Access to Justice of Persons with Disabilities in Africa: The Nigerian Experience

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ABSTRACT

The vulnerability of persons with disabilities (PWDs) makes the discourse of access to justice of this category of persons a topical and imperative one. Persons with disabilities all around the world are largely invisible, ignored and excluded from mainstream development. They are more likely to be victims of violence and rape. They are less likely to obtain police intervention, legal protection or preventive care. This paper examines the factors that inhibit access to justice of persons with disabilities in Africa such as poverty, cultural impediments and physical barriers. Using Nigeria as a case study, this topic subscribes very strongly to the quest for a visible and viable mechanism to ensure access to justice of PWDs. Findings show that this can be achieved through the strengthening of the systems of free Legal Aid as a panacea for access to equal justice of PWDs. The Legal Aid Statute/Scheme in African countries should be amended to include PWDs. Legislation that tends to improve physical accessibility to the courts and other public institutions should be encouraged in Africa. The judiciary should be proactive in their interpretative roles to ensure access to justice for PWDs. The inclusion of civil society is pivotal in the efforts to enhance access to justice for PWDs. The media also plays a fundamental role in performing watchdog functions to ensuring access to justice for PWDs. Finally, the adoption of ADR mechanisms is one means of improving access to justice for PWDs.

KEY WORDS: Access to Justice, Persons living with Disabilities (PWDs), Africa, Nigeria, Legal Aid.

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INTRODUCTION

The idea of justice is not peculiar to Nigeria, it is a global idea that has received universal recognition; Article 8 of the Universal Declaration of Human Rights (UDHR) declares that *Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.* It has been settled in the international terrain that for justice to be effective, it must be within the reach of every individual who is in need of it.¹ Law is the unseen chord that holds human society together, ensuring sanity and orderly behaviour;² it therefore follows that persons with disabilities must be afforded equal access to justice just like every other person.

The global focus on human right is however general, but there is growing interest in the rights of PWDs which has necessitated human rights activist and a host of other stakeholders all over the world to continue to discuss at various instances the need for the protection of persons with disability.³ Access to justice is a paramount issue in any egalitarian society and any country that purports to embrace and promote the principles of human rights needs to ensure that justice is made accessible to all without exception.⁴

The right to access to justice can be traced to certain provisions in international law that address the equality of people before the law, the right of such people to equal protection under the law, and their right to be treated fairly by a tribunal or court.⁵ These rights are addressed in Articles 6 through 11 in the UDHR and are addressed in more detail in Articles 14 – 16 of the International Covenant on Civil and Political Rights (ICCPR).

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The ability to access justice is of critical importance in the enjoyment of all other human rights.\(^6\) For example, a person with a disability who feels that s/he has been denied the right to work may wish to turn to the mechanisms of justice to seek redress. However, if the justice system fails to accommodate his/her physical, communication, or other disability-related needs, and/or expressly discriminates against him/her, then clearly, denial of access to the justice system also results in denial of protection of the right to work.

Similarly, a person with a disability who has been the victim of a crime may wish to report the crime to the police and press charges against the offender.\(^7\) However, if he or she is denied physical access to the police station, clear communication with the police, or access to understandable information, then that person may not be able to fully exercise his or her rights as a victim.

The enjoyment of other human rights can also positively or negatively impact the ability of people with disabilities to enjoy access to justice.\(^8\) For instance, physical accessibility to transportation may determine whether or not a person with disability will be able to travel to a police station, courthouse, or other location where justice is administered. Similarly, a person with a disability who has access to quality education will be in a position to better understand and use the justice system, but if s/he has been denied the right to education due to poverty or disability, then participation in the justice system may be difficult or impossible.\(^9\)

To be fully included in the society, PWDs need access to justice. Paragraph k of the Convention on the Rights of Persons to Disabilities (CRPD) stressed the concern on the barriers in the participation as equal members of society and violations of the rights of persons with disabilities and despite Articles 12 and 13 of the CRPD which guarantees the equal recognition before the law and access to justice of PWDs, PWDs still continue to face several barriers in their bid to have full access to justice in most parts of Africa. As long as they face barriers to their participation in the justice system, they will be unable to assume their full responsibilities as

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\(^6\) Ibid.
\(^9\) Ibid.
members of society on their rights. Consequently, it is imperative that both physical and social barriers be removed so that persons with disabilities can enjoy the equal opportunity to perform their duties as witnesses, lawyers, judges, arbitrators, and other dramatis personnel in the administration of justice.\textsuperscript{10}

Other barriers to accessing justice include: legal prohibitions on people complaining or accessing a court, lack of adequate state-funded legal aid to pay for legal advice and assistance, and if need be, representation, ineffective complaints mechanisms in an institution or within a community-based service, minimal or no support and advocacy for people with diminished functional capacity to advocate for themselves, ineffective independent inspectorate of facilities or services. PWDs face numerous problems, including access to health care and related costs; limited access to education (due to which their level of literacy is lower than the average citizen); and a higher degree of poverty compared to other citizens.

