

**The Legal Framework for Persons Living with HIV and Other Disabilities in Nigeria:
An Appraisal***

Abstract

Disability is a world-wide phenomenon that has no boundary and cuts across countries, sex, age, religion, race, social status, economic and political positions. Its prevalence and incidence in the contemporary world are high and worrisome. It is estimated that there are more than 2 billion physically challenged people world-wide and majority are from developing countries. The Nigerian National Assembly in 2013 estimated that there are over 20 million people living with disability in the country. However, this number has increased with a wide margin because, according to the Center for Disability and Development Innovations, the approximate number of disabled people in the country is 25 million. The United Nations (UN) projected that in every ten people in Nigeria, one person is suffering from one type of disability or the other. It is also reported that out of every 10 persons with disability in the country, 9 live below the poverty level. Frequent and fatal road accidents that cause serious injuries that lead to stroke, paralysis, and mental illness as well as the continuous threat and suffering from infectious diseases, such as HIV AIDS, meningitis, tuberculosis, small pox, polio, and the emergence and suffering from chronic diseases that include blindness, stroke, cardiovascular diseases, hypertension, diabetes and cancer among others, are responsible for the ever increasing disabilities that millions of Nigerians suffer from. It is evident that, compared to non-disabled persons, people with disability have lesser legal protection and live in extreme poverty and poor health, as well as poor educational achievement and are rarely involved in social, cultural and political participation. This paper will look at the legal framework that protects people living with physical and health disabilities with particular reference to HIV/AIDS and make recommendations among others that there should be a National Commission solely placed with the welfare obligation of disabled persons and people living with HIV.

Keywords: Disability, HIV, Legal Framework, United Nations

1. Introduction

It is imperative to state here that the disability being considered in this paper will be a generic term for both physical disability and HIV as a disability. Disability mostly affects vulnerable and marginalized people with a high level of prevalence among lower income people in particular women, children and older people. Disability causes poverty and vice versa. Thus, disability is both a cause and a consequence of poverty. There is a strong relationship between the two with a cyclical tendency. Thus, poverty makes an individual more vulnerable to disability and disability reinforces and deepens poverty.¹ Therefore, disability along with old age, gender and low socio-economic status interacts to make people poor. Several unsuccessful attempts have been made by international organizations, the government and other stakeholders on disability to alleviate the suffering of disabled persons and improve their living conditions. Disabled persons like the able bodied have certain peculiar qualities that are innate. Most of them are trainable. Therefore, with proper care and support from the government and members of the civil society, their talents can be fully harnessed to reduce their dependency and promote their economic and social development. But there are bottle-necks on the way to alleviating the suffering of these people and improving their living conditions. This paper examines the problems of living with disability in Nigeria and focuses its attention on the

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¹ P Mitra, S Aleksandra & V Brandon, "Disability and Poverty in Developing Countries: A Snapshot from the World Health zs" SP Discussion Paper NO 11. 2011.

multiple problems faced by disabled persons and their significant others with a view to understanding their negative experiences of living with disability. Majority of them have negative experiences with respect to employment, proper training, sustainable and dependable empowerment, exclusion from social interaction and participation in decision making on issues that affect their lives such as lack of access to public facilities.

2. Defining Disability

According to Article 1 of the Convention on the Rights of Persons with Disabilities, disability is used to describe the condition whereby physical and social barriers prevent a person with impairment from taking part in the normal life of the community on an equal footing with others. Therefore, disability is not just a mere health predicament. It is a multifarious experience that affects the person's body and his or her ability to function equally in the society in which he or she lives. Disability may be physical, cognitive, mental, sensory, emotional and developmental or some combination of these and may be present from birth or occur during a person's life. Disability is an umbrella term convening impairment, activity limitation and participation restrictions and is an outcome of interaction between impairment and negative environmental impact. It is a fact that most people at some points in their lives will experience one type of disability or the other.²

2.1 Disabled Person

A disabled person is someone who has a physical or mental disability which has an effect on his or her ability to carry out normal day-to-day activities. The disabled are those persons who are 'unable', 'unfit', or 'incapacitated' as a result of health or congenital defects, hereditary and environmental influences, accidents and diseases.

