



## COMPARING MENTAL HEALTH PATIENT VULNERABILITIES AND SAFEGUARDING THEM THROUGH NIGERIA'S MENTAL HEALTH ACT\*\*

### Abstract

Mental health is becoming a growing issue in Nigeria, with many patients experiencing vulnerability and marginalization as a result of poor resources and limited access to healthcare services. The purpose of this research is to identify the vulnerabilities of mental health patients and to look at how Nigeria's Mental Health Act can defend their rights. The study employed a doctrinal research approach to identifying patient vulnerabilities and the effectiveness of the Mental Health Act in defending their rights. The findings show that mental health patients in Nigeria suffer a variety of threats, including stigma, discrimination, and a lack of access to healthcare facilities. These vulnerabilities are worsened by a lack of mental health knowledge and education and insufficient financing and support for mental health services. The study continues by emphasizing the importance of a complete approach to mental health in Nigeria, which includes treating patient vulnerabilities and protecting their rights via the successful implementation of the Mental Health Act. This strategy may aid in reducing the marginalization of mental health patients and improve their overall well-being.

**Keywords:** Mental Health, Vulnerability, Mental Health Act, Marginalization.

### 1. Introduction

Mental health issues and vulnerability go hand in hand, making legal safeguards for mentally ill people vital. The line between sane and insanity is not readily drawn, thus the old adage that "every man has a second of lunacy." People suffering from mental health disorders in Nigeria face several disadvantages and violations of human rights, notwithstanding the Nigerian Constitution, which guarantees equal treatment, equality of opportunity, and status to all citizens. People suffering from mental illnesses have the same basic rights as everyone else, including the rights enshrined in the 1999 Nigerian Constitution.<sup>1</sup> The Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR),<sup>2</sup> and the Convention on the Rights of Persons with Disabilities.<sup>3</sup> are all examples of international treaties. Discrimination based on mental illness is prohibited under these treaties, and those receiving mental health treatment have the right to be recognized as persons under the law.<sup>4</sup> Despite such commendable laws, mentally ill people in Nigeria have been subjected to various cases of abuse of their rights for many years. The lack of a modern legal framework in Nigeria that adequately provided for the rights and treatment of the mentally ill, according to mental health experts and legal scholars, is to blame for this, as well as the continued reliance on antiquated and obsolete colonial legislation, the Lunacy Act of 1958.

In a similar development, the World Health Organization (WHO) said that the world is "faced with a worldwide human rights emergency in mental health" since many nations lack the minimum legal framework to protect persons with mental disabilities.<sup>5</sup> It has been estimated that one

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<sup>1</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>2</sup> Ratified by Nigeria on 29 July 1993. <https://treaties.un.org/pages/ViewDetails>

<sup>3</sup> Signed on 30 March 2007 and Ratified by Nigeria on 24 September 2010. <<https://treaties.un.org/pages/ViewDetails>> accessed 10 February 2023.

<sup>4</sup> P Vijayalakshmi et al, 'People with Mental Illness and Human Rights: A Developing Countries Perspective.' *Indian Journal of Psychiatry* [2013] 55(2):117-124. Doi.10.4103/0019-5545.111447 Available at <https://www.ncbi.nlm.nih.gov> accessed 15 April 2022.

<sup>5</sup> Ibid.



out of four persons will at some point in their lives suffer from mental illness.<sup>6</sup> The overall effect of the COVID-19 lockdowns and economic downturn on Nigerians' psyche; the increased incidences of suicide; the post-traumatic stress disorder (PTSD) recorded in victims of terrorism and banditry as well as members of the armed forces on combat duty in various theatres of conflict; and the increase in drug abuse are all indicators of a projected increase in cases of mental illness. They necessitate a prompt and resolute response.

