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The Voiceless Woman: Countering Dominant Narratives concerning Disabled Women in Nigeria

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Supervisor: Professor Karin van Marle

Declaration

I declare that this thesis 'The Voiceless Woman: Countering Dominant Narratives concerning Disabled Women in Nigeria' which I hereby submit for the degree of Doctor of Philosophy (DPhil) at the Faculty of Law, University of Pretoria is my own work and has not previously been submitted by me for a degree at this or any other tertiary institution.

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Dedication

To the Almighty God, the greatest human rights advocate for giving me a voice and equipping me to use it. The inspiration of and grace for the thesis belongs to God…. *Psalm 147:10.*

To my Mum, who taught me 'everything' … including that cerebral palsy does not define me.

To Tioluwalase and Tirenioluwa … We are earnestly waiting for your manifestation.

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Indeed, there is purpose in pain and great strength in struggle.

To write this thesis was no easy feat and would not have been possible without people that inspired and guided me throughout the journey and process.

I remember vividly the conversation with my supervisor when I decided as a 'disabled' woman to write about disability. This is particularly because of the immense discomfort I felt with the label 'disability' and the negative connotations it carries. I experienced many mixed emotions and a great measure of internal and external struggles throughout the journey. An example of an academic struggle was the validity of the thesis particularly the objectivity versus the subjectivity of this academic exercise. I thank my supervisor, Prof Karin van Marle who steered me on throughout the journey. Your invaluable teachings, guidance, feedback and encouragement is greatly appreciated. I am immensely grateful for the time you took each time to read draft upon draft. Thank you.

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Thank you, 'Mum', for teaching me that cerebral palsy does not define me, believing in me, praying for and encouraging me to continue to soar. I love you.

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To my daughter, Temi. Thank you for your inspiration on a daily basis. ‘Mummy this PhD is stressing you out’ You understood the sacrifices. Your dad and I love you so much.

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Finally, I thank the Almighty God, my best friend and the greatest human rights advocate for giving me a voice and equipping me to use it. The inspiration of and grace for the thesis belongs to God…. *Psalm 147;10.*

I am a woman, I am human, I have a voice and I refuse to be silenced so help me God!

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List of acronyms and abbreviations

African Charter	African Charter on Human and People's Rights
African Commission	African Commission on Human and People's Rights
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CPR	Civil and Political Rights
CRPD	Convention on the Rights of Persons with Disabilities
DSP	Directives of State Policies
ESCR	Economic Social Cultural Rights
FGM/C	Female Genital Mutilation/Circumcision
HIV	Human Immunodeficiency Virus
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IHRDA	Institute for Human Rights and Development in Africa
Maputo Protocol	Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa
NWDA	Nigerians with Disabilities Act
PLWHA	Persons living with HIV-AIDS
UN	United Nations
Universal Declaration	Universal Declaration of Human Rights
VAPPA	Violence Against Persons Prohibition Act
WARDC	Women Advocates and Documentation Centre
WHO	World Health Organization

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Abstract

The main research problem in this study is whether law and specifically the human rights framework can speak to the lived experiences and realities of the disabled Nigerian woman. This thesis reflects the frustrations that I experience with my own intersectional identity as a (Nigerian, Yoruba and disabled) woman. These frustrations begin with Nigerian law, specifically its human rights framework and its perception of the disabled woman. One illustration is that the law demands that one must choose between being a woman (identity category) and being disabled (identity category). Yet, the disabled woman has trouble choosing one of these established identity categories because she is a woman and disabled at the same time.

The law makes these demands without necessarily recognising and contemplating the interaction and intersection between sex(ism) and disability (discrimination). Unfortunately, because the disabled woman does not neatly fit into the human rights categories, she is labelled deviant and denied protection.[1] In most cases, Nigerian law even makes the choice: on the strength of the disability the law decides that one is less of a woman and more disabled, and so refuses to contemplate and recognise the gendered and emergent nature of disability.[2] Thus the limits of the

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[1] M Pavan Kumar & SE Anuradha 'Nonconformity incarnate': Women with disabilities, 'gendered' law and the problem of recognition' (2009) 44 *Economic and Political Weekly* 38.
For the purposes of the thesis, I use 'disabled women' as opposed to 'women with disabilities' because in my opinion, women with disabilities gives a misleading impression that there are women and then there are women with disabilities as if they are separate identity groups. While, this is not necessarily wrong, it portrays the idea (rooted in the medical understandings of disability) that is debunked in the thesis that women are with some kind of appendages (disabilities). Importantly, 'women with disabilities' portrays the idea that we are a subset category and an afterthought of the 'women' identity category. This includes the idea that 'women' and 'disability' are two separate and fragmented identities that are additive in nature rather than intersectional. My use of 'disabled women' is to show that particularly for the disabled Nigerian woman, the disability experience cannot 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 thesis demonstrates that the female disability experience is part and parcel of the female experience particularly in Nigeria.

[2] 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.
I subscribe to Ribet's definition of emergent disability which is a disability that would not necessarily have happened but for some form of oppression and the result of social oppression. She noted how the grounds of the oppression may be based on gender, sexuality, ethnicity, culture, religion and class or other disabilities and often

law and human rights in speaking to the complex and intersectional lived realities of the disabled Nigerian woman become evident.

The law, and specifically the human rights framework, is often portrayed as a saviour of some sort. For instance, a number of commentators point to the need for a Nigerian law and human rights framework that will protect the rights of disabled persons.[3] The acquisition of rights, particularly for vulnerable groups who have previously been denied access to these rights, can be empowering and there is no denying the value of a legal and human rights framework. This in turn raises the question that is asked in this thesis.

The position I hold is that law and specifically the human rights framework, while having enormous value, is limited in its ability to speak to the lived realities of disabled women. In my view, this limitation results from a failure to recognise the complexities, interactions and intersections that exist between identity categories such as sex, gender, ethnicity or race, sexuality, class, age, culture, religion and disability. Specifically, in this case, the law fails to recognise the interactions and intersections between sex(ism) and disability (discrimination) in the country. However, I argue that the product of these unacknowledged interactions and intersections crucially underlie and form the lived realities of the disabled woman.

Key words: sexism, disability, liberalism, feminism, intersectionality

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occurs at the intersection of several of these identity categories at the same time. The triggering events that may generate this kind of disability is not limited to genetics alone but could include extreme violence, systemic, medical, nutritional, or housing deprivation, labor exploitation, safety or environmental hazards, criminal or medical institutionalization, or interpersonal or domestic violence.

[3] CJ Eleweke 'The need for mandatory legislations to enhance services to people with disabilities in Nigeria' (1999) 14 *Disability & Society* 227.

Chapter 1: Introduction

1.1 Research problem

This thesis counters the dominant narratives about disabled women in Nigeria. To do this, I respond to the question of whether law, and specifically the human rights framework, can adequately speak to the lived experiences and everyday realities of disabled Nigerian women and the multiple intersectional oppression they experience. I attempt to expose the limits of the law and specifically human rights in protecting disabled women in Nigeria. Specifically, the disability analysis used in this thesis complicates and expands identity, demonstrating how a woman can embody multiple subject positions and can be claimed by several identity categories. Intersectionality is used to draw attention to the voiceless(ness) and invisibility of disabled women, aspects that the dominant feminist and disability narratives have ignored. The study uses the intersectionality approach to illustrate how the power structures by the dominant narratives interact in the lives of disabled women in Nigerian society.

The voice of the disabled woman remains marginalised in Nigeria.[4] Unfortunately, the reality in Nigeria is that disabled women continue to be silenced as they do not have sufficient space to voice their experiences; therefore, their experiences remain unacknowledged. Disabled women are negatively affected by the institutional, systemic, attitudinal and environmental stereotypes that are attached to being both a woman and then having a disability in Nigeria. Women's worth and competence seem to be determined simply by the absence of a disability. Disabled women are devalued not only because they are disabled, but also on the basis of gender. As a result, disabled women are not considered human and are not regarded as rights-holders, rendering them unworthy of human rights protections and the right to equality. A rights-holder in Nigeria is largely defined by and dependent on the dominant values of a hegemonic order that devalues women and their bodies, privileging masculinity and ableism instead. This challenges the belief that human rights

[4] CJ Eleweke & J Ebenso 'Barriers to accessing services by people with disabilities in Nigeria: Insights from a qualitative study' (2016) 6 *Journal of Educational and Social Research* 118.

protection can lead to the achievement of equality and dignity.

The limitations of law in speaking to the lived realities of the disabled Nigerian woman is a result of the failure to grapple with or tackle the complexities that result from her intersecting identities. In other words, law's ability to speak to disabled women's encounters is limited because it erroneously views the social realities and the identities that a disabled Nigerian woman embodies and carries as one-dimensional with essentialised experiences. Yet the disabled woman does not necessarily fall and cannot neatly fit herself into the 'I am a woman' or a 'I am a disabled person' identity categories that law and specifically the human rights framework has neatly created, without in the process silencing herself completely.

Dominant narratives from law (including human rights and also women's rights), politics and policy perspectives as well as mainstream feminist and disability perspectives have ignored the plight of disabled women in Nigeria for a very long time, because disabled women do not seem to fit neatly into any of the dominant narratives. On the one hand, disability narratives tend to favour disabled men. This can be linked to patriarchal culture and the masculine hegemony, which bestows certain privileges on men in Nigeria in general.[5] 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. Therefore, ableism is usually prioritised. At this juncture, the need for this study arises.

This thesis therefore demonstrates how the adoption of a one-dimensional perspective by the Nigerian legal and human rights framework renders the disabled woman 'voiceless'. The disabled woman's encounters and experiences would be better understood from an intersectional perspective. Applying the intersectional approach will assist the law in recognising and addressing the different and multidimensional experiences and encounters that lead to oppression.

1.2 Assumptions

This thesis interrogates whether law and specifically the human rights framework can speak to the lived realities of disabled women in Nigeria. The acquisition of rights, particularly for vulnerable

[5] As above 118.

and dominated groups who have previously been denied access to rights, can be empowering and there is no denying the value of a legal and human rights framework, but I argue that the law and specifically human rights is limited in speaking to the position of disabled women.

In substantiating this argument, the assumption is that gender is disabling and that disability is a gendered problem in Nigeria. An invisibility surrounds gender as well as disability, adversely affecting disabled women. Unfortunately, current legislation, including the human rights framework, is not addressing the disability problem, particularly as it concerns disabled women, because of the liberal tendencies that underlie these frameworks and prevent them from recognising the interactions and intersections between identity categories such as sex and disability. Thus, these liberal tendencies inherent in the legal and human rights architecture arguably limit the ability to speak to the lived intersectional realities of disabled women in Nigeria. A different and alternative intersectional understanding of law, especially human rights law, is needed to ensure the adequate protection of disabled women in Nigeria.

1.3 Research questions

I respond to the question of whether law, and specifically human rights law, can adequately address the lived experiences and everyday realities of the disabled Nigerian woman. In order to answer the main research question, the following sub-questions are investigated:

1. What is the complex problem of disability, especially in regard to women in Nigeria?
2. How have liberal narratives responded to disabled women in Nigeria?
3. How does intersectionality expose the limits of the law and human rights in protecting disabled women in Nigeria?
4. To protect disabled women, to what extent would Nigeria benefit from a different or alternative understanding of law and human rights and a different narrative?

1.4 Motivation for the study

The reality of Nigerian women as victims of sexist oppression and the severity of this oppression have been well documented.[6] Nigerian women are often injured, disabled and, in extreme

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[6] See generally eg HI Bazza 'Domestic violence and women's rights in Nigeria' (2009) 4 *Societies Without Borders*

situations, murdered as a result of the severity of this oppression and exploitation. In fact, one can speculate that the gravity of sexist oppression and exploitation experienced by Nigerian women has led to their humanity being questioned and continually debated.[7]

The oppression suffered by Nigerian women has been accurately linked to a threefold dysfunctional legal relationship. The first aspect is the relationship between law and culture. According to Williams, Nigerian women are largely defined by their cultural roles as wife and mother, and therefore the problem begins when it becomes difficult to determine where law starts and culture ends, or vice versa.[8] The second aspect is the relationship between the law and the patriarchal Nigerian society that sees women as inferior.[9] The third aspect is the pluralistic relationship and nature of the law that reinforces the confusion and uncertainty, particularly in regard to women's human rights protection.[10]

If the forms of oppression that disabled Nigerian women experience can be largely traced to dysfunctional legal relationships, the question of whether law, and specifically human rights, can adequately respond and speak to their experiences and lived realities becomes significant. This study is also significant because very few studies have paid enough attention to the relationship that exists between law and the oppression that Nigerian women face, particularly when this oppression manifests as sexism and disability discrimination simultaneously. The attention has mostly been on oppression that manifests as sexism and disability discrimination as separate issues. Yet, many Nigerian women have sustained injuries as a result of sexist oppression and have become disabled. This is testament to the interactions and intersections that exist between sexism and disability, although they are rarely acknowledged. Nigerian women are more vulnerable to disability, and not necessarily because of the existence of any impairment per se. In fact, it is possible to speculate that disability would not necessarily occur but for some form of social and

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176; S Williams 'Nigeria, its women and international law: Beyond rhetoric' (2004) 4 *Human Rights Law Review* 230; and 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, 198.

[7] See generally eg 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; S Williams 'Nigeria, its women and international law: Beyond rhetoric' (2004) 4 *Human Rights Law Review* 229; and J Dada 'Impediments to human rights protection in Nigeria' (2012) 8 *Annual Survey of International and Comparative Law* 67.

[8] S Williams 'Nigeria, its women and international law: Beyond rhetoric' (2004) 4 *Human Rights Law Review* 229.

[9] GA Makama 'Patriarchy and gender inequality in Nigeria: The way forward' (2013) 9 *European Scientific Journal* 115.

[10] Durojaye (n 7 above) 176, 198.

sexist oppression and subordination based on gender and other identity categories that women embody.

Even more telling is the fact that, once disabled, women are more likely to encounter sexism. Once disabled, Nigerian women suffer even greater exploitation, oppression and marginalisation.[11] This is because, from the start, cultural and institutional values as well as power relations are hostile towards disabled women in Nigeria. A major explanation for the hostility is not merely the existence of a disability but, according to Gerschick, the myths, fears and misunderstandings that society ascribes to a disability.[12] For a woman, therefore, being disabled is a social and stigmatised condition. Therefore, it becomes clear that sexism reinforces disability and disability reinforces sexism, although this is rarely acknowledged in the country.

The question therefore is how law responds to the relationship that exists between oppression that manifests as sexism or disability discrimination, and also both at the same time. This is because the body of the deviant disabled woman who is both disabled and a woman does not fit neatly into either the woman paradigm or the disabled paradigm.

The Nigerian context of the study is important, because the differences in the way in which men and women experience disability, according to Abu-Habib, largely depend on the circumstances and the cultural context.[13] The study therefore exposes how Nigerian culture and, by extension, Nigeria's legal and human rights framework support the dominant narrative or norm of male ableism and raises questions of power, privilege and powerlessness within the Nigerian context.

This demonstrates the importance of this project in interrogating the invisibility that shrouds disability in the Nigerian context and in examining whether the dominant understandings of law and human rights can adequately protect disabled women. Specifically, it is evident that the project needs to investigate whether Nigerian law, considering its complicity in the oppression of disabled women, can speak and respond to the lived realities of disabled women.

A possible limitation and critique of my study might be that disabled Nigerian women do not

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[11] See generally Eleweke & Ebenso (n.4 above) 118. 'The place of women with disabilities in Nigeria' (2010) https://www.worldpulse.com/fr/node/9591 (date accessed 24 July 2016)
[12] TJ Gerschick 'Toward a theory of disability and gender' (2000) 25 *Feminisms at a Millennium* 1264.
[13] L Abu Habib 'Women and disability don't mix!' Double discrimination and disabled women's rights' (1995) 3 *Gender and Development* 49.

comprise a homogeneous group. This is a valid limitation or critique. However, the disabled woman perspective serves the purpose of this thesis, which is to draw attention to the limits of the law and specifically human rights in speaking to intersectional bodies such as the disabled woman in Nigeria. The disabled woman has been rendered voiceless and invisible by the dominant feminist and disability legal and human rights narratives. Specifically, the disability analysis used in this thesis complicates and expands identity, demonstrating how a woman can embody multiple subject positions and can be claimed by several identity categories. Future research can begin to look more critically at the specific intersecting identities of the disabled woman.

1.5 Background to the study

Women have multiple identities. This means that the situations and forms of oppression that women suffer are multiple, different and countless.[14] Since this thesis is concerned with whether law and specifically human rights can speak to the lived experiences of the disabled Nigerian woman, it is significant to note that a Nigerian woman is not only a woman. If this were so, as Wing rightly illustrates, it will be hypocritical for any woman to attempt to forgo any part of her identity.[15] This reasoning emphasises why it is impossible for the disabled Nigerian woman, for instance, to pretend that she is only a woman and not disabled, or that she is disabled and not a woman.

Yet the law demands that one must choose between whether one is a woman identity category, or one is a disabled identity category at any given time. The law makes these demands because it does not necessarily recognise and contemplate that interactions and intersections exist between sexism and disability discrimination in the country. In other words, the law refuses to acknowledge that the disabled woman is both woman and disabled at the same time; as a result, she is susceptible to oppression manifesting as either sexism or disability discrimination or both. Unfortunately, because disabled women do not neatly fit into the law's established categories, they are labelled deviant and are denied human rights protection.[16]

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[14] A Silverst 'Reprising women's disability: Feminist identity strategy and disability rights' (2013) 13 *Berkeley Journal of Gender Law and Jus*tice 81.
[15] AK Wing 'Violence and accountability: Critical race feminism' (2000) 1 *Georgetown Journal of Law and Gender* 98.
[16] Pavan Kumar and Anuradha (n 1 above) 38.

The law and the human rights framework are often portrayed in heroic terms. Rights acquisition, particularly for vulnerable and dominated groups who have previously been denied access to rights, can be deliciously empowering and there is no denying the value of a legal and human rights framework. In fact, this understanding of human rights has significant support from commentators, who view the quest for rights as an important and valuable tool in the national and international spheres.[17] The main thrust of this argument is that the human rights narrative has become the recognised and dominant language through which political and social wrongs are articulated.[18] This means that when an individual proclaims and lays claim to rights, such a rights narrative becomes a beacon of hope, a magic baton of visibility and invisibility, inclusion and exclusion, power and powerlessness.[19]

The above idea is perhaps why commentators have described the human rights framework as one of the greatest successes for disabled persons.[20] The extensive lobbying for a law and human rights framework that will protect the human rights of disabled persons both nationally and internationally illustrates this point.[21] Eleweke and Ebenso, for instance, emphasise the need for legislation that protects the human rights of disabled persons.[22] Therefore, there might be immediate scepticism about any criticism of the human rights framework that has only recently become available to vulnerable groups such as women and disabled persons.

Nevertheless, the controversies about how human rights are defined in the first place show their limitations in speaking to the lived realities of disabled women. Mutua asks what human rights really means and to whom.[23] He also asks who or what determines, for example, the dignity and worth of a person.[24] It is therefore interesting to interrogate whether human rights protection, particularly for disabled women, however defined, means the same thing in countries like Nigeria

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[17] H Charlesworth 'What are women's international human rights' in RJ Cook (eds) *Human rights of women: National and international perspectives* (1994) 61.
[18] As above 61.
[19] H Charlesworth 'What are women's international human rights' in RJ Cook (eds) (n 17 above) 61.
[20] 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.
[21] Eleweke (n 3 above) 227.
[22] See generally Eleweke & Ebenso (n 4 above) 121; and Eleweke (n 3 above) 229.
[23] M Makau 'Savages, victims, and saviors: The metaphor of human rights' (2001) 42 *Harvard International Law Journal* 201.
[24] As above 201.

as it does in countries like Britain and the United States.

The advancement of women's human rights has countered the unwillingness to explore and question the basis of human rights law. Women have questioned and challenged the human rights architecture when it is understood as liberal. In pursuing a liberal notion of equality, for instance, the definition of international human rights law in Article 1 of the Universal Declaration of Human Rights (Universal Declaration) provides that:

> All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of *brotherhood*.[25]

A liberal understanding of human rights lays claims to universality and demands that all individuals who are similarly situated be treated in the same fashion. In other words, human rights protection means that women should be treated in the same way as men, and the disabled should be treated in the same way as the non-disabled. While there is without doubt value in a liberal understanding of human rights, feminists have raised valid objections to liberal human rights because they are based on a male norm. Feminists challenge the liberal human rights perspective by invoking the 'woman question' as a way of exposing the gendered nature of the law and specifically human rights.

The disabled woman's perspective in this thesis therefore validates the feminist approach by not only exposing the gendered nature of liberal human rights law but also by uncovering the idea that embedded and intertwined in the gendered nature of liberal human rights law is an ableist approach. This ableism is evident and captured in, for instance, the phrasing of 'endowment of reasoning' in Article 1 of the Universal Declaration, which is rarely acknowledged. A dominant human rights narrative that is grounded in male ableism is thus exposed. In other words, the liberal human rights perspective speaks to the lived experiences and realities of the able-bodied male alone.

Nonetheless, in invoking 'the woman question' to criticise liberal human rights, feminists have been caught in a similar trap of essentialism that carries with it the assumption that all women

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[25] The Universal Declaration on Human Rights art 1 (emphasis mine). The phrase *spirit of brotherhood* in my opinion unwittingly confirms the masculine bias that is inherent in the international liberal human rights framework.

share the same lived experience and reality. Such an assumption ignores the impact that the interaction and intersection of identity categories such as gender, race/ethnicity, sexuality, religion, culture and disability that a woman embodies has on her lived experience and reality. Intersections between identity categories such as class, race/ethnicity, culture, religion, disability and gender, for instance, shape aspects of oppression in patriarchal societies. It is my view that these interactions contribute significantly to making disabled women the weakest, most vulnerable, oppressed and poor people in Nigerian society.[26] The disabled woman's perspective in this thesis therefore exposes the essentialist nature of the liberal law and human rights framework.

The insight from the foregoing makes it clear that the dominant human rights narrative insists that a Nigerian must be masculine or able-bodied before being valued and protected. This could possibly explain why only the dominant group that meets the criteria enjoys 'human rights' at the expense of others.[27] It is unsurprising therefore that the disabled woman has generally been marginalised by the dominant feminist and disability human rights narratives, essentially rendering her voiceless and invisible.[28] This neglect stems from the fact that, on the one hand, the dominant disability narrative has tended to focus on the assumption that the experiences of all disabled people are the same.[29] Yet, the experiences of disabled men are usually presented as representative of the experiences of all disabled persons, at the expense of disabled women.[30]

On the other hand, the dominant feminist human rights narrative has conveniently forgotten disabled women, emphasising ableism and powerful images of womanhood.[31] Scholars have often referred to the invisibility and exclusion of disabled women that characterise the dominant feminist narrative as a 'glass ceiling' that needs to be broken.[32] This invisibility and lack of attention by the dominant feminist and disability human rights narratives manifest in the tendency of law and

[26] 'The place of women with disabilities in Nigeria' (2010) https://www.worldpulse.com/fr/node/9591 (date accessed 24 July 2016).
[27] E Brems & CO Adekoya 'Human rights enforcement by people living in poverty: Access to justice in Nigeria' (2010) 54 *Journal of African Law* 258, 263.
[28] See generally N Begum 'Disabled women and the feminist agenda' (1992) 40 *Feminist Review* 73; and N Groce 'Women with disabilities in developing world: Areas for policy revision and programmatic change' (1997) 8 *Journal of Disability Policy Studies* 78.
[29] K Mohamed & T Shefer 'Gendering disability and disabling gender: Critical reflections on intersections of gender and disability (2015) 29 *Agenda* 5.
[30] Begum (n 28 above) 72.
[31] Pavan Kumar & Anuradha (n 1 above) 37.
[32] MA Conejo 'Disabled women and transnational feminisms: Shifting boundaries and frontiers' (2011) 26 *Disability and Society* 597.

human rights to treat issues of gender and disability as single and separate issues. The reality is that disabled Nigerian women are prone to increased oppression and discrimination, not only on the basis of their gender but also on the basis of disability, and their interplay with other identity categories that they embody, such as sexuality, culture, religion and ethnicity.[33] This could explain why disabled women increasingly fall victims to ritual killings,[34] coerced sterilisation,[35] sexual assault and rape[36] in Nigeria.

The unique forms of oppression that disabled Nigerian women experience are exacerbated by negative stereotypes.[37] An illustration is the fact that an individual burdened with a disability is usually labelled as inferior and the 'other'. Studies confirm that this inferiority and otherness is further aggravated when the disabled person is female.[38] Considerable evidence highlights how common it is for disabled women to be stereotyped and portrayed as childlike, dependent, passive, needy, in need of care, incompetent, sick, ill, helpless, asexual, genderless and 'role-less'.[39] The negative social stereotyping of and the double burden placed on disabled women are a result of the stigma ascribed to them as women and then as disabled women.[40]

Such negative stereotypes are usually reinforced and endorsed by institutions and systems that favour the dominant narratives.[41] These negative stereotypes impose an 'invisible and voiceless' status upon disabled women. Disabled women are therefore usually hidden, rendered voiceless, and regarded as abnormal simply because they do not fit neatly into any of the dominant human

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[33] See generally Eleweke & Ebenso (n 4 above) 118; GE Afolayan 'Contemporary representations of disability and interpersonal relationships of disabled women in southwestern Nigeria' (2015) 29 *Agenda* 60. 'The place of women with disabilities in Nigeria' (2010) https://www.worldpulse.com/fr/node/9591 (date accessed 24 July 2016).
[34] See generally NSRP and Inclusive Friends 'What violence means to us: Women with disabilities speak' (2015) http://www.nsrp-nigeria.org/wp-content/uploads/2015/09/What-Violence-Means-to-us-Women-with-Disabilities-Speak.pdf (date accessed 24 March 2017); E Etieyibo and O Omiegbe 'Religion, culture, and discrimination against persons with disabilities in Nigeria' (2016) 5 *African Journal of Disability* 5.
[35] AI Ofuani 'Protecting adolescent girls with intellectual disabilities from involuntary sterilisation in Nigeria: Lessons from the Convention on the Rights of Persons with Disabilities' (2017) 17 *African Human Rights Law Journal* 552.
[36] GE Afolayan 'Contemporary representations of disability and interpersonal relationships of disabled women in southwestern Nigeria' (2015) 29 *Agenda* 54.
[37] Eleweke and Ebenso (n.4 above) 118.
[38] M Fine & A Asch 'Disabled women: Sexism without the pedestal' (2014) 8 *The Journal of Sociology and Social Welfare* 233.
[39] GI Grobbelaar-du-Plessis 'African women with disabilities: The victims of multilayered discrimination' (2007) 22 *South African Public Law* 406.
[40] As above 406.
[41] Mohammed & Shefer (n 29 above) 2.

rights narratives.

Disabled women's experiences of multiple and reinforcing layers of oppression and discrimination mean that protecting these women becomes a complex issue and poses unique difficulties for law and human rights frameworks. One therefore wonders to what extent disabled women can in fact be protected in Nigeria. Therefore, the question of whether law, and specifically 'human' rights, can adequately speak to the experiences of disabled Nigerian women becomes imperative. I argue that the liberal conception of law and human rights is limited in speaking to the experiences of disabled women, and therefore human rights need to be intersectional, because disabled women encounter intersecting and interlocking forms of oppression and are marginalised on the basis of their gender and disability.

Disability in Nigeria has received scant scholarly attention. Even more telling is the dearth of literature on disabled women in Nigeria. The scarcity of any analysis of disability from a Nigerian perspective can be linked to the tendency to stigmatise such analysis and emphasise perspectives from developed countries instead.[42] It is important to acknowledge that very few studies have identified the emergence or non-emergence of disability research in African countries.[43] However, where such research exists, it is very dependent on disability research undertaken in developed countries.[44] Oyaro has attributed this dependence to the fact that disability statistics in developing countries are usually very limited, fragmented and unreliable.[45] Research from developed countries has therefore dominated the manner in which disability is understood globally.

The dependence on foreign disability literature has created a research gap: the role played by developed countries through colonisation in creating some of the disability problems that exist in African countries today has not been studied. Research has identified a strong correlation between colonialism and disability in many Third World countries.[46] There is proof that the high incidence

[42] E Chegwe 'A gender critique of liberal feminism and its impact on Nigerian law' (2014) 14 *International Journal of Discrimination and the Law* 66.
[43] L Swartz 'Five challenges for disability- related research in sub- Saharan Africa' (2014) 3 *African Journal of Disability* 2.
[44] As above 2.
[45] LO Oyaro 'Africa at crossroads: The United Nations Convention on the Rights of Persons with Disabilities' (2015) 30 *American University International Law Review* 347.
[46] S Grech 'Decolonising Eurocentric disability studies: Why colonialism matters in the disability and global South debate' (2015) 21 *Social Identities* 6.

of disability in Southern countries such as Nigeria is a result of certain inherited colonial attributes.[47] A strong connection has been identified between the colonial history of countries such as Nigeria and the existence of conflicts and poverty, which, according to Grech, contributes to people being poor, violent and disabled.[48] He describes how gender roles were altered by colonialists, thereby creating power structures and increased patriarchal tendencies in the colonies.[49] In other words, colonial oppression not only produced male oppressive and patriarchal tendencies, but also birthed disabled people.

Similarly, Meekosha has shown how the foreign domination of disability research has resulted in a complete disregard for the experiences of disabled persons in Southern nations.[50] This disregard stems from the way in which disability issues are usually understood and interpreted globally as universal and neutral, devoid of culture. Yet scholarship reflects the opposite and demonstrates how disability is not necessarily independent of the identity categories that an individual embodies. Scholarship has shown that there are differences in the way in which men and women experience disability.[51] For example, Abu-Habib describes how there are differences in the way in which men and women experience disability and these differences are linked to culture in the particular context.[52] Aside from culture, the unique realities in the countries where disabled persons live must be understood.[53]

I contend that this is particularly true for disabled women in Nigeria. I argue that the dearth of disabled women's literature in Nigeria can be linked to the flawed idea that disabled persons are internally similar or homogeneous and share the same encounters. Afoloyan echoes the dominant socio-cultural narrative's disregard of disabled women's oppression in Nigeria.[54] He explores how disability is socially constructed and defined, and how social constructions of disabled women as weak, passive and asexual affect their interpersonal relationships.[55] Using narratives from disabled

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[47] As above 6.
[48] Grech (n 46 above) 6.
[49] As above 6.
[50] H Meekosha 'Decolonising disability: Thinking and acting globally' (2011) 26 *Disability & Society* 667.
[51] Begum (n 28 above) 70.
[52] Abu Habib (n 13 above) 49.
[53] P Parnes et al 'Disability in low-income countries: Issues and implications' (2009) 31 *Disability and Rehabilitation* 1170.
[54] Afolayan (n 36 above) 54.
[55] As above 54; 55.

women, he demonstrates how negative stereotypes and the manner in which disabled women are presented affect how they are treated and become their lived reality.[56]

Afolayan's investigation of disabled women's interpersonal and intimate relationships makes it clear that disabled women's lived experiences and reality are not the same as those of disabled men and non-disabled persons.[57] His work confirms the gendered nature of disability in Nigeria. He links the shortage of research on disabled women to the fact that the specific experiences of disabled women simply form part of the experiences of disabled persons.[58] This argument is evidenced by the considerable literature about disabled persons as if the 'disabled persons' group is homogeneous in Nigeria. Such an approach fails to acknowledge the unique experiences and realities that disabled women face, and the experiences and lived realities of disabled women are completely ignored.

One could speculate that the reason for regarding disabled persons as a homogeneous group is tied to a concern that raising the gendered nature of disability could divide and weaken the strength of the dominant disability narrative.[59] Existing research therefore tends to regard gender in the dominant disability narrative and disability in the dominant gender narrative as irrelevant, resulting in genderless and gender-blind research.[60] The little attention that has been paid to the interactions and intersections between gender and disability in Nigeria therefore becomes evident. This includes how such interactions influence the way in which disabled women are treated in the country.

In her study on the involuntary sterilisation of disabled girls in Nigeria, Ofuani comes very close to interrogating the gendered nature of disability.[61] Her findings are valid to the extent that they focus on how laws prohibiting the involuntary sterilisation of adolescent girls with intellectual disabilities are inadequate or absent.[62] However, her focus lies strictly on the inadequate Nigerian

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[56] Afolayan (n 36 above) 60; 61.
[57] As above 62.
[58] Afolayan (n 36 above) 55.
[59] E Kim 'Minority politics in Korea: disability, interraciality, and gender' in D Cooper, E Graham, J Krisnades & D Herman (eds) *Intersectionality and beyond: Law, power and the politics of location* (2009) 61.
[60] T Emmett & E Alant 'Women and disability: Exploring the interface of multiple disadvantage' (2006) 23 *Development Southern Africa* 445.
[61] Ofuani (n 35 above) 550.
[62] As above 550.

legal framework, and she does not explore the relationships and intersections between gender and disability and even age.

Eleweke and Ebenso explore the barriers to disabled persons accessing services in Nigeria.[63] They dedicate a section to emphasising the unique plight and oppression that disabled women experience because of their gender and disability in an additive fashion.[64] One could interpret the dedicated section to mean that disabled women are an afterthought. However, the section is revealing because it showcases the oppression that disabled women experience because of the interactions between gender and disability, although these interactions are not emphasised in the study.

The findings of these studies are consistent with the significant and rich literature globally that discusses the 'double' oppression that disabled women encounter as a result of their gender and disability.[65] However, recent scholarship has shifted from the idea of double oppression to the idea of a multi-layered oppression.[66] There has been a slow global recognition that to adequately reflect the lived realities of disabled women, it is limiting to articulate the oppression that disabled women experience as double or even multiple. In other words, there are limits to merely articulating the double or multiple oppression and discrimination that disabled women experience, which has been found to be not nearly enough.[67] There is now a growing need to recognise the disabled woman's encounters and oppression as intersectional.

Moodley and Graham have illustrated the importance of interconnections in discussing disabled women in South Africa.[68] They discuss the daily realities of disabled black women as extremely burdened. They experience oppression on account of their race, gender and disability.[69] Studies have investigated the intersections that exist between gender, employment and disability in

[63] Eleweke & Ebenso (n 4 above) 113.
[64] As above 118.
[65] Fine & Asch (n 38 above) 233. In their study, these authors underscore the double oppression of disabled women. However, other scholars such as Morris have objected to the term of double oppression to be used in reference to disabled women.
[66] Grobbelaar-du Plessis (n 39 above) 406.
[67] See generally A Clutterbuck 'Rethinking baker: A critical race feminist theory of disability' (2015) 20 *Appeal* 57; J Morris *Feminism, gender and disability (*1998) 5. Morris describes how gender and disability should not be about the 'double discrimination' that disabled women experience because it is disempowering.
[68] J Moodley & L Graham 'The importance of intersectionality in disability and gender studies' (2015) 29 *Agenda* 24.
[69] As above 26.

Ghana.[70] Wickenden et al explore the impact of the relationships between Human Immunodeficiency Virus (HIV), gender and disability in Zambia.[71] They discuss the daily realities of disabled black women: challenging essentialised notions of sexuality. The notion that disabled women because of their disability do not have sexual lives. These authors draw attention to disabled women's experience of intersectional oppression on account of their gender, HIV status and disability.[72]

From the forgoing, there is an assumption of consensus on how disability is defined., we therefore need to ask the question: What is disability? Definitions of disability have evolved over time in significant stages. In fact, defining disability is highly contentious and has been done in a number of different ways. According to Parnes et al, the difficulty in defining disability arises from the different ways in which disability is understood and perceived in different cultural environments.[73] Even the Convention on the Rights of Persons with Disabilities (CRPD) does not specifically define disability. The progressive nature of the term is however acknowledged.[74] It is suggested that finding solutions to disability issues is difficult, particularly in African countries, partly because of the absence of a generally acceptable definition of disability.[75]

Human rights-oriented solutions have been presented in regard to the issue of disability. The introduction of the CRPD is testament to a global acknowledgement that disability is a human rights concern.[76] Sadly, the problem with this human rights solution is that people do not necessarily experience disability in the same way. Differences in culture, context and circumstances have an impact on the way in which disability is experienced. According to Article 6 of the CRPD, for instance, Nigeria as a state party is obligated to take the necessary steps to ensure disabled women enjoy their human rights both in relation to their disability and gender.[77] However, this interaction is not happening in practice when we consider the concrete situations of

[70] A Naami 'Disability, gender, and employment relationships in Africa: The case of Ghana' (2015) 4 *African Journal of Disability* 1.
[71] A Wickenden et al 'Disabling sexualities: Exploring the impact of the intersection of HIV, disability and gender on the sexualities of women in Zambia' (2013) 2 *African Journal of Disability* 1; 6.
[72] As above 6.
[73] Parnes et al (n 53 above) 1173.
[74] The Preamble to the Convention on the Rights of Persons with Disabilities (CRPD)
[75] Parnes et al (n 53 above) 1170.
[76] World Health Organization 'WHO global disability action plan 2014-2021: Better health for all people with disability' (2015) http://www.who.int/disabilities/actionplan/en/ (date accessed 16 July 2016)
[77] CRPD art 6.

disabled women. Thus, human rights interventions as proposed by developed countries might not necessarily be useful in the African and Nigerian contexts.

This is true particularly when one remembers that disability in Nigeria is still viewed as shameful and a curse, and generally perceived in charitable and welfare terms with little regard for human rights.[78] These negative attitudes towards disability continue to echo in African societies, in defiance of international human rights instruments. We therefore need to encourage interventions that, according to Phiri, are unique to the specific realities of disabled women in African countries such as Nigeria.[79]

The idea that disability is a social phenomenon while impairment is a natural phenomenon has been the subject of heated debates. Meekosha and Soldatic describe how impairment is not necessarily natural; most of the time it is the result of power relations and social dynamics in bodies that have become medicalised and normalised.[80] This verifies the assertion that the naturalness attributed to the able-bodied liberal person and the negativity that surrounds disability explains the tendency for the disabled to strive to be regarded as 'normal' in order to be considered human.[81] It also possibly illustrates how these social dynamics establish hierarchies of bodies, where some bodies are oppressed and others are privileged.[82] It thus shows how disabled bodies are believed to be unnatural and abnormal,[83] and it is no surprise that women's specific encounters remain largely unvoiced.

Disability has also been defined as a product of socio-cultural rules and expectations about what the body should be and should do.[84] On the one hand, this definition is indicative of disability as a socio-cultural expectation to have what is regarded as a 'normal' body.[85] This definition encompasses ideological categories that include the perception of the disabled as sick, deformed, crazy, ugly, old, maimed, afflicted, mad, abnormal, or debilitated, all of which put disabled

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[78] DFID Scoping studies: 'Disability issues in Nigeria' (2008) www.ucl.ac.uk/lcccr/downloads/scopingstudies/dfid_nigeriareport (date accessed 16 July 2016).
[79] A Phiri 'Building communities of trust: Challenges for disability' (2014) 3 *African Journal of Disability* 1.
[80] H Meekosha & K Soldatic 'Human Rights and the global south: The case of disability' (2011) 32 *Third World Quarterly* 1393.
[81] FAK Campbell 'Exploring internalized ableism using critical race theory' (2008) 23 *Disability and Society* 156.
[82] R Connell 'Southern bodies and disability: Re-thinking concepts' (2011) 32 *Third World Quarterly* 1370.
[83] V Mclean 'Why the inflation in legislation on women's bodies' (2012) 14 *European Journal of Law Reform* 312.
[84] R Garland-Thomson 'Integrating disability, transforming feminist theory (2002) 14 *NWSA Journal* 4.
[85] S Wendell 'Towards a feminist theory of disability' (1989) 4 *Hypatia* 104.

individuals at a disadvantage because their bodies do not fit cultural standards.[86] In other words, if a Nigerian woman does not have what is regarded as a perfect or normal body, she is labelled disabled.

On the other hand, this definition suggests that there are socio-cultural expectations about roles and functions. This is true especially with regard to Nigerian women, who are defined by their cultural roles of mother and wife.[87] If she is regarded as unable to perform such cultural roles or has no role thrust upon her by society, she automatically becomes 'disabled' and is not considered whole or human, thus having no social status. Disabled women are thus women who on account of their disability have been disqualified from the traditional roles of mother and wife. Fine and Asch explain that disabled women are disqualified from and considered inappropriate for certain roles in society.[88] This confirms the idea that disability, like gender, is socially constructed and is part of an arbitrary cultural system that dehumanises women by dividing bodies into hierarchies.[89]

The controversies that surround definitions of disability are testament to the complications and instability that characterise identity categories. Against this backdrop, examining whether law, and specifically human rights, can adequately respond to the lived experiences and everyday realities of disabled Nigerian women is clearly a viable research question. I argue that law and human rights is limited in speaking to the lived realities of disabled women because it fails to recognise and contemplate interactions and intersections, specifically the intersectional encounters between gender and disability and, in fact, other identity categories that disabled women embody that form crucial aspects of their lived realities. Because these interactions and intersections are not recognised or contemplated by the legal architecture, disabled women become lost and silenced, and they are rendered invisible and voiceless.

My argument is not necessarily an attempt to undermine the value of law and human rights for disabled persons, but I seek to draw attention to the complexities surrounding the lived realities of disabled women that law does not contemplate, thus exposing its limits and casting doubts on its ability to offer meaningful protection. This thesis fills the research lacuna in Nigeria and

[86] Garland-Thomson (n 84 above) 6.
[87] Williams (n 8 above) 233.
[88] Fine & Asch (n 38 above) 233.
[89] See generally Wendell (n 85 above) 104; and G Mkhize 'Problematising rhetorical representations of individuals with disability – disabled or living with disability?' (2015) 29 *Agenda* 133.

contributes to existing scholarship that explores the manner in which the intersection of sexism and disability discrimination serves to devalue disabled women, particularly in gendered and ableist contexts such as Nigeria.

1.6 Theoretical approach and methodology of the study

From a theoretical perspective, I use an intersectional lens that has roots in feminist theory to expose the limits of the law in speaking to the lived realities of disabled women. Intersectionality occurs where multiple dimensions of socially constructed relationships and categories such as gender and disability interact and shape simultaneous levels of social inequality.[90] Intersectional oppression describes the multiple forms of oppression that disabled women suffer on the basis of both gender and disability.[91] Disabled women in Nigeria sit at the intersection of gender and disability, which renders them invisible. This creates a unique and specific form of oppression or discrimination that non-disabled Nigerians do not necessarily suffer or experience.

The intersectional approach shows how the social location of identity categories such as disability and gender can privilege other Nigerians through the oppression of disabled women, and how social and systematic forms of oppression shape the lives of 'othered' realities. This also includes the outcomes of these interactions in terms of power. This study attempts to expose institutional and interactional dimensions of power and privilege by the dominant feminist and disability narratives. This not only creates intersectional discrimination, oppression and inequalities, but also exposes the limitations of the law and specifically human rights in protecting disabled women in Nigeria. Using the disabled woman perspective, the study shows the intersection of multiple hierarchies and how such hierarchies are maintained. Thus, the emphasis will be on the relationships of power, disadvantage and exclusion that disabled women suffer in Nigeria.

I engage critically with a desk review of primary and secondary sources in order to answer the research questions. I also use a narrative approach defined as a construction of stories that are necessary to give this research a human face. Nadar describes how stories are well suited to speaking to issues in African countries like Nigeria.[92] The narrative method is therefore used to

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[90] K Crenshaw 'Mapping the margins: Intersectionality, identity politics and violence against women with politics' (1991) *Standard Law Review* 1243.
[91] As above 1243.
[92] S Nadar 'Stories are data with Soul – lessons from black feminist epistemology' (2014) 28 *Agenda* 1.

offer a different perspective and understanding of law and human rights, especially when responding to some of the questions raised by the thesis. This includes attempts to demonstrate how disabled women face intersectional encounters and how their voices have often gone unacknowledged and ignored.

My analysis is informed by sourced experiences. This can be referred to as paradigm shift narrative that refuses to respond solely with legal methods. This method emphasises the positioning of the researcher and demonstrates that the analysis made throughout the thesis is based on an informed position that has the potential to validate the analysis.[93] The invisibility that disabled Nigerian women experience is a result of a number of interrelated social divisions, mainly gender and disability, but also poverty, ethnicity, class, religion and capital and class. All these factors, combined with the lack of homogeneity and the uniqueness of disabled women, engenders the need for intersectionality as a conceptual approach that will address these issues.

The approach used in the thesis interrogates how gender, ethnicity and disability as forms of oppression are interrelated within Nigerian society and the consequences of this oppression for disabled women. An intersectional approach in the context of protecting disabled women will consider the ways in which different positions in terms of gender create conditions that render disabled women vulnerable, disadvantaged and unprotected. These conditions are worsened by disability. Intersectional analysis is combined with narrative theory to give disabled women their voices and to offer alternative narratives.

1.7 Structure of the thesis

The thesis consists of six chapters. The current chapter introduces the research, and outlines the research problem and assumptions that underpin the study. The chapter provides a motivation and rationale for the study, together with a background to the study. The theoretical approach and methodology that is used in the study is provided, followed by a summary and outline of the chapters.

Chapter 2 sets the scene by asking the following question: Who is a disabled woman in Nigeria? The question is asked to reveal whether, as law and specifically human rights would have us

[93] As above 1.

believe, a disabled woman is born (an essentialist and monolithic view) as opposed to the view that the disabled woman is *made* and is a social construction.[94] My position in this chapter is that disabled women are *made*, and I demonstrate how disability and womanhood are social constructs.

This question: Who is a disabled woman in Nigeria? is asked with the intention of exposing Nigerian legal and human rights framework's definition of the disabled woman as 'born and essentialist.' Yet, unlike the essentialist approach that law and human rights adopts, I show the complexities that result from the multidimensional and intersecting identities that the disabled woman embodies.

To make this case, in this thesis and particularly in this chapter, disability is defined as an oppressive system that stigmatises differences. This gives credence to the idea that on the grounds of their supposed sex/gender differences for instance, as Garland -Thomson argues, women in sexist societies such as Nigeria are disabled.[95] Defined in this way, I draw attention to how the concept 'disability' has historically been used to justify discrimination and oppression as well as the unequal treatment of groups considered as different.[96] Consequently, on the basis of their differences from the (male ableist) norm, disabled women enjoy fewer, truncated and limited rights. This argument is exemplified in the perception of women as second-class citizens; women therefore struggle to be adequately protected in patriarchal Nigeria.[97]

The above definition of disability counters the common essentialist medical understanding that persists today of a universal disability experience that focuses on biological determinism. This is where 'disability' is virtually identified with 'born' having a form of physical, sensory, or cognitive impairment in which individuals in these very different conditions and with varying forms of impairment are most commonly and collectively known and labelled as the 'disabled.'[98] However, this understanding in itself is insightful in demonstrating how labelling persons with

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[94] Feminists have argued that women are 'made' and not 'born' as a way to draw attention to how the identity of womanhood is socially constructed and a basis of/for oppression.
[95] Garland-Thomson (n 84 above) 6. I acknowledge that her idea was originally from I Young in 'Throwing like a girl
and other essays in feminist philosophy and social theory '(1990) 153.
[96] D Baynton 'Disability and the justification of inequality in American history': The new disability history (2001) 33.
[97] See generally Williams (n 8 above) 229; 230; and Makama (n 9 above) 115.
[98] Silverst (n 14 above) 92.

physical, sensory, cognitive impairments as 'disabled' introduces the notion that these groups of individuals are equally and just like Nigerian women; disqualified from protection by the law.[99]

This does not necessarily mean that this study does not recognise the shared disability experience or the different stigmatised forms of embodiment that make up what is often referred to as 'disability'. In fact, I acknowledge the common essentialist understanding of a disabled woman that law and human rights adopts. However, the main focus here, following Garland-Thomson's reasoning, is about the need to explore the meanings that are ascribed to bodies, particularly when these bodies are female, rather than looking at the specific forms, functions and behaviours. I argue that unlike this essentialist approach that focuses on biological determinism and a universal disability experience, there are complexities and interactions that makes a 'one size fits all' stable definition for the intersecting identities of womanhood and disability that the disabled woman embodies; flawed.

The assumption that the concept of disability just like womanhood is a representation of a common identity and universal experience is misleading. I argue that rather than being a stable concept, to be disabled is to be different, fluid and an unstable identity. Specifically, the disability analysis as used in this thesis complicates and expands identity, demonstrating how a woman can embody multiple subject positions and can be claimed by several identity categories. This disability analysis immediately calls into question the monolithic and essentialist approach that Nigeria's law and human rights framework adopts with regards to the identities that a disabled woman embodies.

I am heavily influenced by Garland-Thomson's arguments demonstrating the relationship, interactions and intersections that exists between gender and disability. To underscore this relationship, I argue, on one hand, that 'disability is gendered.' This argument is easily manifest in the susceptibility of women to, for example: poverty, poor health care and gender-based violence etc. On the other hand, I portray 'gender as disabling' also framed as 'women as disabled' 'gender as a type of disability' and the idea that there is no such a thing as a 'non-disabled woman' throughout the thesis. This assertion is true considering the disabling consequences of sexist

[99] As above 92

oppressions prevalent in patriarchal Nigeria.

Importantly, the 'gender as disabling' or 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 as well as law's emphasis and reliance on the rigid and essentialised 'disabled woman' identity category as 'born' renders her voiceless. I use examples of sexist oppressions prevalent in patriarchal Nigeria such as rape, marital rape, female genital mutilation (FGM); domestic violence and acid baths that women suffer on a daily basis just because of their sex/gender and their disabling consequences to prove their 'disability.' This underscores how gender is potentially disabling in Nigeria.

The relationship and intersection between gender and disability is therefore obvious and would be further elaborated on in this chapter. The conclusion that therefore emerges demonstrates how Nigeria's legal framework's definition of the disabled woman as 'born and essentialist' creates the problem of biological determinism and a false universal disability experience. Using the interrogation of identity categories that the disabled woman embodies, I prove that unlike this false perception of identity, individual identities are multidimensional and intersectional. Crucially, the analysis shows how the limitations of the law and specifically human rights in speaking to the lived realities of the disabled Nigerian woman are tied to a failure to recognise and contemplate the interactions and intersections that exist between sexism and disability discrimination in the country.

Chapter 3 draws on the arguments from the preceding chapter to posit that the inability of law and specifically human rights to recognise and contemplate the interactions and intersections between sexism and disability as structures of women's oppression is tied to liberal tendencies that are arguably deeply embedded in Nigeria's legal architecture. These liberal tendencies manifest as universal individualism, atomistic man and the public/private distinction.

A number of commentators have objected to the dominant liberal vision of the law and the human rights framework and their manifestations. Cultural relativist scholars have challenged the dominant narrative of universality that the liberal human rights framework upholds. Despite arguments for the universality of human rights, the main thrust of the cultural relativist school of thought is that in order for human rights to make sense we need to recognise the specific cultural

realities and experiences of different cultures. The argument is that as long as cultures are not universal, human rights cannot and should not be said to be universal. Thus, the whole concept of the universality of human rights becomes challenging, especially when we consider the protection of disabled women.

In exposing the limits of liberal human rights, I reflect on the way in which the dominant liberal narrative of ability and masculinity shrouded in formal equality has responded to the experiences and realities of disabled women in Nigeria. I argue that the dominance of human rights that has its origins in western liberal ideology has been identified as flawed in its efforts to protect disabled women, especially in Nigeria.[100] Human rights defined as the entitlement ascribed to individuals by virtue of their being human; limits the ability of human rights to speak to the lived experiences of disabled women because, from the start, their very humanity is in doubt.

In chapter 4, I insist that in order to be able to speak to the lived realities of disabled women, Nigerian law and specifically human rights must develop and adopt an intersectional lens and thinking. Scholarship has slowly started to recognise the importance of intersectionality in discussing the lived realities of women.[101] This recognition has moved from an additive or cumulative analysis to identifying that the lived realities of disabled women are intersectional. However, as explained earlier, there is little or no scholarship on the intersections and interactions that exist between gender and disability, particularly the intersectional experiences of disabled women in Nigeria.

In my view, this explains why disabled women become lost, invisible and voiceless. The law is still allied to a one-dimensional approach to oppression, despite decades of criticism. Intersectionality exposes the limits of the Nigerian legal and human rights framework in protecting disabled women with multiple identities who experience multiple layers of oppression. I highlight Meekosha's argument that a different understanding of law and human rights that is not solely Eurocentric is needed, especially as it pertains to disability in African countries.[102] I therefore interrogate a different intersectional understanding of law and human rights in speaking to the

[100] Meekosha & Soldatic (n 80 above) 1385; 1389.
[101] Moodley & Graham (n 68 above) 24.
[102] Meekosha & Soldatic (n 80 above) 1394.

lived realities of the disabled Nigerian woman.

Chapter 5 draws from the arguments of previous chapters to make a case for a shift from Nigeria's liberal vision of law to an intersectional vision. I explore Nigeria's anti-discrimination law and human rights framework as outlined in section 42 of the 1999 Nigerian Constitution. This study is done to demonstrate Nigeria's liberal outlook and simultaneously expose how such an outlook limits the law's ability to speak to the lived realities of disabled women. The need for the development of an intersectional legal architecture in Nigeria therefore becomes evident. In identifying and selecting the legal texts to be used in this chapter, I focus on the 1999 Nigerian Constitution primarily because it is the supreme law of the land.

I argue that an analysis of the Constitution is significant considering that most laws in the country draw inspiration from the document. For example, like the Constitution, it is clear that the 1993 Nigerians with Disabilities Act is a law that is heavily influenced by an essentialist medical understanding of disability. This is particularly the case even for the recently enacted 2019 Disability Act. The essentialist medical understanding assumes that there is a universal disability experience that focuses on biological determinism.

Chapter 6 concludes the study by demonstrating the limitations of the Nigerian legal architecture to speak to the lived realities of disabled women. I also include an appendix that briefly analyses Nigeria's obligations to disabled women in terms of international human rights treaties.

Chapter 2: The complex disabled woman in Nigeria

> Simone de Beauvoir famously remarked that 'one is not born, but rather becomes, a woman.'[1]
>
> 'To be a woman in sexist societies is to be disabled.'[2]

2.1 Introduction

My argument in this thesis is that law is limited in its ability to speak to the lived realities of disabled women. To develop this argument, this chapter asks who a disabled woman is, particularly in the eyes of the law and specifically the human rights framework in Nigeria. There are no easy answers to this question. One could even argue that the question should not be asked. However, in a bid to offer an answer, I open a Pandora's box of approaches: whether, as law and human rights would have us believe, a disabled woman is born, that is, an essentialist and monolithic view, or whether a disabled woman is made and is a social construction.

This chapter demonstrates that interactions and intersections exist between (sex)ism and disability (discrimination) in the country. The failure to recognise and contemplate the interactions and intersections between the identity categories of gender and disability in Nigeria exposes the limits of the law and specifically human rights in speaking to the lived realities of the disabled Nigerian woman. To develop and substantiate this point, I draw on and use Garland-Thomson's established argument that women in patriarchal and sexist societies are disabled to introduce the 'women as disabled' argument.[3] This argument has four aspects. First, by arguing that women are disabled in

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[1] PA Cain 'Feminism and the limits of equality' (1989) 24 *Georgia Law Review* 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.
[2] R Garland-Thomson 'Integrating disability transforming feminist theory' (2002) 14 *NWSA Journal* 6. I acknowledge that this idea was originally from I Young in 'Throwing like a girl and other essays in feminist philosophy and social theory' (1990) 153. My quote above is actually paraphrased. The quote reads "women in sexist societies are physically handicapped."
[3] As above 6. 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 chapter. If women in Nigeria are disabled, then the need for an intersectional perspective (as opposed to a sole gender perspective) that recognises the interaction between gender and disability becomes obvious. This is considering the definition of disability as an oppressive system that stigmatises differences. The 'women are disabled' argument

Nigeria, I show how law, by making us believe that identity categories such as sex 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. Second, the 'women as disabled' argument is introduced to draw attention to disability and sexism as forms of contextual oppression within a patriarchal Nigerian society.

Third, the 'women as disabled' argument draws attention to gender and disability as subjects of unequal power relationships. Fourth, the 'women as disabled' argument draws attention to the idea that the forms of oppression that the Nigerian woman suffers, whether manifesting as sexism or disability discrimination or both, are related. This argument draws attention to how sexism intersects and reinforces disability and vice versa, that is, demonstrating 'gender as disabling', and 'disability as gendered'. Precisely because of this relationship, interaction and intersection, it will be pointless to attempt to tackle these forms of oppression on their own. In sum, what the four aspects show is how sexism and disability are part of the workings of a dominant narrative that is deeply entrenched in patriarchy.

Therefore, it will be difficult, if not impossible, to attempt to curb either sexism or disability discrimination in Nigeria without recognising their interactions and intersections. Yet, I argue that the product of these unacknowledged interactions and intersections crucially underlies and forms the lived realities of the disabled woman.[4]

My argument proceeds as follows. First, I set the scene by analysing disability as a complex identity problem in Nigeria, highlighting in three stages the daily struggles that the disabled woman experiences. I show how the disabled woman manifests and is oppressed as a woman (identity category), as disabled (identity category) and as a black Nigerian female (identity category). For purposes of clarity, I focus on the way society constructs meaning of the identity categories that a disabled woman embodies and how they become signifiers of oppression. I provide an illustration of the Nigerian woman as a victim of oppression and show how these forms of oppression simply

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brings to the fore the idea that women have differences which manifest in different identities forming the basis of oppressions such as sexism or disability discrimination and both simultaneously. Specifically, the disability analysis as used in this thesis complicates and expands identity, demonstrating how a woman can embody multiple subject positions and can be claimed by several identity categories.

[4] 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.

manifest as sexism or disability discrimination, and in most cases as both, demonstrating how being a woman in patriarchal Nigeria is not only disabling but also a type of disability. In doing this, it should be noted that my position is that these identity categories are not fixed, static or additive, but rather intersecting.

I argue that to disregard the disabled Nigerian woman is misleading, drawing particular attention to how sexism intersects with disability. I draw attention to how a typical non-disabled woman (if there is any such woman) is likely to become disabled in patriarchal societies such as Nigeria, using examples of prevalent gender and sexist oppression. These examples demonstrate and are testament to an often-unacknowledged relationship between sexism and disability discrimination as forms of oppression that women encounter in Nigeria. In other words, sexism reinforces disability and vice versa in the country.

Specifically, the disability analysis as used in this thesis complicates and expands identity, demonstrating how a woman can embody multiple subject positions and can be claimed by several identity categories. I subscribe to the definition of disability as an oppressive system that stigmatises differences in Nigeria. This includes how this system of exclusion and oppression worsens once disabled bodies are identified as female. I believe this will clearly illustrate that disability is a consequence of power relations in a sexist and ableist Nigeria. Hence, I infer that disability, particularly with regards to women, is purely a consequence of unequal power relations, since disability is a by-product of sexism that in turn causes disability in the country.

Next, I interrogate understandings of disability, particularly who a disabled Nigerian woman is. I expound on how disability, especially in relation to women and based on colonial attributes, has been understood or conceptualised historically from the Nigerian perspective. I then investigate how the disabled Nigerian woman manifests as black Nigerian and female. Specifically, I show how the Nigerian colonial experience reinforces and contributes to the negative sexist and ableist ideas about women and disability. I investigate the impact of colonialism on Nigeria in general and particularly on black female bodies. I describe how black female bodies have been viewed as uncivilised colonial subjects portrayed as properties and sexual objects. This includes an exploration of how women were policed through sexual violence. Therefore, given its contributions to the devaluation of the female body, which I argue is tantamount to the perpetuation

of disability, I question whether a legal framework that originates in colonial conquest and that contributes to current conditions can actually speak to the lived realities of the disabled Nigerian woman.

I conclude the chapter by highlighting how the disability identity worsens the experiences of Nigerian women, who are already subjected to sexist and patriarchal oppression. I also draw on how ableist and sexist biases intersect to worsen the oppression of women identified as disabled.

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

Women have multiple identities. This means that the situations and forms of oppression that women suffer are multiple, different and countless.[5] Also, a woman's identity has been identified as crucial to her sense of self as it forms her lived reality. A Nigerian 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.[6] Wing describes the impossibility of subtracting identity parts.[7] Using this approach, it will be impossible to ask the disabled Nigerian woman, for instance, to pretend that she is only a woman and not disabled, or that she is disabled and not a woman.

If this is so, we need to describe the multiple identities that the disabled Nigerian woman embodies and interrogate how these identities reinforce her lived reality and the oppression that she faces daily. Thus, the need to confront narratives that are complicit and are used to condone the oppression that women suffer on the basis of the identities they embody becomes evident. This is especially true for the disability identity, which is arguably one of the most prevalent sources of oppression of women, but is rarely investigated as such in Nigeria.

First, the disabled Nigerian woman manifests as a woman.[8] The cogency of this argument is undeniable, despite legitimate concerns about the strength and ability of disability to strip an

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[5] A Silverst 'Reprising women's disability: Feminist identity strategy and disability rights' (2013) 13 *Berkeley Journal of Gender law and Justice* 81.

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

[7] As above 98.

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

individual of her gender.[9] Legitimate concerns exist about whether a disabled woman is in reality a woman or whether, on account of her disability, her womanhood and even her humanity have been erased.[10] This erasure manifests where the disabled Nigerian woman is considered less of a human being and a woman because she does not, on account of her disability, meet the feminine and traditional ideas and expectations of what it means to be a woman.

The disabled woman's positioning determined by the identity categories of 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 question is which identity category is defined as the common denominator and which identity category becomes the qualifier.[11] I argue that the disabled woman is first and foremost 'woman' and that, as Garland-Thomson has argued, it is disabling to be identified as 'woman' in sexist societies such as Nigeria.[12] This could mean that to be gendered female and to be a woman in Nigeria is disabling and oppressive. This oppression could manifest as sexism or as disability, or both at the same time.

In making this argument, I must first acknowledge an objection that might be raised to this argument, namely that to state that a woman in Nigeria is oppressed is to ignore women's agency and ability to negotiate and offer a resistance to oppression. 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.[13] From the time a Nigerian woman is conceived, for instance, she is ascribed the identity category of 'woman', which is regarded as an inferior and oppressed identity, particularly when compared to the male identity. Thus, where the identity category of 'woman' is inferior, it can easily be equated with and is tantamount to the disability identity, considering that inferiority is regarded as a variation of disability.

The origins of the 'woman' identity category as an inferior and oppressed identity can be traced to patriarchal notions.[14] The forms of oppression that women face are a direct result of the

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[9] 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.
[10] As above 94.
[11] E Kim 'Minority politics in Korea: disability, interraciality, and gender' in E Graham, D Cooper, J Krishnadas & D Herman (eds) *Intersectionality and beyond, law, power and the politics of location* (2009) 232.
[12] Garland-Thomson (n 2 above) 6.
[13] Cain (n 1 above) 808.
[14] G Mkhize 'Problematising rhetorical representations of individuals with disability – disabled or living with

assumptions and meanings that have been ascribed to their bodies by male oppressors.[15] Theorists agree that the inferior meanings ascribed to the woman's body are worsened by harmful colonial, cultural and religious practices, which accord an inferior status to women.[16] One early description of 'woman', for instance, can be traced to biblical times, with the creation of woman (Eve) as the helpmeet of man (Adam).[17] The (mis-)interpretations that scholarship has often attributed to this biblical passage have often been used to justify the idea that 'women' are the weaker sex and inferior to men. Such (mis-)interpretations underlie the view of Nigerian women as minors or even less than human.

The 'woman' identity category has therefore been subject to patriarchal definitions, where men define what it is and means to be a woman. In fact, one would be right to speculate that Nigerian women have been unable to determine their own definitions of what it means to be a woman because the man's foot is constantly on her throat.[18] Therefore, one would be right to assert that to be gendered and sexed female is a source of oppression to women.[19] This oppression could manifest as sexism or disability discrimination and, in most cases, as both at the same time. This point is illustrated by the fact that gender-based oppression and violence have been identified globally as the primary causes of death and disability for women between the ages of 16 and 44.[20] Sexist and gender-based oppression and violence has been defined as–

disability?' (2015) 29 *Agenda* 134.

[15] As above 134.

[16] Theorists that have made this argument include; S Williams 'Nigeria, its women and international law: Beyond rhetoric' (2004) 4 *Human Rights Law Review* 229; AU Iwobi 'No cause for merriment: The position of widows under Nigerian law' (2008) 20 *Canadian Journal of Women and law* 37; 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; 191; and E Durojaye and 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.

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

[18] 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* 74; 75.
See also PA Cain 'Feminism jurisprudence: Grounding the theories' (1989) 4 *Berkeley Journal of Gender, Law and Justice* 193.

[19] Mkhize (n 14 above) 134. Generally, sex/impairment are perceived as biological traits while gender/disability are social constructed. However, even this is not clear-cut, there are interactions and intersections.

[20] 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 (date accessed 20 June 2016).

> violence or oppression targeted against a woman simply because she is a woman or that affects women disproportionately. It includes actions that inflict physical, mental or sexual harm (disability) or suffering, threats of such actions, coercion and other deprivations of liberty such as domestic violence, sexual violence, trafficking in persons and female genital mutilation.[21]

This definition is certainly true in Nigeria, where the severity of gender-based exploitation that women suffer simply because they are women has been widely documented.[22] In fact, the humanity of women in Nigeria has been questioned based on the gravity of the oppressive and discriminatory practices committed against women.[23] Durojaye confirms how the oppression that women suffer is reinforced by the sexist or patriarchal meaning that Nigerian society attaches to the body of the woman.[24] This insight validates the correlation drawn between the inferior identity that is ascribed to women and the reality of oppression in Nigeria.[25] 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. The prevalence and gravity of oppression, such as the practice of female genital mutilation (FGM) in Nigeria, is a case in point. The prevalence of FGM has been attributed to representations of women's bodies as unruly and in need of sexual control. Such control can be said to be similar to the asexuality label usually imposed on 'disabled' women.

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[21] Global Rights Kano Human Rights Network (KAHRN) & Bauchi Human Rights Network (BAHRN) 'State of human rights in northern Nigeria abridged version' (2011) 15.

[22] The gender-based oppression and exploitations that Nigerian women experience have been widely documented. See generally for more discussions: Williams documents the oppressions that Nigerian women experience in S Williams 'Nigeria, its women and international law: Beyond rhetoric' (2004) 4 *Human Rights Law Review* 229; Durojaye makes the same point in 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; 198; and 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. Other authors that underscore the oppressions that Nigerian women experience include: EO Ekhator '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 *Afe 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 'No cause for merriment: The position of widows under Nigerian law' (2008) 20 *Canadian Journal of Women and Law* 37.

[23] 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; 177; 186.

[24] As above 176.

[25] See generally 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 (n 23 above) 176.

As confirmation of this argument, Izugbara notes how most Nigerian cultural and religious values are sexist.[26] According to him, this is a result of the different and inferior values placed on a body that is identified as female as opposed to one identified as male.[27] He refers to most Nigerian cultures where 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.[28] The female child is taught that she is weak and fragile. Her fragility is reflected in the mothering and nurturing roles that she then acquires from the society. The man is taught to be aggressive and strong and to exhibit superiority over the woman.

Consequently, these characterisations of women as weak, fragile and subordinate confirm Garland-Thomson's point that to be a woman in sexist and patriarchal societies is to be disabled, because characteristics such as weakness, inferiority and subordination are variations of disability. In addition, because the culture of a society determines to a large extent how its people behave, the superiority ascribed to the able-bodied man over the 'disabled' woman confirms her oppression.[29] This oppression, according to Sheldon, simply manifests as sexism or disability discrimination and in most cases as both.[30]

This discussion reveals how the body of a Nigerian woman, like a disabled body, is considered inferior because it is often compared to that of the (male) ideal norm. Put differently, the discussion shows that a different embodiment in Nigeria is not simply misunderstood, it is also inherently inferior to an accepted (male) standard. Precisely because female bodies and disabled bodies are regarded as non-normative, their bodies are subjected to control and discipline. This discipline and social pressure are exerted through systems of oppression to shape and normalise these subordinated bodies. Furthermore, a woman's biological features are merged with her socio-cultural roles. In other words, because a woman is born with certain biological features her social roles in the society are already established. The often-uncharted relationship and interactions that

[26] CO Izugbara 'Patriarchal ideology and discourses of sexuality in Nigeria' (2004) *Africa and Regional Sexuality Resource Centre* 7; 23.
[27] As above 13; 15.
[28] Izugbara (n 26 above) 15; 28.
[29] EO Ekhator 'Women and the law in Nigeria: A reappraisal' (2015) 16 *Journal of International Women's Studies* 285.
[30] A Sheldon 'Women and disability' in J Swain et al (eds) *Disabling barriers- enabling environments* (2004) 69.

exist between the 'social' body and the physical body thus become evident.

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 is the point De Beauvoir made when she remarked that one is not born, but rather becomes, a woman.[31] She suggests that it is not necessarily physical characteristics that make one male (able-bodied) or female (disabled), but rather societal constructions that ascribe to one an identity of femaleness or maleness, where the former signifies weakness and by extension disability, and the latter signifies strength and by extension ability. This implies that although an individual is born with female biological characteristics, becoming a woman is a socially constructed identity category.

Butler sums up the womanhood 'problem' by explaining how the assumption that the concept of womanhood is a representation of a common identity is troublesome.[32] 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.[33] 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.[34]

Some feminist scholars have invoked the idea that the identity category of woman is essentially problematic.[35] This problem stems from the sexist and patriarchal meaning that the identity of 'woman' has acquired. However, other feminists argue that it is not necessarily the meaning that society attributes to women's bodily roles that oppress women but the roles themselves. They believe that the biological coalesces into the social, not because society imposes a meaning on woman's body, but because a woman's body determines her social being. While this is an interesting position, the fact remains that women are oppressed, whether it is the meaning that

[31] Cain (n 1 above) 807. Cain quotes de Beauvoir and the reasoning points to how woman as an identity category is not necessarily about biological characteristics but a social constructed category.
[32] J Butler *Gender trouble, feminism and the subversion of identity* (1990) 2; 3; 4.
[33] As above 2.
[34] Butler (n 32 above) 2; 3.
[35] L Alcoff 'Cultural feminism versus post- structuralism: the identity crisis in feminist theory' (1988) 13 *Signs* 405, 406; 436.

society attributes to women's bodily roles or the roles themselves.[36] In other words, the argument is that a woman's sex or gender does not really matter; what counts is the oppression.

To sum up, the implications of this discussion are that female oppression and various forms of discrimination against women are legitimised and accepted in Nigeria ultimately on the grounds that women's bodies, like disabled bodies, are different and abnormal.[37] I argue that this characteristic of Nigerian society endorses the discriminatory and oppressive actions that are suffered by women daily. This is a result of the fact that Nigerian women have been stripped of all power and end up adhering to the dominant culture. These unequal gender relationships or interactions of power between men and women lie at the root of women's oppression, showing that women in Nigeria are not considered human.

Similarly, in drawing attention to the oppression that Nigerian women suffer only because of their womanhood, Williams emphasises how the oppression of women is reinforced by the ideological relationship and interaction that exists between law and culture in Nigeria.[38] The forms of oppression that women suffer are a direct result of the fact that Nigerian law is influenced by and embodies the culturally inspired inferiority that is ascribed to women.[39] In fact, it is this unholy interaction or relationship between law and culture that makes it difficult to determine where culture ends, and law begins and vice versa.[40]

Echoing this point and although he is referring to widows, Iwobi finds law complicit in reinforcing the inferiority and subordination of Nigerian women.[41] This complicity becomes even more evident when one considers that culture and religion form an integral part of Nigeria's law.[42] In other words, the oppression that Nigerian women experience daily is strengthened by the force of law.

The points made so far emphasise that to be a woman in Nigeria is to be ascribed an inferior and

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[36] SA Mann & DJ Huffman 'The decentering of second wave feminism and the rise of the third wave' (2005) 69 *Science and Society* 57.
[37] R Garland-Thomson 'Feminist disability studies' (2005) 30 *Signs* 1557.
[38] S Williams 'Nigeria, its women and international law: Beyond rhetoric' (2004) 4 *Human Rights Law Review* 230.
[39] As above 230.
[40] Williams (n 38 above) 230.
[41] AU Iwobi 'No cause for merriment: The position of widows under Nigerian law' (2008) 37 *Canadian Journal Women and Law* 39; 40; 44.
[42] As above 44.

by extension a disabling identity. The identity category of womanhood is therefore exposed as unstable, socially constructed and is a site for trouble and oppression.

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

The next step in my argument demonstrates that the disabled Nigerian woman manifests as a 'disabled' woman. This means that to be identified as a woman (identity category) in Nigeria is disabling and a type of disability. 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. This claim is true considering the well-documented reality of Nigerian women as victims of sexist and patriarchal oppression.. Disability is thus exposed not only as a form of oppression of women but also as gendered.

In making this argument, I need to immediately acknowledge the objections to such an argument. To state or insinuate that a Nigerian woman is disabled is to place another oppressive identity (disability) on an identity that is already oppressed (womanhood).[43] One may thus be seen as not actually proffering resolutions but as compounding the problem. 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. Nevertheless, the objection indicates that equating womanhood with disability trivialises the hierarchies that are based upon ability and disability status.

As a disabled Nigerian woman, I understand this objection first-hand. From the moment that a (disabled) baby is born in Nigeria, subtle and not-so-subtle negative and tragic messages are conveyed. According to Campbell, these negative messages are inherent in disability.[44] In my view, although hardly acknowledged, these negative messages are similar to the subtle and not-so-subtle messages that are also conveyed from the moment that a female baby is born in Nigeria. Often, these subtle messages are even evident in the name that is given to the female child, indicating how a male child and heir was desired and preferred.

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[43] Kim (n 11 above) 232.

[44] FAK Campbell 'Exploring internalised ableism using critical race theory' (2008) 23 *Disability and Society* 151. Nigerians have been socialised to think of disability from the medical perspective. Disabled persons are taught to see themselves as inferior described as a form of internalised oppression.

While I acknowledge the objection as a valid point, the rebuttal is that Nigerian women are indeed disabled, whether this is acknowledged or not. I am not necessarily suggesting that all women in Nigeria have a form of disability or impairment (as I have with mobility difficulties) but such an argument draws attention to the fact that a once typical non-disabled woman is susceptible to disability, which can manifest in different ways including impairment as a result of the patriarchal tendencies inherent in Nigeria. In other words, the conception of disability as used here is not necessarily only a medical one, but instead draws attention to the unequal power dynamics and the socio-cultural construction of disability. It is precisely for this reason that I argue that these forms of oppression are related, whether they manifest as sexism or disability or both.

If this is so, as Grillot has pointed out, it will be pointless to attempt to tackle these forms of oppression in isolation.[45] I also use her disclaimer: saying that forms of oppression are related does not necessarily mean that a woman who has suffered a 'cultural disability' because her spouse has died and she has lost her socially sanctioned role as a wife, or a woman who has suffered a 'sexual disability' because of rape or FGM will necessarily experience the same pain as the woman who has suffered a 'physical disability' and has a visual impairment. The point is that they all experience pain but in different ways. Disability is therefore exposed as a form of oppression that disproportionately affects women in Nigeria.

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 disabled women. The claim that 'women are disabled' has been said to be a way of hiding the lived encounters of disabled women or women with impairments. While I agree that there might be some truth in this statement, I am in fact centring the disabled woman's experience by arguing that to be a woman in Nigeria is to be disabled. Kim has shown that where efforts are made to achieve equality, to prove that women are not disabled or that disabled men are not feminine, the stigma and oppression that are linked to femininity and disability are reinforced, because the hierarchy between femininity and masculinity remains untouched.[46]

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[45] T Grillot 'Anti-essentialism and intersectionality: Tools to dismantle the master's house' (1995) 10 *Berkeley Women's Law Journal* 16.
[46] Kim (n 11 above) 232.

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 is exemplified in, for instance, the idea that any mention of disability is automatically equated with the common essentialist medical understanding that persists today of a universal disability experience that focuses on biological determinism as 'injury' or an 'impairment'. Evidence shows how, so far, because of this understanding, the voice of the disabled woman in Nigeria has been silenced and her experiences ignored. The question is whether there is any reason why the disabled woman's or the marginalised woman's experience cannot be centred or representative of the woman experience.

Thus, my intention is to highlight the discussions about the female disability experience as part and parcel of the female experience. Specifically, the disability analysis used in this thesis complicates and expands identity, demonstrating how a woman can embody multiple subject positions and can be claimed by several identity categories. By making this argument, I therefore bring to the fore the lived realities of disabled women that the Nigerian legal framework fails to recognise or speak to. I question the dominant assimilationist and essentialist narrative of Nigerian law in regard to the disabled woman.

Nevertheless, some scholars disagree with the position that I share with Garland-Thomson. I readily acknowledge 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.[47]

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

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[47] Disability pride can be loosely defined as the sense that there is nothing inherently negative about being disabled. See generally Ribet (n 4 above) 158. Commendably, some disabled persons in Nigeria have started to develop 'pride' in their disability. However, I must confess that I still struggle with the label and identity 'disabled' particularly because of the negative connotations it carries. Most Nigerians have been socialised to think of disability in the medical perspective. This is coupled with the idea that the disability label and identity is ontologically negative. Thus, it is very difficult to have 'pride' in a label that carries with it such negativity especially in a world structured to suit ableism.

a true representation of the reality in Nigeria, which is what I want to highlight. Specifically, the 'women as disabled' argument underlies the interactions and intersections that exist between sexism and disability. In fact, the argument is that sexism and disability discrimination are the workings of a dominant narrative that is deeply entrenched in patriarchy. If this is so, it is possible to claim that no progress will be made in curbing either sexism or disability discrimination as part of a system of oppression of women, if we do not recognise their interactions and intersections. In addition, we will make no progress until the insight gained from their intersectionality is considered and mirrored in Nigeria's legal and human rights architecture.

Having acknowledged and responded to the counter-arguments, I return to developing and substantiating the argument that to be a woman in Nigeria is to be disabled or that disability is a gendered oppression in Nigeria. To substantiate this assertion, I interrogate three aspects of disability namely; its definition, its origins and its relationships to gender

With regards to definition, to state that disability is a form of gendered oppression in the first instance is reinforced by Kayess and French's understanding of disability as oppression by social structures and practices.[48] Their insight demonstrates how disability is oppression that works by denying or diminishing the individual's personhood, citizenship and civic participation.[49] In other words, disability can be understood as oppression that is manifested in diminished personhood, citizenship and civil participation.[50]

If this reasoning is followed, the diminishing of the personhood of women is a reality in Nigeria. Evidence points to how Nigerian women's humanity is questioned, based on the gravity of the oppression that is meted out to them.[51] This questioning of the humanity of women in Nigeria is, in my opinion, tantamount to what Quinn has identified as 'civil death'.[52] This 'civil death' phrase indicates the denial or loss of an individual's personhood and is arguably as applicable to the Nigerian woman as it is to disabled persons today. This is evidenced by the gravity and prevalence

[48] 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* 5.
[49] As above 5.
[50] Kayess & French (n 48 above) 5.
[51] Durojaye (2013) (n 23 above) 176; 198.
[52] G Quinn 'Reflections on the value of intersectionality to the development of non-discrimination law' (2016) 16 *The Equal Rights Review* 66. Quinn in the article traces the origin of the phrase 'civil death' to Blackstone.

of the oppression that Nigerian women suffer daily. The second-class citizenship that is commonly ascribed to women in Nigeria also illustrates this point and completely validates the argument that to be a woman is to be disabled and that disability is a form of oppression of women.

The concept of disability has historically been used to justify discrimination against and the unequal treatment of groups considered as different.[53] This point is significant because a large part of achieving equality is heavily reliant on legal personhood.[54] Equality and freedom are usually defined by the extent of one's autonomy and are largely dependent on having a legal personality and citizenship status.[55] Therefore, where women lack legal personhood as do the disabled, the liberal vision of equality is untenable. This validates and creates, as this thesis argues, the voiceless 'disabled' woman in Nigeria.

If it has been established that Nigerian women are disabled, then the research question of whether law and specifically human rights can speak to the lived realities of disabled women is a way of highlighting the complicity of Nigerian law and specifically the human rights framework in reinforcing women's diminished personhood. Thus, the ability of law to protect disabled women, considering its complicity in her disability, is questioned.

By making the 'women as disabled' assertion, I reiterate that I am not simply suggesting that some Nigerian women do not have disabilities in the form of, for instance, a physical impairment, but more importantly for this research, I am arguing that being a woman in patriarchal Nigerian society is in itself a type of disability where a woman is denied her personhood or her personhood is diminished. Let me be clear that this assertion is two-pronged. On the one hand, I acknowledge that some Nigerian women do have disabilities in the form of, for instance, an impairment resulting from medical or psychological harm. However, the conception of disability as used here counters the traditional and essentialist medical perspective that simply focuses on genetics, to recognising emergent and gendered disability.[56] It is a consequence of the unequal power relations and socio-

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[53] D Baynton 'Disability and the justification of inequality in American history': The new disability history (2001) 33.
[54] MA 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; 111.
[55] FAK Campbell 'Exploring internalized ableism using critical race theory' (2008) 23 *Disability and Society* 158.
[56] Ribet (n 4 above) 161.

cultural oppression of women embedded in society.

On the other hand, and linked to the first aspect, is that to claim that 'women are disabled' is to draw attention to the idea that the basis of disability as oppression, especially when it concerns a Nigerian woman, is not gender, sexuality, ethnicity, disability or class, neutral but that it often occurs at the intersection of the disabled woman's embodied identity categories simultaneously. This is confirmed by Garland-Thomson's description of disability as gendered feminine.[57] Disability and womanhood have been combined in such a way that they are both understood as defective departures from the (male) privileged norm. The validity of the statement becomes clear, especially since being identified as a 'woman' is equated with being weak, passive, and dependent.[58] These characteristics unfortunately resemble the ones usually associated with being disabled. As stated earlier, these characterisations police differences and point to a veiled standard from which female bodies, like disabled bodies, are thought to depart.[59]

The foregoing could possibly explain why womanhood in patriarchal societies, such as Nigeria, has strong negative connotations that can easily be linked to disability. The prevalence and gravity of oppression that women experience simply because they are women in Nigerian society is proof of how being a woman is not only disabling but is considered a type of disability. In my view, Garland-Thomson points to these clear interactions between femininity and disability in her description of how femininity is a disabling condition in patriarchal society.[60] This is also mirrored in her accurate assertion that to be a woman is to be inevitably identified as disabled in sexist societies.[61] In such societies, women are still regarded as flawed versions of men.[62] They are viewed as biologically and socially unwell and not unlike idiots.[63]

Studies have accurately regarded the experiences of the disabled as synonymous with the experiences of women and vice versa. The fact that disability has been socially constructed as feminine, coupled with the fact that to be female and to be disabled share common descriptions

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[57] Garland-Thomson (2002) (n 2 above) 10.
[58] M Fine & A Asch 'Disabled women: Sexism without the pedestal' (2014) 8 *The Journal of Sociology and Social Welfare* 233.
[59] Garland-Thomson (2002) (n 2 above) 10.
[60] As above 6.
[61] Garland-Thomson (2002) (n 2 above) 6.
[62] V McLean 'Why the inflation in legislation on women's bodies' (2012)14 *European Journal of Law Reform* 316.
[63] As above 316.

such as ‘incomplete, dependent and incompetent’ is enough evidence.[64] A crucial aspect of being female, as far as Morris is concerned, is being weak and dependent, characteristics that are usually synonymous with the manner in which the disabled are depicted.[65] To be labelled female or disabled suggests weakness and passivity, which are characteristics that the disabled woman unfortunately inherits.[66]

The differences that women supposedly exhibit are perceived as departures from the male standard, and are mostly interpreted as types of disabilities.[67] For example, the oppression that women suffer is usually traced to their supposed and perceived physical, intellectual, and psychological differences and abnormalities, when compared to the male norm. These perceived differences that women apparently embody are automatically equated with and interpreted as inferiority and inadequacy, and are usually portrayed in a disabling manner, for instance, as irrationality, hysteria, emotion and physical weakness. Unfortunately, often these kinds of (mis-) interpretations reinforce the oppression that women suffer by attributing disability to them.

The often-uncharted relationships and interactions between the ‘social’ body and the physical body therefore become even more evident. An accurate correlation can be drawn between the oppression that women experience because of their perceived differences and the existence of disability. For example, in Nigeria, in relation to sexuality, boys and men are allowed to be adventurous, while the sexuality of girls and women is regarded as weak and dangerous, implying inferiority.[68] This deduction can be made from descriptions of women as fragile and dependent, with their sexual behaviour requiring surveillance and control.[69] This means that, although private parts are sexual in nature, only the liberal individual man is not asexual.[70] One can therefore link the oppressive experiences that women suffer, for instance, FGM and rape, to these patriarchal tendencies and descriptions that reinforce men’s sexual superiority to women.

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[64] Garland-Thomson (2002) (n.4 above) 10.
[65] J Morris ‘Gender and disability’ in Swain J et al (eds) in *Disabling barriers- enabling environments* (1993) 88.
[66] Fine & Asch (n 58 above) 237.
[67] Baynton (n 53 above) 33.
[68] Izugbara (n 26 above) 15.
[69] 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.
[70] F Olsen ‘Constitutional law: Feminist critiques of the public/private distinction’ (1993) 10 *Constitutional Commentary* 322.

In fact, if the evidence identifying gender-based oppression as the primary cause of death and disability for women is to be believed, then the description of disability as a form of socio-cultural oppression that is similar and related to sexism is accurate.[71]

Offering these arguments 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 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.[72] Wendell's accurate reminder emphasises disability as a narrative depicting the social and cultural oppression of the female body.[73] According to Garland-Thomson, this body is portrayed as sick, flawed, crazy, ugly, abnormal, mad and maimed.[74]

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 FGM has the potential to disable the woman. Authors' analyses and depictions of widows' experiences in Nigeria are also useful here.[75] In their descriptions of the horrors and oppression that widows encounter, these scholars illustrate how most Nigerian 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 this is hardly investigated as such. This is true especially when one considers the dehumanising, oppressive practices and the resultant disabilities that a Nigerian widow suffers upon the death of her spouse.

Iwobi rightly describes widowhood as a form of 'social death' for women in Nigeria.[76] According

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[71] C Barnes & G Mercer *Disability (Polity: key concepts in the social sciences)* (2003) 19.
[72] See generally Garland-Thomson (2002) (n 2 above) 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.
[73] S Wendell 'Towards a feminist theory of disability' (1989) 4 *Hypatia* 104.
[74] Garland-Thomson (2002) (n 2 above) 5.
[75] See generally Durojaye (2013) (n 23 above) 176; Iwobi (n 41 above) 44; and U Eweluka 'Post colonialism gender customary injustice: Widows in African societies' (2002) 24 *Human rights Quarterly* 424.
[76] Iwobi (n 41 above) 44.

to him, widowhood strips women of their social status and they experience severe oppression and stigma.[77] 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. The dehumanisation of widows reinforces the idea and is proof that disability is a form of oppression experienced only by women in Nigeria. This is because, as indicated earlier, the woman's value in most Nigerian cultures is tied to her ability to perform the functions of a wife and mother. This means that upon the death of her husband the widow is no longer able to perform her socially sanctioned wifely functions and 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 that a widow endures on account of the death of her spouse is arguably similar to the loss experienced by the disabled woman, who endures a loss of her womanhood by virtue of her disability. In fact, I argue that if, as authors have established, the general social status accorded to women in Nigeria is one of inferiority and subordination, then it would be accurate to conclude that the general perception in patriarchal Nigeria is that being a woman is a type of disability. This is the case especially if we consider the arguments that rightfully regard inferiority and subordination as variations of disability.

Disability, especially in regard to Nigerian women, is not simply a question of medical health, genetics and sympathy, but instead a question of politics, power and the lack thereof. The concept of 'disabled' women as employed in this thesis is therefore significant, as it could be quickly and easily substituted with patriarchal assumptions about inferior or subordinate women in Nigeria.

On the other hand, the dominant essentialist premise of the 'nature argument' is the view that disability is the result of natural events. This suggests that disability is a product of medical diagnosis and one is disabled because one is medically diagnosed as such. 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 certain feminist sensitivities, and may

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[77] As above 44.

appear to make light of the pain that is associated with a disability.

