

HUSH WOMAN! THE COMPLEX 'DISABLED' WOMAN IN NIGERIA'S LEGAL AND HUMAN RIGHTS FRAMEWORK: A DECONSTRUCTION

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Summary

Few studies have paid enough attention to the relationship that exists between law and the oppression that women in Nigeria face, mainly when this oppression manifests as sexism and disability discrimination simultaneously. The interest has mostly been on the oppression that manifests as sexism and disability discrimination as separate issues. Yet, reality shows that many women in Nigeria have sustained injuries as a result of sexist oppression and have become disabled. This situation is testament to the interactions and intersections that exist between identity categories of sex/gender and disability as well as resultant oppression of sexism and disability discrimination. However, these interactions are rarely acknowledged.

Against this backdrop, the objective of this article is to ask the question: Who is a disabled woman in Nigeria? By asking the question, the intention is to expose the Nigerian legal framework's definition of the disabled woman as 'born and essentialist'. Yet, unlike the essentialist approach that law and human rights adopt, I demonstrate, how the identity categories of womanhood and disability that a disabled woman embodies are unstable and fluid. Unfortunately, Nigeria's legal and human rights framework hardly contemplates this fluidity and instability. I posit in the conclusion that particularly where it concerns women, Nigeria's legal and human rights framework can no longer afford to define violations of rights as if disability and sex/gender are entirely separate, stable, monolithic and essentialist identity categories.

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1 Introduction

In this article, I ask the question, who is a 'disabled' woman, particularly in the eyes of the law and specifically the human rights framework in Nigeria? The intent of this question is twofold. First, I expose the Nigerian legal framework's definition of the disabled woman as 'born and essentialist'. Second, I demonstrate that unlike the essentialist approach that law and human rights adopt, there are complexities that result from the intersecting identities that the 'disabled' woman embodies.

My analysis of, who the 'disabled' woman in Nigeria is, proceeds in five sections as follows. The introduction makes up the first section. In the second section, I interrogate who the 'disabled' woman in Nigeria is. I specifically examine how disability is understood and conceptualised in the eyes of the law and the human rights framework in Nigeria. Next, I expose in the third section, the identities that the disabled woman carries and manifests as a 'woman' identity category. In the fourth section, I interrogate the identities that the disabled woman embodies and displays as a 'disabled' identity category. In the final section, I offer conclusions. The conclusion that emerges demonstrates how Nigeria's law and specifically the human rights framework's ability to protect disabled women's encounters is limited because it erroneously views the social realities and identities that she embodies and carries as one-dimensional with essentialist experiences. Thus, the need for Nigeria's legal and human rights architecture to develop and define the 'disabled' woman using an intersectional lens becomes apparent.

1.1 Clarification of the terminology: 'Disabled' woman in Nigeria

Insight from *Mercier*¹ demonstrates how 'disability' does not necessarily have to involve functional limitation(s) at all but could stem purely from harmful societal attitudes, prejudice and stereotypes. This understanding coincides with the historical but relevant meaning of 'disability' that relates to having limited and truncated human rights.² Specifically, this insight is also consistent with an *emergent disability*³ that would not necessarily have

1 For more information on the *Mercier* case and its potentially intersectional insight, see: *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Montréal (City); Quebec (Commission des droits de la personne et des droits de la jeunesse) v Boisbriand (City)* 2000 SCC 27, [2000] 1 SCR 665. In this case, the court found that 'a person may have no limitations in everyday activities other than those created by prejudice and stereotypes.'

2 For more information on the historical but relevant meaning of 'disability' as limited and truncated rights see generally, A Silvers 'Reprising women's disability: Feminist identity strategy and disability rights' (2013) 13 *Berkeley Journal of Gender Law and Justice* 92. PE Kimani 'Blackness as disability' (2018) 106 *Georgetown Law Journal* 296. D Baynton 'Disability and the justification of Inequality in American history' in DC Baynton, PK Longmore & L Umansky *The new disability history* (2001) 33.

happened but for some form of oppression and the result of social oppression in Nigeria. Specifically, I use Nigeria's patriarchal legal discourse as a case study to demonstrate that the *Mercier* definition of 'disability' persists, mainly when the disabled body is female.⁴ This understanding is unlike Nigeria's legal framework's definition of the 'disabled' woman as 'born and essentialist' that arguably can be potentially faulty. The use of a *disabled woman* as opposed to *women with disabilities* and the specific focus on Nigeria's legal framework as a case study thus becomes evident.

The above understanding is consistent with Wasserman's two aspects of disability. The first aspect is the social marker or stigma,⁵ and the second aspect is physical deficiency.⁶ He advocates for the integration of the two elements.⁷ This twofold argument brings to the fore the idea that the 'disabled' woman, whether because of impairment or difference or combination of both, has limited or curtailed legal protections in Nigeria's legal framework today. Yet, the object of legal and human rights framework should be to protect the oppressed and most stigmatised individuals of society, including how 'disabling habits of thoughts and social practices' function.⁸

3 For more information on *emergent disability*, see: B Ribet 'Emergent disability and the limits of equality: A critical reading of the UN Convention on the Rights of Persons with Disabilities' (2011) 14 *Yale Human Rights and Development Law Journal* 161.

4 In the *Mercier* case, it is clear from the Court's findings that 'a person may have no limitations in everyday activities other than those created by prejudice and stereotypes' that could be used to rationalise truncated and limited rights. Women's limited rights have been captured in a number of scholarships particularly in the common reference to their *second-class citizenship* in Nigeria. See for example, E Durojaye & Y Owoeye 'Equally unequal or unequally equal: Adopting a substantive equality approach to gender discrimination in Nigeria' (2017) 17 *International Journal of Discrimination and the Law* 70 at 71. E Durojaye 'Substantive equality and maternal mortality in Nigeria' (2012) 65 *Journal of Legal Pluralism* 113. E Durojaye 'Woman but not human: Widowhood practices and human rights violations in Nigeria' (2013) 27 *International Journal of Law, Policy and the Family* 176. GA Makama 'Patriarchy and gender inequality in Nigeria: the way forward' (2013) 9 *European Scientific Journal* 11; EO Ekhaton 'Women and the law in Nigeria: A reappraisal' (2015) 16 *Journal of International Women's Studies* 285. From the above, the use of '*disabled women*' is to show that particularly in Nigeria, the disability experience is not limited to functional capabilities and impairments alone (which the terminology *women with disabilities* sometimes could portray) but importantly includes harmful stereotypes and prejudices that cannot necessarily be separated or fragmented from the woman experience, neither can the woman experience be separated from the disability experience. In other words, 'the disabled woman' as used in this paper demonstrates that the female disability experience is part and parcel of the female experience.

5 D Wasserman 'Philosophical issues in the definition and social response to disability' in EF Emens & MA Stein (eds) *Disability and equality law: The library of essays on equality and anti-discrimination law* (2016) 19.

6 As above.

7 As above.

8 JS Beaudry 'The vanishing body of disability law: Power and the making of the impaired subject' (2018) 31 *Canadian Journal of Family Law* 46.

There is a well-documented reality of women as victims of sexist oppression and its severity in Nigeria.⁹ One in three women in Nigeria, for instance, has reportedly encountered sexist oppression at some point in their lives.¹⁰ These women are often injured, disabled, and, in extreme situations, murdered as a result of the severity of this oppression. One can speculate that the gravity of sexist oppression experienced by women in Nigeria has led to continued debate and the questioning of their humanity.¹¹ These sexist oppressions occur with impunity despite existing legal and human rights framework with commitments ostensibly to ensure the protection and promotion of the rights of (disabled) women in Nigeria. A threefold dysfunctional legal relationship confirms the oppression of the woman in Nigeria. The first aspect is the relationship between law and culture. According to Williams, women are primarily defined by their cultural roles as wives and mothers in Nigeria. Therefore, the problem begins when it becomes challenging to determine where law starts, and culture ends, or vice versa.¹² The second aspect is the relationship between the law and the patriarchal Nigerian society that sees women as inferior.¹³ The third aspect is the pluralistic relationship and nature of the law that reinforces confusion and uncertainty, particularly with regards to women's human rights protection.¹⁴

From the above, a correlation between the forms of oppression that women in Nigeria experience and the dysfunctional legal relationships is clear. A significant question to ask would therefore be whether law and specifically human rights, can adequately respond and speak to disabled women's experiences and lived realities. By asking this question, I draw attention to the idea that few studies have paid enough attention to the relationship that exists between law and the oppression that women face, mainly when this oppression manifests as sexism and disability discrimination simultaneously in Nigeria. Engagements have mostly focused on the oppression that manifests as sexism and disability discrimination as separate issues.