Access to Justice is a broad concept, encompassing peoples’ effective access to the systems, procedures, information, and locations used in the administration of justice.\textsuperscript{11} Over time, PWDs have often been faced with constant denied access to fair and equal treatment before courts, tribunals, law enforcement officials, prison systems, and other justice administration.\textsuperscript{12} At times, persons with disabilities have been discriminated against in education which had hindered so many dreams of attaining positions as lawyers, judges, and other officials in the justice system. Such barriers not only limit the ability of persons with disabilities to use the justice system, but also limit their ability to contribute to the administration of justice to society and to the community as a whole.\textsuperscript{13}

Justice system objectives are often framed in concrete terms, for example, terminating disputes and reducing time and costs associated with dispute resolution. However, objectives can also be more broadly cast to extend to justice system values. In some cases these lists of objectives can


\textsuperscript{13} Ortoleva, p. 283.
be quite refined for example: promoting substantive and procedural fairness; satisfying disputants’ substantive interests; satisfying disputants with the dispute resolution process itself; reducing risks related to disputes; reducing harm to disputants and others, including society generally; providing greater choice in dispute resolution processes for disputants and ADR professionals; increasing disputants’ capabilities to handle other disputes; promoting productive relationships between disputants; satisfying disputants with the services of dispute resolution professionals; improving the culture of disputing for disputants, professionals, and society, and promoting compliance with social policies expressed in the law, such as non-discrimination.  

Historically, 1981 to 1992 was declared the United Nations (UN) ‘Decade of Disabled Persons.’ In 1987, a global meeting of experts to review progress recommended that the UN General Assembly should draft an international convention on the elimination of discrimination against persons with disabilities (CRPD). The draft convention outlines were proposed by Italy and subsequently Sweden, but no consensus was reached. Many government representatives argued that existing human rights documents were sufficient. Instead, non-compulsory ‘Standard Rules on the Equalisation of Opportunities for Persons with Disabilities’ were adopted by the General Assembly in 1993.

By 2000, leaders of five international disability NGOs issued a declaration, calling on all governments to support a Convention. In 2001, the General Assembly, following a proposal by Mexico, established an Ad Hoc Committee to consider proposals for a comprehensive and integral convention to promote and protect the rights and dignity of persons with disabilities, based on a holistic approach. Disability rights organisations, including the International Disability Alliance as coordinator of an ad hoc International Disability Caucus, participated actively in the drafting process, in particular seeking a role for disabled people and their organisations in the implementation and monitoring of what became the Convention.

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The Convention became one of the most quickly supported human rights instruments in history, with strong support from all regional groups. 159 States signed the Convention upon its opening in 2007 and 126 States ratified the Convention within its first five years. In recognition of its role in creating the Convention, as well as the quality of New Zealand’s landmark national Disability Strategy, Governor-General of New Zealand, Anand Satyanand received the 2008 World Disability Award on behalf of the nation.19

Every system of government is now required to make available to all its citizens (including persons with disability) a means for the just and peaceful settlement of disputes between them as to their respective legal rights.20 The means provided are courts of justice to which every citizen has a constitutional right of access in the role of Plaintiff to obtain the remedy to which he claims to be entitled in consequence of an alleged breach of his legal or equitable rights by some other citizen, the Defendant.2122

CONCEPTUAL CLARIFICATION

Access to Justice

Access to justice has two dimensions: procedural access (having a fair hearing before a tribunal) and also substantive justice (to receive a fair and just remedy for a violation of one’s rights). It is trite that access to justice entails ensuring that the protection of rights must continue through all stages of the legal process, from the time of reporting a crime to the police, to following the award of a remedy by the court and to the enforcement of the judgment.

The term can also be used in three ways – firstly, to refer to the possibility of the individual to bring a claim before the court and have that matter adjudicated on; secondly, it can refer to the

19The text was adopted by the United Nations General Assembly on 13 December 2006, and opened for signature on 30 March 2007. Following ratification by the 20th party, it came into force on 3 May 2008. As of February 2015, it has 159 signatories and 152 parties, including the European Union (which ratified it on 23 December 2010 to the extent responsibilities of the member states were transferred to the European Union). In December 2012, a vote in the United States Senate fell six votes short of the two-thirds majority required for ratification. The Convention is monitored by the Committee on the Rights of Persons with Disabilities.
21 Ibid. Lord Diplock.
right of an individual to have his claim heard and adjudicated upon in accordance with the
standards of principles and thirdly to signify legal aid for those in need.\textsuperscript{23}

Access to justice is not defined in international law and has been used in different ways in
different contexts. Traditionally, the term refers to opening up the formal systems and structures
of the law to disadvantaged groups in society. This includes removing legal and financial
barriers, and also social barriers such as language, lack of knowledge of legal rights and
intimidation by the law and legal institutions.\textsuperscript{24}

For the purpose of this article, access to justice will be used to include the structural accessibility
and facilities to aid the proceedings of an aggrieved individual in order to give him equal
opportunity of having his claim adjudicated upon on equal basis irrespective of his social status
or identity.

