

ASSESSMENT OF THE MENTALLY DISABLED OFFENDER AND THE RIGHT TO SPECIAL TREATMENT FOR DISABLED PERSONS*

INTRODUCTION

Disability could be congenital or may happen at any time in a person's life without envisaging it. No person of whatever status would wish to become disabled or cherish to find oneself in a state of being disabled. Be that as it may, disability knows no race, age, gender or status. The concept disability is an issue that is too important to be overlooked. The way and manner we treat and respond to persons with disabilities indicate our collective interest of how well we as a people serve our diverse citizens.

Persons with disabilities face various challenges and are sometimes stereotyped and discriminated against. We often lack the requisite general knowledge to appreciate its significance. However, it was in order to jettison this anomaly as well as the need to accord these individuals their full rights as human beings in addition to ensuring that they are given some special rights by reason of their circumstance that countries of the world via the machinery of the United Nations have put in place several instruments to affirm the rights of persons with disabilities. These rights found their bearing on the basis of universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for person with disabilities to be assured of their adequate enjoyment or benefits without discrimination.¹

It suffices to state here unequivocally, that the way we address and even see persons with disability (PWD) should differ; we should not have the feeling of sympathy for them but rather that of empathy. However many disabled people there are, there are clearly enough to come to the attention of the United Nations General Assembly, who adopted the Declaration on the Rights of Disabled Persons in 1975, recommending that all international organizations and agencies should include provisions in their programmes to ensure the effective implementation of these rights and principles. Following this improvement, 1981 was proclaimed international year of disabled persons with the motto "Full participation and equality".²

Subsequently in 1983 the UN adopted a world programme of action which provided the guidelines for the Decade of Disabled Persons (1983 – 1992) proclaimed by the General Assembly which hitherto makes it clear that "disabled people have the same rights as others in their societies and that it is the duty of Governments to promote and protect these rights".³

The United Nations organization estimates that about 600 million people in the world are living with disabilities; this figure has rather than skyrocketed because of diseases, malnutrition, drought and famine, natural disasters, wars, road carnage, work place hazards, poverty and non-sanitary conditions,

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¹Azinge E., Forward written in the Rights of Persons with Disabilities Edited by Azinge E and Ani C, Nigerian Institute of Advanced Legal Studies (NIALS) 2011.

² Michael Oliver, Understanding Disability From Theory to Practice, St. Martin's Press New York 1996 pg. 112.

³ Ibid

ignorance, medical misadventures and negligence, and congenital ailments.⁴ This paper work examines the Concept of disability: Meaning thereof?

The United Nations Declaration on the Rights of Disabled Persons of 1975 stipulates that:

The term disabled means any person unable to ensure by himself or herself wholly or partly, the necessities of a normal individual and or social life, as a result of deficiency, either congenital or not in his or her physical or mental capabilities. Definitions, nomenclature and terminology relating to disability are constantly changing, they are becoming more inclusive. Whilst not discountenancing the traditional notion of disability embedded in these characterizations, we elect to adapt a more inclusive characterization of disability to include all those who are weak in firm in terms of sensory, physical, intellectual, gender, old age and social status. Thus a physically disabled person is one who as a result of a physical impairment together with societal myth, fears, stereotypes and attitudes and the physical environment, is substantially limited in his opportunities to enjoy a full and active life.⁵

According to the Modern Oxford English Dictionary, Disability means the state of being physical incapacitated, either through congenital circumstances or through injury or diseases etc.

Michailakis posits that “Disability” is seen as the lack of ability to perform mental or physical tasks that one can normally do”. However, to Alexander de Seversky, there is more to disability than physical deformities. Thus:

“I discovered early that the hardest thing to overcome is not a physical disability but the mental condition which it induces. The world, I found, has a way of taking a man pretty much at his own rating. If he permits his loss to make him embarrassed and apologetic, he will draw embarrassment from others. But if he gains his own respect, the respect of those around him comes easily”.

In view of the above, it cannot be faulted to state that disability is a state of the mind. Scott Hamilton put it precisely that: “The only disability in life is a bad attitude”. Going by the position of Martina Navratilova,

“Disability is a matter of perception. If you can do just one thing well, you’re needed by someone”. The people we generally referred to as “disable people” are “Persons affected with Disabilities”. They are not disabled as the word suggest. First look at the human life not the deformities.⁶

Further, the authors are of the view that disability is only a question of one’s mindset. They are rather differently enabled and public perception to their existence and functionality should be viewed through empathy as against sympathy.

