THE LAW AND PRACTICE ON DISASTER ISSUES

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DISABILITY, DISASTER MANAGEMENT
AND THE LAW IN NIGERIA

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Abstract

A strong link exists between disaster and disability. Disasters frequently cause disabilities for persons who had none and worsen or cause additional disabilities for persons with disabilities (PWDs). PWDs are usually more at risk in the event of a life-threatening human induced disaster such as bomb explosion or natural disasters like earthquake, tsunami, landslide. Disasters can lead to harm that can be prevented or reduced by including disability in disaster management. PWDs are disproportionately represented among casualties of disaster due to failure to mainstream disability in disaster risk reduction programmes. Incidental or charitable intervention for PWDs in the event of disaster needs to be replaced by a right-based approach to disaster risk management, which mainstreams disability and the peculiar needs of PWDs. While disaster management should cover all segments of society, PWDs are viewed as recipients of charity rather than subjects of rights. Article 11 of the CRPD provides for the right of PWDs to all available measures which the state should provide, to ensure protection and safety of PWDs in situations of risk, including

armed conflict, humanitarian emergencies and the occurrence of natural disasters. This chapter discusses the intersections between disability and disaster management in Nigeria. It focuses on PWDs and disaster, due to the high number of persons affected by disability either as PWDs or as caregivers, the existing level of discrimination against PWDs in access to social benefits, as well as the potential of disasters to either aggravate disability or increase the number of PWDs by causing injuries, damages, displacements, health hazards due to poor hygiene, food and water shortages. The paper concludes with recommendations including the need to mainstream disability in disaster management plans, implementation and post disaster recovery activities, reflecting the principles of equality and non-discrimination in all disaster management programmes, enacting disaster management laws at all levels, creating awareness and preparedness drills for everyone, and for PWDs in the language that they understand, like Braille and sign language.

INTRODUCTION

The United Nations Office for Disaster Risk Reduction has stated that vulnerability and exposure to disasters is increasing as more people and assets locate in areas of high risk. Since 1970, the world's population has grown by 87 per cent. During the same time, the proportion of people living in flood-prone river basins increased by 114 per cent and on cyclone-exposed coastlines by 192%.[1] More than half of the world's large cities, with populations ranging from 2 to 15 million, are located in areas of high earthquake risk. Rapid urbanisation will increase exposure to natural hazards, especially in coastal zones. In terms of its impact, it has had severe consequences.[2]

1   United Nations Office for Disaster Risk Reduction, Global Assessment Report 2011: Revealing Risk, Redefining Development (Geneva, 2011)

2   EM-DAT, The International Database (CRED) found that since the year 2000, deaths related to natural hazards have exceeded 1.1 million; over 2.7 billion people have been affected. Another concern is the economic impact of disasters. Over the last 12 years USD 1.3 trillion has been lost to disasters. The trend is rising and now exceeds, on average, USD 100 million per year over the last decade. Available at http://www.emdat.be/

Disability is a human experience that has attracted the attention of human beings across nations and cultures through all ages. While there are varying types and severities of disabilities, most persons with disabilities (PWDs) share the experience of discrimination in common. PWDs are often left out in the process of planning and implementations of social welfare projects and programmes, including health, education, security, transportation, housing and more. Disaster management did not start with the protection of PWDs as a central focus as objects of protection, rescue or care. Over time however, it has become apparent that PWDs have been left out of the scheme of government protection and provision in the event of disaster, whether man made or caused by natural events like storm, flooding, earthquake, Tsunamis or landslides.

The Yokohama Strategy and Plan of Action avers that the impact of natural disasters in terms of human and economic losses has risen in recent years, and society in general has become more vulnerable to natural disasters.[3] The Plan of Action further states that those usually most affected by natural and other disasters are the poor and socially disadvantaged groups in developing countries as they are least equipped to cope with them.[4] In the light of the rate at which natural and man-made disasters occur and consequently, the need for disaster management that will keep losses of lives and properties at the barest minimum (both for persons without and those with disabilities), it is imperative to discuss disaster management and disability in the context of the law. The law is an instrument of social engineering and therefore sets standards and regulates human conduct, including when the management of disaster becomes necessary. This will afford more vulnerable persons like those with disabilities, the needed and sometimes specialised attention they require.

This paper is divided into six parts comprising of the introduction which gives a preamble to the paper, the second part clarifies relevant concepts in the paper, the legal framework on

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3   Yokohama Strategy and Plan of Action for a Safer World Guidelines for Natural Disaster Prevention, Preparedness and Mitigation World Conference on Natural Disaster Reduction Yokohama, Japan, 23-27 May 1994.

4   *Ibid.*

disability is the third part, while the fourth part focuses on the legal framework on disaster, and the fifth part of the paper examines the interconnection between disability and disaster management in terms of how disaster and disability connect around the law and lastly, the sixth part is the conclusion with recommendations.

THEORETICAL AND CONCEPTUAL CLARIFICATIONS

Disaster: In its Disasters & Emergencies Definitions Training Package, according to the WHO/EHA Panafrican Emergency, a disaster is "an occurrence disrupting the normal conditions of existence and causing a level of suffering that exceeds the capacity of adjustment of the affected community. It is the people who matter most, and without the people we have no disaster."[5] The United Nations Office for Disaster Risk Reduction (UNISDR) has also defined the term disaster as a

> serious disruption of the functioning of a community or a society
> at any scale due to hazardous events interacting with conditions
> of exposure, vulnerability and capacity, leading to one or more
> of the following: human, material, economic and environmental
> losses and impacts.[6]

The term disaster is sometimes interchangeably used with other terms like tragedy, adversity, catastrophe devastation, calamity and particularly emergency.[7] The UNISDR explained further, that in terms of the effect of the disaster, it can be immediate and localised, but is often widespread and could last for a long

5 WHO/EHA Panafrican Emergency Training Centre, Addis Ababa (Updated March 2002 by EHA) Disasters & Emergencies Definitions Training Package. Retrieved on 09 September 2017 at http://apps.who.int/disasters/repo/7656.pdf

