

The right to economic empowerment of persons with disabilities in Nigeria: How enabled?

Anwuli Irene Ofuani*

Lecturer, University of Benin, Benin City, Nigeria

Summary

In many societies, including Nigeria, persons with disabilities (PWDs) are extremely poor and disadvantaged. Economic empowerment is an effective means through which PWDs can fend for themselves and reduce poverty. The article focuses on the right of PWDs in Nigeria to economic empowerment. It argues that PWDs in Nigeria lack the opportunity to economically empower themselves, especially in relation to the Nigerians with Disability Act 1993. It also suggests ways through which PWDs can attain economic empowerment.

1 Introduction

Persons with disabilities (PWDs) are amongst the most economically-disadvantaged in any society in the world. Recent studies indicate that about one in ten persons in the world lives with a disability and that PWDs constitute up to 20 per cent of the population living in poverty in developing countries.¹ This number is continually on the increase because of factors such as war, unhealthy living conditions and a lim-

* LLB (Benin, Nigeria), LLM (Cape Town); wulis4ever@yahoo.com. The author wishes to acknowledge the assistance of Prof OA Ofuani and Prof Emeka Chianu in proof-reading this article.

1 International Day of Persons with Disabilities, 3 December 2009 'Making the Millennium Development Goals (MDGs) disability-inclusive: Empowerment of PWDs and their communities around the world' <http://www.un.org/disabilities/default.asp?id=1484> (accessed 10 October 2010).

ited knowledge of disability, its causes, prevention and treatment.² PWDs usually lack the opportunity to be educated or rehabilitated and are usually denied equal employment opportunities. They are excluded from society and live in abject poverty as they lack the means or are not afforded the opportunity to fend for themselves. Consequently there is a strong correlation between disability and poverty in most societies.³ In fact, even though access to public social services, such as employment, education, transport and housing, is generally better for PWDs in developed countries than it is in developing countries, there is no single nation in the world where the disabled community has reached an equal-opportunity status with their non-disabled counterparts.⁴

The condition of PWDs in Nigeria is no different from those in other developing countries. The World Health Organisation (WHO) estimates that the number of PWDs in Nigeria is about 19 million, approximately 20 per cent of the country's total population.⁵ Most of the PWDs in Nigeria continually face barriers to their participation in society and are often marginalised. They are often afforded little or no opportunities to express themselves and to contribute to their development or that of their families, communities and nation. More often than not, they are regarded as people to be pitied rather than as people who can contribute to the development of Nigeria. As such, they face stigma and discrimination and lack access to opportunities guaranteed by law, such as education, rehabilitation, employment, and the like. Even when they have been educated or rehabilitated and meet the necessary requirements for employment, they are often denied employment because of their disability. Consequently, they have to depend on family members, well-wishers and charity groups for assistance to sustain themselves as they have no source of income for their livelihood.⁶ Their situation is dire because the opportunities for them to emerge from poverty are limited, in many cases by the lack of enabling legislation to promote their access to skills development and employment opportunities or by weak implementation and enforcement measures,

-
- 2 R Lang & L Upah *Scoping study: Disability issues in Nigeria* (2008) http://www.ucl.ac.uk/lc-ccr/downloads/scopingstudies/dfid_nigeriareport (accessed 15 March 2010).
 - 3 CBR 'A strategy for rehabilitation, equalisation of opportunities, poverty reduction and social inclusion of people with disabilities' joint position paper 2004 <http://unesdoc.unesco.org/images/0013/001377/137716e.pdf> (accessed 15 June 2010). See also South Africa's Integrated National Disability Strategy, <http://www.independentliving.org/docs5/SANatIDisStrat.html> (accessed 10 October 2010).
 - 4 WP Khupe 'Disabled people's rights. Where does Zimbabwe stand?' http://www.thezimbabwean.co.uk/index.php?option=com_content&view=article&id=29988:disabled-peoples-rights-where-does-zimbabwe-stand&catid=52&Itemid=32 (accessed 11 January 2011).
 - 5 As above.
 - 6 'Disability in Africa' <http://www.ascleiden.nl/Library/Webdossiers/DisabilityInAfrica.aspx> (accessed 16 March 2010).

where such legislation is in place.⁷ The Nigerians with Disability Act 1993 (NWDA) is the only specific legislation dealing with disability rights in Nigeria.⁸ Although its provisions appear satisfactory, not much has been done with regard to the implementation and enforcement of the Act. Indeed, many people, including PWDs, are not aware of its existence. There is therefore a general disregard of disability rights in Nigeria.

The article examines the right to economic empowerment of PWDs in Nigeria. It focuses on empowerment through education; employment, vocational rehabilitation, the provision of financial resources or services and reasonable accommodation as provided for by the Convention on the Rights of Persons with Disabilities (CRPD)⁹ to which Nigeria is a party. It assesses the provisions of the NWDA in empowering PWDs in Nigeria in terms of the standards laid down in the CRPD.

2 Who qualifies as a person with a disability?

The definition of disability is a very contentious issue within disability discourse. As a result of this, proffering an acceptable definition of 'disability' could be problematic. Indeed, the CRPD acknowledges that 'disability is an evolving concept'¹⁰ and so does not explicitly define disability but merely elucidates who a PWD is. According to the Convention, 'persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others'.¹¹ This explanation of PWDs reflects the social model of disability in which disability is perceived as a complex collection of conditions, many of which are created by the social environment rather than an attribute of the individual.¹² It

7 ILO Fact Sheet 'Promoting the employability and employment of people with disabilities through effective legislation (PEPDEL)' http://www.ilo.org/asia/whatwedo/publications/lang--en/docName--WCMS_106597/index.htm (accessed 20 November 2011).

