

NAVIGATING BETWEEN THE SURVIVAL CENTERED APPROACH AND THE STATE JUSTICE OBLIGATIONS: A CASE STUDY OF PERSONS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES.

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Abstract

This article critically interrogates the tension between a survival-centered approach to the care of persons with intellectual and developmental disabilities (IDD) and the Nigerian state's justice and legal obligations under international and domestic law. While survival-focused interventions are often justified as necessary for protection, they frequently result in substituted decision-making regimes that undermine autonomy, dignity, and legal capacity. This paper argues that Nigeria's current legal framework particularly the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Discrimination Against Persons with Disabilities (Prohibition) Act 2018, and the National Mental Health Act 2021 falls short of compliance with Article 12 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD). The study references the 2025 Gambian communication; a leading decision of the African Commission of Human and Peoples Rights on Legal Capacity; a model for Nigerian advocates. Through doctrinal analysis, sociolegal and comparative African human rights jurisprudence, the article demonstrates the persistence of paternalistic legal structures. This article interrogates the perceived tension between survivor-centered care and survivor-centered justice obligations. It argues that these approaches are not mutually exclusive but must be carefully balanced through trauma-informed, minimum harm justice mechanisms. Drawing on Nigerian law, comparative jurisprudence, and international human rights standards, the article proposes a principled model for aligning survivor welfare with accountability and rule of law imperatives. It proposes a reconciled framework grounded in supported decision-making, presumption of capacity, and proportional safeguards, and concludes with recommendations for reform.

Keywords: Survival-centered approach, justice-centered obligations, intellectual and developmental disability, paternalistic structures.

1.0 INTRODUCTION

The survivor-centered approach has emerged as a dominant framework in responses to gender-based violence (GBV), prioritising survivor autonomy, dignity, safety, and informed choice¹. Simultaneously, states bear binding legal obligations to investigate, prosecute, and punish GBV as a matter of public interest and human rights compliance.²

Persons with psychosocial, intellectual and developmental disabilities typically encounter difficulties in accessing justice; they particularly face severe exclusion as a result of outdated laws, which strip them of legal capacity, as well as the lack of procedural accommodation that would respond to their specific needs, whether as a complainant or defendant/victims. Justice Actors battle to understand and appropriately respond largely for reasons of lack or inadequate knowledge of this type of disability. Persons with intellectual and developmental disabilities (IDD) in Nigeria are frequently subjected to restrictive arrangements such as guardianship, involuntary placement or restrictive care regimes because their basic survival and self-care are deemed insufficient, simply put, institutionalisation.³ These are often justified on survival grounds, but undermine autonomy and dignity. The case of adolescent girls with IDD face higher risk of involuntary sterilisation and denial of health care. This article explores how such practices can be reconciled with Nigeria's legal obligations. This article interrogates the perceived tension between survivor-centered care and survivor-centered justice obligations facing persons living with disability, with a focus on intellectual and developmental disabilities. It argues that these approaches are not mutually exclusive but must be carefully balanced through trauma-informed, minimum-harm justice mechanisms. Drawing on Nigerian law, comparative jurisprudence, and international human rights standards, the article proposes a principled model for aligning survivor welfare with accountability and rule-of-law imperatives. In response, the survivor-centered approach emerged as

¹ Core Principles, UN Women Survivor- Centered Approach to Addressing Violence Against Women (2016) s 12 (2)

² Violence Against Persons Act 2015. s 1, 2, 4, 5, 6, 13, 14, 15, 19, 21, 23, 263-265, 282-284, 353,357 & 360

³ Convention on the Rights of Persons with Disabilities 2006 (adopted 13 December 2006, entered into force 3, May 2008), Article 16

a corrective paradigm that places survivors' rights, choices, and safety at the centre of all interventions.⁴

However, criminal justice institutions are simultaneously bound by legal duties to investigate and prosecute offences,⁵ the constitution deals with specific state obligations on national integration, social justice and criminal prosecution,⁶ even where survivors are reluctant to participate.⁷ The state has an obligation to punish and hold persons accountable for their actions⁸. These justice obligations are reiterated in both substantive and procedural laws, such as the Administration of Criminal Justice Act and the Child's Rights Act⁹ etc. This duality generates tension between respecting survivor autonomy and fulfilling justice obligations. This article examines how justice systems, particularly in Nigeria, can reconcile these imperatives without compromising either survivor dignity or societal protection.

