

Legal Empowerment for Persons with Disabilities: Sustainable Options for Marginalized/Vulnerable Communities in Nigeria¹

ABSTRACT

A trend that has gained momentum in Nigeria is the need to empower marginalized/vulnerable communities to understand their rights and seek accountability from government. However, the rights of communities are still violated with impunity, the legal system remains inaccessible to many, and access to justice remains elusive for the most vulnerable. Persons with disabilities, for example, are often unable to access justice as there are few systems in place to effectuate real legal empowerment. As a result, even when they know their rights have been violated, people with disabilities may not be able to assert those rights. The solution to this problem of legal empowerment may be a system that advocates for a systematic intervention, institutional, legal and administrative reforms informed from the perspective of the vulnerable being served.

This paper begins by explaining the current circumstances for persons with disabilities in Nigeria and the social-legal tools available for legal empowerment. It then describes the barriers faced by persons with disabilities in accessing justice. Thirdly, it examines existing models of legal empowerment at the grassroots level, such as paralegals, community lawyering and microjustice4all and reviews how they function for persons with disabilities in Nigeria. The last section provides an overview of what legal empowerment entails and what a sustainability model would look like. Finally, this paper concludes that for any projects to be sustainable and effective, it should be informed by the vulnerable groups, working with community lawyers and paralegals who frequently consult with the group. Projects must include strategies in law or through administrative regulations that seek to address underlying systemic factors which inhibit groups to assert their rights and seek accountability from the government.

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I. Introduction

Non-Governmental Organizations in Nigeria have carried out many important grassroots initiatives to promote and protect the rights of its vulnerable, and marginalized impoverished communities. Despite these initiatives, lack of access to justice, poverty, and lack of government accountability persist, especially for persons with disabilities who experience barriers beyond those experienced by persons without these disabilities. In fact, on average, Nigerians with disabilities experience additional barriers to legal protections, higher rates of poverty, lower educational achievements, poorer health outcomes, and less political and cultural participation, among other problems.² In addition, disability continues to be perceived as a “charity issue,” not a human rights issue, which is a major obstacle to the promotion of human rights of persons with disabilities in Nigeria.³ They experience various violations, in cases involving criminal prosecution, or discrimination, people with disabilities face socio-legal barriers that range from physical access to courts, sign language interpretation, and access to adequate representation by advocates who understand the needs of people with disabilities.

This paper commends the projects currently being done by NGOs on empowerment but suggests that the lack of serious impact in the lives of disability communities may be because there is a need for a review of the current approach. The paper will seek to identify and describe an approach to real and sustainable legal empowerment for persons with disabilities in poor and vulnerable communities in Nigeria—empowerment that is will long lasting, giving agency to the people and helping them address deep-rooted, systemic, and institutional problems that they experience. It will advocate for a model that works directly with individuals to design projects with their input and from their perspective, the perspective of persons with disabilities and their caregivers, caregivers who are typically women. It envisages a community where the lawyers and NGOs work together with an existing group or help create a new group and contribute knowledge and skill to support solving problems; at the same time, encouraging the people to assert themselves and suggest likely solutions to issues.

It will also acknowledge that there is a need for a systemic change in institutions, law, and frameworks to push the boundaries of the law for change for persons with disabilities. As such, the model of legal empowerment should include provisions establishing legal tools and laws that can address deep-rooted issues. Beyond laws, it will advocate for the provision of administrative rules and regulations that could address some barriers that persons with disabilities experience in legal institutions and practice.

The current barriers facing persons with disabilities are evident because most of the existing laws in Nigeria do not include or adequately capture their issues. This gap is due to the non-inclusion of persons with disabilities in the existing policies and frameworks seeking to improve issues that affect

² UNDP Nigeria, <http://www.ng.undp.org/content/nigeria/en/home/presscenter/articles/2015/08/26/undp-implements-empowerment-programme-for-persons-with-disabilities-.html> (last visited Feb. 12, 2018).

³ Raymond Lang, *Scoping Study: Disability Issues in Nigeria* (April 2008) pg. 28. https://www.ucl.ac.uk/lc-ccr/downloads/scopingstudies/dfid_nigeriareport

them in the country. They are not consulted in law making process or community development activities that may be of concern to them, which has created a huge gap in the socio-legal tools for persons with disabilities across the states. As such, models, rules and laws that recruit the expertise and experience of persons with disabilities will create long lasting solutions for empowerment of these marginalized groups.

II. SOCIO-LEGAL REALITY OF HOW PEOPLE EXPERIENCE DISABILITY IN NIGERIA

A. On the Ground: Persons with disabilities in Nigeria

Over a billion persons, amounting to about 15 percent of the world's population, is estimated to live with a form of disability⁴. There are also a growing number of disabilities due to increases in the ageing population, insurgency in some parts of Nigeria, and global increases in chronic health conditions related to disability.⁵ In Nigeria, the number of persons with disabilities is uncertain. The last census was in 2006 and 3, 253, 169 million approximately 2.32 percent of the population were persons with disabilities.⁶ This has been a highly disputed figure,⁷ and with the current population, it is estimated to be about 28 million Nigerians are living with disabilities.⁸

Regardless, it is not disputed that the most predominant among these disability groups are those of people who are visually impaired, persons who have mobility impairment, persons with speech disabilities, persons who are deaf, persons with cognitive disability, persons with psychiatric disabilities and persons affected by leprosy, among others.⁹

Even though there is this large number of persons with disabilities, Nigeria has not been able to successfully address the challenges associated with their access to justice. In fact, access to justice remains a mirage with a criminal justice system lacking infrastructure, both human and structural. Starting from the point of arrest and investigation to translation where necessary for the hearing and visual impaired; to detention, with no adequate medical facility for a person with mental disabilities; to courts with no capacity to record evidence from a person with intellectual disabilities etc. In addition, persons with disabilities are equally unable to access a wide variety of rights due to structural, communication or non-existent structures.

⁴ World Health Organization, *Disability and health* " Fact Sheet, (2018), <http://www.who.int/mediacentre/factsheets/fs352/en/> (last visited March 8, 2018).

⁵ World Health Organization and World Bank, *Summary World Report on Disabilities*, (2011), http://apps.who.int/iris/bitstream/handle/10665/70670/WHO_NMH_VIP_11.01_eng.pdf;jsessionid=3FF3887AE959B9BB0F334E3FCD28041E?sequence=1. (last visited March 8, 2018)

⁶ National population commission Census Priority Table: 2006 Population distribution by, sex and class size of Household State and local government area table HH (ADD 1), Vol IX, April 2010.

⁷ ETIEYIBO, EDWIN & ODIRIN OMIEGBE. "RELIGION, CULTURE, AND DISCRIMINATION AGAINST PERSONS WITH DISABILITIES IN NIGERIA." AFRICAN JOURNAL OF DISABILITY, 192. PMC (2018).

⁸ *Id.*

⁹ JOINT NATIONAL ASSOCIATION OF PERSONS WITH DISABILITY WWW.JONAPWD.COM (last visited May 20)

The dynamics of disability issues are fast changing, moving away from the charity and “tokenistic”¹⁰ model of focusing on the limitations of the person with disability to a current trend of social model. The social model is a shift in thought, engagement and modus operandi of viewing and working with persons with disabilities as individuals with rights. There has been a global realization which Nigeria is beginning to come to terms with, that persons with disabilities can function and be involved in every aspect of the society with the right accommodations;¹¹ a realization there is a need to remove the barriers of perception, environment and institutions inhibiting the full participation of persons with disabilities in the society. The social model which is a shift from the charity model focuses on the empowerment, voice, choice, and human rights of persons with disabilities.¹² This will ensure that they are involved in everything that concerns or affect them as citizens; that models that include them are initiated and that there are legal tools to enable them to effectuate their rights.

Although, Nigeria has started to make the shift towards the social model by having laws in some states, a special adviser on disability issues to the president, discussion on inclusion of persons with disabilities in elections and policies and rethinking inclusive education, there is still a lot to be done because of the gap in the legal mechanisms, lack of consultation, buy-in, and effective communication with the experts and persons who experience disabilities in the national and local discourse of the issues affecting persons with disabilities in Nigeria.

B. Legal/ Institutional Framework For Persons With Disabilities In Nigeria

1. Legal Frameworks

a) *International obligations on legal empowerment.*

Nigeria signed and ratified the United Nations Convention on the Rights of People with Disabilities (CRPD) and its Optional Protocol in 2007 and 2010 respectively.¹³ The CRPD is currently the ¹⁴most comprehensive law prohibiting discrimination and providing for equality and the empowerment of persons with disabilities globally.¹⁵ The Protocol allows for individual complaints against a State for the violation of any right provided by the CRPD before the Committee.¹⁶

The CRPD initiates a paradigm shift from viewing disability as a medical condition seeking charity to a social model¹⁷ based on rights. It calls for the equal participation of persons with disability to civil, political, economic and cultural rights,¹⁸ having rights to live independently within the community,

¹⁰ Raymond Lang, *Scoping Study: Disability Issues in Nigeria* (April 2008) https://www.ucl.ac.uk/lc-ccr/downloads/scopingstudies/dfid_nigeriareport.

¹¹ *Id.* at pg. 12.

¹² *Id.*

¹³ Consolidated disability findings from the 2010 US State Department Country Reports on Human Rights practices http://www.usicd.org/doc/africa_disability_references1.pdf (last visited April 15, 2018).

¹⁴ Janet E. Lords et al., *Beyond the Orthodoxy of Rule of Law and Justice Sector Reform: A Framework for Legal Empowerment and Innovation through the Convention on the Rights of Persons with Disabilities*, *The World Bank Legal Review*, 45-65 (2012).

¹⁵ *Id.* at 47.

¹⁶ *Id.*

¹⁷ William A. Oluchina, *The Right to Political Participation for People with Disabilities in Africa*, 3 *Afr. Disability Rts. Y.B.* 309,309 (2015).

¹⁸ Janet E. Lords et al., *Beyond the Orthodoxy of Rule of Law and Justice Sector Reform: A Framework for Legal Empowerment and Innovation through the Convention on the Rights of Persons with Disabilities*, *The World Bank Legal Review*, 45-65 (2012).

access justice, exercise legal capacity,¹⁹liberty and security of persons.²⁰ It further prohibits all forms of discrimination²¹and inequality²² of persons with disabilities. Equality here emphasizes the right to accommodating and understanding the difference of others.²³ The fundamental principles outlined by the CRPD which State parties like Nigeria are to abide with are; respect for inherent dignity in all and right to make decisions by all persons; principle of non-discrimination, full and effective participation and inclusion; respect for difference and acceptance; equality of opportunity of accessibility; and equality.²⁴

The treaty envisages that Nigeria, like many other nations, on ratification of the treaty should adopt “appropriate” legislative and administrative measures to implement the rights in the convention.²⁵ This includes abolishing or amending existing laws, regulation, practice, discriminatory laws or policies and adopt inclusive approach to protect and promote the rights of persons with disabilities.²⁶ Article 4, on general principles makes for progressive realization of the social, economic and cultural rights. Up to date, Nigeria is yet to adopt a national law and lacks lot of administrative regulations and oversight that serves the purpose of the CRPD.

Similarly, though Nigeria has signed and ratified Convention on Elimination of Discrimination against Women (CEDAW), it has not domesticated it. Particularly relevant to this discussion, the CEDAW Committee has frequently called on states to ensure the rights of women with disabilities as part of their obligations under CEDAW are fulfilled.²⁷ In its General Recommendation No. 33, the Committee found that women with disabilities may face particular barriers when accessing the justice system, including physical barriers, and recommended that states “[p]lay special attention to access to justice systems for women with disabilities.”²⁸ It further asked States to improve its budgetary allocation to legal aid and to investigate allegations of corruption within the judiciary and prosecute and punish corrupt judicial officials who obstruct justice, in order to restore women’s effective access to and trust in the judicial system.²⁹ In addition, the Committee recommended that the States increase gender-specific awareness among judges to increase and empower women’s access to justice.³⁰

¹⁹ Convention on the Rights of Persons with disabilities, 2007, Art. 12.

