



Analysis Of The Electoral Legal Framework On The Inclusion Of Persons With Disabilities In Nigeria's Electoral Process



Background

Persons with disabilities for a great percentage of Nigeria's population as almost every family has a person with disability either by birth or through accidental occurrence. PWDs face various challenges, including stigmatization and disadvantaged treatment in social affairs, among others. The precarious situation of PWDs in the society today require intentional and concerted efforts towards remedial measures as accidents of various sorts as well as health challenges increase the risk of anyone falling into this group of persons in the society. Consequently, the purpose of the Convention on the Rights of Persons with Disabilities and its Optional Protocols require full implementation, especially the aspects dealing with the rights of PWD vote and be voted for which is not adequately provided for under the municipal laws of Nigeria. This analysis x-rays the Electoral Act 2022, Regulations and Guidelines for the Conduct of Elections, 2022, and INEC Framework on Access and Participation of Persons with Disabilities (PWDs) in the Electoral Process. The need for a deliberate effort at the inclusion of PWDs in the electoral process is supported by the Discrimination Against Persons with Disability (Prohibition) Act passed by the eighth National Assembly in 2012 which ensures the integration of PWDs in the society as well as establish the National Commission for Persons with Disabilities (NCPWD) and vests it with responsibility to care for the health, education, and welfare of PWDs. The focus of this analysis is to dissect the inclusive provisions of the various enactments and subsidiary legislation to unearth their relevance and functionality with a view to proposing recommendations for an improved legal framework. The analysis makes direct recommendations for amendment of the Electoral Act to further improve the participation of PWDs in the electoral process in line with the provisions of international instruments.



The Legal Framework

The Constitution of the Federal Republic of Nigeria, 1999 (As Altered)

The Constitution of the Federal Republic of Nigeria 1999 (As Altered) which is the foundation of all laws in Nigeria as all other laws, including electoral legal framework, derive their validity from the Constitution. It is settled beyond any form of contention that the 1999 Constitution of the Federal Republic of Nigeria (as amended) is supreme, and its provisions supersede any other law or authority in Nigeria. Supremacy of the Constitution implies that the Constitution is the highest authority in the Nigerian legal system and is the grundnorm that stands apart and above any other norm. The Constitution has been referred to as the very foundation which bears the weight of the whole structure of our legal system or fountain head from which all the extant laws in our legal system flow. The grundnorm itself provides for its supremacy in what is commonly referred to as the supremacy clause, enshrined in Section 1(1)-(3) thus:

"(1) This Constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria.

(2) The Federal Republic of Nigeria shall not be governed, nor shall any persons or group of persons take control of the Government of Nigeria or any part thereof except in accordance with the provisions of this Constitution.

(3) If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void."

The Supreme Court in the celebrated case of AG Abia State v AG Federation (2006) 16 NWLR (pt 1005) 265 at p 381, described the Constitution as "the fons et origo, the alpha and Omega, the grund

norm from which every other laws derive their validity."¹ It can be said that the function of the Constitution is to establish a framework and principles of government, broad and general in terms, intended to apply to the varying conditions which the development of our several communities must involve, ours being a plural, dynamic society and therefore, mere technical rules of interpretation of statutes are to some extent inadmissible in a way so as to defeat the principles of government enshrined in the Constitution. Based on the significance of the Constitution, it has been viewed an instrument of government under which laws are made and are not mere Acts or law and the construction which the Court will give to a constitutional provision must be such that will serve the interest of the Constitution and best carry out the subject and purpose and give effect to the intention of the framers.

The most relevant constitutional provision for the protection of the rights of persons with disabilities is the fundamental right to freedom from discrimination of any kind, as follows:



A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions are not made subject.²

The relevance of the above provision lies in the fact that it frowns at any citizen of Nigeria being subjected to any disability or deprivation merely by reason of the circumstances of his birth except by reason only that a law could impose restrictions with respect to the appointment of any person to any office under the State or as a member of the armed forces of the Federation or member of the

¹AG Ondo State v. AG Federation (2002) 9 NWLR (Pt. 772) 222*.

² Section 42(2)

Nigeria Police Forces or to an office in the service of a body, corporate established directly by any law in force in Nigeria.³ Notwithstanding that PWDs are not expressly mentioned in the section, it is arguable that the Constitution provides a basic background for the protection of rights of persons against discrimination. This is why section 42 appears to be the only refuge the PWD have to vent their grievances⁴.

