IMPROVING ACCESS TO JUSTICE FOR PERSONS WITH DISABILITIES

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The paper specifically addressed the need to improve access to Justice for People with Disabilities, it was conceptualised on the premise that People with Disabilities are always denied access to Justice due to several factors and therefore even where their rights are trampled upon, they are forced to either take the law into their hands or leave everything to God. Various opinions were studied; statutes both local and international including the Nigerian Constitution were critically examined while more relevant quantitative studies by the centres for citizens with Disabilities and the United Nations Development Program were reviewed. It was found that People with Disabilities actually have the right to access Justice on an equal basis with others and therefore recommendations were proffered on how to improve access to Justice for People with Disabilities in Nigeria towards achieving Justice for all.

Keywords: Improving Access and Justice, Disabilities

INTRODUCTION

Justice delayed is Justice denied (Gladstone, W. E. 1869); this was and is still a common adage used in our daily conversation. Justice is one of the most essential aspects of human existence, it gives hope to the hopeless and it also bridges the gap between the powerful and the powerless. It tamed the shrewdness of the rich against the poor.

The human race is always in the search for justice and equity which are the most significant ingredient in building and sustaining peace and harmony, justice is one of the most important social services that should be accessible to every human irrespective of their culture, race, region, sex, tribe, religion, disability etc. Accessibility to justice is an inherent right of Human beings, there are no Human rights without Justice, and justice gives room for fair play, Human Rights, equity, dignity, peace and harmony. The absence of justice leads to anarchy; Insurgents and terrorism are often justified by the perpetrators on the grounds of Justice. Lack of Justice also fuels corruptions and other societal ills.

In our society today, Justice seems to have eluded People with Disabilities from just every angle. This paper seeks to carefully examine the most relied path to justice, justice actors which includes the police, the court, the bar and civil society organisations as used by people with disabilities. The struggle for Human Rights by People with Disabilities in Nigeria is also reviewed while legislation for People with Disabilities is analysed on Global perspective. The paper further x-rayed the Nigerian Constitution as it relayed to the rights of People with Disabilities to access Justice, also the proposed Nigeria Disability Rights Bill currently awaiting presidential assent is included. The experience of People with Disabilities in the present Nigerian Legal system is also examined, the impediments to access to justice for People with disabilities are enumerated and recommendations to enhance access to justice for People with Disabilities is proffered.

UNDERSTANDING ACCESS TO JUSTICE

Justice have different definition and these are based on different approaches, the meaning of Justice varied with
disciplines, they have different meaning in philosophy, religion, Law etc. However, in this paper we see justice in the eyes of the law hence; according to the legal dictionary, Justice is the proper administration of the law; the fair and equitable treatment of all individuals under the law. There fore, Justice is built on equity and fairness to all parties. In our legal system, these major ingredients of justice are often lacked due to the imbalanced legal (Court) privileges obtained for the wealthy by attorneys (Lawyers) and by judges themselves who deliver justice in favour of the rich and crucify the poor who deserve justice the more.

The above scenario is often fuelled by corruption which has taken over the temple of justice in Nigeria today; this was corroborated by Musdapher, (2012);

“even though it is difficult to separate the corruption of magistrates/judges from other corruption in the wider justice sector..., all of whom as you know are enforcers of court judgments. They all, one way or another, facilitate or frustrate the goal of achieving the Rule of Law”.

People with disabilities fall within the categories of the less privilege in the society (World report on Disability, 2011) and by this, they are always vulnerable to the corruption in the Judiciary which impedes, seriously, the balanced delivery of justice.

Access to Justice could therefore mean the unfettered access to the temple of justice and the right for fair and equitable hearing on an equal basis with others. Cojocariu, (2013) asserts that access to justice is “the possibility for an individual to bring any claim before a court and obtain a decision from the court on that claim,” or more broadly as “a right to have the case heard and adjudicated in accordance with the standards of fairness and justice”. In the latter sense it is implicit that it is not sufficient that a court hears a claim, it must also do it in a fair and just manner. Therefore, access to Justice is a continues process, Hence, access to justice must be inclusive of People with Disabilities and lack of which increases the vulnerability of Persons with Disabilities in the society. Persons with Disabilities must enjoy the right to obtain reparation for a human rights violation; such a right to redress may include, depending on the circumstances, a duty to investigate, a duty to punish the perpetrators, a duty to provide reparation, a duty to prevent further violations of their human rights.