9 See generally eg HI Bazza 'Domestic violence and women's rights in Nigeria' (2009) 4 *Societies Without Borders* 176; S Williams 'Nigeria, its women and international law: Beyond rhetoric' (2004) 4 *Human Rights Law Review* 230; and Durojaye 'Woman but not human.' (n 4) 198.

10 C Onyemelukwe 'Intersections of violence against women and health: Implications for health law and policy in Nigeria' (2016) 22 *William & Mary Journal of Women and the Law* 611.

11 See generally eg Durojaye 'Woman but not human' (n 4); Williams (n 9) 229; and J Dada 'Impediments to human rights protection in Nigeria' (2012) 8 *Annual Survey of International and Comparative Law* 67.

12 Williams (n 9) 229.

13 Makama (n 4) 115.

14 Durojaye 'Woman but not human ...' (n 4) 198.

Yet, reality shows that many women in Nigeria have sustained injuries as a result of sexist oppression and have become disabled.¹⁵ Anecdotal and scholarly reports of, for instance, brutal acids,¹⁶ burning oil¹⁷ attacks on women is proof of how sexist oppression is disabling. This assertion is valid mainly when the sexist oppression manifests as domestic violence, female genital mutilation (FGM), harmful widowhood rites and can potentially end in physical, sexual and psychological disabilities.¹⁸ These examples demonstrate the link between sexist oppression and its disabling implications, although investigations in this regard are rare. Thus, it is possible to link sexist oppression that sometimes manifests as gender and sexual violence to severe physical and mental-health disorders, as well as physical and psychological impairments.¹⁹

Despite the preceding revelation, the lived realities and experiences of the disabled woman have remained largely silenced and ignored because I argue, her lived experiences do not seem to fit neatly into any of the dominant feminist and disability legal and human rights narratives. On the one hand, disability narratives tend to favour men with disabilities. This situation is the result of patriarchal culture and the masculine hegemony, which bestows certain privileges on men in Nigeria in general. On the other hand, given the existence of the socially constructed institutions and cultures that are already prejudicial towards women, the feminist narrative in Nigeria is geared towards focusing on non-disabled women in general, without focusing specifically on or with little regard for the issues facing disabled women.

The law and specifically the liberal human rights framework as literature find establishes neat categories.²⁰ With such categorisation, the law demands that one must choose between being a woman (identity category) and being disabled (identity category). The disabled woman is to claim rights either as a 'woman' or as 'disabled', but not as both simultaneously. Yet, the 'disabled' woman has trouble choosing one of

15 See generally eg Onyemelukwe (n 10) 614.

16 I Eze-Anaba 'Domestic violence and legal reforms in Nigeria: Prospects and challenges' (2007) 11 *Cardozo Journal of Law and Gender* 25.

17 *Mary Sunday v Nigeria 2018 (ECOWAS Community Court of Justice)*. The victim was brutally attacked by her fiancé who is/was a police officer. During a disagreement, the perpetrator had poured hot oil on the victim

18 HI Bazza 'Domestic violence and women's rights in Nigeria' (2009) 4 *Societies Without Borders* 176; AA Abayomi & KT Olabode 'Domestic violence and death: Women as endangered gender in Nigeria' (2013) 3 *American Journal of Sociological Research* 55 at 56. M Owojuyigbe et al 'Female genital mutilation as sexual disability: Perceptions of women and their spouses in Akure, Ondo State, Nigeria' (2017) 25 *Reproductive Health Matters* 80 at 81. A Idowu 'Effects of forced genital cutting on human rights of women and female children: The Nigerian situation' (2008) 12 *Law Democracy and Development* 116.

19 Human Rights Council *Thematic study on the issue of violence against women and girls and disability: Report of the Office of the United Nations High Commissioner for Human Rights* 30 March 2012 (A/HRC/20/5) para 27.

20 J Ramji-Nogales 'Undocumented migrants and the failures of universal individualism' (2014) 47 *Vanderbilt Journal of Transnational Law* 703.

these established identity categories. This trouble emerges because the 'disabled' woman does not necessarily fall and cannot neatly fit herself into the 'I am a woman' or an 'I am a disabled person' identity categories. Categories that law and specifically the human rights framework has neatly created, without in the process silencing herself completely. Unfortunately, because she does not neatly fit into the human rights categories, she is labelled deviant and denied protection.²¹ Consequently, the 'disabled' woman's actual lived reality and experience of oppression and discrimination remain hushed and silenced in Nigeria's liberal legal and human rights framework that defines violations of rights by treating disability and sex/gender as entirely separate categories.

2 Understanding disability: Who is the disabled woman in Nigeria?

The question we need to ask is: Who is a 'disabled' woman, and how is disability understood in the legal and human rights framework in Nigeria? By asking this question, I draw attention to the Nigerian legal framework's definition of the disabled woman as 'born and essentialist'. I elaborate on the dominant approaches to understanding disability to expose the problem that the Nigerian legal framework's definition of the disabled woman as 'born and essentialist' creates.

When it comes to defining disability as well as determining who qualifies as a disabled person, the concept of disability has been dominated by the controversial medical versus social debate. Underlying this debate is the question of whether it is the body that disables the disabled woman or whether it is the society that disables her. The argument that a woman is 'disabled by her society' is unwelcome in Nigeria,²² mainly because of the apparent disregard of the social dimensions of disability.²³

2.1 The disabled woman understood from the medical-religious perspective in Nigeria's legal framework

The concept of disability as a medical-religious problem is prevalent in Nigeria. On the one hand, as in Western cultures, disability is

21 M Pavan Kumar & SE Anuradha "'Nonconformity incarnate': Women with disabilities, "gendered" law and the problem of recognition' (2009) 44 *Economic and Political Weekly* 38.

22 V Umeasiegbu & D Harley 'Education as a tool for social justice and psychological wellbeing for women with disabilities in a developing country: The challenges and prospects in Nigeria' (2014) 14 *The African Symposium* 121.

23 As above.

predominantly understood from a medical perspective in Nigeria.²⁴ According to this dominant understanding, disability is a product of a medical diagnosis.²⁵ It refers to body variations, impairments, bodily flaws or failures. On the other hand, inspired by the medical understanding, it is still common in Nigeria to view disability in superstitious, cultural and religious terms.²⁶ The explanations given for disability rely on the traditional and religious beliefs of Yoruba folktales and the Bible.²⁷ Swain and French describe the connection between disability and impairment and sin or wrongdoing in biblical injunctions.²⁸ The biblical injunctions related to healings and cure of sick and impaired persons confirm this point;²⁹ reinforcing the medical-religious relationship. Perhaps, it is this relationship that Betcher aptly describes as a lay imitation of the church.³⁰ Nigerians view disability as a fundamental flaw that is a direct consequence of perceived evil, punishment for specific misconduct and misbehaviour.³¹ The religious and traditional explanations ascribed to disability are not surprising considering that religion is an essential part of Nigeria's culture and Nigerians are generally extraordinarily religious and traditional.³² Consequently, underlying this twin understanding is the central premise that disability is an unfortunate consequence of biology and a personal tragic occurrence simultaneously.³³

- 24 AI Ofuani 'The right to economic empowerment of persons with disabilities in Nigeria: How enabled' (2011) 11 *African Human Rights Law Journal* 642. In my opinion, Nigerians have been socialised from birth to think of disability from a medical perspective. I acknowledge other definitions, explanations and understandings given to disability including the economic perspective, the minority group perspective, the universalist perspective, the Nordic relational perspective, the capabilities perspective amongst others. However, I have tried to focus on the understandings common to the Nigerian context and disability scholarships that focus on Nigeria.
- 25 BA Areheart 'Disability trouble' (2011) 29 *Yale Law and Policy Review* 348.
- 26 In my opinion, Nigerians have been socialised from birth to think of disability from a religious point of view. Scholars that have made this same point include: Umeasiegbu & Harley (n 22) 121; and E Etieyibo & O Omiegbe 'Religion, culture and discrimination against persons with disabilities in Nigeria' (2016) 5 *African Journal of Disability* 3. As I will show, this religious perspective shares a relationship with the medical perspective, also a dominant perspective in Nigeria.
- 27 J Swain & S French 'There but not for fortune' in J Swain & S French (eds) *Disability on equal terms* (2008) 8.
- 28 As above.
- 29 An example in the Bible that is (mis)interpreted to possibly corroborate this point includes: Luke 5; 17-26 among other verses.
- 30 S Betcher 'Monstrosities, miracles and mission: Religion and the politics of disablement' in C Keller et al *Post-colonial theologies: Divinity and Empire* (2004) 82.
- 31 K Olaiya 'Commodifying the sacred beatifying the abnormal: Nollywood and the representation of disability' (2013) 7 *The Global South* 151.
- 32 DU Asue 'Evolving an African Christian feminist ethics: A study of Nigerian women' (2010) 2 *International Journal of African Catholicism*. Asue in this study discuss the linkages of religion to culture, describing Nigerians as extremely religious and traditional.
- 33 Areheart (n 25 above) 349. Areheart makes similar arguments in BA Areheart 'When disability isn't "just right": The entrenchment of the medical model of disability and the Goldilocks dilemma' (2008) 83 *Indiana Law Journal* 185 at 186.