**Disability**

Disability from the Conventional perspective adopts a social model. It defines disability as
including *those who have long-term physical, mental, intellectual or sensory impairments which
in interaction with various barriers may hinder their full and effective participation in society on
an equal basis with others.*\textsuperscript{25} According to World Health Organization (WHO), the concept of
disability is classified as one of three: impairment, disability and handicap.\textsuperscript{26} Impairment refers
to the reduction or loss of normally existing physical, psychological or behavioural structures.
Disability refers to the functional impairment resulting from primary damage, and the effect of
the loss of function in daily life is thus the handicap.\textsuperscript{27}

Disabled person according to the United Nations is 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 a

\begin{footnotesize}
\begin{enumerate}
\item http://www.bizchut.org.il/eng
\item Article 1, CRPD.
\end{enumerate}
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deficiency, either congenital or not, in his or her physical or mental capabilities. The British Discrimination Act 1995 states four elements to be considered disabled; there must be a physical or mental impairment; the impairment must adversely affect the individual’s capacity to carry out normal day to day activities; the adverse effect must be substantial; and the adverse effect must be long term.

Discrimination

Discrimination in the context of disability ranges from unjustified differentiation to direct or indirect unfavourable treatment to detailed lists of discriminatory practices. Article 2 of the CRPD states that discrimination means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.

Judiciary

Judiciary can be described as a body of all judges in a country who as a group, form part of the system of government. It is also the branch of government invested with judicial power, the system of courts in a country, body of judges, and the branch of government intended to interpret, construe and apply the law. In the Nigerian case of Monday Ogbonna & 50 others v.

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28 Proclamation of the UN by the Geneva Assembly’s Resolution 3447 of December 9, 1975.
President of Nigeria & 14 others\textsuperscript{31} the court held that the judiciary is that branch of the government, which administers justice by declaring the law.\textsuperscript{32}

**INTERNATIONAL STANDARDS AND FRAMEWORK FOR ACCESS TO JUSTICE OF PWDs**

International human rights law strongly supports the right of people with disabilities to have meaningful and effective access to justice in all its phases, not only as a right in itself, but also so that people with disabilities may better enjoy their other human rights and fully assume their responsibilities as members of society.

The International Convention on the Elimination of all Forms of Racial Discrimination (CERD) and the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) are particularly relevant for people with disabilities, who may be subject to multiple discriminations, such as women with disabilities and ethnic minority groups with disabilities. Article 5(a) of CERD requires that States “eliminate racial discrimination in all its forms,” and guarantee the right of everyone “to equal treatment before the tribunals and all other organs administering justice.” Article 15 of CEDAW addresses these issues as they relate to women, and requires that States treat women “equally in all stages of procedure in courts and tribunals.”

Notable also, is the 1993 UN Standard Rules on the equalization of opportunities for Persons with disabilities (Standard Rules) which does not expressly address the issue of access to justice, but however addresses a number of issues that can impact the enjoyment of access to justice by people with disabilities such as:

- Awareness-raising of the rights, needs, potential and contributions of people with disabilities in society\textsuperscript{33}
- Support services to promote independence and facilitate the exercise of rights by people with disabilities\textsuperscript{34}
- Physical, informational and communication accessibility\textsuperscript{35}

\textsuperscript{31} (1990) 4 NWLR pt. 142 page 130  
\textsuperscript{32} Aderibigbe, (n. 1) p.69.  
\textsuperscript{33} Rule 1  
\textsuperscript{34} Rule 4  
\textsuperscript{35}
Finally, came the Convention on the Rights of Persons with Disabilities which is an international human rights treaty of the United Nations intended to protect the rights and dignity of persons with disabilities. Parties to the Convention are required to promote, protect, and ensure the full enjoyment of human rights by persons with disabilities and ensure that they enjoy full equality under the law. The Convention has served as the major catalyst in the global movement from viewing persons with disabilities as objects of charity, medical treatment and social protection towards viewing them as full and equal members of society, with human rights. The Convention was the first human rights treaty of the third millennium.

The Convention on the Rights of Persons with Disabilities expands upon the issues addressed in earlier human rights documents and helps to clarify how States can respect, protect, and fulfil the enjoyment of access to justice by people with disabilities. Article 13 guarantees the right of people with disabilities to effective access to justice on an equal basis with others; and to effective access to justice at all phases of the administration of justice, including at preliminary stages, such as initial investigations; also to be both direct and indirect participants, including being witnesses; and to receive procedural and age-appropriate accommodations to facilitate their access to justice. It states thus:

1. 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.

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35 Rule 5
36 Rule 6
37 Rule 19
38 Article 4 CRPD.
2. 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.\(^40\)

Article 13 requires States to provide training to those working in the administration of justice in order to help ensure effective access to justice by persons with disabilities. States must respect the right to access to justice by ensuring that State actors (e.g., police, judges, prison staff) do not interfere with the exercise and enjoyment of access to justice by people with disabilities. States must also protect the right by ensuring that non-State actors (e.g., private attorneys, families) do not interfere with the exercise and enjoyment of the right. Furthermore, States have an obligation to fulfil the right, by taking action to ensure that persons with disabilities are able to exercise the right.\(^41\) There are however eight guiding principles that underlie the Convention:

1. Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons
2. Non-discrimination
3. Full and effective participation and inclusion in society
4. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity
5. Equality of opportunity
6. Accessibility
7. Equality between men and women
8. Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.\(^42\)

The Optional Protocol to the Convention on the Rights of Persons with Disabilities is a side-agreement to the Convention which allows its parties to recognise the competence of the Committee on the Rights of Persons with Disabilities to consider complaints from individuals. The text is based heavily on the Optional Protocol to the Convention on the Elimination of All

\(^40\) Article 13, CRPD.
\(^41\) See generally Article 13 CRPD
\(^42\) Guiding Principles of CRPD.