The effect of his or her disability must be substantial and should be more than minor and trivial. The effect must also be adverse and long term. An individual may be qualified as disabled if he had an impairment in the past or is seen as disabled based on a personal or group standard, or such impairment includes physical, sensory or developmental disabilities.³ Thus, a disabled person can be regarded as any person who is unable to obtain for him fully or partially, the normal requirements of an individual and is unable to participate fully in the community due to shortcomings either physically or mentally and whether it occurs since birth or later in life. Therefore, if a person sees handicap as an absolute reality, it means he cannot do anything to it and must learn to live by it and groan under its heavy load but he is educated against the physical limitations and forges his ways ahead of life even if the physical problem is not reversed towards healing, he does not have to despair over it. He masters the situation and overcome self-pity and apathy. It is important to point out that disable people may have their own definition of disability from their own perspective.

2.2 Attitude towards Disabled Persons

Although there are some individuals whose attitudes towards the disable persons is positive, it is undeniable that the predominant attitude is negative and it is of rejection, isolation and are conceived as a liability from a charity perspective. However, this is not something new or peculiar to Nigeria because it could be traced back to Midlevel and Ancient periods. In most Nigerian societies, traditional beliefs on the causes of disability determine, to a large extent,

² World Health Organization (WHO, 2012) "Disabilities" <https://www.who.int/topics/disabilities/en/> Accessed 24 June, 2022.

³ E E Adima, "Career Opportunity for the Disabled in Nigeria" in P E Azinge and C Ani, *The Rights of Persons with Disabilities*, (Lagos, Nigerian Institute of Advanced Legal Studies, 2011).

peoples' attitude and reactions towards the disabled in particular exceptional children. Disability conditions such as deafness, blindness, mental retardation and orthopedic impairment in traditional settings are mostly attributed to punishment by vengeful gods in the present or past incarnations including murder, infidelity etc. There is also a strong belief in witchcraft and evil spirits that cause havoc in forms of disabilities to those who ignore their warning. In this regard the disabled persons are conceived as sinners and deviants and they experience social exclusion. Disabled children also suffer from social exclusion and separation from other children and they are teased and jeered within the neighborhood. The impact of these attitudes on the parents is enormous and disturbing and they experience agony together with their children and at times carry most of the burden.⁴

2.3 Stigma and Discrimination

The term „stigma“ is of Greek origin and was used to describe a mark or scar left typically when branding animals. There is no clear consensus on the definition, but in everyday parlance it can now be described as a severe disapproval due to believed or actual individual characteristics, beliefs or behaviors that are against the societal norms, be they economic, political, cultural or social. Therefore, stigma has its roots in “differences”. The pain and emotional hurt experienced by the stigmatized persons is a deviation is linked to others’ pity, fear, disgust and disapproval of this difference, whether that difference is that of personality, physical appearance, illness and disability, age , gender and sexuality. Thus, stigma can be defined as an attribute that serves to discredit a person or persons in the eyes of others.⁵ Attitudes towards these discreditable attributes vary over time.

Stigma is also culturally defined, and variation is evident in the ways in which particular attributes are either accepted or otherwise between culturally diverse groups. The impact of stigmatizing attitudes on the stigmatized individuals can vary in form and intensity. Much of the behavior, however, towards the stigmatized serves to emphasize „difference“, and thus there are forms of discriminations and prejudice which can be identify in the interactions between the normal and the discredited. Discrimination and prejudice in any form serve to separate and exclude individuals from society and many of the benefits of society, such as equitable access to services like housing, education, health and social support. Discrimination in this way is a form of social exclusion. At the individual level the impact of stigma and social exclusion can be devastating, leading to low self-esteem, poor social relationships, isolation, depression and self-harm. The impact of stigma on those individuals who are already coping with acute or chronic health problems can be profound.

In Nigeria once a disabled person is stigmatized he suffers from a change of identity and this has a profound impact on him as a person and on his social identity because he is no longer considered as Mr. A. but Mr. A. the blind man or the deaf and in this case reference is always made to his disability which is the new identity. This change of identity carries along with it discrimination of various forms against the disabled persons economically, socially, politically and educationally among others.

3. The Role and Need for Disability Legislations

Persons with disabilities often are excluded from the mainstream of the society and denied their human rights. Discrimination against persons with disabilities takes various forms, ranging

⁴ O M Iyabo, “Parental Attitude towards Disability and Gender in the Nigerian Context: Implications for Counseling” *Mediterranean Journal of Social Sciences*; MCSER Publishing, Rome. 2014.