Interestingly, the dominant disability narrative in Nigeria is inspired by the nature argument. Abang, using the example of blindness, identifies five main causes of this disability in Nigeria:[78] infections, cataracts, glaucoma, malnutrition and trauma.[79] 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.[80] Undoubtedly, the way in which disability is conceptualised here is in many respects a medical one. Even if the dominant 'nature' approach to disability is followed, at least three of Abang's five main 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 a number of socio-cultural factors, including poverty and war. Trauma that could trigger blindness could also be caused by domestic violence and rape. What is striking about this argument and supported by the United Nations (UN) and the World Health Organisation (WHO) are the social origins and constructions of disability.[81]

Interestingly, the WHO and the World Bank Report on Disability have reported that approximately 15 percent of the world's population have a disability.[82] Worse still, it is estimated that about 80 percent of the global disabled population are Nigerians.[83] Eleweke and Ebenso speculate that over

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[78] TB Abang 'Disablement, disability and the Nigerian society' (1988) 3 *Disability, Handicap and Society* 72.
[79] As above 1.
[80] N Smith 'The face of disability in Nigeria: A disability survey in Kogi and Niger states' (2011) 22 *Disability, CBR and Inclusive Development* 36.
[81] 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 (date accessed 26 March 2016). Ribet make similar arguments emphasising the social origins of disability in B Ribet (n 4 above) 176.
[82] 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 (date accessed 26 March 2016); and Meekosha & Soldatic (n 80 above) 1383. Meekosha & Soldatic use similar statistics to argue that more than a billion persons of the world's population live with one form of disability. This explains why disabled persons are often referred to as the world's largest minority.
[83] CJ Eleweke & J Ebenso 'Barriers to accessing services by people with disabilities in Nigeria: Insights from a qualitative study' (2016) 6 *Journal of Educational and Social Research* 118. It has to be stated that 15% of the world population of approximately 1,12 billion people. 80% of 1,12 billion people will be 960 million disabled people in Nigeria. As such, these numbers of disabled persons can be said to be merely speculative especially as there is yet to be a proper census conducted in Nigeria since 1991.

22 million people are living with disabilities in the country.[84] However, the conception of disability here is essentially a medical one, especially given that this high speculative figure of disabilities in the country has been linked to preventable illnesses and diseases that can cause disabilities, still endemic in Nigeria. In fact, the inadequate immunisation coverage in the country is identified as the recurring cause of prevalent diseases resulting in disabilities.[85]

In relation to gender, the question that needs to be asked is what precipitates the increased susceptibility of women to disability? Women's increased susceptibility to these diseases and their disabling effects is evident in Nigeria. Smith has alluded to how poor maternal and neo-natal care has played a huge role in increasing the number of disabilities in women and infants in the country.[86] This means that women have an increased risk of acquiring a disability when performing their functions as a wife and mother.[87] This is coupled with the heightened vulnerability of women to increased discrimination and oppression once the disability is identified. Fine and Asch echo the point by describing the increased vulnerability of women with disabilities.[88] They explain how disabled women experience additional oppression not only because they are women but also because they are disabled.[89] This argument is substantiated by the significant accounts and descriptions of the severe exploitation that disabled women experience as a result of their sex and their disability.[90]

First, the literature is unanimous in linking poor health care to disability. Evidence shows how poor hygiene and health facilities in Nigeria cause infections that may result in disabilities. It is therefore valid to argue that most disabilities 'could be prevented through measures taken against malnutrition, environmental pollution, poor hygiene, inadequate prenatal and postnatal care, water-borne diseases and accidents of all types.[91] In addition, studies describe how psycho-social conditions such as depression are more noticeable in women than men.[92] Hormonal changes

[84] As above 118.
[85] Smith (n 80 above) 36.
[86] As above 36.
[87] N Groce 'Women with disabilities in developing world: Areas for policy revision and programmatic change' (1997) 8 *Journal of Disability Policy Studies* 178.
[88] Fine & Asch (n 58 above) 233.
[89] As above 233.
[90] N Begum 'Disabled women and the feminist agenda (1992) 40 *Feminist Review* 73.
[91] Smith (n 80 above) 36.
[92] R de Silva de Alwis 'Mining the intersections: Advancing the rights of women and children with disabilities

following the birth of a child and other factors all raise women's susceptibility to disability.[93]

Similarly, poverty has been linked to disability in Nigeria.[94] 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.[95] Disabilities may develop simply because poor people cannot afford to treat chronic diseases. In other words, poverty makes a person more susceptible to disability, which in turn reinforces and worsens poverty. Thus, the well-documented correlation between disability as both a cause and a consequence of poverty is therefore undeniable. This situation is worsened because poor people are more likely to endure human rights violations and are less likely to enjoy the guarantee of their rights in Nigeria.[96]

If there is at least some truth in this well-established correlation, then the susceptibility of women to disability becomes even more evident, because poverty is viewed as a woman's problem in Africa.[97] If this was a mathematical equation, women's situation in Nigeria would be expressed as x being a subset of y and z. In other words, x=y=z where x signifies poverty, y is disability and z is oppression. Thus, women in Nigeria are more likely to experience poverty which automatically increases their susceptibility to oppression that easily manifests as disability. The ultimate result is that women's susceptibility 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,[98] because of the country's recent unfortunate rise as the poverty (disability) capital of the world.[99] If this is the case, then in the same way as it is possible to speak of the feminisation of poverty, we can assert a

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within an interrelated web of human rights' (2009) 18 *Pacific Rim Law and Policy Journal* 296.
[93] As above 293.
[94] MA Haruna 'The problems of living with disability in Nigeria' (2017) 65 *Journal of Law Policy and Globalization* 103.
[95] Smith (n 80 above) 36.
[96] E Brems & CO Adekoya 'Human rights enforcement by people living in poverty: Access to justice in Nigeria' (2010) 54 *Journal of African Law* 258; 263.
[97] EJ Kaka 'Poverty is a woman issue in Africa' (2013) 18 *Journal of Humanities and Social Science* 77.
[98] 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.
[99] 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/ (date accessed 14 November 2018).

feminisation of disability 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 health care, 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 care-giving responsibilities, domestic and sexual violence all increase women's susceptibility to disability and increased oppression once the disability is identified. 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 disability.

Interestingly, racism has also been linked to disability.[100] This correlation is obvious, as Ribet has shown, if we consider that disability is mostly a consequence of warfare and racism is a potential cause of warfare.[101] Although disability in this regard is defined using the dominant nature and medical narrative, such linkages expose the social and cultural construction of disability where racism is identified as a cause of disability.[102] If there is an interaction between race and disability, then the relations between sexism and disability cannot also be ignored.

From the above discussion, we can conclude that a very narrow essentialised 'nature' and medical definition of disability alone is no longer valid, given the correlation between poor health care, poverty, gender-based violence and racism, on the one hand, and disability, on the other hand, as the literature has correctly established. Whether disability is attributed to the woman culturally or whether the woman acquires the disability naturally, disability is undeniably a form of oppression of women. Making a culture argument about disability therefore shows that pain does matter, but emphasises the idea that pain does not necessarily originate solely from biological or genetic traits alone.

To recap, the argument that 'women are disabled' counters dominant essentialist narratives about

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[100] The United Nations 'World Programme on Disability Report' (1982) available https://www.un.org/development/desa/disabilities/resources/world-programme-of-action-concerning-disabled-persons.html (date accessed 16 March 2016). The report identifies disability to be a direct consequence of racism.
[101] B Ribet (n 4 above) 175.
[102] As above 175; 176.

disability in Nigeria. This argument does not necessarily imply that all women in Nigeria have impairments; importantly, it highlights a three-fold approach. First, it emphasises disability as a type of gendered oppression as well as the increased susceptibility of women to disability. Unlike what the law and specifically human rights would like us to believe, disability, particularly with regards to Nigerian women, is not the result of biology alone; a very large part of what constitutes this kind of disability is gendered, emergent and socially constructed. Second, it emphasises the idea that sexism intersects with disability in the country. If this is the case, sex/gender and disability can no longer be treated as separate identity categories.

Third, the 'women are disabled' argument draws attention to the idea that where ability and masculinity, for instance, are regarded as the dominant narrative in Nigeria, it is often easy to forget that the dominant narrative is not the only perspective. As Grillot and Wildman explain, individuals in dominant groups often assume that their viewpoints are the important ones, and that their problems are the problems that need to be addressed.[103] These authors' observations are that, in the dominant narrative, the members of the dominant group always want to be the speakers and be heard rather than the listeners.[104] They describe how being a member of a privileged group means being the centre and the subjects of all narratives, while marginalised groups such as disabled women are the objects.[105] This argument gains traction when one considers the invisible and voiceless disabled woman who sits at the intersection of multiple identities.

Having established the above, I proceed with the next step of my argument, which is to highlight the idea that there are interactions and intersections between sexism and disability discrimination.

2.2 Highlighting the intersections: The disabled woman and the feminist versus disability narrative in Nigeria

The next step in my argument demonstrates that the disabled Nigerian woman manifests as 'disabled' and 'woman' and both simultaneously. The argument reinforces the impossibility of attempting to separate and isolate identity categories, that is, the impossibility of asking a disabled woman to pretend she is a woman and not disabled, or that she is disabled and not a woman at the

[103] T Grillot & SM Wildman 'Obscuring the importance of race: the implication of making comparisons between racism and sexism (or other -isms)' (1991) *Duke* Law *Journal* 402.
[104] As above 402.
[105] Grillot & Wildman (n 103 above) 402.

same time.

Using the disabled woman perspective or the 'women as disabled' argument, I reinforce the idea that sexism intersects with and reinforces disability and vice versa. This argument is predicated on Garland-Thomson's established argument that to be a woman in patriarchal and sexist societies such as Nigeria is potentially disabling and a type of disability.[106] In my view, in making this assertion she underscores the intersections or the interactions that exist between womanhood and disability.

Studies describe how the dominant feminist and disability legal and human rights narratives have ignored the experiences of disabled women.[107] For Meekosha specifically, not only have the lived realities and experiences of disabled women been trivialised, but disabled women themselves have been overlooked.[108] She describes the dilemma of the disabled feminist because neither the dominant disability narrative nor the dominant feminist narrative fully addresses her experiences.[109] On the one hand, the disability movement has been accused of consciously ignoring and refusing to recognise gender issues. The feminist movement, on the other hand, has been faulted for denying the experiences and realities of disabled women on important issues such as sexuality and motherhood. In fact, the dominant feminist and disability narratives, as far as the literature is concerned, have specifically ignored the reproductive concerns of the disabled woman.[110]

In drawing attention to how disabled women have been disregarded by both the feminist and the disability narratives, Begum notes how a woman with a physical disability is disregarded by both narratives, despite the double oppression of sexism and disability that places the woman in a heightened marginalised position.[111] Specifically, she indicts the feminist narrative that promises to speak for the experiences of all women, yet disregards the disabled woman.[112] Despite the similarities between the disabled woman and her non-disabled female counterpart, the feminist

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[106] Garland-Thomson (2002) (n 2 above) 6.
[107] K Mohammed & T Shefer 'Gendering disability and disabling gender: Critical reflections on intersections of gender and disability' (2015) 29 *Agenda* 2.
[108] H Meekosha 'Virtual activists? Women and the making of identities of disability' (2002) 17 *Hypatia* 68.
[109] As above 68.
[110] V Kallianes & P Rubenfeld 'Disabled women and reproductive rights' (1997) 12 *Disability and Society* 204.
[111] Begum (n 90 above) 70; 73.
[112] As above 70; 73.

narrative has limited its interventions for disabled women because of its reluctance to tackle diversity or differences between women.[113]

This is certainly true of Nigeria. Afolayan highlights the invisibility and exclusion that the disabled woman experiences in the country.[114] The invisibility problem occurs where disabled women have been ignored by the feminist movement on the one hand and their issues have been trivialised by the disability movement on the other hand.[115] This invisibility is exemplified by dominant disability narratives treating disability as genderless, and completely ignoring the disabled woman's experiences. This disregard has been linked to a misleading assumption that the experiences of the disabled are male-centred and homogeneous.[116]

This invisibility problem is also exemplified by dominant feminist narratives disregarding the different aspects of gender. Very few scholars have extended their research to explore the unique exploitation that Nigerian women suffer once they are identified as 'disabled'. This gap in the research mirrors the complete disregard for the experiences of the Nigerian 'disabled' woman. Yet the prevalence of gender inequality and the oppression that women experience in Nigerian society, simply because they are women, is proof of how being a woman in the country is not only disabling, but is also considered a disability.

Arguably, the disregard of the disabled Nigerian woman's lived experiences can be traced to the tensions that exist between two schools of thoughts in relation to the disabled woman. The first school of thought claims that disabled women's experiences are similar to the experiences of their non-disabled female counterparts. For simplicity's sake, this first school can be called the 'assimilationist school'. The assimilationists argue that women with the 'disability identity' are women first and therefore share similar problems with their non-disabled female counterparts. Kallianes and Rubenfeld appear to identify with this school when highlighting the similarities that disabled women and their non-disabled female counterparts share.[117] These similarities

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[113] Begum (n 90 above) 70; 73.
[114] GE Afolayan 'Contemporary representations of disability and interpersonal relationships of disabled women in southwestern Nigeria' (2015) 29 *Agenda* 61.
[115] L Abu Habib *Gender and disability: Women's experiences from the Middle East* (1997) 5.
[116] T Emmett & E Alant 'Women and disability: Exploring the interface of multiple disadvantage (2006) 23 *Development Southern Africa* 445.
[117] Kallianes & Rubenfeld (n 110 above) 204; 206.

specifically concern the control of women's lives and bodies and efforts to challenge the stereotypes and oppression that women jointly face.[118]

Assimilationist scholars note how issues about gender roles and sexuality specifically link the experiences of disabled women with the experiences of a typical woman in a sexist and ableist society.[119] Begum uses three aspects of women's oppression – gender roles, self-image and sexuality – to emphasise the similarities that exist between the disabled woman and her non-disabled female counterpart.[120] In Nigeria, Eleweke and Ebenso suggest that disabled women are as much if not more so victims of patriarchy as their non-disabled female counterparts.[121]

While there is validity in the argument that disabled women are first and foremost women and therefore automatically share certain similarities with their non-disabled female counterparts, research shows that the feminist movement has continued to shun disabled women because of its reluctance to tackle diversity or differences between women.[122] Disabled women are often shunned by their non-disabled sisters because they are not perceived as fitting the ideal feminine standard.[123] Thus, disabled women are excluded from the generic identity category of woman and are regarded instead as dependants.[124] According to Morris, this perception is worsened by the belief that to validate the humanity of disabled women threatens the economic benefits available to their non-disabled female counterparts.[125]

The foregoing perception and belief could explain why, as Morris has shown, significant feminist research has deliberately omitted disabled women from its analyses.[126] For her, the often-provided flimsy excuse given for this omission and disregard is that although disability is acknowledged as a form of oppression of women, it is rarely discussed as such because of the difficulty and fear of making generic assumptions about disability.[127] The bias in such arguments becomes immediately clear given that, as Morris has shown, racism, like disability, also takes different forms and yet

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[118] As above 204.
[119] Begum (n 90 above) 70; 74.
[120] As above 74.
[121] Eleweke & Ebenso (n 83 above) 118.
[122] Begum (n 90 above) 70; 73.
[123] M Lloyd 'The politics of disability and feminism, discord or synthesis' (2001) 35 *Sociology* 716; 718.
[124] J Morris *Feminism, gender and disability* (1998) 8.
[125] As above 8.
[126] J Morris 'Feminism and disability' (1993) 41 *Feminist Review* 57.
[127] As above 56.

this has not prevented black feminists from demanding a feminist perspective that pays attention to their specific needs and places their interests at the forefront of the feminist agenda.[128]

According to Fine and Asch, the claim of the second school of thought (the disassimilationists) is that because the disabled woman is not plagued and pressured by the burdens that society places on non-disabled women, for instance, to get married and have children, their encounters differ significantly from those of their non-disabled female counterparts.[129] For them, the disabled woman is often denied the luxury of femininity, validating her as part of an excluded and varied group within the larger group of women.[130] Although Fine and Asch's statement is not without merit, it might be rather archaic to suggest that disabled women are not plagued by a social burden to get married, especially when there is evidence that disabled women also get married and have children.[131]

The central premise of this second school of thought is that a disabled woman's experience is not necessarily the same as that of her non-disabled female counterpart. This could possibly explain the concession that, although the oppression that disabled women suffer is similar to that of non-disabled women, the severity or impact of this oppression on these two groups of women is not necessarily the same and does vary. This divergence in experiences could be linked to the dominance that the disability identity carries, which ensures that many disabled women are 'de-sexed' from other women.[132] When a woman's gender identity clashes with her identity as disabled, the disabled identity is emphasised.

Unfortunately, where such a collision occurs, the disability marker is the primary and dominant characteristic by which the disabled woman is labelled, and its presence automatically makes the disabled woman ineligible to be regarded as human and sexual. According to Shakespeare, this explains why a woman's sexual identity frequently collides and conflicts with her identity as

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[128] Morris (n 126 above) 57.
[129] Fine & Asch (n 58 above) 233.
[130] As above 233.
[131] Morris (n 124 above) 8. On one hand, it is more common to see disabled men marry non-disabled women because of the view that the non-disabled woman would be able to care and perform her roles as wife and mother. On the other hand, it is quite rare to see disabled women marry non-disabled men because the view is that disabled women would be incapable of performing their roles as wife and mother.
[132] Shakespeare (n 9 above) 94.

disabled.[133] This stem from the very deliberate criteria that are placed on bodies to determine or ascertain whether a person is appropriately and suitably gendered, where the presence of a disability potentially distorts perceptions.[134]

This results in a divergence between the experiences of the disabled woman and those of her non-disabled sister. This divergence could be tied to the fact that disabled women are not only generally considered to be less than human but, importantly, they are considered less of a woman. Abu-Habib points to the prevalent perception that a disabled woman's life is insignificant.[135] This supposed insignificance possibly stems from deeply ingrained cultural stereotypes that portray disabled women in Nigeria as helpless, dependent, incapable of having sexual feelings, and unable to perform the functions of motherhood.[136]

To illustrate the salience of this point, a 2015 report provides vivid stories from disabled women describing how, in Nigeria generally, they are not seen as human beings.[137] Echoing this point, Eleweke and Ebenso provide narratives from disabled women who describe how they are often treated as dogs and not as human beings in Nigeria.[138] According to their study, '[a]ny person with a physical disability or any deformity in Nigeria is treated like a dog depending on where (s)he comes from. Some may not regard a physically challenged person as a human being.'[139]

This narrative aptly demonstrates and confirms how the presence of a disability disqualifies a person from been recognised as a female.[140] This ineligibility that disability carries could explain why, if it were possible for the disabled woman to make choices between her two identities that have negative connotations – of either being female or being disabled – her instinct would be to rely more on the traditional female stereotypes, simply because society views disability as inability.[141] Consequently, disabled women struggle with the need to end the culturally dominant

[133] As above 94.
[134] T Gerschick 'Toward a theory of disability and gender' (2000) 25 *Feminisms at a Millennium* 1264.
[135] Abu Habib (n 115 above) 12.
[136] Afolayan (n 114 above) 57.
[137] See generally NSRP and Inclusive Friends Report 'What violence means to us: Women with disabilities speak' (2015) http://www.nsrp-nigeria.org/wp-content/uploads/2015/09/What-Violence-Means-to-us-Women-with-Disabilities-Speak.pdf (date accessed 24 March 2017); and Afolayan (n 111 above) 57.
[138] Eleweke & Ebenso (n 83 above) 118.
[139] As above 118.
[140] Gerschick (n 134 above) 1263.
[141] Fine & Asch (n 58 above) 234.

models of femininity and yet, as Lloyd explains, at the same time they aspire to achieve such femininity.[142] Disabled women struggle to have their sexuality acknowledged and yet struggle to be free of the shackles that such feminine stereotypes present. This struggle stems from cultural stereotypes that perpetuate the view of disabled women as asexual, unfit to reproduce, dependent, unattractive and as generally unable to be truly women.

This discussion explains the tensions that arise where, on the one hand, non-disabled women are busy clamouring for the elimination of the cultural and sexual roles that stereotype them, while, on the other hand, disabled women are often burdened by the struggle to maintain and fulfil these traditional stereotypes that society ascribes to women, particularly on issues such as sexuality and motherhood, in order to at least be considered human.[143] This is because the humanity and significance of women generally is inevitably tied to and determined by the fulfilment of their socio-cultural roles.

The different encounters experienced by the disabled woman as a result of the identities that she carries compared to her non-disabled female counterpart become obvious. This is because the disabled woman is faced not only with sexist biases but her experience is worsened by ableist biases as well.[144] This could imply that the disabled woman, because of her disability identity, is stripped of and denied the luxury of the fragile pedestal that her non-disabled female counterpart supposedly enjoys.[145] Lloyd points to this feminine pedestal or standard by claiming that the disabled woman's experience is different from that of non-disabled women because, as a result of her disability, she has been stripped of her womanhood and therefore first has to struggle to achieve femininity.

Perhaps because of the above, Schriempf warns that feminists whose theory presumes to include disabled women under the generic identity of 'woman' run the risk of missing the different experiences of a disabled woman in a sexist and ableist society.[146] She explains that although disabled women are undoubtedly women, feminists need to pay attention to disability in a bid to

[142] Lloyd (n 123 above) 718.
[143] As above 716.
[144] A Schriempf '(Re)fusing the amputated body: An interactionist bridge for feminism and disability' (2001) 16 *Hypatia* 54.
[145] Fine & Asch (n 54 above) 233; 234.
[146] Schriempf (n 144 above) 56; 57.

counter the narratives that oppress disabled women.[147]

The two schools of thoughts outlined above provide insight on the existing tensions regarding whether the encounters of disabled women are 'similar to or different from' those of non-disabled women. Yet the disabled woman perspective or the 'women as disabled' argument in this thesis exposes that the real issue is not necessarily whether the encounters of disabled women are 'similar to or different from' those of their non-disabled female counterparts, but the interactions and intersections that exist between sexism and disability. Importantly, because sexism is a cause and consequence of disability and these forms of oppression are the workings of a system of a dominant narrative deeply entrenched in patriarchy, it will be difficult to curb either sexism or disability or both in Nigeria without recognising their interactions and intersections.

The disabled woman perspective or the 'women as disabled' argument emphasises the idea that to be a woman in patriarchal societies such as Nigeria is to be potentially disabled. In other words, a typical non-disabled Nigerian woman today is potentially a disabled woman tomorrow. The severity of the exploitation and oppression that Nigerian women suffer simply because they are women and the lifelong disabling and crippling physical, psychological and emotional effects and potential consequences of the abuse of women victims illustrate this point.[148] The underlying premise here points to how violent actions committed against Nigerian women cause harm and have serious implications for the woman's health and wellbeing. Often the physical, mental, emotional and psychological injuries or disabilities that women acquire because of the sexist oppression they experience turns them into today's 'disabled' women.

This points to the relationship that exists between the violence and sexist oppression that women suffer, on the one hand, and the negative consequences of disabling the bodies and minds of Nigerian women who were once considered to be 'normal' or non-disabled, on the other hand. Echoing this point, Onyemelukwe locates the intersections and relationships that exist between the sexist oppression that women suffer on the one hand and their health on the other.[149] Her illustration portrays the possible health consequences of violence and oppression on a typical

[147] As above 56; 60; 67.
[148] C Onyemelukwe 'Intersections of violence against women and health: Implications for health law and policy in Nigeria' (2015) 22 *William and Mary Journal of Women and the Law* 614; 616.
[149] As above 617-628.

normal Nigerian woman that could render her disabled.[150] It should be acknowledged that the conception of disability here in many respects might be a medical one, exemplified by the presence of impairments.

However, doubts remain about how truly human women in Nigerian society are, on account of the oppression they endure simply because of their sex.[151] The consequences of harmful cultural and religious practices in Nigeria not only endanger their health but also demean women. Arguably, these doubts depict a concern that goes beyond the health of a woman to show how, unfortunately, the perceived differences ascribed to women, automatically equated with inferiority and inadequacy especially when compared to men, often justify discriminatory and disabling actions and attitudes. In making these points, the socio-cultural origins of disability as well as the role that unequal power relations play in the production of the disabled woman become evident.

We can thus accurately speculate that whether a woman is with or without a disability, she carries similar or the same characteristics. Fine and Asch concede this when claiming that the disabled woman carries the two identities of 'woman' and 'disabled'. According to them, even if the disabled woman has the option of identifying either as female or disabled, neither of these identities holds any promises as both identities carry negative connotations.[152] If this is true, then we can accurately assert that being a woman can be equated with being disabled and any reference to a 'disabled woman' is simply tautological, revealing the complexity of identity categories and oppression and their messiness in women's lives and their lived realities in Nigeria.

In order to substantiate the 'women as disabled' idea and how sexism intersects with and reinforces disability and vice versa in Nigeria, I provide examples of prevalent gender discrimination and oppression that women encounter. I do this to demonstrate how sexist and gender-based discrimination against women is not only the primary cause of death but also the cause of disability for women. There is unacknowledged evidence that gender-related oppression such as rape, marital rape, FGM and domestic violence are disabling and could lead to some kind of disability in Nigeria. This kind of disability could manifest in various forms of physical, psychological,

[150] Onyemelukwe (n 148 above) 617-628.
[151] Durojaye (2013) (n 23 above) 176.
[152] Fine & Asch (n 58 above) 237.

cultural and even sexual impairments.

The disabling and negative consequences of gender oppression are therefore evident, exposing how the oppression of women can be both a cause and a consequence of disability. This is coupled with the fact that once they are disabled, disabled women suffer even greater sexism. Thus, the often-unacknowledged relationship between sexism and disability in Nigeria become obvious. This confirms that to be a woman in a sexist society such as Nigeria is a type of disability. In addition, the lines between these forms of oppression are often blurred.

For example, the prevalence of rape as a sexist oppression in Nigerian society has been normalised, justified and condoned. The argument is that once a woman has been raped (sexist oppression), she becomes disabled. Evidence shows that apart from the health, physical and psychological consequences, rape is crucially a weapon of power (and disablement) by male perpetrators over female victims.[153] The following case was reported in a 2011 Global Rights Report:

> Hadija, age 22, was raped by Donatus, resulting in pregnancy. She did not tell her parents for fear of been physically beaten or tortured. Hadija could not report to the police for fear of stigmatisation if the matter was prosecuted. Donatus on learning of Hadija's pregnancy, pleaded with Hadija to abort. When she refused, he lured her into the waiting hands of six friends, who forcefully carried out an abortion on her using crude instruments. No action has been taken against Donald to date.[154]

The above narrative is testament to how public knowledge about a rape leads to stigmatisation, hostility and ostracisation for the female victim. This is worsened by the fact that, as Bamgbose shows, victims of rape are considered unmarriageable or as less valuable for marriage because they have lost their virginity.[155] This is because of the value placed on keeping one's virginity in most Nigerian cultures and religions.[156] This is why women are encouraged by their cultural and traditional beliefs to keep their virginity whereas the same obligation is not expected of boys and

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[153] I Buba 'Terrorism and rape in Nigeria: A cry for justice' (2015) 4 *African Journal of Business and Management Review* 1.
[154] Global Rights Kano Human Rights Network (KAHRN) & Bauchi Human Rights Network (BAHRN) (n 21 above) 15.
[155] O Bamgbose 'Legal & cultural approaches to sexual matters in Africa: The cry of the adolescent girl (2015) 10 *University of Miami International and Comparative Law Review* 137.
[156] As above 137.

men. In fact, this confirms the superiority of male sexuality over female sexuality.[157] This superiority is shown by the way in which Nigerian men and boys are allowed to be sexually expressive and adventurous, while the girls are expected to remain sexually passive.[158] The sexuality of girls is thus often perceived of in terms of vulnerability, danger and, by implication, inferiority.

'True' womanhood and its attendant value in Nigeria is usually defined by and tied to the performance of social, cultural, sexual and motherhood roles.[159] This could mean that where the Nigerian woman is unable to perform these roles because she has been raped, for example, she becomes disabled. Subsequently, where on account of her disability she is disqualified and excluded from performing these roles and functions, she is regarded as less of a woman and stripped of her womanhood and personhood.

This demonstrates how, in the same way as the disabled woman is disqualified from performing her roles because of her disability, her raped sister loses value and becomes ineligible for marriage by virtue of the rape.[160] The stigmatisation, hostility, ostracisation and loss of value that the rape victim faces could be said to be tantamount to what a disabled woman experiences. In fact, it is possible to draw a correlation between the hostility and stigma that a rape victim experiences and the hostility and stigma that the disabled woman faces. The disabled woman's loss of her womanhood on account of disability is the same as the rape victim's loss of womanhood on account of the rape.

Both losses occur because of the established claim that a woman's value in Nigeria is tied solely to her functions as a wife and mother. In the same way as the disabled woman is ostracised and shamed because of her disability, the rape victim is ostracised and shamed, particularly when the rape becomes public knowledge.[161] Thus, we can conclude that once a woman is raped, apart from the health, physical and psychological disabilities that might result from the rape, she could be said

[157] Izugbara (n 26 above) 15; 28.
[158] As above 15; 28. To restrict a (disabled) woman from having a sexual life is a powerful form of sexual and social regulation and control.
[159] Durojaye (2013) (n 23 above) 176.
[160] Bamgbose (n 155 above) 137.
[161] As above 137.

to be (sexually) disabled.

The argument that a woman becomes sexually disabled after being raped is frightening and could be questioned, particularly with regards to equating rape with disability, and considering the asexuality argument that is usually proffered in regard to disabled women. In other words, how can a woman who has been raped be disabled when a disabled woman is usually seen as asexual? Apart from the obvious health, physical and psychological consequences of the rape, investigations show that the asexuality argument stems from the negative notions and perceptions that the non-disabled hold in regard to disabled sexuality.[162]

The general belief in Nigeria is that it is largely inconceivable for a disabled woman to engage in sexual relations. Afolayan corroborates this statement with a narrative from a disabled woman:

> It has been over five years since I have had this challenge. Over the time, my sexuality has not been so much addressed (since being in this condition). Just last year, I actually told one guy that just because I am disabled, and my brain doesn't work effectively does not indicate my vagina does not work. Although this statement can seem as vulgar language in Yoruba society, I just need to ascertain [sic] my sexuality.[163]

Although the conception of disability here is in many respects a medical one, this narrative clearly depicts how the usual asexuality label that is ascribed to disabled women stems from an expectation that, for women to be considered sexually competent, they must have normal and healthy bodies.[164] This indicates the commonly held view that sex is the exclusive preserve of able-bodied people.[165] Because disabled women are deemed to have abnormal and unhealthy bodies, they are disqualified from having sex and considered sexually incompetent, leading to the complete erasure of their sexuality.

However, a 2015 study suggests otherwise, exposing how Nigerian men have sex with disabled women in private, although they are ashamed to be associated with them in public.[166] This could

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[162] Afolayan (n 114 above) 60.
[163] As above 60.
[164] Kallianes & Rubenfeld (n 110 above) 206.
[165] As above 206.
[166] NSRP & Inclusive Friends Report 'What violence means to us: Women with disabilities speak' (2015) http://www.nsrp-nigeria.org/wp-content/uploads/2015/09/What-Violence-Means-to-us-Women-with-Disabilities-

imply that although the non-disabled society might perceive the disabled woman as sexually unfit or asexual, the same society paradoxically endorses and takes advantage of the sexual vulnerability of the disabled woman. While, on the one hand, the disabled woman fails the perfection and normalcy criteria and the traditional standards of feminine perfection, on the other hand, she meets the patriarchal feminine criteria of being docile, weak and passive, and thus she becomes increasingly susceptible to rape.

It might be plausible to argue that sexual pleasure is apparently the exclusive preserve of the able-bodied in Nigerian society.[167] Women with physical disabilities or impairments are very susceptible to sexual exploitation,[168] because the disabled woman has been disqualified not necessarily from the sexual act itself, but from its enjoyment and pleasure. This disqualification is based on Nigeria's socially constructed perceptions of disabled women as passive and helpless.[169]

Eleweke and Ebenso's study addresses the case of a physically disabled woman in Nigeria who was raped.[170] According to the report, the rape was not taken seriously by her family or even the court.[171] This lack of concern about the case can be linked to the belief that when a disabled woman is raped, she should be grateful that someone wants to have sexual relations with her. This situation emphasises the paradox that disabled women are described as asexual and yet at the same time these women are particularly vulnerable to sexual violence.

This discussion debunks the notion that asexuality protects disabled women from sexist attitudes. In fact, the opposite has been demonstrated to be true: disabled women suffer greater vulnerability to sexist oppression. This is true particularly in the Nigerian context, where the disabled woman, even more than her non-disabled female counterpart, is regarded as a sexual object and a plaything. As a result, she faces a greater risk of being viewed as easy prey and becomes more susceptible to sexual violence.[172]

Underlying the asexuality argument is the notion that sex is the exclusive preserve of the able-

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Speak.pdf (accessed 24 June 2016).
[167] Afolayan (n 114 above) 58.
[168] As above 58.
[169] As above 58.
[170] Eleweke & Ebenso (n 83 above) 118.
[171] As above 118.
[172] Afolayan (n 114 above) 58.

bodied.[173] If this is true, then it must mean that coerced sex manifesting as rape and marital rape, for example which is prevalent in Nigeria, is the exclusive preserve of the 'disabled'. The high rates of rape and sexual harassment, particularly the condoning of marital rape, paint a bleak picture even for non-disabled women. If the reasoning that sex is the exclusive preserve of able-bodied people is followed closely, this means that the prevalence of rape and marital rape as documented in Nigeria validates the argument that women are not able-bodied, and if they are not able-bodied, then they must be disabled.

Marital rape is not even considered a crime but rather the conjugal duty of a woman in Nigeria.[174] Marital rape is even justified on the cultural ground that, as Onyemelukwe observes, a wife cannot legitimately refuse to give sexual consent to her husband.[175] This means that the husband is given the licence to sexually disable his wife. Significant evidence exists that demonstrates the physical, mental and sexual disabilities that women are prone to and suffer in Nigeria as a result of marital rape and torture.[176] This supports the argument that rape is the exclusive preserve of the disabled but also that to be a woman in sexist societies such as Nigeria is to be disabled. How else can one explain the prevalence of rape and sexual assault of (disabled) women in Nigeria?

From the above explanation, we can argue that the disabled woman may be sexually exploited based on both the identities she carries. If Garland-Thomson's approach is followed, a woman is susceptible to sexual and sexist exploitation and therefore disabled, but once she is disabled, her susceptibility to sexual exploitation is even greater.

Another example of sexist and gender-based oppression is FGM. The argument is that when a woman undergoes FGM (sexist oppression), she becomes (sexually) disabled. In other words, FGM is a form of sexual disability. There is significant proof that, apart from the health, physical and psychological consequences, FGM is crucially a weapon of power (and sexual disablement) by male perpetrators over female victims.[177] As the name suggests, Nigerian women that undergo

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[173] Kallianes & Rubenfeld (n 110 above) 206.
[174] IS Chika 'Legalization of marital rape in Nigeria: A gross violation of women's health and reproductive rights' (2011) 33 *Journal of Social Welfare and Family Law* 41.
[175] Onyemelukwe (n 148 above) 625.
[176] As above 623.
[177] 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, 81.

the practice suffer extreme sexual, physical and mental mutilation.[178]

Yet, FGM is still considered a prestigious and honourable custom and a rite of passage to womanhood; it is legitimised and even given the force of law by Nigerian law.[179] Interestingly, because FGM is a rite of passage to womanhood, women who refuse to undergo FGM are viewed as promiscuous and unmarriageable or as less valuable for marriage.[180] Further studies confirm that a woman's refusal to undergo this practice leads to stigmatisation, hostility and ostracisation.[181] Consequently, many young women in Nigeria 'voluntarily' submit themselves to FGM in order to be regarded as real women and worthy of the dignity and pride that is usually associated with it. This is coupled with the desire to gain public approval and community acceptance.

It follows that the stigmatisation, ostracisation and loss of prestige that a woman who refuses to undergo FGM encounters could be equivalent to a disabled woman's lived reality. In fact, as in the case of rape, we can identify a similarity between the hostility and stigma experienced by a woman who refuses FGM and the hostility and stigma that the disabled woman faces. While the disabled woman loses her womanhood on account of her disability, the woman who refuses to undergo FGM is denied her womanhood. This indicates, as Garland-Thomson has shown, that the woman, no matter what option she chooses, will still be disabled. She either becomes disabled as a result of the physical, psychological, sexual and emotional consequences of undergoing FGM, or she becomes disabled socially and culturally, because failing to undergo FGM leads to the loss of her womanhood.

Another example of sexist and gender-based oppression is domestic violence.[182] The argument is that once a woman experiences domestic violence (sexist oppression), she becomes disabled. In Nigeria, there is evidence of how non-disabled women have become disabled at the hands of

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[178] As above 80; 81.
[179] 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.
[180] As above 115; 116. Bamgbose makes a similar point in O Bamgbose (n 155 above) 137.
[181] M Owojuyigbe et al (n 177 above) 81. See generally for further insights on FGM in Bamgbose (n 155 above) 137; Onyemelukwe (n 148 above) 627; and L Muzima 'Towards a sensitive approach to ending female genital mutilation/cutting in Africa' (2016) 3 *SOAS Law Journal* 81.
[182] AA Abayomi & KT Olabode 'Domestic violence and death: Women as endangered gender in Nigeria' (2013) 3 *American Journal of Sociological Research* 55; 56.

intimate male partners who at one time or another had professed 'undying' love and affection. Evidence shows how apart from the physical and psychological consequences of domestic violence; the latter is crucially a weapon of power (and disablement) by male perpetrators over female victims.[183]

A huge amount of evidence supports this assertion, worsened by the fact that domestic violence is accorded the force of law in Nigeria.[184] In Northern Nigeria's penal code, for instance, a man is allowed to beat his wife for the purposes of correction as long as the beating does not amount to grievous bodily harm.[185] The definition of grievous bodily harm is not immediately clear but fails to account for the permanent mental, emotional and psychological disabilities that such so-called corrective punishment condones.[186] The following case was reported in a 2011 Global Rights Report:

> Aisha, age 37, is a victim of domestic violence with multiple scars to show for it. She frequently reported to her village head, but on each occasion her husband refused to allow the village heads to address the issue. The village head also seemed to lack the political will to back her taking criminal action against her husband, in spite of her fears that he might eventually kill her.[187]

This narrative confirms the parallel that has been drawn between domestic violence and disability. Writing about domestic violence, Abayomi and Olabode note that to be a woman is to be an endangered gender in Nigerian society.[188] If according to these authors, to be a woman is an endangered gender in Nigeria then my argument that to be woman is a disabling gender is viable. Thus, the correlation between the sexism that women experience and disability becomes even more evident.

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[183] HI Bazza 'Domestic violence and women's rights in Nigeria' (2009) 4 *Societies Without Borders* 175.
[184] As above 175.
Folami provides an estimation of unreported cases of domestic violence, mentioning how domestic violence cases goes unreported because it is strengthened by law and law enforcement in OM Folamin 'Survey of unreported cases of domestic violence in two heterogeneous communities in Nigeria' (2013) 4 *International Review of Law* 1. These authors make the same point: Bamgbose (n 155 above) 137; and Chika (n 170 above) 41.
[185] OJ Ojigho 'Prohibiting domestic violence through legislation in Nigeria' (2009) 23 *Agenda: Empowering women for gender equity* 88.
[186] As above 88.
[187] Global Rights Kano Human Rights Network (KAHRN) & Bauchi Human Rights Network (BAHRN) (n 21 above) 15.
[188] Abayomi & Olabode (n 182 above) 156.

Another example of sexist and gender-based oppression is the acid bath.[189] Once a woman is bathed in acid (sexist oppression), she becomes disabled. Apart from the physical and psychological consequences, the acid bath is crucially a weapon of power (and disablement) by male perpetrators over female victims.[190] The use of acids is known to cause permanent disfigurement or disability of victims in Nigeria.[191]

The final example of sexist and gender-based oppression is witchcraft.[192] If a woman is accused of witchcraft (sexist oppression), she becomes (socially and culturally) disabled in Nigeria. In other words, witchcraft is a form of social and cultural disability. There is significant proof of witchcraft being employed as a weapon of power by male perpetrators over female victims. The stigmatisation, hostility, ostracisation and loss of value that the woman accused of witchcraft faces could be regarded as the same as what a disabled woman experiences. In fact, it is possible to draw a correlation between the hostility and stigma that a witchcraft victim experiences and the hostility and stigma that the disabled woman faces.

A dominant view is that witchcraft is the underlying cause of (mental) disabilities in Nigeria. This assertion validates the 'women as disabled' approach. It also confirms the idea that disability is gendered feminine and unwittingly exposes the vulnerabilities of the Nigerian woman to oppression manifesting as sexism or disability or both, given the increased tendency to label women as witches in Nigeria.[193] This situation is worsened where the woman is disabled, because, as Afolayan has shown, disabled women are generally perceived to be demonic and associated with evil.[194]

The above discussion demonstrates the need to question the insufficient attention that is given to the injuries or disabilities that women acquire as a result of the discrimination and oppression that they suffer because of their gender, resulting in a non-disabled woman becoming 'disabled'. The examples confirm how the 'woman' identity category in a sexist society such as Nigeria is a type

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[189] I Eze-Anaba 'Domestic violence and legal reforms in Nigeria: Prospects and challenges' (2007) 11 *Cardozo Journal of Law and gender* 27.
[190] As above 27.
[191] Eze- Anaba (n 189 above) 27.
[192] Global Rights Kano Human Rights Network (KAHRN) & Bauchi Human Rights Network (BAHRN) (n 21 above) 15.
[193] As above 15.
[194] Afolayan (n 114 above) 57.

of disability, thus validating Mkhize's accurate observation of the gendered nature of disability.[195] If this is the case, to disregard and trivialise disabled women and their experiences in Nigeria is a mistake that results from the failure to recognise that sexist discrimination and oppression can render a 'normal Nigerian woman' disabled.

From the above examples, gender's inextricable and interactive link to disability and vice versa is clear. It is because of this interaction and relationship that sex/gender and disability cannot be treated as separate identity categories justifying the 'women as disabled' argument. In other words, the above demonstrates how sexism intersects with disability in such a way that disability is not only a consequence of sexism, but, to a very large extent, sexism is a primary cause of disability, particularly for women in the country. This explains Sheldon's accurate point about the need to tackle these forms of oppression head-on in trying to fully grasp disability and gender.[196] As she points out, any isolated attempt to simply challenge a single form of oppression, to the detriment of other forms of oppression, runs the risk of ostracising disabled women who encounter more than one source of oppression.[197]

The need for the feminist and disability narratives to be integrated therefore becomes obvious. As demonstrated above, if a woman in a sexist or patriarchal society such as Nigeria is disabled, then feminists need to pay close attention to disability in order to begin to counter the narratives that oppress 'disabled' women. Schriempf highlights the idea that neither feminist nor disability narratives on their own and independently can sufficiently describe the simultaneous and intersectional forms of oppression that disabled women encounter.[198] Until there is an effort to integrate the feminist and disability narratives, the intersections and relationships between the sexist and ableist biases that form the basis of disabled women's oppression and experiences will remain hidden.[199]

To summarise: I have attempted to show the Nigerian woman as a victim of oppression and how this oppression manifests as sexism or disability or both, in most cases. I argue that disregarding

[195] Mkhize (n 14 above) 138.
[196] Sheldon (n 29 above) 69.
[197] As above 69.
[198] Schriempf (n 144 above) 56; 60; 67.
[199] As above 58; 60; 67.

the disabled Nigerian woman is misleading, drawing particular attention to how sexism intersects with disability in the country. I use the example of the heightened sexual violence that disabled women encounter in Nigeria to demonstrate the susceptibility of disabled women to sexism and sexist attitudes. In addition, I cite examples of gender-based violence to demonstrate how the oppression of a 'normal Nigerian woman' may render her disabled.

It is therefore correct to hold that disability, particularly with regards to women, is purely a consequence of unequal power relations, since disability is a by-product of sexism, which in turn causes disability. This highlights the fact that gender inequality or the oppression that women encounter purely on the basis of their gender is a cause and by-product of disability.

This confirms the idea that non-conformity to accepted cultural standards devalues and disadvantages the female body in such a manner that it is automatically equated with a disabled body. As Garland-Thomson has observed, disability is merely a product of cultural diagnosis.[200] This is also in line with the accurate reminder that disability is a narrative depicting the social and cultural oppression of the female body.[201] This body is portrayed as sick, flawed, crazy, ugly, abnormal, mad and maimed.[202] One can therefore argue that where the humanness of the Nigerian woman is questioned by virtue of the oppression she encounters, it is ultimately a revelation of the reality of the 'disabled' woman.

Nigerian culture broadly defines and regards womanhood and disability in synonymously negative terms. In other words, culture and religion affect and determine the value of not only a typical woman but also a disabled woman as a human being.[203] Yet, paradoxically, women are more susceptible to disability as a result of these negative social, religious and cultural practices.

Thus, contrary to popular belief in Nigeria, disability particularly in regard to women is not purely a result of biology; a very large part of what constitutes a disability is socially constructed by the interactions of legal, cultural and religious narratives driven by a political-economic agenda. We need to interrogate these dominant and deeply embedded oppressive cultural and religious

[200] Garland-Thomson (2002) (n 2 above) 4.
[201] Wendell (n 73 above) 104.
[202] Garland-Thomson (2002) (n 2 above) 5.
[203] Durojaye (2013) (n 23 above) 176.

perceptions and narratives that increase the vulnerability of women to disability in the country.

2.3 Understanding disability: Who is the disabled Nigerian woman?

The next question we need to ask at this juncture is: Who is a disabled Nigerian woman and how is disability understood? In other words, who or what sets and imparts the dominant disability agenda and narrative in Nigeria? The question is relevant in determining how the Nigerian legal framework sees the disabled woman: 'born and essentialist' or 'made and socially constructed' or both?

The legal definition of disability in Nigeria raises specific ideological notions. The legal protection of the disabled Nigerian woman depends on where the law locates the problems of disability. In other words, the way law defines the disabled woman determines the application of different perspectives of equality to the problem of apparent discrimination and oppression on the ground of disability.

Disability is not easy to define, and authors have therefore generally been wary of offering a consistent and acceptable definition of disability.[204] Even the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) refers to disability as an evolving term.[205] In Nigeria there is a lack of consensus as to what exactly constitutes a disability or how it is to be understood.

In exploring the definition of disability, it is important from the start, and for the purposes of this chapter, to set the parameters that underlie the process. The first parameter is the idea that, to have an accurate understanding of disability in Nigeria, we need to first explore its gender dimensions and aspects.[206] This kind of investigation is largely unknown in Nigeria and its literature, because of an assumed gender neutrality, not only in determining how disability is understood generally, but also in understanding who actually qualifies as disabled. In fact, we can safely state that the culture of silence that has shrouded disability in the country, especially in relation to women, is

[204] AI Ofuani 'The right to economic empowerment of persons with disabilities in Nigeria: How enabled' (2011) 11 *African Human Rights Law Journal* 641.
[205] The United Nations Convention on the Rights of Persons with Disabilities (CRPD) preamble para 1.
[206] L Abu-Habib 'Women and disability don't mix! 'Double discrimination and disabled women's rights' (1995) 3 *Gender and Development* 49.

deafening. Yet, this investigation is essential because gender neutrality is actually tantamount to gender blindness.[207] This suggests that the relationship between disability and gender is crucial because it influences to a large extent the manner in which disability is understood or misunderstood.[208]

A further parameter to having an accurate understanding of disability in Nigeria is to appreciate that the process of identifying what qualifies as a disability in Nigeria is socio-culturally created and constructed, as well as a matter of power relationships. In other words, the question of who determines and decides the definition and qualification of a disability is a subject of power and human judgment. Disability is therefore not only a matter of the language that is used, but is primarily a matter of politics.[209] Furthermore, if disability is a matter of power and politics, then the workings of such power potentially influence standards and social rules that determine the limits of human behaviour and even reality. This means that disability in Nigeria is largely defined by who talks about the disabled, the language used and the process of talking.

The opposite is also true, which means that disability in Nigeria is largely defined by what is not said about disability, the language not used and the deafening silence that surrounds disability in the country. This is the point that Schaaf hints at, although in reference to disabled sexuality: a narrative or discourse does not always have to be explicit because its silences also speak volumes and hold power.[210] Quoting Foucault, she reasons that silence itself – the things one refuses to talk about or is forbidden to name and mention – is not necessarily the end or the limit of that discourse or narrative, but is an integral part of the strategies that undergird and permeate that narrative.[211]

Her point, made in reference to disabled sexuality but also applicable here, is that not acknowledging disabled sexuality, which is undoubtedly an aspect of the disabled woman's experiences, is actually a way of regulating it.[212] In other words, using Schaaf's argument, the refusal to acknowledge or talk about the disabled woman or her experiences and lived realities

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[207] Abu-Habib (n 115 above) 11.
[208] As above 11.
[209] M Oliver 'Defining impairment and disability: Issues at stake' in EF Emens & MA Stein (eds) *Disability and equality law: The library of essays on equality and anti-discrimination law* (2016) 11.
[210] M Schaaf 'Negotiating sexuality in the Convention on the Rights of Persons with Disabilities' (2011) 14 *SUR International Journal on Human Rights* 114.
[211] As above 114.
[212] Schaaf (n 210 above) 114.

does not necessarily obliterate her or her experiences, but instead endorses and regulates these experiences.

Having outlined the parameters to understanding disability, generally, I will now consider the difficulty in defining this term. This difficulty arises from the different ways in which disability is understood and perceived of in different cultural environments.[213] Swain notes that being labelled 'disabled' addresses different meanings and experiences even within a particular context.[214] The complexity that is characteristic of the concept of disability therefore requires that it be understood from a given cultural context. Unfortunately, the problem with conceptualising disability in the Nigerian context lies clearly in the multiplicity of cultural and religious beliefs that exist in the country. Uzoma notes that the existing complexities that are characteristic of Nigerian society leave little room for a universal meaning that will be shared by all members of Nigerian society.[215] The consequence in relation to disability is the apparent differences in understandings associated with the concept. It is no wonder that efforts to universalise the meaning of disability, particularly in Nigeria, have been challenging.[216]

Developed countries have dictated the manner in which the concept of disability is understood globally.[217] However, the way in which disability is understood in developed countries might not necessarily reflect how disability is perceived of in developing countries such as Nigeria. Any attempt to therefore impose or force foreign understandings of disability on developing countries will, as Swain suggests, encourage western imperialism.[218]

This situation confirms a dilemma in regard to defining disability. Yet, the way in which disability is understood and perceived of by Nigerians will ultimately determine how people identified as

[213] P Parnes et al 'Disability in low-income countries: Issues and implications' (2009) 31 *Disability and Rehabilitation* 1173.
[214] J Swain 'International perspectives on disability' in J Swain et al (eds) *Disabling barriers- enabling environments* (2004) 54.
[215] RC Uzoma 'Religious pluralism, cultural differences and social stability in Nigeria' (2004) *Brigham Young University Law Review* 651; 652.
[216] I Imam and MA Abdulraheen Mustapha 'Rights of people with disability in Nigeria: Attitude and commitment' (2016) 24 *African Journal of International and Comparative Law* 447.
[217] H Meekosha 'Drifting down the gulf stream: navigating the cultures of disability studies' (2004) 19 *Disability and Society* 725.
[218] J Swain 'International perspectives on disability' in J Swain et al (n 214 above) 54.

disabled are treated.[219] The usefulness of understanding disability, as well as exploring who a disabled woman is, particularly in the Nigerian context, therefore becomes obvious.

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 a Nigerian woman is disabled by her body or whether she is disabled by her society. The argument that a woman is 'disabled by her society' has not really been accepted in Nigeria,[220] because the social dimensions of disability have been largely ignored.[221]

Next, I interrogate and elaborate on these dominant approaches to understanding disability.

2.3.1 Disability defined from a medical perspective

As in Western cultures, disability is predominantly understood from a medical perspective in Nigeria.[222] According to this dominant understanding of disability, disability is regarded as a product of a medical diagnosis.[223] Disability is conceptualised as body variations, impairments, bodily flaws or failures. Underlying this understanding is the central premise that disability is an unfortunate consequence of biology and a personal tragic occurrence.[224] From this perspective, the disabled woman is regarded as a victim of her flawed body or mind.

The merit of this medical understanding and perspective of disability is mainly associated with its use of empirical evidence to explore the impact of illness or impairment on individual self-esteem and relationships.[225] Despite this merit, this perspective has largely been found to be limiting in its

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[219] E Etieyibo & O Omiegbe 'Religion, culture and discrimination against persons with disabilities in Nigeria' (2016) 5 *African Journal of Disability* 1.
[220] VI Umeasiegbu & DA 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.
[221] As above 121.
[222] Ofuani (n 204 above) 642.
In my opinion, Nigerians have been socialized 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.
[223] BA Areheart 'Disability trouble' (2011) 29 *Yale Law and Policy Review* 348.
[224] As 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; 186.
[225] Areheart (n 223 above) 349.

scope, encouraging what has been referred to as 'biological determinism'.[226] According to Areheart, this denotes that genetics determines individual development.[227] The problem with this kind of understanding of disability lies in its total reliance on an individualist medical condition, without taking account of the role that society and culture play in disabling people.[228] The individual approach has been found to be a way of eliciting sympathetic feelings in order to distract attention from the ways in which society can be changed.[229]

Disabled persons in Nigeria are usually labelled 'disabled' on account of their medical diagnosis. The woman is blamed for the presence of a disability, suggesting that the woman has been let down by her own body. Using the example of blindness, Abang identifies five main causes of this disability in Nigeria:[230] infections, cataracts, glaucoma, malnutrition and trauma.[231] This line of argument is consistent with an observation of how preventable diseases, congenital malformations, birth-related incidents, physical injury and psychological dysfunction produce disability.[232] Thus, disability portrayed and understood purely in terms of individual features is evident in Nigeria.[233]

This kind of medicalised understanding of disability influences how most Nigerians respond to disability. These responses are usually one of two extremes. One extreme response is a false sense of sympathy for the plight of the disabled, which makes Nigerians charitable.[234] Nigerians are often praised for their charitable and philanthropic efforts towards people identified as disabled.[235] The other extreme response is to be judgmental of the disabled. A common sight in the streets of Nigeria is women with some form of disability soliciting for alms. The solicitation is usually done

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[226] As above 350; 355. Cain exposes biological determinism as a major problem of essentialism in PA Cain 'Lesbian perspective, lesbian experience and the risk of essentialism' (1994)2 *Virginia Journal of Social Policy and the Law* 47.
[227] Areheart (n 223 above) 350; 355.
[228] As above 358.
[229] S Linton 'What I learned' in EF Emens & MA Stein (eds) *Disability and equality law: The library of essays on equality and anti-discrimination law* (2016) 53.
[230] TB Abang 'Disablement, disability and the Nigerian society' (1988) 3 *Disability, Handicap & Society* 72.
[231] As above 2.
[232] Smith (n 80 above) 36.
[233] Afolayan (n 114 above) 57.
[234] DFID Scoping studies: 'Disability issues in Nigeria (2008) www.ucl.ac.uk/lcccr/downloads/scopingstudies/dfid_nigeriareporthttp://www.ucl.ac.uk/lc-ccr/downloads/scopingstudies/dfid_nigeriareporthttps://www.worldpulse.com/fr/node/9591 (date accessed 24 March 2017).
[235] As above (date accessed 24 March 2017).

at parks, on the roads and highways, at offices, and at petrol stations and places of worship.[236]

The general perception is that disabled persons, particularly disabled women, are an embarrassment, shame and a nuisance to society. These kinds of negative notions ascribed to disabled women unfortunately render them vulnerable to severe oppression, general neglect, physical and mental assault, and inhumane and degrading treatment.[237] Significant evidence shows how disabled persons, particularly women, suffer rape, sexual violence and other forms of oppression and discrimination and, in extreme situations, killings and jungle justice.[238]

These extreme responses and attitudes stem from an understanding of disability that stresses a need for cure at all costs and rehabilitation to the detriment of other spheres. Precisely because of the perception of disability as a medical predicament there is a demand for a cure, in order to be endorsed as normal using technological or scientific measures. This could explain why it is more common to segregate rather than protect disabled persons in Nigeria.[239] This attitude could be linked to the fact that, as Garland-Thomson explains, society continually believes that something is wrong with the disabled woman and so the expectation is that disability has to be overcome, cured, fixed or corrected.[240] Disability is thus perceived as a personal medical problem that requires an individualised medical cure.

A misconception and an obsession about a cure are therefore reinforced in the medical profession. The medical understanding of disability endorses a cultural expectation for a miraculous cure that is also upheld by religious views. In fact, medicine has been regarded as a lay imitation of the church.[241]

The medical understanding of disability prevalent in the Nigerian society is reinforced in its law.[242] The Nigerians with Disability Act of 1993 (NWDA), for instance, largely inspired by the medical perspective, restricts the definition of disability to the functional condition and capability of the

[236] IO Smith 'Towards a human rights convention on persons with disabilities: Problems and prospects' (2002) 43 *Amicus Curiae* 8; 9.
[237] See generally Etieyibo & Omiegbe (n 219 above) 3; and Afolayan (n 111 above) 58.
[238] Etieyibo & Omiegbe (n 219 above) 3.
[239] Smith (n 236 above) 8.
[240] Garland-Thomson (2002) (n 2 above) 14.
[241] 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.
[242] Ofuani (n 204 above) 642.

body.[243] This medical reasoning forms the basis of many social welfare laws on disabled persons. This kind of reasoning reinforces the idea that disabled persons are the objects of welfare, health and charity, rather than the subjects of legal rights. The NWDA was until recently the only specific legislation that addressed disability rights in Nigeria.[244]

Paradoxically, medicine, strengthened by the force of law, plays a real relationship, interaction and role in creating disability. Ribet notes how particular groups of women and girls are seen as 'guinea pigs' in reproductive pharmaceutical testing.[245] This indicates a power relationship in which disability is often the outcome of abuse by a medical or scientific institution.[246] In this relationship, medicine and science do not simply enable legal or political abuse; they are the physical cause of disability.[247] In addition, Ribet provides an insightful analysis, describing how:

> Medicine and science can certainly be understood as socially 'disabling' in the sense that they rationalize the deprivation of rights to people labelled disabled, where the underlying basis for the label is a stereotype grounded in racial, gender, sexual, class, or religious ideologies. In this kind of dynamic, medicine plays a role in justifying a violation of rights or a loss of status by establishing disability as stigma.[248]

This description exposes the fact that there is a relationship between law and medicine in determining how disability is not only understood but also produced. This insight is true in Nigeria, where research corroborates how disabled women experience and report negative attitudes in medical facilities. These negative attitudes take the form of, for instance, coerced sterilisation.[249] Eleweke and Ebenso's description of a disabled woman's experience during an ante-natal examination illustrates this point:

> The doctor said, 'Who did this to you? You don't feel sorry for yourself in your condition? You got pregnant?' ... According to the medical doctor she already had enough problems and she should not

[243] Nigerians with Disability Act of 1993 (NWDA).
[244] Ofuani (n 204 above) 642.
[245] Ribet (n 4 above) 164.
[246] As above 164.
[247] Ribet (n 4 above) 164.
[248] As above 163.
[249] AI Ofuani 'Protecting adolescent girls with intellectual disabilities from involuntary sterilisation in Nigeria: Lessons from the Convention on the Rights of Persons with Disabilities' (2017) 17 *African Human Rights Law Journal* 552.

add pregnancy to them.[250]

Such comments expose the power dynamics in the assumption by the medical practitioners that medicine, backed by the force of law, can determine who should have intimate relationships and who should not. Medicine, strengthened by its interactions with law, has been used as an instrument to disseminate and legitimise the dominant disability narrative in order to ensure compliance.

2.3.2 Disability defined from a traditional and religious perspective

The concept of disability in Nigeria is primarily shrouded as a medical and religious problem. It is still common in Nigeria to view disability in superstitious, cultural, religious and medical terms.[251]

Although there might be no definite narrative about disability in Nigeria, understandings of disability can be drawn directly or indirectly from what is done under the auspices of religious teaching, healing, prayer rituals and behaviour.[252] The existence of disabilities and disabled persons in Nigeria can be traced back to a variety of spiritual, religious, cultural and superstitious myths and beliefs.[253] 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 extremely religious and traditional.[254] This is linked to the fact that African traditions are cherished, retained and integrated into all spheres of a typical African life.[255] In fact, African traditional beliefs are a lived religion that involves the entirety of life for all Africans.[256] Therefore, similar to the medical perspective on disability, the understanding of disability as a religious and traditional problem is prevalent in many, if not all, African societies, including Nigeria.

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[250] Eleweke & Ebenso (n 83 above) 118.
[251] 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 220 above) 121; and Etieyibo and Omiegbe (n 219 above) 3. As I will show, this perspective shares a relationship with the medical perspective, also a dominant perspective in Nigeria.
[252] H Ndlovu 'African beliefs concerning people with disabilities: Implications for theological education' (2016) 20 *Journal of Disability & Religion* 31.
[253] K Olaiya 'Commodifying the sacred beatifying the abnormal: Nollywood and the representation of disability' (2013) 7 *The Global South* 139.
[254] 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.
[255] Ndlovu (n 252 above) 31.
[256] As above 31.

First, the explanations given for disability are based on the traditional and religious beliefs of Yoruba folktales and the Bible.[257] Disabled persons are regarded as creative mistakes. Yoruba folktales suggest that disabled persons were created purely in error.[258] The disability mistake is blamed on a Yoruba god known as 'obatala'. The 'obatala' god is blamed for bringing disability into the world because he got drunk while on creative duty, that is, while creating human beings.[259] It is believed that disabled people were allowed to be born incomplete in order to serve as a constant reminder of the misdemeanours of the god.[260] Unfortunately, this belief that disabled people are a result of a creative mistake fuels the negative, tragic and undesirable perceptions and stereotypes of disability, which have grave consequences, particularly for disabled women.

Second, Nigerians view disability as a fundamental flaw that is a direct consequence of a perceived sin, a moral punishment for certain wrongdoing and misbehaviour.[261] Swain and French describe the connection between disability and impairment and sin or wrongdoing in the Bible.[262] Religion depicts disability as an ancestral or spiritual punishment and a direct consequence of the sins and social deviance committed by the individual or his or her family. Olaiya points to the popular perception that the sins of parents can be reflected in the disabled bodies of their children.[263]

In addition, disability is depicted as punishment for ancestral offences committed by the relatives or ancestors of disabled people. These ancestral sins and offences result in disabled persons being commonly viewed as 'social outcasts' in Nigeria, reaping the consequences of ancestral sins.[264] Speaking specifically about Africa, Ndlovu describes how African local religious beliefs portray persons with mental impairments as victims of either witchcraft or ancestral anger, usually meted out for perceived wrongdoings.[265] According to him, there is a widespread African belief that ancestral spirits have the ability to cause temporary insanity that leads to death if not cured.[266]

[257] Olaiya (n 253 above) 139.
[258] As above 145.
[259] Olaiya (n 253 above)145.
[260] As above 146.
[261] Olaiya (n 253 above) 151.
[262] J Swain & S French 'There but not for fortune' in J Swain & S French (eds) *Disability on equal terms* (2008) 8.
[263] Olaiya (n 253 above) 142.
[264] Etieyibo & Omiegbe (n 219 above) 3.
[265] Ndlovu (n 252 above) 33.
[266] As above 33.

Similarly, much of African tradition views disability as an affliction.[267] Disability is often portrayed as an abnormality that destroys life and requires some form of restoration. Religious authorities usually ascribe these afflictions to spiritual forces, including curses, witchcraft and ancestors.[268] Witchcraft is the most cited cause of insanity and psychological illnesses and disabilities in Africa. In fact, in Ndlovu's opinion, the more common psychological disabilities or afflictions in Africa are usually traced to witchcraft.[269] Nigerians, for instance, ascribe disability to supernatural forces that are connected to witchcraft, sex and 'juju'.[270] Many people in Nigeria still believe that disabilities such as cerebral palsy in children are caused by witchcraft.

Third, Nigerians think disabilities are the result of curses, where the disabled person is portrayed as unfortunate without any future. In fact, being disabled in Nigeria is perceived of as an ancestral curse and as taboo.[271] The belief that disabled persons are cursed is quite prevalent in the country, and as a result disabled people are mostly considered to be undeserving of life.[272] These references emphasise how Nigerians believe that disabled persons are cursed by supernatural forces believed to control peoples' destiny. Thus, the idea that disability is closely associated with karma, fate, destiny and misfortune is clear. If a Nigerian woman is disabled, it is erroneously seen as her lot, her fate and God's will for her life.

This discussion confirms how the negative perceptions and stereotypes attributed to disabled women affect the way and manner in which they are treated in society. Afolayan notes that negative perceptions that disabled women are generally demonic, intellectually challenged, asexual, helpless, incompetent and invisible reinforce the condescending treatment they receive.[273] One disabled woman in his study reportedly shared the following: 'Well, I think some of the greatest stereotypes are because you are blind you are demonic and retarded.'[274]

This narrative confirms how negative assumptions and stereotypes have been used to justify the

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[267] Ndlovu (n 252 above) 32.
[268] As above 32.
[269] Ndlovu (n 252 above) 33.
[270] Etieyibo & Omiegbe (n 219 above) 3.
[271] MBI Omoniyi 'Parental attitude towards disability and gender in the Nigerian context: Implications for counselling' (2014) 5 *Mediterranean Journal of Social Sciences* 2255.
[272] Etieyibo & Omiegbe (n 219 above) 3.
[273] Afolayan (n 114 above) 60.
[274] As above 60.

treatment of disabled people as mere things and not as human beings.[275] Disabled persons are considered subordinate and not human, to the extent that they are portrayed as rags in Nigeria.[276] For instance, it is thought that because disabled persons lack what it takes to be referred to as human, they exist solely to privilege non-disabled persons. These kinds of beliefs justify the killing of disabled people for ritual purposes, to ensure that good fortune smiles upon non-disabled Nigerians.[277]

Ritual killings of disabled women have been connected to the traditional and religious belief that the society or community needs to be cleansed of the perceived evils or sins that have been committed by disabled persons. This could explain why disabled persons are often fearful and afraid for their lives. Ndlovu notes how persons with albinism are generally denied their humanity when they are disparagingly referred to as monkeys.[278] In Nigeria the evidence shows that persons living with albinism are often killed with impunity and used for ritual purposes. Etieyibo and Omiegbe describe this:

> People with albinism are broadly discriminated [against] in Nigeria. Sometimes they are isolated, and at other times trafficked and killed. Because many people with albinism is [sic] targeted for ritual killings, most live in hiding. The killing of people with albinism for rituals is fuelled by the belief that their body parts or portions of their parts could be used to create wealth or to prolong one's life.[279]

The above descriptions show that culture, intricately linked with religion, determines Nigerians' understanding of disability and ultimately explains the generally hostile acts that are committed against the disabled. This explains why significant numbers of disabled women are killed for ritual purposes in Nigeria,[280] and also explains the killing and oppression of disabled persons for wealth; and other reasons. These atrocities are justified in Nigeria on the basis that disabled persons are less human than and inferior to their non-disabled counterparts.[281] This clearly demonstrates the

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[275] Eetiyibo & Omiegbe (n 219 above) 2.
[276] Imam & Abdulraheen Mustapha (n 216 above) 446.
[277] See generally Eetiyibo & Omiegbe (n 219 above) 2; and S Kamga 'A call for a Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa' (2013) 21 *African Journal of International and Comparative Law* 222.
[278] Ndlovu (n 252 above) 33.
[279] Eetiyibo & Omiegbe (n 219 above) 2.
[280] As above 3.
[281] Eetiyibo & Omiegbe (n 219 above) 3.

tensions and intersections that exist between culture and religion, on the one hand, and realising rights for women, on the other hand, particularly when the woman has been identified as disabled.

With the foregoing perspective to disability comes a desperation for cures. The need for cures is therefore evident.[282] In fact, disabled persons are often treated as 'pariahs' who have to undergo some form of cleansing and be cured ritually, morally and physically before they can be regarded as truly human.[283] Like medicine, religion has a similar cultural expectancy for cure that reinforces the tragic perception of disability. Biblical descriptions of Jesus performing miracles for the disabled illustrates this point and endorses a tragic perception of disability that reinforces the need for a cure at all costs. The desperation for cures stems from the traditions and religious beliefs that associate disability with ancestral or spiritual punishment. This is coupled with the widespread perception in Africa that virtually all physical and psychological illnesses and disabilities are afflictions.

Traditional therapies are also often prescribed for psychological sicknesses and disabilities, including stress, anxiety, depression, schizophrenia and insanity.[284] It is often believed that these disabilities, defined as afflictions, should be checked by diviners or sorcerers who supposedly possess innate abilities to detect the underlying causes of the affliction.[285] We can speculate that placing the burden and blame for the disability solely on the individual, as well as the perception that disabled persons are objects of pity and shame, unfit and useless to the growth of society, has led to a desperation to find a cure so that disabled persons can fit the norm.[286]

Yet a cure-focused understanding of disability, according to Garland-Thomson, allows for people to be culturally less tolerant of differences and to overlook social systems that require fixing, since a disabled body is automatically regarded as deficient.[287] The problem with an ideology of cure for the disabled body is its emphasis on changing the supposed abnormal bodies, to the detriment of changing hindrances that come as a result of attitudes, environment and exclusions. In other words, an emphasis on cure diminishes the cultural tolerance of human differences and

[282] Ndlovu (n 252 above) 33.
[283] As above 32.
[284] As above 33.
[285] H Ndlovu (n 252 above) 33.
[286] Ofuani (n 204 above) 640.
[287] Garland-Thomson (2002) (n 2 above) 16.

vulnerability by attributing disability to bodies that are thought of as 'abnormal', instead of giving the required attention to the society that needs to be fixed. The overwhelming emphasis often accorded to medical technology to the detriment of rehabilitative programmes is proof of the dominant cultural idea that disability must be overcome at all costs. The idea that the culturally acceptable response to disability is cure is shown by the fact that in Nigeria, for example, adjustments or accommodation are not considered; attention is rather placed on an obsession for cure.

Apart from the issue of cure, the relationship that exists between the medical understanding and the religious understanding of disability in Nigeria becomes glaring. Barile notes how medical and religious groups have exerted power over the lives of disabled women in similar ways.[288] For example, these groups have been found complicit in establishing an acceptable ideology about how physical ability is defined.[289] The church in particular is guilty of reinforcing the ideology of patriarchy and unequal power relations in a way that contributes to the invisibility of women's oppression and imposes disability on them.[290]

Barile's statement is applicable to Nigeria, where evidence shows how religion and medicine are instrumental in imposing patriarchal norms and myths. McLean notes how religion is often used as an instrument of oppression by the powerful, usually men, against the weak, mainly women (who are usually equated with the disabled).[291] She explains how religion is an ancient weapon used by physically strong men to control groups of weaker women.[292] She notes how biblical injunctions, such as Genesis 3:16, have been employed to justify and legitimise the control of female bodies.[293] The reasoning behind the biblical injunction is that because the woman fell into temptation and enticed the man, her body must be controlled (disabled).

This argument unwittingly exposes the complicity of religion in the control of women's bodies.[294] One can speculate that the control of women's bodies is a form of disability since the evidence

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[288] M Barile 'Individual- systemic violence: Disabled women's standpoint' (2002) 4 *Journal of International Women's Studies* 2; 3.
[289] As above 2; 3.
[290] Barile (n 288 above) 2; 3.
[291] Mclean (n 62 above) 313.
[292] As above 313.
[293] Mclean (n 62 above) 313.
[294] As above 314.

shows that the methods used to 'control' women, for instance, their sexuality through sexist forms of oppression such as FGM and domestic violence, are a means of disabling women. We can therefore define this kind of control as a form of disability imposed on women. The truth of this argument is evident from the way in which society portrays women's bodies as unruly and in need of control and thus justifies the use of cultural practices such as FGM.[295] Therefore, where patriarchy is upheld, women are not only oppressed, they are also disabled.

It can likewise be argued that the way in which religion is often used as an instrument of oppression in Nigeria is the same as the way that medicine emphasises physical ability and the survival of the fittest. This kind of religious–medical conception is so deeply entrenched in Nigerian society that it has become an ideology, as French and Swain have argued.[296] The problem with this kind of ideology is that the tragic perception and narrative becomes the norm, and is even disguised as common sense.[297] This perhaps explains why a disabled woman is likely to be hidden away, ostracised or killed in Nigerian society.[298]

Using Costello's logic (although his reference is to racism, but is equally true for disability), ideology influences individuals in a society so that they can act in ways that are considered suitable.[299] This function is performed through various social relations, institutions and practices that indicate to individuals that bodies are inherently unequal.[300] This is done in such a way that the hegemony of the dominant embodiment is considered correct, and makes equality between the master and the inferior embodiment a challenge.[301] Therefore, ideology works to constitute individuals at all levels of the ability and disability hierarchy to create people who think and act as instructed.[302]

This kind of religious–medical ideology is unfortunately still prevalent in Nigeria today and is clearly exemplified in the fact that the Nigerian government does not prioritise disabled persons,

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[295] Mclean (n 62 above) 314.
[296] Swain & French (n 262 above) 8.
[297] As above 8.
[298] Etieyibo & Omiegbe (n 219 above) 3.
[299] H McDougall 'For critical race practitioners: Race, racism and American law (2002) 46 *Howard Law Journal* 7.
[300] As above 8; 9.
[301] McDougall (n 299 above) 8; 9.
[302] As above 8; 9.

particularly women.[303] The failure of the government to acknowledge disability reinforces it as a problem and inadvertently regulates and endorses the tragic view of the disabled, underlined by religion, culture and biology. This lack of attention reinforces the erroneous assumption in Nigeria that to be disabled is to be abnormal and different. A hostile 'us versus them' environment is thus created in Nigeria.[304] A fearful perception and response to disability is thus cultivated, which is grounded in culture.

Unfortunately, the above understandings of disability expose a two-fold problem in Nigeria. First, the problem is that tradition, religion and biology share a cultural expectation for cures, which often links disability to tragedy in Nigeria. Second, these understandings illustrate that disability in Nigeria is considered more of a cultural, religious or medical matter, rather than a socio-cultural or political problem. Yet, as Olaiya notes, disability is not only a physical problem, but mainly a problem that has its roots in Nigerian culture.[305] An accurate connection has been made between the violations that (disabled) women suffer in African countries such as Nigeria and the negative cultural and religious beliefs and myths associated with disability.[306] Paradoxically, in the case of Nigeria, cultural and religious beliefs constitute an integral part of Nigeria's law.[307] This kind of relationship brings to the fore the tensions that exist between understanding disability as a product of nature or as derived from culture.

Thus, it is clear that the medical–religious ideology forms the dominant understanding that Nigerians have of disability, despite the evidence suggesting that disability is more a socio-cultural matter. On the basis of this, I lean towards a socio-cultural lens in a bid to demonstrate how disability, especially where it concerns women, is a consequence of power relationships.

Like religious understandings, cultural explanations recognise that disability is not solely about physical or mental impairments but, as Garland-Thomson has pointed out, it is about how difference is constructed and perceived in the society.[308] At the heart of this understanding,

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[303] Eleweke & Ebenso (n 83 above) 119.
[304] Etieyibo & Omiegbe (n 219 above) 4.
[305] Olaiya (n 253 above) 137.
[306] SAD Kamga 'A call for a Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa' (2013) 21 *African Journal of International and Comparative Law* 223.
[307] D Peters 'The domestication of international human rights instruments and constitutional litigation in Nigeria' (2000) 18 *Netherlands Human Rights Quarterly* 373.
[308] R Garland-Thomson 'The case for conserving disability' (2012) 1 *Journal of Bioethical Enquiry* 5.

disability, like gender, signifies relationships of power. This is based on the idea that disability is a social relationship that has power and cultural meanings, rather than simply an individual feature.[309] Focusing on the cultural lens challenges traditional stereotypes, particularly for disabled women.[310] This kind of lens explores the effects of culture on a society while refusing to emphasise the dominant narratives of incapacity. It highlights for instance *why* disabled women are marginalised rather than *how*.[311] Like religion, there are many culturally induced explanations for disability, particularly when the individual is female.

In Nigeria the evidence demonstrates that persons who have been identified as disabled are usually conceptualised by cultural beliefs and their individual features. A 2015 research report describes how widespread cultural misconceptions about disabled women reinforce and worsen their experiences and oppression daily.[312] This description is corroborated by Afolayan, who clearly shows the close link between the cultural oppression of disabled women, who are portrayed as helpless, dependent and asexual, on the one hand, and the lived oppression that disabled women experience, on the other hand.[313]

The disabled woman in Nigeria is usually regarded as powerless, poor, vulnerable and asexual, which is a reflection of a socially constructed order and power relations that uphold the superiority of men over women.[314] This suggests that the disabled woman is not only affected by her physical limitations but is also defined primarily by the cultural or religious narratives ascribed to her by virtue of her physical limitations.[315] In fact, a strong correlation has been identified between the roles that culture and religion play in worsening the experiences of disabled persons, particularly women.[316]

The linkages between religion and culture as contributing to the oppression that disabled women experience are obvious, given the significant evidence of disabled female bodies in Nigeria being

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[309] Garland-Thomson (2005) (n 36 above) 1558; 1582.
[310] Garland-Thomson (2012) (n 308 above) 5.
[311] As above 5.
[312] NSRP & Inclusive Friends Report 'What violence means to us: Women with disabilities speak' (2015) http://www.nsrp-nigeria.org/wp-content/uploads/2015/09/What-Violence-Means-to-us-Women-with-Disabilities-Speak.pdf (date accessed 24 June 2016).
[313] Afolayan (n 114 above) 57.
[314] As above 57.
[315] Afolayan (n 114 above) 57.
[316] Etieyibo & Omiegbe (n 219 above) 4.

portrayed as products of cultural rules about what bodies should be and do.[317] These cultural rules strive to devalue people, in this case women who do not fit into accepted cultural standards. Therefore, one can infer that the demands on female bodies are regulated by culture. The position is consistent with Garland-Thomson's view of disability as a narrative of the body that has been culturally invented.[318] Unfortunately, these negative cultural representations of disability significantly inform the real lives of disabled women.

It should be mentioned that the cultural aspects of disability, especially in relation to women and their bodies, have been overlooked in Nigeria. Thus, perceiving disability as a cultural problem seeks to unseat the dominant narrative and assumption that disability is something that is wrong with the disabled. It exposes how culture, intricately linked and intersecting with religion, determines Nigerians' understanding of disability. This clearly demonstrates the tensions and intersections that exist between culture and religion, on the one hand, and realising rights for women on the other hand, particularly when the woman has been identified as disabled.

Shakespeare's criticism of this cultural explanation that disability will always be strongly connected to biology is important in my analysis.[319] While he claims that disability is not simply a matter of culture or language, he concedes that, like gender, some aspects of disability could be eliminated or significantly reduced by a change in the environment or social intervention.[320] Therefore, I agree with the arguments that portray disability from a socio-cultural perspective, and with Garland-Thomson's argument that disability reflects how differences are explained culturally.[321]

This thesis examines the socio-cultural meanings of bodies deemed to be disabled, especially female bodies. It should be mentioned that I do not pay special attention to specific impairments. I also examine the relationship between bodies on the one hand and the social and cultural environment on the other hand. Thus, I use the socio-cultural lens in order to question not only the dominant medical emphasis but also and particularly the religious and cultural assumptions that

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[317] Wendell (n 73 above) 104.
[318] Garland-Thomson (2002) (n 2 above) 4; 5.
[319] 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.
[320] As above 69.
[321] Garland-Thomson (2012) (n 308 above) 5.

view disabled women as creative mistakes, as cursed by personal tragedy, and as inferior beings or less than human. These assumptions have so far remained largely unquestioned and unscrutinised in Nigeria.

I pause here to consider what exactly a socio-cultural lens means. The first part would suggest a social perspective.

2.3.3 Disability defined from a social perspective

In general, and as illustrated above, disability is understood predominantly from religious–medical perspectives in Nigeria. A counter-response to these perspectives would be the social approach. The investigation of the social aspects of disability becomes necessary in a country such as Nigeria, where this perspective is yet to be welcomed or firmly established.

The social perspective and understanding of disability has been called the big idea of the disability narrative.[322] The argument that disabled women in Nigeria are 'disabled by society' lies at the heart of the social understanding of disability.[323] 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, the social understanding is a critique of the medical–religious understanding that blames the disabled person for her disability. In elaborating on the critique, scholarship has identified two theoretical frameworks for understanding the concept of disability. Using the reasoning from scholarship, the first is the medical–religious individualistic perspective. This perspective has already been discussed above. However, it is important to reiterate that with this perspective, disability is understood as a deviation from what is considered the norm. An individual's perceived difference is considered a personal tragedy that the individual must seek to come to terms with. The individual perspective refuses to acknowledge the political, economic and

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[322] T Shakespeare & N Watson 'The social model of disability: An outdated ideology' (2002) 2 *Research in Social Science and Disability* 12; 13.
[323] As above 12; 13. 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* 188, 189.

social realities that influence the lived realities of the disabled woman.[324]

The social understanding of disability represents the emergence of an alternative framework in which disability is portrayed as a form of social oppression resulting from political, social and ideological determinants that cause exclusion and the construction of handicaps. The understanding of disability as social oppression is crucial. First, the dominant narrative and understanding of disability as the consequence of a biological condition must be confronted. Second, the social oppression approach assists in the demand for rights.[325] The social understanding of disability reinforces the idea that disabled people must not be viewed as things or as objects of pity and charity, but rather as persons who are entitled to claim rights. This entitlement to rights that such an understanding promises inspires Shakespeare's reference to the social understanding of disability as the great idea of the movement.[326] For him, this great idea encapsulates the elevation of the disabled woman from an object of medical diagnosis to the status of a human rights subject.[327]

From the aforementioned, we can assert that the premise that underlies a social understanding of disability underscores the idea that Nigerian society is oppressive and exclusionary, and imprisons disabled women. This could mean that disability is actually something that is imposed forcefully on top of impairments.[328] This suggests that the presence of a disability is attributed to Nigerian society and, if this is so, such a society is obliged to change. In other words, if disability is socially created and is the consequence of the social context, then the lived realities of disabled women are simply a reflection of that particular context.

A social lens to understanding disability therefore highlights a willingness to improve the lives of disabled women through social inclusion and by eliminating the social barriers that oppress disabled women. With this understanding, the focus shifts drastically from the individual's physical or mental flaws to the role that society plays in including or excluding disabled persons. Hence, the above demonstrates this understanding as a political strategy that ensures the

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[324] Begum (n 90 above) 72.
[325] As above 72.
[326] T Shakespeare 'Critiquing the social model' in EF Emens & MA Stein (n 319 above) 69.
[327] As above 69.
[328] M Oliver 'Defining impairment and disability: Issues at stake' in EF Emens & MA Stein (n 209 above) 5.

elimination of social oppression and the removal of barriers. This kind of understanding is particularly beneficial for Nigeria as it removes the focus from disability as a tragic personal problem to a political matter. Therefore, discrimination is identified as the major cause of disability and this discrimination can be addressed by promoting and protecting human rights.

However, despite its wide popularity, the social understanding of disability has been heavily criticised. Two main criticisms will be discussed here. First, the social model is seen as overemphasising the idea that it is society that disables, without acknowledging the complexities of disabled peoples' lives. Such an understanding of disability fails to acknowledge the relevance of impairment and pain in the lives of disabled women in Nigeria, and 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 a personal experience or as a cause of the disadvantage.[329] The effort to disregard 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. This is what Shakespeare means when he points out that the social understanding of disability deliberately ignores pain because to admit pain would be to endorse the argument that disability is indeed solely about physical limitations.[330]

Responding to the critique of the social understanding approach, Oliver admits that although the model fails to account for the personal restrictions resulting from impairments, it does emphasise the social hindrances of disability.[331] Oliver indicates that there might also be a need to explore the social aspects of impairment.[332] However, the problem with this suggestion is how to correctly distinguish between disability and impairments, considering the difficulty of determining where impairments start, and disability ends, and vice versa. In the light of this difficulty Shakespeare accurately surmises that the disability versus impairment distinction is completely unnecessary,[333] because, as far as he is concerned, it is not only difficult to define impairment, but any such

[329] As above 5.
[330] T Shakespeare 'Critiquing the social model' in EF Emens & MA Stein (n 319 above) 69.
[331] M Oliver 'Defining impairment and disability: Issues at stake' in EF Emens & MA Stein (n 209 above) 16.
[332] As above 16.
[333] T Shakespeare 'Critiquing the social model' in EF Emens & MA Stein (n 319 above) 69.

definition will be socially and culturally determined.[334]

Second, the social lens to understanding disability has been condemned for placing too much emphasis on the social context, without acknowledging the benefits of medical cure and specific impairment-oriented responses. The notion that people with impairments are impaired solely by society, in Shakespeare's opinion, is not necessarily true,[335] because, even when social barriers are removed, the impairment may still be challenging. Nonetheless, although there are undeniable merits to this argument, it can be argued that for as long as there is considerable agreement that social barriers can potentially worsen impairments, eliminating these barriers for the disabled person is undoubtedly crucial.

However, Shakespeare's point that attempts to eliminate social barriers should not be made to the detriment of medical or clinical interventions is also valid.[336] This is because a disabled woman not only experiences discrimination, but is also hugely affected by the limits that are imposed on her by virtue of her impairment. In addition, 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 is the point that underlies Shakespeare's observation that people are not only disabled by society alone but also by their bodies.[337] Again, while there are merits to this argument, it is possible to argue that in countries such as Nigeria, where the social aspects of disability are largely unacknowledged, the disability imposed by society is far worse than any physical or mental impairments.

From the above, it is clear, as Shakespeare has shown, that the medical versus social understanding of disability debate merely shifts the attention from one extreme assumption, that disability is equated with dependency, invalidity and tragedy, to another extreme notion, that disability should be defined in terms of social oppression, social relations and social barriers.[338] In addition, it moves the perception of disability as caused by biological defects to seeing it as something that has

[334] As above 72.
[335] T Shakespeare 'Critiquing the social model' in EF Emens & MA Stein (n 319 above) 72.
[336] As above 72.
[337] T Shakespeare 'Critiquing the social model' in EF Emens & MA Stein (n 319 above) 72.
[338] T Shakespeare (2014) *Disability rights and wrongs revisited* 30.

nothing to do with individual bodies or brains. It is therefore crucial to balance the different perspectives in order to avoid the dominance of one perspective.

2.3.4 Disability defined from a feminist perspective

For some time now, feminist disability theorists have rightly critiqued the disregard shown by the feminist movement to disability and particularly disabled women. Attention has been drawn to how disabled women have been disregarded by both the feminist and the disability movements.[339] This is despite evidence that demonstrates how sexism together with disability places the disabled woman in a marginalised position. The relationship and intersection between these forms of oppression aptly demonstrate the significance of disability being integrated into the feminist narrative.

This disregard has prompted leading scholars such as Wendell and Garland-Thomson to argue for the need to integrate disability into the feminist perspective.[340] A feminist perspective of disability is essential not only because of the evidence that proves that a significant number of disabled persons globally are women, but also because the oppression of disabled persons is linked to the cultural oppression of the female body.[341] From Wendell's perspective, feminists have been primarily engaged with cultural attitudes to the body, so it makes sense to develop a feminist perspective of disability. Her argument is valid especially when one considers that the attitudes held about the female body that contribute to female oppression are similar to the attitudes held about the disabled body, particularly when that body is female.

Therefore, the question we need to ask is: What does it mean for disability to be understood from a feminist perspective? The central premise that underlies this perspective is the need for a social and political understanding of disability; beyond that, because disability is socially constructed, an in-depth understanding of the term must involve a feminist perspective.[342] This is what Wendell means in noting that if being female biologically is a disadvantage, it is because the social context has made it so.[343] Perhaps it is on this basis that disability, like gender, has been perceived as not

[339] Begum (n 90 above) 72.
[340] See generally Garland-Thomson (2002) (n 2 above) 4; and Wendell (n 65 above) 104.
[341] Wendell (n 73 above) 104.
[342] As above 104.
[343] Wendell (n 73 above) 104.

a biological given, but as socially created.

I will examine two main arguments that feminist disability theorists make. First, the understanding of gender as a social construction is the same way that disability becomes even more powerful when it is understood as a culturally false binary, a politicised identity category as well as a social construction, rather than the dominant understanding of it as a natural biological form of inferiority. Garland-Thomson describes how disability, like femaleness, is not necessarily a natural site of inferiority, inadequacy or misfortune, but rather a culturally invented narrative of the body that is tantamount to gender and race.[344] In fact, in the same way that the feminist perspective challenges the argument that to be female is a natural form of physical and mental deficiency, feminist disability studies interrogate the notion that disability is something that is wrong with an individual in a manner that employs the social as opposed to the medical understanding of disability.[345] In other words, body traits do not necessarily disable but, more importantly, the social labels and meanings associated with such traits impose disability.

The above demonstrates how disability is more a representation of how differences have been interpreted culturally as opposed to disability being viewed as a disease to be cured or a feature that must be eradicated. The importance of the disability can be located in the interactions that exist between bodies and their social environments. A feminist disability lens questions the cultural meanings that are associated with bodies that have been identified as disabled. Using a feminist disability lens involves examining how individuals with a wide range of differences, whether physical, mental or emotional, are viewed as defective and faulty and as a result are isolated or excluded from society.