LEGISLATION FOR PEOPLE WITH DISABILITIES: THE GLOBAL PERSPECTIVE

Adedoja (1999), averred that the need for extending particular care to People with Disabilities has long been stated in the general declaration on the rights of the Child of 1924 and in the declaration on the rights of the Child accepted by the United Nations in 1959. Also Kalu, (2004), added that Disability is also recognised in the Universal Declaration of Human Rights, the International covenant on civil and political rights, International covenant on economic, social and cultural rights and in the status and relevant instruments of special agencies and International organisations concern with the welfare of People with Disabilities.

The United Nations is the most articulated International organisation that demonstrates more concern for People with Disabilities, most especially its agencies which includes the World Health Organisation (WHO) and the United Nations Economic and Social Affairs, the United Nations Development Program (UNDP) as well as the United Nations Educational, Scientific and Cultural Organisation (UNESCO).

The standard rules for the equalisation of opportunities for Persons with Disabilities emerges as the first International treaty on Disability enacted by the United Nations. It was during the United Nations Decade of Disabled Persons which implements the world program of action for Persons with Disabilities and at the mid-term review of the world program of action that the initiative for the standard rules emanates which later led to series of international consultations that led to the United Nations adoption of the rules. The rules are not compulsory however it is pertinent to note that they become international customary rule if applied by a great number of states. The purpose of the UN Standard Rules for the Equalisation of Opportunities for People with Disabilities, according to Kalu, (2004), is to ensure that Girls, Boys, Women and men with Disabilities as members of their societies may exercise the same rights and obligations as others (without Disability).

In 2006, the United Nations Convention on the Rights of People with Disabilities emerges; the convention as at today has 125 signatories and 115 ratifications. The Convention is made up of fifty (50) articles which touch on diverse areas of Disability. The Convention was predicated on the premise that Disability is the resultant effect of the interaction between a Person with Impairment and the environment; legitimising the social model of Disability. The Convention today is used in many countries and forms the basis for the development of National disability legislations that promotes inclusion of People with Disabilities in development. Specifically, Article 13 (1, 2) deals with Access to Justice;

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall
promote appropriate training for those working in the field of administration of justice, including police and prison staff.

THE NIGERIA CONSTITUTION, LEGISLATION AND PEOPLE WITH DISABILITIES: SOME STATUTORY IMPEDIMENTS TO ACCESS TO JUSTICE

Adegoke, (1999) asserts that, there are eight chapters in the 1999 constitution of the Federal Republic of Nigeria dealing with various aspects of the Nigerian Nation and with rights guaranteed for the People. There are however no special intervention for the care and facilities for People with Disabilities. Although Chapter Four of the Constitution made provision for the protection of the fundamental rights of the citizens in diverse areas, section 42in particular made provision for the “Rights to freedom from Discrimination” for all citizens. While Sub Section 1, a, b and 2, 3 specifically made mention of Disability (ies) however, it was more focused on protecting the rights of the citizens from being subjected to any form of restriction or Disability by any circumstances under the constitution but it failed to recognised People with Disabilities and ascribe any specific rights to them as citizens of Nigeria. Therefore, no section of the constitution made any provision for the care, protection and facilities for People with Disabilities in Nigeria.

Efforts were made to ensure the rights of People with disabilities are enshrined in the constitution. Just like any other, People with Disabilities also identified loopholes in the constitution and joint Nigerians in agitating for a review, this clarion call was answered by President Goodluck Jonathan, in which a National conference was convened in March 17, to mid-July, 2014. Six People with Disabilities represented the over 22.5 Million and they were selected from the 6 Geo-Political zones of the federation. Out of the recommendations made at the conference for the amendment of the Constitution, there was no provision again for the protection of the rights and privileges of People with Disabilities in Nigeria. It was assumed that the 492 delegates outweigh the meagre 6 representatives of People with Disabilities to make any reasonable impact.

