

Inclusion Matters: Access and Empowerment for People of All Abilities

By

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(Protocol)

Can you imagine that you're getting up in the morning with such severe pain which disables you from even moving out from your bed? Can you imagine yourself having a pain which even requires you to get an assistance to do the very simple day to day activities? Can you imagine yourself being fired from your job because you are unable to perform simple job requirements? And finally can you imagine your little child is crying for hug and you are unable to hug him due to the pain in your bones and joints?"¹

Introduction

I feel deeply honoured and privileged to be invited to deliver this Keynote Address. I would, therefore, like to thank the Network Advocacy for Persons with Visible Disabilities, who, on behalf of the Physically Challenged

¹ See Nael, World Disability Report, 2011, World Health Organisation, The World Bank p 2.

Community in Niger Delta organized the 4th NAPVID Rights Above Charity Lecture and also for honouring me this way.

Historically, people with disabilities have largely been provided for through solutions that segregate them, such as separate residential institutions and special schools. This was very rampant in Nigeria with people suffering from leprosy and skin diseases. Those with hearing disabilities were sent to special schools. That was when leprosy was considered incurable. Today, we are challenged by this historical fact. Leprosy is now curable. Each year the United Nations marks the International Day of Persons with Disabilities and announces a theme.² The theme for 2015 is: **Inclusion matters: access and empowerment for people of all abilities.**

There are also three sub-themes this year:

- Making cities inclusive and accessible for all
- Improving disability data and statistics
- Including persons with invisible disabilities in society and development.

² UN Themes for previous years include: 2014: Sustainable development: the promise of technology; 2013: Break barriers and open doors to realise an inclusive society for all; 2012: Removing barriers to create an inclusive and accessible society for all; 2011: Together for a better world for all: Including persons with disabilities in development; 2010: Keeping the promise: Mainstreaming disability in the Millennium Development Goals towards 2015 and beyond; 2009: Making the MDGs Inclusive: Empowerment of persons with disabilities and their communities around the world; 2008: Convention on the Rights of Persons with Disabilities: Dignity and justice for all of us; 2007: Decent work for persons with disabilities.

We intend to address the theme from two perspectives – access to infrastructure – economic and social - and empowerment by way of employment and provision of facilities. In doing this, we will advocate movement from exclusion to inclusion and from segregation to integration.

Generally, the annual theme provides a framework for considering how people with disability are excluded from society by promoting the removal of all types of barriers; including those relating to the physical environment, information and communications technology (ICT), or attitudinal barriers. This has been occurring since 1992 when the General Assembly proclaimed 3 December as the International Day of Persons with Disabilities.

Since 1945, various international, regional and national instruments have been used to promote the welfare of persons with disabilities and how the barriers can be removed. Various obligations have been placed on state parties to these international instruments while national laws have been used to strengthen these obligations. Over the years, the burden has been on public authorities.

However, celebrating **International Day of Persons with Disability**³ ought to be a collaborative effort involving public authorities, schools, organisations, community groups, businesses and individuals to help break

³ <http://www.idpwd.com.au/3-december/planning-your-event/> accessed on 21 November, 2015.

down disability barriers and celebrate abilities. This will raise awareness about disability issues and the promotion of human rights of all. Indeed, the International Year of Persons with Disabilities was celebrated in 1981 with numerous programmes including the First Founding Congress of Disabled People International in Singapore. In 1982, the General Assembly took a major step towards ensuring effective follow-up to the International Year by adopting, on 3 December 1982, the World Programme of Action concerning Disabled Persons. The Programme restructured disability policy into three distinct areas: prevention, rehabilitation and equalization of opportunities.

The annual observance of the International Day of Persons with Disabilities was proclaimed in 1992, by the United Nations General Assembly Resolution 47/3. The observance of the Day aims to promote an understanding of disability issues and mobilize support for the dignity, rights and well-being of persons with disabilities. It also seeks to increase awareness of gains to be derived from the integration of persons with disabilities in every aspect of political, social, economic and cultural life.⁴

In 1994, the United Nations General Assembly adopted the Standard Rules on Equalization of Opportunities for Persons with Disabilities which

⁴ <http://www.un.org/disabilities/default.asp?id=111> accessed on 21 November, 2015.

culminated in the Convention on the Rights of Persons with Disabilities in 2006.⁵

In the context of this year's theme, we will be examining how private organisations can be involved either by way of public-private-partnership (PPP) or corporate social responsibility inclusively⁶. We will also consider the role of labour institutions and organisations.

The Rights of Persons with Disabilities

One of the aims of platforms such as this is to highlight the rights of persons with disabilities. Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. With the awareness of their rights, such persons will not be discriminated against in society. We will consider the UN System and municipal laws.

a) The UN System

In the Declaration on the Rights of Disabled Persons, 1975⁷, the General Assembly of the United Nations took note of the pledge made

⁵ Hereinafter referred to as "the Convention".