8 The Nigerians with Disability Act 1993 (NWDA). The NWDA was originally a decree, the Nigerians with Disability Decree 1993, which was promulgated by the military head of state (General Sanni Abacha) in January 1993. By virtue of sec 315 of the 1999 Constitution, the NWDA, like other existing federal decrees, became an Act. It has not been repealed by any law and is still in force, despite its forgotten status.

9 Art 1 Convention on the Rights of Persons with Disabilities (CRPD) <http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf> (accessed 20 April 2010).

10 Preamble para (e) CRPD (n 9 above).

11 CRPD (n 9 above) art 1.

12 D Mont 'Measuring disability prevalence' (March 2007) Discussion paper 0706 <http://siteresources.worldbank.org/DISABILITY/Resources/Data/MontPrevalence.pdf> (accessed 14 October 2011).

acknowledges that disability resides in society and not in the person.¹³ For instance, a person in a wheelchair might have difficulties being gainfully employed, not because of his or her condition, but because there are environmental barriers, such as inaccessible buses or staircases in the workplace, that impede his or her access to employment.¹⁴ This view marks a 'paradigm shift' in attitudes and approaches where PWDs are viewed as capable members of society and not as objects of charity, medical treatment and social protection.¹⁵ Thus, the CRPD recognises that disability is not just a medical condition, but also the product of the interaction between the environment and the health condition of particular persons.¹⁶ In other words, it acknowledges that disability results from an interaction between a non-inclusive society and individuals.¹⁷ This is significant because prior to the clarification provided by the CRPD, disability was defined according to the medical model and was seen as a physical, mental or psychological condition that limits a person's ability to function properly.

Clearly, the CRPD does not impose a rigid view of 'disability' but rather assumes a dynamic approach that allows for adaptations over time and within different socio-economic settings.¹⁸ Thus, its recognition that 'disability' is an evolving concept acknowledges the fact that society and opinions within society are not static.¹⁹ It therefore reflects a flexible approach to PWDs in that it does not focus on the condition of the individual, but emphasises the significant impact that attitudinal and environmental barriers in society may have on the enjoyment of the human rights of PWDs.²⁰

The Nigerian perspective on disability is based on the medical model of disability. The NWDA defines a 'disabled person' as a person who has²¹

a condition which is expected to continue permanently or for a considerable length of time which can reasonably be expected to limit the person's functional ability substantially, but not limited to seeing, hearing, thinking, ambulating, climbing, descending, lifting, grasping, rising, any related func-

13 'From exclusion to equality – Realising the rights of persons with disabilities' *Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol 14 of 2007* 4.

14 *Handbook for Parliamentarians* (n 13 above) 13.

15 'Convention on the Rights of Persons with Disabilities and its Optional Protocol' (CRPD Basics) <http://www.un.org/disabilities/documents/ppt/crpdbasics.ppt> (accessed 9 October 2011).

16 'A new financial access frontier: People with disabilities – A concept paper from the Centre for Financial Inclusion at ACCION International' June 2010 <http://www.accion.org/document.doc?id=830> (accessed 7 November 2010).

17 CRPD Basics (n 15) above.

18 *Handbook for Parliamentarians* (n 13 above) 13.

19 As above.

20 As above.

21 NWDA (n 8 above) sec 3.

tion or any limitation due to weakness or significantly decreased endurance so that he cannot perform his everyday routine, living and working without significantly increased hardship and vulnerability to everyday obstacles and hazards.

This perspective is limited as it does not reflect the contemporary social approach to disability reflected in the CRPD. It is therefore suggested that the NWDA, which predates the CRPD, be amended to reflect the contemporary trend.

3 What economic empowerment of PWDs entails

Empowerment is ‘an ongoing process’ which enables an individual to fulfil and be accountable for his or her duties and responsibilities and protect his or her rights in society.²² It is the process through which PWDs can develop the skills to take control of all aspects of their lives and their environment and includes confidence building, insight and the development of personal skills.²³ It therefore involves providing people with the resources, opportunities, knowledge and skills needed to increase their capacity to determine their own future and fully participate in community life.²⁴

The empowerment of PWDs is vital to enable them to take their place in the wider society.²⁵ It therefore involves affording them a variety of opportunities to discover themselves, understand their environment, be aware of their rights, take control of their lives and partake in important decisions that lead to their destiny.²⁶ It also involves providing them with the resources, prospects, knowledge and skills to fend for themselves and to be an integral part of their society. Thus, the economic empowerment of PWDs involves ensuring that they are given the opportunity to earn a living to sustain themselves. It involves addressing employment issues as well as other issues that amplify the cycle of disability, poverty and the exclusion of PWDs.²⁷ In other words, like every other person, PWDs must be regarded as equal before the law²⁸ and must be

22 E Helander *Prejudice and dignity: An introduction to community-based rehabilitation* (1993).

23 ‘The meaning of empowerment’ <http://www.powerfulinformation.org/page.cfm?pageid=pi-empowerment> (accessed 30 April 2010).

24 Helander (n 22 above).

25 ‘People with disabilities: Pathways to decent work’ Report of a tripartite workshop organised by the ILO Skills and Employability Department in Lusaka, Zambia, 9-10 May 2006 http://www.ilo.org/skills/pubs/WCMS_107788/lang-en/index.htm (accessed 13 October 2010).