This twin understanding of disability, prevalent in Nigerian society, is reinforced in its law.³⁴ The 1993 Nigerians with Disability Decree (NWDD), for instance, inspired mainly by the medical perspective, restricts the definition of disability to the functional condition and ability of the body.³⁵ A 'disabled person', according to this 1993 Decree, is:

a person who has received a preliminary or permanent certificate of disability to have a condition which is expected to continue permanently or for a considerable length of time which can reasonably be expected to limit the person's functional ability substantially, but not limited to seeing, hearing, thinking, ambulating, climbing, descending, lifting, grasping, rising, any related function or any limitation due to weakness or significantly decreased endurance so that **he** cannot perform **his** everyday routine, living and working without significantly increased hardship and vulnerability to everyday obstacles and hazards.³⁶

The essentialist undertones in the NWDD are evident in the foregoing definition. First, this definition exposes the medical reasoning that forms the basis of many social-welfare laws on disabled persons in Nigeria. This reasoning reinforces the archaic idea that disabled persons are the objects of welfare, health and charity, rather than the subjects of legal rights.³⁷ Also, the fact that the Decree invokes the need for medical intervention to be certified 'disabled' is worrying.³⁸ This worry is apparent, because, with such requirement, the medical understanding of disability becomes limiting in its scope, encouraging 'biological determinism'.³⁹ 'Biological determinism' according to Areheart, denotes the idea that genetics determines individual development.⁴⁰ Therefore, biological determinism exposes a significant problem of essentialism.⁴¹ The problem with this kind of essentialist understanding of disability lies in its total reliance on a medical condition, without considering the role that society and culture play in disabling people.⁴²

Apart from the 1993 NWDD, the essentialist undertones can be identified in the fact that disability is missing as a prohibited ground for discrimination in section 42 of the 1999 Constitution of the Federal Republic of Nigeria (Nigerian Constitution).⁴³ Literature abounds that

34 Ofuani (n 24) 642.

35 Nigerians with Disability Decree of 1993 (NWDD).

36 Emphasis added, NWDD sec 3.

37 This reasoning is birthed from a medicalised view of disability. See; DFID Scoping studies 'Disability issues in Nigeria' (2008) www.ucl.ac.uk/lcccr/downloads/scoping_studies/dfid_nigeriareport (accessed 16 July 2020).

38 As above secs 3-4.

39 Areheart (n 25) 350; 355.

40 As above.

41 PA Cain 'Lesbian perspective, lesbian experience and the risk of essentialism' (1994) *Virginia Journal of Social Policy and the Law* 47.

42 Areheart (n 25) 358.

43 The Constitution of the Federal Republic of Nigeria of 1999 (the Nigerian Constitution) secs 42(1) and 42(2).

corroborates this oversight.⁴⁴ Arguably, this oversight links to the emphasis on the medical understanding of disability that focuses on biological determinism. This section also depicts a formalistic approach to the prohibited grounds of discrimination that is particularly problematic for the disabled woman. This assertion is evident in *Festus Odafe & Others v Attorney-General of the Federation & Others*.⁴⁵ This case involved the realisation of the rights of persons living with HIV-AIDS (PLWHA). The court had to decide whether, regarding section 42, the applicants had been discriminated against by prison workers and inmates. In reaching its decision, the court applied a narrow and restrictive interpretation. It found that the right to non-discrimination, as enshrined in section 42(1) of the Nigerian Constitution, did not cover discrimination because of illness, virus or disease.⁴⁶ Consequently, the court decided that the applicants did not qualify for freedom from discrimination because health status is not a ground covered in the section.⁴⁷

Notwithstanding, scholars have argued for a purposive interpretation of this section.⁴⁸ In the spirit of purposive interpretation, some scholars have read the phrase '*the circumstances of his birth*' in section 42(2) to include disability.⁴⁹ Using the example of the involuntary sterilisation of adolescent girls with intellectual and developmental disabilities, for instance, Ofuani has argued that the sterilisation of adolescent girls based on their disability is an infringement of section 42(2).⁵⁰ In other words, the author has used section 42(2)'s reference to the '*circumstances of his birth*' to argue that the involuntary sterilisation of adolescent girls with intellectual and developmental disabilities is a discriminatory act. However, there is a different and more common understanding of this phrase. Even Durojaye and Owwoeye note that this phrase is rare in the non-discrimination provisions of most constitutions in Africa.⁵¹ The phrase addresses explicitly discrimination targeted at children because of their parentage or because of conception out of wedlock.⁵²

Even if we read disability into this phrase as suggested, which is not necessarily wrong, it represents an essentialist definition. This essentialist definition limits disability to merely a consequence of the *circumstances of*

44 See generally: N Umeh 'Reading disability into the non-discrimination clause of the Nigerian constitution' (2016) 4 *African Disability Rights Yearbook* 73; Durojaye & Owwoeye (n 4); I Imam & MA Abdulraheen Mustapha 'Rights of people with disability in Nigeria: Attitude and commitment' (2016) 24 *African Journal of International and Comparative Law* 440.

45 *Festus Odafe and others v Attorney General and others* Suit No FHC/PH/CS/680/2003.

46 As above.

47 As above.

48 Durojaye & Owwoeye (n 4) 76.

49 Emphasis added. See generally: Ofuani (n 24) 553.

50 Ofuani (n 24) 553.

51 Durojaye & Owwoeye (n 4) 76.

52 As above.

his birth when it is clear that one cannot limit disability in this way. Besides, the exclusionary male pronoun used in the phrase makes one doubt whether this section covers the disabled female and her intersectional reality.

2.2 The disabled woman understood from the social perspective in Nigeria's legal framework

As a counter response to the medical-religious views would be the social approach. The investigation of the social aspects of disability is necessary for Nigeria, where this perspective is yet to be welcomed or firmly established.⁵³ The argument that disabled women in Nigeria are 'disabled by society' lies at the heart of the social understanding of disability.⁵⁴ Being disabled by society suggests that the oppression faced by disabled women is not merely the consequence of bodily injury, but is an outcome of a social structure that is unable to respond to differences and variations in the human body. Essentially, this social understanding is a critique of the medical-religious view that blames the disabled woman for her disability.

However, despite its wide popularity, the social understanding of disability has been heavily criticised. I discuss two main criticisms here. First, the social model overemphasises the idea that it is the society that disables, without acknowledging the complexities of disabled peoples' lives. Such an understanding of disability fails to recognise the relevance of impairment and pain in the lives of disabled women in Nigeria. It overlooks and disregards the role that impairments play in contributing to disabled women's social disadvantages. In elaborating upon this critique, Shakespeare emphasises such an understanding's deliberate effort to disregard the vital role that impairments play in the lives of disabled women, either as personal experience or as a cause of the disadvantage.⁵⁵ The attempt to ignore impairment by proponents of the social understanding has been deliberate because to admit impairments is to concede that disability is solely about the body's deficiency. According to Shakespeare, the social interpretation of disability deliberately ignores pain because to confirm pain would be to endorse the argument that disability is indeed solely about physical limitations.⁵⁶

Second, the social lens to understanding disability places too much emphasis on the social context, without acknowledging the benefits of medical care and specific impairment-oriented responses. The notion that

53 See generally, Umeasiegbu & Harley (n 22) 121. Ofuani (n 24) 641. Umeh (n 44) 55.

54 T Shakespeare & N Watson 'The social model of disability: An outdated ideology' (2002) 2 *Research in Social Science and Disability* 9 at 12 & 13. Areheart makes similar arguments (n 33) at 189.