Regrettably, the legislation in Nigeria has not kept up with the vulnerabilities and requirements of mental health sufferers. Individuals suffering from mental illnesses and issues with their mental health are often subjected to human rights breaches in the community as a result of stigma, discrimination, and a lack of proper legal protection. The media and the film industry have exacerbated rather than eased the stigma. Because of the fear of stigmatization, curable cases of mental illness have deteriorated into untreatable cases owing to a reluctance to seek and acquire specialized care early. Many mentally ill people in Nigeria go hungry, untreated, and abandoned. The fortunate few are accepted to medical institutions for treatment, and many of them are understaffed, underfunded, and ill-equipped. Many patients wind up in local treatment centres, where they are frequently violently abused for refusing to take drugs, attempting to flee, or for other reasons.

While in so called 'treatment centres' some mentally ill patients are chained like animals and treated in a derogatory manner with untreated injuries sustained from such treatment. Many suffer abandonment by relatives out of frustration and/or lack of finances. In some cases, female patients are sexually abused for the gratification of operators or patrons of these herbal 'treatment centres.'<sup>7</sup> These incidents are rarely recorded or addressed. When a person recovers, re-entry into social circles is connected with stigma.

Many released patients who are unable to cope with society's rejection and stigma become isolated and may attempt suicide or inadvertently damage loved ones. In general, treatment centres lack trained staff, rehabilitation equipment, and facilities. This has been and, to a significant extent, still is the situation in Nigeria with regard to mentally sick people. According to a 2006 WHO report:

... there is considerable neglect of mental health issues in the country's existing mental health Policy document in Nigeria was formulated in 1991. Since its formulation, no revision has taken place and no formal assessment of how much it has been implemented has been conducted ... no desk exists in the ministries at any level for mental health issues and only four per cent of government expenditure on health is earmarked for mental health.<sup>8</sup>

The rights of those suffering from mental illnesses to meaningful community involvement and to agree to or refuse treatment should be maintained, as should their dignity, privacy, and respect. The rights of a mental health patient must be weighed against those of caregivers, family, and the larger society. In Nigeria, however, the reverse has been true: despite great advances in the diagnosis and treatment of mental illness throughout the world, the Lunacy Law of 1958 has remained the primary piece of law on the subject for more than six decades.

The deplorable state of the mentally sick prompted medical specialists to declare the situation a "human rights emergency in mental health."<sup>9</sup> and lobby for immediate changes to the

<sup>6</sup> World Health Organization, 'The World Health Report 2001: Mental Disorders Affect One in Four People', 28 September 2001 <<https://www.who.int/news-room/detail/28-09-2001-the-world-health-report-2001-mental-disorders-affect-one-in-four-people>> accessed 10 February 2023.

<sup>7</sup> C Eze, 'Group Flays Sexual Abuse of Mental Women *This Day*. 3 January 2005.

<sup>8</sup> Ministry of Health and WHO, *WHO-AIMS Report on Mental Health Systems in Nigeria* (Ministry of Health and WHO 2006)

<sup>9</sup> Q Ugochukwu et al, The Time is Now: Reforming Nigeria's Outdated Mental Health Laws, *The Lancet* [2020] 8(8).

<[https://thelancet.com/journals/langlo/article/PIIS2214-109X\(20\)30302-8/fulltext](https://thelancet.com/journals/langlo/article/PIIS2214-109X(20)30302-8/fulltext)> accessed 15 February 2023.



legislation regulating mental health. Advocacy by Nigerian mental health specialists resulted in the approval of the National Mental Health Act in December 2022. While medical doctors have been at the forefront of advocating for the passage of a contemporary mental health law, it is critical that the legal profession add its voice to the evaluation of this essential legislation because mental illness has legal implications.

## 2. The Road to the Enactment of the National Mental Health Act, 2021

Mental health has historically been overlooked in Nigeria's health and development agenda, and its importance was not recognized for many years by Nigeria's authorities, whose health priorities tended to be maternal health, infant mortality, and infectious illnesses. Yet, the World Health Organization estimates that one in every four Nigerians (an estimated 50 million people) suffers from mental illness.<sup>10</sup> The recent rise in suicides and violent crimes are increasingly raising concerns about the mental health of Nigerians.