Thus, in the same way as a feminist lens is concerned with the way culture gives meanings to the particularities of female bodies and then probes the consequences of those meanings, a feminist disability lens is concerned with understanding disability as a prevalent culture that attributes stigma to certain types of body differences. These arguments are applicable to Nigeria, where the evidence shows that female bodies, like disabled bodies, are more a product of cultural rules about what bodies should be and do. In fact, this is supported by a number of scholars who have identified

[344] Garland-Thomson (2005) (n 36 above) 1557.
[345] As above 1557.

a strong correlation between the role that culture plays in worsening the experiences of female bodies in Nigeria.[346] Implicit in these arguments, although hardly investigated in such a manner, is that having a female body in Nigeria is tantamount to having a disabled body.

Second, the importance of the feminist theory is located in its conscious interrogation of systems of oppression such as gender, race, ethnicity, ability and sexuality and how these oppressive systems mutually reinforce, intersect and interact with each other to produce and sustain what becomes one's ascribed and achieved identity.[347] Using a similar logic for a feminist perspective to disability, Garland-Thomson perceives disability as related to race and gender in the way these systems mark bodies as inferior, rather than viewing disability as the idea that something is wrong with the body. Invoking disability in the feminist discourse helps us to question the dominant essentialist notions that are held when speaking about disability (for instance, viewing a person as defective or deformed) and to rather think of disability as violating norms and expectations, for example, how we think a body should be and function.

Consequently, invoking disability in the feminist perspective looks beyond impairment or specific medical categories in understanding and conceptualising disability. This does not necessarily mean that this kind of study does not recognise the shared disability experience or the different stigmatised forms of embodiment that make up what is often referred to as disability. However, the main focus here, following Garland-Thomson's reasoning, is about the need to explore the meanings that are ascribed to bodies, particularly when these bodies are female, rather than looking at the specific forms, functions and behaviours. These kinds of studies assist in understanding how some particulars of human differences are infused with social meanings and how those meanings then contribute to ideas or narratives that condone discrimination against (disabled and non-disabled) women.

However, the feminist disability perspective is not without critique.[348] The main thrust of this criticism is that it underscores an essentialist thinking that assumes there is an essential disabled woman's experience. In other words, the argument is that the female disability experience assists

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[346] Durojaye (2013) (n 23 above) 176.
[347] Garland-Thomson (2005) (n 36 above) 1559.
[348] A Clutterbuck 'Rethinking baker: A critical race feminist theory of disability' (2015) 20 *Appeal* 59.

and informs the feminist perspective. Such an argument can be perceived as essentialist because it wants us to believe that disabled woman's encounters exist and are different from other women's encounters. It is the same as stating that there is a disabled woman's point of view, but the problem is who shares the disabled woman's viewpoint? Is it the woman who becomes disabled or is it the woman who is regarded as disabled? And how are disabled women to be determined or defined?

2.3.5 Disability defined from an interactive and intersectional perspective

Understanding disability is clearly a complex matter, especially in Nigeria. Yet, how societies divide bodies is vital to what it means to be human.[349] This assertion is particularly true in Nigeria. Unlike what law and specifically human rights would like us to believe, disability is not just a medical matter; it is a social and cultural matter in Nigeria. If this is so, it also requires a feminist perspective.

The inequalities that disabled women suffer cannot be understood solely as a result of cultural, socio-economic and biological conditions, but as a combination and intersection of the consequences of these factors and how they affect the disabled woman's experience. As Shakespeare has observed, disability is the outcome of the interactions and relationships between the individual and contextual factors.[350] Disability therefore combines a certain set of physical or mental attributes in a particular environment within a specified social relationship played out within a broader cultural and political context. This combination creates the disability experience. Thus, the experiences of a disabled woman are the total of the relationship between the intrinsic factors and the extrinsic factors from the wider context in which she finds herself. Wasserman has identified two aspects to disability. The first aspect is the social marker or stigma,[351] and the second aspect is the physical deficiency.[352] He advocates for the integration of the two aspects.[353]

The problem starts where there is a dominant tragic perception of disability that singlehandedly

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[349] H Meekosha & R Shuttleworth 'What is so critical about critical disability studies' (2009) 15 *Australian Journal of Human Rights* 53.
[350] T Shakespeare 'Critiquing the social model' in EF Emens & MA Stein (n 319 above) 72.
[351] 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.
[352] As above 19.
[353] D Wasserman 'Philosophical issues in the definition and social response to disability' in EF Emens & MA Stein (n 351 above) 19.

attempts to explain disability. Specifically, the disability analysis as used in this thesis complicates and expands identity, demonstrating how a woman can embody multiple subject positions and can be claimed by several identity categories. A reliance on a single approach to understanding disability will therefore encourage what Shakespeare has referred to as essentialism.[354] An understanding of disability that addresses only external barriers, for instance, disability as injury and disability as an identity, is an incomplete response to the challenges of disability because disabled women are affected by physical and psychological problems as well as external barriers.

2.4 Nigerian, female and black

I turn to the next part of my argument: I show that the disabled Nigerian woman manifests identity categories as Nigerian and black female.

Nigeria has been referred to as a British colonial invention.[355] What is today known as Nigeria is a result of the forceful and artificial imposition of boundaries by colonialists to form a country comprising people who differ in regard to culture, religion and language. Approximately 80% of disabled persons in the world live in Nigeria.[356] This staggering figure and this high incidence of disability in Nigeria, as in other Southern countries, is a direct consequence of certain inherited colonial attributes.[357]

Colonialism denotes power that is exerted over people, in this case, women who have been identified as disabled.[358] This kind of power manifests in different ways, either as structural, cultural, economic or political. Following from this, it is safe to assert that colonialism is power exerted on the 'disabled' woman. Yet the role that developed countries have played through the process of colonisation, in creating some of the disability problems that currently exist in African countries, have scarcely been recognised. Studies have identified a strong correlation between the colonial history of countries and the existence of conflicts and poverty, which contribute to people

[354] T Shakespeare 'Critiquing the social model' in EF Emens & MA Stein (n 319 above) 72.
[355] Joint Special Operations University (JSOU) Report 'Confronting the terrorism of Boko-Haram in Nigeria' (2012) 6.
[356] CJ Eleweke 'A review of the challenges of achieving the goals in the African Plan of Action for people with disabilities in Nigeria' (2013) *Disability and Society* 28.
[357] R Connell 'Southern bodies and disability: re-thinking concepts' (2011) 32 *Third World Quarterly* 1369; 1377.
[358] H Meekosha 'Decolonising disability: thinking and acting globally' (2011) 26 *Disability & Society* 671.

being poor, violent and disabled.[359] Unfortunately, developed countries have not only dominated how disability is understood but, importantly, have deliberately disregarded how colonial intrusions in specific geographies in the Southern nations have contributed to the disability experience,[360] despite overwhelming evidence suggesting that the existence and construction of the disability experience cannot be separated from colonial encounters.[361]

This colonial connection has created dire consequences for the country – consequences that have been eloquently and accurately captured by Meekosha as a disabling and destructive experience.[362] It is therefore accurate to describe Nigeria as a disabling society and link its disabling characteristics to colonialism. As Wendell suggests, where biological characteristics attributable to a female are perceived as a disability, it is because a social and cultural context has made it so.[363] This could mean that Nigeria's social culture not only determines and defines who qualifies as disabled, but particularly how the disabled person is perceived. This can be coupled with Shakespeare's argument that a social or cultural context could potentially worsen impairments and disability.[364]

Therefore, it makes sense to interrogate the colonial contribution to producing and creating the disability experience, particularly for women in Nigeria. It then becomes imperative to understand the disability culture created by colonialism and how this influences the lived experiences and realities of the disabled Nigerian woman. I explore the impact that colonialism has had on black female bodies, particularly when they are viewed as uncivilised colonial subjects. It is clear that, because of colonialism, black people and in this case Nigerian women were excluded from humanity altogether and 'othered'.

Black African bodies, particularly the bodies of women, were devalued during the colonial era.

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[359] See generally S Grech 'Decolonising Eurocentric disability studies: Why colonialism matters in the disability and global South debate' (2015) 21 *Social Identities* 9; and R Connell 'Southern bodies and disability: Re-thinking concepts' (2011) 32 *Third World Quarterly* 1377.
[360] S Grech & K Soldatic 'Disability and colonialism: (Dis)encounters and anxious intersectionalities' (2015) 21 *Social Identities* 2.
[361] As above 2.
[362] Meekosha (n 358 above) 667.
[363] Wendell (n 73 above) 105.
[364] T Shakespeare 'Critiquing the social model' in EF Emens & MA Stein (n 319 above) 72.
This assertion was made by Shakespeare even though he acknowledges that that not all impairments are necessarily caused by the social context.

Bernard, for instance, describes how black female bodies have historically been equated with savagery and sexual abnormality.[365] Colonialism has long equated the black female body with ugliness. The female body has also been likened to darkness or blackness. The oppression and alienation of women is reinforced by the fact that, according to Harse, the African continent and the female body are regarded as dark.[366] She goes on to illustrate how the African continent and women have been metaphorically categorised together and labelled as 'other'.[367] This reasoning stems from the idea that, as Bernard has noted, the colonial intrusion has introduced the notion that black women's bodies are perceived as animalistic and could be measured in the same way as a disabled body.[368]

Female bodies were viewed as property and sexual objects and policed through sexual violence. Significant research very graphically illustrates how women are viewed as property and sexual objects and policed through sexual violence in Nigeria. Women were often 'othered' and treated as property in a bid to justify the violence perpetrated on women, and their bodies were often used as sex symbols. In Nigeria, these depictions were reinforced and stemmed from the notion of otherness that arose from colonialism and that was necessary in order for the colonialists to be able to work effectively.[369] This notion has its roots in a situation where, as Garland-Thomson has explained, certain individuals were identified as not fitting or different from what was considered the ideal or norm.[370]

This is clearly exemplified by the fact that during the colonial period being black was regarded as the opposite of being white.[371] This situation contributes to what Bourassa et al emphasise as the heightened oppression of one group by another through a process often referred to as 'othering'.[372] This 'othering' process is characterised by categorising society into two groups. A consequence of

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[365] AAF Bernard 'Colonizing black female bodies within patriarchal capitalism: Feminist and human rights perspectives' (2016) *Sexualization, Media and Society* 2.
[366] S Harse 'Exploration and colonization: A survey of representations of the female body as land or territory' (2010) 2.
[367] As above 2.
[368] Harse (n 366 above) 2.
[369] S Grech 'Decolonising Eurocentric disability studies: Why colonialism matters in the disability and global South debate' (2015) 21 *Social Identities* 9.
[370] Garland-Thomson (2012) (n 308 above) 5.
[371] Bernard (n 365 above) 2.
[372] C Bourassa et al "Racism, sexism and colonialism: The impact on the health of aboriginal women in Canada' (2004) 24 *Canadian Women's Studies* 24.

this 'othering', as Wendell explains, is the likelihood of projecting the 'other' as a symbol of fear and rejection.[373] In the eyes of the colonialists, black people, particularly Nigerian females in this case, did not fit into the ideal or the norm, and were therefore regarded and labelled as different or 'other'.

The othering of women has invariably exposed them to disability. Instances abound of how this notion of othering originated from colonial intervention. Bourassa et al emphasise the added oppression of women, who endure otherness in multiple forms.[374] In fact, a link has correctly been drawn between how the gender question, like the disability question, exposes the compatibility of womanhood and the disabled as the other.[375]

The colonial masters legitimised their forceful invasion of African societies by claiming that Africans were godless and beasts.[376] In fact, the colonialists justified the notion of otherness on the grounds that the colonised were inhuman, inferior, backward and animal-like, especially when compared to the colonial masters.[377] These inhuman stereotypes and prejudices founded by the colonial legacy and attributed to Africans are also applicable to disabled people.[378] The categories of black African, female and disabled can be categorised together and labelled as other as a result of colonial invasion.

The female body, as Ruiz has shown, has been a representation and the object of surveillance and control by the coloniser.[379] This kind of control and surveillance suggests that female bodies are considered disabled, mutilated and less than the ideal bodies of men. The above representation of the black female body in colonial discourse has contributed not only to the production but also to the preservation of disability.[380] If this is true, we need to show how colonial depictions of the black female body as a site of violence, discrimination, difference and oppression continue to sustain and perpetuate disability, particularly in the Nigerian context.

[373] Wendell (n 73 above) 104.
[374] Bourassa et al (n 372 above) 24.
[375] Garland-Thomson (2002) (n 2 above) 7.
[376] Meekosha (n 358 above) 672.
[377] Grech (n 369 above) 9.
[378] Meekosha (n 358 above) 667.
[379] M Ruiz 'Women's identities and bodies in colonial and postcolonial history and literature' (2012) 7.
[380] Grech (n 369 above) 9.

These colonial attributes are discussed below.

2.4.1 The creation and perpetuation of the otherness culture

The communality of African countries was broken down by colonial influences through the imposition of artificial boundaries.[381] These artificial and forced boundaries coupled with the divide and rule system were powerful weapons that the colonial powers used to define and establish differences between the colonisers and the colonised. As a result, and as stated earlier, a lack of tolerance for differences cultivates and reinforces a disability culture.

2.4.2 The creation and perpetuation of the violence culture

Furthermore, this colonial legacy of otherness, according to Adelman, places more emphasis on the needs of the colonisers to the detriment of the local cultures of the people.[382] Unfortunately, this situation reinforces violence and conflicts induced by feelings of otherness. Similarly, colonial violence induces feelings of otherness. Mahmud notes that the creation of an authoritarian environment by the colonial masters not only developed the idea of the other, but increased the propensity for violence, conflicts and ethnic wars.[383] It is therefore unsurprising that approximately 85 percent of global conflicts occur in developing countries.[384] Wars and conflicts are both a cause and a consequence of disability in developing countries such as Nigeria.[385]

Consequently, as a low-income and developing country, Nigeria remains conflict-ridden.[386] Unfortunately, all these characteristics contribute to and increase the potential and exposure of Nigerians, and particularly Nigerian women, to disability. Research confirms a high incidence of disability in conflict-prone states, especially among women.[387] According to Bourassa et al, groups that have undergone colonial intrusion are vulnerable to oppression, which could contribute to the

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[381] SS Mahmud 'The state and human rights in Africa in the 1990s: Problems and prospects' (1993) 15 *Human Rights Quarterly* 491.
[382] S Adelman 'Culture, universality and human rights in the twenty-first century' (1996) 70 *Philippine Law Journa*l 125.
[383] Mahmud (n 381 above) 498.
[384] Meekosha (n 358 above) 675.
[385] As above 675.
[386] World Health Organization 'WHO global disability action plan 2014-2021. Better health for all people with disability' (2015) http://www.who.int/disabilities/actionplan/en/ (date accessed 16 March 2017).
[387] K Cornelsen 'Doubly protected and doubly discriminated: the paradox of women with disabilities after conflict (2013) 19 *William and Mary Journal of Women and the Law* 105.

risk of or manifest as disability.[388] This is clearly exemplified by the fact that Nigeria's polity is constantly at war with itself, which results in people being brutalised. In Nigeria over 250 different ethnic groups have been forced together.[389] It is therefore believed that the numerous conflicts characteristic of the Nigerian state are, as Attah has noted, a result of the complexity of identities.[390]

The Nigerian polity is characterised by an environment where each ethnic group demonises other groups. This raises suspicion and distrust because one group does not fit another group's idea of normal. Every group tends to compete to demonstrate superiority over the other group. This kind of conflict-ridden environment is, according to a 2015 report, clearly exemplified in increasing, persistent and deteriorating violence, such as terrorist attacks in the North-East, conflict over land and water in the Middle Belt, and concerns about environmental degradation due to oil spills and gas flares in the Niger Delta. Unfortunately, this violence increases the propensity for disability.

Violent conflicts have been established as a cause of disability. During wars or conflicts, the chances of people being injured and impaired increase. In Nigeria, the high rate of conflicts together with the constant struggle to control resources, including land, sea and mineral_resources, have ignited conflicts. Attah argues that the increased propensity for conflict is a result of the clamour for resource control and the sharing formulae,[391] while Meekosha argues that such wars and conflicts are the fault of developed countries.[392]

Religious conflicts, as well as the recent emergence of terrorist groups like Boko Haram, also illustrate the point. Zenn and Pearson have identified a relationship between colonialism and globalisation in the emergence of terrorism in Nigeria.[393] Arguably, the ideology of Boko Haram is rooted in the victimisation of women and the disabled.[394] Unsurprisingly, both the disabled and

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[388] Bourassa et al (n 372 above) 24.
[389] S Iduh 'The key challenge to peace in Nigeria' (2011) 3 *International Journal of Vocational and Technical Education* 124; 127.
By sharing formulae, I refer to the conflicts that arise from how resources are to be shared.
[390] N Attah 'Contesting exclusion in a multi-ethnic state: rethinking ethnic nationalism in Nigeria (2013) 19 *Social Identities* 608.
[391] As above 610.
[392] Meekosha (n 358 above) 675.
[393] J Zenn & E Pearson 'Women, gender and the evolving tactics of Boko Haram (2014) 5 *Journal of Terrorism Research* 51.
[394] As above 51.

women are regarded as potential targets of attacks.

2.4.3 The creation and perpetuation of poverty

Furthermore, a clear correlation has been identified between colonialism and poverty as well as disability in many African countries.[395] Mecosta suggests that disability is produced, sustained and profited from in order to maintain the existing power relations between developed nations and developing nations.[396] In particular, Meekosha notes how colonialism created the 'disabled beggar'.[397] This is certainly true in Nigeria today where, according to Etiyebo and Omoeigbe, the disabled beggar has become a regular sight on Nigerian streets. [398]

Evidence demonstrates a clear correlation between poverty and disability. It has been suggested that poor people are more likely to suffer a disability and that people with disabilities are more likely to be poor. Research has shown that poverty is tantamount to disability, especially in developing countries. The poor socio-economic conditions in Nigeria perpetuate disability. Therefore, a correlation exists between the poor socio-economic conditions experienced in most African countries and disabilities, particularly experienced by women daily.[399] Nigeria harbours the world's poorest peoples and women are the poorest of the poor.[400]

Most women live on less than one dollar a day and live in extremely harsh conditions. There is also a wide gap between the rich and the poor in the country. It is therefore possible to conclude that poverty is a catalyst for disability, and disability also produces poverty in Nigeria. Arguably, not only are poor women more likely to have a disability but women with disabilities are more likely to be poor. Shakespeare links poverty and social exclusion to not only creating impairments but also to worsening and even inventing additional impairments.[401] Therefore, there is a need, as Meekosha suggests, to question the powerful relationship between disability and poverty and to

[395] S Grech 'Disability, poverty and development critical reflections on the majority world debate' (2009) 24 *Disability and Society* 775.
[396] Meekosha (n 358 above) 668.
[397]As above 668.
[398] Etieyibo & Omiegbe (n 219 above) 2.
[399] AH Eide & B Ingstad 'Disability and poverty – Reflections on research experiences in Africa and beyond' (2013) 2 *African Journal of Disability* 1.
[400] K Odeku & S Animashaun 'Poverty, human rights and access to justice: Reflections from Nigeria' (2012) 6 *African Journal of Business Management* 6755; 6756.
[401] T Shakespeare 'Critiquing the social model' in EF Emens & MA Stein (n 319 above) 72.

identify who is guilty of producing poverty, and who actually benefits from such poverty.[402]

These questions are imperative because, as Brems and Adekoya have noted, where poverty exists there are bound to be impaired and disabled people.[403] In Nigeria to be disabled is to be inhuman, and it is therefore no wonder that disability discourse is still particularly unappealing. Brems and Adekoya take this argument further by stating that poor people are less likely to have their human rights enforced.[404] So we can conclude that poverty is completely irreconcilable with human rights. Odeku and Animashaun explain that poor people are more likely to have their rights violated and less likely to have these same rights enforced, irrespective of whether these rights are guaranteed in a constitution or even in international human rights instruments.[405]

If poor disabled persons are less likely to have their human rights enforced in Nigeria, it raises the question of whether human rights, which originate in colonial conquest and which contribute to current conditions, can actually help to protect persons and particularly women with disabilities.

2.4.4 The creation and perpetuation of the fragile state and neo-colonial tendencies

Nigeria is regarded as a weak state. This weakness is clearly mirrored by an extremely fragile infrastructure coupled with a very poor health care system. Ajuwon et al emphasise that the weak health care system in Nigeria is largely responsible for the high incidence of disabilities.[406] The linkages between poor health care services and the prevalence of disabilities in African countries such as Nigeria have been highlighted.[407] Unfortunately, all these characteristics contribute to and increase the exposure of Nigerians, and particularly Nigerian women, to disability.

2.4.5 The creation and perpetuation of patriarchy and gender stereotypes

The negative perception of women and disability is hinged on the colonial legacy. Afolayan describes how this colonial legacy has created the perception that women are inferior to men, perpetuating negative cultural stereotypes.[408] The colonial masters altered the gender roles; Grech,

[402] Meekosha (n 358 above) 671.
[403] Brems & Adekoya (n 96 above) 258; 263.
[404] As above 258; 263.
[405] Odeku & Animashaun (n 400 above) 6754.
[406] P Ajuwon et al 'Attitudes of medical students toward disabilities in Nigeria' (2015) 14 *International Journal of Disability and Human Development* 131 Smith makes a similar argument in Smith (n 80 above) 36.
[407] Smith (n 80 above) 36.
[408] Afolayan (n 114 above) 55.

for instance, describes how this has encouraged the inferiority and regulation of women's bodies.[409] McLean has alluded to the fact that patriarchy, which thrives on the inferiority of women and the superiority of men over women, has its roots in colonisation.[410] Meekosha claims further that the superiority of the male gender over the female is ultimately associated with colonialism where the colonised were seen as inferior, backward and animal-like, especially when compared to the colonial masters.[411]

Grech supports this assertion by insisting that colonial violence is ultimately tantamount to masculine violence.[412] The patriarchal tradition in Nigeria, which ensures that women are unseen, unheard and treated as minors, supports this assertion.[413] This has resulted in a deliberate attempt to control women's bodies, thereby criminalising women's autonomy over their bodies.[414] It is certainly true that colonialism has contributed to disability by regulating women's bodies and lives. This therefore buttresses Garland-Thomson's apt description of how colonialism not only equated femaleness with disability, but also emphasised an understanding of femaleness and disability as flawed when compared to the perceived norm.[415]

In the same way, the gender question reveals the false public/private dichotomy that is forced upon women. The disabled question is therefore relegated to the private, which results in a culture of silence. Wendell, for instance, highlights how the negative devalued body is veiled and hidden;[416] the public world refuses to acknowledge the flawed body because it does not conform to the social and cultural standards of the norm. Women's bodies are thus literally domesticated and controlled, to feed into the patriarchal capitalist society, such as Nigeria. Arguably, when a body is subjugated, it is likely to be regarded as deficient or disabled. According to Silvers, the colonial masters defined women purely on the basis of their sexual and mothering functions.[417] A disabled woman is therefore regarded as deficient simply on account of her disability, which in turn weakens her

[409] Grech (n 369 above) 8.
[410] Mclean (n 62 above) 313.
[411] Meekosha (n 358 above) 673.
[412] Grech (n 369 above) 8.
[413] Durojaye (n 23 above) 176.
[414] Mclean (n 62 above) 312.
[415] Garland-Thomson (2002) (n 2 above) 5.
[416] Wendell (n 73 above) 104.
[417] Silvers (n 5 above) 86.

femaleness and sexuality.

Furthermore, the patriarchal nature of Nigerian society, including its legal framework, renders it insufficient to respond adequately to the problem of disability, especially among women. Mkhize alludes to this when she points out that the voicelessness and the otherness that are characteristic of disabled women are a result of the patriarchal nature of the society.[418] This patriarchal nature also perpetuates the misguided dominance of the able-bodied over the disabled.[419]

Iwobi corroborates this argument by maintaining that the patriarchal tendencies characteristic of Nigerian society reinforces the oppression of women.[420] According to Adjetey, the tripartite legal system characteristic of Nigerian society is regarded as an inheritance from the colonial period, which resulted in the colonialists giving traditional values a lower status, and has also been linked to the inferiority of women politically and socially.[421]

Even in some regions where women were given some autonomy before colonialism, this power was removed by the colonial approach to subordinating women, and inferior roles were attributed to women. This supports Flynn's argument that we need to go beyond legislation in trying to protect the disabled Nigerian woman. From the above, it is possible to conclude that Nigeria is responsible both for creating the disabled woman and for engendering the subsequent difficulties and barriers that further compound that disability, particularly when the individual is female, and the ability of Nigerian law and specifically human rights to speak to the lived encounters and realities of the disabled woman is questionable.

2.5 Conclusions

This thesis asks whether law and specifically human rights can speak to the lived realities of disabled women in Nigeria; I argue that the legal framework is limited in this regard. In this chapter, the question: Who is a disabled woman in Nigeria? is asked with the intention of exposing Nigerian legal and human rights framework's definition of the disabled woman as 'born and

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[418] Mkhize (n 14 above) 133.
[419] As above 133.
[420] Iwobi (n 41 above) 44.
[421] F Adjetey 'Reclaiming the African woman's individuality: The struggle between women's reproductive autonomy and African society and culture' (1995) 44 *The American University Law Review* 1351.

essentialist.' Yet, unlike the essentialist approach that focuses on biological determinism and a universal disability experience, that law and human rights adopts, I show the complexities that result from the multidimensional and intersecting identities that the disabled woman embodies.

I examine the rigid categories that the law has set for the disabled Nigerian woman. For instance, I show how the disabled Nigerian woman manifests as a woman, as disabled and as Nigerian and female. With this examination, I attempt to fulfil two interrelated purposes. First, I expose the complex problem that the 'disabled' woman presents to the legal and human rights architecture in Nigeria. Second, I expose the difficulties in the legal system's rigid and essentialist thinking and perception of the disabled woman.

In the first part of this chapter, using the argument 'women as disabled' in Nigeria, I discuss how the identity category 'woman' is socially constructed and a form of oppression in the country. I draw attention to the plight of women in Nigeria, arguing that to be a woman in the first place in patriarchal Nigeria is not only disabling, but is a type of disability. I note how the entire concept of womanhood in Nigeria is associated with stereotypes such as inferiority, negativity and weakness, which is tantamount to disability.

This is followed by a discussion of how disability is a form of oppression of women. Underlying this argument and despite the disagreement that might accompany such an approach, the reasoning suggests that an interaction and intersection exists between sexism and disability that law and human rights do not recognise and contemplate. In fact, what I deduce from my examination is the idea that sexism and disability are the workings of a dominant narrative that is deeply entrenched in patriarchy. Unfortunately, we can make no progress with curbing sexism or disability separately without recognising the underlying interactions and intersections in both forms of oppression.

Heavily influenced by Garland-Thomson's arguments, I demonstrate the relationship, interactions and intersections that exists between gender and disability. To underscore this relationship, I discuss on one hand, that 'disability is gendered' easily manifest in the susceptibility of women to: for example, poor health care, poverty and gender-based violence. On the other hand, I discuss 'gender as disabling' which I have also framed as 'women as disabled' 'gender as a type of disability' and the idea that there is no such a thing as a 'non-disabled woman.'

I discuss examples of forms of sexist oppression of Nigerian women to demonstrate the

intersections between the sexist oppression that women suffer and its negative consequences of disabling the bodies and minds of women who were once considered 'normal'. I demonstrate how disability is not only a consequence of sexism but, to a very large extent, sexism is a primary cause of disability, particularly for women. In fact, it is safe to assert that to be a woman in Nigeria is tantamount to being disabled.

Thus, the 'woman as disabled' argument exposes how Nigeria's legal and human rights architecture's treatment of disability and sex/gender as entirely separate categories as well as law's emphasis and reliance on the rigid and essentialised 'disabled woman' identity category as 'born' renders her voiceless.

Next, I define who the disabled Nigerian woman is. This is important because the legal protection of the disabled Nigerian woman depends on how she is defined. This is either in terms of locating the problems of disability, or in terms of applying different perspectives of equality to discrimination and oppression on the ground of disability. I interrogate how disability has been conceptualised historically in Nigeria. This investigation reveals the idea that disability has its origins in religion and medicine. I demonstrate how religion and medicine share a similar cultural expectancy for cure that reinforces a perception of disability as tragic. In defining who the disabled Nigerian woman is, it becomes clear that there is a deeply rooted negative disability culture that has permeated society. This culture has been linked to an understanding of disability based on religion and culture that has worse consequences, especially for women. The tensions and intersections that exist between culture and religion, on the one hand, and realising rights for Nigerian women, particularly when the woman has been identified as disabled, on the other hand, is therefore illuminated.

These arguments are explored further by demonstrating how Nigeria's disability culture and religion is a consequence of colonial intrusion, which has perpetuated disability, particularly for women. I describe the role that colonialism played in creating an ableist and sexist culture that contributes to the oppression of women generally and the production of the 'disabled' woman particularly. The disability experience is undoubtedly linked to culture. Culture in Nigeria is a by-product of a number of factors, including patriarchy, and disability, particularly with regards to women, is a product of unequal power relations between men and women, and between the

colonisers and the colonised.

I therefore show that disability in Nigeria is primarily a result of negative cultural and religious beliefs that have translated into people's personal attitudes and learned behaviour. This clearly shows that intersections lie between religion, culture and disability in Nigeria, which emphasise the unequal power relations that women experience in the country. Nigerian women, especially when identified as disabled, suffer oppression because of cultural attitudes, grounded in religion and medical assumptions. Therefore, the whole socio-political environment manifests in victimisation, discrimination, and the brutalisation of disabled women.

The discussion above exposes how the origins and definitions of disability are multifaceted; thus, to try to define disability rigidly, as law and human rights does, as an 'injury or impairment' or as an identity is misleading. The assumption that the concept of disability just like womanhood is a representation of a common identity and universal experience like the Nigeria's legal and human rights framework does is misleading. I argue that rather than being a stable concept, to be disabled is to be different, fluid and an unstable identity. Specifically, the disability analysis as used in this thesis complicates and expands identity, demonstrating how a woman can embody multiple subject positions and can be claimed by several identity categories. This disability analysis immediately calls into question the monolithic and essentialist approach that Nigeria's law and human rights framework adopts with regards to the identities that a disabled woman embodies.

I therefore associate the limitations of Nigerian law with a narrow mindset that thinks in terms of rigid categories and identities that run contrary to the lived realities of the disabled woman in Nigeria. It therefore makes sense to define disability from an intersectional and interactional perspective.

This chapter concludes that the legal mindset that attempts to categorise and compartmentalise the disabled woman's identity in Nigeria is limited in speaking to her lived reality because the disabled woman has multiple and intersecting identities that result in and form a messy lived reality. In other words, the Nigerian law and human rights framework is limited in speaking to the lived realities of disabled women because it clings tightly to the illusion of rigid categories and identities. The lived realities of disabled women in Nigeria can be exposed only after this illusion is destroyed.

Chapter 3: Law and human rights as liberal

'Disability is a human rights issue! I repeat disability is a human rights issue.'[1]

'To be woman is not yet a way to be human.'[2]

3.1 Introduction

In this chapter, I explore how liberal narratives have responded to disabled women in the country.[3] My argument is that there is something inherently wrong with the liberal mindset of Nigerian law and specifically the human rights framework, especially its response to the disabled woman. This liberal mindset sees the disabled Nigerian woman in monolithic, assimilationist and essentialist terms, limiting its ability to speak to her lived realities and encounters.

Before I proceed with this argument, a brief background is necessary. In the preceding chapter, my argument was mainly that the disabled Nigerian woman is a product of a social and intersectional construction. I demonstrated this claim by drawing on Garland-Thomson's argument that women in patriarchal societies such as Nigeria are disabled. I applied this claim to expose the interactions and intersections that exist between sexism and disability, which the law does not recognise or contemplate. In other words, to be woman is not only disabling, but is also a type of disability in Nigeria. To be a Nigerian woman and to be disabled could therefore be regarded as tautological in the country. Hence, to refer to the disabled woman is something of an oxymoron.

Generally, I make these arguments in order to expose the idea that sexism and disability not only interact and intersect but, importantly, that these forms of oppression are the workings of a dominant narrative that is deeply entrenched in patriarchy. I thus associate the limitations of

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[1] G Quinn & T Degener 'The moral authority for change: Human rights values and the worldwide process of disability reform' in A Bruce et al '*Human rights and disability: The current use and future potential of United Nations human rights instruments in the context of disability*' (2002) 13.
[2] CA Mackinnon *Are women human? And other international dialogues* (2006) 3.
[3] My use of the term 'liberal narratives or liberalism' in this chapter describes the dominant narrative and ideology in contemporary western legal and human rights frameworks that arguably has been transferred to African countries such as Nigeria. I acknowledge that there is no single form of liberalism. However, in this chapter, I equate liberalism to the human rights framework that embody liberal ideals present in capitalist and democratic states. Specifically, I explore the way liberal legal frameworks espouse formal perspective of equality.

Nigeria's legal and human rights framework to speak to the lived experiences of disabled women with its inability to recognise and contemplate the interactions and intersections that exist between sexism and disability.

Having laid this foundation, I return to this chapter's argument, which is that there is something inherently wrong with the mindset of Nigerian law and specifically the human rights framework, especially its response to the disabled woman.

Law wants us to believe that it is abstract, neutral, universal, objective and ahistorical. Yet, the reality is that law and specifically human rights are biased particularly against women, manifesting as cultured, ableist, patriarchal, sexist and pluralistic. Fundamental to my argument, therefore, is the idea that inherent in Nigeria's legal and human rights framework are liberal patriarchal tendencies and building blocks that result in sexism and ableism.

This chapter is divided into six sections as follows. This section is the introduction in which I lay out the outline of the chapter. In the second section, I begin by tracing the origins of Nigerian law and specifically its human rights framework. Ultimately, my intention with this exploration is to expose the fact that underlying Nigeria's law are origins that are imposed by and interpreted within the confines of the dominant Western ideologies of liberalism. It is uncertain whether the rights of disabled Nigerian women are indeed a part of the wider human rights discourse, which significant evidence shows has been dominated by a Western liberal framework.

On this basis I explore how the dominant Western ideology of liberalism that underlies Nigeria's legal and human rights framework is defined. I will offer and propose a definition of this liberal vision through three main narratives, which manifest as universality, atomism and the public/private dichotomy. I focus on these three liberal narratives and specifically how they relate to the lived realities of women, particularly when identified as disabled. In this section, I emphasise how the liberal or formal approach to equality that Nigeria's law adopts is limited in its ability to speak to the lived realities of the disabled woman. Arguably, this is because of its over-reliance on the three strands of liberal ideology that have become deeply interwoven in Nigeria's legal framework. I therefore conclude the third section by questioning how such a framework defined and characterised by these three liberal traditions can adequately respond to the realities of disabled women.

Bearing in mind the three strands of the dominant liberal vision that underlies Nigeria's legal and human rights framework, the next part of my argument shows the relationship (intersection) between law's liberal approach and the dominant medical perspective on disability in Nigeria. In making this illustration, I accept the premise that the Nigerian legal framework, as a consequence of its liberal outlook, firmly equates a woman's body with a disabled body perceived in negative and inferior terms, and as a result is limited in its ability to speak to the lived experiences of the disabled woman.

These discussions provide a useful background for exploring the opposing or a different definition of law, and specifically human rights, and how it applies to the disabled women. This opposing definition is often referred to as the substantive approach to equality. I show how a key component of the substantive approach to equality is the appreciation of difference. In other words, the substantive approach to equality that human rights promise emphasises the appreciation of difference. However, I suggest that even this substantive definition of equality, despite its good intentions, can also be limited in its ability to speak to the lived realities of the disabled woman. This is particularly the case when it manifests simply as a representation of the flipside of the liberal coin.

I explore the liberal or formal equality (equal treatment) position versus the substantive equality (special treatment) position. The contentions between these positions are exemplified in scholarship that argues for the need to adopt a substantive perspective and definition of equality. The merits of these positions notwithstanding, the conclusions that emerge from this analysis are that, unfortunately, whether the liberal or substantive perspective is adopted, the law remains limited in its ability to speak to the lived realities of the disabled woman. This is particularly because the two approaches focus on the same coin. Put differently, both the formal and the substantive vision of human rights are limited in their responses because they ask or focus on the wrong question.

Finally, I offer concluding arguments. My conclusion is not necessarily to assert that human rights are without value but essentially to expose their limits in regard to the disabled Nigerian woman, especially when human rights are conceptualised narrowly from a liberal perspective. It is plausible that the limits of the law in regard to the disabled Nigerian woman are a result of its

fixation with equality. I conclude that it might be of greater benefit to shift the focus to power relations; equality questions are perhaps not robust enough to speak to her lived realities.

3.2 Liberalism or human rights or is it both? Liberal ideology as the bedrock of law and human rights in Nigeria

Heated debates have occurred between the opponents and the proponents of the human rights discourse. In an extensive body of knowledge, the proponents have documented the claim that disability is a human rights issue.[4] The main thrust of this argument is that the human rights of disabled women are indeed part of the human rights discourse, despite the acknowledgement that the human rights discourse has been largely dominated by a Western liberal framework. It is perhaps this kind of dominance that has led to the human rights discourse being perceived by opposing views as a form of Western imperialism.[5] The opponents allege that the experiences of the disabled Nigerian woman fall outside the scope of protection that human rights presently offers.

Meekosha and Soldiatic describe how any emphasis on human rights would in reality worsen rather than ameliorate the difficulties that disabled people experience.[6] For them, the human rights discourse, particularly in African countries, is in reality a perpetuation of colonialism, where the dominant West determines to a large extent the constitution of human rights in African countries, while disregarding existing global unequal power relations.[7] This observation is apt particularly because it ultimately raises the question of whether human rights as interpreted and imposed within the confines of the dominant Western ideology of liberalism can speak to the lived experiences of the Nigerian woman, especially when that woman is identified as disabled. Put differently, the question is whether the rights of the disabled Nigerian woman are indeed a part of the wider human rights discourse, which significant evidence shows has been dominated by a Western liberal framework.

My position that the ability of the human rights discourse to speak to the lived realities of Nigerian

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[4] P French & R Kayess 'Out of darkness into light? Introducing the Convention on the Rights of Persons with Disabilities' (2008) 8 *Human Rights Law Review* 1.
[5] PG Danchin 'Who is the human in human rights? The claims of culture and religion' (2009) 24 *Maryland Journal of International Law* 99.
[6] H Meekosha & K Soldatic 'Human rights and the global south: The case of disability' (2011) 32 *Third World Quarterly* 1385.
[7] As above 1388.

disabled women is limited is far less optimistic than that of the proponents. Corroborating this assertion requires an examination of the origins and roots of Nigeria's legal and human rights framework. This exploration is significant as it seeks to expose Nigeria's two-faced liberalism and to establish that the inability of Nigeria's legal framework to speak to the lived realties of disabled women is tied to its liberal roots.

The question of where law and human rights originated from is contentious. Nevertheless, there are possibly many sides to the story. I will briefly present and examine two of these narratives and their arguments.

The one narrative is that human rights emerged from and are historically a by-product of modem Western cultures and societies. Donnelly traces the concept of human rights to Western liberal ontology and even goes so far as to disprove any idea that tries to suggest otherwise.[8] He vehemently refutes claims that human rights are not a Western invention or that all societies have assumptions about and definitions of human rights.[9] To refute these arguments, he claims that most traditional African societies lack not only the practice of human rights but the very terminology.[10] Hence, he deliberately concludes that human rights and illiberal traditional African societies are incompatible.[11]

This approach could mean two things. It could mean that it is virtually impossible for traditional or non-liberal societies to conceptualise human rights. It could also mean, according to Mutua's explanation, that it is virtually impossible to separate liberalism from human rights and vice versa.[12] His description of human rights as the means at the international level by which the liberal vision is propagated globally illustrates this point.[13] The analogy that showcases how liberalism gave birth to democracy which in turn conceived human rights also illustrates this argument.[14] Taken together, these illustrations validate the connection that exists between human rights and

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[8] J Donnelly 'Human rights and western liberalism' in AA An-Na'im & FM Deng (eds) *Human rights in Africa: Cross-cultural perspectives* (1990) 32. In this scholarship work, Donnelly traces the origins of human rights to western liberalism.
[9] J Donnelly 'Human rights and human dignity: An analytic critique of non-western conceptions of human rights' (1982) 76 *The American Political Science Review* 303.
[10] As above 303.
[11] Donnelly (n 9 above) 303.
[12] M Mutua 'The ideology of human rights' (1996) 36 *Virginia Journal of International Law* 592.
[13] As above 592.
[14] Mutua (n 12 above) 592.

Western liberal ideology. They also possibly confirm the observation that although human rights and liberalism might appear to be two different concepts, they are in fact synonymous.[15]

In fact, one could speculate that the phrase 'official human rights', as used by Mutua, suggests that even if there are different versions and strands of human rights, the authentic version is the one linked to liberalism.[16] Having established the above, when this chapter queries how liberal narratives have responded to disabled women, it is another way of asking how human rights narratives have responded to disabled women.

Opposing scholars do not necessarily refute the connection of human rights to Western liberalism. In fact, these authors concede the Western liberal roots of human rights. Generally, the point of departure for these authors is that an insistence on a sole Western basis for human rights reflects a myopic, narrow-minded and colonial viewpoint.[17] Their counter-arguments have been that human rights have Islamic, African or Asian, and non-Western roots. It is therefore precisely because of the Western bias of human rights that they cannot be applied in African societies.

In defending this position, opposing scholars have pointed to historical and colonial struggles as proof of the African origins of human rights. Mutua describes how the historical struggles against colonialism in Africa have largely been discarded or discounted when tracing the roots of human rights.[18] His opinion is that the human rights narrative began when non-Western societies were subjected to Western colonial rule.[19] Echoing this point, Cobbath describes how certain African values embody human rights; where violations of human rights occur in African countries such as Nigeria, it is because of the predominant influence of Western liberalism over the African communal approach.[20] By making this argument, he implies that human rights violations occur because of a misguided attempt to force Africans to be liberal or Western.[21] In other words, human

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[15] As above 592. In this article, Mutua describes how human rights and western liberalism are actually tautological.
[16] Mutua (n 12 above) 592.
[17] A Said 'Precept and practice of human rights in Islam' (1979) 1 *Universal Human Right* 63; 77. Said seem to be against the western chauvinistic attitude that the West have in claiming that anything positive originates from them. He establishes the idea that human rights have Islamic roots as well.
[18] M Mutua 'Savage victims and saviors; The metaphor of human rights' (2001) 42 *Harvard International Law Journal* 201.
[19] As above 201.
[20] JA Cobbah 'African values and the human rights debate: An African perspective' (1987) 9 *Human Rights Quarterly* 309.
[21] As above 309.

rights violations occur in African countries because Africans are forced to have an individualistic mindset when in reality they are communally oriented.

The views from the two sides notwithstanding, there is relative consensus that the origins of the human rights narrative lie in the dominant Western liberal ideology.[22] First, it is suggested that the emergence of colonial rule distorted any existing African values that might be said to embody human rights.[23] Second, the arrival of colonialism on the African continent itself, that made struggles against colonialism and human rights expedient: originated from the West.

3.2.1 The two-sided 'liberal' legal frameworks in Nigeria

If it is conceded that, as Mutua has articulated, the seed of human rights did not germinate in Africa,[24] the question is where the human rights seed come from. Put another way, how did liberal human rights find their way into African countries such as Nigeria? Human rights in African societies have been identified as a legacy of colonialism,[25] because the contemporary idea of legal rights as entitlements that individuals hold in relation to the state first emerged in the colonial setting.[26]

The colonial origins of the liberal vision of human rights inherited by African countries are troubling. This concern stems from a two-sided liberal legacy that manifests, on the one hand, in the superimposition of human rights with tenets such as equality and freedom, and on the other hand, in a flipside that Adelman describes as at the centre of colonialism and that laid the liberal legacy of otherness imposed in African and Nigerian legal architecture.[27] If Adelman's assertion

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[22] There is a large body of work that support this claim. See generally Donnelly (1990) (n 8 above) 32; Danchin (n 5 above) 99; M Mutua 'Human rights in Africa: The limited promise of liberalism' (2008) 51 *African Studies Review* 18. Mutua talks about the undeniable linkage between human rights and western liberalism. V Leary 'The effect of western perspectives on international human rights in AA An-Na'im & FM Deng (eds) *Human rights in Africa: Cross-cultural perspectives* (1990) 16; and RMJ Odour 'Western liberalism African communalism and the quest for an adequate ideological foundation for the recognition and protection of the rights of persons with disabilities in Kenya' (2016) *East African Law Journal* 29. Odour talks about a division between western liberalism and African communalism but in her analysis admits that the origins of rights can be traced to western liberalism.

[23] SS Mahmud 'The state and human rights in Africa in the 1990s: Problems and prospects' (1993) 15 *Human Rights Quarterly* 485.

[24] M Mutua 'Human rights in Africa: The limited promise of liberalism' (2008) 51 *African Studies Review* 18.

[25] B Ibhawoh 'Between culture and constitution: Evaluating the cultural legitimacy of human rights in the African State' (2000) 22 *Human Rights Quarterly* 845.

[26] As above 845. See generally E Ahmed EI-Obaid & K Appiagyei-Atua 'Human rights in Africa -A new perspective on linking the past to the present' (1996) 41 *McGill Law Journal* 819.

[27] S Adelman 'Culture, universality and human rights in the twenty-first century' (1996) 70 *Philippine Law Journa*l 128. In this chapter, I tend to use 'two-sided' and 'two-faced' interchangeably in describing liberal human rights.

is correct, then it confirms a dominant two-sided Western liberal legacy that has been introduced into African societies.[28] This means that one side of the liberal legacy is a proclamation of human rights. However, inherent in this liberal legacy is a flipside that underlies a perpetuation of otherness. Mutua hints at this two-sided legacy in his description of a contradiction that is inherent in the Western liberal vision.[29] This contradiction manifests in a human rights discourse that, on the one hand, carries a promise to respect difference, yet the reality suggests that this difference is tolerated only within certain limits.[30]

Nigeria's two-sided liberal legacy can be substantiated. The first side manifests in independence, where many African countries inherited liberal-type individual rights and constitutional law.[31] The general trend during colonialism was the forceful imposition of the colonial legal framework over the traditional and legal processes of African societies.[32] The introduction of the policy of indirect rule in Nigeria illustrates this point.

On the one hand, the policy introduced a side of the liberal legacy that ensured the colonialism-inspired English law became the supreme law in Nigeria, as in most West African British colonies, although minor issues were tackled with the aid of traditional values. For instance, the forceful imposition of Western legal frameworks occurred through the indirect rule policy.[33] The legal frameworks were then used by the colonialists as a means by which to regulate, control and administer their colonial subjects.[34] The adoption of the Universal Declaration of Human Rights (Universal Declaration) has been frequently cited as a powerful reflection of the forceful imposition of Western legal frameworks in Africa.

The Universal Declaration, famously referred to as the international Bill of Rights, came into existence at a time when it was common knowledge that the West had control of the United Nations

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Although these two phrases do not necessarily mean the same thing, the argument is that the liberal human rights have two sides making it two faced. Adelman makes this same point.

[28] Mutua (2008) (n 24 above) 17.
[29] As above 17.
[30] Mutua (2008) (n 24 above) 17.
[31] Cobbah (n 20 above) 309.
[32] As above 309.
[33] Cobbah (n 20 above) 309.
[34] A Griffiths 'International human rights, women, gender and culture: Perspectives from Africa' (2008) 8 *University of Botswana Law Journal* 79.

and the Declaration was without doubt a product of the liberal vision.[35] In fact, the argument goes, the Western colonialists were able to impose the human rights narrative on African countries such as Nigeria because of their control of the United Nations in 1948.[36] The adoption of the Universal Declaration by the West occurred at a time when most African countries, including Nigeria, were still under colonial rule.

The implication for Nigeria, like other West African British colonies, is significant. Liberal human rights traditions were transposed to African countries by virtue of the inclusion of a bill of rights in their national constitutions, which resembled the one contained in the Universal Declaration.[37] African leaders, even after independence, ensured that when their national constitutions were drafted, human rights provisions were drafted in a similar way to the Universal Declaration.[38]

On the other hand, the flipside of the liberal legacy is manifested in the colonialists treating Africans as different and inferior.[39] With the introduction of indirect rule in African countries came the recognition that Western-style law was not adequate in certain situations and these situations had to be resolved using the traditional laws of the colonial subjects. It therefore became essential to learn these traditional laws so that the colonialists could adequately govern their colonial subjects. This led to a division between Africans and the Westerners, so that a separate domain of laws was ascribed to the Western colonialists and the African elite, while the 'other' different kind of law was left for local Africans.[40]

This reinforced a concept of difference that divided the Western self from the African other.[41] This invoking of otherness is possibly manifest in the cynicism shown by the drafters of the Universal Declaration towards the inclusion of the rights of minorities.[42] Part of this differentiation process originated from and found validity in the view that Africans have an identity and a concept of law that is completely alien to the Western concept of law. This difference is reflected in the Western

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[35] Mutua (1996) (n 12 above) 605. Ibhawoh makes the same point in (n 25 above) 846.
[36] R Howard 'The dilemma of human rights in sub-Saharan Africa' (1980) 35 *International Journal* 726.
[37] F Banda *Women, law and human rights: An African perspective* (2005) 27. These authors make a similar assertion: Mutua (1996) (n 12 above) 605; and Ibhawoh (n 25 above) 846.
[38] Ibhawoh (n 25 above) 846; 847.
[39] Adelman (n 27 above) 128.
[40] Griffiths (n 34 above) 79.
[41] As above 79.
[42] V Leary 'The effect of western perspectives on international human rights' in AA An-Na'im and FM Deng (eds) *Human rights in Africa: Cross-cultural perspectives* (1990) 17.

type of law that underscores the individual as the subject of rights, while the African type of law emphasises the communal lifestyle. As a result, although these local laws formed part of and were included within the legal frameworks of the colonial state, the local law was regarded as 'other', particularly when compared to Western law.

This colonial and cynical attitude generated in Africa a bastardised form of a legal framework,[43] namely a legal framework that favours the interests of the colonial rulers to the detriment of the traditions of the colonised.[44] This bastardised form of legal framework possibly finds expression in the existence of the plural legal systems that are characteristic of most independent African societies. This allows a separation of laws, whereby one legal framework manifests as statutory or formal law applicable to Westerners while the local law is applied to the African other. This situation gives validity to Griffiths' claim that formal Western law is engaged in essentialising social categories and identities.[45]

The two-faced liberal legacy has formed the bedrock of Nigeria's plural legal framework. This legal framework is characterised by the co-existence of three forms of law, namely customary and religious law, on the one hand, and statutory law, on the other hand, which are defined in opposition to one another, and usually regarded as separate and mutually exclusive.[46] This situation has caused conflicts between customary and religious law, on the one hand, and statutory law in Nigeria and has been a subject of intense debates, as illustrated by the extensive scholarship.[47] Such a two-faced liberal paradox deeply embedded in African legal systems has left women socially and politically in a very subordinate position.[48]

Theorists describe how the plurality of Nigerian laws reinforces the confusion and uncertainties that characterise human rights, especially where women are concerned.[49] Uncertainties in determining which law applies, particularly for women at a given time in the country, perpetuate

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[43] Adelman (n 27 above) 128.
[44] As above 128.
[45] Griffiths (n 34 above) 79.
[46] AU Iwobi 'No cause for merriment: The position of widows under Nigerian law' (2008) 20 *Canadian Journal Women and Law* 40.
[47] 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.
[48] F Adjetey 'Reclaiming the African woman's individuality: The struggle between women's reproductive autonomy and African society and culture' (1995) 44 *the American University Law Review* 1351.
[49] See generally Iwobi (n 46 above) 48; and Durojaye (n 47 above) 176.

and reinforce the oppression that Nigerian women encounter.[50]

The invoking of otherness by the colonialists was done not only legally but also racially, culturally, bodily and spiritually, by attributing inferiority to them.[51] Grech illustrates how the colonialists introduced racial hierarchy, which changed the manner in which bodily difference, impairment and ability were socially constructed.[52] As a result, the colonialists not only deliberately created the other but also subjugated and disciplined them.[53] Connell also notes that the colonialists created new hierarchies of bodies by dictating how embodiments were to be shaped.[54] According to her, such a mandate altered and disrupted gender structures and relations in a manner that reinforced patriarchal tendencies.[55] The patriarchal definition of and values ascribed to women solely as mothers and wives illustrate this point.[56]

Connell describes how women's bodies, because of the patriarchal definitions that have been ascribed to them, have been turned into sites of power (disability) by men.[57] The prevalence of child marriages, despite its potentially disabling effects (obstetric fistulas) and even the portrayal of women who are disabled in other ways as having dangerous fertility, illustrates this point and is consistent with events in Northern Nigeria.[58] The connection of violated (disabled) bodies to the colonial is therefore apt.

To recap, the discussion above establishes the colonial and liberal roots of Nigeria's legal and specifically human rights framework. I have exposed its two-faced paradoxical legacy: on the one hand, the legacy promises human rights while, at the same time, it infuses otherness into the Nigerian legal architecture. This is a liberal vision of otherness that arguably finds expression in the bastardised and pluralistic nature of the country's legal architecture. I argue that if the origins of liberalism (human rights) in Africa indeed lie in the colonial legacy, the problems for Nigeria's human rights response to disabled women become obvious. This explains why Nigerian law,

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[50] S Williams 'Nigeria its women and international law: Beyond rhetoric' (2004) 4 *Human Rights Law Review* 230.
[51] S Grech 'Decolonising Eurocentric disability studies: Why colonialism matters in the disability and global South debate' (2015) 21 *Social Identities* 8.
[52] As above 8.
[53] Grech (n 51 above) 8.
[54] R Connell 'Southern bodies and disability: Re-thinking concepts' (2011) 32 *Third world quarterly* 1370.
[55] As above 1376.
[56] Connell (n 54 above) 1377; 1378.
[57] As above 1377.
[58] Connell (n 54 above) 1377.

specifically its human rights response, carries with it a promise of gender equality, yet embedded in its framework is a liberal flipside with structures that are oppressive to women and that 'disable' them.

The question is how the colonially inherited and liberal-inspired legal and human rights framework of Nigeria will be able to speak to the lived realities of the disabled woman when it is responsible for her disability. The complicity of Nigeria's legal framework calls into question the enjoyment of human rights, particularly for women in a context where they are continually oppressed. Significant evidence links female oppression and the various forms of discrimination against women's bodies, similar to disabled bodies, to be in reality reinforced by the Nigeria's legal and specifically human rights framework. In fact, it is evidence of how being a woman in Nigeria is not only disabling, but is also a type of disability.

3.3 Liberal human rights defined as sameness/equal treatment (formal/liberal equality)

Having established that human rights and liberalism are the same and that human rights norms emerged from the Western liberal tradition with a two-faced legacy, I will move on to interrogate how liberal human rights have been defined and conceptualised, especially bearing in mind the lived realities of the disabled Nigerian woman. This interrogation is significant in order to establish that the limitations of Nigeria's legal and human rights framework are tied to its liberal roots. To be able to do this convincingly, we need to delve into how the liberal tradition that underlies Nigeria's legal framework is defined.

Fundamental to the liberal tradition is its commitment to formal autonomy and abstract equality.[59] The liberal tradition, according to Donnelly, is different from other traditions because of its threefold allegiance to autonomy, equality and the protection of these norms through human rights.[60] This fixation with equality is expressed in the Universal Declaration.[61] Article 1 of the Universal Declaration states that 'all human beings are born equal in rights and dignity'.[62]

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[59] J Donnelly & R Howard 'Human dignity, human rights, and political regimes' (1986) 80 *The American Political Science Review* 802; and Mutua (1996) (n 12 above) 601.
[60] As above 802. See generally Donnelly (n 8 above) 32; 33. Donnelly mentions the threefold commitment as individualism, private property rights and civil and political rights.
[61] See generally Donnelly & Howard (n 59 above) 805; and K Michelson 'How universal is the Universal Declaration' (1998) 47 *University of New Brunswick Law Journal* 19.
[62] Universal Declaration on Human Rights art 1.

If, as demonstrated, equality is an integral aspect of the liberal vision, then the question is: What is equality? According to this liberal tradition, equality means sameness.[63] Insight provided by Brown describes equality in the liberal tradition as a state of sameness where all individuals are treated in the same fashion.[64] In elaborating upon what a formal or liberal perspective on equality signifies, Cain suggests that, as a principle of justice, formal equality is easily manifested in a situation where like cases are treated alike.[65] The opposite is also true, so that unlike cases are then treated differently or in an unlike fashion.[66] A liberal or human rights understanding of equality is therefore rooted in an Aristotelian philosophy, which emphasises the idea that likes must be treated alike, while unlikes should be treated in an unlike fashion.[67]

In elaborating upon the liberal Aristotelian philosophy, Cain traces this formal perspective of equality to the assumption that, if it is true that men are indeed different from women and that masters are dissimilar from their servants, these differences (in ability to reason) would create in certain people the ability to rule and in others the ability to be ruled.[68] Speaking about the United States specifically, Cain provides an analogy that elaborates on the formal and liberal approach to equality.[69] She indicates that if, for instance, individual A has been treated in a certain way by the government, then individual B must receive similar treatment for the treatment to be called equal treatment.[70] This equal treatment is considered necessary, particularly if it is true that individual B is indeed similarly situated to individual A. Cain notes that in cases where individual B is treated in an unlike fashion, then an explanation must be given, indicating the reasons for the differential treatment.[71]

What this underlying Aristotelian analogy shows is that for formal or liberal equality to be achieved, groups of persons must pass a similarly situated or comparison test. With this kind of

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[63] W Brown *States of Injury, power and freedom in late modernity* (1995) 153.
[64] As above 153.
[65] PA Cain 'Feminism and the limits of equality' (1989) 24 *Georgia Law Review* 818.
[66] As above 818.
[67] M Freeman et al *The UN Convention on the Elimination of all Forms of Discrimination against Women: A commentary* (2012) 53.
[68] Cain (n 65 above) 818.
[69] As above 818.
[70] Cain (n 65 above) 818.
[71] As above 818.

test, women, for instance, must be able to show that they are like men, in the same way as disabled persons must be able to show that they are the same as able-bodied or non-disabled persons.[72] Liberal proponents would argue that the best or even the only way to eliminate oppression and discrimination against women (disabled) is the requirement that they be treated in the same way as men (non-disabled). It is assumed that the oppression that women suffer can be categorised and resolved by the similarly situated requirement. This could explain why feminists who adopt the liberal vision in claiming the equality of the sexes would insist on emphasising the similarities between men and women while muting their differences.[73]

The implication is that if differences are acknowledged, the liberal approach to equality is denied and belittled. An acknowledgement of difference, such as pregnancy for instance, would be treated and considered a disability.[74] In other words, if a woman's experiences do not coincide with those of a man, she is considered disabled. This is based on the position that any special acknowledgement of the uniqueness of pregnancy, or of any other differences between the sexes, will raise the possibility of protective legislation. This will result in a maintenance of stereotypes and a second-class status for women.

With this kind of definition of equality, the question that arises is whether women really are the same as men. Evidence shows that men and women, just like disabled and non-disabled persons, are not necessarily the same. Feminist theorists have noted that the problem with defining equality as sameness is that gender is viewed as difference.[75] As Brown puts it, the opposite of equality in the liberal tradition is not inequality but rather difference.[76] Therefore, while inequality and oppression are the problems to which equality as sameness is the resolution, difference is the problem to which equality as sameness is not applicable.[77] In other words, in the liberal tradition, oppression and discrimination happen only when those who are believed to be the same are treated differently; however, ontological difference is a problem that is believed to be outside the confines

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[72] FAK Campbell 'Exploring internalized ableism using critical race theory' (2008) 23 *Disability and Society* 152.
[73] Some prominent liberal feminist theorists in America have stated that not all liberal feminists subscribe to formal equality, but some prefer to substantive equality. In Nigeria, when there are issues about the need for gender equality in Nigeria, the general assumption is that women want to be like men.
[74] JO Brown et al 'The failure of gender equality: An essay in constitutional dissonance' (1987) 36 *Buffalo Law Review* 579.
[75] Brown (n 63 above) 153.
[76] As above 153.
[77] Brown (n 63 above) 153.

of the law.[78]

The obsession with formal or liberal equality described above also occurs in Nigeria. Studies have correctly linked the Nigerian Constitution to an Aristotelian formal approach to equality.[79] This approach flows from the idea that all Nigerians should be treated identically and in the same way in order to eliminate the inequalities between men and women.[80] This influence is manifested in the Nigerian courts' efforts to emphasise the similarities that women share with men, while diminishing their differences.[81] Men and women are to be treated the same; it does not matter whether they are treated equally badly or equally well.[82] The emphasis is therefore on the need to be the same in order to be equal, because being different is a disqualification from such entitlement.

Nigeria adopts this kind of formal approach to equality to make it more compelling to claim that men and women are similarly situated in the efforts to achieve gender equality in Nigeria. This explains why the common assumption is that women want to be like men when there are calls for gender equality in the country.[83] The problems of such a liberal definition then start to become obvious for the disabled Nigerian woman, especially when it is evident that men and women, in the same way as able-bodied and disabled Nigerians, are not necessarily similarly situated. How such a liberal definition of equality can apply to the disabled Nigerian woman therefore becomes questionable.

Arguably, the conception of liberal human rights as sameness is reinforced by a threefold interrelated liberal assumption, namely, the universal individualist assumption, the atomistic man assumption, and the public/private dichotomy assumption.[84] I offer an appraisal of these liberal assumptions since they are firmly entrenched in Nigeria's legal framework, which is unable to

[78] As above 153.
[79] See generally E Chegwe 'A gender critique of liberal feminism and its impact on Nigerian law' (2014) 14 *International Journal of Discrimination and the Law* 66; and E Durojaye 'Substantive equality and maternal mortality in Nigeria' (2012) 65 *Journal of Legal Pluralism* 103.
[80] Chegwe (n 79 above) 66.
[81] 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.
[82] As above 70.
[83] F Para-Mallam 'Promoting gender equality in the context of Nigerian cultural and religious expression: Beyond increasing female access to education' (2010) 40 *Compare: A Journal of Comparative and International Education* 465.
[84] J Donnelly 'Human rights and western liberalism' in AA An-Na'im & FM Deng (n 8 above) 32; 33. The proposed three assumptions I offer are consistent with Donnelly's threefold commitment to liberalism which are: individualism, private property rights and civil and political rights.

recognise the interactions and intersections between sexism and disability discrimination. I will explain these three aspects of the liberal human rights framework, and will then outline significant criticisms in the light of the disabled Nigerian woman.

3.3.1 The disabled woman and the assumption of 'universal individuality' in the sameness of treatment approach

Underlying and inherent in the liberal tradition is the core assumption of and focus on universal individualism.[85] This twin liberal narrative of 'universal individualism' is the dominant assumption embedded in the liberal human rights architecture.[86] Using this assumption, liberalism presents to the world the idea that law and human rights are universal and individualistic. The following question therefore arises: What do the terms 'universal' and 'individualist' actually mean?

The term 'universal' has two connotations. The first is in relation to its applicability.[87] Here, human rights can be said to apply to all human beings in the same way, regardless of the differences in cultures or the different characteristics that human beings embody. The liberal understanding of 'universal' therefore emphasises a neutral and assimilationist idea that human rights apply to all persons in the same way; differences in sex, gender, cultures, religion and ability do not matter. The second meaning concerns validity, which presupposes consensus about the content of the human rights essential for a person's dignity and equality.[88] In other words, all human beings agree on what law and specifically human rights should contain and constitute.

Such bold assumptions about the universality of human rights have received overwhelming support from naturalists, utilitarians, positivists and social contract writers.[89] These writers reportedly express overwhelming support for the universality of human rights, albeit for different reasons.[90]

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[85] J Ramji-Nogales 'Undocumented migrants and the failures of universal individualism' (2014) 47 *Vanderbilt Journal of Transnational Law* 703. The twin word 'universal individualism' as used in this chapter is borrowed from Ramji-Nogales.
[86] As above 703.
[87] Ramji-Nogales (n 85 above) 703.
[88] As above 703.
[89] TE Higgins 'Anti-essentialism, relativism, and human rights (1996) 19 *Harvard Women's Law Journal* 94. The naturalists for instance believe that human rights are an entitlement ascribed to an individual by nature.
[90] As above 94.

The individualist aspect refers to the rights that individuals enjoy as human beings.[91] This means that it is the individual and not the community or group that is entitled to human rights. In other words, the accurate definition of human rights is its link only to an individual and that individual's humanity. Howard and Donnelly are strong proponents of the universal individuality assumption.[92] They have both claimed, at one time or the other, that human rights are not only valid and applicable universally, but also that human rights are an individual entitlement.[93] Therefore, despite significant proof to the contrary, these scholars cling tightly to the idea that human rights are universal and are held by individuals because they are human.

This twin liberal narrative of universal individualism proceeds from and is clearly located in the Universal Declaration. Despite its obvious Western influences, the Universal Declaration's provisions have often laid claim to universality, inalienability and cross-cultural validity.[94] Article 1 of the Universal Declaration clearly illustrates this claim by providing that 'all human beings are born equal in rights and dignity'.[95] This article clearly reveals the instrument's liberal vision, which portrays human rights as rights to which all human beings are entitled because they are considered human and the same. Similar assumptions can also be made based on Article 3 of both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), commonly regarded as the offspring of the Universal Declaration.[96]

3.3.1.1 The disabled woman: Cultural relativists' critique of the liberal assimilationist's assumption of 'universal individuality'

This grand notion of universal individualism and its overly Western influences have formed the basis of extensive human rights critiques. Tensions persist as to whether human rights are indeed

[91] Ramji-Nogales (n 85 above) 703.
[92] R Howard 'Are (should) human rights (be) universal' (1998) 22 *Human Rights/Update on Law-Related Education* 29. Howard makes a similar point in R Howard 'Group versus individual identity in the African debate on human rights' in AA An-Na'im & FM Deng (eds) *Human rights in Africa: Cross-cultural perspectives* (1990) 160. In these articles, Howard explains a liberal vision of human rights as universal and individualist. Donnelly also makes the same point in Donnelly (n 9 above) 307. J Donnelly 'Human rights and western liberalism' in AA An-Na'im & FM Deng (n 8 above) 32.
[93] Donnelly & Howard (n 59 above) 805.
[94] See generally B Ibhawoh 'Cultural relativism and human rights: Reconsidering the Africanist discourse' (2001) 19 *Netherlands Quarterly Human Rights* 43; and Donnelly and R Howard (n 59 above) 805.
[95] Universal Declaration on Human Rights art 1.
[96] International Covenant on Civil and Political Rights (ICCPR) art 3 International Covenant on Economic, Social and Cultural Rights (ICESCR) art 3.

universal and individualistic or whether they are culturally specific and group-oriented. The bone of contention in these debates has been whether human rights can be said to apply to all human beings in the same way, regardless of individual cultures or societies, or whether human rights are in fact culturally relative.[97] However, if human rights are to be understood within cultural contexts, how culturally specific should human rights be in order not to lose their universality while at the same time gain cultural legitimacy?

A large body of writing discusses and documents these debates and critiques extensively. For the purposes of this section, I will briefly describe the debates and some criticisms that have been levelled at the notion of universal individualism inherent in the liberal vision of human rights. This discussion is necessary as it might tell us what this assumption could mean and its implications for disabled women in Nigeria.

Reservations have been expressed about the assumption of universal individualism. Critics of the liberal universal individualism assumption claim that human rights are not universal or individualistic, but are rather culturally specific and community-oriented. Elaborating upon this, communitarian critics argue that by claiming that individuals are entitled to rights, the social and cultural context is overlooked, making light of social and community relationships.[98] Yet, women in Africa are believed to be more concerned with the interests of their families and communities than with their individual interests and rights. Specifically, this school of thought argues that culture determines or influences to a great extent how human rights are perceived and interpreted. Their argument is that for human rights to make any sense, we must consider the different cultural realities in every society. This means that no matter the perceived differences between culture and human rights, the former cannot be overlooked in the development of human rights.[99] Thus, if human rights are perceived mainly through the eyes of culture, sensitivity to culture is important for human rights to be protected.

Arguments by these critics can therefore be summed up as follows. First, the common claim with cultural relativists is that human rights are not in reality universal but specific to cultures. The

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[97] Ibhawoh (n 94 above) 43.
[98] As above 45.
[99] AA An-Na'im 'Problems of universal cultural legitimacy for human rights' in AA An-Na'im & FM Deng (eds) *Human Rights in Africa: Cross-cultural perspectives'* (1990) 333.

human rights concept mirrors the ideas of Western and Eurocentric societies, which differ from those of African countries; the latter reflect more traditional communal lifestyles.[100] Meekosha and Soldatic argue that human rights are only truly universal when perceived from a Western perspective.[101] In fact, Danchin exposes how individualistic and universal rights arguments are usually espoused by powerful states, such as the United States, as another form of Western imperialism to universalise and impose the values of a distinct liberal tradition on other cultures.[102]

If this is the case, the universality of human rights is exposed as a ploy to encourage hateful and exclusionary ideas rather than being a natural occurrence.[103] Therefore, it is safe to assert that although the universality of human rights claim might not always be misleading, or even tricky, it is more often than not both of these things.[104] Clamouring for universal human rights is often a mask to hide ulterior motives, always defined by an interest in a specific objective, and with a projected consequence.[105]

Second, cultural relativists contend that human rights conceptualised as pretentiously universal and individualist cannot necessarily be applied to African cultures.[106] Cultural relativists challenge the idea that human rights are universal and individualist as a colonially dominant and inspired assumption. Underlying this assumption is a misleading belief that there is a given set of norms that is totally devoid of culture. Yet, as long as cultures are not universal, any claim to the universality of human rights is misleading. Hence, it is believed that an insistence on the universal individualism assumption is a way of showing superiority over other (African) non-Western cultures in the anticipation that these African cultures will develop better Western human rights norms.[107]

Again, such a colonial stance and superiority lies at the root of the opposition and perhaps confirms the tensions that exist between culture and human rights.[108] These tensions manifest where the

[100] Meekosha & Soldatic (n 6 above) 1388.
[101] As above 1388.
[102] Danchin (n 5 above) 99.
[103] Mutua (2008) (n 24 above) 19.
[104] As above 19.
[105] Mutua (2008) (n 24 above) 19.
[106] AS Preis 'Human rights as cultural practice: An anthropological critique' (1996)18 *Human Rights Quarterly* 28.
[107] Meekosha and Soldatic (n 6 above) 1388.
[108] R Howard 'Are (should) human rights (be) universal' (1998) 22 *Human Rights/Update on Law-Related Education* 30.

dominant universal individualist narrative pretends, as earlier stated, that there is a set of human rights that cuts across all cultures. This could possibly explain why the universal individualist stance is often viewed as essentially an attack on culture. Notions of an African concept of human rights have perhaps developed on this basis and from this line of argument. Opponents have clamoured for a cultural relativist perspective, suggesting that each continent should adopt its own version of human rights.[109]

This confirms the validity of the questions raised about how universally applicable human rights can truly be, considering their Western colonial sources and roots. This approach suggests that human rights cannot be applied to the disabled Nigerian woman, for instance, without an understanding of the woman's cultural context. The ability of human rights to speak to the experiences of the disabled Nigerian woman therefore becomes uncertain. This uncertainty is similar to other uncertainties that have been raised with regards to the applicability of human rights to Africans, given its Western bias.[110] If human rights have Western sources, how can they claim to be universally applicable? The difficulty with the liberal universal individualist stance for the disabled Nigerian woman therefore begins to unfold. Is she concerned with her rights as an individual (disabled) woman or is she more concerned about her rights as a member of a community or group? Which and why does she have to choose?

Nevertheless, rebuttals countering the cultural relativists' perspective have been offered. As far as Howard is concerned, there is little or no clarity as to what cultural relativism actually entails.[111] In her opinion, it is mostly African authors with Western training who clamour for an African version of human rights.[112] To concede that human rights are not universal but culturally specific is to give room to and allow discrimination, particularly against women, to continue to occur in the name of culture.[113] The observation is that a culturally specific conceptualisation of human rights is problematic because, while it pretends to want to reflect cultural differences, the reality is

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[109] Cobbah (n 20 above) 309.
[110] As above 309.
[111] R Howard 'Group versus individual identity in the African debate on human rights' in AA An-Na'im & FM Deng (eds) *Human Rights in Africa: Cross-cultural perspectives* (1990) 160.
[112] As above 160.
[113] R Howard 'Evaluating human rights in Africa: Some problems of implicit comparisons' (1984) 6 *Human Rights Quarterly* 167.

that it is instead used to privilege wealthy African male elites and to oppress women.[114]

Howard opines that calls for cultural relativism constitute cultural absolutism, which pretentiously clamours for an African communal lifestyle but in reality is a cover to benefit a male-dominated political and wealthy class at the expense of vulnerable groups.[115] She warns that African leaders' seeming rejection of the universality of human rights is purely an excuse to endorse discriminatory traditions that continually violate the rights of vulnerable women with impunity.[116] Thus, a demand for a culturally specific definition of human rights is simply a disguised attempt by male African elites to oppress vulnerable groups.[117] The main reason that African male elites deny the universal individuality of human rights is to satisfy their selfish ambitions, hiding under the cloak of culture. The prevalence of harmful traditional practices such as female genital mutilation (FGM) that clearly violate the human rights of women illustrates this point.

The universal individualists believe that an African version of human rights that focuses on a group or communal lifestyle is a problem for the disabled Nigerian woman. The problem arises where certain aspects of such Nigerian culture appear to run contrary to the protection of the woman's individual rights, particularly the idea that, to be entitled to rights in the African version of rights, the woman has corresponding duties.[118] In other words, the human rights of a woman as an individual have little meaning without a parallel obligation to her family or community.

This is evident in Nigeria where the Constitution includes an ostensibly universal individualist Bill of Rights. This Bill of Rights includes a prohibition on discrimination on the basis of sex. Yet evidence shows that FGM, despite its perceived negative disabling effects on women's health and wellbeing, is still practised, because it is believed to be a cultural rite of passage to womanhood and a woman may be denied societal and cultural identity, prestige and honour if she does not undergo FGM.[119] This situation is even more complex in the Nigerian context where traditional

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[114] Howard (n 108 above) 29.
[115] See generally R Howard-Hassmann 'Cultural absolutism and the nostalgia for community' (1993) 15 *Human Rights Quarterly* 322; and Howard (n 108 above) 29.
[116] Howard (n 113 above) 167.
[117] Mahmud (n 23 above) 485.
[118] M Mutua 'The Banjul charter and the African cultural fingerprint: An evaluation of the language of duties' (1995) 35 *Virginia Journal of International Law* 339.
[119] A Idowu 'Effects of forced genital cutting on human rights of women and female children: The Nigerian situation' (2008) 12 *Law Democracy and Development* 115. For further research on FGM, see generally: L Muzima 'Towards a sensitive approach to ending female genital mutilation/cutting in Africa (2016) 73 *SOAS Law Journal*

and religious norms also carry the force of law. The question therefore is what happens where a potentially disabling communal obligation like FGM, sanctioned and perceived of as part of customary law in Nigeria, runs contrary to and clashes with the individual rights of women.

In the case of the Nigerian woman, it is easy to speculate that where there is a clash between an individual right as encapsulated in the Constitution and her cultural and communal duty to practise FGM, it is most likely that the cultural and communal duty will prevail. The high rates of FGM, despite existing laws that ban the practice in Nigeria, suggest that women appear to prefer the 'disability' that will result from the health consequences of undergoing the practice than be 'disabled' culturally and socially for failing to undergo the practice. I therefore return to the question of what happens to a (disabled) woman's individual rights when they clash with her duty to her family or community.

Universal individualists appear to be afraid that if an African version of human rights that focuses on a group or communal lifestyle is conceded, then the whole concept of the universality of human rights becomes challenging. Silk has offered two reasons for upholding the universality of human rights.[120] One reason is the fact that the universality of human rights may be rejected to violate the rights of vulnerable groups, for instance, the disabled Nigerian woman. The second reason is that rejecting the universality of human rights would automatically strip human rights of their effect and value because human rights are of no use if they are not universal.[121]

The obvious question then is who or what determines the content of the universality of human rights. Simply put, what criteria are used when determining human rights and human wrongs? These questions are similar to the ones raised by Mutua, who queries what human rights really mean and to whom, and who or what determines an individual's dignity and worth.[122] This is added to the quest for clarity as to whether dignity and worth, however understood, have the same meaning in African countries and Western countries.[123]

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[120] J Silk 'Traditional culture and the prospect for human rights in Africa' in AA An-Na'im & FM Deng (eds) *Human Rights in Africa: Cross-cultural perspectives* (1990) 291.
[121] As above 291.
[122] Makau (2001) (n 18 above) 210.
[123] As above 210.

In response, Ibhawoh's social anthropological reasoning provides some insight. This reasoning exposes the contradictory nature of culture that makes it prone to different interpretations.[124] What therefore eventually becomes regarded as a human rights culture is not only subject to powerful cultural values, but also to a specific cultural or local context. These questions are even more poignant when one considers debates around FGM versus cosmetic surgery.

The universal individualism scholars' criticisms of an African version of human rights appear to be incomplete and short-sighted because they subtly suggest that the Western liberal concept of human rights is equated with authentic and universal individualistic human rights. In other words, universal human rights are actually a disguise for Western liberal notions of individualism. Yet the question remains: If human rights have Western origins, can they be said to be universal? Howard seems to think that they can, claiming that even though human rights and liberalism have Western origins, they can be applied elsewhere.[125] In their attempt to argue for the universality of human rights, therefore, the proponents of universal individualism appear to unwittingly concede and expose the power relations that are involved in determining what are regarded as human rights and human wrongs.

The reality in many African countries is the adoption of a liberal approach and its inherent universal individualism assumption.[126] However, this does not obliterate the continual battle evident in the fact that African countries are neither purely individualistic nor purely community-oriented.

To recap, one needs to ask what the basis of these contentions is. Universal individualism is dependent on the modern assumption that objectivity and universal truth are possible, and that the historical and situated experiences of the individual do not matter. The main thrust of the cultural relativist critique is that truth is relative and human beings are not all the same. The disabled Nigerian woman, for instance, is not only an individual; she is a woman, a Nigerian and disabled. The liberal individualistic assumption inherent in law and specifically human rights ignores these

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[124] Ibhawoh (n 25 above) 849.
[125] R Howard 'Human rights and the culture wars: Globalization and the universality of human rights' (1998) 53 *International Journal* 99.
[126] R Howard 'Group versus individual identity in the African debate on human rights' in AA An-Na'im & FM Deng (n 111 above) 160.

crucial aspects of her identity. Yet for human rights to make sense, cultural relativists insist, it must pay attention to these cultural differences. A disabled Nigerian woman should not be forced to choose between her quest for gender equality (individual right) and her cultural (and even ethnic) identity as a Nigerian (cultural right). By making such a claim, cultural relativists also appear to be blind to the patriarchal nature of these cultures that are often complicit in the disabling of the Nigerian woman.

Universal/cultural relativists do not have honest motives. On the one hand, for universal individualists, universality is born out of expressed intimidation about the economic growth of African, but mostly Asian societies.[127] This means that the universal/cultural relativist human rights contention is a manifestation of post-Cold War global power tussles. On the other hand, cultural relativism for African and Asian societies is rather conceived from the need to protect the selfish interests of the male elite and the African style of capitalism.[128] Thus it becomes clear how universal/cultural contentions are triggered by different strands of capitalism, without a real desire to ensure that cultural differences are recognised in the human rights framework.[129]

This insight suggests that the relativism critics are not necessarily interested in (gender, (dis)ability, cultural and religious) differences nor are they interested in countering the sameness/difference duality and the patterns of dominance that are normalised and produced as a result of the binaries. It seems that the real intention is actually to reverse the dualisms. The African Charter on Human and Peoples Rights as the regional African human rights instrument illustrates this point. One would be correct in deciding that the 'difference' it underscores does not necessarily speak to the specific interests of the disabled Nigerian woman. If that is the case, then whose 'difference' the cultural relativists are advocating is questionable. Thus, the hidden power issues at play and the global struggle for economic power in the contentions of the universal/cultural relativists are exposed.

Otto claims that the universalists are guarding the dominance of the West, while the relativists are

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[127] D Otto 'Rethinking the universality of human rights law' (1997) 29 *Columbia Human Rights Law Review* 7.
[128] As above 7. Otto writes about an Asian style of capitalism which in my view, is applicable in African countries such as Nigeria which can be called an African style of capitalism.
[129] Otto (n 127 above) 7.

seeking to reverse the duality that presently perceives African societies as the West's other.[130] Her invitation is therefore to take a careful look at the use of the sameness/difference dualities of modernity by both sides of the argument and how it reveals two things:[131] first, a ploy to further the selfish interests of both sides that has little to do with the interests of vulnerable groups such as the disabled Nigerian woman, and second, power tussles between the West and African societies.

3.3.1.2 The disabled woman and the feminist dilemma: Feminists' critique of the liberal assimilationist's assumption of 'universal individuality'

The following question emerges from the debates discussed above: What does the cultural relativism versus the liberal assumption of universal individualism approach mean for the disabled Nigerian woman?

The tensions that exist between cultural relativists and universalists are a reflection of the tensions within feminism itself.[132] Arguments within the feminist movement largely question the universality argument based on essentialist assumptions.[133] The tension is between treating the experiences of women as a collective foundation for political strategy, on the one hand, and respecting the differences between women, on the other hand.[134] The crux of these arguments has been whether the presumption of universality means that all women share the same identities and encounters. This is the same as asking whether all women share the same experiences and lived realities of the disabled Nigerian woman.

On one side of the argument is the universality claim based on feminist essentialist assumptions. Feminists on this side insist on disregarding the differences between women, such as race, ethnicity (dis)ability, class, religion and culture. The claim is that such a disregard is necessary in order to ensure that the universal human rights of women are upheld. In other words, the oppression that brings women together is stronger than the oppression that separates them. On the other side of the debate is the feminist anti-essentialist assumption, which is similar to the cultural relativism approach. The premise here is that the liberal universal individualist stance that disregards the

[130] As above 7.
[131] Otto (n 127 above) 7.
[132] Higgins (n 89 above) 97.
[133] S Okin 'Feminism and multiculturalism: Some tensions' (1998) 108 *Ethics* 663; 664.
[134] Higgins (n 89 above) 121.

differences between women obscures the vulnerabilities of marginal women, such as the disabled Nigerian woman. By so doing, this approach runs contrary to the entire premise of good feminism, which promises to speak to the differences between and the lived realities of all women.

Higgins describes how the feminist essentialists have often criticised the inadequacy of the traditional human rights framework generally, but have scarcely attacked its universality.[135] This is because, for these feminists, women have much more to lose if they deviate from a universal individualist assumption in favour of deference to culture. These feminists have therefore focused more on the threat that a cultural defence would pose to women. Generally, this focus has been considered paramount, since culture and traditions have often been employed as an excuse to legitimise the oppression that women experience. This claim can also be validated by the fact that human rights norms have not been seen to work particularly well in African countries. Oppressive practices continue in the name of culture and tradition, preventing the realisation of rights for women.

Okin has claimed that although all cultures have patriarchal and sexist histories, most Western liberal cultures have made greater progress in curbing sexist tendencies than other cultures.[136] Precisely for this reason she suggests that it will make more liberal sense for a more patriarchal minority culture to be assimilated within the less patriarchal majority culture so as to achieve equality for women.[137] This stance is hypocritical for three reasons.[138]

The first reason exposes Okin's stance as hypocritical because it tends to consciously or unconsciously conflate culture with harmful practices, as if harmful cultural practices are solely found in African societies. The assumption is that Western liberal cultures are less sexist and therefore superior to minority cultures. Third World women (including Nigerian women) are often represented as the minority culture with patriarchal tendencies while Western liberal cultures are portrayed as cultureless.[139] The inference is that the powerful are apparently cultureless, while the

[135] As above 101, 104.
[136] Okin (n 133 above) 680.
[137] As above 680.
[138] F Anthias 'Beyond feminism and multiculturalism locating difference and the politics of location' (2002) 25 *Women's Studies International Forum* 278.
[139] L Vlopp 'Feminism versus multiculturalism' (2001) 101 *Columbia Law Review* 1191.

powerless are full of culture.[140] Westerners are presented as rational beings, while Africans who rely on their group's cultural identity are often described as dehumanised.[141]

This argument reinforces the idea that all cultures have been oppressive to women in one way or another. While it might be true that some cultural practices are harmful to women, harmful cultural practices are not limited to a particular cultural context. In fact, evidence illustrates that oppressive cultural practices have also been identified in cultures that claim to uphold universal human rights.

The second reason reveals how the assumption that Western universal human rights can be applicable in all cultures encourages cultural imperialism within the feminist movement.[142] By refusing to recognise the differences that exist between women, feminists tend to fall into the same trap as the traditional human rights framework, particularly if claims that Western human rights perspectives disguised as universalist might be exclusionary or imperialist are true. The attention given to the right to abortion, for instance, as opposed to the little or no mention of the specific reproductive concerns of disabled women, such as forced sterilisation, illustrates how the feminist narrative is biased towards Western, white, able-bodied women.[143]

The paradox is even more apparent when we consider that the entire concept of feminism, as Higgins has shown, revolves around recognising the cultural context and the particular experiences of women, especially those of disabled Nigerian women, who lie at the margins of power.[144] These feminists have been so engrossed with vehemently countering the traditional human rights framework that has tended to exclude the voices and experiences of women generally that they do not realise that they have fallen into the same trap of excluding the voices of marginal women, such as disabled Nigerian women, thus defeating the entire premise of feminism and its promise to respect differences.

The last reason is that Western feminism disregards the fact that cultural norms carry different connotations for insiders and outsiders.[145] Cultural practices can acquire certain connotations

[140] As above 1191.
[141] Vlopp (n 139 above) 1191.
[142] Anthias (n 138 above) 278.
[143] R Sifris 'Involuntary sterilization of HIV positive women: An example of intersectional discrimination' (2015) 37 *Human Rights Quarterly* 474.
[144] Higgins (n 89 above) 124; 125.
[145] Anthias (n 138 above) 278.

depending on different positioning and specific struggles, and also create dualisms and binaries of the 'insider and the outsider'.[146]

The above description reflects a 'between the devil and the deep blue sea' dilemma for feminists.[147] Higgins notes that, on the one hand, the devil aspect of the dilemma is captured in some feminists' preference for the universal individualist stance to the detriment of culture. Yet to make a claim to universalism is to make ambiguous claims about the lives and experiences of women, and we can question the extent to which women's oppression can be said to be similarly constituted across cultures.[148] On the other hand, the deep blue sea aspect of the dilemma arises where taking such a universal individualist stance appears to run against the whole idea of feminism, which is to respect difference and to listen to the voices of all women.

The 'devil and the deep blue sea' dilemma raises the question of whether feminists should seek to expand human rights to include the experiences of women as though they are or were universal, or acknowledge the differences of women in a manner that rejects universal individuality detached from the cultural milieu. There is no easy answer because acknowledging the differences of women is equally troubling, because this runs the risk of minimising the feminist criticisms of cultural norms that violate women.[149]

To recap: tensions between universalists and cultural relativists are mirrored in feminists' essentialist versus anti-essentialist arguments. On the one hand, essentialist scholars could argue that we need to emphasise the universal sameness of rights as this allows for possible ways of including disabled women, who are considered to be different. On the other hand, feminists' anti-essentialism has the same approach as cultural relativists: that the oppression that women suffer cannot be understood cross-culturally.[150] Therefore, even though the tendency is for some feminists to lean more towards a universalist argument, the feminist anti-essentialists share similar concerns as do the cultural relativists about cultural imperialism.

Nevertheless, while we need to take the issues of cultural differences that cultural relativists and

[146] As above 278.
[147] Higgins (n 89 above) 97; 104.
[148] As above 103; 104.
[149] Higgins (n 89 above) 111.
[150] As above 124; 126.

anti-essentialists raise seriously, this must be done without letting go of our critical position about the oppression that women experience. The challenge that a cultural relativism perspective therefore presents for the woman has two aspects, as Higgins has shown. First, to simply tolerate cultural differences is too broad, because following this argument would mean that feminists become blind to the prevalent limits on women's freedom, despite the existence of autonomy that, according to Higgins, is merely theoretical.[151] Second, to do away totally with cultural practices is too narrow. In fact, the existence of the disabled Nigerian woman suggests that this is not a viable option simply because it would require a dismissal of her culturally specific encounters as false. This points to the idea that cultural relativism should be supported only to the extent that it resists various forms of cultural essentialism.[152] Narayan notes that what is criticised is not necessarily universality but pseudo-universalism,[153] where Western dominance pretentiously poses as universalism.

3.3.1.4 The disabled woman and the critique of the liberal assimilationist's assumption of 'universal individuality'

The above approaches of cultural relativists and feminists encapsulate the dilemma that the liberal assumption of universal individuality presents to the disabled Nigerian woman. The 'difference' of the disabled Nigerian woman brings to light the tensions that exist between balancing sensitivity to difference, on the one hand, against the aspiration for universal rights, on the other hand. The best way of striking a balance between guaranteeing individual rights and acknowledging difference and group interests is therefore uncertain.