⁶ <http://www.idpwd.com.au/theme/> accessed on 21 November, 2015

⁷ UN General Assembly Resolution 344 (XXX) of 9 December, 1975

by Member States, under the Charter of the United Nations of 1945 to take joint and separate action in co-operation with the Organisation to promote higher standards of living, full employment and conditions of economic and social progress and development; re-affirmed its faith in human rights and fundamental freedoms and in the principles of peace, of the dignity and worth of the human person and of social justice proclaimed in the Charter; recalled the principles of the Universal Declaration of Human Rights; the International Covenants on Human Rights; the Declaration of the Rights of the Child and the Declaration on the Rights of Mentally Retarded Persons, as well as the standards already set for social progress in the constitutions, conventions, recommendations and resolutions of the International Labour Organisation; the United Nations Educational, Scientific and Cultural Organization; the World Health Organization; the United Nations Children's Fund and other organizations concerned; recalled the Economic and Social Council resolution 1921 (LVIII) of 6 May 1975 on the prevention of disability and the rehabilitation of disabled persons and emphasized that the Declaration on Social Progress and Development has proclaimed the necessity of protecting the rights and assuring the welfare and rehabilitation of the physically and

mentally disadvantaged; proclaimed that disabled persons shall enjoy all the rights set forth in Declaration without any exception whatsoever and without distinction or discrimination on the basis of race, colour, sex, language, religion, political or other opinions, national or social origin, state of wealth, birth or any other situation applying either to the disabled person himself or herself or to his or her family. Such rights include:

- Disabled persons have the inherent right to respect for their human dignity.
- Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow-citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and full as possible.
- Disabled persons have the same civil and political rights as other human beings; paragraph 7 of the Declaration on the Rights of Mentally Retarded Persons applies to any possible limitation or suppression of those rights for mentally disabled persons.

Thus the UN has done a lot in this area beginning with 1945 Charter of the United Nations. Other than the above international instruments, the UN has adopted the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Discrimination Against Women; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families to the Convention on the Rights of Persons with Disabilities, New York, 13 December, 2006 (“the Convention”). As at 28 of September, 2015, 160 countries have signed the Convention and 158 have ratified it. Nigeria signed on 30 March, 2007 and ratified on 24 September, 2010.

The purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.⁸

⁸ See Article 1 of the Convention.

In addition there is the World Programme of Action concerning Disabled Persons, 1982 and the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, 1994 in influencing the promotion, formulation and evaluation of the policies, plans, programmes and actions at the national, regional and international levels to further equalize opportunities for persons with disabilities.

The adoption of the Convention is a recognition that disability is an evolving concept and that disability results from the interaction between persons impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others. The aim is to mainstream disability issues as an integral part of relevant strategies of sustainable development. Furthermore discrimination against any person on the basis of disability is a violation of the inherent dignity and work of the human person.

The Convention has fifty (50) Articles imposing several obligations on State Parties especially in relation to:

- General Principles – Art 3
- General Obligations – Art 4
- Equality and Non-Discrimination – Art 5

- Women with Disabilities – Art 6
- Children with disabilities – Art 7
- Awareness raising – Art 8
- Accessibility – Art 9
- Right to life – Art 10
- Equal recognition before the law – Art 12
- Access to Justice – Art 13
- Liberty and security of person – Art 14
- Freedom from torture or cruel, inhuman or degrading treatment or punishment – Art 15
- Freedom from exploitation, violence and abuse – Art 16
- Protecting the integrity of the person – Art 17
- Liberty of movement and nationality – Art 18
- Leaving independently and being included in the community – Art 19
- Personal Mobility – Art 20
- Education – Art 24
- Health – Art 25
- Habilitation and Rehabilitation – Art 26
- Work and Employment – Art 27

- Participation in political and public life – Art 29

For the purpose of this presentation, we will not focus on the position of state parties but the private sector, communities, schools, businesses and individuals.

These are international instruments that require domestication under section 12 of the 1999 Constitution. Even if they are not domesticated, Article 27 of the Vienna Convention on the Law of Treaties provides thus: “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”⁹

b) The Municipal System – Nigerian Constitution

There are various provisions in the Nigerian Constitution of 1999, as amended, that have bearings on the rights of persons with disabilities.

This can be found in the following provisions:

- i) Section 14(1) and (2) thus:

14. (1) The Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice.

(2) It is hereby, accordingly, declared that:

⁹ See also Art 3 of the ILC’s Articles on State Responsibility, 2001.

- (a) sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority;
- (b) the security and welfare of the people shall be the primary purpose of government: and
- (c) the participation by the people in their government shall be ensured in accordance with the provisions of this Constitution.