Nigeria's mental health laws were originally adopted in 1916, and were known as the Lunacy Ordinance of 1916; this was a regional law that was based on an English law, the Lunacy Act of 1890. The Lunacy Ordinance was renamed the Lunacy Act in 1958 after minor amendments. Mental health professionals criticized the 1958 Lunacy Act for violating the fundamental rights of people with mental health and psychosocial problems. Sheikh believes<sup>11</sup> the Lunacy Act considers all mental health conditions to be insanity and makes no mention of prevention, promotion, or treatment. A lunatic, according to the Lunacy Act, includes stupid and anybody with an unsound mind.<sup>12</sup> According to practitioners, the restriction of this concept is that a person might be of sound mind yet not be impacted by a mental condition.<sup>13</sup> Nevertheless, there are occasions where mental disease combines sadness and other psycho-social crises, and such people cannot be labelled as insane. Even normal people experience depression and other psychological crises from time to time.<sup>14</sup> Some other medical specialists condemned the existing rule as antiquated, outmoded, and incompatible with modern reality, arguing that the almost half-century-old statute views mental health challenges incorrectly. It reflected a time in human history when not only was mental health misunderstood, but also when the treatment of people with mental-health care requirements was harsh, inadequate in content and context, and violated the fundamental human rights of people with mental health and psychosocial problems.<sup>15</sup> According to medical professionals, the ancient statute created during British colonial era is out of date and incongruous with modern reality<sup>16</sup> and unable to give proper mental health treatment on an equal level with physical health. It makes no mention of funding for mental health treatment or access to such services in primary care settings. It contemplates the presence of 'asylums,' which are often formed by local government authorities.<sup>17</sup> According to an assessment of this statute using the World Health Organization's Guideline for Mental Health Law, it lacks an "emphasis on human rights and non-discrimination, access to services, and least restrictive treatment choices." As a result, a review was unavoidable in order to preserve the rights of mentally ill individuals.

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<sup>10</sup> WHO, WHO-AIMS Report Supra

<sup>11</sup> E Onyeji, 'Nigeria's Long Road to Repealing Colonial-Era Lunacy Law'. *Premium Times* 23 February 2020. <<https://www.premiumtimesng.com/news/headlines/378626-nigerias-long-road-to-repealing-colonial-era-lunacy-law-regulating-mental-health.html?tztc=1>> accessed July 2022.

<sup>12</sup> S1 Lunacy Act 1958

<sup>13</sup> A H Westbrook, 'Mental Health Legislation and Involuntary Commitment in Nigeria: A Call for Reform'. *Washington University Global Studies Law Review*, [2011] 10(2) 403-404.

<sup>14</sup> M Godfree, 'A Critique of the Autonomy of Mental Health Patients Under Nigerian Law', *The Nigerian Lawyer*, 29 June, 2020.

<sup>15</sup> Taiwo Sheikh, 'No Mentally Stable Human Rapesees, Kidnap Others', Available at <[www.herald.ng](http://www.herald.ng)> Accessed 8 March, 2022.

<sup>16</sup> E Onyeji, note 11.

<sup>17</sup> C Obinna, 'Mental Health Experts Call for Repeal of Lunacy Act', *Vanguard* 11 Nov, 2019.

<<https://www.vanguardngr.com/2019/11/mental-health-experts-call-for-repeal-of-lunacy-act/>> accessed 3 July, 2022.



On the international stage, growing recognition of the mentally ill's vulnerability and the need to protect their human rights resulted in the United Nations (UN) Resolution 46/119 for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (Principles for Mental Health Policy) in 1991.<sup>18</sup> For the first time in a UN text, this resolution formalized the rights of the mentally ill and their entitlement to treatment. Psychiatrists were compelled to use these as a reference when dealing with authorities and governments in their respective nations.<sup>19</sup> The national government was to put these Principles into action by appropriate legislative, judicial, administrative, educational, and other actions, which they were to assess on a regular basis.<sup>20</sup> Notwithstanding its support for the Resolution, the Nigerian government did not make any effort to adopt suitable laws.