It is possible that applying the universal individualism reasoning to the disabled Nigerian woman, for instance, presupposes two things. First, it pretentiously assumes that humanity is a given and human rights protection is universal irrespective of context. Second, (universal) individualism assumes the independence and autonomy of the (disabled) woman. In other words, the

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[151] Higgins (n 89 above) 124.

[152] U Narayan 'Essence of culture and a sense of history: A feminist critique of cultural essentialism' (1998) 13 *Hypatia* 88; and J Freedman 'Women, Islam and rights in Europe: Beyond a universalist/culturalist dichotomy' (2007) 33 *Review of International Studies* 29.

[153] Narayan (n 152 above) 102; 104.
In the same token, Niarayan also criticises what she calls 'pseudo-particularism' This is where dominant representations of specific cultures obscures from plain view the fact that there are worrisome notions about complex and internally differentiated contexts.

individuality part of the universal individuality notion emphasises the fact that the guarantee of human rights has historically relied on individuals being functional.[154] This is the same as the way that the universal part of the universal individuality notion implies entitlement to human rights, provided that one is human.

The difficulties with such a dual connotation that universal individualism promises for the disabled Nigerian woman is therefore obvious. In fact, the pretentious notion that humanity is a given and human rights protection is universal is quite troublesome. The premise of the universal individualism reasoning to the disabled Nigerian woman presents four difficulties, as documented by Ramji-Nogales. With a specific focus on and reference to undocumented migrants, he offers four reasons why the universal individualism assumption that is inherent in the liberal vision of human rights is difficult.[155] I apply this reasoning to the disabled Nigerian woman.

First, the assumption creates the need to fit into the hierarchical legal categorisations in order to deserve protection. This first point describes how universal individualism establishes a hierarchy of suffering that silences the suffering and oppression of vulnerable groups, instead of providing protection. Unfortunately, because the disabled woman does not fit into the established categories, she is not seen and is therefore rendered voiceless without protection. Second, the universal individualists' stance camouflages its political agenda. The ability to ascribe or attribute a human rights status to a person or practice unwittingly exposes the politics embroiled in determining what is considered a human right and human wrong. Third, by focusing on individualism and autonomy, global oppression is obscured. Universal individualism deliberately reinforces the idea of the survival of the fittest in the world. Fourth, by emphasising universal individualism, alternatives are not considered. This emphasis overlooks the importance of group-based identities, and the available responses to social norms such as FGM, for instance, are limited.

In explaining the first difficulty with respect to the disabled Nigerian woman, Ramji-Nogales shows how the rights of vulnerable groups such as the disabled woman are not necessarily covered or protected by the human rights framework. This lack of protection is linked to the established

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[154] Universal Declaration of Human Rights, art 1 refers to an *endowment of reason* (emphasis mine). This presupposes a human rights criterion and an individuality that women and (disabled) women are seemingly disqualified from.

[155] Ramji-Nogales (n 85 above) 703; 705-714.

tendency of a human rights framework to create rigid categories and to expect persons to fit into such neatly established categories.[156] The problem for the disabled Nigerian woman therefore becomes clear because, unfortunately for her, she does not fit neatly into any of the set categories of 'woman' or 'disabled'. These legal categorisations reinforce hierarchies endorsed and legitimised in societies in such a way that in Nigeria, for instance, disabled women are not seen as human simply because they do not fit into the legally recognised categories.

Unfortunately, where only certain rights are seen and prioritised at the expense of others, the human rights framework becomes blind to the 'othered' rights. For the disabled woman this means that she is stigmatised and denied protection because she is not expressly recognised by the legal and human rights framework. This exposes the complicity of a human rights framework that appears to be tolerant of the oppression of vulnerable groups, such as disabled women, simply because she does not fit into the neatly established categories. Therefore, the encounters of vulnerable groups such as disabled Nigerian woman are usually considered to be outside the scope of human rights protection.

In regard to the second difficulty, the human rights narrative with its universal individualism assumption camouflages the political agenda. The validity of this claim is clear from the disabled Nigerian woman's perspective. On the one hand, this difficulty can be linked to the emphasis and presumption placed on the neutrality of laws. This means that rules and laws grounded on the liberal narrative that claim to be universal and by extension neutral are in reality usually blind to politics and unequal power relations in their quest for rational behaviour.[157] Such neutrality emerges from the fact that mainstream human rights instruments are characterised by blanket provisions that fail to recognise discrimination and differences.[158]

The supposed neutrality that the Universal Declaration embodies is problematic, because it implies a kind of gender and disability blindness – a blindness that is clearly evident in the fact that disability was not included in the first place in the Universal Declaration. This lack of reference to

[156] As above 706; 707.
[157] See generally Ramji-Nogales (n 85 above) 708; K Schick 'Beyond rules: A critique of the liberal human rights regime' (2006) 20 *International Relations* 322.
[158] G Quinn 'The United Nations Convention on the Rights of Persons with Disabilities: Toward a new international politics of disability' (2009) 15 *Texas Journal on Civil Liberties & Civil Rights* 47; 48.

disability in the Universal Declaration is significant because it portrays the predominant perception of how the true grounds for equality or guarantee of human rights traditionally rely on capacity.[159] The problem with this is that, in line with the formal or liberal vision to equality, the emphasis is on banning distinctions and differences on the basis of personal characteristics rather than removing hindrances that will allow individuals with certain characteristics to function effectively.[160]

Arguably, these arguments stem from the fact that the absence of disability (defined as difference) is actually regarded as the ideal and universal experience, while the presence of a disability (difference) is not considered a part of human experience and is viewed as inherently negative. We can therefore safely conclude that the absence or the perceived absence of such capacity or functionality on the grounds of sex and disability is what apparently justifies inequality and makes it acceptable. The consequence and implication of this situation is thus the tendency to achieve procedural equality to the detriment of its outcomes, which fail to recognise and address structural disadvantage.

On the other hand, the trouble and difficulty manifest in the assumption that the disabled Nigerian woman, for example, is automatically a recipient of rights by virtue of the fact that, as earlier highlighted, rights entitlement is considered to be ascribed to the woman simply by virtue of her personhood and humanity. To illustrate, a woman is presumed to be a recipient of the right to life. In fact, it is commonly believed that the right to life is a universally accepted right. However, even that right can be questioned, particularly when one considers the number of women that lose their lives as a result of oppression suffered in their homes. Ramji-Nogales shows how regarding, claiming and identifying certain rights as universal is a matter cloaked in politics.[161] He explains how the problem is actually unveiled once something or someone is ascribed a human rights status.[162]

Yet, the universal individualism assumption pretends that human rights are devoid of politics. This

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[159] D Baynton '*Disability and the justification of Inequality in American history*': *The new disability history* (2001) 33.
[160] M Lisberg 'Disability and employment: A contemporary disability human rights approach applied to Danish, Swedish and EU law and policy' (2011) 43 *School of Human Rights Research Intersentia United Kingdom* 26.
[161] Ramji-Nogales (n 85 above) 702; 708.
[162] As above 708; 709.

is despite evidence that demonstrates how politics determines what is regarded as human rights and what is not. Therefore the presumption of universalism removes the focus from structural inequalities and automatically obscures from plain sight the politics involved in determining rights.[163] An example of this kind of structural disadvantage and politics at work is easily manifested in the fact that US women, for instance, were granted personhood and full citizenship only a century ago.[164] The universal individuality inherent in the liberal vision conveniently ignores the fact that full citizenship was extended to women less than a century ago and how it took a full-blown civil war for this status of personhood and humanity to be extended to African-Americans in the United States,[165] an accomplishment that has been accurately described as more formal than substantive.[166]

This example is more apparent in Nigeria, where women are yet to attain full citizenship. Significant evidence points to the fact that humanity is not a given for women in Nigeria.[167] Legitimate doubts have been expressed about how human a Nigerian woman truly is, on account of the violation she suffers.[168] This makes the power play involved in human rights apparent: Nigerian women are worse off than their US counterparts, and are still been repeatedly stripped of their citizenship because of their womanhood. Such denial of women's citizenship validates women's disability in Nigeria, especially if it is true that citizenship is a condition that guarantees an individual full membership or true humanity in a society.[169] This would also be the case if one writer's remark about how disability is the direct opposite of citizenship is equally true.[170]

Authors unwittingly validate the disability of Nigerian women when they refer to women as second-class citizens in the country.[171] This prevailing blatant denial of women's citizenship, as well as the confirmation of their second-class status, not only provides sufficient proof of the disability status of women in the country but also justifies my use of the word 'disabled' when

[163] Ramji-Nogales (n 85 above) 708.
[164] Adelman (n 27 above) 125.
[165] As above 125.
[166] Adelman (n 27 above) 125.
[167] E Durojaye (2013) (n 52 above) 176.
[168] As above 176.
[169] T Shakespeare et al 'The *sexual politics of disability: Untold desires'* (1996) 200; 201.
[170] As above 200, 201.
[171] GA Makama 'Patriarchy and gender inequality in Nigeria: The way forward' (2013) 9 *European Scientific Journal* 115.

referring to women in Nigeria. This is even more true when we consider how even the United Nations Convention on the Rights of People with Disabilities (CRPD) has reconceptualised the nature of disability, from being perceived as a personal impairment leading to limits in activity alone to a renewed recognition that disability is a type of social oppression resulting from discrimination, a denial of citizenship and a denial of civic participation.[172] From the above, it is clear that the manner in which the liberal vision of rights and its claim to universality of content excludes minorities and silences their suffering reinforces unequal power relations.

Another example of structural disadvantage portrayed in the universal individualist assumption is the inherent contradiction evident in the introduction of a capitalist system, which is built on the absence of substantive equality yet is accompanied by an ideology of human rights that claims the opposite.[173] Adelman notes that this liberal vision places a huge emphasis on individualism at the expense of the individual,[174] which is mirrored in today's biased world where human rights and their allegiance to the twin notion of universal individualism have been employed as a ploy to satisfy the selfish economic and geopolitical interests of the dominant Western capitalist nations.[175]

The above depictions of unequal power relations and structural disadvantages for the disabled woman renders suspect Article 1 of the Universal Declaration, which provides that all human beings are entitled to rights and equality.[176] The article encapsulates the central universal individuality premise upon which the liberal vision rests. If this is so, the question is: If the entitlement to human rights according to the liberal vision is solely based on universal humanity, what happens when that very humanity is questioned or uncertain? This question is also relevant to the Nigerian woman, considering the way in which disability is ascribed to her as a way to legitimise and excuse the oppression and inhumanity that she suffers daily.

The pretentious assumption that humanity is a given and human rights protection is universal is particularly laughable as far as the disabled Nigerian woman is concerned. Significant evidence clearly shows the inhuman treatment that the disabled woman encounters daily, for example, the

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[172] United Nations Convention on the Rights of Persons with Disabilities (UN CRPD) preamble para (e); art 1. See similar argument made in Meekosha & Soldatic (n 6 above) 1383.
[173] Adelman (n 27 above) 125.
[174] As above 125.
[175] Meekosha & Soldatic (n 6 above) 1388.
[176] The Universal Declaration on Human Rights art 1.

disabled are ostracised, killed and used for ritual purposes with impunity in Nigeria.[177] This occurs because of the dominant belief that the disabled woman is not deserving of life. This argument is corroborated by a 2015 research study in Nigeria, where a disabled woman laments that disabled women are not viewed as human beings.[178] This can be traced to the fact that, as research has shown, the strength of the disability identity most times overshadows and denies personhood.[179]

This premise of universality is concerning for the disabled woman, particularly if enough attention is paid to the argument that colonialism has contributed immensely to the creation of disabled bodies on the African continent.[180] Yet with this same colonial influence, despite its complicity, came the bold introduction of human rights. For example, Meekosha and Soldatic appear to be cautiously wary of the arguments for universality that are made in the name of keeping open the possibilities of inclusion.[181] While this line of argument might have certain merits, it is interesting that what is brought to the fore is the fact that even the reference to inclusion is itself challenging, particularly for the disabled woman, because, when inclusion is mentioned, it is usually heavily determined by the dictates of the able-bodied.[182]

One would be right to question how human rights can be said to be universal particularly when the criteria for the guarantee of such rights are dependent on a particular standard (male ableism). Perhaps precisely for this reason, Meekosha and Soldiatic are correct to infer that the specific concerns of the disabled fall outside the scope of human rights protection.[183] Thus, if the inhumanity that the disabled woman encounters on the basis of her womanhood and disability can be traced to human rights, it is uncertain how this same human rights narrative intends to offer adequate protection and speak to her lived realities.

The third difficulty that Ramji-Nogales identifies is that the assumption of universal individualism

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[177] E Etieyibo & O Omiegbe 'Religion, culture, and discrimination against persons with disabilities in Nigeria' (2016) 5 *African Journal of Disability* 3.
[178] NSRP & Inclusive Friends 'What violence means to us: Women with disabilities speak' (2015) http://www.nsrp-nigeria.org/wp-content/uploads/2015/09/What-Violence-Means-to-us-Women-with-Disabilities-Speak.pdf (date accessed 24 March 2017).
[179] T Shakespeare 'Disability, identity and difference' in C Barnes & G Mercer (eds) *Exploring the divide* (1996) 112.
[180] Meekosha & Soldatic (n 6 above) 1389.
[181] As above 1388.
[182] Meekosha & Soldatic (n 6 above) 1388.
[183] As above 1383.

hides the oppression that happens globally.[184] With the term: 'universal individualism' stems the difficulty of individualism. This individualism originates in the liberal vision's emphasis on formal equality and abstract autonomy. Inherent in the universal individualist notion, for instance, is the premise of autonomy and individualism that is particularly worrying for the disabled woman, because the individualist assumption covers global inequality, giving the false impression that the world is full of autonomous individuals who are able to enjoy rights equally.[185] In other words, this assumption about universal individuality pretends that the world provides an equal playing field for every individual, when the disabled woman in Nigeria clearly proves otherwise.

To make such an argument is to deliberately turn a blind eye (pun intended) to the imbalances in the global distribution of power and wealth. The individualist perspective impairs the vision of the global community, which fails to notice the systemic injustices that occur around the world. The perspective that is adopted by human rights treaties and their treaty monitoring bodies manages to shift the focus from actual occurrences in the global context, which are characterised by inequalities of power.[186] Ramji-Nogales's analogy comparing the individualist perspective of human rights to a kingdom with an allegiance to equality but within a differentiated and hierarchical structure is therefore apt.[187] An example is the priority accorded to civil and political rights as opposed to economic, social and cultural rights.

The premise of autonomy inherent in the individualist notion is troublesome for the disabled woman because of the priority ascribed to negative rights over positive rights. Ramji-Nogales explains that primacy is given to rights that stop people from acting in certain ways as opposed to rights that require positive and concrete action.[188] This explains why civil and political rights appear to have greater significance than economic, social and cultural rights, as well as rights to development.

A counter-argument often peddled in support of the universality of human rights is the frequency of the ratification of human rights treaties. However, although it might be true that certain treaties

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[184] Ramji-Nogales (n 85 above) 710; 711.
[185] As above 711.
[186] Ramji-Nogales (n 85 above) 710; 711.
[187] As above 710.
[188] Ramji-Nogales (n 85 above) 711.

enjoy ratification by a great number of states, this in itself does not necessarily confirm the universality of human rights.[189] In Nigeria, for instance, the reality is that the ratification of a human rights treaty is not necessarily an accurate reflection of the position of the majority of Nigerians on that issue. In fact, the likelihood is that the ratification of a treaty in African countries might be the idea of members of the elites who have adopted or have been exposed to Western influences and whose viewpoints might run contrary to the viewpoint of the majority of the population, who have greater allegiance to their local cultural beliefs and values.[190]

Brems and Adekoya concede this point, describing how despite the recognition of human rights in national constitutions and in widely ratified international human rights treaties, human rights have remained a pipe dream for the majority of people.[191] Specifically, they note how vulnerable and poor people are mostly likely to suffer violation and are less likely to have their rights guaranteed in Nigeria.[192] If this is so and if one considers the established link between women and poverty manifested in the feminisation of poverty, on the one hand, and the link between poverty and disability, on the other hand, then it begs the question of who exactly the 'human' in human rights refers to. The language of human rights is often used to silence the suffering of those outside its scope, including the disabled woman.

The final difficulty has to do with the egotistic stance of universal individualism that prevents it from considering other alternatives. In making this point, Ramji-Nogales draws attention to how the individualist focus of human rights disregards the social constructionist idea.[193] This idea depicts the realisation that rights cannot be guaranteed except by shared and community interaction, although individuals are still regarded as autonomous and bearers of rights. This idea is related to the cultural relativist argument, which emphasises social and community ties.

One could speculate that the limits to the guarantee of human rights in African countries are rooted in their individualistic and egotistic nature. This nature arguably prevents a proper development of a human rights culture in African societies because it egotistically overlooks the positive culture

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[189] As above 709.
[190] Ramji-Nogales (n 85 above) 709.
[191] E Brems & CO Adekoya 'Human rights enforcement by people living in poverty: Access to justice in Nigeria' (2010) 54 *Journal of African Law* 258; 265.
[192] As above 258; 265.
[193] Ramji-Nogales (n 85 above) 712; 713.

of Africans. While there are undoubtedly benefits to the individualistic view of liberalism, it is limited to the extent that it looks down upon and disregards the communal lifestyle, without which human rights have little or no meaning in African societies. I am alluding to Ramji-Nogales' point about how grouping and community ties are an essential part of any society and how the depiction of people as autonomous individuals rather than as group members fails to take adequate account of social ties in legal decisions, which in turn narrows the public discourse.[194] Once a legal and human rights perspective is adopted in respect of a social problem, it is limited in its approach.[195] This is borne out of the impression created by the law and specifically the human rights framework – that unless there is a legal or human rights response to an issue, there can be no other workable or alternative response. The need to accommodate group rights within the liberal and individualistic human rights framework is therefore striking.

3.3.2 The disabled woman and the assumption of the 'atomistic man' in the sameness of treatment approach in the Nigerian legal framework

Inherent in the liberal tradition and the definition of equality is the core presumption and focus on the atomistic man. By atomistic man, I am referring to the idea, as shown by a large body of feminist literature, that the masculine chauvinism of law and specifically the human rights framework underlies the liberal tradition.[196] The patriarchal premise deeply embedded in the fabric of human rights is hinged on two main points, as identified by feminist research.[197] The first point is related to the position of the person who is making the argument for rights and on whose behalf the argument is being made. Underlying the international human rights structure is a male-dominated structure primarily concerned with male's encounters, to the detriment of women. According to Charlesworth, this makes the human rights allegiance to objectivity and universality suspicious.[198] In fact, she goes on to suggest that unless the gendered nature of law and human

[194] As above 712; 713.
[195] Ramji-Nogales (n 85 above) 714.
[196] Brown (n 63 above) 153. For a further discussion of the masculine chauvinism of law and specifically the human rights framework that underlies the liberal tradition, see: L Parisi 'Feminist perspectives on human rights' (2017) *Oxford Research Encyclopaedia of International Studies* 4; L Parisi 'Feminist praxis and women's human rights' (2002) 4 *Journal of Human Rights* 571; and H Charlesworth 'Human rights as men's rights' in J Peters & A Wolper (eds) *Women's rights, human rights: International feminist perspectives* (1995) 103.
[197] L Parisi 'Feminist praxis and women's human rights' (2002) 4 *Journal of Human Rights* 578.
[198] H Charlesworth 'Human rights as men's rights' in J Peters & A Wolper (eds) *Women's rights, human rights: International feminist perspectives* (1995) 103.

rights is recognised, there can be no meaningful equality for women.[199]

The second point embedded in the liberal understanding of equality is the presumption of a criterion of sameness to be achieved in order to qualify for equal treatment. Integral to this presumption is a 'similarly situated' requirement that raises the question: the same as who or what? The difficulty with this understanding of law for the disabled Nigerian woman is immediately clear. This understanding surreptitiously creates or places an emphasis on a requirement for a standard. It also raises the subsequent question of what criterion or measurement is to be used to determine the liberal subject. In other words, the question becomes: who or what is this ideal standard? The favouritism deeply entrenched in the rights claim to equality grounded on a liberal vision therefore becomes clear. [200] The bias in how rights offer promises only at a painful cost and to the extent that an individual is able to attain an ideal norm becomes evident.[201]

This bias is also clearly evident in the liberal assumption that focuses on individual merit and fault.[202] By focusing on merit, there is an assumption that individual merit exists in the abstract, without considering gender, (dis)ability, culture and other underlying features. Yet, the criteria for measuring merit are often the result of the dominant narrative.

Likewise, the assumption of independence, rationality and autonomy that is ascribed to the subject of the liberal vision, for example, exposes the deception and confirms the underlying notion that there is a 'criterion or ideal' to be met in order for an individual to be regarded as human and worthy of rights.[203] It also becomes evident how the criteria for acquiring equal treatment are based on the dominant culture and its characteristics, for instance, being male, able-bodied and heterosexual. If the disabled woman is measured using the male criteria, she will obviously come up short, simply because she is not an able-bodied man. The ideal citizen, according to Meekosha and Dowse, is not only male but an active male, as opposed to what is considered the inactive or

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[199] As above 103.
[200] M Shildrick 'Critical disability studies: Rethinking the conventions for the age of postmodernity' in N Watson et al (eds) *Routledge handbook of disability studies* (2012) 38.
[201] As above 38.
[202] Baynton (n 160 above) 33. As stated earlier, Bayton has highlighted how the true grounds for equality has been capacity as such, the absence or the perceived absence of such capacity would justify inequality. Fineman makes a similar point in M Fineman 'The vulnerable subject: Anchoring equality in the human condition' (2008) 20 *Yale Journal of Law & Feminism* 1.
[203] CA Ball 'Looking for theory in all the right places: Feminist and communitarian elements of disability discrimination law' (2005) 66 *Ohio State Law Journal* 121.

disabled (female) other.[204]

This insight is useful in exposing the gendered nature of liberal equality, which is clear from the way in which there is a reliance on a dominant standard that makes it difficult for women to be equal to men. This is the point Brown makes in describing how a connection to an ontology of masculine sameness underlies liberal equality's sameness.[205] For her, the ontology produces a formally male-centric standard insofar as it is premised upon the differentiation in women.[206] The sameness of men therefore requires the difference that is women in the same manner that ability requires the difference defined as disability.[207]

Similarly, embedded in the liberal understanding of equality is the idea that men and women are to be treated the same if they are 'similarly situated'. As MacKinnon correctly notes, this 'similarly situated' requirement emphasises the notion that if something is not necessary for men, then women cannot have it.[208] This means that if, as feminist theorists have established, liberal equality is defined as sameness and, within that same definition, sex denotes difference, then the gendered nature of liberal equality becomes apparent. Thus, the point is that liberal equality is male-centric because of its insistence on sameness and difference. These terms not only assign an inferior meaning to gender but also establish gender's inferior place within liberal discourse.[209]

In their argument for equal treatment, liberal proponents would prefer the differences between women and men to be muted. The argument is that any special acknowledgement of difference between men and women will lead to special legislation, which will reinforce the stereotypes attributed to women. This kind of argument emphasises the fact that law favours the male sex. In addition, it unwittingly validates the idea that the standard to be met is the male ideal, and maleness is the standard to be used to determine if discrimination has occurred. The example of pregnancy has been used to substantiate this point in the United States. One liberal approach is that pregnancy should be regarded as a 'disability' in order to remove the need for women to be identified as

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[204] H Meekosha & L Dowse 'Enabling citizenship: Gender disability and citizenship in Australia' (1997) *Palgrave Macmillan Journals* 49.
[205] Brown (n 63 above) 153.
[206] As above 153.
[207] Brown (n 63 above) 153.
[208] MacKinnon (n 2 above) 26.
[209] Brown (n 63 above) 153.

special or unique. In fact, some liberal proponents go so far as to claim that any medical condition or illness that men have can be equated with pregnancy in women. Unfortunately, this reinforces the assumption that the identity categories of individuals can be frozen.

The above discussion confirms claims of the existence of a universal human rights framework that, in reality, is male-centric. Under this framework and in order to achieve equal treatment, the disabled Nigerian woman is faced with the choice of assimilation: if she wants to be treated like non-disabled members of society, she must become like them. Unfortunately, where she cannot become like her non-disabled counterparts, this forms the basis for different treatment.

This male-centric human rights framework has been the target of most feminist criticism. The main thrust of the critique is that the utility of liberalism is undermined by the male-centrism and patriarchy that characterise the international human rights framework.[210] To substantiate this criticism and elaborating upon the patriarchal nature of law and specifically human rights, we should note that Article 1 of the Universal Declaration provides that:

> All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in *a spirit of brotherhood*.[211]

In my opinion, this article encapsulates the central patriarchal premise upon which the entire liberal vision rests. The significance of this male-centrism to law and specifically the human rights framework is as follows: First, the liberal narrative hides male favouritism and gendering every time it uses gender-neutral wording.[212] This male favouritism is clearly evident in law's hierarchical order, its antagonistic nature, its language and imagery, its constant attempt to make use of neutral and abstract means to resolve competing rights, and its allegiance to abstraction, rationality and objectivity, traditionally depicted as features of men. This immediately unmasks law's male bias and confirms that law is an integral part of the patriarchal institution.[213]

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[210] See generally H Charlesworth 'Human rights as men's rights' in J Peters & A Wolper (n 198 above) 103; and S Okin 'Feminism, women's human rights, and cultural differences (1998) 13 *Hypatia* 32.
[211] The Universal Declaration on Human Rights art 1 (emphasis mine). In my opinion, this article unwittingly confirms the masculine bias inherent in the international human rights framework.
[212] Brown (n 63 above) 153.
[213] H Charlesworth 'What are women's international human rights' in RJ Cook (eds) *Human rights of women: National and international Perspectives* (1994) 61.

This male favouritism is also obvious in how rules that are usually considered neutral in the liberal ideology are in reality pseudo-neutral.[214] As Olsen explains, the pseudo-neutrality is reflected in the manner in which so-called neutral laws are actually made by a male (and ableist-oriented) framework that automatically reinforces male (ableist) interests and experiences.[215] This pseudo-neutrality is also emphasised by the fact that the international human rights framework is grounded on masculine concerns and women's silences.[216] It is no wonder that international law and by extension human rights have been described as purely a reflection of international men's law.

Patriarchy is the extent to which a society is male-dominated, male-identified and male-centred.[217] Male domination is the tendency for men to reserve and occupy positions of authority. Male identification emphasises the qualities that a society associates with men as the good and normal behaviour that makes men superior to women. This kind of superiority of men over women confirms male-centrism, where the encounters of men are regarded as the norm or the true definition of human experience, while all other experiences, including the encounters of women, are seen as the exception to the norm.[218] Consequently, the human rights framework, as far as feminist theorists are concerned, is gendered masculine, which means that it protects the male subject and encounters that are primarily targeted at men in largely male contexts.[219]

Feminist theorists have revealed that the pretentious universal human rights framework is a cover-up that represents men, their bodies, their encounters and their stereotypical characteristics, easily manifested as rationality, agency and independence.[220] The danger with this state of affairs is that the notion that the man is the ideal norm and their encounters are the universal experience makes one question the sameness between men and women that the liberal vision pretentiously upholds. Research proves how, on the contrary, women and their bodies as well as the stereotypical characteristics ascribed to them, for instance, dependence and a lack of agency, have removed

[214] F Olsen 'Statutory rape: A feminist critique of rights analysis' (1984) 63 *Texas Law Review* 396.
[215] As above 396.
[216] H Charlesworth 'What are women's international human rights' in RJ Cook (n 213 above) 59.
[217] L Parisi 'Feminist perspectives on human rights' (2017*) Oxford Research Encyclopedia of International Studies* 3.
[218] As above 3.
[219] E Friedman 'Bringing women to international human rights' (2006) 18 *Peace Review: A Journal of Social Justice* 480.
[220] V Peterson & L Parisi 'Are women human? It's not an academic question' in T Evans (eds) '*Human rights fifty years on: A reappraisal* (1998) 142; 143.

them from the universal narrative and rendered them incomplete.[221]

Unfortunately, what this reasoning indicates is that only men possess the enviable universal category of being regarded as human, while women are not regarded as human but rather regarded as the other. The reality of this assertion proves that, to be a woman is, as MacKinnon correctly points out, yet to be considered human both in the legal and lived sense.[222] In my view, MacKinnon notes the complicity of the legal (specifically male) human rights framework in denying women the ability to become human in a liberal society. Essentially, women are yet to be seen as having a legal personality and, unfortunately, where there is no legal personality, humanity is denied. The implication of this is that the exclusion and violation that women encounter are left unacknowledged and unprotected by human rights. This confirms the fact that the international human rights framework is dominated by men, accounting solely for their encounters, to the detriment and exclusion of women.

If the male bias in the liberal vision of human rights is conceded and if human rights are men's rights, then the question that arises is how women can be protected within such a patriarchal framework. The truth is that the protection of women within such a male-centric framework is uncertain.

The above discussion is consistent with the camouflaged maleness in the sameness model that Nigeria's liberal legal and human rights framework emphasises.[223] Relentless struggles by Nigerian women to achieve equality is proof of the existence of the (male ableist) criteria by which they are evaluated.[224] These criteria indicate that the entire Nigerian legal framework continues to be gauged using male ableist standards. In fact, this Aristotelian view of equality endorses the patriarchal dominance of the man.[225] Arguably, this veiled maleness characteristic of Nigerian law clearly disadvantages and disables women. I argue that the problem is compounded for the disabled woman, because at the core of the hidden male criteria in the 'sameness' approach is an entangled 'ableism' that the Nigerian law also upholds.

[221] As above 132.
[222] Mackinnon (n 2 above) 3.
[223] Chegwe (n 79 above) 66.
[224] As above 68.
[225] Durojaye & Owoeye (n 81 above) 70.

I make this point based on Meekosha and Dowse's claim that the benchmark and ideal norm is not only about being masculine but is also, importantly, about representing an able-bodied, un-problematised masculine norm.[226] In other words, without ableism, the male norm would lose its significance and vice versa. This means that the liberal vision that Nigeria adopts is not only characterised by a veiled maleness but also by an unacknowledged ableism that makes law and the human rights framework unable to respond to the everyday experiences of the disabled woman.[227]

The difficulty that immediately confronts the disabled Nigerian woman when she attempts to achieve meaningful equality or even proper citizenship status thus becomes obvious. This difficulty is highlighted when these authors argue that the concept of a disabled citizen is a contradiction of sorts.[228] Evidence shows that, unfortunately for the disabled woman, the law privileges the autonomous man.[229] The traditional construction of human rights regards the atomistic man as a criterion for the guarantee of these rights, while to be different from man is to be othered. Abundant evidence, particularly in Nigeria, suggests that to be a man is tantamount to ability and autonomy.[230] If this is true, implicit in this assertion is the idea that, although hardly ever stated as such, to be a woman in Nigeria can be said to be tantamount to disability and a lack of autonomy. This kind of construction elevates the able-bodied man in such a way that an opportunity to challenge the systemic oppression that the 'disabled' woman faces daily is missed.

Nigeria's legal and human rights framework is inherently patriarchal, as has been well documented. Nigeria has been acknowledged worldwide as a patriarchal society where the human rights of women are frequently ridiculed and violated with impunity.[231] Cultural, religious and social values have arguably ensured that a deeply rooted and historical unequal power imbalance is embedded in the Nigerian legal and human rights framework.[232] The influence of the various religions and traditions in Nigeria, for instance, where women are portrayed as the 'weaker sex', ensures that discrimination against and oppression of women are regarded as the norm.[233] This

[226] Meekosha & Dowse (n 204 above) 49.
[227] Campbell (n 72 above) 152.
[228] Meekosha & Dowse (n 204 above) 49.
[229] Izugbara (n 26 above) 15; 28.
[230] As above 15; 28.
[231] NO Odiaka 'The concept of gender justice and women's rights in Nigeria: Addressing the missing link' (2013) 2 *Journal of Sustainable Development Law and Policy* 190.
[232] As above 190.
[233] Odiaka (n 231 above) 190.

proves Odiaka's point that the violations of the human rights of a woman start from the moment she is conceived and only end when she dies.[234]

Similar sentiments have been expressed by Iwobi, who has identified the inherently patriarchal nature of the Nigerian legal framework.[235] An accurate correlation has been drawn between the discrimination and oppression that women suffer and the patriarchal society that sees the woman as inferior.[236] Discrimination against women is worsened by deeply entrenched cultural practices that regard women as second-class citizens and deprive them of rights.[237] The patriarchal nature of the Nigerian society is validated by, for instance, the commonly held belief that women are to be dominated by men and treated as objects, misfits and second-class citizens.[238]

Bazza echoes the above point by linking the violence that women suffer in Nigeria to patriarchy.[239] The implication of this situation is that Nigerian law and its traditions see women as objects who are not quite human.[240] This demonstrates that Nigeria is a masculine institution, politically and socially. This suggests, according to MacKinnon, that if the state is male, its law will see and treat women the way men do.[241] The truth of this assertion is evident where tendencies characteristic of the Nigerian law reinforce men's superiority and dominance over women.[242] The complicity of the Nigerian law in maintaining the inferiority and regulation of women's bodies therefore become apparent. From the above, we can correctly equate men's dominance over women with the dominance that the able-bodied exert over the disabled. This makes Nigerian law complicit in violating and disabling the woman in such a way that it forces legal disabilities on women and makes women less human.[243]

The consequence of this 'atomistic man' assumption that characterises Nigerian law for the disabled woman is therefore premised on two grounds. First, the notion of 'atomistic man' that characterises Nigerian law creates a pyramid of hierarchies that perpetuates the perception that

[234] As above 190.
[235] Iwobi (n 46 above) 40.
[236] Durojaye & Owoeye (n 81 above) 71.
[237] As above 71.
[238] Makama (n 171 above) 115.
[239] HI Bazza 'Domestic violence and women's rights in Nigeria' (2009) 4 *Societies Without Borders* 176.
[240] As above 176.
[241] Mackinnon (n 2 above) 3.
[242] Iwobi (n 46 above) 44.
[243] Baynton (n 160 above) 33.

women are indeed inferior and different. This automatically attributes disability to women by virtue of their inferior status. Therefore, where the man is considered the ideal, women are 'othered'. I argue that such 'othering' is tantamount to the 'othering' that characterises the disabled body, particularly when she is female. This is supported by Meekosha and Dowse's argument that locates the ideal citizen as the active male, as opposed to what is regarded as the disabled (female) other.[244]

As Izugbara insists, this kind of narrative privileges the Nigerian man and equates maleness with autonomy, while femaleness is equated with vulnerability as well as weakness easily defined as disability.[245] This author's argument suggests that Nigerian law, by adopting this narrative, reinforces the idea that the 'natural' order of things is that men are superior and able-bodied, while women are inferior and disabled.[246] Unfortunately, the problem with what is usually referred to as 'natural' is that it creates and projects the unquestionably good and right on the one hand, while anything that is opposed or opposite automatically emphasises the negative cultural notions that are usually associated with disability.[247] Such a flawed hierarchy makes it difficult for disabled Nigerian women to live up to this maleness (ableist) norm.

The consequent danger here is revealed clearly in a kind of colonially inspired hierarchy on the basis of sex, in which actors are cast into superior and inferior positions.[248] This emphasis on hierarchy ensures that people who are regarded as different and do not meet the ideal are 'othered' or given an inferior position.[249] Therefore, it is possible to argue that because inferiority is a metaphorical representation of disability, the liberally inspired human rights narrative is guilty of establishing hierarchies of dualisms that are used as weapons to deny rights to people, especially at the lower level of the hierarchy.[250]

The notion of 'atomism' emphasises the similarities that Nigerians share, as opposed to how they differ. Underlying a liberal human rights definition of atomism is an assumption that women are

[244] Meekosha & Dowse (n 204 above) 49.
[245] Izugbara (n 26 above) 15.
[246] As above 15.
[247] Baynton (n 160 above) 33.
[248] Mutua (2001) (n 18 above) 201.
[249] As above 201.
[250] D Kennedy 'The international human rights movement: Part of the problem' (2002) *Harvard Human Rights Journal* 101.

the same as men in Nigeria. The difficulty with this understanding of law for the disabled Nigerian woman is immediately clear. The difficulty lies in the fact that all men are not necessarily the same, while all women are also not necessarily the same. This assertion is backed by the idea that gender identity is not only formed differently, but is also socially constructed.[251] This point is clearly evident in Nigeria where it has been shown that men and women are socialised and raised as completely separate individuals with different identities.[252] This kind of social construction ensures that the woman is brought up to be perceived as naturally inferior to the man and, by extension, disabled.[253] This suggests that an identity in Nigeria is less likely to be constructed in the abstract or sameness terms that its law pretentiously emphasises.

Second, the consequence of this type of 'atomistic man' assumption for the disabled woman is manifested in the fact that dependence is usually overlooked and avoided in the liberal narrative. Yet, as Ball has argued, dependency is a part of life that cannot be easily discarded.[254] Dependence is seen as going against liberal expectations that the individual must be independent and autonomous. However, the idea that all individuals function as free and independent equal citizens has been challenged and regarded as empirically unreal. As Shildrick points out, the existence of the disabled Nigerian woman is proof of the need to move away from a liberal conception of an autonomous and stable subject to the realisation that a subject can be embodied, dependent and unsettled.[255]

From the above, it is possible to argue that the formal or liberal vision that underlies the Nigerian legal framework offers false hope for women, particularly when they are identified as disabled. This is based on the fact that the male ableist bias that the Nigerian legal and human rights framework exhibits endorse women's invisibility and inferiority. The problem begins where the disabled Nigerian woman faces the illusion of inclusion, not just because of her sex but compounded by her disability, since, as established above, it is clear that the man is the liberal 'ideal' subject because the woman is yet to be recognised as an actor or a subject in the legal

[251] N Nzegwu 'Gender equality in a dual-sex system: The case of Onitsha' (1994) 7 *Canadian Journal of Law and Jurisprudence* 73; 85.
[252] Izugbara (n 26 above) 15; 28.
[253] As above 15; 28.
[254] Ball (n 203 above) 120; 121.
[255] Shildrick (n 200 above) 38.

architecture. This makes a mockery of the optimism of human rights to achieve equality, especially in terms of the liberal vision for Nigerian women, and particularly when they are identified as disabled.

The dominance of the Nigerian liberal subject defined as an ableist man is therefore likely to remain in place until efforts are made to redefine autonomy and humanness in the Nigerian legal framework. A liberal vision that emphasises that the same rules that apply to men (able-bodied) should be applied for women (disabled), ignoring the (disability) differences, would fail in its efforts to ensure meaningful equality. It is therefore accurate to argue that the liberal structures of equality as demonstrated above are not necessarily enough to end the discrimination and oppression of women, particularly when identified as disabled, because of the embodiments of difference and the anxiety that disability generates.[256] This is coupled with the fact that this logic emphasises an allowance of rights to hold out the promise of equality and yet still reinforces a masculine as well as a negative and tragic view of disability that continually breeds oppression.

I therefore insist that an effective response for the disabled Nigerian woman must go beyond the liberal vision of equality that underlies a male-centred legal framework that takes care of male realities; it must go beyond a male ableist legal framework, identifying deeply entrenched hindrances to meaningful equality. The embodied subject is always vulnerable and the criteria of the ideal norm defined in liberal frameworks is based on an illusion.[257]

3.3.3 The disabled woman and the assumption of a 'public/private dichotomy' in the sameness of treatment approach in the Nigerian legal framework

Inherent in the dominant liberal tradition is an ideologically based demarcation between the public and private domains of life. Liberalism presents to the world a false view that there is a demarcation between what happens in the public realm of life and what occurs in the private realm of life. The question that therefore emerges is what exactly the public/private demarcation means. The public is usually regarded as the traditional and political realm, ruled and occupied by men, while the private is considered the realm of the family, occupied by women. If this is the case, the validity

[256] As above 38.
[257] Shildrick (n 200 above) 38.

of the query about how the public/private demarcation became gendered is clear.[258]

Charlesworth traces the disregard of women in the public realm to liberal teachings that refer to God's punishment of Eve as proof that it is natural for women to be subordinate to men.[259] This is coupled with other liberal teachings that link the disregard of women in the public realm to a matter of convenience and choice.[260]

By presenting the public/private demarcation, liberalism has ignored the (disabled) woman's question. Feminist theorists have for a long time made serious attempts to prove that the liberal public/private demarcation is the main reason for women's subordination.[261] In fact, women's subordination and by extension their inferiority to men and their disability is facilitated by the public/private demarcation.[262] This is clearly exemplified in the way it acts as a mask to obscure women's encounters from plain sight and exclude them from the protective confines of law and human rights. However, it is not necessarily the activities that distinguish the public and the private; rather, it is the actor.[263] Even when the definition of 'public' in one society could be regarded as 'private' in another, what is consistent is the devaluation of women's functions, which are mostly seen as private.[264]

Feminists have criticised the liberal notions that want us to believe that the demarcation of the public and private domains is abstract and a result of natural occurrences. Concerns have been raised about the extent to which an action is regarded as a private or public action.[265] Underlying the public/private divide is the assumption that something can be regarded as a private action and something can be regarded as a public action. However, what the demarcation fails to do is to clarify where the line of demarcation is to be drawn.[266] In other words, what makes an action public or private? This question thus exposes the indeterminacy and malleability that is inherent in the

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[258] H Charlesworth 'The public/private distinction and the right to development in international law' [1989] 12 *Australian Yearbook of International Law* 190.
[259] As above 190, 191.
[260] Charlesworth (1989) [n 258 above] 191; 192.
[261] H Charlesworth 'Human rights as men's rights' in J Peters & A Wolper (n 198 above) 103.
[262] As above 192; 193.
[263] Charlesworth (1989) [n 258 above] 191; 192.
[264] As above 191; 192.
[265] F Olsen 'Constitutional law: Feminist critiques of the public/private distinction' (1993) 10 *Constitutional Commentary* 322.
[266] As above 322.

liberal vision of human rights that automatically makes it susceptible to manipulation.

This is the insight that Brown et al provide in detecting the ideology that underlies these distinct domains, which is far from natural but socially constructed, and subject to different meanings.[267] This ideology is a powerful false view presented to the world that there is a demarcation between two realms, between what happens in the male public realm of life and what occurs in the female private realm of life.[268] As these authors explain, this ideology dictates that the private realm is the site of the family, home and caregiving.[269] The values that are associated with this realm are relational and non-hierarchical.[270] The truth is that this ideological public/private demarcation has the potential to influence and reflect reality.[271] Women's lives, for instance, tend to reflect the characteristics that the ideology dictates and assigns to the private domain.

For example, the ideology has dictated that women perform household chores in the private sphere while men perform business and trade in the public arena. This could explain why it is commonplace and a function of socialisation to see women develop the values that the ideology has associated with the private domain, including performing the duties of a mother and wife. These kinds of liberal teachings, reinforced by industrialisation and capitalism, endorse its demarcation from the public realm of the law, economy and business.[272]

Feminist theorists have challenged the absence of law and specifically human rights protection from the private and family realm. Unfortunately, this absence has not only left women without protection, but also confirms the idea that the private family realm is less important and undeserving of protection, as opposed to the public realm that is regulated by law. An illustration of this is the fact that law enforcement agents in Nigeria, particularly policemen, frequently taunt domestic violence victims.[273] The woman is often asked what she did wrong to deserve, for instance, battery. She is usually then admonished and told to go home and make amends and resolve the issue with her spouse, because of the perception that domestic violence is a private

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[267] Brown (n 74 above) 588.
[268] As above 587; 588.
[269] Brown (n 74 above) 587; 588.
[270] As above 587.
[271] Brown (n 74 above) 588.
[272] As above 587; 588.
[273] OM Folami 'Survey of unreported cases of domestic violence in two heterogeneous communities in Nigeria' (2013) 4 *International Review of Law* 2.

matter. Yet, if that woman kills her spouse as a result of the battery, the same policemen would automatically regard such an action as a public matter, demanding immediate criminal justice intervention and are very unlikely to treat it as a matter for resolution.

This illustration makes it clear that the public/private categories are not logical.[274] Aside from the difficulty of malleability, where private actions can be made to appear to be public actions and vice versa, there is no way to really determine what makes an action public or private.[275] As Olsen points out, what individuals want to do and not be questioned about usually qualifies as private.[276] This could possibly explain why the rape or sterilisation of a (disabled) woman can be regarded as a private matter by the perpetrator. However, these laws are disregarded or are treated in a neutral fashion by those who are supportive of the rules. For instance, the oppression of (disabled) women should ideally be seen as a public action, but it is still often regarded as a private matter by those who condone oppression in Nigeria. We can therefore query how such behaviour can be successfully characterised as private or public, and why society (de)legitimises behaviours.[277]

Another issue that becomes clear from the foregoing is that class, sex, ethnicity, sexuality and (dis)ability could very well determine the extent to which an action is deemed to be public or private. This is clear from the value that is placed on privacy, which is different for men and women.[278] In fact, it is clear that privacy is not enjoyed in the same way by men and women, but is a matter of hierarchy and serves the interests of those with power.[279] Those without power, in the private sphere, are rendered insecure and invisible. According to Charlesworth, this perspective of law underlies the restriction of human rights protection to men's experiences, which often occur in the public sphere, for example, law and the economy.[280] This is in sharp contrast to women's experiences, which are restricted to the private and family life.[281]

In my opinion, this is what feminists mean when they claim that women have developed an ethos of care, as opposed and in sharp contrast to the ethos of rights that characterises the masculine

[274] Olsen (n 263 above) 324; 326.
[275] As above 324.
[276] Olsen (n 263 above) 324.
[277] As above 325.
[278] Olsen (n 263 above) 325.
[279] As above 325.
[280] H Charlesworth 'What are women's international human rights' in RJ Cook (n 213 above) 70.
[281] As above 62; 66.

public sphere.[282] The insistence on demarcating the public sphere from the private sphere has been used as a way of ensuring that the public domain is biologically and culturally constructed in a manner that upholds and serves as the exclusive preserve of men, to the detriment and disadvantage of women. The public/private demarcation, as a manifestation of the male-centric perspective on law and human rights, is therefore unwittingly exposed.

These liberal teachings have ensured that specific violations of women, such as domestic violence, have been disregarded and treated as a matter of nature or choice and purely a private matter. This disregard is justified by the ideology that underlies the demarcated realms. Feminists' analyses of liberal scholarship have therefore demonstrated that the separation of the public and private into distinct domains is not only socially constructed but gendered, and is particularly harmful to women. The public/private demarcation is actually a powerful ideology that is used to camouflage and disregard the lived realities of women, and is the means by which the subordination and inferiority of women is legitimised and hidden. The privacy of the domestic sphere ensures that women's encounters remain hidden and their voices remain silenced, and the status quo is thus preserved. This is true particularly when one considers that most of the violence and oppression that manifests as sexism and disability discrimination that women encounter occurs in the private domain, and is not recognised.

Feminists like Charlesworth suggest that the ideology inherent in the public/private separation is a function and an instrument of patriarchal tendencies.[283] The law and the human rights framework through the lens of the public/private demarcation have acted as ideological weapons of patriarchy in their efforts to reinforce and perpetuate the inferiority and subordination of women.[284] These tendencies are clear from the way in which women are assigned to the private and family sphere, which establishes men's domination over women.

These kinds of power relationships that men have over women create dualistic hierarchies. A number of feminists have identified and exposed the fact that the dominant liberal vision of human

[282] Brown (n 74 above) 588.
[283] See generally H Charlesworth 'What are women's international human rights' in RJ Cook (n 213 above) 62; and H Charlesworth 'Human rights as men's rights' in J Peters & A Wolper (n 198 above) 103.
[284] H Charlesworth 'What are women's international human rights' in RJ Cook (n 213 above) 62; 65; 66.

rights constructs truths in hierarchies that manifest as the public/private demarcation.[285] This demarcation is then normalised and naturalised by linking these truths to biology. The world wants us to believe – as a universal truth – that the public domain is the male realm and the private domain is the realm of women, but this has been exposed as a partial and socially constructed version of truth.[286]

Research have shown that what is regarded as 'natural' is usually the result of power relations and social dynamics in bodies that have become medicalised and normalised.[287] Feminist theorists have identified a number of gendered divisions that follow the public/private demarcation, for example: reason/emotion, ability/disability/impairment; rational/irrational; knowledge/desire, thought/feeling; nature/culture; mind/body; politics/family; objectivity/subjectivity; active/passive; abstract/contextualised.[288]

The first of each dual hierarchy has generally been linked with naturalness attributed to the public male domain of rationality, order and political authority. The second of each dual hierarchy has been associated with the private female domain of subjectivity and desire.[289] In other words, the second and feminine aspects of the demarcation are usually regarded as subordinate to the first and masculine aspect. With this kind of dichotomy, it is clear that women are viewed as subordinate and inferior, while men are considered to be superior and privileged. The naturalness and normalness usually attached to the former explains the tendency for the latter to strive to be the former in order to be considered human and to enjoy meaningful equality.

The foregoing observation exposes how deeply embedded the public/private demarcation is, particularly in the language and wording of law.[290] Law, for instance, purportedly claims to be rational, neutral, reasonable, objective, abstract and principled.[291] These qualities are not only connected with the public sphere but are what men pretend to be. This is opposed to and in sharp contrast to what law supposedly is not, which is irrational, subjective, emotional, contextualised

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[285] F Olsen 'Statutory rape: A feminist critique of rights analysis' (1984) 63 *Texas Law Review* 420.
[286] C Dalton 'Where we stand: Observations on the situation of feminist legal thought' (1987) 3 *Berkeley Journal of Gender, Law and Justice* 6.
[287] Meekosha & Soldatic (n 6 above) 1385.
[288] Brown (n 63 above) 153.
[289] As above 153.
[290] H Charlesworth 'What are women's international human rights' in RJ Cook (n 213 above) 65; 68.
[291] As above 65; 68.

or personalised. These qualities are not only connected with the private domain, but are what men claim women to be.[292]

As a result, where the liberal vision of the public/private demarcation portrays law as universal, neutral and objective, law is essentially concerned with male encounters. This explains why women remain voiceless and invisible: mainly because the state is masculine in the feminist sense. This means that rules are often formulated in a male-dominated society, mirroring male needs, male concerns and male experiences.[293] As a result, law sees and treats women the way men see and treat women. It is therefore clear that law is male and not female, confirming how the public/private demarcation reflected in law uses law to reinforce the inferiority of women. By so doing, patriarchy privileges men over women and establishes a framework of subordination that has been able to exist, not despite liberal narratives on equality but precisely because of these narratives.

The above sketch establishes the twofold implication of the liberal public/private demarcation with respect to law and specifically human rights. Feminist theorists have identified two sides to the public/private dichotomy.[294] The first one has to do with the manner in which the law has been employed to exclude women from the public domain of the economy, politics, markets, voting etc. The second one has to do with what falls within law's confines and its regulatory power, and what falls outside the confines and the regulation of the law.

The demarcation of these two domains, which originate from the liberal vision, poses a dilemma for law and specifically the human rights discourse. Charlesworth describes this dilemma as the fact that the human rights discourse conveniently addresses public violations committed against the citizenry, and yet pays lip service to similar violations committed in private by non-state actors.[295] This dilemma is also possibly mirrored in the existence of rights hierarchies.[296]

To recap: what is the point of such a lengthy engagement? This engagement is important because the woman question or the feminist critique reveals the false public/private dichotomy that is

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[292] H Charlesworth 'What are women's international human rights' in RJ Cook (n 213 above) 65; 68.
[293] Parisi (n 197 above) 578.
[294] Charlesworth (n 258 above) 192; 193; 194.
[295] H Charlesworth 'Human rights as men's rights' in J Peters & A Wolper (n 198 above) 104;105; 106.
[296] As above 106.

forced upon women. Essentially, the lacunae in the public and private spheres emphasise the patriarchal nature that is characteristic of the liberal law framework. Unfortunately, as demonstrated, this patriarchal nature is inherent in the international human rights framework which, for a long time, has been accused of being masculine and thus failing to account for the experiences of women.[297]

Furthermore, evidence from the above discussion confirms that the (Nigerian) legal and human rights framework as liberal has perpetuated the inferiority of women. Echoing this point, Durojaye notes how the functions of Nigerian women are relegated to the private as purely sexual and motherhood-related, while men's roles are regarded as political.[298] The reminder is that this kind of patriarchal conception of women has the potential of resulting in disability.[299]

Nigerian law's supposed abstractness reinforces unequal power relations. This means that the law's indifference to dealing with private violations does not denote neutrality but instead reinforces the power that men have over women, particularly in the private sphere.[300] Women's inferiority is reinforced and perpetuated by Nigeria's male ableist legal framework, which completely disregards the violations that occur in the private domain.[301] From the above, the inference I make follows feminists' criticisms that Nigerian law and specifically human rights as liberal renders women invisible and voiceless. Hence, this explains its limitations in speaking to the lived realities of (disabled) women.

The public/private demarcation has been a subject of intense discussion and criticism raised by feminist scholars. Many of these feminist scholars have tended to look at the implications of the public/private demarcation for gender. Yet, the disabled Nigerian woman in this analysis reminds us that gender is not the sole category of oppression that women encounter, and so a number of aspects of the demarcation also apply and interact with other categories of oppression, such as culture, ethnicity and disability.

The foregoing raises the question of whether rights grounded on a liberal conception of law as

[297] H Charlesworth 'What are women's international human rights' in RJ Cook (n 213 above) 70.
[298] E Durojaye 'Substantive equality and maternal mortality in Nigeria' (2012) 65 *Journal of Legal Pluralism* 103.
[299] Connell (n 54 above) 1377.
[300] TE Higgins 'Gender, why feminists can't (or shouldn't) be liberals' (2004) 72 *Fordham Law Review* 1629.
[301] Chegwe (n 79 above) 66.

discussed above offers an adequate response to (disabled) women or whether these rights only intend to offer recognition within an already oppressive system.

3.4 Relationships (intersections) that exist between Nigerian law's liberal approach and the medical approach to disability

I have discussed the three aspects of the liberal conception of the legal framework, and specifically the human rights framework in Nigeria: universal individualism, atomism and the public/private divide. I proceed to argue that Nigeria's formal approach to equality is not surprising, considering the connection that exists between the liberal and formal perspective on equality and the medical perspective on disability.[302] I will demonstrate the relationship as follows.

First, common to the formal equality approach and the medical approach of disability is the definition that is ascribed to the disabled woman. The predominance of the medical and religious constructions of disability in Nigeria were established in the preceding chapter. This understanding is rooted in the perception that disability is a tragic problem that happens only to unfortunate individuals, who in this case are Nigerian women. The woman is blamed for the disability, which is viewed as the result of an unknown sin. In other cases, even where the disability is linked to a sin committed by either the parents or family members, the individual with the disability is ostracised and shamed the most. The individualistic perception of disability is immediately exposed. This kind of individualism is similar to liberal individualistic notions.

Second, the medical perspective on disability as well as liberal individualistic notions underlie an assimilationist approach. On the one hand, in accordance with a liberal understanding of equality, likes must be treated alike. On the other hand, in accordance with the medical approach to disability, likes must also be treated alike. The opposite is also true: individuals who are regarded as different are treated differently or 'othered'. This is similar to the medical perspective on disability, where those who have been identified as different are labelled sick, flawed and in need of medical attention.

Degener makes a similar point in highlighting a close connection between the medical explanations

[302] T Degener 'Disability in a human rights context' (2016) 5 *Laws* 18.

of disability and formal or liberal equality.[303] According to her, the existence of an impairment is regarded as a difference that should either be disregarded or become a justification for inequality.[304] The relationship between the formal equality perspective and the medical perspective on disability thus becomes obvious where there is a notion that social structures are constant and should not be changed. This relationship originates from the fact that these two concepts share the idea that structures are constant and cannot be distorted.[305]

Third, the relationship between the liberal perspective on equality and the medical approach to disability is manifest in the existence of an ideal standard that is to be achieved. With the medical approach to disability, disability is perceived as deviant from the health norm. This reinforces the medical control of disease, which has been rightly connected to the control of the individual and the devaluing of lived realities.[306] This is the same way in which the liberal vision of equality, disability and gender has been perceived as deviant from the ideal male norm. Unfortunately, what happens with deviations is that they are either segregated or rehabilitated, as is done for disabled persons because they are not like the able-bodied norm, or they are denied equality, like women because they are not the same as the ideal male norm.

Fourth, common to the formal equality approach and the medical approach of disability is the notion of a 'cure' in order to meet the norm or standard. The emphasis placed on the need for a cure for the disabled woman is arguably grounded on the liberal vision, which suggests that the disabled woman fails to meet an ideal in the form of an autonomous and rational unproblematic man. This kind of distinction arguably endorses the charity and welfare response to the disabled Nigerian woman, rooted in the perception of the disabled woman as dependent and different from the ideal norm. The disabled woman's perceived abnormality, according to Barnes and Mercer, renders her dependent on family and welfare.[307] The disabled Nigerian woman, by virtue of her disability, therefore becomes a passive recipient of charity and pity.

This proves the argument that socially constructed definitions of the independent male norm that

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[303] As above 18.
[304] Degener (n 302 above) 18.
[305] As above 18.
[306] C Barnes & G Mercer *Disability (Polity: key concepts in the social sciences* (2003) 22.
[307] As above 22.

characterise the Nigerian legal system encourage distinctions that are grounded on needs.[308] The outcome of this distinction becomes evident in the power of social systems to create hierarchies of bodies that privilege some and oppress others.[309] Katsui makes this point by tracing the history of the charity-based response to a period when hospitals were built by religious people for people who were considered needy.[310] This describes a hierarchical relationship where the giver is usually regarded as superior and able-bodied, while the receiver is considered inferior, needy and disabled. This clearly illustrates, according to Katsui, the unequal power relationships that exist between the givers and those who receive the charity.[311]

Common to the liberal and formal equality approach and the medical approach of disability is that medicalisation and control are conducted on women's bodies to make them the same as men. McLean uses the example of religion and how it is employed as a weapon of oppression by the powerful against the weak, usually equated with the disabled.[312] She also explains how religion has been used specifically as an excuse and weapon to control women's bodies.[313] Lang et al are correct to argue that such medicalisation and its attendant charity factor undermine any promise of equality for disabled women in the country.[314]

It is therefore argued that where distortions defined as differences exist, there must be a mechanism to cure or overcome such difference.[315] This is similar to the medicalisation that is conducted on the disabled body to restore or cure the body so that it meets the health norm. Thus, an accurate correlation can be drawn between the medicalisation and control of women's bodies and the control of the disabled body.

[308] H Katsui 'Downside of the human rights-based approach to disability in development' (2008) *Working Paper* 2.
[309] Connell (n 54 above) 1377.
[310] Katsui (n 308 above) 2.
[311] As above 2.
[312] V Mclean 'Why the inflation in legislation on women's bodies' (2012) 14 *European Journal of Law Reform* 316.
[313] As above 316.
[314] DFID Scoping studies: 'Disability issues in Nigeria' (2008) www.ucl.ac.uk/lcccr/downloads/scopingstudies/dfid_nigeriareport (date accessed 24 March 2017).
[315] Lisberg (n 159 above) 26.

3.5 Liberal human rights defined as difference: Formal/liberal equality versus another form of liberal/formal equality or is it substantive equality?

In response to the formal or liberal vision and perspective extensively discussed above, that to be equal means to be the same as men, the need arose to recognise the specific differences of individuals, as opposed to merely emphasising a supposed sameness. It was recognised that women's lived realities and encounters are not in reality the same as men's. This recognition of difference becomes even more obvious when a woman is pregnant.[316] This type of situation informed intense debates about whether women should be treated the same as men in the form of equal treatment, or whether they should be treated differently and accorded special protection.

This recognition of women's difference has led to arguments emphasising the need for alternative understandings of equality. The argument is that the formal or liberal vision's assimilationist approach that emphasises the need for women to be treated the same as men in order to qualify for equal treatment ignores intrinsic parts of women's identity, thus limiting its ability to speak to the lived experiences of women.

Building on this argument, cultural feminists believe that women have a different voice from that of men.[317] These feminists note that the liberal vision and its liberal feminist adherents focus on independence and individuality and disregard the values that are connected with womanhood. Take, for instance, the belief that feminine values significantly involve caring, motherhood and dependence; these differences should in their opinion be recognised by the law. However, since not all women will necessarily conceive children, biological differences are not the only differences that distinguish women from men.[318] The flaws in this argument therefore become evident, particularly considering that biology alone does not encapsulate the totality of the lived realities of all women. It therefore does not provide a clear guide of what law should consider when defining equality.

As far as radical feminists are concerned, the portrayal of woman in terms of their functions as a mother or wife is significantly faulty, because these functions are determined by patriarchal

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[316] Brown (n 74 above) 579.
[317] K Mahoney 'Theoretical perspectives on women's human rights and strategies for their implementation' (1996) 21 *Brooklyn Journal of International Law* 808; 809; 810.
[318] As above 811; 812.

tendencies that see men as superior and women as subordinate. In opposition to superficial sameness, therefore, proponents of substantive equality have persuasively emphasised that individuals can be treated as equal only to the extent that certain difference characteristics that place individuals at a disadvantage are explored.[319]

These feminists' contentions raise the question of the extent to which differences are to be reflected upon in order to achieve meaningful equality. There is therefore a 'dilemma of difference'.[320] Briefly, the dilemma is reflected in the idea that to disregard difference would reinforce oppression and yet, at the same time, to emphasise differences results in discrimination.

There have been calls for a substantive understanding of equality. Different definitions have been proffered for substantive equality. However, the exact meaning of substantive equality has been the subject of intense debate.[321] Fredman's insight in this regard is useful.[322] She offers a four-dimensional perspective to the right to substantive equality. First, substantive equality should redress disadvantage. Second, substantive equality should address stigma, stereotyping, prejudice and violence that are based on a particular feature. Third, it should enhance voice and participation in a way that counters exclusion. Fourth, substantive equality should accommodate difference and achieve structural change.[323] I will briefly describe the four dimensions of substantive equality and MacKinnon's rebuttals.

The first dimension is about redressing disadvantage. The emphasis is on groups that have historically experienced oppression and disadvantage, for example, the disabled women. The objective is to focus on the disadvantage rather than abstractions. However, the difficulty with this dimension is its failure to explore the unequal power relations that are working to create the disadvantage. MacKinnon appears to be wary of the disadvantage dimension.[324] She warns that,

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[319] Mahoney (n 317 above) 315.
[320] Degener (n 302 above) 17. Broderick holds a similar position in A Broderick 'The long and winding road to equality and inclusion for persons with disabilities: The United Nations Convention on The Rights of Persons with Disabilities' School *of Human Rights Research Series*. The term '*dilemma of difference'* originally coined by M Minnow underscores how formal equality creates the difference of stigma by focusing on difference and by ignoring difference at the same time.
[321] Fredman and MacKinnon are leading scholars that have made compelling engagements and debates on substantive equality.
[322] S Fredman 'Substantive equality revisited' (2016) 14 *International Journal of Constitutional Law* 723.
[323] As above 723.
[324] CA MacKinnon 'Substantive equality revisited: A reply to Sandra Fredman' (2016) 14 I*nternational Journal of*

despite its promising stance, there is a lack of clarity and instruction about how disadvantage is to be identified. Yet, social hierarchy is very obvious in its manifestations, such as high/low, dominant/subordinate, and above/beneath. The main thrust of MacKinnon's argument is that disadvantage is essentially a comparative hierarchy.[325]

Fredman's rejoinder to MacKinnon makes the point that hierarchy is embedded in the disadvantage dimension.[326] She suggests that defining substantive equality solely in hierarchical terms hides the multifaceted ways in which oppression occurs.[327] Her point is that relationships of power are not one-dimensional as the hierarchy seeks to portray, and hierarchy on its own is limited in reflecting the different ways in which power can be seen.[328]

The second dimension emphasises the need to redress stigma, stereotyping, prejudice and violence that are based on a particular feature, for instance, gender, ethnicity and disability.[329] Fredman explains that this equality speaks to the humanity of every individual. In other words, equality is ascribed to the disabled Nigerian woman, not because she has earned it by merit, rationality or citizenship, but because she is human. The way to redress stigma is through recognition. Identity is shaped by the way in which individuals are recognised. In response, MacKinnon offers what appears to be a correction, which is that what is captured under this dimension is not necessarily a separated dimension, but is a representation and demonstration of some of the various facets of social disadvantage.[330]

The third dimension of substantive equality has to do with enhancing voice through participation, as opposed to exclusion.[331] The main thrust of the argument is that because vulnerable groups, such as disabled Nigerian women, have suffered historical oppression that has hindered active political participation, equality laws should be enacted that will ensure that their voices are heard and will ensure their increased participation.

Constitutional Law 740.
[325] As above 740.
[326] S Fredman 'Substantive equality revisited: A rejoinder to Catherine MacKinnon' (2016) 14 *International Journal of Constitutional Law* 748.
[327] As above 748.
[328] Fredman (n.326 above) 748.
[329] Fredman (n 322 above) 723.
[330] MacKinnon (n 324 above) 742.
[331] Fredman (n 322 above) 723.

MacKinnon's criticism of this dimension is quite striking, because she reduces the need for voice and inclusion that this dimension proffers to equal opportunity, which requires a pre-existing grounded hierarchy test for it to work.[332] The insight that she provides is that this dimension without a test could easily go wrong, because the dimension fails to clearly specify and clarify the voice that needs to be heard and which individuals are being excluded. She notes that Fredman's claim that the four dimensions interact does not resolve this difficulty. For her, historical hierarchy fills the gap of identifying the voice that is heard and the one that is silenced. Interestingly, she seems to suggest that although enhanced voice and participation are important for equality, if they are not pursued, this would not necessarily make a law discriminatory.

The final dimension of the substantive equality developed by Fredman has to do with accommodating difference and structural change.[333] In developing this dimension, Fredman is concerned with correcting the idea of neutrality and abstraction that the liberal vision adopts so that the characteristics and identities that an individual embodies are frozen. Substantive equality recognises that the identities of an individual are important and should be considered when framing equality frameworks. The emphasis is therefore on removing the difficulty associated with the difference, and not necessarily the difference itself. This requires the structures in society to be changed in such a way that differences are adequately accommodated, as opposed to the requirement for conformity or assimilation to the dominant group and culture.

Fredman acknowledges the difficulty with this dimension by querying whether accommodation of difference carries a requirement for structural change or whether it is enough to merely establish exemptions for certain individuals.[334] Fredman concedes that exemptions do not necessarily challenge unequal power relations or counter the dominant narratives that are usually at play, such as ableism and sexism. This assertion is true particularly when one considers the concept of inclusion that is usually mentioned in relation to disabled persons.

My discomfort with this concept is the fact that it is always employed with reference to able-bodied terms. The result is what we see in Nigeria, for instance, where the built environment

[332] MacKinnon (n 324 above) 742.
[333] Fredman (n 322 above) 723.
[334] As above 723.

accommodates the non-disabled Nigerian and not necessarily the disabled Nigerian woman. This creates the impression that 'normal' individuals may continue to construct buildings and institutions in a certain way as long as disabled persons are accommodated and included.

Therefore, the assertion that accommodation itself is assimilationist is true, particularly to the extent that the objective is to make the disabled woman fit into the existing system in the name of inclusion. Fredman has responded to this criticism by arguing that the distinction between exceptionalism and structural change is exaggerated. Her view is that there are situations where the norm must be overhauled while, in other cases, an exception is the preferred outcome.

However, the example she provides to prove this point does not necessarily state who is responsible and what criteria are to be employed in deciding and determining whether structural change or an exemption is to be used. The trouble begins when the discretion to make that decision or the criteria used are incorrect. Another difficulty with this dimension is the cost implications that are usually associated with structural change. In other words, it is expensive to achieve structural change and it is unclear who will bear the expense. Her rebuttal is that the perpetrator bears the burden of damage costs but, importantly, substantive equality does not depend on the existence of perpetrators before it responds to structural disadvantages.

MacKinnon's critique of this dimension is insightful. Her argument is that requiring an accommodation of difference without a substantive guideline detailing how this accommodation should be achieved could become the basis for special treatment.[335] According to her, substantive equality is flawed to the extent that it accommodates difference in the form of special measures.[336] This is linked to its inextricable potential to also unknowingly create stigma even if it has managed to achieve its outcome.[337] In addition, she explains its flaw as essentially grounded in an inability to question the hierarchy system that allows for the special privileges to become necessary in the first place, in attempts to achieve meaningful equality.[338] This is particularly the case in the absence of a clear guideline detailing when the accommodation of difference is required.

[335] MacKinnon (n 324 above) 740.
[336] As above 740.
[337] MacKinnon (n 324 above) 743.
[338] As above 743.

It therefore appears that the substantive approach, despite its best intentions of rejecting sameness and insisting on difference per se, is not very clear and still uses the male standard, whether consciously or unconsciously. It could easily fall prey to the liberalism model which it criticises, where formal equality expects women to be the same as men. Substantive equality looks at the issue of 'different from whom', and this remains the case considering that structural discrimination is yet to be understood and identified as a legal entitlement.[339] This is especially true in Nigeria, where the evidence suggests that there is no real interest in ensuring any kind of equality, particularly for women.

MacKinnon's observation is that Fredman's four dimensions are abstract, meaning that they can be manipulated in such a way that they can be reduced to a formal approach. The insight she gives in regard to stereotyping is useful. She notes how a black woman and a white man can be stereotyped in a similar fashion, but what is usually dissimilar is the strength and the substance of these stereotypes, which reinforce the hierarchies of the dominance of men and white supremacy. She explains that the problem is not with the stereotyping itself, but with the hierarchies.

Likewise, there is validity in arguing that special benefits, whether on the grounds of disability or sex, are considered part of the sameness model.[340] MacKinnon draws attention to the reference in the Convention on the Rights of Persons with Disabilities to reasonable accommodation as a manifestation of a difference model.[341] She argues that merely accommodating difference, which is a primary dimension of the substantive notion of equality, without substantive directions could be a weapon for inequality disguised as special treatment.[342] She insists that this could worsen instead of ameliorate oppression, since it simply normalises the existing hierarchies.[343]

The difficulties with reasonable accommodation, although it is well intentioned, is that it can also be used to stigmatise. An example is affirmative action, where sex or disability is recognised as needing special protection, and can itself be regarded as discriminatory. The point here is that, as MacKinnon has shown, hierarchy is important, without which substantive equality becomes no

[339] MacKinnon (n 325 above) 743.
[340] As above 743.
[341] MacKinnon (n 325 above) 743.
[342] As above 743.
[343] MacKinnon (n 325 above) 743.

different from the formal perspective.[344]

From the foregoing, a close connection has been identified between Aristotelian liberal equality and substantive equality. This is what MacKinnon means when she underlines a struggle between the sameness and difference models.[345] In attempting to explain the struggle, she describes how, in both forms of equality, there is a degree of consensus that likes should indeed be treated alike.[346]

From the above contentions, we can infer that even substantive equality itself, as promising and well intentioned as it appears, should be employed with caution, particularly in the absence of proper guidelines. However, even the option of guidelines appears to be problematic, because the assumption of guidelines or formulae in Nigeria, with its patriarchal ideology, could easily be misconstrued and does not appear very promising.

With the above sketch, I have attempted to show my criticism of formal legal explanations about equality embedded in the Nigerian legal framework as a means to speak to the lived realities of the disabled woman. I have also attempted to examine substantive equality, which could arguably be described as a vast improvement on formal understandings of law.

However, in reality, I am also cautious about so-called substantive equality, particularly within Nigeria's patriarchal law. In fact, the tussle between these two academics on what substantive equality actually means suggests that we are asking the wrong question in relation to the disabled Nigerian woman. I readily acknowledge that substantive equality might be better than formal equality, particularly in the Nigerian context, but my concern, particularly for the disabled Nigerian woman, is that these approaches are simply two sides of the same coin. The question that we should perhaps be responding to is the idea that gender, like disability, is a manifestation of power relationships.

3.6 Conclusions

In this chapter, I argue that there is something inherently wrong with the approach of Nigerian law

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[344] As above 743. See generally CA MacKinnon 'Substantive equality revisited: A rejoinder to Sandra Fredman' (2017) 15 *International Journal of Constitutional Law* 1174.
[345] CA MacKinnon 'Substantive equality revisited: A rejoinder to Sandra Fredman' (2017) 15 *International Journal of Constitutional Law* 1174.
[346] P Stancil 'Substantive equality and procedural justice' (2017) 102 *Iowa Law Review* 1642.

and specifically the human rights framework in its response to the disabled woman. I associate and link this wrong to a liberal approach that sees the disabled Nigerian woman in monolithic, assimilationist and essentialist terms. In other words, the crux of my argument is that law and specifically human rights as liberal is limited in its ability to speak to the lived realities of the disabled Nigerian woman. I trace the origins of law and human rights to the liberal tradition and its two-faced legacy to corroborate this assertion.

With this liberal vision of human rights defined as sameness, I explore three characteristics of the liberal human rights tradition – universal individuality, atomism and the public/private dichotomy – and what they mean for the disabled Nigerian woman. In doing this, I introduced and presented an extensive feminist critique of the three liberal characteristics. My intention with this is to show how feminists have countered liberal tendencies by 'asking the woman question' within a liberal vision of law and human rights framework that was largely built on men's interests and the silence of women.

Through this analysis, I show how human rights, particularly when defined as liberal, do not recognise the concept of woman and womanhood as a way of being human. Yet, to be considered human both in the legal and lived sense is a legal, social and political process. Through this analysis, I question how a human rights discourse grounded on liberal narratives can provide meaningful equality to the disabled Nigerian woman, that is, I question how a patriarchal human rights discourse can speak to the lived realities of the disabled Nigerian woman. My analysis indicates that the idea of a supposed sameness, which the liberal idea of human rights promises between Nigerian men and women is in reality a blatant disregard of the woman's body, tantamount to the disregard of the disabled body. The liberal idea of a universal ableist male standard embedded in the Nigerian legal and human rights framework is a site for the further oppression and disability of the woman and offers false hope.

A formal kind of equality reinforces the dominant narrative because the needs of the disabled Nigerian woman are complex, and she does not necessarily fit into the dominant box that has been created. She is rendered invisible because she is not only not similarly situated with her non-disabled counterparts, but she also does not fit with her male disabled counterparts. As a result, law is limited in its ability to speak to the lived experiences of the disabled woman.

The problem for the disabled Nigerian woman therefore begins with this narrow and formal conception of equality and human rights, because such a narrow conception is unable to combat inequalities. I therefore question how human rights defined within a liberal framework can adequately respond to the lived experiences of women, particularly when she is identified as disabled. Specifically, I question the liberal ideology of Nigeria's legal framework and its ability to ensure the realisation of the rights of women.

The idea that women have rights is indeed a valid claim, but, as Olsen has shown, the ambiguity that clothes the rights of women suggests that the rights are unable to respond to contentious questions.[347] This point is clearly evident in the conflict that arises, for instance, between the rights to formal and substantive equality.[348] This attempt to be neutral that is endorsed by the Nigerian formal model of equality does not properly respond to and adequately reflect the complex needs, the imbalances of power or the perceived everyday forms of oppression that women and particularly disabled women experience.

There is no easy answer to these contentions. However, it appears that achieving meaningful equality for disabled women in Nigeria is not a question of similarities or differences, because, as demonstrated above, maleness is and remains the underlying criterion since Nigerian law undoubtedly emphasises male supremacy. According to MacKinnon this male ableist supremacy separates the public domain from the private domain and naturalises dominance as differences. To the extent that this is accurate, equality or the lack thereof is a matter of power and I argue therefore that disability is a construct of male ableist power that is used to oppress Nigerian women. Where there is an absence of power, equality becomes an illusion.

From the foregoing, it is clear that we cannot necessarily assert that human rights are without value, but the discussion clearly exposes the limits of a narrow liberal vision of human rights in regard to the disabled Nigerian woman. It is plausible that the limits of law in regard to the disabled Nigerian woman are a result of law's fixation with equality. I conclude that, as far as the disabled Nigerian woman is concerned, it might be of greater benefit to shift the focus to power relations;

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[347] F Olsen 'Liberal rights and critical legal theory' (2011) 12 *German Law Journal* 396.
[348] As above 396.

equality questions are perhaps not robust enough to speak to her lived realities.

Chapter 4: Law and human rights as intersectional

> 'The question must move away from the destructive tensions between "sameness" and "difference" towards a deeper understanding of gender (disability) as a system of power relations.'[1]

4.1 Introduction

The position I take in this thesis is that law and specifically the human rights framework is limited in its ability to speak to the lived realities of disabled women in Nigeria. In this chapter, I explore how intersectionality exposes these limits of the law and human rights. The argument is that, instead of being liberal, law and specifically the human rights framework must be intersectional in order to be able to speak to the intersectional lived reality of the disabled woman. In other words, the law must recognise and contemplate that the disabled Nigerian woman faces oppression on the basis of her multiple and intersecting identity categories.

In the previous chapters, I exposed two related issues. First, sexism and disability are the workings of a dominant narrative that is deeply embedded in patriarchy. I emphasised the intersections and interactions between sexism and disability that law and human rights do not recognise or contemplate. Second, I linked law's inability to recognise or contemplate the interactions and intersections that exist between sexism and disability to liberal tendencies that are deeply embedded in the legal and human rights approach.

In chapter 3, the focus was on the idea that law and specifically human rights is limited in its ability to speak to the lived experiences of the disabled Nigerian woman because of the liberal tendencies that the law and specifically human rights upholds. These tendencies are manifested in the dominance of law and specifically human rights as a narrative that rigidly relies on constraints imposed by the liberal notions of formal equality and neutrality. Such liberal notions of equality and neutrality that discrimination law upholds do not easily apply to individuals such as the

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[1] JC Williams 'Deconstructing gender' (1989) 87 *Michigan Law Review* 836.

disabled Nigerian woman, who is oppressed on multiple grounds. As a result, what is exposed is how law and specifically the human rights framework is ill-equipped to deal with the complexity of the intersectional identity and the oppression she experiences.

I identified three liberal sameness/difference tendencies: universal individualism, atomism, and the public/private dichotomy, which I argued are characteristic of and deeply embedded in the liberal vision of the legal and human rights framework. I demonstrated how these liberal tendencies and features are troublesome for the disabled woman, hence the need to 'ask the woman question' and to introduce a feminist critique.

Law's optimism about its ability to speak to the multidimensional lived realities, encounters and voices that a disabled Nigerian woman represents is foiled by the liberal single-issue perspective that it upholds. This single-issue perspective limits its ability to recognise and contemplate the interactions and intersections between sexism and disability. In other words, liberal law's single issue does not recognise and is blind to how the disabled woman's gender and disability, as well as their intersection, influences how she is treated by society. To be intersectional, law and specifically human rights must recognise that the disabled woman's lived identities interact and that categories of oppression are messy.

Intersectionality exposes the voices that underlie rights in the aspirational mode of liberalism without any actual connection to what the voices mean in the lived realities of real people, such as disabled women in Nigeria. The voice of the disabled woman is rarely heard in law and specifically human rights. In this chapter, I introduce a framework of intersectionality that exposes the limits of law in speaking to the lived realities of disabled women in Nigeria. Intersectionality confronts law's liberally inspired single-issue perspective, which manifests in three interrelated ways.

First, the sameness and assimilationist perspective manifests in a liberal thinking that attempts to freeze identity categories because of the assumption that not only are men and women the same, but all women are the same. The assimilationist perspective presupposes that all individuals are either the same or different. Intersectionality, by virtue of its recognition of the complexity and multidimensionality that is characteristic of individual identity, therefore disrupts and responds to such a liberal assimilationist idea. An intersectional lens demonstrates, and rightly so, the importance of an individual's identity and the need to bring to light the complexities inherent in

that identity.

Second, an essentialist perspective manifests in liberal law's single-issue thinking that attempts to essentialise. It assumes that there is a universal woman experience (where men and women are viewed as different, but all women are the same). By focusing on gender as the sole axis of oppression, mainstream feminist legal thought often forces disabled women to fragment their experience in a way that does not reflect their lived realities.

Third, the power perspective manifests in a liberally inspired single-issue tendency to obscure and disregard unequal power relationships. Yet, an individual's identity reflects power relationships.[2]

Thus, in order for Nigerian law and human rights to make sense of and speak to the lived realities of the disabled woman, it has to move from this three-fold liberal thinking to intersectional thinking. In other words, law and specifically human rights must be intersectional. My argument therefore is that we need to develop an intersectional understanding of law and human rights that is free of these liberal constraints. This resembles Gouws' point about the need to ensure a shift from law's singular identity thinking to an intersectional (matrix) identity thinking.[3] I therefore take further the argument of the preceding chapters to suggest that the lived experiences of the disabled Nigerian woman are not about sameness or difference, but about power relations.

To sum up this argument, I show how an intersectional analysis, understood as a theory that recognises the multidimensionality of identity categories that a disabled Nigerian woman embodies, disrupts law's liberal singular focus that forces it to create a single experience and freezes identity categories. My application of intersectionality here is as a theory of identity that confronts law's liberally inspired single-issue perspective. This perspective manifests, on the one hand, in a liberal thinking that attempts to freeze identity categories and, on the other hand, in an essentialist notion that assumes that there is a universal woman experience. In other words, I highlight how an intersectional understanding helps to disrupt law's essentialist assumptions.

Having laid this foundation, my argument proceeds as follows. I start by tracing the origins of

[2] JC Nash 'Home truth on intersectionality' (2011) 23 *Yale Journal of Law and Feminism* 456. Nash makes this argument which she immediately criticizes. Nash for instance states that although intersectionality tells us something about power working, it should not be the only 'home truth' used to describe the workings of power. (See pp 470)
[3] A Gouws 'Feminist intersectionality and the matrix of domination in South Africa' (2017) 31 *Agenda* 21.

intersectionality. Next, I offer a three-fold understanding of intersectionality, particularly in respect of the disabled Nigerian woman. This is done bearing in mind Collins' comment that the strength of the concept of intersectionality lies in its fluidity.[4] In discussing the three-fold understanding of intersectionality, this discussion has three aspects: In the first aspect, intersectionality is understood as a matrix of domination thinking that confronts law's singular identity thinking. Here, the argument is that intersectionality is crucial as a theory of identity, because it exposes the constraints of a liberal influenced single dimensionality perspective of law. The intersectional lens confronts and disrupts the liberal inspired singular idea that the disabled woman's identities can be frozen or fragmented into distinct categories, which makes it difficult to capture her lived encounters of multiple and intersectional forms of oppression.

This takes further the argument of the preceding chapters that suggests that the Nigerian legal framework, by virtue of its liberal influences, fails to recognise and acknowledge the differences and complexities that a disabled woman represents. Here I show how the simultaneous interlocking of identities and the resultant oppression that the disabled Nigerian woman encounters is proof of a decentred subject. Intersectionality is therefore understood as a matrix of domination thinking that confronts law's singular identity thinking.

In the second aspect, intersectionality is understood as a matrix of domination thinking that challenges law's essentialist assumptions about a universal woman experience. I explore the argument that intersectionality is necessary because it exposes the limits of a liberal vision of human rights conceptualised in such a way that it assumes that the disabled Nigerian woman's encounters are the same as the Western woman's encounters. I engage with texts that discuss the essentialist argument versus the anti-essentialist argument, such as the writings of Lorde,[5] Grillo[6] and Harris.[7] I also refer to the story of Sojourner Truth and analyse the 'Ain't I a woman question'.

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[4] P Hill Collins 'Intersectionality's definitional dilemmas' (2015) 41 *Annual Review* 1.
[5] A Lorde *Age race, class and sex: women redefining difference in sister outsider: essays and speeches* (1984) 114; 115.
[6] T Grillot 'Anti-essentialism and intersectionality: Tools to dismantle the master's house' (1995) 10 *Berkeley Women's Law Journal* 17.
[7] AP Harris 'Race and essentialism in feminist legal theory' (1990) 42 *Stanford Law Review* 581.

I rely on reasoning from Williams[8] and Wong[9] to argue that the essentialist versus anti-essentialist debate is necessary only to the extent that the anti-essentialist argument does not fall into the trap of essentialising itself.

I am aware that my use of the 'disabled Nigerian woman' can be questioned in the same way as I question the existence of an 'essential woman' who appears to be representative of the experiences of only a few women. I acknowledge that although there is no essential disabled Nigerian woman experience, my attempt to present what could be considered a disabled Nigerian woman's perspective here is motivated by a desire to prevent her voice from being silenced. My objective is therefore to avoid the problem that essentialism presents by defining the category of 'woman' in Nigeria as expansively as possible.

In the third and final aspect, intersectionality is understood not as a question of 'sameness' or 'difference', but as a question of power relations. My argument is that an intersectional lens is crucial in shifting attention from sameness or difference to power relations and imbalances. I discuss scholars who have insisted that the utility of intersectionality goes beyond recognising the multidimensionality of identity to recognising that these multiple identities interact and intersect in ways that reinforce oppression and unequal power relationships.

Finally, and in attempts to offer conclusive arguments, I admit that despite the benefits of intersectionality, there are dilemmas. I look at the arguments of scholars who critique intersectionality, claiming that the value that intersectionality offers has reached its end. While I acknowledge the merit of some of these criticisms, I suggest that intersectionality has value for as long as it exposes the limits of a liberal vision of law conceptualised in a way that assumes 'sameness' or 'differences' and identifies instead with the possibility of eradicating the unequal power relations that create oppression and privilege.

4.2 Understanding intersectionality: The emergence of the term

The term 'intersectionality' is not easy to define. Collins notes that it has been defined in various

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[8] Williams (n 1 above) 799 Williams makes a similar argument in JC Williams 'Dissolving the sameness/difference debate: A post-modern path beyond essentialism in feminist and critical race theory' (1991) 1991 *Duke Law Journal* 299.

[9] J Wong 'The anti-essentialism v. essentialism debate in feminist legal theory: The debate and beyond' (1999) 5 *William and Mary Journal of Women and the Law* 277; 280; 287; 292.

ways.[10] The ambiguity and contentions associated with defining the term have been widely acknowledged. There is a lack of clarity about whether to refer to intersectionality as a concept, a method or even a theory,[11] and whether the term should be regarded as a paradigm,[12] crossroads or an axis of difference.[13]

There is clearly a lack of consensus in scholarship about how to conceptualise this term. In fact, a parallel has been drawn between the definitions of the concept of intersectionality and the definitions of equality.[14] Smith has compared intersectionality to equality, especially in regard to the varied contentions about its definition.[15] Yet scholars admit that the term is significant in feminist research. In fact, intersectionality represents the most significant contribution that feminism has made.[16] Some have referred to it as the buzzword of the feminist movement, correctly linking its vagueness to its success.[17] If the term is that significant, then the need for a definition of intersectionality becomes evident. However, in offering a definition of intersectionality, we must be aware that such efforts should not be viewed as a way of narrowing its benefits, but should instead be seen as a useful starting point.[18] In other words, the strength of the term lies in its fluidity.[19]

Intersectionality scholarship was conceived in the critical theory developments in the United States and around the world.[20] The origins and emergence of intersectionality analysis have been linked to the intense criticism of the mainstream feminist movement, which at that time reflected the voices of white, upper-class, heterosexual, able-bodied and otherwise privileged women.[21] In other

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[10] Hill Collins (n 4 above) 1.
[11] L McCall ‘The complexity of intersectionality’ (2005) *Spring* 1771.
[12] AM Hancock ‘Intersectionality as a normative and empirical paradigm (2007) 3 *Politics and Gender* 251.
[13] K Davis ‘Intersectionality as buzzword: A sociology of science perspective on what makes a feminist theory successful’ (2008) 9 *Feminist theory* 68.
[14] B Smith ‘Intersectional discrimination and substantive equality: a comparative and theoretical perspective’ (2016) 16 *The Equal Right Review* 76.
[15] As above 76.
[16] MCcall (n 11 above) 1771.
[17] Davis (n 13 above) 68.
[18] Hill Collins (n 4 above) 1.
[19] As above 1.
[20] AN Davis ‘Intersectionality and international law: Recognizing complex identities on the global stage’ (2015) 28 *Harvard Human Rights Journal* 208.
[21] As above 208. Bond echoes similar point in JE Bond ‘Intersecting identities and human rights: the example of Romani women's reproductive rights’ (2004) The *Georgetown Journal of Gender and the Law* 899, 900. Harris and Bond echoes similar points respectively in Harris (n 7 above) 587. JE Bond ‘Intersecting identities and human rights: the example of Romani women's reproductive rights’ (2004) The *Georgetown Journal of Gender and the*

words, feminists' views of women were confined to a particular kind of 'woman' that excluded others. These mainstream and privileged feminists were accused of deliberately excluding African-American women from the feminist narrative. African-American women felt that their specific forms of oppression had been ignored because none of the existing dominant movements had dealt adequately with their specific concerns.[22] In fact, before the 1990s, women's human rights activism focused on the universal experience of women.[23] The lived encounters of privileged women were presented as representative of the lived experiences and realities of all women across the world.