(ii) Section 17(1) and (2) thus:

17. (1) The State social order is founded on ideals of Freedom, Equality and Justice.

(2) In furtherance of the social order-

- (a) every citizen shall have equality of rights, obligations and opportunities before the law;
- (b) the sanctity of the human person shall be recognised and human dignity shall be maintained and enhanced;
- (c) governmental actions shall be humane;
- (d) exploitation of human or natural resources in any form whatsoever for reasons, other than the good of the community, shall be prevented; and

(e) the independence, impartiality and integrity of courts of law, and easy accessibility thereto shall be secured and maintained.

(3) The State shall direct its policy towards ensuring that-

(a) all citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment;

(b) conditions of work are just and humane, and that there are adequate facilities for leisure and for social, religious and cultural life;

(c) the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused;

(d) there are adequate medical and health facilities for all persons:

(e) there is equal pay for equal work without discrimination on account of sex, or on any other ground whatsoever;

(f) children, young persons and the age are protected against any exploitation whatsoever, and against moral and material neglect;

(g) provision is made for public assistance in deserving cases or other conditions of need; and

(h) the evolution and promotion of family life is encouraged.

iii) Section 33 (1) provides thus:

33. (1) Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.

iv) Section 34 (1) provides thus:

34. (1) Every individual is entitled to respect for the dignity of his person, and accordingly -

(a) no person shall be subject to torture or to inhuman or degrading treatment;

(b) no person shall be held in slavery or servitude; and

(c) no person shall be required to perform forced or compulsory labour.

v) Section 35 (1) provides thus:

35. (1) Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law -

v) Section 42 (1) and (2) provides thus:

42. (1) 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:-

(a) 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, religions or political opinions are not made subject; or

(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.

(2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

We must state however that sections 14¹⁰ and 17¹¹ of the Constitution are non-justiciable while sections 33, 34, 35 and 42 are

¹⁰ Dealing with The Government and the People.

¹¹ Dealing with Social Objectives.

justiciable. Like was done in the case of the Fiscal Responsibility Act, 2007 that has made section 16¹² of the Constitution justiciable, we urge the National Assembly to exercise its powers under Item 60 in the Exclusive Legislative List to promote the enforcement of sections 14 and 17 of the 1999 Constitution.

c) Discrimination Against Persons with Disabilities (Prohibition) Bill, 2011.

This is a Bill for an Act to enable full integration of persons with disabilities into the society and to establish the National Commission for Persons with Disabilities and vest the Commission with the responsibilities for their education, health care and protection.

According to the provisions of Article 4(1)(a) and (b) of the Convention, one of the obligations on the State Parties is to adopt appropriate legislative, administrative and other measures for the implementation of the rights recognized in the Convention. The Bill which has Eighteen (18) Parts is one of Nigeria's legislative and administrative measures for the implementation of the Convention and the Bill provides for:

- Prohibition of discrimination and harmful treatment – section 1
- Awareness – section 2
- Accessibility of Physical Structures – sections 3-12

¹² Dealing with Economic Objectives.

- Road, Sea, Railway, and Air Transportation – sections 13-15
- Right to First Consideration in queues and in emergencies – section 17-18
- Liberty – section 19
- Communal Life – section 20-21
- Right to Education – sections 22-25
- Healthcare – section 26-29
- Job Security – section 30
- Adequate Standard of Living and Social Protection – section 31
- Participation in Politics and Public Life – section 32
- Establishment, powers and functions of the Commission, among others – sections 33-34, 39-41.

There are similar laws in other jurisdictions¹³.

Sustainable Development Goals and Disability

During the 2012 United Nations Conference on Sustainable Development (Rio+20), Member States agreed to launch a process to develop a set of sustainable development goals (SDGs)¹⁴ to succeed the Millennium Development Goals (MDGs), whose achievement period concludes in 2015.

¹³ See the UK Equality Act, 2010

¹⁴ Also referred as Global Goals. There are 17 Goals.

The SDGs are to address all three dimensions of sustainable development (environmental, economic and social) and be coherent with and integrated into the United Nations global development agenda beyond 2015. The envisaged SDGs have a time horizon of 2015 to 2030.¹⁵

Disability is referenced in various parts of the SDGs and specifically in parts related to education, growth and employment, inequality, accessibility of human settlements, as well as data collection and monitoring of the SDGs.

The following Goals are relevant to the Convention and related instruments:

- **Goal 4** - ensure inclusive and equitable quality education and promotion of life-long learning opportunities for all.
- **Goal 8** - promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.
- **Goal 10** – reduce inequality within and among countries.
- **Goal 11** - make cities and human settlements inclusive, safe, resilient and sustainable.
- **Goal 17** - strengthen the means of implementation and revitalize the global partnership for sustainable development.