⁵ S L Franzoi, *Social Psychology* (London: Brown and Benchmark. 1996).

from invidious discrimination, such as the denial of educational opportunities, to more subtle forms of discrimination, such as segregation and isolation because of the imposition of physical and social barriers. Effects of disability-based discrimination have been particularly severe in fields such as education, employment, housing, transport, cultural life and access to public places and services. This may result from distinction, exclusion, restriction or preference, or denial of reasonable accommodation on the basis of disablement, which effectively nullifies or impairs the recognition, enjoyment or exercise of the rights of persons with disabilities.

Despite some progress in terms of legislation over the past decade, such violations of the human rights of persons with disabilities have not been systematically addressed in society. Most disability legislation and policies are based on the assumption that persons with disabilities simply are not able to exercise the same rights as non-disabled persons. Consequently the situation of persons with disabilities often will be addressed in terms of rehabilitation and social services. A need exists for more comprehensive legislation to ensure the rights of disabled persons in all aspects - political, civil, economic, social and cultural rights - on an equal basis with persons without disabilities. Appropriate measures are required to address existing discrimination and to promote thereby opportunities for persons with disabilities to participate on the basis of equality in social life and development.

There also are certain cultural and social barriers that have served to deter full participation of persons with disabilities. Discriminatory practices against persons with disabilities thus may be the result of social and cultural norms that have been institutionalized by law. Changes in the perception and concepts of disability will involve both changes in values and increased understanding at all levels of society, and a focus on those social and cultural norms, that can perpetuate erroneous and inappropriate myths about disability. One of the dominant features of legal thinking in twentieth century has been the recognition of law as a tool of social change. Though legislation is not the only means of social progress, it represents one of the most powerful vehicles of change, progress and development in society.

Legislation at country level is fundamental in promoting the rights of persons with disabilities. While the importance - and increasing role - of international law in promoting the rights of persons with disabilities is recognized by the international community, domestic legislation remains one of the most effective means of facilitating social change and improving the status of disabled persons. International norms concerning disability are useful for setting common standards for disability legislation. Those standards also need to be appropriately reflected in policies and programs that reach persons with disabilities and can effect positive changes in their lives.

4. Legal Frameworks

4.1 The Constitution of the Federal Republic of Nigeria 1999

Section 42 of the Constitution of the Federal Republic of Nigeria 1999, prohibits discrimination against any citizen of Nigeria whether on the grounds of the community to which he or she belongs, ethnicity, place of origin, sex, religion, or political opinion. Section 17 of the Constitution also provides that the State shall direct its policy towards ensuring that all citizens can secure adequate means of livelihood, as well as suitable employment, and that there should be equal pay for equal work without discrimination on the grounds of sex or any other ground, without discrimination on any group whatsoever.

The Nigerian courts, however, have held that the provisions of section 17 of the Constitution are mere statements of policy, and cannot be relied upon in a Nigerian court of law as a basis for challenging any discriminatory practice, unless the provisions are contained in a substantive law.

4.2 Discrimination against Persons with Disabilities (Prohibition) Act, 2018

The Act prohibits all forms of discrimination against persons with disability. If an individual is found violating this law, he/she will pay a fine of N100, 000 or a term of six months imprisonment. The law imposes a fine of one million naira on corporate bodies. Discrimination against such persons is prohibited in public transportation facilities and service providers are to make provision for the physically, visually and hearing impaired and all persons howsoever challenged. This applies to seaports, railways and airport facilities. Also, it provides the rights and privileges of persons with disability to include education, health care, priority in accommodation and emergencies and all public organizations are to reserve at least five per cent of employment opportunities for these persons. The Act gives citizens with disabilities the right to file a lawsuit for damage against any defaulter. It also provides for a five-year transitional period within which public buildings, structures or automobile are to be modified to be accessible to and usable by persons with disabilities, including those on wheelchairs and before a public structure is constructed, its plans shall be inspected by relevant authorities to ensure that the plan conforms with the building code. As such, any government or government agency, body or individual responsible for the approval of building plans shall not approve the plan of a public building if the plan does not make provision for accessibility facilities in line with the building code and an officer who approves or directs the approval of a building plan that contravenes the building code, commits an offence and is liable on conviction to a fine of at least N1, 000,000 or a term of imprisonment of two years or both.

4.3 The HIV/AIDS Anti-Discrimination Act 2014

This Act makes it illegal to discriminate against people based on their HIV status. It also prohibits any employer, individual or organization from requiring a person to take an HIV test as a pre-condition for employment or access to services.