In 2003, two legislators submitted a Mental Health bill to the National Assembly, which was a move in the right direction.<sup>21</sup> Regrettably, the Bill was withdrawn six years later due to a lack of support from the parliamentary chambers. The Bill was reintroduced unsuccessfully in 2013, when the National Policy for Mental Health Service Delivery established the foundations for providing treatment to persons with mental, neurological, and drug misuse issues.<sup>22</sup> The idea was that the economic downturn had devastated Nigerians to the point that some had attempted, but unsuccessful, suicide. Because attempting to commit such an offense is a crime under the Nigerian Criminal and Penal Code, victims are handled with little sympathy and with little or no respect for their mental health. When allegations are levelled against someone, they are almost guaranteed to face time in prison and onerous bail conditions, even if the magistrates are inclined to release them. This unfortunate instance revealed the clear necessity for legislative reform. The Bill did not pass in 2013 due to a lack of enthusiasm on the part of politicians.

A Mental Bill titled 'A Bill for an Act to provide for the establishment and regulation of mental health and substance abuse services, protect persons with mental health needs and establishment of National Commission for Mental and Substance Abuse Services, for the effective management of mental health in Nigeria and for other related matters,' was re-introduced in October 2019.<sup>23</sup> The Bill, which attempted to offer guidance for a cohesive response to victims of mental health and drug misuse, was passed by the Senate on December 3, 2021, and by the House of Representatives on July 6, 2021.<sup>24</sup> Following nearly a year and a half of delay and various changes, it got presidential approval in January 2023. The new Act includes major measures targeted at promoting and preserving the rights of those suffering from mental illnesses. It also establishes statutory entities tasked with carrying out the Act and guaranteeing accountability in the delivery of mental health care.

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<sup>18</sup> Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, UN. General Assembly (46th session: 1991-1992) [https://digitalibrary.un.org/search?In=en&as=0&p=subjectheading:\[Principles+for+the+Protection+of+Persons+with+Mental+Illness+and+for+the+Improvement+of+Mental+Health+Care+%281991%29\]](https://digitalibrary.un.org/search?In=en&as=0&p=subjectheading:[Principles+for+the+Protection+of+Persons+with+Mental+Illness+and+for+the+Improvement+of+Mental+Health+Care+%281991%29])

<sup>19</sup> Ahmed Okasha, 'The Declaration of Madrid and its Implementation. An Update.' *World Psychiatry* [2003] 2(2): 65–67. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1525091/#:~:text=The%20Madrid%20Declaration> accessed 16 February 2023.

<sup>20</sup> Principle 23, Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care.

<sup>21</sup> The Bill was introduced by lawmakers Ibiabuye Martyns-Yellowe, a psychiatrist and Dalhatu Tafida. See E Onyeji, 'Nigeria's Long Road to Repealing Colonial-Era Lunacy Law'. *Premium Times* 23 February 2020. <<https://www.premiumtimesng.com/news/headlines/378626-nigerias-long-road-to-repealing-colonial-era-lunacy-law-regulating-mental-health.html?tztc=1>> accessed July 2022.

<sup>22</sup> E Onyeji, n 11.

<sup>23</sup> The bill was sponsored by Mr Oloriegbe (APC, Kwara Central). See [nass.gov.ng](http://nass.gov.ng)

<sup>24</sup> See [nass.gov.ng](http://nass.gov.ng).