The Electoral Act 2022



The Electoral Act 2022 is the primary electoral legislation enacted by the Ninth Assembly and assented to by President Muhammadu Buhari in February 2022. This portion of the analysis dwells on the relevant provisions of the Act on inclusion of PWDs in the electoral process. The relevant provisions are analysed below:

a. Section 9 (National Register of Voters and voters' registration)

9.(1) The Commission shall compile, maintain, and update, on a continuous basis, a National Register of Voters (in this Act referred to as "the Register of Voters") which shall include the names of all persons —

(a) entitled to vote in any Federal, State, Local Government or Federal Capital Territory Area Council elections; and

(b) with disability status disaggregated by type of disability.

The essence of section 9(1)(b) is to put the Commission under an obligation to identify persons with disability in the Register of Voters to aid planning in the electoral process. The Commission can only plan adequately for inclusion of PWDs when it has a reliable data. This is facilitated by information gathered during the voter registration process which is reflected in the information entered into the

3. Section 42(2) &(3)

4. Oluwadayisi, A.O. 'Rights of Persons with Disabilities in Electoral Process: Juxtaposing the Standard of Convention on the Rights of Persons with Disabilities and its Optional Protocols with Nigeria's Legal Regime' [2021] 5(1) AJLHR, 89

Register of Voters. This has become necessary because the systematic exclusion of PWDs on account of disability has affected a significant part of the nation's population, from effective participation in areas of human endeavour. This data is significant to the electoral system, especially as it discloses the locations with the largest concentration of PWDs which in turn influences the type of assistive devices to be deployed to each location.

b. Section 14 (Demand for information regarding registration)

14. In the performance of his or her duties under this Act, a registration officer and an update officer shall—

(a) demand from any applicant the information necessary to enable him or her to ascertain whether the applicant is qualified to be registered as a voter in accordance with the provisions of this Act ; and

(b) require any voter or applicant to complete an application form for the purpose of the registration, but in the case of an illiterate or disabled person such application form may be completed by the registration officer on the applicant's request.

The provision of section 14(b) affords protection for the disability community as it enables a registration officer and update officer from the Independent National Electoral Commission (INEC) to complete the application form for registration for persons who either cannot read or write or a person with disability who requests such assistance. One thing that is clear from this provision is the role of PWDs who are required to request assistance. Consequently, such registration and update officers cannot initiate the assistance of completing the application form as such request must emanate from a person with disability who needs assistance. This provision appreciates that a PWD may be able to complete his/her registration form, depending on the nature of the disability.

c. Section 54 (Visually impaired and incapacitated voters)

54 (1) A Voter with visual impairment or other form of disability who is otherwise unable to distinguish symbol or who suffers from any other physical disability may be accompanied into the polling unit by a person chosen by him or her and that person shall, after informing the Presiding officer of the disability, be permitted to accompany the voter into the voting compartment and assist the voter to make his or her mark in accordance with the procedure prescribed by the Commission.

(2) The Commission shall take reasonable steps to ensure that persons with disabilities, special needs and vulnerable persons are assisted at the polling place by the provision of suitable means of communication, such as Braille, large embossed print, electronic devices, sign language interpretation, or off-site voting in appropriate cases.

Subsection (1) of this section contains conditions for applicability of the measures provided. First, the provision is wide enough to cover all forms of disability as it is not restricted to visually impaired voters. The use of the word 'or' between 'visual impairment' and 'other form of disability' shows that the disabilities are in the alternative. Consequently, it applies to visual impairment as well as any other disability. However, for a voter, other than a visually impaired voter, to reap the benefits of the provision, his/her disability alone is insufficient. He/she must show that he/she is unable to distinguish symbols or suffers physical disability in which case he/she may be accompanied into the polling unit. From the wordings of subsection 9(1), it is a person of the voter's choice that accompanies him/her to the polling unit. The duty of the other person accompanying the voter is to inform the Presiding Officer of the voter's disability, accompany the voter to the voting compartment, and assist the voter to make his/her mark in like with the procedure prescribed by INEC. The provision puts the Presiding Officer under an obligation to permit the person accompanying the voter to render the various layers of



assistance outline in the provision. The use of the word 'shall' in the provision connotes compulsion, leaving the Presiding Officer with no choice upon the information of the person accompanying the voter. One thing that is obvious from the provision is the power given to the INEC to prescribe the voting procedure in the circumstance.

Subsection (2) puts the Independent National Electoral Commission under a duty to provide suitable means of communication to assist persons with disabilities, special needs, and vulnerable persons. Such suitable means of communication include Braille, large, embossed print, electronic devices, sign language interpretation, or off-site voting. The list is not exhaustive as the Commission is to determine what is appropriate in every circumstance.