6 United Nations Office for Disaster Risk Reduction (UNISDR), Terminology, 2009 version.

7 Emergency is sometimes used interchangeably with the term disaster, as, for example, in the context of biological and technological hazards or health emergencies, which, however, can also relate to hazardous events that do not result in the serious disruption of the functioning of a community or society.

period of time.[8] The effect may test or surpass the ability of a community or people to cope by relying on its own resources, and consequently may require assistance from external sources, which could include neighbouring jurisdictions, or those at the national or international levels.[9] Disasters occur in different scales and the scope of their impacts also differs. The following terms describe the scopes of disaster:

a) *Small-scale disaster:* A type of disaster only affecting local communities which require assistance beyond the affected community.

b) *Large-scale disaster:* A type of disaster affecting a society which requires national or international assistance.

c) *Frequent and infrequent disasters:* This depends on the probability of occurrence and the return period of a given hazard and its impacts. The impact of frequent disasters could be cumulative, or become chronic for a community or a society.

d) *A slow-onset disaster* is defined as one that emerges gradually over time. Slow-onset disasters could be associated with drought, desertification, sea-level rise, epidemic disease, etc.

e) *A sudden-onset disaster* is one triggered by a hazardous event that emerges quickly or unexpectedly. Sudden-onset disasters could be associated with earthquake, volcanic eruption, flash flood, chemical explosion, critical infrastructure failure, transport accident, etc.[10]

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8   UNISDR, 2009, expounds that disaster damage occurs during and immediately after the disaster and it is usually measured in physical units (e.g., square meters of housing, kilometres of roads, etc.), and describes the total or partial destruction of physical assets, the disruption of basic services and damages to sources of livelihood in the affected area. It clarifies further that disaster impact is 'the total effect, including negative effects (e.g., economic losses) and positive effects (e.g., economic gains), of a hazardous event or a disaster. The term includes economic, human and environmental impacts, and may include death, injuries, disease and other negative effects on human physical, mental and social well-being'.

9   UNISDR 2009, *Ibid.*

10 The Sendai Framework for Disaster Risk Reduction 2015-2030 (para. 15). Available at:

Disaster Management: Disaster Management refers to the coordination and integration of all activities necessary to build, sustain and improve the capability to prepare for, protect against, respond to and recover from threatening or actual natural or human-induced disasters.[11] Disaster Management is a multijurisdictional, multi-sectoral, multi-disciplinary and multi-resource initiative.[12] Therefore, it is vital that the federal, state and local governments, civil society organisations (CSOs) and the private sector discharge their respective roles and responsibilities and complement each other in achieving shared goals of disaster management[13]. For achieving efficient disaster management, flow charts or plans such as the flow chart for disaster management of a National Preparedness Cycle – Arrow ring chart are often used. Below is a typical flow chart, illustrating an arrow ring chart sample which was created on the base of the figure illustrating the web page "National Preparedness Cycle Plan" from the Federal Emergency Management Agency (FEMA) website.[14]

> Planning makes it possible to manage the entire life cycle of a potential crisis. Strategic and operational planning establishes priorities, identifies expected levels of performance and capability requirements, provides the standard for assessing capabilities and helps stakeholders learn their roles.[15] The planning elements identify what an organisation's Standard Operating Procedures (SOPs) or Emergency Operations Plans (EOPs) should include for ensuring that contingencies are in place for delivering the capability during a large-scale disaster. [fema.gov/plan].[16]

11   National Disaster Framework Nigeria, Understanding the Framework. Retrieved on 14th October 2017 at http://www.preventionweb.net/files/21708_nigherianationaldisastermanagementf.pdf

12   National Disaster Framework Nigeria, *Ibid.*

13   National Disaster Framework Nigeria, *Ibid.*

14   The arrow ring chart example "National Preparedness Cycle" was created using the Concept Draw PRO diagramming and vector drawing software extended with the Target and Circular Diagrams solution from the Marketing area of Concept Draw Solution Park. www.conceptdraw.com/solution-park/marketing-target-and-circular-diagrams Retrieved on 17 November 2017 from https://conceptdraw.com a2018c3/preview

15   *Ibid.*

16   *Ibid.*
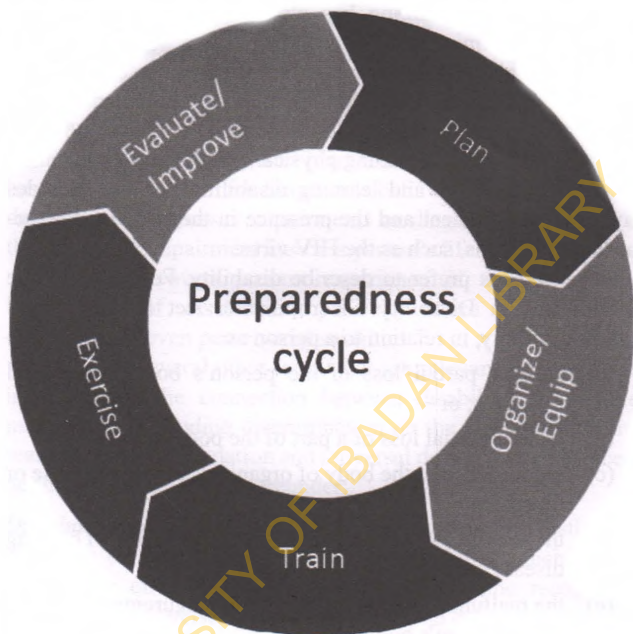
Disability: The Convention on the Rights of Persons with Disability (CRPD)[17] defines persons with disabilities to "include those who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal

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17   Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, 76th plen. mtg., U.N. Doc AIRES/61/106 (Dec. 13, 2006). The CRPD entered into force on May 2008 according to the UN News Centre, http://www.un.org/apps/news/story.asp?NewsID=26554#.VGzGqW1jJKl. See Loius O. Oyaro, 2015. Africa at Crossroads: The United Nations Convention on the Rights of Persons with Disabilities, American University International Law Review, Vol. 30, Issue 2, pp.347-377 at 347.

basis with others."[18] The Australian Government Department of Education and Training has also defined disability in its Disability Discrimination Act (DDA) 1992 in Section 4 of the Act as: a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that result in disturbed behaviour. The definition of "disability" used in the DDA is broad, including physical, intellectual, psychiatric, sensory, neurological and learning disabilities. It also includes physical disfigurement and the presence in the body of disease-causing organisms, such as the HIV virus.

