7 and 8 of the ICESCR consolidate the various aspects of the right to work, including "fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work".

Nigeria has ratified the ICESCR⁴⁸ as part of its drive to support international promotion of social, economic and cultural rights. However, these rights are yet to be realized for its citizenry⁴⁹. Nigeria has embedded economic, social and cultural rights, including the right to employment in Chapter II of the Constitution, but labels them as "objectives of the state" which are rendered non-justiciable in the courts of law.⁵⁰ Together, the ICCPR and the ICESCR outlines a comprehensive framework for protecting and promoting human rights across civil, political, economic, social, and cultural dimensions. Chapter six will examine the relevant constitutional provisions that promote the right to work and the status of socio-economic rights in Nigeria.

(iv) Declaration on the Rights of Disabled Persons 1975

As earlier mentioned, the Declaration on the Rights of Disabled Persons (the Declaration) was adopted same year as the Women's conference held in Mexico. The Declaration Principles 1&2 define the term "disabled person" using the reflexive pronouns "himself/ herself" and possessive

⁴⁸ Nigeria ratified the ICESCR on 29 July 1993.

⁴⁹ Solomon Ifejika 'Nigeria and the International Covenant on Economic, Social and Cultural Rights: Straightening the Crooked Path' (2023) 31(2) *Journal of Social Science and Humanities* p. 897.

⁵⁰ Chapter II of the Constitution of the Federal Republic of Nigeria 2004; Oluwadayisi, A. O. 'Economic and Sociocultural rights in the democratic governance of Nigeria: Enforcement mechanisms beyond justiciability' (2014) 5 *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* p. 105-107; Kutigi, H. D. 'Towards justiciability of economic, social and cultural rights in Nigeria. A role for Canada-Nigeria cooperations?' (2017)4 *The Transnational Human Rights Review* p. 125-45.

pronouns “his/her” while also expressly prohibiting discrimination against PWDs regardless of sex. The provisions of both principles provide:

1. The term "disabled person" means any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of deficiency, either congenital or not, in his or her physical or mental capabilities.
2. Disabled persons shall enjoy all the rights set forth in this Declaration. These rights shall be granted to all disabled persons without any exception whatsoever and without distinction or discrimination on the basis of race, colour, sex, language, religion, political or other opinions, national or social origin, state of wealth, birth or any other situation applying either to the disabled person himself or herself or to his or her family.

The excerpt above clearly contemplates gender perspectives of disability by prohibiting discrimination against persons with disabilities on grounds of sex, amongst other grounds. Furthermore, the families of PWDs are also protected from discrimination pursuant to the provisions of the Declaration which is rather remarkable. The declaration also promotes the right to access employment. In that regard, Principle 7 provides as follows:

7. Disabled persons have the right to economic and social security and to a decent level of living. They have the right, according to their capabilities, to secure and retain employment or to engage in a useful, productive and remunerative occupation and to join trade unions.

The provision above not only guarantees the right to work but also secures the right to work in meaningful, productive paid work suitable to their capacity to work. Despite its invaluable worth in the protection of WWDs, the Declaration on the Rights of Disabled Persons remains persuasive in nature and not binding as a matter of law.

**(v) Convention on the Elimination of All Forms of Discrimination Against Women
1979**

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁵¹ was adopted shortly after the Mexico Women’s Conference 1975 in response to calls for a women treaty. CEDAW legally binds all states parties to fulfil, protect, and respect the human rights of women. Further, states parties have the obligation to eliminate all forms of discrimination against women by addressing gender inequalities at all levels and in all spheres, including in the family, community, market, and state.⁵² Although the central theme of CEDAW is gender equality, none

⁵¹ CEDAW was adopted by the United Nations General Assembly on 18 December 1979 and came into force on 3 September 1981. Full CEDAW is available at <http://www.un.org/womenwatch/daw/cedaw/> accessed 22 April 2016.

⁵² See Preamble to CEDAW: "...discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women on equal terms with men in the political, social, economic, and cultural life of their countries, hampers the growth of the prosperity of society and the family, and

of its provisions expressly mentions WWDs. However, the CEDAW General Recommendation No. 18 of 1991⁵³ recognizes the double discrimination faced by WWDs and urges states parties to urgently provide information on WWDs in their periodic reports for submission to the Committee on the Elimination of Discrimination against Women.⁵⁴ The Recommendation states:

Concerned about the situation of disabled women, who suffer from double discrimination linked to their special living conditions,
.... Affirming its support for the World Programme of Action concerning Disabled Persons (1982), Recommends that States parties provide information on disabled women in their periodic reports, and on measures taken to deal with their particular situation, including special measures to ensure that they have equal access to education and employment...and to ensure that they can participate in all areas of social and cultural life.

The recommendations in the excerpt above are aimed towards ensuring that special measures are implemented in providing education and providing employment for WWDs as victims of double discrimination. Nigeria has not met the requirement of CEDAW General Recommendation as regards providing information on WWDs. As of now, there is a paucity of reliable data and evidence of measures taken to address the unique challenges of WWDs, and even PWDs generally. Although the provisions of CEDAW as well as its General Recommendation No. 18 of 1991 are only persuasive due to the dualistic nature of Nigeria's legal system,⁵⁵ there is no requirement that domestication must occur to obtain information about WWDs. Nigeria ratified CEDAW without reservations in 1985 and in due compliance with its obligations as a party to the convention, Nigeria combined and submitted its seventh and eighth periodic report⁵⁶ to the CEDAW Committee on the current progress made as regards implementation of the provisions of CEDAW. While the report reflected some progress made in improving the lives of women and girls generally, it completely omitted to mention WWDs. Also, Article 13, Paragraph 11.2 of the Report

makes more difficult the full development of the potentialities of women in the service of their countries and of humanity...."

⁵³ Supra, note 18.

⁵⁴ Same as the Declaration on the rights of disabled persons in 1975, the General Recommendation No. 18 of 1991 on the double discrimination faced by women with disabilities remains persuasive in nature and not binding as a matter of law.

⁵⁵ For example, in a dualist country like Nigeria, even though CEDAW has been ratified, the Convention is not legally binding or enforceable unless it is incorporated into national law by an Act of the National Assembly. This is further expatiated in section 4.7 of this chapter.

⁵⁶UN Committee on the CEDAW Consideration of reports submitted by States parties under article 18 of the Convention, seventh and eighth periodic reports of States parties due in 2014: *Nigeria*, 11 January 2016, (CEDAW/C/NGA/7-8), available at: <https://www.refworld.org/docid/582d75584.html> accessed 16 June 2021.

references ‘people living with disabilities’ in terms of constructing skill acquisition centres for them. The relevant paragraph of Nigeria’s report provides:

11.2 Under the Women Funds for Economic Empowerment (WOFEE) programme, 5,500 women cooperatives/groups have received N27.2 million out of which 6,000 jobs in Animal Fattening, Poultry, Farming, and Trading were created during the period. Twenty-eight States of the Federation are participating in the scheme, of which 12 States have contributed their counterpart funds to the tune of N103.5 million. Others include:

- launched in 2013 the Smart Woman and 1000 ICT Girls Training Initiatives.
- Micro-Credit Grants to 444 Agric-Based Cooperative Societies in 748 Local Government Areas launched on 24 April 2014.
- Development of women entrepreneurial activities and encouraging skills acquisition for rural women.
- 77 Skills Acquisition Centres are under construction across the country with 24 of these completed and fully equipped. Each centre is expected to train 500 women and people living with disabilities annually to reduce unemployment and associated social vices in the society....⁵⁷

The provisions of the paragraph above have limited significance for WWDs. The general reference to “women” and “people with disabilities” without cognizance of a gendered perspective of disability (or the intersection between gender and disability) in a report meant to capture all categories of women, including WWDs, is particularly worrisome. At the presentation of Nigeria’s seventh and eighth report by the Minister for Women Affairs and Social Development and delegates from Nigeria,⁵⁸ the CEDAW Committee expressed concern that CEDAW had still not been domesticated⁵⁹ at both the Federal and State level in Nigeria and many of the measures taken by Nigeria as stated in her report were “imprecise”.⁶⁰

The Committee also queried Nigeria’s delegates about the implementation of national policies and programmes for WWDs in consideration of the intersecting forms of discrimination they experienced.⁶¹ To these questions, Nigeria’s delegate responded that progress had only been made with regard to physical accessibility for WWDs.⁶²

⁵⁷ Chapter 11, Article 13, Para 11.2 *ibid* p. 54. The paragraph is titled: ‘Major Achievements During Reporting Period’.

⁵⁸ Aisha Jummai Al-Hassan, the former Minister for Women Affairs and Social Development presented Nigeria’s Report on 14 July 2017.

⁵⁹ Domestication of a treaty means the incorporation of the provisions of the treaty into national legislation or enacting the treaty as a national law to facilitate its implementation in that country.

⁶⁰ United Nations Human Rights Office of the High Commissioner ‘Committee on the Elimination of Discrimination Against Women Examines the Reports of Nigeria’ available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21879&LangID=E> accessed 16 June 2021.

⁶¹ *Ibid*.

⁶² *Ibid*.

The Convention has two enforcement mechanisms: the individual complaints procedure and the inquiry procedure. The individual complaints procedure allows individuals or groups of individuals to submit complaints to the CEDAW Committee alleging violations of their rights under the Convention. The inquiry procedure allows the Committee to conduct inquiries into grave or systematic violations of women's rights in states parties to the Convention. However, it is important to note that neither of the mechanisms is legally binding. Generally, the CEDAW relies on political pressure and public shaming to encourage states to comply with their obligations under the Convention.

(vi) World Programme of Action Concerning Disabled Persons 1982

As earlier stated, the United Nations declared 1981 as the International Year of Disabled Persons (IYDP).⁶³ The IYDP had as its aim, to promote the realization of the rights of PWDs and to enable them to participate in all aspects of society, including employment on an equal basis with other citizens.⁶⁴ As the major outcome of the IYDP, the World Programme of Action Concerning Disabled Persons (WPA) was adopted by the United Nations to promote disability prevention, rehabilitation, and equalization of opportunities, as a means to realize full and equal participation of PWDs in social life and national development.⁶⁵ The WPA contains recommendations for implementation at national, regional, and international levels.⁶⁶ While acknowledging that many PWDs generally suffer employment discrimination, WWDs are referenced in the WPA among the "special groups of disabled persons" as follows:

The consequences of deficiencies and disablement are particularly serious for women. There are a great many countries where women are subjected to social, cultural and economic disadvantages which impede their access to, for example, healthcare, education, vocational training and employment. If, in addition, they are physically or mentally disabled, their chances of overcoming their disablement are diminished, which makes it all the more difficult for them to take part in community life. In families, the responsibility for

⁶³ The United Nations General Assembly declared the year 1981 as the International Year of Disabled Persons via its resolution A/RES/36/77 which was adopted by the UN General Assembly on 11 December 1980.

⁶⁴ Para 4, International Year of Disabled Persons Resolution A/Res/35/133 adopted by the UN General Assembly on 11 December 1980.

⁶⁵ The World Programme of Action was adopted by UN Resolution adopted by the General Assembly on 3 December 1982, by its resolution 37/52. This resolution is contained in United Nations document A/37/51, Official Records of the General Assembly, Thirty-seventh Session Supplement No. 51 (Archival PDF) accessed 2 February 2021.

⁶⁶ Ibid. Implementation of the Programme of Action, using multi-sectoral and multidisciplinary approaches was addressed by the General Assembly on 3 December 1982 and 22 November 1983. 'Equalization of opportunities' is the key principle of the WPA towards achieving inclusiveness for PWDs in all aspects of social and economic life.

caring for a disabled parent often lies with women, which considerably limits their freedom and their possibilities of taking part in other activities.⁶⁷

From the provisions above, the WPA acknowledged the intersection between gender and disability, and is thereby significant in the development of international human rights instruments relating to WWDs. Following the declaration of the WPA, a resolution proclaiming 1983-1992 as the International Decade of Disabled Persons was adopted by the United Nations to give member nations time to implement the provisions of the WPA.⁶⁸ The provisions of the WPA are non-binding on UN member states, including Nigeria, but serve as morally persuasive guidelines that can be instrumental to implement human rights for PWDs, and particularly WWDs. The United Nations Report on the implementation of the World Programme of Action Concerning Disabled Persons (the Report) notes that despite the non-binding status of the WPA, several nations have utilized its provisions to develop and implement strategies for the inclusion of PWDs, including WWDs, in mainstream society.⁶⁹ The Report indicates that “national policy frameworks can encourage increased access to the open labour market for PWDs in many ways” and “cooperation and implementation are possible within both the private and public sectors”.⁷⁰ Paragraph C of the Report further adds that South Africa utilized the provisions of the WPA to economically empower women, including WWDs, and “offer special additions to housing grants for persons with disabilities, including single women with dependents”.⁷¹ Although there have been several other reports on the review and appraisal of the implementation of the WPA,⁷² Nigeria has never been mentioned in the United Nations Report with regard to any positive actions taken to implement the guidelines of the WPA for PWDs.

⁶⁷ World Programme of Action ‘Special Groups’ available at <https://www.un.org/esa/socdev/enable/diswpa04.htm> accessed 3 October 2021.

⁶⁸ United Nations General Assembly, United Nations Decade of Disabled Persons: resolution adopted by the General Assembly, 23 November 1984, A/RES/39/26 available at: <https://www.refworld.org/docid/3b00f4762e.html> accessed 14 June 2021.

⁶⁹ Report of the Secretary-General on the Implementation of the World Programme of Action concerning Disabled Persons: the Millennium Development Goals and synergies with other United Nations disability instruments [A/62/157] available at <https://www.un.org/development/desa/disabilities/report-of-the-secretary-general-on-the-implementation-of-the-world-programme-of-action-concerning-disabled-persons-the-millennium-development-goals-and-synergies-with-other-united-nations-disability.html> accessed 16 June 2021.

⁷⁰ Paragraph C, ‘Integrating Disability into Goal 3: Promoting gender equality and empowering women’, *ibid.* This observation was made by South Africa.

⁷¹ *Ibid.*

⁷² The United Nations Secretary-General reports on the WPA periodically.

(vii) Standard Rules for the Equalization of Opportunities for Persons with Disabilities 1993

The Standard Rules for the Equalization of Opportunities for Persons with Disabilities (the Standard Rules)⁷³ is the outcome of a series of global consultations, expert meetings, and was also the outcome of the United Nations Decade of Persons with Disabilities. The Standard Rules consist of 22 guidelines for the realization of equal participation, target areas for equal participation, implementation measures, and monitoring mechanism for PWDs in all aspects of their lives, including employment.⁷⁴ However, like the WPA, the Standard Rules are non-binding but can serve as persuasive guidelines for member states in policymaking and implementation. Part II of the Standard Rules makes specific reference to WWDs under "Target Areas for Equal Participation" and in terms of Education (in mainstream schools), family life, and personal integrity. In that regard, Rules 6 and 9 state as follows:

Rule 6. Education:

"In States where education is compulsory, it should be provided to girls and boys with all kinds and all levels of disabilities, including the most severe.

Special attention should be given to the following areas:

Very young children with disabilities;

Pre-school children with disabilities;

Adults with disabilities, *particularly women*.....⁷⁵

Rule 9. Family life and personal integrity:

"...States should promote measures to change negative attitudes towards marriage, sexuality and parenthood of persons with disabilities, especially of girls and *women with disabilities*,⁷⁶ which still prevail in society...."

The standard rules above are significant because they seek to guarantee employment and access to education, amongst other rights for all PWDs.⁷⁷ The right to education as provided for by the Standard Rules, recognizes that special attention must be given to WWDs. Since education is incidental to accessing gainful public employment, the Standard Rules aim to improve the labour

⁷³ The United Nations Standard Rules for the Equalization of Opportunities for Persons with Disabilities was adopted by the United Nations General Assembly on 20 December 1993 at its forty-eighth session by resolution 48/96 available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C159> accessed 17 December 2018.

⁷⁴ Rule 7 of the Standard Rules which concerns employment for PWDs generally provides that: "States should recognize the principle that persons with disabilities must be empowered to exercise their human rights, particularly in the field of employment. In both rural and urban areas they must have equal opportunities for productive and gainful employment in the labour market".

⁷⁵ Emphasis mine.

⁷⁶ Ibid.

⁷⁷ Apart from seeking to ensure the right to education and employment, the Standard Rules also guarantees the right to accessibility, income maintenance and social security, family life and personal integrity, culture, recreation and sports, religion. Generally 5, 8-12 of the Standard Rules.

value of WWDs to enable them to participate in the open labour market on an equal basis.⁷⁸ Also the Standard Rules aim to change negative perceptions about PWDs as regards “marriage, sexuality and parenthood” with special consideration for women and girls with disabilities, as indicated above. Despite the provision of the Rules regarding WWDs, *Bengt Lindqvist* (Sweden), a former special rapporteur on the implementation of the Standard Rules, emphasizes that “the gender perspective should receive more attention in future implementation efforts” globally.⁷⁹ He further urged in his monitoring report to the United Nations to the Commission for Social Development that, in implementing the Standard Rules, governments should “have particular regard to women and children with disabilities in ensuring the protection of their human dignity and integrity in all aspects of their lives, [including employment]”.⁸⁰

Nigeria has not shown strong commitment regarding the education and employment of WWDs, as covered by the Standard Rules. Barriers in educational mainstreaming for WWDs due to negative societal attitudes still abound, as discussed in 3.4 of chapter three. Women and girls with disabilities in Nigeria are seldom sent to school because they are often stereotyped into traditional gender roles.⁸¹ Again, as earlier mentioned, the intersection between gender and disability and the implications for WWDs is yet to be fully appreciated in the field of disability in Nigeria. WWDs still face exclusion from state policies and programmes designed to ensure women’s rights and those for guaranteeing the human rights of PWDs.⁸²

⁷⁸ Full text of the Standard Rules for the Equalization of Persons with Disabilities is available at <https://www.un.org/development/desa/disabilities/standard-rules-on-the-equalization-of-opportunities-for-persons-with-disabilities.html> accessed 22 October 2019.

⁷⁹ Part IV of the Standard Rules provides for the Office of the Special Rapporteur and all his obligations; Bengt Lindqvist (the special rapporteur on the implementation of the Standard Rules) noted this in his monitoring report on the implementation of the Standard Rules, for the Period of 1994-1997. See ‘Monitoring the Implementation of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities [E/CN.5/2002/4, Report on Third Mandate of the Special Rapporteur]’ - part 2, available at <http://www.un.org/disabilities/default.asp?id=208> accessed 12 March 2019.

⁸⁰ Emphasis mine. Also, Hissa Al-Thani, another special rapporteur on disability had recourse to the gender dimension of disability in her report submitted in 2004; See Statement by the Special Rapporteur on Disability to the 42nd Session of the Commission for Social Development, <http://www.un.org/disabilities/default.asp?id=57> accessed 15 June 2018.

⁸¹ Zewude B and Habtegiorgis T ‘Willingness of youth without disabilities to have romantic love and marital relationships with persons with disabilities’ (2021) 17 (5) *Journal of Life Sci Soc Policy* available at <https://lssjournal.biomedcentral.com/articles/10.1186/s40504-021-00114-w> accessed 15 November 2021.

⁸² LEDAP ‘NGO Submission to the CEDAW Committee Pre-Sessional Working Group for Nigeria’ October 2016 p. 1.

(viii) Beijing Declaration and Platform for Action 1995

The Beijing Declaration and Platform for Action⁸³ was reached at the fourth world conference to improve on the outcomes of the third world conference in advancing women's rights globally. Article 9 of the Beijing Declaration affirms the commitment of states parties to "ensure the full implementation of the human rights of women and of the girl child as an inalienable, integral and indivisible part of all human rights and fundamental freedoms" while Article 13 recognizes that women are entitled to full participation in all aspects of the society. Further, Article 14 lends support by affirming that women's rights are also human rights.⁸⁴

The Beijing Declaration and Platform for Action holds special significance for women and girls with disabilities by expressly mentioning them in 38 of its articles.⁸⁵ Indeed, the Platform for Action has greatly influenced the inclusion of WWDs and girls with disabilities in most international human rights documents.⁸⁶ Chapter IV (Article 46) of the Declaration confirms that women may face additional barriers to the enjoyment of their human rights due to disability and other factors,⁸⁷ therefore, Articles 31 & 32 of the Beijing Declaration aims to:

- 31. [P]romote and protect all human rights of women and girls;
- 32. Intensify efforts to ensure equal enjoyment of all human rights and fundamental freedoms for all women and girls who face multiple barriers to their empowerment and advancement because of such factors as their race, age, language, ethnicity, culture, religion, or disability".

Articles 31 and 32 above are significant for WWDs. They recognize the intersection between gender and disability, among other possible categories of discrimination, with a view to achieve

⁸³ The Fourth World Conference held from 4-15 September 1995 in Beijing, China. The Platform for Action is available at <http://www.un.org/womenwatch/daw/beijing/> accessed 27 April 2013.

⁸⁴ Articles 13 and 14 of the Beijing Declaration state:

"13. Women's empowerment and their full participation on the basis of equality in all spheres of society, including participation in the decision-making process and access to power, are fundamental for the achievement of equality, development and peace;

14. Women's rights are human rights".

⁸⁵ Especially in the sections covering the issues of education and vocational training, health, violence against women, economy and girls.

⁸⁶ Committee on the Elimination of Discrimination Against Women: General Recommendation No 18 on Disabled Women, Committee on the Rights of the Child: General Comment No. 9 The rights of children with disabilities, 13 November 2007, CRC/C/GC/9/Corr.1; Committee on Economic, Social and Cultural Rights; General Comment No. 5, Persons with Disabilities, E/1995/22.

⁸⁷Chapter IV, Article 46 of the Beijing Declaration and Platform for Action recognises that women "...face barriers to full equality and advancement because of factors such as their (...) disability".

the promotion and protection of “all human rights of women and girls”, including WWDs.⁸⁸ Despite its non-bindingness, being only a declaration, the Beijing Declaration and Platform for Action has contributed to significant progress in the empowerment of women, including WWDs, and its provisions have been reaffirmed and reinforced by subsequent global conferences and resolutions.⁸⁹

(ix) Vienna Declaration and Platform for Action 2004

The UN convened a Seminar of Disabled Women “specifically to consider the problems of disabled women and the contribution that disabled women could make to development”.⁹⁰ After careful meetings and deliberations at the Seminar, a detailed list of more than 70 recommendations for WWDs was adopted namely, Vienna Declaration and Platform for Action. Paragraph H of the Recommendations concerns employment for WWDs and notes as follows:

Employment is a critical component in enabling disabled women to achieve self-esteem and social recognition. Disabled women should be trained for employment opportunities for which there is a demand in the labour market. When special training is needed, women with disabilities should not be disadvantaged in comparison with other population groups. Disabled women should have appropriate access to all training programmes...

...Disabled women should be encouraged to seek employment opportunities which have a reasonable wage and status. Effective assistance should be given to disabled women to maintain employment, through such means as follow-up services and contacts with employers.

...[D]isabled women should have equal right to financial assistance, if available.

The programmes of the ILO and FAO, as well as other organizations concerned with employment should take into account the needs of disabled women. Those organizations should work in close co-operation with disabled women and their organizations.

The above provision promotes employment for WWDs. It explicitly affords protection for WWDs in employment access and recommends follow-up measures for maintaining employment for WWDs. Again, the Vienna Declaration and Platform for Action is non-binding on UN member states, but it serves as inspiration and guidance to the government, civil societies, international organizations, and individuals in UN member states to implement concrete actions for vulnerable groups, including WWDs.

⁸⁸ Article 31, *ibid*.

⁸⁹ The Beijing Declaration and Platform for Action has been reaffirmed and reinforced by subsequent global conferences and resolutions such as, the Beijing +5 Political Declaration in 2000, the UN Security Council Resolution 1325 on Women, Peace and Security in 2000, and the 2030 Agenda for Sustainable Development in 2015.

⁹⁰ The Seminar for Women with Disabilities was held from 20-24 August 2004 in Vienna. The full report is available at <http://www.un.org/esa/socdev/enable/women/wwdsem0.htm> accessed 22 June 2017.

The next section examines protection extended to WWDs by the only international disability-specific instrument namely, the United Nations Convention on Rights of Persons with Disabilities (UN CRPD) 2006.⁹¹

(x) United Nations Convention on Rights of Persons with Disabilities 2006

The need to effectively mainstream disability into the development agenda through a binding international instrument for PWDs spurred the United Nations to adopt the Convention on Rights of Persons with Disabilities (UN CRPD).⁹² The convention is founded on the general principles outlined in Article 3 of the UN CRPD, including non-discrimination and equality between men and women with disabilities.⁹³ Article 4(1) of the UN CRPD defines the general obligations of state parties as follows:

States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

- (a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;
- (b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
- (c) To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;

The provisions above emphasize the need for the enactment of laws and formulation of policies for “the full realization of human rights and fundamental freedoms for PWDs”. Laws and policies must be drafted or modified to actualize the right to work (among other rights), for all categories of PWDs. Article 5(2) of the UN CRPD further obligates states parties to “prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds”.

The next section discusses the relevant articles in the UN CRPD that offer protection for WWDs whilst promoting the right to work and other rights ancillary thereto.

⁹¹ UN CRPD 2006, A/RES/61/106 adopted by the United Nations on 13 December 2006 and came into force on 3 May 2008.

⁹² Supra note 55.

⁹³ Article 3 (b) and (g) of the UN CRPD, respectively. In other terms, all other provisions in the convention derive their interpretation and implementation from the guidelines listed in Article 3.

4.4 Article 6 (1) (2) –Women and girls with disabilities

The UN CRPD is the first and only binding human rights treaty that recognizes the intersection between gender and disability by directly referencing that the type of discrimination experienced by women and girls with disabilities is uniquely different and multifarious.⁹⁴ The UN CRPD requires that women and girls with disabilities are fully empowered, advanced, and developed through appropriate positive measures.⁹⁵ This obligation is not deemed fulfilled by either merely passing “gender-neutral” disability laws and policies, or organizing gender-neutral programmes for PWDs.⁹⁶ The UN CRPD obligates states parties to protect WWDs from discrimination arising from stereotypes such as traditional beliefs, harmful cultural practices, religious inclinations amongst others.⁹⁷

Article 6 of the UN CRPD particularly connotes international recognition of the intersection between gender and disability. The convention confirms that women and girls with disabilities could be victims of multifarious discrimination different from their male counterparts, and they must therefore be specially considered in all actions and measures taken for integrating PWDs.

Article 6(1)(2) of the UN CRPD which is devoted to WWDs and provides *inter alia*:

6(1). States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

6(2). States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

Article 6(1) above differentiates women and girls with disabilities by recognizing that they are susceptible to “multiple discrimination” compared to men and boys with disabilities.⁹⁸ Article 6(2) is an extension of the duty of states parties towards women and girls with disabilities. The requirement that states parties must take “all appropriate measures to ensure” that women and girls

⁹⁴ Article 6 (1) UN CRPD 2006.

⁹⁵ Article 6 (2) *ibid*.

⁹⁶United Nations CESC, General Comment No. 16, paragraph 18, <http://www2.ohchr.org/english/bodies/cescr/comments.htm> accessed 1 March 2019.

⁹⁷ Article 8(1)(b) UN CRPD; United Nations CESC, General Comment No. 28, paragraph 5, <http://www2.ohchr.org/english/bodies/cescr/comments.htm> accessed 1 March 2019.

⁹⁸ UN Committee on the Rights of Persons with Disabilities General Comment No. 3 (2016) p. 3 available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/3&Lang=en accessed 13 April 2019.

with disabilities are fully “developed, advanced, and empowered”, specifically promotes the right to employment of WWDs amongst other rights contained in the convention.⁹⁹ Furthermore, states parties to the UN CRPD have an obligation to recognize and respect gender equality principles whilst formulating and implementing laws and policies that relate to PWDs.¹⁰⁰ As stated in chapter one, employment promotes human dignity, a sense of belonging and financial independence.¹⁰¹ The UN CRPD further emphasizes the importance of realizing employment for WWDs by stating that their right to employment is integral to the exercise and enjoyment of all other human rights and fundamental freedoms guaranteed in the Convention.¹⁰² The UN Committee on the Rights of Persons with Disabilities surmises as follows:

Article 6 is a cross-cutting article related to all the other articles of the Convention. It should remind States parties to include the rights of women and girls with disabilities in all actions aimed at implementing the Convention. In particular, positive measures need to be taken in order to ensure that women with disabilities are protected against multiple discrimination and can enjoy human rights and fundamental freedoms on an equal basis with others.¹⁰³

The right to work guaranteed by Article 27 of the UN CRPD is central to the theme of this research and will be exhaustively analysed in the next section. Thereafter, a discussion on the right to accessibility, the right to education, and other measures incidental to the right to employment for WWDs, will follow.

4.5 Article 27 UN CRPD – Right to work

By international law, every human being is entitled to the fundamental right to work.¹⁰⁴ Article 27 of the UN CRPD exhaustively safeguards and promotes the right to work by setting out measures

⁹⁹ Emphasis is mine.

¹⁰⁰ Dr. Sigrid Arnade and Sabine Haefer ‘Standard Interpretation of the UN Convention on the Rights of Persons With Disabilities (UN CRPD) From A Female Perspective’ Position and Reference Paper on the Significance of References to Women and Gender in the Rights of Persons with Disabilities available at https://www.ohchr.org/documents/hrbodies/crpd/dgd/2013_submissions/1.netzwekartikel.doc accessed 13 April 2019.

¹⁰¹ Supra note 73. Aleksandra Jasiak and Patrycja Krolak ‘The importance of Work for Persons with Disabilities and Evaluation Imposed Obligations of Employers’ in *Ergonomics For People With Disabilities* p. 229-30 available at https://content.sciendo.com/downloadpdf/book/9783110617832/b_9783110617832-019.xml accessed 1 June 2019.

¹⁰² Pursuant to Article 6(2) of the UN CRPD, states parties must ensure to take measures to empower and develop WWDs so they can enjoy and fully exercise all the other rights in the Convention.

¹⁰³ UN Committee on the Rights of Persons with Disabilities General Comment No. 3 (2016) p. 3 available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/3&Lang=en accessed 1 June 2021.

¹⁰³ Emphasis is mine.

¹⁰⁴ International instruments such as apply generally to the fundamental human right of everyone to work generally, are: the United Nations Charter (Article 1 (3)), Universal Declaration of Human Rights (Article 23), International Covenant on Economic, Social and Cultural Rights (Article 6), International Covenant on Civil and Political Rights (Article 8 (3)(a), Convention on the Elimination of All Forms of Discrimination against Women (Article 11 (1) (a)),

with which states parties can realize work for PWDs, including for those who acquire a disability in the course of employment. For clarity and emphasis, Article 27 of the UN CRPD provides *inter alia* that:

1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, *inter alia*:

- (a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, the continuance of employment, career advancement, and safe and healthy working conditions;
- (b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;
- (c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;
- (d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services, and vocational and continuing training;
- (e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining, and returning to employment;
- (f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives, and starting one's own business;
- (g) Employ persons with disabilities in the public sector;
- (h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives, and other measures;
- (i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
- (j) Promote the acquisition by persons with disabilities of work experience in the open labour market;
- (k) Promote vocational and professional rehabilitation, job retention, and return-to-work programmes for persons with disabilities.

2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.¹⁰⁵

Pursuant to the provisions of Article 27 above, states parties are obliged to eradicate all forms of discriminatory practices against PWDs and adopt positive measures towards making sure they

International Convention on the Elimination of All Forms of Racial Discrimination (Article 5(e)(i)), Convention on the Rights of the Child (Article 32), International Convention on the Protection of the Rights of Migrant Workers and Members of their Families (Articles 11, 25, 26, 40, 52 and 54).

¹⁰⁵ Emphasis mine.

exercise the right to employment. Specifically, the right of WWDs to work is addressed by the conjunctive provisions of Article 6(1)(2) and Article 27. In effect, while recognizing the multiple disadvantaged status of WWDs, states parties must ensure WWDs are assisted to exercise their right to work without discrimination in an environment that is “open, inclusive and accessible” in line with all the measures listed in Article 27(1)(a)-(k) above. The UN CRPD also proscribes slavery or forced labour in Article 27 (2). Some of the measures listed in Article 27 that promote the enjoyment of the right of PWDs to work are treated under section 3.8 of this chapter.

As stated in the previous chapter, Nigeria is a state party to the UN CRPD which it ratified timeously in 2007.¹⁰⁶ The UN CRPD binds states parties to adopt laws, policies, and other measures to ensure the implementation of its provisions.¹⁰⁷ Also, Article 35 requires that periodic state reports on the implementation of the UN CRPD are submitted for evaluation by the Committee on the Rights of Persons with Disabilities.¹⁰⁸ The Committee on the Rights of Persons with disabilities is the body of independent experts that monitors implementation of the Convention by states parties. The Committee provides authoritative guidance about the provisions of the Convention on the rights of persons with disabilities through general comments. Nigeria submitted its initial report to the UN CRPD committee since ratifying it in 2007.¹⁰⁹ The initial report mentions some laws and policies targeted at women¹¹⁰ with steps taken by the federal government to address women issues in the country as having relevance for addressing the social and economic situation of WWDs as women, without specifically detailing how WWDs have

¹⁰⁶ Nigeria ratified the UN CRPD on 30 March 2007, one year after the Convention was adopted.

¹⁰⁷ See generally Article 4 UN CRPD for the obligations of states parties.

¹⁰⁸ Article 35 UN CRPD. States parties are required to submit through the United Nations Secretary-General, a report on the implementation measures of the UN CRPD two years after ratifying the UN CRPD and every four years thereafter.

¹⁰⁹ The Ministry of Women Affairs and Social Development has responsibility to submit Nigeria’s report to the UN CRPD Committee. Nigeria’s initial report submitted to the Committee on 26 March 2021 can be found in the UN Treaty Body Database available at tbineternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FNGA%2F1&Lang=en accessed 13 March 2024.

¹¹⁰ The laws mentioned in the initial report include: the Constitution of the Federal Republic of Nigeria; Violence Against Persons (Prohibition) Act, 2015; Anambra State Gender and Equal Opportunities Law, 2007; Ekiti State Gender Based Violence (Prohibition) Law, 2011; Imo State Gender & Equal Opportunity Law, 2007; Lagos State Protection Against Domestic Violence Law, 2007, and the Rivers State Dehumanizing and Harmful Traditional Practices Law, 2007. The policies include: National Gender Data bank; National Policy on Gender in Basic Education; National Framework on Girls and Women Education; National Policy on Sexuality and Family Life Foundation.

benefitted so far.¹¹¹ In addition, the Federal Disability Law¹¹² enacted for PWDs in Nigeria (which will be discussed in chapter five), contains no gender-specific provisions that accord recognition and promotion of rights for WWDs in violation of Article 6(1) of the UN CRPD. There is no known sanction imposed for non-implementation of the provisions of the UN CRPD; and unlike the CEDAW, UN CRPD does not have an inquiry procedure as one of its enforcement mechanisms.

4.6 Enforcing international instruments relevant for promoting WWDs in Nigeria

Generally, each state party to a ratified treaty or convention has an obligation to take steps to ensure that its citizens can enjoy the rights set out in the treaty.¹¹³ The expectation is that states who accepted the United Nation's legal commitments would at least generally uphold them. States parties can also be incentivised to comply with international obligations through the provision of economic and domestic benefits, generating peer and public pressure on states among other motivating factors.¹¹⁴ One major challenge to the enforcement of human rights treaties is the differing of political systems of the sovereign states which make up the United Nations.¹¹⁵ Several theories explain how international law applies within a state's legal system. Member states of the United Nations primarily operate under either monist or dualist systems when integrating international law into domestic law.¹¹⁶ Under the monist approach, international and domestic law

¹¹¹ The initial Report states:

“Some programmes of the federal government specifically targeted at women also address enhancement of social and economic benefits for women with disabilities. Some of these programmes are:

- Women Fund for Economic Empowerment. The Fund has a low interest rate and targets grassroots women cooperative societies.
- Business Development Fund for Women. It targets women entrepreneurs who desire loan to expand their businesses. The fund provides low-interest credit facilities for women entrepreneurs who may not be able to enjoy facilities from conventional banks.

¹¹² Discrimination Against Persons with Disabilities (Prohibition) Law, 2018. It was signed into law on 23 January 2019.

¹¹³ Quixan Sun ‘The Enforcement of International Human Rights Law: Challenges and Solutions’ (2023)8 *Journal of Education Humanities and Social Sciences* p. 494.

¹¹⁴ Other motivating factors for state compliance include: the desire to maintain international peace and security, enhance their reputation, or receive reciprocal benefits from other states. Carmela Lutmar, Cristiane L. Carneiro & Sara McLaughlin Mitchell ‘Formal Commitments and States’ Interests: Compliance in International Relations’ (2016) 42(4) *International Interactions*, p. 559-64; Valentina Carraro ‘Promoting Compliance with Human Rights: The Performance of the United Nations’ Universal Periodic Review and Treaty Bodies, *International Studies Quarterly*, Volume 63, Issue 4, December 2019, Pages 1079–93.

¹¹⁵ Hannah Moscrop ‘Enforcing International Human Rights Law: Problems and Prospects; (2014) available at *Enforcing International Human Rights Law | PDF | International Human Rights Law | Human Rights (scribd.com)* accessed on 3 March 2024.

¹¹⁶ For further reading and research on the monist and dualist theories, see the following: Malcolm Shaw, *International Law*, 8th ed. (Cambridge University Press, 2017), pp. 131,551-52; Charlesworth, Hilary, Madelaine Chiam, Devika

form a unified system.¹¹⁷ Ratified treaties automatically become part of national law, and in cases of conflict, international law takes precedence.¹¹⁸ Unlike the monist approach, the positivist–dualist view is reflected in the doctrine of transformation, which treats international and domestic law as separate systems.¹¹⁹ International law has no effect domestically unless it is formally converted into national law through constitutional processes, such as legislation.¹²⁰ As mentioned in chapter one and three, Nigeria operates a dualistic legal system, meaning that international conventions are not automatically incorporated into domestic law without a post-ratification process by the National Assembly.¹²¹ Despite the enforcement problems, international standards discussed above have exerted influence on states’ behaviour on domestic and international levels, even if only of consensual and voluntary nature.