55 Shakespeare & Watson (n 54) 5.

56 T Shakespeare 'Critiquing the social model' in EF Emens & MA Stein (eds) *Disability and equality law: The library of essays on equality and anti-discrimination law* (2016) 69.

people with impairments are impaired solely by society, in Shakespeare's opinion, is not necessarily true,⁵⁷ because, even while removing social barriers, the impairment may still be challenging. Shakespeare's point that attempts to eliminate social barriers should not be to the detriment of medical or clinical interventions is valid.⁵⁸ It is right because a disabled woman not only experiences discrimination but is also hugely affected by the limits that are imposed on her by her impairment. Besides, critics have warned that interpretations drawn from the social understanding of disability suggest an attempted denial of the impaired bodies or minds of disabled women in a desperate attempt to seek equality with non-disabled people at all costs. This point underlies Shakespeare's observation that people are not only disabled by society alone but also by their bodies.⁵⁹

Until recently, the only specific legislation that addressed disability rights in Nigeria was the NWDD.⁶⁰ Arguably, one can read the social or right-based understanding of disability in section 57(b) of the recently enacted the Discrimination Against Persons with Disabilities (Prohibition) Act, 2018 (Disability Act).⁶¹ Section 57(b) provides a definition for the term 'disability' to include: 'long term, physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder full and effective participation in society on an equal basis with others.'⁶² With this definition, there appears to be an acknowledgement of the role that the Nigerian society and culture play in disabling people. However, in a completely contradictory fashion, the Act reverts to defining *persons with disabilities* in line with the medical understanding of disability just like the 1993 NWDD quoted above.⁶³ Like the 1993 NWDD, this 2018 Act requires a medical certificate to be certified 'disabled'.⁶⁴ With such a requirement, biological determinism is emphasised in a manner that invalidates a social and human rights definition of disability.

The drafters' intention for a contradictory twin definition of disability is not clear and explicitly stated in the 2018 Disability Act. However, what is clear, is that the Act's position is dissimilar to the stance of the Convention on the Rights of Persons with Disabilities (CRPD) where its drafters simply acknowledge disability as an evolving term.⁶⁵ Also, the Act's medical definition of *persons with disabilities* is unlike the CRPD's

57 Shakespeare (n 56) 72.

58 Shakespeare (n 56) 72.

59 As above.

60 See the NWDD of 1993. See also Ofuani (n 24) 642 making the same point. There is now a 2018 Disability Rights Act that has been enacted into law to protect the rights of disabled persons in Nigeria

61 Sec 57(b) 2018 Discrimination Against Persons with Disabilities (Prohibition) Act, 2018 (Disability Act) (date accessed 30 September 2020).

62 Section 57(b) 2018 Disability Act.

63 Secs 3 & 4 NWDD

64 Section 57(a) 2018 Disability Act. See generally, AE Arimoro 'Are they not Nigerians? The obligation of the state to end discriminatory practices against persons with disabilities' (2019) 19 *International Journal of Discrimination and the Law* 89 at 91 & 97.

65 The Preamble to the Convention on the Rights of Persons with Disabilities (CRPD).

social and human rights perspective.⁶⁶ Nevertheless, the essentialist undertones in this 2018 Act is evident in its language. Section 1 of the 2018 Disability Act, for instance, provides that ‘a person with disability shall not be discriminated against on the ground of *his* disability by any person or an institution in any manner or circumstance whatsoever’.⁶⁷ At face value, the use of the term ‘a person with a disability’ as it appears in the Act gives the impression of a ‘false universal’ disability experience for all disabled persons. This assumption of a ‘false universal’ disability experience in itself is particularly problematic for the disabled woman. This problem arises because such false universal disability experience assumes that all disabled persons share similar encounters. Yet, this is not necessarily true. A ‘false universal’ disability experience does not necessarily contemplate the complexity and intersecting experiences of a disabled woman who could potentially experience discrimination on more than just her disability or sex as separate grounds but both grounds simultaneously.

Even more disturbing is the Act’s use of the male pronoun *his* for a twofold reason. One, as earlier indicated, just like the 1993 NWDD, the exclusionary male pronoun as used in this legislation makes one question whether the legal protections provided include the disabled woman. Two, the exclusionary male pronoun as used in this legislation, exposes how the male experience usually presented as the ‘universal’ disability experience, ignores the complex and intersectional experiences of the disabled woman in Nigeria.⁶⁸

2.3 The disabled woman understood from an interactive and intersectional perspective in Nigeria’s legal framework

The previous analysis is significant as it proves that understanding disability is a complicated matter, especially in Nigeria. Yet, how societies divide bodies is vital to what it means to be human.⁶⁹ So far, we have shown two characteristics of essentialism evident in the Nigerian legal framework. The first is biological determinism that rests on the medical understanding of disability. The second is a false universal disability experience that rests on both the medical and social perspectives. Although both sides disagree vehemently on how ‘disability’ is to be defined. There still appears to be consensus by proponents on each side of ‘a false universal’ disability experience. As Shakespeare has shown, the medical versus social understanding of disability debate merely shifts the attention

66 Art 1 CRPD.

67 Sec 1 2018 Disability Act. Emphasis added. The use of the pronoun *his* reflects the gender bias already inherent in the document. How such a document intends to protect disabled women given such bias is debateable.

68 I Truscan & J Bourke-Martignon ‘International human rights law and intersectional discrimination’ (2016) 16 *The Equal Rights Review* 105.

69 H Meekosha & R Shuttleworth ‘What is so critical about critical disability studies’ (2009) 15 *Australian Journal of Human Rights* 53.

from one extreme assumption to another equally extreme notion.⁷⁰ For example, on the one hand, disability is equated with dependency, invalidity and tragedy. On the other hand, disability manifests as social oppression, social relations and social barriers. In other words, it moves the perception of disability as caused by biological or natural defects to seeing it as something that has nothing to do with individual bodies or brains.

Therefore, the problem starts where there is a dominant tragic perception of disability in law that singlehandedly attempts to explain disability. This assertion is particularly true in Nigeria where law and specifically human rights would like us to believe that disability is just a medical and religious matter. Be that as it may, the reliance on a single approach to understanding disability has encouraged essentialism.⁷¹ Essentialism, according to Grillot, assumes that there is a disabled person's encounter that can be explained individually from other characteristics that the disabled person carries and embodies.⁷² Her explanation describes how this essentialist understanding presupposes that a disabled person's encounter is a stable one, one with a clear and constant meaning, through time, space, and different historical, social, political, and personal contexts.⁷³ The perceived need to define what the disabled experience is, has prompted the stripping away of identities such as sex, gender, sexuality and race with the presumption that these individual identities can be separated or fragmented

However, using the experiences of African American women, Crenshaw introduced 'intersectionality',⁷⁴ as a way to criticise the essentialist problem of antidiscrimination law including Nigeria's law that refuses to contemplate the disabled woman's intersectional identity. In the next section, drawing from an intersectional lens, I demonstrate, how the identity categories of womanhood and disability that a disabled woman embodies are unstable and fluid unlike the essentialist approach that law and human rights adopt,

70 T Shakespeare *Disability rights and wrongs revisited* (2014) 30.

71 T Shakespeare (n 56) 72.

72 T Grillot 'Anti-essentialism and intersectionality: Tools to dismantle the master's house' (1995) 10 *Berkeley Women's Law Journal* 19.

73 As above.

74 For a detailed discussion on intersectionality, see K Crenshaw 'Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics' (1989) *University of Chicago Legal Forum* 139 at 151.

3 As a woman: Womanhood as a form of oppression in Nigeria

I have established who the disabled woman is and the essentialist understanding of disability that Nigeria's legal and human rights framework upholds. In this section, I continue with the question: Who is a disabled woman in Nigeria? This question demonstrates the complexities that result from the intersecting identities that the disabled woman embodies. Specifically, the disability analysis as used here complicates and expands identity, showing how a woman can represent multiple subject positions and embody several identity categories. To do this, I interrogate the social realities and identities that the disabled woman embodies. I focus on the way society constructs meanings to the identity categories that a disabled woman displays and how they become signifiers of oppression. Thus, using the interrogation of identity categories that the disabled woman represents, I show how individuals have multiple and intersecting identities.

Women have multiple identities. These identities mean that the situations and forms of oppression that women suffer are different and countless.⁷⁵ A woman's identity is crucial to her sense of self as it forms her lived reality. A woman is therefore not just a woman and, if this is so, as Wing rightly illustrates, it will be hypocritical for any woman to attempt to forgo any part of her identity.⁷⁶ She describes the impossibility of subtracting identity parts.⁷⁷ Using Wing's approach, it will be impossible to ask the disabled woman, for instance, to pretend to be only a woman and not disabled, or disabled and not a woman in Nigeria. If this is so, we need to describe the multiple identities that the disabled woman embodies and interrogate how these identities reinforce her lived reality and the oppression that she faces daily in Nigeria.

First, the disabled woman in Nigeria manifests as a woman.⁷⁸ The cogency of this argument is undeniable, despite legitimate concerns about the strength and ability of disability to strip an individual of her gender.⁷⁹ The disabled woman's positioning determined by the identity categories of

75 A Silvers 'Reprising women's disability: Feminist identity strategy and disability rights' (2013) 13 *Berkeley Journal of Gender Law and Justice* 81.