As society progresses towards full inclusion of people with disabilities, it is important that people without a developmental disability learn how to relate to those with a disability in respectful ways. Knowing how to use appropriate language is a key to making positive change,

Many people with disabilities are quite independent and capable of giving help. But if you want to help someone with a disability, ask first if he or she needs it.

Regulations and Guidelines for the Conduct of Elections, 2022



The Electoral Act 2022, in section 148, vests the Commission with powers to issue regulations, guidelines, or manuals for the purpose of giving effect to the provisions of the Act and for its administration. This power is, however, subject to the provisions of the Act. Pursuant to the powers conferred on the Commission, it issued the Regulations and Guidelines for the Conduct of Elections, 2022, which makes robust provisions for inclusivity. The relevant provisions of the Regulations and Guidelines are examined hereunder.

a. Regulation 7 (Location of Polling Units)

(a) Whenever practicable, Polling Units shall be located within enclosures in public places accessible to every voter, including Persons with Disability (PWDs). Where they are in open spaces, canopies may be provided.

(b) Public places include public schools, civic centres, town halls and communal open spaces. Polling Units shall not be in places of worship, palaces of traditional rulers and private homes.

This regulation is intentional about PWDs, especially as it relates to accessibility of Polling Units. The implication of this provision is that the Commission is under a duty to take PWDs into consideration when determining the location of Polling Units. The provision of regulation 7(b) is designed to avoid any form of ambiguity as to the nature of public places. Hence, it describes public spaces to include public schools, civic centres, town halls and communal open spaces. However, it prevents polling units from being in places of worship, places of traditional rulers and private homes.

b. Regulation 17 (Commencement of Polls)

The Guidelines provide an additional layer of inclusion for the

vulnerable, including PWDs, in Regulation 17 (d)(iv) which puts the Presiding Officer under a duty to create a separate queue for PWDs, visibly pregnant and breast-feeding mothers as well as the elderly. Under the said provision, the polls are to start between 8:00am to 8:30am or at any other time prescribed by the Independent National Electoral Commission (INEC). Furthermore, the Presiding Officer is required to separate the lines for men and women where culture prohibits their mingling and declare the polling unit open for accreditation and voting among others. In the absence of cultural constraints, there is no need for a separate line for both men and women.

c. Regulation 19 (Accreditation and Voting)

Regulation 19 (b)(vii) provides accreditation process shall consist of arranging priority voters' line for pregnant women, nursing or breast-feeding mothers aged persons, and persons with physical disabilities. This provision accords priority to the group of persons mentioned therein. However, one thing that is obvious here is the fact that it is only persons with physical disabilities that are entitled to priority attention contemplated under this provision. What happens to persons with other disabilities that are not physical in nature? From the language of the provision, it seems a person stands excluded from the priority attention provided here if his disability is not physical in nature. This ought not to be so and should be reviewed to cover all forms of disability.

Under the provision of Regulation 19(c)(iii), an Assistant Presiding Officer III is under a duty to check whether a voter is a person with disability and needs assistive devices or facilities to aid the voting process. This role is to ensure that a person with disability is not left stranded but assisted to participate in the process in a seamless manner.

It is a mandatory duty of the Assistant Presiding Officer III under Regulation 19(c)(vii) to inform Persons with Disability of the availability of priority voting and direct him/her to the queue once

their disability is confirmed. This provision is to equip PWDs with requisite information about priority voting and follow it up with the necessary assistance to the queue for ease of voting. However, if the Person with Disability cannot effectively communicate with the Assistant Presiding Officer III due to a hearing or speech impairment, further priority shall be accorded to him/her).

Regulation 19(e)(iv) and (v) contain further inclusive provisions such as assistive material to PWDs in accordance with their respective disability status and documenting the status of the voter through the completion of a PWD Form. It is further required that the voting cubicle and ballot box are accessible to Persons with Disability so that they can complete the voting process independently.⁵

d. Regulation 24 (Visually Impaired or Voter with Disability)

(a) The Presiding Officer shall allow a voter who is visually impaired or with other forms of disability, who is unable to distinguish symbols or who has any other physical disability to be accompanied into the Polling Unit and be assisted to vote by a person chosen by him/her, other than an Election Official, a polling agent, or a security personnel on election duty.

(b) Visually Impaired registered voters may, where available, use Assistive Voting Devices such as the Braille Ballot Guide or magnifying glass.

(c) No person shall accompany a voter to the voting area or assist a voter in marking a ballot paper, except as specified in these Regulations and Guidelines.