Nigeria is making efforts to comply with its international obligations as a means of enjoying some of the incentives as UN member state. However, the United Nations can ensure compliance with international obligations for recognizing and promoting rights for WWDs in Nigeria by establishing more monitoring and reporting mechanisms, launching global awareness campaigns, partnering with NGOs and disability groups, encouraging countries to adopt policies centred on promoting rights for WWDs, ensuring that all UN initiatives contain gender and disability considerations including the intersection between these two factors, support research on the intersection between gender and disabilities, facilitate dialogue and discussion among stakeholders on the challenges and probable solutions relating to the employment rights of WWDs.

Apart from the UN norms and standards, including the UN CRPD discussed above, the employment agency of the United Nations, namely, the International Labour Organization (ILO) adopted conventions and guidelines to regulate employment relationships in member states.

Hovell, and George Williams, eds. *The Fluid State: International Law and National Legal Systems*. Sydney, Australia: Federation Press, 2005; Crawford, James. *Brownlie’s Principles of Public International Law*. 8th ed. Oxford: Oxford University Press, 2012; Denza, Eileen. “The Relationship between International and National Law.” In *International Law*. 4th ed. Edited by Malcolm Evans, pp. 412–40. Oxford: Oxford University Press, 2006; Malanczuk, Peter. *Akehurst’s Modern Introduction to International Law*. London: Routledge, 1997; Nijmann, Janne, and Andre Nollkaemper, eds. *New Perspectives on the Divide between National and International Law*. Oxford: Oxford University Press, 2007.

¹¹⁷ Divya S Nair ‘Comparing Monism and Dualism: Theories on Relationship Between Domestic and International Law’ (2024) Vol 12(7) *International Journal of Creative Research Thoughts* p.144-45.

¹¹⁸ Ibid.

¹¹⁹ Rashmi, Kirti ‘Incorporating International Law in India: The Transposition between the Incorporation and Transformation Theory’ (2023) Vol. 6(5) *International Journal of Law Management & Humanities*, pp. 1882–90.

¹²⁰ Ibid.

¹²¹ Okeke and Anushiem ‘Implementation of Treaties in Nigeria: Issues, Challenges and The Way Forward’ (2018) 9(2) *NAUJILJ* 9 (2) p. 216.

The next section focuses on the contribution of the International Labour Organization in promoting rights for WWDs.

4.7 International Labour Organization

The International Labour Organization (ILO) as the oldest specialized agency of the United Nations has contributed immensely to realizing employment for PWDs, including WWDs.¹²² The ILO was created in 1919 by part XIII of the Peace Treaty of Versailles ending World War I.¹²³ The governing body of the ILO promotes the need for equal opportunity and treatment for all workers by adopting binding conventions and standards, some of which have employment significance for WWDs. The ILO also issues recommendations from time to time. Conventions are binding while Recommendations are non-binding guidelines which do not require ratification, but member states are obligated to report on conventions (ratified and unratified)¹²⁴ and recommendations.¹²⁵ Nigeria is a member of the ILO and has ratified some ILO conventions significant for protecting workers with disabilities, including WWDs.¹²⁶ The ratified ILO Conventions have direct applicability in Nigeria without requirement for domestication.¹²⁷ An examination of the relevant ILO employment conventions and standards is addressed next.

(i) Discrimination (Employment and Occupation) Convention 1958 (No. 111)

The Discrimination (Employment and Occupation) Convention 1958 (No. 111)¹²⁸ was adopted by the ILO General Conference to promote employment equity for all workers and to prohibit discrimination in employment. A few provisions of this convention can be construed to protect PWDs, including WWDs. Articles 1 and 2 define and prohibit discrimination in employment due

¹²² ILO 'Achieving Equal Employment Opportunities for Persons with Disabilities Through Legislation: Guidelines' (Second Edition 2014) available at https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/publication/wcms_322685.pdf accessed 3 April 2022).

¹²³ Sandrine Kott, 'ILO: Social Justice in a Global World? A History in Tension' (2019) *Directory of Open Access Journals* available at <https://doi.org/10.4000/poldev.2991> accessed 3 April 2022.

¹²⁴ Article 22 of the ILO Constitution places obligation on member states to submit periodic reports on ratified conventions. Article 19 (5) (e) obligates member states to report on non-ratified conventions as well.

¹²⁵ Article 19 (6) (d) of the ILO Constitution require member states to report on recommendations. Recommendations usually supplement the Convention to which they are linked by providing more detailed guidelines on how they could be applied. Recommendations can also be autonomous, i.e. not linked to a Convention.

¹²⁶ Nigeria became a member of the ILO on 17 October 1960.

¹²⁷ Section 254(C)(2) of the Third Alteration Act discussed in 4.7 below.

¹²⁸ The Discrimination (Employment and Occupation) Convention 1958 (No. 111) was adopted by the General Conference of the ILO on 25 June 1958 at its forty-second session.

to sex and other factors which nullify equal treatment in employment and occupation, such as may be determined by the member state: Article 1(a)-(b) provides:

1. For the purpose of this Convention the term *discrimination*¹²⁹ includes:
 - (a) any distinction, exclusion or preference made on the basis of ...*sex*...¹³⁰ or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
 - (b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned.

The definition of discrimination above, particularly Article 1(b) leaves member states with the discretion to determine additional grounds of discrimination apart from those listed in Article 1(a) above. This means that “disability” may be implied as a discriminatory ground under the provisions of 1(b) above, should a member state so determine. Article 2 calls for the enactment of policies that promote equality of treatment in employment for all, at national level.

More particularly, Article 5(1)-(2) of the Discrimination (Employment and Occupation) Convention contemplates special measures for persons who may suffer disadvantage by virtue of certain limiting factors, including “disablement”. The Article reads:

- 5(1). Special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination.
- 5(2). Any Member may, after consultation with representative employers' and workers', where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination.

The foregoing provisions convey that special measures should be taken to protect or assist PWDs and other vulnerable groups such as WWDs, as required to enable them to exercise their employment or occupational rights on an equal basis with others. Such special assistive measures will not be regarded as discrimination against other workers, pursuant to Article 5(2) of the convention.

¹²⁹ Emphasis mine.

¹³⁰ Emphasis mine.

Nigeria ratified the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) in 2002.¹³¹ Article 3(f) of the Convention obligates states parties which have ratified the convention to submit annual reports on the measures taken to implement its provisions. Nigeria has been inconsistent with submission of reports on the Discrimination (Employment and Occupation) Convention.¹³² Despite several direct requests made by the Committee of Experts on the Application of Conventions and Recommendations (CEACR),¹³³ the most recent direct request being 2020, Nigeria's report remains out of cycle.¹³⁴ Part of the CEACR's direct request to Nigeria, reads as follows:

The Committee asks the Government to provide information on: (i) the application of the Discrimination Against Persons with Disabilities (Prohibition) Act, 2018 in practice, including on its impact on the integration of men and women with disabilities in the labour market; as well as on (ii) any measures and programmes implemented, including within the framework of the National Commission for Persons with Disabilities, to promote vocational training and employment of persons with disabilities and the results achieved. It asks the Government to provide information on the employment rate of persons with disabilities, disaggregated by sex and work environment (segregated work environment or open labour market), as well as on the number, nature and outcome of cases of discrimination on the ground of disability dealt with by the National Commission for Persons with Disabilities, the labour inspectors, the courts or any other competent authority.¹³⁵

As earlier indicated, Nigeria failed to respond to the direct request of the CEACR, which included a request for information on disaggregated data on PWDs as well as the steps taken to integrate men and women with disabilities in the employment sector.¹³⁶

Another ILO convention, namely, the Vocational Rehabilitation and Employment (Disabled Persons) Convention¹³⁷ and its significance for WWDs is considered next.

¹³¹ Nigeria ratified the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) on 2 October 2002.

¹³² ILO 'Requested Reports and Replies to CEACR Comments: Nigeria 2020, 2021' available at http://www.ilo.int/dyn/normlex/en/f?p=1000:14000:0::NO:14000:P14000_COUNTRY_ID:103259 accessed 13 October 2021.

¹³³ The CEACR (established in 1926) consists of a body of experts appointed for a three-year tenure. These experts have the responsibility to examine the growing reports on conventions ratified by governments of nations.

¹³⁴ Ibid.

¹³⁵ ILO 'Direct Request (CEARC) – adopted 2020, Published 109 ILC session' (2021) available at http://www.ilo.int/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID:4060243:NO accessed 13 October 2021.

¹³⁶ As indicated in the excerpt from the Direct Request immediately above.

¹³⁷ ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention (No 159) of 1983.

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

The Vocational Rehabilitation and Employment (Disabled Persons) Convention 1983¹³⁸ is the only legally binding international pre-UN CRPD document that directly refers to WWDs. Article 2 and 3 of the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) provide:

2. Each Member shall, in accordance with national conditions, practice and possibilities, formulate, implement and periodically review a national policy on vocational rehabilitation and employment of disabled persons.
3. The said policy shall aim at ensuring that appropriate vocational rehabilitation measures are made available to all categories of disabled persons, and at promoting employment opportunities for disabled persons in the open labour market.

States parties are required to establish, implement, and periodically review a national policy on vocational rehabilitation and employment for all PWDs. From the provisions above, “all categories of disabled persons” can be interpreted to include WWDs. Article 4 further provides that:

The said policy shall be based on the principle of equal opportunity between disabled workers and workers generally. Equality of opportunity and treatment for *disabled men and women*¹³⁹ workers shall be respected.

The significance of the Convention is captured in the provision above. The wordings of the convention specifically distinguish between men and women workers with disabilities to promote equal right to employment both at international and national levels.

Nigeria is a member state of the ILO and has ratified the Vocational Rehabilitation and Employment (Disabled Persons) Convention.¹⁴⁰ The Convention requires states parties to submit a periodic report to the CEACR¹⁴¹ detailing measures taken to implement its provisions.¹⁴² In 2020, the CEACR noted with concern that Nigeria is yet to submit any implementation report despite

¹³⁸ ILO Convention 159 was adopted by the General Assembly in 1983 and came into effect in 1985.

¹³⁹ Emphasis mine.

¹⁴⁰ Nigeria ratified the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) on 26 August 2010.

¹⁴¹ The CEACR (established in 1926) consists of a body of experts appointed for a three-year tenure. These experts have the responsibility to examine the growing reports on conventions ratified by governments of nations.

¹⁴² Every three years, governments have to provide reports detailing the steps they have taken in law and practice to apply any of the eight fundamental and four governance Conventions that they have ratified. For all other Conventions, reports have to be provided every six years, except for Conventions that have been “shelved” (which are no longer supervised on a regular basis). Reports on the application of Conventions may be requested at shorter intervals.

several direct requests made by the committee.¹⁴³ The CEACR also observed that despite the enactment of a national disability legislation in Nigeria reserving five per cent of the workforce to PWDs, the country fails to provide full and detailed information on the implementation measures and disaggregated statistical disability data based on sex, the nature of disability, and all matters covered by the Vocational Rehabilitation and Employment (Disabled Persons) Convention, including employment.¹⁴⁴

(iii) Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168)

In addition to emphasizing the significance of work and productive employment the Employment Promotion and Protection against Unemployment Convention, 1988¹⁴⁵ addresses the problem of unemployment and underemployment. Pursuant to Article 2 of this convention:

Each Member shall take appropriate steps to co-ordinate its system of protection against unemployment and its employment policy. To this end, it shall seek to ensure that its system of protection against unemployment, and in particular, the methods of providing unemployment benefit, contribute to the promotion of full, productive and freely chosen employment, and are not such as to discourage employers from offering, and workers from seeking productive employment.

Article 8 further provides that:

Each Member shall endeavour to establish, subject to national law and practice, special programmes to promote additional job opportunities and employment assistance and to encourage freely chosen and productive employment for identified categories of disadvantaged persons having or liable to have difficulties in finding lasting employment, such as women, young workers, disabled persons, older workers, the long-term unemployed, migrant workers lawfully resident in the country and workers affected by structural change.

As can be gleaned from the above provisions, the Convention urges states parties to establish special measures or programmes to ensure employment assistance both for women and for persons with disabilities. Nigeria is yet to ratify the Convention. Compliance with this convention would mean creating policies and programmes that specifically address the challenges faced by persons with disabilities in the labour market.

¹⁴³ ILO Observation (CEACR) adopted 2020, Published 109 ILC Session (2021). The Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 available at https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:4061749 accessed 17 June 2021.

¹⁴⁴ Ibid.

¹⁴⁵ The Employment Promotion and Protection against Unemployment Convention was adopted by the ILO on 29 June 1988 and came into force on 17 October 1991.

**(iv) Employment and Decent Work for Peace and Resilience Recommendation
2017 (No. 205)**

The Employment and Decent Work for Peace and Resilience Recommendation, 2017¹⁴⁶ replaced the Employment (Transition from War to Peace) Recommendation, 1944.¹⁴⁷ Its provisions afford protection for PWDs and women workers that are relevant for equal employment participation of WWDs, both as women and as disabled persons. Part of its general principles state:

IX. The redistribution of women workers in each national economy should be carried out on the principle of complete equality of opportunity for men and women in respect of admission to employment on the basis of their individual merit, skill and experience; and steps should be taken to encourage the establishment of wage rates on the basis of job content, *without regard to sex*.¹⁴⁸

X. Disabled workers, whatever the origin of their disability, should be provided with full opportunities for rehabilitation, specialised vocational guidance, training and retraining, and employment on useful work.

Also, reaffirming the labour rights of women generally, Articles 36-38 titled “Employment of Women” provide:

36. The redistribution of *women workers*¹⁴⁹ in the economy should be organised on the principle of complete equality of opportunity for men and women on the basis of their individual merit, skill and experience, without prejudice to the provisions of the international Labour Conventions and Recommendations concerning the employment of women.¹⁵⁰

37. (1) In order to place women on a basis of equality with men in the employment market, and thus to prevent competition among the available workers prejudicial to the interests of both men and women workers, steps should be taken to encourage the establishment of wage rates based on job content, *without regard to sex*.¹⁵¹

(2) Investigations should be conducted, in co-operation with employers' and workers', for the purpose of establishing precise and objective standards for determining job content, *irrespective of the sex of the worker*,¹⁵² as a basis for determining wage rates.

38. The employment of women in industries and occupations in which large numbers of women have traditionally been employed should be facilitated by action to raise the relative status of these industries and occupations and to improve conditions of work and methods of placement therein.¹⁵³

¹⁴⁶Employment and Decent Work for Peace and Resilience 2017 (No. 205) was adopted by the International Labour Conference at its 106th session held on 5 June 2017 following a two-year process of standard setting and tripartite consultations to revise and replace Recommendation No. 71 on Employment (Transition from War to Peace) of 1944.

¹⁴⁷ Ibid.

¹⁴⁸ Emphasis mine.

¹⁴⁹ Emphasis mine.

¹⁵⁰ Emphasis mine.

¹⁵¹ Emphasis mine.

¹⁵² Emphasis mine.

¹⁵³ Emphasis mine.

Furthermore, Articles 39-44 call for affirmative action for workers with serious disabilities and equal participation for PWDs generally in the labour market in the following areas:

X. Employment of Disabled Workers

39. The criterion for the training and employment of disabled workers should be the employability of the worker, whatever the origin of the disability.

40. There should be the closest collaboration between medical services for the disabled and vocational rehabilitation and placement services.

41. Specialised vocational guidance for the disabled should be developed in order to make it possible to assess each disabled worker's capacity and to select the most appropriate form of employment for him.

42. (1) Wherever possible, disabled workers should receive training in company with able-bodied workers, under the same conditions and with the same pay.

(2) Training should be continued to the point where the disabled person is able to enter employment as an efficient worker in the trade or occupation for which he has been trained.

(3) Wherever practicable, efforts should be made to retrain disabled workers in their former occupations or in related occupations where their previous qualifications would be useful.

(4) Employers with suitable training facilities should be induced to train a reasonable proportion of disabled workers.

(5) Specialised training centres, with appropriate medical supervision, should be provided for those disabled persons who require such special training.

43. (1) Special measures should be taken to ensure equality of employment opportunity for disabled workers on the basis of their working capacity. Employers should be induced by wide publicity and other means, and where necessary compelled, to employ a reasonable quota of disabled workers.

(2) In certain occupations particularly suitable for the employment of seriously disabled workers, such workers should be given preference over all other workers.

(3) Efforts should be made, in close co-operation with employers and workers, to overcome employment discriminations against disabled workers which are not related to their ability and job performance, and to overcome the obstacles to their employment, including the possibility of increased liability in respect of workmen's compensation.

(4) Employment on useful work in special centres under non-competitive conditions should be made available for all disabled workers who cannot be made fit for normal employment.

44. Information should be assembled by the employment service in regard to the occupations particularly suited to different disabilities and the size, location and employability of the disabled population.

The foregoing provisions embody workable fundamental principles for ensuring the right to employment of WWDs. In all, the provisions regarding employment of women, affirmative action for workers with serious disabilities plus equal participation for PWDs apply to WWDs. As earlier mentioned, ILO Recommendations are non-binding on member states but serve as useful guidelines to be applied in realizing employment for WWDs.

(v) ILO Code of Practice on Managing Disability in the Workplace, 2002

The ILO has further contributed to promoting the working lives of men and women with disabilities through its Code of Practice on Managing Disability in the Workplace.¹⁵⁴ Similar to the ILO recommendations, the ILO Code of Practice has no binding force on ILO member states. Rather, its purpose is to provide helpful guidelines for employers concerning the management of disability in the workplace as far as their national and local laws permit.¹⁵⁵ All provisions in the ILO Code are foregrounded on the principle of equality aimed at safe and healthy employment of all PWDs, including WWDs.¹⁵⁶

It specifically mandates “competent authorities” to:¹⁵⁷

2.2.1 ...advocate for the adoption of workplace disability management strategies by employers, as part of a national policy to promote employment opportunities for people with disabilities in the private and public sectors.

2.2.2 ...include disability-related issues in the general framework of economic and social regulations, taking into account national conditions and practice.

2.2.3 ...periodically review all rules and regulations governing employment, job retention, and return to work in the public and private sectors, to ensure that they do not contain elements of discrimination against people with disabilities.

2.2.4 ...undertake periodic reviews of their systems of social protection, including employee compensation, to ensure that adequate support is provided, and that no undue obstacles are inadvertently placed in the way of persons with disabilities in entering employment, retaining their job or occupation, or returning to the open labour market and paid employment.

2.2.5 ...facilitate employers’ efforts in the management of disability issues in the workplace, and in the recruitment, retention or return to work of people with disabilities, by assisting them to identify high-quality placement, technical advisory, rehabilitation, and other support services, both public and private. On-site safety and health committees, employee assistance programmes, industrial relations units and equality committees may also be suggested according to national circumstances and national legislation.

2.2.6 ...ensure that the services of the different agencies required by employers are of high quality and provided in a coordinated and timely manner.

2.2.7 ...set out criteria determining what is reasonable for the purposes of adjustment or accommodation in accordance with national law and practice.

WWDs are specifically referenced and protected by the ILO code as follows:

¹⁵⁴ The ILO Code of Practice on Managing Disability in the Workplace was adopted at the Tripartite Meeting of Experts on the Management of Disability at the Workplace in Geneva, October 2001.

¹⁵⁵ International Labour Office ‘Managing Disability in the Workplace: ILO Code of Practice’ available at <https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1166&context=gladnetcollect> accessed 12 February 2020.

¹⁵⁶ Ibid.

¹⁵⁷ Under the general provisions of the ILO Code of Practice, a competent authority is defined as: ‘A ministry, government department, or other public authority having the power to issue regulations, orders, or other instructions having the force of law’.

2.2.8 ...competent authorities should consider measures to promote employment, job retention and return-to-work opportunities for people with disabilities, which incorporate specific action for women with disabilities.

The provisions above conjunctively recognize WWDs and their peculiar disadvantage in accessing and retaining employment in the public and private sectors of the economy. Therefore, measures to ensure their full participation must be taken by a “competent authority”. The competent authority vested with a mandate for handling disability issues in Nigeria is the Ministry of Women Affairs and Social Development.¹⁵⁸ So far, the ministry’s primary focus has been on assisting PWDs with skills acquisition and training for PWDs to realize employment for them to run small businesses in the informal sector of the economy.¹⁵⁹ Gender aspects of disability and the impact on the experiences of WWDs are not adequately addressed in the efforts of the Ministry.¹⁶⁰

The ILO has no enforcement mechanisms for non-compliance or breaches of the Conventions. However, the ILO supervisory system monitors the application of the Conventions and makes observations and recommendations regarding member states compliance. Also, the ILO provides technical assistance and training to help countries implement the Conventions in law and practice. The enforcement of ILO conventions mainly depends on the jurisprudence of courts recognized by the respective states. Nigeria ratified ILO treaties are directly applicable in Nigeria pursuant to constitutional amendment provisions. The next section discusses the case law and constitutional provisions which empower the labour court in Nigeria to invoke and enforce ratified ILO Conventions/treaties without the need for domestication.

4.8 Direct application of ILO treaties in Nigeria – An exception to the requirement for domestication

Although Nigeria has ratified most of the international human rights norms regarding PWDs, including WWDs, as discussed above, realizing rights for WWDs, particularly in terms of employment access, is yet to materialize due to non-domestication of treaties.¹⁶¹ As mentioned before, Nigeria operates a dualist system (as do most nations in Africa), which means that ratified

¹⁵⁸ The broad mandate of the Ministry is to advise government on gender and Children issues, issues affecting Persons with Disabilities and the Aged; initiate policy guidelines and lead the process of gender equality and mainstreaming at both the national and international levels.

¹⁵⁹ Ngozi C Umeh and Romola Adeola, Repository on Disability Rights in Africa (rodra): Country Report, Nigeria (2013)1 *ADRY University of Pretoria* p. 277-90.

¹⁶⁰ *ibid.*

¹⁶¹ Chinenyendo Nriezedi-Aniejionu Could the Non-Domestication of Nigerian Treaties Affect the Energy Investment Attraction into the Country? (2020) 28(1) *African Journal of International and Comparative Law* p. 122.

treaties/conventions do not have the force of law upon ratification unless they are passed into law (domesticated) by the National Assembly of Nigeria, thereby becoming part of the laws of the federation of Nigeria.¹⁶² Section 12(2) of the Constitution of the Federal Republic of Nigeria provides:

No treaty between the Federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly.

(2) The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty.

Domestication of treaties has the effect of transposing a ratified treaty into a legally enforceable law within the ratifying country.¹⁶³ Essentially, only upon domestication would courts in Nigeria have jurisdiction and powers to implement the provisions of international treaties and norms.¹⁶⁴ Nigeria's National Assembly has primary prerogative to domesticate treaties as part of the laws of the Federal Republic of Nigeria by virtue of Section 12(1)(2) of the Constitution of the Federal Republic of Nigeria.¹⁶⁵ Despite having no force of law in Nigeria, non-domesticated treaties are not entirely useless. Such treaties could serve as persuasive authority in Nigerian courts, regardless of their unenforceability status in domestic courts.¹⁶⁶ Treaty provisions may also serve as useful guidelines or reference in the law-making process of the National Assembly.¹⁶⁷

Notwithstanding the requirement of domestication of treaties contained in Section 12(1)(2) of the Constitution, an exception to the rule has been expressly created by constitutional amendment. Nigeria has a specialized labour law court with exclusive jurisdiction to hear and arbitrate in civil causes and matters relating to labour, including trade unions, and industrial relations, and environment and conditions of work, health, safety and welfare of labour and other incidental matter.¹⁶⁸ The Constitution of the Federal Republic of Nigeria (Third Alteration) Act,

¹⁶² Section 12(1) of the Constitution of the Federal Republic of Nigeria 1999 states that: No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.

¹⁶³ Ibid.

¹⁶⁴ Ibid.

¹⁶⁵ Section 12(2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) Cap C23 LFN 2004 provides that: "[t]he National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty".

¹⁶⁶ Ibid.

¹⁶⁷ Ibid. For instance the Child Rights Act Cap C50 Laws of the Federation of Nigeria, 2004 was influenced by the UN Convention on the Rights of the Child 1989.

¹⁶⁸ Section 7 of the National Industrial Court Act 2006.

2010 (Third Alteration Act),¹⁶⁹ re-establishes the National Industrial Court (the NIC) as a superior court of record in Nigeria. Section 254(c) (2) of the 1999 Constitution as embodied in section 6 of the Third Alteration Act grants the National Industrial Court of Nigeria (NICN) exclusive jurisdiction to deliberate on matters or issues arising from the application of any labour-related international convention, treaty or protocol ratified in Nigeria. The amendment also permits the NICN to deal with matters relating to unfair labour practices and to implement international best practices upon proof of their existence.¹⁷⁰ Section 254(C)(2) of the Third Alteration Act specifically reads as follows:

Notwithstanding anything to the contrary in this Constitution, the National Industrial Court shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith.

The provision above adopts the monist approach of automatic incorporation of treaties into Nigerian legal system, in respect of labour related treaties.¹⁷¹ This means that the ILO treaties discussed above can be applied by the NICN in all matters brought before it without the need for domestication. This position was aptly confirmed in *Aero Contractors Co. of Nigeria Ltd v National Association of Aircrafts, Pilots and Engineers and Ors*¹⁷² where the National Industrial Court of Nigeria held that ‘...the use of the word “notwithstanding” in section 254C (2) of the Constitution, as amended, is meant to exclude the impending effect of Section 12(1) or any other section of the 1999 Constitution’. In the extant case, Justice Kanyip directly applied ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise of 1948 and ILO Convention No. 98 on Right to Organise and Collective Bargaining Convention of 1949 though the Conventions have not been domesticated in Nigeria.

The National Industrial Court has exercised its powers to interpret and apply ILO treaties for women and in several other cases. In *Ejieke Maduka v. Microsoft Nigeria Limited and 3 Ors*¹⁷³

¹⁶⁹ The Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 (Third Alteration Act) came into force on 4 March 2011.

¹⁷⁰ 254(C)(1)(f) of the Third Alteration Act, 2010.

¹⁷¹ Okeke and Anushiem, footnote 100 p. 228. Philip Folarin Abiodun ‘National Industrial Court and the Third Alteration Act: Emerging Trends’ (February 27, 2017) *Essays in Honour of Professor Enefiok Essien* edited by Uwem Udok (2016) University of Uyo, Nigeria pp. 229-251 available at SSRN: <https://ssrn.com/abstract=2924609> accessed 5 October 2023.

¹⁷² *Aero Contractors Co. of Nigeria Ltd v National Association of Aircrafts, Pilots and Engineers and Ors* (2014) N.L.L.R (Part 133) p.664.

¹⁷³ *Ejieke Maduka v. Microsoft Nigeria Limited and 3 Ors* (2014) 41 NLLR (Pt.125) p.67.

where the applicant, an employee of the defendant company alleged that she and other female staff were being consistently sexually abused by the CEO of the respondent company. She had reported to the appropriate department in the company, but nothing was done about the situation. She eventually reported the respondent to her husband who came into the office and gave the CEO a stern warning. Shortly after, the CEO terminated her employment in retaliation. Decrying the non-existence of any laws in Nigeria prohibiting sexual harassment at work, the Court relied on the provisions of the ILO Discrimination (Employment and Occupation) Convention 1958 No. 111 to grant the applicant general damages of N13, 225, 000.00 (Thirteen Million, Two Hundred and Twenty Five Thousand Naira) against each of the first, second, and third respondent. In another case, *Adebusola Adedayo Omole v Mainstreet Microfinance Bank*,¹⁷⁴ which concerned the reduction of the salary of the claimant without her consent, the NICN applied the provisions of the Labour Act and the ILO Protection of Wages Convention No. 95 of 1949 to order a repayment of the total deducted sum. Furthermore, the court declared its mandate to bring Nigeria's labour jurisprudence at par with what obtains at the global level in exercising its jurisdiction to enforce ratified international labour standards. The NICN also adopted the practice of using international law to strengthen a decision based on domestic law. In *Folarin Oreka Maiya v The Incorporated Trustees of Clinton Health Access initiative, Nigeria & 2 Ors*,¹⁷⁵ where the court awarded huge damages to the claimant, after it determined that the claimant who had been unjustly dismissed on account of her pregnancy, had suffered a breach of her rights to protection from discrimination under section 254(c)(1)(f)(h) of the Constitution, the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act and the non-domesticated ILO Convention No. 111 of 1958 on discrimination.

In exercising this jurisdiction, NICN can valuably contribute to enforce employment rights at work for PWDs, and particularly WWDs in Nigeria.¹⁷⁶ For example, the court can use the substantive approach to interpret ILO treaties and employment laws in a manner that guarantees

¹⁷⁴ *Adebusola Adedayo Omole v Mainstreet Microfinance Bank* (2015) 53 N.L.L.R.

¹⁷⁵ *Folarin Oreka Maiya v The Incorporated Trustees of Clinton Health Access initiative, Nigeria & 2 Ors* NICN/ABJ/13/2011.

¹⁷⁶ So far, the NICN has remarkably exercised its jurisdiction to promote gender equality by declaring as unconstitutional, laws and employment practices that are discriminatory towards women. For example in *Omolola v. The Nigerian Police Force and 2 Ors*, the Court ruled as unlawful the dismissal of an unmarried female police officer based on a law (Regulation 127 of the Police Act) that the court declared as gender discriminatory. No cases from the NICN were found in relation to employment discrimination specifically against PWDs or WWDs at the time of writing this thesis.

the protection and inclusion of WWDs, ensuring they receive equal treatment and opportunities; by setting legal precedents that affirm the rights of WWDs, thereby influencing future cases and encouraging employers to comply with anti-discrimination laws, amongst others. Notwithstanding the exception of ILO Conventions to the dualist rule, it is still essential to domesticate all other treaties and instruments that acknowledge the intersection of gender and disability, as well as the unique discrimination being faced by WWDs. This domestication is crucial for ensuring specifically their right to access employment and addressing the discrimination they encounter as a more vulnerable group especially in the Nigerian context.

The next section highlights some of the employment measures indicated by the international norms and standards, particularly the UN CRPD for the actualization of the right of PWDs, including WWDs to work, against the backdrop of exemplary implementation practices.

4.9 Employment measures for realizing WWDs right to work: good practices

There are few good global practices for mainstreaming WWDs in employment although many UN member states are yet to come to terms with the intersection between gender and disability, as indicated in chapter three. However, some countries, having understood the unique vulnerability of WWDs and its impact on employment outcomes for them, have gender-focused policies and programmes that remove barriers and promote accessibility and equality of treatment for WWDs in exercising the right to employment. In Nigeria, although few initiatives are springing up to specifically address the employment vulnerability of WWDs including the establishment of non-governmental organizations focused on promoting rights for WWDs discussed in 6.2 of Chapter six and the launching of the National Mass Transit Policy in Lagos State, as stated in 3.4 of Chapter three, there is need to grow and consolidate on these initiatives. The significance of noting exemplary practices is to make useful recommendations for Nigeria on possible measures and strategies to adopt towards implementing integrating WWDs into employment and to better the existing few schemes/initiatives, in compliance with the UN CRPD requirements.¹⁷⁷

(i) Accessibility

As earlier indicated in 3.4 of chapter three, lack of accessibility into physical transport and public structures constitutes an employment barrier to PWDs generally. Article 9 of the UN CRPD urges

¹⁷⁷ The focus of this section is particularly on the good practices and not necessarily on the political or geographical dynamics of the countries involved.

state parties to take measures to enable PWDs to access the physical environment, transport, and information technologies on an equal basis with others, both in rural and urban areas.¹⁷⁸ PWDs therefore have a right of access into all public buildings, roads, transport facilities, hospitals, schools, workplaces, and all information technology systems.¹⁷⁹ To stretch the proviso further, states parties have responsibility to ensure that public and private entities that offer services to the general public employ the use of signage and other forms of live assistance required to guarantee accessibility to PWDs.¹⁸⁰ As mentioned in Chapter three, although there are moves to provide accessibility for PWDs in this regard, implementation is very slow.¹⁸¹

Further to accessibility for PWDs, the internet information and technology must be designed to provide usefulness to PWDs, including WWDs at a minimal cost.¹⁸² State parties must adopt the ‘Universal Design’ principle to ensure physical and technological accessibility.¹⁸³ Universal Design is the fabrication of a product or design of an environment in a manner that ensures the accessibility and utilization to the greatest extent possible by all categories of people irrespective of their age, size, ability or disability.¹⁸⁴ As part of good practice to promote accessibility for all categories of PWDs, the Thailand government engaged measures to build skills in advanced technology programming, computer training, training on electronic repairs and short English language courses for its disabled job seekers, including WWDs.¹⁸⁵ Also in Vietnam, WWDs are getting trained in the field of Information and Technology.¹⁸⁶ USAID and Catholic Relief Services in collaboration with the Hanoi College of Information Technology and Van Lang

¹⁷⁸ Article 9 (1) UN CRPD.

¹⁷⁹ Article 9 (1) (a) *ibid.*

¹⁸⁰ Article 9 (2) (b) *ibid.*

¹⁸¹ Viktorija Mickute and Sarah Kim ‘Nigeria’s Lagos-Life with a disability in the African megacity: A close look into the state of accessibility in Nigeria’s largest city’ (30 March 2022) available at *Nigeria’s Lagos: Life with a disability in the African megacity | Inequality | Al Jazeera* accessed 10 October 2023.

¹⁸² Article 9 (2) (h). For the right to accessibility, see generally Article 9 (1) (a) (b) (2) (a)-(h), *ibid.*

¹⁸³ *Ibid.* International Labour Organization ‘Promoting Employment and Decent Work in a Changing Landscape’ held at the meeting of the International Labour Conference 109 Session, 2020 p. 17 available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_736873.pdf accessed 12 August 2022.

¹⁸⁴ Rob Imrie ‘Universalism, Universal Design, and Equitable Access to the Built Environment’ (2012) 34 (10) *Journal of Disability and Rehabilitation* p. 874.

¹⁸⁵ D A Perry, ‘Toward Decent Work for People with Disabilities: Examples of Good Practices in Vocational Training and Employment from Asia and the Pacific’ Bangkok, International Labour Office (2003) available at http://www.ilo.org/public/libdoc/ilo/2003/103B09_417_engl.pdf - accessed 6 March 2017.

¹⁸⁶ United States Alliance for International Development (USAID) ‘Advancing Women and Girls with Disabilities’ available at <https://www.usaid.gov/what-we-do/gender-equality-and-womens-empowerment/women-disabilities> accessed 12 March 2020.

University in Ho Chi Minh City provides training in advanced computer skills, such as graphic design, 3D modelling and web development, for young boys and girls with disabilities from all over Vietnam.¹⁸⁷ From 2007 till date, the programme has trained over 700 students with disabilities, including WWDs in Hanoi and Ho Chi Minh City, out of which 80 per cent have found employment.¹⁸⁸

(ii) Education and Training

Education is also essential for attaining decent employment that is open and public for all categories of PWDs, as explained in chapter three. Article 24 of the UN CRPD guarantees the right to education for PWDs, taking WWDs into consideration.¹⁸⁹ Also pursuant to the UN CRPD, in recognizing the right of PWDs to education, states parties must ensure an inclusive education system at all levels and lifelong learning to develop PWDs to their fullest potential.¹⁹⁰ States parties are further obligated to provide all the support necessary for achieving inclusive quality education free from discrimination.¹⁹¹ Reasonable accommodation, such as provision of trained tutors (including tutors with disabilities), braille facilities and any other individualized or general assistance is required by the UN CRPD for effective inclusion of WWDs in primary, secondary and tertiary education.¹⁹²

In India, special strategic programmes are being developed for advancing education, employment and other rehabilitation services to WWDs.¹⁹³ Educational and vocational training facilities have also been set up to specifically rehabilitate abandoned women/girls with disabilities by encouraging their adoption into families, in order to impart them with training for gainful

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ Education measures for PWDs must take consideration of gender-perspectives, pursuant to a proper interpretation of Article 6 of the UN CRPD.

¹⁹⁰ Article 24 (1) *ibid.*

¹⁹¹ Article 24 (2) (a)-(e) *ibid.*

¹⁹² Particularly Article 24 (c) (3)-(5), *ibid.*

¹⁹³ Chatterjee, Rajni and Hashim, Uzma 'Rehabilitation of Mentally Ill Women' (July 2015) 57 (2) *Indian Journal of Psychiatry* available at https://journals.lww.com/indianjpsychiatry/Fulltext/2015/57002/Rehabilitation_of_mentally_ill_women.21.aspx accessed 2 February ECA 2022. Section 29 of India's National Policy for Persons with Disabilities 2006 No.3 -1/1993 – DD.III promotes education and programmes specifically for women/girls with disabilities in India available at <https://disabilityaffairs.gov.in/upload/uploadfiles/files/National%20Policy.pdf> accessed 2 July 2021. Also, India's Rights of Persons with Disabilities Act 2016 provides a strong legislative framework for inclusive education, defining it as 'a system of education wherein students with and without disability learn together and the system of teaching and learning is suitably adapted to meet the learning needs of different types of students with disabilities'.

employment skills.¹⁹⁴ Also, the government of India is expected to support projects where representation of WWDs is assured.¹⁹⁵ Similarly, the Ethiopian Women with Disabilities National Association (EWDNA) has established a periodic training activity powered by successful and strong WWDs.¹⁹⁶ The central focus of the activity is mainstreaming women and girls with disabilities in all aspects of society, including employment.¹⁹⁷

(iii) Reasonable accommodation

Reasonable accommodation is essential for achieving economic integration for PWDs, including WWDs. Pursuant to Article 27(1)(i) UN CRPD, employers are required to provide reasonable accommodation for PWDs in the workplace. Article 2 of the UN CRPD defines reasonable accommodation to mean:

...necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms....