76 AK Wing 'Violence and accountability: Critical race feminism' (2000) 1 *Georgetown Journal of Law and Gender* 98.

77 As above.

78 The analysis of the identities that a disabled woman in Nigeria embodies as done here is not in any way to suggest that these identities can be fragmented but rather to argue otherwise. This argument is made in a way that demonstrates how the identities that the disabled woman carries, and its resultant oppressions are multiple and intersecting in nature in Nigeria.

79 T Shakespeare 'Disability, identity and difference' in C Barnes & G Mercer (eds) *Exploring the divide* (1996) 94. Shakespeare in this article imaginatively describes the susceptibility of disabled women to be de-sexed.

being disabled at the same time as being a woman raises the question of which identity category is the more determining identity. In other words, the problem is which identity category defines the common denominator and which identity category becomes the qualifier.⁸⁰ Legitimate concerns exist about whether a disabled woman is truly a 'woman'. There are doubts about the disabled woman's womanhood and humanity because of her disability.⁸¹ Doubts manifest because of the wrong perception of the disabled woman as less of a human being and a woman. This perception occurs because the disabled woman does not on account of her disability, meet the feminine and traditional ideals and expectations of what it means to be a woman in Nigeria.

I argue that the disabled woman is first and foremost 'woman' and that, as Garland-Thomson has discussed, to be 'woman' in sexist societies such as Nigeria is disabling.⁸² In making this argument, I must first acknowledge a possible objection to this argument, namely to confirm a woman's oppression or claim that 'women are disabled' is to ignore women's agency and ability to negotiate and resist oppression in Nigeria. While this objection has some truth, it does not remove the patriarchal and oppressive tendencies that are closely attached to the definition of a woman that such an argument exposes.⁸³

3.1 Womanhood as a form of oppression: As an inferior identity in Nigeria

From her birth, for instance, a woman has ascribed the identity category 'woman' which is regarded as an inferior and oppressed identity, particularly when compared to the male identity in Nigeria. As confirmation of this argument, Izugbara notes how most Nigerian cultural and religious values are sexist,⁸⁴ a result of the different and inferior values placed on a female body as opposed to one identified as male.⁸⁵ In most Nigerian cultures, the female child is socialised from birth to believe that she is not only different from, but also inferior and subordinate to, the male child.⁸⁶ On the one hand, the female child learns weakness and fragility.⁸⁷ Her fragility is reflected in the mothering and nurturing roles that she then

80 E Kim 'Minority politics in Korea: Disability, interraciality, and gender' in E Graham et al (eds) *Intersectionality and beyond, law, power and the politics of location* (2009) 232.

81 Shakespeare (n 79) 94.

82 R Garland-Thomson 'Integrating disability transforming feminist theory' (2002) 14 *National Women's Studies Association Journal* 1 at 6. This idea was originally from I Young in 'Throwing like a girl and other essays in feminist philosophy and social theory' (1990) 153. Garland-Thomson's quote is actually paraphrased. The original quote reads 'women in sexist societies are physically handicapped'.

83 PA Cain 'Feminism and the limits of equality' (1989) 24 *Georgia Law Review* 808.

84 CO Izugbara 'Patriarchal ideology and discourses of sexuality in Nigeria' (2004) *Africa and Regional Sexuality Resource Centre* at 7, 9 & 23.

85 Izugbara (n 84) 10, 13 & 15.

86 Izugbara (n 84) 10, 15 & 28.

87 Izugbara (n 84) 15 & 28.

acquires from the society. On the other hand, the man learns aggression and strength and to exhibit superiority over the woman.⁸⁸

Besides, scholarship has accurately equated womanhood to disability. A crucial aspect of being female, as far as Morris is concerned, is being weak and dependent, characteristics that are usually synonymous with depictions associated with the disabled.⁸⁹ The differences that women supposedly exhibit are perceived as departures from the male standard and interpreted as types of disabilities.⁹⁰ For example, the oppression that women suffer is usually linked to their supposed and perceived physical, intellectual, and psychological differences and abnormalities, when compared to the male norm.⁹¹ These perceived differences that women embody are usually portrayed in a disabling manner, for instance, as irrationality, hysteria, emotional and physical weakness and are automatically equated with and interpreted as inferiority and inadequacy.

Unfortunately, these kinds of (mis)interpretations reinforce the oppression that women suffer by attributing disability to them. To be labelled female or disabled suggests weakness and passivity, which are characteristics that the disabled woman unfortunately inherits.⁹² Thus, the inferior identity category of 'woman' can easily be equated with and is equivalent to the disability identity, considering that inferiority is a variant of disability and disabling.⁹³

3.2 Womanhood as a form of oppression: As a patriarchal defined identity in Nigeria

Patriarchal notions confirm the origins of the 'woman' identity category as inferior and oppressed.⁹⁴ The forms of oppression that women face are a direct result of the assumptions and meanings that have been ascribed to their bodies by male oppressors.⁹⁵ Harmful colonial, cultural and religious practices, which accord an inferior status to women, theorists agree, worsen inferior meanings ascribed to the woman's body.⁹⁶ One early description of 'woman', for instance, can be traced to biblical times, with

88 As above.

89 J Morris 'Gender and disability' in Swain J et al (eds) in *Disabling barriers – Enabling environments* (1993) 88.

90 Baynton (n 2).

91 As above.

92 M Fine & A Asch 'Disabled women: Sexism without the pedestal' (2014) 8 *The Journal of Sociology and Social Welfare* 237.

93 Garland-Thomson (n 82) 6.

94 G Mkhize 'Problematising rhetorical representations of individuals with disability – Disabled or living with disability?' (2015) 29 *Agenda* 133 at 134.

95 As above.

96 Theorists that have made this argument include: Williams (n 9) 229; AU Iwobi 'No cause for merriment: The position of widows under Nigerian law' (2008) 20 *Canadian Journal of Women and Law* 37; Durojaye 'Woman but not human ...' (n 4) 176 & 191; and Durojaye & Owoye (n 4) 70.

the creation of woman (Eve) as the helpmeet of man (Adam).⁹⁷ The (mis)interpretations that scholarship has often attributed to this biblical passage often justifies the idea that women are the weaker sex and inferior to men. Such (mis)interpretations underlie the view of women as minors or even less than human in Nigeria.⁹⁸ The 'woman' identity category has, therefore been subject to patriarchal definitions, where men define what it is and mean to be a woman. One would therefore be right to speculate that perhaps women in Nigeria have been unable to determine their definitions of what it means to be a woman because the man's foot is frequently on her throat.⁹⁹

Durojaye also confirms how the sexist or patriarchal meaning attributed to the female body reinforces the oppression that women suffer in the Nigerian society.¹⁰⁰ This insight validates the correlation between the inferior female identity and the reality of oppression in Nigeria.¹⁰¹ The flawed identity ascribed to women is what arguably rationalises their unfavourable legal treatment. Evidence demonstrates how the oppressive acts meted out to female bodies, like disabled bodies, are endorsed by cultural stories and the representation of women as inferior and unruly.¹⁰² The prevalence and gravity of oppression, such as the practice of FGM in Nigeria, is a case in point. The FGM practice occurs because of representations of women's bodies as unruly and in need of sexual control. By undergoing FGM, parts that cause sexual pleasure for women are removed and 'controlled' in the name of preventing sexual promiscuity, ensuring docility as well as total submission to the husband.¹⁰³ Unfortunately, this practice's potential to render some women 'asexual' and sexually passive or inactive becomes evident. Such sexual control resulting from FGM can therefore be said to be similar to the asexuality label usually imposed on disabled women.

From the above, one would be right to assert that to be female is a source of oppression to women.¹⁰⁴ This oppression could manifest as

97 Genesis 2 vs 18, 22 King James Version (KJV) of the Bible.

98 Makama (n 4) 115.

99 The phrase *a man's foot in the woman's throat* is indicative of how women are perceived to be subordinate to men, men are regarded and treated as superior to women. See generally EC Dubois et al 'Feminist discourse, moral values, and the law – A conversation' (1985) 34 *Buffalo Law Review* 11 at 74; 75. See also PA Cain 'Feminism jurisprudence: Grounding the theories' (1989) 4 *Berkeley Journal of Gender, Law and Justice* 191 at 193.

100 Durojaye 'Woman but not human...' (n 4) 176.

101 See generally HI Bazza 'Domestic violence and women's rights in Nigeria' (2009) 4 *Societies Without Borders* 175 at 176; Williams (n 9) 230; and Durojaye 'Woman but not human...' (n 4) 176.

102 V McLean 'Why the inflation in legislation on women's bodies' (2012)14 *European Journal of Law Reform* 312 at 321.

103 A Idowu 'Effects of forced genital cutting on human rights of women and female children: The Nigerian situation' (2008) 12 *Law Democracy and Development* 111 at 116.