Other sources prefer to describe disability. For instance, the Commonwealth Disability Discrimination Act (DDA) 1992[19] defines disability, in relation to a person as:

(a) total or partial loss of the person's bodily or mental functions; or

(b) total or partial loss of a part of the body; or

(c) the presence in the body of organisms causing disease or illness; or

(d) the presence in the body of organisms capable of causing disease or illness; or

(e) the malfunction, malformation or disfigurement of a part of the person's body; or

(f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or

(g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour; and includes a disability that:

(h) presently exists; or

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18 Article 1, Convention on the Rights of Persons with Disabilities, 2006. The Convention was adopted by the United Nations on December 13, 2006, and opened for ratification on March 30, 2007.

19 Australian Government Department of Education and Training Factsheet Disability Discrimination Act, 1992. Retrieved on 04 December 2017 from: https://docs.education.gov.au/system/files/doc/other/dse-fact-sheet-1-dda_0.pdf

(i)   previously existed but no longer exists; or

(j)   may exist in the future (including because of a genetic predisposition to that disability); or

(k)   is imputed to a person.[20]

The DDA definition of disability has been described as broad and including temporary and permanent disability that a person has now, may have in the future or is believed to have. The DDA definition encompasses impairments or diagnoses regardless of the impact an impairment has on a person's life functioning.[21]

The DDA covers present experience of disabilities, past experiences of disabilities, possible future experience of disabilities or even perceived disabilities.[22]

There are several other terms that are relevant or appropriate in discussing the connection between disability and disaster management including discrimination on the basis of disability, reasonable accommodation and universal design. They have been defined in the CRPD as hereunder:

Discrimination on the basis of disability means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.[23]

Reasonable accommodation means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to

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20   Departmental Disability Definitions Fact Sheet of the Australian Government Department of Education and Training

21   The Australian Government Department of Education and Training has defined disability in its Disability Discrimination Act (DDA) 1992 in Section 4 of the Act.

22   Australian Government Department of Education and Training Factsheet Disability Discrimination Act, 1992. Retrieved on 04 December 2017 from: https://docs. education.gov.au/system/files/doc/other/dse-fact-sheet-1-dda_0.pdf

23   Article 2 of the Convention on the Rights of Persons with Disabilities (CRPD), 2006.

persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.[24]

Universal design means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design. "Universal design" shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.[25]

Communication includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology.[26]

INTERNATIONAL LEGAL FRAMEWORK ON DISABILITY

The 2011 World Report on Disability by the World Health Organisation and the World Bank, avers that about 15% of the world's population will experience a disability at some time in their lives . In other words, about one billion persons around the world are already, or will become, persons with disabilities. Therefore, by protecting persons with disabilities, the convention plays a role in protecting some of the most vulnerable people in the world by ensuring their economic, social and political rights are secured.

The protection of the rights of PWDs did not start with the adoption of the CRPD. There had been a buildup of regulatory instruments, programmes and principles for promoting and protecting the rights of PWDs at the global level, particularly since after the second world war. The global community agreed on the undesirability of war and its destructive consequences on the human race, and found it necessary to protect and promote the rights of humans to life and dignity of the human person, among

24   *Ibid.*
25   *Ibid.*
26   *Ibid.*

other things. Thus, the Universal Declaration of Human Rights (UDHR) of 1945 was adopted and one of its key features is that it laid the foundation for modern human rights and also set the stage for the provisions in the Bill of Rights and standard for other human rights instruments. In its Article 2, the UDHR provided for all human rights "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

The UDHR however, did not mention impairment or disabilities specifically in the grounds of discrimination, nor did the International Covenant on Civil and Political Rights (ICCPR)[27] and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which together form the International Bill of Rights.[28] However, the Bill of Rights forbid discrimination. The ICCPR prohibits discrimination as follows:

> Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[29]

On its part, article 2 (2) of the ICESCR[30] similarly disallows discrimination in the implementation of human rights thus:

> The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

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27 International Covenant on Civil and Political Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16th December 1966 entry into force 23 March 1976, in accordance with Article 49.

28 Article 2 of the UDHR 1945, ICCPR and ICESCR 1966.

29 Article 2 (1) of the ICCPR. 1966.

30 International Covenant on Economic, Social and Cultural Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with article 27.

The three instruments that comprises the Bill of Rights did not mention disability as a ground for non-discrimination, but all three contain a common clause: "other status", which has been applied to achieve non-discrimination on grounds of disability before the CRPD was adopted. While it was found useful, that provision was regarded as inadequate protection for PWDs. [31]

INTERNATIONAL SOFT LAW FOR THE PROTECTION OF PWDs

As a result of the inadequate protection against discrimination for PWDs under the limited human rights regime, they continued to be viewed as objects of pity and consequently treated as objects of charity and welfare rather than subjects of rights under the law.[32] Such a perception minimised the role of cultural and physical barriers and rather magnified the impairment in the PWDs, a situation which necessitated that focus should shift to obvious physical barriers, and the manifold social, behavioral, stereotype-based barriers that lead to and potentially sustain the exclusion of persons with disabilities.[33] Human rights, and particularly of PWDs continued to emerge and from the 1970s, gained more prominence. The human rights regime of the UN in 1971 and 1975 when documents known as the Declaration on the Rights of Mentally Retarded Persons and the Declaration on the Rights of Disabled Persons were adopted respectively. The 1975 Declaration on the Rights of Disabled Persons stated, inter alia, that "the term 'disabled person' means any person unable to ensure himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of deficiency, either

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31 Marianne Schulze. A Handbook on the Human Rights of Persons with Disabilities Understanding The UN Convention On The Rights Of Persons with Disabilities Edited by: Handicap International, 2009, p. 11.