²⁰ *Id.* Art. 14.

²¹*Id.* Art. 5.

²² *Id.* Art 3 & 5.

²³ Arlene S. Kanter, *The Promise and Challenge of the United Nations Convention on the Rights of Persons with Disabilities*, 34 Syracuse Journals of International Law and Commerce 287 at 209 (2007).

²⁴ Raymond Lang, *The United Nations Convention on the right and dignities for persons with disability: A panacea for ending disability discrimination?* Vol 3, ALTER - European Journal of Disability Research (2009),

²⁵ Janet Lord et al., *Prospects and Practices for CRPD Implementation in Africa*, 1 Afr. Disability Rts. Year Book 97 at 101 (2013).

²⁶ *Id.*

²⁷ CEDAW Committee, *General Recommendation No. 18: Disabled women* (1991).

²⁸ CEDAW Committee, *General Recommendation No. 33 on women’s access to justice*, 13 & 17(g), U.N. Doc. CEDAW/C/GC/33 (2015).

²⁹ Concluding observations: Nigeria, 17 & 18th U.N. Doc. CEDAW/C/NGA/CO/7-8 (2018).

³⁰ *Id.*

b) Regional legal obligations on legal empowerment

The African Charter on Human and Peoples' Rights makes for general provisions of rights of persons with disabilities but did not make any extensive provision on it.³¹ The Protocol to the Africa Charter, proposed by The Working Group on the Rights of Older Persons and People with Disabilities³² adopted by the African Union is the most current and extensive legal instrument specific on the rights of persons with disabilities in Africa.³³ The Protocol "addresses some of the urgent issues that have the most disproportionate impact on people with disabilities, such as poverty, systemic discrimination and harmful practices."³⁴ The Protocol will increase accountability oversight on how States like Nigeria, once it adopts the Protocol, will implement human rights obligations leading to greater inclusion for persons with disabilities in laws, policies and budgets.³⁵

Furthermore, the African Commission on Human and Peoples' Rights have made various institutional agreements to implement rights of persons with disabilities within the region.³⁶ It has stated, for example, that although many countries in Africa has limited resources to provide all rights needed by persons with disabilities, Governments should make extensive and targeted effort within its limited resources to ensure the possible realization of its human rights obligations to persons with disabilities.³⁷ It further stated that counties should take steps to repeal regressive laws impacting negatively on persons with disabilities.³⁸

c) National laws and the Formal Legal System.

Nigeria has no national law for persons with disabilities and the Constitution has no specific enforceable provisions for persons with disabilities. Disability and government's economic obligation is found in the fundamental objectives and directive principles³⁹ of state policy which has been held as not enforceable against the State⁴⁰ However, Chapter IV contains extensive provisions on fundamental rights, which is the Bill of enforceable rights for all citizens. Although, it does not capture peculiar rights that should accrue to persons based on their disabilities, they can be loosely inferred.⁴¹ Specifically, Section 42 of Chapter IV provides for an enforceable non-discrimination clause, but does not include disabilities as one of the specified prohibited grounds of discrimination.⁴² Persons with disabilities can also rely on the constitutional provisions that indirectly address disabilities such as, Section 42(2), which prohibits

³¹ African Charter on Human and Peoples' Rights, adopted 1981 and came into force 1985, <https://au.int/en/treaties/african-charter-human-and-peoples-rights> (last visited March 18 2018).

³² The Working Group on Rights of Older Persons and People with Disabilities was established by Resolution 118 at the 42nd Ordinary Session held in Brazzaville, Republic of Congo from 15-28 November 2007 and their mandate was extended by Resolution 143 of the 45th Ordinary Session (Banjul, The Gambia – May 2009).

³³ Ms. Catalina Devandas, Press Release- African states affirm the rights of persons with disabilities in a new landmark Protocol <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22661&LangID=E>

³⁴ *Id.*

³⁵ *Id.*

³⁶ Janet Lord et al., *Prospects and Practices for CRPD Implementation in Africa*, 1 Afr. Disability Rts. Year Book 97 at 111 (2013).

³⁷ Purohit and Moore v. Gambia, AHRLR 96 ACHPR (2003).

³⁸ *Id.*

³⁹ Nigeria CONST. as amended. Chapter 2

⁴⁰ Attorney General of Ondo State Vs. Attorney General of the Federation (2002) 9 NWLR (pt. 772) 222 S.C, see also sections 6(6)(c) of the Amended Constitution of the Federal Republic of Nigeria

⁴¹ Nigeria CONST. as amended.

⁴² Nigeria CONST. as amended. Section 42.

discrimination based on the circumstances of birth; and Sections 14, 16(1) and 17, which guarantee the right to equality and fundamental rights. Noting that all disabilities are not based on circumstance of birth, this create exclusion for many.

In addition, Nigeria also have the National Policy on Rehabilitation which mentions disabilities as a human rights and development issue with an objective to amongst others, ensure that disability issues are on the agenda in all spheres of social, economic and political life; ensure maximum access of people with disabilities to all mainstream services and facilities; work to prevent discrimination against persons with disabilities in all spheres; and increase awareness on disability issues and support national/international advocacy- for persons with disabilities.⁴³

There is a proposed National Bill to domesticate the CRPD and for a domestic national law to protect the rights of persons with disabilities in Nigeria.⁴⁴ The Bill has been by several Assemblies but was never assented to be pass presidents. It has currently been passed again by the current Assembly and waiting for assent by president Mohammed Buhari. The Bill seeks to give effect to Article 4 of the CRPD which requires countries to adopt appropriate legislative, administrative and other measures for the full implementation of the rights recognized by the Convention. As such, it prohibits discrimination, ill treatment and harmful practices against persons with disabilities.⁴⁵ It provides for accessibility and full integration of the persons with disabilities in the society.⁴⁶ Although, the Bill can be said to be not as comprehensive as the CRPD, Nigeria, like other developing countries have not been able to conceptualize what legal capacity as defined by CRPD will be within its national jurisdiction.

This lack of normative framework has been reflected in recommendations by International mechanisms, for example, the CEDAW Committee in its last review of Nigeria urged Nigerian government to expedite the adoption of the National Disability Bill and the Equal Opportunities Bill.⁴⁷ Specifically, on access to justice, the Committee asked the government “to increase the budget for legal aid and to investigate allegations of corruption within the judiciary and prosecute and punish corrupt judicial officials who obstruct justice.”⁴⁸

2. State Law and Obligations

This lack at the national level notwithstanding, at the State level, six States of Lagos, Jigawa, Bauchi, Ekiti⁴⁹, Plateau and Kwara,⁵⁰ have passed laws, and other states--Ogun, Edo, Akwa-Ibom, Kwara⁵¹ are working on the passage of similar laws. Nasarawa has passed a Bill on disability and is

⁴³ World Health Organization, Country resource, Nigeria National Policy on Rehabilitation, <https://www.mindbank.info/item/2144> (last visited Feb. 12, 2018).

⁴⁴ Paul Uwadima, *As NASS Sets to Transmit Disability*. Leadership, March 4, 2018.

⁴⁵ Silver Nwokoro, *Group urges Buhari to sign disability bill into law*, Guardian. March 30, 2018.

⁴⁶ Id.

⁴⁷ CEDAW Committee, *Concluding Observations: Nigeria*, E 10(c), U.N. Doc. CEDAW/C/NGA/CO/7-8 (2017).

⁴⁸ Id. Access to Justice, E 13 (b).

⁴⁹ Magnus Eze, *Only 4 states have disability laws* - <http://sunnewsonline.com/only-4-states-have-disability-laws-group/>.

⁵⁰ Gov Ahmed Signs Disability Amendment Bill into Law, <https://kwarastate.gov.ng/gov-ahmed-signs-disability-amendment-bill-into-law/>.

⁵¹ Joint National Association of Persons with Disabilities, *2016 Annual Report* <http://www.jonapwd.org/2016report.pdf> (last visited May 25, 2018).

optimistic the Governor will assent to it.⁵² The laws passed in these States are tools which persons with disabilities within the State can harness for the rights enforcement. The major problem in many of them is implementation of the law. Many of the provisions are not yet tried in court and government institutions are not properly engaged.⁵³

Lagos State Special Persons Law Vol 5,⁵⁴ though with a name that speaks the obvious have been the most progressive in terms of usage, reference and activities to impact the lives of persons with disabilities in Lagos. This may be because of the setting up of and equipping the Office of Disability Affairs (ODA)⁵⁵ as mandated by the law and with progressive governors in the State. The ODA was “established to safeguard persons with disabilities against all forms of discrimination and equalize their opportunities in all aspect of living in the society.”⁵⁶ The ODA has the mandate to ensure the full implementation of the law in the State, including collaborating with relevant stakeholders both public and private to ensure accessibility.⁵⁷ They are to receive, investigate, prosecute and sanction violations subject to an individual’s right to seek redress in court.⁵⁸ They also collect data on disabilities issues,⁵⁹ which is highly lacking and issue guidance on education, social development and planning. The ODA’s mandate of issuing directives and guidelines on disability issues,⁶⁰ and ability to liaise with all relevant government agencies to ensure all peculiar interests of persons with disabilities are taken into consideration in every government policies, programmes and activities⁶¹ should be heavily relied on for ensuring that tools to access justice for persons with disabilities in Lagos state is promoted and protected. In addition, the ODA administers the Disability fund⁶² which is created by the law for the advancement of the cause of persons with disabilities in the state. Fund which has been provided by the current governor of the State.⁶³

The law provides for non-discrimination⁶⁴ and deals with the major effects of the vulnerability of persons with disabilities to prejudice or harmful practices.⁶⁵ It further provides for accessibility both in employment,⁶⁶ education, health, public building,⁶⁷ parking,⁶⁸ transportation⁶⁹ etc. It makes it mandatory for persons with disabilities to have the freedom to seek information and express themselves through

⁵² *Nasarawa Assembly passes Disability Rights Commission bill into law*, Premium Times, Feb. 19, 2018 <https://www.premiumtimesng.com/regional/north-central/259169-nasarawa-assembly-passes-disability-rights-commission-bill-law.html>.

⁵³ Raymond Lang, *Scoping Study: Disability Issues in Nigeria* (April 2008).

⁵⁴ Special Peoples Law, Lagos State (2011). <https://www.lagoshouseofassembly.gov.ng/download/special-peoples-law-vol-5/>. (last visited May 20, 2018).

⁵⁵ *Id.*

⁵⁶ Sub-title to the Special Persons Law.

⁵⁷ *Id.* at Section 3(1) (2).

⁵⁸ *Id.* at 3 (3) (4).

⁵⁹ *Id.* at Section 7.

⁶⁰ *Id.* at Section 10.

⁶¹ Section 14, Special Peoples Law of Lagos State (2011).

⁶² *Id.* at Section 17.

⁶³ Lagos State Office for Disability Affairs, <http://www.lasoda.org.ng/news-events/26-lagos-state-disability-fund.html> (last visited April 27, 2018).

⁶⁴ *Id.* at Section 26 of the Special Persons Law (2011).

⁶⁵ *Id.* Section 26 (2).

⁶⁶ *Id.* at Section 34.

⁶⁷ *Id.* at Section 29.

⁶⁸ *Id.* at section 26.