104 Mkhize (n 94 above) 134. Generally, sex/impairment are perceived as biological traits while gender/disability are socially constructed. However, even this is not clear-cut, there are interactions and intersections.

sexism or disability discrimination and, in most cases, as both at the same time. Gender-based oppression and violence identified globally as the primary causes of death and disability for women between the ages of 16 and 44 validate this point.¹⁰⁵ This observation is undoubtedly correct in Nigeria, where exhaustive documentation reveals the severity of gender-based exploitation that women suffer just because they are women.¹⁰⁶

Underlying the argument that to have a 'woman' identity category in Nigeria is to be oppressed is the notion that one is not necessarily born a woman, but one becomes a woman. This point is similar to DeBeauvoir's remark that one is not born but instead becomes, a woman.¹⁰⁷ She suggests that it is not necessarily physical characteristics that make one male (able-bodied) or female (disabled). In other words, it is societal constructions that ascribe to one an identity of femaleness or maleness, where the former signifies weakness and by extension disability, and the latter represents strength and by extension ability. By implication, although an individual is born with female biological characteristics, becoming a woman is a socially constructed identity category.

Some feminist scholars have invoked the idea that the identity category of woman is problematic.¹⁰⁸ This problem stems from the sexist and patriarchal meaning that the woman identity acquires, already discussed above. However, other feminists argue that it is not necessarily the meaning that society attributes to women's bodily roles that oppress women but the functions themselves.¹⁰⁹ They believe that the biological coalesces into the social, not because society imposes a meaning on a woman's body, but because the woman's body determines her social being. While this is a valid position, women's oppression is a reality, whether it is the meaning that society attributes to women's bodily roles or the roles

105 See generally Global Rights Kano Human Rights Network (KAHRN) & Bauchi Human Rights Network (BAHRN) 'State of human rights in northern Nigeria abridged version' (2011) 15; The United Nations Development Funds for Women on violence against women: 'Facts and figures' available at www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm (accessed 20 March 2020).

106 The gender-based oppression and exploitations that women experience have been widely documented in Nigeria. See generally for more discussions: Williams documents the oppressions that women experience in Nigeria Williams (n 9) 229; Durojaye makes the same point in Durojaye 'Woman but not human...' (n 4) 176; 198; and Durojaye & Owioye (n 4) 70. Other authors that underscore the oppressions that women in Nigeria experience include: EO Ekhaton 'Women and the law in Nigeria: A reappraisal' (2015) 16 *Journal of International Women's Studies* 285; NO Odiaka 'The concept of gender justice and women's rights in Nigeria: Addressing the missing link' (2013) 2 *Aje Babalola University: Journal of Sustainable Development Law and Policy* 191. Iwobi makes a similar argument, specifically with a case study of widows in AU Iwobi (n 96) 37.

107 Cain (n 83) 807. Cain quotes De Beauvoir and the reasoning posited here points to how 'woman' as an identity category is not necessarily about biological characteristics but a social constructed category.

108 L Alcott 'Cultural feminism versus post-structuralism: The identity crisis in feminist theory' (1988) 13 *Signs* 405 at 406 & 436.

109 S Mann & DJ Huffman 'The decentering of second wave feminism and the rise of the third wave' (2005) *Science and Society* 56 at 57.

themselves in Nigeria. In other words, the argument is that woman's sex or gender does not matter; what counts is the oppression.

Butler sums up the womanhood problem by explaining how the assumption that the concept of womanhood is a representation of a shared identity is troublesome.¹¹⁰ She explains that rather than being a stable concept, to be a woman is a site of trouble and oppression, even for those that the concept purportedly exists to protect.¹¹¹ This oppression and trouble stem from the fact that an individual is not only a woman; her identity is non-exhaustive because gender intersects with other identities. If this is so, it becomes difficult, if not impossible, to separate gender from the political and cultural intersections that invariably shape and sustain gender.¹¹² What the previous analysis and feminists' disagreements show is how, unlike what Nigeria's legal and human rights framework would like us to believe, the identity category of womanhood is complex, unstable and disabling.

4 As disabled: Disability as a form of gendered oppression in Nigeria

The next step in my argument demonstrates that the disabled woman manifests and carries a 'disabled' identity in Nigeria. I argue that to be a woman in Nigeria is to be 'disabled'. In making this argument, I draw on Garland-Thomson's claim that to be a woman in sexist and patriarchal societies such as Nigeria is to be disabled.¹¹³ This insight exposes disability as a form of gendered oppression. I acknowledge possible objections to the 'woman as disabled' argument.¹¹⁴ I will briefly summarise some of the possible objections. First, to state or insinuate that a woman in Nigeria is disabled is to place another oppressive identity (disability) on an identity that is already oppressed (womanhood). Thus, the possibilities of compounding the problem as opposed to proffering resolutions are valid.

110 J Butler *Gender trouble, feminism and the subversion of identity* (1990) 2-4.

111 Butler (n 110) 2.

112 Butler (n 110) 2-3.

113 Garland-Thomson (n 82) 6.

114 Some scholars disagree with the position that I share with Garland-Thomson on the grounds that to claim that women are disabled immediately suggests that I am assuming that disability is inherently negative. This kind of negativity, some might argue, could be viewed as an endorsement of the very dominant narrative that I intend to counter, namely, that disability is something that is inherently wrong with someone. In addition, it could be argued that this inherently negative notion of disability could be seen as countering the struggle of global disability activists who continue to lobby for disability pride. I acknowledge the merits of this objection. However, my argument does not intend in any way to undermine disability pride. My argument that 'women are disabled', in my view, is contextual and a true representation of the reality in Nigeria, which is what I want to highlight. The 'woman as disabled' argument exposes how Nigeria's legal and human rights architecture's treatment of disability and sex/gender as entirely separate identity categories is flawed. The need to recognise the interactions and intersections between the identity categories of sex/gender and disability is the object of the paper.

To claim that ‘women are disabled’ or that disability is a form of oppression on women is a way of invoking one oppressive system to deprecate individuals marked by another system of representation. This objection notwithstanding, this claim is valid considering the well-documented reality of women as victims of sexist and patriarchal oppression and their resulting disabling consequences in Nigeria.

Second, another objection could be that arguing that to be a woman in Nigeria is to be ‘disabled’ will obscure even more the different and specific experiences faced daily by women with impairments. While I agree that there might be some truth in this statement, I am centring the ‘disabled’ woman’s experience by arguing that to be a woman in Nigeria is to be disabled. The intention of the ‘woman as disabled’ argument is to counter the dominant narrative about what the disabled woman’s experience is or should be. This argument opposes the idea of disability as automatically equated with an ‘identity’, an injury or impairment. By making this argument, I, therefore, bring to the fore the lived realities of disabled women that the Nigerian legal framework fails to recognise. I question the dominant assimilationist and essentialist narrative of Nigerian law about the disabled woman.

4.1 Disability as a form of gendered oppression: Its definitions

Having acknowledged these objections, I proceed to reveal disability as a form of gendered oppression in Nigeria; I interrogate three aspects of disability, namely, its definition, its origins and its tendencies. First, the meaning of the term ‘disability’ is contentious. This contention is apparent because even the CRPD does not explicitly define disability.¹¹⁵ The progressive nature of the term is however acknowledged. To state that disability is a form of oppression on women in the first instance is reinforced by Kayess and French’s understanding of disability as oppression by social structures and practices.¹¹⁶ Their insight demonstrates disability as the oppression that works by denying or diminishing the individual’s personhood, citizenship and civic participation.¹¹⁷ This reasoning confirms the diminishing of the personhood of women as a reality in Nigeria. Evidence points to how women’s humanity is questioned, based on the gravity of the oppression meted out to them in Nigeria.¹¹⁸ This questioning of the humanity of women in Nigeria is, in my opinion, equal to what Quinn has identified a

115 Preamble to the CRPD.

116 R Kayess & P French ‘Out of darkness into light? Introducing the Convention on the Rights of Persons with Disabilities’ (2008) 8 *Human Rights Law Review* 1 at 5.

117 As above.

118 Durojaye ‘Woman but not human...’ (n 4) 176; 198.

'civil death'.¹¹⁹ This civil death phrase indicates the denial or loss of an individual's personhood. It is, in my opinion, as applicable to the woman as it is to disabled persons in Nigeria today. The gravity and prevalence of the oppression that women suffer daily in Nigeria is evidence enough.