2.0 CONCEPTUAL CLARIFICATION OF TERMS.

2.1 The Survivor-Centered Approach

The survivor-centered approach is grounded in human rights and public-health frameworks. It prioritises safety, confidentiality, respect, non-discrimination, and informed consent.¹⁰ Survivors are recognised as rights-holders rather than mere witnesses or evidentiary tools. The approach seeks to avoid re-traumatisation and empowers survivors to make decisions about reporting, medical care, and legal action.

2.2 Survivor-Centered Justice Obligations

Survivor-centered justice obligations arise from domestic constitutional law, criminal statutes, and international human rights treaties. States have a duty not only to respect survivor autonomy but also to exercise due diligence in preventing, investigating, and punishing GBV.¹¹ These

⁴ Core Principles, UN Women Survivor Centred Approach to Addressing Violence Against Women (2016)

⁵ Nigerian Police Act 2020 s 4, 38, 44,

⁶ 1999 Constitution of the Federal Republic of Nigeria. ss, 15(5), 17(2)(b), 174, 211

⁷ Convention on the Elimination of All forms Of Discrimination Against Women (1979) Article 21

⁸ Nigerian Correctional Service Act 2019, ss, 2, 3, 12,14,15,166, 37, 46, 47

⁹ ACJA ss, 1,4,106,109, 270, 311, Child Rights Act 2003, s 1, 204-207, 214, 215, 223, 236,

¹⁰ UN Women Survivor- Centred Approach to Addressing Violence Against Women (2016)

¹¹ Committee on the Elimination of Discrimination Against Women, General Recommendation No 35 (2017). Para

obligations are grounded in the understanding that GBV is both an individual harm and a public wrong with broader societal implications.

2.3 Intellectual and Developmental Disability (IDD)

An intellectual and developmental disability (IDD) is a group of conditions that begin during the developmental period (before age 18) and affect a person's intellectual functioning and/ or adaptive behaviour. It is often characterized by limitations in intellectual functioning: difficulty with learning, reasoning, problem solving, and limitations in adaptive behaviour in everyday skills like communication, social interaction, self-care, etc.¹² Examples of such conditions include autism spectrum disorder and cerebral palsy.¹³

Intellectual and developmental disability refers to a condition originating before adulthood.¹⁴ IDD is distinct from psychosocial disability, which refers to the interaction between a person's mental health condition and social, institutional and attitudinal barriers (being the combined effect of impairment). It can start at any age in life, and it may not be lifelong as IDD¹⁵

3.0 STATEMENT OF THE PROBLEM

Between protection and autonomy, which should the state, civil society, like the International Federation of Women Lawyers (FIDA) or NGO(S) give priority to? There exists a tension between survival-focused interventions and the state's duty to respect legal capacity, particularly as regards FIDA'S mandate to protect vulnerable populations, in which IDD persons fall under these

categories. Suffice to say that there has to be some sort of balance, and as regards which principle or mandate will prevail, this will largely depend on the unique circumstances and the individuals involved.

¹² American Association on Intellectual and Developmental Disabilities, *Intellectual Disability: Definition Classification and System of Supports* 11th edn, AAIDD 2010)

¹³ Ibid, 25-29

¹⁴ Institute On Community Integration <https://ici.umn.edu>

¹⁵ World Health Organisation and World on Disability (WHO Press 2011) 4-7

4.0 METHODOLOGY

This study adopts a doctrinal and socio-legal research methodology to critically examine the intersection between survivor-centered approaches and justice-centered obligations, with particular focus on persons living with intellectual and developmental disabilities

4.1 Doctrinal Analysis

The study undertakes a systematic examination of international and domestic legal instruments which are relevant to the subject matter at hand. The Doctrinal analysis entails an evaluative and analytical approach to available and existing literature at hand.

4.2 Socio-Legal Approach

To bridge law and practice, the study adopts a socio-legal perspective by: examining secondary empirical literature on the experiences of persons with IDD in accessing justice; analysing reports from international organisations, NGOs, and criminal justice institutions; and interrogating how systemic barriers (e.g., stigma, communication barriers, institutional bias) affect both survivor-centered protections and justice-centered outcomes.