26 DV Tsengu *et al* ‘CBR and economic empowerment of persons with disabilities’ http://www.asksource.info/cbr-book/cbraspart_04.pdf (accessed 16 March 2010).

27 ‘Economic empowerment’ http://www.handicap-international.org.uk/page_244.php (accessed 30 April 2010).

28 CRPD (n 9 above) art 12. See also Universal Declaration of Human Rights (1948) GA Res 217A (III), UN Doc A/810 71.

given equal chances and opportunities to better themselves through employment, education, and such without discrimination.²⁹

The CRPD promotes the empowerment of PWDs by addressing disability issues in a human rights context and by linking disability issues to economic, social, civil, political and cultural rights.³⁰ It is based on the principles that PWDs have a right to equal opportunity, a right not to be discriminated against as well as a right to be allowed to fully and effectively participate and be included in society.³¹ It recognises that all persons are equal before and under the law and are entitled, without any discrimination, to the equal protection and equal benefit of the law.³² It also calls for the prohibition of all discrimination on the basis of disability and the guarantee that PWDs be accorded equal and effective legal protection against discrimination.³³ It further requires that appropriate steps are taken to ensure that reasonable accommodation is provided so as to promote equality and eliminate discrimination.³⁴ It defines 'reasonable accommodation' as³⁵

necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.

It sees the denial of reasonable accommodation as a form of discrimination on the basis of disability.³⁶ It additionally advocates the empowerment of PWDs by calling for the elimination of all barriers to their living independently and participating fully in all aspects of life by ensuring their access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communication technologies and systems, and to other facilities and services open or provided to the public.³⁷

29 'Equal opportunity' http://www.encyclopedia.com/topic/Equal_Opportunity.aspx (accessed 14 October 2011).

30 ICRPD – Implementation Tool Kit <http://www.icrpd.net/implementation/en/toolkit/section1.htm> (accessed 12 October 2011).

31 CRPD (n 9 above) art 3.

32 Art 5(1) CRPD (n 9 above).

33 Art 5(2) CRPD (n 9 above).

34 Art 5(3) CRPD (n 9 above).

35 Art 2 CRPD (n 9 above).

36 As above. Art 2 of the CRPD defines discrimination on the basis of disability as 'any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.'

37 Art 9 CRPD (n 9 above).

However, regardless of the provisions of the CRPD, many PWDs are not afforded the opportunity to empower themselves.³⁸ It has therefore become necessary for PWDs to be given the means to survive and take advantage of the opportunities which the twenty-first century has to offer and empower themselves economically without discrimination.³⁹ As such, all barriers, be they financial, economic, political, social or psychological, which hinder PWDs from being accorded equal opportunities should be eliminated.⁴⁰ This can be achieved through education, employment, vocational rehabilitation and the provision of financial resources/services.

3.1 Education

Education is an effective tool for the economic empowerment of PWDs and it entails equal opportunity without discrimination. It is the primary means by which disadvantaged people can lift themselves out of poverty and participate fully in their community. It gives independence, a sense of self-worth, citizenship rights, employment and economic power.⁴¹ The right to education entails ensuring that equipment and teaching materials match needs and that teaching methods and curricula suit the needs of all children and promote the acceptance of diversity.⁴² So, empowerment is inextricably linked to education as education is a crucial part of all empowerment programmes.⁴³ The education of PWDs could be formal (involving the provision of an inclusive educational system from nursery/kindergarten school to tertiary institutions) or informal (involving the establishment of special and vocational training schools). Through formal and informal educational programmes, PWDs can gain knowledge and skills needed to perform functions and tasks or carry out some socio-economic activities for personal and community development.⁴⁴ Empowerment through education cannot be achieved only through the education and training of PWDs; it is also important to train the teachers and professionals that work with them.⁴⁵ Curricula for the special and vocational training schools should

38 International Convention on the Rights of Persons with Disabilities – Some facts about persons with disabilities <http://www.un.org:80/disabilities/convention/pdfs/factsheet.pdf> (accessed 9 October 2011).

39 L Frieden 'Perspectives on the status of people with disabilities internationally' <http://home.comcast.net/~lfrieden/lfriedenperspectives0603.htm> (accessed 30 April 2010).

40 World Conference on Human Rights (June 1993) – Vienna Declaration and Programme of Action (1993) 32 *International Legal Materials* 1661 art 64.

41 Right to education – What does this mean for us? <http://www.hrc.co.nz/newsletters/manahau/2010/03/right-to-education-%E2%80%93-what-does-this-mean-for-us/> (accessed 6 May 2010).

42 As above.

43 n 27 above.

44 Art 24(1) CRPD (n 9 above).

45 As above.

also take into account the activities that prepare PWDs for an effective transition from school to working life.⁴⁶

The right of PWDs to education is a fundamental right which is enshrined in the CRPD. The CRPD recognised the need for the provision of an inclusive education system at all levels and for lifelong learning directed at ensuring that PWDs reach their fullest potential and enabling them to participate effectively in a free society.⁴⁷ In realising the right to education, it enjoins that state parties ensure, amongst other things, that PWDs are not excluded from the general education system on the basis of disability; that access to inclusive, qualitative and free primary education and secondary education is available on an equal basis; that reasonable accommodation of the individual's requirements is provided; and the receipt of the support required, within the general education system, to facilitate their effective education.⁴⁸ It also enjoins state parties to take appropriate measures to ensure that PWDs fully and equally participate in education by facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, sign language and the promotion of the linguistic identity of the deaf community, and so on.⁴⁹ It also advocates the employment of teachers, including teachers with disabilities, with adequate training to educate PWDs at all levels of education.⁵⁰