32 Quinn/Degener, *Human Rights and Disabilities* – Chapter 1 "The moral authority for change: human rights values and the worldwide process of disability reform," in Marianne Schulze, *Ibid.*

33 Quinn/Degener, *Human Rights and Disabilities* – Chapter 1 "The moral authority for change: human rights values and the worldwide process of disability reform," in Marianne Schulze, *Ibid.*

congenital or not, in his or her physical or mental capabilities."[34] Although a "soft law", which means it had no binding force of law, the Declaration on the Rights of the Disabled proclaimed further that the rights, which persons with disabilities shall enjoy,

> shall be granted to all disabled persons without any exception whatsoever and without distinction or discrimination on the basis of race, colour, sex, language, religion, political or other opinions, national or social origin, state of wealth, birth or and other situation applying either to the disabled person himself or herself or to his or her family.

This definition obviously extended the scope of prohibition of disability discrimination by including other grounds on which PWDs are not to be discriminated against, compared with what was contained in the Bill of Rights. It also extends beyond PWDs to provide for those who care for them, such as their family members and makes all other human rights applicable to disabled persons thus:

> Disabled persons have the inherent right to respect for their human dignity. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow-citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and as full as possible.

The first indicators of reasonable accommodation may be discerned from another Article of the Declaration: "disabled persons are entitled to the measures designed to enable them to become as self-reliant as possible."

Although the declaration did not have binding force as an outright treaty document, it was an evidence of remarkable progress in the enhancement of the protection and promotion of the rights of PWDs.

Again, the UN declared 1981 as the International Year of Persons with Disabilities, while in 1982 the General Assembly adopted the World Programme of Action Concerning Disabled Persons

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34 General Assembly Resolution 2856 (XXVI), 20th December 1971 and General Assembly Resolution 3447 (XXX) 9th December 1975.

which was followed by the proclamation of a Decade on Persons with Disabilities, which spanned from 1983 to 1992.[35] Still in 1982, PWDs were recognised in the authoritative interpretations, which the expert panels created under the UN Human Rights Treaties, may issue, for the first time.[36] For instance, the Human Rights Committee,[37] issued a general comment, which included a reference to persons with mental disabilities. On the right to liberty and security of the person, the committee held that this applies to "all deprivations of liberty, whether in criminal cases or in other cases, such as, for example, mental illness, vagrancy, drug addiction, educational purposes."[38]

By 1989, the UN adopted yet another specialised human rights treaty known as the Convention on the Rights of the Child (CRC), and it was the first treaty to include the first stand-alone article referring to the rights of persons (children) with disabilities unequivocally. The CRC also included "disability" as a potential ground of discrimination.[39]

Upon the accomplishment of the decade on PWDs in 1992, the UN Standard Rules on the Equalisation of Opportunities for Persons with Disabilities were adopted in 1993.[40] The standards spell out "a strong moral and political commitment on behalf of states to take action for the equalisation of opportunities for persons with disabilities." This was also a "soft law" and therefore more of a persuasive than binding instrument in terms of its legal status.

In keeping with the authority given by the UN to issue general comments on disability by the expert panels created under the

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35 Marianne Schulze, A Handbook on the Human Rights of Persons with Disabilities Understanding The UN Convention On The Rights Of Persons with Disabilities Edited by: Handicap International September 2009, p. 12.

36 ICCPR, CESCR, CERD, CEDAW, CAT, CRC, CRMW.

37 The body constituted under the ICCPR to monitor the implementation of civil and political rights.

38 ICCPR General Comment 8, Liberty and security of the person.

39 See article 2 of the CRC.

40 The UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities were adopted in 1993 by the UN General Assembly on 20th December 1993 by resolution 48/96 annex. A/RES/48/96.

UN Human Rights Treaties, in 1994, the committee under the ICESCR adopted a general comment on Persons with Disabilities which in its opening paragraph states:

> disability is closely linked to economic and social factors —
> conditions of living in large parts of the world as so desperate
> that the provision of basic needs for all – food, water, shelter,
> health protection and education must form the cornerstone of
> national programmes. Even in countries which have a relatively
> high standard of living, persons with disabilities are very often
> denied the opportunity to enjoy the full range of economic,
> social and cultural rights recognised.[41]

Similarly, in 1991, the committee under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) also mentioned the rights of women with disabilities and restated the need to specifically include them in State Party reports.[42] As noted earlier, the existing core treaties and soft laws were major strides in the crystallisation of the protection of rights of PWDs. The efforts were however grossly inadequate when compared with the level of disregard and violation of the rights of PWDs, notwithstanding the fact that all human rights provisions contained in the various instruments were also applicable to PWDs. Thus, the Convention on the Rights of Persons with Disabilities became necessary for specific protection and promotion of the rights of PWDs.

CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD)

The purpose of the CRPD as disclosed in article 1, is to "to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity."

It covers various key areas such as self-determination, physical and programmatic access, personal mobility, health, education, employment, habilitation and rehabilitation, participation in political life, and equality and non-discrimination. The convention

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41 ICESCR, General Comment 5, Persons with Disabilities.
42 CEDAW, General Comment 18, *Women with Disabilities.*

marks a shift in philosophy about disability from a social welfare concern/charity, to a human rights centred issue. It acknowledges that societal barriers and prejudices are themselves disabling and must be dismantled. There are eight underpinning principles of the CRPD (set out within it), namely respect for inherent dignity and individual autonomy; non-discrimination; full and effective participation and inclusion in society; respect for difference; equality of opportunity; accessibility; equality between men and women; and respect for the evolving capacities of children.[43] The intention of the principles is to ensure that PWDs are treated with respect, their human dignity is respected and all their human rights are accorded to them. Of great interest to this paper, are all its provisions, especially equality and non-discrimination as they are critical in the context of disaster management.

The Committee on the Rights of Persons with Disabilities opened an investigation into a signatory state for breaching their convention obligations in 2015. The investigation was triggered by article 6 of the optional protocol, which provides that an investigation will be carried out once the committee receives reliable information indicating grave and systematic violation of the human rights of persons with disabilities.[44]

African Regional Protection of the Rights of PWDs

African Charter[45]

Regional human rights documents were not left out in the recognition of PWDs in the various regions but this paper limits itself to the African region. The African human rights treaty known as the African Charter on Human and Peoples' Rights prohibits discrimination and makes all human rights equally applicable to all persons[46] thus:

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43   Article 3 of the CRPD 2006, *op.cit.*

44   The government of the United Kingdom is being investigated, with the final report currently due to be released in 2017. "UN inquiry considers alleged UK disability rights violations". The Guardian. 20th October 2015.