⁶⁹ Section 29, Special Peoples Law of Lagos State (2011).

any means of communication of their choice.⁷⁰ This is key as court documents; enforcement agencies; and prisons should have adequate and accessible tools and means of communication and for its staff to engage with persons with disabilities. The law also reinforces the right to free legal representation and interestingly “without condition”⁷¹ to all persons with disabilities through the Office of the Public Defender (“OPD”)⁷² in Lagos State and provides for a department for legal services⁷³ on disabilities within the Office of Disability Affairs. This will serve as a useful tool for persons with disabilities seeking to enforce and protect their rights within the State

Furthermore, disability has been shown as a major 'risk factor' when analyzing vulnerability to torture, cruel, inhuman or degrading treatment or other abuse.⁷⁴ As such, the law prohibits cruel and inhuman treatment of persons with disabilities from torture, and medical or scientific experiment without consent.⁷⁵ This has recently been reinforced by a federal law criminalizing torture. The Anti-Torture Act, which was adopted in 2017 provides a definition of torture and specific legal protections against torture, including mental/psychological torture.⁷⁶

The apparent problem with the Lagos State law, like many other disability laws is that it provides for a progressive realization, a “transitory”⁷⁷ period of five years for companies whose business entails attending to the public to train its personnel on disability rights,⁷⁸ and same applies with adjustments of public buildings.⁷⁹ It is more than five years since the inception of the law and most of this obligation has not been progressively realized. A legal action seeking enforcement or violation of the law may be the way forward to the full realization of the provisions of the law.

3. Institutions and actors

a) *Federal/ State Ministry of Women and Affairs and Social Development*

Apart from the legal provisions and gaps within it in Nigeria, there are State and non- State institutions that play key roles in the protection and promotion of the rights of persons with disabilities and one of such is the Ministry of Women Affairs and Social Development at the federal and in the State ministries. The Federal Ministry of Women Affairs oversees the affairs/welfare of persons with disabilities in Nigeria under its Rehabilitation Department at the national level, and in the states, it is the State ministries.⁸⁰ Consequently, most of the interventions for persons with disabilities are perceived as charity, and mainly not from the rights perspective as envisaged by the CRPD. For example, the current Minister for women affair while discussing of a great plan to set up National Rehabilitation Institute within the

⁷⁰ *Id.* at Section 35.

⁷¹ *Id.* at Section 26 (4).

⁷² *Id.*

⁷³ *Id.* at Section 14 (1) d.

⁷⁴ Report of the Office of the High Commissioner for Human Rights 'Expert seminar on freedom from torture and ill-treatment and persons with disabilities' (11 December 2007) http://www2.ohchr.org/english/issues/disability/docs/torture/seminar_torture_report_final.doc (April 7, 2018).

⁷⁵ Section 27, Special Peoples' Law of Lagos (2011).

⁷⁶ Section. 2(2)(a) & (b), Anti- Torture Act (2017).

⁷⁷ Section 18, Special Peoples Law of Lagos (2011).

⁷⁸ *Id.*

⁷⁹ *Id.* at Section 29.

⁸⁰ Raymond Lang, *Scoping Study: Disability Issues in Nigeria* (April 2008).

Ministry mentioned she has also directed that accessibility for persons with disabilities be considered and put in the 2017 budget “in order to show love and care for them.”⁸¹

Majority of the empowerment provided by the Ministry is based on medical and vocational training. In addition, the Ministry’s has limited budgetary allocation to handle their core goal of dealing with women affairs, coupled with auxiliary duties to disability affairs and rehabilitation.⁸² This reflects the low priority of issues of disability rights.⁸³ The Ministry is “poorly staffed and incapacitated,”⁸⁴ as such there is need to separate disability issues to a special Commission with experts experienced in disability rights to coordinate and prioritize the affairs of persons with disabilities. Such Commission as proposed by the proposed Disability Bill.

This lack of efficient oversight over disability issues can also be seen in the National Gender Policy,⁸⁵ adopted by the Ministry, setting different goals and target for women. It addressed important human rights and development issues faced by women, including gender-based violence and access to justice. Regrettably, the policy failed to acknowledge specific multiply, and intersectional forms of discrimination, based on both their gender, and other statuses, including disability status, faced by women with disabilities in exercising their rights.⁸⁶ Women with disabilities were only mentioned in the Policy in target objective 4 “[a]chieve equity and equality in employment opportunities and eliminate all discriminatory and abusive practices [] disability against the employment of women in the public and private sectors . . .”⁸⁷ This apparent omission of women with disabilities in its policy may reflect the neglect other types, areas and aspects of disabilities may suffer, considering that the Ministry could omit comprehensively inclusion and protection of women with disabilities who are directly under its core mandate.

A National Rehabilitation Policy was adopted by the Federal Ministry of Women Affairs and Social Development with some broad multi-sectoral policy approach,⁸⁸ aimed at enabling the government to give priority to persons with disabilities to participate fully in all areas of life and eliminating all obstacles that prevent such.⁸⁹ Though it has been in existence before the CRPD, this

⁸¹ Adeniyi Lawal, *Women Affairs Minister advocates for national rehabilitation institute*, (2016). <https://fmic.gov.ng/women-affairs-minister-advocates-national-rehabilitation-institute/> (last visited April 19, 2018)

⁸² R Lang & L Upah ‘Disability scoping study in Nigeria’ at pg. 21(2008).

⁸³ *Id.*

⁸⁴ Adebukola Adebayo, *Current Status, Key Challenges Faced and Key Lessons Learned in Local And National Contexts In Planning/Constructing Accessible Cities and their Infrastructures and Basic Public Services for all the case of Nigeria*, Paper Presented at UNDESA/DSPD Forum On Disability And Development (2016) <https://www.un.org/development/desa/disabilities/about-us/undesadspd-forum-on-disability-and-development-28-30-october-2015.html>.

⁸⁵ Ministry of Women and Social Development, *National Gender Policy*, § 2.5.4 (2006), http://www.aacoalition.org/national_policy_women.htm (last visited April 19, 2018).

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ World Health Organization Country Resource: *Nigeria National Policy on Rehabilitation*, <https://www.mindbank.info/item/2144> (last visited April 19, 2018).

⁸⁹ *Id.*

policy is hardly implemented because it is not backed with appropriate legislative and institutional frameworks to effectively enforce implementation.⁹⁰

b) Associations and Organizations working on Disabilities Rights in Nigeria.

Amongst the non-state actors, the major national umbrella for persons with disabilities is the Joint National Association of Persons with Disabilities (JONAPWD) is a major actor. It works through its cluster groups of different disabilities consisting of “six disabled groups which are the Blind, the physically disabled, the deaf, the intellectually impaired, those with spinal cord injuries, and leprosy victims.”⁹¹ It has been in existence since 1992,⁹² though, initially accused of lacking organizations capacity for a rights-based advocacy,⁹³ it have picked up with implementation of major projects with a seemingly stable management structure.⁹⁴ It has several projects on election, right to education and advocating for the passage of the disability bill at the national level.⁹⁵ It states that it is not funded by the government in Nigeria but receives funding from International Foundation for Electoral Systems (IFES) for its work on increasing the participation of persons with disabilities in the electoral process,⁹⁶ U.S. Agency for International Development (USAID), Coalitions for Change (C4C)⁹⁷ amongst others.

A major funding project by USAID, through its Strengthening Advocacy and Civic Engagement (SACE) programme in Nigeria has seen the organization leading on inclusive education for children with disabilities. With a goal to “[i]mprove the inclusion and access of children with disabilities to quality basic education in Nigeria through effective stakeholders’ advocacy engagement for policy influencing, capacity building and public awareness creation.”⁹⁸ The organization though active still battles with the challenges of managing the disability affairs in a Nigeria that is ridden with huge discrimination against persons with disabilities due to lack of awareness and poverty level of persons with disabilities.⁹⁹ The “very limited human, material and financial resources as well as a generally dysfunctional institutional and organizational governance structure”¹⁰⁰ are also challenges faced by JONAPWD. This is reflective in the lack of jurisprudence on disability issues in Nigeria which such a national body ought to at the forefront with the evident violations of the rights of persons with disabilities in Nigeria.

Another key organization working on disability rights issues is the Association of Comprehensive Empowerment of Nigerians with Disabilities (ASCEND) which was started in 2002 and re-launched its name 2006.¹⁰¹ It is founded by Cosmas Okoli¹⁰² with a vision for persons with disabilities to work together

⁹⁰Adebukola Adebayo, *National and local experience (urban policy and practices) on promoting e-accessibility/e-government for participation and inclusions of persons with disabilities in urban development context*, Paper Presented at UNDESA/DSPD Forum on Disability and Development. (2015).

⁹¹ JOINT NATIONAL ASSOCIATION OF PERSONS WITH DISABILITIES, <http://www.jonapwd.org/about.html> (LAST VISITED May 20, 2018)

⁹² Raymond Lang, *Scoping Study: Disability Issues in Nigeria* (April 2008).

⁹³ *Id.* at pg. 20.

⁹⁴ See <http://www.jonapwd.org/about.html>.

⁹⁵ *Id.*

⁹⁶ *Id.* See also, IFES Voter Education Engagement with Persons with Disabilities (2014), <http://www.ifes.org/news/ifes-voter-education-engagement-persons-disabilities> (last visited April 19, 2018).

⁹⁷ *Id.*

⁹⁸ See 2016 Annual Report, <http://www.jonapwd.org/2016report.pdf>.

⁹⁹ *Id.* Pg. 13.

¹⁰⁰ *Id.* Pg. 13.

¹⁰¹ Raymond Lang, *Scoping Study: Disability Issues in Nigeria* Pg.19 (April 2008).

for their issues with one voice.¹⁰³ ASCEND was very active on the empowerment of persons with disabilities in the past. There are also many other Disabled Persons Organization (DPOs) across the country working on diversity of issues, some of which are such as Mobility Aid and Appliances Research and Development Centre (MAARDEC), Disability Rights Advocate Center (DRAC),¹⁰⁴ which works to facilitate the full participation of persons with disabilities in all aspects of life and living.¹⁰⁵ The Centre for Citizens with Disabilities (CCD),¹⁰⁶ works to promote inclusion, participation, access, and mainstreaming of issues of persons with disabilities to programmes of state and non-state institutions.¹⁰⁷

c) *National Human Rights Commission (NHRC)*

To effectuate the human rights of all persons including that of persons with disabilities in Nigeria, The National Human Rights Commission was created (NHRC “Commission”). And in line with Resolution 48/134 of the United Nations General Assembly which requires all States parties to establish independent National Institutions.¹⁰⁸ The National Human Rights Commission was established by the National Human Rights Act of 1995, as amended in 2010.¹⁰⁹ Its mandate includes the promotion, protection and enforcement of all human rights guaranteed by the Constitution of the Federal Republic of Nigeria, as well as the African Charter on Human and Peoples Rights, the United Nations Charter, the Universal Declaration on Human Rights and other international treaties to which Nigeria is a party.¹¹⁰ The 2010 amendment expanded this jurisdiction to include quasi-judicial powers to summon persons, hear evidences, award compensation or recommendation which shall be same as a decision of High Court or Federal High Court.¹¹¹ It has used this jurisdiction effectively in the much celebrated APO Killings.¹¹²

The Commission also has the mandate of visiting places of detention to ensure that detainees rights are not violated and to conduct human rights education. It has through its mandate to conduct human rights education engaged with stakeholders on different issues and with tertiary institutions on inclusive education and the provision of ramps in schools.¹¹³ It has also visited prisons and made recommendations but needs to extend it to visit other places of detention specific for persons with disabilities.

¹⁰² See <http://www.schwabfound.org/content/cosmas-i-okoli>.

¹⁰³ Raymond Lang, *Scoping Study: Disability Issues in Nigeria* (April 2008).

¹⁰⁴ DISABILITY RIGHTS ADVOCACY CENTER <http://drac-ng.org> (LAST VISITED May 20, 2018).

¹⁰⁵ *Id.*

¹⁰⁶ CENTER FOR CITIZENS WITH DISABILITIES <https://ccdnigeria.org/> (LAST VISITED May 21, 2018).

¹⁰⁷ *Id.*

¹⁰⁸ G.A. Res. 48/134, A/RES/48/134 (Dec. 20, 1993).