From the definition above, reasonable accommodation implies providing support for PWDs to properly adjust to the work environment to enable them to perform their jobs on an equal basis with others. The aim of reasonable accommodation is to promote inclusiveness for PWDs in the workplace.¹⁹⁸ The cost of providing reasonable accommodation does not always suggest undue inconvenience to the employer.¹⁹⁹ As stated in chapter two, some modern and simple assistive software and equipment aids that can assist employees with disabilities work effectively are available at very minimal cost.²⁰⁰ In addition to physical adjustments to the workplace, reasonable accommodation may also involve procedural changes in recruitment methods, flexible work

¹⁹⁴ Chatterjee, *ibid.*

¹⁹⁵ *Ibid.*

¹⁹⁶ Ethiopian Women with Disabilities National Association (EWDNA) 'Womankind worldwide' available at <https://www.womankind.org.uk/partners/ethiopian-women-with-disability-national-association-ewdna/> accessed 16 November 2021.

¹⁹⁷ *Ibid.*

¹⁹⁸ ILO 'Promoting Diversity and Inclusion Through Workplace Adjustments: A Practical Guide' (2016) p. 16 available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_536630.pdf accessed 4 October 2021.

¹⁹⁹ United Nations Committee on the Rights of Persons with Disabilities General Comment No. 3 (2016) on women and girls with Disabilities p.4 available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD/C/GC/3&Lang=en accessed 1 July 2021.

²⁰⁰ United Nations DSPD and United Nations DESA 'Toolkit on Disability for Africa: The Rights of Persons with Disabilities' available at <https://www.un.org/esa/socdev/documents/disability/Toolkit/Rights-Persons-with-DisabilitiestoWork.pdf> accessed 1 April 2021.

scheduling (especially for WWDs), or hiring a job coach.²⁰¹ The “reasonability” of the adjustment depends on the type of disability of the applicant or employee. Recent jurisprudence from the CEDAW Committee referenced reasonable accommodation for WWDs in the context of employment.²⁰² Furthermore, the UN Committee on the Rights of Persons with Disabilities notes that:

The duty to provide reasonable accommodation is an *ex nunc* duty, meaning that it is enforceable from the moment a person requests it in a given situation in order to enjoy his or her rights on an equal basis in a particular context. Failure to provide reasonable accommodation, especially after it has been requested for by an employee with disabilities, may ground an action for discrimination against the employer for breach of Articles 5 and 6 of the UN CRPD.²⁰³

In accordance with the above provision, failure to provide reasonable accommodation for WWDs, peculiar to their needs, amounts to discrimination.²⁰⁴ Furthermore, case law has recognized that a request for reasonable accommodation may be expressed or implied.²⁰⁵ It is implied where, in the given circumstance, the employer can be fairly said to have knowledge of the employee’s disability and necessity for reasonable accommodation as was held in *Kowitz v Trinity Health*.²⁰⁶ It is expressed where the employer requests reasonable accommodation verbally or in writing.²⁰⁷

Pursuant to the UN CRPD, reasonable accommodation must be defined and guaranteed for PWDs by national disability laws or any employment-specific policy.²⁰⁸ In compliance with the requirement, several countries included the definition and the need for employers to provide reasonable accommodation for workers with disabilities. For instance, the South African Employment Equity Act 1998 (EEA)²⁰⁹ defines “reasonable accommodation” as any “modification or adjustment to a job or to the working environment that will enable a person from a designated group to have access to or participate or advance in employment”.²¹⁰ Section 15(2)(c)

²⁰¹ Ibid.

²⁰² CEDAW Committee General Comment No 2 (2014) available at <https://uhri.ohchr.org/en/> accessed 1 August 2021.

²⁰³ Article 2 of the UN CRPD defines discrimination as including the denial of reasonable accommodation; UN Rights of Persons with Disabilities Committee General Comment No. 2 (2014) CRPD/C/GC/2. Article 5 provides for equality and non-discrimination while Article 6 focuses on women and girls with disabilities.

²⁰⁴ Para 26 General Comment, *ibid*.

²⁰⁵ *Kowitz v Trinity Health*, (8th Cir. 2016) No. 15-1584 CA.

²⁰⁶ Ibid.

²⁰⁷ Ibid.

²⁰⁸ Article 27 (1) (i) UN CRPD.

²⁰⁹ Employment Equity Act No. 55, 1998 of South Africa.

²¹⁰ Section 1 of the Employment Equity Act, *ibid*.

of the EEA also guarantees employment for PWDs and women by listing them as part of designated groups to be granted employment.²¹¹ Similarly, section 9(4) of the Persons with Disabilities Act of Uganda 2020²¹² provides a definition of reasonable accommodation for PWDs as required by the UN CRPD.²¹³ Furthermore, Uganda's Persons with Disabilities Act²¹⁴ makes it compulsory for an employer to provide reasonable accommodation for job applicants with disabilities and employees with disabilities.²¹⁵ Similarly, the Persons with Disabilities Act 2010 of Tanzania,²¹⁶ provides in section 3 that "reasonable changes" mean:

necessary, appropriate and adjustments offered in a manner that does not impose a disproportionate burden, where needed in a particular case, to ensure persons with disabilities enjoy or exercise on an equal basis with others all human rights and fundamental freedoms.

Discrimination pursuant to the Tanzanian Persons with Disabilities Act also includes denial of reasonable accommodation to an employee with disabilities.²¹⁷ The Americans with Disabilities Act (ADA) 1990 also defines reasonable accommodation for PWDs and prohibits the denial of reasonable accommodation for employees with disabilities.²¹⁸

Although not every person with disabilities requires reasonable accommodation, it is advised that in cases where reasonable accommodation is required, feedback from the individual with the disabilities should be obtained, in order to determine what is best for optimum

²¹¹ Section 15(2)(c) concerns making reasonable accommodation for people from designated groups in order to ensure that they enjoy equal employment opportunities.

²¹² Persons with Disabilities Act No. 3 of 2020. This Act was assented to on 19 September 2019 and commenced 14 February 2020.

²¹³ Section 4, *ibid* states "reasonable accommodation" means necessary and appropriate modification and adjustments where needed to ensure that an employee who is a person with a disability can enjoy or exercise all human rights and fundamental freedoms on an equal basis with others, and includes tools, equipment, working environment and where necessary, a modified work schedule".

²¹⁴ *Ibid*.

²¹⁵ Failure to fulfil this requirement constitutes discrimination pursuant to Section 9(1)(2)(3) of the Persons with Disabilities Act of Uganda 2020.

²¹⁶ Persons with Disabilities Act No. 9 of 2010, Tanzania available at https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=86525&p_lang=en accessed 3 April 2022.

²¹⁷ Section 3, *ibid*.

²¹⁸ Furthermore, Section 12111 (9) (A) (B) and 12112 (5) (A) of the Americans with Disabilities Act 1990 42 U.S.C. provides for reasonable accommodation for PWDs and prohibits the denial of reasonable accommodation for employees with disabilities define reasonable accommodation to include: "(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and (B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities."

productivity.²¹⁹ Unlike Persons with Disabilities Act of Uganda and Tanzania, and that of the ADA discussed above, Nigeria's Discrimination Against Persons with Disabilities Act (DAPDA) 2018 completely fails to emphasize reasonable accommodation throughout its provisions, an omission that runs counter to the provisions of Article 27(1)(i) of the UN CRPD.²²⁰ Despite the lacunae in Nigeria's national disability legislation, reasonable accommodation can be implied; the argument being that proper enforcement of DAPDA will compel employers to adjust their business practices, including the environment, to provide PWDs vulnerable groups with equal employment opportunities.²²¹

(iv) Affirmative action

The UN Commission on Human Rights conceptualizes Affirmative Action (AA) as:

“...a coherent packet of measures, of a temporary character, aimed specifically at correcting the position of members of a target group in one or more aspects of their social life, in order to obtain effective equality.”²²²

Some disadvantaged groups have been victims of discrimination for long periods, which in effect has caused hardship to their descendants because of, for instance, disability. AA is aimed to compensate for past discrimination that still has present repercussions.²²³ The UN CRPD in Article 27(1) (h) requires states parties to implement AA for PWDs as part of measures to guarantee their employment, particularly in the private sector.²²⁴

South African legislation complies with the UN CRPD requirement by applying AA for PWDs, and women generally. For instance, section 13(1) of the South African Employment Equity

²¹⁹ *E.E.O.C. v. Convergys Customer Mgmt. Grp. Inc.*, 491 F.3d 790, 795 (Eighth Cir. 2007).

²²⁰ Chineze Ibekwe and Onyeka Christiana ‘Legislating Disability Integration in Employment: Comparing Legal Solutions from Nigeria, South Africa and the United States of America’ (2019) 1(2) *IJOCLLEP* p. 97.

²²¹ Chineze Ibekwe and Onyeka Christiana ‘Disability Discrimination in Employment: Comparative Legal Solutions for Nigeria’ (2017) 13 *Unizik Law Journal* p. 9.

²²² Marc Bossuyt (Special Rapporteur Final Report submitted in accordance with Sub-Commission resolution 1998/5 UN Economic and Social Council) ‘Prevention of Discrimination: The Concept and Practice of Affirmative Action’ (fifty-third session) available at <https://digitallibrary.un.org/record/467997?ln=en#record-files-collapse-header> accessed 10 November 2021. Section 15(1) of the EEA defines ‘affirmative action measures’ as those designed to ensure that suitably qualified people from designated groups receive equal employment opportunities and are equitably represented in all occupational categories and levels at the workplace of a designated employer.

²²³ *Ibid* at p.5. The report indicates that ‘special measures’ was first mentioned by the Government of India during the drafting of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

²²⁴ Article 27(1) (h) urges state parties to: ‘Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives, and other measures’.

Act (EEA)²²⁵ requires “designated employers” to implement AA for PWDs who fall within the category of designated groups.²²⁶ “Designated groups” include women, PWDs, and other categories specified by the EEA.²²⁷ By implication, WWDs form part of designated groups, as women and as PWDs. By virtue of the EEA, designated employers must have due consideration for the designated employees to ensure equitable distribution of designated workers and to eliminate employment barriers and unfair treatment.²²⁸ Furthermore, due regard must be had to providing measures aimed at preferential treatment ensuring diversity and equality for designated workers in the workplace.²²⁹ Failure to comply with the AA provisions renders the designated employer liable to pay a prescribed fine.²³⁰ Nigeria’s DAPDA has no provisions on AA for PWDs. Instead, as mentioned earlier, the law adopts a quota scheme for including PWDs in public sector employment only.²³¹ Quota schemes are discussed in the next section.

(v) Quota schemes

Quota schemes are compatible with the UN CRPD and ILO Vocational Rehabilitation and Employment (Disabled Persons) Conventions.²³² Quota schemes are considered as a form of AA measure frequently used for guaranteeing equal working opportunities for PWDs.²³³ It involves reserving a certain percentage of the workforce for PWDs in national legislation or policy. The quota percentage requirements could vary from country to country and is determined by a number of factors such as, private or public sector employment, size of the nation’s workforce,

²²⁵ Employment Equity Act No. 55 of 1998.

²²⁶ Designated employers include: employers with 50 or more employees, with less than 50 employees with total annual turnover of equal to or above turnover of the applicable annual turnover of a small business..., a municipal, an organ of state, an employer bound by a certain collective agreement. See section 1 of the EEA.

²²⁷ Section 1 of the Employment Equity (Amendment Act 47 of 2013) states: ‘Designated groups means black people, women and people with disabilities who are citizens of the Republic of South Africa by birth or descent; or became citizens of the Republic of South Africa by naturalization before 27 April 1994 or after 26 April 1994 and who would have been entitled to acquire citizenship by naturalization prior to that date but were precluded from doing so by apartheid policies’. The previous section under the Employment Equity Act of 1998 defines ‘designated groups’ as black people, women and people with disabilities.

²²⁸ See generally Article 15 (2) EEA No. 55 of 1988.

²²⁹ Ibid.

²³⁰ Schedule 1 of the EEA, *ibid*.

²³¹ Section 29 of the Discrimination Against Persons with Disabilities (Prohibition) Act 2018. The provisions of Section 29 DAPDA is discussed in Chapter five.

²³² ILO ‘Promoting Employment Opportunities for People with Disabilities: Quota Schemes’ Vol. 1 available at https://www.ilo.org/global/topics/disability-and-work/WCMS_735531/lang--en/index.htm accessed 12 November 2021.

²³³ Ibid. Over 100 countries in the world use quota schemes to ensure equality of employment opportunities for PWDs.

implementation standards and punitive measures for breach.²³⁴ For example, the German Code statutorily stipulates a five per cent quota for the employment of severely disabled employees in firms having more than 20 members of staff.²³⁵ For a breach of this requirement, employers are to pay a monthly compensation penalty, depending on the degree of underrepresentation of PWDs.²³⁶ For Turkey, it is a three per cent quota for firms with more than 50 workers in the private sector and four per cent for the public sector with fines for breach.²³⁷ Also, China's Regulations on the Employment of People with Disabilities²³⁸ reserves 1.5 per cent of public and private sector employment for PWDs with attendant levies for non-compliance.²³⁹

Proper implementation of quotas and enforcement of the penalties have proven to be effective in reducing the unemployment rate for PWDs.²⁴⁰ Particularly, Germany and Turkey recorded an improved participation of PWDs, including WWDs, especially in the public employment sector.²⁴¹ In Nigeria, five per cent of the employment quota is reserved for PWDs in the public sector only, pursuant to section 28 of DAPDA. The section provides: "All employers of labour in public organization shall as much as possible have persons with disabilities constituting five per cent of their employment". However, there are no penalties prescribed for breach of the quota requirement in DAPDA. Imposition of penalties will ensure proper implementation. Also, the five per cent quota requirement ought to extend to private employment as obtains in some of the countries discussed above.

(vi) Employer incentives

As a means to ensure that PWDs, and particularly WWDs, enjoy an equal right to employment, Article 27(1)(h) of the UN CRPD urges states parties to adopt policies and take other measures to provide incentives to motivate employers (especially in the private sector) to hire PWDs as part of

²³⁴ Michael Fuchs 'Quota Systems for Disabled Persons: Parameters, Aspects, Effectivity. European Centre Policy Brief' (March 2014) available at https://www.researchgate.net/publication/322234360_Quota_Systems_for_Disabled_Persons_Parameters_Aspects_Effectivity_European_Centre_Policy_Brief_March_2014 accessed 22 April 2021.

²³⁵ Social Code Book IX, The Rehabilitation and Integration of Disabled People and General Policy Law 104/92 (SGB IX. Released in 2001.

²³⁶ *ibid.*

²³⁷ Turkey Employment Law 2003.

²³⁸ Regulation of the PRC on the Employment of People with Disabilities, Order No. 488 [2007] of the State Council.

²³⁹ Article 8, *ibid.*

²⁴⁰ *supra* note 197.

²⁴¹ *ibid.* Daily Sabah 'Turkish Public Sector Boosts Number of Disabled Employees' *Daily Sabah*, 9 January 2020 available at <https://www.dailysabah.com/turkey/2020/01/09/turkish-public-sector-boosts-number-of-disabled-employees> accessed 12 February 2022.

their workforce.²⁴² Government initiated incentives such as tax credit schemes, procurement of assistive funds for reasonable accommodation, inclusive internship programmes for employees, and AA (discussed immediately above), are useful for achieving employment goals for PWDs, including WWDs. As a matter of good practice, several states in the United States of America have policies that extend tax credit facilities to employers for hiring PWDs. For instance, the Delaware State Tax Code²⁴³ provides employers in Delaware with tax reduction for hiring individuals with disabilities, including WWDs. Similarly, Code 49E of the Louisiana Income Tax Act²⁴⁴ offers income tax credit of up to 50 per cent for taxpayers who continue to provide employment for individuals with disabilities.²⁴⁵

4.10 Conclusion

The international normative framework (comprising CEDAW, WPA, Standard Rules, UN CRPD, ILO Vocational Rehabilitation Convention, Discrimination (Employment and Occupation) Convention 1958 (No. 111), Employment and Decent Work for Peace and Resilience Recommendation 2017 (No. 205) and Code of Practice examined in this chapter promote a human-rights-based approach and take cognizance of the intersection between gender and disabilities. Pursuant to their interpretation, states parties are obligated to bring to bear the vulnerability of women and girls with disabilities (gender perspectives) in making and implementing laws, policies and other measures for PWDs generally. While some countries have complied with the requirements, Nigeria's federal disability law has neglected to recognize the intersection between gender and disability which makes WWDs a uniquely vulnerable part of the disability group. The Nigerian government also lags in implementation of international conventions and standards for PWDs, as is made evident by the few reports submitted to the UN Committees. These UN Committees have often berated Nigeria for violation of international norms.²⁴⁶

²⁴² Article 27(1) (h) UN CRPD provides that state parties "Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives, and other measures".

²⁴³ Delaware State Tax Code on Income, Inheritance and Estate Taxes (2017) Title 30 § 20B-101-4 available at <http://delcode.delaware.gov/title30/c020b/index.html> accessed 12 November 2021.

²⁴⁴ Code 49E and 50 Louisiana Laws, Title 47, 2016 LA Rev Stat § 47:297.13 (2016) available at <https://law.justia.com/codes/louisiana/2016/code-revisedstatutes/title-47/rs-47-297.13/> accessed 13 November 2021.

²⁴⁵ Ibid.

²⁴⁶ Genty Kabiru Ishola 'ILO and the International Labour Standards Setting: A Case of Nigeria Labour Acts' (2013) 1(1) *Journal of Human Resource Management* pp. 15-20 doi: 10.11648/j.jhrm.20130101.13 accessed 12 May 2018.

The first step to be taken in realizing employment for WWDs, which chapter five builds on, is for the National Assembly of Nigeria to speedily domesticate international disability conventions that it has ratified, taking into consideration the economic dynamics of the country.²⁴⁷ Before domestication takes place, however, for now, thorough law reform to incorporate all the international normative requirements, particularly those contained in the UN CRPD regarding the recognition of the intersection between gender and disability and addressing employment issues for WWDs, is necessary in Nigeria.²⁴⁸ Fortunately, ratified labour conventions apply directly to Nigeria without the need for domestication²⁴⁹ and as such, they can be used to promote rights for WWDs prior to domestication of other UN conventions.

Apart from the international promotion of the rights of WWDs, regional protection also exists for recognizing the rights of PWDs and particularly those of WWDs. The African regional instruments relevant for promoting and safeguarding human rights for WWDs, including the right to access employment, form the basis for analyses in the next chapter. As an option, WWDs in Nigeria can explore enforcing African regional norms to realize their right to employment.

²⁴⁷ Ibid.

²⁴⁸ The WPA recognizes that women and girls with disabilities may face marginalization in accessing education. Since the right to education is incidental to the right to employment, it is necessary that both rights be fulfilled together.

²⁴⁹ Section 254 (c) Third Alteration Act 2010, Constitution of the Federal republic of Nigeria.

CHAPTER FIVE

REGIONAL NORMATIVE FRAMEWORK FOR PROMOTING EMPLOYMENT FOR WOMEN WITH DISABILITIES IN AFRICA

5.1 Introduction

Chapter four examined the international norms and standards adopted for the realization of rights for persons with disabilities (PWDs) with a focus on gender consideration for women with disabilities (WWDs). The World Programme of Action concerning disabled persons (WPA) mandates regional commissions of the United Nations and other regional bodies to: “encourage regional and sub-regional co-operation in the area of prevention of disability, rehabilitation of disabled persons and equalization of opportunities”.¹ Regional human rights instruments play an invaluable role in adapting international norms and standards to the prevalent peculiarities of a particular region.² Notably, the African region fully supported the negotiation and inception of the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD).³ As will be shown in this chapter, the legislative framework for human rights in the African region substantially complies with the requirements of the UN CRPD. As state party to the African Union, Nigeria has ratified some regional human rights treaties, some of which promote the rights of WWDs, including their right to work.⁴

This chapter considers human rights protection for WWDs within the African region, with the purpose of identifying the lapses and challenges inherent in the implementation system while

¹ Paragraph 34 of the World Programme of Action.

² Universal Rights Group, Geneva ‘A Rough Guide to the Regional Human Rights Systems’ available at <https://www.universal-rights.org/human-rights-rough-guides/a-rough-guide-to-the-regional-human-rights-systems/> accessed 31 June 2021.

³ UN CRPD 2006, A/RES/61/106 adopted by the United Nations on 13 December 2006 and came into force on 3 May 2008. E. Lord and M. A. Stein ‘Prospects and Practices for CRPD Implementation in Africa’ (2014) *African Disability Rights Yearbook*: 97–113. Sixteen African countries signed the CRPD on the first day it opened for signature, and 41 have since ratified the treaty; UN CRPD, List of Ratifying States and Regional Integration Organizations, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=IV-15&chapter=4&clang=en accessed 16 October 2017. (PDF) Transposing the Convention on the Rights of Persons with Disabilities in Africa: The Role of Disabled Peoples’s. Available at: https://www.researchgate.net/publication/334843287_Transposing_the_Convention_on_the_Rights_of_Persons_wit_h_Disabilities_in_Africa_The_Role_of_Disabled_Peoples'_s accessed 30 Oct 2021.

⁴ Nigeria became a member of the OAU (AU) on 25 May 1963. Nigeria has ratified seven AU treaties including: the African Charter on Human and Peoples’ Rights (Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa; African Charter on the Rights and Welfare of the Child; Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of the African Court on Human and Peoples’ Rights; OAU Convention Governing Aspects of Refugee Problems in Africa; African Youth Charter; African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention);

proffering useful suggestions for achieving a more workable system that can be used to enforce the right to employment for WWDs in African countries, including Nigeria. The first section is an overview of the development of human rights protection for WWDs within the African human rights system. Next, normative human rights protection within the region is analysed specific to the context of employment for WWDs. Thereafter, Nigeria's commitment towards implementing regional norms for WWDs is also examined. The chapter concludes with an analysis aimed at improving implementation and enforcement of legal norms for the employment benefit of African WWDs. Once implementation improves, WWDs in the African region, particularly in Nigeria can easily resort to enforce their regionally guaranteed right to employment, amongst other rights, in regional courts.

5.2 Overview of regional efforts for the recognition of the rights of WWDs in Africa

The recognition of disability rights within the African region has been criticized as being one of “benign neglect”.⁵ This neglect often results in insufficient legal frameworks, policies, and enforcement mechanisms to address the unique challenges faced by people with disabilities across the continent. The development of disability as a human rights concept at the international level has greatly influenced that of the African regional system.⁶ In 1963, the Organization of African Unity (OAU) was established as the existing African regional body of African states by delegates from 32 independent African countries.⁷ Particularly, the signing of the OAU Charter brought the OAU regional institution into existence.⁸ The mandate of the OAU was to foster international cooperation and promote human rights, in addition to other mandates.⁹ The OAU paid less

⁵ TP van Reenen and H Combrinck ‘The UN Convention on the Rights of Persons with Disabilities in Africa: Progress after 5 years’ (2011) 14 *SUR International Journal on Human Rights* p. 153.

⁶ Helene Combrinck ‘Disability Rights in the African Regional Human Rights System in 2011 and 2012’ (2013) *ADRY* p. 362.

⁷ The OAU was formed 25 May 1963. Currently, the AU, (In 2002, the OAU transited into the African Union), comprises 54 sovereign African States (excluding Morocco. Morocco left membership of the AU in 1984 when Sahrawi Republic, which Morocco considered to be part of its territory, was granted membership). The 54 member countries of the AU are: Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cabo (Cape) Verde, Central African Republic, Chad, Comoros, Congo, the Democratic Republic of Congo, Cote d'Ivoire, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Saharawi Democratic Republic, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somali, South Africa, South Sudan, Sudan, Tanzania, Togo, Tunisia, Uganda, Zambia, Zimbabwe.

⁸ The OAU Charter was signed by the Heads of State and Governments of 32 African nations in Addis Ababa, Ethiopia.

⁹ Article 2 of the OAU Charter set out the purposes of the OAU as follows:

“To promote the unity and solidarity of the African States;

To coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa;

To defend their sovereignty, their territorial integrity and independence;

attention to human rights issues at the time,¹⁰ rather, its main focus was on achieving sovereignty for colonized African nations, eradicating apartheid and promoting a unified Africa, issues which were predominant around the 1960s.¹¹ The first African regional seminar on disability¹² was convened in response to the adoption of the United Nations Declaration on the Rights of the Disabled 1971,¹³ Declaration on the Rights of Mentally Retarded Persons 1971,¹⁴ and the United Nations call for the declaration of 1981 as the International Year of the Disabled.¹⁵ At the first African seminar on disability – the Regional Seminar on the International Year of Disabled Persons – the OAU Council of Ministers measured the prevalence of disability in Africa against the perspective of colonial oppression and other external factors.¹⁶ Shortly thereafter, the OAU Labour Commission held a meeting where the Resolution on the Problem of Disabled Persons was adopted to address disability issues within the African region.¹⁷ Another decision reached at the meeting was to establish an African Rehabilitation Institute (ARI), which was supported by the International Labour Organization.¹⁸

In 1981, the OAU adopted the first human rights instrument in the African region, namely, the African Charter on Human and Peoples' Rights (ACHPR). The ACHPR recognized the rights of PWDs in rather vague terms as will be discussed later in this chapter.¹⁹ Thereafter in 1985, an Agreement to Establish the African Rehabilitation Institute for PWDs, was conclusively drafted

To eradicate all forms of colonialism from Africa; and

To promote international cooperation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights”.

¹⁰ Kwadwo Appiagyei-Atua ‘A Comparative Analysis of the United Nations Convention on the Rights of Persons with Disabilities and the African Draft Protocol on the Rights of Persons with Disabilities’ (2017) 21 *Law, Democracy and Development* p. 155.

¹¹ Ibid.

¹² The Regional Seminar on IYDP was held at Africa Hall Addis Ababa, on 6 and 7 October 1980. The Seminar on IYDP was jointly convened by the OAU, the UN Economic Commission for Africa, and the IYDP Secretariat.

¹³ Adopted by the United Nations General Assembly Resolution No 31/82 of 13 December 1971

¹⁴ The United Nations Declaration on the Rights of Mentally Retarded Persons was adopted by the UNGA in 1971 via resolution 2856 (XXVI) of 20 December 1971.

¹⁵ UN General Assembly called for the declaration of the year 1981 as the International Year of Disabled Persons via A/RES/31/123 reached on 16 December 1976, available at: <http://www.un-documents.net/a31r123.htm> accessed 15 June 2021.

¹⁶ Resolution on the Conclusions and Recommendations of the Regional Seminar on the International Year of Disabled Persons (3(111) E/CN.IV785 E/CN.U/AMSA/III/Rpt CM/1095(XXXVI)/AMSA/III/R pt 23 para 9 accessed on 12 April 2014.

¹⁷ This was done by the OAU Labour Commission via LC/Res 63 (V) Annex (IV) adopted in April 1981.

¹⁸ Ibid.

¹⁹ Article 18 (4) of the ACHPR.

and signed.²⁰ The African Rehabilitation Institute emerged in 1991 with the technical assistance of the ILO for manpower development and rehabilitation of PWDs.²¹ The rise of democratization within the African continent coincided with the UN Decade for Persons with Disabilities (1983-1992),²² influencing the OAU Ministerial conference to adopt the Grand Bay (Mauritius) Declaration and Plan for Action in 1999.²³ Part of the Declaration called on member states to respect the rights of vulnerable people, especially those living with HIV, WWDs and children with disabilities.²⁴ By July 1999, the OAU Heads of State and Government declared 1999-2009 as the African Decade of Persons with Disabilities with the primary goal to ensure the full participation, equality and empowerment of Africans with disabilities in all aspects of society.²⁵

In 2002, the OAU transited into the African Union (AU), setting the stage for the adoption of a Continental Plan of Action, and the establishment of a Secretariat for the African Decade (1999-2009) in Cape Town, South Africa.²⁶ Progress in commencing with activities pursuant to the Continental Plan of Action was initially slow, due to a lack of financial resources resulting in the extension of the decade for a second period, i.e. from 2009 to 2019.²⁷ Within the new African decade, the AU adopted several protocols (some of which Nigeria has ratified as will be shown later in this chapter – the Protocol to the ACHPR on the Rights of Women in Africa (the “Maputo Protocol”) in 2003,²⁸ the Protocol to the ACHPR on the Rights of Persons with Disabilities in

²⁰ The Agreement for the Establishment of the ARI is available at [https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/30176/126000/F-132328802/ORG-30176%20\(EN\).pdf](https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/30176/126000/F-132328802/ORG-30176%20(EN).pdf) accessed 12 September 2023.

²¹ The Agreement to Establish an African Regional Institute was adopted on 17 June 1985 and came into force on 10 June 2016. The ARI has its headquarters in Harare, Zimbabwe with regional offices located in Dakar, Senegal (West Africa), Brazzaville, Congo (Central Africa) and Harare (Southern Africa).

²² The United Nations proclaimed 1983-1992 as the Decade of Disabled Persons via A/RES/39/26.

²³ The Grand Bay (Mauritius) Declaration and Plan for Action was adopted at the OAU’s first Ministerial Conference on Human Rights (at its 20th Ordinary session meeting) held in 1999.

²⁴ Article No. 7 of the Grand Bay Declaration and Platform for Action.

²⁵ The African Decade of Persons with Disabilities (1999-2009) was adopted at the 35th session of the OAU in Algiers, Algeria in July 1999. See [https://african.org/empowerment/CONTINENTAL%20PLAN%20OF%20ACTION%20\(1999-2009\).pdf](https://african.org/empowerment/CONTINENTAL%20PLAN%20OF%20ACTION%20(1999-2009).pdf) accessed 20 October 2021.

²⁶ The OAU was disbanded on 9 July 2002 by its last chairman, the South African President at the time, Thabo Mbeki, and replaced by the African Union (AU) at a Summit held in Durban, South Africa. The OAU Charter was also then replaced by the AU Charter.

²⁷ The extended African Decade of Persons with disabilities was adopted in July 2000 at the 1st AU Conference of Ministers of Social Development, which convened in Windhoek, Namibia, 27–31 October 2012. For the full document, see https://au.int/sites/default/files/pages/32900-file-cpoa_handbook_audp.english_-_copy.pdf accessed 20 October 2021.

²⁸ The Maputo Protocol was adopted on 11 July 2003 by the AU at its 2nd Summit held in Maputo, Mozambique. The Protocol is available at <https://www.refworld.org/docid/3f4b139d4.html> accessed 22 October 2021.

Africa (the “Disability Protocol”) 2018²⁹ – and the AU also declared the African Decade for Women (2010-2020).³⁰ While the Maputo Protocol was adopted with the primary goal of upholding the rights of women and girls in Africa, the Disability Protocol aims to “promote, protect and ensure the full and equal enjoyment of all human and people’s rights by all persons with disabilities, and to ensure respect for their inherent dignity”.³¹ The Decade for Women on the other hand, stressed the need to promote the rights of young women, WWDs, and elderly women in mainstream public opportunities, including employment.³²

The African regional instruments relevant to promoting the rights of PWDs are examined in the next section to ascertain whether any gender considerations for WWDs exist to promote their participation in employment.

5.3 Regional normative framework for WWDs

The AU regional human rights instruments directly relevant for economic empowerment of WWDs in African member nations, including Nigeria, are the African Charter on Human and Peoples’ Rights (ACHPR),³³ the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol),³⁴ and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities in Africa (Disability Protocol).³⁵ Nigeria ratified all the instruments listed above except the Disability Protocol. Each will be considered seriatim.

²⁹ The AU adopted the Disability Protocol on 29 January 2018 at the AU Summit held in Addis Ababa, Ethiopia.

³⁰ In 2008, a proposal for an Africa Women’s Decade (2010-2020) was initiated by the African Union (AU) Ministers for Gender and Women Affairs at their meeting held in Maseru, Lesotho. The idea was then adopted in February 2009 by the AU at the 12th Ordinary Summit of Heads of State and Government, in Addis Ababa, Ethiopia.

³¹ Article 2 of the Disability Protocol.

³² African Union, ‘The Launch of the African Women’s Decade’ Kenyatta International Conference Centre (14 October 2010) Nairobi, Kenya available at http://preventgbvafrica.org/wp-content/uploads/2013/11/Nairobi_Declaration_October_2010.pdf accessed 12 October 2021.

³³ The ACHPR was adopted on 27 June 1981 by the 18th Assembly of Heads of State and Government of the OAU, the official body of African states (now African Union). It entered into force on 21 October 1986. It is also known as the Banjul Charter because a final draft of it was produced in Banjul, the capital of the Gambia.

³⁴ The Maputo Protocol was adopted by the Assembly of the African Union in Maputo, Mozambique on 11 July 2003 but came into force in November 2005.

³⁵ The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities in Africa was adopted at the 30th African Union Summit meeting held in Addis Ababa, Ethiopia on 29 January 2018 at the 19th Extraordinary Session of the African Commission on Human and Peoples’ Rights.

(i) African Charter on Human and Peoples' Rights (ACHPR) 1981

The ACHPR, sometimes referred to as the 'Banjul Charter', promotes and protects human rights and basic freedoms within the African region.³⁶ The African Charter has been commended for its moral undertones and thrust against colonialism.³⁷ As mentioned in the introduction to this chapter, Nigeria is a member state of the African Union.³⁸ In addition to ratifying the Banjul Charter, Nigeria has transposed all the provisions of the Banjul Charter into its national law through domestication, as described in 4.8 of chapter four.³⁹ Being the first regional instrument to incorporate civil, economic, political, social, cultural, individual and collective rights into a singular instrument,⁴⁰ the ACHPR in Article 1 obligates member states to "recognize the rights, duties and freedoms enshrined in the [African Charter] and...undertake to adopt legislative or other measures to [enforce them]". The provisions of the African Charter emphasize the universality of the equality principle by prohibiting discrimination due to sex, birth or other status.⁴¹ The Maputo Protocol addresses the shortcomings of the African Charter by specifically tackling issues of gender discrimination and inequality as will be discussed in the next section. Although Article 2 of the ACHPR does not specifically mention disability, Oyaró submits that "other status," suggests that other grounds such as "disability" can be implied.⁴² More importantly, the term "birth or other

³⁶ The ACHPR was adopted on 27 June 1981 by the 18th Assembly of Heads of State and Government of the OAU, the official body of African states (now African Union). It entered into force on 21 October 1986. It is also known as the Banjul Charter because a final draft of it was produced in Banjul, the capital of the Gambia.

³⁷ Frans Viljeon *International Human Rights in Africa* (2nd edn,) Oxford University Press 2012. Makau Mutua 'The Banjul Charter and the African cultural fingerprint: An assessment of the language of duties' (1995) 35 *Virginia Journal of International Law* p. 339. Dejo Olowu 'The African Charter on Human and Peoples' Rights, Its Regional System, and the Role of Civil Society in the First Three Decades: Calibrating the "Paper Tiger" (2013) p. 31 available at <https://independentresearcher.academia.edu/DejoOlowu> accessed 15 July 2021.

³⁸ Nigeria joined the OAU (now AU) on 25 May 1963.

³⁹ Sequel to domestication in 1983, the African Charter has been renamed African Charter on Human and Peoples' Rights (Enforcement and Ratification) Act Cap 10 Laws of the Federation 2004 and has full force of Law in Nigeria.

⁴⁰ Eghosa Osa Ekható 'The impact of the African Charter on Human and Peoples' Rights on Domestic Law: A Case Study of Nigeria' *Commonwealth Law Bulletin* 41(2) pp. 253-70, available at <https://doi.org/10.1080/03050718.2015.1049633> accessed 2 July 2020. The rights protected by the Banjul Charter are: right to life (article 4), right to dignity of the human person (article 5), equality of all peoples (article 19), the right to existence and self-determination (article 20), the right to free disposal of natural wealth and resources (article 21), the right to satisfactory and clean environment (article 24), among other rights (PDF) *The impact of the African Charter on Human and Peoples' Rights on domestic law: a case study of Nigeria* available from: https://www.researchgate.net/publication/279250631_The_impact_of_the_African_Charter_on_Human_and_Peoples'_Rights_on_domestic_law_a_case_study_of_Nigeria accessed 15 July 2021.

⁴¹ Articles 2 and 3 of the ACHPR

⁴² Louis Oyaró 'Africa at Crossroads: The United Nations Convention on the Rights of Persons with Disabilities' (2015) 30(2) *American University International Law Review* p. 354.

status” has been interpreted by the African Commission to include disability in one of its general comments.⁴³

The right to work and equal wages is guaranteed for “every individual” (including WWDs) by Article 15 of the ACHPR.⁴⁴ The ACHPR has no provisions relating directly to WWDs. Rather, provisions that pertain to women separate from PWDs are contained in Article 18(3)(4).⁴⁵ As discussed in the next chapter, Article 18(4) is the only direct disability provision in the ACHPR that seeks to protect the aged and disabled. It states, “the aged and the disabled shall have the right to special measures of protection in keeping with their physical or moral needs”. The ACHPR neither defines what constitutes “physical or moral needs” nor does it stipulate what “special measures” are required. However, as indicated in the previous chapter, the United Nations Human Rights Commission suggests that “special measures” include reasonable accommodation for PWDs such as Affirmative Action and such like measures.⁴⁶

As part of monitoring compliance with the ACHPR, section 62 of the ACHPR obligates each state party to submit a report containing legislative and other measures taken to implement the rights and freedoms in the ACHPR.⁴⁷ Nigeria’s sixth periodic country report, which is the most recent report regarding the implementation of the ACHPR submitted to the African Commission, did not mention WWDs throughout the report.⁴⁸ The report addressed disability issues from a general viewpoint and only in relation to vocational rehabilitation and skills acquisition.⁴⁹ The

⁴³ The African Commission used a ‘non-exhaustive list of grounds of discrimination to interpret ‘birth or other status’ in one of its general comments and expressly included ‘disability’. See Para 20 of the African Commission General Comment No. 4 on the African Charter on Human and Peoples’ Right: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment available at https://www.achpr.org/public/Document/file/English/achpr_general_comment_no_4_english.pdf accessed 3 July 2021. This position was also taken by the African Commission on Human and Peoples’ Rights in the communication brought before it in *Purohit and Another v. The Gambia* (2003) AHRLR p. 96 (ACHPR 2003); SA Kamga ‘A call for a Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities in Africa’ (2013) 21 *African Journal of International and Comparative Law* pp. 219 and 237.

⁴⁴ The provisions of Article 15 ACHPR and its enforceability in Nigeria are discussed in the next chapter.

⁴⁵ Article 18 (3) of the African Charter directly prohibits discrimination against women by calling on states parties to “...ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.”