The Committee on the Rights of Persons with Disabilities is a body of human rights experts tasked with monitoring the implementation of the Convention. It initially consisted of 12 independent human rights experts, with half elected for a two-year term and the other half elected for four-years. Thereafter members will be elected for four-year terms, with half the members elected every two years. As the Convention has achieved 80 ratifications, the Committee will be expanded to 18 members.43

In Africa, human rights system addresses PWDs inadequately and in a fragmented manner.44 Viljoen and Biegon identified the potential mechanisms to protect PWDs to include the African Charter, African Children’s Charter, African Women’s Protocol and the African Youth Charter which all include PWDs within their ambit.45

FACTORS INHIBITING ACCESS TO JUSTICE OF PERSONS WITH DISABILITY IN AFRICA

It has been argued that sometimes the justice system remedies inequality and discrimination and at other times, the justice system itself that perpetuates that very inequality and discrimination.46 From the foregoing, examples of barriers to Access to Justice for persons with disability include:

Poverty

The relationship between disability and poverty has been described as cyclic such that any poverty reduction strategy has to put the disability issue in a prominent position.47 In most African countries like Nigeria, most persons with disability usually end up begging for alms on

43 For further information, please visit www.un.org/esa/socdev/enable or contact: Edoardo Bellando, United Nations Department of Public Information, tel.: (212) 963-8275, e-mail: bellando@un.org
45 Ibid.
the streets. It is apparent that poverty present formidable problems to the effective realization of the rights or PWDs to recourse procedures. Discrimination against PWDs is a function of economic considerations and particularly poverty. Additionally, getting adequate remedies for violations of human rights and getting good representation in criminal cases requires the services of a legal counsel and this expense mostly discourages people from seeking appropriate remedies when they truly deserve one.

**Physical barriers**

This entails barriers to police stations, courthouses, jails, prisons, and other public buildings such as lack of accessible transportation to police stations, courthouses, and other public buildings; lack of accommodations to facilitate communication by people with disabilities, especially blind and deaf people, people with intellectual disabilities, and people with learning disabilities.

It is disheartening that most of the police stations which should be the first point of access to ensure justice are structurally defective and discriminatory. The structures are constructed in a manner that denies a person with some form of disabilities to have physical access to the police stations. For instance, a person confined to a wheelchair cannot easily access a police station to lodge a complaint without being assisted. Usually, sign language interpreters are not available in most African police stations but mostly, persons with disabilities are not believed when they have cases to report and they are not viewed as credible and reliable witnesses by police and prosecutors.

The same situation goes for most of the States High Courts. Most African Courts require accessibility through climbing of stairs; the witness boxes are mostly inaccessible to some persons with certain form of disabilities, such as a person confined to a wheelchair, and so on.

In situations where the complainants are able to have physical access to the Courts or Justice Administration buildings, other facilities to enhance their participation in the justice process are usually lacking. These include prompt provision of sign language interpreters, Braille facilities, well illuminated or dimly lighted rooms, as required, provision of technology to enable the witness/party with disability to understand the rules of proceedings and other necessary facilities.

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48 Op Cit p.62
to enhance fair trial. Participation in this context is not limited to being the victim or complainant but also as a witness. Thus where a person who seeks protection from the law is denied physical access to the justice system, this would amount to a denial of the protection of the rights of those involved.

It was reported that Esthe Muller, a South African lawyer confined to a wheelchair, filed an action against the Justice Department and the Department of Public Works because of the inaccessibility of the courthouse. She had to be carried up and down the flight of stairs in order to attend to her matters in court. The South African Equality Court in 2004 reached a final decision and ruled that the non provision of wheelchair access is an unfair discrimination and both the Justice Department and the Department of Public Works committed to a plan to ensure that all court buildings throughout South Africa would be made accessible within three years.

Also, law schools in Africa do not include disability law in their curriculum such that most lawyers in practice are not trained on how to handle clients with disabilities, especially if they are appointed by the courts on legal aid basis. Most lawyers are not trained in sign languages neither do they have adequate information on how to deal with blind clients or clients with other forms of disabilities such as mental disability, down syndrome, etc.

**Cultural impediments**

Nigerian culture just like most African culture refers to the totality of the customs, values, knowledge, perceptions, politics and economic practices of Nigerians which are either influenced domestically or internationally. It is important to note that Nigerian culture cannot exist in isolation of its environment. There is the cultural perception in Nigeria and most African countries that persons born with disability are evil and should be avoided. There is also the belief that anyone who becomes disabled by virtue of disaster or accident is being punished by the gods and should also be avoided. Not to mention the unjust perception about PWDs generally, for

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49 Ortoleva, 306.
50 D. Reynolds, *Government Sets Date for All Courts to be Accessible*, cited in Ortoleva, 306.
51 www.ccsenet.org/jsd Journal of Sustainable Development; Vol. 5, No. 7; 2012 ISSN 1913-9063 E-ISSN 1913-9071 Published by Canadian Center of Science and Education
127 Cultural Impediments to Socio-Economic Development in Nigeria: Lessons from the Chinese Economy Adebayo Olufemi Fadeyi1 &WaziriBabatunde Adisa2
example the belief that people with psycho-social disabilities cannot be reliable witnesses is repugnant to natural justice. Furthermore, the lack of knowledge by legal professionals of how to work with clients with disabilities\(^52\) without necessarily considering their peculiar nature had contributed to the impediments of access to justice by PWDs.