¹⁰⁹ NATIONAL HUMAN RIGHTS COMMISSION ACT, [http://www.lawnigeria.com/LawsoftheFederation/NATIONAL-HUMAN-RIGHTS-COMMISSION-\(AMENDMENT\)-ACT-2010.html](http://www.lawnigeria.com/LawsoftheFederation/NATIONAL-HUMAN-RIGHTS-COMMISSION-(AMENDMENT)-ACT-2010.html).

¹¹⁰ NATIONAL HUMAN RIGHTS COMMISSION, <https://www.nigeriarights.gov.ng/index.php> (LAST VISITED May 23, 2018).

¹¹¹ *Id.* at Section 22.

¹¹² Court Upholds Human Rights Commission Decision on Apo Killings Case, *ThisDay*, November 28, 2015.

¹¹³ Ngozi Umeh & Romola Adeola, *Nigeria Report*, 1 ADRY 277-290 at 284 (2013).

Specifically, on persons with disabilities, there is a dedicated session on disability rights in the National Action Plan.¹¹⁴ Although there are reports of the Commission having specific thematic focus on persons with disabilities,¹¹⁵ and office of a special rapporteur on disabilities,¹¹⁶ its current website does not reflect persons with disabilities amongst its eleven thematic focus areas.¹¹⁷

C. BARRIERS TO LEGAL EMPOWERMENT IN NIGERIA FOR PERSONS WITH DISABILITIES IN NIGERIA

Apart from the legal mechanisms and institutional actors improving or hindering the rights of persons with disabilities, there are several barriers which inhibit the empowerment and inclusion of persons with disabilities in Nigeria. These barriers play a major role in affecting the legal empowerment of persons with disabilities.

1. Traditional principles / Socio-cultural barriers

Nigeria, like many African countries is a religious and traditional based society which reflects more in the beliefs, superstitions and assumptions on disabilities being caused by a supernatural intervention.¹¹⁸ This magnifies in the beliefs that disability is an act of punishment by the gods or a curse which can be cured by religious and traditional healers.¹¹⁹ Similar cultural beliefs on the financial gains exposes a lot of women with mental disabilities to sexual violence, especially rape.¹²⁰ The belief that having intimacy with them could bring wealth or prolong an individual's life.¹²¹ All these beliefs have led to a lot of stigmatization and discrimination which has increased their vulnerability, abuse by communities, institutions and family.¹²²

As such, most families when faced with a child with disabilities or a person with mental disabilities, the first point of call are the traditional or spiritual homes to seek divine solutions. This has also resulted in wide-spread discrimination by communities, exclusion and torture by these healers to heal or disperse the spirit behind the disability.¹²³ This is more prevalent in persons with mental or intellectual disability. This inherently affects persons with disabilities from access to justice as they are hidden by the family who sincerely believes divine healing is the best for them or are ashamed to be associated with such¹²⁴. Furthermore, disabled people in Nigeria, particularly those living in rural areas,

¹¹⁴ NATIONAL HUMAN RIGHTS COMMISSION, <https://www.nigeriarights.gov.ng/Files.php> (LAST VISITED May 23, 2018).

¹¹⁵ See, pg 4 at <http://www.nanhri.org/wp-content/uploads/2016/04/NIGERIA.pdf> (last visited May 23, 2018).

¹¹⁶ Ngozi Umeh & Romola Adeola, *Nigeria Report*, 1 ADRY 277-290 at 284 (2013).

¹¹⁷ See NATIONAL HUMAN RIGHTS COMMISSION, <https://www.nigeriarights.gov.ng> (last visited May 23, 2018).

¹¹⁸ EDWIN ETIEYIBO & ODIRIN OMIEGBE, *DISABILITIES IN NIGERIA: ATTITUDES, REACTIONS, AND REMEDIATION*, Hamiton books (2017).

¹¹⁹ *Id.*

¹²⁰ Etieyibo, Edwin & Odirin Omiegbe, *Religion, Culture, And Discrimination Against Persons with Disabilities in Nigeria*, AFRICAN JOURNAL OF DISABILITY 5.1 (2016): 192.

¹²¹ *Id.*

¹²² Janet Lord & Michael Ashley Stein, *Prospects and Practices for CRPD Implementation in Africa*, 1 AFR. DISABILITY RTS. YEAR BOOK. 97 at 102 (2013).

¹²³ Cheluchi Onyemelukwe, *Stigma and Mental Health in Nigeria: Some Suggestions for Law Reform*, 55 J.L. POL'Y & GLOBALIZATION, 63 (2016).

¹²⁴ Etieyibo et al., *Religion, Culture, and Discrimination against Persons with Disabilities in Nigeria*, 5.1 AFRICAN JOURNAL OF DISABILITY 192 (2016).

find it extremely difficult to complete primary education, as well as finding it virtually impossible to obtain long-term, sustainable employment. This scenario is further compounded by gender disparities.¹²⁵

The charity/welfare attitude which is adopted by society and the Government reinforces exclusion and means that the public is more concerned with mitigation rather than the transformation that is required to expand the rights and livelihood opportunities of persons with disabilities.¹²⁶ This attitude means that many Nigerians are more comfortable with, and even prefers, giving persons alms to persons with disabilities on the streets, rather than providing paid employment, employable skills and shelter.¹²⁷ The charity/welfare approach is further preserved by religion, for example, Islam provides that the care of the disabled should be affected through alms and the “Zakat”, which is a form of gift from other individuals who have to maintain persons with disabilities who do not have.¹²⁸ This approach advocates the provision of cash handouts to people living with disabilities which is not conducive to long-term sustainable change and the development of a rights-based approach to disability.¹²⁹ This has also seen a lot of parents of children with disabilities sending them out onto the streets to beg for alms.¹³⁰ Which is prohibited by the proposed National Disability Bill and the Special Peoples’ Law of Lagos State.

All these cultural norms are also reflected in the legal system. For example, mental disability is still governed by the Lunacy Act of 1958, which is not only outdated and against all tenets of the CRPD, but also treats individuals with disabilities as lunatics with no rights in its priorities on the protection of law and order.¹³¹ As such, persons with mental disabilities are still involuntarily confined in “non-therapeutic, overcrowded, unsanitary, and dilapidated facilities with little or no capacity for adequate treatment.”¹³²

2. Institutional Barriers

Institutional barriers are reflective in inadequate laws, regulations, and administrative structures for legal empowerment of marginalized and vulnerable communities. Politicians and public officers hardly attribute any adequate importance to issues not affecting them or in the case of disability, affecting real progress in disabilities rights.¹³³ The inability and political will for adequate laws addressing marginalized communities in Nigeria is evident with many national laws like the Gender and Equal

¹²⁵ Raymond Lang, *Scoping Study: Disability Issues in Nigeria*, pg.20-21 (April 2008).

¹²⁶ http://coalitions4change.org/index.php?option=com_content&task=blogcategory&id=21&Itemid=59

¹²⁷ Celine Osukwu, *The Place of Women with Disabilities in Nigeria, March 2010*, <http://www.worldpulse.com/node/18821> (last visited May 28, 2018).

¹²⁸ The plight of people with disabilities and older people in developing countries – the Nigerian Experience”, <http://livingwaterfoundation.com/the-plight-of-people-with-disabilities-and-older-people-in-developing-countries/>

¹²⁹ Raymond Lang, *Scoping Study: Disability Issues in Nigeria* (April 2008) at 22.

¹³⁰ Etieyibo et al., *Religion, Culture, and Discrimination against Persons with Disabilities in Nigeria*, AFRICAN JOURNAL OF DISABILITY 193 (2016).

¹³¹ Paula U. Ude, *Policy Analysis on Nigerian Lunacy Act (1958): The Need for a New Legislation*, JOURNAL OF PSYCHIATRY, VOL 19, ISSUE 1 at 343, (2015).

¹³² *Id* at 344.

¹³³ Raymond Lang, *Scoping Study: Disability Issues in Nigeria*, at 21.

Opportunities Bill¹³⁴ and the National Disability Bill,¹³⁵ which has spanned through many Assemblies without assent by the president. As a result, groups rely on general provision of laws to seek redress.

This is also reflective in international, regional, national and local obligations. For persons with disabilities for example, Nigeria has signed and ratified the CRPD and its optional Protocol but has failed to domesticate it through a national law for enforcement. More especially, its report to the CRPD Committee as mandated by the treaty has been due since 2010 and Nigeria is yet to submit any report.¹³⁶

The current president of Nigeria, President Mohammad Buhari tried to incorporate persons with disabilities in his cabinet through the creation of the office of Special Adviser to the president on disability matters. An adviser who is to assist the “President on all matters relating to the welfare and well-being”¹³⁷ of all persons with disabilities in Nigeria. These duties include protection of fundamental rights and privileges of persons with disabilities, amongst others.¹³⁸ This is a mere political appointment, just like the other Disability Advisors appointed by State governors of states who adopt charity/welfare approach by displaying handouts given to persons with disabilities as a way of improving their lives and never trying any right-based approach.¹³⁹

In the States, to administer the affairs of persons with disabilities, Lagos State Office of Disability Affairs (LASODA) which was set up in line with the Special Persons Law, had made several strives to impact the group and with the support of the State Governor. Still some of its recorded impacts are geared towards inclusion and economic empowerment of the community¹⁴⁰, which may reinforce the charity model as there is still lack of evidence of impact on the rights to access to justice, in terms of polices, tools or physical improvement of the courts and other justice mechanisms. Although, provisions of amenities are important,¹⁴¹ there needs to concrete tools, avenues and structures to impact full empowerment and not celebration of provisions of amenities.

The Committee on the Rights of Persons with Disabilities in its Concluding Observations stated that States must have laws explicitly prohibiting disability-based discrimination with sanctions and a dedicated mechanism to address such.

Other forms of barriers faced by persons with disabilities which affects their legal empowerment are:

Information and Communication Barriers. This is created by lack of access and accessibility of laws, regulations, legal rights or how to exercises these rights. Many laws in Nigeria are in printed form and even when few are in the electronic format, many persons with disabilities do not have access to the

¹³⁴ Kay Ugwuode, *Why the Gender Equality Bill Will Be 'Just Another Law'*, BusinessDay May 2017. <http://www.businessdayonline.com/gender-equality-bill-will-just-another-law/> (last visited May 21, 2018).

¹³⁵ Disability Bill: When will it become a law? Dec. 15, 2017.

¹³⁶ UN officer of the High Commissioner, on Reporting Status for Nigeria.

http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=NGA&Lang=EN (last visited May 21, 2018).

¹³⁷ The Agricultural Research Council of Nigeria, *Visit of the Senior Special Assistant to the President on Disability Matters to the Council* (May 2, 2018) <http://arcnigeria.org/arcn/2017/06/16/visit-of-the-senior-special-assistant-to-the-president-on-disability-matters-to-the-council/>.

¹³⁸ *Id.*

¹³⁹ R Lang & L Upah, *Disability Scoping Study in Nigeria* at Pg 20.

¹⁴⁰ Ambode employs 250 persons with disabilities into civil service, Vanguard News, (Aug. 9, 2017) <https://www.vanguardngr.com/2017/08/ambode-employs-250-persons-with-disabilities-into-civil-service/>

¹⁴¹ *Id.*

internet or are uneducated. Additionally, make court in Nigeria especially those in the rural communities do not have accessible court proceedings for persons who are blind or any listening systems in the courtrooms. The law enforcement agencies hardly have an interpreter for its engagement with persons who are hearing impaired or brail machines. This lack of accessible information and means of communication impacts the level of knowledge for persons with disabilities on what constitutes a crime, how to report it and effectively participate in legal proceedings.

In additional, the lack of data for planning or policy advocacy on issues of persons with disabilities.¹⁴² negatively affects disability rights in Nigeria. Article 31 of the UN Convention requires Nigeria to “undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention.”