⁴⁶ Marc Bossuyt, (Special Rapporteur, Final Report submitted in accordance with Sub-Commission resolution 1998/5 UN Economic and Social Council), ‘Prevention of Discrimination: The Concept and Practice of Affirmative Action’ (fifty-third session) available at <https://digitallibrary.un.org/record/467997?ln=en#record-files-collapse-header> accessed on 10 November 2021.

⁴⁷ The report is required to be submitted to the Committee every two years.

⁴⁸ Nigeria submitted her sixth periodic report covering 2015-2016 on 9 March 2018; the full report is available at <https://www.achpr.org/states/statereport?id=115> accessed 23 June 2021.

⁴⁹ Ibid.

only gender-specific issue referenced in the report pertained to the elimination of stereotypes and gender roles for women and girls generally.⁵⁰

Other African regional instruments that are specific to the promotion of rights for WWDs are considered next.

**(ii) Protocol to the ACHPR on the Rights of Women in Africa (Maputo Protocol)
2003**

The Maputo Protocol is an African regional treaty adopted to supplement the provisions of the ACHPR and to respond to the inadequacies of the Convention on the Elimination of all Forms of Discrimination Against Women, (CEDAW) in the context of Africa.⁵¹ While the ACHPR affirms general human rights principles, it lacks specific, actionable protections for women, particularly on issues such as discrimination, reproductive rights, and socio-economic inequality. As indicated above, the Maputo Protocol explicitly fills the gaps in the ACHPR. The Maputo Protocol contains an array of provisions that guarantee the human rights of women, including their right to participate in employment and has as its main purpose, the eradication of all forms of discrimination arising from disability and harmful traditional practices perpetrated towards women and girls in Africa, which inhibit the enjoyment of their fundamental human rights.⁵² To achieve equality for African women and girls, the Maputo Protocol urges all states parties to adopt legislative and institutional measures to promote human rights for women and girls in all living aspects, including the right to work.⁵³ Article 23 of the Maputo Protocol captioned “Special Protection of Women with Disabilities” addresses the rights of WWDs. By its provisions, states parties are required to:

- a) ensure the protection of women with disabilities and take specific measures commensurate with their physical, economic, and social needs to facilitate their access to employment, professional and vocational training as well as their participation in decision-making;
- b) ensure the right of women with disabilities to freedom from violence, including sexual abuse, discrimination based on disability and the right to be treated with dignity.

⁵⁰ Ibid p. 91-3.

⁵¹ The Maputo Protocol was adopted by the Assembly of the African Union in Maputo, Mozambique on 11 July 2003 but came into force in November 2005. Bond argues that CEDAW lacked credibility in the African region because it gave little consideration to the traditional cultural roles played by women in African societies. The Protocol better captured the African realities of women, “tailored for Africans by Africans”. See Johanna E. Bond, *Gender, Discourse, and Customary Law in Africa* (2010) 83 *S. CAL. L. REV.* pp. 509, 519-20, 539-40.

⁵² See generally, Article 1 of the Maputo Protocol.

⁵³ Article 13, *ibid*.

The right to work is an economic need and WWDs are entitled to exercise this right without discrimination pursuant to the above provisions of the Maputo Protocol. Nigeria ratified the Maputo Protocol but is yet to domesticate it.⁵⁴ As such, the Maputo Protocol is not directly enforceable in Nigerian courts. This limitation stems from Nigeria's dualist legal system, which requires ratified international or regional treaties to be enacted into domestic law by an Act of the National Assembly before they acquire the force of law internally.⁵⁵ This has significant implications for women's rights advocacy, as many protections guaranteed under the Protocol (e.g., reproductive rights, protection from harmful practices) are yet to be legally actionable in Nigeria. In terms of implementation and monitoring, Article XXVI of the Maputo Protocol obligates states parties to indicate, in the report submitted pursuant to Article 62, measures taken to ensure the full realization of the rights contained therein. Although Nigeria's sixth periodic report included a section dedicated to progressive measures for the implementation of the rights for women as guaranteed by the Maputo Protocol,⁵⁶ which include some employment measures, no reference was made to WWDs or their vulnerabilities.⁵⁷

(iii) Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa 2018

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (African Disability Protocol)⁵⁸ builds on the rights guaranteed by the UN CRPD discussed in chapter three, in promoting the realization of equalization of opportunities for all PWDs within the African region.⁵⁹ Although the United Nations Convention on the Rights of

⁵⁴ Nigeria ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) on 16 December 2004 and deposited its articles of ratification on 18 February 2005.

⁵⁵ As discussed in 4.6 above.

⁵⁶ Especially implementation of Article 26 of the Maputo Protocol.

⁵⁷ Part B, Section 8 of Nigeria's sixth periodic report (p. 143-66): Measures Taken to Implement Article 26 of the Maputo Protocol on the Rights of Women in Africa available at <https://www.achpr.org/states/statereport?id> accessed 24 June 2021.

⁵⁸ The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa was adopted at the thirtieth African Union Summit Meeting held in Addis Ababa, Ethiopia on 29 January 2018 at the 19th Extraordinary Session of the African Commission on Human and Peoples' Rights. An accompanying draft Model Disability Law (MDL) was developed and adopted by the Pan African Parliament (PAP) on 19 October 2019. The MDL will facilitate the domestication of the Africa Disability Protocol in AU Member States once adopted by the AU Summit of Heads of State and Government. The Disability Protocol is the feedback of a process that began with the declaration of the African Decade for Persons with Disabilities in 1999 and the creation of a Working Group with the responsibility of drafting the instrument.

⁵⁹ The Disability Protocol of the African Union was adopted to specifically strengthen the implementation of human rights for Africans with disabilities.

Persons with Disabilities (UN CRPD) is the first comprehensive human rights treaty of this century, the African Disability Protocol uniquely addresses disability issues for the African context. For instance, specific issues such as poverty, harmful traditional practices,⁶⁰ and patriarchy which are peculiar to WWDs in the African regional setting are addressed by the Disability Protocol, as will be analysed below.

First, Article 5(1) of the Disability Protocol prohibits discrimination on the basis of sex (among other grounds) thereby recognizing the intersection of gender and disability. The section provides as follows:

Every person with a disability shall be entitled to the enjoyment of rights and freedoms recognized and guaranteed in this protocol without distinction of any kind on any ground including race ...sex...birth or any other status”.

Also, to ensure the implementation of the provision above and in compliance with the UN CRPD, Article 5(2) of the Disability Protocol obligates states parties to:

- a. Prohibit discrimination on the basis of disability, and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds [*including sex*].⁶¹
- b. Take steps to ensure that specific measures, as appropriate, are provided to persons with disabilities in order to eliminate discrimination, and such measures shall not be considered discrimination.

The provisions above place WWDs within the ambit of protection by including sex as one of the grounds of discrimination. Commendably, the Disability Protocol also considers that relatives of the disabled may likely be subjects of discrimination. Specifically, the Disability Protocol includes provisions to achieve protection for relatives of PWDs against discrimination in Article 5(2)(c) which unequivocally provides that states parties must:

Take effective and appropriate measures to protect the parents, children, spouses, other family members closely related to the persons with disabilities, caregivers or intermediaries from discrimination on the basis of their association with persons with disabilities.

Particularly, the right to decent work and employment of every PWD within the African region is covered by Article 19 of the Disability Protocol:

⁶⁰ Harmful practices such as witchcraft, abandonment, concealment, ritual killings or the association of disability with omens, which infringe on the rights of persons with disabilities are addressed by Article 11 of the Disability Protocol.

⁶¹ Emphasis mine.

1. Every person with a disability has the right to decent work, to just and favourable conditions of work, to protection against unemployment, to protection against exploitation, and to protection from forced or compulsory labour.
2. States parties shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right on an equal basis with others by:
 - a. Prohibiting discrimination on the basis of disability with regard to all matters concerning all forms of employment, including employment opportunities, vocational training, conditions of recruitment, hiring and employment, continuance of employment, promotion, career advancement and safe and healthy working conditions;
 - b. Protecting rights of persons with disabilities on an equal basis with others, to just and favourable conditions of work and the right by persons with disabilities to exercise their labour and trade union rights;
 - c. Promoting opportunities for persons with disabilities to initiate self-employment, entrepreneurship, and to access financial services;
 - d. Employing persons with disabilities in the public sector, including by reserving and enforcing minimum job-quotas for employees with disabilities;
 - e. Promoting the employment of persons with disabilities in the private sector through appropriate policies and measures, including through the use of specific measures such as tax incentives;
 - f. Ensuring that reasonable accommodation is provided to persons with disabilities in the workplace;
 - g. Ensuring that employees with disabilities or those who become disabled are not unfairly dismissed from employment on the basis of their disability.
3. States Parties shall take legislative, administrative, and budgetary measures to ensure that the principle of equal pay for equal work done is not used to undermine the right to work of persons with disabilities.
4. States Parties shall take appropriate measures to recognize the social and cultural value of the work of persons with disabilities.

Article 19 above generally provides for the protection of all PWDs in matters relating to employment listed therein. By the provisions, PWDs are freely entitled to exercise the right to work in public and private sector employment, and states parties are under obligation to actualize this right through appropriate measures. Article 19 seeks to protect PWDs from discrimination from recruitment to dismissal. Equal pay for equal work, trade union rights, just and favourable conditions of work, among other employment rights, are also promoted for employees with disabilities. Importantly, employers have an obligation to ensure that PWDs are provided with reasonable accommodation, where necessary, to enable them work optimally and productively, in fulfilment of the UN CRPD requirement discussed in the previous chapter. WWDs also, as part of the general disability group, are entitled to the right to access and enjoy favourable working conditions and all the other working rights listed in article 19 above, on an equal basis with others, and free from all discrimination.

Article 27 of the Disability Protocol is particularly dedicated to WWDs, in compliance with the requirements of Article 6(1)(2) of the UNCRPD.⁶² Article 27 of the Disability Protocol, which is the first of its kind as a regional disability instrument exhaustively defines all the aspects wherein states parties have an obligation to protect WWDs, including in accessing and securing employment on an equal basis with others.⁶³ It provides that:

States parties shall ensure that women and girls with disabilities have full enjoyment of human and people's rights on an equal basis with other persons, including by ensuring that:

- a. Women and girls with disabilities participate in social, economic and political decision-making and activities;
- b. Barriers that hinder the participation of women with disabilities are eliminated;
- c. Women with disabilities are included in mainstream women's organizations and programmes;
- d. Women and girls with disabilities are protected from discrimination based on disability, and enjoy the right to be treated with dignity;
- e. Women with disabilities access information, communication and technology;
- f. Women with disabilities have access to employment, and to professional and vocational training;
- g. Programmes to overcome social and economic isolation and *removing systemic barriers in the labour market for women with disabilities*⁶⁴ are developed;
- h. Women with disabilities have access to income-generating opportunities and credit facilities...
- i. Specific measures are developed and implemented to facilitate full and equal participation of women and girls with disabilities....

The provisions above clearly recognize the intersection between gender and disability by specifying measures for improving visibility of WWDs in the political, economic, and social aspects, including in exercising their right to work. Also, pursuant to subsection 27((g)), states parties must specifically adopt and implement measures aimed at removing barriers that hinder labour market participation for WWDs. If properly implemented, the AU Disability Protocol, though fairly recent, can significantly facilitate employment access for WWDs within the African region.⁶⁵ Some nations in the African region have signed the African Disability Protocol, while

⁶² Article 6(1) (2) provides: "States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention".

⁶³ Protection afforded WWDs in inter-American and European region are not as detailed as the provisions contained in Article 27 of the Disability Protocol of the African region despite the fact that the African regional system of human rights is the most recent of them all.

⁶⁴ Emphasis mine.

⁶⁵ Although the African Disability Protocol was adopted in 2018, it offers extensive protection for the right of WWDs in all areas, including employment.

only six have ratified it, at the time of writing this thesis.⁶⁶ However, the Nigerian National Assembly (comprising the Senate and House of Representatives) is yet to sign or ratify the African Disability Protocol, being a fairly new regional protocol.⁶⁷ It is important that Nigeria ratifies and possibly domesticates the AU Disability Protocol through its National Assembly in the near future, especially because it incorporates gender dimensions and as part of an effort to guarantee the right to employment for PWDs, and particularly WWDs in the nation. As a compliance measure, Article 34 of the Disability Protocol mandates states parties to indicate in reports submitted to the African Commission, measures taken to implement the provisions of the Protocol.⁶⁸

So far, the normative human rights framework in the African region substantially complies with the dictates of the UN CRPD. Essentially, gender perspectives of disability are incorporated, as has been examined above, especially in the Maputo Protocol and the African Disability Protocol in fulfilment of the international mandate to include same. However, instead of utilizing protocols to recognize the intersectionality between gender and disability in addition to establishing rights for WWDs, the AU can adopt a resolution that would specifically address the rights of WWDs. For instance, the European region recently adopted a resolution to address the situation of WWDs in Europe in 2018.⁶⁹ Paragraph 4 of the European Resolution on the Situation of Women with Disabilities recognizes that women and girls with disabilities are victims of multiple discrimination brought about by the intersection of gender and disability and may extend to discrimination on grounds of “sexual orientation, gender identity, gender expression, sex characteristics, country of origin, class, migration status, age, religion or ethnicity”. The resolution calls on the European Commission and member states to ensure that WWDs are guaranteed equal right to education, employment, among all other human rights.⁷⁰ For now, however, in the absence of such resolution,

⁶⁶ Signatories – Angola (17/06/2020), Burkina Faso (17/01/2019), Cameroon (05/02/2020), Central African Republic (02/10/2018), Gabon (05/07/2019), Mali (01/06/2020), Rwanda (21/10/2019), South Africa (29/04/2019) & Togo (22/05/2019) have signed the Disability Protocol. The Disability Protocol is not yet ripe for ratification until 15 countries sign it. Ratifications – Central African Republic, Rwanda, Togo, South Africa, Gabon and Burkina Faso have adopted and ratified the Protocol in their countries at the time of writing this thesis.

⁶⁷ A sensitization seminar was recently held in Kigali, Rwanda on 5-6 July 2019 for African member states on the ratification of the Protocol on the Rights of Older Persons in Africa and the Protocol on the Rights of Persons with Disabilities in Africa, being the two most recent African regional instruments.

⁶⁸ Recall that Article 62 of the ACHPR requires a report to be submitted periodically (every two years) on implementation of its provisions. As regards the Disability Protocol, a section must be dedicated towards implementation of its provisions in the report.

⁶⁹ European Parliament Resolution of 29 November 2018 on the situation of women with disabilities (Res 208/2685RSP).

⁷⁰ Paragraph 11, *ibid.*

Nigerian WWDs can take advantage of the provisions of the African regional instruments discussed above, to enforce their right to employment when domestic laws fail to do so. It is also expedient for Nigeria to domesticate the above African regional treaties to realize employment participation for PWDs, and particularly, WWDs.

The AU region has its own established human rights enforcement mechanisms. These will be discussed in the next section coupled with how effective the mechanisms have been in human rights enforcements within the region.

5.4 African human rights regional mechanisms

(i) African Commission on Human and Peoples' Rights

Article 30 of the African Charter on Human and Peoples' Rights established the African Commission to promote human rights for persons within the region.⁷¹ The Commission consists of 11 members, acting in their personal capacity, chosen from amongst African personalities of the highest repute, human rights competence, with particular consideration given to persons that possess legal experience.⁷² The African Commission holds two ordinary sessions each year and extraordinary sessions when necessary.⁷³ Through Article 45 of the ACHPR, the main functions of the African Commission include: the interpretation of the provisions of the ACHPR and its supplementary protocols by issuing comments, thematic resolutions and guidelines; reviewing state reports with concluding observations; hearing of individual complaints in order to facilitate friendly settlements, calling on the relevant state to take interim measures to prevent harm to the victim(s) of alleged human rights violations or to issue urgent appeals; and conducting missions in African states such as on-site investigations or sensitization visits to ensure that member states comply with the state reporting obligation. The African Commission may also make useful recommendations to the AU Assembly of Heads of State and Government.⁷⁴ Before a case can be instituted before the African Commission, a complainant must have exhausted or attempted to use

⁷¹ Article 30 of the ACHPR provides: 'An African Commission on Human and Peoples' Rights, hereinafter called "the Commission", shall be established within the Organization of African Unity to promote human and peoples' rights and ensure their protection in Africa".

⁷² Article 31 (1) (2) ACHPR.

⁷³ African Commission on Human and Peoples' Rights: 'Sessions' available at <https://www.achpr.org/sessions> accessed 24 October 2021. See further <https://www.achpr.org/sessions/detail> accessed 24 October 2021.

⁷⁴ Article 53 of the ACHPR.

all available national local protection to seek redress, appealing as necessary, until the claim can no longer be pursued at the national level.⁷⁵

(ii) African Court on Human and Peoples Rights

The African Court is a continental court established by the Protocol to the ACHPR on the Establishment of an African Court on Human and Peoples' Rights to ensure the protection of human and peoples' rights in Africa (ACHPR Court Protocol).⁷⁶ The Court is composed of 11 judges elected by the AU Assembly from a list of candidates nominated by AU member states elected in their personal capacity.⁷⁷ However, no two serving judges shall be nationals of the same state.⁷⁸ Due consideration is also given to gender and geographical representation in the nomination process.⁷⁹

The African Court has the mandate to adjudicate on matters and disputes concerning the interpretation and application of the ACHPR, and any other human rights instruments ratified by the state concerned.⁸⁰ Also, before a case can be brought before the African Court, it is required that all judicial local remedies must be exhausted, except where there is an undue prolonged delay in the process of exhausting local remedies.⁸¹ After deciding a case on the merits, the African Court has powers to make appropriate orders to remedy the violation, including awarding compensation or reparation.⁸² The African Court is also empowered to facilitate friendly settlements between

⁷⁵ Section 56(5) *ibid*.

⁷⁶ The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (African Court Protocol) was adopted on 10 June 1998 in Ouagadougou, Burkina Faso. The Protocol entered into force on 25 January 2004. Article 30 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.

⁷⁷ Article 11 *ibid*. The current 11 Judges of the African Court are: Lady Justice Imani Daud Aboud (President) Tanzania, Justice Sylvain Oré (President), Côte d'Ivoire, Justice Ben Kioko (Kenya), Justice Rafaâ Ben Achour, (Kenya), Justice Ângelo Vasco Matusse (Mozambique), Lady Justice Ntyam Ondo Mengue (Cameroon), Lady Justice Marie Thérèse Mukamulisa (Rwanda), Lady Justice Tujilane Rose Chizumila (Malawi), Lady Justice Bensaoula Chafika (Algeria), Lady Justice Stella Isibhakhomen Anukam (Nigeria), Hon. Justice Dumisa Ntsebeza - (South Africa), Justice Sacko Modibo (Mali).

⁷⁸ *Ibid*.

⁷⁹ Article 12 of the ACHPR Court Protocol.

⁸⁰ *Ibid*.

⁸¹ Article 56(5) of the ACHPR and Article 6(2) of the ACHPR Court Protocol. This requirement has been given judicial backing by the African Court in *Abubakari Mohammed v The United Republic of Tanzania*, (Application 007/2013) Judgment 3 June 2016, paragraph 97; *Urban Mkandawire v Federal Republic of Malawi* (Application 003 2011) Judgment 21 June 2013 para 94; *David Mendes (represented by Centre for Human Rights) v Angola* February 2013, ACHPR, 413/12, 13th Extraordinary Session. It was also established in the case of *Beneficiaries of Late Norbert Zongo & ors v Burkina Faso* (Application 013, 2011), Judgment 28 March 2014, that where the process of exhausting domestic remedies is unduly prolonged, the precondition can be waived and an application made to the African Court..

⁸² Article 27 of the African Court Protocol.

parties and adopt provisional measures when the emergency arises, similar to the African Commission.⁸³

Furthermore, at the request of the AU, a member state or any African organization recognized by the AU, the African Court can render advisory opinions on legal matters.⁸⁴ Member states are required to make declarations accepting the jurisdiction of the court as regards petitions from individuals and non-governmental organizations (NGOs) to bring petitions directly before it.⁸⁵ By Articles 5(3) and 34(6) of the ACHPR Court Protocol,⁸⁶ NGOs with observer status before the African Commission on Human and Peoples' Rights and individuals from states which have made a declaration accepting the jurisdiction of the African Court, can institute cases directly before the African Court.⁸⁷ Nigeria has ratified the ACHPR Court Protocol but is yet to make the Declaration for direct access to the court by individuals and Non-Governmental Organizations (NGOs).⁸⁸

For now, only state complaints can be brought before the African Court in respect of Nigeria. Eight African states, including Benin, Burkina Faso, Cote d'Ivoire, Ghana, Malawi, Mali, Tanzania and Tunisia have made the relevant declaration allowing for direct petitions from individual citizens and NGOs to the African Court.⁸⁹ It is important for Nigeria to comply with

⁸³ Article 9 *ibid.*

⁸⁴ Article 4 *ibid.*

⁸⁵ Article 34(6) *ibid.*, provides:

“At the time of the ratification of this Protocol or any time thereafter, the State shall make a declaration accepting the competence of the court to receive cases under Article 5(3) of this protocol. The Court shall not receive any petition under Article 5(3) involving a State party which has not made such a declaration.” Article 5(3) provides, “the Court may entitle relevant Non-Governmental Organizations (NGOs) with observer status before the Commission and individuals to institute cases directly before it in accordance with Article 34(6) of this protocol”.

⁸⁶ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights 1998.

⁸⁷ Thirty-one states in the African region have ratified the Protocol of the African Court so far: Algeria, Benin, Burkina Faso, Burundi, Cameroon, Chad, Côte d'Ivoire, Comoros, Congo, Democratic Republic of Congo, Gabon, Gambia, Ghana, Kenya, Libya, Lesotho, Mali, Malawi, Mozambique, Mauritania, Mauritius, Nigeria, Niger, Rwanda, Sahrawi Arab Democratic Republic, South Africa, Senegal, Tanzania, Togo, Tunisia, and Uganda, with the Republic of Côte d'Ivoire, Tunisia and the Gambia accepting the Court's jurisdiction. Nigeria had ratified the Protocol establishing the Court in 2004, but is yet to make the Declaration as required under Article 34(6) of the Protocol establishing the Court for direct access to the court by individuals and NGOs.

⁸⁸ Mraadmin 'Nigerian Court Judge calls on Nigerian Government to Enable Access to the Courts for Nigerian Citizens, NGOs' *Media Rights Monitor*, 20 December 2021 available at <https://mediarightsagenda.org/african-court-judge-calls-on-nigerian-government-to-enable-access-to-the-court-for-nigerian-citizens-ngos/> accessed 23 April 2022.

⁸⁹ Rwanda withdrew its acceptance of jurisdiction after having previously accepted it. See International Justice Research Centre 'African Court on Human and People's Right' available at

Article 5(3) of the ACHPR Court Protocol to enable individuals, including all categories of PWDs and NGOs to directly petition the African Court.

(iii) Special Enforcement Mechanisms

As earlier mentioned special enforcement mechanisms such as rapporteurs, committees and working groups function within the African system.⁹⁰ The African Commission has the mandate to appoint special rapporteurs and committees to deal with thematic issues relating to human rights violations, pursuant to Article 25 of the Rules of Procedure of the African Commission.⁹¹ The Special Rapporteurs focus on monitoring and awareness-raising, while the Committees and Working Groups are tasked to develop principles, guidelines, or strategies on certain issues. These mechanisms report to the African Commission during its sessions.⁹² The African Commission has particularly established the Special Rapporteur on the Rights of Women in Africa.⁹³ The Special Rapporteur on the Rights of Women in Africa has as its mandate, to work with member states to achieve gender equality and the promotion of the rights of women in Africa and ensure compliance with the Maputo Protocol.⁹⁴

The Working Group on Rights of Older Persons and People with Disabilities (working group) is responsible for clarifying and defining the rights of older persons and all categories of PWDs, including WWDs.⁹⁵ The responsibilities of the working group extend to drafting legal instruments to protect the rights of older persons and people with disabilities, and studying and

<https://adsdatabase.ohchr.org/IssueLibrary/AFRICAN%20COURT%20ON%20HUMAN%20RIGHT%20AND%20PEOPLES%20RIGHTS.pdf> accessed 23 April 2022.

⁹⁰ Rule I (1)-(2) of the Standard Operating Procedures on the Special Mechanisms of the African Commission on Human and Peoples' Rights.

⁹¹ Article 25 of the Rules of Procedure of the African Commission Adopted by the African Commission on Human and Peoples' Rights during its 27th Extraordinary Session held in Banjul (The Gambia) from 19 February - 04 March 2020.

⁹² See generally, *ibid*.

⁹³ The Special Rapporteur on the Rights of Women in Africa was established on the occasion of the 23rd Ordinary Session of the African Commission held in Banjul the Gambia, from 20-29 April 1998. At the 25th Ordinary Session held in Bujumbura, Burundi the African Commission adopted Resolution ACHPR/res.38 (XXV) 99 on the appointment of a Special Rapporteur on the Rights of Women in Africa. The first Special Rapporteur on the Rights of Women in Africa was Commissioner Julienne Ondziel Gnelenga of the Republic of Congo.

⁹⁴ African Commission on Human and Peoples' Rights: Special Rapporteur on the Rights of Women (Mandate) available at <https://www.achpr.org/specialmechanisms/detailmech?id=6> accessed 24 October 2021.

⁹⁵ The Working Group on Rights of Older Persons and People with Disabilities originated as a Focal Point which was established by the adoption of Resolution 118 at the 42nd Ordinary Session held in Brazzaville, Republic of Congo from 15-28 November 2007. Resolution 143 of the 45th Ordinary Session (Banjul, The Gambia – May 2009) a) extended the mandate of the group by establishing a Working Group on the Rights of Older Persons and People with Disabilities,

publishing research on relevant human rights situations and conditions, amongst other responsibilities.⁹⁶ The working group is supervised by the African Commission and is headed by an appointed Chairperson and members.⁹⁷ The working group, as part of its founding mandate, has consistently called for social inclusion of WWDs.⁹⁸ Also, the working group recently reiterated its call on member States of the African Union to sign and ratify the Disability Protocol (“as a matter of utmost priority”) and show commitment to the advancement of the rights of PWDs in their respective countries.⁹⁹ The working group further calls for urgent development and commencement of useful strategies to implement provisions of the Disability Protocol.¹⁰⁰

The main mandate of the Committee on the Rights of Persons with Disabilities (the Committee) is the consideration of state reports and making recommendations to states parties based on the report.¹⁰¹ The Committee is to be established at international level and consists of 18 members, with consideration for “equitable geographical distribution, representation of the different forms of civilization and of the principal legal systems, balanced gender representation and participation of experts with disabilities”.¹⁰² In practice, following a state’s submission, the African Commission issues concluding observations which often include recommendations urging state parties to: enact or amend existing laws to align with the disability rights protocol; establish national bodies or institutions to oversee disability rights enforcement; promote inclusive participation of PWDs and civil society; adopt national action plans and policies to address discrimination and promote equality; provide training and resources for institutions working on disability rights; submit regular implementation reports to the African Commission, among other recommendations.¹⁰³ These recommendations, though non-binding, carry soft-law authority and

⁹⁶ Working Group on the Rights of Older Persons and People with Disabilities: ‘Mandate’ available at <https://ijrcenter.org/regional/african/working-group-on-the-rights-of-older-persons-and-people-with-disabilities/> accessed 30 October 2021.

⁹⁷ Ibid.

⁹⁸ Lawrence M Mute ‘Strengthening Cooperation in Protection and Promoting the Economic, Social and Cultural Rights of Persons with Disabilities (2014) Prepared Presentation for Workshop on Enhancing Cooperation between United Nations and Regional Mechanisms for the Protection of Human Rights’ held 8-9 October 2014 p. 5, available at <https://www.ohchr.org/documents/countries/cooperation/lawrencemurugumute.doc> accessed 30 October 2021.

¹⁰⁰ Ibid.

¹⁰¹ See Article 34-36 of the UN CRPD.

¹⁰² Article 34 (4) *ibid.*

¹⁰³ The recommendations are drawn from the ICJ’s study of nine sub-Saharan African States’ implementation of the Convention on Persons with Disabilities (May 2025) titled ‘An Opportune Moment: Realizing the Rights of Persons with Disabilities in Africa’ available at https://www.icj.org/wp-content/uploads/2025/05/Summary_An-Opportune-Moment_Realizing-the-Rights-of-Persons-with-Disabilities-in-Africa.pdf accessed on 2 July 2025.

moral influence. States often comply to maintain legitimacy and peer standing. There are no punitive measures for non-compliance with reporting duties in the African disability rights system however, non-compliant states may face critical international scrutiny, diminishing their reputation among peers and civil society.

As earlier indicated, Nigeria has not submitted any report on WWDs. Nigeria's failure to report not only constitutes a breach of its treaty obligations but also significantly undermines the visibility and protection of WWDs, who face compounded discrimination. Without state reports, the African Commission is unable to provide targeted concluding observations and recommendations, which are essential for guiding states toward effective and inclusive implementation. This omission weakens the regional monitoring process and limits civil society's ability to engage meaningfully.

5.5 Effectiveness of the regional enforcement mechanisms: A Critique

As earlier stated, the Special Rapporteur on the Rights of Women in Africa is instrumental in promoting rights specific to African women (including WWDs) through collaborations with international, regional, and national organizations. In its line of activities, the Special Rapporteur on the Rights of Women in Africa contributes to drafting and adoption of General Comments by the African Commission, especially as it relates to the implementation of the Maputo Protocol.¹⁰⁴ The activities of the Special Rapporteur on the Rights of Women in Africa and the African Commission are essentially focused on family, inheritance, and reproductive rights for women.¹⁰⁵ For instance, the Special Rapporteur on the Rights of Women in Africa played an active part in drafting the General Comment No. 2 of 2014 (General Comment), adopted by the African Commission.¹⁰⁶ In this General Comment, the African Commission interpreted the general

¹⁰⁴ Durojaiye E 'The special rapporteur on the rights of women in Africa (SRRWA) 2007-2015' (January 2018) 16(1) *Journal of Gender and Behaviour* pp. 10700-709. The Special Rapporteur on the Rights of Women in Africa was also instrumental to the drafting and adoption of the General Comment with the Committee of Experts on the Rights and Welfare of the Child on early/child marriage, amongst other General Comments adopted by the African Commission.

¹⁰⁵ Most of the programmes supported by the Special Rapporteur on the Rights of Women in Africa Centre on Maternal Mortality (African Commission Resolution on Maternal Mortality, 2008), armed conflict (Resolution 283 on the situation of women in armed conflict 2014), HIV (African Commission General Comment on Article 14 1 (d) and (e) of the African Women's [Maputo] Protocol 2012), divorce (Comment on Article 7 (d) of the Maputo Protocol), and Early marriage (General Comment with the Committee of Experts on the Rights and Welfare of the Child on early/child marriage).

¹⁰⁶ Para 3 of the African Commission's General Comment No. 2 of 2014 on Article 14 (1) (a), (b), (c) and (f) and Article 14 (2) (a) and (c) of the African Women's Protocol (Maputo Protocol) provides: "For purposes of this instrument [Maputo Protocol], which entered into force in 2005, 'women' is understood as persons of female sex

obligations of states to protect WWDs under article 14 of the Maputo Protocol to mean that states parties need to adopt positive steps to ensure that third parties do not interfere with the rights of vulnerable groups such as adolescent girls, WWDs, women living with HIV, and women in situations of conflict.¹⁰⁷

Although the African Court has ruled on several broader human rights issues including on gender-based discrimination¹⁰⁸ and disability claims as separate issues, cases that directly engage with issues at the intersection of gender and disability were not discovered during this research. The Working Group in Africa specifically notes that only few disability-related cases have been considered by both the African Commission and the African Court compared to other human rights issues.¹⁰⁹ In *Purohit and Moore v. The Gambia*,¹¹⁰ the African Commission ruled that the terms “lunatics and idiots” used to refer to people with mental disabilities under the Gambian Mental Health Act violates their human dignity under Article 5 of the African Charter. Similar decision was reached in *Shumba v. Zimbabwe*,¹¹¹ in a complaint regarding the torture and mistreatment of a PWD during detention which left them traumatized. The Commission also held Zimbabwe to be in breach of the African Charter in that case. The African Commission has only recently begun to formally acknowledge persons with disabilities within its resolutions.¹¹²

including girls, including women and girls living with a disability”. The General Comment No 2 of 2014 is available at <https://www.achpr.org/legalinstruments/detail?id=13> accessed 26 October 2021

¹⁰⁷ Para 43, *ibid*.

¹⁰⁸ Examples include: *APDF and IHRDA v. Republic of Mali* (May 11, 2018) Application 046/2016 available at *Application 046/2016 - APDF & IHRDA v. Republic of Mali - African Court on Human and Peoples' Rights* accessed on 2 May 2024, where the Court found certain provisions of the Malian Code related to inheritance and marriage to be discriminatory against women, thereby violating the principles of equality and non-discrimination outlined in the African Charter and; *Equality Now & Ethiopian Women Lawyers Association (EWLA) v Federal Republic of Ethiopia*, Communication 341/2007 (14 October, 2021) ACHPR 523 where the African Court highlighted gender-based discrimination and reaffirmed its commitment to advocate for women’s right across Africa.

¹⁰⁹ *Supra* note 94.

¹¹⁰ *Purohit and Moore v. The Gambia* (Communication 241/2001, 2003).

¹¹¹ *Shumba v. Zimbabwe* Communication 288/2004 – 2017.

¹¹² Examples of such resolutions are: *Resolution on the renewal of the mandate of the working group on the Rights of older persons and people with disabilities in Africa* - ACHPR/Res.250(LIV)2013 reached at the 54th Session of the African Commission held in Banjul, The Gambia on 22 October – 5 November 2013 available at <https://www.achpr.org/sessions/resolutions?id=283> accessed 31 October 2021; *305 Resolution on accessibility for persons with disabilities* - ACHPR/Res.305(EXT.OS/XVIII)2015 adopted at the 8th Session of the African Commission held from 29 July – 7 August 2015 in Nairobi, Kenya available at <https://www.achpr.org/sessions/resolutions?id=151> accessed 31 October 2021; *349: Resolution on the Attacks on Persons with Albinism in Malawi*, 18 June 2016 reached by the African Commission on Human and Peoples' Rights, meeting at its 20th Extraordinary Session, held in Banjul, The Gambia, from 09-18 June 2016 available at <https://www.refworld.org/docid/5811e6814.html> accessed 31 October 2021.

Also, the decisions reached by re-dressing human rights violations are mostly non-effective in terms of enforcement. The reason adduced is that execution of judgment is left entirely to the African Commission and states parties themselves without proper legislative monitoring procedures in place to ensure compliance.¹¹³ As a consequence, African member states flagrantly disregard the decisions of the African Commission and the African Court. Some African nations such as Tanzania (the seat of the regional court), Benin, Cote d'Ivoire, and Rwanda, have disregarded the decisions of the African Court, and hit back by withdrawing from the court's jurisdiction when decisions they perceived to be "unfavourable" were entered against them for state human rights violations.¹¹⁴ A better approach would be to allow the African Court to enforce its own decisions through statutory enforcement guidelines.¹¹⁵ For instance, in the inter-American system of human rights, the Inter-American Court on Human Rights supervises state compliance with its judgment through investigations and additional obligations may be imposed on the erring state when necessary.¹¹⁶

5.6 Conclusion

As is evident from the discussion above, the African region has a rich array of provisions for safeguarding rights for PWDs, particularly WWDs, patterned to suit the peculiarities of the region. However, the African regional human rights system needs to do more than establish laws in fulfilment of the mandate of the UN CRPD. A tighter, workable means to monitor and ensure compliance by member states, including Nigeria, to the letter ought to be developed within the African region to restore the confidence of the African people in utilizing the regional system upon failure to get redress from the domestic judicial system. The inter-American system of enforcement and execution of judgments can serve as blueprint in this regard. Once this is achieved, WWDs in

¹¹³ This conclusion is drawn from the flagrant flouting of the decisions of the African Commission and the African Court by African nations.

¹¹⁴ Segona Horace Adjolohoroun 'A Crisis of Concern and Judicial Practice? Curbing States Disengagement from the African Court on Human and Peoples' Rights'(2020) 20(1) *African Human Rights Law Journal* pp. 6,7,12,16. Nations and withdrawal dates – Rwanda (24 February 2016), Tanzania (14 November 2019), Benin (24 March 2020), Cote d'Ivoire (28 April 2020).

¹¹⁵ In the inter-American system of human rights, the Inter American Court on Human Rights rather than the American Commission, supervises state compliance with its judgment to the letter through investigations and additional obligations may be imposed on the erring state. Article 65 and 69(2) of the Rules of Procedure of the Inter-American Court of Human Rights states the procedure for execution of court decisions.

¹¹⁶ Article 65 and 69(2) of the Rules of Procedure of the Inter-American Court of Human Rights.

Nigeria, indeed other categories of PWDs, will be able to seek redress for human rights violations from regional judicial institutions when necessary.

Also, the Special Rapporteur on the Rights of Women in Africa ought to lay more emphasis on empowerment of WWDs as part of its activities and contribution to increase the relevance of WWDs and ensure their inclusion into society. Although the current sway of the activities of the Special Rapporteur on the Rights of Women in Africa towards promoting reproductive and family rights for women, including WWDs, is commendable, securing employment for WWDs should also be prioritized as part of realizing social acceptance for WWDs.

The next chapter critically analyses the existing domestic legal and institutional framework in Nigeria as regards its conformity with international and regional standards for promoting the rights of PWDs, and particularly WWDs in the context of employment.

CHAPTER SIX

LEGAL AND POLICY FRAMEWORK FOR PROMOTING EMPLOYMENT IN NIGERIA: ANY CONSIDERATIONS FOR WOMEN WITH DISABILITIES?