### 3. Persons with Mental Health Conditions as a Vulnerable Group

People suffering from mental problems are especially vulnerable in today's world. Vulnerable populations are defined as "people and communities who confront increased challenges in accessing social, economic, political, and environmental resources, as well as limitations due to sickness or disability."<sup>25</sup> Economically disadvantaged people, racial and ethnic minorities, uninsured, low-income, children, the elderly, the homeless, people with HIV, and those with other chronic health problems, including severe mental illness, are all vulnerable populations. It might also include people who live in rural regions, where access to healthcare is typically limited.

The vulnerability of these individuals is enhanced by race, ethnicity, age, sex, and factors such as income, insurance coverage (or lack thereof), and the absence of a usual source of care. Their health and healthcare problems intersect with social factors, including housing, poverty, and inadequate education.<sup>26</sup>

In research, people with mental illnesses are classified as a "vulnerable category," although the foundation for this classification is rarely established or spelt explicitly. For example, in the Madrid Declaration,<sup>27</sup> the World Psychiatric Association simply states, "Since psychiatric patients are a particularly vulnerable research population, special care should be made to assess their competence to participate as research subjects and to ensure their autonomy and mental and physical integrity."<sup>28</sup> This explanation is insufficient since there is a need to understand what is unique about psychiatric patients as a group, or maybe more significantly, as individuals, that makes them more vulnerable than other patients. It is also important to establish how this might be addressed to guarantee their rights are protected.

Vulnerable populations in the psychological domain include "those with chronic mental conditions such as schizophrenia, bipolar disorder, major depression, and attention deficit/hyperactivity disorder, as well as those with a history of alcohol and/or substance abuse and those who are suicidal or homeless."<sup>29</sup> People suffering from mental diseases are significantly more likely to be victims of crime and abuse than the general population.<sup>30</sup> Despite the fact that the demands of the mentally ill are significant, often debilitating or life-threatening, and need extensive and comprehensive medical and non-medical care, these needs are commonly underestimated.<sup>31</sup>

Mental health patients in Nigeria are frequently deprived of their dignity owing to the twin powers of stigma and superstition. They are concealed from public view, have no legal safeguards, and are frequently refused access to basic services like education, health care, and work. Mental diseases are sometimes misconstrued as spiritual issues, leading to detention in so-called "spiritual healing houses" and other unlicensed mental health institutions. According to Human Rights Watch, shackling, chaining, starving, and whipping are common, and those suffering from mental illnesses

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<sup>25</sup> Muhammad Rahman, Rabab Ahmed et .al, 'Mental Distress and Human Rights Violations during Covid 19: A Rapid Review of the Evidence Informing Rights, Mental Health Needs and Public Policy Around Vulnerable Populations' *Frontiers in Psychiatry* [2021] doi: 10.339/Fpsyt:2020.603875

<sup>26</sup> M Chernew et al, 'Vulnerable Populations: Who are They?' *American Journal of Managed Care* [2006] 12 (13).

<sup>27</sup> World Psychiatric Association. *Madrid Declaration on Ethical Standards for Psychiatric Practice* (WPA General Assembly 1996).

<sup>28</sup> Ibid., para 7.

<sup>29</sup> Vulnerable Populations: Who Are They? *American Journal of Managed Care*. Volume 12 Issue 13, 2006. Cited in: Greg Hornback, 'Defining the Vulnerable and At-Risk Populations: Who are We Really Looking At?' 8/6/2018. <<https://www.coronainsights.com/2018/08/defining-the-vulnerable-and-at-risk-populations-who-are-we-really-looking-at/>> Accessed 01 March 2023

<sup>30</sup> M. Foley and I.D. Cummins, Reporting Sexual Violence on Mental Health Wards, *The Journal of Adult Protection* 2018 <http://usir.salford.ac.uk/id/eprint/46498/> Accessed 01 March 2023

<sup>31</sup> Jacqueline M. Atkinson, (2007) 'Protecting or Empowering the Vulnerable? Mental Illness, Communication and the Research Process'. Being a paper Presented at AREC/EFGCP Conference, To serve and protect', Edinburgh, 7-8 June 2007, *Research Ethics Review* [2007] 3(4), 134-138.



are occasionally subjected to brutal treatment because of the mistaken idea that "madness" is contagious. In such cases, defining rights relevant to a mentally ill patient must be taken into account.