Forms of Mental Disability

Mental disability connotes the inability to perform some function; especially the inability of one person to alter a given relation with another person. It is also an objectively measurable condition of

⁴Azinge E. and Ani C. Op Cit. pg 37.

⁵ John A.A. Global Best Practices in Treatment of Disable Persons: A critical appraisal in Azinge E. and Ani C. Ibid p. 35.

⁶ Dickson V.T., Disability Rights in Nigeria, Edited by Lolus Digital Press, First Edition (2013) Pp. 2-4

impairment, physical or mental, especially one that prevents a person from engaging in meaningful work.⁷

The Black's Law Dictionary⁸ defines a disabled person as a person who lacks legal capacity to act sui juris or one who is physically or mentally disabled from acting in his own behalf or from pursuing occupation.

Article 1 of the United Nations Declaration on the Rights of Persons with Disabilities⁹ stipulates that the term "disabled person" means any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and or social life, as a result of deficiency, either congenial or not, in his or her physical or mental capabilities.

According to the World Health Organization (WHO) : The concept of Disability is generally referred to as a covering impairments, activity limitations, and participation restrictions. Impairment on the other hand has been defined as a problem in body function or structure; an activity limitation as a difficulty encountered by an individual in executing a task or action; while a participation restriction is a problem experienced by an individual in involvement in life situations. Therefore, disability connotes difficulty as a concept, showing an interaction between characteristics of a person's body and features of the society in which the particular individual resides.¹⁰

The Americans with Disabilities Act (ADA) in an individualistic approach see "Disability" as a physical or mental impairment that substantially limits one or more major life activities of such individual. It is any developmental or psychological disorder, such as retardation, organic brain syndrome, emotional illness, or specific learning disability.¹¹

UNITED NATIONS AND DISABILITY RIGHTS IN PERSPECTIVE

The United Nations Convention on the Rights of Persons with Disabilities is the first international, legally binding human rights treaty geared towards the protection of the human rights of people with disabilities. Nigeria became the 94th country to ratify the convention and the 58thratifier of the optional protocol. Nigeria's support for disability rights was effective on Friday September 24 2010 signing both the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol.¹²

The primary aim of the convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities as well as to promote respect

⁷Bryan A.G. Black's Law Dictionary, Thomson Reuters, West Publishing Co. 10th Ed. (2014) p. 559.

⁸ Black H.C: Black's Law Dictionary, (Minnesota: West Publishing Co., 6th Edition (1990).

⁹General Assembly resolution 46/119 of 17 December 1991.

¹⁰Ani CC, Criminal Justice And The Mentally Disabled Offender in Azinge E and Ani C. Op Cit. p. 291.

¹¹ Ibid

¹² Nigeria ratified the Convention on 8 June, 2009 and its Optional Protocol on 7 August, 2010. The United Kingdom was among the first 82 countries to sign the Convention on 30 March 2007. Note also the UN adoption of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, such as Awareness raising, Medical Care, Rehabilitation, Support Services; Accessibility, Education, Employment, Income Maintenance and Social Security, Family life, and Personal integrity, Culture, Recreation, and Sports, Religion, Information and Research, Policy making and Planning Legislation, Economic Policies; Coordination of work, Organization of Persons with Disabilities; Personnel Training, National Monitoring and Evaluation of Disability Programs in the implementation of rules, Technical and Economic cooperation and international cooperation.

for their inherent dignity. It went further to outline eight guiding principles that will foster equality, thus;

- a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons.
- b) Non-discrimination
- c) Full and effective participation and inclusion in society
- d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity
- e) Equality and opportunity
- f) Accessibility
- g) Equality between men and women
- h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.¹³

The convention had further changed the mindset of persons by introducing a greater perception through the elevation from perceiving persons with disabilities as 'objects' of charity, medical treatment and social protection towards seeing persons with disabilities as 'subjects' with rights, who possess the ability to pursue those rights and deciding their faith to live on a free and unfettered consent and ensuring their active membership in the society.¹⁴

THE NIGERIA AND DISABILITY RIGHTS IN PERSPECTIVE

On January 23, Nigeria's President Muhammadu Buhari signed into law the Discrimination Against Persons with Disabilities (Prohibition) Act, 2018, following 9 years of relentless advocacy by disability rights groups and activists. According to the World Health Organization's 2011 World Disability Report, about 15 percent of Nigeria's population or at least 25 million people have a disability. Many of them face a number of human rights abuses including stigma discrimination, violence, and lack of access to healthcare, housing and education.