Physical Barriers. Physical barriers are the most commonly seen or known barrier when the issues of disabilities are discussed in Nigeria. Many court, law enforcement in Nigeria is inaccessible for persons with disabilities. Inaccessible public buildings, computers, lights and transport impacts the ability to seek information report a crime or simply access court document. Court with old structures provides a lot of inaccessible physical barriers that impacts justice for persons with mobility impairment such as stairs, narrow doorways and inaccessible toilets.¹⁴³

Economic Barriers. Persons with disabilities are amongst the poorest communities in Nigeria due to lack of education and employment. As such they are usually indigent and unable to access the services of a lawyer or pay for documents for administrative proceedings, especially in the rural communities. A significant number of women are survivors of physical or sexual violence due to their disability and are not able to report due to lack financial capacity, lack of money to transport to the police stations and fear of reprisal from home. Economic barrier is often multifaceted as they affect several areas of engagement for persons with disabilities which affects their ability to integrate in the society and the legal system.

III. IMPROVING THE LEGAL/ INSTITUTIONAL FRAMEWORK FOR THE EMPOWERMENT OF PERSONS WITH DISABILITIES IN NIGERIA

Despite all the limitations in legal and institutional framework, along with the barriers faced by persons with disabilities, the government and these institutions still have a major role in promoting protecting and fulfilling legal obligations owned to its citizens.¹⁴⁴ Several reforms which are within the ambit of these legal and institutional framework could affect legal empowerment.

¹⁴² Raymond Lang, *The United Nations Convention on The Right and Dignities for Persons with Disability: A Panacea for Ending Disability Discrimination?* 3, ALTER - EUROPEAN JOURNAL OF DISABILITY RESEARCH (2009).

¹⁴³ Janet Lord & Michael Stein, *Prospects and Practices for CRPD Implementation in Africa*, 1 AFR. DISABILITY RTS. YEAR BOOK 97 at 102 (2013).

¹⁴⁴ FRAN QUIGLEY, *How Human Rights Can Build Haiti*, Vanderbilt University Press Nashville, pg. 105, (2014).

A. Federal and State Government Fulfilling Its Obligations to Aid Legal Empowerment.

The Constitutional obligation of the government in ensuring adequate representation of any accused person¹⁴⁵ is a role it aims to fulfill through the Legal Aid Council of Nigeria (LACON), which was established to provide free legal assistance and advice to any person who is unable to afford the services of a lawyer in Nigeria.¹⁴⁶ The body is governed by the Legal Aid Act 2011, which provides for legal aid and access to justice fund managed by LACON¹⁴⁷ to assist indigent citizens prosecute their claims.

LACON, which has been in existence with minimal impact as many NGOs still provide legal aid to indigent persons have developed and launched what could be hope for a positive impact, the National Legal Aid Strategy (2017-2022).¹⁴⁸ The strategy which aims to support the full implementation of Legal Aid Act, enhance the provision of legal aid scheme in Nigeria, provide a framework for the coordination of stakeholders and Pro-bono services and generally help to position LACON to deliver on its mandate on the delivery of legal aid services in Nigeria,¹⁴⁹ is a tool that help increase legal empowerment for persons with disabilities. This enhanced strategy can be geared towards the provision of strategic litigation in the pro bono representation of persons with disabilities with a deliberate attempt to expand jurisprudence on disability issues in Nigeria, thus creating tools for legal engagement on the issues.

Furthermore, the Nigeria Police Force in a bid to enhance this constitutional provision of right to counsel for any arrested or accused person launched its Force Order No. 20, 2017, which is a statutory instrument under the Police Act. The Order is to institutionalize the provision of duty solicitor services in all police stations in 36 States of the country. If fully implemented, every accused person including persons with disabilities will have a right to a counsel at the police station.¹⁵⁰ It will not only reduce acts of torture within the police, it will ensure adequate representation of an accused person and oversight of a third party¹⁵¹ in cases any barriers to representation of persons with disabilities at the police station.

The functionality of the Order seems visible and useful for persons with disabilities who are most times faced with barriers to reporting and engaging the police. More so, the Order creates an advisory committee which includes the police, the Legal Aid Council of Nigeria, the National Human Rights Commission, the National Orientation Agency and nonstate groups.¹⁵² DPOs and NGOs in Nigeria

¹⁴⁵ Section 36 of the Constitution of the Federal Republic of Nigeria.

¹⁴⁶ *Id.* at Section 46.

¹⁴⁷ Section 1, Preamble, The Legal Aid Act 2011 (CAP L9).

¹⁴⁸ The National Legal Aid Strategy of Nigeria 2017-2022 (A Publication funded by the European Union and Implemented by United Nation Office on Drugs and Crime), See also, <https://thesheet.ng/promoting-legal-aid-reform-strategic-planning-brief-reflection-nigerias-national-legal-aid-strategy-read/>.

¹⁴⁹ LEGAL AID COUNCI, <http://www.legalaidcouncil.gov.ng/index.php/en/resources/legal-aid-acts/91-news/175-the-legal-aid-council-40th-anniversary-celebration> (last visited April 21, 2018).

¹⁵⁰ Chidi Odikalu, *As Nigeria launches Duty Solicitor Scheme: Looking back, looking forward* (2017) <https://www.vanguardngr.com/2017/09/nigeria-launches-police-duty-solicitor-scheme-looking-back-looking-forward/> (last visited April 21, 2018).

¹⁵¹ Alex Enumah, *IG Launches Force Order 20, Says Force Has Zero Tolerance on Rights Violation, Corruption* (2017). <https://www.thisdaylive.com/index.php/2017/09/21/ig-launches-force-order-20-says-force-has-zero-tolerance-on-rights-violation-corruption/> (last visited April 21, 2018).

¹⁵² Stanley Ibe, *Nigeria's Legal Aid Lawyers Win Police Recognition*, (2017). <https://www.opensocietyfoundations.org/voices/nigeria-s-legal-aid-lawyers-win-police-recognition> (last visited May 2, 2018).

should ensure that for full legal empowerment for persons with disabilities that awareness is created on it amongst the communities and the police stations in accessible means.

All these notwithstanding, for there to be full legal empowerment in Nigeria for marginalized and vulnerable communities there must be legal tools available for empowerment of the people and functional institutions to enforce these rights. Still using persons with disabilities as a yardstick, Nigeria government must first sign the national disability bill into Act.¹⁵³ This is necessary as it will not only serve to create the much-needed tool to recognize and clarify the rights of persons with disabilities, it will establish the Commission of experts on disability rights and above all serve to fulfil Nigeria's obligation to the CRPD.

Furthermore, on its internationally commitment, Nigeria have failed to submit any State report as required by the CRPD. As such, Nigeria cannot be reviewed on its adherence to the obligations in the treaty and there cannot be any concluding observations or recommendations for Nigeria on its obligations to persons with disabilities in Nigeria. Nigeria must submit its State report to the CRPD Committee as this will have huge domestic effect in Nigeria on disability issues. Nigeria can then be held accountable to its obligations to persons with disabilities both internationally and nationally.

B. Reforms through Administrative/ regulatory agencies for legal empowerment of persons with disabilities.

Beyond the promulgation of National and State laws on disability rights issues, there are lots of administrative and regulatory framework that can be put in place in various federal and state ministries to impact disability rights. If every ministry in Nigeria could activate a regulation mandating or improving its operations of day to day affairs in its agencies, many issues hindering persons with disabilities from accessing to justice may be removed.

These regulations are not advocated to take the place of laws or to negate the need to promulgate laws on disabilities issues in Nigeria. It is aimed to serve as a supplementary or subsidiary to aid the quick dispensation of justice and removal of blockages to the full empowerment of persons with disabilities. Even, the CRPD mandates state parties to enact legislations and "take other administrative measures" to implement the rights stipulated in the Convention. This administrative regulation advocated for, will aim to serve this purpose of improving the rights, and engagement of persons with disabilities with relevant ministries in Nigeria to effectuate their rights. For example, the ministry of Justice can through a practice direction by the Chief Justice of the Federation or other State Justices on accessibility of material and handling of witnesses/litigants with disabilities improve access to justice for persons with disabilities. A practice direction serves as subsidiary legislation which seeks to aid practice in court.¹⁵⁴

Similarly, Section 269 of the Police Act empowers the Inspector-General of police to issue Force Orders and Force Administrative Instructions which provides control, guidance, and information of members of the police force in its activities. Such orders can be issued on the handling of persons with disabilities as a complainant or a detainee and for the general engagement of the police with any person

¹⁵³ Levinus Nwabughio, CCB urges Buhari to sign Disability Bill into law, Vanguard May 12, 2018) <https://www.vanguardngr.com/2018/05/ccb-urges-buhari-sign-disability-bill-law/>.

¹⁵⁴ AFRIBANK (NIG.) PLC VS. AKWARA, 5 NWLR (PT. 974) 619, 654-655 (2006).

with disabilities accordingly. Including but not limited to the provision of a disability desk in all police stations, a sign language interpreter, placement of signs for directions, visible notices and accessible tools of engagement and handling of persons with disabilities especially person with cognitive or mental disabilities.

Same applies to various other ministries both for general engagement of persons with disabilities and their legal empowerment. For example, improving the banking structure which is known to be mainly inaccessible to persons with disabilities in Nigeria through amendment of the Banks and Other Financial Institutions Act (BOFIA) may take years to effect. The Central Bank of Nigeria can through a circular or its regulations mandate banks to make their services and structures accessible to persons with disabilities including the use of high placed ATM machines, amendment of security doors leading to the banks, improving accessibility of banking information and materials, amongst others.

In addition, with disability desks in all the local government areas and at the office of the National Human Rights Commission (NHRC),¹⁵⁵ local governance affairs and community engagement should be easier. Persons with disabilities should be constantly engaged to work in these offices and data on experiences of persons engaging thi offices should be constantly collected and reviewed for improvement.

C. The role of the National Human Rights Commission (NHRC) and Disabled Persons Organizations/ Other CSOs

Equally, The National Human Rights Commission's expansive mandate should be fully explored and implemented to document detention conditions¹⁵⁶ of persons with disabilities in prison, hospital institutions and other places of detention especially for those with mental disabilities and persons with other disabilities taken off the road by the government and kept in institutions.¹⁵⁷ The Commission's quasi- judicial jurisdiction should be activated for cases affecting persons with disabilities. This may be through the creation of awareness amongst DPOs and Organizations working on disability rights to explore its mandate and report cases of violations.

Similarly, the National Human Rights Commission should set the pace by working with JONAPWD and other DPOs to compel Nigeria government to fulfill its international obligations to the UN CRPD. Nigeria has assigned and ratified the Optional Protocol to the CRPD which enables individual's complaints to the CRPD Committee, yet no complains have been activated from Nigeria. With all the reported violation of the rights of persons with disabilities, there is a huge need to ignite the force of this mechanism as it will proffer expansive definition and obligations of the rights of persons with disabilities in Nigeria.

Groups should activate the Nigeria obligation to the Optional Protocol by filing individual compliant to the CRPD Committee for evaluation and recommendations and encourage DPOs and individuals to engage its mandate. The Commission should also create more education awareness programs on the rights of persons with disabilities, support to ensure that Nigeria fulfils its obligation under the CRPD and makes a State report. It can also work with the ministry of justice to see that there

¹⁵⁵ Ngozi Umeh & Romola Adeola, *Nigeria Report*, (2013) at 284.

¹⁵⁶ Section 6(1)d, National Human Rights Commission Act as amended.

¹⁵⁷ See *Lagos State Rehabilitation Centre, Owutu-Majidun in Lagos*, <https://guardian.ng/news/beggars-physically-challenged-persons-hold-ambode-lagos-assembly-members-hostage/> (last visited April 21, 2018).

are administrative mechanisms put in place to support access and accessibility of the Court to persons with disabilities.