5. SCOPE AND LIMITATION

The study is limited to selected international and Nigerian legal frameworks; International instruments such as the UN Convention on the Rights of Persons with Disabilities (CRPD) and relevant UN guidelines on victim protection particularly the Discrimination Against Persons with Disabilities (Prohibition) Act 2018, and the National Mental Health Act 2021, the 2025 Gambian communication; communication to the African Commission of Human and Peoples Rights on Legal Capacity; regional human rights frameworks; and domestic laws including the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Violence Against Persons (Prohibition) Act (VAPP Act), Child Rights Act 2003, Police Act 2020 and the Nigerian Correctional Service Act 2019 and other available secondary data, without primary empirical field.

6.0 AN APPRAISAL OF THE LEGAL FRAMEWORK.

6.1 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)¹⁶

CEDAW creates a strong justice-centered obligation¹⁷ which states must exercise “due diligence” to prevent, investigate and punish violence against women, including women with disabilities. General Recommendations explicitly recognises that women with disabilities face intersecting forms of discrimination¹⁸.

However, CEDAW’s framework is weak on survivor-centered autonomy for women with IDD. It does not require supported decision-making, and its references to “best interests” in the context of healthcare¹⁹ can be interpreted paternalistically. For a woman with IDD, the justice-centered duty to prosecute may override her wishes if she lacks the capacity to consent to legal action, a tension CEDAW does not resolve. Worthy of note is the fact that, Nigeria, has no national legislation that has domesticated the CEDAW.

6.2 Convention on the Rights of the Child (CRC)²⁰

The CRC uniquely embeds both a justice-centered duty²¹ (it states that states must take protective measures, including mandatory reporting,²² it stipulates rights of children with disabilities, protection from abuse and exploitation) and a survivor-centered element. Every child capable of forming views has the right to express them freely, with due weight given according to age and maturity.²³ For a child with IDD, Article 12 is crucial, but its application depends on the child being “capable” and on states providing appropriate communication support.

¹⁶ Convention on the Elimination of all forms of Discrimination Against Women (adopted 18 Dec. 1979 entered into force 1981 (1249 UNTS 13).

¹⁷ Ibid, 1-5 & 12

¹⁸ Ibid, General Recommendation, No. 35

¹⁹ Ibid, 12

²⁰ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3

²¹ Ibid, 3, 12, 19 & 23

²² Ibid, 34-36

²³ Ibid, 12

The tension lies in the provision for best interests.²⁴ In practice, “best interests” is often determined by adults (parents, social workers, judges) without genuinely ascertaining the child’s views. For a child with IDD, this can mean a justice-centered intervention (e.g., removing the child from a parent) that disregards the child’s own preferences. General Comment on children with disabilities²⁵ urges supported decision-making, but the CRC’s text itself does not mandate it. Although the instrument provides a survivor-centered foothold, the CRC’s strong protectionism often results in paternalistic, justice-led responses for children with IDD.

6.3 African Charter on Human and Peoples’ Rights²⁶

The African Charter establishes justice-centered obligations. Clearly, the most relevant provisions are non-discrimination, equality before the law, right to life and integrity, dignity, prohibition of torture, access to justice, protection of the family, states must guarantee access to courts, prohibit torture and inhuman treatment, and protect vulnerable groups²⁷. The African Commission on Human and Peoples’ Rights has issued General Comments on access to justice²⁸ that emphasised states must remove procedural barriers for persons with disabilities.

However, the Charter is silent on legal capacity and supported decision-making. It does not explicitly recognise the right of persons with IDD to make their own decisions with support. Consequently, while a state’s failure to investigate violence against a person with IDD would breach the Charter, the state could still lawfully appoint a guardian to act instead of the individual, overriding the survivor-centered approach. It is heavily justice-centered and useful for compelling state action and non-discrimination, but lacks a framework for respecting the will and preferences of persons with IDD. Balancing these interests requires recognition that survivor autonomy is not negated by justice obligations but must be exercised within transparent legal limits. The case of *Purohit & Mooore v The Gambia*²⁹ The principles of dignity and non-discrimination were reiterated; persons with mental or psychosocial disabilities are entitled to full protection of their human rights under the African Charter on Human Rights. This is a

²⁴ Ibid, 3

²⁵ Ibid, General comments on children with disability no. 9

²⁶ African Charter on Human and Peoples Rights (1981 OAU DOC CAB/LEG/67/3 re 5, adopted 27 June 1981, entered into force 21 October 1986