The law prohibits discrimination on the basis of disability and imposes sanctions including fines and prison sentences on these who contravene it. It also stipulates a five-year transitional period for modifying public building structures, and automobiles to make them accessible and usable for people with disabilities.¹⁵ The law will also establish a National Commission for persons with Disabilities, responsible for ensuring that people with disabilities have access to housing, education, and healthcare. The commission will be empowered to receive complaints of rights violations and support victims to seek legal redress amongst other duties.

The enactment of the Discrimination Against Persons with Disabilities (Prohibition) Act is but a first step in the fulfillment of Nigeria's obligations under the United Nations Convention on the Rights of Persons with Disabilities (CRPD).¹⁶

¹³Nlerum F..E., Treatment of Disabled Person's Equality and non-discrimination in Azinge E. and C. Ani Op Cit P. 351.

¹⁴Dakas CJ, Nigeria's Obligation Under The International Convention on the Rights of Persons with Disabilities in Azinge E and Ani C. *ibid* P. 221.

¹⁵ Human Rights Watch: Copyright Human Rights Watch – 350 Fifth Avenue 34th Floor New York, NY-10118-3299 USA reliefweb:int/report/nig accessed online on 08/06/2020

¹⁶ *Ibid*, The Rights of Persons with Disabilities Act, 2016 is the disability legislation passed by the Indian Parliament to fulfill its obligation to the United Nations Convention on the Rights of Persons with Disabilities, which India ratified in 2007. The Act replaces the existing persons with Disabilities Act, 1995.

CRUCIAL RIGHTS

There are certain rights for every disability legislation such as the one stated above had to protect. These include rights that have to do with everyday activities. Rights that enhances uplifts or ensures development and general well-being that is right to education, health and transportation. Right to employment and security of tenure etc. Rights in education, the Equality Act 2010 makes it unlawful for education providers to discriminate against disabled pupils, students and adult learners.

Protection in the work place: it is also unlawful for an employer to discriminate against or harass a disabled person. An employer must make reasonable adjustments for disabled people. The Equality Act 2010 makes it clear that these rights do not just apply to employment. The act covers other forms of work like partnerships, contract work, or holding an office like a director of a business. It stipulates that an employer must not:

- a) Treat a disabled person less favourably because the person has a disability-this is known as “direct discrimination”;
- b) Indirectly discriminate against a disabled person, unless there is a fair and balanced reason for this;
- c) Directly discriminate against, or harass a person because they are associated with a disabled person;
- d) Indirectly discriminate against or harass a person who is wrongly thought to be disabled;
- e) Victimize anyone

Healthcare Rights - The Equality Act, 2010 gives disabled people rights not to be discriminated against or harassed in access to health services and social services. Mental Health Right: It is evident that most people with a mental health condition do not think of themselves as ‘disabled’. Hence, the need to protect people with learning disabilities and mental health conditions; and provide specified plans for careers and professionals making it obvious about who can take decisions in which situations.

Right to Everyday Activities: Service providers have to make reasonable adjustments for disabled people in the way they deliver their services. The essence being that a disabled person is not put at a substantial disadvantage compared to non-disabled people in accessing the services.

Reasonable adjustments could mean the following:-

- Installing an induction loop for people who are hearing impaired.
- Providing disability awareness training for staff that have contact with the public.
- Making available larger; well-defined signage for people with impaired vision.
- Setting/or putting a ramp at the entrance to a building which has steps.

It is trite law that persons with disabilities possess the same and immediate rights like every other human being especially devoid of discrimination, self-determination and to live independently. In view of this, the Constitution of the Federal Republic of Nigeria 1999 (as amended) guarantees the right to freedom from discrimination in all its forms against any person.¹⁷

The repealed Disability Decree of 1993 made copious provisions of the rights of people with disabilities which include among others:-

- The right to free medical and health services including general medical needs.
- The right to free education at all levels

¹⁷Section 42(1). This provision also has a direct bearing on persons with disabilities.