These Goals are also consistent with the theme and sub-themes for this year's International Day for Persons with Disabilities.

¹⁵ <http://www.un.org/disabilities/default.asp?id=1618> accessed on 23 November, 2015.

Inclusion Matters: Access and Empowerment of People of All Abilities

Near the start of the bus route I climb on. I am one of the first passengers. People continue to embark on the bus. They look for a seat, gaze at my hearing aids, turn their glance quickly and continue walking by. Only when people with disabilities will really be part of the society; will be educated in every kindergarten and any school with personal assistance; live in the community and not in different institutions; work in all places and in any position with accessible means; and will have full accessibility to the public sphere, people may feel comfortable to sit next to us on the bus.¹⁶

The Preamble to the Convention acknowledges that disability is an evolving concept and stresses that “disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others”. Disability is also part of the human condition. Almost everyone will be temporarily or permanently impaired at some point in life, and those who survive to old age will experience increasing difficulties in functioning. For instance, I never wore reading glasses until age 40; I played lawn tennis till age 60 when arthritis of the knee stopped me. Most extended families have

¹⁶ Abiya, World Disability Report, 2011, World Health Organisation, The World Bank p 2

a disabled member, and many non-disabled people take responsibility for supporting and caring for their relatives and friends with disabilities.

According to Chan and Zoellick¹⁷

More than one billion people in the world live with some form of disability, of whom nearly 200 million experience considerable difficulties in functioning. In the years ahead, disability will be an even greater concern because its prevalence is on the rise. This is due to ageing populations and the higher risk of disability in older people as well as the global increase in chronic health conditions such as diabetes, cardiovascular disease, cancer and mental health disorders.

Across the world, people with disabilities have poorer health outcomes, lower education achievements, less economic participation and higher rates of poverty than people without disabilities. This is partly because people with disabilities experience barriers in accessing services that many of us have long taken for granted, including health, education, employment,

¹⁷ Margaret Chan and Robert B Zoellick, *ibid* xi. Chan is the MD of the WHO while Zoellick is the President of the World Bank Group

and transport as well as information. These difficulties are exacerbated in less advantaged communities.

Happily, responses to disability have changed over time prompted by the awareness of even those with disabilities that there is ability in disability. At governmental level, policy has shifted towards community and educational inclusion. Among the major outcomes of the Decade of Disabled Persons was the adoption, by the General Assembly, of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities in 1993¹⁸. Although not a legally binding instrument, the Standard Rules represent a strong moral and political commitment of Governments to take action to attain equalization of opportunities for persons with disabilities. The Rules serve as an instrument for policy-making and as a basis for technical and economic cooperation.

The Standard Rules consists of 22 rules summarizing the message of the World Programme of Action. The Rules incorporate the human rights perspective which had developed during the Decade. In this year of Inclusion, my position is that all governments should adopt the Standard Rules on the Equalization of Opportunities for Persons with Disabilities. These Rules were precursors to the Convention.

¹⁸ See UNGA Resolution A/RES/48/96 of 4 March, 1994

The Theme and sub-themes of this year, will be examined further in the succeeding parts of this presentation.

The Concept of Public-Private-Partnership (PPP)

In the past, it was thought that it was the sole responsibility of governments worldwide to provide infrastructure. Many reasons accounted for this. Essentially it was thought that the capital outlay for the provision of infrastructure was high for the private sector to bear and that public utilities (infrastructure) were public goods. Today, we are witnessing a worldwide revolution in the provision of infrastructure. This is essentially because of the paradigm shift – movement from the provision of infrastructure by government to the private sector and the governments only creating an effective regulatory environment. In other words, movement from government as a provider to government as a regulator.

Infrastructure services are critical inputs in the provisions of goods and services and significantly affect the productivity, cost and competitiveness of the economy. Policy decisions regarding their provision and sector development have ramifications throughout the economy.¹⁹ In the same vein, the provision of infrastructure increases the access of all especially

¹⁹ J L Guash *Granting and Renegotiating Infrastructure Concessions: Doing it Right* (The World Bank, Washington DC, 2004) ix. See also I N Kessides, *Reforming Infrastructure: Privatisation, Regulation, Competition* (The World Bank, Washington DC 2004) xi.

when their design, construction, operation and maintenance take into account the interests of persons with disabilities.

Governments worldwide have been involved in one form of privatization or the other – restructuring and reforming of a particular sector of the economy on the one hand and the restructuring and reforming of the economy as a whole. The debate has been what should public sector do and what should the private sector do. Some other time, the debate is what kind of partnership between the two is ideal.