²⁷ African Charter on Human and Peoples Rights, art 2-6 & 18(20

²⁸ Ibid General Comments No. 5

²⁹ *Purohit & Mooore v The Gambia* (2003) AHRLR96 (ACHPR

leading decision of the African Commission on Human and Peoples' Rights on mental health and disability rights. This decision buttresses detention with safeguards and how criminal justice must adapt to protect persons with disabilities. This authority emphasises that vulnerability does not diminish rights; rather, it heightens states' obligations of protection and care. This is consistent with recognition of personal autonomy in *Medical & Dental Practitioners Disciplinary Tribunal v Okonkwo*.³⁰

6.4 Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol)³¹

The Maputo Protocol is progressive on both fronts but still incomplete. It specifically protects women with disabilities, requiring states to “ensure their participation in decision-making” and protect them from violence, including harmful practices.³² This justice-centered duty is explicit. Importantly, it guarantees reproductive rights and the right to control one's fertility³³ a provision that, if properly implemented, would forbid involuntary sterilisation of women with IDD, thereby respecting their survivor-centered autonomy. However, the Protocol does not explicitly mandate supported decision-making, nor does it address legal capacity. States should often invoke “best interests” to override the reproductive choices of women with IDD. Childbearing is serious business, and individuals must not only possess legal capacity but also mental capacity to undertake such decisions. The Maputo Protocol is more progressive than CEDAW or the African Charter, because Articles 12 and 23 together create both justice-centered protection and a measure of autonomy. But without a clear, supported decision-making framework, the balance remains fragile and state-dependent.

6.5 Convention on the Rights of Persons with Disability.³⁴

The CRPD is the gold standard for balancing the two approaches; it provides for legal capacity, requires states to provide access to supported decision-making³⁵ the essence of survivor-

³⁰*Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo* (2001) 7 NWLR (Pt 711) 206 (SC) 244.

³¹ Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol) (2003) adopted 11th July, 2003 entered into force 25th Nov. 2005

³² Protocol to the African Charter on the Rights of Women in Africa, art 23

³³ *Ibid*, 12

³⁴ Convention On the Rights of Persons with Disability (2006, UN DOC A/RES/62/106, adopted 13 DEC. 2006 entered into force 3 May 2008).

³⁵ Convention on the Rights of Persons with Disability, art Article 12(3)

centered autonomy and access to justice.³⁶ It obliges states to take all appropriate measures to prevent, investigate and prosecute violence³⁷ a justice-centered duty that must operate in tandem with respect for the person's will and preferences.

The CRPD does not see a conflict; justice and autonomy are mutually reinforcing. For persons with IDD, the state must investigate abuse and do so in a way that enables the person to lead the process, with appropriate communication support. explicitly rejects substituted decision-making.³⁸

The balance is fully integrated in the CRPD, which provides the normative blueprint that Nigeria's domestic laws currently fail to follow. In the case of *Opuz v Turkey (European Court of Human Rights)*³⁹ the legal principle laid is in regard to state inaction in domestic violence cases, which breaches the right to life and prohibition of discrimination⁴⁰. The court held that authorities failed to protect the applicant and her mother from repeated violence by her husband, despite complaints. While *Opuz* is not directly binding on Nigeria (but European system), its reasoning is widely cited as persuasive authority. It reinforces the justice-centered obligation states cannot remain passive when violence is reported, even if the survivor is hesitant or unable to pursue the case. For a person with IDD, this principle is vital: police and prosecutors cannot dismiss a complaint as "too complicated" or wait for the survivor to articulate their wishes perfectly. The state's duty to investigate is independent of the survivor's capacity to pursue the case alone. However, *Opuz* does not address the survivor-centered side; it does not require the state to respect the survivor's choice not to proceed, especially where the survivor with IDD may be influenced or coerced.

6.6 The 1999 Constitution of the Federal Republic of Nigeria (as amended)⁴¹

There is a strong constitutional foundation for dignity and non-discrimination⁴² and access to justice.⁴³ Additionally, for persons with IDD, this provides a baseline: no one may be treated as

³⁶Ibid, 13

³⁷ Ibid,16

³⁸ Ibid, General Comments No. 1 (on Article 12)

³⁹ *Opuz v Turkey (2009) 50 EHRR 28*. European Court of Human Rights, art 2

⁴⁰ Constitution of the Federal Republic of Nigeria.