Some African countries have recognised the need for educating PWDs and have taken steps to provide and to adopt policies on the education of PWDs. For instance, in Kenya, the Ministry of Education has adopted an integration policy which would allow children with disabilities to be placed in normal schools.⁵¹ South Africa has also drafted a policy on inclusive education.⁵²

3.2 Employment

PWDs have the right to be given an equal opportunity to seek employment. They have a right to obtain decent work – that is, productive work in which their rights are protected, which generates an adequate

46 Tsengu *et al* (n 26 above).

47 Art 24(1) CRPD (n 9 above).

48 Art 24(2) CRPD (n 9 above).

49 Art 24(3) CRPD (n 9 above).

50 Art 24(4) CRPD (n 9 above).

51 'Kenya Country Profile of March 2004 – Employment of people with disabilities: The impact of legislation' prepared by ILO InFocus Programme on Skills, Knowledge and Employability in the framework of a project funded by Development Co-operation Ireland (DCI) http://www.ilo.org/wcmsp5/groups/public/-ed_emp/-ifp_skills/documents/publication/wcms_107837.pdf (accessed 20 November 2010).

52 See South Africa's White Paper on Special Needs Education of 2001 <http://www.info.gov.za/whitepapers/2001/educ6.pdf> (accessed 20 November 2010).

income, with adequate social protection.⁵³ This is because employment is instrumental for their self-esteem, economic and social integration within the family, the community and society.⁵⁴ PWDs can demonstrate their ability and contribute equally alongside fellow workers if employers remove unfair discriminatory barriers to their employment and make reasonable accommodation for their needs.⁵⁵ As such, employers, including the government, should be willing to give PWDs an opportunity to prove their capability and earn a living by ensuring that jobs are available to them. Employers should also afford them the opportunity to hold leadership positions to enable them to use their initiative in handling responsibilities and also allow them to join labour unions to enable them to express their views on problems and issues affecting their lives.⁵⁶

The 1993 United Nations (UN) Standard Rules on Equal Opportunities for Persons with Disabilities acknowledges that PWDs must be empowered to exercise their human rights, particularly in the field of employment, and must have equal opportunities for productive and gainful employment in the labour market.⁵⁷ As such, the integration of persons with disabilities into open employment must be actively supported.⁵⁸ This right of employment as stated by the CRPD includes the right to gain a living through work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities.⁵⁹ It enjoins state parties to safeguard and promote the realisation of the right to work, by taking appropriate steps, including legislation to, *inter alia*, prohibit discrimination on the basis of disability with regard to all matters concerning employment; protect the rights of PWDs on an equal basis, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances; ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others; promote opportunities for self-employment, entrepreneurship and the development of co-operatives and businesses; and employ

53 n 25 above.

54 'Good practices for the economic inclusion of people with disabilities in developing countries – Funding mechanisms for self-employment' August 2006 <http://www.handicap-international.fr/bibliographie-handicap/7Donnees/RapportEtude/Good-PracticesEcoInclusion.pdf> (accessed 3 November 2010)

55 South Africa's Draft Code of Good Practice on Disability in the Workplace <http://www.labour.gov.za/legislation/codes-of-good-ractise/employment-equity/code-of-good-practice-on-disability-in-the-workplace> (accessed 05 January 2011).

56 Tsengu *et al* (n 26 above).

57 Rule 7 United Nations Standard Rules on the Equalisation of Opportunities for Persons with Disabilities <http://www.un.org/esa/socdev/enable/dissre00.htm> (accessed 9 October 2011).

58 As above.

59 Art 27(1) CRPD (n 9 above).

persons with disabilities in the public and private sectors.⁶⁰ It provides that reasonable accommodation should be provided to PWDs in the workplace so as to promote their right to work.⁶¹ It also calls for the protection of PWDs from slavery, servitude and forced or compulsory labour in the course of their employment.⁶²

3.3 Vocational rehabilitation

Vocational rehabilitation refers to a continuous and co-ordinated process of rehabilitation which involves the provision of vocational services such as vocational guidance, vocational training and selective placement that are designed to enable a PWD to secure and retain suitable employment.⁶³ It is a means through which PWDs can be reintroduced into society to function socially and economically according to their capability. It entails the transfer of power and control over their lives from external entities to the individuals themselves and is based on individual needs and is meant to prepare PWDs to achieve a lifestyle of independence and integration within their workplace, family and local community.⁶⁴ The purpose of vocational rehabilitation is to enable a disabled person to secure, retain and advance in suitable employment and thereby to further such a person's integration or reintegration into society.⁶⁵ It includes education; training; vocational guidance and counselling; and rehabilitation services such as medical, psychiatric, social and psychological assessments, vocational assessment and restoration, job preparation and placement and assistive technological services.⁶⁶

Vocational rehabilitation could either be community-based or institutional-based. Community-based rehabilitation involves meeting the needs of PWDs through the combined efforts of the PWDs, their families and their communities. On the other hand, institutional-based

60 As above.

61 As above.

62 Art 27(2) CRPD (n 9 above).

63 South Africa's Integrated National Disability Strategy – A White Paper, Appendix B <http://www.info.gov.za/whitepapers/1997/disability.htm> (accessed 20 September 2010).