**Illiteracy**

The unfortunate cultural perception in Nigeria has contributed to the high rate of illiteracy among PWDs. Lack of accessible information about how the justice system works and what a disabled person’s rights and responsibilities are within the justice system is a major barrier in itself to access to justice of PWDs. Also, a person with a disability who has had access to a quality education will be better able to understand and use the justice system. Where a person had been denied the right to quality education, the ability to participate in the justice system may be impeded. Furthermore, a denial of formal legal education to persons with disabilities will prevent such persons the opportunity to work as lawyers or serve as judges who can integrate and advocate the views and experiences of disabled persons in the justice system.\(^53\)

**OVERVIEW OF THE PROFILE OF NIGERIA**

The legal framework on access to justice in Nigeria can be traced to the combination of sections 6(6)(b), 46(1) and 36(1) of the 1999 Constitution (as amended). S. 6(6)(b) vests adjudicatory powers in the courts to determine any question of civil rights and obligations; s. 46(1) guarantees access to the High Courts for any person who claims that his fundamental rights has been, is being or is likely to be contravened while s. 36(1) guarantees the right to fair hearing. However, section 42 which is the freedom from discrimination provision did not make any provision for PWDs. It can be inferred that the section seeks to protect all citizens of Nigeria but the provision would have been more effective if it had made specific reference to PWDs.


\(^{53}\) Ibid.
In Nigeria, it is estimated that about 22 million people live with one form of physical disability or the other.\textsuperscript{54} Some are born that way, and with the rising cases of internal conflict situations and insurgency in the country, it has led to an increase in the number of persons with disabilities. For instance, during the 2014 Nyanya bombing which took place in Abuja in April, most of the survivors lost their arms and limbs putting them in the disabled bracket. Also, road accidents, wrong medical diagnosis and sometimes failure to immunize children against diseases like Polio can lead to disability in children in Africa and around the world.

According to Nigeria Society of Physiotherapy,\textsuperscript{55} PWDs are disproportionately represented among the world’s poorest, and lack equal access to basic resources, such as education, employment, healthcare and social and legal support systems, as well as have a higher rate of mortality. In spite of this situation, disability has remained largely invisible in the mainstream development agenda and its processes. Persons living with disabilities have most times contributed to national growth one way or the other. Take for instance, the Nigerian Para-Olympic team in the 2012 London Olympics which saved the nation from embarrassment by winning medals for the country, a feat able Olympians failed to achieve.\textsuperscript{56}

In 2007, the Association for Comprehensive Empowerment of Nigerians with Disabilities (ASCEND), in collaboration with Mobility Aid and Appliances Research and Development Centre (MAARDEC) and other organisations advocating for persons affected by disabilities, presented a bill to protect the rights of people with disabilities to the National Assembly. The Association supported the bill with unprecedented advocacy to end the social exclusion of persons with disabilities in Nigeria. In 2008,\textsuperscript{57} the Association promoted a programme via which certain Nigerian legislators participated in a “One Day Disability Experience”. For just one day, the legislators put themselves in the shoes of persons with disabilities. Some of them were blindfolded, some had their ears stopped and their mouths muzzled, while others used a wheelchair for the day. This generated unprecedented awareness in the upper legislative chamber.

\textsuperscript{55}\textit{Leadership} Newspaper, February 18, 2015
\textsuperscript{56} C. Asuquo is regarded as one of the most talented artistes and producers in the country and his productions have earned him acclaims both in Nigeria and outside the shores of the country
\textsuperscript{57} Inspired by \textit{Baroness Lynda Chalker}
and helped to ensure the passage of the bill. Unfortunately till date, it has been awaiting the Nigerian President’s assent after its passage.\textsuperscript{58}

It is imperative to point out that the Bill, when assented to by Mr. President will provide for the education, healthcare and the protection of social, economic, political and civil rights of the persons with disabilities. Also, the Act will provide for the establishment of National Commission for Persons with Disabilities (NCPWD), which will serve as the vehicle for the enforcement of all the provisions of the Disability Act. This Bill is in consonance with the United Nations Convention on the Rights of Persons with Disabilities and its optional protocol.

Fortunately, the Independent National Electoral Commission (INEC) had repeatedly pledged the commission’s commitment to increasing participation of the Persons Living with Disabilities (PWDs) in the electoral process. The commission, had also at different times acknowledged that the population of PWDs, who observed their civic rights to partaking in electioneering processes was grossly poor, thereby adopted several measures to arrest the situation.

To this end, towards the 2015 elections in Nigeria, INEC increased its engagements with stakeholders and stepped-up enlightenment campaigns to ensure inclusion of PWDs in electoral processes. The commission also announced that important voter education materials and guides would be produced in Braille forms for the benefits of the visually impaired, though there was no record of this during the election. Also, stakeholders at a two-day national conference on mainstreaming PWDs into electoral processes, held in December 2014, at Abuja, recommended that beyond producing voter education materials in braille, INEC should produce electoral materials in Braille forms so as to enable the visually impaired participate actively in the electoral process.