6.1 Introduction

As part of efforts to promote inclusiveness for Persons with Disabilities (PWDs), the United Nations requires all member states to formulate and implement laws and policies, including harmonizing existing domestic laws, to promote and guarantee the equal exercise of human rights for PWDs.¹¹⁷ As discussed in chapter four, the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD) dictates that in fulfilling the requirement above, national laws and policies must be drafted and implemented to recognize and accommodate the unique vulnerability of women with disabilities (WWDs).¹¹⁸ Chapter five extensively discussed the regional recognition of the intersection between gender and disability with the protection of the human rights of WWDs in Africa, particularly the right to work. Furthermore, suggestions on how the African system can properly implement human rights standards within member states of the region, including in Nigeria were considered in the previous chapter.

Despite the existing legal protection afforded PWDs, more particularly WWDs at international and regional levels, several countries, including Nigeria, lack comprehensive national laws, policies or programmes that reflect gender perspectives of disability.¹¹⁹ The legislative framework in Nigeria to a large extent fails to conform to either international or the African regional requirements of having due regard to the rights of WWDs, particularly as it concerns the right to employment. Employment implementation programmes designed to address disability or gender issues in Nigeria do not adequately contemplate the needs of WWDs as a uniquely disadvantaged group. The purpose of this chapter is to critically assess the existing laws and policies with the implementing institutions in Nigeria to determine whether any protection exists for WWDs in the context of access to employment, in compliance with the UN CRPD.

The first section of this chapter is a brief overview of the efforts for recognizing disability rights in Nigeria. Next, the existing legislation in force in Nigeria which ought to promote non-

¹¹⁷ Article 4 and 5 UN CRPD.

¹¹⁸ Ibid, Article 6(1)-(2).

¹¹⁹ Louis O. Oyaro 'Africa at Crossroads: The United Nations Convention on Persons with Disabilities' *American University International Law Review* (2015) 30(2) p. 358.

discrimination and equal right to employment for PWDs, having due consideration to the vulnerability of WWDs are examined. Thereafter, Nigeria's gender and other employment-related policies will also be discussed to determine how they can be made useful in realizing employment protection for WWDs. Third, the implementing institutions in Nigeria and the adequacy or otherwise of their functions in-keeping with promoting equal standards for WWDs and realizing social integration for them through employment, are highlighted.

6.2 Overview of efforts for the recognition of rights of WWDs in Nigeria

The Nigerians with Disability Decree 1993¹²⁰ (the Decree) is the first ever attempt at recognizing rights for PWDs in Nigeria promulgated during Nigeria's military regime.¹²¹ The Decree was prompted by the limited disability awareness brought about by few individuals and non-governmental organizations (NGOs) who advocated for the rights of PWDs in Nigeria at the time.¹²² Although the Decree affords legal protection of the rights of PWDs, including the right to vocational rehabilitation and employment,¹²³ and establishes a National Commission to implement its provisions, there are no gender provisions.¹²⁴ The Decree was not effectively implemented and also failed to recognise the intersection between gender and disability.¹²⁵ After Nigeria transitioned to democracy in 1999, several disability bills were introduced to the Nigerian National Assembly for consideration and passage into law.¹²⁶ Nigeria's ratification of the United Nations Convention on the Rights of Persons with Disabilities in 2007 heightened the advocacy by disability rights groups

¹²⁰ The Nigerians with Disability Decree 1993 was promulgated during the military era in Nigeria. The full text of the Decree is available at *Nigerians with Disability Decree 1993 - Disability Rights Education & Defense Fund (dredf.org)* accessed 23 September 2023.

¹²¹ The Decree was by the then military head of state (General Sanni Abacha) in January 1993.

¹²² Ibrahim Imam and M.A. Abdulraheem Mustapha 'Rights of People with Disability in Nigeria: Attitude and Commitment' (2016) 24(3) *African Journal of International and Comparative Law* (Edinburgh University Press) p. 442.

¹²³ Section 6 of the Decree relates to the right to vocational rehabilitation and employment.

¹²⁴ Section 14 *ibid*.

¹²⁵ Dada Oluseyi Akintunde and Odewenwa Oludare Joseph 'Advocating for the Rights of Persons with Special Needs in Nigeria: A Perspective being a Paper Presented At The 25th Naset Annual Conference/Workshop Held At Umuahia Abia State 21-25 October 2013.

¹²⁶ *Ibid* n5. These bills were: the Discrimination against Persons with Disability (Prohibition Bill) (2008); a Bill for an Act to prohibit all forms of discrimination against persons with disability, giving them equal opportunities in all aspects of life in society and related matters (2009); a Bill for an Act to provide special facilities for the use of handicapped persons in public buildings; a Bill for an Act to establish the National Social Security Board and vest with it the responsibility for the control and administration of benefits and assistance to enhance the welfare of citizens, especially disadvantaged persons, particularly children, women, the handicapped, the sick, the aged and the unemployed (2000); the Mental Health Bill (2008); and the Social Welfare Bill (2008).

and activists for the enactment of a federal disability law.¹²⁷ Finally in 2019, Nigeria passed the Discrimination Against Persons with Disabilities (Prohibition) Act to proscribe discrimination against PWDs with disabilities in addition to promoting their inclusion and access to various aspects of society. However, like the 1993 Decree, DAPDA contains no provisions that recognize the intersection between gender and disabilities neither does it accord specific rights to WWDs. As a result, there has been a concerning rise in cases of violence and other forms of social exclusion targeting women and girls with disabilities.¹²⁸

The United Nations Committee on the Rights of Persons with Disabilities (the committee) has expressed concern that “national laws and policies on disability have historically neglected aspects related to women and girls with disabilities”.¹²⁹ The committee particularly identifies the “lack of, or insufficient number of specific measures to promote the education and employment of women with disability”.¹³⁰ Nigerian legislation and policies in particular, seldom contemplate the unique vulnerability of WWDs, occasioned by the intersection of gender and disability.¹³¹ Generally, PWDs in Nigeria are often treated as a homogenous group, with implementation strategies and programmes hardly contemplating gender dimensions of disability in violation of the requirements in Article 6 of the UN CRPD.¹³²

As mentioned in chapter three, despite the legislative gap, the intersection between gender and disability is gradually gaining momentum in Nigeria. As noted in Chapter one, apart from growing academic research on the topic, non-governmental organizations particularly established to promote rights for WWDs are sprouting up in Nigeria. Notably, the Network of Women with Disabilities (NWD) was formed in 2019 and has as its vision, “to create a just world without exclusion,” and its mission is to empower women and girls with disabilities, enable them, educate

¹²⁷ Aniete Ewang ‘Nigeria Passes Disability Rights Law’: Offers Hope of Inclusion, Improved Access’ *The Guardian* 25 January 2019 available at *Nigeria Passes Disability Rights Law | Human Rights Watch (hrw.org)* accessed 6 October 2023.

¹²⁸ Edward Ugbada Adie Ph.D and Yusuf Nzim Shamagana ‘Towards Improved Inclusion of Women and Girls with Disabilities in the Development Agenda in Nigeria’ *International Journal of integrative Humanism* (2018) 10(1) p.1-14.

¹²⁹ UN Committee on the Rights of Persons with Disabilities, General comment No. 3 (2016) on women and girls with disabilities p. 1 available at <https://www.refworld.org/docid/57c977344.html> accessed 13 October 2021. The Committee published the General comment No. 3 (2016) on women and girls with disabilities on 2 September 2016

¹³⁰ Ibid.

¹³¹ World Bank ‘Disability Inclusion in Nigeria: A Rapid Assessment’ (2020) World Bank, Washington, DC. © World Bank available at <https://openknowledge.worldbank.org/handle/10986/34073> License: CC BY 3.0 IGO, accessed 12 October 2021.

¹³² Article 6 UN CRPD is discussed in chapter three.

them, and advocate for their rights in society”.¹³³ In addition to advocating for equal representation, non-discrimination and inclusion of girls and WWDs in all aspects of society, the NWD aims to create greater awareness about the rights of women and girls with disabilities among the public and the government.¹³⁴ As the first network of WWDs in Nigeria, the NWD has championed several advocacy programmes centred on mainstreaming WWDs in all aspects of the society, including at the Annual General Conference 2024.¹³⁵ Another reputable NGO, The Advocacy for Women with Disabilities Initiative (AWWDI) was formed with mandate to develop, advocate for, and empower WWDs, to encourage vocational skills, enhance income and encourage, among other objectives.¹³⁶ It has been reported that from 2009-2017, AWWDI provided skills training to WWDs as a means to empower them in their respective communities.¹³⁷

The next section critically examines the Nigerian legislative framework concerning gender equality, disability and employment to ascertain the instrumentality or otherwise towards promoting economic rights for PWDs, especially WWDs.

6.3 Legal Framework

The following domestic laws are examined in this section: the Nigerian Constitution;¹³⁸ African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act;¹³⁹ Discrimination

¹³³ The NWD was founded and registered by the Corporate Affairs Commission in September 2019. Their website is available at *Who Are We - Network of Women with Disabilities* accessed 3 October 2023.

¹³⁴ Ibid.

¹³⁵ Recently, on 29 August, 2024, the NWD emphasized on the need to mainstream women including those with disabilities into strategic roles across all sectors. Agbo Christian ‘NWD Champions Gender Inclusion at the Defence Headquarters Annual Gender Conference 2024’ (*Qualitative Magazine*, September 2024) available at NWD Champions Gender Inclusion at Defence Headquarters Annual Gender Conference 2024 - QUALITATIVE MAGAZINE accessed on 10 October 2024.

¹³⁶ Advocacy for Women with Disabilities Initiative (AWWDI) operates as one of the community self-help groups in Nigeria that helps to empower women and girls with disabilities in Nigeria through vocational skill acquisition. They are available online at <https://awwdi.org.ng/> accessed 12 April 2021.

¹³⁷ AWWDI – Projects available at *Projects – Advocacy for Women with Disabilities Initiative (AWWDI)* accessed on 10/20/2024. This was the only reported specific employment program for WWDs that was found on AWWDI’s website.

¹³⁸ Constitution of the Federal Republic of Nigeria (Third Alteration Act), No. 3 2010.

¹³⁹ African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act Cap A9 Laws of the Federation of Nigeria 2004.

Against Persons with Disabilities (Prohibition) Act;¹⁴⁰ Special People's Law;¹⁴¹ Labour Act;¹⁴² Gender and Equality Opportunities Bill;¹⁴³ and the Employees Compensation (Amendment) Act.¹⁴⁴

(i) Constitution of the Federal Republic of Nigeria 2004

Article 5(2) of the UN CRPD urges states parties to prohibit all discrimination based on disability and guarantee to PWDs equal and effective legal protection against discrimination on all grounds. The Constitution of the Federal Republic of Nigeria (the Constitution)¹⁴⁵ is the supreme law from which all other legislation in Nigeria draws legitimacy. Section 42 of the Constitution forbids discrimination against citizens on several grounds including sex.¹⁴⁶ However, disability is not mentioned as one of the prohibited grounds of discrimination.¹⁴⁷ The relevant provisions state:

(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, *sex*,¹⁴⁸ religion or political opinion shall not, by reason only that he is such a person:

(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, *sex*,¹⁴⁹ religious or political opinions are not made subject; or

(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, *sex*, religious or political opinions.

(2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.¹⁵⁰

A literal interpretation of Section 42 of the Constitution above, suggests that disability is not contemplated as a prohibited ground. However, opinions differ as to whether “disability” can be implied under the open-ended phrase “circumstances of his birth” in subsection 2. *Kutigi* holds the

¹⁴⁰ Discrimination Against Persons with Disabilities (Prohibition) Act 2018.

¹⁴¹ Lagos State Special Peoples' Law 2011.

¹⁴² Labour Act Cap L1, Laws of the Federation of Nigeria 2004.

¹⁴³ Gender and Equality Opportunities Bill 2011.

¹⁴⁴ Employees Compensation (Amendment) Act 2011

¹⁴⁵ Constitution of the Federal Republic of Nigeria (Third Alteration Act), 2011 Cap C25 Laws of the Federation 2004.

¹⁴⁶ S. 42 (1)(2) of the Constitution of the Federal Republic of Nigeria 2004; Discrimination is also prohibited by Section 15(2) of the Nigerian Constitution which reads:

(2) ...national integration shall be actively encouraged, whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited.

Apart from explicitly prohibiting discrimination on the basis of sex, the purpose of the provision above, as its wordings connote, relates solely to the promotion of national integration.

¹⁴⁷ Ibid.

¹⁴⁸ Emphasis mine.

¹⁴⁹ Emphasis mine.

¹⁵⁰ Emphasis mine.

view that despite its omission in the wordings of Section 42 of the Constitution, disability can be implied as one of the grounds of discrimination under subsection 2, as a “circumstance of birth”.¹⁵¹ However, the shortfall of construing disability as a “circumstance of birth” is that it limits the anti-discrimination provision to include only PWDs that were born with disability, while neglecting those who acquired disability after birth. Aturu opines that the phrase “circumstances of his/her birth” is rather nebulous and subsection 2 ought to be reviewed to expressly mention disability as a specifically prohibited discriminatory ground to avoid any confusion.¹⁵² According to him, until the review, Section 42(2) of the Constitution, “disability” cannot be implied under any guise.¹⁵³

As indicated in 3.6 of chapter three, judicial interpretation of Section 42 of the Constitution in Nigeria leans towards the formal approach to equality of opportunities for all citizens instead of utilizing the provision to achieve substantive equality for all vulnerable groups, including all categories of PWDs. Therefore, in *Festus Odafe v. AG Federation & Ors*,¹⁵⁴ the Federal High Court found that since the list in Section 42 of the Nigerian Constitution clearly omits to mention disability as a discriminatory ground, any such interpretation is invalid. A similar decision was reached by the Court of Appeal in *Uzoukwu v. Ezeonu*.¹⁵⁵ Unlike the situation in Nigeria, several nations constitutionally outlaw discrimination due to disability. Notably, nations such as

¹⁵¹ Halima Doma Kutigi ‘Human Rights of Persons with Disabilities: Challenges of Protection and Enforcement in Nigeria’ (May 2002) 1(4) *International Journal of Legal Insights* p. 2 available at https://www.researchgate.net/publication/341090390_human_rights_of_persons_with_disabilities_challenges_of_protection_and_enforcement_in_nigeria accessed 12 July 2020.

¹⁵² Bamidele Aturu ‘Discrimination in the Workplace’ *Vanguard News*, 3 March 2010; See also: Duru Onyekachi Wisdom Caesar ‘The Justiciability of the Fundamental Objectives and Directive Principles of State Policy under the Nigerian Law’ available at <http://www.academia.edu/5185441/> accessed 20 March 2018.

¹⁵³ *Ibid.*

¹⁵⁴ *Odafe and Others v. Attorney General of the Federation* (2004) *AHRLR* 205 at p.211.

¹⁵⁵ In *Uzoukwu v Ezeonu II* (1991) 6 NWLR (Pt.290) 708 CA the Nigerian Court of Appeal held, among others, that an action for discrimination can only succeed under sec 39 of the Nigerian Constitution, 1979, now sec 42 of the present Constitution, where the discrimination complained against falls within the listed prohibited grounds, including: ethnic group, place of origin, sex, religion, political opinion or circumstances of birth and nothing more.

Zimbabwe,¹⁵⁶ South Africa¹⁵⁷, Malawi,¹⁵⁸ Ghana,¹⁵⁹ and Uganda¹⁶⁰ have constitutional provisions that expressly prohibit discrimination due to disability. Additionally, the Ugandan¹⁶¹ and Zimbabwean¹⁶² Constitutions recognize sign language is a valid means of communication. The issue of disability has gained enough global impetus to be specifically prohibited as a discriminatory ground in the Nigerian Constitution; so, there is need for amendment in that regard, to bring the Nigerian Constitution at par with the requirements in articles 4 and 5 of the UN CRPD. However, before the amendment, courts in Nigeria ought to properly interpret Section 42 to promote substantive equality for the participation and integration of PWDs, including WWDs in all aspects of society and development.¹⁶³

Concerning employment, section 17(3)(a)-(e) of the Constitution requires that all citizens possess equal rights of opportunity to secure adequate means of livelihood and employment without discrimination.¹⁶⁴ The section further promotes “equal pay for equal work” without discrimination based on “sex” or any other ground whatsoever.¹⁶⁵ Again, disability is not

¹⁵⁶For example, Zimbabwe amended its constitution (Constitution of Zimbabwe Amendment (No 20) Act 2013 and added disability in section 83 as a ground of discrimination (and also recognised sign language as a means of communication). It states: ‘The States must take appropriate measures, within the limits of the resources available to it, to ensure that persons with disabilities realize their full mental and physical potential....’

¹⁵⁷ Section 9 (3) of the Constitution of the Republic of South Africa (Act No. 108) 1996 provides: “The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth

¹⁵⁸ Section 13, 20, 23 and 30 of the Constitution of Malawi 1994.

¹⁵⁹ Section 29 of the Constitution of the Republic of Ghana 1992.

¹⁶⁰ Section 35(1)(2) of the Constitution of the Republic of Uganda 1995 provide:

35 (1). 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.
(2) Parliament shall enact laws appropriate for the protection of persons with disabilities”.

Uganda also recognizes sign language as a valid means of communication in section 24, *ibid*.

¹⁶¹ Article XXIV (d) of the Constitution of Uganda 1995 (as amended).

¹⁶² S. 6(4) of the Constitution of Zimbabwe Amendment (No.20) Act of 2013.

¹⁶³ Ngozi Chuma Umeh ‘Reading ‘Disability’ into the Non-Discrimination Clause of the Nigerian Constitution’ (2016) 4 *African Disability Rights Yearbook* p. 66.

¹⁶⁴ Section 17(3)(a)-(e) provides *inter alia*:

(3) The State shall direct its policy towards ensuring that:

(a) all citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment;
(b) conditions of work are just and humane, and that there are adequate facilities for leisure and for social, religious, and cultural life;
(c) the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused;
(d) there are adequate medical and health facilities for all persons;
(e) there is equal pay for equal work without *discrimination on account of sex*, or on any other ground whatsoever;

¹⁶⁵Section 17(3)(e) above.

specifically mentioned as one of the protected grounds in section 17 of the Constitution.¹⁶⁶ The omission of disability throughout the Constitution of Nigeria indicates that Nigeria is yet to prioritize disability issues and by extension, yet to recognize the intersection between gender and disability with all the unique implications it spells for WWDs. As mentioned in the preceding paragraph, the judiciary has a vital role to play in applying the substantive equality approach to constitutional provisions for the protection of all categories of PWDs in Nigeria and other vulnerable groups.

It is important to note that all the rights listed in section 17(3) of the Constitution of Nigeria, including the right to work are rendered non-justiciable pursuant to section 6 (6)(c) of the same constitution.¹⁶⁷ Part II of the Nigerian Constitution titled: “Fundamental Objectives and Directive Principles of State Policies” particularly section 6(6)(c) sets out the non-justiciable provision as follows:

(6) The judicial powers...

(c) ... shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution ...

Pursuant to the provision above, no organ of government can be sued in any court of law in Nigeria for acts or omissions constituting breaches of socio-economic rights.¹⁶⁸ In effect, section 6 above “claws back”¹⁶⁹ the socio-economic rights guaranteed to Nigerian citizens in section 17 of the Constitution.¹⁷⁰ In due compliance with this provision, high courts in Nigeria have consistently

¹⁶⁶ This provision contemplates only one ground of discrimination relevant to WWDs which is gender.

¹⁶⁷ All items listed in Chapter II of the Nigerian Constitution including S. 17 are in the Category of Fundamental Objectives and Directive Principles of State Policy which are non-justiciable by the provision of Section 6(6)(c) of the Constitution.

¹⁶⁸ Femi Falana ‘Making Chapter II of the Constitution Justiciable’ *ThisDay Newsonline*, 2 March 2022 available at <https://www.thisdaylive.com/index.php/2022/03/02/making-chapter-ii-of-the-constitution-justiciable/> accessed 6 April 2022. Socio-economic rights include the right to security and welfare, right to political participation, right to health, right to secure adequate means of livelihood including suitable and adequate shelter, suitable and adequate food, right to environment, reasonable national minimum wage, sick benefits amongst others; See generally Chapter II of the Constitution of the Federal Republic of Nigeria 2004 comprising sections 13-24.

¹⁶⁹ “Claw back” means to take back something already given, in some other way.

¹⁷⁰ *Ogugua V C. Ikpeze ‘Non-justiciability of Chapter II of the Nigerian Constitution as an impediment to Economic Rights and Development’* (2015) 5(18) *Developing Countries Studies* available at https://www.researchgate.net/publication/282816601_Non-Justiciability_of_Chapter_II_of_the_Nigerian_Constitution_as_an_Impediment_to_Economic_Rights_and_Development accessed 21 July 2019. As regards this provision, Nigeria may have borrowed the use of this claw back provision from the provisions of the ACHPR discussed in the previous chapter.

struck out cases relating to enforcement of socio-economic rights brought by citizens against the government.¹⁷¹ Ogugua refers to section 6(6)(c) as an “aberration” and calls for a constitutional reform to expunge the ouster provision to afford citizens the opportunity to enforce their socio-economic rights against the government.¹⁷²

Section 6(6)(c) can be regarded as a violation of the mandate of the UN CRPD. Article 27 of the UN CRPD, as discussed in chapter three requires states parties to guarantee the right to work, which is a socio-economic right, to all categories of PWDs including WWDs. To comply with the UN CRPD, Section 42 of the Constitution of Nigeria ought to be properly worded to promote substantive equality for PWDs while also promoting their economic rights on equal basis with other citizens by section 17 of the Constitution. *Ikpeze* submits that the reason socio-economic rights, including the right to employment, are non-justiciable in Nigeria may be due to the paucity of state resources for their implementation.¹⁷³ Ousting judicial enforcement of the right to work, amongst other socio-economic rights, for whatever reason, is suggestive of a deliberate attempt to preclude deserving citizens from enjoying their human rights.

Nigeria can take cue from jurisdictions where socio-economic rights are deemed enforceable. For example, in South Africa¹⁷⁴ and Zimbabwe,¹⁷⁵ socio-economic rights are judicially enforceable. South Africa’s Constitutional Court in *Njongi v. Department of Welfare, Eastern Cape*¹⁷⁶ ruled that the cancellation of a disabled woman’s benefits without notice or explanation is “devoid of all humanity,” and ordered the mandatory restoration of her total benefits.¹⁷⁷ Also in *Despatch Municipality v. Sunridge Estate and Development Corporation (Pty)*

¹⁷¹ Ibid.

¹⁷² Ibid.

¹⁷³ Ikpeze O V C ‘Right to Education: Case of the Rural Poor and Globalization in Nigeria’ (2008) 1(1) *Journal of Women and Minority Rights* (2008) p.

¹⁷⁴ South Africa is an exemplary country for the constitutionalization and judicialization of socio-economic rights. The South African Constitution in Chapter 11 contains Bill of Rights, including civil and political rights, environmental rights, socio-economic rights which are deemed enforceable; Ajepe Taiwo Shehu ‘The Enforcement of Social and Economic Rights in Africa: The Nigerian Experience’ (2013) 2(1) *Afe Babalola University: Journal of Sustainable Development Law and Policy* p. 101. Iyabode Ogunniran ‘Enforceability of Socio-Economic Rights: Seeing Nigeria Through the Eyes of Other Jurisdictions’ (2010) 1 *Nnamdi Azikiwe Journal of International Law and Jurisprudence* p. 71.

¹⁷⁵ Section 24 of the Constitution of Zimbabwe 2013. The Chitungwiza Magistrate Court, in *Mavis Marange v. Chitungwiza Municipality and Glory to Glory Housing Co-operative, Case No 106/2014* enforced section 74 of the Constitution of Zimbabwe 2013 (right to housing).

¹⁷⁶ *Njongi v. Department of Welfare, Eastern Cape* 2008 (4) SA 237 (CC) (S. Afr.).

¹⁷⁷ Ibid at paras. 90, 92(7); Further, Article 26 of the South African Constitution provides: "(1) Everyone has the right to have access to adequate housing, (2) The state must take reasonable legislative and other measures, within its

Ltd,¹⁷⁸ South Africa's Prevention of Illegal Squatting Act¹⁷⁹ permitted the summary demolition of unauthorized buildings or structures without necessarily obtaining a court order.¹⁸⁰ Despite the existence of the law, the right to housing guaranteed by section 26(3) of the Constitution of South Africa was successfully enforced. In that case, the South African High Court held that section 38 of the Prevention of Illegal Squatting Act was at variance with section 26(3) of the Constitution of South Africa, which guarantees the socio-economic right to adequate housing and was accordingly invalid. Apart from South Africa and Zimbabwe, socio-economic rights, including the right to equal employment opportunities and working conditions, are also constitutionally protected and deemed judicially enforceable in countries such as Argentina,¹⁸¹ Colombia,¹⁸² and Venezuela.¹⁸³ Indeed, the constitution of Malawi provides that "[a]ny law that ousts or purports to oust the jurisdiction of the courts to entertain matters pertaining to this Constitution shall be invalid".¹⁸⁴

available resources to achieve the progressive realization of this right". Pursuant to the above provision, the right to adequate housing is a socio-economic right guaranteed by the South African constitution.

¹⁷⁸ *Despatch Municipality v. Sunridge Estate and Development Corporation (Pty) Ltd* (1997)8 B.C.L.R 1023. See also *Grootboom v. Oostenberg Municipality and Ors*, 2000(3) BCLR (c).

¹⁷⁹ Prevention of Illegal Squatting Act 52 of 1951 of South Africa.

¹⁸⁰ *Supra* note 47 above.

¹⁸¹ Section 14 of the Constitution of Argentina 1994 (as amended) states: "All inhabitants of the Nation enjoy the following rights, in accordance with the laws that regulate their exercise, namely: of working in and practicing any lawful industry....Labor in its diverse forms shall enjoy the protection of the law, which shall ensure to workers: dignified and equitable working conditions; a limited working day; paid days of rest and vacation; fair remuneration; adjustable minimum living wages; equal pay for equal work; a share in the earnings of enterprises, with control over production and collaboration in management; protection against arbitrary discharge; permanence of public employment; free and democratic organization of labor unions, recognized simply by inscription in a special register". *Viceconti v Ministry of Health & Social Welfare (Poder Judicial de la Nacion, Causa no.31.777/96*, of 2 June 1998.

¹⁸²Section 25 of the Constitution of the Republic of Colombia 1991 (Rev 2009) provides: "Work is a right and a social obligation and enjoys, in all its forms, the special protection of the State. Every individual is entitled to a job under dignified and equitable conditions". *Mora v Bogota District Education Secretary & Ors*. Colombian Court, Decision T-170/03 of 28 February 2003.

¹⁸³Section 87 of the Constitution of Venezuela (Bolivarian Republic Of) 1999 (Rev. 2009) provides: "All persons have the right and duty to work. The State guarantees the adoption of the necessary measures so that every person shall be able to obtain productive work providing him or her with a dignified and decorous living and guarantee him or her the full exercise of this right. It is an objective of the State to promote employment. Measures tending to guarantee the exercise of the labor rights of self-employed persons shall be adopted by law". *Cruz Bermudez et al v Ministerio de Sanidad y Asistencia Social* (Supreme Court of Justice of Venezuela) Case No 15.789, Decision No. 916 15 July 1999.

¹⁸⁴ Section 10(4) of the Constitution of the Republic of Malawi 1994.

Hopes for the enforcement of socio-economic rights in Nigeria could be restored with the domestication of the African Charter on Human and Peoples' Rights Act¹⁸⁵ in Nigeria. The provisions of this legislation, as domesticated, are examined in the next section.

(ii) African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 2004

Nigeria operates a dualist legal system, which means that treaties or part of treaties have no binding force of law except where they are domesticated by the National Assembly (comprising the Senate and House of Representatives).¹⁸⁶ However, as discussed in 4.8 of chapter four, the domestication requirement does not apply to ratified ILO treaties, conventions and instruments.¹⁸⁷ Nigeria is the first country to adopt the African Charter on Human and Peoples' Rights (ACHPR) wholesale into its laws, with the ACHPR becoming the first regional human rights treaty to be domesticated.¹⁸⁸ The ACHPR is now restyled the African Charter on Human and People's (Ratification and Enforcement) Act (ACHPRA) by the National Assembly of Nigeria.¹⁸⁹ Having become part of the laws of Nigeria, the ACHPRA began to receive judicial relevance in superior courts of record. In the case of *General Sani Abacha & Others v Chief Gani Fawehinmi*,¹⁹⁰ the Supreme Court of Nigeria, per Ogundare JSC, succinctly acknowledged the relevance of domestication as follows:

Where a treaty is enacted into law by the National Assembly, as was the case with the African Charter which is incorporated into municipal law by the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act... it becomes binding, and our courts must give effect to it like

¹⁸⁵ African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap A9 Laws of the Federation of Nigeria 2004. Victor Ayeni 'The Impact of the African Charter and Women's Protocol in Nigeria' in *Centre for Human Rights, The impact of the African Charter and Women's Protocol in selected African States* (2012) PULP p.

¹⁸⁶ Amos Enabulele 'Implementation of Treaties in Nigeria and the Status Question: Whither Nigerian Courts' (2009) 17 *AJICL* p. 326. Section 12 of the Nigerian Constitution declares: "...no treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly".

¹⁸⁷ Section 254 C(2) Third Alteration Act. *Adebusola Adedayo Omole v Mainstreet Bank Microfinance Bank Ltd*, [2015] 53 N.L.L.R -*Aero Contractors Co. of Nigeria Ltd v National Association of Aircrafts, Pilots and Engineers and Ors* [2014] N.L.L.R (Part 133).

¹⁸⁸ Supra note 39. Nigeria ratified the ACHPR on 22 June 1983.

¹⁸⁹ Upon domestication, the ACHPR became known as the African Charter on Human and Peoples Right (Ratification and Enforcement) Act No. 2 of 1983 now Cap A9 L. F.N 2004. The Preamble to the ACHPRA is as follows: "...And whereas it is necessary and expedient to make legislative provision for the enforcement in Nigeria of the said Charter by way of an Act of the National Assembly:

1. As from the commencement of this Act, the provisions of the African Charter on Human and Peoples' Rights which are set out in the Schedule to this Act shall, subject as thereunder provided, have the force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria.

2. This Act may be cited as the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.

¹⁹⁰ *General Sani Abacha & Others v Chief Gani Fawehinmi* (2000) SC 45/1997.

all other laws falling within the judicial power of the courts. ...the ACHPR is now part of the laws of Nigeria and like other laws, the Courts must uphold it. The ACHPR gives to citizens of member states of the African Unity (now African Union) rights and obligations, which rights and obligations are to be enforced by our courts if they must have any meaning.

Although the case mentioned above has been overturned in labour matters due to the introduction of the Third Alteration Act 2010, which grants direct applicability to ratified ILO Conventions and Standards in Nigeria, it remains important to clarify or explain the general requirement for domestication outlined in Section 12(1) of the Nigerian Constitution. Article 2 of the ACHPRA provides: The ACHPRA prohibits discrimination on the basis of sex, amongst other grounds.¹⁹¹

Article 2 of the ACHPRA provides:

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

From the excerpt above, the ACHPRA fails to expressly include disability as one of the prohibited grounds for discrimination, as with the Nigerian Constitution. However, as previously indicated in 5.3 of chapter five, the African Commission has construed disability as part of a “non-exhaustive list” of prohibited grounds of discrimination. Paragraph 20, General Comment No. 4 on the African Charter on Human and Peoples’ Rights titled: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment, provides:

20. This General Comment uses a non-exhaustive list of grounds of discrimination. These include race, colour, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin, gender, sexual orientation, gender identity, disability (including psychosocial and intellectual disability), health status, economic or indigenous status, reason for which one is detained (including accusations of political offences or terrorist acts), asylum-seekers, refugees or others under international protection, or any other status or adverse distinction...¹⁹²

Logically, the above provision being a construction of the African Commission signifies that the provisions on discrimination contained in the ACHPR and the Nigerian version – the ACHPRA – can be interpreted to apply and enforce rights for PWDs, including WWDs. The only specific reference to PWDs in the ACHPRA is found in Article 18(4). It states: “the aged and the

¹⁹¹ Article 2, 3 ACHPRA.

¹⁹² Para 20 of the African Commission General Comment No. 4 on the African Charter on Human and Peoples’ Right: ‘The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment’ p. 6 available at https://www.achpr.org/public/Document/file/English/achpr_general_comment_no.4_english.pdf accessed 3 July 2021. Also see the ruling in *Purohit & Moore v. The Gambia* (2003) AHRLR 96 (ACHPR 2003).

disabled shall also have the right to special measures of protection in keeping with their physical and moral needs”. As noted in the previous chapter, the phrase ‘physical and moral needs’ is neither defined in the ACHPRA nor are ‘special measures’ explained. Article 15 of the ACHPRA is specifically relevant for promoting the right to work for all citizens.¹⁹³ It provides that: “Every individual shall have the right to work under equitable and satisfactory conditions and shall receive equal pay for equal work”.

Apart from the Constitution and the ACHPRA, Nigeria recently passed a federal disability law for promoting the rights of PWDs. The federal disability law is considered next.

(iii) Discrimination Against Persons with Disabilities (Prohibition) Act 2018

Although constitutional protection of PWDs is preferred, disability-specific instruments are also relevant to ensure protection for PWDs, in fulfilment of Article 4(1)(a) of the UN CRPD.¹⁹⁴ As indicated in chapter one, Nigeria’s federal disability law known as the Discrimination Against Persons with Disabilities (Prohibition) Act (DAPDA)¹⁹⁵ was enacted in 2018 after several years of activism championed by disability groups and human rights advocates in the nation. The DAPDA is the country’s first national disability law since Nigeria transited into a democratic regime.¹⁹⁶ Although WWDs form a part of this general disability group, men with disabilities are more likely to be major beneficiaries of disability legislation in Nigeria due to notoriety of patriarchy and harmful gender stereotyping prevalent in the Nigerian society.¹⁹⁷ Concerning disability discrimination, the DAPDA provides:

Part 1: Prohibition of Discrimination and Harmful Treatment

(1) A person with a disability shall not be discriminated against on grounds of his disability by any person or institution in any manner or circumstance whatsoever

Penalty

(2) A person who contravenes subsection (1) commits an offence and is liable to conviction if the person is:

(a) A body corporate, a fine of N100,000,000 and

(b) An individual, a fine of N100,000 or six months imprisonment or both

¹⁹³ Article 15 ACHPRA also lists other protected socio-economic rights of citizens.

¹⁹⁴ Article 4(1)(a) provides that states parties undertake: “To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention....”

¹⁹⁵ Discrimination Against Persons with Disabilities (Prohibition) Act 2018.

¹⁹⁶ The first disability law that was passed in Nigeria was the Nigerians with Disabilities Decree 1993, during the military regime.

¹⁹⁷ Adejugbe Adeyinka and Adejugbe Adedolapo ‘Women and Discrimination in the Workplace: A Nigerian Perspective’ (August 20, 2018) available at SSRN: <https://ssrn.com/abstract=3244971> or <http://dx.doi.org/10.2139/ssrn.3244971> accessed 20 June 2020.

(3) Notwithstanding the prosecution or otherwise of any person for any offence under this Law the person against whom any crime or wrong is committed may maintain a civil action against any such person committing the offence or causing the injury, without prejudice to any conviction or acquittal.

Sections 27 and 28 contain provisions concerning employment for PWDs as follows:

27. (1) Persons with disabilities shall have the right to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open.
(2) A person in breach of this section shall be liable on conviction to nominal damages of a minimum of N250,000.00 payable to the affected person with disability.
(3) Where a company is in breach of this section-
(a) the company shall be liable to nominal damages of a minimum of N500,000 payable to the affected person with a disability; and
(b) any principal officer of the company involved in the violation shall be liable to N50,000 damages payable to the affected person with a disability.
28. All employers of labour in public shall as much as possible have persons with disabilities constituting at least 5% of their employment.

The above wordings of the DAPDA present as gender neutral. A model approach would have been to prohibit disability discrimination based on sexual grounds, that is, recognizing that WWDs experience intersectional or multiple discrimination, at least. Article 4(1)(b) of the UN CRPD obligates state parties to “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities”. Also, there is no provision in the DAPDA to abolish customs and practices that are harmful to PWDs, particularly WWDs, in Nigeria. The requirement of gender perspectives in Article 6(1)(2) of the UN CRPD discussed in chapter three cannot be fulfilled by merely stating that all PWDs in general are equally entitled to certain rights, particularly in Nigeria, where WWDs are rendered almost invisible due to patriarchy. As will be recommended in the next chapter, the DAPDA requires an amendment to reflect gender perspectives for WWDs, in compliance with the mandate of the UN CRPD.¹⁹⁸ Another recommendation elaborated in the next chapter, is to create

¹⁹⁸ Article 6 of the UN CRPD on Women with Disabilities provides that:

“1. States Parties recognize that women and girls with disabilities are subject to multiple discriminations, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention”.

separate policies that specifically empower WWDs in public service and open labour market such as affirmative action measures.¹⁹⁹

The disability law of Lagos State of Nigeria, which is the first state disability law to be enacted in Nigeria, is better worded than the DAPDA in terms of expressly acknowledging WWDs as separate from men with disabilities. The provisions of the state law are examined next.

(iv) Special People's Law (Lagos State) 2011

The Lagos State Special Peoples' Law (SPL) is the first state disability law to be enacted in Nigeria. The SPL was enacted in 2011, five years after the UN CRPD came into existence and seven years before the enactment of the DAPDA.²⁰⁰ A few of its provisions can be regarded as more progressive than the DAPDA particularly as regards express recognition and protection for WWDs. Section 26 of the SPL generally provides:

26. Prohibition from Discrimination and Harmful Treatment

(1) A person living with disability shall not be discriminated against on the ground of his or *her* disability by any person or institution in any manner or circumstances whatsoever.²⁰¹

(2) A person living with disability shall not be subjected to prejudice or harmful practices, including those based on *sex*, work, age or tradition in any area of life.²⁰²

(3) Persons living with disability shall have the rights to sue any individual, corporate body or Government and its agencies for damages in the event of the violation of their fundamental rights.