- The right to free transportation by bus, rail or any other conveyance (other than air travel) that serves the general public needs.
- The right to public and private sports facilities
- The right to access telephone and other media and telecommunication facilities.¹⁸

THE PLACE OF THE MENTALLY DISORDERED OFFENDER (MDOs) IN CRIMINAL PROSECUTIONS

The prosecutor in this respect is under obligation to show to the court beyond reasonable doubt:

- a) That the defendant brought about the prohibited act, omission or state of affairs. That is the actus reus;
- b) That the defendant did the act with the state of mind prescribed by the definition of the crime – This is referred to as the mens rea, and
- c) That the accused is not entitled to the benefit of any defence which may have been argued on his or her behalf.¹⁹

The above reasonability test is further expressed in the Latin maxim, *actus non facit reum, nisi mens sit rea*, that is an act does not make a person guilty of committing an offence unless the mind is legally blameworthy.²⁰

At common law, the mentally ill has been described by Blackstone to mean:

“A total idiocy or absolute insecurity, excuses from the guilt, and of course from the punishment of any criminal action committed under such deprivation of the senses.”²¹

This presupposes that the individual’s capacity in taking decisions or make choices and to exhibit the manipulative tendencies to obtain results or make ends in line with the prohibitions of the penal code diminishes to a certain state, he is no doubt in need of medical attention as against punishment. The implication of his actions in contravening the criminal law should be seen as a call for ordering medical treatment, instead of calling for his conviction.²²

For this reason, he should be seen as devoid of criminal responsibility, and exonerated from punishment. The mentally ill in this situation is a kin to insanity, lacking the mental alertness to reason, as well as the deprivation of the knowledge of the real disposition and situation of things.²³

¹⁸ As well as the right of assistance by a person of his choice to vote at every election, the right to employment and decent standard of living, the right to access social justice and the right to access to public institutions and facilities. See also sections 501-504 of the 1973 Rehabilitation Act as amended 29 U.S.C 791 prohibition of discrimination on the basis of disability in programs conducted by Federal agencies, in programs receiving federal financial assistance etc requires affirmative action and non-discriminating in employment by federal agencies of the executive branch, first civil rights law guaranteeing equal opportunity for people with disabilities in the U.S.A; requires affirmative action and prohibits employment discrimination by Federal government contractors and subcontractors with contract of more than \$10,000.

¹⁹Molan, M., et al: Bloy and Parry’s Principles of Criminal Law (London: Cavendish Publishing Ltd, 4thed., 2000) p.25.

²⁰ Ibid

²¹ Blackstone 4 commentaries, 16thed, pp. 24-25

²²Mc Clean J.D. & Wood J.C.: Criminal Justice and the Treatment of Offenders, (London: Sweet & Maxwell, 1969), p. 265.

²³Ani CC Op. Cit. P. 308

The Defence of Insanity

Insanity as a concept is deep and complex at the same time, in the sense that, it is not an issue the Court in any given case can treat with waive of hand. Under common law or states with common law practices, the guiding principle to questions of insanity is the M’Naghten Rule.²⁴ To recapture the facts of the M’Naghten case by Sheb and Scheb II; he asserted that suffering from delusions that he as being persecuted by government officials. Daniel M’Naghten took the decision to kill Sir Robert Peel, the British Home Secretary. From outside Peel’s home M’Naghten saw Peel’s Secretary Edward Drummand, leave the house. Believing Drummand to be Peel, M’Naghten shot and killed him.

At the trial, M’Naghtendefence attorneys (Lawyers) argued that he was insane at the time of the shooting and a verdict of guilty should be returned. The jury agreed. The queen was dissatisfied and decided that criteria for the defence of insanity be prescribed. Subsequently, the House of Lord laid down the rules known as the M’Naghten’s rules. The purport of the rules are to the effect that insanity cannot be a defence to a crime unless “at the time of committing the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing”.²⁵ This case aside from providing the first test in the United Kingdom, it also provided the fest for insanity used in both Federal and State Courts in the United States.²⁶

Insanity as a mental disability connotes “craziness” or “madness” which depicts behaviours likened to certain abnormal, mental or behavioural patterns. Insanity may result to violations of societal norms, comprising of one being a threat to himself and others.²⁷

There is a clear evidence of compromise between the society and the law on cases concerning defence of insanity. While society are of the view that criminals should be punished for their wrongdoing; conversely, society believes that people who are ill should receive treatment for their illness. The implication of this is that, society perceives the law to exonerate defendants who are mentally indisposed or are unable to control their conduct, from punishment.²⁸