The HIV/AIDS Act describes acts that amount to discrimination making the law clear and enabling easy adherence. Some of the ways by which the HIV/AIDS Act seeks to protect the rights and dignity of people living with and affected by HIV and AIDS include:

- a. creating a supportive environment, so that employees living with HIV and AIDS are able to continue working under normal conditions for as long as they are medically fit to do so;
- b. promoting appropriate and effective ways of managing HIV in the workplace, community, institutions and other fields of human endeavour; and
- c. creating a safe and enabling working and learning environment for all persons.

Additionally, the HIV/AIDS Act imposes several obligations on employers in conformity with the objectives of the Act; and prescribes penalties for failure to carry out such obligations. The duties of an employer under the Act include:

- a. to provide reasonable accommodation (defined as “any modification or adjustment to a job description, school or workplace or institution that is reasonably practicable and will enable a person living with HIV or AIDS to participate or advance in his or her chosen endeavor”) to support people living with or affected by HIV;
- b. to refrain from mandating an employee to disclose his/her HIV status directly or indirectly;

- c. to refrain from compulsory pre-employment HIV testing for its prospective employees;
- d. to refrain from disclosing any employee's HIV status unless the disclosure is required by law; All persons living with HIV or affected by AIDS have the right to protection of data with respect to their health and medical records. Any person, including an employer, who fails to protect such data, is liable on conviction to a fine of not less than ₦500,000.00 for an individual, and ₦1,000,000.00 for an institution; or imprisonment for a term not exceeding 2 years, or to both fine and imprisonment.
- e. to provide a safe workplace, including ensuring that the risk of occupational exposure to HIV is minimized;
- f. to provide support and compensation to an employee who becomes infected with HIV in the workplace including costs of medical tests and supply of medicines and treatment for opportunistic infections; Every employer is required to ensure that all occupationally acquired HIV infections are reported to the Minister of Labour and Employment from the date of discovery of such infections. The failure of an employer to comply with this provision attracts a fine of not less than ₦250,000.00 or imprisonment for a term not exceeding 1 year, or to both fine and imprisonment.
- g. in consultation with its employees or their representatives, to adopt a workplace HIV/AIDS Policy that is consistent with the National HIV and AIDS Workplace Policy and to lodge the policy with the Federal Minister of Labour and Productivity within one month of its adoption. This duty applies to employers having 5 (five) or more employees. The penalty for failure to adopt this policy is a fine of ₦250,000.00 the first year of default and ₦100,000.00 for each subsequent year or part of a year that the offence continues. Failure to lodge a copy of the policy with the Minister attracts a penalty of ₦10,000.00 for every day or part of a day that the offence continues.

It is also hoped that the new law will create a more supportive environment, allowing people living with HIV to carry on their lives as normally as possible. More than three million people are living with HIV in Nigeria.

4.4 The Persons Living With HIV/AIDS Law No.17 Laws of Lagos State, 2007

In addition to the foregoing, Lagos State of Nigeria promulgated the Persons Living with HIV/AIDS Law in 2007 which reinforces that employers in Lagos State are prohibited from carrying out compulsory and mandatory HIV tests on its employees. Any employer that contravenes the provisions of this law is guilty of an offence and liable on conviction to a fine not exceeding ₦50,000.00 or to imprisonment for a term not exceeding 2 (two) years, or to both such fine and term of imprisonment. The HIV/AIDS Law also requires every corporate organization to issue an HIV/AIDS policy for the benefit of any of its employees living with HIV or affected by AIDS. Failure to maintain such an HIV/AIDS policy as prescribed by the law is an offence, for which an employer shall be liable on conviction to a fine not exceeding ₦100,000.00 or imprisonment for a term not exceeding 2 (two) years.

4.5 The United Nations Convention on the Rights of People with Disabilities (CRPD) (2006)

The purpose of this Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to protect respect for their inherent dignity.

It also states that persons with disabilities include 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.