Additionally, to have a 'disability' means having fewer, truncated and limited rights. This argument is in line with literature describing how historically, the usage of 'disability' justifies discrimination against, and the unequal treatment of groups considered as different.¹²⁰ This usage persists in Nigeria's legal narrative, where women are yet to attain full citizenship. The second-class citizenship commonly ascribed to women in Nigeria clearly illustrates this point.¹²¹ Such denial of women's citizenship validates women's disability in Nigeria, especially if it is true that disability is the direct opposite of citizenship.¹²² Equality and freedom determine the extent of one's autonomy and depend mostly on having a legal personality and citizenship status.¹²³ Therefore, where women lack legal personhood as do the disabled, the liberal vision of equality is untenable. This point is valid because a large part of achieving equality is heavily reliant on legal personhood.¹²⁴ It completely validates the argument that to be a woman is 'disabling' and that disability is a form of gendered oppression.¹²⁵ In making this point, I would use Grillot's disclaimer: saying that forms of gender and disability oppression are related does not necessarily mean that they are the same.¹²⁶

Nevertheless, the above usage and definition of 'disability' run contrary to the common understanding that persists today. Today, disability means having a form of physical, sensory, or cognitive impairment. Silvers describes how individuals in these very different conditions and with varying forms of injury are known and labelled as the 'disabled'.¹²⁷ However, this understanding in itself is insightful in exposing how labelling persons with physical, sensory and cognitive impairments as

119 G Quinn 'Reflections on the value of intersectionality to the development of non-discrimination law' (2016) 16 *The Equal Rights Review* 63 at 66. Quinn in the article traces the origin of the phrase 'civil death' to Blackstone.

120 For discussions on the usage of disability, see PE Kimani 'Blackness as disability' (2018) 106 *Georgetown Law Journal* 293 at 296. see also, Silvers (n 75) 92. Baynton (n 2) 33.

121 The common reference to women's *second-class citizenship* in Nigeria is captured by for example, Durojaye & Owoeye (n 4) 71. E Durojaye 'Substantive equality ...' (n 4). Durojaye 'Woman but not human...' (n 4) 176. Makama (n 13) 115.

122 T Shakespeare et al 'The sexual politics of disability: Untold desires' (1996) 200, 201. Baynton makes this point in Baynton (n 2) 33.

123 F Campbell 'Exploring internalized ableism using critical race theory' (2008) 23 *Disability and Society* 151.

124 M Freeman 'Measuring equality: A comparative perspective on women's legal capacity and constitutional rights in five commonwealth countries' (1990) 16 *Berkeley Women's Law Journal* 110 at 111.

125 Garland-Thomson (n 82) 6.

126 Grillot (n 72) 27.

127 Silvers (n 75) 92.

'disabled' introduces the notion that these groups of individuals, just like women are disqualified from protection by the law in Nigeria.¹²⁸

4.2 Disability as a form of gendered oppression: Its origins

Second, offering the claim that disability is a form of gendered oppression in Nigeria stirs up the contentious 'culture versus nature' arguments about the origins of disability. On the one hand, from the 'culture' perspective, disability, especially with regards to women, is viewed as a by-product of societal and cultural oppression. This position is consistent with the arguments of scholars such as Garland-Thomson, Wendell and Begum, who describe disability as merely a product of cultural diagnosis.¹²⁹ Wendell's accurate reminder emphasises disability as a narrative depicting the social and cultural oppression of the female body.¹³⁰ This body, according to Garland-Thomson, is portrayed as sick, flawed, crazy, ugly, abnormal, mad and maimed.¹³¹

In my view, this perspective is applicable in Nigeria, where there is significant evidence of how not conforming to accepted socio-cultural standards devalues and disadvantages the female body in such a way that it is automatically equated with or becomes a disabled body. Evidence shows that failure to conform to harmful cultural practices such as female genital mutilation (FGM) is potentially disabling.¹³² The FGM practice, for instance, involves the partial or complete mutilation of the woman's external genitalia meant for sexual enjoyment. This practice's tendency to reduce or limit women's ability to enjoy sex could result in permanent disability for women primarily because of the use of unsterile instruments amidst unsanitary circumstances.¹³³ Thus, scholarship linking the FGM practice to psychological impairment¹³⁴ as well as sexual disability¹³⁵ in Nigeria is accurate.

Further, authors' analyses and depictions of widows' experiences in Nigeria could be useful here.¹³⁶ In their descriptions of the horrors and oppression that widows encounter, scholars illustrate how most Nigerian

128 As above.

129 See generally Garland-Thomson (n 82) 4; N Begum 'Disabled women and the feminist agenda' (1992) 40 *Feminist Review* 70. Wendell makes similar arguments in S Wendell 'Towards a feminist theory of disability' (1989) 4 *Hypatia* 104; and S Wendell *The rejected body: Feminist philosophical reflections on disability* (1996) 12.

130 S Wendell 'Towards a feminist theory...' (n 129).

131 Garland-Thomson (n 82) 5.

132 M Owojuyigbe et al 'Female genital mutilation as sexual disability: Perceptions of women and their spouses in Akure, Ondo State, Nigeria' (2017) 25 *Reproductive Health Matters* 80 at 80-81.

133 As above.

134 Human Rights Council (n 19) para 27.

135 Owojuyigbe et al (n 132) 80-81.

136 See generally Durojaye 'Woman but not human ...' (n 4) 176; Iwobi (n 96); and U Eweluka 'Post colonialism gender customary injustice: Widows in African societies' (2002) 24 *Human rights Quarterly* 424.

cultural and religious values are sexist and oppressive to women. In making their arguments, these scholars importantly also expose the disabling oppressive nature of most Nigerian cultural and religious values, although hardly investigated as such. Iwobi rightly describes widowhood as a form of 'social death' in Nigeria.¹³⁷ According to him, widowhood strips women of their social status, and they experience severe oppression and stigma.¹³⁸

Following the same logic, if widowhood is a form of social death for women, this validates my argument that widowhood can also be a form of socio-cultural disability. This argument is valid, especially when one considers the dehumanising, oppressive practices and the resultant disabilities that a Nigerian widow suffers upon the death of her spouse. This dehumanisation of widows reinforces the idea and is proof that disability is a form of oppression experienced only by women in Nigeria. As indicated earlier, the woman gains value in most Nigerian cultures when she can perform the functions of a wife and mother. What this means is that upon the death of her husband, the widow is no longer able to fulfil her socially sanctioned wifely functions, she becomes 'disabled'. Her position is even worse if she has no male children. The woman is, therefore ascribed the disability status and stripped off her womanhood because of her inability to perform her social functions.

The loss of womanhood a widow endures is arguably similar to the loss experienced by the disabled woman. The widow's loss is because of the death of a spouse while a disabled woman, because of disability bears a similar loss. If as established above, the general social status accorded to women in Nigeria is one of inferiority and subordination, then it would be accurate to conclude that the public perception in patriarchal Nigeria is that being a woman is disabling. This deduction is correct, especially if we consider the arguments that rightfully regard inferiority and subordination as variations of disability. Disability, especially regarding women, is therefore not merely a question of medical health, genetics and sympathy, but instead a question of politics, power and the lack thereof in Nigeria.

On the other hand, the dominant premise of the 'nature' argument is the view that disability is the result of natural events. This argument suggests that disability is a product of medical diagnosis, and one is disabled because of a specific medical diagnosis. Proponents of the 'nature' argument might, therefore, vehemently disagree with such blunt and bold assertions that women in Nigeria are disabled. These assertions may offend particular feminist sensitivities and may appear to make light of the pain that is associated with a disability.

137 AU Iwobi (n 96) 44.

138 As above.

Interestingly, the dominant disability narrative in Nigeria is the nature argument. Abang, using the example of blindness, identifies five leading causes of this disability in Nigeria:¹³⁹ infections, cataracts, glaucoma, malnutrition and trauma.¹⁴⁰ His line of argument is also consistent with Smith's description of how preventable diseases, congenital malformations, birth-related incidents, physical injury and psychological dysfunction produce disability.¹⁴¹ Undoubtedly, the definition of disability here is, in many respects, a medical one.

Even if I follow the dominant nature approach to disability, at least three of Abang's leading causes of blindness, namely, malnutrition, trauma and infection, could also have their roots in cultural and unequal power explanations. It is, therefore misleading to limit the causes of blindness to genetics and medical factors. One might not necessarily be born malnourished, but malnourishment could be a result of several socio-cultural factors, including poverty and war. Also, domestic violence and rape could result in trauma triggering blindness. What is striking about this argument and supported by the United Nations (UN) and the World Health Organisation (WHO) is the social origins and constructions of disability.¹⁴²

4.3 Disability as a form of gendered oppression: Its tendencies

Third, disability as gendered reflects women's increased susceptibility to diseases and their disabling effects; evident in Nigeria. Smith has alluded to how poor maternal and neonatal care has played a considerable role in increasing the number of disabilities in women and infants in the country.¹⁴³ Child marriages prevalent in Northern Nigeria encourages early childbearing and is a significant cause of poor maternal care that could quickly develop into severe disabilities or death.¹⁴⁴ It is unsurprising that compared to other countries, Nigeria tops the rates of poor maternal care, meaning that according to Onyemelukwe, women are five times more likely to develop disabilities and in extreme cases, die.¹⁴⁵ While there are no available statistics on the actual numbers of women who develop disabilities as a result of poor maternal care in Nigeria, De Silva de Alwist describes how hormonal changes following childbirth coupled with other

139 TB Abang 'Disablement, disability and the Nigerian society' (1988) 3 *Disability, Handicap and Society* 72.

140 As above.

141 N Smith 'The face of disability in Nigeria: A disability survey in Kogi and Niger states' (2011) 22 *Disability, CBR and Inclusive Development* 36.