To further buttress the above assertion, section 28 of the criminal code²⁹ state that a person is not criminally responsible for an act or omission if at the time of doing the act or omission, he is in such a state of mental disease or natural mental infirmity³⁰ as to deprive him of his capacity to understand what he is doing, or of capacity to control his actions, or of capacity to know that he ought not to do the act or make the omission.³¹

Part two of this section presupposes that a person whose mind, at the time of his doing or omitting to do an act, is affected by delusions on some specific matter or matters, but who is not otherwise entitled to the benefit of the first arm of the section, is criminally responsible for the act or omission to the same

²⁴M’Naghten’s case 8 Eng. Rep. 718 (1843)

²⁵Scheb J.M. and Scheb II, J.M. Criminal Law and Practice, 7thedn (USA Wadsworth, 2008) at p. 383 also Commonwealth v. Cavalier, 131 A 229 (P 1929).

²⁶Alubo A.O., Modern Nigerian Criminal Law (Materials, Cases and Comparative Studies) University of Jos Press 3rdedn 2018 pp.155-156

²⁷Ani CC, Op. Cit p. 309.

²⁸ Ibid

²⁹ Cap C 38 Laws of the Federal of Nigeria, 2004.

³⁰The Queen v. Michael Tabigen (1960) INSCC 65C – Natural mental power neither produced by his own default nor the result of disease of the mind.

³¹Ani CC Op Cit p. 309 Ezediufuv.The State (2001) 17NWLR (Pt. 741) 82, Sect 51 of the Penal Code.

extent as if the real state of times had such as he was included by the delusion to believe to exist. The implication here is that an accused person affected by delusions can only be exonerated from criminal responsibility.

- 1) If at the time of doing the act or making the omission he is in such a state of mental disease or natural infirmity as to deprive him of such capacity to know that he ought not to do the act or make the omission.
- 2) Where he has a valid and absolute defence in law, i.e. under the nature or under the constitution.³²

In *Achukwu v. State*,³³ the facts of the case succinctly put, that the appellant, a police officer being one of those attached to B Department, Operations and Training Makurdi in Benue State who was on a stop and search duty; stopped a commercial Mitsubishi bus driver and demanded to be given money. The driver (deceased) instead pleaded to do so on his return trip. The appellant got angry and shot the deceased on the neck and he died immediately. The entire team members were detained. The appellant was tried and convicted for culpable homicide punishable with death. The appellant sort to be exonerated on a plethora of defences. Concerning the defence of insanity, the court held:

Every person is presumed to be sane. The proof of insanity is on the defendant who pleads it as a defense. Although, the burden is not discharged by proof beyond reasonable doubt but on the balance of probability. In other words, a defendant who raise the defense of insanity must show that he was, at the relevant time, suffering from either mental disease or from natural infirmity, as the case may be, which deprived him of the capacity; or

- a) Understand what he was doing or
- b) Control his action or
- c) Know that he ought not to do the act or make the omission.

At any time any of these criteria is established, the law takes the position that there is no consent of will and the defendant's act is not punishable as a crime. The court further reiterated that "insanity is a blanket term which encompasses a considerable variety of mental abnormalities, mental infirmities, neurosis and psychoses. The criminal code appears blank to a wider accommodation of these phrases, whereas the criminal code, of Lagos State being a later legislation embraces a more persuasive language of mental disorder, mental imbalance resulting to depression and psychosis. To this effect, Ocheme stipulates that "this means that insanity under the criminal code does not include such situations as obsession, frustration, depression, nervous breakdown, blue devils etc, except until and unless, it is established that the actual state of affairs happened as he was induced by such obsession, frustration, depression etc to believed to exist". Not so under the Criminal Code of Lagos State.³⁴

On the other hand, the Penal Code enumerated the requirement for the defence of insanity thus:

- i) At the time of doing it
- ii) By reasons of unsoundness of mind
- iii) Is incapable of knowing the nature of the act
- iv) That he is doing what is either wrong or contrary to law.

³²*Udofia v. State* (1981) 11SC 49, *Loke v. State* (1983) 7NWLR Pt.1)1.

³³(2015) 6NWLR Pt. 1456, 461-462.