Public-Private-Partnership (PPP) means several things to several people including governments. Indeed the boundaries between the public and private sectors are the most important political issues of our time. There is hardly a discourse today on the provision of infrastructure without reference to deregulation or their provision by the private sector. It is safe to assert that the primary responsibility to provide infrastructure rests on the public sector and that more than 70% of the responsibility still rests on the public sector. Consequently, the public entities must continue to make budgetary allocation for the provision of infrastructure.

A public private partnership or PPP refers to a contractual agreement formed between a government organ (Ministry, Department or Agency - MDAs) and

a private sector entity that allows for greater private sector participation in the delivery of public infrastructure projects.²⁰ For the purpose of this transaction, a special purpose vehicle (SPV) is usually incorporated. In its incorporation, one key issue to be determined is whether it is going to a project finance with limited or no recourse. In other words, is it going to be an off-balance sheet transaction or some with limited recourse to the balance sheet. In some countries involvement of private financing is what makes a project a PPP.

PPPs can be used for both economic and soft infrastructure. According to the Black's Law Dictionary,²¹ 'infrastructure' means 'the underlying framework of a system especially public services and facilities (such as highways, schools, bridges, sewers and water systems) needed to support commerce as well as economic and residential development' while the Chambers English Dictionary²² defines 'infrastructure' as the 'inner structure, structure of the component parts: a system of communications and services as backing for military, commercial, etc, operations'. Other references to 'infrastructure' includes 'public utilities' and 'public goods'. The former relates to a set of services provided by various organisations that are used

²⁰ See section 1 of the Infrastructure Concession Regulatory Commission Act, 2005

²¹ Bryan A Garner *Black's Law Dictionary*. 9th Edn, West Publishing Co, St Paul, MN, 2004, p 851.

²² Catherine Schwarz, *et al Chambers English Dictionary*. 7th Edn, Chambers, Edinburgh, 1992 p 732. See also section 36 of the Infrastructure Concession Regulatory Commission Act, 2005.

in everyday life by the public. These include airports, roads, bridges, canals, dams, electricity, energy, parks, ports, rail, sewage, solid waste, water and telecommunications. In the case of the latter, scholars are quick to assert that a public good (or collective good) is a good that is non-rivalled and non-excludable. This means, respectively, that the consumption of the good by one individual does not reduce availability of the good for consumption by others, and that no one can be effectively excluded from using the good²³. The description of public goods is generally the same with that of 'public utilities'. In some contexts, therefore, 'infrastructure', 'public utilities' and 'public goods' can be used interchangeably.

It is in the area of the procurement of public services or utilities that the concept is more pronounced. While there could be some consensus that tangible assets such as bridges, roads, railways and tunnels are infrastructure, others would cast the net much wider. Thus, a distinction is often drawn between 'economic' and 'social' infrastructure.²⁴

²³ http://en.wikipedia.org/wiki/Public_good accessed on November, 2015. For current definitions of public goods see any mainstream microeconomics textbook, eg.: R Hal Varian, *Microeconomic Analysis* (3rd edn W W & Company, Inc, Norton 1992); Mas-Colell, et al, *Microeconomic Theory*. (Oxford University Press, Oxford 1995); and H Gravelle and R Rees, . *Microeconomics* (Pearson Education, Harlow 2004)

²⁴ Darrin Grimsey and Mervyn K Lewis, *Public Private Partnerships* (Edward Edgar Publishing Ltd, Cheltenham 2007) 20; See generally *Reforming Public Institutions and Strengthening Governance: A World Bank Strategy* (The World Bank, Washington D.C 2000); and Ashoka Mody (ed), *Infrastructure Delivery Private Initiative and the Public Good* (Economic Development Institute, The World Bank, Washington, DC, 1996).

In terms of infrastructure delivery, it is now recognised that there are four categories:

- a) Hard economic infrastructure
- b) Soft economic infrastructure
- c) Hard social infrastructure
- d) Soft social infrastructure

Economic infrastructure is considered to provide key intermediate services to business and industry and its principal function is to enhance productivity and innovative initiatives. 'Hard Economic' facilities include roads, highways, bridges, ports, railways, airports, public transport, telecommunications, electricity and gas generation, transmission and distribution. 'Soft Economic' infrastructure encompasses vocational training, financial facilities for business (payments, credit, equity, derivatives, venture capital, etc), the facilitation of research and development and technology transfer, and organisations encouraging export orientation and productive cooperation among individuals and entities. Notably, many of these are privately owned and operated, some provided by individual institutions (e.g. credit rating organisations) and others by groupings of private entities forming cooperative networks (e.g. payments system).