45   Adopted 27th June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21st October 1986.

46   Article 2 the African Charter on Human and Peoples' Rights (ACHPR), also known as the Banjul Charter, was adopted on 27th June 1981 and came into force on 21st October 1986, 21 LLM.

> Every individual shall be entitled to the enjoyment of the rights
> and freedoms recognised and guaranteed in the present Charter
> without distinction of any kind such as race, ethnic group, color,
> sex, language, religion, political or any other opinion, national
> and social origin, fortune, birth or other status.

The ACHPR makes provision for the protection of the rights of PWDs, calling for the right to special measures thus: "The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs."[47]

AFRICAN WOMEN'S PROTOCOL

The African human rights regime also has protection in the African region specifically for women with disabilities. The African Women's Protocol explicitly provides for the rights of women with disabilities as follows:
State Parties undertake to:

    (a)   ensure the protection of women with disabilities and take specific measures commensurate with their physical, economic and social needs to facilitate their access to employment, professional and vocational training as well as their participation in decision-making; [and]

    (b)   ensure the right of women with disabilities to freedom from violence, including sexual abuse, discrimination based on disability and the right to be treated with dignity.[48]

AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD

It is notable that the African Charter on the Rights and Welfare of the Child also, as a regional instrument, protects the rights of persons with disabilities. It provides for the protection of handicapped children by placing obligations on State Parties to ensure that:

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47 Article 18 (4) of the African Charter on Human and Peoples' Rights (ACHPR), also known as the Banjul Charter, was adopted on 27th June 1981 and came into force on 21st October 1986, 21 LLM.

48 Article 23(a) and (b) of the African Women Protocol. (Emphasis mine).

1.   Every child who is mentally or physically disabled shall have the right to special measures of protection in keeping with his physical and moral needs and under conditions which ensure his dignity, promote his self-reliance and active participation in the community.

2.   State Parties to the present Charter shall ensure, subject to available resources, to a disabled child and to those responsible for his care, assistance for which application is made and which is appropriate to the child's condition and in particular shall ensure that the disabled child has effective access to training, preparation for employment and recreation opportunities in a manner conducive to the child achieving the fullest possible social integration, individual development and his/her cultural and moral development.

3.   The State Parties to the present Charter shall use their available resources with a view to achieving progressively the full convenience of the mentally and physically disabled person to movement and access to public highway buildings and other places to which the disabled may legitimately want to have access to.[49]

The African human right regime is replete with avalanche of laws which can be found in various African instruments, but they are scattered in different documents and there is no single law that has all the African provisions together for harmony and easy access. The laws are also to be realised within domestic jurisdictions and that means that if any African country is not party to an instrument, its citizens cannot enjoy the benefits thereof. It is expected that countries that are parties to the African Charter and other instruments should include such provisions that protect and promote the rights of PWDs in their national laws and enforce them in their national laws. Although Nigeria is a party to the CRPD and all the African instruments highlighted, the effects are not too far reaching to date. Part of the reasons for

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49   Article 13, African Charter on the Rights and Welfare of the Child African Comm'n On Human and Peoples' Rights, African Youth Charter 18 (2009), available at: http://www.au.int/en/sites/default/files/

this is that enforcement level is low, some of the laws are not yet domesticated, including the CRPD, and there is lack of political will to commit resources to the promotion and protection of the rights of PWDs.

INTERNATIONAL DISASTER MANAGEMENT FRAMEWORK

The law on disaster management is an emerging area of law. The focus of disaster management has evolved and the changing paradigm has been moving from supply of relief materials to victims of disaster, to disaster risk reduction as well as from state-centred intervention to involving governments, civil societies, groups and individuals.

United Nations Disaster Risk Reduction is the concept and practice of reducing disaster risks through systematic efforts to analyse and manage the causal factors of disasters, including through reduced exposure to hazards, lessened vulnerability of people and property, wise management of land and the environment, and improved preparedness for adverse events. Resilience is the ability of a system, community or society exposed to hazards to resist, absorb, accommodate to and recover from the effects of a hazard in a timely and efficient manner, including through the preservation and restoration of its essential basic structures and functions. There have been various initiatives towards disaster management and control at the international and national levels. Some of them will be considered here.

INTERNATIONAL FRAMEWORK FOR ACTION FOR THE INTERNATIONAL DECADE FOR NATURAL DISASTER REDUCTION OF 1989

The International Strategy for Disaster Reduction (ISDR) was adopted during the 1999 IDNDR Programme Forum, held in July 1999 in Geneva, and ratified by the United Nations' Economic and Social Council (ECOSOC) and General Assembly during the second meeting of its commission on sustainable development. More than 20 speakers at the CSD spoke in favour of the strategy and the proposed institutional arrangements in November 1999, and a resolution to that

effect was adopted.[50] The main thrust of the ISDR resolution was to reaffirm the need for strengthening an international framework for the improvement of early warning systems and disaster preparedness by developing an effective international mechanism for early warning, including the transfer of technology related to early warning to developing countries, under the auspices of the United Nations, as an integral part of future strategies and frameworks or any arrangements for natural disaster reduction.[51]

THE YOKOHAMA STRATEGY FOR A SAFER WORLD: GUIDELINES FOR NATURAL DISASTER PREVENTION, PREPAREDNESS AND MITIGATION AND ITS PLAN OF ACTION, 1994

Disaster prevention, mitigation, preparedness and relief are four elements which contribute to and gain from the implementation of sustainable development policies. These elements, along with environmental protection and sustainable development, are closely interrelated. Therefore, nations should incorporate them in their development plans and ensure efficient follow-up measures at the community, national, subregional and international levels.[52]

THE INTERNATIONAL STRATEGY FOR DISASTER REDUCTION OF 1999

The United Nations (UN) International Strategy for Disaster Reduction Secretariat (UNISDR)[53] was established in 1999 as the successor to the Secretariat of the International Decade for Natural Disaster Reduction. UNISDR leads the organisation of the Global

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50   The International Strategy for Disaster Reduction (ISDR) was adopted during the 1999 http://www.disaster.info.desastres.net/idndr/idndr.htm

51   General Assembly Resolution Adopted by the General Assembly [on the report of the Second Committee (A/54/588/Add.2)] 54/219. A/RES/54/219 3rd February 2000 Fifty-fourth session Agenda item 100 (b): International Decade for Natural Disaster Reduction: successor arrangements. Retrieved from on 17th Nov. 2017 from: http://undocs.org/A/RES/54/219

52   Yokohama Strategy and Plan of Action for a Safer World Guidelines for Natural Disaster Prevention, Preparedness and Mitigation World Conference on Natural Disaster Reduction Yokohama, Japan, 23-27th May 1994.