(4) Government shall be required to provide free legal aids without condition to persons living with disability through the Office of the Public Defender ("OPD") when required.²⁰³

The SPL is clearly worded to better conform to the UN CRPD requirements for prohibiting discrimination and harmful treatment of WWDs living within Lagos state of Nigeria. Subsection 1 above proscribes discrimination due to "his or her disability..." while subsection 2 among other grounds, explicitly prohibits discrimination due to "sex" and "tradition", two significant grounds of discrimination against WWDs in Nigeria, thereby substantially complying with Article 6(1)(2) of the UN CRPD. The SPL can be deemed to recognize the intersection between gender and

¹⁹⁹ South Africa has no statutory Act dedicated to persons with disabilities. Instead, South Africa has an Integrated National Disability Strategy which recognizes WWDs and an Employment Equity Act which provides employment assistance for black people, women and PWDs through affirmative action; See generally, Chapter III of the Employment Equity Act (No. 55) of 1998.

²⁰⁰ Special People's Law (Lagos State) 2011. The bill was signed into Law on 24 November 2011 by the then Governor of Lagos State, Mr. Babatunde Raji Fashola.

²⁰¹ Emphasis mine.

²⁰² Emphasis mine.

²⁰³ Emphasis mine.

disability, among other intersecting grounds of discrimination. Importantly, subsection 3 of the SPL grants PWDs (and WWDs) the right to sue for violation of all their human rights, including the right to the opportunity to gain a living, while subsection 4 assures free legal aid for PWDs, for as often as they may require. The provisions in Section 34 SPL specifically promote the right to work as follows:

34. Right to Work and Employment

(1) Persons living with disability shall have the right to work on an equal basis with others, this includes the right to the opportunity to gain a living by working freely in a chosen or accepted labour market and work environment.

(2) An employer or his agent or purported agent shall not discriminate against a person living with disability in any manner whatsoever but not limited to:

(a) job application procedure;

(b) the terms and conditions of employment;

(c) denying the employee access or limiting the employee's access to opportunity for promotion, advancement, transfer or training, or to any other benefit associated with employment;

(d) on-the job training;

(e) accommodation, where applicable;

(f) employee compensation;

(g) dismissal mainly on the ground of disability; or

(h) subjecting the employee to any other detriment.

(3) A person or corporate body shall not subject a person living with disability to slavery/servitude, forced or compulsory labour or undue disadvantages in any form except by an order of Court.

(4) Any person in breach of subsection (3) commits an offence and is liable to a fine of One Hundred Thousand Naira (N100,000.00) or maximum imprisonment of three (3) months or both, while any corporate in breach commits an offence and is liable to a fine of Five Hundred Thousand Naira (N500,000.00) as damages to the affected person with disability.

(5) All employers of labour employing up to one hundred (100) persons shall reserve at least 1% of such workforce for qualified persons living with disability.

(6) (a) Government shall take steps to ensure the self-reliance of persons living with disability and accordingly give adequate assistance to persons living with disability who desire to be employed.

(b) Government may set up vocational training institutions to facilitate the acquisition of special skills by persons living with disability.

(7) No employee shall be relieved of his employment on the ground of disability sustained during his employment.

From the provisions above, the wordings of the SPL appears more detailed than the DAPDA and is the first legislative attempt at recognizing the intersection arising from gender and disability in Nigeria, as required by Article 6(1)-(2) of the UN CRPD.²⁰⁴ It is also commendable that a state

²⁰⁴ The deliberate inclusion of the word "her" is clearly suggestive of WWDs.

law can, apart from guaranteeing the right to work, proscribe employers from discriminatory practices at all stages of employment (from recruitment to termination), in fulfilment of Article 27 of the UN CRPD.²⁰⁵

Both the DAPDA and the SPL penalize employment discrimination against PWDs.²⁰⁶ Furthermore, both laws embrace the quota system to realize employment for PWDs in accordance with the UN CRPD. DAPDA stipulates 5 per cent quota reservation for PWDs in public sector employment, while the SPL requires “all employers” having up to one hundred workers to reserve one per cent of the workforce for PWDs.²⁰⁷ In that regard, “all employers” in the SPL would include both public and private sector employers and is preferable than the DAPDA quota reservation which is limited to “public sector” employers only.

Both DAPDA and SPL each establish an agency to monitor implementation.²⁰⁸ But realistically, the DAPDA and SPL are rarely implemented for PWDs, including WWDs, in Nigeria despite several calls and agitations for its implementation.²⁰⁹ The Nigerian environment is majorly unresponsive to the employment needs of PWDs.²¹⁰ Specifically, there is a need to include gender dimensions in DAPDA for effective implementation, to properly guarantee the right to work, among all other human rights to PWDs with consideration for WWDs, as required by section 6 of the UN CRPD.

The SPL still applies in Lagos State, with direct relevance for WWDs, from the wordings discussed above. However, where the provisions of the Lagos State SPL conflict with any of the provisions in the DAPDA (which is a federal law), the provisions of the latter will prevail but only

²⁰⁵ Section 26(2)(a)-(g).

²⁰⁶ Section 27 DAPDA and Section 34 SPL.

²⁰⁷ Section 28 of DAPDA 2018, section 34(5) of the SPL (Lagos State).

²⁰⁸ DAPDA establishes the National Commission for Persons with Disabilities (NCPWD) while SPL establishes the Lagos State Office for Disability Affairs (LASODA).

²⁰⁹ Matthew Ogune ‘EU to FG: Disability Law a Waste without Implementation’ *The Guardian* 17 October, 2021 available at <https://guardian.ng/news/eu-to-fg-disability-law-a-waste-without-implementation/> accessed 10 April 2022. Uli Aliogo ‘NGO Tasks FG on Implementation of Disability Law’ *ThisDayLive* 26 April, 2021 available at <https://www.thisdaylive.com/index.php/2021/04/26/ngo-tasks-fg-on-implementation-of-disability-law/> accessed 10 April 2022. Adeola Tukur ‘Implement 5 percent Employment Quota in Disability Act – IFA Tasks FG’ *Blue Print*, 24 November 2021 available at <https://www.blueprint.ng/implement-5-percent-employment-quota-in-disability-act-others-ifa-tasks-fg/> accessed 10 April 2022.

²¹⁰ For instance, most public buildings and employment spaces are largely inaccessible to PWDs; and there are no vital assistive facilities to properly accommodate the mobility needs of PWDs, as indicated in chapter two. Chibuike Nwachukwu ‘Group decries Poor Implementation of Lagos State Special Peoples’ Law’ *The Guardian* 11 September, 2018 available at <https://guardian.ng/features/law/group-decries-poor-implementation-of-lagos-special-peoples-law/> accessed 13 April 2021.

to the extent of the inconsistency.²¹¹ This means that the DAPDA does not entirely void state disability laws; rather, it cancels or supersedes only those portions that are at variance with it. All other provisions of the SPL which are at par or consistent with the provisions of the DAPDA remain valid and enforceable with regard to PWDs, including WWDs.

Good legislative practices exist, which import the intent of the UN CRPD in clearer and more explicit terms for WWDs. An example is Article 4 of India's Rights of Persons with Disabilities Act 2016²¹² which recognizes and protects WWDs by placing responsibility on the government to "take measures to ensure that the women and children with disabilities enjoy their rights equally with others". Although the implementation of the Persons with Disabilities Act of India for WWDs is rather slow, the employment status of Indian WWDs has not only been highlighted but also has registered significant improvement.²¹³

Nigeria's federal employment law is considered in the next section.

(v) Labour Act 2004

Employment laws can also be utilized for realizing the rights of WWDs. The Labour Act²¹⁴ is the principal workers' legislation for regulating employment issues and relationships in Nigeria. However, its application extends to employees engaged under a contract of labour or clerical work in both the private and the public sectors.²¹⁵ The Act comprises four sections. Part I deals with general provisions relating to the protection of wages, contracts of employment and terms and conditions of employment. Part II relates to the process of recruiting workers generally, while Part III concerns miscellaneous provisions. Special employment conditions for women are included in

²¹¹ Section 8 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

²¹² The Rights of Persons with Disabilities Act No. 49 of 2016 replaced the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act of 1995.

²¹³ Renu Addlakha 'Slow Progress for Women with Disabilities in India' (2022) 121(834) *Current History* p. 129–34. National Commission for Women, Government of India 'Employment Rights of Disabled Women in India: A Study of Compliance and Impact of the Persons with Disabilities Act with Special Reference to UP, Rajasthan, Bihar, Maharashtra and Tamilnadu' available at http://ncwapps.nic.in/pdfReports/EMPLOYMENT_RIGHTS_OF_DISABLED_WOMEN.pdf accessed 9 April 2022.

²¹⁴ Labour Act Cap L1 Laws of the Federation of Nigeria 2004.

²¹⁵ Section 91(1)(e) defines the term worker to include who are generally employees who perform manual labour or clerical work"; and "Employees" who perform administrative, executive, technical or professional functions (referred to as "Non-Workers").

Part III as regards maternity,²¹⁶ working nights²¹⁷ or working underground (mining).²¹⁸ Lastly, Part IV of the Labour Act is the supplementary section that mandates employers to keep records and returns indicating compliance with the provisions of the Act.

Nigeria's Labour Act contains no provisions prohibiting discrimination either due to gender or disability.²¹⁹ In other words, the intersection between gender and disability is completely absent from the provisions of the Act. DAPDA, as discussed above, has impliedly plugged the gap concerning PWDs by promoting and safeguarding the right to employment for PWDs albeit without gender-specific provisions (to cover WWDs). Additionally, as expressed in chapter four, the ratified labour standards prohibit discrimination due to gender or disability and are directly applicable in the field. However, the Labour Act, being a federal employment law, can be amended to incorporate specific provisions that promote employment for WWDs such as Affirmative Action measures. For instance, South Africa has no disability-specific law but the Employment Equity Act²²⁰ provides employment assistance for black people, women and PWDs through affirmative action as designated groups.²²¹ There is a pending Labour Act (Amendment) Bill²²² which proposes to amend certain sections of the Labour Act 2004. The bill also aims to expunge the provisions that are discriminatory towards women, as discussed in chapter two.²²³ The bill scaled through second reading at the Senate in 2016 and progressed to the Committee stage.²²⁴ As of 2023 the Committee is yet to report on the bill and there are no further updates.²²⁵

The next section examines the Gender and Equal Opportunities Bill and whether its provisions are useful to realize employment for WWDs.

²¹⁶ Section 54, *supra* note 86.

²¹⁷ This does not apply to women employed as nurses in any public or private industrial undertaking or in any agricultural undertaking, nor to women holding responsible positions of management who are not ordinarily engaged in manual labour. Section 55(2) of the Labour Act.

²¹⁸ Section 55-56, *ibid*.

²¹⁹ Section 7 and 8 of the Employment and Labour Relations Act of Tanzania prohibits both direct and indirect discrimination on all grounds including sex and disability; Section 6(3) Employment Law of Uganda 2006. Further, the Ugandan Law establishes a labour advisory board consisting of one representative of PWDs.

²²⁰ Employment Equity Act No. 55 of 1998 (South Africa).

²²¹ Generally, Chapter III, *ibid*.

²²² Labour Act 2004 (Amendment) Bill 2016.

²²³ Section 55-58 of the Labour Act, Cap L1 LFN 2004.

²²⁴ The bill was referred to the House Committee on Labour, Employment and Productivity for further legislative work after the second reading.

²²⁵ Eghosa Ekhatior 'Protection and Promotion of Women's Rights in Nigeria: Constraints and Prospects' in Michael Addaney (ed) *Women and Minority Rights Law: African Approaches and Perspectives to Inclusive Development* (Eleven International Publishing, Netherlands 2019).

(vi) Gender and Equal Opportunity Bill 2011

The Gender and Equal Opportunity Bill (GEO)²²⁶ aims to accord women equal rights with those of men, including in the aspect of employment.²²⁷ The GEO draws its existence from the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Protocol to the African Charter on Human and Peoples' Rights on Rights of Women in Africa (Maputo Protocol), National Gender Policy and the Nigerian Constitution.²²⁸ The GEO bill has failed thrice in the Nigerian Senate due to opposition from members, particularly those representing the Northern states of Nigeria (comprising predominantly Muslims) due to religion and ethnicity.²²⁹ In addition to the religious and ethnic reasons adduced by the senators, the rejection of the GEO Bill is also impliedly influenced by notorious patriarchal privilege prevalent in the Nigerian society where men are viewed as superior to women and in control of every aspect of society.²³⁰

During the last debate on the floor of the Senate, it was recommended that the word "equality" should be replaced with "equity" in the title of the Bill.²³¹ In summary, the reasons advanced on the floor of the house, for rejecting the GEO Bill include: to enable other senators to read through it properly; for wider consultations to be made; and to address all the issues raised before its passage.²³² Meanwhile, five states in Nigeria namely, Ekiti, Imo, Anambra, Plateau, and

²²⁶ Gender and Equal Opportunities Bill (S.B 116) 2016.

²²⁷ The bill was introduced thrice in the National Assembly in 2011, 2016 and 2020 but failed.

²²⁸ Damilola Taiye Agbalajobi and Leke Abraham Oluwalogbon 'The Nigerian Senate and the Politics of Non-Passage of the Gender Equality Bill' (April 2019) 13(3) *African Journal of Political Science and International Relations* p. 20.

²²⁹ Henry Umoru and Joseph Erunke 'Northern Senators Reject Bill on Gender Equality' *Vanguard Newspaper* 16 March, 2016 available at <https://www.vanguardngr.com/2016/03/senate-throws-out-bill-on-gender-equality/> accessed 2 October 2019.

²³⁰ *supra* note 97, p. 21.

²³¹ Samson Toromade 'Senators Block Gender and Equal Opportunities Bill Because Islam Doesn't Support It' *Pulse News*, 15 December, 2021 available at <https://www.pulse.ng/news/politics/senators-block-gender-and-equal-opportunities-bill-because-of-islam/kv45t40> accessed 10 April 2022. Senators Gyang Istifanus Dung (Plateau North - PDP), Eyakenyi Akon Etim (Akwa Ibom South - PDP), Ovie Omo-Agege (Delta Central - APC), Ajibola Bashiru (Osun Central - APC), James Manager (Delta South - PDP), and Remi Tinubu (Lagos Central - APC) all supported the bill while Senator Yusuf Abubakir Yusuf stated: "I will not support the passage of this until the word 'equal' is removed. If we now have debate on the gender opportunities bill, fine. But when you bring equality into it, it infringes into the practice of Islamic religion." His view was supported by Senator Aliyu Wammako (Sokoto North - APC) and several other senators. Eventually, the Bill was stepped down.

²³² *Ibid*.

Kogi states, have enacted GEO state laws which is in force in the respective states.²³³ These state laws promote equal rights of inheritance for women, equality of all persons and prohibits all forms of gender-based discriminations in the respective states.

Nigerian legislation also provides compensation for workers who sustain injuries or disability, and compensation to the dependents of workers who die in the course of employment. The relevant Act is examined next.

(vii) Employees Compensation (Amendment) Act 2011

The Employees Compensation Act (ECA) of the Federal Republic of Nigeria²³⁴ repeals the Workmen's Compensation Act.²³⁵ Pursuant to the ECA, workers in the public and private sectors are entitled to equitable and fair compensation for injuries, diseases, death (beneficial to dependents) and disabilities arising from accidents that occur in the course of employment.²³⁶ It also contains provisions for rehabilitating employees who have work-related disabilities.²³⁷ The ECA establishes the Nigeria Social Insurance Trust Fund (NSITF) Management Board, a body responsible for computing the amount of compensation to be paid out to employees or their dependents (in case the worker becomes deceased).²³⁸

As is common, the implementation of laws and policies in Nigeria is generally poor.²³⁹ The provisions of the ECA are seldom put into practice for the relevant workers, including workers with disabilities.²⁴⁰ The ECA makes it mandatory for employers of labour to register with NSITF to enable their employees or their dependents to get compensation for any injury, disease, disability or death arising out of their employment, but unfortunately many employers are yet to do so.²⁴¹ Another reason for poor implementation is because the majority of workers are unaware of the

²³³ The National Coalition on Affirmative Action ensured the passage of GEO Law in Ekiti, Imo and Kogi States of Nigeria. CIRDOC Nigeria 'The Genesis of the Gender and Equal Opportunities Bill: The Birth of the National Coalition On Affirmative Action (NCAA), now the Affirmative Action Initiative for Women, and the Genesis of the Gender and Equal Opportunities Bill' available at <https://cirddoc.org/the-genesis-of-the-gender-and-equal-opportunities-bill/> accessed 14 April 2022.

²³⁴ Employees Compensation Act 2011.

²³⁵ Employees Compensation Act 2011 repealed the Workmen's Compensation Act Cap W6 L.F.N 2004.

²³⁶ Part 1, *ibid*.

²³⁷ Section 1 (b) of the Employees Compensation Act (ECA), *ibid*.

²³⁸ The NSITF is established pursuant to Section 2(2) of the ECA, *ibid*.

²³⁹ Omoro Joseph Oke and Okaka Emmanuel Obukovwo 'Evaluation of the Implementation of Employees Compensation (Amendment) Act of 2011 of Nigeria' (June 2016) 11 *International Journal of Development and Management Review (INJODEMAR)* pp. 189-90

²⁴⁰ *Ibid*.

²⁴¹ *Ibid* p. 188.

existence of the compensation scheme, and as such, hardly know how to take advantage of its provisions when the need arises.²⁴² The NSITF needs to do more to better implement the provisions of the ECA. Some recommendations for a better implementation include: recruiting more manpower into the NSITF, updating the record of employers in Nigeria, embarking on awareness/sensitization campaigns, and proper management of funds.²⁴³ Aggrieved parties or their dependents can then sue to enforce payment of compensation at the National Industrial Court.

(viii) Ratified ILO treaties, and international labour best practices

As earlier stated in 4.8 of chapter four, the Constitution of the Federal Republic of Nigeria 1999 as amended by the Third Alteration Act²⁴⁴ grants the National Industrial Court in Nigeria exclusive jurisdiction to deliberate on matters or issues arising from the application of any labour-related international convention, treaty or protocol ratified in Nigeria.²⁴⁵ The amendment also permits the NICN to deal with matters relating to unfair labour practices and to implement international best practices upon proof of their existence.²⁴⁶ Since the ILO Conventions and recommendations can be directly applied in Nigeria, they can be regarded as source of law in the Nigerian labour system.

The next section analyses Nigeria's gender, education, and employment policies to determine whether provisions exist which can be utilized to achieve equal employment for WWDs.

6.4 Policy Framework in Nigeria

By Article 4(c) of the UN CRPD, states parties are obliged to: "take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes". In fulfilling this obligation, Article 6(1)(2) of the UN CRPD which requires gender consideration for women and girls with disabilities must be adhered to. Nigeria has formulated several policies particularly on gender, education, and employment, most of which fail to reflect gender aspects of disability. The policies to be considered in this section are: the National Gender Policy;²⁴⁷ National

²⁴² Ibid.

²⁴³ Ibid p. 195.

²⁴⁴ The 1999 Constitution of the Federal Republic of Nigeria (as amended by the Third Alteration Act, 2010).

²⁴⁵ Section 254 (C) (2) *ibid*.

²⁴⁶ Section 254(C)(1)(f) *ibid*.

²⁴⁷ National Gender Policy 2006.

Policy on Education;²⁴⁸ National Policy on Special Needs Education;²⁴⁹ National Policy on Inclusive Education;²⁵⁰ and the National Employment Policy.²⁵¹

(i) National Gender Policy 2006

The lead federal government agency responsible for handling disability issues in Nigeria namely, the Ministry of Women Affairs and Social Development (MWASD) formulated a National Gender Policy in 2006, which recognizes the developmental challenges experienced by women in Nigeria due to patriarchal norms, harmful traditional practices and negative stereotypes.²⁵² The National Gender Policy (NGP) expressly seeks to include 35 per cent of women into politics in Nigeria, through affirmative action (AA).²⁵³ Based on this provision, WWDs have requested for five per cent out of the 35 per cent allocated to women.²⁵⁴ The NGP references the intersection between gender and disability, but only in terms of setting a target to eliminate discriminatory and abusive employment practices for women by 2015.²⁵⁵ Objective 4, Target 1 of the NGP developed by the MWASD reads:

...Target 1: [to] Achieve equity and equality in employment opportunities and eliminate all discriminatory and abusive practices (on the ground of sex, ethnicity, class, religion, age, *disability*, or marital status) against the employment of women in the economy by 2015.²⁵⁶

Despite the above provision, existing interventions on inclusion of women have not adequately addressed the concerns of WWDs in Nigeria. This is basically due to inadequate information about the situation of WWDs influenced by the intersection between gender and disability, which affects the planning, implementation and monitoring of women's initiatives from the perspective of disability. The NGP has failed to achieve the 35 per cent AA in politics; and the above target has

²⁴⁸ National Policy on Education 2004.

²⁴⁹ National Policy on Special Needs Education 2015.

²⁵⁰ National Policy on Inclusive Education 2017.

²⁵¹ National Employment Policy 2017.

²⁵² Stephanie Ortoleva and Patience Dickson et al., NGO Submission to the CEDAW Committee Pre-Sessional Working Group for Nigeria October 2016.

²⁵³ National Gender Policy Strategic Framework (Implementation Plan) Federal Republic of Nigeria (2008-2013) created in August 2008 available at <http://extwprlegs1.fao.org/docs/pdf/nig151427.pdf> accessed 26 August 2019.

²⁵⁴ John Akubo 'Disabled Women Demand 5% of 35% of Affirmative Action' *The Guardian*, 7 December 2020 available at <https://guardian.ng/news/disabled-women-demand-5-of-35-affirmative-action/> accessed 3 November 2021.

²⁵⁵ The Ministry is still very far from achieving that target as of 2022 from all current indications.

²⁵⁶ Emphasis mine.

not been realized for women, years after the targeted year 2015.²⁵⁷ Currently, only about six per cent of women are represented in both elective and appointive positions in Nigeria.²⁵⁸ The NGP has been described as “mere beauty on paper”, particularly as regards implementation.²⁵⁹ The NGP, as a women’s policy, ought to “expressly” recognize and promote the economic rights of WWDs. A revised gender policy (2021-2026) has recently been approved by the Federal Executive Council in Nigeria.²⁶⁰ At the time of writing this thesis, the new NGP has not been published to the public gazette. It is hoped that the new NGP takes cognizance of the aspirations of WWDs, particularly as it relates to their right to education and employment.

Nigeria is ripe for a women’s law to recognize and enforce equal rights for women. Instead of a gender policy, it is recommended that the GEO Bill should incorporate inclusion for WWDs in all aspects before passage into law. For instance, Gambia has a Women’s Act which explicitly promotes the rights of WWDs in politics, education employment, among other aspects of inclusion in society.²⁶¹

The next three sections examine Nigeria’s existing policies on education to determine how relevant they are for PWDs, and particularly women and girls with disabilities. As indicated in chapter three, education is important to realize employment participation for WWDs.

(ii) National Policy on Education 2004

As indicated in 3.4 of chapter three, the right to education is closely linked with the right to employment. In Nigeria, formulation of educational policies is the concurrent mandate of the federal and state governments.²⁶² Access to education will improve the labour value of women and

²⁵⁷ The Guardian Editorial ‘Time to Implement National Gender Policy’ *The Guardian*, 22 March 2020 available at <https://guardian.ng/opinion/time-to-implement-national-gender-policy/> accessed 3 April 2021.

²⁵⁸ Vanguard News ‘Only 6% Women Active in Nigerian Politics’ *Vanguard News* 2022 available at <https://www.vanguardngr.com/2022/06/only-6-women-active-in-nigerian-politics-report/> accessed 3 June 2022.

²⁵⁹ Ibid.

²⁶⁰ Anthony Ailemen ‘FEC Approves New Gender Policy’ *The Guardian* 3 March, 2022 available at <https://businessday.ng/news/article/fec-approves-new-national-gender-policy-2021-2026/> accessed 11 April 2022.

²⁶¹ Article 54, Women’s Law of Gambia 2010 states:

“The government shall take appropriate measures to: (a) ensure the protection of women with disabilities and take specific measures commensurate with their physical, economic and social needs to facilitate their access to employment, professional and vocational training, as well as their participation in decision-making; and (b) ensure the right of women with disabilities to freedom from violence, including sexual abuse, discrimination based on disability and the rights to be treated with dignity”.

²⁶² Education is an item in the concurrent legislative list of the Constitution of the Federal Republic of Nigeria 2004.

girls with disabilities and equal their ability to compete in the open labour market.²⁶³ Hence, Nigeria's National Policy on Education (NPE) includes special education for PWDs such as "physical, visual, hearing, mental, emotional, social, speech, learning and multiple impairments".²⁶⁴

The policy emphasizes the establishment of special schools for different categories of PWDs, with such schools named after a specific type of disability.²⁶⁵ Few special schools "for the blind", "for the deaf and dumb", "for the physically handicapped" were scattered across states in Nigeria pursuant to the NPE.²⁶⁶ But these special schools for learners with disabilities fall short of inclusive education.²⁶⁷ As noted in chapter three, the internationally approved modern standard of mainstreaming PWDs is now through "inclusive education" which connotes teaching learners with disabilities and those without disabilities in the same classroom with the necessary learning aids for learners with disabilities. The establishment of special schools for learners with disabilities separates PWDs, including women and girls with disabilities, from those without disabilities thereby defeating the purpose of inclusive education.

Specifically, the NPE contains no special measures recognizing the intersection between gender and disability, and therefore does not address the educational barriers it poses for women and girls with disabilities.

(iii) National Policy on Special Needs Education 2015

By 2015, the Federal Ministry of Education initiated and formulated the National Policy on Special Needs Education (NPSNE) with the aim to achieve equal education for all children regardless of their physical, mental, and emotional state.²⁶⁸ In terms of Paragraph 4.0 of the NPSNE, federal and state governments are obligated to ensure that all necessary training, facilities and equipment that

²⁶³ Children with disabilities are entitled to free and inclusive education without discrimination up to secondary school level pursuant to section 17-18 of Nigeria's federal disability law.

²⁶⁴ National Policy on Education (Sixth Edition) available at <https://education.gov.ng/wp-content/uploads/2020/06/NATIONAL-POLICY-ON-EDUCATION.pdf> accessed 15 December 2020.

²⁶⁵ Adetoro Rasheed 'Inclusive Education in Nigeria, a Myth or a Reality?' (2014) 20(5) *Journal of Creative Education* pp. 1777-81 available at <http://www.scirp.org/journal/ce> <http://dx.doi.org/10.4236/ce.2014.520198> accessed 2 November 2021.

²⁶⁶ Ibid.

²⁶⁷ Section 52-56 of the National Policy on Education.

²⁶⁸ National Policy on Special Needs Education is available at <http://www.rodra.co.za/images/countries/nigeria/policy/National%20Policy%20on%20Special%20Needs%20Education.pdf> accessed 12 October 2021. Garuba A 'Inclusive education in the 21st century: Challenges and opportunities for Nigeria' (2003) 14(2) *Asia Pacific Disability Rehabilitation Journal* pp. 191-200.

promote easy access and implementation of special needs education programme and services are put in place for all categories of children with disabilities.²⁶⁹ Although the provisions in the NPSNE are detailed and well-meaning for Nigerian children with disabilities, the present practices are not fully consistent with existing global practice, and poorly impact on children with special needs.²⁷⁰ Particularly, the NPSNE fails to recognize the intersection of gender and disability and does not make provision for special measures to promote equal education accessibility for women and girls with disabilities.

The next section is centred on a policy that seeks to promote inclusion for children with disabilities in conformity with internationally approved inclusive education standards.

(iv) National Policy on Inclusive Education 2017

Pursuant to the provisions of the UN CRPD requirement in Article 24, discussed 3.4(ii) of Chapter three, all regular schools must be inclusive of and made accessible to learners with or without disabilities. Nigeria adopted the National Policy on Inclusive Education (NPIE)²⁷¹ to harmonize and create a unified system of education that involves accommodating both children with and without disabilities in regular classrooms.²⁷² As also mentioned in chapter three, inclusive education is important for mainstreaming women and girls with disabilities into decent open employment. A few states in Nigeria, including Kaduna, Kwara, Lagos, Enugu and Jigawa domesticated the NPIE and are currently practicing inclusive education.²⁷³ Furthermore, Lagos and Enugu states have established new schools comprising children with and without disabilities with intervention funds donated by international partners.²⁷⁴

Similar to the NPE discussed immediately above, there are no provisions for ensuring equal access to education for women and girls with disabilities in the NPIE. Some of the challenges of

²⁶⁹ National Policy on Special Needs Education 2015 available at https://planipolis.iiep.unesco.org/sites/planipolis/files/ressources/nigeria_special_needs_policy.pdf accessed 29 September 2019. The categories of disabilities detailed by the National Policy on Special Needs Education include: visual impairment; hearing impairment; speech and language disorders; physical and health impairment; mental retardation; Behavioural Disorders; Learning disabilities; multiple impairment and albinism.

²⁷⁰ Adebisi R O, Jerry J E and Rasaki S A 'Barriers to Special Needs Education in Nigeria' (2014) 2(11) *IJER* p. 455.

²⁷¹ The Federal Ministry of Education formulated the National Policy on Inclusive Education in 2017.

²⁷² Inclusive education is explained in 3.4(ii) of chapter three.

²⁷³ UNESCO Report on Nigeria, Inclusion (30 July 2021) available at <https://education-profiles.org/sub-saharan-africa/nigeria/~inclusion> accessed 3 August 2021.

²⁷⁴ *Ibid.*

achieving modern inclusive education for PWDs in regular schools generally include: Inadequate funding, lack of qualified tutors, inaccessibility, lack of cooperation, and stigmatization, among other challenges.²⁷⁵ Also, there are no effective monitoring schemes to ensure that the NPIE requirements are properly implemented in regular schools.²⁷⁶ Proper and equal implementation specifically for women and girls with disabilities will combat discrimination, promote equal educational opportunities and enhance their employability.²⁷⁷

Nigeria further has a national policy on employment which will be analysed in the next section to ascertain whether any of its provisions bear relevance on promoting the right to work for WWDs.

(v) National Employment Policy 2017

The ILO Vocational Rehabilitation and Employment (Disabled Person) Convention²⁷⁸ requires that national employment policies (NEP) incorporate provisions for inclusion of PWDs in employment.²⁷⁹ The National Employment Policy (NEP) was formulated to strategically create the “enabling environment for productive and employment-intensive growth in Nigeria”.²⁸⁰ In addition, the NEP aims at tackling the issue of unemployment in Nigeria through the promotion of job creation, decent work in observance of international labour standards, social protection and workers’ fundamental rights.²⁸¹ Although the NEP contains no express mention of WWDs, it contains provisions relevant to women and PWDs separately. One of the primary objectives of reviewing the NEP in 2017 was to ensure greater participation of women in the Nigerian workforce through financial assistance, tax incentives and other affirmative action measures.²⁸² These measures are extensively discussed in chapter six. In specifically recognizing the right of PWDs to work, the NEP also seeks:

²⁷⁵ Dr. Dorcas Oluremi Fareo ‘Prospects and Challenges of Inclusion of Children with Disabilities into Regular School Setting in Nigeria’ (2020) 5(6) *Saudi Journal of Humanities and Social Sciences* pp. 269-73.

²⁷⁶ Maimuna Suleiman Isah ‘Inclusive Education in Nigeria: The Way Forward’ (2014) 2(1) *National Journal of Inclusive Education* pp. 35-9.

²⁷⁷ Ibid.

²⁷⁸ ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention (No 159) of 1983. This ILO Convention has already been examined in chapter four.

²⁷⁹ Article 2-4, *ibid*.

²⁸⁰ Section 3 National Employment Policy of Nigeria available at <https://drive.google.com/file/d/1j2uLX0Pq-iVxKHZTXli6dvYnPXcJPB3h/view> accessed 3 November 2020.

²⁸¹ Ibid.

²⁸² Item 4.7.3, Objective 1 Ibid p.37.

[T]o ensure the full employability of Nigerians with disability generally; removing all forms of discrimination against PWDs; provide them access to inclusive educational and vocational training as demanded by the labour market to enable integration in the country's public workforce.²⁸³

From the above provision, the NEP promotes inclusive education for PWDs to enable and equip them to compete for jobs in the open labour market. Also, the NEP tasks government to explore avenues such as job/career fairs, improve accessibility, tax incentives, development of reliable statistical data for PWDs, including WWDs, to enable them participate effectively in the national workforce.²⁸⁴ Pursuant to the objective of achieving education and employment, the Federal Government of Nigeria, through the Ministry of Women Affairs and Social Development, developed a “Strategic Results Framework” designed for successfully implementing the NEP.²⁸⁵ One of the core strategies for WWDs under the framework is focused on strengthening the capacities of organizations of WWDs to engage in interactive forums affecting their rights and influence decision-making for equal access and empowerment.²⁸⁶ The NEP, though drafted with positive employment intent for PWDs, has little positive impact on the lives of women and WWDs since its formulation due to poor implementation.²⁸⁷

The laws and policies above require amendment to incorporate provisions which specifically address the education and employment discrimination of women and girls with

²⁸³ Item 4.7.4, Objective 1, *ibid* at p. 38.

“1.1 Government shall promote the mobility of PWDs by removing architectural barriers in all buildings and facilities constructed with government funding.

1.2. To promote the employability of PWDs through access to special transportation services for PWDs

1.3. Government shall establish vocational rehabilitation centres to develop and enhance the skills and potential of persons with disability.

1.4 Public and Private employers of labour shall provide PWDs employment flexibility and scheduling in other aspects of their work, giving them sufficient time to prepare for work, to travel and from work, and to deal with health concerns”.

²⁸⁴ Objective 1.3, *ibid*.

“3.1 Disability and Special Job Fairs shall be used to promote self-employment strategies and employment potential among PWDs in Nigeria.

3.2 Government shall improve the quality and availability of disability data and statistics in Nigeria, which is essential for the formulation of disability-sensitive development policies and programmes across the country. Such a database will also create easy access for potential employers to ensure easy job placements for PWDs.

3.3 Taxes of employees with disabilities shall be retained by the organization as an incentive to help in implementing their disability-friendly policies and programmes”.

²⁸⁵ National Gender Policy Strategic Framework (Implementation Plan) Federal Republic of Nigeria (2008-2013) created in August 2008 available at <http://extwprlegs1.fao.org/docs/pdf/nig151427.pdf> accessed 26 August 2019.

²⁸⁶ In order to achieve this, the Ministry set a time target of June 2010.

²⁸⁷ Nigerian Policies & Legislation on Women & Children: National Gender Policy 2006 (17 July 2020) available at Strategic Results Framework designed for successfully implementing the National Gender Policy, accessed 22 June 2020.

disabilities. The reflection of gender perspectives in the legislative framework examined above will substantially improve implementation for women and girls with disabilities and increase their employment participation.

The next section focuses on the institutional framework for labour, gender, and disability in Nigeria to ascertain whether any consideration for women and girls with disabilities exist in their functional activities.

6.5 Institutional framework

As discussed in chapter four, the UN CRPD mandates states parties to implement policies that guarantee the employment of PWD and in implementing such policies, gender considerations are compulsory.²⁸⁸ The agencies and institutions which are discussed in this section include: the Federal Ministry of Women Affairs and Social Development; Federal Ministry of Labour and Employment; Federal Ministry of Education; Federal Ministry of Information; Disabled Peoples' Organizations (DPOs) and Civil Society Organizations (CSOs); and Donors and International Partners.

(i) Federal Ministry of Women Affairs and Social Development

The Federal Ministry of Women Affairs and Social Development (MWASD) was first established as the National Commission for Women (NCW) in 1989.²⁸⁹ The NCW was established in response to the United Nations agreement to create institutional mechanisms for the advancement of Women and Women matters in Nigeria.²⁹⁰ The NCW became MWASD in 1995.²⁹¹ The institution is the lead federal government agency for handling disability affairs and operates via its head office situated in the Federal Capital Territory, Abuja, Nigeria with branch offices in the 36 states of the federation.²⁹²

The MWASD has as some of its mandates, to “advise government on gender and children issues, issues relating to PWDs and the aged, initiate policy guidelines and lead the process of

²⁸⁸ Article 6(1) UN CRPD.

²⁸⁹ The Ministry of Women Affairs and Social Development (formerly National Commission on Women) was established by Decree No. 30 of 1989 under Nigeria's military regime.

²⁹⁰ Federal Ministry of Women Affairs, Nigeria (Official Website) available at <https://www.womenaffairs.gov.ng/> accessed 3 November 2020.

²⁹¹ Ibid.

²⁹² The federal office is controlled by a minister while commissioners head the state ministries.

gender equality and mainstreaming at both the national and international levels”.²⁹³ As noted in chapter one, the MWASD has not measured up to its mandate concerning disability-related issues since its establishment.²⁹⁴ At best, with support from international bodies and Disabled People’s Organizations (DPOs), the MWASD organizes welfare-based assistance and vocational training activities for PWDs.²⁹⁵ Furthermore, the MWASD is yet to prioritize activities that address the issue of employment discrimination WWDs experience due to the intersection between gender and disabilities. As indicated in chapter one, a lot of the disability initiatives and programmes set up by the MWASD lack gender perspectives or are centred on informal vocational skill acquisition for WWDs. This is largely due to insufficient information and understanding of the peculiar vulnerability of WWDs which affects the planning, implementation and monitoring of gender initiatives and disability initiatives from the WWD lens, as required by the UN CRPD.

(ii) Federal Ministry of Employment, Labour and Productivity

The Ministry of Employment, Labour and Productivity is one of the oldest ministries in Nigeria.²⁹⁶ The Ministry is saddled with the responsibility to facilitate and promote peaceful, productive and harmonious industrial relations, safe and decent working environments and enhanced social security coverage for all Nigerians, including WWDs.²⁹⁷ Further, the Ministry’s overall functions are geared towards creating an enabling work environment for workers and fostering a cordial relationship between workers and employers in the public and private sectors of the Nigerian economy.²⁹⁸

The Minister of Labour is charged with the responsibility of implementing the provisions of the Nigerian Labour Act.²⁹⁹ Since the Labour Act in Nigeria contains no implementation measures relating to prohibiting discrimination against workers with disabilities, the labour ministry has no

²⁹³ Supra note 156.

²⁹⁴ Gbenga Ogundare ‘Women Affairs Ministry Spent N275 million on Non-Existing Rehabilitation Institutes for Persons Living with Disabilities’ International Centre for Investigative Reporting, 2020 available at <https://www.icirnigeria.org/women-affairs-ministry-spent-n275-million-on-non-existing-rehabilitation-institutes-for-persons-living-with-disabilities/> accessed 1 November 2021.