#### 4. Rights of Mentally Ill Persons under the 1999 Nigerian Constitution

People with mental illnesses are entitled to fair treatment, respect, and dignity, and their privacy should be respected. According to recent global recognition and campaigning individuals have the right to get services that are suitable for their age and culture, to comprehend treatment options and alternatives, and to receive care that does not discriminate based on age, gender, colour, or illness kind. Individuals also have the right to be free from any forms of abuse, including physical constraints such as shackling, chemical restraints, and isolation, which are common procedures in some hospitals and treatment institutions, as well as in the criminal justice system.<sup>32</sup>

In Nigeria, despite the fact that the preservation of its people's fundamental rights is enshrined in Chapter IV,<sup>33</sup> the 1999 Constitution of the Federal Republic of Nigeria does not particularly provide for the rights of this vulnerable population. The fundamental rights are the right to life, human dignity, personal liberty, fair hearing, private and family life, freedom of thought, conscience, and religion, freedom of expression and the press, peaceful assembly and association, freedom of movement, freedom from discrimination, and the right to acquire and own immovable property in Nigeria<sup>34</sup>.

Chapter IV rights are sacred and serve as a lifeline for residents. The basic law enforcement mechanism in Nigeria, the courts, also provides for the enforcement of these rights.<sup>35</sup> Although Chapter IV does not establish particular provisions for the mentally ill, it is correct to say that these rights, which are generally available to all Nigerians, apply equally to this group of people. For example, the Human Right to Dignity states that "every individual is entitled to respect for the dignity of his person, and accordingly- (a) no person should be subjected to torture or cruel or degrading treatment; (b) no person shall be held in slavery or servitude."<sup>36</sup>

When mental health patients exhibit suicidal tendencies and/or commit suicide, their right to life is jeopardized. This imposes an extra responsibility of care on hospitals and other facilities to take reasonable precautions to prevent such individuals from committing suicide. There are no resolved Nigerian cases pertaining to the protection of mental health patients' right to life. The UK Supreme Court unanimously found in *Rabone and others (Appellants) v Pennine Care NHS Foundation Trust (Respondent)*<sup>37</sup> that Pennine Care NHS Trust had a responsibility under Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>38</sup> In this case, Melanie Rabone's right to life was violated, and she failed in this obligation when she committed suicide. Melanie Rabone committed herself by hanging herself from a tree in Lyme Park, Cheshire, on April 20, 2005. She was on two days' home leave from Stepping Hill Hospital in Stockport, where she was being treated for a depressive condition as an informal patient (i.e., not detained under the Mental Health Act 1983). She had been admitted to the hospital as an emergency after attempting suicide. She was assessed by the hospital as a high risk of a further suicide attempt. Her parents maintained that the hospital should not have granted her home leave and that they were to blame for their daughter's untimely death. They brought legal action against the Pennine Care NHS Trust ("the trust"), alleging negligence and a violation of the right to life guaranteed by Article 2 of the European

<sup>32</sup> Muhammed Rahman, Rabab Ahmed et-al, n 26.

<sup>33</sup> 1999 Constitution of Federal Republic of Nigeria (As amended)

<sup>34</sup> Sections 33 – 44 1999 Constitution (As Amended).

<sup>35</sup> Section 45, 1999 Constitution (As Amended); Fundamental Rights Enforcement Procedure) Rules, 2009.

<sup>36</sup> S.34(1) Ibid

<sup>37</sup> [2012] UKSC 2

<sup>38</sup> Convention for the Protection of Human Rights and Fundamental Freedoms Rome, 4.XI.1950,

[https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf) 10 March 2023



Convention for the Protection of Human Rights and Fundamental Freedoms. The trust finally conceded wrongdoing but rejected culpability for article 2 violations.