³⁴*Alubo A. O. Op Cit P. 157.*

For the accused person/defendant to lay claim or rely on this defence, he must, at the time of doing the act be of unsound mind. It would seem that the term “unsoundness of mind” appear very technical and requires to be established extensively. However, where it is feigned, the defence cannot stand. In *Popoola v. State*,³⁵ the Supreme Court reaffirmed that S.222 of the Criminal Procedure Law of Ogun State stipulates that “An accused person shall be deemed to be of unsound mind and consequently incapable of making his defence if by reason of some physical or mental condition he cannot follow the proceeding and so cannot make a proper defence. This no doubt widened the scope of unsound mind. Though it is arguable whether the Penal Code meant that it should comprise physical as against mental condition.”³⁶

The Court in *Moh’d v. Kano State*³⁷ held that:

There is every possibility one may feign madness in order to escape culpability or pretend he was mad, and, even at it out to convince the court. Feigned insanity is the stimulation of mental illness in order to avoid or lessen the consequences of a confrontation or conviction from an alleged crime because it is easy to fake a mental illness as it is to fake a physical one. All a malingerer needs is to act the illness out. It is not in every situation, defence of insanity is raised, it will avail the accused. In the instant case, the fact that the appellant acted abnormally before the Court notwithstanding, they may all be gimmicks. The appellant could have possibly feigned madness for purpose of deceit or evasion or to avoid the wrath of the law. He was able to remember under cross-examination, amongst other things, the street his mother lived, that he had been in prison to 9 years, but, feigned ignorance of the death of Bashir Jibrin. He seemed to have deliberately shut out of his mind, what transpired on the 21st December, 2001, how he forcibly woke Bashir up in spite of PW1’s protest and forced him again to escort him to an unknown destination. The deceased head was shattered with block and laid in the pool of his own blood, and the appellant did not bother to go to the deceased’s family to give account of their outing, rather he stayed away until his arrest by the police. This is nothing but a callous and wicked murder. The appellant is nothing but a malingerer, playing a drunken person and stripping himself.

It is important to note that, it is not every form of mental disorder that can avail an accused person from criminal responsibility. Prior to a mental disorder can relieve an accused person as a defence, it must fall within the statutory provision of the criminal law.³⁸

The first segment of S.28 of the Criminal Code Law of Bendel State for an accused to establish his defence of insanity must prove that at the time of commission of the offence, he was devoid of the following:-

- a) The capacity to understand what he was doing;
- b) Capacity to control his action;
- c) Capacity to know that he should not do the act or make the omission.

The second segment stipulates that in order to support his defence of insanity he must establish:

- a) That there is a set of facts which does not actually exist but which he imagines to exist;

³⁵Ibid, (2013) 7SC (Pt.111) 85, *Adamu v. State* (2014) 10NWLR (Pt. 1425) 465 SC-Insanity-Successful Plea of

³⁶ Ibid P. 157 – 158.

³⁷(2014) 4NWLR (pt. 1397) 320.

³⁸A.O. Alubo Op. Cit P. 162-163

- b) That as a result of his belief that the set of facts actually exist as he imagined them, he commits an act of omission or commission which has resulted in the charge on which he stands trial; and
- c) That if those facts had existed as so imagined by him they would have amounted to a complete defence to his act which is called in question even though the factual situation was not real.

Further, the trial Court in determining the defence of insanity should take into account

- a) The nature of the killing;
- b) The conduct of the accused before, at the time of the killing as well as thereafter, and
- c) Any history of mental abnormality affecting the accused. As well as also taking awholsitic approach to any admissible medical evidence, all the facts and the surrounding circumstances of the case.

Usually evidence of insanity pleaded by an accused person himself is suspect, scout and of not serious effect. Evidence that an accused person had mental disorder not depriving him of issues stipulated under the first segment of S.28 of the Criminal Code Law of Bendel State as stated above will not be satisfactory evidence of defence of insanity under the law.

The Mentally Retarded Persons Rights under the United Nations Declaration otherwise the United Nations Declaration on the Rights of Mentally Retarded Persons.³⁹ The mentally retarded person has a right to protection against any form of exploitation, abuse and degrading treatment. Where he faces prosecution for any offence, he must enjoy the right to due process of law taking into consideration full or total cognizance to the degree or extent of his mental responsibility.⁴⁰

To this extent, the Declaration considered circumstances where the extreme or serious nature of the mental disability may render the suspect incapable of performing all his rights in sensible manner or most likely restrict or deny some or all of these rights. For such restriction or denial of rights to exist, there must be in place adequate legal safeguards prohibiting every form of abuse and exercisable relying on an evaluation of the social capacity of the mentally retarded person by qualified experts subject to periodic checkup and to the right of appeal to superior authorities.⁴¹

Inclusive to the rights enshrined by the Declaration is the right of the mentally retarded person to proper medical care and physical therapy as well as rights to such education, training, rehabilitation and guidance which are in tandem to help him develop his ability and utmost potential.⁴² United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health care.⁴³

The kernels of these principles are to promote the rights of mentally disabled persons in health care. Principle 5 stipulates that every person with a mental illness possess the right to exercise all civil, political, economic, social and cultural rights, the International Covenant on Civil and Political Rights, and in other relevant instruments, such as the Declaration on the Rights of Disabled Persons and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

³⁹ The Declaration was proclaimed by General Assembly resolution 2856 (xxvi) of 20 December, 1971.