African-American women therefore challenged and condemned the mainstream feminists who claimed to represent all women universally. African-American women described their oppressive encounters that were very different from those of white Western women, who constituted the mainstream feminist movement.[24] These black feminists considered it a priority to emphasise the oppression they suffered as a result of the relationships between gender, race, and class, which many white feminists tended to ignore at the time. Beale, for instance, introduced the concept of 'double jeopardy' in her efforts to highlight the dual oppression that African-American women encounter as a result of the combined oppression of sexism and racism.[25] Women's experience of 'double oppression' as a result of a combination of their sex and gender was thus emphasised.[26]

The 'triple oppression' notion was also introduced to document how African-American women suffered oppression for being black, women and working class.[27] The intention of these feminists' arguments was to emphasise the idea that gender was not the only reason for which they suffered oppression. They described how they suffered: sexism, in addition to racism, in addition to classism. In other words: sexism + racism + classism.

Applying this kind of additive mathematical equation to the oppression of the disabled Nigerian

Law 899, 900.

[22] Harris (n 7 above) 587.

[23] JE Bond 'International intersectionality: A theoretical and pragmatic exploration of women's international human rights violations' (2003) 71 *Emory Law Journal* 186.

[24] Harris (n 7 above) 587.

[25] D King 'Multiple jeopardy multiple consciousness: The context of a black feminist ideology' (1988) 14 *The University of Chicago Press* 46.

[26] As above 42.

[27] N Yuval-Davis 'Intersectionality and feminist politics' (2006) 13 *European Journal of Women's Studies* 195.

woman, for instance, suggests that all Nigerian women are oppressed by sexism. However, some (disabled) women are further oppressed by sexism + disability. While this additive equation of oppression could be regarded as true, the additive analysis suggests that a woman's disabled identity can be fragmented or separated from her identity as a woman. In addition, unfortunately, such an analysis distorts disabled women's experiences of oppression by failing to note the important differences between the contexts in which non-disabled women and disabled women experience sexism.

This kind of insight ignited the need to shift from additive thinking. King, for instance, introduces the concept of 'multiple jeopardy'[28] to highlight how double or even triple jeopardy is not encompassing enough to describe fully the multiple forms of oppression that black women encounter.[29] King defines the multiple jeopardy concept as an interactive model that became imperative at the time because of the need to correct the additive presumption that discriminatory and oppressive actions could be addressed as a single experience or a mathematical sum.[30] This mathematical sum finds expression in the idea that black women's experience can simply be summed up in an equation: sexism + racism + classism.

Nonetheless, feminists argued that there was nothing like triple oppression and instead sought to move away from essentialising blackness or womanhood.[31] This was the result of a tendency to silence the encounters of the more marginalised members of the group. Collins emphasises the need to discard the 'add and stir' method of oppression,[32] for two reasons.[33] First, such thinking encourages thinking in the form of binaries, which defines individuals and even things in terms of their opposites. In other words, one is either black or white, disabled or abled, woman or man. Individuals are forced into either/or categories when the truth is that individuals have both/and identities. The binary logic is problematic when it comes to oppression, because such logic pretends that an individual is either oppressed or not, failing to recognise the both/and thinking

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[28] King (n 25 above) 42.
[29] As above 42.
[30] King (n 25 above) 42.
[31] Yuval-Davis (n 27 above) 195. See also, P Hill Collins '*Black feminist thoughts: Knowledge consciousness and the politics of empowerment* (2000) 6.
[32] P Hill Collins 'Toward a new vision: Race, class, and gender as categories of analysis and connection (1993) 1 *Race, Sex and Class* 27; 28.
[33] Hill Collins (n 32 above) 27; 28.

that suggests that one can be oppressed and an oppressor at the same time.[34]

Collins' second point illustrates that this kind of 'add and stir' way of thinking about oppression encourages hierarchy of differences mirrored, for instance, in the idea that men are superior to women.[35] The presumption is that one person's oppression is measurable and that one person is more oppressed than the other. I find that this insight can be particularly applied to the disabled woman, who is sometimes required to fragment her forms of oppression as a woman or as disabled. This applies even more in Nigeria, where the disabled woman is stripped of her womanhood as though she is not a woman or even human, but disabled, when in reality she is both disabled and a woman at the same time. This argument does not suggest that particular groups of persons, such as disabled women, do not face more severe oppression than women generally; the intention is to draw attention to the need to replace additive thinking with interlocking thinking.[36]

There was thus a shift in emphasis from the additive form of oppression to the ways in which distinct categories of analysis and identities, such as gender, race and disability, interact to become interlocking structures of oppression. To give credence to this argument, Harris has shown how gender has been perceived as the dominant category of oppression and is usually employed to fully account for the experiences of all women.[37] She describes how the dominance of gender as an identity category fails to account for and does not represent the experiences of all women.[38]

Harris introduced the notion of 'multiple consciousness' as a way of signifying how disabled Nigerian women at the margins, for instance, are oppressed not on the grounds of their gender alone but also on the basis of other intersectional identities they carry.[39] These other identities could be, for instance, being black (Nigerian) and disabled, and the ways in which these different intersectional identity categories interact in inextricable webs.[40] The need for a 'multiple consciousness' that ensures that, in the formation of categories, there is room for instability in a

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[34] As above 27; 28.
[35] Hill Collins (n 32 above) 28.
[36] As above 27; 28.
[37] Harris (n 7 above*)* 587.
[38] As above 587.
[39] Harris (n 7 above*)* 587.
Similar arguments in: MJ Matsuda 'When the first quail calls: Multiple consciousness as jurisprudential method' (1989) 11 *Women's Rights Law Reporter* 7; 8. AK Wing 'Violence and accountability: Critical race feminism (2000) *1 Georgetown Journal of Law and Gender* 98.
[40] Harris (n 7 above) 587.

way that leaves room for identity categories to be as explicit as possible becomes obvious.[41] Arguably, such instability will be particularly beneficial, especially in law and specifically human rights, where the tendency is to freeze identity categories.

The importance of the concept of multiple consciousness therefore lies, as Harris emphasises, in the challenge it presents to the problem of essentialism in the feminist movement.[42] Using an intersectional lens therefore rejects the idea that there is one dominant system or category of oppression, rendering other categories afterthoughts. This intersectional lens does not necessarily mean that these categories in themselves are not crucial, but emphasises the need to destabilise the neat categories to bring to the fore the oppression of individuals who sit at the margins of intersections.

The contributions that these feminist scholars make therefore bears repetition. Feminist intersectional scholars vehemently object to the idea that an individual is either the norm or other, and the notion that forms of oppression are separate and mutually exclusive. These feminists demonstrate that simply adding new categories of oppression is not sufficient to describe the vulnerability and oppression that African-American and marginalised women suffer. These feminists disagree with the tendency to treat multiple forms of oppression as separate, distinct and additive, that is, the tendency to rank forms of oppression, where one form of oppression is treated as more fundamental than another. The important point is therefore that we need to see systems of oppression as part of one dominating structure.[43] In such an interlocking system, an individual's identity is so fluid, and intersectional explanations recognises that an individual can be oppressed, or be an oppressor, or be both at the same time.

Intersectional-like explanations and solutions were therefore borne out of scholarship in attempts to offer explanations for African-American women's unique encounters and their interlocking forms of oppression. Intersectionality, according to Collins, is an understanding that the categories of oppression, for instance, race, class, gender, sexuality, ethnicity, nation, (dis)ability and age, function less as separate, mutually exclusive and distinct categories but rather as reciprocally

[41] As above 586.
[42] Harris (n 7 above) 586.
[43] Hill Collins (n 4 above) 1.

constructing phenomena that in turn shape complex oppression.[44]

The different categories of oppression need to be situated as mutually reinforcing each other in such a way that one system is unable to function without the others.[45] This should be done so that these systems of oppression become part of a structure of domination in what is famously referred to as 'the matrix of domination'.[46] The intervention that intersectionality brings to the table in the matrix of domination draws on the idea that an individual can be oppressed on the basis of a number and multiple forms and axes of oppression. These could include gender, disability, race, ethnicity, sexuality and class, which do not operate as separate and mutually exclusive categories, but are instead interlocking, interactive, related and simultaneous.

The resulting interactive and intersecting multiple roads of oppression that intersectional individuals such as disabled women experience form a different kind of oppression that is far greater than the sum of its parts.[47] In other words, the intersectional oppression that a disabled woman encounters is greater than the mathematical equation of sexism + disability discrimination. It is instead mutually reinforcing and interlocking in such a way that it is virtually impossible to try to tackle the oppression as a singular issue. This demonstrates that oppressive categories are not fixed, separate or hierarchical and do not function as single issues, but instead are interlocking, interactive, related and simultaneous categories that form overlapping, interactive and interlocking oppression.

By invoking anti-essentialism and intersectionality, advocates bring to the fore the fact that disabled women's multiple lived encounters of oppression cannot be fragmented into categories of gender, on the one hand, and disability, on the other, but rather are simultaneous, interlocking, related and multidimensional, thus adding to a decentring of the mainstream universal woman subject.

The above does not necessarily mean that a Nigerian woman without a physical impairment will understand the oppression that a Nigerian woman with a physical impairment encounter. However, it does mean that it is a waste of effort to try to address sexism in isolation, without addressing

[44] P Hill Collins 'Intersectionality's definitional dilemmas' (2015) 41 *Annual Review* 1.
[45] As above 1.
[46] Hill Collins (n 44 above) 1.
[47] Hill Collins (n 4 above) 1.

disability, and vice versa. In fact, it is precisely because all forms of oppression are related and mutually reinforcing that the intersectional lens urges us to ask the 'other' question, in order to understand each form of oppression.[48] I draw inspiration from Matsuda's invitation to ask the 'other' question in order to understand the relationship between, and the interaction and intersection of, all forms of oppression.[49] Her reasoning could mean that when something is viewed as sexist, it should ignite curiosity about disability or ableism. This means that there is a realisation that disability is gendered, and gender is disabling.

From the foregoing, it is obvious that Crenshaw is not the only scholar who has offered intersectional-like explanations. However, she has been widely credited as the initiator and originator of the term 'intersectionality'.[50] In her earliest work and in explaining intersectionality, she uses vivid metaphors of crossroads and traffic to show the operation of and the impact that multiple forms of oppression can have on individuals who have multiple grounds of identities.[51] An intersectionality lens draws attention to the encounters of individuals, such as the disabled woman, who sit at the intersection of more than one identity category. Although, the emphasis in her studies is on two categories, namely race and gender, she does not discount the fact that there are other categories of identities, such as sexuality, disability, ethnicity and class.[52]

Intersectionality has therefore shifted from the classic traditional race/gender/class identity categories to other neglected identity categories, such as age,[53] sexuality,[54] disability,[55]

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[48] MJ Matsuda 'Beside my sister, facing the enemy: Legal theory out of coalition' (1991) 43 *Stanford Law Review* 1189. The 'other' question for example is mirrored in the idea that when there is something that looks sexist; Matsuda's invitation is to look for the heterosexism in it.
[49] As above 1189.
[50] 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.
[51] As above 149.
[52] K Crenshaw 'Mapping the margin: Intersectionality identity politics and violence against women of color' (1991) 43 *Stanford Law review* 1241.
[53] See generally J Day 'Closing the loophole-Why intersectional claims Are needed to address discrimination against older women' (2014) 75 *Ohio State Law Journal* 447; and N Taefi 'The synthesis of age and gender: intersectionality, international human rights law and the marginalisation of the girl-child' (2009) 17 *International Journal of Children's Rights* 345.
[54] DL Hutchinson 'Identity crisis: "intersectionality," "multidimensionality," and the development of an adequate theory of subordination' (2001) 6 *Michigan Journal of Race & Law* 285.
[55] See generally T Shefer & K Mohamed 'Gendering disability and disabling gender: Critical reflections on intersections of gender and disability' (2015) 29 *Agenda* 2; and A Clutterbuck 'Rethinking baker: A critical race feminist theory of disability' (2015) 20 *Appeal* 51.

masculinities[56] and transnationality.[57] The insight that Crenshaw provides is that although forms of oppression are often presented as separate and mutually exclusive, the reality shows the opposite. In other words, forms of oppression interact and intersect, forming complex intersections.[58]

Having laid this foundation, the next step in the argument is to find out what an intersectional lens presents to the liberal vision of law and human rights. I turn my attention to exploring the characteristics of such a liberal influenced single-issue perspective of law, as well as the difficulties that such a perspective presents to the disabled Nigerian woman. In other words, why should law and specifically human rights shift from its liberal thinking to an intersectional matrix of domination thinking? I propose that this shift is crucial based on the three-fold insight that an intersectional lens arguably presents to the liberal law and human rights framework.

4.2.1 Understanding intersectionality: Intersectionality understood as a matrix of domination thinking that confronts law's assimilationist and singular identity thinking

First, law and human rights as liberal need to be intersectional in order to be able to disrupt the liberal singular identity's disregard for the (disabled Nigerian) woman's multiple identities. The disabled Nigerian woman sits at the intersection of multiple identity categories.[59] These multiple identity categories, as demonstrated throughout this thesis, explain her vulnerability to myriad and complex forms of oppression. The disabled woman is in this dilemma because she is seen as not disabled enough to be recognised by the dominant disability narrative and not woman or female enough to be identified by the dominant feminist narrative. This dilemma finds expression not only on the grounds of her sex, but is also compounded by her disability, because she is not only seen as less of a woman but also as less of a human.

The foregoing raises the question of the grounds on which the forms of oppression that the disabled woman encounters occur. In other words, is the disabled Nigerian woman, for instance, oppressed solely because she is a woman, or because she is disabled, or because she is both woman and

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[56] D. Carbado 'Colorblind intersectionality' (2013) 38 *Journal of Women in Colour and Society* 1; 4; 6.
[57] S Salem 'Postcolonial feminism and decolonising intersectionality' https://www.academia.edu/6789689/Decolonial_intersectionality_and_a_transnational_feminist_movement (accessed 6 January 2019).
[58] Crenshaw (n 50 above) 149.
[59] Grillot (n 6 above) 17.

disabled at the same time? One can correctly link the marginalised experiences that the disabled Nigerian woman faces to the disregard of the complexity and multiplicity of her identity.

Trouble arises from the fact that discrimination against a disabled Nigerian woman can be based on a number of the woman's features. Clutterbuck confirms this point by referring to disabled black women, drawing attention to how these women's multidimensional identity categories make their encounters of disability oppression distinct.[60] In fact, she notes that ableism can be racist and sexist, sexism can be racist and ableist, and racism can be ableist and sexist.[61] This point validates this thesis' argument that sexism is ableist and disabling, while disability is sexist, indicating an interaction and intersection between sexism and disability in Nigeria.

Precisely because one cannot be sure on what ground a woman has suffered discrimination, the inadequacies of a law that relies on a single issue to protect individuals, particularly women with multiple identity categories, become evident. The need to shift from the conservative notion that discrimination can be understood only from one single viewpoint to the realisation that discrimination against any individual can be based on a number of the individual's identities is therefore apparent.

Having established the disabled Nigerian woman's intersectional identities, one can immediately tell that her lived multidimensional realities will pose distinct challenges to a liberal vision of law. The multiplicity of her voice disrupts the one-dimensional approach of the law. Using this approach, the law has failed to account for the lived experiences of disabled women in Nigeria, because it remains oblivious to the oppression that women generally suffer and is also completely blind to the oppression that occurs as a result of the interactions in the identity categories embodied by a disabled Nigerian woman.[62] It is therefore not surprising that where Nigerian law is unwilling to acknowledge the complexities in disabled women's lives, it lacks the ability to deal with the discrimination that arises from such complexities.

I posit that the best way in which law and specifically human rights can recognise, understand and speak to the disabled woman's multidimensional encounters is through the intersectional lens.

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[60] A Clutterbuck 'Rethinking baker: A critical race feminist theory of disability' (2015) 20 *Appeal* 53.
[61] As above 53.
[62] 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* 71.

Guidance offered by Crenshaw, for instance, demonstrates how the term 'intersectionality' was employed to illuminate the difficult encounters that women on the margins had with law's assimilationist and singular identity mindset.[63] In coining the term, the emphasis was on describing a kind of framework that would assist in a better understanding of the distinct encounters and struggles of African-American women, whose encounters fell through the cracks of both the feminist and anti-racist narratives.[64]

This guidance from Crenshaw confirms why law and specifically human rights should shift from its liberal thinking to an intersectional matrix of domination thinking. Insight garnered from Crenshaw's study demonstrates a critical flaw that permeates anti-discrimination law and the human rights narrative. Specifically, her analysis identifies a flaw in the way law functions to overlook the encounters of marginalised women, who face a distinct kind of oppression as a result of the multiple identities they embody. An intersectional lens confronts law's assimilationist and singular identity thinking that underlies the assumption that oppression is based on one identity at a time.

Like the disabled Nigerian woman's increased susceptibility to oppression on the basis of her sex and disability, Crenshaw's reference to the lived realities of African-American women is an exposé of how multidimensional encounters are incongruent with the dominant singular identity frameworks that anti-discrimination legal and human rights frameworks adopt.[65] In emphasising the invisibility that surrounded the experiences of African-American women, her work shows how law's reliance on a single experience standard means that law loses its ability to speak to the multidimensional experiences that a woman with multiple identities, such as the disabled Nigerian woman, represents.[66] Law's unwillingness to acknowledge the complexities in women's lives results from not only a lack of political commitment but also from the dominant notion that oppression and discrimination can be understood from a single issue and one-dimensional viewpoint.[67]

My understanding of intersectionality therefore becomes essential in efforts to confront what I

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[63] Crenshaw (n 50 above) 140; 150; 152.
[64] As above 140; 150; 152.
[65] Crenshaw (n 50 above) 141; 150; 152.
[66] As above 145.
[67] Crenshaw (n 50 above) 145.

argue is law's liberal influenced single-issue flawed perception. Again, this confrontation is necessary in order to expose the limits of the law in protecting disabled women in Nigeria. My task here is to use intersectionality to problematise the assumption that the subject is always removed from the analysis in a manner that produces an illusion about an ideal identity.[68] This task is crucial considering that the Nigerian legal framework by virtue of its liberal influences fails to recognise and acknowledge the differences and complexities that a disabled woman represents.

These multiple identity categories, as demonstrated throughout this thesis, explain her vulnerability to myriad and complex forms of oppression. Intersectionality demonstrates its power by giving voice to the multidimensional subject, who in this case is the disabled woman in Nigeria who finds herself trapped and unable to speak within the dominant narratives that posit identity as singular and one-dimensional. I therefore apply an intersectional understanding of the disabled Nigerian woman to expose the conflicts that a liberal influenced single dimensionality perspective of law presents, thus confronting the individualist, atomistic and no identity standpoint of the legal subject that is characteristic of the dominant influence of the liberal law regime.

Law's optimism about its ability to speak to the multidimensional voices that a disabled Nigerian woman represents is foiled by the single-issue perspective that it upholds. An intersectional lens confronts law's assimilationist and singular identity thinking. As a theory of identity, intersectionality is crucial because it exposes the constraints that a liberal influenced single dimensionality perspective of law presents. This liberal inspired single dimensional perspective of discrimination law presents a conflict to the disabled Nigerian woman, because it means that the disabled Nigerian woman, who by virtue of her multiple identities is unable to meet with law's single-issue requirement, is likely to remain overlooked.

Put differently, it is imperative to interrogate whether a single dimensional voice that the law upholds is able to speak adequately to the multi-dimensional voices and experiences that the disabled Nigerian woman embodies. In other words, the application of intersectionality rightly questions the single axis perspective that law and the liberal vision of law upholds.

Law clearly demonstrates its inability to understand the disabled Nigerian woman's life by simply

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

focusing on a single aspect of her complex and multidimensional identity. The intersectionality lens disrupts the neat group categories that are inherent in the liberal vision of law.[69] The starting point should be the realisation that the disabled Nigerian woman should be defined as expansively as possible, because what are regarded as differences, and the category of 'woman' itself, are socially constructed. Cain notes that the reluctance to include the experiences and stories of (different) women is connected to the fact that their unique experiences have the potential to expose a fundamental element of patriarchy that has not been explored.[70]

Thus, in the process, we reveal the partiality and the complicity of the single issue and one-sided system of law in catering only for privileged persons to the detriment of women on the margins who are likely to have multiple identities. This is necessary because this dominant narrative of law or feminist legal theory fails to account for the experiences of the different (disabled Nigerian) woman who does not fit into the widely recognised and accepted categories. Intersectionality counters this kind of narrow-mindedness that is characteristic of a single experience framework. Intersectionality is crucial to the extent that it identifies alternatives to dealing with structures of oppression. This could mean that, instead of looking at patriarchy or ableism in an individualistic fashion, we need to emphasise how these forms of oppression mutually interact and affect all individuals in dangerous ways.

Unfortunately, despite this insight, as Smith has rightly observed, law still holds on tightly to the singular focus of discrimination.[71] Most anti-discrimination laws and human rights frameworks, despite significant criticism, reflect single-issue thinking, where identity categories are frozen in such a way that the different encounters and voices of legal subjects are silenced.[72] As far as the law is concerned, an individual can be fragmented and able to have only a single experience at a time. This means that, as far as the law is concerned, a woman must decide to be either a woman or disabled, and rarely recognises that a woman can be both disabled and woman at the same time. As a result, despite the fact that equality and anti-discrimination provisions are common

[69] Crenshaw (n 57 above) 1241.
[70] PA Cain 'Lesbian perspective, lesbian experience and the risk of essentialism' (1994) *Virginia Journal of Social Policy and the Law* 71. Here Cain is referring to the experiences of lesbian women whose experiences have been marginalized from the mainstream feminism.
[71] Smith (n 14 above) 74.
[72] As above 74.

characteristics of national, international and regional human rights frameworks, law's single-issue perspective and thinking has ensured that equality has remained illusory.[73]

An intersectional lens is necessary for law and human rights because, understood as a theory that recognises difference, it recognises the multidimensionality of identity categories that individuals such as the disabled Nigerian woman embody. By so doing, it disrupts law's liberal singular focus that forces it to create an ideal standard that freezes identity categories. The freezing and stripping of a disabled woman's identity categories are proof of law's refusal to acknowledge difference, preferring instead to conceptualise an illusory ideal subject. This position, consistent with Truscan and Bourke-Martignoni's observation, has triggered the intersectional lens that–

> serves [as] a counterweight to the dominant essentialist conception of inequality which put forward fixed, homogeneous groups as categories within national and international anti-discrimination law and policies. The intersectional, anti-essentialist critique argues that people cannot be defined by singular, unchanging attributes, but rather that identities are constantly being shaped and remade as a result of multiple characteristics and experiences.[74]

The roots of law's assimilationist and singular identity thinking in liberal tradition have been well documented.[75] The dominant liberal tradition sees the liberal subject as atomistic and individualistic. Such atomism and individualism originate from the dominant liberal narrative's treatment of identity categories, such as race, gender and disability, as negative frameworks that society uses to marginalise individuals identified as different.[76] In addition, singular identity thinking is based on the individualistic idea of rights and equality that underlies neutrality and universality.

By focusing on neutrality and universality, law's assumption is that all liberal subjects are the same and assimilationist. These liberal tendencies, according to Smith, reinforce the thinking that law considers only a singular characteristic or an individual issue when dealing with oppression and

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[73] As above 75.
[74] I Truscan & J Bourke-Martignon 'International human rights law and intersectional discrimination' (2016) 16 *The Equal Rights Review* 105.
[75] Smith (n 14 above) 74.
[76] Crenshaw (n 52 above) 1241.

discrimination.[77] Law presumes that groups are strictly and solely defined by certain fixed and singular identities, such as gender, sexuality or disability.[78] This means that law recognises and contemplates that a disabled woman is only one of her multiple identity categories at any given time. To illustrate, one is either a woman (sex), or heterosexual (sexuality), or black (race/ethnicity), or disabled or religious.

This is done without contemplating the fact that, in the real world, individuals usually embody a number of these identity categories at the same time: a disabled black woman is black and disabled and a woman simultaneously. This lack of recognition and contemplation gives rise to the conception of an ideal legal subject that is somehow always erased from the analysis in a manner that strips the subject of certain identity categories.[79]

I therefore confront the liberal law assumptions of 'neutrality' and 'universalism' not only to dismantle them but also to offer an alternative intersectional understanding free of these liberal constraints. The supposed neutral stance adopted by law in order to achieve equality is hypocritical and misleading. Its hypocrisy stems from its deliberately masking from view the fact that the male ideal is the standard for determining whether discrimination has occurred. Importantly, MacKinnon counters such flawed understanding and establishes that there are indeed differences between men and women, demonstrating how neutrality is used as a cloak to hide male domination.[80]

An undeniable connection exists between the neutrality that universal sameness applauds and the existence of patriarchy.[81] These claims therefore validate the assertion that the supposed neutral stance of law is misleading. This is particularly true where law is traditionally conceptualised in a way that assumes maleness is a representation of (gender) neutrality, and emphasises the principles of formal equality in anti-discrimination law, as is the case in Nigeria. An intersectional lens disrupts law's blind quest for a so-called universal truth rooted in dominant liberal influences. In fact, an intersectional analysis of intersectional individuals such as the disabled Nigerian woman,

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[77] Smith (n 14 above) 74.
[78] As above 74.
[79] Smith (n 14 above) 74.
[80] CA Mackinnon '*Are women human? And other international dialogues'* (2006) 26.
[81] M Fineman 'Challenging law establishing differences: The future of feminist legal scholarship' (1990) 42 *Florida Law Review* 2.

I argue, is necessary to show how her experiences have been silenced because she does not fit neatly into the categories of women or the disabled. I argue that the emergence of the disabled Nigerian woman questions the idea that there is a universal experience of womanhood that is free of differences.

Consequently, while law by virtue of its liberal single dimensionality perspective emphasises the idea that there is an ideal subject stripped of any identity, intersectionality, by recognising the complexity and multidimensionality of identities as well as the simultaneously interlocking forms of oppression that the disabled Nigerian woman embodies, provides proof of a decentred subject. This analysis is therefore significant to the extent that, as Smith correctly explains, it breaks down the liberal dominant requirement that difference is gauged from an ideal.[82]

Intersectionality therefore correctly challenges the atomistic, neutral and no identity standpoint of the legal subject that is characteristic of the dominant liberal law regime. This kind of regime carries with it a vision that there is supposedly an ideal subject that can be stripped from certain identity categories. The attempt to strip identity categories because of law's single-issue perspective proves troubling for individuals with complex identities, such as the disabled Nigerian woman.

Moreover, the focus of the liberal vision of law on neutrality and universalism creates binaries and dichotomies. This includes whether an individual is thought to be either the norm or other, superior or inferior, equal or different, and public or private. The problem that arises with this kind of singular dimensional thinking is that it obscures the individuals with multiple identities and their resultant oppression. Crooms describes this binary kind of thinking portrays identity as monolithic rather than multi-dimensional.[83] According to her, this kind of thinking portrays individuals as one-dimensional actors who are always presented as either the norm or the other.

Intersectionality disrupts this kind of thinking and identity is regarded as fluid. A person can be an oppressor at the same time as being a member of an oppressed group. In particular, intersectionality counters the binary either/or thinking that is prevalent in anti-discrimination laws. Intersectionality

[82] Smith (n 14 above) 73.
[83] LA Crooms 'Indivisible rights and intersectional identities or what do women's human rights have to do with the race convention' (1997) 40 *Howard Law Journal* 621.

therefore encourages a need to comprehend oppression based on interactions between various identity categories. Intersectionality is therefore significant to the extent that, as Smith accurately indicates, it exposes the difference within categories.[84] He refers to this as a disruption of law's focus from the 'subject versus other' hierarchy to demanding that the law moves from merely acknowledging difference to the (matrix of) domination thinking.[85] Intersectionality therefore encourages a need to comprehend oppression based on interactions between various identity categories.

Law's tight grip on assimilation has been exposed and, as far as Yoshino is concerned, assimilation is not only embedded in law but is an integral part of being human.[86] This is easily exemplified by, for instance, speaking a language or wearing certain clothes.[87] Using the example of sexual minorities, we can identify three ways in which the law expects assimilation to occur:[88] conversion, which refers to the changing of the underlying identity; passing, where the identities are not necessarily changed but are hidden; and covering, where identities are not necessarily changed or hidden but are restrained.[89] Yoshino makes the point that although women and racial minorities do not have the luxury of converting or hiding, it might be possible to cover one's femaleness.[90]

This analysis identifies a relationship between assimilation and discrimination. Yoshino describes how the type of assimilation required by an identity is usually determined or associated with the intensity of the discrimination encountered. His explains that where there is intense discrimination, the requirement might be conversion. Less intense discrimination might require passing, while retaining the identity. Finally, when the discrimination is weakest, the requirement might be the need to cover up, while retaining and disclosing the identity. [91]

If we apply Yoshino's reasoning to the disabled woman: conversion would require that although the woman cannot necessarily change her identity as a woman, for instance, her disability would be cured. Passing could be exemplified in the disabled woman not necessarily being cured of her

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[84] Smith (n 14 above) 79.
[85] As above 79.
[86] K Yoshino 'Covering' (2002) 111 *Yale Law Journal* 771.
[87] As above 771.
[88] Yoshino (n 86 above) 774.
[89] As above 774.
[90] Yoshino (n 86 above) 774.
[91] As above 774.

disability but being able to hide her disability, for example, a disabled woman not necessarily cured of depression but being able to pretend to society that she is non-disabled. Another example is a woman who is able to hide her sexual disabilities that resulted from rape or FGM, pretending to society that she is non-disabled. Passing is prevalent in Nigeria: evidence shows that disabled women are ostracised and forced to hide in order not to be killed.[92] In the same vein, although a woman might not be able to change her identity as a woman, her covering could be exemplified in the ability of the disabled woman to distract society about her disability.

Although this insight refers to the United States context, it is applicable to Nigeria, because assimilation is believed to be the answer to most social problems.[93] If this is the case, one would be right to infer that the (disabled) woman's inability to assimilate into society because of immutable and visible features makes her different and less human, thus justifying the discrimination, oppression and her invisibility in Nigeria.[94] Her invisibility and oppression as a disabled Nigerian woman is linked to the fact that she is unable to change, blend or fit into the norm or construct. Unfortunately, if, or precisely because, she cannot change to fit within the norm, she is invisible.

Drawing from this assimilation analysis, it is clear that law based on sameness or assimilation is inherently problematic for individuals such as the disabled Nigerian woman, who does not necessarily blend into society, because of her multidimensional encounters. It is therefore not surprising that Crenshaw recognises that there is something not quite right about the definition of discrimination.[95] The need for concrete efforts to counter the status quo about the definition of discrimination becomes obvious. 'Intersectionality' serves as a counter understanding to replace law's faulty singular focus framework.[96] The emphasis on the intersections and interactions of gender and race brings to the fore the importance of recognising multiple grounds of identity and their interaction in shaping the social world.[97] Law's single issue or experience perspective fails to recognise the experiences of African-American women because these experiences are rendered

[92] E Etieyibo & O Omiegbe 'Religion, culture, and discrimination against persons with disabilities in Nigeria' (2016) 5 *African Journal of Disability* 3.
[93] Yoshino (n 86 above) 771.
[94] Etieyibo & Omiegbe (n 92 above) 3.
[95] As above 141.
[96] Crenshaw (n 50 above) 139.
[97] Crenshaw (n 52 above) 1242.

invisible by the dominant idea that one is either a woman or black.[98]

Similarly, Crenshaw's analysis exposes the idea that, far from what law's singular identity thinking about discrimination would have us believe, marginalised women's experiences are not simply additive, consisting simply of the addition of race or gender.[99] In other words, discrimination against a black African-American woman is not simply a result of the sum of her race and gender but a combination of both.[100] The additive nature of law erased the unique encounters of the black woman, rendering her unrecognised by law and by the feminist and the anti-racist movements,[101] because both groups regard the black woman as different: she is regarded as too much of a woman or too black.[102]

Crenshaw equates discrimination with traffic at an intersection, coming and going in different directions.[103] A comparison of discrimination and an accident that occurs at a traffic intersection indicates that discrimination can occur on different grounds simultaneously, in the same way that an accident at an intersection could be the result of the actions of a number of cars. The difficulty in identifying the actual car responsible for the accident is the same as the challenge of determining on what ground an individual with multiple identities has been discriminated against. This shows how an individual's multidimensional lived reality can rarely be explained by one identity or factor; it is generally influenced by a number of different and mutually influencing identities.

This approach indicates how discrimination against the disabled Nigerian woman can occur on different grounds simultaneously. It is clear that while the discrimination may be based on a single ground, it can also be the result of a combination of grounds. The complex identity features that a disabled Nigerian woman embodies arguably make her not only vulnerable to a complexity of oppression and discrimination, but also make it difficult to identify the specific ground(s) upon which this woman suffered discrimination or oppression. A disabled Nigerian woman can be discriminated against on the basis of a number of features that this woman carries, so law's single experience method of dealing with discrimination becomes insufficient.

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[98] Crenshaw (n 50 above) 142.
[99] As above 140; 149.
[100] Crenshaw (n 50 above) 141.
[101] As above 153.
[102] Crenshaw (n 50 above) 150.
[103] As above 149.

Therefore, if we want to address the oppression of disabled Nigerian women properly, we cannot do this by simply adding black women to the already established and faulty legal structure. Using African-American women as an example, Crenshaw has shown that the intersectional experiences that result from the interactions between gender and race supersede the mere addition of these oppressive categories.[104]

Crenshaw's study examines the difficulties that African-American women had with the law because their encounters of discrimination were not necessarily the same as those of black men or white women.[105] The cases cited by Crenshaw demonstrate that the encounters of African-American women were silenced and excluded because of the narrow single dimensional definitions ascribed to sexism and racism by the legal framework at the time.[106] Specifically, she notes that the legal framework conceptualised sexism and racism in an unspoken manner that favoured white women and black men.[107] As a result of such favouritism, the law required the experiences of African-American women either to be like those of Western white women with respect to sexism or to be like those of black African men with respect to racism, before they could qualify for the legal protection that white women and black men enjoyed.

The foregoing demonstrates how law's narrow single dimensional thinking required African-American women to hide her femaleness and become a man with respect to racism, or to hide her blackness and become a white woman with respect to sexism in order to be protected by the law. As a result, the legal protection of African-American women relied solely on the extent to which their encounters were similar to the experiences of white women or black men.

The difficulty starts to unfold here: unlike their white female or black male counterparts, black women do not have the luxury of a single identity of femaleness or blackness alone. This difficulty finds further expression in the burden placed on black women to merge their complex identities into a single identity in order to be recognised by the law. Yet the black woman does not have the luxury of being only a woman or being only black since she is both black and a woman at the same

[104] Crenshaw (n 50 above) 149.
[105] As above 145.
[106] Crenshaw (n 50 above) 145.
[107] As above 145.

time.

This is the same as asking a disabled woman in Nigeria either to be like a non-disabled woman with respect to sex or to be like a disabled man with respect to disability, before she can be deserving of legal protection. This is the case even when non-disabled women do not necessarily share similar experiences or do not know what it is like to be disabled, while disabled men do not know what it is like to be a woman. This argument does not necessarily deny the idea that the disabled Nigerian woman might share certain experiences with her female as well as her disabled male counterparts.

The court rulings cited by Crenshaw show how the law saw African-American women as too different to be representative of those who had been endorsed to represent their lived realities, namely black men and white women.[108] Law's faulty singular reasoning and hypocrisy were therefore exposed, where an African-American woman was disqualified as a representative of all women simply because her gendered encounter was influenced by her race.[109] However, it is ironic that white women who had no racial encounters and African men who had no gendered encounters were considered appropriate to represent African-American women, who experienced both gendered and racial oppression.[110]

Crenshaw's study exposes how, because of singular identity thinking, law is influenced around women's encounters who are not Africans and Africans who are not women. In other words, one is either the same or different. The court's reasoning indicated that law's singular identity thinking, reflected in the idea that one is either the same or different, was particularly oppressive to African-American women.[111] It is clear that African-American women, because of their multiple and intersecting identities, were not only denied protection but were also denied the ability to represent gender or race. In other words, the law could not contemplate African-American women's experiences because they were too similar to be different and too different to be the same, thus rendering the women difficult, if not impossible, subjects of anti-discrimination law.[112]

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[108] Crenshaw (n 50 above) 145.
[109] As above 145.
[110] Crenshaw (n. 50 above) 145; 146.
[111] KW Crenshaw 'Close encounters of three kinds: on teaching dominance feminism and intersectionality' (2010) 46 *Tulsa Law review* 165.
[112] Carbado (n 56 above) 4.

For example, in denying the African-American women's claim on the basis that they had not asked for recourse as women, but as black women, the court unwittingly exposed two failings of the law, which were a result of its singular identity thinking: first, the law's limitation in failing to recognise the intersectional encounters of African-American women, and second, the law's limitation in failing to recognise and contemplate the intersectional encounters of African-American women as part of their oppression and discrimination as women.[113] Applying an intersectional lens is not necessarily a call for a separate juridical acknowledgement of intersectional individuals, such as the disabled woman, but a call for the recognition that the disabled woman's intersectional encounters are no more or less representative of oppression than those of a woman who is the assumed representative of women.[114] In other words, the intersectional oppressive encounters of disabled women are not necessarily separate from but a part of the oppressive encounters of women.

From the previous engagement, therefore, it is possible to infer that intersectionality is a demand on law to pay attention to (black/different) marginalised women who sit at the intersections of identity categories that go beyond gender and race as single issues.[115] In fact, the intersectional vision lies in recognising that gender, racial and other forms of oppression are not each suffered separately, but rather as a single, synthesised experience.[116] Intersectionality specifically addresses feminists' concerns about the need to recognise the differences between women.[117] It does this by explaining and comprehending global oppression. It exposes the idea that oppression does not affect women in the same way and assists in our understanding of how identity categories position women differently.

Intersectionality is therefore a way of understanding and analysing the complexity in the world and people's experiences. This is very important because of the realisation that women with multiple identities, such as the disabled Nigerian woman, will enjoy protection only to the extent that the complexity of their identities is recognised by the legal framework.[118] Intersectionality is

[113] Crenshaw (n 111 above) 165.
[114] As above 165.
[115] Crenshaw (n 52 above) 1242.
[116] As above 1242.
[117] Davis (n 13 above) 70.
[118] Crenshaw (n 50 above) 149.

therefore relevant because it forces the exploration of layers of identities in order to analyse how they interact with one another. Crenshaw makes the point that it will be more appropriate for the woman who is most oppressed to be the representative of what it means to be discriminated against as a woman: thus, there is greater certainty that most if not all the voices of women will be heard.[119]

Following this argument, the best resolution would be that Nigerian law adopts an intersectional approach that recognises that women generally sit at multiple intersections. Law would thus focus on women with multiple identities, like the disabled Nigerian woman, who experiences multiple forms of oppression. In this way women who have single issues of oppression will also be protected. Crenshaw demonstrates that the panacea to the problems of racism, sexism and, in this case, disability would be to place the experiences of the most oppressed at the centre, to ensure that their voices are heard.[120]

This discussion shows that there is a connection between the failure to address structures of oppression particularly targeted at women, such as patriarchy, sexism, racism and ableism, and the single-issue experience legal framework that refuses to acknowledge the different experiences of women. This connection finds expression in the tendency of law to challenge a single form of oppression to the detriment of other forms of oppression in a manner that ostracises the intersectional being, such as the disabled Nigerian woman who encounters more than one source of oppression.[121]

To recap: the existence of the disabled Nigerian woman confronts the liberal notion of the law by virtue of its singular focus that the subject is always removed from the analysis, thus producing an illusion about an ideal. An intersectional lens is necessary to counter this argument and to suggest instead that the positionality of the subject is essential.

Fundamentally, intersectionality teaches us that there are different categories of oppression and these categories interact. Intersectionality therefore exposes the failure of law's reliance on a single-issue social division. It teaches us to examine how different social divisions interact and reinforce each other. The application of intersectionality to law and specifically the human rights

[119] As above 166.
[120] Crenshaw (n 50 above) 166.
[121] A Sheldon 'Women and disability' in J Swain et al (eds) *Disabling barriers- enabling environments* (2004) 69.

framework will ensure that the lived encounters of individuals such as disabled Nigerian women who possess multiple identity categories can be recognised and accounted for. The women's human rights narrative has been undermined by the accusation that the movement does not account for the lived encounters of all women.

An alternative understanding of (women's) human rights must consider a deep understanding of multiple forms of oppression and bring to light a discussion about differences. In other words, for human rights to make sense, there must be a discussion of women's different encounters of oppression. In fact, it has been suggested that difference must be spelt out in such a way that when women are referred to, one must be able to say specifically which woman one is speaking about. The specificity in women's identities and encounters, as far as Atrey is concerned, foregrounds women's human rights into real and lived experiences, in such a way that the universal one-size-fits-all perspective on how human rights are defined and realised is abandoned.[122]

4.2.2 Understanding intersectionality: Intersectionality understood as a matrix of domination thinking that challenges law's essentialist assumptions about a universal woman's experience

Law needs to be intersectional in order to be able to disrupt the liberal singular identity thinking that there is an essential woman's experience. In the preceding section, I argued that in the pursuit of a liberal notion of equality, international human rights law has embraced the conception of a universal self that has been stripped of all identities.

A similar experience of law's singular and assimilationist thinking is reflected in the feminist movement.[123] A gender essentialist assumption about a universal essential woman's experience believes that it can be stripped of identity categories such as race, sexuality, ethnicity, religion and culture.[124]

The next step in my argument demonstrates how an intersectional lens confronts law's essentialist perspective that manifests in a liberal thinking that assumes there is a universal woman's

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[122] S Atrey 'Women's human rights: From progress to transformation, an intersectional response to Martha Nussbaum' (2018) 40 *Human Rights Quarterly* 871.
[123] C Romany 'Black women and gender equality in a new South Africa: Human rights law and the intersection of race and gender' (1996) 21 *Brooklyn Journal of International Law* 860.
[124] Harris (n 7 above) 585.

experience. A number of feminist theorists have offered definitions of essentialism.[125] In Grillot's words, essentialism is the assumption that a single woman's or disabled person's encounter can be explained separately from the other identities of the individual, or that there is an essence to an individual encounter.[126] In other words, essentialism is guilty of creating the falsehood of a singular experience of being either a woman or a disabled person, and refuses to acknowledge interactions between identity categories.[127] Essentialism strongly influences how people relate to discrimination law.[128]

Law's tendency to ignore interactions obscures the intersectional complexity in identity categories and forces an examination of the forms of discrimination that arise therefrom separately and as single issues. Law also gives the false impression that one particular experience from a group of women's encounters is representative of all the experiences that members of that group face. Smith takes this argument further by admitting that even where the law attempts to look beyond the dominant characteristic, it fails.[129] The problem begins where members of a group begin to exhibit complex characteristics and experiences that go beyond the dominant characteristic or what the group is known for and are therefore left without any protection.

With individuals such as the disabled Nigerian woman, who exhibits complex intersectional identities, a dilemma is immediately evident in the quest for protection. The disabled Nigerian woman, because of her intersectional complexity has the additional burden of providing proof to demonstrate the complexity of the discrimination she suffers. One will therefore be correct to conclude that law's limitation in speaking to her intersectional encounters stems from the fact that it is strongly wired to single essentialist thinking. The single-issue essentialist approach of discrimination law, according to Smith, is a consequence of a dominant culture that emphasises that oppression and discrimination can simply be understood from a one-dimensional essentialist viewpoint.[130]

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[125] Wong (n 9 above) 274. See also R Hunter 'Deconstructing the subjects of feminism: The essentialism debate in feminist theory and practice' (1996) 6 *The Australian Feminist Law Journal* 135.
[126] Grillot (n 6 above) 19.
[127] Smith (n 14 above) 81; 82.
[128] As above 81; 82.
[129] As above 81; 82.
[130] Smith (n 14 above) 81; 82.

Essentially, the origins of the single-issue essentialist approach have been traced to the traditional and restrictive political liberation movements that have categorised struggles as singular issues and have thus become preoccupied with single issue features.[131] This kind of narrow preoccupation with lone issues prevents such political movements from being able to speak to differences or even give room for alternatives.[132] By focusing on gender as the sole axis of oppression, mainstream feminist legal thought often forces disabled women to fragment their experiences in a way that does not reflect their lived realities.

Smith's example of activism for women's right to vote in the United States of America illustrates this point.[133] Despite its promised benefits for all women, this activism excluded and essentially forgot to consider the specific needs of African-American women,[134] and we can therefore ask whether African-American women were even considered women. This illustration provides a snapshot and demonstrates the limitations of discrimination law and by extension a feminist legal theory that relies on a faulty single-issue system of gender activism to protect women at the margins.

Feminism promises to speak universally (neutrally) for all women.[135] Although this promise is well intentioned, feminists appeared to make this promise without a clear understanding or plan about how to keep this promise. Underlying this promise rests a fundamental misconception of presumed neutrality and essentialist thinking about women's experiences. The roots of this essentialist thinking lie in a liberal inspired assumption that an 'ideal standard' must be met in order for an individual to be regarded as human and as worthy of protection and rights.[136] Such a criterion surreptitiously creates or emphasises the requirement of an ideal standard. This liberal requirement ostensibly assumes that all women are the same, and have singular identities and issues that leave no room for alternatives or differences. This tendency is rooted in feminism's attempt to follow blindly law's quest for a so-called universal truth, to the detriment of the real

[131] As above 74.
[132] Smith (n 14 above) 74.
[133] As above 81.
[134] Smith (n 14 above) 81.
[135] MCcall (n.11 above) 1771.
[136] C Ball 'Looking for theory in all the right places: Feminist and communitarian elements of disability discrimination law' (2005) 66 *Ohio State Law Journal* 112; 113.

lived experiences of women.[137]

Single-issue thinking in feminism is exemplified in the works of sameness feminists. Liberal (sameness) feminists were sceptical about the differences between men and women and even about the differences between women. Williams draws attention to an early period in the feminist movement, when there was a focus on the inherent sameness of men and women.[138] This supposed sameness of men and women traditionally served as the basis for the call for equality between these two groups.[139]

Difference feminists rightly emphasised the differences between women and men, but were reluctant to acknowledge the differences between women. During this time, feminism was preoccupied with including the woman's question, and primarily interested in the way the lived experiences and realities of women have differed from those of men and, importantly, how law has tackled such differences.

Yet the supposed universal woman, according to Crenshaw, was usually represented and dominated by the white, heterosexual, middle-class and able-bodied woman.[140] The dominant feminist narrative was largely dominated by white women who emphasised their own oppression as females (gender), to the detriment of other differences, such as race, ability, sexual preference, class and age.[141] The attempt of white women to represent all women to the exclusion of black women (or disabled women) has been likened to the white male ableist voice that usually camouflages itself as neutral and objective.[142] In Crenshaw's opinion, the usual white male (ableist) voice is merely inherited by or transferred to white ableist women who, apart from their gender, appear to have similar characteristics.[143] She uses the example of the interrogation of patriarchy, and how race and its contribution to the oppression of women is often overlooked. For her, this occurs because when patriarchy is interrogated, feminists refuse to explore how race (difference) functions and contributes to the oppression of women.[144]

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[137] Fineman (n 81 above) 26.
[138] Williams (n 1 above) 797.
[139] As above 797.
[140] Crenshaw (n 50 above) 142.
[141] As above 142; 153; 154.
[142] Crenshaw (n 50 above) 154.
[143] As above 154; 155.
[144] Crenshaw (n 50 above) 154.

Harris makes a related point in her description of how white (American) women enjoy the privilege of being colourless and are able to enjoy the treatment of sexism and racism as distinct forms of oppression.[145] Yet, this same gesture is not extended to black women, thus validating how the dominant feminist narrative remains white.[146] She is critical of feminism's tendency to treat gender as the most important difference and identity category to be considered when interrogating women's real lived experiences; in a way that creates an essential woman.[147] This essential woman, according to her, has two features that ensure that black women's voices are disregarded.[148] First, in the pursuit of the essential female, women are stripped of all identities in a manner that relies essentially on the category of gender, hiding other aspects of identity.[149] Yet it was clear that African-American women's experiences could not be explained solely on the grounds of gender.

Second, in their removal of race from the feminist narrative, feminist essentialists have ensured that the voices of black women are silenced and their encounters erased. The white woman therefore becomes the representation of the voices of all women.[150] Second, to disregard difference that manifests as race leads to a situation where white women forget their privilege of whiteness and define woman in terms of their experience alone. The result is that black women become 'othered'.[151]

This kind of pretence of a female universal experience, based solely on gender as the dominant identity or the identity that matters, frustrates the ability of law to speak to complex voices and instead results in coercion and authoritarianism.[152] Harris alludes to this essentialist trap in emphasising that the feminist movement is in grave danger of falling into the same single-issue trap into which the law has fallen.[153] This trap, according to her, explains why law and by extension feminist legal theory have been unable to speak to women who have no power.[154]

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[145] Harris (n 7 above) 604.
[146] Crenshaw (n 50 above) 154 See also L Sherri 'Talking back to white feminism: An intersectional review' (2015) 1 *Liberated Arts: A Journal for Undergraduate Research* 1.
[147] Harris (n 7 above) 587; 588.
[148] As above 592.
[149] Harris (n 7 above) 592.
[150] As above 592.
[151] Fineman (n 81 above) 2.
[152] Harris (n 7 above) 587.
[153] As above 581.
[154] Harris (n 7 above) 585.

Proponents of difference, particularly between men and women, are therefore so caught up in their advocacy that they fall into the trap of refusing to acknowledge that there are also differences between women, and they are thus guilty of advocating for an essential womanhood.[155] Thus, the difference feminists, even while countering the sameness or assimilation thinking of their predecessors, also fall into the same trap of monolithic single-issue identity thinking by placing gender as the sole identity category by which women are oppressed.

The story of Sojourner Truth, a black woman exposed to the harmful effects of patriarchal attitudes of her day, is widely documented.[156] As a black woman, Truth had to be wary of black and white men. Truth's story is interesting because she not only had to deal with patriarchal tendencies that emphasised the dominance of men over women, but she also had to confront a pretentious belief in universal womanhood that refused to acknowledge her experience.[157] She felt that, as a black woman and by virtue of her blackness, she was not only treated as something less than a woman but as less than human.[158] A correlation can be drawn from the story between Truth's experience with the white suffrage movement and black women's experience with mainstream feminism and the argument that when feminist legal theory claims to reflect women's experiences but does not include or speak to black women, this brings into question how truly 'woman' a black woman is.[159]

The above question is relevant for the disabled Nigerian woman today who, I argue, should rightly question whether she is truly a woman not only on the basis of her gender but importantly on the basis of her disability. The description of how the presence of a disability disqualifies a person from being recognised as a male or female illustrates this point.[160] This is not surprising, considering the fact that, as research has shown, when a woman's femaleness clashes with her identity as disabled (different), the disabled (different) identity is emphasised in a way that erases or ignores her femaleness.

The above scenario is not too far-fetched, considering Roth's point that Truth was a slave, a

[155] Fineman (n 81 above) 2.
[156] Crenshaw (n 50 above) 154.
[157] As above 153.
[158] Crenshaw (n 50 above) 153; 154.
[159] As above 154.
[160] T Gerschick 'Toward a theory of disability and gender (2000) 25 *Feminisms at a Millennium* 1263.

condition that is also perceived in negative terms.[161] It might therefore be possible to suggest that Truth would have revealed an increased wariness about the existence of a pretentious sisterhood that questioned not only her womanhood but also her humanity, on account of her enslavement. Thus, one would be right to speculate that feminism's adoption of the universal woman experience failed to recognise her voice and her very existence, despite forms of oppression that she might have experienced as a black (disabled) female.

The consequence of adopting law's single perspective is therefore the creation of the essential or single woman experience that unfortunately cannot properly account for the complexity of encounters that individuals such as the disabled Nigerian woman experiences. Feminism's adoption of the essential woman experience is therefore faulty. Its fault stems from creating an experience that relies on the liberal tendency of law to give preference to a supposed neutral experience in a manner that freezes identity categories.

The singular identity thinking is exemplified in MacKinnon's emphasis on the sexual difference of women. Feminist anti-essentialist theorists have been critical of MacKinnon's one-dimensional approach that appears to treat gender as the dominant factor in a way that disregards race and other categories of oppression in the process.[162] Attention is drawn to how, although there is accuracy and power in MacKinnon's description of difference as a manifestation of law's dominance, the black woman's voice is completely disregarded in her analysis. The criticism is fundamental because although MacKinnon draws attention to law's dominance disguised as difference, she refers to only the single issue of gender, to the detriment of intersectional complexities that exist within gender.[163] The disabled Nigerian woman's lived experiences counter the presumption that there is a universal woman's experience. While MacKinnon sees domination and oppression solely in terms of gender, an application of intersectionality as a theory of identity, in contrast, addresses this failure by shedding light on the existence of a number of other identity categories that influence and interact to impact experiences.[164]

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[161] J Roth 'Entangled inequalities as intersectionalities towards an epistemic sensibilization' (2013) 43 *Working paper* 6; 7.
[162] Harris (n 7 above) 592. This point is also made in: R Hunter 'Deconstructing the subjects of feminism: The essentialism debate in feminist theory and practice' (1996) 6 *The Australian Feminist Law Journal* 137. Smith (n 14 above) 79.
[163] Smith (n 14 above) 79.
[164] As above 74; 80; 81.

West's creation of the essential woman also illustrates this singular identity thinking. According to Harris, West is accurate in identifying the difficulty of the liberal position for women because this position misunderstands the actual causes of vulnerabilities of women.[165] Yet she points out that West is guilty of the same liberal position she criticises by virtue of her creation of an essential woman based on her mothering and nurturing abilities.[166] This essential woman proves particularly problematic for the disabled Nigerian woman. This is because if a woman is defined as a woman simply because of her mothering functions, then if the disabled Nigerian woman has been disqualified and excluded from performing these functions based on her disability, it means she is regarded as less of a woman and stripped of her womanhood and personhood because of the presence of the disability.

Feminism's adoption of law's single-issue perspective is therefore worrying, because it means that the disabled Nigerian woman, because of her multiple and intersectional identities, will continue to be overlooked. Harris regards the conception of essentialist thinking as reflective of the failure of feminists to pay close attention to the actual lived experiences of real women.[167] The presumption of a universal woman's experience is therefore simply a manifestation of oppression in a different voice. The paradox that exists in feminism's attempt to resolve sexism and racism using a singular emphasis is a case in point. An African-American woman who is raped, for instance, is not raped only because she is a woman, but particularly because she is a black woman.[168]

Feminism's sole emphasis on rape as an expression of male power over a woman's sexuality is flawed,[169] because it potentially obscures from view how rape can also be used as an instrument to perpetuate racial terror. This logic can be translated to the disabled Nigerian woman's situation: when a disabled woman is raped she is not raped only because she is a woman; it is more likely that the rape occurred because she is disabled and a woman at the same time.

Evidence shows an increased severity of sexual violence on disabled women. Yet, these violent acts remain invisible in Nigerian society. This invisibility can be tied to the fact that when disabled

[165] Harris (n 7 above) 581; 602.
[166] As above 581; 602.
[167] Harris (n 7 above) 581; 602.
[168] Crenshaw (n 50 above) 157; 158; 159.
[169] As above 157.

women are sexually assaulted, the assault is most likely to be a result of the combination of their sex, gender and disability. The disabled Nigerian woman is increasingly sexually vulnerable to male domination not only on the basis of her femaleness, but also because of the effective denial and erasure of that same femaleness by her disability.

The disabled woman's femaleness renders her sexually susceptible to domination by men, while her disability ensures that she is refused any protection. Narratives of disabled women in Afolayan's study prove this point.[170] In terms of Nigerian law, it is almost impossible for a man to sexually assault a disabled woman, and this is worsened by a failure to refer to disability and disabled women in the Constitution.[171] Male power is thus reinforced on both points but manifests differently. The situation becomes even more complex if we consider the disabled woman's ethnicity and religion: with the emergence of Boko Haram in Nigeria, there is evidence of how Christian women were raped in certain areas of the North because of their religion.[172] This illustrates that rape can be used not only as male terror, but also as a weapon of disability, ethnic and religious war, and terror simultaneously. The law's tendency to rely on a singular experience might therefore prevent the disabled woman, on account of her complex identity, from getting the legal protection she requires. The single approach hides from view the fact that rape can be used as a tool to reinforce ableist dominance.

The deduction here would therefore be that, as the disabled Nigerian woman demonstrates, individuals are not only men or women alone but have different and multiple identity layers. Law's singular focus renders invisible and excludes individuals with multiple identities, who are most oppressed,[173] for example, the disabled woman who sits at the intersection of the disabled group and the woman group, because of the complexity of her identities. This validates the idea that there

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[170] GE Afolayan 'Contemporary representations of disability and interpersonal relationships of disabled women in southwestern Nigeria' (2015) 29 *Agenda* 54.
[171] NC Umeh 'Reading disability into the non-discrimination clause of the Nigerian constitution' (2016) 4 *African Disability Rights Yearbook* 53. The argument is also made in *I* Imam & Abdulraheem-M Mustapha 'Rights of people with disability in Nigeria: Attitude and commitment' (2016) 24 *African Journal of International and Comparative Law* 439. Although there is a new law that has recently been enacted that prohibits discrimination on the basis of disability, there is no mention of sexual assault particularly as it relates to the disabled woman. Even more disturbing is the idea that although there is provision of non-discrimination on the basis of sex in the Nigerian Constitution, it excludes gender. There is very little inkling of the interactions and intersections that exist between sex and disability and vice versa.
[172] Human Rights Watch: 'Those terrible weeks in their camp" Boko Haram violence against women and girls in Northeast Nigeria' (2014) 16.
[173] Smith (n 14 above) 74.

is something not quite right about the singular identity way of conceptualising discrimination. Therefore, the challenge for law, and by extension feminism, especially in regard to the disabled Nigerian woman, is its attempt at a supposedly neutral stance, which is misleading.

This is particularly true where law and feminism assume that universal womanhood is a representation of neutrality. It is therefore not surprising that the feminist movement has been accused of failing to keep its promise to speak universally for all women, particularly for women with multiple identities and/or differences.[174]

The foregoing insight confirms the contentions between the liberal feminists and the difference feminists that constitute the sameness/difference debate.[175] For a long time, feminists have emphasised equal treatment with men in the form of formal equality, men/women differences or the domination of women by men.[176] Bond notes the following:

> Regardless of whether feminists were on the sameness, difference, or radical sides, the problem was the tendency by these groups to treat 'women' as a monolithic and universal category. The 'sameness' feminists for instance treated 'women' as a universal category without internal differences that simply needed to be compared with the category of 'men'. For 'difference' feminists, the category of 'women' was also a universal one-without internal differences that simply needed to be contrasted with the category of 'men'. For 'radical' feminists, too, the category of 'women' was also a universal one that was defined exclusively through subordination to men.[177]

Unfortunately, as Bond has shown, this unified, monolithic and universal category of 'women' led to African-American feminists beginning to question the tendency of the movement to depend upon a universal essence of womanhood that excluded different voices in favour of privileged white, upper middle class, heterosexual, able-bodied women.[178] Recently, this singular identity

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[174] M Reilly 'Feminism and the politics of difference (2012) *Oxford Research Encyclopedia of International Studies* 4. Similar arguments in: A Dailey 'Feminism's return to liberalism' (1993) 102 *Yale Law Journal* 1266. Romany (n 129 above) 860.Wong (n 9 above) 277. R Hunter 'Deconstructing the subjects of feminism: The essentialism debate in feminist theory and practice' (1996) 6 *The Australian Feminist Law Journal* 135. L Sherri 'Talking back to white feminism: An intersectional review' (2015) 1 *Liberated Arts: A Journal for Undergraduate Research* 1.
[175] Bond (n 23 above) 106.
[176] As above 106.
[177] Bond (n 23 above) 106.
[178] As above 106.

thinking has been extended to African women and women in the Global South, commonly referred to as average Third World women. Feminists have identified at least five stereotypes that Western women have emphasised in creating the monolithic Third World African woman.[179]

First is the idea that the Third World African woman is a victim of men's oppression. Second is the idea that the Third World African women are universally dependent. Third is the idea that the Third World African woman is a victim of colonialism. Fourth is the idea that the Third World African woman is a victim of their communities and families. Fifth is the idea that the Third World African woman is a victim of religion. These stereotypes accorded to the average Third World African woman are a far cry from and in contrast to the portrayal of the Western white woman as liberated and educated.[180]

The point is not necessarily that the stereotypes are not true but that the reliance on singular identity thinking is flawed. The need to resolve this state of affairs has led to calls for recognising differences within the mainstream feminist movement and the need for intersectionality therefore become evident. This single identity thinking about the oppression of women carries a number of assumptions, as raised by feminist research.

First, this kind of thinking has led to the disregard and masking of the differences between women that are based on race, ethnicity, religion, culture, sexuality and (dis)ability. Also, singular identity thinking has meant that the importance of heterogeneity is hidden within the feminist narrative. The single identity notion of oppression has also inaccurately identified the lived encounters and realities of the white, middle-class, heterosexual and able-bodied woman as representative and the norm for all women. Finally, the single identity notion of oppression has meant the dominance of and reliance upon feminism remains in white Western and European thinking. This is the point that is raised in the idea of (white) solipsism in feminist thinking, where whiteness, like ableism in the case of the disabled woman, forms or is used in the description of the world.[181] The single

[179] M Reilly 'Feminism and the politics of difference (2012) *Oxford Research Encyclopedia of International Studies* 4.
[180] C Mohanty 'Under western eyes: Feminist scholarship and colonial discourses' (1984) 12 *Duke University Press* 337.
[181] Harris (n 7 above) 588.
Harris uses the term 'white solipsism which is a term that was reportedly coined by Adrienne Rich. White solipsism is the tendency to describe and think of the world using the white lens. In the same manner, ableism solipsism is the tendency to describe and think of the world using the ableism lens.

identity thinking that is unable to recognise non-white, disabled reality as significant, except sporadically, is also what forms reality.

The foregoing sketch emphasises the need for anti-essentialism and intersectional-like explanations based on the disregard of multiple identity categories that ultimately encourage the silencing of the voices of black women and Third World women. The fact that all women were being portrayed as white, middle-class, heterosexual and able-bodied ignited and triggered the responses of African-American feminists. According to Bond, these advocates of anti-essentialism developed intersectionality, where the argument is that gender is only one of the many identity categories by which a woman is oppressed, and these forms of oppression are interactive and interlocking.[182] According to Bond:

> Anti-essentialist theory teaches that identity cannot be reduced to an essence that is so central to an individual's being that it precludes other categories of analysis along the axes of race/ethnicity, gender, class, religion, and sexual orientation.[183]

This points to the idea that the central crux of the anti-essentialism perspective is the assumption that the identity categories of race, gender, disability and sexual orientation are not fixed and static biological traits.[184] Rather, these identity categories are socially constructed. Based on these socially constructed categories, the encounters of individuals have concrete and real consequences, which manifest as privilege, hierarchy and oppression around the world. These anti-essentialist theorists emphasise the idea that the identity categories that individuals embody must remain fluid and permeable rather than stagnant and fixed. The boundaries of the category must be flexible enough to accommodate the experiences of a diverse group of women. Anti-essentialism and intersectionality envision a complex, fluid notion of the self, in which one may be and always is both the oppressed and the oppressor.

The anti-essentialist and intersectional feminists brought to light the insight that 'asking the woman question' has assumed a new meaning, where the emphasis of feminist investigations has moved from the differences between men and women to the differences between women themselves. Importantly, feminist interrogation has started to recognise the lived experiences of women on the

[182] Bond (n 23 above) 106.
[183] As above 106.
[184] Bond (n 23 above) 106.

margins. The idea that there can be a universal woman experience has been met with objections and accusations of essentialism. Anti-essentialist scholars have been critical of the essentialist tendency to define the category of woman solely in terms of gender.[185] Anti-essentialist feminists have therefore been instrumental in the attempts to dismantle law's singular essentialist identity thinking. This thinking underscores the idea of a universal self. Difference is no longer only that which presents a separation of men from women, or women from each other, but even that which separates an individual from his- or herself.

Grillot emphasises that, according to the law, the woman is fragmented and is able to be only one thing at a time.[186] Law and specifically human rights, by virtue of their liberal influences, fail to recognise and acknowledge the differences and complexities that a disabled woman represents. Law's tendency to fragment individual's lives and its singular identity thinking about oppression and discrimination has meant that it is difficult, if not impossible, for law to translate and speak to the lived encounters of individuals, such as disabled woman.[187] Her approach is to expose the idea that generally women sit at multiple intersections.[188] Law needs to adopt an intersectional approach that will recognise the following:

> Each of us ... sits at the intersection of many categories. At any one moment in time and space some of these categories are central to her being ... Some categories, such as race, gender, class and sexual orientation, are important most of the time. Others are rarely important ... yet, if we turn the traditional tools of legal analysis upon this woman, we find she is someone entirely different. She is fragmented, capable of being only one thing at a time.[189]

Grillot thus captures the point that the application of intersectionality assists in reinforcing the idea that identity is fluid and multifaceted. Intersectionality embraces the idea that the disabled Nigerian woman, for instance, possesses a dynamic and unstable reality that is often uncontemplated and hindered by the application of law's one-dimensional approach. Attention is drawn to the idea that the consequences of such an approach are individually encountered by those who struggle to 'fit'

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[185] PYS Chow 'Has intersectionality reached its limits? Intersectionality in the UN human rights treaty body practice and the issue of ambivalence' (2016) 16 *Human Rights Law Review* 457; 458.
[186] Grillot (n 6 above) 17.
[187] As above 17.
[188] Grillot (n 6 above) 17.
[189] As above 17.

into the accepted core identity categories of either being a woman or disabled. Intersectionality is therefore clearly a way of making sense of a world that appears constantly at odds with actual lived realities and experiences.[190]

These experiences can easily be manifested in the frustrations, confusion and discomfort that the disabled Nigerian woman feels when the official version of truth does not necessarily match or is inconsistent with her reality,[191] resulting in a sense of hopelessness that is felt when certain parts of one's identity, for instance gender and disability, are pitted against each other. The definition of intersectionality has been expanded by the realisation that there are multiple intersections of disjointed persons. An intersectional lens provides the insight that the disabled Nigerian woman, for instance, sits at the intersection of multiple identity categories.[192] This idea emphasises the need to define women's complex experiences as closely to their full identity complexity as possible.[193] As Grillo reminds us, forms of oppression are mutually reinforcing and are related.[194] This means sexism intersects with disability, which could mean that disability uses sexism as its enforcer or that sexism uses disability as its enforcer.[195]

This recognition ensures that, even in the formation of categories, there is room for instability, which allows for categories to be as explicit as possible. Such allowances ensure that the experiences of the most oppressed are placed at the centre, rather than being categorised and essentialised. Thus, as difficult as it might be to run away completely from categorisation, the starting point should be the realisation that the disabled Nigerian woman must be defined as expansively as possible.

This expansive definition is necessary in order to ensure that marginal voices, such as the voice of the disabled Nigerian, woman are not erased or silenced. I offer an illustration of how the experiences of the disabled Nigerian woman are completely ignored because she does not necessarily fit neatly into either the female or disabled categories. According to Grillo, this is a

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[190] J Conaghan 'Intersectionality and the feminist project in law' in E Graham et al (eds) *Intersectionality and beyond, law, power and the politics of location* (2009) 26; 27.
[191] As above 26.
[192] Grillot (n 6 above) 17; 18; 19.
[193] As above 26; 27; 28.
[194] Grillot (n 6 above) 27.
[195] As above 27.

result of the fact that the disabled Nigerian woman speaks with multiple voices in a manner that potentially leads in different directions.[196] This multiplicity of voices occurs because of the existence of well laid out categories that separate voices.

African feminists have countered the view that there can be a universal woman's experience.[197] This universal experience has hidden women's differences, based on their race, class, sexuality, ethnicity and disability, and has ignored how these differences intersect. African-American women and African women in the Global South therefore engaged in the decentring and countering of the dominant and exclusionary tendencies of the feminist movement in a bid to create autonomous, geographically, historically, and culturally grounded feminist strategies that would be useful cross-culturally.[198] African and Global South feminists had shown discontent with the singular and fixed thinking of women's identity. Mohanty notes how the discontent was a result of the need for feminist scholars to engage in self-reflection and recognise how women's specific social positioning influences their lived realities.[199]

The women's human rights narrative was seen as having inherited the liberal singular identity thinking of portraying all women as universal with a monolithic identity. Unfortunately, this has reinforced the short-sighted perspective on women's human rights that is blind to the complex forms of oppression. The feminist movement has been built on the rigid and monolithic category of women. The human rights emphasis on women to the detriment of other identity categories, such as race, ethnicity class, religion and (dis)ability, has limited the understanding of the human rights of women.

Third World feminists who have been othered have been vehement in their opposition to universality. Mohanty has been credited with drawing attention to the creation of this monolith in the feminist movement in the form of an average Third World or African woman.[200] The difference is that this monolith is not only singular in its thinking of African women's oppression, but African women are 'othered' when they are described as uneducated and uncivilised, as opposed to

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[196] As above 28.
[197] Bond (n 23 above) 106.
[198] Mohanty (n 180 above) 335.
[199] As above 348.
[200] Mohanty (n 180 above) 335.
[200] As above 337.

liberated and educated Western woman. Mohanty notes that research is dominated by the creation of the poor, victimised, oppressed, average Third World African woman, a clear indication of a lack of universal womanhood.[201]

This insight indicates that the academic formulation of the 'Third World' woman is opposed to the 'Western' woman and has been regarded as projecting a form of racist feminism.[202] The implications and the results of such 'discursive colonisation' are that all experiences from the margins of the different (disabled Nigerian) woman are likely to be erased and silenced.[203] The racist feminist assumes that the Third World (disabled Nigerian) woman is unable to shape the social relations in which she operates, since she has been positioned as 'other' to the predominant 'Western self'. Mohanty notes how this kind of Third World woman formulation results in discursive colonisation of the historical differences in the lives of the women from the Third World in a manner that creates the essential Third World woman,[204] despite the fact that such a formulation ignores a world where power imbalances occur.

The foregoing validates Mohanty's rejection of the notion of a universal womanhood and the insistence that a number of factors must be considered, including historical and political contexts.[205] This assertion rings true in Nigeria, where neoliberal imperialism and the attendant colonialism have produced structures of oppression and illustrate this point.[206] Mohanty indicates that the claim to universal womanhood is false and the fabrication in such universality is evident in her apt description of how the poor, victimised and oppressed 'average Third World woman' is created in sharp contrast to the implicit self-representation of Western women as educated, modern and having control over their bodies.[207]

Female genital mutilation or circumcision (FGM/C) can be used to illustrate the above point. The general perception of Western feminists is that FGM is a barbaric act performed by African or Third World women. While the barbarism in the practice is undeniable, its presentation

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[201] As above 335; 336; 337.
[201] Mohanty (n 180 above) 335.
[202] As above 353.
[203] Mohanty (n 180 above) 337.
[204] As above 337.
[205] Mohanty (n 180 above) 33.
[206] As above 340; 341; 342.
[207] Mohanty (n 180 above) 337; 338; 339.

essentialises culture and often portrays African women as uneducated, uncivilised and lacking control of their bodies. The problem here is that these descriptions resemble men's portrayal of women and these terms are often used synonymously to reflect disability and carry similar negative connotations. Western feminists are then portrayed as modern, educated saviours who have come to save African women from the barbaric act. Western feminists are quick to emphasise a flawed universal assumption that there is something like a normal female body. Yet evidence suggests that the bodies of women are not natural but are socially constructed.

A parallel has been drawn, for instance, between cosmetic surgery performed on Western women and FGM/C. It is possible to disagree and claim that these two practices are not the same, particularly as far as consent is concerned. However, one can also acknowledge that both practices are in fact consented to, even if one form of consent is coerced.

Mohanty reminds us that although Western feminism in itself is not homogeneous, its assumption of women as an unproblematic category with homogeneous experiences, as well as its creation of essential womanhood to ignore the power imbalances in the experiences of women, distinguishes it as Western.[208] The entrance of the notion of a Third World woman believed to be representative of the human rights needs of African women has thus been well documented.

Also writing about the monolithic construction, Davis echoes the point that although the Third World woman notion was well intentioned in its attempts to highlight the specific and different requirements of African women, it ended up creating yet another essentialism, but this time with the different intent of othering.[209] This is the same point that Mohanty makes in warning that a universal womanhood cannot be attained simply on the basis of gender. Unfortunately, disregarding women's differences not only creates a pretentious homogeneity and false universality, but also fails to acknowledge the power imbalances that divide women.[210]

Nonetheless, even with the creation of the essential black woman, some women are still 'unwanted' or 'inferior', such as the disabled Nigerian woman, and they are humiliated, forced out of the narrative or compelled to change to fit within a problematic norm.[211] The problem for the

[208] Mohanty (n 180 above) 337; 338; 349.
[209] Davis (n 20 above) 205.
[210] Mohanty (n 180 above) 335.
[211] Clutterbuck (n 60 above) 53.

disabled Nigerian woman is that if she cannot change to fit in and blend with the norm, she is immediately forsaken.

To recap: The analysis above demonstrates that for a long time the liberal vision of law and specifically human rights focused on the way in which women were not different from men, in other words, the claim that women are the same as men. This was followed by a period where the emphasis was on the idea that women are actually different from men. Feminists achieved this by 'asking the woman question'. However, the problem for women became obvious, particularly when there were women within this women group that identified as different (disabled, lesbian etc). In other words, these 'different' women were stating that, in asking the woman question, their lived realities were not adequately represented, ignored or totally missing from the feminist legal and human rights discourse.

Cain is very vocal in her rejection of a neutral experience of womanhood and essentialist thinking that focuses on women's sameness as opposed to their differences.[212] She reveals how the specific experiences and stories of (different) women are excluded because their unique experiences expose a fundamental element of patriarchy.[213] In asking the woman question, therefore, we need to recognise and contemplate the different ways that different women, such as disabled women or lesbians, encounter oppression differently. Using Cain's logic, the experiences of the disabled Nigerian woman expose a fundamental element of patriarchy.

The entrance of intersectionality therefore emphasises the importance of the differences that exist between women. In fact, the crux of this thinking is that gender alone is insufficient in speaking to the lived realities of African women. Intersectionality confronts and disrupts the focus of law and human rights on gender discrimination and oppression alone as speaking to a certain category of privileged women. Intersectionality is instrumental in highlighting the way in which, due to women's different social positioning, identity categories other than women's gender need to be considered when formulating the legal and human rights narrative.

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[212] PA Cain 'Lesbian perspective, lesbian experience, and the risk of essentialism' (1994) 2 *Virginia Journal of Social Policy & the Law* 71.
[213] PA Cain 'Feminist jurisprudence: Grounding the theories' (1989) 4 *Berkeley Women's Law Journal* 208.

4.2.3 Understanding intersectionality: Intersectionality understood not as a question of 'sameness' or 'difference' but as one of power relations

Law and human rights as liberal need to be intersectional in order to be able to disrupt the liberal singular identity's disregard for power relationships. I draw on the idea that intersectionality emphasises the inclusion of different identities and experiences and pays particular attention to the manner in which power relationships determine the exclusion of individuals with multiple identities, such as the disabled Nigerian woman.[214] An intersectional lens confronts law's singular identity thinking that disregards the power relationships.[215] This means that an intersectional understanding and lens must go beyond the tendency to act as a 'corrective' of essentialist thinking. Intersectionality is not a question of sameness or differences, but one of power relations.

In her recent work and citing her previous study, Crenshaw draws attention to the harm that African-American women suffered because of the failure to recognise that they were harmed by treatment that assumed they were the same as white women and African-American men, and treatment that assumed they were different from these groups.[216] She presents an intersectional lens that goes beyond the question of sameness/difference to a question of power relations.[217] Her recent analysis of her earlier work, particularly on the court cases, shows that there are no easy answers to the oppression that African-American women plaintiffs encountered.[218]

The intersectional lens was introduced to showcase these women's experiences of oppression and the multiple and different ways in which power can meet and intersect. Crenshaw demonstrates the need to ensure that difference is not erased where it matters, while at the same time ensuring that difference is not placed on a pedestal where difference does not matter.[219] Oppression is not balanced or equal and its modus operandi is to ensure the entrenchment of power by some over others.[220] Research has shown that power relationships can occur both vertically and diagonally, in other words, black men can exert power because of their gender but cannot necessarily exert

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[214] Smith (n 14 above) 73.
[215] See generally Crenshaw (n 111 above) 165; A Gouws (n 3 above) 1; and S Fredman *Intersectional discrimination in EU gender equality and non-discrimination law* (2016) European Commission Report 31.
[216] Crenshaw (n 111 above) 165.
[217] As above 165.
[218] Crenshaw (n 111 above) 165.
[219] As above 165.
[220] S Fredman *Intersectional discrimination in EU gender equality and non-discrimination law* (2016) European Commission Report 31.

power because of their race or the colour of their skin. White women can also exert power in relation to their whiteness but not because of their gender. In the same way, non-disabled Nigerian women can exert power because they are able-bodied but not because of their gender.

Friedman's argument is consistent with the argument of this thesis that power is able to function so as to construct identity categories. Specifically, identity categories such as race, disability and gender are more socially constructed and more of a basis for oppression than purely biological realities. According to her, even one's ethnic origin is defined in terms of power relations. This assertion is particularly true in Nigeria, where evidence shows that there are constant tensions between dominant ethnic groups and ethnic minorities. The tensions between Ife and Modadeke in South West Nigeria illustrate this point. If the above is true, the oppression that women suffer is a manifestation of unequal power relations.[221] The complexities and messiness inherent in structures of domination thus become immediately clear and it becomes difficult, if not impossible, for law's singular identity thinking to contemplate them.

In addition, recent scholarship shows that an intersectional confrontation must go beyond a simplistic exposure of identities and must instead highlight how the interactions between these identities or differences is fundamentally a revelation of power dynamics that explains the different forms of oppression that an individual such as the disabled woman with intersectional encounters faces.[222]

Intersectional matrix thinking seeks to stop the 'add and stir' approach, often used to add one or more identity groups, so that we can account for power imbalances and their influence on individuals, particularly women with multiple identities.[223] This suggests that identity categories such as disability and gender signify systems of power relations. In other words, my application of intersectionality is a call to disrupt assumed categories instead of naturalising identity politics. The intersectional approach as offered here must go beyond simply exposing the complex identities, and must showcase the power imbalances that result from the refusal or disregard of such differences or identities and its attendant oppression. The problem with identity categories is that they unconsciously create hierarchies of 'samed' and 'othered'. This reveals the trouble with

[221] Grillot (n 6 above) 18.
[222] Gouws (n 3 above) 19.
[223] As above 19.

categories, which cannot be resolved simply by adding disability to existing identity categories.

Importantly, I want to suggest that intersectionality must go beyond identifying identities and their interactions to understanding identity categories, their interactions and resultant oppression, especially in regard to women, as purely a consequence of unequal power relations. Such an intersectional understanding, I argue, disrupts the 'sameness' and the 'differences' that law emphasises. An intersectional lens is necessary in order to emphasise the many ways or the different ways in which the patterns of power can coincide.

Scholars have been pivotal in drawing attention to the need to shift from an emphasis on groups and identity categories to how power structures operate to include some and exclude others.[224] Smith describes how intersectionality refuses to see identities as mutually exclusive categories of experience but as a complex, compound sum of different experiences of power relations that excludes and includes voices.[225] He further describes how a proper grasp of intersectionality will assist in exposing the power dynamics that reinforce disadvantage and privilege.[226] This argument coincides with Nash's description of intersectionality as a notion that emphasises structures of domination interacting with each other.[227] She also highlights how intersectionality brings to light the complexity that is inherent in identity.[228]

The scholars suggest that intersectionality viewed as a matter of groups and identity categories with rigid boundaries is not far reaching enough. The intersectional lens reveals power functions with the preoccupation of creating new identity categories. This kind of perception assists in the shift from who people are to how things function. According to Tomlinson, this means that the intersectional lens places the focus on the differences that require attention.[229] He goes so far as to suggest that where intersectionality's focus is on identities as opposed to power dynamics, it is linked to an inability to detect which 'difference makes the difference'[230] I therefore support the

[224] S Cho et al 'Toward a field of intersectionality studies: theory applications and praxis' (2013) 38 *Journal of Women in Culture and Society* 785.
[225] Smith (n 14 above) 76.
[226] As above 78.
[227] Nash (n 2 above) 456.
[228] As above 456.
[229] B Tomlison 'To tell the truth and not get trapped: Desire, distance, and intersectionality at the scene of argument' (2013) 38 *Signs* 1000.
[230] As above 999; 1000.

assertion that this does not necessarily mean that identities do not matter, but instead demonstrates how identities simply reflect the intersection of multiple hierarchies and how such hierarchies are maintained. In other words, an intersectional lens captures the fact that referring to a person as male/female or abled/disabled showcases the hierarchies and how these identities are reinforced.

4.3 Criticisms and flaws of intersectionality

Having shown why law and human rights as liberal must shift to law and specifically human rights as intersectional, I now present the criticisms that have been levelled against intersectionality. Despite the advantages that intersectionality presents to women who have multiple forms of identity, such as a disabled Nigerian woman, critics have highlighted some problems.

A number of the criticisms have centred around what has been famously or infamously tagged the etcetera challenge.[231] This challenge highlights the idea that intersectionality, in its attempt to ensure that all voices are heard and included, falls into a trap where the following question arises: To what extent can identity categories and subjects continue to multiply? This reinforces scholars' references to the embarrassment that comes from a lack of knowledge as to where to end the endless proliferation, breaking down and multiplication of sub-groups and identity categories.[232]

One difficult question therefore is whether, realistically, legal and human rights frameworks can manage such an endless list. Yet, it has been pointed out that, aside from the multiplication of sub-groups, intersectionality falls into the same trap that it attempts to resolve, by assuming that all members of the sub-group have similar encounters.

Another trouble with intersectionality is that, while it promises the recognition of complexity, it also negates the promise. This is as a result of the fact that, because of the overwhelming complexity, it often falls into the trap of assuming that the differences it recognises can be fixed. Yet, there is an indefinite and wide-ranging list of differences that clearly cannot be covered in any given analysis. The difficulty or impossibility of accounting for every difference therefore becomes obvious. Ludvig notes that because of the infinity in the list of differences, the lines of

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[231] Nash (n 2 above) 457. A number of scholarships talk about this embarrassment of identity challenge for example, A Ludvig 'Differences between women? Intersecting voices in a female narrative' (2006) 13 *European Journal of Women's Studies* 246; 247.

[232] A Ludvig 'Differences between women? Intersecting voices in a female narrative' (2006) 13 *European Journal of Women's Studies* 246; 247.

intersectionality become blurred.[233]

This blurriness arises because of the problem of when to put a stop to the different competing identities that struggle for prominence. Also, what criteria should be used to determine which identity categories should be prioritised? This difficulty is further exemplified in the fact that the differences or complexities inherent in a woman's identity cannot be treated in isolation or disaggregated because, as has been established, categories of identity are not additive but multiply. Ludvig is therefore right to question the silence that shrouds the validity of intersectionality and to question the determining of differences as crucial or not: Who, when and how?[234]

These questions are relevant considering the difficulty faced by a disabled Nigerian woman, for instance, in being able to determine and identify on which ground she has suffered discrimination. Intersectionality therefore faces embarrassment when it aims to pursue all identities but then realises that every identity that a person carries, and its interactions, cannot be fully or exhaustively analysed.

In making a similar point, Fineman describes the trouble with highlighting differences between women.[235] The trouble is easily manifested when there is a lack of clarity as to when to actually put a stop to the different competing identities that struggle for prominence and what exactly are the criteria to be used to determine the identity categories that should be prioritised. Fineman explains how a fixation with women's differences creates a problem of hierarchies of forms of oppression.[236] She explains how hierarchies are guilty of disregarding voices that are crucial for change and how competing forms of oppression result in the dominant group's interests controlling the women on the margins.[237] She opines that privileging certain features to the detriment of others is counterproductive because each feature could potentially create difficulties and this could possibly hinder finding solutions to the difficulties that women share.[238]

However, this brings to the fore the question of which of these factors should take precedence or priority when analysing the circumstances that women encounter daily. Fineman describes how

[233] As above 247.
[234] Ludvig (n 232 above) 247; 248; 249.
[235] Fineman (n 81 above) 27.
[236] As above 27.
[237] Fineman (n 81 above) 27.
[238] As above 27.

emphasising a few differences to the detriment of others produces an analysis that fails to showcase the complex and gendered lives of women.[239] She believes feminists should be concerned about this. For her, such ranking of forms of oppression that hierarchies demand carries with it the dangers of disunity, exclusion, conflict and competition. Further, she illustrates that privileging certain identity categories to the detriment of others is counterproductive because each identity category can create difficulties. From her perspective, therefore, this situation could possibly hinder finding solutions to the difficulties that women share, thus preventing the strength in numbers needed to ensure that the voices of women and their experiences are heard.

The apprehension that characterises the management of sub-groups triggered the move and the shift from the narrow focus on identity categories and groups to power relationships. The rebuttal I offer here borrows from Tomlinson and other scholars, who insist that the argument that intersectionality is about difference or identity categories misses the point.[240] The idea is to take difference seriously where it does matter, while at the same time not putting it on an unnecessary pedestal.

Intersectionality has been accused of failing to problematise categories, resulting in a tendency to simply 'add and stir'. Intersectionality has thus been found to be complicit in the same individualistic identity politics that it intends to confront. Yet the disadvantage of individualising women's experiences is that it could lead to disregarding women's shared experiences of marginalisation. A solution would be to employ what have been referred to as 'master categories' and to acknowledge that in particular circumstances certain identity categories are more important than others.[241] Nevertheless, the scholars maintain that, in doing this, it is crucial to grasp that different positionalities have different reasoning that operates at different levels.[242]

Conaghan argues that intersectionality has reached its limit, especially in regard to law and feminism.[243] She attributes this limitation to the theory's emphasis on identity to the detriment of inequality. Again, she is very critical of the attention given to identity groups rather than focusing

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[239] Fineman (n 81 above) 27.
[240] Tomlison (n 229 above) 998.
[241] S Salem 'Feminist critique and Islamic feminism: the question of intersectionality' (2013) 1 *The Postcolonialist*.
[242] As above.
[243] Conaghan (n 190 above) 27.

on efforts to end oppression.[244] The crux of this argument is that although intersectionality has significantly added to the feminist narrative, the concept has reached its limits.

These limits of intersectionality have been associated with its origins in law.[245] According to Conaghan, intersectionality is undermined by its legal origins which are unable to deal with the complexity that oppression presents. She links the limitations of intersectionality with the lives of women on the margins. She notes that cultural and religious practices might be regarded as oppressive, while the women who engage in such acts might not necessarily perceive these practices as such. The question is therefore how human rights frameworks can accommodate such multiple identities, which are mirrored in their identities as women and their identities as members of a religious and cultural group.

It has been shown how, although certain aspects of a woman's identity may be identified as oppressive, it is commonplace for women to seek to preserve their cultural and religious identities because these identities have shaped and defined their identity. Intersectionality is therefore employed to resolve such tensions but it has been accused of being only partially able to resolve such tensions. However, in trying to respond to this criticism, I draw on Smith's point that intersectionality is the very instrument that could be employed to end the oppression that Conaghan seems to clamour for.[246] However, in attempting to counter the identity critique, Smith explains that no project can deal with every single identity, but that intersectionality emphasises the importance of acknowledging the complexity of voices that an identity may represent.[247] The need to make categories as fluid as possible becomes evident.

Another accusation that has been levelled against intersectionality is that it reinforces the use of categories. In other words, the way in which intersectionality views the disabled woman as consisting of a number of identity categories exposes the disabled woman. When the intersectional lens emphasises the idea that the category a woman carries is problematic or certain, it introduces the idea of an ideal norm or subject. Feminist critics have argued that intersectionality's dependence means that it has become positivist.[248] Salem explains that this means that the use of

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[244] As above 27.
[245] Conaghan (n 190 above) 27.
[246] Smith (n 14 above) 78.
[247] As above 78.
[248] Salem (n 241 above).

a category is expected to lead to true knowledge about the encounters of women on the margins.[249] She cites commentators who have argued as follows:

> Categories should be seen as bundles of relationships. While others maintain that floating categories should be instead exchanged by signifiers based on the lived realities of particular women and that representations should not be perceived as illustrating an individual's essence.[250]

In fact, following Crenshaw's argument, the rebuttal is that categories could be empowering and even where categories are a social construction and even precisely because identity categories are a social construction, this does not obliterate the real effect on an individual's lived realities.