The provision of Regulation 24(a) allows a Presiding Officer to allow a voter who is visually impaired or with other forms of disability who is unable to distinguish symbols to be assisted to vote by a person chosen by him or her. However, the person chosen by the Person with

5. Regulation 19(f)(v).

Disability to assist with voting cannot be an Election official, polling agent or security personnel on election duty.

e. Regulation 25 (Priority of Some Categories of Voters)

This Regulation provides that PWDs, visibly pregnant women, nursing or breast-feeding mothers and the elderly, shall be granted priority access to voting at the Polling Units. This is a recognition of the vulnerability of the group mentioned herein.

f. Regulation 35 (Closing of Voting Procedures, Sorting and Counting of Ballots and Recording of Votes)

Under Regulation 35 (b) (v) and (vi), the Presiding officer is mandated to complete the relevant EC 40H(I) form for PWD information and statistics and complete the Persons with Disabilities information boxes in the Polling unit booklet. This is designed to ensure that data of PWDs is kept.

g. Regulation 54 (Collation of Presidential Election Result at State Level)

This mandates a State/FCT collation officer for a Presidential election to ensure that he/she completes the status form for Persons with Disabilities.

INEC Framework on Access and Participation of Persons with Disabilities (PWDs) in the Electoral Process



The need for inclusion of Persons with Disabilities (PWDs) cannot be overemphasized. This is recognized by international instruments, the Constitution of the Federal Republic of Nigeria, 1999 (as altered), (CFRN) and other national laws. According to the Universal Declaration of Human Rights of December 1948, all human beings are born free and equal in dignity and rights.⁶ Similarly, it entrenches the right of citizens to take part

6. Article 1

in the government of their country, either directly or through freely chosen representatives.⁷ This freedom to exercise franchise based on equality of individuals without discrimination is the bedrock of democracy.

In line with the spirit of the Universal Declaration of Human Rights, the CFRN confers on every citizen the right to freedom from discrimination.⁸ In the same manner, the Electoral Act 2022 provides the conditions for a citizen to register and vote, which are that he/she is a citizen of Nigeria; has attained the age of 18 years; is ordinarily resident, works in, originates from the Local Government, Area Council or Ward covered by the registration Centre; presents himself to the registration officers of the Commission for registration as a voter ; and is not subject to any legal incapacity to vote under any law, rule or regulations in force in Nigeria.⁹

A combined reading of the CFRN, the Electoral and international instruments, discloses an obvious recognition of the right of persons with disability to participate in the electoral process, based on equality in the political, public, and social life of the country. In recognition of the fact all eligible citizens have inalienable right to participate in the electoral process based on inclusive representation, which is one of the cornerstones of democracy, the Independent National Electoral Commission issued the Framework on Access and Participation of Persons with Disabilities in the Electoral Process. This framework underscores the commitment of INEC to providing full and equal access to all eligible citizens, regardless of their physical condition in the discharge of its mandate of conducting free, fair, credible and peaceful elections.

Undoubtedly, mainstreaming disability into the Nigerian electoral framework to promote the participation of PWDs in the political process and supporting them to aspire to decision making positions will enable the country benefit from the full potential and talents of all its citizens. It is the expectation of the Commission that the documents will become useful in combatting stereotypes, prejudices and exclusion and assist Person with Disabilities to protect and pursue their own interests in the effort to promote a more inclusive society and deepen democracy in Nigeria.

7. Article 21(1)

8. Section 42

9. Section 12(1)



Conclusion

The legal framework for the inclusion of PWDs in Nigeria's electoral process needs further legislative actions. The Constitution of the Federal Republic of Nigeria, which is the grundnorm does not make specific provisions relating to the participation of PWDs in the electoral process. Similarly, looking at the outlook of the Electoral Act 2022, it can be said that the provisions relating to inclusivity are grossly inadequate. The most comprehensive provision comes in the Regulations and Guidelines for the Conduct of Elections, 2022. The challenge here is the legal status of the Regulations as INEC Guidelines have suffered the challenge of enforceability over the years. There must be deliberate efforts on the part of stakeholders to enact an enforceable legal framework that ensures inclusive participation in the electoral process. This means an amendment of the Electoral Act 2022 to cater for the special needs of PWDs in view of the legal status of INEC Guidelines as held by the Supreme Court's decision in *Wike Nyesom v. Adol Peterside*.¹⁰ Specifically, the provisions of the Regulations and Guidelines for the Conduct of Elections, 2022 should be reproduced in the Electoral Act to put the Commission under a legal obligation to comply.

10. ELC [2016] 2131 SC P.1



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