After the receipt of the report of the National Conference by the National Assembly, the later set up a Constitutional review Committee, yet of the bill passed by the National Assembly on the amendment of the 1999 Constitution, the Rights of People with Disabilities are not included. It is therefore pertinent to note that, the only on going effort that seems feasible to provide legal protection for People with Disabilities in Nigeria is tight to the National Disability Rights Bill currently at the National Assembly. This bill had suffered changes in nomenclature and rejection for presidential assent since Obasanjo’s civilian administration, to Yar’adua and Goodluck Jonathan of recent.

The Nigerian National Disability Rights Bill is made up of 24 parts classified in different format. The official title of the bill is

“AN ACT TO ENSURE FULL INTEGRATION OF NIGERIANS WITH DISABILITY INTO THE SOCIETY AND TO ESTABLISH A NATIONAL COMMISSION FOR PERSONS WITH DISABILITY AND VEST IT WITH THE RESPONSIBILITIES FOR THEIR EDUCATION, HEALTH CARE AND THE PROTECTION OF THEIR SOCIAL, ECONOMIC, CIVIL AND POLITICAL RIGHTS”.

From the official title above, one can deduce the main objective of the Bill thus: to improve the quality of Life of People with Disabilities and to establish the National Commission for People with Disabilities.

The bill covered extensively areas such as accessibility to the built environment, to Information and Communication Technology, to Education, to quality health care delivery system, to empowerment on an inclusive basis and it also guaranteed the enjoyment of the fundamental human rights by People with Disabilities on an equal basis with others.

While this bill had suffered enough of humiliation and rejection by the presidency since the civilian administration of President Olusegun Obasanjo, to Yar’adua and lately President Goodluck Jonathan, there has been no official statement on the reason for the rejection even where the National Assembly kept to their National duty of passing the bill and harmonising same for presidential assent. At some instances, the clause establishing the Commission has been removed by the House of Representatives in response to opposition for the establishment of the Commission; however of recent, with the relentless effort of People with Disabilities, the Senate included the establishment of the Commission and was still rejected by the Goodluck administration at the twilight of his Government.

The National Disability Rights Bill when assent by the President to become an Act/Law will provide the legal basis for the improvement of access to Justice for People with Disabilities in Nigeria as all restrictions to justice have been considered in the bill and are taken cared off. And this informed the clarion call by People with Disabilities all over the Federation for the immediate presidential assent, but with the emergence of the 8th Assembly, everything about the bill is likely to start afresh which will mean the third struggle for the Bill through the House of Representatives and the Senate.

THE PATH TO JUSTICE: DISABILITY AND THE JUSTICE ACTORS

In the justice delivery system, there are several key actors that play distinct roles in enabling the effective discharge of justice to those who need it. They determine and influence the entire justice delivery system. These key actors include the Nigerian Police, the Court, Legal
aid system and the traditional institutions. While the Police are known and their stations are located in every nook and cranny of the Nigerian Nation, they play the primary role of eliminating crime, settling minor disputes, prosecuting accused persons before the court and protecting life and property of every citizen. The Court are located in strategic locations /z/ use the traditional Institution but 1.7% use other means of accessing Justice which constitutes the legal aids while an alarming 77.1% do nothing, they forfeited their rights to access Justice (Center for Citizens with Disabilities, 2014).

From the study above, it appreciates the universal acclamation of the high vulnerability of People with Disabilities in the society. With majority not finding it worthy to seek for redress when their rights are trampled upon shows the flaws in our legal system and it further unveils the dark side of the key actors in the Justice delivery system, unless this is address, Justice for all remains a myriads and the court is no longer the last hope of the common Man.