Another criticism of intersectionality is that it is a Western concept that cannot necessarily be applied to the Global South, especially the disabled Nigerian woman's experiences. For women in countries like Nigeria, where neo-colonialism and liberal imperialism are still dominant and influence the structures of oppression, it is argued that concepts that have their origin in the West cannot be employed as an instrument for change. This is an interesting criticism since Nash has been instrumental in critiquing intersectionality for its overdependence on the black woman's encounters, to the detriment of and masking other identity categories of power. Tomlinson's rebuttal draws attention to Crenshaw's work, where the lived realities of black women are used in her work as a 'starting point'.[251]

To offer a rebuttal to these criticisms, I argue that the brand of intersectionality needed in the quest to speak to the lived realities of the disabled Nigerian woman is the intersectionality where the emphasis is not simply a question of sameness versus difference, but a question of power relations. Scholars have noted that for intersectionality to be beneficial in Southern countries such as Nigeria, a decolonial perspective needs to be merged with intersectionality. I believe this supports my argument that to understand the disabled Nigerian woman, it is important to understand her social positioning, thus speaking to the relevance of looking at how colonialism, coloniality and the colonising of women's bodies have influenced the experiences of the disabled Nigerian woman. Therefore, the rebuttal is that intersectionality as a question of power is against omitting difference

[249] As above.
[250] Salem (n 242 above).
[251] Tomlison (n 229 above) 1006; 1007; 1008.

where it makes a difference and at the same time guards against the urge to put difference on a pedestal where it does not make a difference.

In summary, I mention Tomlinson's four reasons why critics want to distance themselves from intersectionality.[252] The first reason is probably an outright rejection and replacement mostly raised by transnational feminists. The second reason concerns rectification, the third reason concerns regulation, and the last reason is the reduction reason.

I acknowledge that although I have questioned what it entails to be a woman, especially when this disregards the differences between women, I am reluctant to agree with scholarship that asserts that an essential woman's experience is needed, especially when it is argued that this kind of experience is fundamental to improving the material conditions of women. However, the essential woman's experience exposes the limits of the law where women who have multiple identities, such as the disabled Nigerian woman, are concerned.

These dilemmas might be what Williams[253] and Wong[254] are trying to guard against when they insist that the essentialist versus anti-essentialist debate is actually unnecessary, because an anti-essentialist debate can easily fall into the trap of essentialising itself. I am aware that just as I question the existence of an essential woman that appears to be representative of the experiences of only a few women, my use of the disabled Nigerian woman can be questioned. Who is this disabled woman in Nigeria?

However, while I acknowledge that there is no essential disabled Nigerian woman experience, my use of an intersectional analysis of the disabled Nigerian woman demands that the category of woman be defined as expansively as possible so that Nigerian law considers a disability (difference) perspective, especially where it concerns women. This is done because of my previous argument that disability is both a cause and a consequence of gender inequality and to highlight the limits of Nigerian law, by virtue of its singular as well as essentialist focus, in offering adequate protection to the Nigerian woman, particularly when she is identified as disabled.

[252] As above 999.
[253] Williams (n 1 above) 799.
[254] Wong (n 9 above) 277; 280; 292.

4.4 Conclusions

In this chapter, I show that in order to be able to speak to the lived realities of the disabled Nigerian woman, law and human rights must shift from a liberal singular identity to an intersectional lens. I support this position by offering three reasons why this is necessary.

First, law as liberal needs to be intersectional in order to be able to disrupt the liberal singular identity's disregard for the disabled Nigerian woman's multiple identities. In my argument, I demonstrate that the law's optimism about its ability to speak to the multidimensional voices that a disabled Nigerian woman represents is foiled by the single-issue perspective that it upholds. An intersectional analysis, understood as a theory that recognises the multidimensionality of identity categories that a disabled Nigerian woman embodies, disrupts law's liberal singular focus that forces it to create a single experience and freeze identity categories.

Second, law as liberal needs to be intersectional in order to be able to disrupt the liberal singular identity thinking that there is an essential woman's experience. I apply intersectionality as an alternative understanding that confronts law's single experience tendency to essentialise. Intersectionality is understood as a matrix of domination thinking that challenges law's essentialist assumptions about a universal woman's experience. My use of intersectionality is a questioning of the assertion of law and by extension feminist legal theory that it speaks universally for all women. I argue that this assertion is troubling, considering the privileged liberal tendencies that form much of the bedrock of feminism today.

The dominant narrative of essentialism emphasises a so-called universal and homogeneous experience of womanhood that, I argue, instead silences the voice of the marginalised (disabled Nigerian) woman. Intersectionality exposes the limits of a liberal vision of law conceptualised in such a way that it assumes the (disabled Nigerian) woman is similarly situated to the Western woman. This is done in a way that confronts and decentres (Nigerian) law's hold on an ideal standard.

I argue that the notion of a universal womanhood is flawed. This flaw stems from law's refusal to recognise, for instance, the stories of different (disabled Nigerian) women which reflect their lived realities. I show how, with intersectionality, the differences that exist within the category of 'woman' are exposed. This emphasises the flaw in a feminism that promises to speak for all women

but, in reality, speaks for only a certain group of privileged women. In other words, intersectionality is a counter argument that holds that when feminism promises to speak for all women, it should be clear for which 'woman' it claims to speak. It cannot use a one-size-fits-all liberal lens because the lived realities of women are not necessarily the same.

An intersectional explanation suggests that difference(s) exist in the notion of womanhood, and to define the concept of 'woman' using only a dominant category is flawed. Intersectionality exposes how defining the woman by her gender alone or as the sole identity category masks the manner in which other categories, such as sexuality, disability and ethnicity, interact and form her lived reality. In addition, the encounters of women must be understood from a particular socio-cultural context, and the experiences and encounters of all women are not necessarily the same.

It is imperative to minimise the essentialised assumptions, whether of feminism or disability, and instead emphasise the lived realities of women who are disabled. My argument is that, instead of adopting a flawed essentialist tendency, feminism must confront this flaw. I argue that the need for this confrontation lies in the fact that the creation of an essential womanhood is rooted in a challenge of difference. As illustrated, the essential 'woman' experience not only refuses to appreciate the multiple differences and identities that a disabled Nigerian woman embodies, but importantly ignores how these differences influence and form her lived reality.

Attention is therefore drawn to the fact that if feminists genuinely wish to fulfil their promise to listen to the voices of all women, feminism needs to tell the full story of the different (disabled Nigerian) woman. This is necessary because when the different (disabled Nigerian) women's experiences are centred, feminism can shift the attention from the challenge of definition, which is usually perceived as a way to exclude, and instead pursue an alternative vision for feminism, in other words, recognising that when the full story of the different (disabled Nigerian) woman is left untold, it denies her lived reality. We can thus conclude that feminism must be intersectional or it will be reckless.

Third, law as liberal needs to be intersectional in order to be able to disrupt the liberal singular identity's disregard for power relationships. I draw on the idea that intersectionality emphasises the inclusion of different identities and experiences and pays particular attention to the manner in which power relationships determine the exclusion of individuals with multiple identities, such as

the disabled Nigerian woman. In the process, I demonstrate the need for intersectionality as a theory of identity to the extent that it brings to light the identities that a different (disabled Nigerian) woman embodies and confronts the marginalisation that characterises the feminist movement.

My application of intersectionality therefore confronts law's liberal inspired single-issue perspective. This perspective manifests in a liberal thinking that attempts to freeze identity categories, in an essentialist thinking that assumes that there is a universal woman experience, and in a liberal thinking that disregards power relationships.

To conclude, my attempt with the above analysis is to substantiate the idea that feminism, in its bid to 'ask the woman question', has disregarded, ignored and completely erased the disability experience and perspective. This erasure resembles and mirrors how male experiences have been emphasised in the human rights narrative to the detriment of the female experience and perspective.

A critique of my analysis may be: Is there an essential disabled Nigerian woman experience? The answer would be in the negative. However, by centring the disabled Nigerian woman's experience, as this thesis does, we can use intersectionality to bring to the fore the importance of other identity categories and their power dynamics, for instance, the woman's Nigerian identity (cultural and religious identity), her womanhood, her disability and her intersections. The disabled Nigerian woman's experience is therefore important for feminism purely because her marginalisation and lived realities are different from those of other women.

Chapter 5: Can the disabled woman speak? The intersectionality of gender and disability: A critical analysis of Nigeria's anti-discrimination law and human rights framework

'The master's tools will never dismantle the master's house.'[1]

5.1 Introduction

The question I reflect on in this chapter is the extent to which Nigeria would benefit from a different or alternative understanding of law and specifically human rights. In framing my argument and with intersectionality in mind, I use the lived realities of disabled women to demonstrate that the one-dimensional identity perspective adopted by Nigerian law is limited. In this chapter, I use and centre the lived realities of the disabled woman in Nigeria to emphasise the need for law to shift its focus from the concept of gender as a dominant and isolated category of analysis for women to recognising the manner in which gender intersects with other categories of identity, specifically disability, in an effort to understand and possibly tackle the intersectional oppression that disabled women experience.

In the previous chapter, I explained the concept of intersectionality, emphasising the need for law to shift the focus from the concept of gender as an isolated and dominant identity category of analysis for women to recognising the manner in which gender interacts, intersects and is inextricably linked with other identity categories. Given the intersectional encounters that a disabled woman experiences, I argue that Nigeria would benefit from a different and an alternative understanding of law. In fact, it is possible to speculate that there is a close relationship and interaction between sexism and disability, so that the lines are almost blurred. In fact, I am arguing that Nigeria needs to develop an intersectional approach to discrimination to be able to protect the disabled woman.

I use the intersectional perspective as a metaphorical vehicle and focus on the lived realities of disabled women. My argument is that the intersectional oppression that disabled women suffer

[1] T Grillot 'Anti-essentialism and intersectionality: tools to dismantle the master's house' (1995) 10 *Berkeley Women's Law Journal* 17. This quote is originally from Lorde. I refer to this quote sharing Grillot's analysis and reasoning

stems from a combination of multiple identities that create oppression that is distinct from a single form of oppression and discrimination. This point can be deduced from the idea that a Nigerian woman's identity layers function less as separate, mutually exclusive entities, but rather as reciprocally constructing phenomena that in turn shape complex social inequalities and oppression.[2] In other words, the intersectional perspective recognises the unique encounters of the disabled woman based on the interactions and intersections of all relevant grounds, which could include gender, class, ethnicity, religion and disability.

Following Crenshaw's reasoning, I argue that intersectionality exposes that there is something wrong with how discrimination is defined in Nigeria.[3] I argue that Nigerian law by virtue of its liberal singular focus is limited in its ability to adequately protect women, especially when they are identified as disabled. I adopt Crenshaw's approach and use intersectionality as a metaphor to expose disabled women's power relationships, which are hidden from the law and specifically the human rights architecture, bearing in mind the following:

> Intersectionality is both a method of observation and an action-oriented form of practice that aims to expose and redress the workings of privilege and oppression that often remain unvoiced and hidden from view in the traditional single-axis analyses of discrimination and oppression used by most international human rights monitoring mechanisms.[4]

My use of intersectionality brings to light this problem, in a serious attempt to resolve forms of oppression such as sexism, disability and patriarchy. I therefore use Crenshaw's argument to highlight the difficulties in Nigerian law, particularly in regard to women. I therefore offer a twofold argument. First, I argue that the erasure of women's blackness as Crenshaw highlighted is similar to the erasure of disability (difference) in Nigeria. Disability is not even recognised in Nigerian law, thus allowing discrimination against the disabled woman to occur with impunity. The need to confront Nigerian law's blind quest for an ideal norm and its tendency to freeze

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[2] P Hill Collins 'Intersectionality's definitional dilemmas' (2015) 41 *Annual Review* 1.
[3] 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 151. As discussed in the previous chapter, one of the arguments in Crenshaw's study exposes is the idea that there is something not quite right with the court's interpretation of discrimination particularly with regards to African American women.
[4] I Truscan & J Bourke-Martignon 'International human rights law and intersectional discrimination' (2016) 16 *The Equal Rights Review* 104.

identity categories therefore becomes evident.

Second, the disabled Nigerian woman brings to the fore, using Crenshaw's reasoning, the importance of exploring the relationships in (different) identity categories, such as race or ethnicity, gender and disability, which a disabled Nigerian woman embodies, when formulating the legal/feminist narrative. These relationships show a decentred woman and her subjectivity, which shapes her experiences and forms her lived reality. The significance of intersectionality in decentring and countering law's blind quest for an ideal norm therefore becomes apparent.

My intersectional analysis of the disabled Nigerian woman here serves to counter, decentre and deconstruct the dominant individualistic liberal narrative characteristic of human rights, where the marginal oppressed voices are usually silenced in efforts to produce a so-called universal and neutral experience. I therefore make a case for the shift from a focus on rigid and watertight identities to an emphasis on the relationships of power, disadvantage and exclusion that disabled women suffer in Nigeria. The identities that a (Nigerian) woman embodies reveal power relationships.[5] Intersectionality is therefore applied here to bring to light the power relations and dynamics inherent in these relationships. For instance, how do gender, race/ethnicity, class, culture, religion and disability interact and influence the lived realities and experiences of disabled women?

Against this background, my argument proceeds in five stages as follows. This first stage is the introduction which outlines how the arguments in the chapter would proceed. In the second stage, I set the scene by providing narratives from disabled women in Nigeria that reflect on their intersectional experiences and lived realities. This provides a basis for the third stage, where I critically analyse the Nigerian legal and human rights architecture. I outline the equality and non-discrimination provisions in the Nigerian Constitution. I explore the non-discrimination section of the Nigerian Constitution in order to show how the current liberal understanding of the Nigerian legal and human rights architecture is limited in its ability to speak to the lived realities of disabled women.

I present features of the Nigerian anti-discrimination law and human rights framework that

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[5] JC Nash 'Home truth on intersectionality' (2011) 23 *Yale Journal of law and Feminism* 445.

arguably prevent it from recognising and offering adequate remedies to the intersectional discrimination that disabled women encounter. I intend to show that the limitations stem from the disabled woman's encounters of oppression that do not necessarily fit the dominant narrative that the law adopts. A different and alternative understanding to law is needed precisely because of these limitations.

By interrogating Nigeria's conception of equality and the non-discrimination provisions embedded in its legal framework, I demonstrate the ways in which the dominant narrative and assumptions of ability and masculinity are shrouded in the formal liberal rights framework.[6] I show how the threefold nature of liberal ideology (that manifests as universalism, atomism and the public/private dichotomy) deeply embedded in the Nigerian legal and human rights architecture limits it from accommodating a more complex and nuanced understanding of a disabled woman's lived realities. In other words, the disabled woman is denied the protection of Nigerian law because of her intersectional location.

The conclusion reached in this third stage is that a legal architecture that is patterned on the one-dimensional Nigerian legal perspective is limited in its ability to speak to the lived realities of disabled women. An analysis of section 42 of the Nigerian Constitution (the non-discrimination section) reveals that part of the difficulty is its liberal tendency to compare individuals (in this case, the disabled woman) with other Nigerians who do not necessarily share her characteristics. Research has shown that in order to be able to develop an intersectional lens in this situation, where there are no noticeable comparators, it is possible to conjecture and beyond that to ask why such discrimination has occurred.

In addition, this analysis makes it clear that list of grounds in Nigeria's anti-discrimination law needs to become more open-ended, in a manner that pays attention to the disabled woman, because discrimination can occur on the basis of more than one ground and can occur on the basis of several intersecting grounds. In order to protect disabled women, Nigerian anti-discrimination law must recognise that disability is not neutral in regard to gender, culture, religion and ethnicity.

In the fourth stage, I examine some case studies using an intersectional lens. I look at the story of

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[6] Equality as used here is considered a strong pillar and an expression of the realisation of human rights in Nigeria.

Amina Lawal, who garnered international attention when she was sentenced to death by stoning for adultery, under Sharia laws. Although she was not stoned in the end, one can deduce from her reported experiences that she must have suffered psychological and mental disabilities. This is followed by an examination of the kidnap of the 276 Chibok girls in Northern Nigeria. I examine these cases very briefly to show how the oppression suffered by women in Nigeria is not only a result of the fact that they are women (sex and gender) but because there is an often unacknowledged and inextricable connection between being a woman from the Northern part of Nigeria (ethnic origin), Muslim and subjected to Sharia laws or Christian (religion), and then subsequently becoming disabled (disability). Lastly, I look at the story of Mary Sunday, a case where a previously non-disabled woman became disabled as a result of gender-based violence.

These stories demonstrate the inextricable linkages between sex or gender, religion, culture and ethnicity to produce what Ribet has called an emergent disability.[7] The stories also expose the inextricable interactions as well as the blurred lines between sexism and disability. I expose the particular vulnerabilities of women on the margins, such as disabled Nigerian women, to specific forms of human rights violations. Lastly, I expose the unequal power relationships that exist and result in oppression, disadvantage and the voiceless disabled woman in patriarchal Nigeria.

The fifth stage offers conclusions. The Nigerian legal and human rights framework is yet to develop an intersectional perspective, as it has tended to adopt a one-dimensional lens in its non-discrimination provisions. This assertion is validated by the fact that the Nigerian legal framework does not grasp that disabled women form a distinct group. For example, I could not find one single domestic court decision on disabled women. This arguably proves that the disabled woman is indeed voiceless and falls outside the confines of Nigerian anti-discrimination law. However, beyond disability as an identity analysis, the encounters of the disabled woman are messy, showing that there is an intersectional and almost blurred relationship between the identity layers and the limits of categories.

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[7] 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. I subscribe to Ribet's definition of emergent disability which is a disability that would not necessarily have happened but for some form of oppression and the result of social oppression. The grounds of the oppression may be based on gender, sexuality, ethnicity, culture, religion and class or other disabilities and often occurs at the intersection of several of these identity categories at the same time.

My argument throughout this thesis relies on Garland-Thomson's reasoning that to be woman in patriarchal societies such as Nigeria is potentially disabling and a type of disability.[8] This reasoning in my opinion underlies the interactions and intersections that exist between sexism and disability. These interactions and intersections reveal the complexity of oppression and its messiness in women's lives. This is particularly the case when considering the undeniable patriarchal nature of Nigerian society.[9] I argue that sexism and disability are the workings of a system of a dominant narrative that is deeply entrenched in patriarchy.

In fact, this chapter particularly demonstrates that there will be no progress in curbing both sexism and disability discrimination in Nigeria without recognising their interactions and intersections and until insight is gained from their intersectionality, and this is considered and mirrored in Nigeria's legal architecture. By analysing the Nigerian legal and human rights architecture, this chapter illuminates the limits of law and specifically human rights in speaking to the lived realities of the disabled woman. The conclusion that emerges from the analysis is that Nigeria would benefit from a different or alternative intersectional understanding and narrative of law and human rights to protect disabled women. What becomes even more apparent is that when we speak about disability, particularly with regards to women in patriarchal Nigeria, it is mostly socially constructed and therefore biased towards gender, cultural, religious and ethnic divisions.

At the end of this chapter I propose that the Nigerian legal and human rights architecture needs to develop an intersectional perspective as a different and alternative understanding of discrimination that will recognise the lived realities of disabled women. An alternative understanding that is based on intersectionality will provide the space for identifying and eradicating the unequal power relations that reinforce oppression and privilege in Nigeria.

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[8] R Garland-Thomson 'Integrating disability transforming feminist theory' (2002)14 *NWSA Journal* 6.

[9] The patriarchal nature of the Nigerian society has been well documented in scholarship. See for example E Durojaye and Y Owoeye 'Equally unequal or unequally equal: Adopting a substantive equality substantive equality approach to gender discrimination in Nigeria' (2017) 17 *International Journal of Discrimination and the Law* 70. See also GA Makama 'Patriarchy and gender inequality in Nigeria: the way forward' (2013) 9 *European Scientific Journal* 115. 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; 198.

5.2 The disabled Nigerian woman and intersectional encounters

The disabled Nigerian woman has intersectional identities.[10] As a result of these intersectional identities, she is more likely to encounter unique and multiple forms of vulnerabilities, discrimination and oppression. Intersectional forms of oppression could be the result of being a woman, disabled, a minority, from a particular religion and Nigerian ethnic background, or of being poor. As noted in preceding chapters, these multiple intersectional discriminations are often mirrored in the general neglect, physical, sexual and mental oppression, and the inhumane and degrading treatment that disabled women often encounter. In Nigeria, it is common to see disabled women soliciting for alms at parks, on the roads and highways, at offices, and at even religious institutions.[11] This situation is the result of the general perception that disabled women are an embarrassment and a nuisance to society. This discrimination is validated by negative and erroneous assumptions that disabled women are, for instance, asexual and unqualified for motherhood or, in extreme cases, are hypersexual.[12]

These assumptions increase their vulnerability to rape, sexual violence and other forms of oppression and discrimination, and may in extreme situations even lead to murder and jungle justice.[13] Eleweke and Ebenso describe how, aside from the inequality encountered as a result of their gender, disabled women suffer multiple forms of discrimination and oppression.[14] The authors report that disabled women–

> … have a lot to contend with. We face a lot of different discrimination based on gender, because of the patriarchal society we live in. We also face discrimination because of our disability. We experience social discrimination which can either be based on being a woman or because we are disabled.[15]

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[10] This point can be deduced from my previous chapters' arguments and from a number of scholarships on intersectionality. For more on intersectionality, T Grillot 'Anti-essentialism and intersectionality: Tools to dismantle the master's house' (1995) 10 *Berkeley Women's Law Journal* 17.
See also 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.
[11] IO Smith 'Towards a human rights convention on persons with disabilities: Problems and prospects' (2002) 43 *Amicus Curiae* 8; 9.
[12] GE Afolayan 'Contemporary representations of disability and interpersonal relationships of disabled women in southwestern Nigeria' (2015) 29 *Agenda* 54.
[13] E Etieyibo & O Omiegbe 'Religion, culture, and discrimination against persons with disabilities in Nigeria' (2016) 5 *African Journal of Disability* 2, 6.
[14] CJ Eleweke & J Ebenso 'Barriers to accessing services by people with disabilities in Nigeria: Insights from a qualitative study' (2016) 6 *Journal of Educational and Social Research* 118.
[15] As above 118.

This narrative draws attention to the fact that disabled women have multiple identities and have been marginalised by virtue of being both disabled and female. The oppression and discrimination women encounter because of their gender has already been established. Significant evidence illustrates that women are denied their humanity and encounter all kinds of discrimination and oppression simply because they are women in Nigeria.[16] The question that this raises is the following: If the disabled woman in Nigeria encounters oppression, on what grounds has this oppression occurred? A subsequent question would be whether the disabled Nigerian woman has encountered the oppression on the basis of her gender or on the basis of her disability, or on both grounds.

These questions bring to light inter-related points. A disabled Nigerian woman suffers encounters of multiple and simultaneous discrimination and oppression. This is because disabled women cannot neatly compartmentalise or categorise their identities, they are women and disabled at the same time. In other words, the disabled woman is unable to explain, let alone describe with certainty, whether an encounter was based on one particular identity or ground.

I therefore argue that the forms of oppression that disabled women suffer are multiple and intersectional. In other words, these forms of oppression are not additive or cumulative (which goes beyond the mere addition of one or more grounds of discrimination as the above narrative appears to illustrate) but rather the forms of oppression that could manifest as sexism and disability discrimination are mutually related and intersecting. This is clearly shown by a case reported in a 2011 Global Rights Report:

> Jessica, age 19, is a mute special school student in Bauchi. She had left home to buy groceries. After waiting for hours for her return, her parents made frantic efforts to trace her and stumbled on information that she was last seen at a police officer's residence in the neighbourhood. When they knocked at the door of the described house, the police officer responded, 'I'll soon be through with the job', thinking he was speaking to a friend who saw him lure Jessica into the room. Jessica's parents forced the door open and discovered that the police officer was raping their daughter. The matter was

[16] 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; 198.

> reported to the police outpost in Gwalameji, but no criminal action was initiated against the offender.[17]

Here is the story of a disabled woman who was raped:

> There was a case where a woman in a wheelchair was raped. The case was not taken seriously. Even the family members did not want us to pursue it. They felt that if a disabled woman got raped, she should have been grateful that someone wanted to have sex with her![18]

These two narratives show how a disabled woman is raped not on the grounds of her only being a woman or only being disabled, but particularly because she is both disabled and a woman. In my opinion, these narratives point to how disabled women may encounter significant discrimination and oppression that is connected to their disability and their gender, which is thus different from the encounters of disabled men or women generally. This fact becomes clear when one considers how the above narrative notes that the disabled woman must consider herself lucky and show gratitude that a person is willing to have sex with her. In my view, this indicates that the rape occurred because of the trait combination of gender and disability.

The argument here is that the combination of gender and disability produces a particular oppression and discrimination that is greater than the sum of their individual parts. The narratives also clearly depict the interactions that could be reflected in the way sexism could reach into disability, disability wraps around class, class strains against abuse, abuse snarls into sexuality, sexuality folds on top of race and ethnicity, and everything is finally embodied in the single disabled female body.[19] The narratives show that disabled women's oppression may be magnified by the sexism that intersects with official disability.

If the disabled woman in Nigeria suffers multiple and intersectional forms of oppression, implicit in this assertion is the reminder that it will be a wasted venture to attempt to eliminate these forms of oppression separately. This lays the basis for another point: where disabled women's encounters of oppression are multiple and intersectional, unfortunately these cannot be articulated in Nigeria's

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[17] Global Rights Kano Human Rights Network (KAHRN) & Bauchi Human Rights Network (BAHRN) 'State of human rights in northern Nigeria abridged version' (2011) 18.
[18] Eleweke & Ebenso (n 14 above) 118.
[19] B Smith 'Intersectional discrimination and substantive equality: A comparative and theoretical perspective' (2016) 16 *The Equal Rights Review* 73.

legal framework. In fact, the argument in this thesis is that, where disabled women's experiences and forms of oppression are intersectional, as depicted above and throughout the thesis, the law is limited in its ability to speak to their lived experiences or to provide them with the necessary protection.

Ribet explains why this is so. According to her, most legal frameworks are usually structured in a manner that limits them and blinds them from recognising or resolving the interactions of racial or ethnic group, class, gender, sex, age, disability or religious oppression, and their resultant forms of oppression.[20] I agree with her point that the product of these interactions, which are mostly ignored, crucially underlie emergent disabilities.[21] In my view, this non-recognition of and lack of remedy for intersectional discrimination and oppression limits Nigerian law's ability to speak to the lived experiences and realities of disabled women.

In fact, I insist that once women's encounters are intersectional in nature, the limitations of Nigerian law become obvious. I therefore conclude that the disabled woman, as a result of her intersectional positioning, is rendered voiceless and lacks the protection of Nigerian law and specifically the human rights framework.

The Nigerian legal and human rights framework, like the majority of non-discrimination frameworks, including many human rights treaties, portrays a one-dimensional perspective.[22] Further examination reveals how law has traditionally and historically perceived individuals as monolithic. In fact, most of the anti-discrimination international human rights bodies focus on discrete, mutually exclusive grounds of discrimination, as recognised in human rights instruments. We could speculate that disabled women's encounters of oppression are silenced and unheard because these international bodies see the disabled woman as having a single feature at a time and erroneously assume that her oppression or discrimination is on a sole ground each time.

Significant evidence shows that individuals are multidimensional and cannot be defined solely by a monolithic feature. In other words, individuals are not only men or women but come from certain ethnic, cultural and religious backgrounds that embody and possess different and varying identity

[20] Ribet (n 7 above) 197.
[21] As above 171.
[22] Truscan & Bourke-Martignon (n 4 above) 104.

layers.[23] In this context, therefore, the disabled woman is not only a woman but she is also disabled, has a particular ethnic origin, has a particular religious affiliation, and is most likely poor. In fact, as the above narratives show, most cases of discrimination and oppression that disabled women suffer affect more than one identity layer, and one layer is not more important than another, that is, they are intersectional. This could mean that any one of the disabled Nigerian woman's identity layers or a combination of her identities can be the basis for discrimination and oppression. Despite this reality, anti-discrimination law and human rights documents have adopted a one-dimensional perspective with a focus on the grounds of discrimination in isolation. This traditional one-dimensional perspective is used to enforce legal provisions prohibiting discrimination.

In other words, despite evidence that individuals have multiple and intersecting identities and are more likely to experience multiple forms of discrimination and oppression, the remedies and resolutions offered by international human rights mechanisms have tended to reinforce a one-dimensional perspective of discrimination that, as some authors have observed, establishes normative and institutional fragmentation and discursive hierarchies by which experiences of discrimination are identified and resolved.[24] Consequently, because of the gender aspects of the disability rights framework being neglected, as well as the disability aspects of feminism being neglected, it becomes crucial to expose the limits of Nigerian law in speaking to the lived realities of disabled women.

We can therefore conclude that most non-discrimination laws cling to a one-dimensional lens that disregards differences along the intersecting identity layers of gender, race, ethnicity, religion and disability. Yet, this does not tell the whole story and reflect the reality. Corroborating the argument, particularly with regard to women, Bond notes that even though it has been established that women's oppression is intersectional, their oppression continues to be viewed and explored from law's single and one-dimensional perspective.[25] This chapter is concerned with deconstructing or countering the dominant one-dimensional narrative of Nigerian law, which does not adequately reflect women's encounters, particularly those within marginalised communities.

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[23] United Nations Committee on the Rights of Persons with Disabilities Report 'General discussion on the rights of women and girls with disabilities' (2014) 14.
[24] Truscan & Bourke-Martignon (n 4 above) 104.
[25] JE Bond 'International intersectionality: A theoretical and pragmatic exploration of women's international human rights violations' (2003) 52 *Emory Law Journal* 104.

Such a one-sided perspective prevents law and specifically the human rights framework from addressing and responding adequately to the complex forms of oppression and discrimination that are a product of the sexism and disability discrimination encountered by disabled women. Unfortunately, with such a perspective, disabled women's intersectional encounters remain outside the confines of the law. The oppression that women suffer in Nigeria, whether it manifests as sexism or disability discrimination, or both, is largely attributable to the interactions and relationships that exist between law and patriarchy[26] and law and culture,[27] and the tripartite nature of the Nigerian law.[28]

Iwobi describes these relationships in referring to the patriarchal, cultured and pluralistic nature of Nigerian law.[29] Using the example of widows, he emphasises the relationships between culture, the manifestations of patriarchal power, and the pluralism that is embedded in the Nigerian legal environment as responsible for the oppression of women and arguably of the disabled woman. The complicity of the one-dimensional perspective of law in reinforcing the oppression of women in Nigeria is undeniable, making a mockery of its ability to protect disabled women. In other words, the question is how law with its one-dimensional perspective intends to protect disabled women from the oppression it is guilty of perpetuating by virtue of its unholy alliance with patriarchy, culture and pluralism.

Despite law's complicity in the oppression of disabled women through its patriarchal, cultured and pluralistic underpinnings and interactions, it can still pretend, because of its monolithic approach, to be oblivious to the oppression and discrimination that women experience, whether this manifests as sexism or disability discrimination or both, as is the case for the disabled woman. The disabled woman's intersectional encounters remain outside the confines of the law because the law cannot recognise or resolve the interactions between racial or ethnic origin, class, gender, sex, age, ability, and cultural and religious differences. The need to scrutinise the law – the objective of this chapter – then becomes apparent.

The above discussion makes it clear that where disabled women experience intersectional

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[26] E Durojaye (n 16 above) 176; 198.
[27] S Williams 'Nigeria, its women and international law: Beyond rhetoric' (2004) 4 *Human Rights Law Review* 229.
[28] R Zahn 'Human rights in the plural legal system of Nigeria' (2009) 1 *Edinburgh Student Law Review* 73;74; 85.
[29] AU Iwobi 'No cause for merriment: The position of widows under Nigerian law' (2008) 20 *Canadian Journal of Women and Law* 37.

encounters, as is the case in Nigeria, legal remedies are limited and largely difficult, if not impossible, to achieve. I attribute this limitation to the one-dimensional perspective that has been adopted by the Nigerian legal framework, which fails to recognise complex interactions.

The one-dimensional perspective that characterises the Nigerian legal architecture will be demonstrated in the next section, where I start by exploring the Nigerian legal framework, particularly its anti-discrimination law as encapsulated in section 42 of the 1999 Constitution of the Federal Republic of Nigeria (Nigerian Constitution).[30] I expose and demonstrate its one-dimensional lens, which is evident in section 42's emphasis on universality, atomism and the public/private dichotomy.

5.3 Can the disabled woman speak? The intersectionality of gender and disability and a critical analysis of the 1999 Constitution of the Federal Republic of Nigeria

In this section, I demonstrate how the perspective on non-discrimination adopted by section 42 of the Nigerian Constitution perceives Nigerians as one-dimensional. In my view, it is this monolithic and one-dimensional approach to non-discrimination that arguably limits the ability of Nigeria's legal and human rights framework to speak to the lived intersectional realities of the disabled woman.

My position is that the one-dimensional perspective that is currently adopted is limited in its value and, in order to be able to speak to the lived realities of disabled women, Nigeria will benefit from an intersectional lens. I argue that the country's anti-discrimination law and human rights framework has not yet developed such a lens. I explore the Nigerian anti-discrimination law jurisprudence, particularly as provided for in section 42, and how it relates to intersectionality. By examining case law, I will draw attention to how Nigeria's anti-discrimination law, specifically in section 42, has refused an intersectional analysis.

It has been established that non-discrimination and equality are the two foundations of law and specifically human rights.[31] Equality has been described as the outcome of the right to non-discrimination and as the direct opposite of any unfair treatment encountered on the basis of certain

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[30] The Constitution of the Federal Republic of Nigeria of 1999 (the Nigerian Constitution) secs 42.
[31] J Donnelly & R Howard 'Human dignity, human rights, and political regimes' (1986) 80 *The American Political Science Review* 802. See also J Donnelley 'Human rights and human dignity: An analytic critique of non-western conceptions of human rights' (1982) 76 *The American Political Science Review* 303.

personal features. This has been acknowledged in most, if not all, human rights documents. The Nigerian Constitution is no exception. Its preamble outlines the authority and superiority of the Nigerian Constitution as the supreme law of the land by which everyone is bound.[32] As the supreme law, the Constitution includes provisions on non-discrimination and equality.

Section 17(2)(a) of Chapter 2 of the Nigerian Constitution emphasises the equality of rights, obligations and opportunities before the law for every Nigerian citizen.[33] At face value, this provision is optimistic as it ostensibly provides equality of rights before the law for every citizen in the country, including the disabled woman. Nevertheless, the Constitution's reference to equality of rights and equal treatment before the law for every Nigerian citizen can be questioned, particularly when one considers that the right to equality is enclosed within the fundamental objectives and directive principles of state policy that are regarded as non-justiciable.[34] This could mean that the provision of the right to equality, like many other rights outlined in this chapter of the Constitution, could be described as merely aspirational and theoretical. It therefore becomes difficult, if not impossible, for these rights, particularly as they relate to equality, to be guaranteed in practice – and especially for the disabled woman.

Chapter 4 of the Nigerian Constitution outlines the Bill of Rights and Fundamental Freedoms that provides rights for all Nigerian citizens. These justiciable fundamental human rights include the right to non-discrimination. Specifically, section 42 of the Constitution refers to the right to non-discrimination for all citizens, ostensibly including the disabled woman. The right to non-discrimination states the following:

> 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

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[32] The Nigerian Constitution The preamble of the document underscores its supremacy over all the laws in the land.
[33] The Nigerian Constitution chapter 2 sec 17(2) is illustrative of the point.
[34] The Nigerian Constitution chapter 2 sec 17(2) contains socio-economic rights that are considered non-justiciable under sec. (6) c. See also, AI Ofuani 'Protecting adolescent girls with intellectual disabilities from involuntary sterilisation in Nigeria: Lessons from the convention on the rights of persons with disabilities' (2017) 17 *African Human Rights Law Journal* 553.

> 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, religious 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.[35]

Despite what this section suggests, if it is assumed that equality is synonymous with non-discrimination and that discrimination against an individual will ultimately result in the infringement of the right to equality, then how the right to equality is to be realised in the Nigerian context is not exactly clear. This is because the right to equality as provided for in Chapter 2 of the Constitution – which could be said to be a non-justiciable right – is at odds with the right to non-discrimination in section 42 of the Constitution, which is regarded as justiciable. One would be correct to conclude that these conflicting provisions prove the unwillingness of Nigeria to ensure the right to equality for every Nigerian citizen.

Nevertheless, perhaps in the light of reconciling these tensions and possible conflicts between the non-justiciable right to equality and the justiciable non-discrimination right, some scholars insist that section 42 should be read together with section 34 of the Constitution, which deals with human dignity, to ensure that equality is guaranteed. It is apparent that we need to question what equality and non-discrimination mean, particularly in the Nigerian context.

5.3.1 What is equality and (non-)discrimination in the Nigerian context?

To answer the question in regard to (non-)discrimination, we need to note that there is no clear definition of discrimination in the Nigerian Constitution.[36] This lack of definition could have several implications: one is that where there is no definition of a problem, in this case discrimination, there will usually be some uncertainties about its resolution (non-discrimination). It is therefore not surprising that, apart from the lack of a definition of discrimination, there is no clear and consistent approach to understanding and interpreting section 42 of the Constitution.

[35] The Nigerian Constitution sec 42.
[36] Women Aid Collective for Nigeria NGO Coalition on CEDAW Report 'CEDAW and accountability to gender equality in Nigeria: A shadow report' (2008) http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/NigeriaNGOCoalition41.pdf 21 (accessed 12 June 2017).

However, in trying to understand the right to non-discrimination, scholars agree that there is a leaning and inclination towards liberal or formal roots. Durojaye and Owoeye attest to how the Nigerian courts, in making their decisions, still rely greatly on a formal or liberal perspective in explaining and interpreting section 42.[37] If the Nigerian liberal roots are established, then the question that begs answering is what this means.

Equality and non-discrimination, according to liberal or formal roots, are conceptualised as a condition of sameness that includes the right of every Nigerian to be treated the same. However, while equality as far as Nigerian law is concerned is an issue of sameness, gender in this same liberal vision is seen *as* difference, subtly referred to as disability. This position is consistent with Brown's statement that:

> If difference (gender) is in opposition to liberal sameness then gender difference which is women's sexual difference is in opposition to the liberal human being, and equality defined as sameness is the opposite of gender as difference.[38]

With this liberal reasoning, injustice, oppression or discrimination happen only when those considered the same are treated differently, whereas ontological difference is considered to be outside the confines of justice. The implication of this reasoning for the protection of disabled woman is substantial, particularly bearing in mind Crenshaw's reminder. First, what the disabled woman teaches is that the recognition of difference along a single dimension of gender is not enough, because gender is not the only defining characteristic in women's lives. Second, the disabled woman, because of her gender and disability and other possible differences, is in opposition to and out of tangent with the liberal human being, who is expected to be an able-bodied man.

The opposite of this liberal definition of equality that Nigerian law tirelessly pursues is not necessarily inequality or discrimination, but difference. It has been shown that while inequality is

[37] 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* 77. Chegwe also underscores the formal and liberal understanding to equality in Nigeria in E Chegwe 'A gender critique of liberal feminism and its impact on Nigerian law' (2014) 14 *International Journal of Discrimination and the Law* 66.
[38] W Brown *States of Injury, power and freedom in late modernity* (1995) 153.

the difficulty that equality as sameness attempts to resolve, difference that manifests as gender and disability is the difficulty to which equality as sameness does not apply.[39] If this is the case, these two interrelated points could possibly explain the legitimacy that inequality and oppression enjoy where difference exists. How else can the prevalent oppression that manifests as sexism or disability discrimination or both be explained in Nigeria? It is even possible to speculate that disability happens because women are naturally unable to fit in to the sameness criteria and, given that so many of women's encounters of oppression relate to their sexual selves, by magnifying the sameness of men and women, the 'sexual body' and, particularly, the 'woman's' body is erased.[40]

Borrowing from Crenshaw's argument, therefore, I contend that the erasure of the woman's body as it happens in Nigeria today is similar to the erasure of women's blackness. This kind of liberal reasoning explains the continuing disability as a structural norm in which women are not only disabled, but also have an increased tendency to be disabled through exposure to patriarchal tendencies. The allegiance of the anti-discrimination section to the equal treatment perspective as the dominant conception of equality is therefore easily manifested.

Considering the characteristics of the dominant liberal and equal treatment perspective, the problems for the disabled woman with intersectional encounters in regard to the right to non-discrimination are clear. The question is what the implications of such a formal and liberal interpretation of section 42 are for the disabled woman. The reasons for the limitations of Nigeria's anti-discrimination law and human rights framework in speaking to the intersectional encounters of disabled women are addressed in the section below.

5.3.1.1 False universality: Direct or indirect discrimination in section 42 of the Nigerian Constitution

I argue that the Nigerian law and human rights framework is limited in speaking to the lived and intersectional encounters of disabled women, because it does not contemplate the intersectional discrimination that the disabled Nigerian woman encounters. Nigeria's law is limited in speaking to the lived experiences of the disabled woman because section 42 pretentiously emphasises false universality. Underlying this non-discrimination section is the understanding and interpretation

[39] As above 153.
[40] E Chegwe 'A gender critique of liberal feminism and its impact on Nigerian law' (2014) 14 *International Journal of Discrimination and the Law* 68.

that likes should be treated in a like or similar fashion.[41] Arguably, this understanding does not necessarily contemplate the intersectional encounters of the disabled woman that are manifested in the interactions between sexism and disability.

The subsequent question therefore is how exactly the non-discrimination section is to be interpreted. One such interpretation is evident in section 42's claim to false universality. The section seeks to exhibit its neutrality and universality, particularly in relation to the right to non-discrimination. This can be clearly observed in the clear prohibition of direct discrimination. However, the problem with this is that rules and laws grounded on the liberal narrative that claim to be universal and neutral are usually blind to politics and unequal power relations in their quest for rational behaviour.[42]

This is applicable in Nigeria where, even though the wording of the section might not directly intend to be discriminatory, for example, by not explicitly excluding certain groups, its outcome suggests the opposite, especially with its similarly situated requirement. This requirement is one where a similar practice and condition has to be universally applied to every Nigerian, irrespective of their differences.[43] In other words, while the section ostensibly provides for the prohibition of discrimination, at the same time it ironically appears to condone indirect discrimination against certain groups by requiring that these groups of persons pass a similarly situated or comparison test.[44]

With this test, the allegiance to universality is upheld, because underlying such a comparison test is the assumption that men and women, like the able-bodied and disabled, are to be treated the same because they share similar experiences. The consequence of such an assumption is that injustice, oppression or discrimination can only be said to have happened when those considered to be the same are treated differently. Yet it is common knowledge that this assumption is not necessarily true. Durojaye and Owoeye have shown that identity, whether it manifests as gender

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[41] Durojaye & Owoeye (n 37 above) 73.
[42] K Schick 'Beyond rules: A critique of the liberal human rights regime' (2006) 20 *International Relations* 321.
[43] N Umeh 'Reading disability into the non-discrimination clause of the Nigerian constitution' (2016) 4 *African Disability Rights Yearbook* 73.
[44] As above 73.
Durojaye &Owoeye also allude to the same point in their scholarly work in Durojaye & Owoeye (n 37 above) 74.

or disability or both, is not only formed differently but is socially constructed.[45]

It has been shown that men and women in Nigeria are socialised and raised as completely separate individuals with different identities.[46] The evidence provided by these authors points to how men and women, like the able-bodied and disabled, are not necessarily the same and do not share similar encounters, as Nigerian law pretentiously emphasises.[47] This situation suggests that an identity in Nigeria is less likely to be constructed or construed in the abstract or neutral terms that section 42 pretentiously emphasises. This means that those who are considered different fall outside the protection of the law.

Further evidence connects these differences between men and women to religious and cultural beliefs that form an integral aspect of and influence Nigerian law. Hence, where men and women, like the able-bodied and the disabled, are regarded as biologically different, such an understanding justifies the differences in treatment on the basis of sex, gender, ability and ethnicity etc. This situation may explain the social construction that ensures that a woman is brought up to be seen as naturally inferior to the man and, by extension, disabled.[48]

The difficulty with this understanding of law, particularly for the disabled Nigerian woman, is immediately clear. The disabled woman does not necessarily fit into the category of *all* women because her experiences are not believed to be the same as those of 'all' women, nor can her experience fit into the experiences of 'all' disabled persons. In terms of Nigeria's liberal understanding the disabled woman is obligated to prove that she is like non-disabled comparators and her experiences are similar to their experiences in order for her to qualify for protection. Yet, because this approach generally involves comparing the disabled woman with other Nigerians who do not necessarily share her characteristics or encounters, her encounter of oppression will be obscured. The disabled woman's encounters of oppression will be obscured by the existence of non-vulnerable able-bodied comparators who have not suffered the same encounters.

In fact, to use non-vulnerable and able-bodied Nigerian men and able-bodied women as

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[45] Durojaye & Owoeye (n 37 above) 71.
[46] CO Izugbara 'Patriarchal ideology and discourses of sexuality in Nigeria' (2004) *Africa and Regional Sexuality Resource Centre* 7; 23.
[47] Izugbara (n 46 above) 7; 23.
[48] As above 7; 23.

comparators for vulnerable disabled Nigerian women amounts to subjecting her to oppression and discrimination.[49] This explains the oppression and discrimination that vulnerable groups still suffer because, with such a liberal understanding, differential treatment is not considered an infringement of equality.[50] Nigeria's preference for and endorsement of isolation and segregation as the best way of achieving equality between disabled and non-disabled persons illustrates the point.

As an aside, I use the term *able-bodied* women loosely since, in my opinion, it is debatable whether able-bodied women exist. Women suffer severe oppression and its disabling consequences because of their gender.[51] This is in line with the argument in this thesis that women in patriarchal societies such as Nigeria are disabled, and indicative of the interactions and intersections that exist between sexism and disability.

Consequently, the interpretation of section 42 of the Nigerian Constitution that insists on the idea that likes should be treated in a like or similar fashion fails to understand not only the historically rooted but also the intersectional nature of oppression and discrimination that women experience in a manner that then becomes unfavourable to vulnerable disabled woman.[52] By emphasising the similarities of Nigerians, as opposed to how they differ, structural oppression and disadvantage that manifest as poverty, institutionalised sexism and disability are disregarded. In other words, the intersectional disabled female self is born because disability is regarded as both an outcome of structural oppression and the cause of continued oppression, particularly when it results in poverty or immobilisation.[53]

To recap: This discussion demonstrates that the liberal or formal understanding of non-discrimination adopted in section 42 of the Constitution has failed woefully, particularly when interpreted as above, to recognise that vulnerable persons such as disabled persons are different from other non-vulnerable Nigerians. As a result, the section does not represent an equality that is inclusive of vulnerable persons, particularly disabled women.[54] Instead, it creates the intersectional

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[49] Umeh (n 43 above) 55.
[50] Durojaye & Owoeye (n 37 above) 77.
[51] Durojaye (n 16 above) 176, 198. See also AU Iwobi 'No cause for merriment: The position of widows under Nigerian law' (2008) 20 *Canadian Journal Women and Llaw* 40. See also GA Makama 'Patriarchy and gender inequality in Nigeria: The way forward' (2013) 9 *European Scientific Journal* 115.
[52] Durojaye & Owoeye (n 37 above) 70.
[53] A Clutterbuck 'Rethinking baker: A critical race feminist theory of disability (2015) 20 *Appeal* 51.
[54] Durojaye & Owoeye (n 37 above) 77. See also Umeh (n 43 above) 55.

disabled female self.

Nevertheless, with intersectionality in mind, I take the argument further, particularly in regard to the disabled woman, to argue that section 42, as construed, not only fails in its ability to recognise that vulnerable persons are different from non-vulnerable Nigerians but, importantly, it woefully fails to recognise and differentiate between subjects within the same vulnerable group, for example, women or people with disabilities. In other words, it falls into the trap of erroneously treating vulnerable groups as homogeneous, failing to recognise their internal differences. The implication of this compartmentalisation is that the intersectional discrimination and oppression unique to specific members of the vulnerable women or disability group remain invisible and fall outside the protection of the law. These differences could manifest as gender-based discrimination in the case of the disabled person or disability-based discrimination in the case of women.

However, the disabled woman suffers a combination of gender-based discrimination and disability-based discrimination simultaneously. This kind of discrimination and oppression is not necessarily targeted at women or the disabled as a homogeneous group, but is targeted particularly at women on the margins, in this case the disabled women who do not necessarily share similar experiences with disabled men or women generally. These gender aspects of disability and the disability aspects of gender in the disability/women vulnerable groups are rarely scrutinised in the dominant legal narrative.

Offering a contrary argument and in attempts to be optimistic, some authors have argued that section 42 can be interpreted and understood to seemingly address both direct and indirect discrimination.[55] Indirect discrimination refers to a type of discrimination where ostensibly neutral acts may be discriminatory in their impact, irrespective of the intention.[56] Durojaye and Owoeye argue that this kind of interpretation is essential in tackling gender discrimination.[57] However, the possibility of tackling gender discrimination in the country is uncertain and even questionable, considering the sexist and gender bias evident in the male wording of the very same section.[58]

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[55] Durojaye & Owoeye (n 37 above) 76.
[56] P Uccellari 'Multiple discrimination: How law can reflect reality' (2008)1 *Equality Rights Review* 33. See also LLM Timo Makkonen 'Multiple, compound and intersectional discrimination: Bringing the experiences of the most marginalized to the fore' (2002) Institute for Human Rights; Åbo Akademi University 4.
[57] Durojaye & Owoeye (n 37 above) 76.
[58] The Nigerian Constitution sec. 42.

Apart from the extensive criticism that exists in this regard, the use of the male pronoun in the section supports this claim.[59]

Moreover, the problem with an optimistic interpretation of section 42 has three aspects. First, even if a progressive interpretation is followed, the possibility of tackling gender or disability discrimination in the country is uncertain, considering the difference (gender and disability) wording of the section, which makes this progressive interpretation difficult. Second, while there is proof of progressive interpretations of section 42 succeeding in upholding women's right to non-discrimination, there are also other cases that demonstrate the opposite. It becomes obvious that unfortunately there is no clear and consistent approach to understanding and interpreting this section. Third, if the second point is true, then the possibility of protecting a disabled woman will be even more remote.

In fact, as the cases below will indicate, there is no normative basis for positive treatment upon which to ground an intersectional discrimination claim in Nigeria's anti-discrimination and human rights framework. To prove the three interrelated points above, I interrogate established scholarship on non-discrimination cases in Nigeria. While I found a number of cases dealing with sex discrimination, there is an acknowledged deficit of disability discrimination cases.[60] My struggle to find a single court case on whether section 42 of the Constitution is applicable to the disabled woman was particularly disturbing. I observed a lack of recognition of the existence of disabled women as a distinct group.

Although alarming, this is revealing in proving my argument that law and specifically human rights is limited in speaking to the lived realties of disabled women, rendering them voiceless because their intersectional encounters occur outside the confines of the law. The truth is that law cannot protect an individual who it does not see. In failing to accommodate and recognise the multiple and intersectional identities of the disabled woman, the law is confirming the idea that the disabled woman is not valued and is not deserving enough of protection.[61] This could possibly explain the heightened oppression that a disabled woman suffers, as the literature has captured.[62]

[59] Durojaye & Owoeye (n 37 above) 76.
[60] Umeh (n 43 above) 71.
[61] Uccellari (n 56 above) 24.
[62] Eleweke & Ebenso (n 14 above) 118.

In examining sex discrimination cases, my observation is that disability is not mentioned, while sex is hardly referenced in the cases of disability discrimination. Yet there is evidence of stereotypes ascribed to disabled women that show the interaction between sexism and disability discrimination. Such interactions are not contemplated in Nigerian anti-discrimination law and the human rights framework. The is evidenced by the absence of court cases on discrimination against disabled women. Thus, it is correct to note that, as in the cases Crenshaw explored on the erasure of women's blackness, this lack of cases confirms the idea that disabled women are voiceless and invisible.

I interrogate the cases here in order to prove the unwillingness of the Nigerian courts and the Supreme Court as the highest court of the land to offer a clear and consistent approach to interpreting section 42, even where there has been ample opportunity to do so. For instance, in the oft-cited case of *Uzoukwu v Ezeonu*[63] the Nigerian Court of Appeal made assumptions with respect to the right to non-discrimination, as provided for in section 42, as follows:

> First, that the discriminatory act complained against must have been based on law; second, the discrimination must be seen as an act of government or its agencies; third, that the discriminatory act committed does not apply to other Nigerians. Finally, a violation of section 42 can only be applied where the discrimination falls within the protected grounds; it cannot be invoked if, in addition to protected grounds, there are other reasons why a person is discriminated against.[64]

The above assumptions confirm the restrictive, narrow and formal interpretation of section 42. This also crucially supports the claim that such interpretations are unfavourable to vulnerable groups, including the disabled woman. This position is supported by Durojaye and Owoeye, who draw attention to the court's interpretation of section 42 that restricts discrimination to state actors alone.[65] The difficulty with this interpretation and reasoning is that it turns a blind eye to acts committed by non-state and private actors,[66] despite significant evidence showing that the majority of the oppressive and discriminatory acts committed against women can easily be traced to

[63] *Uzoukwu v Ezeonu* (1991) 6 Nigerian Weekly Law Review (NWLR) (pt. 200) 798.
[64] As above 798.
[65] Durojaye & Owoeye (n 37 above) 76.
[66] As above 76.

traditional practices, usually committed by individuals and non-state actors.

Mojekwu v Mojekwu[67] involved a conflict about whether the daughters in a family had the right to inherit property where the surviving male relative had claimed ownership. The Court of Appeal relied on section 42 to denounce the patriarchal tendencies that reinforce women's inferiority to men. Like the first case, this decision exposes certain assumptions in regard to non-discrimination as provided for in the Constitution. The implication of the *Mojekwu* case for this thesis lies in the analysis put forward by Durojaye and Owoeye in relation to section 42.[68] They note that, even though the ruling is progressive, particularly in efforts to ensure that women's right to non-discrimination is realised, the ruling fails woefully in defining the appropriate perspective to employ when determining whether discrimination has occurred.[69]

I agree with their argument that the ruling has solidified the dominant formal equal treatment perspective, even though this perspective is virtually empty.[70] Its emptiness stems from a preoccupation with ensuring that men and women are treated the same way in customary law, to the detriment of the consequences of differential treatment. The court still relies on a formal perspective to equality without clearly reflecting on the lived encounters of women who are subjected daily to discriminatory practices.[71]

Similarly, I support Durojaye and Owoeye's opinion on the case of *Ukeje v Ukeje*.[72] The Nigerian Supreme Court was required to give its legal opinion on the Igbo tradition that refuses to allow daughters to inherit property.[73] One of the daughters of the deceased claimed that she was entitled to inherit a portion of her late father's estate. The trial court decried and condemned this Igbo tradition, an opinion that was supported by the Court of Appeal. This opinion was also endorsed by the Nigerian Supreme Court. In making this point, the judge found that the Igbo tradition was discriminatory and infringed section 42(1) and (2).

Interestingly, these authors point to how the Supreme Court's approach in this case is more

[67] Mojekwu v. Mojekwu (1997) 7 NWLR (part 512) 283 (CA).
[68] Durojaye & Owoeye (n 37 above) 77.
[69] As above 77.
[70] Durojaye & Owoeye (n 37 above) 77.
[71] As above 77.
[72] Durojaye & Owoeye (n 37 above) 77.
[73] As above 77.

progressive when compared to the earlier case of *Mojekwu v Iwuchukwu*.[74] In this case, the Supreme Court failed woefully to rule that a similar Igbo tradition is contrary to the prohibition on discrimination against women. In fact, extensive studies have described the Supreme Court's refusal to uphold the decisions of the lower courts and instead criticise the decisions of the Court of Appeal that held the primogeniture rule to be an infringement of women's rights to non-discrimination as unreasonable. The authors note that, although the decision of the Court of Appeal was upheld, with this rebuke, the Supreme Court unknowingly revealed the inconsistencies that characterise the interpretation of section 42.[75]

Nigeria's Supreme Court, the highest court of the land, had recklessly squandered its chance to explain the nature and scope of section 42.[76] Citing *Mojekwu v Iwuchukwu*, Durojaye and Owoeye describe how the Supreme Court wasted the chance to develop the non-discrimination jurisprudence.[77] The authors describe the position of the Supreme Court as conservative and 'lacklustre'.[78]

Although the Supreme Court in *Ukeje v Ukeje* decided that the Igbo tradition, which denies daughters their inheritance rights, was an infringement of the right to non-discrimination, this was not nearly enough. Moreover, the court failed to go the further step of offering substantial reasons for its decision.

The Supreme Court's stance has been regarded as a major error, since it missed the opportunity to provide explanations for certain questions. Durojaye and Owoeye are therefore correct to question the court's reasons for making its decisions and hence have identified a shortcoming.[79] These authors have held the Supreme Court responsible for failing to develop convincing jurisprudence on equality and non-discrimination under the Nigerian Constitution.[80] It is thus clear that no matter how many progressive decisions the Court of Appeal makes, its rulings are not sufficient to invalidate the approach of the Supreme Court as the highest court of the land, especially in relation

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[74] Durojaye & Owoeye (n 37 above) 79.
[75] As above 78.
[76] Durojaye & Owoeye (n 37 above) 78.
[77] As above 78.
[78] Durojaye & Owoeye (n 37 above) 78.
[79] As above 78.
[80] Durojaye & Owoeye (n 37 above) 79.

to gender discrimination cases. This is coupled with the reality that most cases dealing with traditions and culture in Nigeria do not get as far as the Court of Appeal, and the local or area courts rarely consider constitutional matters.[81]

This inconsistent line of reasoning is echoed in the two disability discrimination cases available.[82] In *Simeon Ilemona Akubo v Diamond Bank*[83] the claimant was a disabled man in Nigeria, but the insight it provides is still useful, particularly in showing the inconsistencies in the interpretation of section 42. In this case, the claimant was denied access to the banking hall because the bank did not have accessible facilities. The court relied strictly on section 42 and decided that Diamond Bank was not obligated to provide accommodation to the claimant beyond giving him banking services and a reasonable opportunity to use its facilities.[84] The judge thus placed the burden on the claimant, arguing that it was his duty to do whatever was necessary to ensure that he could use the facilities. The judge's reasoning was as follows:

> The problem was with the metal devices (crutches). I am not aware that he tried to access the bank using wooden or plastic crutches and could not gain access. Whereas, the action of the respondent's staff could be labelled as lacking initiative, untactful or even insensitive, but I am very doubtful that it can be reasonably be regarded as one offending the applicant's right to human dignity or discrimination.[85]

This confirms the medical perspective to disability, particularly when the judge locates disability as a tragic problem that the individual must endure. Beyond this, the point to be made from the case is that the judge's ruling shows a narrow and restrictive perspective on non-discrimination. In contrast, in the similar case of *Simeon Ilemona Akubo v First City Monument Bank*,[86] which had similar facts, the ruling was progressive only because the judge relied on foreign jurisprudence. These two cases demonstrate the contrast between and inconsistencies in decisions, particularly when they address the interpretation of section 42. We can therefore conclude that, as Durojaye

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[81] Chegwe (n 40 above) 79.
[82] Umeh (n 43 above) 70. Umeh mention how these are High Court cases and there are no non-discrimination cases applied to disabled persons in the Supreme and Appeal Courts.
[83] See generally *Simeon Ilemona Akubo v Diamond Bank*. (Suit ID/763M/2010); Umeh (n 43 above) 70; 71; 72.
[84] As above Umeh also makes the point in Umeh (n 43 above) 70; 71; 72.
[85] *Simeon Ilemona Akubo v Diamond Bank* (n 83 above)
[86] *Simeon Ilemona Akubo v First City Monument Bank*. (Suit ID/824M/09). Umeh also makes the point in Umeh (n 43 above) 70; 71; 72.

and Owoeye have opined, the Nigerian Supreme Court has yet to define what the appropriate perspective will be in determining whether section 42 has been infringed.[87] These authors note that given that the prohibited grounds of discrimination in section 42 could be restrictive, it would be beneficial if the Supreme Court clarified which actions and grounds are covered or not covered under the section.[88]

The Supreme Court as the highest court of the land needs to explain what would happen if, for example, a disabled woman approached the court seeking protection and justice under section 42. What should be the starting point in determining whether discrimination against such a woman has occurred? In other words, we need clarity about when an act or measure can be said to amount to unfair discrimination under the Nigerian Constitution. Finally, the court should also be able to respond to the question about what should be considered in determining whether section 42 of the Constitution has been infringed.

To recap: Unfortunately, there is no clear and consistent approach to understanding and interpreting section 42. Apart from this, it is obvious that the Nigerian courts fail to recognise the intersectional discrimination that could be the result of the inextricable interactions between, for instance, sex, culture and ethnicity.

Take, for example, the previously cited *Mojekwu c*ase.[89] As the facts of the case suggest, the main ground of discrimination that was identified was gender. Yet it is quite clear from the facts of the case that the claimant had not suffered discrimination on the basis of her gender alone; the discrimination was a result of her ethnic origin (Igbo)), her cultural identity and her gender. Even though the claimant's sex was recognised as the ground for discrimination, the claimant's culture and ethnicity are inseparable from her sex and from her lived reality.

One can therefore conjecture what has happened. Generally, Nigerian courts are blind to exploring the multidimensional aspects of the claimant's identities and the resulting intersectional or multidimensional discrimination. Specifically, in its failure to offer a consistent understanding of discrimination, the court has made it difficult to even identify the intersectional positioning of the

[87] Durojaye & Owoeye (n 37 above) 78.
[88] As above 78.
[89] *Mojekwu v Mojekwu* (n 67 above).

woman who suffered the discrimination. These arguments could be true, particularly when one scrutinises the fact that the woman in this case was not discriminated against solely on the grounds of her sex, as the court implies, but crucially because her culture and ethnic origins as Igbo wrapped interactively around her status as a woman simultaneously.

Although the court's decision identified the obvious problem faced by women generally, particularly in referring to the inferiority of women in Nigerian society, it erroneously assumes that being a woman is a unitary category. It missed the obvious difficulties of the negative cultural practice among the Igbos that disables women by denying them the right to an inheritance, that is, the difficulties of Igbo women as a sub-group within the women group. This discrimination is not necessarily experienced by Igbo men or Nigerian women in general. Studies are therefore correct in describing the ruling as a 'sympathetic' approach to discrimination against women,[90] because the ruling does not offer a consistent or rigorous analysis and understanding of section 42 in a manner that lessens the negative consequences on women.[91] This sketch confirms that the Nigerian legal framework has frozen the identities of women, making it blind to the experiences of disabled women who encounter multiple forms of discrimination.

Following from this, the significance of an intersectional analysis is evident: An intersectional analysis would assist in recognising that comparisons could be essentialist because they treat Nigerians as mutually exclusive. This kind of analysis also brings to the fore the need for comparators to be chosen with extra care, bearing in mind that a wrong comparison could potentially lead to the dismissal of a case that ideally should be resolved. The need for Nigeria's anti-discrimination law to develop an intersectional lens to speak to the lived realities of disabled women can be drawn from the above analysis. To do this, we need to shift the legal question and approach from whether a person has been treated less favourably than someone else to a legal framework that asks why a disabled woman, for example, is treated in the way and manner that she is.

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[90] Durojaye & Owoeye (n 37 above) 77.
[91] As above 77.

5.3.1.1.1 Closed identity category list and universal individuality in section 42

The next point I make is that section 42 of the Nigerian Constitution relies on a false universal individuality that manifests in a closed list of prohibited grounds of (non-)discrimination. The argument is that this closed list underlies the country's human rights and anti-discrimination law, making it difficult to develop an intersectional lens. Arguably, this closed list does not contemplate the intersectional encounters of the disabled woman that are exemplified by the interactions between sex(ism) and (dis)ability.

To reiterate, section 42 of the Nigerian Constitution provides that:

> 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 …[92]

To interpret this section again, I consider the oft-cited case of *Uzoukwu v Ezeonu*.[93] The significance of this case lies in its approach to the right to non-discrimination in section 42 of the Nigerian Constitution. In this case, the Nigerian Court of Appeal, with respect to the right to non-discrimination in section 42, referred to the idea that a violation of this section can be applied only where the discrimination falls within the protected grounds. The court mentions that the section cannot be invoked if, in addition to the protected grounds, there are other reasons why a person is discriminated against. In other words, the decision states that section 42 can be infringed only where the discrimination falls within the protected grounds. From the above, the question that needs to be asked is what this narrow and restrictive interpretation of discrimination implies for the disabled Nigerian woman. It is possible to speculate as follows:

5.3.1.1.1.1 Implication of the narrow and restrictive interpretation of section 42 (non) discrimination for the disabled Nigerian woman

First, section 42 and its interpretation makes it clear that non-discrimination in the Nigerian context has been narrowly defined solely on the basis of the listed grounds, which include the individual's membership of a particular community, ethnic group, place of origin, sex, religion and political

[92] The Nigerian Constitution sec 42.
[93] *Uzoukwu v Ezeonu* (n 63 above). 798; 799.

opinion.[94] From the list it is clear that, in the Nigerian context, disability is not a characteristic that is recognised as deserving protection, since it does not appear in the protected list in section 42.

Significant literature has emphasised the omission. Imam and Abdulkareem-Mustapha draw attention to the fact that disability is missing as a prohibited ground of discrimination in the Nigerian Constitution.[95] They note that, unlike a number of Constitutions in Africa, the Nigerian Constitution not only fails to protect disabled persons but, because of this omission, the implementation of human rights, especially in regard to disabled persons in Nigeria, is difficult.[96] This difficulty is exemplified by an absence of political and economic will to ensure that rights are realised, particularly for disabled persons.[97] This suggests therefore that what is included and/or excluded in the protected list of categories of Nigeria's anti-discrimination law is a matter of politics.

We can speculate about the implications of this. This could imply that a disabled Nigerian woman can only be said to be discriminated against if she can prove that an act of discrimination or oppression was committed or falls within the characteristics in the protected list in isolation. This mean that, in a case of discrimination, it would be only sex/gender that would be considered separately, leaving behind her disability. The word 'only' in section 42(1) supports this claim. As one author has observed, the word 'only' as used in the section suggests that discrimination is forbidden only on the sole basis of the listed grounds.[98] This author notes how the use of the word 'only' in section 42 is crucial because it suggests that before the section can be said to have been infringed, it must be clearly shown that the discrimination occurred because of one of the listed grounds.[99]

The word 'only' as contained in section 42(1) could also imply that there should be a recognised correlation between the causes of discrimination and the prohibited grounds before an unfair discriminatory act can be deemed to have occurred. In other words, there must be a connection in

[94] The Nigerian Constitution sec 42.
[95] I Imam & M Abdulraheem-Mustapha 'Rights of people with disability in Nigeria: Attitude and commitment' (2016) 24 *African Journal of International and Comparative Law* 440.
[96] As above 441.
[97] Imam & Abdulkareen-Mustapha (n 95 above) 441.
[98] Durojaye & Owoeye (n 37 above) 77.
[99] As above 77.

the anti-discrimination law between the cause of the discrimination and the aftermath by using the listed grounds.

While section 42 of the Nigerian Constitution ostensibly guarantees the right to non-discrimination to all its citizens, at the same time it anticipates that these citizens must have certain characteristics before they can qualify for protection from discrimination.[100] This means that an individual deserves protection only to the extent that the individual embodies certain recognised traits. The section denies protection to individuals who embody traits that are not explicitly recognised, for instance, disability or sexuality. We find that while human rights are held out to be universal, one has to qualify first as a human being or as a citizen of Nigeria to enjoy the guarantees of non-discrimination. In other words, underlying the façade of neutrality in section 42 is a reliance on comparison that is based purely on restrictive grounds of (non-)discrimination.

This means that while the section pretentiously clings to a claim of universality and neutrality, its insistence on certain strict characteristics suggests otherwise.[101] Such a restrictive understanding makes it more difficult for the law to recognise the disabled woman's intersectional discrimination that might occur on the basis of two intersecting grounds, particularly when one ground, such as disability, is not even recognised. This point is exemplified in the already cited *Simeon Ilemona Akubo v Diamond Bank* case above.[102]

What can be drawn from this case is that in Nigerian anti-discrimination law it is not enough to show that a bank's policy restricted the disabled person's access to a banking facility, in other words, that indirect discrimination has occurred. The denial or restriction of access must be linked to listed grounds. Unfortunately, since disability is not among the listed grounds of non-discrimination, discrimination cannot be said to have occurred.

This non-recognition of disability as a ground of non-discrimination is clearly shown in the case above. Although the claimant in the case was a disabled man in Nigeria, the case provides insight that is still useful for the disabled woman. Because disability is yet to be explicitly recognised as

[100] The Nigerian Constitution sec 42.
The list of prohibited grounds of non-discrimination grounds recognised in this section include the specific community, ethnic group, place of origin, sex, religion or political opinion.
[101] Umeh (n 43 above) 73.
[102] *Simeon Ilemona Akubo v Diamond Bank* (n 83 above).

a prohibited ground of discrimination, and because there is no particular provision in the Nigerian Constitution that is specifically devoted to disability and the prohibition of discrimination against disabled women, disability discrimination will not be regarded as a violation of section 42.

We can therefore safely conclude that an intersectional lens is yet to be developed in Nigeria's anti-discrimination law. This is linked to the omission of disability from section 42 and, more importantly, to the omission of open-ended phrases like 'other status'. A cursory look at section 42 supports this claim. Durojaye has described how such rigid interpretations of section 42 are in contrast to and in direct opposition to international instruments.[103] Durojaye notes that, unlike non-discrimination provisions in most human rights instruments, section 42 does not include the phrase 'other status'.[104]

Although the grounds of discrimination are usually listed in international instruments, they do make room for other emerging grounds by using phrases such as 'other status'.[105] The 'other status' phrase has been interpreted broadly by some treaty monitoring bodies to ensure that potential and new categories of prohibited grounds of discrimination are accommodated. Further research has also shown that the category of 'other status' can be interpreted to include other characteristics.[106] It has been further noted that:

> While the evolving and constantly growing list of grounds of discrimination prohibited by international human rights law would seemingly provide the basis for a systematic consideration of intersectional forms of discrimination, to date this has not been the case. As a general rule, most of the treaty bodies have approached inequality as a singular or separate phenomenon, paying little attention to the substantive rethinking of international anti-discrimination law that would be necessary in order to effectively capture and redress situations of intersectional inequality.[107]

This demonstrates that where there is an open-ended and non-exhaustive list, as is the case with international treaties, intersectional forms of discrimination can be considered. This includes the recognition of the combination and intersectionality of grounds as possibly another protected

[103] E Durojaye 'Substantive equality and maternal mortality in Nigeria' (2012) 65 *Journal of Legal Pluralism* 111.
[104] As above 111.
[105] Truscan & Bourke-Martignon (n 4 above) 109.
[106] As above 109.
[107] Truscan & Bourke-Martignon (n 4 above) 109.

ground against discrimination. The absence of such open-ended phrases like 'other status' leads to a limited perception of identity that ensures that the intersectional individual, such as the disabled woman, who is unable to neatly place herself into one of the listed and accepted grounds or categories, finds that she is voiceless and unprotected by Nigerian anti-discrimination law. There is little or no room for new, emerging and evolving grounds of discrimination, and the consequences of discrimination for vulnerable groups are overlooked.

Durojaye and Owoeye argue that section 42 should not be read as exhaustive but purposive.[108] This approach could find support in the European Court of Human Rights case of *Glor v Switzerland*.[109] In this case, it was held that even though disability is not explicitly mentioned, the grounds on which discrimination is forbidden under the European Convention on Human Rights are not exhaustive. In other words, the Convention includes disability as a prohibited ground. The progressive ruling in *Simeon Ilemona Akubo v First City Monument Bank*,[110] with similar facts, can also be used to support this claim.

Some scholars have read the phrase 'the circumstances of his birth' in section 42(2) to include disability.[111] Using the example of the involuntary sterilisation of adolescent girls with intellectual and developmental disabilities, Ofuani has argued that the sterilisation of adolescent girls on the basis of their disability is an infringement of section 42(2).[112] 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 Owoeye note that this phrase is scarcely used in the non-discrimination provisions of other Constitutions in Africa. The phrase specifically addresses discrimination targeted at children because of their parentage or because they were conceived out of wedlock.[113] Even if disability can be read into this phrase as suggested, which is not necessarily wrong, it represents a definition

[108] Durojaye & Owoeye (n 37 above) 76.
[109] *Glor v Switzerland* (2009) European Court of Human Rights (Application No 13444/04)
[110] *Simeon Ilemona Akubo v First City Monument Bank* (n 86 above).
[111] AI Ofuani 'Protecting adolescent girls with intellectual disabilities from involuntary sterilisation in Nigeria: Lessons from the convention on the rights of persons with disabilities' (2017) 17 *African Human Rights Law Journal* 553.
[112] As above 553.
[113] Durojaye & Owoeye (n 37 above) 76.

that limits disability to simply a consequence of the circumstances of birth, when it is clear that disability cannot be limited in this way, since it can occur at any period in an individual's life but, more importantly, is arguably a social construction in Nigeria.

Although there are undoubtedly merits in Ofuani's assertion, unfortunately the use of 'his' in the phrase is distracting, because it underscores the gender bias and insensitivity in the section. With such insensitivity and gender bias, it is difficult to even read sex discrimination as attempted. Even more difficult is the reading of an intersectional discrimination based on the intersecting grounds of sex and disability. The issue of age is also particularly important in the involuntary sterilisation case. In other words, we are considering how sex intersects with disability and age to form lived realities. In my opinion, section 42(2)'s reference does not represent a reading of an intersectional approach to non-discrimination for disabled women or even adolescent girls with intellectual disabilities.

Returning to Durojaye and Owoeye's argument for a purposive reasoning of section 42, these authors immediately concede that certain interpretations that have been ascribed to section 42 by the Nigerian courts have been restrictive, making their approach difficult to defend.[114] This assertion is evident in *Festus Odafe & Others v Attorney-General of the Federation & Others*.[115] This case involved the realisation of the rights of persons living with HIV-AIDS (PLWHA). The court had to decide whether, with reference to 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 by reason of illness, virus or disease.[116]

Consequently, it was decided that the applicants did not qualify for freedom from discrimination because health status is not a ground covered in the section.[117] This exposes the narrow and restrictive thinking that a closed, one-dimensional perspective creates. It is therefore plausible to argue that, in the case of *Simeon Ilemona Akubo v First City Monument Bank*,[118] the progressive

[114] As above 77. See also E Durojaye 'Substantive equality and maternal mortality in Nigeria' (2012) 65 *Journal of Legal Pluralism* 103.
[115] *Festus Odafe and others v Attorney General and others* (2003) *(Suit No. FHC/PH/CS/680/2003)*.
[116] As above.
[117] *Festus Odafe and others v Attorney General and others* (n 115 above)
[118] *Simeon Ilemona Akubo v First City Monument Bank* (n 86 above).

ruling was an exception rather than the rule and was made only because the judge relied on foreign jurisprudence. The judge was progressive in making the decision because of his use of international jurisprudence, which leaves room for a growing list of grounds of discrimination.

The position I take is that the listed or related grounds perspective that is adopted by section 42 is unreasonable, because it fails to accommodate the multiple forms of oppression that a disabled woman encounters and because it excludes from protection those who are not included in the listed grounds or who cannot fit themselves into an analogous ground. Moreover, the fact that disability is excluded from the list of protected grounds in section 42 in the Nigerian Constitution is quite revealing. For one, it makes one question how Nigeria determines what characteristics should and (should not) be included in its list of grounds.

This question is relevant because the selection of grounds mirrors, according to Iyer, the dominant narrative about which social features are pertinent (and which are not) when distinguishing between individuals.[119] This is easily manifested in Nigerian anti-discrimination law, where it appears to be unacceptable to treat individuals unfairly on the grounds of sex, ethnic group and religion, but appears to be acceptable to differentiate on the grounds of disability.

The argument that I make is succinctly summarised by Iyer:

> To the extent that the dominant narrative (which is the perspective of the categorizer) represents the 'common sense' of society, these choices will not be controversial: members of marginalized as well as dominant groups are socialized within an ideology which leads all of us to consent that only some characteristics deserve protection under antidiscrimination law. Further, once a list of characteristics has been set out in legislation, the list itself begins to appear neutral and permanent, particularly if the lists in various antidiscrimination laws are similar. It becomes part of the way things are; it appears as though everyone would agree with this list and no other, for all time.[120]

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[119] N Iyer 'Categorical denials: equality rights and the shaping of social identity' (1993) 19 *Queen's Law Journal* 187.

[120] As above 187.

5.3.1.1.1.2 Implication of the narrow and restrictive interpretation of section 42 (non) discrimination for the disabled Nigerian woman

Second, a direct consequence of this restrictive thinking, where one can be protected only to the extent that the individual embodies certain traits, is law's tendency to treat traits separately. In other words, the disabled woman can claim only sex discrimination, since it is one of the protected grounds, but cannot include disability since it is not a protected ground.

However, even if it assumed that disability is one of the protected grounds of non-discrimination, the court's interpretation still suggests that it will treat issues of sexism and disability discrimination separately. This point is confirmed by the court's reference to the fact that the section cannot be invoked if, in addition to protected grounds, there are other reasons why a person has been discriminated against. This suggests that protection from discrimination is not only restrictive, but is also not intersectional.

Upon a cursory look at the court's reasoning, one can speculate that the court indicates that it could not address additive thinking about discrimination. The court indicates that it could address acts of discrimination only as separate issues. The court cannot address the disabled woman's sex discrimination and then on top of that deal with another reason, which could be her disability. This kind of understanding does not consider the multiple, complex and intersectional discrimination that the disabled woman encounters in Nigeria.

Identifying only a single ground of discrimination will not adequately represent the lived realities of the disabled woman and also does not adequately reflect the complex nature of the discrimination, since it is usually not clear on which ground the discrimination occurred, whether on the basis of her gender or her disability or both. Where the discrimination is not adequately articulated, appropriate resolutions and remedies cannot be found for the disabled woman. Where the list of prohibited grounds of discrimination is exhaustive and narrow, it fails to reflect the lived realities of individuals with multiple identities, such as the disabled woman, whose reality cannot be defined simply by a single category. An intersectional analysis is thus hindered, and appropriate remedies cannot be provided. The intersectional lens provides the insight that the disabled woman's oppression and discrimination cannot be understood solely as sex discrimination or disability discrimination. Sometimes the disabled woman experiences discrimination as a disabled woman – not the sum of disability and sex discrimination, but as a disabled woman.

Another speculation from the court's reasoning is that the disabled woman would be de-sexed in such a manner that the gender aspects of her disability discrimination, as well as the disabling aspects of her gender, would be overlooked. In other words, even if disability is recognised as a ground of discrimination, because of the singular mindset that Nigeria adopts, where it treats issues separately, it will be difficult for the disabled woman to claim discrimination on the basis of both her sex and her disability. The court's interpretation of the section refuses to acknowledge that the disabled woman is disabled and a woman at the same time, despite knowing that discrimination against a disabled woman does not happen only because she is a woman or disabled, but because she is both a woman and disabled. The discrimination affects her as a whole person, which is as a disabled woman.

This demonstrates and exposes the one-dimensional perspective and singular identity thinking that the Nigerian legal and human rights framework adopts. Its limits in responding to the intersectional discrimination that a disabled woman encounters become obvious. Yet this reasoning is at odds with reality and the established recognition of the fact that individuals have multiple identities and, importantly, the disabled woman's identity is intersectional. Understanding the theory of the intersectional self, for instance, means recognising that identity is marked by many intersecting characteristics that cannot be understood as the sum of the individual characteristics.[121] As a result, even the additive and mathematical equation that portrays the disabled woman's experiences simply as woman + disabled is unsuitable, as it does not necessarily reflect the disabled woman's reality. This is coupled with the fact that it is not sufficient to recognise how different categories and characteristics intersect to create a sense of the self; it is as important to explore how the categories themselves are created and maintained.[122]

Disability has recently been recognised as a prohibited ground of discrimination in Nigeria. On 23 January 2019, the Nigerian Government enacted the Discrimination Against Persons with Disabilities (Prohibition) Act, 2018 (Disability Act).[123] The disability rights movement in Nigeria

[121] 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* 149.
[122] As above 149.
[123] Discrimination Against Persons with Disabilities (Prohibition) Act, 2018 (Disability Act) https://www.orderpaper.ng/18-years-jinx-broken-as-buhari-signs-disability-bill-into-law/ (date accessed 18 February 2019).

had been advocating for a law and this eventually led to the enactment of the Disability Act. The Disability Act 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.'[124] This is a welcome development considering the number of years it has taken for the Nigerian government to recognise disabled persons as subjects of rights and not objects of charity.

However, even though disability is now a recognised prohibited ground of discrimination in Nigeria, the one-dimensional legal approach to interpreting the section still reinforces the difficulties for disabled women. Put differently, the Nigerian legal approach with disability as an identity perspective continues to perceive the disabled woman's identity as singular, unitary and stable. This could possibly explain why, once a woman is considered disabled in Nigeria, she is de-sexed.[125] A reason for this de-sexing could be that Nigerian law is unable to accommodate and contemplate the disabled woman's multidimensional identity, so it erases from its confines an aspect of this multidimensional identity that is usually her womanhood. In other words, as far as Nigerian law is concerned, the disabled woman is either disabled or a woman and cannot be both at the same time. The limits of the law in speaking to the lived and intersectional reality of the disabled woman are therefore obvious.

Although disability is now recognised as a prohibited ground of discrimination in the Disability Act, complications emerge as a result of Nigeria's federal legal structure. In this federal structure, for instance, each state in Nigeria has the legislative powers to enact its own laws. This means that states can decide whether to enact their own laws in regard to disability or whether to domesticate and take on board this newly enacted disability law. At the same time, states can decide to do neither. These complications aside, this newly enacted law is still limited because it focuses on the grounds perspective, which is unable to contemplate the possibility that the disabled woman's discrimination can occur as a result of the interaction between her disability and her gender.

Although this Disability Act now recognises disability as a prohibited ground of discrimination, it

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[124] As above (emphasis mine). 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.
[125] 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.

exposes and makes the invisibility and voicelessness of the disabled woman more apparent. In fact, the Disability Act's lack of reference to disabled women illustrates this point. The mere enactment of the Disability Act has proven the tendency of Nigerian anti-discrimination law to categorise and compartmentalise, which does not necessarily tell the entire story for the disabled woman. In my view, therefore, the Disability Act has further obscured the intersectional encounters of the disabled woman in Nigerian society.

It is obvious that the disabled Nigerian woman is much more than a ground. The truth is that she is more than several grounds. She is a person who may be inter-subjectively formed and defined but who is also more than that.[126] In fact, a disabled woman in Nigeria cannot encounter gender discrimination other than as a person with disability and, at the same time, the woman cannot experience disability discrimination other than as woman. The woman cannot neatly categorise or compartmentalise herself to fit into the discrete grounds of discrimination that the new Disability Act has neatly laid out for her, because even if it is assumed that only one ground of discrimination seems relevant, it is nearly impossible to prove that a disabled woman was discriminated against solely because of her disability. If the disabled woman is oppressed because of her disability, she is also oppressed because she is a woman, and vice versa.

5.3.1.1.1.3 Implication of the narrow and restrictive interpretation of section 42 (non) discrimination for the disabled Nigerian woman

Third, the court's reasoning that section 42 can be infringed only where the discrimination falls within the protected grounds makes an unreasonable assumption, which is that discrimination occurs only on the basis of sex or disability. The problem in *Simeon Ilemona Akubo v Diamond Bank*[127] was that the trait that was inherent in the claimant was disability, and because disability had not been recognised as a discrete ground for non-discrimination in Nigeria, the claimant was denied protection. In other words, the judge's opinion confirms the narrow interpretation that if discrimination occurs on any ground other than the ones explicitly mentioned in section 42, discrimination cannot be said to have occurred.

The ruling validates the fact that the judge's focus was on abstract categories and generalisations rather than on a contextualised approach to discrimination that underlies specific experiences and

[126] Clutterbuck (n 53 above) 51.
[127] *Simeon Ilemona Akubo v Diamond Bank* (n 83 above).

consequences. The judge's reference to human dignity in *Simeon Ilemona Akubo v Diamond Bank*[128] is interesting, when one considers Pothier's claim that the actual limitation of non-discrimination for disabled claimants might not necessarily stem from the requirement of grounds, but from the impact of discrimination i.e. a human dignity element.[129] However, the problem with this is the fact that human dignity is a malleable term that can be made to mean anything the judge wants it to mean.[130] This point is clearly made in the case. Even though the judge identified the actions of the staff of the respondent (Diamond Bank) as lacking initiative, untactful or even insensitive, the judge still reasoned as follows: 'I am very doubtful that it can be reasonably be regarded as one offending the applicant's right to human dignity or discrimination.'[131]

From the above one would be justified in asking what human dignity or the absence of it means for the judge. Consequently, one can easily speculate that the reasoning stems from a narrow understanding of discrimination that is far removed from reality. Yet it has been shown that most discrimination does not necessarily occur because of the characteristics of the disabled woman inherent in her, for instance, disability or sex, but because of what society thinks the disabled woman represents and because she does not necessarily fit into Nigerian society. Perhaps this is why disabled women continue to encounter oppression and discrimination in Nigerian society.

In making this point, I draw inspiration from the court's reasoning in *Egan v Canada*.[132] The Supreme Court of Canada confirmed that the problem of discrimination will never be tackled completely if the focus continues to be on abstract grounds, categories and generalisations, rather than on specific consequences or the aftermath of the discrimination. The court emphasised that:

> When the focus is on the grounds for the distinction instead of the impact of the distinction, there is the danger of undertaking an analysis that is distanced and desensitized from real people's real experiences …. More often than not, disadvantage arises from the way in which society treats particular individuals, rather than from any characteristic inherent in those individuals.[133]

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[128] As above.
[129] D Pothier 'Connecting grounds of discrimination to real people's real experiences' (2001) 13 *Canadian Journal of Women and Law* 56.
[130] As above 56.
[131] *Simeon Ilemona Akubo v Diamond Bank* (n 83 above). Umeh makes a similar point in Umeh (n 43 above) 70; 71, 72.
[132] *Egan v. Canada* [1995] 2 S.C.R. 513.
[133] As above 551; 552.

The importance of *Egan v Canada* lies in its striking reasoning in relation to Nigeria's anti-discrimination law. I use the reasoning from the *Egan* case to argue that the one-dimensional framework that Nigeria adopts has led to a narrow and closed focus on certain listed and related grounds.

This narrow approach to discrimination runs contrary to section 42's claim to universality. Referring to *Egan*, where the focus is on grounds as exemplified in Nigerian anti-discrimination law rather than on the impact of the discrimination, it cannot speak to lived experiences. The narrow approach to discrimination emphasises the characteristics of a disabled woman rather than society's treatment of her.

I return to section 42's narrow reading of non-discrimination in *Festus Odafe & Others v Attorney-General of the Federation & Others*. This case exemplifies that attempts by vulnerable persons or intersectional individuals to use the law will most likely fail, as they did in this case. In my opinion this case resembles to some extent the US case of *Atiyeh v Capps*. Ribet's analysis of the latter case in the context of prisoners' rights is useful for this discussion.[134] According to her, the case demonstrates how, although the US Supreme Court had recognised the potential of prison conditions to cause disability, these conditions have still not been recognised as infringing US law. She describes how these forms of disability were dismissed in *Atiyeh v Capps* where the judge reasoned that:

> Nobody promised them a rose garden; and I know of nothing in the Eighth Amendment which requires that they be housed in a manner ... likely to avoid confrontations, psychological depression, and the like.[135]

This case outlines Justice Rehnquist's opinion which, according to Ribet, reveals the shortcomings of the American Disability Act. This shortcoming is linked to the significant emphasis that this Act places on existing disability rather than the process of disablement in the United States.

In my opinion, *Festus Odafe & Others v Attorney-General of the Federation & Others* is similar.[136] As indicated earlier, this case involved the realisation of the rights of PLWHA. The court had to

[134] Ribet (n 7 above) 167.
[135] As above 167.
[136] *Festus Odafe and others v Attorney General and others* (n 116 above).

decide whether, in terms of section 42, the applicants had been discriminated against by prison workers and inmates. The court held that the right to non-discrimination in section 42(1) did not cover discrimination by reason of illness, virus or disease.[137] Using Ribet's reasoning, therefore, I argue that the process of disablement (oppression) is being completely ignored. This is compounded by the fact that disability is yet to be recognised as a ground for non-discrimination. Even if it can be argued that this is no longer the case, given the enactment of Nigeria's Disability Act

As Ribet explains, it is evident in these cases that where the issue is a disabling medical condition, courts are often unwilling to acknowledge the issue of disability for equal protection purposes.[138], As both the Nigerian and US cases show, the courts would instead prefer to cling to the argument that applicants who are prisoners do not qualify for freedom from discrimination on the basis of the explicitly listed grounds and categories.[139] Yet, Ribet's reasoning shows that where it is clear, at least in the Nigerian context, that there is continuing disablement as a structural norm in which women who are not already disabled have an increased tendency to become so through exposure to patriarchy, defining disability rights in terms of equal treatment, as Nigeria's anti-discrimination law does, is of limited value.[140]

This limited value can be traced to the fact that, as these cases show regarding disablement, there is no normative basis for positive treatment upon which to ground a discrimination claim in Nigeria. Having some limited right to continue to live or to access institutions after becoming disabled is useful but poses no fundamental challenge to violent or oppressive disablement, and therefore cannot ensure meaningful protection from discrimination and oppression.[141]

What I have tried to depict here using Ribet's reasoning is that disability and the process of disablement are important in Nigeria. The restrictive and narrow interpretation of anti-discrimination law, as evidenced in *Festus Odafe & Others*, is particularly dangerous for disabled women in Nigeria.