**Legal Aid Scheme in Nigeria**

The last formal channel of justice or conflict resolution specifically provided for the financially disadvantaged in Nigeria is the Legal Aid Scheme implemented by the Legal Aid Council. This council was created by the Legal Aid Decree.\textsuperscript{59} The provision of Legal Aid was instituted to

\textsuperscript{58}Leadership Newspaper, February 18, 2015
\textsuperscript{59} No. 56 of 1976
ensure that financial assistance is provided to people who otherwise would be unable to enforce or defend their legal rights because they cannot afford to obtain legal services on their own.

The Federal Government of Nigeria is the main source of funds to the Council. The component states are not bound to contribute to the funding of legal aid although there is a provision in the Act which makes it optional on the part of the state to contribute. Some have donated offices and residential accommodation to the branch offices in their states.\textsuperscript{60} The Legal Aid Scheme is limited to the following:

\begin{enumerate}
  \item Legal Aids Scheme in Nigeria does not provide for PWDs
  \item Legal Aid is available only in criminal cases: murder of any degree, manslaughter, maliciously or unlawfully wounding or inflicting grievous bodily harm, and assault occasioning actual bodily harm.\textsuperscript{61}
  \item Legal Aid is available only to persons earning below N5,000. 00 (Five Thousand Naira) per annum. This sum has only just been increased with the amendment of 1994. Before the amendment it was N1,500. 00 (One Thousand, Five Hundred Naira) which in the economic circumstance of Nigeria was unreasonable.\textsuperscript{62}
\end{enumerate}

It is unclear why legal aid is not available to the generality of cases. There seems to be no reason why this is so other than the fact that the constitutional guarantee of right to counsel provided for under section 33(6) (c) of the Nigerian Constitution\textsuperscript{63} only applies to criminal matter. For the poor urban person, this seems to be a case of creating a distinction where there is no difference.\textsuperscript{64} A poor person, who is charged with, a crime and therefore liable to lose his liberty, is not in a much worse position than one whose means of livelihood and survival is threatened by a dispute

\textsuperscript{60} In addition, some make cash donations, like Oyo State which donated a hundred thousand naira to legal aid every year according to Mr. W.O. Akanbi (now High Court Judge of Osun State) the Zonal Assistant Director of the Council. These sums are not substantial enough to make a significant impact on the work of any branch office which has to depend mainly on what is available through the Federal grant. This led to an acute funding problem for the Council throughout Nigeria.

\textsuperscript{61} However, the Legal Aid (Amendment) Decree (Now Act)No. 10 of 1986 enlarges the scheme to cover civil matters in respect of accidents. Also The Legal Aid (Amendment) Decree enlarges the scheme to cover common assault, affray, stealing and rape.

\textsuperscript{62} As is the case in England the scheme makes provision for contributions to be made by persons earning above £5,000.00

\textsuperscript{63} 1999 Constitution of the Federal Republic of Nigeria

\textsuperscript{64} P. Harris: An Introduction of Law (Sweet & Maxwell) pp112-122
which causes him to require urgent legal services he can hardly afford. Unfortunately, till date none of these (whether civil or criminal) covers persons with disability.

Gibson had argued that access to justice would be meaningless without the right to free legal aid, and that this is even more important for persons with disabilities because of their lack of knowledge of the legal system and their extreme poverty. She stated that the legal procedure applied to PWDs shall take their physical and mental condition fully into account. She was further of the opinion that legal aid right must also extend to civil matters for PWDs if Article 13 is to be construed meaningfully.

The Legal Aid Regulations made under the Legal Aid Act, provide that legal advice other than legal representation may be given free of charge by legal practitioners appointed by or in the services of the Legal Aid Council in civil or criminal matters at any police station, court, offices of the council or prison. However, under the provisions of this regulation, advice can be given which the recipient might be able to act upon if he/she can find a sympathetic lawyer.

**INTERVENTION FOR PWDS IN SOUTH AFRICA**

Disability framework in South Africa evolved over a number of years. The situation faced by PWDs is that of extreme levels of inequality and discrimination. Barriers exist that created marginalization and unequal access to justice for PWDs in South Africa. Policies and practices adopted by the apartheid government set up and maintain mechanisms which contributed to further abuse and discrimination of PWDs. However, the introduction of the Bill of Rights and the Constitutional Court created mechanisms to address past inequalities and protect the rights of all people including PWDs.

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65 1999 Constitution of the Federal Republic of Nigeria
67 Gibson, 121.
68 See: Regulation I
69 The Council officials were of the opinion that it was necessary to broaden legal aid to include every legal matter, especially landlord and tenant matters, as well as land dispute and matrimonial cases.
71 Ibid, 1.
South Africa had been successful in creating an enabling environment for policy and legislative development in the field of disability.\textsuperscript{72} South Africa had developed and adopted the White Paper on an Integrated National Disability Strategy and had further adopted the Plan of Action for the African Decade of People with Disability.\textsuperscript{73} Thus section 24 of the Bills of Rights in the South African Constitution provides that ‘everyone has the right to an environment that is not harmful to their health or wellbeing’. This provision guarantees accessible built environment that enhances access to justice by PWDs.

The case of PWDs in South African has been greatly assisted by the judiciary, this is replete in the Esther Muller case.\textsuperscript{74} Esther Muller is a South African lawyer and also a wheelchair user. When she and other people with disabilities were unable to access her local courthouse because of the presence of steps, she brought a case in 2003 under the “Promotion of Equality and Prevention of Unfair Discrimination Act” of 2000. Her case was supported by the South African Human Rights Commission and was brought against the Justice Department and the Department of Public Works.