64 JF Kosciulek 'Empowering people with disabilities through vocational rehabilitation counselling' (2004) *American Rehabilitation*; see also 'Vocational rehabilitation' <http://www.minddisorders.com/Py-Z/Vocational-rehabilitation.html> (accessed 20 September 2010).

65 ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention No 159 1983 Part I, art 1(1) <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C159> (accessed 20 November 2011).

66 B Dupes 'Vocational rehabilitation: Helping people with disabilities in jobs and careers' http://www.amputee-coalition.org/easyread/first_step_2005/voc_rehab-ez.pdf (accessed 20 September 2010).

rehabilitation is rehabilitation of PWDs at or through institutions, often away from their homes.⁶⁷

The right of PWDs to vocational rehabilitation is well articulated in the International Labour Organisation (ILO) Vocational Rehabilitation and Employment (Disabled Persons) Convention 159 of 1983,⁶⁸ and the ILO Vocational Rehabilitation and Employment Recommendation 168 of 1983.⁶⁹ ILO Convention 159 provides that member parties should have a policy aimed at ensuring that appropriate vocational rehabilitation measures are made available to all categories of PWDs.⁷⁰ The competent authorities shall take measures with a view to providing and evaluating vocational guidance and vocational training.⁷¹ ILO Recommendation 168 recommends that, in providing vocational rehabilitation and employment assistance to disabled persons, the principle of equality of opportunity and treatment for men and women workers should be respected.

3.4 Provision of financial services/resources

Financial services are products, facilities and services including savings, credit, insurance, transfers, payment services, leasing, and such which are provided by banks, credit unions and financial institutions, government and non-governmental organisations (NGOs).⁷² It is indisputable that financial service providers have largely failed in providing services that include PWDs.

Microfinance is the best way to address the financial needs of persons with disabilities because it lacks the usual difficulties involved in accessing other financial products such as the provision of security.⁷³ It also has features like doorstep delivery and product flexibility such as access to rental services for machines or equipment or lease services to ensure that PWDs are not sidelined.⁷⁴ In the 1970s, microfinance was instrumental in the dramatic shift from seeing the poor as unbankable and the provision of financial services to them as a losing proposition and business folly. This is because not only did the poor prove bank-

67 R Arora 'National programme for rehabilitation of persons with disabilities – A blend of CBR and IBR' <http://www.aifo.it/english/resources/online/apdrj/frimeet202/national.doc> (accessed 10 October 2010).

68 ILO Convention 159 (n 65 above).

69 ILO Vocational Rehabilitation and Employment Recommendation 168 <http://www.ilo.org/ilolex/cgi-lex/convde.pl?R168> (accessed 20 September 2011).

70 ILO Convention 159 (n 65 above) arts 2 & 3.

71 Art 7 ILO Convention 159 (n 65 above).

72 South Africa's Draft Code of Good Practice on Disability in the Workplace (n 55 above). See also 'Financial services' <http://www.businessdictionary.com/definition/financial-services.html> (accessed 10 October 2010).

73 Microfinance involves the provision of financial services to low-income clients and those who have been traditionally excluded.

74 South Africa's Draft Code of Good Practice on Disability in the Workplace (n 55 above).

able, but they were bankable in a sustainable and profitable way.⁷⁵ The provision of financial services to PWDs in the twenty-first century also faces similar scepticism, some of it based on real service delivery challenges and some rooted in misperception.⁷⁶

PWDs ought to be given access to financial services/resources to assist them to become self-reliant and to realise their socio-economic needs such as education, self-employment, social security, and such. This right of PWDs to financial services should be facilitated as it could be a means of empowering them and achieving the Millennium Development Goals (MDG) goal of reducing poverty by 2015. Indeed, the CRPD recognises PWDs' right to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit.⁷⁷

Nevertheless, they are not given access to financial services because of the belief that they are unbankable and providing them financial services is not cost-effective.⁷⁸ The provision of financial resources and services to PWDs is important as not all of them can be educated, trained, rehabilitated or employed by the public and private sectors. So they ought to be provided with financial services to be able to cater for themselves. Hence, PWDs that have successfully completed their education or vocational training/rehabilitation but are yet to secure wage-earning jobs should be given access to financial services, especially microfinance, to enable them set up workshops or suitable income-generating activities in order to earn a living. PWDs should also be provided with the financial resources to facilitate their education as most of them are too poor to afford the expenses related to education. In view of this, financial aid/services in the form of bursaries, grants, scholarships, small loans or student loans could also be granted to them to assist them in their educational needs.

4 How enabled is the right to economic empowerment of persons with disabilities in Nigeria?

The Nigerian Constitution⁷⁹ and the NWDA⁸⁰ guarantee equal treatment, equal rights, privileges, obligations and opportunities before

75 J Goldstein 'Making international microfinance institutions disability inclusive: A call to action' <http://wid.org/employment-and-economic-equity/access-to-assets/equity/equity-e-newsletter-november-2010/feature/> (accessed 5 January 2011); see also M Romeu 'A call to action: Making international MFIs disability-inclusive' <http://centerforfinancialinclusionblog.wordpress.com/2010/11/05/a-call-to-action-making-international-mfis-disability-inclusive/> (accessed 5 January 2011).

76 As above.

77 Art 12(5) CRPD (n 9 above).

78 V Ratnala 'They are bankable: Reaching out to people with disabilities' <http://www.microfinancefocus.com/liveblog/2009/09/11/they-are-bankable-reaching-out-to-people-with-disabilities/> (accessed 5 January 2011).