²⁹⁵ Ngozi C Umeh and Romola Adeola, Repository on Disability Rights in Africa (rodra): Country Report, Nigeria (2013)1 *ADRY, University of Pretoria* pp. 277-290.

²⁹⁶ The Federal Ministry of Labour and Productivity recently renamed Federal Ministry of Labour and Employment is one of the oldest Ministries in Nigeria. It began as a Department of Labour in the then colonial office in 1932 and developed into a full-fledged Ministry in 1952.

²⁹⁷ About the Ministry: Federal Ministry of Labour and Employment available at <https://labour.gov.ng/about-the-ministry/#:~:text=Mandate%3A,policies%20of%20the%20Federal%20Government> accessed 2 November 2020

²⁹⁸ Ibid.

²⁹⁹ Ibid.

responsibility pursuant to the Labour Act. However, the Minister of Labour has responsibility to review and implement the provisions of Nigeria's National Employment Policy (NEP) examined above. Part of the responsibilities of the Minister of Labour under the NEP is to collate disaggregated data on PWDs in order to ensure effective placement schemes for employment of all categories of PWDs, including WWDs.³⁰⁰ Presently, there is no reliable data on PWDs, particularly WWDs, in Nigeria, as stated in 3.4 of chapter o. Consequently, employment barriers for PWDs generally are insufficiently addressed.³⁰¹ The Ministry of Labour needs to deliver on its mandate in this regard.

(iii) Federal Ministry of Education

As earlier stated, in order to fully include WWDs in the open labour market and particularly in decent employment such as public service, education is important. Article 24 of the UN CRPD promotes the right to inclusive education for all categories of learners with disabilities. The Ministry of Education is established with responsibility to ensure standardized education in Nigeria.³⁰² Also, the Federal Ministry of Education both at national and state levels in Nigeria has concurrent powers to coordinate, organize and implement inclusive education for all children/adults with special needs in Nigeria.³⁰³ PWDs, including women and girls with disabilities are persons with special needs.³⁰⁴ In fulfilment of its responsibility, the Federal Ministry of Education has formulated the education policies discussed above, aimed towards ensuring education for all learners with disabilities in Nigeria, including women and girls with disabilities. However, proper implementation of the inclusive policies poses a challenge. For women and girls with disabilities, access to inclusive education is exceptionally difficult due to harmful stereotypes, customary beliefs, stigmatization, and patriarchy, as noted in chapter two.

³⁰⁰ Item 4.9.2 of the National Employment Policy 2017.

³⁰¹ Chapter two indicates that there are moves by the Nigerian Government and other stakeholders to compile disaggregated data on PWDs in Nigeria, but that is yet to be achieved at the time of writing this thesis. Gabriel Ewepu, 'Institute Initiates Moves to Gather Accurate Data for PWDs in Nigeria' *Vanguard News, Nigeria* June 17 2021 available at <https://www.vanguardngr.com/2021/06/institute-initiates-moves-to-gather-accurate-data-for-pwds-in-nigeria> accessed 1 August 2021.

³⁰² Edu Celeb 'Things to Know about Nigeria's Federal Ministry of Education' available at <https://educeleb.com/nigerias-federal-ministry-of-education/> accessed 2 November 2020.

³⁰³ Education is listed as item 30 of the concurrent legislative list, Part II of the Constitution of the Federal Republic of Nigeria Cap C4 L.F.N. 2004.

³⁰³ Ibid.

³⁰⁴ Ibid.

(iv) Federal Ministry of Information

According to article 8(1)(2) of the UN CRPD, states parties must engage in awareness-raising and awareness-training to sensitize the public, including employers about the rights of PWDs. The UN CRPD also specifically obligates states parties to take measures “to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life”.³⁰⁵ Pursuant to Part II of the DAPDA 2018, the Federal Ministry of Information is responsible for creating awareness about PWDs and their rights through organized campaigns and programmes.³⁰⁶ In exercise of this responsibility, the Ministry of Information has over time and in conjunction with Disabled Peoples Organizations in Nigeria, involved in advocacy for PWDs, especially through media publicity and rallies. However, the awareness campaigns and advocacy organized by the ministry seldom addresses the intersection between gender and disabilities and its outcomes for WWDs; rather, the focus is on disability issues addressed from a homogenous or unified perspective.³⁰⁷ There is a need for programmes specific to enhancing the visibility of WWDs through employment in liaison with all relevant stakeholders, including DPOs, and civil societies, to educate the public about the vulnerability of WWDs, their equal rights, and the need to include them in open employment.

(v) Disabled Peoples’ Organizations (DPOs) and Civil Society Organizations (CSOs)

Article 33(3) of the UN CRPD mandates DPOs and CSOs to fully participate in monitoring the national implementation of the provisions of the UN CRPD for PWDs. DPOs and CSOs are mostly founded on self-representation and are a positive force in articulating disability rights. They represent the linkage through which the needs and expectations of PWDs are transmitted to the

³⁰⁵ Article 8(1)(b) UN CRPD.

³⁰⁶ Part II of the Discrimination Against Persons with Disabilities Prohibition Law 2018.

³⁰⁷ Only few programmes are dedicated to address disability issues pertaining to WWDs. One of such few programmes was organized by the Canadian International Development Agency (CIDA) in collaboration with the Federal Ministry of Women Affairs and Social Development where strategies for harmonizing the implementation of Nigeria’s National Gender Policy were developed in consultation with all gender equality stakeholders in Nigeria. The Canadian International Development Agency (CIDA) supports sustainable development around the world to reduce poverty and ensure Canada’s contribution to a secure and prosperous world. Funds for NGOs. See Canadian International Development Agency (CIDA) available at <https://www.fundsforngos.org/bilateral-funds-for-ngos/canadian-international-development-agency-cida/> accessed 3 September 2019.

government and international donors.³⁰⁸ Some well-organized DPOs initiate measures for self-help or informal training that are instrumental for improving the living conditions of WWDs.³⁰⁹ For example, DPOs and civil societies train WWDs in informal hand skills like sewing, weaving, crafting, pottery and help them market the finished products to provide a livelihood for themselves.³¹⁰ DPOs and civil societies are also relevant for creating public awareness about the strengths and “ableness” in disability.³¹¹

The Joint National Association of Persons with Disabilities (JONAPWD) is the umbrella body of all organizations which advocate for disability rights in Nigeria.³¹² There is a women affairs department within JONAPWD that is chaired by a female coordinator.³¹³ Nigeria currently has few organizations committed to specifically advocating for the rights and inclusion of WWDs in mainstream society. The formation and registration of more WWD-focused DPOs and organizations are required to give WWDs a stronger voice in society.

(vi) Donors and international partners

The Ministry of Women Affairs and Social Development statutorily has the responsibility to fund disability NGOs in conjunction with the Federal Government.³¹⁴ However, due to paucity of resources, most of the funding for disability NGOs and other charitable groups operating in Nigeria come from international donors in the form of grants rather than from the Federal Government.³¹⁵ For example, the Joint Association of Persons with Disabilities (JONAPWD) received its first

³⁰⁸ Rebekah Young, Matthew Reeve and Nathan Grills ‘The Function of Disabled People’s Organizations in Middle and Low-Income Countries: A Literature Review’ (November 2016) 27(3) *Disability CBR and Inclusive Development* p. 47.

³⁰⁹ El-Srouji, Talaat Mostafa ‘Civil Society and its Implications for Social Welfare Policy Making – Egyptian Society as a Model’, Paper for the 14th Scientific Conference, Faculty of Social Work, Helwan University, Cited in Dr Saad Eid Kasem Ziedan, ‘The Role of Civil Societies in Achieving Social Protection for the Disabled’ (2018) 6(1) *Journal of Sociology and Social Work* (2018) p. 57.

³¹⁰ Advocacy for Women with Disabilities Initiative, operates as one of the community self-help groups in Nigeria that helps to empower women and girls with disabilities in Nigeria through vocational skill acquisition. They are available online at <https://awwdi.org.ng/> accessed 12 April 2021.

³¹¹ Ibid.

³¹² JONAPWD covers six disability clusters: National Association of the Blind; Nigeria National Association of the Deaf; National Association of Persons with Physical Disabilities; National Association of Persons with Intellectual Disabilities; National Association of Persons Affected by Leprosy – IDEA Nigeria; Spinal Cord Injury Association of Nigeria. JONAPWD operates with a national headquarters located in the FCT, Abuja and branches domiciled in all 36 states of the federation.

³¹³ Quite commendably, the National President of JONAPWD is a female with disability – Ekaette Umoh.

³¹⁴ Solomon Amadasun ‘Social Work Services for Persons with Disabilities in Nigeria: A Qualitative Enquiry’ (January 2020) 6(2) *International Journal of Social Sciences Perspectives* p. 60.

³¹⁵ Matt Stephens ‘NGOs in Nigeria: Meaning, Functions, Purpose, & Over 200 Examples’ (14 November 2018) available at <https://www.naijahomebased.com/ngos-nigeria-meaning-functions-purpose/> accessed 22 June 2021.

international major funding from USAID (United States Agency International Development) in 2015.³¹⁶ Other donors and international partners actively supporting DPOs in Nigeria, including among others, Christian Blind Mission (CBM);³¹⁷ Inclusion International;³¹⁸ United Nations Educational, Scientific and Cultural Organization (UNESCO);³¹⁹ World Bank Group;³²⁰ International Disability Alliance (IDA);³²¹ and UN Women.³²² The World Bank and United

³¹⁶ USAID is committed to disability-inclusion development across all spheres. Specifically, USAID has its focus on ‘supporting the economic independence of women with disabilities through microcredit programmes that provide seed grants to women to invest in their families and start new businesses amongst other commitments’. Also, USAID has contributed to the labour value of WWDs in the formal sector.

³¹⁷ The focus of CBM's work is to enable local and national partners in developing countries to implement services for people with visual disabilities, hearing disabilities, physical disabilities, Mental/ Intellectual disabilities. CBM also organises vocational training and employment for persons with disabilities, as well as disaster relief, in case a project is affected. The CBM recognizes that gender and disability are intervening factors that may relegate WWDs to the background if not properly checked. Pursuant to this, CBM engages in awareness-raising and advocacy, pre-vocational training, skill and vocational training, self-employment, and mainstreaming for WWDs.

³¹⁸ Formerly known as Handicapped International, Inclusion International is a global federation of family-based organizations advocating for the human rights of people with intellectual disabilities and their families worldwide. Inclusion International has as one of its Millennium Development Goals, ‘the eradication of social, economic and political discrimination against women and girls who have a disability and their mothers’ in order to promote gender equality. Inclusion International ‘Hear Our Voices: People with Disabilities and Their Families Speak Out On Poverty And Exclusion’ (November 2006) available at <https://inclusion-international.org/wp-content/uploads/2013/07/Hear-Our-Voices-with-Covers.pdf> accessed 2 September 2019.

³¹⁹ In cooperation with Ministries of Education, UNESCO helps women and girls obtain quality education which sets them on a platform for securing decent employment and living independent lives. UNESCO ‘Skills for Employment’ available at <https://www.skillsforemployment.org/KSP/en/Sources/UNESCO/index.htm> accessed 30 August 2019.

³²⁰ The WBG commits to exploring opportunities to focus more deliberately on the economic empowerment of women and girls with disabilities. The Women Entrepreneurs Finance Initiative (We-Fi), housed at the World Bank, creates a unique opportunity to tackle, comprehensively, the full range of barriers facing women entrepreneurs across developing countries. Future rounds of We-Fi funding provide opportunities to focus more deliberately on the economic empowerment of women and girls with disabilities, by addressing the policy and regulatory frameworks; designing projects, for example, in the transport and ICT sectors, with a gender disability lens; and developing and rolling out new products, for example, disability insurance.³²⁰ The next round of the Women, Business and Law survey, feeding into a dataset on the laws and regulations that restrict women's economic opportunities, will include questions on legislation and protections for women with disabilities. See specifically: Commitment No. 3 of the World Bank Group Commitments on Disability-Inclusive Development states: World Bank Group Commitments on Disability Inclusive Development available at <https://www.worldbank.org/en/tinopic/socialdevelopment/brief/world-bank-group-commitments-on-disability-inclusion-development> accessed 26 August 2019.

³²¹ The IDA recognizes that women and girls with disabilities are more vulnerable than males with disabilities due to the intersection between gender and disability, globally. The agency supports women and girls with disabilities through its activities in partnership with the United Nations and utilizes international support for advocating disability rights.

³²² The ‘UN Women’ is an agency for amplifying the voices of WWDs all over the world. UN Women encourages strengthened partnerships for women and girls with disabilities and their organizations to address the barriers to their participation and empowerment. It aims to spread awareness through digital and social media and support concrete actions for women’s economic empowerment. To empower women through its digital media campaign ‘I am (wo)man,’ it has sought to provide an opportunity for WWDs to share their stories. UN Women, ‘Empowering and Including Women and Girls with Disabilities’ available at <https://www.unwomen.org/en/news/stories/2015/12/empowering-and-including-women-and-girls-with-disabilities> accessed 22 August 2019.

Nations Donor Agencies' projects are mostly welfare in nature.³²³ Even the international donors need to place more emphasis on improving the employment participation of WWDs with all its ancillary matters in beneficiary countries.

(vii) National Commission for Persons with Disabilities

The National Commission for Persons with Disabilities (NCPWD) is established by the virtue of the provisions of DAPDA.³²⁴ The National Commission for People with Disability is a statutory body with responsibility to administer or implement the provisions of DAPDA. Part of its mandate is to eradicate all forms of social, economic and cultural discrimination against PWDs in Nigeria. Although the NCPWD has been inaugurated by the president of Nigeria, the impact of its activities is yet to be felt across the nation.³²⁵ Nigerians are still hopeful that the NCPWD will translate its mandate into promotion of rights for PWDs, including WWDs.³²⁶ But until that happens, the law remains mere wishful thinking instead of an enforceable legislation. The Commission should be so empowered.

6.6 Conclusion

It can be observed from the foregoing that a reasonable number of laws and policies that can be implemented to guarantee equality and non-discrimination for WWDs exist in Nigeria.³²⁷ However, most of the Nigerian legislation and policies such as, the Constitution; Labour Act; NEP; GEO Bill; NPE; NPSNE; and NPIC discussed above, including Nigeria's federal disability law (DAPDA), do not address sufficiently the intersection between gender and disabilities to promote rights specifically for WWDs in the employment context. As a result, WWDs in Nigeria continue to struggle with general negative attitudes and other barriers meted by both employers and members of the public, as discussed in section 3.4 of chapter three. As earlier indicated, patriarchy,

³²³ Ethel Innocent Amadi 'Implementation of Nigeria's National Gender Policy: An Appraisal of Empowerment and Gender Equality Programmes and Projects in Rivers State' (2017) 3(1) *Journal of Political Science and Leadership* p.26.

³²⁴ Section 31(1)-(2) of DAPDA provide: "(1) There is established a National Commission for Persons with Disabilities ...to be placed under the Presidency. (2) The Commission is a body corporate with – (i) perpetual succession, (ii) a common seal; and (b) may sue and be sued in its corporate name; and (c) may acquire, hold and dispose of property, moveable and immovable".

³²⁵ Omololu Ogunmade 'Buhari Appoints Chairman, Secretary of National Commission for Persons with Disabilities' *ThisDayLive*, 25 August 2020 available at <https://www.thisdaylive.com/index.php/2020/08/25/buhari-appoints-chairman-secretary-of-national-commission-for-persons-with-disabilities/> accessed 6 October 2022.

³²⁶ Guardian Editorial 'The Significance of the Disability Commission' *The Guardian*, 21 October 2020 available at <https://guardian.ng/opinion/the-significance-of-disability-commission/> accessed 6 October 2022.

³²⁷ Most of the laws discussed above protect WWDs against discrimination, albeit from a general human perspective except for a few that are gender sensitive.

religious, and ethnic leanings continue to affect the inclusion of gender-perspectives into legislation and policies (for instance, as regards the GEO bill discussed above) to improve socio-economic integration including employment participation of WWDs.³²⁸

Although most of the national laws and employment policies discussed above have no gender dimension, these can be amended and utilized for achieving equality and economic relevance for WWDs. As legislative reform is necessary for improving the employability of WWDs, all law and policy making bodies, government agencies, in consultation with CSOs, DPOs and all relevant stakeholders have the collective responsibility to amend existing laws and policies to ensure protection for WWDs as a vulnerable group affected by the intersection between gender and disability.

The judiciary is also required to play its role by adopting the substantive interpretation of laws and policies to promote inclusion and employment for PWDs, with special consideration for WWDs as required by the UN CRPD. In addition, all implementing institutions in Nigeria must work towards an effective integration strategy to address the employment needs of WWDs in Nigeria. Such effective integration strategies would include employer incentives, formal training and education, improved accessibility to transport and into public buildings, flexible work arrangements, amongst other strategies, discussed in the next chapter. Apart from the government of Nigeria, DPOs and CSOs must take active part in monitoring implementation strategies to ensure full integration for WWDs.

The next chapter consolidates all the recommendations advanced in the thesis and maps out detailed modalities for achieving inclusion for WWDs in Nigeria, through employment.

³²⁸ Religious leanings as in the case with the non-passage of the Gender and Equal Opportunities Bill discussed above.

CHAPTER SEVEN

RECOMMENDATIONS

7.1 Introduction

As noted in chapters four and five, Nigeria has ratified a number of international and regional disability human rights treaties, most of which require gender-mainstreaming in the context of disability.¹ As stated in 4.2 of chapter four, it is important that gender perspectives should be given greater focus in future global implementation efforts with special attention given to women with disabilities (WWDs), ensuring the protection of their human dignity and integrity in all areas of their lives, including employment. However, as demonstrated in chapter six, Nigeria's domestic law/policies and implementing institutions do not adequately reflect gender considerations as required by the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD).² More particularly, it has been noted that Nigeria's federal disability law has no references to the intersection between gender and disability.³ The analysis presented in Chapters One through Six forms the basis of the recommendations in this chapter, which are aimed at addressing the discrimination faced by women with disabilities due to the intersection of gender and disability. These recommendations seek to promote substantive equality in the realisation of their right to employment in Nigeria.

The recommendations in this chapter are considered under four broad themes, namely, law/policy reform, social interventions, implementation and enforcement measures, and employment assistive schemes.

7.2 Law and policy reform

Chapters three and six identify the lack of gender-inclusive perspectives in national disability policies and legislation as a barrier to employment inclusion for WWDs in Nigeria, among other barriers.⁴ By Article 4(1)(a) of the UN CRPD, states parties are required to adopt laws and policies to ensure that PWDs are enabled to exercise their fundamental human rights. States parties are also

¹ Disability instruments at international and regional levels are discussed in chapter three and four respectively.

² Article 5(2) and 6(1)(2) of the UN CRPD 2006.

³ This was noted in section 5.2 of chapter five. Edward Ugbada Adie Ph.D and Yusuf Nzim Shamagaana 'Towards Improved Inclusion of Women and Girls with Disabilities in the Development Agenda in Nigeria' *International Journal of integrative Humanism* (2018) 10(1) p.1.

⁴ Section 2.4 of Chapter two and the whole of chapter five.

urged to modify or abolish all existing legislation that constitute discrimination against PWDs.⁵ In fulfilling this obligation, state parties must contemplate the intersection between gender and disabilities, especially in implementing laws, policies and programmes to fully advance and empower women and girls with disabilities.⁶ As stated in 4.8 of Chapter four, despite that the ILO Conventions on labour matters are directly applicable to the Nigerian Industrial Court, it is still essential to domesticate all other treaties and instruments that acknowledge the intersection of gender and disability, as well as the unique discrimination being faced by WWDs. Domestication is particularly crucial for ensuring substantive equality in access to employment for women with disabilities and for addressing the discrimination they face, especially within the Nigerian context. Therefore, law reform is proposed in the following areas: The Nigerian Constitution, federal disability law, education, labour and gender-specific laws and policies.

(i) Constitution of the Federal Republic of Nigeria 2004

As indicated in 6.2 of chapter six, the Constitution of the Federal Republic of Nigeria⁷ does not explicitly list disability as one of the proscribed discriminatory grounds in Section 42. Also as mentioned in chapters five and six, the African Commission on Human and Peoples' Rights has determined that disability is included as one of the 'non-exhaustive grounds of discrimination'.⁸ By extension, disability can now be construed as falling within the purview of the African Charter on Human and Peoples' Rights Act (ACHPRA) which is now Nigeria's domesticated version of the ACHPR for full realization of rights for PWDs, including WWDs. However, it is imperative for Nigeria to constitutionally prohibit discrimination due to disability to as do the Constitutions

⁵ Article 4(1)(b) UN CRPD.

⁶ Article 6(1)-(2) UN CRPD.

⁷ Ibid.

⁸ Para 20 of the African Commission General Comment No. 4 on the African Charter on Human and Peoples' Right: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment p. 6 available at https://www.achpr.org/public/Document/file/English/achpr_general_comment_no._4_english.pdf accessed 3 July 2021.

of several other nations such as Zimbabwe,⁹ South Africa,¹⁰ Malawi,¹¹ Ghana,¹² and Uganda.¹³ Considering that the Constitution of a nation is the grundnorm from which all other laws derive their validity and enforceability, I recommend that a constitutional amendment is required to include disability as a ground in Section 42 as a starting point.

On the issue of non-justiciability of socio-economic rights against the government of Nigeria,¹⁴ it is recommended that the ouster provision contained in section 6(6)(c) should be repealed by the National Assembly of Nigeria in order to eliminate barriers that hinder WWDs and other citizens from fully and equally enjoying their socio-economic rights including the right to access employment. The national constitutions of South Africa¹⁵ and Zimbabwe have provisions to guarantee the enforcement of socio-economic rights.¹⁶ Furthermore, the right to equal employment opportunities and working conditions are also constitutionally protected and judicially enforceable in Argentina,¹⁷ Colombia,¹⁸ and Venezuela, as also indicated in the previous

⁹ For example, Zimbabwe amended its constitution (Constitution of Zimbabwe Amendment (No 20) Act 2013 and added disability in section 83 as a ground of discrimination (and also recognised sign language as a means of communication) It states:

“The States must take appropriate measures, within the limits of the resources available to it, to ensure that persons with disabilities realize their full mental and physical potential....”

¹⁰ Section 9 (3) of the Constitution of the Republic of South Africa (Act No. 108) 1996 provides:

“The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth”.

¹¹ Section 13, 20, 23 and 30 of the Constitution of Malawi 1994.

¹² Section 29 of the Constitution of the Republic of Ghana 1992.

¹³ Section 35(1)(2) of the Constitution of the Republic of Uganda 1995 provide:

“35(1). 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. (2) Parliament shall enact laws appropriate for the protection of persons with disabilities”. Uganda also constitutionally recognizes sign language as a valid means of communication in section 24, *ibid*.

¹⁴ As discussed in 6.3 of chapter six of the thesis.

¹⁵ The South African Constitution in Chapter 11 contains Bill of Rights including civil and political rights, environmental rights, socio-economic rights which are deemed enforceable.

¹⁶ Section 24 of the Constitution of Zimbabwe 2013.

¹⁷ Section 14 of the Constitution of Argentina 1994 (as amended) states: “All inhabitants of the Nation enjoy the following rights, in accordance with the laws that regulate their exercise, namely: of working in and practicing any lawful industry....Labour in its diverse forms shall enjoy the protection of the law, which shall ensure to workers: dignified and equitable working conditions; a limited working day; paid days of rest and vacation; fair remuneration; adjustable minimum living wages; equal pay for equal work; a share in the earnings of enterprises, with control over production and collaboration in management; protection against arbitrary discharge; permanence of public employment; free and democratic organization of labour unions, recognized simply by inscription in a special register”. *Viceconti v Ministry of Health & Social Welfare (Poder Judicial de la Nacion, Causa no.31.777/96, of 2 June 1998*.

¹⁸ Section 25 of the Constitution of the Republic of Colombia 1991 (Rev 2009) provides: “Work is a right and a social obligation and enjoys, in all its forms, the special protection of the State. Every individual is entitled to a job under

chapter.¹⁹ Therefore, constitutional amendment to repeal section 6(6)(c) is doable, as suggested above.

Apart from constitutional reform, Nigeria's federal disability law, passed in 2018 requires some modifications which will be advantageous to the realization of the right to work for WWDs. The next section highlights the relevant areas of the law that require amendment.

(ii) Discrimination Against Persons with Disabilities (Prohibition) Act 2018

As analysed in 4.4 of chapter four, the UN CRPD requires that all instruments and programmes that advance the exercise of fundamental human rights for PWDs should have due regard to the intersection between gender and disability to protect WWDs.²⁰ However, it has been noted that Nigeria's only federal disability law – the DAPDA – has no explicit provisions to recognize the intersection between gender and disability or promote rights for WWDs despite its enactment 16 years after the UN CRPD came into existence.²¹ Similar to the recommendation above regarding amending the Nigerian Constitution, DAPDA, being a federal disability law also requires an amendment by the National Assembly to reflect the intersection between gender and disability and thereby accord explicit protection and inclusion for WWDs through its provisions.²² It is further recommended that WWDs and WWD NGOs and civil societies actively participate in the amendment process to properly capture and address their peculiar needs through legislation.

Concerning employment, Article 27(1)(g)-(h) of the UN CRPD urges states parties to promote the employment of PWDs through affirmative action (AA) and other incentives. The quota scheme discussed in chapter four is the popular method of AA utilized to secure employment

dignified and equitable conditions". *Mora v Bogota District Education Secretary & Ors.* Columbian Court, Decision T-170/03 of 28 February 2003.

¹⁹ Section 87 of the Constitution of Venezuela (Bolivarian Republic Of) 1999 (Rev. 2009) provides:

"All persons have the right and duty to work. The State guarantees the adoption of the necessary measures so that every person shall be able to obtain productive work providing him or her with a dignified and decorous living and guarantee him or her the full exercise of this right. It is an objective of the State to promote employment. Measures tending to guarantee the exercise of the labour rights of self-employed persons shall be adopted by law". *Cruz Bermudez et al v Ministerio de Sanidad y Asistencia Social* (Supreme Court of Justice of Venezuela) Case No 15.789, Decision No. 916 15 July 1999.

²⁰ Article 6(1)(2) UN CRPD.

²¹ This has been noted throughout the thesis, particularly in chapter 5.

²² It is the constitutional mandate of the National Assembly to amend federal laws. Part I of the Constitution of the Federal Republic of Nigeria Cap C24 L.F.N 2004.

for PWDs, including WWDs, in public and private sectors across nations.²³ As noted in chapter 4.9 of chapter four, countries such as China,²⁴ Germany,²⁵ Malta,²⁶ and Turkey²⁷ utilize their disability laws to reserve a certain quota of their public and/or private workforce for PWDs. In addition to this, penalties are imposed by the applicable law for violation of the required employment quota.²⁸ The DAPDA requires only ‘public sector employers’ to ensure that PWDs constitute five per cent of their total staff strength; however, there are no penalties for breach of this requirement throughout the Act, as discussed in 6.3 of chapter six.²⁹ It is hereby recommended that the quota requirement in DAPDA should be amended to extend to private sector employers, particularly private entities that render service to the general public to provide a larger employment platform for PWDs. The quota requirement contained in the Special Peoples Law (SPL) applicable in Lagos State, Nigeria as discussed in 6.3 of chapter six, is preferable to the DAPDA provision. The SPL provides an employment quota requirement of one per cent for all employers in Lagos having staff strength of one hundred and above, regardless of whether they are situated in the public or private sector.³⁰ DAPDA provisions should also be amended to impose penalties against employers in both public and private sectors (especially those involved in rendering services to the general public) who fall short of the quota requirement, except if it is shown that efforts to employ PWDs have proved unsuccessful.

²³ Quota schemes are positive discrimination measures necessary to balance out the employment drawbacks and barriers faced by PWDs as discussed in section 3.7 of chapter three.

²⁴ China’s Regulations on the Employment of People with Disabilities reserves 1.5 per cent of public and private sector employment for PWDs with attendant levies for non-compliance. Regulation of the PRC on the Employment of People with Disabilities, Order No. 488 [2007] of the State Council (China).

²⁵ Germany’s General Equal Treatment Act 2006 reserves a quota of five per cent for the employment of severely disabled employees in firms having more than 20 staff.

²⁶ The Equal Opportunity (Persons with Disabilities) Act 2000 of Malta reserves a two per cent quota for “all companies with staff strength of 20 and above”. The quota was established by the Minister of Labour after consultation with the Disablement Resettlement Advisory Committee (DRAO) and persons employed to satisfy the quota are selected from the said Employment and Training Corporation-ETC’s Register. Persons with Disabilities Employment Act Cap 210, Laws of Malta. The Equal Opportunities (Persons with Disability) Act Ch. 413 of the Laws of Malta, 2000 also regulates employment of PWDs in Malta.

²⁷ For Turkey, it is three per cent quota for firms with more than 50 workers in the private sector and four per cent or the public sector. Turkey Employment Law of 2003.

²⁸ For Germany, the Social Code Book IX, The Rehabilitation and Integration of Disabled People and General Policy Law 104/92 (SGB IX) released in 2001 requires employers who are in breach of this requirement to pay a monthly compensation penalty, depending on the degree of underrepresentation of PWDs. Also, Article 8 of China’s Regulation of the PRC on the Employment of People with Disabilities, Order No. 488 [2007] of the State Council prescribes penalties against non-compliance with quota requirement.

²⁹ Section 27-8 DAPDA discussed in 3.7 of chapter three and 5.2 of chapter five.

³⁰ Lagos state Special Peoples Law 2011.

The next section is focused on reforming Nigeria's labour, gender and education policies.

(iii) Labour, education and gender-specific laws and policies

It is a requirement of the UN CRPD for state parties to formulate and implement policies or amend existing ones for promoting the rights of PWDs, and with gender considerations with regard to WWDs.³¹ As stated in the previous chapter, the Labour Act, being a federal employment law, requires amendment to incorporate provisions that promote employment for WWDs such as Affirmative Action measures. For instance, although South Africa has no disability-specific law, the Employment Equity Act of South Africa³² provides employment assistance for black people, women and PWDs through affirmative action, as designated groups, as a special employment measure.³³ Again, although ratified labour treaties and best international labour practices are directly applicable to Nigeria by virtue of the National Industrial Court jurisdiction, there remains need for the National Assembly of Nigeria to amend the provisions of the Labour Act to better promote employment participation of WWDs domestically with due regard to the peculiarities of Nigeria's labour system. The Ministry of Women Affairs and Social Development should then rise to its responsibility to ensure that the amended Labour Act is effectively implemented to realize the right to work for WWDs.

Nigeria's National Employment Policy (NEP) which seeks to promote greater employment participation of women and PWDs, is discussed in 6.4 of chapter six. The NEP encourages inclusive education of women and PWDs to afford them equal right to compete for employment. Although strategies have been developed to strengthen the capacities of organizations of WWDs to influence decision-making for equal access and empowerment of WWDs as discussed in Chapter six, the provisions of the NEP are yet to be implemented to realize employment for WWDs. WWDs in Nigeria still experience multiple barriers to employment due to the intersection between gender and disability, as shown in chapter three. The provisions of the NEP need to be amended by the Minister of Labour to recognize the intersection between gender and disability and to promote the employment participation for WWDs in Nigeria.

³¹ Article 4 UN CRPD and Article 6(1)-(2).

³² Employment Equity Act (No. 55) of 1998 (South Africa).

³³ Generally, Chapter III, *ibid*.

Also as indicated in chapter six, Nigeria is long overdue for the passage of a women's law that includes provisions to promote employment for WWDs. The frequent rejection of the Gender and Equal Opportunities Bill³⁴ at the Senate level in Nigeria, which is fuelled by patriarchy and religious inclination, is a major setback to realizing rights for WWDs and women generally, as discussed in 2.4 of chapter two and 6.3 of chapter six. There is need for the passage of a gender-specific law containing special provisions for the inclusion of WWDs in all aspects of society, particularly in employment, to improve the lives of WWDs and help them contribute their quota towards economic development. It was noted in chapter six that Gambia has a Women's Act which explicitly promotes the rights of WWDs in politics, education employment, among other aspects of inclusion in society.³⁵

Also, the three education policies discussed in 6.4 of chapter six namely: National Policy on Education,³⁶ Nigerian Policy on Special Needs Education,³⁷ and the National Policy on Inclusive Education,³⁸ require amendment to include gender perspectives specific to prioritizing and implementing education of the girl-child and WWDs. In that regard, the Ministry of Education must fulfil its mandate to amend and implement education policies for the benefit of women and girls with disabilities in Nigeria.

(iv) Domestication and Enforcement of Treaties

As emphasized in chapters two, four and six, domestication is required for treaties to become enforceable as part of Nigerian legislation due to the country's dualist legal system.³⁹ At the regional level, Nigeria has domesticated the African Charter on Human and Peoples' Rights, but has only ratified the Protocol to the African Charter on Human and Peoples' Rights on Rights of

³⁴ Gender and Equal Opportunities Bill (S.B 116) 2016.

³⁵ Article 54 of the Women's Law of Gambia 2010 states:

"The government shall take appropriate measures to: (a) ensure the protection of women with disabilities and take specific measures commensurate with their physical, economic and social needs to facilitate their access to employment, professional and vocational training, as well as, their participation in decision-making; and (b) ensure the right of women with disabilities to freedom from violence, including sexual abuse, discrimination based on disability and the rights to be treated with dignity.

³⁶ National Policy on Special Needs Education is available at

<http://www.rodra.co.za/images/countries/nigeria/policy/National%20Policy%20on%20Special%20Needs%20Education.pdf> accessed 12 October 2021.

³⁷ Nigerian Policy on Special Needs Education 2017.

³⁸ National Policy on Education 2008.

³⁹ Section 3.7 of chapter three and 5.2 of chapter five explain domestication.

Women in Africa (Maputo Protocol) without domesticating it.⁴⁰ Also, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (Disability Protocol) is neither ratified nor domesticated in Nigeria. Both African protocols promote the rights specific to WWDs, including the right to work, having due regard to the peculiar discrimination they may experience within the African context.⁴¹ While the domestication of both Protocols is strongly recommended, Nigeria should, as an interim measure, promptly fulfil its reporting obligations under Article 34 of the Protocol and establish a permanent mechanism to ensure inclusive and timely reporting. Future reports must include disaggregated data on WWDs and address their specific challenges. The African Commission on its part should encourage Nigeria to adopt responsive legislative, policy, and budgetary measures. In the absence of a state report, the Commission should prioritise shadow reports and actively engage with disabled persons' organisations and disabled women's rights groups.

Nigeria has also ratified some international treaties and instruments that acknowledge the intersection between gender and disability, particularly the UN CRPD.⁴² However, as with the regional instruments mentioned above, Nigeria is yet to domesticate the UN CRPD. It is hereby recommended that National Assembly of Nigeria urgently domesticate the UN CRPD because of its salient provisions on the gendered aspect of disability and the two African regional protocols to afford WWDs in Nigeria to directly enforce their human rights, specifically the right to employment, in domestic courts. In lieu of complete domestication of the UN CRPD, Nigeria can amend its DAPDA to accommodate gender perspectives of disability.

7.3 Social interventions

As mentioned in chapter one, the rights-based approach to disability views disability as the result of social and environmental incompatibility that limits PWDs in the exercise of their human rights on an equal basis with others.⁴³ The removal of social and environmental barriers requires interventions to ensure full and effective inclusion of WWDs in society and development. The

⁴⁰ The Maputo Protocol was adopted by the Assembly of the African Union in Maputo, Mozambique on 11 July 2003 but came into force in November 2005. Nigeria ratified the Maputo Protocol on 16 December 2004.

⁴¹ The Protocol to the African Charter on Human and Peoples' Rights on Rights of Women in Africa (Maputo Protocol) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (African Disability Protocol) are discussed in detail in chapter four of the thesis.

⁴² Nigeria ratified the UN CRPD in 2007.

⁴³ T. Degener 'A Human Rights Model of Disability' in *Routledge Handbook on Disability Law and Human Rights* eds. P. Blanck and E. Flynn (Routledge, 2017) p. 33.

notion of substantive equality and non-discrimination is the bedrock of human rights that must accrue to WWDs. Therefore, it is essential that government agencies, the public, and relevant stakeholders, including employers, play their rightful roles in actualizing the right to employment for PWDs, having particular regard to WWDs.

This section discusses six social interventions useful for ensuring the exercise of human rights for PWDs, particularly WWDs. The interventions include: awareness creation; research and reliable data development; access to physical structures; access to transport; access to justice, and active engagement of civil societies/disabled peoples' organizations (DPOs).

(i) Awareness creation

In compliance with Article 8 of the UN CRPD, DAPDA places responsibility on the Federal Ministry of Information to promote public awareness about issues concerning PWDs and their rights.⁴⁴ Chapter three identified negative attitude of the public, including employers as one of the impediments to actualizing employment for PWDs generally.⁴⁵ The chapter further identified that WWDs experience overlapping discrimination due to the intersection between gender and disability.⁴⁶ It is hereby recommended that the Ministry of Information, in close collaboration with the National Commission for Persons with Disabilities, the media, disability groups, civil society, and other relevant stakeholders, organize campaigns and trainings premised on the intersection between gender and disabilities, and the rights as afforded by relevant laws, especially the UN CRPD. Adequate funding must be made available by the government to engage the relevant stakeholders, for far-reaching impact. So far, the digital and social media in conjunction with the umbrella body of PWDs in Nigeria – Joint National Association on Persons with Disabilities (JONAPWD) and some Disabled Peoples Organizations (DPOs) – actively publicize the rights of PWDs from time to time, but without emphasis on the unique discrimination barriers created by

⁴⁴ Part II of the Discrimination Against Persons with Disabilities (Prohibition) Act 2018.

⁴⁵ See 3.4 of chapter three. World Bank. 2020. Disability Inclusion in Nigeria: A Rapid Assessment. World Bank, Washington, DC. © World Bank available at <https://openknowledge.worldbank.org/handle/10986/34073> License: CC BY 3.0 IGO, accessed 12 June 2021.