⁴¹ Ibid.

less than a full rights-holder. However, the Constitution does not explicitly address legal capacity or support. decision-making. Consequently, while a person with IDD enjoys constitutional protection in principle, the practical exercise of those rights often depends on the willingness of courts and officials to recognise their capacity. This gap means that the survivor-centered ideal, where the individual's own voice guides the response, is often displaced by a justice-centered approach that assumes the person cannot speak for themselves and therefore requires a third party (parent, guardian, or state actor) to act on their behalf. The Constitution provides a strong rights foundation, but without implementing legislation on legal capacity, the survivor-centered principle remains largely aspirational for persons with IDD. The Constitutional provisions which reinforce the state justice-centered obligation is laid in the case of *Federal Republic of Nigeria v Osahon*⁴⁴ There seemingly exists a tension between Survivor autonomy and justice mandates. A core challenge

arises when survivors decline to report violence or withdraw cooperation, while the state retains a duty to prosecute. Mandatory reporting laws, evidentiary requirements, and prosecutorial discretion can override survivor preferences. If poorly managed, this can result in secondary victimisation through intrusive questioning, repeated interviews, and prolonged proceedings.

Conversely, privileging absolute survivor choice risks entrenching impunity, particularly in cases involving serial offenders or vulnerable victims. Courts have recognised this tension. In *Attorney-General v Susan Obi*,⁴⁵ The Nigerian Court of Appeal emphasised that criminal offences are wrongs against the state, not merely private individuals, that the power of the A.G powers are wide and is exercisable at every stage of the criminal proceedings, subject only to considerations of public interest, justice and prevention of abuse of legal processes.

6.7 Discrimination Against Persons with Disabilities (Prohibition) Act ⁴⁶

The Disability Act prohibits all forms of discrimination⁴⁷ on grounds of disability and imposes fines for violations. It guarantees rights to education,⁴⁸ healthcare⁴⁹, employment, and access to

⁴² 1999 Constitution of FRN (as amended) s 34(1),35 & 36

⁴³ Ibid 6, 36 & 46

⁴⁴ *Federal Republic of Nigeria V Osahon* (2006) 5 NWLR (Pt. 973) 361 (SC)

⁴⁵ *Attorney- General of Federation v Susan Obi* (2005) 14 NWLR (Pt 945) 545 (SC)

⁴⁶ Discrimination Against Persons with Disabilities (Prohibition) Act 2018 (Disability Act.)

justice⁵⁰ and public buildings.⁵¹ However, the Act is entirely silent on legal capacity. It does not address who can make decisions for a person with IDD, nor does it create a framework for supported decision-making. This silence has a direct effect on the survivor-justice balance; it is a Survivor-centered weakness; without any provisions for legal capacity, a person with IDD may be deemed incapable of giving evidence, consenting to medical treatment, or instructing a Lawyer. The Act's anti-discrimination provisions can be invoked to challenge systemic failures (e.g., inaccessible courts, lack of interpreters). It also established the National Commission for Persons with Disabilities (NCPWD)⁵², which has a mandate to enforce accessibility and inclusion. However, enforcement has been "inconsistent" and the Commission "underfunded and under-resourced". The Disability Act is a crucial anti-discrimination tool, but a missed opportunity regarding legal capacity. Its silence means that the justice-centered obligation to investigate and prosecute crimes against persons with IDD is hampered by procedural barriers that the Act does not address. The survivor-centered approach is virtually absent.

6.8 National Mental Health Act ⁵³

The Act incorporates intellectual, psychosocial and cognitive disabilities within its definition of mental health. It establishes a Mental Health Assessment Committee (a tribunal)⁵⁴ to protect the rights of persons with intellectual, cognitive and psychosocial disabilities, including rights to a legal representative, employment, and housing. It also provides that persons with mental health conditions shall "participate in formulating their medical plans devoid of coercion".⁵⁵ These provisions represent progress. Yet the Act remains wedded to a substituted decision-making model. The Mental Health Assessment Committee has powers that can override the individual's choices, ⁵⁶and the Act's safeguards while valuable, do not fully embrace the CRPD's requirement of supported decision-making that respects the person's "will and preferences"

⁴⁷ Ibid, 1,2,

⁴⁸ Ibid, 17 & 18

⁴⁹ Ibid, 21

⁵⁰ Ibid, 12

⁵¹ Discrimination Against Persons with Disability Prohibition Act 2018. S 6-9

⁵² Ibid, 31

⁵³ National Mental Health Act 2021 (Act No 46, of 2022)

⁵⁴ Ibid, 14

⁵⁵ Ibid s 21

⁵⁶ Ibid 14,15,16 & 21

Nigerian mental health laws “complied⁵⁷ only in part” with CRPD and that “some improvements are required to ensure that the safeguards the CRPD prescribes are well enshrined”. The Mental Health Act is a double-edged sword. It provides procedural safeguards that can support a justice-centered response (e.g., legal representation, oversight of coercive treatment).⁵⁸ However, its residual reliance on substituted decision making undermines the survivor-centered principle, especially when the state or a third-party claim to act in the “best interests” of the person with IDD rather than facilitating their own expression of will.