JONAPWD and other DPOs including mainstream CSOs should engage the government, the NHRC and other regulatory agencies to provide a platform for legal empowerment of persons with disabilities in Nigeria. DPOs could also bring cases before the NHRC as seen in the Apo case, where the NHRC awarded damages for the abuse of a group and the awards have been fully executed by the federal government of Nigeria. The Apo case has been a landmark for the NHRC and the mechanism should be used by persons with disabilities.

Furthermore, The Convention creates national monitoring mechanism for the fully implementation of the CRPD which DPOs, NHRC and other organizations working on disabilities issues should leverage on. States are to create focal points within the government and establish a coordination mechanism for the fully implementation of the convention. States should establish or designate a framework that includes one or more independent mechanisms to promote, protect and monitor the Convention's implementation.¹⁵⁸ As such, DPOs in Nigeria, needs to realize the enormous that they are human rights organizations and demand the rights from the government by working and monitoring closely activities relating to this issue. In addition, they must take up the enormous role placed on them by the CRPD. The convention, in recognition of the slogan "Nothing about us without us!" provided that States parties should "closely consult with" and "actively involve" persons with disabilities in decision-making processes related to them.¹⁵⁹ Specifically, the Convention requires that "civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process".¹⁶⁰ This means that they must be involved both in process and substance. Process in the sense of ensuring that persons with disabilities are involved in monitoring of government activities. And in substance, that persons with disabilities have experience and expertise in their issues and they must be consulted and their voices central in the monitoring reports.¹⁶¹

IV. EFFECTING LEGAL EMPOWERMENT FOR PEOPLE WITH DISABILITIES

A. Human Rights Definition of Legal Empowerment

The concept of legal empowerment which is advocated by for persons with disabilities is anchored in the basic principles of human rights articulated in the 1948 Universal Declaration of Human Rights (UDHR) and other international and regional conventions.¹⁶² UDHR notes that all human rights are indivisible and that "All human beings are born free and equal in dignity and rights."¹⁶³ Legal empowerment of the poor seeks to establish the rule of law and ensure equal and equitable access to justice and tackle the root causes of exclusion, vulnerability and poverty.¹⁶⁴

¹⁵⁸ Article 33, Convention on the Rights of Persons with Disabilities.

¹⁵⁹ *Id.* Article 4 (3).

¹⁶⁰ *Id.* Article 33 (3).

¹⁶¹ United Nations, *Office of the High Commissioner, Monitoring the Convention on the Rights of Persons with Disabilities Guidance for human rights monitors Professional training series No. 17*, Pg. 33 (2010).

¹⁶² High Level Commission on Legal Empowerment of the Poor. Co-Chair's Outcome Document. First Meeting of the HLCLEP, 20-21 January 2006. New York: HLCLEP, 2005.

¹⁶³ Article 1, Universal Declaration of Human Rights (UDHR).

¹⁶⁴ United Nations, *Legal Empowerment of the poor and eradication of poverty*, A/64/133 (July 2009).

As envisaged by the United Nations Commission for the Poor,¹⁶⁵ in Nigeria, laws, institutions, and policies governing economic and social interactions do not afford equal opportunity and protection to a large segment of the population, who are mostly poor, minorities, women, persons with disabilities and other disadvantage groups. Legal empowerment of the poor then becomes the “process of systemic change through which the poor are protected and enabled to use the law to advance their rights and their interests as citizens and economic actors.”¹⁶⁶

As such, legal empowerment aims to reduce poverty, improve the rule of law, and help people realize their rights¹⁶⁷ to improve or transform their social, political or economic situations. It is conceived on four key conditions for empowerment of the poor and these are identity, information, voice and organization.¹⁶⁸ In the long run, the concrete and practical nature of legal empowerment programmes, through a combination of tools, are aimed to help these communities cultivate agency having freedom of choice and action¹⁶⁹ for social change.

B. Pillars of legal empowerment.

The United Nations Commission on Legal Empowerment for the Poor identifies four pillars of legal empowerment:¹⁷⁰ Drawn from the Universal Declaration of Human Rights. The First is access to justice and the rule of law as seen in Article 6 and 7 of the UDHR. It focuses on the problems faced by the poor in accessing the justice system and the presence of an operative mechanisms for implementing the rights. Second, from UDHR Article 17 is property which focuses on secure and accessible property rights. Third, labor rights of individual workers or as a group for the recognition and protection of their rights, and fourth is the business rights on laws regulating small businesses and the informal economy. It works on removing unnecessary barriers that limit economic opportunities and on protecting business.¹⁷¹ This section will focus more on the first pillar—access to justice and rule of law, particularly for persons with disabilities in Nigeria.

The basic principles underlying approaches to legal empowerment include the following: that justice is possible in any environment; justice can be accessed through the formal court systems or through understanding administrative rules and how to navigate them; justice could be achieved through combination of approaches, both strategic litigation and high-level advocacy; and justice seeks to strengthen people’s agency rather than treating them as clients.¹⁷² These approaches often rely on “legal awareness raising, legal service provision, dispute resolution, law reform initiatives, and litigation.”¹⁷³

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at Pg.3

¹⁶⁷ George Soros, *Legal Empowerment, Justice, and Development*, OPEN SOCIETY JUSTICE INITIATIVE (2013).

¹⁶⁸ *Id.* at pg.7

¹⁶⁹ AMARTYA SEN, *DEVELOPMENT AS FREEDOM* New York: Alfred A. Knopf, (2000).

¹⁷⁰ Commission on Legal Empowerment of the Poor, *Making the Law Work for Everyone*, Consolidated Graphics, A Forest Stewardship Council, (2008).

¹⁷¹ Johan Borg et al., *Is ‘Legal Empowerment of The Poor’ Relevant to People With Disabilities In Developing Countries? An Empirical and Normative Review*, GLOB. HEALTH ACTION. VOL 6 (2013).

¹⁷² Anuradha Joshi, *Legal Empowerment and Social Accountability: Complementary Strategies Toward Rights-based Development in Health? World Development* Vol. 99, pp. 160–172 at Pg. 163. (2017).

¹⁷³ *Id.*

Generally, legal empowerment generally involves four tasks: (1) reforming law and giving the poor a voice to participate in processes that affects them; (2) providing knowledge as a means for empowerment: Making sure that the poor understand their rights and the processes by which they can be exercised and enforced—rights awareness; (3) Leveling the playing field: ensuring that the poor are able to overcome bureaucratic and cost barriers that broadly affect their access to economic opportunity and wealth generation—rights enablement; and (4) providing access to enforcement—making sure that the poor can protect their rights in and access to opportunities and assets through affordable, fair mechanisms for enforcement of rights and contracts and dispute resolution—or rights enforcement.¹⁷⁴

C. Sustainability and legal empowerment

Sustainability of a legal empowerment project or activity envisages a long-lasting activity that stands the test of time. Empowerment that will outlive the donor agency and be imbedded in the people. A sustainable empowerment program must be¹⁷⁵

Need-based and client-driven. Here the individuals or community have a need which is identified and analyzed at the inception, program design and implementation. The lawyer serves as vehicle through their direction of the communities or individual and this creates agency in the people.¹⁷⁶

Broad-based and integrated. Programs that identify underlying and connected problems and seeks not solve all but connect clients to other resources, for example, supporting persons with mental disabilities but partnering with clinics that support their medical need or moving beyond the immediate issue to address the deep rooted legal issue through legislative advocacy.¹⁷⁷

Concrete benefits. Enactment of a law or training on the provisions on the law does not in itself provide sustainability as ‘gun without the bullets amounts to nothing’. Sustainable legal empowerment must look beyond provision of laws and help in its full implementation. Always question “how this will benefit the community.” For example, the Special People’s law which is in force in Lagos State makes provisions for accessible public buildings that is not in existence in majority of public buildings in Lagos. Legal empowerment must work beyond education of content of the law and seek concrete steps like litigation or engagement with the relevant stakeholders for its actualization.

Sustainability of legal empowerment for persons with disabilities in Nigeria, must be projects will instill a consciousness of right and provision of concrete tools for individuals and groups to organize and act devoid of funding or support. Persons with disabilities, DPOs and other organizations should take the lead on this based on their experience and dealing with disability issues.

¹⁷⁴ *Id.*

¹⁷⁵ Robin Nielsen, *Justice Initiatives*, Open Society Justice Initiative Publications Series, (2013), <https://www.opensocietyfoundations.org/sites/default/files/justice-initiatives-legal-empowerment-20140102.pdf> (last visited May 2, 2018).

¹⁷⁶ *Id.* Golub, *Focusing on Legal Empowerment*, Pg.377–82.

¹⁷⁷ Alsop et al., *Empowerment in Practice: Analysis and Implementation*, A World Bank Learning Module 19–21 (2007) <http://siteresources.worldbank.org/WBI/Resources/EmpowermentLearningModulebody.pdf> (Last visited May 2, 2017).

V. LEGAL EMPOWERMENT MODELS – REVIEW AND CRITIQUE FOR SUSTAINABILITY

Having a functional legal system and institutions/actors to ensure legal empowerment for marginalized and vulnerable communities cannot be complete without an adequate model of engagement with the communities to effectuate these rights. Thus, legal empowerment and access to justice to everyone has employed different models and strategies. A review of some existing models of empowerment initiatives and the possibility of its functionality in Nigeria marginalized and vulnerable communities using persons with disabilities as the conduit will create a proposal for a sustainable model of legal empowerment of persons with disabilities in Nigeria.

A. Models of grassroots empowerment initiatives

1. Paralegal Model

The paralegal model creates a valuable model as it uses the services of non-lawyers trained on an ad-hoc bases to provide wide range of intermediate legal services that may be resolved or pending the availability of lawyers.¹⁷⁸ It generally arose to “promote and protect human rights and to provide greater access to justice for marginalized, less privileged, and poor residents.”¹⁷⁹

The model employs the services of individuals who work within their own communities for an issue that affects them or are trained to work for an issue. Generally, “[t]he substantive direction of their work is determined by whatever problems community members bring to them.”¹⁸⁰ Their skills differ from basic legal drafting, counseling, monitoring, communications and identification of issues relating to criminal or civil justice system, including alternative dispute resolution,¹⁸¹ either working in isolation as village leaders or in partnership with lawyers. In Nigeria, the concept gained momentum as a first aid to assist indigent persons who are unable to access the services of a lawyer and who are only provided legal aid by State in criminal proceedings at trial¹⁸² and has been applied in communities for land rights issues.

A study on the use of paralegal model in a village in Mozambique, found that woman had their land claims resolved in their favour when paralegals were connected, and worked in partnership with lawyers as the lawyers moved the cases beyond the community level for justice in the courts. Unlike when paralegals worked in isolation without the lawyers as most times the community leaders failed to resolve the cases at the family level.¹⁸³ The 2017 study concluded that although, paralegal have great potentials to act as mediators in problems solving and are core to most legal systems, there are many

¹⁷⁸ Jackie Dugard & Katherine Drage, *To Whom Do the People Take Their Issues? The Contribution of Community-Based Paralegals to Access to Justice In South Africa*, (2013).

<https://openknowledge.worldbank.org/handle/10986/16597>. (last visited April 30, 2018).

¹⁷⁹ Carley Robb-Jackson, *Part of the Justice Puzzle: Community-based Paralegal Programs and Sierra Leone’s Legal Aid Act*. http://www.povertylaw.ca/uploads/6/7/6/0/6760250/sierra_leone_robb-jackson.pdf (last visited May 1, 2018).

¹⁸⁰ Vivek Maru, *Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide*, *YALE JOURNAL OF INTERNATIONAL LAW* 31, No. 427 (2006): 428–76.

¹⁸¹ Jackie Dugard & Katherine Drage, *To Whom do the People Take Their Issues? The Contribution of Community-Based Paralegals to Access to Justice in South Africa*, (2013).