Because of the inaccessibility of the courthouses, Ms. Muller had to be carried up the stairs to enter the courthouse. On another occasion the court had to postpone her cases because she could not get into the room. “It’s embarrassing for my client to have his lawyer carried into court. It’s also embarrassing for me,” she said.

In September 2004, the South African Equality Court reached a final settlement in the case. The two government departments admitted that they had failed to provide proper wheelchair access. They also admitted that their failure was a form of unfair discrimination against Ms. Muller and other people with similar accessibility needs, and they apologized for this. The departments committed to a plan to ensure that all court buildings throughout the country will be made accessible within three years. At least one courtroom and one toilet in each building will have to be accessible to persons with disabilities.

\textsuperscript{72} Shughuru, 27.
\textsuperscript{73} Ibid.
\textsuperscript{74} Esthé Muller v DoJCD and Department of Public Works (Equality Court, Germiston Magistrates’ Court 01/03).
Presently in South Africa, the Building Standards Act\textsuperscript{75} and the National Building Regulation\textsuperscript{76} controls access to built environments. This is to ensure that buildings are designed and built to accommodate users including PWDs. Though there is no specific legislation on rights of persons with disabilities in South Africa, there are several pieces of statutes that guarantee the rights of persons with disabilities especially on the aspect of access to justice and sexual violence.\textsuperscript{77} Despite all these, it had been argued that the framework/regulations on accessibility of PWDs fall short of expected minimum guarantee.\textsuperscript{78}

**INTERVENTION IN TANZANIA**

Tanzania adopted the National Policy on Disability in 2004. The policy recognizes the association between disability on one hand and prejudice as well as negative attitude towards PWDs on the other hand.\textsuperscript{79} In Tanzania, there is a specific legislation to protect the rights of PWDs enacted in 2010.\textsuperscript{80} The 1977 Tanzania Constitution and the Penal Code\textsuperscript{81} are further legislations that seek to ensure access to justice of PWDs but full accessibility of justice to PWDs in Tanzania remains problematic.\textsuperscript{82} Article 30(3) of the Tanzanian Constitution is to the effect that any person claiming that any law concerning his right has been, is being or is likely to be violated may institute proceedings for redress in the High Court. By incorporation, this provision includes PWDs but as noted, the provision would have been more effective if it was specific to lay more emphasis on the inclusion of PWDs. Also, article 13 of the Tanzanian constitution guarantees equality before the law. Thus PWDs in Tanzania have equal access to the court as with persons without disabilities but there is no specific enactment that seeks to promote this equality as envisaged by the constitution.

\textsuperscript{75} Act 103 of 1977 as amended in 1989.  
\textsuperscript{76} Pursuant to section 17(1) of Act 103 of 1977, as amended in 1989.  
\textsuperscript{78} Shughuru, 43.  
\textsuperscript{79} Shughuru, 36.  
\textsuperscript{80} Persons with Disabilities Act, Act 9 of 2010.  
\textsuperscript{81} Cap 16 R.E. 2002.  
The Tanzanian Persons with Disabilities Act is the only enactment that guarantees accessibility to built environment by entrenching accessibility as one of its basic principles. Section 35 makes provision for the adoption of regulations prescribing accessibility to buildings and that upon its adoption, every public and private bodies must follow the regulations. Section 36 further makes it the responsibility of all Heads of public bodies to ensure that their services are made available to PWDs. This automatically includes police stations and the courts.

Of further importance to PWDs in Tanzania is the great lakes region’s Protocol on the Prevention and Suppression of Sexual Violence against Women and Children. The Protocol seeks to protect women and children with disabilities and provide them with access to justice on sexual violence. Member states are obliged to ensure criminal procedures that are sensitive to the needs of the victims and survivors of sexual violence.

CONCLUSION

Notwithstanding the traditional connections between poverty and disability and a host of other impediments, it is settled that PWDs in Africa need unrestricted access to justice just like the able bodied citizens. The plait of PWDs in Africa till date has been the failure of legislation, judiciary and the state government to effectively provide access to justice of PWDs. Again, the failure of development in Africa can easily be described as the failure of the judiciary and the law as a transformative discourse and practice. Law and legal reforms especially in the judiciary are central to judicial transformation thereby ensuring access to justice of PWDs.

Amidst the terror of technicality, the tyranny of procedure; the tier upon tier of appeals, revision about jurisdiction not to mention a host of booby traps in the execution of proceedings which holds out unexpected horror – dependent on proliferating precedents and destructive legal

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83 Section 4(e) Persons with Disabilities Act.
ingenuity, the interpretative role of the judiciary remains the only hope of justice and equity to persons with disability.\textsuperscript{86}

While South Africa had gone a long way in ensuring access to justice of PWDs in terms of physical, architectural accessibility and barrier challenges, the shortcoming lies in the absence of South Africa to enact a specific statute on the rights and access to justice of PWDs. This will give more effect to the various laws that exist on the protection of PWDs. On the other hand, while Tanzania had done well in enacting a specific law to protect PWDs, giving effect to the law is an outcry as there is no law to regulate the physical and architectural access in Tanzania. Nigeria seems to be behind compared to South Africa and Tanzania in that the statutes that exist to protect PWDs are couched in general ways such as to guide against discrimination, violence, etc, which by extension applies to all citizens of the country. The country lacks specific legislations aimed at providing access to PWDs. Public offices are not made accessible to PWDs neither are they encouraged to participate in the justice system either by being victims or witnesses in that the police stations and courts lack the appropriate resource persons and technology to ensure participation by PWDs.