Social infrastructure is seen as providing basic services to households. Its main role is to improve the quality of life and welfare in the community, especially among those of limited means. 'Hard social' facilities embrace hospitals, education and training buildings, water storage and treatment facilities, housing, sewerage and drainage pipes, child care and aged care institutions and prisons. Again, some of these are provided by private sector bodies (e.g private hospital and private schools). 'Soft social' infrastructure takes the form of the social security system, a range of community services, and environmental protection agencies. Many of these services are viewed by the community as 'essential' and tend to have the characteristics of 'merit goods' in that they are regarded as socially desirable.²⁵

For our purpose, the main argument about infrastructure, public utility, public good is who should provide it – government or the individual or a private entity. Public utilities are often natural monopolies because the infrastructure required for producing and delivering a product such as electricity or water is very expensive to build and maintain. As a result, they are often government monopolies, or if privately owned, the sectors are specially regulated by government. Developments in technology have eroded some of the natural monopoly aspects of traditional public utilities. For instance,

²⁵ Grimsey & Lewis (n 18) 6

electricity generation, electricity retailing, telecommunication, some types of public transit and postal services have become competitive in some countries and the trend towards liberalisation, deregulation and privatisation of public utilities is growing, but the network infrastructure used to distribute most utility products and services has remained largely monopolistic²⁶. This was alluded to by Mody thus:

Government-run monopolies were once justified by the low production costs associated with large-scale operations and by the need to protect consumers from voracious private monopolies. But now there is growing recognition that private initiative – disciplined in part by competitive market forces – often has the upper hand in efficiently delivering infrastructure. While the government as a provider is being outmoded (especially in sectors such as telecommunications and electric power) the government as a regulator – protecting the public interest – is acquiring a more prominent role.

As a concept, PPP has assumed many meanings and models. In its strict construction, it may mean that there is really no partnership with the MDAs except that at the end of the project circle, it reverts to the MDAs or that the

²⁶ <http://en.wikipedia.org/wiki/Public_utility> accessed on 4 November, 2015.

contribution of the MDA is the provision of the land for the facility or the facility itself.

PPPs are used around the world to build new (greenfield) and upgrade existing public facilities/infrastructure (brown field) such as schools, hospitals, roads, power plants, waste and water treatment plants and prisons, among other things. A greenfield investment refers to the construction and sometimes operation of a new project, for example a new independent power plant or a school. Compared with traditional procurement models, the private sector assumes a greater role in the planning, financing, design, construction, operation and maintenance of public facilities. In this regard, risks are allocated between the MDA and the private sector. Risk associated with the project is transferred to the party best positioned to manage it.

The thrust of this presentation is that government should be a regulator while the private sector should be the provider of infrastructure. The key areas for persons with disabilities are education, health care and employment. Education in Nigeria is at various levels – local, state and federal government. As a deliberate policy, PPP can be used to provide this infrastructure by examining the design, construction, operation, financing

and maintenance of such infrastructure.²⁷ The risks associated with all these are shared between the public sector and the private sector as illustrated in the various models.²⁸ The models include:

Design-Build (DB) or Build-Transfer – Under this model, the MDA contracts with a private partner to design and build a facility in accordance with the requirements set by the MDA. After completing the facility, the MDA assumes responsibility for operating and maintaining the facility.

Design-Build-Maintain (DBM) – This model is similar to the DB model except that the private sector also maintains the facility while the MDA retains responsibility for operations.

Design-Build-Operate (DBO) – Under this model, the private sector designs and builds the facility. Once the facility is completed, the title for the new facility is transferred to the MDA while the private sector operates the facility for a specified period. This model is also referred to as **Build-Transfer-Operate (BTO)**.

Design-Build-Operate-Maintain (DBOM) – This model combines the responsibilities of design-build procurements with the operations and

²⁷ In countries like the UK, US and Australia, PPP is being used to build schools. The major difference between PPP in roads and PPP in Education is that in the case of roads, tolls are collected whereas in Education, there are no tolls instead the government, through budgetary allocations spreads payment over a period.

²⁸ See HK Yong (ed) *Public-Private Partnerships Policy and Practice* (Commonwealth Secretary 2010) 19 and Grimsey & Lewis (n 18) 10.

maintenance of the facility for a specified period by the private sector partner. At the end of that period, the operation of the facility is transferred back to the MDA. This model is also referred to as **Build-Operate-Transfer (BOT)**. Because BOTs were initially the most common form of private greenfield investments in infrastructure, the term tends to be used as the generic label for privately owned and operated infrastructure projects financed on a non-recourse basis under a concession-type arrangement. Under such an arrangement, a private company or consortium typically forms a project company based on the right to build or rebuild a facility and to operate it for a fixed time period. The company recoups the investment and operating costs as well as an annual rate of return exclusively from the revenue stream generated by the project through charges levied on the service user(s), without any resource to the balance sheets of sponsors or the host government. In the case of a service like Education, the public sector pays for the service and spreads the capital cost over the term of the project. This means that the private sector (usually an SPV) secures funding from equity investors and from senior lenders such as banks or the capital market and

repays them over the life of the project from the money received from the public sector.²⁹

Build-Own-Operate-Transfer (BOOT) – In this model, the MDA grants a franchise to a private sector to finance, design, build and operate a facility for a specific period of time. Ownership of the facility is transferred back to the MDA at the end of that period.