79 Sec 17 Constitution of the Federal Republic of Nigeria, 1999 Cap C 34, LFN 2004.

80 Secs 2(1) & (2)(b) NWDA.

the law. They provide that PWDs should be treated as equals to other Nigerians for all purposes. These provisions ought to facilitate PWDs in attaining economic empowerment, but in reality this is not the case. They are usually not given equal opportunities before the law and so lack the opportunity to actualise themselves. Unfortunately, education, rehabilitation and employment are still inconceivable by most PWDs in Nigeria. More so, the absence of implementation and enforcement of the above-mentioned laws is a hindrance to the economic empowerment of PWDs. Thus, the one factor that still separates PWDs in Nigeria from the rest of society is economic equality because of PWDs' ignorance of their rights and privileges. The right of PWDs to education, employment, vocational rehabilitation and financial resources/services is examined below.

4.1 Education

Although education is also one of the objectives of the Nigerian government at the state and federal levels and the Nigerian Constitution contains provisions for equal and adequate educational opportunities at all levels, not much has been done with regard to educating PWDs.⁸¹ This is mainly because educational provisions are contained in chapter II of the Constitution which deals with the Fundamental Objectives and Directive Principles of State Policy and are non-justiciable. By virtue of section 6(6)(c) of the 1999 Constitution, the authority of the judiciary does not extend to any issue or question relating to the Fundamental Objectives and Directive Principles of State Policy. So, the Nigerian government cannot be compelled to carry out the duties in the Constitution and the only way of enforcing these provisions is through judicial activism.

The NWDA states that the government and relevant authorities must ensure equal and adequate education as well as provide free education in public institutions at all levels for PWDs in Nigeria.⁸² In addition, it provides for the training of personnel to cater for the educational development of PWDs and the vocational training of PWDs.⁸³ It also provides for the establishment of special schools with appropriate curricula for the different disability conditions and the improvement of university education facilities for the maximum benefit of PWDs.⁸⁴ The Act further provides for the establishment of a National Institute of Special Education⁸⁵ and that government must ensure that not less

81 Sec 18 & Second Schedule, Part II 1999 Constitution.

82 Secs 2(2)(c) & 5(1) NWDA.

83 Sec 5(2) NWDA.

84 Secs 5(4)(1) & (2) NWDA.

85 As above.

than 10 per cent of all educational expenditure is committed to the educational needs of PWDs at all levels.⁸⁶

In spite of these provisions, the rate of education for PWDs in Nigeria is very low and the degree of illiteracy for PWDs is much higher than that of the general population. Although there is a lack of data on the rate of education of PWDs in Nigeria, a survey carried out by UNICEF shows that as at 1993, there were 1,51 million children with disabilities and only about 284 special schools in the country. It was also reported that only 4,23 per cent of the children were enrolled in formal schools, suggesting that about 95 per cent had no access to formal education.⁸⁷ Education for PWDs is not free at any level and there are few available trained personnel. Special schools in Nigeria that cater for the different disability conditions are few and inadequate. Also, only a few schools in Nigeria offer special education and training in vocational skills for PWDs and more often than not, they lack the appropriate curricula to provide for the special needs of PWDs. Besides, not much has been done by the government with regard to policy making and implementation to guarantee the education of PWDs. It is doubtful if 10 per cent of all educational expenditure is spent on catering for the educational needs of PWDs. While the government states that it is committed to providing free education for PWDs, it has failed to provide the manpower, resources and equipment for that purpose. In fact, educational policies and programmes are made and educational expenditure is spent without taking into consideration the special needs of PWDs. Thus, the education of PWDs in Nigeria needs to be given greater consideration than it is given now and subsequent policies should take into account the different disability conditions.

4.2 Employment

The Nigerian Constitution also provides that all citizens should have the opportunity to secure an adequate means of livelihood and suitable employment without discrimination of any group.⁸⁸ However, these provisions are also non-justiciable as they are contained in chapter II of the Constitution and the authority of the judiciary does not extend to any issue or question relating to it.

The NWDA provides for government to take measures to promote the employment of PWDs.⁸⁹ It also provides that at least 10 per cent of all fund allocations to training and personnel development must be reserved by employers of PWDs. No PWD should be subjected to

86 Sec 5(4)(2) NWDA.

87 UNICEF Nigeria *Children's and women's rights in Nigeria: Renewing the call – Situation assessment and analysis* (2007).

88 Sec 17(3)(a) 1999 Constitution.

89 Sec 6(2) NWDA.

discrimination by an employer because of his or her disability.⁹⁰ The Act further provides that private employers who employ PWDs must be entitled to a tax deduction of 15 per cent of all payable tax upon proof to the Internal Revenue Department.⁹¹

However, PWDs are especially vulnerable to discrimination and disadvantage in employment in Nigeria. They often experience unequal employment opportunities, limited rights to work and reduced job security.⁹² Even when they are well educated, they are generally denied employment because of their disability. Most employers are reluctant to employ PWDs believing that they will be unable to perform their roles and/or that it would be too expensive due to fear and stereotyping, thus focusing more on the disability than on the abilities of the individual.⁹³ All efforts must be made to encourage employers, particularly those in the private sector, to employ PWDs.