142 See generally World Health Organisation and the World Bank 'World report on disability' (2011) https://www.who.int/disabilities/world_report/2011/report.pdf?ua=1 (accessed 26 March 2020). Ribet make similar arguments emphasising the social origins of disability in Ribet (n 3) 176.

143 Smith (n 141) 36.

144 Onyemelukwe (n 10) 619.

145 As above.

factors trigger women's risk of depression.¹⁴⁶ This assertion is consistent with anecdotal evidence on the depression crisis in Nigeria.¹⁴⁷ Thus, women's increased risk of acquiring a disability when performing their functions as a wife and mother is evident.¹⁴⁸ Once disabled, the heightened vulnerability of women to increased discrimination and oppression amplifies the risk. Fine and Asch confirm the point by describing the increased exposure of women with disabilities to more significant harm,¹⁴⁹ not only because they are women but also because they are disabled.¹⁵⁰ Significant accounts describing the severe exploitation that disabled women experience as a result of their sex and their disability is enough evidence.¹⁵¹

At this juncture, I ask the question: What precipitates the increased susceptibility of women to disability? Literature is unanimous in linking poor healthcare to disability. Evidence shows how inadequate hygiene and health facilities in Nigeria cause infections that may result in disabilities. It is, therefore, valid to argue that preventing most disabilities could be through measures taken against malnutrition, environmental pollution, poor hygiene, inadequate prenatal and postnatal care, water-borne diseases and accidents of all types.¹⁵² Besides, studies describe how psycho-social conditions such as depression are more noticeable in women than men.¹⁵³ As earlier stated, De Silva de Alwis' description of how hormonal changes following childbirth trigger women's risk of depression is evidence enough.¹⁵⁴

Similarly, poverty links to disability in Nigeria.¹⁵⁵ Smith describes the relationship and interactions that exist between poverty and disability and shows how poor people become disabled simply because of issues such as poor nutrition and a dirty environment.¹⁵⁶ Disabilities may develop simply because poor people cannot afford to treat chronic diseases. In other words, poverty makes a person more susceptible to a disability, which in turn, reinforces and worsens poverty. Thus, the well-documented correlation between disability as both a cause and a consequence of

146 R de Silva de Alwis 'Mining the intersections: Advancing the rights of women and children with disabilities within an interrelated web of human rights' (2009) 18 *Pacific Rim Law and Policy Journal* 296.

147 O Sunday 'Nigeria suffers looming depression crisis' *OZY Nigeria* 22 November 2018 <https://www.ozy.com/around-the-world/nigeria-suffers-looming-depression-crisis/90613/> (accessed 6 November 2020).

148 N Groce 'Women with disabilities in developing world: Areas for policy revision and programmatic change' (1997) 8 *Journal of Disability Policy Studies* 178.

149 Fine & Asch (n 92) 237.

150 As above.

151 Begum (n 129) 70.

152 Smith (n 141) 36.

153 De Silva de Alwis (n 146) 296.

154 As above.

155 MA Haruna 'The problems of living with disability in Nigeria' (2017) 65 *Journal of Law Policy and Globalization* 103.

156 Smith (n 141) 36.

poverty is, therefore, undeniable. This situation worsens because poor people are more likely to endure human rights violations and are less likely to enjoy the guarantee of their rights in Nigeria.¹⁵⁷

If there is at least some truth in this well-established correlation, then the susceptibility of women to disability becomes even more evident. This correlation is valid mainly because poverty is gendered in Africa.¹⁵⁸ Thus, women in Nigeria are more likely to experience poverty which automatically increases their susceptibility to the oppression that quickly manifests as a disability. The ultimate result is that women's exposure to poverty disables and oppresses them, making them undeserving of human rights protection. Today in Nigeria, more than ever, we witness the feminisation of poverty,¹⁵⁹ because of the country's recent unfortunate rise as the poverty (disability) capital of the world.¹⁶⁰ Consequently, if it is possible to speak of the feminisation of poverty, then a feminisation of disability is to be expected in Nigeria. By this, I mean that women in Nigeria are more likely than men to develop disabilities because they are the least likely to have access to food, education and healthcare, the lack of which increases their vulnerability to disability.

Importantly, from a gender-based violence perspective, women are most likely to become disabled because of their vulnerability to sexist and gender-based violence in Nigeria's patriarchal society. Socio-economic oppression, unequal incomes, disproportionate caregiving responsibilities, domestic and sexual violence all increase women's susceptibility to disability and once disabled, amplifies the harm. Although disability in this regard is usually defined using the dominant nature and medical narrative, such linkages expose the social and cultural construction as well as the gendered and emergent nature of the disability.

From the above discussions, we can make a threefold conclusion. One, that given the correlation between poor healthcare, poverty and gender-based violence, on the one hand, and disability, on the other hand, as the literature has correctly established, disability is undeniably a form of oppression of women. Two, the essentialist assumption that there is a 'false universal' disability experience that rests on biological determinism is limiting. Three, the 'woman as disabled' argument counters this

157 E Brems & CO Adekoya 'Human rights enforcement by people living in poverty: Access to justice in Nigeria' (2010) 54 *Journal of African Law* 258 at 263.

158 E Kaka 'Poverty is a woman issue in Africa' (2013) 18 *Journal of Humanities and Social Science* 77.

159 K Boyne 'UN women: Jumping the hurdles to overcoming gender inequality, or falling short of expectations' (2011) 17 *Cardozo Journal of Law and Gender* 683. In this article, Boyne writes how the phrase 'feminization of poverty' originally coined by Pearce is used to depict women's disproportional susceptibility to poverty especially compared to men.

160 'Nigeria overtakes India as world's poverty capital' *Vanguard Newspapers* Nigeria 25 June 2018 <https://www.vanguardngr.com/2018/06/nigeria-overtakes-india-as-worlds-poverty-capital-report/> (accessed 14 March 2018).

essentialist argument pointing instead to an intersectional open-ended idea that disability is not about a woman having functional limitations alone (as crucial as that is). Still, this paper has demonstrated that 'disability' should include restrictions that are a consequence of patriarchal stereotypes, prejudices and attitudes as shown in the Nigerian situation. This assertion is valid considering the potential of harmful patriarchal stereotypes, prejudices and attitudes to turn a typical 'non-disabled' woman today to a potentially 'disabled' woman tomorrow. Viewed in this way, the interactions that exist between sexism and disability (discrimination) becomes significant.

5 Conclusion

In this article, I focused on answering the question: Who is the disabled Nigerian woman? By asking this question, I have drawn attention to the Nigerian legal framework's definition of the disabled woman as 'born and essentialist'. I elaborated on the dominant approaches to understanding disability as a way to expose the problems that the Nigerian legal framework's definition of the disabled woman has created. The above analysis has shown how such a definition of the disabled woman creates a problem of biological determinism and 'false universal' disability experience. Using the interrogation of identity categories that the disabled woman embodies, I have shown how individual identities are multiple and intersecting, unlike a false perception of identity. Law by making us believe that identity categories such as sex/gender and disability are biological realities fails to recognise that the identity categories that the disabled woman embodies, such as gender and disability, are socially constructed and signifiers of oppression.

The 'woman as disabled' argument exposes Nigeria legal and human rights architecture treatment of disability and sex/gender as entirely separate categories as well as law's emphasis and reliance on the rigid and essentialist disabled woman's identity category as faulty. This fault renders her voiceless resulting in increased exploitations and human rights violations. It is clear that to disregard the disabled woman perspective is misleading, considering the fluidity and instability inherent in identity categories of womanhood and disability in Nigeria. It might, therefore, be beneficial to define 'woman' as expansively as possible to include the disabled woman's perspective. In other words, if there is a real interest in protecting the human rights of women, an intersectional lens that considers the female disability experience as part and parcel of the female lived experience and reality in Nigeria is necessary.

Conclusively, I posit that mainly where it concerns women, Nigeria's legal and human rights framework can no longer afford to define violations of rights as if disability and sex/gender are entirely separate, rigid, monolithic and essentialist identity categories. Instead, there is a need to

consciously and proactively treat disability as inextricably and interactively linked to sex/gender and vice versa.