Build-Own-Operate (BOO) – The MDA grants the right to finance, design, build, operate and maintain a project to a private entity, which retains ownership of the project. Under this model, the private entity is not required to transfer the facility back to the MDA. One area where this can be used is in the educational sector. Indeed what the missionaries did in Nigeria is akin to this. What PPP is doing now is to formalize this practice.

Design-Build-Finance-Operate-Maintain (DBFO, DBFM or DBFO/M) – Under this model, the private sector designs, builds, finances, operates and/or maintains a new facility under a long term lease. At the end of the lease term, the facility is transferred to the MDA. In some jurisdictions, this model covers both BOO and BOOT.

²⁹ Nicholas Avery (ed) *Public-Private-Partnerships: A Practical Analysis* (Globe Business Publishing Limited 2006)
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Rehabilitate-Operate-Transfer (ROT) – Strictly ROT is not a greenfield project but is included in the list because the form of contracts are similar to the other forms of contract. A concession can be in the form of ROT where the private sector is granted the right to rehabilitate any existing facility, operate for a period and transfer back to the original grantor.

Service Contract – Private companies are employed for certain narrowly defined and specified tasks. This model is very popular in the provision of service, for example, billing services, cleaning, distribution, catering, etc. The MDA contracts with a private entity to provide services the MDA previously performed. The service contract is paid for in a fixed fee by the MDA. The degree of risk transferred to the private sector is limited to the service task.

Management Contract – Nigerians will recall the management contracts entered into in respect of the Nigeria Airways, Nigerian Railways Corporation and Nigerian Telecommunications Ltd. At the moment, the Transmission Company of Nigeria Plc (TCN) is under a management contract. Although they may appear unpopular, a management contract differs from a service contract in that the private entity is responsible for all aspects of operations and maintenance of the facility under contract. The management risk is transferred to the private sector. A key to success in this regard is setting

parameters for measuring performance with appropriate bonuses or penalties. Similarly monitoring is a key element to success. Payment is usually a fixed fee.

Lease – This is where the MDA grants a private entity a leasehold interest in an asset. The private partner operates and maintains the asset in accordance with the terms of the lease but the asset is owned by the MDA. The MDA is responsible for financing new investment and the private sector for working capital and maintenance. The private sector is also responsible for collecting revenue, that it uses to fund its operations while more risk is allocated to the private sector.

Concession – Concession does not involve divestiture. This is so because the MDA merely grants a private entity exclusive rights to operate and maintain an asset over a long period of time in accordance with performance requirements set forth by the MDA. The private sector is responsible for new investment for a period of time defined in the concession agreement. The MDA retains ownership of the original asset, while the private sector retains ownership over any improvements made during the concession period. The concession agreement is usually structured such that the private entity recoups the investment/improvements within the duration of the concession. The concession agreement should spell out clearly what happens to the

residual value of such investment/improvements – should it be retained by the MDA or it reverts to the private entity or the private entity is paid the residual value of the investment/improvements?

What should be stressed at the design, construction, financing, operations and maintenance stages of any infrastructure, is that the special needs of persons with disabilities should be taken into account. This will ensure that the theme and sub-themes of this year are attained. We must state that when private financiers commit funds under PPPs for infrastructure, they need to be convinced that a viable revenue stream can be tapped either from the users or from public entities or a combination of both.³⁰

Corporate Social Responsibility

Corporate Social Responsibility (CSR), also referred to as corporate conscience, corporate citizenship or responsible business is a form of corporate self-regulation integrated into a business model. It is a form of business practice that involves participating in initiatives that benefit society as a whole instead of focusing on profit motives. This is a marked departure from the stakeholder theory that states that a business enterprise should be run in the interest of shareholders. Key areas of concern are the

³⁰ Grimsey & Lewis (n 18) 64. Project Viability is the key to a PPP project – economic viability, financial viability, technical viability, political and social viability, legal and administrative viability and environmental viability. See Denton Wilde Sapte LLP(ed) *Public Private Partnerships* (2nd Edn Euromoney Institutional Investor Plc 2006) 29

environment, the well being of employees, the community and civil society in general. The key drivers are the shrinking role of government from being a provider to a regulator; demands for greater disclosure; needs for higher charitable contributions and the need to provide for society at large.