⁴⁰ Article 6

⁴¹ Article 7

⁴² Article 2

⁴³ Adopted by General Assembly resolution 46/119 of 17 December 1991.

The provision for criminal offenders suffering from mental illness to receive the best available mental healthcare. In other words, the provisor stipulated that its applicability is to those persons serving sentences of imprisonment for criminal offences, or who are otherwise detained due to criminal proceedings or investigations against them, and who are confirmed to have a mental illness or who it is believed may have such an illness.⁴⁴The provisor also allows domestic law to permit a court or other competent authority, acting relatively as a competent and independent medical advice, to order such persons be admitted to a mental health facilities.⁴⁵

Mental health disorders are not uncommon, and the global burden of mental health disorders is estimated to reach 15% by the year 2020 which we are already in its last quarter. It was projected then that by this time, common mental disorder such as depression, anxiety, and substance abuse related disorders, will disable more people than complications resulting from AIDS, heart disease, accidents and wars combined.⁴⁶

In Nigeria, an estimated 20%-30% of our populations are believed to suffer from mental disorder no doubt that as at today the rate may have increased.⁴⁷ Considering Nigeria's projected population of being above 200 million, the figure is alarming and this by implication reveals the low level of attention given to mental health disorder in Nigeria, level of awareness by the Nigerian public on mental health cases is abysmally low or poor and the misconceptions on this concept have continually been on the increase.

To a very large extent, and considering the economic recession as experienced in the country; mental health disorders causes economic burden. In the U.S., it is estimated that about 79 billion dollars represent the indirect costs associated with these disorders, out of these, 63 million dollars shows the loss of productivity due to illness. In Canada, the economic burden of mental illness in 2003 was placed at about 34 billion dollars (\$1056 per capita), with depression and schizophrenia responsible for about \$5billion and \$2.7 billion annually, respectively.⁴⁸

According to Charles and Van Weel,

“For too long, mental disorders have been largely overlooked as part of strengthening primary care. This is despite the fact that mental disorders are found in all countries, in women and men, at all stages of life, among the rich and poor, and in both rural and urban settings. It is also despite the fact that integrating mental health into primary care facilitates person-centered and holistic services, and as such, is central to the values and principles of the *Almata Declaration*”.⁴⁹

⁴⁴ Principle 20(2), Ibid

⁴⁵ Principle 20 (3), Ibid

⁴⁶ Ngui EM, khasakhala, L. Ndetei D. Roberts L.W. Mental disorders, health inequalities and ethics: A global perspective. *Int Rev Psychiatry* 2010, 22:235-44 in Suleiman D.E. Mental Health disorders in Nigeria: A highly neglected disease. *Ann Nigerian Med* (Serial online 2016) cited 2020 October 5, 10:47-8 Available from <http://www.anmjournals.com/text.asp?2016/10/2/47/206214>

⁴⁷ Onyemelukwe C. Stigma and mental health in Nigeria: Some suggestions for law reform *J. Law Policy Glob* 2016; 55:63-8 in Suleiman DE, Ibid

⁴⁸ Ngui EM et al *ibid*

⁴⁹ *Ibid*, WHO/WONCA. Integrating Mental health into primary care: A Global Perspective Geneva: World Health Organization and World Organization of Family Doctors (WONCA); 2008.

Further, the former President of the Nigeria Medical Association (NMA) while speaking on the commemoration of the World Health Day in Nigeria reiterated the need to ponder on the rights of people who labour under illness by treating them with respect and dignity as well as a call for a national strategy to address mental health problems in Nigeria by the government at all levels, one which should lay emphasis on prevention.⁵⁰

WHO IS AT RISK FROM MENTAL DISORDERS?