6.9 Violence Against Persons (Prohibition) Act 2015 (VAPP Act)⁵⁹

The VAPP Act criminalises gender-based violence, including sexual violence, harmful traditional practices,⁶⁰ and psychological abuse.⁶¹ It mandates state protection and support for victims. Critically, the Act prohibits discrimination on the basis of disability and imposes sanctions (fines and imprisonment) for contravention. Some states have taken steps to make the law accessible to persons with disabilities, such as launching a Braille version of the VAPP law in Ondo State. For persons with IDD, the VAPP Act creates a clear justice-centered obligation:⁶² the state must investigate and prosecute violence, regardless of the survivor’s communication challenges. However, the Act does not address how to carry out that investigation. The Act suffers the same procedural barriers; absence of protocols for facilitated communication, and judicial scepticism about the competence of witnesses with IDD mean that the VAPP Act’s promise often goes unfulfilled. The VAPP Act robustly articulates the justice-centered obligation.⁶³

6.10 Child Rights Act 2003⁶⁴

The Child Rights Act imposes mandatory reporting⁶⁵ and protective obligations⁶⁶ where a child is a victim of abuse, “thereby limiting absolute survivor discretion”. For a child with IDD, this

⁵⁷ Convention on the Rights of Person with Disabilities, art 12-14

⁵⁸ Discrimination Against Persons with Disability Prohibition Act 2018. S 1-2, 3-9,12-13,17-18

⁵⁹ Violence Against Persons Prohibition Act 2015

⁶⁰ Ibid, 6, &15

⁶¹ Ibid 6, 9,13,14 & 15.

⁶² Ibid, 27-33, 38, 40, 46.

⁶³ Ibid.

⁶⁴ Child Rights Act 2003, Laws of the Federation

⁶⁵ Ibid, 204, 208

creates a clear tension: Justice-centered strength: Mandatory reporting ensures that even if the child cannot speak for themselves, the state is obliged to intervene. This is particularly important where the child's carers may be the abusers. Survivor-centered weakness: The mandatory reporting obligation can override the wishes of the child (or their family) not to involve authorities. For a child with IDD, who may have limited ability to express their preferences, there is a risk that "protective" action is taken without any meaningful attempt to ascertain the child's views. The Act's emphasis on "best interests"⁶⁷ can be interpreted in a paternalistic way that ignores the child's own will and preferences. The Child Rights Act prioritizes justice-centered intervention ⁶⁸over survivor-centered choice. While this is defensible in cases of severe abuse, the lack of supported decision-making mechanisms means that the child's voice is often entirely excluded. A core balanced approach would require that, wherever possible, the child's will and preferences are sought through appropriate communication support.

6.11 Evidence Act 2011⁶⁹

witnesses⁷⁰ It is applied in a way that frequently excludes persons with IDD from giving evidence, because courts lack protocols for facilitated or augmentative communication. "The Evidence Act and standard investigative procedures were drafted without considering how to admit testimony from non-verbal or intellectually disabled children" The Evidence Act is a major structural barrier to both survivor-centered and justice-centered approaches. As the Blueprint article notes, "Section 175 of the Evidence Act dealing with competence of witnesses, becomes a barrier rather than a gateway when courts lack protocols for facilitated communication". Without reform, the person with IDD cannot be a participant in the justice process (survivor-centered failure), and the state cannot effectively investigate and prosecute crimes (justice-centered failure). This is perhaps the single most urgent legal reform needed. Obligations. while neglecting the survivor-centered principle (absence of supported decision-making, lack of communication protocols). However, the implementation gap is even more striking: Access to justice remains elusive: The author recalls a personal experience of an inmate