**IMPEDEMENTS/BARRIERS TO ACCESS TO JUSTICE FOR PEOPLE WITH DISABILITIES**

There are obstacles that impede the access to justice for People with Disabilities, according to studies conducted by the Center for Citizens with Disabilities, (2014) and UNDP (2013) which are further classified below:

**EDUCATION**

People with Disabilities are the least educated in Developing countries and Nigeria as well. The lack of education constitutes a major obstacle to accessing Justice in different dimension. An illiterate person might not even establish an incidence as a bridge on his right, he may not even know what his rights are as enshrined in the various statutes and thus cannot assimilate injustice as it is and seek for redress. This always makes the abuser to go scot-free and have the tendency of repeating the abuse on the same person or another with a Disability.

**PHYSICAL/STRUCTURAL ACCESSIBILITY**

Both of the reports cited above shows that Police Stations, Court buildings, offices of the Alternative Dispute resolution mechanisms are not accessible to People with Physical Disabilities. There are no rams constructed and many court buildings are located upstairs and yet lifters or even ramps leading upstairs are completely absent except in the Federal High Court Headquarters and the Supreme Court of Nigeria that lifters are found but yet no ramps leading to the ground floor so even the lifters are not accessible.

**COST OF JUSTICE**

Apathy to seeking justice by People with Disabilities is most often tight to their inability to afford the cost of justice. Persons with Disabilities are the most poorest in the society and thus with the high cost of accessing justice mostly due to corrupt attitude of the key players most especially the Police and also the court officials who often seek for bribe from clients and the inability of a Person with Disability to settle these abysmal demands often denied them justice and this leads to loss of confidence in the justice delivery system and force them to leave everything to God.

**COMMUNICATION**

The use of sign language interpreters are absent, the Deaf will need the services of sign language interpreters which will facilitate communications with the Justice actors but in the absence of this vital communication tool, the deaf cannot express themselves fluently and neither can they be able to understand communications with the justice actors and by so doing, Justice is arbitrarily denied. In Nigeria, Sign language interpreters are not available in courts, Police Stations and most of the CSOs as well.

The Blind are not left out as they are denied the rights to have court proceedings printed in Braille for them to read and understand. Without this, the Blind cannot be said to be actively involved in any case that involve him and in such a situation, justice is most likely to be miscarried and twisted in favour of the other party who might not be blind.

**DISCRIMINATORY ATTITUDE**

The attitude of the society towards People with Disabilities is generally negative and this often breeds discrimination against the rights of People with Disabilities in the society. Discrimination against the rights of an Individual is the denial or subversion of the rights of that Individual. The attitude of the key Justice actors most especially the Police and also the Court officials is said to be negative, this dispels People with Disabilities from approaching them to seek for redress because they assume they will not be heard and or may not get Justice even when heard. This makes many People with Disabilities to succumb to fate.

**INTERNAL DISCRIMINATION**

There is also the burden of discrimination among People with Disabilities themselves which tends to turn backward the clock to success to justice for People with Disabilities. While it is noted that there are about six categories o
Disability recognised in Nigeria, there is some internal competition for superiority among these classes of the Disability. The Blind would want to be recognised as most superior Disability the Deaf, the Physically Handicapped, the Spinal Cord Injury survivors as well as the mentally retarded. As this internal squabble for superiority and power lingers on the minority will feel inferior and thus have the right to justice annihilated by the so-called majority or superior groups.

NON ENFORCEMENT OF LAWS, TREATIES AND REGULATIONS

In the developing countries, enactment of laws and or signing and ratification of international treaties are not always the problem but the proper implementation of the law or treaties are always the problem. There are treaties which include the United Nations convention on the Rights of People with Disabilities which Nigeria Signed and Ratified but it is yet to domesticate it, which is the only legitimate avenue for the unfettered implementation of the Convention.

RECOMMENDATION ON IMPROVING ACCESS TO JUSTICE FOR PEOPLE WITH DISABILITIES

In an attempt to proffer solution, the following recommendations are made which are classified according to roles and responsibilities of principal actors in enhancing access to Justice for People with Disabilities in Nigeria.