4.3 Vocational rehabilitation

The NWDA provides that government should take measures to promote the employment of PWDs through the establishment of vocational rehabilitation centres in all local government areas and training programmes to develop vocational skills.⁹⁴ It also provides that vocational guidance and counselling should be made available to PWDs.⁹⁵ However, there are few vocational centres in Nigeria and the availability of vocational guidance counsellors in such centres is doubtful. The government has implemented a community-based vocational rehabilitation project in some states of the country and some of such centres are supported by CBM. For instance, the CBM project 'Services for people with disabilities' supports about 100 persons a year in its economic empowerment and livelihood unit by vocational training and small loans or grants for those that have achieved vocational skills to set up their own micro-businesses.⁹⁶ Nevertheless, there is a lack of commitment by the government to provide the requisite manpower and resources to ensure the functioning of such centres. The Nigerian government should therefore be more committed to reducing poverty and unemployment by establishing more vocational centres and providing such centres with the resources to function effectively.

90 Secs 6(3) & (4) NWDA.

91 Sec 6(6) NWDA.

92 B Doyle *Disability, discrimination and equal opportunity – A comparative study of the employment rights of disabled persons* (1995) 2-3.

93 'UN Enable – International Day of Disabled Persons' <http://www.un.org/disabilities/default.asp?id=110> (accessed 15 September 2010).

94 NWDA (n 8 above) sec 6(1).

95 As above.

96 CBM Worldwide 'Others are not so lucky – Vocational training in Nigeria' http://www.cbm.org/en/general/CBM_EV_EN_general_article_45191.html (accessed 4 April 2010).

4.4 Provision of financial resources

There is no express provision for access to financial services or resources in the NWDA or the Constitution. There is therefore a need for a legal framework that reflects the impact of PWDs to make financial decisions at the national level.⁹⁷ It is not enough to educate and train PWDs; there is also the need to provide financial services for those who cannot secure employment to arm them with the necessary equipment that they need to be self-employed and possibly become employers of labour themselves. Financial service providers in Nigeria should take into consideration the fact that PWDs are bankable, credit-worthy and that providing them with financial services could be cost-effective. They should therefore endeavour to develop products that are suited to the condition of PWDs to enable them to empower themselves. In order to effectively and efficiently reach out to people with disabilities, financial service providers should work directly with local disability organisations because these organisations offer entry into communities of PWDs and also provide support services.⁹⁸ They should actively recruit PWDs as staff members as it could make reaching out to potential clients with disabilities easier and ensure that disability inclusion becomes part of their culture.⁹⁹ They should also endeavour to train their staff in order to increase their awareness of the potential of PWDs as clients. In addition, financial service providers should take steps to eliminate barriers that restrict PWDs access to them, including physical access to their premises and facilities and the availability of information.¹⁰⁰

5 Achieving the economic empowerment of persons with disabilities in Nigeria

The economic empowerment of PWDs in Nigeria is crucial to raising their status and guaranteeing their contribution to the development of society. However, this cannot be achieved without the involvement and participation of all stakeholders: the government, members of the public, the labour market and PWDs themselves.¹⁰¹ There are various ways through which PWDs could be empowered. They include enacting legislation, proactive governmental interest as well as public awareness and involvement.

97 n 54 above.

98 Goldstein (n 75 above).

99 As above.

100 As above.

101 As above.

5.1 Legislation

The enactment, implementation and enforcement of legislation on the rights of PWDs are ways to ensure that their rights, including socio-economic rights, are guaranteed. Such legislation should adequately contain provisions that guarantee the protection of the rights of PWDs and are backed by sanctions directed against persons that contravene such by the legislation.

The Nigerian Constitution contains provisions that are applicable to PWDs. It provides for the state to direct its policy towards ensuring that the welfare of the disabled is provided for.¹⁰² In addition, section 42 of the Constitution guarantees the right to freedom from discrimination in all its forms against any person, including circumstances of birth. This section could be construed to mean that PWDs should not be subject to discrimination in their bid to be educated or employed because of the circumstances of their birth. Unfortunately, there is a lack of political will and commitment on the part of the Nigerian government to enact new laws protecting PWDs and to enforce the existing ones. This is evidenced by the fact that the programmes and provisions under the NWDA are not implemented. For instance, the National Commission for People with Disabilities, which was established by the Act to promote, amongst other things, the welfare of PWDs, is practically non-functional.¹⁰³ The NWDA also lacks penalty sections for the infringement of the rights of PWDs. A law not backed by sanctions is of no effect as enforcement is not achievable. More so, two significant Bills for PWDs were introduced in the National Assembly in the year 2000, namely, a Bill for an Act to provide special facilities for the use of handicapped persons in public buildings and a Bill for an Act to establish a national commission for handicapped persons and to vest it with the responsibility for their education and social development and for connected purposes, but nothing developed from these Bills. Also, in 2004, the National Disabled Trust Fund (Establishment) Bill was presented to the National Assembly, but nothing concrete has come out of it.¹⁰⁴ In addition, only a few states in the country have enacted laws protecting the rights of PWDs. There is therefore a need to either amend the NWDA or to enact a new law to adequately protect the rights of PWDs in Nigeria. As such, state governments in Nigeria ought to make laws to protect the rights of PWDs in respective states. Although the National Assembly must be commended for its zealotry, it lacks legislative competence to legislate laws for the welfare of PWDs as such laws would only be applicable in the Federal Capital Territory, because enacting such legislation is the responsibility of state governments. Nonetheless, the enactment

102 1999 Constitution (n 79 above) sec 16(2)(d).

103 1999 Constitution (n 79 above) sec 14.

104 JA Oluborode 'Human rights crisis in Nigeria' <http://www.pambazuka.org/en/category/comment/47079> (accessed 15 March 2010).

of such laws by the National Assembly could prompt states to enact laws with regard to the economic and social welfare of PWDs.