⁶⁶ Ibid, 11, 13, 14, 209-210 & 221

⁶⁷ Ibid, 1

⁶⁸ Ibid, 11, 149-151, 204-221, 223

⁶⁹ Evidence Act 2011. Laws of the Federation of Nigeria

⁷⁰ Ibid 175

with a speech defect and hearing difficulty who was remanded in custody for over two years without being formally charged before a Law Court, until such a time when the author encountered the inmate in prison and thereafter called the attention of the Nigerian Legal Aid Council and the Disability Rights Commission to provide legal aid and an interpreter to rescue the indigent inmate⁷¹. Similarly, the Author recalls a case of alleged rape of a girl child who suffered from nonverbal autism spectrum⁷². The unavailability of support, consequently led to poor investigation and abandonment of the case by the law enforcement officers; a glaring procedural lacuna. The case of *Uzoukwu v Ezeonu II*,⁷³ as well as the case of *Adesanya v President of Nigeria*⁷⁴ the Supreme Court adopted a Strict approach requiring personal injury or direct interest as a condition for access to court, though, the jurisprudence has evolved.

7.0 BASIC PRINCIPLES FOR BALANCING THE SURVIVAL CENTERED APPROACH WITH THE STATE JUSTICE OBLIGATIONS.

I. Consent and Legal Transparency

Survivors must be clearly informed of their rights and the legal boundaries of confidentiality. Deception or coercion undermines both justice and trust.

ii. Trauma-Informed Justice Processes

Courts increasingly acknowledge the effects of trauma on memory and behaviour. In *R v Doody*,⁷⁵ The court recognised that delayed reporting does not necessarily undermine credibility.

iii. Minimum-Harm Compliance

Where prosecution is unavoidable, justice institutions must adopt a minimum-harm approach. This aligns with due diligence obligations under international law.⁷⁶

⁷¹ 8th of July 2025, the Author's undocumented lived experience, Nigeria Correctional Service.

⁷² facebook.com/share/v/18XU4TPNiT accessed 10th/4/2026 modupe Afiz-Ogun Foundation a disability advocacy group)

⁷³ *Uzoukwu v Ezeonu ii* (1991)6 NWLR (PT 200) 708 (CA) at 761—762)

⁷⁴ *Senator Abraham Adesanya v The President of the Federal Republic of Nigeria* (1981) 1 All NLR (Pt 1) (SC)

⁷⁵ *R v Secretary of State for Home Department, ex p Doody*; L [1994] 1 AC 531 (HL).

⁷⁶ CEWDAW General Recommendation No. 19 (1992) paras 24(b), 26(c), 31((a), CRPD, art, 6,13,16

Iv .Survivor Participation Without Coercion

Survivors should be treated as participants, not passive subjects. They must be kept informed ⁷⁷

v. Accountability Focused on Perpetrators

Justice processes must firmly locate responsibility with perpetrators, as emphasised in *A.G Federation v Abubakar* ⁷⁸ where the court rejected victim-blaming narratives.

vi. Institutional applications of key Actors:

a. Law Enforcement

Police must combine respectful engagement with lawful investigation. Specialised GBV units and gender desks enhance survivor confidence and evidentiary quality.

b. Courts and Prosecution

Judicial adaptations, such as in-camera hearings, protective orders, and expedited proceedings, are essential. Nigerian courts have upheld such measures as consistent with fair-trial guarantees.

c. Health and Social Services

Medical care must be provided regardless of reporting choices, consistent with WHO guidelines.⁷⁹

d. Correctional and Oversight Institutions

Correctional authorities can play vital roles in the provision of diverse rehabilitation programs tailored towards the needs of persons with disabilities. National Human Rights Commission, play a crucial role in monitoring compliance.

8.0 LIMITATIONS/CHALLENGES IN THE PROTECTION OF PERSONS WITH IDD

⁷⁷ UNODC, Handbook on Effective Prosecution Responses to Violence against Women (2014).

⁷⁸ *A.G Federation of Nigeria v Abubakar* (2007) 10 NWLR 9Pt 1041) (SC)

⁷⁹ *World Health Organisation (WHO) Guidelines for Medico-Legal Care for Victims of Sexual Violence* (2003).

1. Absence of a Supported Decision-Making Framework

No Nigerian law recognises legal capacity on an equal basis for persons with IDD. Substituted decision-making (guardians, parents, courts) prevails, meaning the survivor's own voice is legally erased.

2. Evidentiary Barriers (Evidence Act 2011, Section 175)

Courts routinely exclude testimony from persons with IDD because there are no protocols for facilitated or augmentative communication. Police and judges deem them “incompetent witnesses” without assessing their actual ability to communicate with support

3. Mandatory Reporting (Child Rights Act 2003)

For a child with IDD who is a victim, there is no legal mechanism to ascertain the child's will and preferences before reporting. The justice-centered obligation completely overrides survivor-centered autonomy.