The UN General Assembly in the recent years has repeatedly emphasized that the genuine achievement of the Millennium Development Goals (MDGs) and other internationally agreed development goals, requires the inclusion and integration of the rights, and well-being, as well as the perspective of persons with disabilities in development efforts at national, regional and international levels. Toward this end, in 2011, the General Assembly convened the High Level Meeting on development and disability (HLMDD) at the level of Heads of State and Government, on 23 September 2013, under the theme: “The way forward: a disability inclusive development agenda towards 2015 and beyond”.

In conclusion, disability is associated with 20 per cent of global poverty, of which the majority live in developing countries like Nigeria. In spite of being the world’s largest minority group, persons with disabilities and the issue of disability has remained largely invisible in the mainstream development frameworks and its processes. The above mentioned impediments have

continued to be an impenetrable fortress at which PWDs have been losing arrows. It is time to take the bull by the horn.

RECOMMENDATIONS

*Legislative intervention*

Governments should review existing legislation for compliance with international standards on non-discrimination against PWDs. It is hereby recommended that Right to legal standing to bring cases, remedies and mechanisms accessible to people with intellectual disabilities and psycho-social disabilities be allowed. Strengthening systems of free Legal Aid is a panacea for access to justice of PWDs. The Legal Aid Statute/Scheme should be amended to include PWDs. Legislation that tends to improve physical accessibility to the courts and other public institutions should be encouraged in Africa (for example the Nigerian president should give assent to the pending bill).

*Role of the judiciary*

The judiciary should be proactive in their interpretative roles to ensure access to justice for PWDs. Introduction of E-Justice Systems: Following the best practice example of Turkey, which has also been adapted to the Kazakhstan judicial system. Systems of e-justice should be introduced to enhance the efficiency and expediency of justice in Africa. Once systems are introduced, extensive training will be required for all stakeholders and outreach efforts should be made to promote the system throughout the respective countries.

*Role of NGOs*

The inclusion of civil society is pivotal in the efforts to enhance access to justice for PWDs. States should foster the creation of more effective relationships between international donors, government bodies, Non-Governmental Organisations (NGOs) and the target groups in order to create a different atmosphere and better understanding of their specific needs, more effective rights protection and social inclusion. Enhanced inclusion of civil society most often leads to greater accountability and reduced discrimination.
NGOs should be allowed to lodge applications with the Court on behalf of victims, even in the absence of specific authorisation. An example is the Access to Justice (AJ) a Nigeria-focused human rights organization based in Lagos founded in 1999. It is a justice advocacy group working to defend the rights of equal and non-discriminatory access to courts of law, expand access of marginalized people to equal and impartial justice, attack corruption in justice administration, support legal struggles for human dignity and disseminate legal resources that help achieve these purposes.

**Role of the Media**

It is important that barriers be removed so that persons with disabilities can enjoy the equal opportunity to perform their duties as parties, witnesses, jurors, lawyers, prosecutors, judges, arbitrators, and other participants in the administration of justice. The media also plays a fundamental role in performing watchdog functions to ensuring access to justice for PWDs. (for example, through investigative journalism). However, it can equally jeopardize access to justice through deficient or saturated reporting. Enhancing reporting capacities of media on human rights and access to justice issues improves the enabling environment for successful justice reforms. Communication strategies should be tailored to the target audience, which is the PWDs that suffer from exclusion or acute vulnerability, and presented in user-friendly formats.

**Promotion of ADR**

Traditional systems of justice are important to PWDs. The adoption of ADR mechanisms is one means of improving access to justice for PWDs. This may take several forms, including recognition of customary arbitration/traditional law in some areas of law (for example, divorce, property); use of traditional mediators from PWDs to settle disputes; and training paralegals from PWDs to aid in dispute resolution and advise on the use of formal judicial services.

Finally, access to justice is more than improving an individual’s access to courts or guaranteeing legal representation. Access to justice indicates the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances in compliance with human rights standards. There is no access to justice where PWDs find the justice system physically and
financially inaccessible. Access to justice supports sustainable peace by affording the population a more attractive alternative to violence in resolving personal and political disputes.

Maximizing access to justice involves the use of both informal/non-state and formal/state justice mechanisms based on strict compliance with human rights standards. This will likely require harmonizing informal practices with international human rights law. Improving access is not just about more courtrooms or more staff. It is also about quality of justice. Justice systems that are remote, inaccessible, unaffordable, slow, or incomprehensible to the public effectively deny legal protection. Increase in the quantity and quality of justice administration is the panacea to address these problems facing PWDs. As *dramatis personnel* in the judiciary of our various countries, our primary duty remains *jus dicere et non jus dare*\(^\text{87}\) and we all must endeavour to play our roles effectively.

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\(^{87}\) *jus dicere et non jus dare* means the right to speak or to declare or state the law; to expound the law. It means to declare the law, not to make it.