Determinants of mental health and mental disorders include not only individual attributes such as the ability to manage one's thoughts, emotions, behaviours and interactions with others, but also social, cultural, economic, political and environmental factors such as national policies, social protection, standards of living, working conditions and community support.⁵¹ Stress, genetics, nutrition, perinatal infections and exposure to environmental hazards are also contributing factors to mental disorders.⁵²

WORLD HEALTH ORGANISATION (WHO) RESPONSE

WHO's Mental Health Action Plan 2013-2020, endorsed by the World Health Assembly in 2013, recognizes the essential role of mental health in achieving health for all people. The plan includes 4 major objectives;⁵³

1. More effective leadership and governance for mental health;
2. The provision of comprehensive, integrated mental health and social care services in community-based settings;

RECOMMENDATION AND CONCLUSION

- There is as a matter of urgency, the need to improve the health care system in Nigeria, by introducing strategies that would improve mental health literacy, and change the narrative towards stigmatization attitude at both institutional and community levels.
- In the United Kingdom under the Mental Health Act 1983, Section 136 provides for a Lunatic to be removed from places where the public have access to by a constable for the protection of the lunatic and the public. Such lunatic will be removed to a place of safety as a residential accommodation, provided by a local social service authority under part III of the National Assistance Act 1948 and under paragraph 2 of the National Health Service Act 1977, a hospital as defined by the act, a police station, mental nursing home, residential home for the mentally disordered persons or any other suitable place where the occupier will fully receive the patient. Conversely, in Nigeria, the authors doubt if there are any provision under her jurisdiction for taking such lunatics in and detaining them. However, in some cases, where the facilities exist, the conditions for which they are detained are horrible and not befitting for any sensible human being. In Psychiatric hospitals and government run rehabilitation centres; staff forcibly administered medication, while some staff admitted to administering electroconvulsive therapy (ECT) to patients without their consent.

⁵⁰Vanguard News World Health Day: NMA Collaborates with NASS on Passage of Mental Health Bill. Vanguard News, 2017 available from <http://www.vanguardngr.com> Accessed online Oct 5 2020 1:15pm

⁵¹GBD 2017 Disease and Injury Incidence and Prevalent Collaborators (2018). Global, regional, and national incidence, prevalence, and years lived with disability for 354 diseases and injuries for 195 countries and territories 1990-2017; a systematic analysis for the Global Burden of Disease Study 2017. The Lancet DOI; [https://doi.org/10-1016/5014-6736\(18\)32279-7](https://doi.org/10-1016/5014-6736(18)32279-7)

⁵² Ibid

⁵³Wang et al, (2007) Use of mental health services for anxiety, mood, and substance disorders in 17 countries in the WHO world mental health surveys. The Lancet. who.int/news-room/fact-sheets/detail/mental-disorders accessed online Oct 5 2020 1:23pm

Nigeria ratified on the Convention the Rights of Persons with Disabilities (CRPD) in 2007. It has the obligation to see to it that equal rights for people with disabilities, including the right to liberty and freedom from torture, ill-treatment, and forced treatment. This should be undertaken in line with the constitution of the Federal Republic of Nigeria which prohibits torture and other inhuman or degrading treatment, the government has not outlawed chaining. In a 2015 report, the United Nations special rapporteur on torture said that chaining “unequivocally amount to torture”.The government as well as civil organisations should carryout public information campaign to increase awareness about mental health conditions and the rights of people with disabilities, especially fostering harmonious relationship among the broader community, experienced mental health condition persons in conjunction with faith leaders and media.

Enhance voluntary and accessible community-based mental health and support services, to include development of psychosocial support services and integration of mental health service in the primary health care system.

Mental health is a state of wellbeing in which an individual realises his potential and he is able to cope with the normal stresses of life, work productively and make a contribution to his community. “People fall into mental challenges, depending on each individual’s breaking point. We react differently to issues and situations, but the percentage of people coming down with the disorder is increasing”. Stress, depression, stigma, poverty, lack of social support, isolation, poor antenatal care for pregnant women, anxiety, mania, bipolar disorder and substance abuse, among others are trigger factors.

Mental health should be accessible to everyone. The government should invest more in mental health through the employment of more professionals like psychiatrists, psychiatric nurses, psychologists, medical social workers and occupational therapists. Underestimating our mental health in the long run will constitute a great burden across disease spectrum all over the world.⁵⁴

⁵⁴Dapo A, Punch Healthwise, Consultant Psychiatrist, Federal Neuro-Psychiatric Hospital, Yaba. Punchonline@punchng.com accessed online 12 Oct 2020 7:56AM