¹⁸² Access to legal aid in criminal justice systems in Africa, Survey report, UNODC, New York, 2011, 18 & 21, http://www.unodc.org/pdf/criminal_justice/Survey_Report_on_Access_to_Legal_Aid_in_Africa.pdf (last visited 9 March 2018).

¹⁸³ Vivek Maru & Laura Goodwin, *What We Know about Legal Empowerment? Mapping the Evidence*, *HAGUE J. RULE LAW*, 9:182 at 172 (2017).

undocumented paralegal effort and as such “evidence of paralegals remain thin.”¹⁸⁴

Another study of Community Based Paralegal model in the Philippines¹⁸⁵ conducted in twelve organizations found that paralegals are necessary in many communities to reduce the scarcity for the public interest work as most lawyers sought high paying commercial jobs. But the resultant effect was that paralegals who were willing to work had little or no mentorship required from experienced lawyers. Secondly, it found that the paralegal model was effective but lacked sustainability due to non-institutionalization of the model within the country’s institutional framework. Most of the paralegals project are mainly funded by donor organizations which where time bound and tied to the amount of fund received at the time. The lack of institutionalization led to the Supreme Court in Philippines attempting to reduce the “unauthorized practice of law.” Thirdly, paralegals were faced with lack of cooperation by local government officials leading to situations were some of them were physical and legal harassed which threatened their work and reduced activism in some area. They were also an increase in “lawyer centered” legal consciousness among citizens and even paralegals. This affected the trust the communities had in the paralegals. Lastly, due to lack of monitoring and evaluation, there is lack of evidence-based results of the role of paralegals to the justice system. Also, based on issues of accountability and legitimacy on the part of paralegals, NGOs were beginning to divert funds and resources to rethink and form other types of organizing.¹⁸⁶ .

Most of the findings above are consistent with the practice of the paralegal model in Nigeria. In Nigeria, the quality of services rendered by these paralegals have been questioned as they sometimes receive two to five days training by NGOs. And because of lack of a unified framework for operation and monitoring of these paralegals, there were complication of issues, ill- advised clients and denial of justice for the poor and vulnerable group they serve.¹⁸⁷In the long run this affects communities’ trust of the justice system, resulting in self-help and poverty.¹⁸⁸In addition, the lack supervision by lawyers posed a danger to the communities the paralegals serve, as many of them become ‘semi heroes’ on the law and with little guidance.

There is also the question of sustainability of the model, most of the paralegals services are unpaid and dependent on stipends issued by NGO at the time, as such some of the paralegals disappears once they are no longer stipends to sustain their transportation and expenses. This is because most of the paralegals are employed youths. The current trend to avert this has been raising paralegals from the affected communities or interest, in that way they are driven by passion or experience of an issue.

2. Community lawyering

¹⁸⁴ *Id.*

¹⁸⁵ Franco Jennifer et al., *Community Based Paralegalism in The Philippines : From Social Movements To Democratization*). Justice and development working paper series ; no. 27. Washington, DC ; World Bank Group.(2014.) <http://documents.worldbank.org/curated/en/735621468334143438/Community-basedparalegalism-in-the-Philippines-from-social-movements-to-democratization> .

¹⁸⁶ *Id.*

¹⁸⁷ Lawyers Alert, *Para Legal And The Nigeria Justice System*, (2013), <https://lawyersalert.wordpress.com/2013/05/22/para-legals-and-the-nigeria-justice-system-2/>.

¹⁸⁸ *Id.*

Another effective model of legal empowerment in poor communities is the Community Lawyering model which is mainly driven by lawyers as a tool for social change. The lawyers here works with organized groups within a community to help proffer solutions for change.¹⁸⁹ The term community lawyering stems from the belief that the traditional mode of lawyering where the lawyer is seen as a “savior” breeds dependence and not interdependency.¹⁹⁰The structure of most legal systems makes the lawyers the voice and the client the observer which affects the power sharing and power building between the two.¹⁹¹ As such the model tries to use the advocate skills to consciously build organizational power and community leadership especially for the most poor community which are disempowered already.

It beliefs that social change occurs when such communities are allowed or supported to organize around common issue or grievance; and are worked with to identify their problem; and the lawyer’s role is to help them think through to arrive at a solution while seeking to develop close relationship with them. The lawyers aim is to work through organized groups, communities, coalitions, and unions and leverage on collective action and strategic campaigns.¹⁹² In this model lawyers act as translators between the communities they serve and the legal system.¹⁹³

There is lack of literature on this in Africa. The term community lawyering or sometimes called movement lawyering is more prominent in literatures in the United states. It has been used by students working after Hurricane Katrina at the Mississippi Coast. Where law student was required to work with communities who already felt prejudiced about political equality and afraid of lawyers dominating the process of their recovery and subjecting them to another subordination on their issues. The students employed the community lawyering model and built sustaining relationships with the communities over time based on the collaborative strategic vision of working with and building coalitions in the communities and worked with them to develop abilities to advocate for themselves.

A review of the Sargent Shriver National Center on Poverty Law¹⁹⁴Bread for the City’s legal clinic project on community lawyering showed a lot of impact and challenges using the community lawyering model. The project started by hiring a community organizer who helped the lawyers create and learn relationship with the communities and helped deepen the impact of the project. Other community organizers leading were mobilized at the inception of the project leading to accountability and strategies building. This created ownership of the project ideas by the community and their willingness to see the planned outcomes achieved which led to series of positive outcomes like the passage of the Fair Criminal Record Screening Amendment Act of 2014.¹⁹⁵

¹⁸⁹ *Id.*

¹⁹⁰ William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455, 457-58 (1994).

¹⁹¹ Taylor Healy & Aja Taylor, *Making the Case for Community Lawyering*, pg 2 (2016).

<http://povertylaw.org/clearinghouse/collections/community> (last visited March 18, 2018).

¹⁹² BILL QUIGLEY, *Social Justice Advocacy* COMMUNITY LAWYERING BLOG – The Role of Lawyers In The Social Justice Movement at https://billquigley.wordpress.com/2015/07/23/community-lawyering-the-role-of-lawyers-in-the-social-justice-movement/#co_footnote_F8391073464_1.

¹⁹³ Angelo N. Ancheta, *Community Lawyering*, 1 ASIAN L. J. 189 (1994),

¹⁹⁴Taylor Healy & Aja Taylor, *Making the Case for Community Lawyering*, (2016),

<http://povertylaw.org/clearinghouse/articles/communitylawyering>.

¹⁹⁵ Fair Criminal Record Screening Amendment Act of 2014, D.C. Act 20-422.

The strategies for the success of the community lawyering model was the lawyers worked with co-leaders in the community, listened more and even handled non-legal issues. The ability to learn to spot issues as opportunities to engage with people instead of only looking for problems that a lawyer can solve is a useful tool for the model. As community lawyers they sought to build capacities and leadership of the communities along with working on the cases.

The project also had its challenges. Sustaining momentum after a victory was difficult, example, in working with tenant's associations, the project had envisaged long term impact but finding the solution to an immediate water bill issue which was important to the community did not lead to the sustained participation and momentum as planned at the inception of the engagement with the association. On the other hand, it was easy for community fatigue to set in where an issue took a longer time to resolve. This fatigue lead to low community participation at curial moments. In addition, capacity building for the community could be very exhaustive for the lawyers and took a lot of project time. This length of time also affected the community members who were struggling to see the immediate results of capacity building. Bearing in mind that capacity building was a critical component of community lawyering the lawyers were not deterred.

Generally, the community lawyering model may require substantial expertise as community members organize on different issues. A small NGO with few lawyers will struggle to serve the needs of a community, and there may be a likelihood of lack of expertise on issues arising from these groups. There is also the concern about how lawyers will deal with a group that organized on one specific issue when many sub-issues and other legal obligations or issues are at play.

3. Mircojustice4all- A bottom of the pyramid approach

Mircojustice4all is another model that have been applied to poor communities in a bit to create legal empowerments in communities. It is a unique model that looks at the solving simple problems of communities who are at the bottom of the pyramid of wealth but with a view on the market value of the legal system. Almost like creating corporative of fund from members with similar problem contributing money to solve their collective legal problem and a lawyer helping to facilitate the process.

The Microjustice (MJ) model¹⁹⁶mainly seeks to provide justice for vulnerable persons by assisting with their basic legal needs which are often unmet due their inability to access the systems which are expensive and unreliable.¹⁹⁷The model makes a shift from access to justice projects focusing more on the improvements of the supply side to the demand side for those with limited resources. It believes that the current system lacks innovation on how to adjust to the needs and capacities of the poor and uses a system like microcredit to deliver services that meets the needs of the clients in the development process, a system like the microfinance banks.¹⁹⁸ It aims at providing accessible, affordable legal service for non-litigious private and administrative legal matters with a view of protecting individuals, their business and belongings through practical solutions mostly involving legal documents.

The model lays a lot of emphasis on aftermath of a humanitarian crisis where people will need to access legal aid and protect themselves and restore their pre-disaster legal situation (e.g. restoration

¹⁹⁶ MICROJUSTICE4ALL, <http://microjustice4all.org/mj4all/>.

¹⁹⁷ *Id.*

¹⁹⁸ MAURITS BARENDRECHT AND PATRICIA VAN NISPEN, MIRCOJUSTICE4ALL (2007), http://microjustice4all.org/mj4all/images/1_about/2_2.pdf.

of property and arranging civil paperwork). Beyond humanitarian crisis, it assists with civil documents relating to personal identity, setting up business, birth certificates which is aimed at improving access to education, health services, social benefits, microfinance and voting.¹⁹⁹

Microjustice4all lacks independent literature evaluating its applications but it has been used through a replication model in Peru, Kenya, Bolivia, Uganda etc. To set up the model in a country, it uses a mixed model of external funding from a donor agency as a seed fund for startup, after which clients—mainly poor people at the bottom of the pyramid—pay for service delivery at a very affordable rate. With the aim of creating sustainability and self-reliance for the poor it serves as administrative costs for them.²⁰⁰

In Kenya, the model was used to assist women and children in the slums who lack access to the legal services and documentation needed to access education, healthcare, and to protect their small businesses and property rights. The project conducted a legal needs assessment, trained legal professionals, and created toolkit with information on how women can obtain birth certificates, cohabitation contracts, inheritance proceedings, amongst others.²⁰¹ In Rwanda, it is being used for civil documentation of birth, marriage, death; family laws issues like inheritance and succession; land and property rights etc. This is carried out through provision of legal advice, case management, creation of awareness about the program, legal campaigns and training workshops as well as research and legal product development.²⁰²

B. Adapting these empowerment models to serve persons with disabilities in Nigeria

1. Paralegal Model as an option for persons with disabilities in Nigeria.

The paralegal model is currently functional in Nigeria especially with work around the reform of criminal justice²⁰³ both within the legal services NGOs and university clinics.²⁰⁴ They are equally associated with the protection of social and economic rights of communities relating to urban poor communities and their rights to land in land grabs by the government.²⁰⁵ Some are designed to help provide services under protection of women's rights.²⁰⁶ Their services range from the police to court and the prison with an aim to forestall unnecessary long detention and torture by police or prison.

Generally, the most common work performed by these paralegals are education on legal rights and enforcement mechanisms; basic advice and counseling on how to resolve problems; helping with referrals; writing of complaints, petitions agreement etc.; acting as mediators for peaceful resolution of

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ Microjustice Kenya: *The Microjustice Toolkit for Women and Children in Nairobi Slums*, <https://worldjusticeproject.org/our-work/programs/microjustice-kenya-microjustice-toolkit-women-and-children-nairobi-slums> (last visited April 30, 2018).

²⁰² MIRCOJUSTICE4ALL, RWANDA, <http://microjusticerwanda.org/web/>.

²⁰³ *Global Rights, Partners for Justice, Community Based Paralegal Training Manual* (2011), https://namati.org/wp-content/uploads/2015/03/Nigeria_Paralegal_Manual_2011-11-14.pdf.