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[137] As above.
[138] Ribet (n 7 above) 167.
[139] As above 167.
[140] Ribet (n 7 above) 167.
[141] As above 167.

From this threefold analysis, it can be surmised that the *Uzoukwu*[142] decision demonstrates a narrow and formal equality perspective to non-discrimination that refuses to acknowledge the intersectional encounters of the disabled woman. Using the *Uzoukwu* decision, I have shown why an intersectional lens that speaks to the lived realities of the disabled woman is difficult to develop. It is hoped that, by emphasising the difficulties, the need for an alternative intersectional understanding of law and human rights will be exposed.

Nigeria's anti-discrimination law thus depicts a formalistic approach to the prohibited grounds of discrimination that is particularly problematic for the disabled woman, who is far from the unitary and essentialist individual depicted in Nigerian discrimination law.

I will provide examples to possibly illustrate why an intersectional lens is yet to be developed in Nigeria. Generally, the scarcity of case law in Nigeria when it comes to the right to non-discrimination of disabled persons has been established.[143] However, this scarcity is even more telling where disabled women are concerned. This situation could be linked to the attitudes of society and the judiciary when disabled women report discrimination. Take for example the previously cited report about the rape of a disabled woman whose case was not taken seriously.[144]

The case is a clear indication that a disabled woman suffers discrimination and oppression because of the way in which society treats her, and not because of any inherent characteristic. This is fuelled by the negative attitude that disabled women are not expected to have sex and to have children, so they can be raped. It is therefore possible to speculate that when the disabled woman was raped, it was not only because she is a woman, but particularly because she is both disabled and a woman. The lived encounters of the disabled woman as illustrated in the narrative show that discrimination does not always occur as the result of the acts of one person against the disabled woman on the basis of an individual ground. The implication is that the disabled woman has most likely been discriminated against because Nigerian society thinks she does not fit in, and not because of any identifiable grounds.

This is reinforced by the fact that the rape case was not taken seriously – even the family members

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[142] *Uzoukwu v Ezeonu* (n 63 above).
[143] Umeh (n 43 above) 71.
[144] Eleweke & Ebenso (n 14 above) 118.

did not want to pursue it. The general approach of Nigerian society appears to be that if a disabled woman is raped, she should be grateful that someone wanted to have sex with her. This shows that the discrimination and oppression that the disabled Nigerian woman encounters stem from complex structural, systemic and institutional factors, as opposed to inherent characteristics or grounds.

It is therefore clear that the definition of discrimination that fails to recognise the discrimination and oppression that occur as a result of the product of sexism and disability is not acceptable. This one-dimensional perspective of the Nigerian legal framework, while it may acknowledge rape as an instrument to perpetuate male power, potentially obscures from view how rape is used as an instrument to perpetuate both male and disability terror simultaneously.

When a disabled woman is raped, therefore, law's tendency to rely on a singular experience might prevent her from obtaining adequate legal protection, on account of her complex identity. The fact that the case was not taken seriously shows how the interactions between sexism and disability are obscured, but importantly also shows that discrimination is defined incorrectly.

We can therefore speculate about the uphill battle that the disabled woman will face in attempting to translate the complexities of the discrimination she has suffered into the discrete, protected categories that Nigerian anti-discrimination law recognises. This approach of Nigerian anti-discrimination law means it is almost impossible for an individual to claim discrimination on two simultaneous grounds, such as gender and disability. It is also equally difficult, if not impossible, to claim discrimination on the basis of intersecting grounds. Nigerian law's approach renders the disabled woman, who is at the intersection of several identity categories, voiceless. The monolithic legal mindset dictates that related forms of oppression, such as sexism and disability, become mutually exclusive grounds and categories.

Another example is necessary to illustrate why an intersectional lens is yet to be developed. I will use the case of *Mojekwu* since there are no recorded court cases dealing with disabled women. The complainant's case was that, as the only surviving male relative, he was entitled to inherit property under a Kola tenancy land tenure system. The complainant claimed the property was his because

of the *Oli-ekp*e tradition,[145] which prevents daughters in a household from inheriting their father's property. One of the issues that was brought before the Court of Appeal was whether this tradition was discriminatory. The court held that this tradition was discriminatory on the grounds of sex.

Although this case is widely celebrated as progressive and successful, it still exposes the narrow and restrictive stance of Nigeria's anti-discrimination law. The case was won based on procedural matters and legal technicalities, that is, that discrimination on the grounds of sex is unconstitutional, without investigating and thus overlooking the underlying social inequality and oppression of Igbo women, which are at the root of the case. This is the same point that Pothier makes: Even where cases are won and expected to engender some kind of social change, what happens instead is that these moments play a role in naturalising the status quo by magnifying one form of legally recognisable and prohibited discrimination.[146]

The most relevant point here is the court's failure to identify the intersectional positioning of the women that suffered the discrimination. In other words, how did sex interact with culture and ethnicity to cause the discrimination? This means that the result is still unsatisfactory, because it has failed to reflect upon and recognise the lived realities of the woman and the extent of the oppression encountered.

This argument is validated by Durojaye and Owoeye's description of how the court was largely preoccupied with ensuring that men and women are treated equally in customary law, without having regard to the consequences of differential treatment.[147] The court still relied on a formal perspective on equality, without clearly reflecting on the lived encounters of women who are subjected to discrimination daily.

These examples clearly show that Nigerian law does not completely resolve issues of the product of sexism and ableism, because it focuses on legally forbidden discrimination that is observable, as well as the relatively isolated acts of individuals – the kind that commentators have described as narrow acts of 'objective discrimination'.[148] But discrimination cannot be completely resolved

[145] Durojaye & Owoeye (n 37 above) 76.
[146] Pothier (n 129 above) 56.
[147] Durojaye & Owoeye (n 37 above) 76.
[148] Pothier (n 129 above) 56.

if the focus remains on abstract and isolated categories rather than specific consequences.[149] The danger of exploring the grounds for the distinction instead of examining the impact and aftermath of the distinction is that it does not reflect the lived realities of the disabled woman. In other words, there is a lack of sensitivity to the real experiences of the disabled woman.

The above analysis demonstrates the problems that Nigeria's formalistic perspective has presented for the disabled woman. Because it focuses on the prohibited grounds of discrimination, Nigerian law is limited in its efforts to address and respond adequately to the complex and intersectional forms of oppression and discrimination that disabled women encounter. The question that can then be asked is whether Nigeria's anti-discrimination law has any value at all.

The approach of Nigerian law is not necessarily useless, but it becomes a problem when used in the formalistic manner that Nigeria adopts. Without a careful understanding of the grounds in anti-discrimination law, an analysis of discrimination is limited. An understanding of the dynamics of the grounds is needed to foster a relational understanding of discrimination. This position is consistent with Pothier's point that an understanding of the variety of ways in which discrimination functions will lead to the emergence of a more complex and comprehensive appreciation of equality.[150]

Part of the crucial attention to grounds that is required involves recognising the importance of the intersection of grounds, and resisting the legal bias that tends to concentrate on a single ground as well as the tendency to fall into the traps of categorisation and compartmentalisation. Intersecting grounds bring to the fore the idea that discrimination can occur in multiple directions simultaneously. The crucial point of a discrimination analysis is being able to challenge the dominant narrative. Paying close attention to the dynamics of the grounds of discrimination is necessary to counter the dynamics of power relationships.

From the foregoing, some suggestions can be made for developing an intersectional analysis in regard to the right to non-discrimination in section 42. First, significant research supports the idea that intersectional discrimination should be a separate analogous category on its own. To support

[149] Uccellari (n 56 above) 24.
[150] Pothier (n 129 above) 56.

this claim, it will be useful to explore the Supreme Court of Canada's decision in *Law v Canada*.[151] The significance of the *Law* case lies in its reasoning, as suggested by Aylward. In her analysis, she notes that an intersectional discrimination claim by disabled women and their encounters of sexual assault and rape could be expressed in terms of a distinct form of discrimination based on stereotypes about disabled women's sexuality.[152] According to her, where there are intersectional claims, the starting point should be a discourse of the various forms of discrimination and oppression, followed by an intersectional analysis of the particular form(s) present in the case at hand, rather than as additions to the discrimination encountered by heterosexual able-bodied middle-class women, for example.[153]

In the Nigerian context an intersectional analysis assists in formulating an anti-discrimination law that addresses the reality of different women's lives while helping the courts to produce a solution that is suitable in the circumstances. An intersectional analysis also assists with an increased understanding and revelation of oppression in Nigerian society, its underlying roots and the roles individual Nigerians could play in perpetuating oppression. The counter-argument to this suggestion might be that it still relies on categories, which have been challenged. However, the important thing to note is that while there is still value in categorisation, disabled women do not fit into rigid categories, and therefore the categorisation needs to be fluid, open-ended and allowed to intersect.

The above sketch demonstrates that the problem with section 42 is its failure to recognise the disabled woman's intersecting grounds of discrimination. I have tried to outline the consequences of the liberal construction adopted by Nigerian anti-discrimination law. I have demonstrated that disability is overlooked in the Nigerian Constitution or reduced to a liberal conception of discrimination, where acknowledging discrimination is only a matter of recognising difference. I have shown how even though disability has now been recognised as a ground for non-discrimination in Nigeria, an approach that focuses on grounds will reinforce the poor use and representation of identities relative to the complexity of identities and experiences.

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[151] C Aylward 'Intersectionality: Crossing the theoretical and praxis divide' (2010) 1 *Journal of Critical Race Inquiry* 40.
[152] As above 40.
[153] Aylward (n 151 above) 40; 41.

However, the more important point is that, in both instances, the possibility of engaging intersectional oppression and discrimination remains outside the confines of law. In order to be able to develop an intersectional lens that responds to the real experiences of the disabled woman in Nigeria therefore, where there are no noticeable comparators, we need to move beyond to ask why such discrimination has occurred. The list of grounds in section 42 must become more open-ended in a manner that pays attention to the fact that discrimination can occur on the basis of more than one ground and can occur on the basis of several intersecting grounds.

5.3.2 The atomistic man and patriarchy inherent in section 42

Added to the problem of the focus on grounds outlined above is the idea that an atomism that manifests as the able-bodied male is deeply embedded in section 42. This emphasis on atomism prevents Nigeria's anti-discrimination law from developing an intersectional lens. I substantiate this point below.

To be assigned difference or to be categorised (which can take different forms, for example, sex or disability or both) are signs of hierarchies and power relations. Iyer explains this point further by noting that, when certain features such as disability and sex are viewed as difference and are employed as a means to categorise individuals, they do more than differentiate individuals and are more likely to be understood in hierarchical terms.[154] In other words, to refer to an individual as a disabled woman does more than distinguish her from other individuals; it also shows that there is some sort of order in place. To be disabled suggests that there is an able-bodied person and to be woman suggests that there is a man. Furthermore, the understanding Iyer offers is that not just any person categorises or differentiates; her observation with particular reference to Canada is that the

> categoriser in anti-discrimination law has a particular social identity shared, in varying degrees, by members of the dominant group. This social identity is historically and geographically specific.[155]

She describes further how–

> [t]he dominant social identity is embedded in the basic social structures so that it remains white and male and heterosexual …

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[154] Iyer (n 119 above) 183.
[155] As above 186.

> particular set of social characteristics of the dominant social identity and its ideology constitute the invisible background norm against which categorizations of difference are made in antidiscrimination law.[156]

This is easily shown in the Nigerian situation. Using Iyer's reasoning, it is possible to argue that there is an invisible categoriser in Nigeria's anti-discrimination law that has particular dominant social identities embedded in society, which arguably remain masculine, ableist and heterosexual. This is evidenced by the veiled maleness that characterises Nigeria's liberal vision and a masculinity that prevents it from speaking to the lived and intersectional realities of disabled women in Nigeria.

Chegwe makes this point by echoing a camouflaged masculinity in the 'sameness' perspective.[157] For her, because women are naturally unable to conform to the sameness and given that so many of women's experiences of oppression relate to their sexual selves, by magnifying the sameness of men and women, the 'sexual body' and, particularly, the 'woman's body' is erased. To further substantiate this, I note that section 42 states the following:

> 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…[158]

This validates research that has accurately linked liberalism's abstract interpretations to abstract masculinity.[159] Section 42 ostensibly guarantees the right to be free from discrimination to all its citizens. However, at the same time, there is an obvious grip to the atomistic man. This legal instrument, which is expected to award and provide rights for all Nigerians, instead places the sole emphasis on the unproblematic man. This is evidenced by the use of the male pronoun throughout the Constitution and particularly in section 42.

The wording of the section and the use of the male pronoun exposes the gender bias and

[156] Iyer (n 119 above) 186.
[157] Chegwe (n 40 above) 68.
[158] The Nigerian Constitution sec 42.
[159] Brown (n 38 above) 153.

insensitivity of the section, as noted by several scholars.[160] In fact, attention has been drawn to the fact that the masculine pronoun is used without any clarification as to whether its use is a way of referencing both sexes.[161]

In addition, section 42 demonstrates the pretentious universality that underlies the liberal vision. This false universality is depicted in its pretentiously gender-neutral stance that clearly fails to consider the specific needs of Nigerian women. This is mirrored in the way in which the Nigerian liberal vision of equality, for instance, is grounded upon sameness, where sex always connotes difference. The gendered nature of the liberal vision of equality is therefore manifest as far as it relies on a norm that both denies and disqualifies women from equality with men.

Besides, it has been noted that the liberal narrative masks this gendering every time it employs gender-neutral wording. It is therefore not surprising that the male (ableist) standard is usually portrayed as the universal and neutral experience, while the woman's experience is portrayed as negative and othered.[162]

However, applying Crenshaw's insight to the disabled Nigerian woman is a reminder that gender is not the sole axis of difference but that it intersects with other identity layers. In other words, gender is not the only defining characteristic of a woman; she has multiple identities. Therefore, where research speaks of the gendered nature of liberalism, one can speculate that inherent in that gendered nature is also an ableist nature.[163] I argue further that the problem is compounded for the disabled woman, because at the core of the hidden male criteria in the 'sameness' approach is an 'ableism' that Nigerian law also upholds. [164] Arguably, it is this veiled male ableism characteristic of Nigerian law that clearly disadvantages and disables the woman.

In my view, the above not only exposes the masculinity embedded in the anti-discrimination provision, but it also interestingly shows that this masculine bias is not necessarily veiled but

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[160] Durojaye & Owoeye (n 37 above) 78.
[161] The Nigerian Constitution sec 33(1). This section provides that "*everyone has a right to life and no one shall be robbed intentionally of '**his**' life"* (emphasis mine).
[162] J Morris 'Feminism and disability' (1993) 43 *Feminist Review* 57.
[163] A number of feminists have underscored the gendered nature of the liberal vision of the law. For literature on this subject see Brown (n 38 above) 153. On ableism, see FAK Campbell, 'Exploring internalized ableism using critical race theory' (2008) 23 *Disability and Society* 152. See also, A Clutterbuck 'Rethinking baker: A critical race feminist theory of disability' (2015) 20 *Appeal* 51.
[164] Chegwe (n 40 above) 66.

deliberate. Moreover, I continue to insist that inherent in the *not-so-veiled* masculinity and entrenched in section 42 is an interaction with veiled ableism.[165] This argument finds validity in a study that describes how masculinity is socially constructed in a manner that instils specific and different personalities and identities into male and female children.[166] One can speculate that one of the social identities that is instilled in the construction of masculinity in Nigeria is ableism, while the opposite is true for femininity. How else do we explain the socialisation that teaches us that to be masculine is a representation of strength and autonomy, while being feminine is associated with weakness and vulnerability.[167]

The disabled woman's problem begins from the clear demonstration that the formal and liberal understanding that is deeply embedded in the Nigerian legal framework ascribes rights to a man and importantly to an unproblematic man, which the disabled woman clearly is not. This means that, despite its claims to universality, section 42 offers protection to Nigerian women only to the extent that their encounters bear a resemblance to and coincide with those of men.

In other words, in order to be worthy of protection under the Nigerian anti-discrimination framework, the disabled woman must be able to approximate the identity of the able-bodied liberal male standard that is considered superior or else be othered. Having established that the camouflaged able-bodied male is inherent in Nigerian anti-discrimination law, we can conclude that this dominant male ableism constitutes the invisible and camouflaged background standard against which categorisations of difference are made.

To further illustrate the importance of this not-so-veiled ableist masculinity embedded in Nigeria's anti-discrimination law, it is useful to consider an Igbo traditional ritual known as *Nrachi*.[168] *Nrachi* is a ritual in which a father prevents one of his female children from getting married so that she will be able to raise sons to take over from him when he dies.[169] In fact, it is commonly believed that once a daughter undergoes this ritual, she effectively become*s* a man and assumes a man's

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[165] FAK Campbell 'Exploring internalized ableism using critical race theory' (2008) 23 *Disability and Society* 152. Campbell speaks a lot about ableism as an oppression and how dominant definitions of disability has been given and determined by non-disabled individuals. In the same way as definitions of what it means to be a woman has been given and determined by men.
[166] Izugbara (n 46 above) 7; 23.
[167] As above 7; 23.
[168] Chegwe (n 40 above) 70.
[169] As above 70.

position.[170]

This tradition is particularly significant because it requires a woman to become a man before she can qualify to inherit. In *Mojekwu & others v Ejikeme*[171] the Court of Appeal decided that a daughter had a right to inherit from her late father's estate without undergoing this Igbo traditional ritual of *Nrachi*.[172] In this case, the court held that the *Oli-ekpe* tradition that does not recognise female inheritance in the absence of *Nrachi* was discriminatory and contrary to section 42(1).[173] The court found therefore that the tradition discriminated against the daughter who did not undergo the ritual and was hence unconstitutional.

While this could technically be regarded as a progressive interpretation, the court case is nevertheless revealing. First, the existence of this custom in Nigeria indicates that in order to qualify for a right or to be protected, a woman must be a man or must be in the position of a man. Second, even though this particular decision is progressive, it does not prevent other courts from not relying on the custom when making decisions in the future.

In fact, there is an increased chance that other courts will not necessarily follow the approach of the Court of Appeal, considering the fact that there are inconsistencies in the way (non-) discrimination is interpreted by the different courts in Nigeria. A case in point was discussed previously in regard to the Supreme Court. This situation is worsened by the fact that most Nigerians tend to accept court decisions, particularly in regard to tradition and culture, without question. Most of the cases that involve traditions and customary law do not even get as far as the Court of Appeal, and constitutional issues are never raised in the customary or area courts.[174]

The question to ask, therefore, is what the implication is, particularly for the disabled woman in Nigeria. I borrow two consequences from Iyer, and I argue that these are consistent with Nigerian anti-discrimination law.[175] The first has to do with the selection of what is included or excluded in the list of grounds in section 42. The second consequence has to do with the fact that the definition or meaning that is ascribed to each listed category, ground or characteristic is determined by

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[170] Chegwe (n 40 above) 70.
[171] *Mojekwu & others v Ejikeme & others* (2000) 5 NWLR 402.
[172] As above.
[173] *Mojekwu & others v Ejikeme & others* (n 171 above) 402.
[174] Chegwe (n 40 above) 69.
[175] Iyer (n 119 above) 186; 187.

reference to the dominant social identities.[176]

In Nigeria, the first point could mean that the choice of what is included and excluded in section 42's list is determined by the dominant norm. In other words, the dominant identities in the country determine which characteristic is worthy of protection. The choices made by Nigeria's non-discrimination list mirror the dominant narrative about what social features and characteristics should be considered when differentiating Nigerians. This dominant ableist masculine narrative embedded in section 42 makes it an offence to discriminate on the basis of sex, ethnic origin and even religion, but it is not necessarily an offence, at least under section 42, to differentiate on the basis of disability or on the basis of two or more intersecting grounds at the same time.

The reason for this deficit can be traced to socialisation. In Nigeria it is acceptable to place more value on the male than the female. In fact, the preference for males in Nigerian society has been well documented. The same preference applies in the same manner to the able-bodied, given that it is only recently that disability became a topic of discussion. In fact, for a long time disability was not even contemplated by Nigeria's legal framework. Iyer describes this state of affairs as follows:

> To the extent that the dominant perspective (which is the perspective of the categorizer) represents the 'common sense' of society, these selections and choices will not be controversial: members of marginalized as well as dominant groups are socialized within an ideology which leads all of us to accept that only some characteristics deserve protection under antidiscrimination law. Further, once a list of characteristics has been set out in legislation, the list itself begins to appear neutral and permanent, particularly if the lists in various antidiscrimination laws are similar. It becomes part of the way things are; it appears as though everyone would agree with this list.[177]

Although Iyer writes in the context of Canada, his description is easily applicable to Nigeria, and is clearly mirrored in *Simeon Ilemona Akubo v Diamond Bank*.[178] Although this case is about a disabled man, it confirms the fact that disability has not been given much thought in Nigeria. As a

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[176] As above 186; 187.
[177] Iyer (n 119 above) 187.
[178] *Simeon Ilemona Akubo v Diamond Bank*. (n 83 above).

result, at least for a long time, the disabled were not considered worthy of protection, hence the exclusion of disability from the protected list in section 42. This point becomes clearer when the above case is compared with the similar case of *Simeon Ilemona Akubo v First City Monument Bank*,[179] where the facts were similar. In an effort to make a progressive ruling the judge in this case had to rely on foreign jurisprudence. One might conclude that reliance on foreign jurisprudence was necessary to give a favourable ruling because including disability in the protected list has yet to make common sense.

Even more striking than these cited cases is the judicial absence and unvoiced encounters of the disabled woman. This can be traced to the dominant background categoriser (male ableism) in the Nigerian context that fails to contemplate these experiences. Similarly, the second consequence in the Nigerian context means that the content or meaning of each listed category, as contained in section 42, is defined and determined by reference to the characteristics of the dominant group. This could mean that Nigeria's anti-discrimination law protects Nigerians in the category list from being discriminated against in relation to members of the dominant group. In other words, the disabled woman is protected under section 42 only to the extent that her encounters coincide with those of able-bodied men.

This position is consistent with Duclos's reasoning that–

> [a]ntidiscrimination law protects people in these categories from being disadvantaged in relation to members of the dominant group because the assumption on which the judgment of discrimination is based – that of a simple, 'one step' divergence from the norm – fits them.[180]

This exposes the idea that when section 42 refers to non-discrimination on the basis of sex, for instance, it simply means not male. This is because the dominant group categoriser uses its own (established male ableist) features as the invisible standard against which difference is assigned.

To recap: Having already established that the invisible categoriser and its dominant characteristics in Nigeria are male and ableist, I use the insight that Iyer provides to conclude, first, that there is

[179] *Simeon Ilemona Akubo v First City Monument Bank*. (n 86 above).
[180] N Duclos 'Disappearing women: Racial minority women in human rights cases' (1993) 6 *Canadian Journal of Women and Law* 43.

an invisible dominant criterion that determines which characteristics are to be included and excluded in the protected list. Second, when section 42 provides for protection on the basis of certain grounds, it indicates an invisible categoriser, who has dominant characteristics against which the identity categories that comprise the protected list are compared. I argue that it is precisely because of these two interrelated consequences and their manifestations in Nigerian law that the intersectional encounters of disabled women are obscured.

Inherent in Nigeria's anti-discrimination law is the acceptance of the male ableist ideal. Another manifestation of this ideal is section 42's reference to a *citizen of Nigeria.*[181] At face value, this reference appears to protect every citizen of Nigeria against discrimination, exuding a false universality. Yet, the section also glaringly discriminates on the basis of citizenship. Section 42 confirms that, to be protected from discrimination, one must be a citizen of the country. In other words, the dominant citizenship narrative is exemplified as a status that must be attained in order to be worthy of protection. If this is the case, women's citizenship in Nigeria is debatable. Section 42 could be said to have deliberately disqualified 'disabled' women from attaining citizenship status on the grounds of their gender. This is the point that a number of authors make by emphasising the second-class citizenship status of women that results from the gravity of oppression they suffer simply because of their gender.[182]

In my opinion, this second-class citizenship status ascribed to women is paradoxical and is consistent with a similar reference to the concept of a disabled citizen, regarded as a contradiction of sorts.[183] One is either a citizen or a non-citizen and to refer to women as second-class citizens status can be seen as a backward and indirect way of acknowledging and endorsing the idea that women are not actually regarded as citizens in Nigeria. Where women's citizenship is denied, this not only confirms their disability but obscures their intersectional encounters from the purview of the law, because Nigeria's anti-discrimination law protects only *a citizen of Nigeria.* Women's systemic oppression and the discrimination that they experience are thus hidden. These

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[181] The Nigerian Constitution sec 42.
[182] R Ozoemena & M Hansungule 'Development as a right in Africa: Changing attitude for the realisation of women's substantive citizenship' (2014) 18 *Law Democracy and Development* 225. See also GA Makama 'Patriarchy and gender inequality in Nigeria: The way forward' (2013) 9 *European Scientific Journal* 115. Durojaye & Owoeye (n 37 above) 71; 72.
[183] H Meekosha & L Dowse 'Enabling citizenship: Gender disability and citizenship in Australia' (1997) *Palgrave Macmillan Journals* 49.

experiences are further obscured and complicated when this systemic oppression of women manifests as disability.

To further illustrate the significance of this point, although section 42 forbids discrimination on the grounds of sex, there is proof that the same legal provision appears to have stripped women of their citizenship status as well as their legal humanness and personhood in marriage.[184] This is evidenced by the discriminatory provisions and the clawback clauses that are contained side by side in the Nigerian Constitution itself. In other words, despite the inclusion of sex as a prohibited ground of discrimination, women continue to be oppressed and discriminated against not only because of their sex, but on the basis of other intersecting grounds, such as religion, ethnicity and disability. Yet the Nigeria's legal mindset cannot contemplate the idea that a disabled woman suffers discrimination not only because of her sex but because of several intersecting grounds. As a result of the male ableist emphasis in Nigeria's anti-discrimination law, the Constitution is *blind* to the systemic oppression that women experience.

The problem is that even with the inclusion of sex as a prohibited ground of discrimination, discriminatory provisions and clawback clauses often prevent sex discrimination cases from being won, not to mention cases involving other intersecting grounds. One example is section 26(2), which provides for a rule of indigene-ship in the Nigerian Constitution that gives rise to discrimination against women.[185] This rule emphasises certain benefits that a Nigerian is entitled to by virtue of being a state indigene. Unfortunately, in terms of the rule, a married woman may be denied certain benefits in Nigeria. The denial of benefits that a woman suffers is a result of the fact that she is regarded as a foreigner in her husband's state; yet in her home state, she is also rejected since she is now married.[186]

Extensive literature shows that section 26(2) is discriminatory because it confers citizenship on foreign women who are married to Nigerian men, but excludes foreigners married to Nigerian women.[187] The section thus limits Nigerian women's right to confer their nationality on their

[184] The Nigerian Constitution sec 26(2), sec 29(4)(b). Ikimi makes a similar argument in I Ikimi 'Development of the human rights of women in a cultural milieu' (2018) 9 *Nnamdi Azikiwe University International Law and Jurisprudence Journal* 61.
[185] The Nigerian Constitution sec 14(3), 318(1).
[186] The Nigerian Constitution sec 26(2).
[187] The Nigerian Constitution sec 26(2).

foreign spouses. This provision is not only discriminatory, but is intersectional in nature, because the denial of benefits under the state indigene rule and citizenship status is not only a result of the woman's gender but a result of the fact that she is both a woman and married.

Section 29(4)(b) is yet another example of discrimination against women in the Nigerian Constitution.[188] This section assumes a female has reached the age of majority once she is married, without a corresponding provision for males in the country.[189] This constitutional provision means that, by virtue of marriage, Nigerian females will no longer be deemed to be under-age and children. This provision has been used to excuse and reinforce child marriage in the country.[190] The men who are now seen as their husbands are allowed to escape prosecution from what would otherwise be an infringement of non-discrimination.[191] This provision is not only discriminatory but is intersectional in nature: Female children are discriminated against not only because of their sex but because of their sex, age and even religion simultaneously.

These discriminatory provisions show that although section 42 forbids discrimination on the grounds of sex, discrimination on this basis still occurs. Because sex discrimination still happens, the focus is removed from the different ways in which different women experience discrimination differently.

The discriminatory provisions show how the question for women in Nigeria has moved beyond being disqualified from citizenship to a questioning of their very humanity. One can therefore conjecture that women's inability to attain citizenship and even to be regarded as human cause the disability that Nigerian women suffer from birth until death.[192] This disability occurs because the Nigerian legal framework still views a woman as an object who is not quite human.[193]

The implication of these forms of discrimination is that Nigerian women are not considered human enough to be worthy of protection. These discriminations also ultimately validate the point that all

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[188] The Nigerian Constitution sec 29(4)(b).
[189] The Nigerian Constitution sec 29(4)(b).
[190] T Braimah 'Child marriage in northern Nigeria: Section 61 of part I of the 1999 Constitution and the protection of children against child marriage' (2014) 14 *African Human Rights Law Journal* 486.
[191] Global Rights Kano Human Rights Network (KAHRN) & Bauchi Human Rights Network (BAHRN) 'State of human rights in northern Nigeria abridged version' (2011) 23.
[192] NO Odiaka 'The concept of gender justice and women's rights in Nigeria: Addressing the missing link' (2013) 2 *Journal of Sustainable Development Law and Policy* 190.
[193] HI Bazza 'Domestic violence and women's rights in Nigeria' (2010) 4 *Societies Without Borders* 175.

women may be disabled and that to be woman in Nigeria is a type of disability. These discriminations instead attributes a (legal) disability to women – a point that scholars make when highlighting the fact that when women forfeit their legal humanness in marriage, this can be tantamount to *civil death*.[194] One can therefore argue that the 'civil death' occurs on account of her gender or even another disability and her crime is associated with her womanhood and her body.

An extensive body of literature has shown that, despite the inclusion of sex as a prohibited ground of discrimination in section 42, women continue to be oppressed and discriminated against. This is reinforced by the Nigerian tripartite legal system: statutory, customary and religious law form part of Nigeria's body of law. In fact, the complexity of Nigeria's law arises from the co-existence of statutory, customary and religious norms that form the bedrock of the legal framework.[195] Elaborating upon Nigeria's legal complexity, studies have shown that Nigeria's tripartite legal system, combined with a federal system of government, is not particularly beneficial for women. By virtue of the country's federalism, each state has the power to enact its own laws. A direct consequence of this legal system combined with federalism is the potential for contradictions, ambiguities, conflicts and inconsistencies in the enactment of laws, and this makes the protection of women under Nigeria's anti-discrimination law even more difficult.

Cultural and religious beliefs constitute an integral part of Nigeria's law.[196] Ikimi cites the case of *Esuwoye v Bosere* to substantiate the claim.[197] He explains that in this case, the Nigerian Supreme Court confirmed customary law as no less a source of law than other sources of law.[198] This means that not only does customary law form a part of the Nigerian legal architecture, but crucially there is an acknowledged relationship and unholy alliance between these three legal systems in Nigeria. Williams refers to this relationship and unholy alliance when describing the difficulties in ascertaining where culture ends and law starts and vice versa.[199] Yet, commentators have pointed to the failure of the Nigerian Constitution to resolve the conflict that arises between women's right

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[194] G Quinn 'Reflections on the value of intersectionality to the development of non-discrimination law (2016) 16 *The Equal Rights Review* 66.
[195] Durojaye (n 16 above) 176; 198.
[196] D Peters 'The domestication of international human rights instruments and constitutional litigation in Nigeria' (2000) 18 *Netherlands Human Rights Quarterly* 373.
[197] I Ikimi 'Development of the human rights of women in a cultural milieu' (2018) 9 *Nnamdi Azkiwe University International Law and Jurisprudence Journal* 61.
[198] As above 61.
[199] Williams (n 27 above) 229.

to non-discrimination, on the one hand, and her customs and religion, on the other hand.[200] The question is which one of the two would prevail.

Ikimi goes so far as to suggest that women married in terms of customary law in Nigeria are potentially *disabled*.[201] There is significant substance in this claim, particularly considering that customary law and religious law are heavily influenced by the existing religious and traditional beliefs in the country. Evidence shows that customary law and Sharia law tend to reinforce discriminatory practices against women. Some cultural practices derived from customary law, including wife inheritance or primogeniture, practised in the Eastern part of the country deny women the right of inheritance. To give an example, referring to women as the weaker sex is very common in Christian and Islamic religious settings. It is perhaps the (mis-)interpretation of such statements that easily reinforces the liberal conception of women as difference. This situation seems to be inconsistent with the principles of non-discrimination and equality as outlined in section 42.[202]

The question therefore is if women's oppression and discrimination are a direct result of customary law, proving its culpability in the disability of women. Customary law is an essential part of the legal architecture in Nigeria, so the ability of law and specifically human rights to protect women in different power relationships is questionable.

Chegwe's analysis of *Nezianya v Okagbue*[203] is another example that proves the disabling consequence of a tripartite legal system and reinforces the intersectional discrimination that women suffer. In this case, the court held that, under the customary law of Onitsha in South-Eastern Nigeria, a widow's possession of her deceased husband's property is not absolute. In fact, it was held that this widow could not handle her late husband's estate without the consent of her in-laws. Consequently, if a husband dies without a male child, his widow and his daughters are denied any inheritance, while his extended family inherits his property. Extensive research documents various cases that support this assertion about inheritance.[204]

[200] Durojaye (n 16 above) 105.
[201] Ikimi (n 197 above) 61.
[202] Durojaye (n 16 above) 110.
[203] Chegwe (n 40 above) 69.
[204] As above 69.

Diala has referred to the Supreme Court's invalidation of male primogeniture, which upholds the practice of the most senior son or male relative of a deceased person receiving the inheritance.[205] However, despite the invalidation of this practice, Nigeria's Supreme Court has been complicit in upholding this discriminatory rule.[206] Nevertheless, apart from the fact that the decisions of the Supreme Court have been inconsistent, it must be reiterated that when a case involves or invokes culture and religion, for example, marriage, it is more likely that customary and religious law will prevail. The case of *Akinnubi v Akinnubi* is a good example.[207] In this case, a woman was married under Yoruba customary law and upon the death of her husband claimed an entitlement to her husband's estate. However, the court's decision was that, under Yoruba customary law, the wife is considered part of her deceased husband's property as part of a rule of intestacy. The wife was therefore denied any entitlement to the estate.[208]

With intersectionality in mind, the above-mentioned discriminatory provisions bring to light the power relationships that are manifest in religious and cultural claims in Nigeria. It is very clear that women are often trapped in the conflict between their demands for their rights to non-discrimination and gender equality within their religious groups and their reliance on community or group alliances. Without doubt, there is a risk of viewing women as victims of culture. However, an intersectional mindset rejects this monolithic view of culture. Underlying such monolithic culture is the commitment to legal rationality to the detriment of cultural complexity.[209] An increased recognition of the fluidity of identity, according to Bond, means that women should not be required to choose between gender equality and their cultures, religions and ethnicities. Her point is that women should have the freedom to stay with or move away from their religious beliefs in the pursuit of equality.

Considering the current complexities that characterise Nigeria's body of law and its negative consequences for women, one might be wary of yet another potential complexity that an intersectional lens proposes. However, it is exactly because of these complexities that an

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[205] A Diala 'A critique of the judicial attitude towards matrimonial property rights under customary law in Nigeria's southern states' (2018) 18 *African Human Rights Law Journal* 102.
[206] Chegwe (n 40 above) 69.
[207] *Akinnubi v Akinnubi* (1997) 2 NWLR (Pt 486) 144
[208] R Nwabueze 'Securing widows' sepulchral rights through the Nigerian constitution' (2010) *Harvard Human Rights Journal* 141.
[209] JE Bond 'CEDAW in sub-Saharan Africa: Lessons in implementation' (2014) Michigan *State Law Review* 261.

intersectional lens is needed. To reiterate, the value of intersectionality is located in the ability to recognise the interactions and intersections that a disabled woman embodies and, beyond that, to recognise existing power relationships.

To recap and conclude: I have attempted to demonstrate that embedded in Nigeria's anti-discrimination law is an able-bodied liberal male. I argue that it is because of this male ableist stance that an intersectional lens is difficult. I have established that the humanity of a Nigerian woman is questionable considering that, paradoxically, Nigeria's anti-discrimination law is complicit in disabling and reinforcing discrimination against women, who constitute about half of the Nigerian populace.[210] This situation can be traced to the fact that Nigeria's anti-discrimination law is defined by male standards. It is evident that men are the invisible standard for protection and their encounters are the essence of human rights identity. Evidence shows that, unfortunately for the disabled woman, the law privileges the autonomous man. Arguably, this makes it difficult, if not impossible, to address the lived realities of disabled women, which cannot be compared to those of men.

If this is the case, the difficulty that immediately confronts the disabled woman becomes even more clear, since the unproblematic male ableist subject of the liberal narrative clearly excludes her. This subject refuses to accommodate the woman's intersectional oppressive encounters, including the product of sexism and disability that a Nigerian woman might experience. It instead adopts false universalising tactics in attempts to respond to the oppression of women. By offering a false universality and a hidden male ableism, Nigeria's anti-discrimination law obscures from view the differences between women located in very different power relationships. Rooted in the dominance of Nigeria's formalistic narrative of anti-discrimination law are the silenced, unvoiced and unheard lived encounters of disabled women, because such intersectional encounters do not offend the narrative of formal equality and the language of anti-discrimination law.

5.3.3 The public/private dichotomy inherent in section 42

Added to the male ableism inherent in Nigeria's anti-discrimination law is the operation of the public/private dichotomy which resembles the dichotomy between men and women in Nigeria. I

[210] EO Ekhator 'Women and the law in Nigeria: A reappraisal' (2015) 16 *Journal of International Women's Studies* 285.

argue that Nigeria's anti-discrimination law and human rights framework is limited in speaking to the lived and intersectional experiences of the disabled woman because a public/private hierarchy appears in section 42. This hierarchy limits anti-discrimination law from capturing the disabled woman's intersectional encounters that form her lived reality. While section 42 ostensibly guarantees the right to non-discrimination to all its citizens, at the same time it emphasises the hierarchical public/private dichotomy.

This dichotomy is exemplified in Nigeria's body of law where the public is seen as the domain and the exclusive preserve of men and the private sphere is seen as the domain of women. The man is often regarded as the head of the house and the breadwinner and thus placed on the pedestal of the public domain of law. The woman is seen as the homemaker, mother and wife and thus finds herself confined to the private domain of her home and family and even the private domain of the law.

Writers have referred to the understanding and interpretation of Nigeria's anti-discrimination section that is provided in the case of *Uzoukwu*.[211] The significance of this case to our discourse lies in the reasoning in regard to the public/private dichotomy inherent in Nigeria's anti-discrimination law, as put forward by Durojaye and Owoeye.[212] In their analysis of this case, these authors describe how the Nigerian Court of Appeal's interpretation, which restricts discrimination to only state actors, is narrow and restrictive.

This narrow and restrictive interpretation ensures that section 42 cannot be invoked for discrimination that is committed by non-state and private individuals and actors, despite significant evidence showing that the majority of oppressive and discriminatory acts committed against women usually occur in private and can easily be traced to traditional practices usually committed by private individuals and non-state actors. This restrictive interpretation of anti-discrimination law obscures from its view the systemic and horizontal discrimination and oppression that women encounter in private. This discrimination remains hidden, unvoiced and even disappears, particularly when it manifests as disability.

A manifestation of the public/private dichotomy in Nigeria's anti-discrimination law is located in

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[211] *Uzoukwu v Ezeonu* (n 63 above).
[212] Durojaye & Owoeye (n 37 above) 176; 198.

the hierarchies of rights. These hierarchies are mirrored in the common reference in literature to first-generation rights as civil and political rights, second-generation rights as socio-economic and cultural rights, and third-generation rights as collective rights. The implication of this dichotomy and the result of the ranking is that men in the public sphere are worthy of protection, hence their enjoyment of civil and political rights, which are germane to that sphere. Women in the private sphere are considered to be more entitled to rights that are connected to the family context, for example, the right to food, water and shelter. These kinds of rights are usually called economic, social and cultural rights. This public/private dichotomy endorses the greater importance accorded to civil and political rights, to the detriment of the other two generational rights.

The hierarchy of rights is mirrored in the Nigerian Constitution, where civil and political rights are encapsulated in Chapter Four of the Constitution and regarded as fundamental human rights that are justiciable.[213] The Nigerian Constitution ostensibly provides for the right to life.[214] However, it can be argued that this 'right' as prescribed in the Constitution applies solely to the unfortunate situation where a human life is taken as a result of public action alone.[215] It therefore denies this 'right' in relation to the disabling and oppressive situations that Nigerian women encounter daily in private. This shows that a greater emphasis is placed on protecting the individual (man) in public than on protecting the woman in private. The assault of a woman on the street is a crime in Nigeria, but if she is harmed in a similar way in her home or in the family and marriage context, it is not treated as a crime. It is assumed that because the harm occurred at home, the woman somehow agreed to be harmed. An extensive body of literature documents how the Northern Nigerian Penal Code accepts and endorses this claim.[216]

Others might argue otherwise, claiming that the Violence Against Persons Prohibition Act (VAPPA), enacted in 2015, makes it a crime to harm individuals in the privacy of their homes.[217] Nevertheless, while acknowledging the merits of this argument, it would be naïve of us to think

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[213] The Nigerian Constitution chapter 4 contains fundamental human rights believed to be justiciable.
[214] The Nigerian Constitution sec 33(1).
[215] H Charlesworth 'Human rights as men's rights' in J Peters & A Wolper (eds) *Women's rights, human rights: International feminist perspectives* (1995) 103.
[216] Northern Nigeria Penal Code 55(1).
[217] Violence Against Persons (Prohibition) Act (VAPPA) For further discussions and analysis of the VAPPA see: C Onyemelukwe 'Legislating on violence against women: A critical analysis of Nigeria's recent Violence Against Persons (Prohibition) Act' (2016) 5 *DePaul Journal of Women Gender and the Law* 9.

that the enactment of this law addresses the harm that women encounter in the privacy of their homes. It would be even more problematic to overlook the deficiencies of this Act, especially where the protection of women from discrimination in Nigeria is concerned. A growing body of literature supports this claim.[218] For this research, it is important to reiterate two of these deficiencies, especially in relation to disabled woman. First, the VAPPA employs gender-neutral wording and language, which is an indirect way of proving the male emphasis of the law.[219] The danger for the disabled woman is that this maintains the male/female binary in a manner that obscures how different women, for instance, the disabled woman and the lesbian woman, encounter and experience systemic and intersectional oppression differently.

The second flaw is manifested in the existence of other discriminatory laws that exist alongside the VAPPA. The Nigerian Constitution itself contains discriminatory provisions that contradict and run counter to the VAPPA. For example, although the VAPPA clearly prohibits FGM, the Constitution could be read as encouraging or allowing FGM by endorsing customary law as an integral aspect of Nigeria's body of law, which appears to defeat the purpose of the VAPPA. The question that could be asked is which law would trump the other where there is a conflict between the Nigerian Constitution and the VAPPA. The Nigerian Constitution is likely to prevail in such a situation because of its superiority over other laws in the land, as stated in its preamble. The implication of this paradoxical situation obscures from view the systemic oppression that women experience. These experiences are further and even more obscured and complicated when the systemic oppression of women manifests as disability.

Another example that supports this claim is Nigeria's federal structure, which allows its states, especially where women are concerned, the option to opt in or out of a federal law like the VAPPA. The continued existence of the Northern Penal Code alongside the VAPPA is paradoxical and proof enough. This emphasis on public life to the detriment of private life manifested in Nigeria's

[218] OJ Ojigho 'Prohibiting domestic violence through legislation in Nigeria' (2009) 23 *Agenda: Empowering women for gender equity* 88. Onyemelukwe provides a detailed analysis of the VAPPA in C Onyemelukwe 'Legislating on violence against women: A critical analysis of Nigeria's recent Violence Against Persons (Prohibition) Act' (2016) 5 *DePaul Journal of Women Gender and the Law* 9.
[219] C Onyemelukwe 'Legislating on violence against women: A critical analysis of Nigeria's recent Violence Against Persons (Prohibition) Act' (2016) 5 *DePaul Journal of Women Gender and the Law* 9.

anti-discrimination law has been condemned by various legal writers.

In addition, the socio-economic rights enshrined in Chapter Two of the Constitution contain the Directives of State Policies (DSP) and are treated as non-justiciable.[220] An extensive body of research discusses and documents the contentions in determining the justiciability of the socio-economic rights in Nigeria that could support this assertion.[221] Significant evidence shows that there are hierarchies of rights in the Nigerian Constitution. An oft-cited example that confirms this hierarchy is *SERAP v Federal Republic of Nigeria and Universal Basic Education Commission*.[222] In this case, the ECOWAS Community Court of Justice held that children in Nigeria have a right to education, declaring that the right to education is justiciable. By so doing, the court dismissed the Nigerian government's defence that education as enshrined in Chapter Two of the Constitution should be regarded as a mere directive policy of the government and not a right of Nigerians.[223]

However, the government's outright refusal to ensure the realisation and implementation of the court's decision is proof that there is a ranking when it comes to the guarantee of rights. With this kind of ranking, the interactions between the three generations of rights are often ignored. The difficulties that arise from the hierarchies in rights is that they obscure from view the intersecting encounters and discrimination against the disabled woman that result from failing to recognise the indivisibility and interdependence of oppression. This is consistent with the point Crooms makes when drawing attention to the refusal of states such as Nigeria to embrace the indivisibility of civil and political rights as well as economic, social and cultural rights.[224] With such a refusal, the limits of Nigerian anti-discrimination law in addressing the intersecting and interlocking forms of oppression of the matrix of domination that the disabled woman encounters are exposed.

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[220] The Nigerian Constitution chapter 4 contains fundamental human rights that are believed to be justiciable while rights contained in the Directive of State Policy (DSP) in chapter 2 of the Nigerian Constitution are believed to be non-justiciable.
[221] H Kutigi 'Towards justiciability of economic, social, and cultural rights in Nigeria: A role for Canadian-Nigerian Cooperation? (2017) 4 *The Transnational Human Rights Review* 129.
[222] SE*RAP v Federal Republic of Nigeria and Universal Basic Education Commission* case (2010) ECW/CCJ/APP/12/07
[223] As above.
[224] LA Crooms 'Indivisible rights and intersectional identities or what do women's human rights have to do with the race convention' (1997) 40 *Howard Law Journal* 619.

5.4 Can the disabled woman speak? The intersectionality of gender and disability, culture and religion: The experiences of disabled women in Nigeria

Next, using an intersectional lens, I examine three case studies in Nigeria. First, I look at the story of Amina Lawal, who received international attention when she was sentenced to death by stoning for adultery, under Sharia laws. Second, I examine the kidnap of the 276 Chibok girls in Northern Nigeria. Finally, I focus on the case of Mary Sunday, who was attacked and doused with burning oil by her fiancé. I have two aims in describing these stories.

First, I wish to show how a Nigerian woman's lived experience and reality reflects the intersection that occurs between her gender and other identities that she carries, including her ethnicity, disability, religion, culture and sexuality. The aim is not necessarily to essentialise any identity category, such as culture, religion, gender and ethnicity, but to show how these identity categories can intersect in a woman's life to form her lived reality. Amina's story depicts the interaction between her religion, culture, gender and ethnicity and how their intersections influenced how she was treated by society.

Second, I want to show how these identity categories and their intersection can conspire to render women disabled. A non-disabled woman can become disabled, with or without physical impairments, as a result of the oppression and violence she suffers as a result of the intersections that occur between her gender and her other identities, including her ethnicity, religion and culture.

I examine these cases to show that Nigerian women suffer oppression not only because they are women alone (gender) but because there is an often unacknowledged and inextricable connection between being a woman, from the Northern part of Nigeria (ethnic origin), being Muslim and subjected to Sharia laws (religion) and then subsequently becoming disabled (disability). These stories demonstrate the inextricable linkages between gender, religion, culture and ethnicity to reveal the gendered and emergent nature of disability.[225] These stories expose the inextricable interactions as well as the blurred lines between sexism and disability. Lastly, the stories expose the unequal power relationships that result in oppression, disadvantage and the voiceless disabled woman in patriarchal Nigeria.

By using women's real-life situations, I further buttress my argument that sexism and disability

[225] Ribet (n 7 above) 161.

are the workings of a dominant narrative that is embedded in patriarchy. In other words, each form of oppression that manifests as sexism or disability discrimination or both reveals a fundamental aspect of patriarchy that should not be disregarded. In fact, I demonstrate that there are interactions and intersections between sexism and disability that Nigeria's anti-discrimination law does not contemplate. I show how oppression that manifests as sexism and disability is not neutral in regard to gender, religion, culture, (dis)ability, class and ethnicity.

These stories, in my view, should emphasise further the interactions that exist between sexism and disability in a manner that reveals the complexity of oppression and its messiness in women's lives. This is particularly the case when considering the undeniably patriarchal nature of Nigerian society.[226] In fact, it is possible to claim that there will be no real headway in curbing either sexism or disability in Nigeria without recognising their interactions and intersections and until the insight gained from their intersectionality is considered and mirrored in Nigeria's legal architecture.

5.4.1 Can the disabled woman speak? The case of Amina Lawal

The State v Amina Lawal[227]

Summary of known facts

The story of Amina Lawal is the most widely documented case on stoning in Nigeria.[228] Amina Lawal was a 30-year-old divorced Nigerian mother of three who was sentenced to death by stoning for having a baby out of wedlock. Her daughter was conceived about nine months after her divorce from her second husband. The father of the baby denied the act of fornication and the prosecuting officers could not obtain proof in the form of four eyewitnesses to the allegation, so the charge against him was subsequently dropped. However, the fact that Amina's daughter was conceived and born served as the basis for the charges against her.

There was international outcry and protests when an Islamic court in Katsina State convicted

[226] Durojaye & Owoeye (n 37 above) 71.
Durojaye & Owoeye mention how discriminatory and oppressive practices against women are perpetuated by patriarchy.
[227] O Gbadamosi 'Intersection between sharia and reproductive and/or sexual health and human rights' (2012) 36 *University of West Australian Law Review* 52.
[228] As above 52. Khouri makes the same point in N Khouri 'Human rights and Islam: Lessons from Amina Lawal and Mukhtar Mai' (2007) 8 *The Georgetown Journal of Gender and the Law* 97; 98.
See also C Nicolai 'Islamic law and the international protection of women's rights: The effect of sharia in Nigeria' (2004) 31 *Syracuse Journal of International Law and Commerce* 299; 300; 301.

Amina of adultery under Sharia laws on 15 January 2002. This case triggered arguments about the relationship between Sharia law and human rights. The sentence was appealed against in September 2003. The Appeal Court found a number of flaws in the Islamic court's decision, and Amina was freed.[229] She was therefore cleared of all charges by the Upper Sharia Court, amidst sighs of relief nationally and internationally.

5.4.1.1 An analysis of Amina Lawal's case: An intersection of gender, religion and culture

Because Amina was a Muslim woman, her case was heard by a Sharia court. This explains the significant literature that explores the relationship between human rights and Islamic law in Northern Nigeria and other Islamic states. Khouri employs three different interpretive frameworks to analyse Amina Lawal's case,[230] to demonstrate the relationship that exists between human rights and Islam (religion) in Nigeria. I provide a brief description of her argument, especially in regard to the relationship between human rights and Islamic law (religion).

The first is the clash of civilisations lens, where human rights and Islam are portrayed as opposites. This interpretive lens sees culture in an essentialised and monolithic way. Khouri notes that the Amina Lawal case was viewed by the global media using the clash of civilisations interpretive lens. This is evidenced by the portrayal of Amina's conviction and sentence as an infringement of her human rights by an Islamic law and culture that disregards human rights. Khouri describes the widespread remarks in the global media on the cruelty of stoning as an unusual punishment, and the absurdity of adultery as deserving capital punishment as illustrating this point.

This kind of portrayal is based on the perception of Sharia law as grounded on an Islamic civilisation that is oppressive towards women.[231] Khouri notes that the media was particularly critical of the continual struggles against patriarchal tendencies that are masked by religion and culture.[232] She opines that this kind of interpretive framework does not adequately account for Amina's lived realities. Her conclusion is therefore that Amina's freedom was not necessarily achieved because human rights values prevailed over Islamic law, but because certain human

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[229] Gbadamosi (n 227 above) 52. Gbadamosi mentions some of the flaws that led to Amina's acquittal including the absence of four witnesses before a charge of *zina.*
[230] N Khouri 'Human rights and Islam: Lessons from Amina Lawal and Mukhtar Mai' (2007) 8 *The Georgetown Journal of Gender and the Law* 97; 98.
[231] As above 98.
[232] Khouri (n 230 above) 98.

rights values were located within the Islamic law narrative.

According to Khouri, the legal pluralism lens sees human rights and Islam as separate narratives but the idea is that they interact with and shape each other in accordance with local power relationships.[233] She describes how the legal pluralism lens does not necessarily see human rights and Islamic law as opposed but as overlapping.[234] This kind of lens sees human rights and Islamic law as types of law that co-exist with each other in an attempt to shape and influence human behaviour. With this kind of lens, culture is not static and monolithic but interacts with other systems.

Like the clash of civilisations lens, the legal pluralism lens portrays human rights and Islam as representative of different cultures, but the difference between the two lenses is that legal pluralism perceives culture as dynamic and without fixed boundaries that separate one from the other. Khouri's observation is that, with such an understanding, the question is not whether human rights will prevail over Islam but how these narratives are employed in power struggles and unequal power relationships.[235]

Khouri correctly questions whether the global legal pluralism lens describes Amina's lived reality better than the clash of civilisation lens.[236] She suggests that Amina's freedom was not based on a human rights logic articulated by the global world, despite the fact that the global community achieved its desired result. She explains how the court based its decision to free Amina on the idea that freedom, protection and justice were underlying tenets of Islam and Sharia law. Justice and Amina's freedom were therefore premised on a narrative of social justice that was different from the human rights narrative embraced by many Nigerians. Sharia law advocates are reported to prefer the social justice narrative as opposed to the liberal vision of statutory law that was introduced and imposed by the colonialists. The social justice narrative is, according to Khouri, believed to be fairer, swifter and God-given.[237]

The legal pluralism lens, according to Khouri, adopts this different definition of justice because it

[233] As above 98.
[234] Khouri (n 230 above) 98.
[235] As above 98.
[236] Khouri (n 230 above) 98.
[237] As above 98.

is grounded on the idea that different and overlapping laws co-exist without allowing one law to trump another.[238] In addition, the legal pluralism lens brings to the fore the power relationships that shape the interactions between the human rights and Islamic law narratives in the country. According to her, some Nigerians believe that Sharia law is incompatible with human rights, while other Nigerians note that there are human rights values within an Islamic narrative, and it is precisely because this lens recognises this differences that it provides a better understanding.

Khouri states that the global legal pluralism lens ensured Amina's freedom because it allows for a different narrative of social justice that was not necessarily based on human rights.[239] The lens allows for the accommodation and co-existence of overlapping legal frameworks where one legal framework is not necessarily seen as superior to another. In addition, it emphasises the internal political conflicts that often characterise the operation of Sharia law in Nigeria. Based on these explanations, Khouri concludes that this legal pluralism lens accurately describes the relationship between human rights and Islamic law in Amina's case.[240]

The transnational legal processes lens portrays the relationship between human rights and Islam in terms of transnational legal processes by which the two narratives are employed to form communities and influence the actions of the state.[241] According to Khouri, using this lens in Amina's scenario requires existing human rights networks and the impact of human rights values in an Islamic context.[242]

Khouri describes how, in contrast to the legal pluralism lens, the transnational legal process lens places human rights on a higher pedestal than Islamic law.[243] She notes how the relationship between the human rights and Islam narratives is not neutral because international human rights are embedded in international law. Where human rights are defined as liberal, this becomes problematic. As a result of the international attention the case received, the transnational legal processes lens refers to the international legal networks that sought to ensure Amina's freedom. Yet, as Khouri shows, Amina's freedom was granted based on Sharia law and not necessarily

[238] Khouri (n 230 above) 98.
[239] As above 98.
[240] Khouri (n 230 above) 98.
[241] As above 98.
[242] Khouri (n 230 above) 98.
[243] As above 98.

because Nigeria had internalised any international human rights laws.[244]

Although Nigeria has an anti-discrimination legal and human rights framework, as stated in section 42 of the Nigerian Constitution, it was not directly applied in the case. In fact, it is argued that the definition of justice applied by the court cannot be said to be based on human rights reasoning; instead, it is argued that Amina's freedom was at a greater risk precisely because of the international attention the case received. Khouri therefore concludes that while the transnational legal process lens is useful in emphasising the various networks and actors' involvement, its explanations in regard to Amina's case are not tenable. She notes that the international attention and pressure that was exerted did not ensure compliance with human rights obligations.

This analysis shows the limitations of law and specifically the human rights framework in speaking to the lived realities of Amina Lawal. It is clear that the Sharia court did not deal with the intersectional discrimination that Amina suffered as a result of being a woman and a Muslim at the same time.

I therefore introduce the intersectional lens to describe the relationship between human rights and Islam (religion) in the case. I argue that human rights as intersectional hold more promise in speaking to the lived realities of Amina and women like her, who are not only women but carry multiple identities. Religion is one of the identities they embody.

This thesis offers the intersectional lens as an alternative interpretive lens, describing the relationship between human rights and religion (Islam or Christianity). Unlike the other three lenses that Khouri discusses, the intersectional lens does not necessarily see human rights and religion, whether Islamic or Christianity, as separate. In other words, such an understanding emphasises the idea that a woman is not only a woman but a woman with multiple identities that interact and intersect to form women's lived realities. This means that it understands that religion is one of the identities that a woman potentially carries. A woman should therefore not have to or be forced to choose between her quest for gender equality and her religious identity. Intersectionality as an interpretive lens builds on certain aspects of Khouri's legal pluralism lens. The argument is that human rights as intersectional examines how a woman's identities and their

[244] Khouri (n 230 above) 98.

intersections represent structures of power that reflect lived realties.

Amina's story depicts the interaction between her religion, culture, gender and ethnicity, and how their intersection influences how she is treated by society. Amina's story is a clear depiction of how law's one-dimensional view when dealing with discrimination and oppression does not fully reflect women's lived experiences. A focus on one identity alone, for instance her gender, ethnicity, religion or culture, will fail to tell Amina's full story.

Religion is often erased from feminists' conversations.[245] Tensions often arise within the feminist narrative on the subject of religion and religious women. In fact, Salem describes how dominant Western feminism finds it challenging to engage with women who are religious.[246] On the one hand, it is argued that religion is an inherently patriarchal institution that by its nature excludes women and renders them unequal to men. On the other hand, it is undeniable that many women see themselves as feminists and as religious. With this argument, Salem is right to query whether religion has been defined too simply by feminists. My presentation of Amina Lawal's story brings to the fore how the intersection of identity categories such as religion, culture, ethnicity and gender determined her lived reality.

The question to be asked about religion is: Who decides whether religion is oppressive to women and what unequal power relationships are at play in making such a decision? There is a tendency to essentialise religion, so that all religious women, particularly Muslim women, are portrayed as oppressed in the same way as Third World women are portrayed as disempowered. This kind of construction obscures from view the specificities and particularities that form women's lived realities and shifts the discourse to an idea of false consciousness. Salem suggests that when the discourse on religion focuses on religion as a choice, in other words, the idea that women choose to be religious, it exposes the dominant liberal narrative that carries with it the argument for agency. In addition, when the discussion focuses on religion as a right that is either given or taken away, it also portrays liberal individualistic tendencies. In fact, the idea of religion, that is, the existence of superior power who transcends a person, according to Salem, is already contrary to

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[245] S Salem 'Feminist critique and Islamic feminism: the question of intersectionality' (2013) 1 *The Postcolonialist*
[246] As above.

the liberal assumption of individual autonomy.[247]

The liberal notions of agency and autonomy can be traced to the dominant narrative of secularism. According to Salem, this narrative espouses the idea that religious women have no free will, which runs contrary to the idea of a secular society where religion is considered to be outside the domain of politics.[248] Although, the Nigerian Constitution lays claim to secularisation with the idea of free, autonomous action, the adoption of Sharia law in twelve states in Northern Nigeria debunks this notion. The debate about agency versus religion concerns the monolithic and essentialist description of religion as oppression. This approach obscures the fact that many women choose to be religious.

I agree with Salem's point approach to addressing dilemmas, which is to focus:

> … less on essentialized notions of feminism and religion, and more on the lived realities of women who are religious. By centring on the experiences of the lived experiences of the disabled Nigerian woman feminism can move away from the problematic of definition (which by extension is always a process of exclusion) and try to explore the option of multiple feminisms. Intersectionality is a way to conceive such a move.[249]

5.4.2 Can the disabled woman speak? The case of the Chibok girls

Summary of known facts

On 14 April 2014, 276 schoolgirls were violently abducted from their secondary school in Chibok, a rural town in Borno State of Northern Nigeria. Human Rights Watch has reported that this abduction represents the biggest single incident of abduction carried out by Boko Haram.[250] At the time of writing, only about 103 schoolgirls have been rescued, and little is known about the whereabouts of the other girls or when they are likely to be rescued.[251] The abduction of these schoolgirls has led to a national and international outcry, protests and campaigns.[252] Human Rights

[247] Salem (n 245).
[248] As above.
[249] Salem (n 245).
[250] Human Rights Watch 'Those terrible weeks in their camp" Boko Haram violence against women and girls in Northeast Nigeria' (2014) 25.
[251] Nigeria's report to the African Commission on Human and Peoples Rights.
[252] The abduction of the Chibok girls triggered the '*Bring back our girls'* campaign in 2014.

Watch has documented graphic accounts based on survivors' testimonies about the violence and physical and psychological abuse that occurred during the kidnap. The abuse and violence included rape and sexual violence, forced marriage, forced labour, etc.

5.4.2.1 An analysis of the Chibok case: An intersection of gender, religion, culture and age

The abduction of the Chibok girls in Northern Nigeria is another clear example of how the oppression that a Nigerian woman suffers cannot be understood using the single-issue and one-dimensional approach of law and human rights. The Nigerian law and human rights framework need to develop an intersectional lens in order to be able to speak to the lived realities of disabled women in Nigeria. Human Rights Watch has documented how the victims were targeted because they were girls (gender)[253] and regarded as easy prey, because of their religion (Christianity),[254] because of their age (young girls),[255] and because of their ethnic/cultural origins (Northern Nigerian).[256] The intersecting identities resulted in their abduction (oppression) and even led to these previously non-disabled girl children suffering different forms of disability.

5.4.3 Can the disabled woman speak? The case of Mary Sunday

Mary Sunday v Nigeria (ECOWAS Community Court of Justice)[257]

Summary of known facts

Mary Sunday is a Nigerian woman who was attacked and doused with burning oil by her fiancé during a domestic disagreement. Two human rights civil society organisations, namely the Women Advocates and Documentation Centre (WARDC) and Institute for Human Rights and Development in Africa (IHRDA), brought a case of domestic violence on the survivor's behalf to the ECOWAS Community Court of Justice in 2018. The survivor's fiancé was a law enforcement officer named Corporal Gbanuan. As a result of this attack, Mary reportedly suffered burns as well as psychological and emotional disability as a result of the trauma.

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[253] Human Rights Watch (n 250 above) 16.
[254] As above 2; 4; 16.
[255] Human Rights Watch (n 250 above) 4.
[256] As above 4; 16; 17.
[257] *Mary Sunday v Nigeria (*2018) (ECOWAS Community Court of Justice ECW/CCJ/APP/26/15WARDC&IHRDA)

5.4.3.1 An analysis of the Mary Sunday case: An intersection of gender, religion, culture and age

During legal proceedings in Nigeria, Mary Sunday was denied justice. The police statements and reports cleared Corporal Gbanuan of any wrongdoing. In fact, it was reported that during the investigations, bogus eyewitnesses were produced to write statements, while statements were not received from the two individuals involved.[258] Mary Sunday was reported to have been questioned and interviewed by the police two years after the police filed its report on the case.[259] This case was further undermined by the loss of Mary's file by the Ministry of Justice after the investigating policeman died.

Although the ECOWAS Community Court of Justice ordered that the victim be compensated, the survivor's claim of gender-based discrimination was dismissed as not systematic. In the court's view, the gender-based discrimination was not systematic because the case involved an individual. Moreover, the court reasoned that the state could not be implicated in the act of domestic violence simply because the perpetrator was a law enforcement officer. Although the court's decision has been largely commended, the court did not go far enough, as it did not find the Nigerian government complicit in systematic gender-based discrimination, and failed to use an intersectional lens to elaborate further upon the situation of the survivor who had been 'disabled' by gender-based discrimination that was reinforced by the patriarchal tendencies of the state.

This story confirms the argument put forward in this thesis that sexism and disability are the workings of a dominant narrative that is deeply embedded in patriarchy. These forms of oppression will not be curbed until their interactions and intersections are recognised and reflected in the legal and human rights architecture.

5.5 Conclusions

In this chapter, I respond to the question of the extent to which Nigeria would benefit from a different and alternative approach to law. In responding to the question, my argument is that the Nigerian legal framework is limited in its ability to speak to the lived realities of disabled women, because it has failed to use an intersectional lens. Nigerian law, by virtue of its singular focus, does

[258] S Omondi et al 'Breathing life into the Maputo Protocol: Jurisprudence on the rights of women and girls' (2018) 60; 61.
[259] As above 60; 61.

not recognise interactions and relationships between structures of oppression, for example, gender and disability on the one hand, and law, culture and religion on the other hand, despite evidence that shows how most forms of oppression that disabled women encounter are clearly intersectional in nature. I explore the interactions and power relationships that the disabled Nigerian woman portrays as a woman and as disabled. In addition, intersections exist between culture, religion and law as sites of power and oppression in Nigeria.

I argue that that women are controlled and ascribed disability by the patriarchal state because of these intersections of culture, religion and law. In other words, the intersections and the unholy union that exists between sexism and disability on the one hand, and interactions between law, culture and religion on the other hand, expose the complicity of law in producing the disabled woman. This makes a mockery of law's attempts to protect women, particularly women who have been identified as disabled.

The Nigerian legal and human rights framework therefore needs to develop an intersectional perspective. To substantiate this argument, I use narratives of disabled women that demonstrate the multiple and intersectional forms of discrimination they experience because they are both disabled and women. This discrimination occurs because of the interactions and intersections between sexism and disability in Nigeria. I analyse Nigeria's legal and human rights framework against this backdrop. This analysis is essential in order to demonstrate why the Nigerian legal architecture is limited in speaking to the lived realities of the disabled woman.

My analysis begins with an examination of the Nigerian Constitution's anti-discrimination section. Specifically, my argument is that there is something not quite right with the way discrimination is defined or not defined in Nigeria, which makes it difficult to contemplate the intersectional encounters of the disabled woman. The absence of court cases that question the multiple, complex and intersectional forms of oppression encountered by disabled women validates my argument. In fact, this demonstrates that women's unique encounters grounded on the interactions between their gender, disability and even religion and culture are not being contemplated by Nigeria's anti-discrimination law framework. I trace the reason for this to the one-dimensional approach of Nigerian law, which manifests as follows.

First, Nigerian law makes a false claim to universalism, which is defined as the tendency of

Nigerian law to freeze identities and perceive individuals from a one-dimensional lens. This is mirrored in the characteristics, grounds and categories that are included and excluded from protection against discrimination. Specifically, I question the categorical and essentialist perspective that section 42 has adopted, which limits it from contemplating the disabled woman's intersectional encounters that form her lived reality. Next, I carefully examine what I call the atomistic able-bodied man's perspective, which is embedded in section 42 and which prevents it from speaking to the disabled woman's intersectional encounters that form her lived reality. Here I show how Nigeria's one-dimensional perspective is portrayed in section 42's emphasis on hierarchy, where the able-bodied male citizen is seen as the neutral standard and arbiter in order to qualify for protection against discrimination.

Finally, I insist that deeply entrenched in section 42 is a public/private hierarchy that limits it from capturing the disabled woman's intersectional encounters that form her lived reality. I continue with the hierarchy argument that manifests in the public/private dichotomy. In this argument, I show how the one-dimensional perspective of section 42 finds expression in the hierarchical public/private dichotomy, where the public is seen as the domain of men and the private is seen as the domain of women. The implication of this dichotomy is that men in the public sphere are worthy of protection, hence their enjoyment of civil and political rights that are germane to the sphere. Women in the private sphere are not worthy of protection and are rendered disabled; this is mirrored in the hierarchy of civil and political rights versus economic, social and cultural rights.

Next, I provide further support for my argument by using case studies that show the interactions between sexism and disability, which Nigeria's anti-discrimination law does not contemplate. I show how forms of oppression that manifest as sexism and disability are not neutral in regard to gender, religion, culture, (dis)ability, class and ethnicity. These case studies further emphasise the interactions that exists between sexism and disability in a manner that reveals the complexity of oppression and its messiness in women's lives, particularly when considering the established and undeniably patriarchal nature of Nigerian society.

I argue that sexism and disability are the workings of a system of dominant narrative that is deeply entrenched in patriarchy. I claim that neither sexism nor disability in Nigeria will be curbed without recognising their interactions and intersections and until the insight gained from their

intersectionality is considered and mirrored in Nigeria's legal architecture. I therefore reveal law's dishonesty and show how the language of rights is compromised by the fact that their application to Nigeria's body of law is completely political, and not neutral or universal as their liberal underpinnings would have us believe.

Chapter 6: Conclusion

6.1 Introduction

This thesis aims to counter the dominant narratives about disabled women in the Nigerian context. To do this, the thesis responds to the question of whether law, and specifically the human rights framework, can adequately speak to the lived experiences and everyday realities of the disabled Nigerian woman and the multiple intersectional forms of oppression that she experiences.

Disability is a human rights issue. The acquisition of human rights, particularly for vulnerable and dominated groups who have previously been denied access to rights, can be empowering. Yet embedded within this narrative is the question of what it actually means to be a member of the disabled group and what it means to be worthy of human rights. The voice of the disabled woman remains marginalised by dominant disability and feminist narratives, largely because of her intersectional location, and because disability in the Nigerian context is often treated as genderless and genderblind. In other words, the face of disability as a human rights issue is a man, and male encounters largely define what it means to be disabled, while the experience of true womanhood is defined by the absence of disability. This is reflected in the ability to perform the functions of a wife and mother. The disabled woman is therefore denied the protection of the law and specifically the human rights framework, largely because, as Grillo and Wildman have rightly observed–

> [t]he dominant narrative tends to assume that dominant perceptions are the pertinent perceptions, that their problems are the problems that need to be addressed, and that in discourse they should be the speaker rather than the listener.[260]

I hold the position that law and specifically human rights is limited in its ability to speak to the disabled woman's intersectional encounters. Its limitation is associated with the erroneous view that the disabled woman's lived realities and the identities that she carries can be addressed using an essentialised and monolithic lens.

Nigerian law responds to the disabled woman in a monolithic, one-dimensional and essentialist

[260] T Grillot & M Wildman 'Obscuring the importance of race: The implication of making comparisons between racism and sexism (or other -isms)' (1991) *Duke* Law *Journal* 402.

manner that does not necessarily reflect the messiness and complexities that form her lived reality. Law's expectation is that the woman should fragment her encounters into neat categories of woman, or disabled, when in reality she is both a woman and disabled at the same time.

Precisely because the disabled woman does not fit into law's neatly established categories, she is labelled different or deviant, and denied meaningful equality and protection. This raises uncertainties about law's ability to offer meaningful equality. Bearing this in mind, this chapter proceeds with a discussion of my key findings, proposals for the development of an intersectional lens, and suggestions and recommendations for future research.

6.2 Key findings

I argue that Nigeria's law is limited in speaking to the lived realties of disabled women in Nigeria. I associate this limitation with its one-dimensional, monolithic and essentialist perspective. To substantiate and develop this point, I used the intersectional reality of the disabled Nigerian woman as a starting point. Arguably, the law cannot recognise the messiness and complexities that form the disabled woman's lived reality and is therefore limited in speaking to her lived reality.

First, law's limitations are tied to its inability to recognise and contemplate the interactions and intersections that exist between the forms of oppression that the disabled Nigerian woman encounters, which manifest as sexism and disability or both. Second, law's limitations in speaking to the intersectional realities of the disabled woman are tied to the dominant liberal tendencies enshrined in the legal and human rights mindset. Viewing law and human rights as intersectional indicates a need for Nigeria's legal and human rights architecture to shift from liberal single identity thinking to an intersectional matrix of domination thinking that represents the intersectional realities of the disabled Nigerian woman.

The limits of human rights as liberal are exemplified by Nigeria's anti-discrimination architecture, as encapsulated in section 42 of the Nigerian Constitution. A brief analysis of the international human rights instruments as they relate to the disabled Nigerian woman is also included as an appendix to this thesis. This analysis exposes the extent to which Nigeria would benefit from the development of an intersectional lens.

My intention in chapter 2 is to demonstrate the limits of the law and specifically human rights in

speaking to the lived realities of the disabled Nigerian woman. In this chapter, I delve into the question of how the law perceives the disabled woman. I find that the law sees the disabled woman as born, in other words, in essentialist and monolithic terms. I demonstrate that the Nigerian legal framework specifically adopts a one-dimensional perspective that renders voiceless the disabled woman, whose encounters and identities are better understood from an intersectional perspective.

I begin by unpacking the identities that a disabled Nigerian woman carries, not in an additive fashion, but to demonstrate that her oppression must be understood as interactive and intersecting. In other words, disability is gendered, and gender is disabling. In a patriarchal society, the interaction between sexism and disability discrimination as well as other layers of identities informs the oppression that a disabled Nigerian woman experiences. This is easily shown by the idea that to be a woman in Nigeria is not only disabling, but a type of disability. It is important to counter the dominance of the narrative that 'de-sexes' a woman, by presenting the argument that disabled women are women first and foremost. To show this, I illustrate that being a woman in Nigeria is in itself a type of disability, hence revealing the often-unacknowledged notion that there is an interaction between sexism and disability. The dominant narrative with regards to disability is that an impairment is required for there to be a disability.

I use Garland-Thomson's point about how women in patriarchal societies such as Nigeria are disabled to show how women and their bodies are controlled and disciplined in a disabling manner, because of the intersections and relationships between law, culture and religion as sites of power and oppression. I demonstrate that interactions and intersections exist between sexism and disability, and that these interactions and intersections manifest in how the oppression suffered by women by virtue of their womanhood is both a cause and a consequence of disability.

My object is to draw attention to the idea that disability, particularly in regard to women in Nigeria, is not necessarily the result of biological characteristics or genetics but is largely socially constructed through the interactions of legal, cultural and religious narratives driven by Nigeria's patriarchal agenda. This kind of emergent disability – that is usually not neutral in respect of gender, race, ethnic, religion, class or ability – is demonstrated throughout the thesis.

I explore the forms of oppression that a disabled Nigerian woman experiences as a woman. My intention is to expose the patriarchal tendencies that are closely attached to the definition of a

woman. I show that from the time a Nigerian woman is conceived, she is ascribed the category of 'woman' as an inferior and oppressed identity. I also show how, by virtue of that inferior identity, she suffers various kinds of disabilities and, in extreme cases, death. On this basis I question the origins of the inferiority and inferior identity, which stems from patriarchal notions in religion and culture. I therefore show how oppression for the Nigerian woman is compounded by her gender, resulting and manifesting in the attendant sexism that she suffers on account of patriarchal attitudes.

In setting the scene I grapple with the question of how the law perceives a disabled woman in Nigeria. In other words, I am interested in whether a disabled woman is born (essentialist and monolithic view) or whether she is made (social construction). My position is that the disabled Nigerian woman is a product of social construction. I proceed to analyse disability as a complex problem in Nigeria, highlighting in three stages the struggles that the disabled woman experiences daily.

My argument is that sexism and disability are part of the workings of a system of dominant narrative that is deeply entrenched in patriarchy. It will be difficult, if not impossible, to attempt to curb both sexism and disability discrimination in Nigeria without recognising their interactions and intersections. Yet, law fails to recognise and contemplate these interactions. Hence, the argument I present here suggests that Nigerian law is limited in speaking to the disabled woman's lived reality precisely because of its inability to recognise these interactions and intersections between sexism and disability. The law instead promotes its own one-dimensional monolithic identity category assumptions that do not necessarily reflect the disabled woman's reality.

Chapter 3 draws on the arguments from the preceding chapter to posit that (Nigerian) law's inability to recognise and contemplate the interactions and intersections between sexism and disability as structures of women's oppression is linked to liberal tendencies that are deeply embedded in Nigeria's legal architecture. These liberal tendencies manifest as universal individualism, atomistic man and the public/private distinction.

I develop the argument from the preceding chapter by, first, elaborating on the argument that human rights are a legacy of conquest thrust upon African countries such as Nigeria. I interrogate how human rights as a legacy of conquest, interpreted and imposed within the confines of the

dominant Western ideologies of liberalism and its dominant narrative, can speak to the lived experiences of the Nigerian woman, especially when she is identified as disabled. I approach this question by examining the manner in which liberal oriented human rights are conceptualised as sameness, with their three strands of universalist, atomistic man and the public/private dichotomy, and ask whether this model can speak to the lived realities of the disabled Nigerian woman. I conclude that the lived experiences of the disabled Nigerian woman are not a question of sameness or difference, which underlies the liberal ideology, but are really a question of power relations.

In chapter 4, I argue that Nigerian law and specifically the human rights framework need to develop and adopt an intersectional lens and thinking in order to be able to speak to the lived realities of disabled women.

Human rights as intersectional means that in order to be able to speak to the lived realities of the disabled Nigerian woman, law and specifically human rights must shift from a liberal singular identity to an intersectional lens. I substantiate this position by offering three reasons for this need. First, law and human rights as liberal need to be intersectional in order to be able to disrupt the liberal singular identity's disregard for the disabled Nigerian woman's multiple identities. Law's optimism about its ability to speak to the multidimensional voices that a disabled Nigerian woman represents is foiled by the single-issue perspective that it upholds. An intersectional analysis, understood as a theory that recognises the multidimensionality of identity categories that a disabled Nigerian woman embodies, disrupts law's liberal singular focus that forces a single experience and freezes identity categories.

Second, law as liberal needs to be intersectional in order to be able to disrupt the liberal singular identity thinking that there is an essential woman's experience. I apply intersectionality here as an alternative understanding that confronts law's single experience tendency to essentialise. Intersectionality is understood as a matrix of domination thinking that challenges law's essentialist assumptions about a universal woman's experience. My use of intersectionality confronts and counters the assertion of both law and feminist legal theory to speak universally for all women. I argue that this assertion is troubling, considering the privileged liberal tendencies that form much of the bedrock of feminism today.

For example, the dominant narrative of essentialism emphasises a so-called universal and

homogeneous experience of womanhood that, I argue, instead silences the voice of the marginalised disabled Nigerian woman. Intersectionality, however, exposes the limits of a liberal vision of law that assumes the disabled Nigerian woman is similarly situated to the Western woman. This is done in a way that confronts and decentres (Nigerian) law's hold on an ideal standard.

This analysis is valid considering that such a monolithic notion appears to obscure the power imbalances that divide women. I argue that the notion of a universal womanhood is flawed. This flaw stems from law's refusal to recognise, for instance, the stories of different disabled Nigerian women that reflect their lived realities. I show how intersectionality exposes the differences that exist within the category of 'woman'. This emphasises the flaw in a feminism that promised to speak for all women but actually speaks only for a certain group of privileged women. In other words, intersectionality is a counter-argument that rightly raises the question of when feminism promises to speak for all women, it should be clear for which 'woman' it claims to speak. Feminism cannot use a one-size-fits-all liberal lens because the lived realities of women are not necessarily the same. Third, law needs to be intersectional in order to be able to respond to power relationships

Chapter 5 demonstrates how human rights as liberal, as evidenced in section 42 of the Nigerian Constitution, is limited in speaking to the lived realities of the disabled woman.

By virtue of its singular focus, Nigerian law does not recognise interactions and relationships between structures of oppression, for example gender and disability on the one hand, and law, culture and religion, on the other hand, despite evidence that shows how most forms of oppression that disabled women encounter are clearly intersectional in nature. I explore the interactions and power relationships that the disabled Nigerian woman embodies as a woman and as disabled. In addition, intersections exist between culture, religion and law as sites of power and oppression in Nigeria.

My analysis begins with an examination of the Nigerian Constitution's anti-discrimination section. Specifically, my argument is that there is something not quite right with the way discrimination is defined or not defined in Nigeria, which makes it difficult to contemplate the intersectional encounters of the disabled woman. My argument gains validity from the fact that there are no court

cases that question the multiple, complex and intersectional oppression encountered by disabled women. This demonstrates that disabled women's unique encounters, grounded on the interactions between their sex, gender, disability and even religion and culture, are not being contemplated by Nigeria's anti-discrimination law and human rights framework.

I conclude that no progress will be made in curbing either sexism or disability discrimination in Nigeria without recognising their interactions and intersections, and until the insight gained from their intersectionality is considered and mirrored in the legal architecture

6.3 Recommendation: Redefining law and human rights: A reform of the women's human rights architecture in Nigeria

This study exposes the idea that when human rights are defined as liberal, law is not applied in the same way to all Nigerians. Human rights as liberal have been exposed as a dominant narrative that is used to protect some individuals to the detriment of other individuals, such as the disabled woman. The disabled woman is denied human rights protection simply because she does not fit into law's neat and established categories.

Human rights as intersectional recognises that the disabled woman is a social construction, and that sexism and disability discrimination are contextualised and a product of an unequal power relationship. Human rights as intersectional recognises that a one-size-fits-all perspective cannot speak to the lived experiences of intersectional individuals such as the disabled Nigerian woman, but the specificities of the disabled woman must be properly spelt out as expansively as possible. Human rights as intersectional recognises that the identities that the disabled woman embodies are fluid and allows for a non-exhaustive category list.

This thesis draws attention to the intersectional reality of the disabled Nigerian woman. By so doing, it introduces intersectionality into the disability literature in Nigeria. The thesis therefore discloses diverse areas for further research. A possible limitation and critique of my study is that the disabled Nigerian woman group is not a homogeneous group. This is a valid critique, but it serves the purpose of this thesis, which is to draw attention to the disabled woman in Nigeria who has been rendered voiceless and invisible by dominant feminist and disability legal and human rights narratives. Specifically, the disability analysis as used in this thesis complicates and expands

identity, demonstrating how a woman can embody multiple subject positions and can be claimed by several identity categories. Future research can begin to look more critically at the intersecting identities of the disabled woman.

6.4 Conclusion

How is this study to be concluded? It is possible that I have raised more questions to be reflected upon than answers. For example, who is the disabled woman? What is womanhood? What is disability? Are women in Nigeria disabled? Are disability and womanhood the same in Nigeria? While the answers might be contested, I draw attention to the idea that gender is disabling, and disability is gendered in patriarchal Nigeria. If this is true, law and human rights must start paying attention to these interactions and intersections to address the oppression that manifests as sexism or disability discrimination or both in Nigeria.

The disabled Nigerian woman as used in this thesis is imaginary, but she attempts to show the relationship between sexism and disability discrimination that is rarely acknowledged or discussed. The thesis attempts to show the messiness and complexities in the lived realities of the disabled Nigerian woman. The imaginary woman shows us that a woman in Nigeria is not only a woman but a woman with multiple and different identities who should not be perceived in an additive manner but as intersectional. Using the imaginary disabled woman, I show the complexities in the definitions that are given to the identity categories that the woman embodies, for example, sex and disability.

It is clear that to disregard the disabled Nigerian woman perspective is misleading, considering the fluidity and instability inherent in identity categories of womanhood and disability. It might therefore be beneficial to define ‘woman’ as expansively as possible to include the ‘disabled woman’ perspective. In other words, if there is a real interest in protecting the human rights of Nigerian 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.

The disabled woman mirrors the multiple identities that a woman embodies. In other words, I am a woman and because I am a woman in Nigeria, I am susceptible to forms of oppression such as sexism and disability, which are not isolated, but occur at the same time. In other words, these

forms of oppression are the workings of a dominant narrative deeply embedded in patriarchy. My use of the disabled woman is a way of demonstrating that no progress will be made in curbing both sexism and disability discrimination in Nigeria without recognising their interactions and intersections, and until the insight gained from their intersectionality is considered and mirrored in Nigeria's legal architecture.

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Appendix: Can the disabled woman speak? The intersectionality of gender and disability: A critical analysis of Nigeria's obligations to the disabled woman under international human rights treaties

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1.1 Introduction

My argument in this thesis is that law is limited in its ability to speak to the lived realities of disabled women. In this appendix, I assess the extent the current international law and human rights framework responds to the intersectional experiences of the disabled Nigerian woman.

I offer a brief analysis into four international human rights treaties that Nigeria has ratified especially in relation to the disabled woman. This is done in order to make an assessment as to whether or not, the current international law and human rights framework have developed an intersectional lens that would be able to speak to the disabled women's intersectional lived realities.

Four specific human rights treaties that Nigeria have ratified would be considered in relation to the disabled woman including the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW); the African Charter on Human and Peoples Rights (African Charter); The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (Maputo Protocol) and the Convention on the Rights of Persons with Disabilities (CRPD).

From the analysis, the conclusions that emerge are that, international law and human rights framework's response to intersectional encounters that the disabled Nigerian woman experiences are still at the embryonic stages. Even if the international human rights treaties that Nigeria has ratified are gradually developing an intersectional lens especially with regards to protecting the disabled woman, it is still limited by the difficulties that prevent Nigeria from fulfilling its international obligations.