4. Substituted Decision-Making in the Mental Health Act 2021

Although the Act provides safeguards, it still permits a Mental Health Assessment Committee or family members to make decisions “in the best interests” of a person with IDD, without a supported decision-making alternative.

5. Lack of Communication and Procedural Accommodations

No provision for sign language interpreters, augmentative communication devices, or trained facilitators in police stations, courts, or legal aid offices. No practice directions to integrate inclusive procedures. The survivors cannot tell their story. Even when the state wishes to act (justice-centered), it cannot gather reliable evidence.

6. Police and Judicial Bias/Lack of Training

Law enforcement and judges often view persons with IDD as unreliable. The justice-centered obligation is breached by state inaction (*Opuz v Turkey*)⁸⁰. The survivor-centered approach is irrelevant because the person never gets a fair hearing.

⁸⁰ *Opuz V Turkey* (Application No 33401/02 European Court of Human Rights (ECtHR, 9 June 2009)

7. Resource and Implementation Gaps

The National Commission for Persons with Disabilities (NCPWD) is underfunded and under-resourced. Accessibility mandates are not enforced. Legal aid is unavailable for most persons with IDD.

8. Tension Between “Protection” and “Autonomy” in Abuse by Caregivers

No Nigerian law provides a guided middle path (e.g., supported decision-making to explore options, safe housing that respects choice).

9. Non-Domestication of Key International Instruments

The balanced CRPD model remains aspirational. Domestic law continues to operate under a substituted-decision-making paradigm.

10. Absence of Data and Monitoring

No systematic data on how many persons with IDD access justice, how many cases are dismissed, or how often supported decision-making is attempted. Policymakers cannot identify the scale of the problem, and accountability for state failures is impossible.

9.0 RECOMMENDATIONS

1. Policy and Law Reforms

Clear statutory guidance on survivor rights, Inter-agency coordination protocols, mandatory trauma-informed training, survivor protection and witness-support schemes. etc. In addition, enacting a Law aligned with CRPD Article 12.

2. Amendment and Development of Procedural Laws

The need to amend Section 175 of the Evidence Act to explicitly allow testimony from persons with IDD using facilitated or augmentative communication. Issue Practice Directions on disability-inclusive evidence.

3. Mandatory Reporting Overrides Choice Amend the Child Rights Act to require that, wherever possible, the child’s will and preferences be sought Create a “supported reporting” option where a trained facilitator helps the child decide.

4. Substituted Decision Making in the Mental Health Act

Revise the Mental Health Act 2021 to replace substituted decision-making with supported decision-making. The Mental Health Assessment Committee should become a support-facilitating body, not an overriding tribunal.

5. Provision of Communication Support and Availability of Professionals

Lack of communication accommodations mandates the NCPWD to develop and fund a national protocol for communication support (interpreters, augmentative devices, trained facilitators) in all justice settings. Allocate specific budget lines.

6. Police and Judicial Bias and Lack of Training Mandate Compulsory

Certified training for all police officers, prosecutors, judges, and legal aid lawyers on disability-inclusive procedures, supported communication, and legal capacity. Include practical simulations.

7. Resource and Implementation Gaps.

The need to substantially increase funding for the NCPWD and the Legal Aid Council to employ disability inclusion officers. Tie state budgets for justice to accessibility compliance.

8. Tension Between Protection and Autonomy

Develop a guided decision-making protocol that offers safe alternatives (shelter, supported living) while respecting the survivor's expressed will wherever possible.

9. Non-Domestication of International Instruments.

Domesticate the Maputo Protocol and CRPD fully. Enact a Rights of Persons with Disabilities (Legal Capacity) Act that directly incorporates CRPD Articles 12, 13 and 16 into Nigerian law.

10. Absence of Data and Monitoring.

Mandate the NCPWD and the National Bureau of Statistics to collect disaggregated data on justice access for persons with IDD. Publish annual reports on case outcomes, barriers, and state compliance.

10.0 CONCLUSION

The balance is not a zero-sum choice. A truly survivor-centered approach requires effective justice mechanisms that are accessible and respectful. Nigeria's current framework fails on both counts. The recommendations above aim to build a mutually reinforcing system where autonomy and protection advance together.

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