53   United Nations (UN) International Strategy for Disaster Reduction Secretariat (UNISDR retrieved on 21st October 2017 at: http://www.preventionweb.net/files/26097_unisdrassessment1.pdf

Platform for Disaster Risk Reduction, which meets every two years and has become the main global forum for guidance on the implementation of the Hyogo Framework for Action (HFA) and share experience among stakeholders.

The formal mandate of UNISDR is given by the UN General Assembly, and is to serve as the focal point in the United Nations system for the coordination of disaster reduction and to ensure synergies among the disaster reduction activities of the United Nations system and regional organisations and activities in socio-economic and humanitarian fields.[54]

HYOGO FRAMEWORK FOR ACTION (HFA) 2005-2015: BUILDING THE RESILIENCE OF NATIONS AND COMMUNITIES TO DISASTERS

The World Conference on Disaster Reduction was convened by the decision of the General Assembly,[55] and had five specific objectives:

(a) To conclude and report on the review of the Yokohama Strategy and its plan of action, with a view to updating the guiding framework on disaster reduction for the twenty-first century;

(b) To identify specific activities aimed at ensuring the implementation of relevant provisions of the Johannesburg Plan of Implementation of the World Summit on Sustainable Development on vulnerability, risk assessment and disaster management;

(c) To share good practices and lessons learned to further disaster reduction within the context of attaining sustainable development, and to identify gaps and challenges;

(d) To increase awareness of the importance of disaster reduction policies, thereby facilitating and promoting the implementation of those policies;

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54 United Nations (UN) International Strategy for Disaster Reduction Secretariat (UNISDR retrieved on 21st October 2017 at: http://www.preventionweb.net/files/26097_unisdrassessment1.pdf

55 General Assembly resolution 58/214 of 23rd December 2003.

(e)   To increase the reliability and availability of appropriate disaster-related information to the public and disaster management agencies in all regions, as set out in relevant provisions of the Johannesburg Plan of Implementation.

In terms of the expected outcome, while taking the above objectives into account, and drawing on the conclusions of the review of the Yokohama Strategy, states and other actors participating at the World Conference on Disaster Reduction ("the Conference") resolved to pursue the following expected outcomes for the next 10 years: The substantial reduction of disaster losses, in lives and in the social, economic and environmental assets of communities and countries.

The realisation of this outcome will require the full commitment and involvement of all actors concerned, including governments, regional and international organisations, civil society including volunteers, the private sector and the scientific community. The following strategic goals were to be adopted with the resolve of the conference with a view to attaining the expected outcome:

(a)   The more effective integration of disaster risk considerations into sustainable development policies, planning and programming at all levels, with a special emphasis on disaster prevention, mitigation, preparedness and vulnerability reduction;

(b)   The development and strengthening of institutions, mechanisms and capacities at all levels, in particular at the community level, that can systematically contribute to building resilience to hazards;

(c)   The systematic incorporation of risk reduction approaches into the design and implementation of emergency preparedness, response and recovery programmes in the reconstruction of affected communities.

SENDAI FRAMEWORK FOR DISASTER RISK REDUCTION 2015-2030

The Sendai Framework is the most recent initiative and sets out to consolidate the gains of previous moves with a view to improving on them. The present framework applies to the risk of small-scale and large-scale, frequent and infrequent, sudden and slow-onset disasters, caused by natural or man-made hazards as well as related environmental, technological and biological hazards and risks. It aims to guide the multi-hazard management of disaster risk in development at all levels as well as within and across all sectors. In terms of its expected outcomes, the substantial reduction of disaster risk and losses in lives, livelihoods and health and in the economic, physical, social, cultural and environmental assets of persons, businesses, communities and countries.

In terms of goals, it is intended to prevent new and reduce existing disaster risk through the implementation of integrated and inclusive economic, structural, legal, social, health, cultural, educational, environmental, technological, political and institutional measures that prevent and reduce hazard exposure and vulnerability to disaster, increase preparedness for response and recovery, and thus strengthen resilience.

The Sendai Framework is built on elements which ensure stability with the work done by states and other stakeholders under the HFA and introduces a number of innovations as called for during the consultations and negotiations. Commentators have identified the most significant shifts as a strong emphasis on disaster risk management as opposed to disaster management, the definition of seven global targets, the reduction of disaster risk as an expected outcome, a goal focused on preventing new risk, reducing existing risk and strengthening resilience, as well as a set of guiding principles, including primary responsibility of states to prevent and reduce disaster risk, all-of-society and all-of-state institutions engagement. In addition, the scope of disaster risk reduction has been broadened significantly to focus on both natural and man-made hazards and related environmental,

technological and biological hazards and risks. Health resilience is strongly promoted throughout.

Also, to achieve its goal within national and local levels, article 27(a) of the Sendai Framework for disaster risk control advocates the need to

> mainstream and integrate disaster risk reduction within and across all sectors and review and promote the coherence and further development, as appropriate, of national and local frameworks of laws, regulations and public policies, which, by defining roles and responsibilities, guide the public and private sectors in: (i) addressing disaster risk in publicly owned, managed or regulated services and infrastructures; (ii) promoting and providing incentives, as relevant, for actions by persons, households, communities and businesses; (iii) enhancing relevant mechanisms and initiatives for disaster risk transparency, which may include financial incentives, public awareness-raising and training initiatives, reporting requirements and legal and administrative measures; and (iv) putting in place coordination and organisational structures.