- The Government
  - Construction and installation of Accessibility facilities such as ramps, curb ramps, lifters and accessible walkways on road networks to Courtrooms, Police Stations etc.
  - Provision of specialised services in Court, Police Stations and citizens mediation centres, these includes sign language interpreters for the Deaf and tactile interpreters for the DeafBlind, printing of Judicial proceedings and statements in Braille for easy access to the Blind.
  - Improving the quality of Education and the true implementation of the National inclusive education plan which will enhance access to education for People with Disabilities at all level. An Educated Person is an enlightened Person who knows his rights and is aware of how to protect and defend his right accordingly.
  - Scholarship provision for PWD who desire to read law will enable access to justice through awareness creation to fellow People with Disabilities and provision of legal aid.
  - Sincere provision of accessible, free and compulsory Education for People with Disabilities at all levels. From primary to the University level, this should include People with Disabilities and their families while resources permit.
  - Domestication of the United Nations Convention on the Rights of People with Disabilities by the Nigerian National Assembly through the re-passage of the Nigerian Disability Rights Bill by the 8th National Assembly and the subsequent domestication of the proposed law in all the 36 States of the Federation.
  - Provision of free, accessible and quality health care facilities for People with Disabilities on Inclusive basis to save cost.
    - Civil Society organisations
      - The civil society Organisations should be encourage to Set up citizen mediation centres in the rural and urban communities which will be tasked in resolving minor conflicts and avoiding unnecessary litigations in court. This is capable of providing justice in a crude way and reducing discrimination and abuse of the rights of People with Disabilities.
      - Provision of legal aid to PWDs at small or no cost can be achieved through the setting up of legal aid fund. This fund should be managed by the organisation but the Person with a Disability should be allowed to choose a legal practitioner of his choice while the fund defray the cost, this will enable the litigant with Disability to have access to most qualified and professional lawyers who have the capacity to defend his rights in a high profile cases.
    - The Traditional Communities
      - The traditional institution will require ongoing capacity building on understanding Disability and the rights of People with Disabilities in the Community to access Justice in whatever capacity.
      - Also the Integration of People with Disabilities in community activities will open the society to everybody through improving physical accessibility, bridging communication gap, eliminating discrimination and fostering inclusion.
    - The Disabled People’s Organisations
      - Awareness creation on the rights, privileges and duties of People with Disabilities in their Community.
      - Training on the significance of seeking Justice, how to seek for Justice, the functions of the various justice actors and the importance of avoiding corruption in whatever perspective.
      - Awareness on the need to avoid litigations at all cost except where necessary.
      - Strengthening of the various Organisations of People with Disabilities to stand fight and demand for the rights of People with Disabilities to have access to basic social amenities such as Education, Health, Livelihood and Empowerment which in the long run will yield to access to Justice.
CONCLUSION

Access to Justice is a Human Rights issue; Persons with Disabilities are human beings whose rights to access Justice on equal bases with others is not negotiable. This paper had established the fact that People with Disabilities have been hitherto denied their rights to Justice or have themselves refused to realise their rights most of which are hinged on ignorance among other inhibiting factors to access justice. The realisation of the rights of People with Disabilities by themselves is the bedrock of achieving the Inclusion of People with Disabilities into the society. Therefore, enhancing access to Justice for People with Disabilities as recommended is a duty for all including all of us here in this class; Injustice is tantamount to exclusion while Justice is inclusion on the Human Rights approach. May we all be advocates for enhancing access to Justice for people with Disabilities.

REFERENCES

Keynote Address at the Media Roundtable organized by Socio-Economic Rights and accountability Project (SERAP) in collaboration with the Royal Netherlands Embassy. 9 February 2012. http://serap-nigeria.org/cjn-justice-dahiru-mudsapher-keynote-address/
UNDP, (2013). strengthening judicial integrity through enhanced access to Justice: Analysis of the Nationalstudies on the capacities of the judicial institutions to address the needs/demands of persons with disabilities, minorities and women, New York: United Nations Development Program.