5.2 Proactive governmental interest

There are few educational institutions, a limited number of adequately trained teachers and a lack of facilities in Nigeria to cater for the special needs of PWDs.¹⁰⁵ This is because the government (state and federal) has shown little or no interest in this regard. As such, the government should be more proactive and direct its policies towards building schools, training teachers, providing facilities, providing employment opportunities and promoting the rights of PWDs. Government should ensure the employment of PWDs by creating awareness of the need for equal opportunities for them and by educating the public on their capabilities. Government should also ensure that qualified PWDs are given an opportunity to work in government agencies and institutions and also ensure that they are given a quota at all levels of government. This would ensure that PWDs are fully integrated into Nigerian society in line with section 2 of the NWDA which provides for the integration of PWDs into the national economy.

5.3 Public awareness and participation

The empowerment of PWDs is not only the responsibility of government but also the responsibility of every Nigerian. It is the responsibility of every Nigerian not to discriminate against PWDs, but to treat them humanely and with dignity. Unfortunately, many Nigerians are either ignorant or uncaring about the plight of such persons. A change in the attitude of Nigerians towards PWDs is therefore an urgent necessity. This is because such attitudinal barriers tend to limit their ability to participate effectively in economic activities.¹⁰⁶ Government should carry out public enlightenment programmes to sensitise the public on their plight and the need to empower and include them in society. In fact, the African Decade of Persons with Disabilities and the CRPD support the need to promote awareness on the rights and capabilities of PWDs.¹⁰⁷

NGOs and religious institutions in Nigeria also have a role to play in creating awareness on the plight of PWDs. In addition to assisting in the education, rehabilitation and employment of PWDs, they should also carry out programmes geared towards raising awareness about the need to include them in society. NGOs should also utilise their

105 'The lost ones' http://234next.com/csp/cms/sites/Next/Opinion/5493564-184/The_lost_ones_csp (accessed 15 March 2010).

106 Helander (n 22 above).

107 Objective 12 of the African Decade of Persons with Disabilities; art 8 CRPD (n 9 above).

resources to put pressure on government to cater for PWDs and to influence government policies on PWDs.

The private sector also has a role in raising awareness on issues affecting PWDs. Entrepreneurs and company executives should endeavour to contribute to the economic empowerment of PWDs by including their welfare in their corporate/social responsibility plans. An example of such initiative is the 'Disability and U' roadshow and seminar in Nigeria which, since 2006, have been sponsored and organised by MTN to create public awareness on disability issues and to provide assistance to PWDs.

6 The way forward

There is a need for a disability-friendly perspective in legislation/policy making, implementation and enforcement in Nigeria. To this end, government should ensure that enforcement mechanisms and programmes are put in place to ensure that the provisions of the NWDA are effectively implemented and enforced. The NWDA should also be amended to include sanctions for the infringement of the provisions of the Act. The government (both state and federal) should ensure that new and updated laws are enacted to protect the rights of PWDs, especially with regard to education and employment. Nigeria is a party to the CRPD and, as such, the legislature should endeavour to adopt the principles and standards set out in the CRPD into the NWDA and appropriately developed state laws to ensure that the rights of PWDs are protected. This could be done by studying the CRPD and the laws of other countries that have adopted the standards provided by the CRPD.

The government should also be more committed in its efforts to include the education of PWDs in its budget and policies. It should build schools and ensure that they are equipped with appropriate curricula, trained personnel, resources and facilities. Teachers should be trained to cater for different disability conditions in society. The government should also endeavour to implement the 15 per cent tax reduction provided for in the NWDA to encourage employers to employ PWDs. It should equally introduce incentives for employers of labour to encourage them to employ PWDs. A binding quota system backed with an effective enforcement mechanism could be introduced to compel employers to reserve a number of jobs for PWDs in Nigeria like in China, Germany and Thailand, who have adopted laws which prescribe the minimum number of jobs to be reserved for PWDs by employers.

NGOs, private employers and the Nigerian people should also endeavour to play a more active role in aiding government in providing finance for facilities and equipment, building schools and providing employment for PWDs.

7 Conclusion

PWDs desire to be productive but the absence of opportunities and the resulting lack of resources prevent them from achieving their goals, from acquiring needed assets, challenge their dignity, and frustrate any hope that they may have of empowerment.¹⁰⁸ There is therefore a continuing need to promote the understanding of their humanity and abilities so that they are not disregarded, but are empowered to function effectively as members of society.¹⁰⁹ They have great potential which, if given the appropriate opportunities, could be tapped and harnessed for the development of Nigeria. The fact that there is ability in disability is clearly portrayed by Director Roger Ross Williams, whose documentary *Music by Prudence* about a young Zimbabwean PWD, Prudence Mabhena, won Best Documentary Short Film at the 2010 Academy Awards in the United States of America. Hence, the empowerment of PWDs in Nigeria through education, employment, vocational rehabilitation and the provision of financial resources could enable them to provide for themselves, to help alleviate poverty and to contribute to their development and the development of society. The cost of claims on social security and occupational benefit schemes could also be reduced if employees with disabilities are retained at work. They should therefore be given an equal opportunity to participate in all aspects of society.

¹⁰⁸ Frieden (n 39 above).

¹⁰⁹ DW Anderson 'Human rights and PWDs in developing nations of Africa' presented at the Fourth Annual Lilly Fellows Programme National Research Conference at Sanford University, Birmingham, 13 November 2004 http://www.samford.edu/lillyhuman-rights/papers/Anderson_Human.pdf (accessed 20 November 2011).