The increase in the scope of stakeholders beyond governments, to include even businesses and households and the quest to mainstream and integrate disaster risk reduction into various sectors as well as create financial and other incentives, raising public awareness and ensuring coherence, are some of the innovations in the Sendai Framework, making it an improvement on earlier actions.

National Disaster Management Framework in Nigeria

As a country, Nigeria has had its fair share of disasters, including drought, desertification, flooding, epidemics, coastal erosion, dam failure, building collapse, oil spillage, maritime collision or accident, bomb explosion, communal clash, fire, air crashes and boat mishap.[56]

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56 National Disaster Framework (NDMF) Understanding the Framework. Retrieved on 18th October 2017 from: http://www.preventionweb.net/files/21708_nigherian ationaldisastermanagementf.pdf

Historically, salient disasters in Nigeria include, the yearly epidemics such as cholera, measles and cerebro-spinal meningitis. There were drought in the Sudan-Sahel zone of the country in 1972-74 and 1982-84. There were flood disasters in Ogunpa (Oyo State) in 1982, Lagos Bar Beach in 2001, Shiroro and Kaduna in 2003, Gombe in 2004, Jalingo in 2005, etc. Others include, the 2008 landslide in Agwu LGA (Enugu State); and 2005, 2006 and 2009 landslide in Agwagune (Cross River State). Also, Nigeria experienced numerous ethnic, political and religious violent conflicts in Kaduna, Lagos, Kano, Plateau, Bauchi, Borno, Taraba, Benue, Delta, Anambra, Ondo, and Osun.[57]

The National Disaster Management Framework (NDMF) is the instrument that functions as a regulatory guideline for effective and efficient disaster management in Nigeria. The framework defines measurable, flexible and adaptable coordinating structures, and aligns key roles and responsibilities of disaster management stakeholders across the nation. It describes specific authorities and best practices for managing disasters, and explains a paradigm shift in disaster management beyond mere response and recovery. The NDMF offers a holistic approach to disaster management.[58] It serves as a legal instrument to address the need for consistency among multiple stakeholders. It is a coherent, transparent and inclusive policy for disaster management in Nigeria.

The NDMF has stated its objectives as (i) Establishment of functional disaster management institutions at all levels of governance to prepare for, prevent, mitigate, respond to and recover from disaster events in Nigeria, and (ii) Development of capacity of relevant institutions and stakeholders for effective and efficient disaster management in Nigeria.

The NDMF clearly states the objectives of Disaster Response under thematic areas as follow:

   i. ensure maximum survival of affected persons;

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57 *Ibid.*
58 National Disaster Framework (NDMF) Understanding the Framework. Retrieved on 18 October 2017 from: http://www.preventionweb.net/files/21708_nigherianationaldisastermanagementf.pdf

   ii.   encourage self help;

   iii. ensure preservation of property and the environment;

   iv. establish mechanisms for integrated response;

   v.   bring order to a chaotic situation;

   vi. keep the public informed through appropriate systems;

  vii. ensure psychosocial support to affected.

It also identified the critical components of effective disaster risk reductions shall be the various regulations, standards, by-laws and other legal enforcement instruments. The federal, state and local governments shall ensure adherence to the legal enforcement instruments, some of which include:

   i.   land use regulations;

   ii.   urban planning and development standards;

   iii. standard for environmental impact assessments;

   iv. building codes;

   v.   fire codes;

   vi. enabling acts/laws/bye-laws of the legislature on health and environmental issues; and

  vii. relevant international conventions and treaties signed by the government of Nigeria.[59]

In terms of mainstreaming disaster risk reduction, the NDMF provides that disaster risk reduction shall be mainstreamed into developmental efforts at all levels of governance and it shall be integrated, amongst other things, into: spatial development including National Emergency Management Agency (NEMA) at the federal level, State Emergency Management Agency (SEMA) at the state level, and Local Emergency Management Authority (LEMA) at the local government level

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59 National Disaster Framework (NDMF) Understanding the Framework. Retrieved on 18 October 2017 from: http://www.preventionweb.net/files/21708_ nigherianationaldisastermanagementf.pdf

in order to strengthen the capabilities of federal, state and local governments to reduce the likelihood and severity of disasters.[60]

NEXUS BETWEEN DISASTER MANAGEMENT AND DISABILITY

It has been estimated that 10% of any population is likely to be disabled, and up to one in five of the world's poorest have a disability.[61] With a population of over 140 million, Nigeria has approximately 14 million people with disabilities.[62] The World report on disability, published in 2011 on its part, estimates that about 25 million Nigerians had at least one disability, while 3.6 million of these had very significant difficulties in functioning, while Natalie observed that there are varied estimates of persons with disabilities in Nigeria.[63]

The effects of disasters include destruction, usually leaving survivors with physical, sensory and psychosocial impairments. Participation of PWDs and accessibility experts in the disaster risk assessment and planning at the community level has been identified as the first essential phase. The second step to take, is the specific solutions on accessible environments, information and services should be identified. Through advance planning, organisations of PWDs and local governments can effectively

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60   *Ibid*. The NEMA, SEMA, LEMA and other stakeholders, are to ensure the inclusion of spatial planners, Geographic Information System (GIS) experts in all phases of disaster risk reduction plans and programmes. Also, Disaster risk reduction strategies shall be integrated into governmental medium and long term goals of the National Development Plan and Educational Curriculum. Disaster risk reduction strategies shall be incorporated into education curriculum at all levels (Primary, Secondary and Tertiary) to inculcate the required knowledge, attitude, and skills in the youth.

61   See the UNESCO. Guide to community-based rehabilitation services. United National Educational, Scientific and Cultural Organisation, Paris. 1991; and . Mont D. Measuring Disability Prevalence. SP Discussion Paper No. 0706. Washington DC, USA: The World Bank. 2007 in Natalie Smith, (2011). The face of disability in Nigeria: A disability Survey in Kogi and Niger States, Disability, CBR and Inclusive Development, Vol 22, No.1, DOI 10.5463/DCID.v 22 i1.11, 2011, p. 35.