1.2 Can the disabled woman speak? The intersectionality of gender and disability: A critical analysis of Nigeria's obligations under the Convention on the Elimination of Discrimination Against Women (CEDAW)

The CEDAW was adopted in December 1979 and came into force in September 1981.[1] In 1999, an Optional Protocol was created which allowed women in the respective states parties to make individual complaints to the United Nations Committee on the Convention on the Elimination of all forms of Discrimination against Women (CEDAW Committee). [2]

The coming into force of the CEDAW has been described as a landmark breakthrough in the advocacy for the rights of women globally.[3] The significance of the document is in its efforts to achieve human rights for women, and earned it, its common reference as the 'International Bill of Rights' of Women.[4] As an international Bill of Rights for women, the CEDAW has been regarded as a powerful instrument in efforts to ensure that women's rights are regarded as human rights. [5] In addition, CEDAW seeks to tackle and address women's oppression not just in the application of law but that is deeply ingrained in its fabric.[6]

Nigeria ratified CEDAW on June 13, 1985 without reservations, along with its Optional Protocol on November 22, 2004.[7] The Nigerian government has been relatively compliant in its reporting obligations by submitting state reports indicating measures it has taken to improve the rights of Nigerian women to the CEDAW Committee.[8] In response, the CEDAW Committee has made significant recommendations: importantly, the need for CEDAW to be domesticated into Nigeria's

[1] The Convention on the Elimination of all forms of Discrimination against Women (CEDAW): UN General Assembly 34/180 of 18 December 1979 A/RES?34/180 (accessed 22 January 2019)
[2] CEDAW Optional Protocol UN General Assembly A/RES/54/4 15 October 1999 (accessed 22 January 2019)
[3] B Herndndez-Truyol 'Sex, culture, and rights: A re/conceptualization of violence for the twenty-first century' (1997) 60 *Albany Law Review* 611
[4] JE Bond 'CEDAW in sub-Saharan Africa: lessons in implementation' (2014) 241 *Michigan State Law Review* 243. Jiyan and Forster also refer to CEDAW as an 'International Bill of Rights for Women' in V Jivan & C Forster 'Challenging conventions: in pursuit of greater legislative compliance with CEDAW in the Pacific' (2009) 10 *Melbourne Journal of International Law* 657.
[5] JE Bond 'International intersectionality: A theoretical and pragmatic exploration of women's international human rights violations' (2003) 52 *Emory Law Journal* 85.
[6] LA Crooms 'Indivisible rights and intersectional identities or what do women's human rights have to do with the race convention' (1997) 40 *Howard Law Journal* 628.
[7] The Nigerian government ratified CEDAW without reservations in 1985 and its Optional Protocol in 2004.
[8] See Nigeria's combined 4th and 5th Country Report (CEDAW/C/NGA/405) The combined report does not deal explicitly with women with disabilities.

national law.[9]

However, so far, Nigeria has been completely silent on the situation of disabled women with no reference to them in these reports.[10] This is despite sufficient evidence that demonstrates for instance that a Nigerian disabled woman suffers heightened intersectional discrimination.[11]

Recently, the CEDAW Committee had drawn attention to the plight of vulnerable groups particularly with regards to disabled women. The CEDAW Committee has emphasised the situation of disabled women in conflict situations and their increased susceptibility to sexual violence.[12] This recommendation is an improvement as previously, the CEDAW Committee had made no reference to disability and particularly disabled women in Nigeria.[13]

Against this background, we need to analyse whether the CEDAW responds to the intersectional encounters of the disabled Nigerian woman. The first area of analysis is in the definition of discrimination. Article 1 and 2 of CEDAW places a duty on states parties to end every form of discrimination on the basis of sex and gender.[14] A cursory examination of these articles indicates a definition of discrimination that leans closely to substantive equality.[15] Suggestions abound about the idea that CEDAW leans towards a substantive equality perspective rather than formal equality.[16] This according to Bond, means that when it comes to human rights, CEDAW goes

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[9] Concluding Observations of the Committee on the Elimination of Discrimination against Women: Nigeria (2008) [Part of A/6x3/38] CEDAW/C/NGA/CO/6 (date accessed 12 July 2017).
[10] See Nigeria's combined 4th and 5th Country Report (CEDAW/C/NGA/405)
[11] GE Afolayan 'Contemporary representations of disability and interpersonal relationships of disabled women in southwestern Nigeria' (2015) 29 *Agenda* 61. Arguably, Nigeria's silence can be attributed to a number of factors. The main factor I advance, as demonstrated in this thesis is the religious-medical perception of the disabled woman that is evident in the country's liberal legal and human rights framework. The legal and human rights' complicity in disabling the Nigerian woman is very significant considering that the Nigerian state bears the ultimate responsibility to deal with private violations. G Olatokun et al 'Making a case for the domestication of CEDAW in Nigeria: Empirically and conceptually justified' (2014) 22 *Journal of Law, Policy and Globalization* 46.
[12] Concluding Observations of the Committee on the Elimination of Discrimination against Women: Nigeria (2008) [Part of A/63/38] CEDAW/C/NGA/CO/6 (date accessed 12 July 2017).
[13] For instance, in CEDAW Committee's earlier concluding recommendations and response to Nigeria's 4th and 5th state report Nigeria Concluding observations: 30th session (CEDAW/C/NGA/4-5) (date accessed 12 July 2017).
[14] CEDAW art 1, 2. See generally: S Cusack & L Pusey 'CEDAW and the rights to non-discrimination and equality' (2013) 14 *Melbourne Journal of International Law* 5; 6; 7.
[15] CEDAW art. 1 According to art 1 of CEDAW; *discrimination against women* 'shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights"
[16] Bond (n 5 above) 96.

beyond formal comparisons with the status of men or the male standard.[17] The advantage of this kind of perspective is its recognition of the specific and systemic discrimination that women encounter just because they are women. For example, writers point to CEDAW's holistic perspective towards equality; by its recognition of both civil and political rights as well as economic, social cultural rights.[18]

It is interesting to point out the disagreements with the foregoing assertion. Rebouche's reminder is that the origins of CEDAW can be traced to a liberal or formal perspective to equality.[19] For example, CEDAW's articles that stipulate equal treatment between men and women who are similarly situated underscores a formal perspective and stance to equality.[20] This claim is buttressed by the fact that this treaty reportedly came into force during a period when the dominant narrative within the feminist movement was focused on discrimination that women encountered as women.[21] In Rebouche's opinion, the liberal/formal perspective to equality has only started to change with an increased understanding of the changing nature of women's rights and the introduction of CEDAW General Recommendations.[22]

For example: The fact that it took the CEDAW Committee some time to issue the General Recommendation 19 on violence against women, confirm CEDAW's emphasis on formal equality between women and men. CEDAW's failure is identified in its inability to protect women against some forms of discriminations that had not been recognised as at the time of its compilation. This includes the disregard of gender-based violence as a form of discrimination often targeted at women in the private.[23]

These contentions notwithstanding, even if it is true or assumed that CEDAW's definition of discrimination extends beyond formal equality to a substantive equality, it is still according to Charlesworth hinged on the same limited perspective of sameness.[24] The challenge with this kind

[17] As above 96.
[18] Bond (n 5 above) 85.
[19] As above 79.
[20] R Rebouche 'Health and reproductive rights in the Protocol to the African Charter: Competing influences and unsettling questions' (2009) 16 *Washington and Lee Journal of Civil Rights and Social Justice* 79.
[21] See generally Bond (n 5 above) 85; and JE Bond 'Gender discourse and customary law in Africa' (2010) 83 *Southern California Law Review* 519.
[22] Rebouche (n 20 above) 79.
[23] JE Bond 'CEDAW in sub-Saharan Africa: Lessons in implementation' (2014) 241 *Michigan State Law Review* 246.
[24] H Charlesworth 'What are women's international human rights' in RJ Cook (eds) *Human rights of women:*

of twin approach is that it appears to be the two sides of the same coin. A coin that has been described as narrowly tied to a human rights framework grounded on a male standard.[25] The consequence of this situation has been the infringement or the absence of rights for women where their unique experiences and lived realties do not bear resemblance to the male standard.

Article I of CEDAW for instance still leans on the standard of equality that remains masculine in a manner where the discrimination it forbids is still restricted to accepted male human rights.[26] This point is easily exemplified in article 4 where the CEDAW stipulates the adoption of special and short-term affirmative methods.[27] With this provision, as Charlesworth has noted, lies an underlying presumption that these steps will be short term methods to allow women to be able to act in a similar fashion as or become like men.[28] She is right to point out that if these rights are conceptualised in a gendered manner, to have access to them will be unlikely to promote meaningful equality.[29] This masculine standard of equality that CEDAW favours is, in Charlesworth's words, subtlety strengthened by its emphasis on the public domain and sphere of law and economy to the detriment and in sharp contrast to the limited emphasis that is given to the oppression that women encounter in the private and family life.[30]

From the above, it is evident how feminist criticisms of CEDAW has mainly focused on the dominance of the masculine narrative. The masculine standard of comparison remains the required standard to be met to the detriment of other alternatives.[31] Nevertheless, despite the merits in the criticisms, what these criticisms have done is to address a specific type of woman. [32] This is because although the instrument claims to adopt the substantive perspective, it is not exactly clear what the CEDAW means by the substantive approach it adopts. Its provisions mirrors a focus on gender as an isolated identity category or oppression that disregards other forms of discrimination and oppression that result from other identity layers that women embody.[33] This is despite the

National and international perspectives (1994) 64.
[25] Crooms (n 6 above) 619.
[26] H Charlesworth 'What are women's international human rights' in RJ Cook (n 24 above) 64; 65.
[27] CEDAW art 4.
[28] H Charlesworth 'What are women's international human rights' in RJ Cook (n 24 above) 66; 69.
[29] As above 64.
[30] H Charlesworth 'What are women's international human rights' in RJ Cook (n 24 above) 64; 65.
[31] C Romany 'Black women and gender equality in a new South Africa: Human rights law and the intersection of race and gender' (1996) 21 *Brooklyn Journal of International Law* 860.
[32] As above 860.
[33] Bond (n 23 above) 259.

significant attention that has been drawn to intersectional beings and the interaction and intersection that exist between gender and race.[34] This includes the different ways discrimination might occur simultaneously along different identity layers such as gender, race, ethnicity, sexual orientation, disability, culture, religion, or class.[35] Yet, for law and specifically human rights to speak to the lived realities of disabled women in Nigeria, it would require that this framework adopts an intersectional approach.

Having laid this foundation, the second area of analysis is the question of whether intersectional lens has been developed within CEDAW. This question has been a subject of growing debate.[36] There are possibly many sides to this debate. I will examine two sides of the debate, the arguments and what this could possibly mean for the disabled Nigerian woman.

One side of the debate is the claim that CEDAW is blind to the unique and diverse realities of women.[37] The argument is that the CEDAW despite being referred to as the international Bill of Rights for women fails to mention explicitly the differences that women embody. Scholars have identified that there is no article and provision in CEDAW that explores the relationship and interaction that exists between sex /gender and other categories of identity.[38] The promise in the CEDAW's preamble exemplified in the particular concern shown towards issues such as poverty, apartheid, racial discrimination, colonialism and neo-colonialism and how these issues intersect and shape women's lived realities was not demonstrated and articulated in the substantive articles in the instrument.[39] In fact, the claim is that there is no mention of women that encounter oppression and discrimination on grounds of race, religion, ethnicity, sexual orientation and disability etc.[40]

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[34] As above 259.
[35] Bond (n 23 above) 259.
[36] M Campbell 'CEDAW and women's intersecting identities a pioneering new approach to intersectional discrimination' (2015) 11 *DIREITO GV Law Review* 480. Campbell in this paper appears to be responding to other scholars who have accused CEDAW of failing to recognise women's intersectional identities.
[37] For scholars that make similar arguments, see generally: DL Rosenblum 'Unsex CEDAW, or what's wrong with women's rights' (2011) 20 *Columbia Journal on Gender and Law* 101. Rosenblum vehemently speaks about the idea that there is no definition of 'woman' in CEDAW. Bond (n 5 above) 72; 73; 96; 97; I Truscan & J Bourke-Martignon 'International human rights law and intersectional discrimination' (2016) 16 *The Equal Rights Review* 110; and CI Ravnbel 'The human rights of minority women: Romani women's rights from a perspective on international human rights law and politics' (2010) 17 *International Journal on Minority and Group Rights* 25.
[38] Bond (n 5 above) 72; 73; 74.
[39] As above 96.
[40] As above 72; 74.

Arguably, although there is an extensive definition of discrimination in the document, there is no direct mention of disability or intersectionality. The result of such perspective is that it fails to account for intersecting oppressions and is primarily focused on oppression that results from gender in a manner that is blind to mutually reinforcing forms of oppression such as disability, racism and even heterosexism.[41]

Put simply, the accusation is that CEDAW had failed to account for the differences in women and their widespread encounters. CEDAW adopts a single ground perspective that treats women as if there is only one way to be woman although there are a few exemptions.[42]

Recently, there has been an increased recognition in the different ways oppression and discrimination might occur simultaneously along different identity layers such as gender, race, ethnicity, disability sexual orientation, religion, or class but which according to Bond, CEDAW's provisions does not necessarily reflect.[43] She describes how instead CEDAW reflects a focus on discrimination that appears to be blind and isolated from other intersecting forms of discrimination.[44] For Bond, this is evident in CEDAW's failure to produce a General Recommendation (GR) that recognises the intersectional nature of gender oppression and discrimination.[45] However, whether this position still holds with the adoption of General Recommendation 28 is subject to debate. This is especially since this Recommendation does not necessarily capture some of the insight Bond provides.[46]

The second side of this debate is the standpoint that CEDAW is alive to the differences of women and to claim otherwise is a misreading of the CEDAW document.[47] These advocates view CEDAW as intersectional, stressing that although there is no direct mention of intersectional discrimination in CEDAW, it is still responsive to the different lived realities of all women.[48] If

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[41] Bond (n 5 above) 96.
[42] As above 96. Here Bond refers to, for instance, CEDAW art 14 on rural women as a small attempt at intersectionality.
See also DL Rosenblum 'Unsex CEDAW, or what's wrong with women's rights' (2011) *20 Columbia Journal on Gender and law* 101.
[43] Bond (n 5 above) 72; 74.
[44] As above 72; 74.
[45] Bond (n 5 above) 96.
[46] As above 163.
[47] Campbell (n 36 above) 486.
[48] As above 486.
See generally S Cusack & L Pusey 'CEDAW and the rights to non-discrimination and equality' (2013) 14

the argument invoked is accepted, it means that although the CEDAW does not explicitly mention disabled women but mentions women, it implicitly would cover disabled women.[49] This I assume would include the disabled Nigerian woman.

Some scholars have even accepted that the lacuna in CEDAW if any, has been corrected with the adoption of General Recommendations.[50] This position is that the CEDAW Committee has corrected its wrongs by issuing various General Recommendations where there has been perceived failing. Campbell opines that the CEDAW Committee has started to recognise and include the language of intersectionality in its work through the issuing of General Recommendations.[51] Article 21 of the CEDAW allows the CEDAW Committee, the authority to adopt General Recommendations that could be used to clarify, make suggestions and interpret certain provisions in CEDAW particularly with regards to states obligations.[52]

I briefly look at some of these General Recommendations. The CEDAW Committee for instance had adopted the General Recommendation 18 in 1991.[53] With General recommendation 18 for instance, the CEDAW Committee focuses on disabled women, calling on states parties to, in their respective periodic reports, report comprehensively on disabled women particularly with respect to employment, education and social security.[54] This General Recommendation obligates states parties to provide protection for disabled women, making specific reference to the *double discrimination* that disabled women encounter.[55] However, a cursory look at this General Recommendation indicates of an additive approach and not necessarily an intersectional approach. The CEDAW Committee's phrasing and reference to "*double discrimination" linked to their special living conditions* in the document validates my point.[56] In my view, this phrasing is

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Melbourne Journal of International Law 6.
[49] A Bruce et al 'Gender and disability: The Convention on the Elimination of all Forms of Discrimination against Women' in A Bruce et al '*Human rights and disability: The current use and future potential of United Nations human rights instruments in the context of disability'* (2002) 165.
[50] Campbell (n 36 above) 486.
[51] As above 486.
[52] CEDAW art 21.
[53] CEDAW General Recommendation 18: 10th session (1991) A/46/38.
[54] United Nations Committee on Persons with Disabilities 'General discussion on women and girls with disabilities' (2014) 9.
[55] CEDAW General Recommendation 18 (emphasis mine).
[56] As above (emphasis mine).
Bond makes a similar argument, validating my scepticism with the phrasing *double discrimination* as additive. See Bond (n 5 above) 157.

suggestive of the idea that the disabled woman is, as Davis aptly put it, a mere derivative of other women whose ability is considered the norm.[57] In addition, the phrasing suggests that the disabled woman is able to fragment herself in a manner that the disability oppressions she experiences can be experienced outside of her sex and vice versa.

With General Recommendation 25 on temporary special measures, the CEDAW Committee recognises that there is a gender aspect in racial and disability discrimination.[58] The CEDAW Committee draws attention to the idea that:

> Certain groups of women, in addition to suffering from discrimination directed against them as women, may also suffer from multiple forms of discrimination based on additional grounds such as race, ethnic or religious identity, disability, age, class, caste or other factors. Such discrimination may affect these groups of women primarily, or to a different degree or in different ways than men. States parties may need to take specific temporary special measures to eliminate such multiple forms of discrimination against women and its compounded negative consequences on them.[59]

For the first time, the CEDAW Committee recognises that women possess multiple identities and characteristics. While this is a valid recognition, its focus is still on the identity category of gender while other identity layers appear to be seen as offshoots. What is even more apparent is the emphasis on the additive thinking and nature of discrimination. This additive thinking differs from an intersectional thinking where the focus is on how identities can interact and infuse to produce a distinct form of oppression.

Other examples of General Recommendations that have been adopted include: General Recommendation No 30 adopted in 2013; that discusses women and conflict prevention, conflict and post conflict situations and carries aspects of intersectionality.[60] General Recommendation No 33 on access to justice for women adopted in 2015.[61] General Recommendation No 34 adopted in

[57] AN Davis 'Intersectionality and international law: Recognising complex identities on the global stage' (2015) 28 *Harvard Human Rights Journal* 221.
[58] CEDAW General Recommendation 25 (article 4, para 1 CEDAW on temporary special measures) 30th session (2004) para 12.
[59] As above para 12.
[60] CEDAW General Recommendation No 30 (women in conflict prevention, conflict and post-conflict situations) 18 October 2013 CEDAW/C/GC/30.
[61] CEDAW General Recommendation No. 33 on women's access to justice 3 August 2015 CEDAW/C/GC/33.

2016, specifically recognises the rights of rural women.[62] General Recommendation No 24 requires states parties to provide information on women and health; paying particular attention to the health of disabled women.[63]

Of particular interest is General Recommendation No. 28 issued in 2010.[64] This General Recommendation (GR) underscores the main commitments that states parties such as Nigeria hold with regards to the non-discrimination provision in CEDAW. Through this GR, the CEDAW Committee had a shift in its mind-set recognising intersectional discrimination that intersectional beings such as the disabled Nigerian woman encounters. Importantly, the GR recognises the inseparable linkage between the different grounds of discrimination as against the rigid and closed grounds perspective that has been the prevalent approach in the anti-discrimination jurisprudence for a long time.[65]

The GR demonstrates the CEDAW Committee's gradual recognition of the benefits of applying an intersectional lens to the discriminations and oppressions that women encounter. Theoretically, by issuing the GR, the CEDAW Committee appears to have moved from the additive nature of discrimination that is often expressed as woman +disabled = disabled woman to recognising that the intersectional discrimination that a disabled Nigerian woman experiences can form a separate ground of discrimination.[66]

Specifically, the CEDAW Committee in this GR admits three interrelated points that are relevant here as follows:[67] First, that states parties in fulfilling their commitments under the instrument must now interpret and understand these commitments in the light of intersectionality. Second, it recognises that the discrimination and oppression that women encounter because of their sex and gender is inextricably connected with other factors such as race, ethnicity, religion or belief, health status, age, class, caste and sexual orientation and gender identity.[68] Interestingly it does not mention disability as a factor, one wonders whether this is a deliberate omission. Third, it requires

[62] CEDAW General Recommendation No 34 (2016) on the rights of rural women 7 March 2016 CEDAW/C/GC/34.
[63] CEDAW General Recommendation No 24: article 12 of CEDAW (Women and health), 5.
February 1999, UN Doc A/54/38/Rev.1, chap.1 para 22.
[64] CEDAW General Recommendation No 28 on the core obligations of states parties under article 2 16 December 2010 CEDAW/C/GC/28/
[65] CEDAW General Recommendation No 28 para 18.
[66] As above para 18.
[67] CEDAW General Recommendation No 28 para 18.
[68] As above para 18.

states parties such as Nigeria to legally acknowledge such forms of discrimination and their compounded negative consequences on the women concerned and to take steps to prevent these consequences including adopting policies and programmes to redress intersectional discrimination.

The significance of this General Recommendations lies in its particular reference to the fact that discrimination and oppression against women is worsened by interactive and intersecting dynamics.[69] In fact, the General Recommendation as far as Campbell is concerned, acknowledges reality that different women experience discrimination and oppression in different ways.[70] This includes the recognition that although there are different ways that oppressions affect men and women, there is a shift from focusing solely on the male comparator to acknowledging that some differences that exist between and among women is as important or even more so than the differences between men and women.

For advocates therefore, although the CEDAW had initially used a one size fits all perspective, focusing on the monolithic identity category of 'woman' to human rights protection, it has gradually started to develop an intersectional lens that focuses on the lived realities of different women who experience oppressions in different ways. The CEDAW Committee's adoption of the General Recommendation is a significant stride in the efforts to engage and utilise the intersectional lens.[71]

Nevertheless, despite the merits in the foregoing argument, it would be naive to think that the adoption of GRs; as an indication of the development of an intersectional lens; is enough. Campbell concedes this point, observing how CEDAW at times is inconsistent and pays little attention to intersectional oppression.[72] These inconsistencies have been linked to CEDAW's exclusive focus on the discrimination that affects a monolithic type of woman and her male comparator.[73] This male comparator weakens complex analysis, making it difficult to disrupt the neat and settled antidiscrimination and human rights framework.[74] This position is consistent with Truscan and

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[69] CEDAW General Recommendation No 28 para 18.
[70] Campbell (n 36 above) 486.
[71] As above 490.
[72] Campbell (n 36 above) 422.
[73] Bond (n 5 above) 96.
[74] I Truscan & J Bourke-Martignon 'International human rights law and intersectional discrimination' (2016) 16 *The Equal Rights Review* 124.

Bourke-Martignon's argument that:

> While the text of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) explicitly refers to particular groups of women in Article 14, on rural women, and in Article 12(2), on equal access to health care where special mention is made of pregnant and breast-feeding women, *until recently*, the CEDAW Committee carried out its work without much analysis of the forms of intersectional oppression that groups and individual women may face. The group "women" was viewed by the Committee as being an essentially unitary category with comparisons being made against a male comparator (presumably also devoid of any identifying features other than biological sex.[75]

Although the CEDAW Committee's application and understanding of intersectionality has been progressively growing, its growth is still stunted and weakened by the treaty itself. [76] The insight Bond provides is that the CEDAW is weakened by its monolithic tendencies and provisions that treat women as a one type of woman.[77] Moreover, she describes how CEDAW's focus has been on the interaction between gender and another ground for instance ethnicity; while still failing to consider other intersecting identity categories such as disability.[78] CEDAW's monolithic and essentialist tendencies is mirrored in its wording which potentially treat women as victims of culture which is not always accurate.[79] For example: During CEDAW's drafting, women were not seen as religious or members of cultural communities; this blindness ensured as Bond has shown, that the multiple sites of oppression in women's lived realities were ignored.[80]

Specifically, Bond's observation is that the manner in which CEDAW tends to treat culture as monolithic is a consequence of its commitment to its liberal influences of legal rationality to the detriment of cultural complexity.[81] The rebuttal given to Bond's claim is that the CEDAW's stance is essential for the achievement of its primary objective which is to respond to the oppression and human rights violations that women encounter on a daily basis in the name of culture.[82] However,

[75] As above 110.
[76] Bond (n 23 above) 259; 260.
[77] As above 259; 260.
[78] Bond (n 23 above) 260.
[79] As above 260.
[80] JE Bond 'Gender, discourse, and customary law in Africa' (2010) 83 *Southern California Law Review* 519.
[81] Bond (n 23 above) 261.
[82] As above 260.

despite the merits in this assertion, it does not obliterate the point that, an increased recognition of the fluidity of identity means that there should not be a requirement for women to choose between gender equality and their cultures, religions and ethnicities.[83] The inference to be drawn is therefore that CEDAW does not reflect the multidimensional and intersectional role of African women as both members of their cultural settings and as gender equality proponents within those communal settings.[84] Part of CEDAW (as a human rights instrument being intersectional), is that, it should allow women the freedom to keep or move away from their religious and cultural beliefs in the pursuit of equality. [85]

What the foregoing suggests, is that even if it is admitted that the CEDAW does take some aspects of intersectionality into consideration, it is a weak one. This is especially when CEDAW has not formally recognised that women with multiple identity categories such as the disabled Nigerian woman face oppression and discrimination that should not according to Davis, be categorised as a fraction of women as a whole and that these women are not considered mere derivatives of other women whose ability, ethnicities, cultures, race, religions are considered the norm.[86]

Adherents of the view that CEDAW has developed an intersectional lens have cited as evidentiary proof, individual cases that the CEDAW Committee have recently handled. In the next part, I would briefly examine some individual cases that have been presented before the CEDAW Committee in order to determine the validity of such claims and particularly, whether the CEDAW can respond to the intersectional encounters of the disabled Nigerian woman.

1.2.1 Can the disabled woman speak? The intersectionality of gender and disability: A critical analysis of intersectional cases handled by the UN Convention on the Elimination of Discrimination Against Women (CEDAW Committee)

In making an assessment on whether the CEDAW Committee responds adequately to the intersectional encounters of individuals such as the disabled Nigerian woman, I have drawn inspiration mainly from scholarship's analysis of four cases that the CEDAW Committee have handled recently.[87] These cases are as follows:

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[83] Bond (n 23 above) 260.
[84] Bond (n 80 above) 525.
[85] Bond (n 23 above) 260.
[86] Davis (n 57 above) 221.
[87] In doing this assessment, I relied on analysis from; I Truscan & J Bourke-Martignon (n 74 above) 111-122; and CI

1.2.1.1 R. P. B vs. Philippines [88]

The summary of known facts.

R.P.B, a 17-year-old young disabled female with difficulties speaking and hearing was allegedly raped by her neighbour 'J' in 2006.[89] After undergoing a medical examination to confirm the rape, the case was reported to the police authorities. In making the report, the complainant's sister had to act as an interpreter using sign language; because these services had not been provided by the state.

After a long and protracted trial period, 'J' was released on the grounds that RPB had failed to provide enough evidentiary proof to demonstrate that the sex was not consensual. Following this bogus acquittal, in making her complaint to the CEDAW Committee, R.P.B maintained that the state had infringed on her human rights to access to justice in the legal process. She mentioned how the release of 'J' was based on negative stereotypes and myths that were held with regards to disabled women. Specifically, R.P.B. mentioned how negative stereotypes held about female rape victims made evidentiary proof difficult, drawing attention to the state's total disregard for her intersectional identities as a minor, disabled and female. She described how her intersectional identities had not been taken into consideration during the legal process.

Summarily, the CEDAW Committee in making its decisions held the state complicit in failing to provide the required sign language facility in the court proceedings. By so doing, it was held that the state had failed to protect the complainant from discrimination. In its recommendations therefore, the CEDAW Committee amongst other requirements, obligated the state government to provide the complainant with necessary monetary compensations commensurate with the discrimination she had experienced. It also required that the state government take concrete measures to review its legal process and particularly in ensuring that interpretation services was

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Ravnbel 'The human rights of minority women: Romani women's rights from a perspective on international human rights law and politics' (2010) 17 *International Journal on Minority and Group Rights* 25.
G Beco 'Protecting the invisible: an intersectional approach to international human rights law' (2017) 17 *Human Rights Law Review* 638.
[88] Communication 34/2011 *R.P.B. v the Philippines*, CEDAW Committee (12 March 2014) UN Doc. CEDAW/C/57/D/34/2011
[89] As above

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made available.[90]

Whether, the foregoing case reflects the use of an intersectional lens by the CEDAW Committee if allowed can become a subject of lengthy debate. However, some scholars have generally identified the CEDAW's Committee reasoning in this case as an example of its response to intersectional discrimination.[91] This assertion would be accurate to the extent that it draws attention to the fact that it was the first time that the CEDAW Committee had considered states parties obligations with regards to the rights of disabled women and girls.[92] Although, the CEDAW Committee had made significant progress in identifying intersectional discrimination in this case, as Truscan and Bourke-Martignon have shown, this case also paradoxically exposed the CEDAW Committee's limits in ensuring that the intersectional analysis was followed to its logical end. [93] The development of a consistent intersectional lens is watered down by the CEDAW Committee's reference to General Recommendation 18 on disabled women where, as argued previously, the CEDAW Committee's reasoning leaned more towards an additive understanding to the oppression that RPB suffered as opposed to an interactive and intersectional understanding.

Even the additive understanding is suspect. As Truscan and Bourke-Martignon have shown, the CEDAW Committee had in its reasoning declared that the facts of the case had amounted to discrimination based on sex/gender. [94] By so holding, the CEDAW Committee had not only overlooked RPB's disability but also her age, treating her instead as an adult female.[95] There is therefore validity in the assertion that the CEDAW Committee had not followed through on the '*add and stir'* approach that it had advocated in its General Recommendation 18. [96] Even this understanding of discrimination and oppression on the grounds of sex, gender, age and disability had not even employed how much more intersectional discrimination. From the case, it is evident that the CEDAW Committee had reverted and still opted for the single axis perspective where it fragmented and separated the complainant's encounters and focused solely on sex and gender-

[90] *R.P.B. v the Philippines* (n 88 above)
[91] G Beco 'Protecting the invisible: an intersectional approach to international human rights law' (2017) 17 *Human Rights Law Review* 638.
[92] Truscan & Bourke-Martignon (n 74 above) 118.
[93] As above 118.
[94] Truscan & Bourke-Martignon (n 74 above) 118.
[95] As above 119.
[96] Truscan & Bourke-Martignon (n 74 above) 119.

based discrimination to the detriment of RPB's age and disability. [97]

The CEDAW Committee's reversal to the single identity thinking is evident in the way it addressed the oppression that RPB experienced as a singular issue of gender discrimination. This single axis way of thinking rears its ugly head again in a manner that fails and disregards the intersectional aspects of the oppression that the complainant had suffered on the basis of the interactions between her gender, age and disability. This is a significant flaw considering the growing literature that have begun to underscore the interactions that exist between age and gender; [98] as well as disability and gender.[99] The RPB case is an example of the CEDAW Committee's flaw in perceiving gender as the sole identity category by which women encounter oppressions.

The CEDAW's Committee missed the opportunity to concretely address intersectional discrimination by failing to recognise and contemplate how RPB's intersecting identity categories of disability, gender and age contributed to the discrimination and oppression that she had encountered. This is what perhaps triggered Truscan and Bourke-Martignon's suggestion that the CEDAW Committee's refusal to act on RPB's intersectional discrimination despite its awareness of her complexities and lived realities is particularly unreasonable. [100] In fact, these authors call it a retrogressive step in the development and application of the intersectional lens. [101]

1.2.1.2. Andrea Szijjarto (AS) vs. Hungary [102]

The summary of known facts.

AS vs Hungary is one of the foremost and initial communications received by the CEDAW Committee in 2004.[103] This communication was about the story of AS, a Hungarian Romani woman who was coerced to go through medical sterilisation without receiving her free and full consent. This happened after AS had just undergone surgery in a local hospital in Hungary.

[97] As above 119.
[98] For scholarship that discuss the intersections that exist between gender and age, see:
N Taefi 'The synthesis of age and gender: Intersectionality, international human rights law and the marginalisation of the girl-child' (2009) 17 *International Journal of Children's Rights* 345.
[99] For scholarship that discuss the intersections that exist between gender and disability, see A Clutterbuck 'Rethinking baker: A critical race feminist theory of disability' (2015) 20 *Appeal* 51.
[100] Truscan & Bourke-Martignon (n 74 above) 123.
[101] As above 123.
[102] Communication 4/2004 *A.S. v Hungary,* CEDAW Committee (29 August 2004) UN Doc. CEDAW/C/36/D/4/2004
[103] As above

Generally, Romani women are believed to represent multiple and intersectional oppression that marginalised women encounter as minorities and as women.[104] In its findings, the CEDAW Committee had identified an infringement of AS's human rights to health-based information, health related discrimination as well as a violation on the woman's human rights to family planning.

Like in the case of *R.P.B vs. Philippines,* although, scholarship has generally identified the CEDAW's Committee reasoning as beneficial to ensuring the realisation of the human rights of marginalised women, the CEDAW Committee's limits in recognising the intersectional encounters of these women is again evident from this case.[105] In the AS vs. Hungary case for instance, the CEDAW Committee had reverted to the single identity again, paying attention to the oppression that AS experienced as a woman in a manner that failed and disregarded the intersectional aspects of the oppression that she is suffered. This position is consistent with Truscan and Bourke-Martignon's point about how the remedies that the CEDAW Committee had provided in this case had not gone far enough in dealing with the intersectional discrimination that AS had encountered as a mother and as a member of a minority group in her quest for sexual and reproductive health care. [106]

What the AS's case reveals is the flaw of the CEDAW Committee in perceiving gender as the sole identity category by which women encounter oppressions. The CEDAW's Committee for instance failed to recognise and contemplate how AS's racial and ethnic intersecting identities contributed to the oppression that AS had encountered. The case is a powerful illustration of the importance of examining how racial and ethnic roots reinforces forced sterilisation as part of systemic and intersectional oppression. An author has pointed out, for instance how forced sterilisation is not a practice aimed arbitrarily at all women, but the targets are usually women such as the disabled woman who are burdened with increased disadvantage due to the multiple oppressions against them.[107]

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[104] CI Ravnbel 'The human rights of minority women: Romani women's rights from a perspective on international human rights law and politics' (2010) 17 *International Journal on Minority and Group Rights* 23; 25.
[105] As above 25.
[106] Truscan & Bourke-Martignon (n 74 above) 112.
[107] CI Ravnbel (n 104 above) 25.

1.2.1.3. E.S and S.C vs. Tanzania.[108]

The summary of known facts

E.S and S.C vs. Tanzania is a recent communication received by the CEDAW Committee. This communication is about the story of ES and SC, Tanzanian women with young children who had recently become widowed following the death of their husbands. These widows had been instructed by the Tanzanian courts to leave their homes as provided for under the customary laws of the land. This case is particularly insightful because some of the facts in the case are consistent to happenings in Nigeria. The vacation order for instance, had been given in light of a primogeniture customary law that forbade female inheritance.

It is interesting that although the High Court in Tanzania had come to progressive conclusions that the customary laws were discriminatory to women in validating their inferiority and granting preferential treatment to men, it held that it was impossible to reinforce customary change by judicial pronouncements. The Court's reasoning was based on the idea that to reverse the customary law provisions would be tantamount to opening a Pandora's box meaning that all seemingly discriminatory and oppressive customary laws would tow the same path.

Following from this and having exhausted all local remedies in Tanzania, the widows filed a complaint before the CEDAW Committee. In their complaint, the women had underscored the tripartite legal architecture that guided inheritance laws in Tanzania and how it was the customary and religious laws determined to a large extent women's inheritance right. In making its decision, Truscan and Bourke-Martignon mentioned how although the CEDAW Committee had commendably observed that the inheritance issues were subject to multiple legal systems in Tanzania and that the complainants had been subjected to Sukuma customary law on the basis of their ethnicity, it does not elaborate further upon the situation of the complainants as widows that are subject to patrilineal and patriarchal customary inheritance law.

In fact, the observation is that the CEDAW Committee only refers to intersectional discrimination

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[108] Communication 48/2013, *E.S. and S.C. v Tanzania*, CEDAW Committee (13 April 2015) UN Doc. CEDAW/C/60/D/48/2013

that these widows experienced by way of a footnote. The CEDAW Committee in its reasoning brought to the fore the oppressions that widows face by having to rely on male relations and how that infringes on their right to economic independence as articulated in Article 13 of CEDAW. The CEDAW Committee also held that the state party had infringed the human rights of the widows as encapsulated under Articles 2 (c), 2 (f), 5 (a), 15 (1), 15 (2), 16 (1)(c) and 16 (1)(h) of the Convention that was read in the light of General Recommendations Nos. 21, 28 and 29.[109]

In its recommendations therefore, the CEDAW Committee required the state government to offer the required compensations to the complainants as well as ensure that the human rights of all women as contained in the CEDAW carry more weight than oppressive and inconsistent national laws. Specially, it placed an obligation on Tanzania to repeal or review local customary laws that were discriminatory against women with the object of providing women and girls with equal administration and inheritance rights upon the termination of marriage by spousal death regardless of ethnic origins or religious beliefs.[110] Yet again, while the possibility of identifying intersectional discrimination has been raised, the CEDAW Committee has failed to offer a detailed analysis of the intersectional discrimination that these widows encountered on the basis of their gender, marital status, ethnic group and geographical location.[111]

What the foregoing case demonstrate is, as Truscan and Bourke-Martignon shown, another missed opportunity by the CEDAW Committee to engage in a meaningful discourse on how for instance, a woman's status as a widow in a patriarchal society and from a particular ethnic or religious origin can trigger intersectional discrimination. [112]

1.2.1.4. Cecilia Kell vs. Canada[113]

The summary of known facts.

Cecilia Kell *vs. Canada* is another communication received by the CEDAW Committee in 2008. This communication is about the story of an aboriginal woman in the North West Territories of

[109] As above
[110] E.*S. and S.C. v Tanzania* (n 108 above)
[111] Truscan & Bourke-Martignon (n 74 above) 122.
[112] As above 123.
[113] Communication 19/2008, *Cecilia Kell v Canada*, CEDAW Committee (26 April 2012) UN Doc. CEDAW/C/51/D/19/2008

Canada who had come home after attending university. Shortly after coming home, Kell was able to gain access to a residential property together with her partner. However, she began to experience domestic violence at the hands of her partner. This violence reportedly worsened as soon as Kell became gainfully employed.

The main thrust of the case was how Kell's partner was able to remove her name as owner of the residential property they jointly owned without her consent. After exhausting local remedies in Canada in efforts to get back her property, Kell filed a complaint before the CEDAW Committee claiming that she had suffered discrimination based on her racial and ethnic origins as an aboriginal woman and discrimination based on her sex. The CEDAW Committee in making its decisions found that the Kell's property rights had been prejudiced by the public authority acting with her partner.[114] As such the CEDAW Committee made its decision that Kell had been discriminated against on the basis of her ethnic and racial origin as an aboriginal woman who had suffered intimate partner violence. The CEDAW Committee cited the General Recommendation 28 reiterating the need for states parties to understand its obligations under article 2 in the light of intersectionality. The observation was that,

> The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity. States parties must legally recognise and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned.[115]

Based on the foregoing the CEDAW Committee identified that an act of intersectional discrimination has taken place against the complainant. In its recommendations therefore, the CEDAW Committee required the Canadian government to provide the complainant with the necessary remedies and compensations for the discrimination she had experienced. It also required that the Canadian government take concrete measures including ensuring that an increased number of Aboriginal women are trained and recruited to provide legal aid services to Aboriginal women with an emphasis on domestic violence and property rights.[116] This would serve as a way to ensure

[114] As above
[115] *Cecilia Kell v Canada* (n 113 above)
[116] As above

that Aboriginal women had access to justice.

With the insight from the above cases, even though there is an increased awareness of the intersectional discrimination and oppression that women encounter on a daily basis, the development of an intersectional lens by the CEDAW Committee is still at its embryonic stages. This position is in line with Truscan and Bourke-Martignon's observation of the CEDAW Committee's regression in its application of the intersectional lens in the decisions it made particularly in the *R.P.B. v the Philippines*, and particularly in *E.S. and S.C. v Tanzania,* cases.[117] Although, it has to be conceded that such a deduction might be difficult to defend based only on a few cases. What is evident is that as these authors claim, these cases are particularly insightful in drawing attention to the lacunae that exists between the recognition of intersectional discrimination and its application in legal architecture. [118]

1.3 Can the disabled woman speak? The intersectionality of gender and disability: A critical analysis of Nigeria's obligations under the African Charter on Human and Peoples Rights (African Charter)

The African Charter on Human and Peoples' Rights (African Charter) came into force in 21 October 1986.[119] In analysing briefly whether the African Charter responds to the intersectional encounters of the disabled Nigerian woman, the first area of analysis is in the definition of discrimination. The treaty itself encapsulates major articles that deal with the protection of women against discrimination. I will look at these articles briefly.

Article 2 of the African Charter for instance provides that:

> Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as ... sex…. or other status…. Every individual shall be equal before the law. 2. Every individual shall be entitled to equal protection of the law.[120]

This article highlights that rights are to be enjoyed without any distinction using the phrase *other*

[117] Truscan & Bourke-Martignon (n 74 above) 123.
[118] As above 128.
[119] The Preamble of the African Charter on Human and Peoples' Rights (African Charter)
[120] African Charter art 2.

status. [121] With this phrasing, although, the African Charter does not explicitly mention 'disability' as a ground for prohibition of non-discrimination, it is possible to speculate that the African Charter has allowed some form of intersectional analysis. This is assertion is hinged on the idea that such phrasing allows for a degree of leeway to accommodate new forms of discrimination which could potentially include intersectional discrimination.[122]

The article refers to the fact that states parties such as Nigeria have to ensure not only that individuals have an entitlement to be equal before the law and that discrimination against women because of their sex/gender is forbidden.

However, in its efforts to underscore sex/gender equality, it makes the same mistake as the Nigerian Constitution of treating women as monolithic by its reliance on individual characteristics approach to discrimination, thereby overlooking the intersectional discrimination that women encounter. In other words, that discrimination can occur as a result of the interaction and intersection between two or more grounds. The African Charter adopts a liberal definition to discrimination that views sex for instance as the central axis of difference and fails to take into consideration the idea that women do experience oppression differently, not only on a number of different but also crucially interacting grounds.

Another article that deals specifically with equality and non-discrimination of women is article 18(3). It provides that:

> The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.[123]

By this article, states parties such as Nigeria are required to eliminate every discrimination against women. However, the problem with this article is the well-known critique about the African Charter's lumping the rights of women with that of the children which has been well documented. Some critics for instance capture how article18(3) make the mistake of assuming that discrimination against women cannot be eliminated except in relation to children and the family.

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[121] As above (emphasis mine).
[122] Truscan & Bourke-Martignon (n 74 above) 109.
[123] African Charter art 18 (3).

Nevertheless, while the merits in this critique is undeniable, the article could also be read purposively to mean that the instrument realizes that there are certain paradoxically intersectional discriminations that could occur to women in the context of the family. The discrimination targeted against women for instance as a result of the interaction between women's marital status, their age, religion and cultures or ethnicities in the family context. Polygamy and early marriage are cases in point. However, even the merits in this argument does not obliterate law's non-recognition of the fact that different women experience different oppressions differently and interactively. These oppressions could manifest as sexism or disability or both.

The point I have tried to show throughout this thesis with an analysis of the lived encounter of the disabled woman is that it will be a wasted effort to try and curb these oppressions separately. A significant part of what eventually becomes disability particularly when it deals with the Nigerian women is socially constructed and is the consequence of oppressive interactions between gender, race or ethnicity, religion and culture. The implication of the aforementioned point and the difficulties for the disabled Nigerian woman become even more apparent in article 18(4) which provides that

> The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.[124]

By this article, the difficulties for the disabled woman is even more exposed because it obscures from view her specific and intersectional encounters. In fact, it is not just about the obscurity of her encounters, but she practically disappears and her intersectional encounters, unvoiced. It also glaringly lumps the needs of the aged and the disabled together as if to suggest that one can only be disabled when one is aged, or one cannot be aged without being disabled. In addition, the fact that the instrument appears to underscore African traditions without tackling women's lived reality that shows how a number of negative customary practices, such as female genital mutilation, early marriage and wife inheritance can be disabling and threatening the lives of women.

From the foregoing, it is possible to accurately document how the African Charter's blatant disregard of these negative traditions could result in an equally blatant lack of recognition of

[124] African Charter art 18(4).

intersectional encounters of disabled women for instance how culture, religion and ethnicity can interact and intersect in the lives of women by disabling them. An intersectional approach also does the opposite and recognises the cultural complexity in women's lives and does not force them to choose between a quest for equality and their cultural and religious alliances.

It has to be noted that the African Charter has been domesticated into the local law of Nigeria. By this domestication, some would argue that this treaty can be enforced in the same way as the Chapter 4 of the Nigerian Constitution. While this might be commendable in several respects particularly because it sets a good precedence for other international human rights treaties. For instance, some commentators have pointed to the Supreme Court's decision in the case *of Abacha vs. Fawehinmi*.[125] In that case for instance the Supreme Court, the highest court of the land had decided that that the African Charter, having been domesticated into local law, could be used by Nigerian courts to apply and grant remedies to individuals whose rights under the instrument had been infringed hence making the rights under the instrument justiciable.[126]

However, its domestication hardly holds any promise since in the same token, other scholars have pointed to the same case of *Abacha*, to argue that the supremacy of the Nigerian Constitution is to upheld over every other law including international treaties.[127] The African Charter's ability to speak to the lived and intersectional encounters of disabled woman is therefore questionable particularly given the difficulties and controversies discussed above.

1.4 Can the disabled woman speak? The intersectionality of gender and disability: A critical analysis of Nigeria's obligations under the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (Maputo Protocol)

The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (Maputo Protocol) was adopted in July 2003 and came into force in November 2005.[128] It is a substantive supplement document drafted by virtue of article 66 of the African Charter on

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[125] *General Sanni Abacha et al v Fawehinmi* (2000) 6 NWLR (Pt 660) 228 (Suit No S. C 45/1997)

[126] I Ikimi Development of the human rights of women in cultural milieu (2018) 9 *Nnamdi Azikiwe University Journal of International law and Jurisprudence* 161.

[127] D Peters 'The domestication of international human rights instruments and constitutional litigation in Nigeria' (2000) 18 *Netherlands Quarterly of Human Rights* 357.

[128] The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (Maputo Protocol)

Human and Peoples Rights (African Charter).[129] The Maputo Protocol in its preamble sets out the rationale behind its existence.[130] It was drafted for instance primarily as a result of the growing concern and in response to ongoing violations of the human rights of women in Africa despite the existence of its principal instrument; the African Charter as well as the CEDAW.[131]

Since its enforcement, the instrument has expanded and included robust normative standards on the rights of women.[132] This includes innovatively addressing African women's unique oppression that many felt had been omitted in the CEDAW.[133]

The Nigerian government by virtue of its ratification of the Maputo Protocol in 2005 at least theoretically has expressed its commitment to ensure that its women not only begin to enjoy rights but also on an equal basis with men. Having laid this foundation, the question I want to reflect on here, is whether the Maputo Protocol has developed an intersectional lens that would for instance respond to the intersectional discrimination that the disabled Nigerian woman encounters. In analysing briefly whether the Maputo Protocol can respond to the intersectional encounters of the disabled woman, the first area of analysis is in the definition of discrimination.

Article 2 of the Maputo Protocol places a duty on states parties to end every form of discrimination on the basis of sex and gender. [134] There is an obligation as follows;

> States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures. In this regard they shall: a) include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application.[135]

From the foregoing, one could argue that this definition of equality leans towards the formal perspective that grants equality to women as long as it coincides with the experiences of men.[136]

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[129] Maputo Protocol art 66.
[130] See generally the Preamble of the Maputo Protocol
[131] As above
[132] F Viljoen 'An introduction to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' (2009)16 *Washington and Lee Journal of Civil Rights and Social Justice* 21.
[133] Bond (n 80 above) 512, 543.
[134] Maputo Protocol art 2
[135] Maputo Protocol art. 2(1)(a)
[136] R Rebouche 'Health and reproductive rights in the protocol to the African charter: Competing influences and unsettling questions' (2009) 16 *Washington and Lee Journal of Civil Rights and Social Justice* 97.

Yet, in the same token, it also adopts the substantive approach that takes into consideration the systemic and historic disadvantage that African women have experienced over the years. A cursory examination of article 2 indicates a definition of discrimination that leans closely to substantive equality.[137] What is therefore evident is that like CEDAW, the Maputo Protocol seem to adopt a twin approach to equality that relies on both the formal and substantive perspective to equality. The challenge with this kind of twin approach is that it appears to be the two sides of the same coin. A coin that has been described as narrowly tied to a human rights framework grounded on a male standard.[138]

Bond in drawing a parallel between CEDAW and the Maputo Protocol, argues that unlike CEDAW, the Maputo Protocol provides a more nuanced intersectional perspective when it comes to culture and religion on one hand and gender equality.[139] Article 3 of the Maputo Protocol for instance obligates states parties to take steps to eliminate negative practices that are justified in the name of culture and religion.[140] While, in the same token, Article 17 also provides for a right to a positive cultural context which suggests the realisation that culture could be positive.[141]

Using Bond's logic in the context of disabled Nigerian woman, the value of the aforementioned provisions is in the idea that it underscores the positive value of African culture and tradition Nigerian women for instance would not feel that they are constrained to choose between their religious identity and their identity as women who are entitled to rights. She therefore rightly infers that the Maputo Protocol makes more effort in recognising the multidimensional and intersectional reality of the African woman. [142]This it does by acknowledging the fact that cultural, racial, ethnic, and religious identity intersects with gender identity in meaningful ways in women's lives.[143]

The Maputo Protocol has been commended for its specific reference to the women with disabilities in Africa.[144] The inclusion of article 23 of the Maputo Protocol for instance, has been applauded for drawing attention to the oppression that disabled women in Africa face on a daily basis.[145] I

[137] As above 97.
[138] Crooms (n 6 above) 619.
[139] Bond (n 80 above) 543; 547; and Bond (n 23 above) 262.
[140] Maputo Protocol art 3.
[141] As above art 17.
[142] Bond (n 80 above) 543; 547; and Bond (n 23 above) 262.
[143] As above 543; 547.
[144] Maputo Protocol art 23
[145] S Kamga 'A call for a Protocol to the African Charter on Human and Peoples' Rights on the rights of persons

agree with Bond when she points out that although the explicit mention of disabled women is commendable, it fails to identify and recognise the intersecting oppressions that disabled women experience both as women and as disabled individuals. What this section does, although still important, is to recognise the additive nature of the discrimination that women face which can be easily expressed as woman +disabled = disabled woman.

Nevertheless, what I draw attention to is that beyond this kind of additive discrimination, emphasis should be placed on how the discrimination of disabled women are intersectional and interactive in nature which is greater than the sum of their parts. In other words, although the recognition of oppression and compounded discrimination is crucial, there is more to say about how the dynamics of oppression and discrimination shape, infuse, and constitute one another.

What the foregoing demonstrates is how the Maputo Protocol like other international instruments fall into the trap of merely perceiving disability as an identity that works mainly to compartmentalize and categorize individuals in order to be protected from discrimination, while this might be significant, the disabled Nigerian woman's reminder is that such viewpoint fails to take into consideration intersectional discrimination that she encounters or is prone to encounter. It is also a reminder that asides from gender, there are other identity layers at play through which power relationships can be interrogated and how this axis of identities can be infused by multiple layers of oppression. Having stated this, whether one single article is sufficient to comprehensively cover the complexity of issues that a disabled Nigerian woman for instance suffers on a daily basis becomes the question. This could explain the critique behind the ambiguity that characterises the singular article that wastes an opportunity to draw awareness to the oppression that disabled women suffer on the grounds of their sex and disability.[146]

Separately, another point to consider is that unfortunately, despite the Maputo Protocol's explicit mention of disabled women and the country's obligation thereto, the Nigerian government in its 5th periodic report to the African Commission on Human and Peoples' Rights (African Commission) still failed to report specifically on the situation of disabled women in the country.[147]

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with disabilities in Africa' (2013) 21 *African Journal of International and Comparative Law* 223.

[146] As above 223.

[147] Nigeria's 5th periodic country report: 2011-2014 on the implementation of the African Charter in Nigeria' (2014) http://www.achpr.org/states/nigeria/reports/5th-2011-2014/ (accessed 12/02/19).

Again, the Nigerian government proves the entire argument that unfortunately disabled women are yet to be considered human both in the legal and lived sense in the country.

Consequently, in its concluding recommendations, the African Commission required Nigeria to include and provide comprehensive information on disabled women in its next state report to the African Commission. However, like CEDAW, although, the Nigerian government has been relatively compliant in its reporting obligations by submitting reports indicating measures it has taken to improve the rights of Nigerian women to the African Commission on Human and Peoples Rights (African Commission), it has so far been completely silent on the situation of disabled women and have made no reference to disabled women in its reports. This is despite sufficient evidence that suggests for instance that a disabled Nigerian woman suffers heightened intersectional discrimination.[148] Arguably, Nigeria's silence can be attributed to its unwillingness to acknowledge disabled women as a distinct group as well as the intersectional discrimination they experience.

1.4.1 Can the disabled woman speak? The intersectionality of gender and disability: A critical analysis of intersectional cases handled by the African Commission on Human and Peoples Rights (African Commission)

In making an assessment on whether the African Commission responds adequately to the intersectional realities of the disabled Nigerian woman, the second area of analysis will be to examine an individual communication that was presented before the African Commission.

1.4.1.1 Equality Now and Ethiopian Women Lawyers Association v Federal Republic of Ethiopia

The summary of facts.[149]

Ms. Negash represented by two Non-Governmental Organisations, Equality Now and Women Lawyers Association, was a young 13-year-old girl allegedly kidnapped and raped by Mr Aberew in 2001.[150] After undergoing a medical examination to confirm the rape, the case was reported to

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[148] GE Afolayan 'Contemporary representations of disability and interpersonal relationships of disabled women in southwestern Nigeria' (2015) 29 *Agenda* 61.
[149] Communication 341/2007, *Equality Now and Ethiopian Women Lawyers Association (EWLA) v. Federal Republic of Ethiopia*, African Commission on Human and Peoples' Rights (African Commission)
[150] As above

the police authorities. Mr Aberew was duly apprehended.

However, upon his release on bail, Mr Aberew kidnapped the girl a second time. This second time he raped her repeatedly and forced her into 'marriage'. After remaining in seclusion for over a month, the girl escaped and again reported the matter to the police. Mr Aberew was subsequently apprehended yet again and this time a lower Court handed down a ten-year sentence. Upon appeal, Mr Aberew was released on the grounds that the complainant could not prove that the sexual act was not consensual.

The case was brought before the African Commission after all domestic remedies had been exhausted. In making its decision, the African Commission held the Ethiopian government complicit for its failure to act with due diligence in protect the victim and prevent the abduction and rape of a minor child. The African Commission obligated the state to pay monetary compensation. Whether, the foregoing case reflects the use of an intersectional lens by the African Commission becomes the question. Interestingly in deciding on the case, although the African Commission's decisions in this case was largely positive, its reasoning in certain aspects makes one doubtful as to whether the intersectional lens has been developed. In this case, the African Commission had reasoned that the violence committed against the victim could not be regarded as discrimination since there was no 'male comparator' who had enjoyed protection that was denied the victim.

The foregoing reasoning by the African Commission in my opinion is a clear consequence of human rights as liberal where a woman is only accorded human rights protection to the extent that her experiences coincides with those of a man. Yet, it is common knowledge that the violence and oppression that women suffer are usually because they are women. This case demonstrates the relationship that exist between sexism and disability and vice versa. It is precisely because of the sexist oppressions (rape/abduction) targeted at the victim because she is female, that she has a (sexual) disability. Another consequence is evidenced in the one-dimensional perspective which creates binaries of where an individual is either a man (the norm) or different (woman) and refuses to see how the multiple and intersectional identities that also contribute to a different experience of oppression. There was a total disregard for the intersectional identities of the victim as a minor female which had not been taken into consideration that made her vulnerable to the oppressions she suffered. It is therefore safe to assert that the African Commission is yet to develop an

intersectional lens that would deal with the intersectional realities of the disabled Nigerian woman.

1.5 Can the disabled woman speak? The intersectionality of gender and disability: A critical analysis of Nigeria's obligations under the Convention on the Rights of Persons with Disabilities (CRPD)

The Convention on the Rights of Persons with Disabilities (The CRPD) came into force in 2008, its adoption has been described as an attempt to move away from the tragic medical perception of disability to a perception that builds on social explanations to disability.[151] Article 1 supports this claim, providing that:

> 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.[152]

It is from this article that commentators in attempts to locate disability in the society have argued that the CRPD represents a powerful response to the systemic discrimination that disabled persons continue to suffer across the globe.[153] A relationship has therefore been rightly identified between the social explanations of disability and the substantive equality approach where emphasis is placed on the idea that difference needs to be accommodated.[154]

However, the social dimensions has been criticized as limited in its ability to respond to the oppressions that arise from impairments and instead focuses solely on the oppressions of the society.[155] In fact, Degener insists that the human rights explanation to disability builds on social dimensions.[156] Specifically, she links the adoption of the CRPD to a more radical human rights explanation to disability.[157] Research has shown how across the globe, countries are beginning to adopt and move towards a human rights explanation to the disability problem.[158] A global shift from, for instance, perceiving the disabled Nigerian woman as a 'problem' or object of charity to

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[151] The Preamble of the Convention on the Rights of Persons with Disabilities (CRPD)
[152] CRPD art 1.
[153] T Degener 'Disability in a human rights context' (2016) 5 *Laws* 4.
[154] See generally as above 3; and Kamga (n 145 above) 223.
[155] Degener (n 153 above) 7.
[156] As above 2.
[157] Degener (n 153 above) 14.
[158] G Quinn & T Degener 'The moral authority for change: Human rights values and the worldwide process of disability reform' in A Bruce et al '*Human rights and disability: The current use and future potential of United Nations human rights instruments in the context of disability'* (2002) 13.

the view that she is entitled to rights and considered a right holder.

Scholarship has accurately documented the absence of a human rights treaty that dealt with the human rights of disabled persons before the CRPD was adopted. [159] There has even been reference to the fact that disability was hardly mentioned in the international community prior to the CRPD adoption.[160] This situation is confirmed by the invisibility of disabled persons in the international human rights framework for a long time.

At the heart of the human rights perspective for instance, is an emphasis on the need for recognition and entitlement to rights as well as accommodation of differences.[161] In other words, a disabled Nigerian woman for instance is perceived as a human rights subject when her difference is recognised and accommodated. The human rights explanations to disability as encapsulated in the CRPD, goes beyond just recognising difference but places emphasis on biological as well as socially constructed differences which Degener refers to as transformative equality.[162] By this, the CRPD is believed to extend and offer more in its equality approach than other international human rights documents.[163]

Having laid this background, the question I want to reflect on here, is whether the CRPD has developed an intersectional lens that would for instance respond to the intersectional discrimination that the disabled Nigerian woman encounters. In analysing briefly whether this instrument can respond to the intersectional encounters of the disabled woman, the first area of focus is in the definition of discrimination. The definition of discrimination is encapsulated in article 2 of CRPD; placing a duty on states parties to end every form of discrimination on the basis of disability. It provides that:

> Discrimination on the grounds of disability is defined as any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social,

[159] Kamga (n 145 above) 222.
[160] As above 222.
[161] G Quinn & T Degener 'The moral authority for change: Human rights values and the worldwide process of disability reform' in A Bruce et al (n 158 above) 13.
[162] Degener (n 153 above) 17.
[163] As above 17.

> cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.[164]

Based on the foregoing definition, research has engaged in a comparative analysis of the CRPD and the CEDAW especially where it concerns discrimination against disabled women.[165] Cornelsen for instance highlights that the CRPD and CEDAW are related in the goal of ensuring that discrimination is forbidden.[166] The observation is that while the CEDAW's commitment to non-discrimination focuses on legal measures as well as a duty to refrain from discriminatory acts, the CRPD goes a step further by bringing to the fore, additional aspects to this obligation. This includes the obligation that states parties must take proactive steps to adopt the right laws as well as refrain from actions that will perpetuate discrimination.[167]

Moreover, the CRPD has been identified as the first human rights instrument to explicitly recognise the intersectional discrimination and the intersectional lived reality of the disabled woman.[168] What this connotes is a direct recognition that disability is not genderless and is actually gendered. This recognition is exemplified in article 6 which brings attention to the multiple discrimination that the disabled woman experiences and then places an obligation on states parties such as Nigeria to take concrete steps to end it.[169] It is perhaps on this basis that Degener underscores the idea that the CRPD heralded the entrance of a new kind of equality that goes beyond the formal and substantive to transformative.[170]

From the foregoing, with intersectionality in mind, I question the extent to which the CRPD speaks to the lived encounters of disabled women in Nigeria. By this, I am not just referring to intersectionality's disruption of water tight identity categories alone where there is a recognition of the compounded oppression that a disabled Nigerian woman encounters by virtue of her disability and her gender for instance but importantly, I question how the CRPD responds to the identity layers that the disabled woman embodies which result in oppressions intersecting and influencing one another. Put differently, the question I want to reflect on here, is whether CRPD

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[164] CRPD art 2.
[165] K Cornelsen 'Doubly protected and doubly discriminated: The paradox of women with disabilities after conflict' (2013) 19 *William and Mary Journal of Women and the Law* 117.
[166] As above 117; 118.
[167] Cornelsen (n 165 above) 117; 118.
[168] Degener (n 153 above) 17.
[169] CRPD art 6.
[170] Degener (n 153 above) 17.

has developed an intersectional lens that would for instance respond to the intersectional discrimination that the disabled Nigerian woman encounters. The question of whether intersectional lens has now been developed within the CRPD has been a subject of growing debate.[171]

Nevertheless, it has to be stated that there are possibly many sides to the story, I will attempt to briefly present and examine two of these sides and their arguments and what they could possibly mean for the disabled Nigerian woman. On the one side, some scholars would have us believe that asides from protecting the rights of disabled people generally, the CRPD protects the rights of specific groups of disabled persons such as disabled women. There is significant scholarship that would draw attention to the CRPD's Preamble where it refers to the multiple forms of discrimination encountered on the basis of gender, race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status as evidence of its intersectional lens.[172]

The CRPD preamble also recognises the diversity of disabled persons and underscores the universality, indivisibility, interdependence and interrelatedness of human rights as well as the its radical admission that disability is an evolving concept has also been commended.[173] This admission can be read to be an avenue through which the intersectionality lens can be further developed. Even more striking and of particular interest is where the CRPD mentions and recognises in a separate article, the intersectional discrimination against disabled women.[174]

Furthermore, the CRPD Committee have recently drafted a General Comment No. 3 which focuses on women and girls with disabilities. This Recommendation specifically documents and defines the intersectional discrimination. It states that:

> Intersectional discrimination recognises that individuals do not experience discrimination as members of a homogeneous group, but

[171] As above 17. Degener convincingly asserts that the CRPD is the first human rights instrument to acknowledge intersectional discrimination. On the other hand, is Ribet's argument in 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. Ribet is not as convinced especially when it has to do with emergent disability that is the consequence of social inequity.
[172] CRPD Preamble
[173] As above
[174] CRPD art 6.

rather as individuals with multidimensional layers of identities.[175]

Having stated this, whether a single article is sufficient to comprehensively cover the complexity of issues that a disabled Nigerian woman for instance suffers on a daily basis becomes the question. This could explain the critique behind the ambiguity that characterises the singular article that wastes an opportunity to draw awareness to the oppression that disabled women suffer on the grounds of their race/ethnicity, sex and disability.[176] It might also be useful to query whether the intersectionality that is reflected in the CRPD's preamble and even in the recently adopted General Recommendation can be reflected in a single article.

On the other hand, and with respect to the second side, some scholars admit that even though the CRPD does include some aspects of intersectionality, it is weak particularly when it comes to preventing disability. I agree with Ribet to the extent that she makes a case for the need to prevent disability.[177] My agreement stems from the crux of my thesis which takes a twin approach to disability. The gendered disability that is socially constructed and socially handicapping yet result in impairments on the one hand and on the other hand, the gendered disability that is socially constructed and *socially handicapping yet* with no visible signs of impairments.[178] With such twin definition of disability, my interest on disability prevention makes sense.

Ribet for instance makes what I consider an interesting comparative analysis of the CRPD and the World Programme of Action Concerning Disabled Persons. (World Programme) to buttress this point.[179] She makes five arguments to support this claim. I will summarise three of which I find is relevant here. The crux of her first point is that the CRPD does not adequately respond to the needs of individuals with *emergent* disabilities especially when it is equated with the World

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[175] Committee on the Rights of Persons with Disabilities, General Comment No. 3 (2016) art 6: Women and girls with disabilities, 25 November 2016 CRPD/C/GC/3 para 5. It recognises that disabled women themselves are not homogenous.
[176] Kamga (n 145 above) 222, 228.
[177] 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* 159.
I agree with Ribet's rationale behind disability prevention. She describes how without thinking of disability prevention, law has removed from its focus, the 'disability' that has social roots and origins, a consequence of unequal power relationships.
[178] Ontario Human Rights Commission: 'An intersectional approach to discrimination multiple grounds in human rights claims': Discussion Paper http://www.ohrc.on.ca/sites/default/files/attachments/An_intersectional_approach_to_discrimination%3A_Addressing_multiple_grounds_in_human_rights_claims.pdf (accessed 21 January 2019)
[179] Ribet (n 177 above) 162.

Programme.[180] I am more inclined to her second, point that while the CRPD does take some aspects of intersectionality into consideration, it is a weak one. This is especially when importantly intersectionality is not perceived solely as a response to law's essentialist identity tendencies.[181]

Echoing this second point, studies mention how states parties such as Nigeria that ratify the CRPD acknowledge 'the multiple discrimination' that disabled women experience and commit to take steps to tackle it.[182] In an ongoing comparison, Cornelsen for instance has identified that although CEDAW and the CRPD acknowledge disabled women by the presence of disability in the CEDAW and gender in the CRPD. While the CEDAW does not directly reference disability, unlike the CEDAW, the CRPD explicitly mentions the plight of disabled women, disabled women.[183] The CRPD's Preamble acknowledges that disabled women and disabled girls have an increased tendency to face discrimination and refers to multiple discrimination.[184]

By this, unlike other international instruments, the CRPD takes a step further by its recognition of the double discrimination of disabled women. This recognises the compounded and additive form of discrimination usually expressed as disabled +women = disabled women. While this recognition is significant, because while it falls into the conservative trap of previous treaties of merely perceiving disability as an identity that works mainly to compartmentalize and categorize individuals in order to be protected from discrimination, it does go a step further. However, what the CRPD does not do well particularly with reasoning from Ribet, is that an intersectional lens must go beyond responding to law's tendency to freeze individuals' identities. Although, this might be significant, the disabled Nigerian woman's reminder is that such viewpoint fails to take into consideration intersectional discrimination that responds to identities as a manifestation of power relationships.

It is also a reminder that asides from gender, there are other identity layers at play through which power relationships can be interrogated and that this axis of identities can be infused by multiple layers of oppression. In making her third point, Ribet mentions how the CRPD fails to take into

[180] As above 178.
[181] Ribet (n 177 above) 159; 178.
[182] See generally CRPD art 6; Cornelsen makes a similar point (n 165 above) 119.
[183] Cornelsen (n 165 above) 117, 118, 119.
[184] CRPD Preamble

consideration the interactions that disability has with race.[185] The only thing I will add, thinking of the Nigerian disabled woman, is that the CRPD does not recognise the interactions with additional identities like ethnicity, culture and religion and how they can contribute to the discrimination that disabled women suffer. This is what an author draws attention to by recognising how CRPD like all other international treaties is a result of compromise, the implication is that the treaty is far from been harmonious and overlooks some of the specific concerns of African disabled women.[186] Beyond that, the CRPD does not recognise how interactions of ethnicity, religion, culture and gender can interact to potentially produce disability in a Nigerian woman.

Continuing with the comparison between CRPD and CEDAW, as far as Cornelsen is concerned, because the discrimination that disabled women encounter can be traced to the intersection between their multiple identities, it is essential to interpret their rights by looking at the intersections of the CRPD and the CEDAW rather than largely continuing to compartmentalize and categorize the treaties.[187] Although, the CRPD does make reference to multiple discriminations, according to her, the rights of women are best protected when the CRPD is read together with the rights contained in CEDAW. In fact, her observation is that reading these two treaties in isolation from one another risk[s] entrenching discrimination against disabled women.[188]

Having established the above, in 2010, the Nigerian government ratified the CRPD and its Optional Protocol.[189] By its ratification, the government is expressing commitment to moving away from the tragic perception of disability as a charitable problem to that of rights entitlement. Again, the question here is how Nigeria's ratification translates for the disabled woman. Offering a response, there are a number of scholars who agree sadly that the ratification of CRPD has remained at a purely theoretical level with very little emphasis placed on disability as requiring a human rights response in Nigeria.[190] This is consistent with observation from a additional scholarship that, there is lack of commitment on the part of the Nigerian government to ensure that constitutionally provided rights are enforced especially for the disabled woman.[191] Another

[185] Ribet (n 177 above) 159; 178.
[186] Kamga (n 145 above) 219; 222; 228.
[187] Cornelsen (n 165 above) 115.
[188] As above 115.
[189] CRPD Preamble
[190] O Onazi '(Disability) justice dedicated by the surfeit of love: Simone Weil in Nigeria' (2017) 28 *Law Critique* 8.
[191] I Imam & M Abdulkareem-Mustapha 'Rights of people with disability in Nigeria: Attitude and commitment' (2016) 24 *African Journal of International and Comparative Law* 439.

point to consider is that unfortunately, despite the CRPD's explicit mention of disabled women and the country's obligation thereto, the Nigerian government is yet to fulfil its reporting obligations to the CRPD.

Conclusively, I have questioned how the CRPD responds to the identity layers that the disabled Nigerian woman embodies which result in oppressions intersecting and influencing one another. With intersectionality in mind, I am not just referring to intersectionality's disruption of water tight identity categories alone where there is a recognition of the compounded oppression that a disabled Nigerian woman encounters by virtue of her disability and her gender for instance but importantly, an intersectional lens must go beyond responding to law's tendency to freeze individuals' identities. Although, this might be significant, the disabled Nigerian woman's reminder is that such viewpoint fails to take into consideration intersectional discrimination that responds to identities as a manifestation of power relationships. However, it is essential to note that the CRPD does take the intersectional lens further than other international human rights treaties

1.6 Can the disabled woman speak? Nigeria's difficulties with fulfilling its international obligations under international human rights treaties intersectionality or not?

Next, I proceed with the assumption that even if it is agreed for a moment that international human rights instruments that Nigeria has ratified as part of its body of law discussed above, recognise and respond to the lived and intersectional realities of disabled women, there are still difficulties especially with their application in Nigeria. Before, I proceed, it is necessary to reiterate a few points. First, I have explored and pointed to research that has shown how the international human rights framework has shifted gradually in attempts to respond to intersectional beings such as disabled women.

Second, I have presented the debates that exist between commentators who argue that the international human rights framework generally still leans on the grounds-perspective to discrimination on the one hand and others who insist that the international human rights framework including the traditional human rights treaties recognise intersectional discrimination that the disabled Nigerian woman might encounter.

These debates notwithstanding, I think it can be agreed that the development of an intersectional lens is at an early stage and slowly growing at the international level especially with treaties such

as the Convention on the Rights of the Child (CRC)[192] and the CRPD. The argument I underscore therefore is that even if this assertion is followed, there are still difficulties that limit Nigeria from fulfilling its international human rights obligations in other words indirectly developing an intersectional lens that would allow it to speak to the lived and intersectional encounters of disabled women in the country. These difficulties stem from Nigeria's inability to appreciate the benefits that an intersectional perspective provides. It is clear that the Nigerian law and human rights' framework because of its mind-set does not contemplate intersectional discrimination that the disabled Nigerian woman encounters. I will briefly examine these difficulties:

1.6.1 Lack of indivisibility

The first difficulty I identify that limits Nigeria from developing an intersectional lens that would enable it respond to the lived and intersectional realities of disabled women is a lack of indivisibility and interdependence of rights. This lack evident in Nigeria's anti-discrimination's law, it could even be argued was inherited from the United Nations scheme of treaty-based and customary international human rights frameworks. Research has shown that to view the international human rights framework as indivisible and interdependent is to acknowledge Collins' matrix of domination.[193] This is an interesting argument because the claim is that, underlying the indivisibility of human rights is a premise that identifies oppression and discrimination as the consequence of interactive and interlocking oppressions.

This standpoint is consistent with Crooms' discussion:

> This indivisibility uses a "both/and conceptual stance" to address three fundamental flaws in the U.N. scheme of treaty-based and customary international human rights. The first is the thematic and territorial divisions of the human rights system. The second is the ranking of rights in a three-tiered hierarchy of first-, second and third-generation rights. The third is the conditions governing membership in both the U.N. and the international community.[194]

[192] Although, I did not analyse the Convention on the Rights of the Child here, I acknowledge the intersections that exist with gender, age, disability and other identity layers and its potential contribution to not only produce disability but the intersectional disabilities that disabled girls in Nigeria do suffer especially considering the increased prevalence of child marriage.
[193] Crooms (n 6 above) 625.
[194] As above 625-628.

Crooms' analysis is useful in underscoring the explanation that applying the indivisibility of rights corrects the fundamental errors that a framework of treaty based and customary international human rights presents.[195] This for instance means that instead of viewing the human rights framework in terms of themes or divisions that focus on specific groups or identities, indivisibility makes allowance for reaching out to non-group members who are usually considered to be outside the specific group. This first error manifests in the United Nations' establishment of a number of human rights instruments in a bid to hold states accountable for guaranteeing the right to non-discrimination for specific groups of persons.

Citing the example of CEDAW, Bond explains how this instrument is faulty because of its monolithic tendency to focus solely on one kind of discrimination and oppression which in the case of the CEDAW manifests as gender discrimination.[196] By encouraging the separation of gender, ethnic, racial and even disability discrimination, the United Nations has reportedly hindered states such as Nigeria from, recognising and exploring the oppressions that occur as a consequence of the intersections and interactions between one ground and other interacting grounds.[197]

Bond is therefore right to point out how the treaty-based system within the United Nations is itself guilty of the current fractured and monolithic understanding of the nature of discrimination that Nigeria's anti-discrimination law for instance adopts. An understanding which fails to recognise that discrimination and oppression is often the result of inextricable interaction of factors and characteristics such as race, ethnicity, religion, gender and culture. The aforementioned point is what Cornelsen must mean when she indicates that although both CEDAW and the CRPD recognise disabled women, both fail in giving them the necessary attention they deserve.[198] In fact, she insists further that reading the CRPD and CEDAW separately would jeopardizes these instruments' ability to protect disabled women.[199] There is growing scholarship that have engaged in whether interdependence of rights can be equated to intersectionality.[200]

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[195] Crooms (n 6 above) 628.
[196] Bond (n 5 above) 96.
[197] As above 141 142.
[198] Cornelsen (n 165 above) 119.
[199] As above 119.
[200] V Ayeni 'Introduction' in V Ayeni (eds) *The impact of the African Charter and the Maputo Protocol in selected African states* (2016) 1.

1.6.2 Non-domestication

Even if it is agreed for a moment for the purpose of this section that international instruments that Nigeria has ratified discussed above recognise and speak to the lived and intersectional realities of disabled women, there are still difficulties especially with their application in Nigeria. For one, the potential of international human rights treaties to ensure the realisation of human rights is heavily reliant on the extent to which these rights are protected in the domestic legal system.[201] What this means is that for Nigeria by virtue of its international human rights obligations to be able to speak to the intersectional discrimination that disabled women experience depends on the extent to which it adheres to these rights domestically. This is an interesting claim especially considering that the country is a dualist state. This dualism means that international instruments have no direct application at the national level in Nigeria except incorporated through an Act of the National Assembly.[202]

To provide further elaboration, Egede views Nigeria's dualistic perspective as a consequence of section 12 of the Nigerian Constitution.[203] According to section 12 of the legal document, before an international treaty can be implemented in the country, it has to be enacted into law.[204] It is therefore possible to argue that this singular provision determines the relationship between an international treaty and its implementation in the country. In the popularly cited Abacha vs. Fawehinmi case, a number of commentators agree that the case is indicative of the fact that even when a treaty is domesticated, it must not threaten the superiority of the Constitution. [205] This is consistent with Onomrerhinor's argument that the purpose of section 12 is to safeguard the supremacy of the Nigerian Constitution.[206]

The implication drawn here is therefore that, no matter how beneficial a treaty is; it is meaningless unless it is incorporated into the law of the land and even when incorporated, it is still subject to

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[201] Onazi (n 190 above) 6

[202] The 1999 Constitution of the Federal Republic of Nigeria (The Nigerian Constitution) sec 12(1); sec 12(2) grants the national assembly powers to enact laws for treaty purposes outside of the exclusive list.

[203] E Egede 'Bringing human rights home: An examination of the domestication of human rights treaties in Nigeria' (2007) 51 *Journal of African Law* 250.

[204] The Nigerian Constitution sec 12(1); sec 12(2).

[205] Egede (n 203 above) 250.

[206] F Onomrerhinor 'A re-examination of the requirement of domestication of treaties in Nigeria' (2016) 7 *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 21.

the Nigerian Constitution. What this suggests is that even if for the sake of argument, it is claimed that the CEDAW and other international instruments protect disabled women from intersectional discrimination for instance, although Nigeria has ratified CEDAW and it provides for the realisation and enjoyment of rights for women particularly women at the margins, the treaty cannot enjoy the force of law or be binding in Nigeria unless the provisions of section 12 of the Constitution of the Federal Republic of Nigeria 1999 are complied with. It is no wonder that Dada has blamed the section for the challenges of actualisation of rights for Nigerians particularly women.[207] Interestingly, there are contrary arguments that see Section 12 as a sword to protect Nigeria's sovereignty and supremacy of the Constitution and not necessarily to deny Nigerians any right.[208]

In addition, according to the Nigerian Constitution, matters relating to women are under the legislative purview of states and the residual list.[209] The consequence of this contentious section become obvious. International treaties like CEDAW and the Maputo Protocol are subject to and cannot be incorporated into law until either an act of the National Assembly or at least 23 of the 36 states in Nigeria have ratified this treaty, otherwise each state has to enact separate laws that relate to women.[210] The question is how does this apply in the Nigerian situation. It can be stated that one of the reasons CEDAW and the Maputo Protocol have not been domesticated in the Nigerian situation is because the perception that certain specific human rights instruments such as CEDAW deal with women that is usually not taken seriously There is therefore a resistance to such domestication or else how can one explain the refusal to domesticate CEDAW and even the Maputo Protocol when the African Charter has been domesticated to Nigerian law.

The implication of this situation for the disabled woman with intersectional encounters is that the likelihood of the enactment of a law that recognises the intersectional encounters is low especially considering the current Nigerian legal mind-set. Nevertheless, although Nigeria is yet to domesticate most of the international human rights instruments, by its ratification of these instruments, it becomes binding in the Nigerian state although it is not justiciable in its courts except through persuasive and progressive interpretations. Currently, Nigeria has only

[207] J Dada 'Human rights under the Nigerian constitution: Issues and problems' (2012) 2 *International Journal of Humanities and Social Sciences* 36.
[208] Onomrerhinor (n 206 above) 21.
[209] The Nigerian Constitution sec 61.
[210] The Nigerian Constitution sec 12(3).

domesticated the African Charter and the Convention on the Rights of the Child (CRC)

1.6.3 Inconsistencies between the ratification and implementation of international instruments in the country

Even if it is agreed for a moment that international instruments that Nigeria has ratified recognise and speak to the lived and intersectional realities of disabled women, there are still difficulties especially with their application in Nigeria. A difficulty is located in the inconsistencies between the ratification and implementation of international human rights treaties in the country. There is a growing body of writings about the inconsistencies between the ratification and implementation of the CRPD in the country that supports the claim. [211] These inconsistencies also can be linked to the supremacy of the Nigerian Constitution especially in relation to international instruments. The supremacy of the Nigerian Constitution has been established. The Nigerian government has domesticated the African Charter on Human and Peoples Rights (African Charter) into domestic law through the African Charter Act.[212]

However, despite Nigeria's supposed domestication of the instrument, Egede has accurately identified a potential conflict between the domesticated African Charter and the Nigerian Constitution.[213] It is clear that where such conflict does exist, the Nigerian Constitution prevails by virtue of its supremacy.[214] The problem with such supremacy is that where for instance there is a clash between the African Charter or the Maputo Protocol which does provide to an extent for the non-discrimination of women and disabled women as provided in article 18(2), (4) of the African Charter and Article 23 of the Maputo Protocol for instance, one can speculate that the anti-discrimination section 42 of the Nigerian Constitution which makes no reference to disability is likely to prevail.[215]

This assertion is validated in the case of *Simeon Ilemona Akubo v Diamond Bank* discussed in the

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[211] Onazi (n 190 above) 9.
[212] 1990 African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Laws of the Federal Republic of Nigeria.
[213] Egede (n 203 above) 250.
[214] The Nigerian Constitution sec 1(1)(3) provides that " the Constitution is supreme and its provisions shall have binding force"
[215] The African Charter art 18(2), (4) despite the weakness, vagueness and the criticisms of how one singular article of the African Charter and such lumping together still offers some protection for disabled women which the Nigerian Constitution arguably does not provide.

preceding chapter is a case in point. [216] One can therefore conclude already that even though Nigeria has domesticated the African Charter, it has so far not offered any significant dividends or protection to the intersectional encounters of disabled Nigerian woman. This gives credence to the argument that in reality, many states do not actually support the human rights conventions they are signatories to.[217] They for instance, rightly identify the tension that exists between the Nigeria's responsibility for instance, to guarantee human rights, and the Nigerian state that violates or simply ignores those rights at the same time.[218] This is especially challenging where states such as Nigeria and its laws are patriarchal and as a result particularly hostile to protecting women particularly disabled women from intersectional discrimination.

The question could then be asked how beneficial it is to ratify international treaties considering the complexities that characterise the domestication as well as the questionable superiority of the Constitution which as elaborated, contains discriminatory provisions particularly with regards to Nigerian women. The same situation is unfortunately reflected in the case of disability. Although, a National Disability Act 2018 has now been duly passed into law by the President, its ability to speak to the intersectional discrimination that the disabled woman experiences is questionable. As such, one is not surprised that as Onazi has accurately identified, there are inconsistencies between the ratification and implementation of the CRPD in the country.[219]

Another problem that is related to this inconsistencies is with international law's reliance on state responsibility to ensure for instance, that the disabled Nigerian woman is regarded as a right holder.[220] The problem with this begins with the fact that international law cannot necessarily dictate or determine the behaviour of states for instance where as Quinn observed, the norm is or it is acceptable for disabled women and their intersectional encounters to be disregarded.[221] He describes how disabled people have been disregarded in all cultures and how this disregard has been firmly reflected in international human rights treaties.[222] As such, states such as Nigeria is

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[216] *Simeon Ilemona Akubo v Diamond Bank*. (Suit ID/763M/2010).
[217] H Meekosha & K Soldatic 'Human Rights and the global south: The case of disability' (2011) 32 *Third World Quarterly* 1388.
[218] As above 1388.
[219] Onazi (n 190 above) 9.
[220] G Quinn & T Degener 'The moral authority for change: Human rights values and the worldwide process of disability reform' in A Bruce et al (n 158 above) 13.
[221] As above 14.
[222] G Quinn & T Degener 'The moral authority for change: Human rights values and the worldwide process of disability reform' in A Bruce et al (n 158 above) 15.

able to decide whether it wants to comply with certain obligations usually heavily dependent on whether it suits their interests to comply or not. This is particularly true when we consider the fact that Nigeria has ratified the Convention on the Rights of Persons with Disabilities (CRPD) since 2010 and yet there is significant evidence that suggests that very little has been done to reflect the intersectional discrimination that disabled women suffer in Nigeria.

1.6.4 Religious and customary conflicts

Another difficulty that international human rights treaties encounter in Nigeria is the existence of religious and customary laws which form part of the law in the country. The recognition of customary and religious law as part of law in Nigeria has been said to run contrary to the right to non-discrimination for Nigerian women. Customary law has been regarded as a primary hindrance to achieving rights for women.[223] Similarly, the implementation of Sharia-based penal codes as the legal system in a number of its Northern states since January 2000 for instance, has posed hindrances to the achievement of rights particularly the right to non-discrimination for women.[224] International treaties and their ability to achieve rights for women especially disabled women who have intersectional encounters and suffer intersectional discrimination is undermined and compromised where these rights clash with discriminatory religious or customary laws. As such, where CEDAW provides for liberal individual rights enforcement, it is grossly limited in the Nigerian context for instance, where it does not take into consideration the oppression that women suffer as a result of the interactions and intersectionality with deeply entrenched cultural and religious mores.[225]

An example that demonstrates this point clearly is the case of Amina Lawal. What the story of Amina demonstrates is how the oppression and discrimination that women suffer cannot be understood solely on one ground alone. Amina suffered discrimination not just on the ground of her sex alone but because she was a woman, a Muslim and a Northerner simultaneously. However, it is worth noting the efforts to incorporate CEDAW into the local law of Nigeria through a bill

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[223] M Ndulo 'African customary law, customs and women's rights' (2011) 18 *Indiana Journal of Global Legal Studies* 87.
[224] VO Nmehielle 'Sharia law in the northern states of Nigeria: To implement or not to implement the constitutionality is the question' (2004) 26 *Human Rights Quarterly* 731.
[225] P Andrews 'Lectures, women's human rights and the conversations across cultures (2003) 67 *Albany Law Review* 610.

that was brought before the National Assembly in 2006.[226] Unfortunately, the bill was strongly contested and rejected primarily because of culture and religion.[227] The Bill failed for the most part because it was perceived as sinful and contrary to the African mores.[228]

Generally, Nigerians for instance opposed the Bill purely on the erroneous grounds that somehow the CEDAW and the Maputo Protocol provisions could be used as an excuse for abortion and promiscuity.[229] This is interesting because the reasons for the rejection of the Bill show clearly the interactions between culture, religion and law and makes mockery of the universality and neutrality that the law pretentiously carries. Yet the law is not only blind to its own interactions with culture and religion on the one hand but it also fails to recognise the consequences that these interactions have on women.

Another illustration that demonstrates the salience of the above point is when considering Nigeria's state report to the CEDAW Committee in 2008 for instance, the Committee was concerned about how customary, traditional and religious practices have perpetuated discrimination against women in Nigeria. It was on this basis, that the CEDAW Committee made certain suggestions and concluding recommendations to the Nigerian government in efforts to fulfil their obligations under the treaty. For one, the CEDAW Committee were particularly disturbed by the prevalence of cultural stereotypes in the country that were harmful to women posing serious threats to the physical and emotional health of women infringing their rights.

Another point that the CEDAW Committee raised was the discrimination, negative difficulties and consequences that Nigeria's tripartite legal system presents to women. There is substantial evidence that documents this claim. There are studies for instance that have linked the coexistence of the customary, religious and the statutory law side by side in the country to the prevalence of

[226] O Para- Mallam et.al 'The role of religion in women's movements: The campaign for the domestication of CEDAW in Nigeria' (2011) 4.
[227] As above 4.)
[228] E Oji 'Fighting discrimination in Africa through CEDAW: Hard fights easy fights' (2010) 16 *New England Journal of International and Comparative Law* 108.
[229] Para- Mallam et.al (n 226 above) 4.

domestic violence,[230] rape.[231] Female Genital Mutilation[232] and even forced marriage.[233] In addition, the CEDAW Committee was worried about the discriminatory practices against women that is often excused and rationalised by religious and customary laws and practices particularly within the family context. This observation demonstrates how in Nigeria, culture and religion is able to interact and wrap around gender to produce disability.

1.6.5 Reservations

If it is agreed that the CEDAW and other international instruments are able to speak to the intersectional encounters of the disabled woman and the resultant intersectional discrimination in Nigeria. The question to ask is how this is possible is questionable considering the existence and Nigeria's power to make reservations on international human rights treaties.

It becomes crucial to consider what exactly reservations mean. Commentators generally agree that reservations could be declarations that states have the power to make when signing, ratifying and acceding to an international instrument. This is usually done with an intention of modifying or diluting the legal force that specific articles of the instrument would have when in application in the country.

With this definition in mind, although the Nigerian government did not formally make reservations on any provisions of for instance the CEDAW, the problem starts to unfold when as research has shown, some states in Nigeria have subtly subjected CEDAW's application to Sharia law. By this I mean that these states have unofficially modified the legal force of certain articles of CEDAW that they are not in agreement with and have instead subjected it to the Sharia law.

The result of reservations has been well documented.[234] For one, studies have rightly linked the

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[230] HI Bazza 'Domestic violence and women's rights in Nigeria' (2009) 4 *Societies Without Borders* 175.
[231] IS Chika 'Legalization of marital rape in Nigeria: A gross violation of women's health and reproductive rights' (2011) 33 *Journal of Social Welfare and Family Law* 41.
[232] 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, 81.
[233] T Braimah 'Child marriage in Northern Nigeria: Section 61 of part I of the 1999 Constitution and the protection of children against child marriage' (2014)14 *African Human Rights Law Journal* 486.
[234] See generally DL Rosenblum 'Unsex CEDAW, or what's wrong with women's rights' (2011) *20 Columbia Journal on Gender and Law* 112; C Nicolai 'Islamic law and the international protection of women's rights: The effect of sharia in Nigeria' (2004) 31 *Syracuse Journal of International Law and Commerce* 317; and M Buenger 'Human rights conventions and reservations: An examination of a critical deficit in the CEDAW' (2013) 20 *Buffalo Human Rights Law Review* 69.

ineffectiveness of CEDAW to ineffective enforcement as well as the power of states to make reservations because it gives these states an excuse to avoid fulfilling their obligations. To strengthen this point is an illustration of the sentencing to death of Amina Lawal in Northern Nigeria. What is interesting about the case proves that CEDAW lacks the persuasive and compelling power to ensure that states such as Nigeria fulfil its obligations. In fact, there is no effective enforcement agency to prevent Nigeria from discriminating against women. there is proof for instance that demonstrates that CEDAW has no power to authorize its Committee to find that Nigeria has infringed on its provisions. It also gives no room for appropriate remedies in a timely fashion. This has led a number of scholars to make claims describing CEDAW as more of a "statement of intent than a set of internationally binding obligations.[235]

Even more relevant for this chapter is that the Amina Lawal scenario exposes the intersectional discrimination suffered evident by virtue of her gender, ethnicity and religion. Asides from gender, there are other identity layers at play through which to interrogate power relationships, but these are infused by multiple layers of oppression. in addition, given that Nigeria cannot be forced to ratify human rights treaties and not only that even after ratification, they are allowed to make reservations as they deem fit. In fact, CEDAW has been considered to have the highest number of reservations. The many difficulties with the modus operandi and implementation of CEDAW like other international treaties have been well documented. In fact, there have been scholarship that have linked the problems of CEDAW for instance to its vague and neutral language.

This kind of situation leaves the human rights framework in what Crooms has described as a schizophrenic space. What this denotes is a space where on the one hand, rights are expressed in the manner that allows for oppression that manifests as the matrix of domination to be tackled yet on the other hand what she calls the Collins' both/and stance is deterred by the existence of the different and separate human rights instruments, the existence of a rights hierarchy and how states for instance determine which instruments to ratify and in the case of Nigeria to domesticate and which ones to overlook. This contradiction has been particularly harmful to women.[236] As such, it is possible to infer that CEDAW like many other international treaties have limited value in

[235] C Nicolai 'Islamic law and the international protection of women's rights: The effect of sharia in Nigeria' (2004) 31 *Syracuse Journal of International Law and Commerce* 317.
[236] Crooms (n 6 above) 625.

ensuring that the intersectional encounters of the disabled woman are brought to the fore.

1.6.6 The absence of a world police to ensure Nigeria's compliance

Related to the point on reservations on international human rights treaties, it has been noted that most of these treaties have the weakest implementation and enforcement institutions. This point has been significantly reported. The consequence of this situation is that many states parties such as Nigeria get away with infringing the rights of women. What this means specifically, for the disabled woman is that even if it can be claimed that CEDAW or even the CRPD has adopted an intersectional lens that now places the intersectional discrimination at the center; Nigeria as a state party cannot be forced to adhere to its obligations under the human rights instrument.

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