²⁰⁴ Network of University Legal Aid Institution, *Pre-trial Detainees Law Clinics in Nigeria*, <http://nulai.org/index.php/projects/pretrial-detainees-law-clinics>

²⁰⁵ JUSTICE EMPOWERMENT INITIATIVE, <http://www.justempower.org/what-we-do/paralegals>

²⁰⁶ Oby Nwankwo, *Reflection On The Paralegal Concept In Nigeria And The Way Forward*, (2010), <https://ng.boell.org/2010/02/01/reflection-paralegal-concept-nigeria-and-way-foward>. (last visited April, 30 2018).

conflict; and accompanying parties to court.²⁰⁷ They are paired with lawyers who they call upon to assist with a case when the need for counsel arises.²⁰⁸ The Legal Aid Council of Nigeria, the body officially tasked with the provision of legal aid in Nigeria,²⁰⁹ has also commenced training of its staff members to act as paralegals to the lawyers providing pro bono services.²¹⁰ This was done with support from international organizations like the European Union (EU) and United Nations Office on Drugs and Crime (UNODC) and other NGOs like, Prison Rehabilitation and Welfare Action (PRAWA).²¹¹

Although, paralegal model is not new in Nigeria and has been adopted by many, there is currently no paralegal group in Nigeria working specifically with persons with disabilities as paralegals. What has remotely existed are paralegals working with persons with disabilities to advocate for a specific issue. To have paralegals work on disability rights issues, they need to be adequately trained on the issues as frontline defenders. The advocated sustainable agenda of paralegal model is always focused on paralegals being part of the community and representing based on the passion for the community or the issue. The application of the model to persons with disabilities from the stand point of persons them serving as the paralegals based on passion or experience may face not be applicable for all groups of persons with disabilities especially for those with server disability and the inaccessibility of the justice system and materials for others.

Notwithstanding, paralegal model is still a viable option for some clusters of persons with disabilities in Nigeria as its importance cannot be over emphasized but there must be regulation in place for a standardized training for specific groups and to manage quality of the service they provide. It will also reduce the burden on lawyers to supervise and make them accountable individually. In all, for persons with disabilities, either as acting as paralegals themselves or through their care givers or mothers will reinforce legal empowerment as it will reinforce the voice and interactions in their issues.

2. Community Lawyering as a model for legal empowerment of persons with disabilities

Community lawyering or rebellious lawyering as a phase is not popular and currently not common in Nigeria. It is an advancement to the public interest lawyering done by almost every lawyer or legal service NGOs in Nigeria. One sector offering what looks like community lawyering is the clinical legal education program of the Network of University Legal Aid institutions (NULAI). This is organized and works with law faculties in schools to introduce curriculum based clinical law courses and establish law clinics for students to provide human rights education and legal aid services to vulnerable groups, communities and persons in detention. They also try to partner NGOs, law schools and the private sector.

²⁰⁷ Global Rights, partners for Justice, Community based paralegal Training Manual (2011), https://namati.org/wp-content/uploads/2015/03/Nigeria_Paralegal_Manual_2011-11-14.pdf.

²⁰⁸ *Id.*

²⁰⁹ Preamble to the Legal Aid Act 2011, LAWS OF FEDERATION OF NIGERIA. <http://lawnigeria.com/LawsoftheFederation/Legal-Aid-Act,-2011.html>

²¹⁰ Legal Aid Council of Nigeria, *Annual Report to the Nigerian Bar Association* pg 5, (2017) at Page 5 <http://www.legalaidcouncil.gov.ng/index.php/en/resources/annual-reports>

²¹¹ *Id.*

Community lawyering in Nigeria for persons with disabilities may be a perfect fit as the disability community has a popular slogan of “Nothing about us, without us”. They are organized in clusters based on their different disability. A community lawyering approach will entail committed lawyers working with groups to advocate for their issues and may be supported with paralegals or legal clinics from school. This model for the disability community in Nigeria will mean lawyers working on their issues with their full involvement and through their lens as they personally have experience on what their issues and knows what looks like or is the best sustainable solution to the issues. The lawyer creates and works through a relationship with the groups to together solve their legal problems. This reinforces voice for the disability community but also allows for expertise based on experience.

3. Microjustice4All and persons with disabilities in Nigeria.

The Microjustice4All model is unknown in Nigeria. The unique aspect of the model is helping the poor to navigate the system and sort out legal documents which they ordinarily would not have access to. Its focus on seeking practical legal solutions to non-litigious private and administrative legal matters which may fit well with persons with disabilities who most times may be caught of inaccessibility which limits their ability to access legal documents. The model works with people from the bottom of the pyramid which are mainly the poor and marginalized groups like persons with disabilities in Nigeria, providing bottom-up institutional capacity-building, and building a bridge between the people and the government.

Financing the model in a cost-efficient and sustainable way may pose challenges in Nigeria. Legal aid programs in Nigeria are funded by government administered legal aid or NGOs, or other groups. The recent practice of few NGOs in Nigeria for women to pay stipends for cases on domestic violence may be the closest call to this model. Though the idea behind the stipend charged by some NGOs is for commitment from the women and to deter them from using reports to NGOs as a bait to scare their husbands without any willingness to pursue the case. But for the Mircojustice4all model, persons with disabilities are mainly marginalized, unemployed and the poor and mainly unable to afford the services of a lawyer.

Furthermore, this model may pose a problem in Nigeria with the fee payment as it will not only question the motive for the lawyer’s passion to help poor the community but the determination of the amount to charge or the best fee for the services. Even though there is fee scale set by the model, monitoring compliance on the fee may be tough hurdle as Nigeria currently do not have a fee regulation or what can be charged for by a lawyer. This may create room for exploitation by lawyers as they may demand money or create room to demand money for unnecessary expenses. Similarly, unlike micro finance banking or services where the poor engage it as a source to aid of livelihood, there may be lack of motivation to engage the legal for legal documents since they can still manage without it or can engage in self-help.

VI. PROPOSITION OF A MODEL FOR LEGAL EMPOWERMENT FOR MARGINALIZED/ VULNERABLE COMMUNITIES THROUGH PERSONS WITH DISABILITIES IN NIGERIA

Legal empowerment will not stem from a single strategy, but it must have a core goal to target disadvantaged populations, with a focus on the use of law, the legal system, and legal services—in broad terms—as instruments for development and poverty reduction for the disadvantaged.²¹² As such this paper does not seek to discredit any one model; it asserts that they each can offer valuable initiatives. However, it offers insights into the viability of these models in the Nigerian context and makes suggestions about how the models may or may not be used for building sustainable systems of justice for people with disabilities in Nigeria

Nigeria like in many other countries; most persons of the marginalized/ vulnerable communities are poor without power and saddled with problems. An empowerment model that tries to give the power back to the people, make them feel empowered to make decisions about their lives and issues, may be the solution to legal empowerment. A mix of community lawyering and the use of paralegals may be necessary and could make empowerment and social justice a reality for these communities in Nigeria.

Community lawyering could work through existing groups or help for creating groups based on and to address different issues, with lawyers and trained paralegals helping them to identify their grievances. This must realize that there are deep rooted systemic issues to be addressed through the law to make real impact. It follows then that community lawyers must believe that leadership should come from within the people or community. Real, lasting change can only result from an oppressed group itself identifying its grievances and developing demands and a strategy for achieving them. They can decide whether to change their situation and their plan, and they can execute a campaign for change. It is only then that lawyers can begin a discussion to determine if they can be helpful and if their help is desire.²¹³

In Nigeria, the national disability association JONAPWD, have and works through existing clusters of persons clarified into different types of disabilities. Working with this existing group may be a great starting point for the model of legal empowerment proposed. Conversely, this proposal goes a step further to note that beyond being of same disabilities, there are different issues for different groups which has caused in “infighting and factions.”²¹⁴The basic idea of grouping persons with disabilities as a group who must have “one voice”²¹⁵ and work together can sometimes undermine the difference and the invisibility of some peculiar issues within the group. There may thus be a need to recognize that though individuals are stratified based on same types of disabilities, there could be other areas of grievances, need or peculiarity that may differ from one person to the other. A great model of legal empowerment must be able to recognize and create new groups even within the existing clusters or persons with same types of disabilities to address different concerns were need be.

Similarly, the model proposed seeks to acknowledge and make modifications in strategy where it becomes necessary. Most times, when issues of disabilities are discussed, persons with physical disabilities are easily identified and envisaged. Even the DPOs and work done so far tend to focus on

²¹² UN. Legal empowerment of the poor and eradication of poverty; New York: United Nations; 2009. Secretary General Report 2009. A/64/133

²¹³ Loyola Journal of Public Interest Law, *Community Lawyering - The Role of Lawyers in the Social Justice Movement* (2013)

²¹⁴ R Lang & L Upah, *Disability Scoping Study in Nigeria* pg. 20

²¹⁵ *Id.* at pg. 20.

tackling environmental barriers which leaves the hidden and deep -rooted barriers still in existence. For example, persons with mental and intellectual disabilities are faced with different limitations larger than the environmental and structural limitation of access to and engaging with the justice system than a person with physical disabilities.

This model will recognize these limitations and as such organize and work through the care givers or mothers of persons with mental or intellectual disabilities where it is necessary. Women are known to cater for persons with disabilities and women are very resilience. They can be helped to form groups on the various issue and advocate. Such consciousness of observing the peculiarity in the needs and difference even within groups of persons with similar disabilities is at the root of this proposed model—a mix of community lawyering and paralegal model— building communities of interest and collective action leading to sustainability.

As such, the model will identify/support or build on formal and informal groups based on interest, realities, aspirations or grievances. The lawyers will function as a part of the group, pay attention, attend meetings, understand the dynamics and work along with the group to seek legal ways to resolving issues. Members of the group could serve as paralegals or it can work through other paralegals trained on disability rights to support their lawyers where it becomes necessary. In the long run, since group members are part of the process, they owe the outcome/results which increases their resolve for change in other areas and sustains their willingness to seek accountability using the law and its tools for social change. This interaction facilitates learning, pooling of resources, and mobilization of local knowledge and capacity.

VII. CONCLUSION

The ultimate role of the Nigeria government is to ensure the promotion, protection and respect of the rights of its citizen. As such, for the sustainability of any legal empowerment or access to justice efforts, the government must eventually take over its mandate as duly recognized by the 1999 Constitution as amended. One of which is the provision of legal assistance to the indigent as enshrined in the Constitution. It must also ensure that international and regional obligations owed to its citizenry are fully fulfilled through the enactment of the necessary laws, provision of tools and mechanisms for empowerment of groups, especially disadvantaged groups like persons with disabilities.

Beyond core laws, administrative agencies of different government ministries must ensure that salient areas that inhibit persons with disabilities to access and engage constitutionally entitled rights within the justice systems are resolved. This can be by creating regulations and administrative directives to address and empower groups to seek and enforce their rights.

Empowerment efforts break down when good systems are not in place; no amount of empowerment laws, regulations or effort will help until those systems are set. As such, legal empowerment projects that are developed from the community's perspective, explicitly create leadership roles for community members. It requires active consultation with communities and include strategies that aims to address underlying factors that impede groups from asserting their rights and to seek accountability from the government. Organizations concerned about and working with

communities must be ready to push the boundaries, use existing legal tools, work with organized or informal groups to sustain efforts for legal empowerment. It must also recognize the unique difference in people's situations even when as one large group and work to meet everyone at the point of their respective unique situations/ needs. It must seek ways to ensure the people concerned are involved and heard in decisions making regarding the group.

A mix of community and paralegal model which works from a bottom up approach with community groups, unions or issue-based groups to empower the people while working on a top-down approach to address deep-seated institutional and attitudinal barriers through the law and necessary administrative regulations will create a sustained model for disadvantaged communities such as persons with disabilities.

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