62   UNPD World Population Prospects: the 2004 revision. New York: UN Population Division. 2005.

63   Natalie Smith. The face of disability in Nigeria: A disability Survey in Kogi and Niger States, Disability, CBR and Inclusive Development, Vol 22, No.1, 2011. DOI 10.5463/DCID.v 22 i1.11,2011, p. 35.

address critical issues and coordinate with partners outside of the locality in the wake of disasters.[64]

Compared to the general population, PWDs face higher risks and are disproportionately affected by disasters. From available data, the mortality rate of the disabled population is two to four times higher than that of the non-disabled population in many disaster situations.[65] Disasters create a new generation of survivors with physical, sensory and psychosocial impairments. For every one person killed in a disaster, another three are injured or left with a long-lasting impairment.[66] Constructively however, PWDs have been found to make unique contributions, although often disregarded, to help reduce the risk of disasters and build resilient societies and communities.[67] The number of PWDs is expected to rise in the next decades due to range of factors including the increase in natural and human–induced disasters.[68]

Apart from the risk of acquiring a disability, persons with existing disabilities are more vulnerable and exposed to the destructive impact that disasters bear in terms of mortality, injury and adverse long-term health effects. Evidence gathered after the Great East Japan Earthquake in March 2011 indicates that mortality rates of persons with disabilities were two to four times higher than those without disabilities.[69]

64 United Nations ESCA Economic and Social Commission for Asia and the Pacific Committee on Disaster Risk Reduction Fourth session Bangkok, 27-29th October 2015. Item 6 of the provisional agenda Risk-sensitive development, E/ESCAP/CDR(4)/INF/4

65 Rehabilitation International (RI), the Nippon Foundation and UNESCAP, "Sendai Statement to Promote Disability-inclusive Disaster Risk Reduction for Resilient, Inclusive and equitable Societies in Asia and the Pacific" (24th April 2014). Available at http://www.riglobal.org/sendai-statement-to-promote-disability-inclusive-disaster-risk-reduction-for-resilient-inclusive-and-equitable-societies-in-asia-and-the-pacific/

66 CBM International, Technical brief for the post-2015 consultation process. Available from www.who.int/violence_injury_prevention/other_injury/en/disaster_disability.pdf.

67 *Ibid.*

68 United Nations, Department of Economic and Social Affairs, Population Division, World Population Prospects: The 2015 Revision (New York, 2015). Available from http://esa.un.org/unpd/wpp/Publications/Files/Key_Findings_WPP_2015.pdf.

69 Japan Disability Forum, What is behind the higher death rate of persons with disabilities? (Tokyo, 2013). Available from www.dinf.ne.jp/doc/english/twg/escap_121031/fujii.html.

The stark and often life-threatening impact of disasters on persons with disabilities is attributed, in part, to the absence of disability perspectives in all phases of disaster risk reduction (DRR). While "risk-informed decisions"[70] are often promoted in improving DRR, the experiences of PWDs leave much to be desired.[71]

HOW PWDS ARE AFFECTED BY NON-INCLUSION IN DISASTER RISK REDUCTION PLANS

The deficiency of accessible environments, information and services has been identified as a critical factor. Deaf persons are often unable to receive early warning signals and any information that influences a life or death situation, as they are often transmitted only through audible means. Sign language interpreters are often not provided at emergency shelters. Wheelchair users are often unable to access evacuation routes, emergency shelters, temporarily housing units and bathrooms. Persons with intellectual disabilities and psychosocial disabilities are often not provided with effective communication and emotional support and are therefore often left in isolation.

Furthermore, although persons with disabilities are among the most at-risk groups during natural disasters, actors in the Asia-Pacific region depend on scarce evidence for their interventions due to the dearth of disaster data disaggregated by the status of disability.

PROTECTION FOR PWDS IN THE CONTEXT OF DISASTER

The CRPD has specifically provided for equality treatment of PWDs in situations of risk and humanitarian emergencies State Parties shall take, in accordance with their obligations under

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70 United Nations. Sendai Framework for Disaster Risk Reduction (Sendai, 2015). Available from www.un.org/disabilities/documents/desa/3WCDRR/Sendai_2015 - 2030.pdf.

71 UNISDR. Key Findings: UNISDR 2013 Survey on Living with Disabilities and Disasters. Executive Summary. (Geneva, 2014). Available from www.unisdr. org/2014/iddr/documents/2013Disability SurveryReport_030714.pdf.

international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.[72]

In terms of international cooperation,

> States Parties recognise the importance of international cooperation and its promotion, in support of national efforts for the realisation of the purpose and objectives of the present convention, and will undertake appropriate and effective measures in this regard, between and among states and, as appropriate, in partnership with relevant international and regional organisations and civil society, in particular organisations of persons with disabilities.[73]

CONCLUSION

Disaster management has not been inclusive of persons with disabilities who often suffer discrimination and exclusion in many other spheres of life due to their disabilities. Recently however, the perception of disability as well as the position of law on the rights of PWDs is changing and their rights are becoming more crystalised, especially with the adoption of the CRPD, 2006 as well as other international laws which have also enhanced the status of PWDs at regional and national levels. While the law has also emerged for disaster management at all levels, it has not always factored the needs and possible contribution of PWDs to building resilience and disaster risk reduction in the ever increasing frequency of the occurrence of disaster as a result of natural and man-made causes.

The paper recommends that governments should consider the needs of PWDs, mainstream disability in disaster management plans, implementation and post disaster recovery activities. The principles of equality and non-discrimination needs to be reflected

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72   Article 11 CRPD, 2006. Retrieved on 19th October 2017. http://www.un.org/esa/socdev/enable/rights/convtexte.htm

73   Article 32, CRPD 2006. Retrieved on 19th October 2017. http://www.un.org/esa/socdev/enable/rights/convtexte.htm

in all disaster management programmes, so that PWDs can be carried along not just as objects to be helped, but planning with them before and in the context of disaster. Disaster management laws should be made and observed at international, regional, national and local levels and awareness and preparedness drills should be given to everyone, and PWDs in the language that they understand, like Braille for example and constructions should adopt "universal design" that will serve everyone for accessibility to facilities. The CRPD has set down a standard for disaster management laws as well as disability laws at national and local levels and it should be so adopted and applied for the benefit of society at large.