In the United Kingdom, section 172 of the Companies Act, 2006 expressly deals with the duty to promote the success of the company thus:

- (1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to –*
- (a) the likely consequences of any decision on the long term,*
 - (b) the interests of the company's employees,*
 - (c) the need to foster the company's business relationships with suppliers, customers and others,*
 - (d) the impact of the company's operations on the community and the environment,*
 - (e) the desirability of the company maintaining a reputation for high standards of business conduct; and*
 - (f) the need to act fairly as between members of the company.*

However, under the Companies & Allied Matters Act, 2004, there is no such provision. The government should through regulations and guidelines direct corporate entities to be socially responsible. Furthermore, the Corporate Affairs Commission, the Securities & Exchange Commission, the Central Bank of Nigeria and other regulators should ensure that all codes on corporate government and other guidelines impose a duty on business to be socially responsible. In doing this they should take into account the special needs of persons with disabilities.

Private entities should be given the incentives to establish foundations aimed specifically at catering for the needs of persons with disabilities. Such incentives, can be tax holidays or specially controlled waivers. Communities, churches, private organisations and businesses have a role to play in this regard.

Labour Law and Policy

In the context of this year's theme, the Ministry of Labour and Productivity has a major role to play in terms of empowerment and the provision of data and statistics.³¹ The Labour Laws should take into account the working conditions of persons with disabilities.

³¹ The National Bureau of Statistics should liaise with the Ministry of Labour & Productivity in this regard.

It is noteworthy that the National Employment Policy Review of Nigeria has provisions on the needs of persons with disabilities. It provides, amongst others, that public and private employers of labour shall provide people with disabilities flexibility in the scheduling and other aspects of their work – giving them sufficient time to prepare for work, to travel to and from work and to deal with health concerns. Organisations that comply with 3% employment quota for persons with disabilities should be recognized with awards at the highest level of government while a *Hall of Shame* should be created for serial defaulters.

The National Policy also stressed job retention for victims of work-related accidents rather than severance pays. Similarly compensation for such victims should focus on job retention and not severance pay and Social Insurance Fund should focus on compensation of the previously paid salary in case the disability has reduced capacity of the employee. The employer should re-train and re-assign the employee in a job within the organization while the Insurance Fund pays any differential in salary.

More specifically the National Employment Policy provides thus:

- a) Various channels should be used to demonstrate the potentials of persons with disabilities and promote employment for them across the country.

- b) Disability and Special Job Fairs should be used to promote self-employment strategies and employment potentials among persons with disabilities in Nigeria.
- c) Improve the quality and availability of disability data and statistics in Nigeria which is essential for the formulation of disability-sensitive development policies and programmes across the country. Such a database will also create easy access for potential employers to ensure easy job placement for persons with disabilities.
- d) Tax of employers with disabilities should be retained by the organization as an incentive to help in implementing their disability friendly policies and programmes.
- e) Persons with disabilities should be placed in internship programmes with employers for 2-6 months period and receive stipends from government during such programmes.

Concluding Remarks

The thrust of this presentation is that over the years, it has been the sole responsibility of governments to provide for persons with disabilities. It is now clear that governments alone cannot do this. Consequently, we must involve the private sector either by way of a PPP or corporate social responsibility.

At the federal level, there is a National Policy on PPP, published by the Infrastructure Concession Regulatory Commission (ICRC). States are urged to have similar laws that provide the legal and regulatory framework for PPP transactions.

We are not saying that governments, as state parties to the Convention should abdicate their roles. We are not saying that the Discrimination Against Persons with Disabilities (Prohibition) Bill 2011 should not be passed. What we are saying is that in addition to the obligations on the state under the Convention and the law, the provisions of the needs of persons with disabilities should be a collaborative effort involving the private organisations, businesses, schools, and communities. The level of awareness should be raised that there has been movement from segregation to integration and from exclusion to inclusion. By so doing, the abilities of all will be appreciated.

While the Discrimination Against Persons with Disabilities (Prohibition) Bill 2011 is laudable, we urge the National Assembly to transform sections 14 and 17 of the 1999 Constitution, as amended, under Item 60 of the Exclusive Legislative List to justiciable provisions.

If the design, construction, operation, financing and maintenance of our roads, churches, schools, building, offices, among others, take into account

the special needs of persons with disabilities, there will be access to all persons with abilities. Furthermore if our labour laws and policies take into account the special needs of persons with disabilities, such persons will be empowered. The Ministry of Labour and Productivity should liaise with the National Bureau of Statistics to ensure that we have accurate statistical data on persons with disabilities.

Remember, we are all either temporarily or permanently impaired.

Remember, that there is ability in disability.

Thank you for your attention and God bless.

**BEING THE KEYNOTE ADDRESS DELIVERED AT THE
INTERNATIONAL DAY FOR PERSONS WITH DISABILITIES:
BENIN CITY, EDO STATE: 3 DECEMBER, 2015**