⁴⁶ Kari P Hadivassiliou, 'Discrimination and Access to Employment for Female Workers with Disabilities' Directorate-General for Internal Policy Department A: Economic and Scientific Policy Study on Discrimination and Access to Employment for female workers with Disabilities Case Study: United Kingdom (June 2017) available at https://www.researchgate.net/publication/319999703_Discrimination_and_Access_to_Employment_for_Female_Workers_with_Disabilities_DIRECTORATE-GENERAL_FOR_INTERNAL_POLICY_DEPARTMENT_A_ECONOMIC_AND_SCIENTIFIC_POLICY_Study_on_Discrimination_and_Access_to_E accessed 27 April 2022.

the intersection between gender and disability to WWDs. Also, WWDs or their DPOs must be made active participants of disability-focused campaigns to foster improvement to their visibility and possibly erode negative societal attitudes, prejudices and practices which advance discrimination against them. Among other mechanisms, vocal and written documentary of the lived experiences of WWDs can be used as part of the awareness campaigns.

(ii) Research and reliable data development

The UN CRPD in Article 31(1) emphasizes the need for states parties to take measures to generate statistics and research on PWDs disaggregated by sex and other factors. Currently, research on the intersection between gender and disability is limited both globally and especially domestically.⁴⁷ Particularly in Nigeria, there is a growing body of literature on intersectional discrimination against women, including on the intersection between gender and disability. This thesis is a contribution to the growing body of research on the intersection between gender and disability. Regarding data development as identified in 3.4(vii) of chapter three, information and data about WWDs in most countries, including Nigeria, is outmoded, inaccurate or unavailable.⁴⁸ There is therefore an urgent need to reinvigorate data collection and scholarly research of the intersection between gender and disability to address the societal anomalies that contribute to the marginalization of WWDs. This will help promote their participation in all aspects of society, including in employment. Such data and research must adhere to confidentiality, comply with the relevant standards on ethics of data protection and respect for the privacy of PWDs.⁴⁹ All such data must be made publicly available to PWDs and non-PWDs alike.⁵⁰

Particularly, disaggregated data are required to enable better implementation and to address barriers to the exercise of rights guaranteed to all categories of PWDs, including WWDs.⁵¹ Some countries are able to generate data regarding the number of WWDs in employment. These data are mostly in percentages and good practices on collation of the total number of PWDs disaggregated by sex were hard to find during this research. Recently, the UK AID funding from the UK

⁴⁷ Sophie Mitra & Jaclyn Yap 'The Disability Report' (2021) available <https://disabilitydata.ace.fordham.edu/wp-content/uploads/2021/05/The-Disability-Data-Report-2021.pdf> accessed 27 April 2022.

⁴⁸ Limited data is available on the employment of persons with disabilities in Nigeria. Research suggests that the country issued a report on employment of persons with disabilities in 2002 based on a household survey (the National Survey on Persons with Disabilities 1996), but this is largely out of date.

⁴⁹ Article 31 (1)(a)(b) UN CRPD.

⁵⁰ Article 31 (3), *ibid.*

⁵¹ Article 31 (2) *ibid.*

government engaged a research team in partnership with global disability experts to flag the Disability Data Portal Project to generate global disaggregated data on PWDs.⁵² In Nigeria, the African Polling Institute instituted serious moves to generate accurate disaggregated data on PWDs in collaboration with the National Bureau of Statistics, academic researchers, and NGOs which is a welcome and timely development.⁵³ It is expected that both federal and state governments in Nigeria effectively key into this project by creating budgetary investments to fund the collation of data and evidence-based research, including those that work at the intersection of gender, disabilities, and employment.⁵⁴ It is also important that the realities of WWDs and their lived employment experiences should form part of the research to accurately identify gender gaps for the formulation and implementation of appropriate employment policies and programmes.

(iii) Improved access to physical structures

The UN CRPD promotes the right of PWDs to accessibility into physical structures pursuant to Article 9 and urges states parties to ensure the same for PWDs. Specifically, “buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces” must be universally designed to accommodate the transport needs of PWDs.⁵⁵ As discussed in 3.4(iv) of chapter three, the inability or difficulty in accessing physical structures, including workplaces, is one of the barriers experienced by PWDs, including WWDs, in Nigeria. Part II of the DAPDA in Nigeria seeks to address this barrier by imposing penalties for the violation of the right to accessibility of PWDs.⁵⁶ Pursuant to section 7 of DAPDA, a building plan which is not structured in such way as to ensure accessibility to PWDs, will be denied approval by the appropriate planning authority. The Ministry of Land, Planning and Urban

⁵² Disability Data Review: A Collation and Analysis of Disability Data from 40 Countries’ (Leonard Cheshire Report funded by UK Aid) available at https://www.disabilitydataportal.com/fileadmin/uploads/lcdp/Documents/report-web_version.pdf accessed 22 April 2022.

⁵³ Gabriel Ewepu ‘Institute Initiates Moves to Gather Accurate Data for PWDs in Nigeria’ *Vanguard News Nigeria* June 17, 2021 available at <https://www.vanguardngr.com/2021/06/institute-initiates-moves-to-gather-accurate-data-for-pwds-in-nigeria> accessed 1 August 2021.

⁵⁴ Evidence-based research can be stimulated by approving grants to academics and researchers (including WWDs) to investigate the situation of WWDs and the extent of their involvement in labour market for use in the development of effective implementation strategies.

⁵⁵ Article 9(1)(a) UN CRPD 2006. Article 1 UN CRPD defines Universal Design as: “the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. “Universal design” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed”.

⁵⁶ Part III-VI of the Discrimination Against Persons with Disabilities (Prohibition) Act 2018 provides that PWDs are entitled to: (i) Right of Access to Public Premises (ii) Accessibility to Roads, Side-Walk, Airports and Seaports, and railway. Section 8, *ibid* prescribes penalties for denying accessibility into physical structures to PWDs.

Development as the government agency responsible for approving building plans in Nigeria, needs to strengthen the relevant provision of DAPDA through effective implementation measures.⁵⁷

As part of strategic methods to improve accessibility by PWDs into public and private buildings in Cameroun, the Ministers of Social Affairs and Public Health, Minister of Housing and Urban Development, Minister of Public Works, and Minister of Public Procurement, collaborated in sponsoring an awareness-raising project on the construction of accessible buildings and infrastructure.⁵⁸ This has substantially compelled the government to improve access into physical structures for PWDs, especially in Yaounde City.⁵⁹ In Nigeria, public and private buildings require assistive structures such as ramps (for wheelchairs), visual or auditory cues (for sight and hearing impaired PWDs), safety bars (for the visually impaired), among other aids. In addition to the responsibility of ensuring that proposed public buildings conform with the requirement of accessibility for PWDs, it is recommended that Ministry of Lands, Planning and Urban Development both at federal and state levels in collaboration with the National Commission for Persons with Disabilities, should ensure that already existing public and private physical structures, are modified to grant accessibility to PWDs in compliance with DAPDA, and particularly the UN CRPD. DAPDA provides for a transitory period of five years within which all public buildings are to be made accessible to all individuals with disabilities.⁶⁰ It is hoped that this becomes achievable given that the transitory period is still subsistent.

(iv) Improved access to transport

The right of PWDs to inclusive transportation is integral to realizing their right to work. Article 9 of the UN CRPD mandates states parties to make sure that all PWDs, including WWDs, are rightly entitled to access public means of transportation. Furthermore, transportation media must conform to the “Universal Design”.⁶¹ Article 20 of the UN CRPD also urges states parties to procure personal mobility “aids devices, assistive technologies and forms of live assistance and intermediaries to PWDs at affordable cost”. Part III of DAPDA complies with the UN CRPD

⁵⁷ Section 7(3) of DAPDA stipulates penalties for officers of the Ministry who approve or direct the approval of a building that violates the building code.

⁵⁸ Fulbert Rodrigue Zogning Lonsi and Coco Bertin Lowa Wandjie ‘Assessment of Public and Private Buildings in the City of Yaoundé (Political Capital of Cameroon)’ (April 2022) 9(4) *Open Access Library Journal* p.

⁵⁹ *ibid.*

⁶⁰ Specifically, section 6 DAPDA.

⁶¹ Article 1 UN CRPD.

requirement for provision of inclusive transport for PWDs.⁶² Particularly, section 11 of the UN CRPD provides that transport service providers are required to provide audio and visual devices in their vehicles to accommodate PWDs. In addition, there must be reserved parking spots for PWDs in public spaces, as required by section 12 of the UN CRPD. PWDs are also entitled to accessible road, rail, and water transport.⁶³ In spite of these provisions, accessibility to public transport, continues to present significant barriers for individuals with disabilities in Nigeria, as indicated in 3.4 of chapter three.⁶⁴ PWDs struggle through significant mobility barriers to meet their daily need for movement, due to inaccessible transportation in Nigeria.⁶⁵

There are intentional changes and adjustments that need to be made across Nigeria to improve public transportation access for all PWDs, according to their differing mobility needs. For instance, in the Czech Republic (precisely the Prague), the APEX company in collaboration with the Czech association for the blind has developed a “command set” for visually impaired people.⁶⁶ It consists of a pocket transmitter and receiver, which among other components inform the user of the route number and direction, final destination or departure time of a bus or tram.⁶⁷ Low floor buses are also designed for wheelchair users in the Prague.⁶⁸ Also, in South Africa, consultation and active interaction on transport changes has informed confirmed progress towards disability inclusive transport.⁶⁹ Furthermore, as an implementation and enforcement measure in Shanghai, old people and PWDs are recruited to annually audit and report on transport accessibility issues for PWDs; and this approach has improved the system.⁷⁰ These strategies can be replicated in Nigeria to actualize transport accessibility for all categories of PWDs, including WWDs and thereby improve their employment participation.

⁶² Part III of the Discrimination Against Persons with Disabilities (Prohibition) Act 2018 covers mandatory access of all PWDs to Road Transportation. The Rights listed in the section are: (i) Goods, Services and Facilities (ii) Accessibility of Vehicles (iii) Provision of Facilities for Persons with Disabilities (iv) Reserved Spaces.

⁶³ *ibid.*

⁶⁴ World Bank Group ‘The Rights of Women with Disabilities, Women, Business and the Law 2020’ available at <https://openknowledge.worldbank.org/handle/10986/32639> License: CC BY 3.0 IGO accessed 10 June 2020.

⁶⁵ *Ibid.*

⁶⁶ European Conference of Ministers of Transport, ‘Improving Access to Public Transport’ (ECMT 2004 Publication) available at <https://www.itf-oecd.org/sites/default/files/docs/04access.pdf> accessed on 7 May 2021.

⁶⁷ *ibid* p.32.

⁶⁸ *Ibid.*

⁶⁹ High Volume (Applied Transformation Research), ‘Disability Inclusive Public Transport: Practical Steps to Making Transport Disability Inclusive’, (2018) available at https://www.transformative-mobility.org/assets/publications/HVT-Disability_STANDARD_ONLINE_v2A.pdf accessed on 22 April 2021.

⁷⁰ *Ibid.*

(v) Improved access to public information and communication

Improved access to public information and communication is a major determinant of inclusion for all categories of PWDs.⁷¹ Therefore, Article 9(2)(h) of the UN CRPD tasks state parties “to promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost”. As identified in 3.4(vi) of chapter three, poor access to public information and communication can deprive PWDs, including WWDs, of employment opportunities for which they may be qualified. As noted in chapter three, recruitment processes in Nigeria are often rigid and unsuited to the communication needs of applicants with disabilities.⁷²

Both government and private institutions in Nigeria have the responsibility to ensure that the means through which they digitally interface with the public is disability friendly. Particularly, job advertisements should be made through communication and information media outlets adapted to the needs of applicants with disabilities in fulfilment of international obligation. Training can be conducted for PWDs, including WWDs, in Nigeria to make them computer smart and employable especially in the public sector or in private sectors that interface with the public. As indicated in 4.9 of chapter four, WWDs and youth with disabilities are being trained in the field of Information and Technology in Vietnam.⁷³ The training programme has recorded successes with most of the participants, including WWDs, securing decent employment.⁷⁴

(vi) Improved access to justice

DAPDA criminalizes discrimination against PWDs. According to section 3 of the DAPDA, a civil action may lie after a previous conviction or acquittal has been secured based on a criminal hearing on the same case of discrimination against a PWD.⁷⁵ Also, pursuant to the UN

⁷¹ Anjlee Angwal and Andre Steele ‘Disability Considerations for Infrastructure Programmes’ (March 2018) p. 5 available at https://assets.publishing.service.gov.uk/media/57a08954ed915d3cfd0001c4/EoD_HDYr3_21_40_March_2016_Disability_Infrastructure.pdf accessed on 15 August 2019.

⁷² Holly O’Mahony ‘Disabilities in the Workplace: Are We Failing Our Disabled Workforce?’ *The Guardian Newspaper*, 17 April 2017.

⁷³ United States Alliance for International Development (USAID) ‘Advancing Women and Girls with Disabilities’ available at <https://www.usaid.gov/what-we-do/gender-equality-and-womens-empowerment/women-disabilities> accessed 12 March 2020.

⁷⁴ Ibid.

⁷⁵ Part I of the Discrimination Against Persons with Disabilities (Prohibition) Law, particularly in section 3.

CRPD, all PWDs have a right to access justice.⁷⁶ In addition, the SPL discussed in chapter five, provides that all aggrieved PWDs are entitled to free legal aid service without condition, to enforce their rights against an individual, corporate body or the government.⁷⁷ The DAPDA as the federal disability law in Nigeria has no such provision for free legal aid service and requires an amendment to reflect same. Although some civil societies have provided legal aid and counselling for women and girls in the last decade, no reported cases brought pursuant to the provisions of DAPDA were found at the time of writing this thesis.⁷⁸

There are practical measures that may be taken to improve access to justice for PWDs, including WWDs. For example, the Canadian Ontario Bar Association has published a bar training module comprising basic guidelines on how PWDs are treated in the law, the general concept of disability and the applicable legislation.⁷⁹ Also, the Judicial College's Equal Treatment Bench Book has developed a guide for judges, magistrates, and other judicial officials on addressing the needs of individuals with disabilities in England and Wales.⁸⁰ The Nigerian Bar Association and the Nigerian judiciary can take a cue from the above. There is a need to train advocates in disability law who can effectively interact with and defend PWDs in law courts.⁸¹ All justice sector actors such as judges, court officials, prosecutors, lawyers and other law enforcement agents in Nigeria,

⁷⁶ Article 13(1) of the UN CRPD provides: "States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages".

⁷⁷ As indicated in chapter five, section 26(4) of the Special People's Law of Lagos State entitles PWDs, including WWDs to sue to enforce their rights. Furthermore, PWDs are entitled to free legal aid service without conditions.

⁷⁸ Most of the cases bothering on disability in Nigeria are incomplete or unreported. Ben Ezeomalu 'Lawyer with Disability Sues Rivers State Government over Inaccessibility of Court Rooms' *Premium Times News*, 17 July 2016 available at premiumtimesng.com accessed 16 April 2018. Onyinye Onobe 'WARDC emerges best CSO promoting, advancing human rights in Nigeria' *The Guardian*, 15 January 2022 available at <https://guardian.ng/guardian-woman/wardc-emerges-best-cso-promoting-advancing-human-rights-in-nigeria/> accessed 3 May 2022.

⁷⁹ While specific legal frameworks may be exclusive to Ontario and Canada, the document has a helpful chapter outlining general considerations for lawyers when dealing with clients that have disabilities. Julinda Beqiraj, Lawrence McNamara and Victoria Wicks, 'Access to justice for persons with disabilities: From international principles to practice' (October 2017) available at https://www.biicl.org/documents/1771_access_to_justice_persons_with_disabilities_report_october_2017.pdf accessed 8 May 2022.

⁸⁰ Ibid.

⁸¹ David Allen Larson 'Access to Justice for Persons with Disabilities: An Emerging Strategy' (2014) 3(2) *Laws* available at https://www.researchgate.net/publication/262690323_Access_to_Justice_for_Persons_with_Disabilities_An_Emerging_Strategy accessed 6 May 2022.

ought to be effectively tutored on how to administer justice in cases relating to discrimination against PWDs to comply with the UN CRPD.⁸²

(vii) Active engagement of civil societies and disabled peoples' organizations

The disability movement in Nigeria is significantly driven by civil societies and disabled peoples' organizations (DPOs). The UN CRPD requires civil societies (including PWDs and their DPOs) to be actively engaged in national and local disability policy formulation and implementation monitoring up to the reporting stage.⁸³ One concrete example in which all forms of civil society involvement can be brought together is the process of national reporting. So far, there has been limited participation of DPOs, especially those centred on WWDs, to the extent that their participation and input in the few state reports that Nigeria submitted to the United Nations Committee on the Rights of Persons with Disabilities remain low.⁸⁴ Currently, DPOs for WWDs operating in Nigeria have restricted interaction with the Ministry of Women Affairs and Social Development in tackling disability issues.⁸⁵ Each DPO in the nation seemingly speaks on its own behalf, instead of consolidating with other DPOs with similar objectives.⁸⁶ Nigeria's umbrella body of all DPOs – the Joint National Association of Persons with Disabilities (JONAPWD) – has a crucial role to play to advance unity of purpose among the DPOs, especially those formed to protect the interests of women.⁸⁷ Once this is achieved, there will be a stronger employment advocacy for WWDs and the much-needed positive pressure can be exerted on the government (and its agencies) to meet their demands through implementation monitoring strategies.⁸⁸

DPOs and civil societies undoubtedly play a crucial role in organizing, developing, and exchanging ideas on how to include WWDs in the fight for equality for WWDs in the disability agenda for employment. WWDs are more advocacy-minded and their civil society participation is

⁸² Article 13(2) UN CRPD states: "In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff".

⁸³ Article 33(3), *ibid.*

⁸⁴ Unfortunately, Nigeria has a habit of failing to submit reports. Nigeria was due to submit its State report to the UN CRPD in 2009.

⁸⁵ Nigeria Country Report 2018 to the DRF/DRAF Committee on Government and Current Affairs p. 20 available at http://www.disabilityrightsfund.org/wp-content/uploads/Country-Report_Nigeria_2018.pdf accessed 7 July 2020.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ Onyinye Onobe, *supra* note 78. Women Advocates Research and Documentation Centre (WARDC), a civil society made up of young dynamic women, has recorded significant success in promoting human rights for women and girls with disabilities in Nigeria.

capable of producing greater results than men with disabilities.⁸⁹ A Bangalore based disability group for WWDs – Mitra Joythi – recorded immense success in broadening the horizon of employment for WWDs by exposing them to urban job culture and providing accommodation for them.⁹⁰ Mitra Joythi has trained several WWDs and created a job placement cell where WWDs are trained in IT, soft skills, and work ethics which has helped them find jobs in public and private sectors of the economy.⁹¹ Also, Bereginya-Ukraine, a DPO for WWDs, prioritizes IT training of WWDs as a means of enhancing their employment participation.⁹²

7.4 Employment assistive schemes

The UN CRPD urges states parties to engage in measures to improve the enjoyment of the right to employment for PWDs in Article 27(1)(h). Measures such as: Access to education and training; tax reduction and funding schemes; and job/career fairs are instrumental towards the actualization of the right to employment for PWDs, and more particularly WWDs. Recommendations on each of the measures are considered seriatim.

(i) Inclusive education and training

As demonstrated in chapter three, generally women and girls with disabilities lack the requisite education and training qualifications to land decent employment. As a result of their gender and disability, they suffer educational barriers. Section 24 of the UN CRPD promotes the right to education of PWDs while sections 20-23 of DAPDA provide for inclusive education at a subsidized rate for PWDs and children with disabilities in respect of public schools. However, as chapter three indicates, more men and boys with disabilities in Nigeria are preferably enrolled into formal education or training while many women and girls with disabilities are left at home to perform “gender roles” or learn a vocational skill to establish a small-scale trade.⁹³ Chapter six

⁸⁹ US AID ‘Women with Disabilities in the Europe and Eurasia Region (Final Report 2012)’ available at <https://www.usaid.gov/sites/default/files/Women-with-Disabilities-EE-Region-FINAL-2012.pdf> accessed 11 May 2018 p.24.

⁹⁰ Dimpal Gulwani ‘This Bengaluru-Based NGO Is Empowering Women With Disabilities By Providing Accommodation, Employment’ *The Logical Indian*, 16 January, 2022) available at <https://thelogicalindian.com/uplifting/ngo-empowering-women-with-disabilities-providing-accommodation-employment-33311> accessed 10 April 2022.

⁹¹ *ibid.*

⁹² US AID ‘Women with Disabilities in the Europe and Eurasia Region (Final Report 2012)’ available at <https://www.usaid.gov/sites/default/files/Women-with-Disabilities-EE-Region-FINAL-2012.pdf> accessed 11 May 2018 p.22.

⁹³ Celine Osukwu ‘The place of women with disabilities in Nigeria’ (posted March 2010) available at <https://www.worldpulse.com/en/community/users/celine/posts/9591> accessed 12 March 2018.

portrays that educational policies, particularly the National Policy on Special Needs Education and the National Policy on Inclusive Education expressly promote inclusive education of children, youth and adults with special needs, but not enough financial and human resources are committed for the actualization of the education goals.⁹⁴

To properly include women and girls with disabilities in education, both federal and state governments through their Ministries of Education as well as relevant stakeholders must cooperate to facilitate the inclusion of women and girls with disabilities in primary, secondary, tertiary, and vocational education.⁹⁵ By extension, it is recommended that government support schemes in areas such as transport and personal maintenance allowance, scholarships and other assistive mechanisms incidental to inclusive education, are necessary incentives for promoting education of women and girls with disabilities.⁹⁶ Employers and employers' organizations can also render assistance to set up formal and vocational training schemes to assure WWDs of ready employment opportunities. Prioritizing programmes which promote equity in selection, training and employment processes and procedures for WWDs will increase employment placement for qualified WWDs.⁹⁷

(ii) Tax reduction and funding schemes

As an incentive, it is recommended that the government, through the Ministry of Labour, should adopt policies that embody tax reduction measures to motivate employers in the public and private sector of the economy, to hire PWDs, and particularly WWDs. Additionally, the government could provide employers with some assistive funds to procure reasonable accommodation for workers with disabilities. As indicated in chapter six, some states in America have government policies that

⁹⁴ Section 7 and 8 of the Revised National Policy on Education (2008). Ajuwon P M 'Inclusive Education for Students with Disabilities in Nigeria: Benefits, Challenges and Policy Implications' (2008) 23(3) *International Journal of Special Education* pp.11-16. Inclusive education in the modern context means accommodating students in regular schools as opposed to creating separate schools and classes for them regardless of their "physical, intellectual, social, emotional, linguistic or other conditions". Supra note 89.

⁹⁵ Education is listed under Section 30, Part II of the concurrent list in the Constitution of the Federal Republic of Nigeria. This means that both federal and state governments in Nigeria share powers to make laws with respect to technical, vocational, post-primary, primary or other forms of education, including the establishment of institutions for the pursuit of such education.

⁹⁶ Liesbeth Roolvink 'No Girl With Disabilities Should Be Denied the Right to Education' 4 June 2021 available at <https://www.globalpartnership.org/blog/no-girl-disabilities-should-be-denied-right-education> accessed 6 February 2022.

⁹⁷ Employment of People with Disabilities: The Impact of Legislation, Report of a Technical Consultation, Addis Ababa – 2002 available at https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_bk_pb_90_en.pdf accessed 20 October 2019.

provide tax benefits to employers for hiring PWDs.⁹⁸ For instance, the Delaware State Tax Code⁹⁹ provides employers in Delaware with tax reduction for hiring individuals with disabilities, including WWDs. Similarly, Code 49E of the Louisiana Income Tax Act¹⁰⁰ offers income tax credit of up to 50 per cent for taxpayers who continue to provide employment for individuals with disabilities.¹⁰¹ Further, employers can recover monies expended on workplace adjustments for workers with disabilities pursuant to the arrangement.¹⁰² This gesture has served over the years as a useful tool for encouraging the hiring of qualified PWDs without the fear of incurring overbearing costs on the employer. Tax reduction and funding schemes enable PWDs to get jobs in disability-conducive work environments.

(iii) Flexible work arrangements

Women generally are charged with the responsibility of caring for their families in addition to fulfilling workplace roles, as indicated in chapter three. It is therefore necessary that WWDs are allowed flexible working conditions suitable to their qualification and ability to work, through policy.¹⁰³ The current National Employment Policy can be modified by the Ministry of Labour, to include flexible working hours and conditions of work such as job sharing, working on part-time basis, working from home, compressed hours, flexitime, and other kinds of convenient work arrangements for WWDs, to promote the exercise of their fundamental right to work.¹⁰⁴ It is also recommended that the gesture be extended to women workers who are caregivers of PWDs to enable them have time to cater to their dependents with disabilities (child, spouse, or family member).¹⁰⁵ Flexible arrangements enhance labour participation and improve work-life balance.¹⁰⁶

⁹⁸ Some states in America such as Louisiana, Delaware, New York, Utah, Tennessee, and Florida offer tax incentives to employers for hiring PWDs as part of their workforce.

⁹⁹ Delaware State Tax Code on Income, Inheritance and Estate Taxes 2017, Title 30 § 20B-101-4 available at <http://delcode.delaware.gov/title30/c020b/index.html> accessed 12 November 2021.

¹⁰⁰ Code 49E and 50 Louisiana Laws, Title 47, 2016 LA Rev Stat § 47:297.13 (2016) available at <https://law.justia.com/codes/louisiana/2016/code-revisedstatutes/title-47/rs-47-297.13/> accessed 13 November 2021.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Carol Boyer 'Job Challenges of Women with Disabilities 25 years After the A.D.A' (2015) 17(2) *Regional Labour Review* pp. 15-16.

¹⁰⁴ Ibid.

¹⁰⁵ Caregivers of PWDs are statutorily protected in America pursuant to the Family Medical Leave Act and American with Disabilities Act 1990.

¹⁰⁶ Ibukun Olorunisola Kolawole PhD and Adekunle Emmanuel Ibironke 'The Impact of Flexible Work Model on Employees Work Life Balance in an Emerging Economy' (April 2021) V(IV) *International Journal of Research and Innovation in Social Science* p. 385.

(iv) Job and career fairs

Job fairs provide an awareness-raising opportunity for graduate job seekers with disabilities to demonstrate their talents to potential employers.¹⁰⁷ Job fairs are also strategic for including PWDs in employment.¹⁰⁸ Specifically, the employment needs and realities of WWDs can be explored through insightful debates and discussions at job fairs and prospective employers can be taught about the advantages of hiring WWDs as part of their workforce. Also, orientation sessions in close collaboration with civil societies and disabled peoples' organizations can be held from time to time comprising activities designed to educate and inform employers who are interested in hiring PWDs.

Job fairs have proven to be effective in addressing open market participation needs of PWDs generally. For instance, the job fair held at the Addis Ababa Exhibition Centre in Ethiopia, had nearly 300 scheduled interviews conducted with effective follow-up methods.¹⁰⁹ Also, since 2014, Mojokerto city in East Java, Indonesia has been conducting job fairs for PWDs, including WWDs, which has enabled most of them to obtain decent jobs in the city.¹¹⁰ Nigeria conducted her first disability summit and career fair for PWDs in 2019 following the enactment of DAPDA.¹¹¹ However, the outcomes of that job fair failed to significantly increase the employment rate for PWDs generally due to lack of effective follow-up mechanisms to secure jobs for the PWDs who participated in the fair.¹¹² Lessons can be learnt from successful job fairs in other jurisdictions to conduct future job fairs in Nigeria. For impactful results, workable follow-up mechanisms must be set up with job fairs to ensure that qualified PWDs, including WWDs, are suitably employed.

¹⁰⁷ Awareness-raising is also a measure of realizing employment for PWDs, particularly WWDs, in this context. Awareness-raising is covered by Article 8 of the UN CRPD and may also be implied into Article 27 (1)(h) of the UN CRPD.

¹⁰⁸ ILO Jakarta 'Promoting Rights and Opportunities for People with Disabilities in Indonesia (UN Partnership to Promote the Rights of Persons with Disabilities, UNPRDP)' available at https://www.ilo.org/wcmsp5/groups/public/-asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms_617107.pdf accessed 12 November 2021.

¹⁰⁹ ILO 'Moving Towards Disability Inclusion: Ethiopia Disability Support Services' available at https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/publication/wcms_161489.pdf accessed 10 November 2020 p. 6.

¹¹⁰ Ibid.

¹¹¹ The Nigerian 2019 Disability Summit and Career Fair, themed, 'Realities of the Nigerian Disability Law: Implication for Workplaces, Businesses, and Other Stakeholders' was a platform where key stakeholders discussed full inclusion of PWDs in all aspects of the Nigerian society. Members of the Disability Community were also able to interact with leaders in the private and public sectors in the light of the imperatives of DAPDA.

¹¹² Ibid.

7.5 Conclusion

As earlier noted, the UN CRPD purposefully emphasizes that states parties must take appropriate measures to ensure that women and girls fully and equally exercise their fundamental human rights without discrimination. Chapter seven has proffered recommendations for addressing the intersection between gender and disability in Nigeria. Law reform, social interventions, employment assistive schemes, in compliance with the dictates of the UN CRPD, among other strategies, have been discussed as suggestions to promote employment participation of WWDs. For law reform, the amendment of aspects of the Nigerian Constitution, DAPDA, gender, education and employment policies, and domestication of ratified treaties to realize employment protection for WWDs are offered as recommendations. Furthermore, the role of the judiciary in interpreting constitutional provisions against discrimination and equality for PWDs, particularly WWDs, is emphasized.

Next, social interventions for dismantling employment barriers to situating WWDs within the employment sector in Nigeria were considered. Awareness-raising, improved accessibility into physical structures and transport, research and data development, access to justice and active engagement of DPOs, and civil societies were identified as instrumentalities towards the dismantling of barriers to employment access for WWDs. The importance of education and training of women and girls with disabilities, provision of tax incentives for employers, and job fairs were also suggested as assistive schemes to realize employment goals for PWDs, including WWDs, in Nigeria. The relevant implementing institutions were tied to their respective roles. The recommendations on law reform, social interventions, and employer assistive measures discussed above, if properly implemented by the appropriate institutions, will publicize the intersection between gender and disability. More particularly, the recommendations are useful to situate WWDs on the agenda for society and development in Nigeria through employment.

CHAPTER EIGHT

SUMMARY AND GENERAL CONCLUSION

8.1 Introduction

This chapter summarizes the research, and draws conclusions based on the main findings and recommendations.

8.2 Overview of thesis

The research study addressed the major question posed in the introductory chapter: To what extent are the existing domestic legislation and policies in Nigeria suitable to address the peculiar discrimination being experienced by WWDs in accessing employment in the Nigerian public service and labour market in Nigeria? This research has shown that Nigerian legislation and policies: the Constitution,¹ Labour Act,² National Employment Policy,³ Gender and Equal Opportunities Bill,⁴ National Policy on Education,⁵ Nigerian Policy on Special Needs Education,⁶ and the National Policy on Inclusive Education,⁷ including Nigeria's federal disability law (DAPDA),⁸ do not sufficiently recognize and incorporate provisions for the promotion of rights for WWDs, particularly the right to employment in the public service and labour market in Nigeria. The research also finds WWDs in Nigeria to be significantly poorer than men with disabilities, due to higher unemployment rates.

The research utilized the rights-based approach to disability to add to a small but developing body of research and evidence to consider ways by which the deficits in law and policy in Nigeria can be brought to conform to international standards and norms that promote the right to work for WWDs, as a fundamental human right.⁹ Although PWDs in general are entitled to

¹ Constitution of the Federal Republic of Nigeria LFN 2004.

² Labour Act Cap L1 L.F.N 2004.

³ National Employment Policy 2017.

⁴ Gender and Equal Opportunities Bill (S.B 116) 2016.

⁵ National Policy on Special Needs Education is available at

<http://www.rodra.co.za/images/countries/nigeria/policy/National%20Policy%20on%20Special%20Needs%20Education.pdf> accessed 12 October 2021.

⁶ Nigerian Policy on Special Needs Education 2017.

⁷ National Policy on Education 2008.

⁸ Discrimination Against Persons with Disabilities Law 2018.

⁹ Other international normative treaties and instruments discussed in chapter three are, the Convention on the Elimination of Discrimination Against Women, World Programme of Action, Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Vocational Rehabilitation Convention, Discrimination (Employment and

exercise their fundamental human rights, including the right to employment on the basis of equality, PWDs do not constitute one indivisible disability group. Crenshaw's intersectionality theory discussed in chapter three was used to demonstrate that WWDs constitute more vulnerable group within the larger disability group, and may experience intersectional discrimination on grounds of gender, disability among other grounds, different from men with disabilities. Patriarchy, gender stereotypes and harmful traditional practices, especially prevalent in African societies, including Nigeria, contribute to limit equal employment participation for WWDs. The employment barriers relatable to PWDs as well as the severity with which they apply to WWDs were discussed in 3.4 of chapter three. The section highlighted and discussed the employment barriers such as widespread negative attitudes, inaccessible physical structures and transport facilities, public information and communication, family responsibilities and inflexible work arrangements, as well as educational inaccessibility as prevailing outcomes of discrimination due to gender and disability experienced by WWDs. The research emphasizes that the peculiar needs of WWDs ought to be separately addressed to achieve substantive equality for WWDs and to properly situate them in employment that is suited to their qualifications and potential.

Special provisions exist in international treaties and instruments that promote the right to work for WWDs and girls with disabilities as a more uniquely vulnerable group.¹⁰ WWDs are entitled to full and equal participation in all aspects of life, including employment, by international standards.¹¹ Therefore, chapter four examines the Convention on the Elimination of Discrimination Against Women, World Programme of Action, Standard Rules on the Equalization of Opportunities for Persons with Disabilities, United Nations Convention on the Rights of Persons with Disabilities, and particularly the UN CRPD, member states of the United Nations, including Nigeria, are duty-bound to comply with international obligations for the fulfilment of rights for WWDs in their respective countries. Compliance with international obligations in this regard will substantially curb the discrimination against WWDs that limit the actualization of their right to employment. It has been noted, however, that although Nigeria has ratified most of the international treaties, the government lags behind in terms of implementation. The thesis in 4.7 of

Occupation) Convention 1958 (No. 111), Employment and Decent Work for Peace and Resilience Recommendation 2017 (No. 205) and the Code of Practice 2002.

¹⁰ Article 6(1) – (2) of the UN CRPD.

¹¹ Ibid.

chapter four, emphasized the need for the National Assembly of Nigeria to domesticate international instruments that promote employment for PWDs with gender considerations.

The right to work may also be realized for WWDs through the provisions of regional treaties. Therefore, chapter five examined the African regional instruments which promote rights for WWDs, including the right to employment. The African Charter on Human and Peoples' Rights (ACHPR), Protocol to the ACHPR on the Rights of Women in Africa (Maputo Protocol), Protocol to the ACHPR on the Rights of Persons with Disabilities (Disability Protocol), were considered as measured against the international benchmarks on disability, particularly the UN CRPD. It was indicated that the regional instruments contained special provisions that promote rights for WWDs, particularly the right to work. Chapter five has noted that Nigeria has ratified all the relevant regional instruments, except the Disability Protocol. The chapter called for ratification of the Disability Protocol to benefit WWDs. Upon ratification, petitions concerning human rights violations can be brought directly before the African Court of Human Rights to enforce the provisions of African human rights treaties. Furthermore, the chapter suggested that the African Court on Human and Peoples' Rights should develop its own statutory guidelines to supervise the enforcement of its decisions in respect of matters brought before it by African Union member states similar to what obtains in the inter-American system.¹² Section 5.3 of chapter five, called for the domestication of the regional treaties and instruments, especially those that promote employment participation for PWDs with gender considerations to enable WWDs to conveniently enforce their human rights in domestic courts, without having to go through the rigorous process of filing petitions before the regional court of human rights.

There are certain research limitations or gaps which were encountered during the research, as identified in chapter one. One of such limitations is the limited availability of statistical data and case law regarding PWDs in many countries, including Nigeria. Where disability data exist, it is rarely disaggregated by sex. So, this research relied mainly on percentages and estimated disability population figures. As recommended, there is need to generate accurate data on the disability population across nations, especially those data disaggregated by sex, to address discrimination against WWDs. Another gap identified in the course of the research is that there is lack of gender-inclusive perspectives in most national legislation and policies which promote

¹² Section 4.5 of Chapter four

rights for PWDs, including the right to work. Therefore, while good implementation programmes, strategies and practices for PWDs in general abound, gender-sensitive ones particularly organized for WWDs by the government of other nations were scarcely found during the research to serve as good practices for Nigeria. To actualize inclusion for WWDs through employment access, all efforts towards improving their employment participation must be addressed, especially through the instrumentality of national laws and policies which recognize and address the unique vulnerability of WWDs. The gaps identified above are potential future avenues of research in countries across the world.

This research has contributed to knowledge by identifying the unique vulnerability of WWDs and offering recommendations relevant to actualizing the exercise of their right to employment in Nigeria. Chapter six of the thesis offers a critique of Nigeria's domestic legislation and policies while chapter seven identified strategies for addressing the intersection between gender and disability through law reform to bring it into conformity with international standards, particularly the UN CRPD. In addition, social interventions relevant to dismantling the employment barriers being experienced by WWDs were also recommended. The thesis also suggested some employment assistive schemes for improving the employment participation of WWDs in Nigeria, in fulfilment of the requirements of the UN CRPD to promote rights for WWDs. As regards law reform, recommendations on amending aspects of the Nigerian constitution, gender-specific and disability and employment-specific laws and policies to promote the exercise of the right to employment for WWDs, were proffered.

The judiciary has a role to interpret existing laws to achieve substantive equality for PWDs, and more particularly for WWDs to enable them fully to exercise their right to work. Also, implementing institutions in Nigeria, such as the Ministry of Women Affairs and Social Development, the National Commission for Persons with Disabilities, Ministry of Education, Ministry of Labour, Ministry of Information, in consultation with Civil Societies, Disabled Persons Organizations and other relevant stakeholders have the collective responsibility to discharge their functions for the benefit of WWDs, in terms of improving their employment participation.

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