4.6 International Covenant on Civil and Political Rights (1966)

Article 2 requires states to protect the rights and freedoms of all persons regardless of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition. Other articles relevant to those living with HIV/AIDS are: 6 (the right to life); 7 (the right to humane treatment); 9 (the right to liberty and personal security); 12 (the right to liberty of movement and freedom to choose residence); 14 (equality before the courts and tribunals); 16 (the right to recognition everywhere as a person before the law); 17 (the right to privacy and protection of the law against arbitrary or unlawful attacks on personal honor and reputation); 18 and 19 (the right to freedom of thought and expression, including the freedom to seek, receive, and impart information); 23 (the right to form a family); 24 (the rights of children to protective measures by the State based on his/her status as a minor); 26 (equality before the law and the right to equal protection); and 27 (rights of ethnic, religious or linguistic minorities)

4.7 Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (1984)

This instrument may be applied in cases where individuals have been subjected specially to cruel, inhuman, or degrading treatment or punishment based on their HIV/AIDS status, whether in a health care facility, prison, or other public institution. Article 10 specifies that the training of law enforcement, medical, civil, and military personnel and other public officials must include the prohibition of torture during the custody, interrogation, or treatment of any individual subjected to arrest, detention, or imprisonment. Article 13 ensures that any person alleging that he/she has been subjected to torture has the right to complain to, and have his/her case promptly and impartially reviewed by the competent authorities. Article 14 calls on legal systems of State parties to provide redress to victims, who have an “enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.”

4.8 Convention on the Rights of the Child (1989)

Noting in its Preamble that “childhood is entitled to special care and assistance,” Article 24 recognizes the right of all children to “the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.”

4.9 International Guidelines on HIV/AIDS and Human Rights (1997; Revised 2003).

It provides policy guidance to governments, international organizations, NGOs, civil society groups, and others on the development and implementation of national strategies that adequately address issues raised by HIV/AIDS. Of the 12 Guidelines, number 6 has garnered the most attention: “States should enact legislation to provide for the regulation of HIV related goods, services, and information...” Prevention, treatment, care, and support are mutually reinforcing elements and a continuum of an effective response to HIV/AIDS. Based on human rights principles, universal access requires that these goods, services, and information not only be available, acceptable, and of good quality, but also within physical reach and affordable for all. States are urged to incorporate community participation in all phases of policy design, and to ensure that criminal laws and correctional systems are consistent with international human rights obligations and are not misused to target those living with HIV/AIDS; that legal support systems are implemented to educate people living with HIV/AIDS about their rights and provide free legal services to enforce these rights; and that both the public and private sectors

develop codes of conduct regarding HIV/AIDS issues that translate human rights principles into codes of professional responsibility and practice.

4.11 International Labour Organization (Ilo) Convention Concerning Vocational Rehabilitation and Employment (Disabled Persons) (1983)

This convention aims at ensuring that member states consider the purpose of vocational rehabilitation as being able to enable a disabled person to secure, retain and advance in suitable employment and thereby to further such people's integration into society.

4.12 Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities

This convention in reaffirming that persons with disabilities have the same human and fundamental rights as others, aims at preventing and eliminating all forms of discrimination against persons with disabilities and also to promote their full integration into the society

5. Conclusion and Recommendations

Despite the effort of international organizations such as the United Nations, some regional organizations and various governments in formulating and enacting laws aimed at ensuring the rights of disabled people throughout the world, this has not been adequately materialized in Nigeria for a number reasons socially, culturally, politically and economically but some of the reasons given by the authorities, such as lack of money to supply the needed facilities and equipment, are not convincing and have no basis in a country like Nigeria which is endowed with abundant natural and human resources. It is a fact that adequate and functional facilities for the health care of disabled persons their education, transportation, training and empowerment are not readily available and the few but limited facilities put in place are not easily accessible to most of them. They are to a large extent discriminated against, segregated and marginalized. What is evident is that there is no political will and commitment on the part of the government to ensure, protect and promote the interest of people living with disability in Nigeria despite the passing into law of bill that would aid that such as the "Disability Bill".

Also, although the HIV/AIDS Act has been in existence for about 4 years plus, not many employers are aware of its existence, and therefore, many have not complied with its provisions. The laws that were examined in this paper are a step in the right direction towards the eradication of discrimination and stigmatization that Disabled and HIV-affected persons face on a daily basis from their family, friends, employers and from the general populace.

In order for these laws to be effective, there is a need to ensure that their provisions are properly enforced and the prescribed sanctions imposed on defaulting employers to boost the sensitization of employers in the public and private sectors and protect the rights of HIV-positive employees working within it as well as other disabled people.

This paper recommends that the government should create a functional and efficient National Commission for persons with Disabilities which would be responsible for ensuring that people with disabilities have access to housing, education and healthcare as well as receive complaints of rights violations and support victims to seek redress. The government should engage in a wide and rigorous public enlightenment campaign against the discrimination of disabled people and people living with HIV in the Nigerian society. The Federal government should introduce Disability Tax Fund (DTF) which should be used for the provision of social security and welfare of disabled persons.