Section 35(1) of the 1999 Constitution states that "every individual shall be entitled to his personal liberty, and no person shall be deprived of such liberty except in the following conditions and in accordance with a procedure established by law..." The provision provides for exceptions by utilizing the phrase "except in the following instances," one of which refers to the mentally ill. Persons of unsound mind may be denied the right to personal liberty under paragraph (e) for the sake of their care or treatment or the safety of the community. It is stated that denial of liberty is only transitory and only under extreme situations, notably "for the sake of their care or treatment or the community's safety."

Care is described as "the supply of welfare and protection," or "the providing of what is required for someone or something's health, welfare, maintenance, and protection." As a result, it is contended that any 'care' that is not directed at and does not result in the health, welfare, or protection of a mentally ill person does not qualify for the exemption in section 35(1) (e). The harsh, inhumane, demeaning, and harmful treatments that the mentally ill are exposed to in some treatment facilities cannot, by any stretch of the imagination, be considered carefully. It is the polar opposite of concern. According to Black's Law Dictionary,<sup>39</sup> treat means "to care for (a medical patient); to try to cure (a person's) ailment or injury by using the medicine, hospital care or surgery." Treatment is defined as "the action or method of medically or surgically treating a patient or a condition: management and care to prevent, cure, ameliorate, or slow progression of a medical condition;" the "use of drugs, exercises and others to improve an ill or injured person's condition, or to cure a disease."<sup>40</sup> Treatment, as defined above, comprises care and is aimed at curing, treating, or improving the health condition. This presupposes a decent, humane and medically acceptable environment.

The third ground "the protection of the community" is problematic if interpreted disjunctively from care or treatment. In focusing solely on the community, the needs and rights of the mentally ill person tend to be neglected. While it is true that confinement of a mentally ill person, for example, one who demonstrates violent tendencies, may be necessary for the purpose of protecting others, the interest of the mentally ill patient should be considered alongside that of the community and the three limbs - care, treatment *and* protection of the community - should go hand in hand.

Section 35 further states that any deprivation must be done in line with a legal procedure. This implies that even if the goal is care, treatment, and/or community protection, a mentally ill individual cannot be arbitrarily detained. Instances in which family members, traditional or religious "healers," or governmental authorities intervene to restrict people without adhering to the provisions of applicable legislation are consequently breaches of section 35.

The new National Mental Health Act has covered previously existing gaps by thoroughly providing for the legal processes and procedures that were absent or inadequate in the previous Lunacy Act. As a result, it is necessary to investigate how the National Mental Health Act safeguards the rights of those suffering from mental illnesses.

## 5. Rights of Mentally Ill Persons under the National Mental Health Act, 2021

The recently approved National Mental Health Act<sup>41</sup> includes provisions aimed primarily at protecting people with mental illnesses. One of the Act's goals is to promote and defend the basic rights and freedoms of all people with mental illnesses, as well as to ensure that such rights are

<sup>39</sup> Bryan Garner (ed.), *Black's Law Dictionary* (11th Edition) (Thomson Reuters 2019) 1808.

<sup>40</sup> Cambridge Advanced Learners Dictionary. <https://dictionary.cambridge.org/dictionary/english/treatment> accessed 12 February 2023.

<sup>41</sup> National Mental Health Act, 2021 (Referred to as 'the Act')



protected.<sup>42</sup> This can be understood to suggest that the Act builds on the basic rights provisions of the 1999 Constitution to ensure that this disadvantaged population has access to the rights enshrined in the Constitution. In order to achieve its goals, the Act creates a Department of Mental Health Services inside the Federal Ministry of Health, which is tasked with enforcing the Act's requirements. The Department's functions include, among other things, "ensuring and guaranteeing the basic rights and safety of people with mental health disorders, and protecting them from discrimination and stigma."<sup>43</sup> The Act also creates a Mental Health Assessment Committee tasked with safeguarding those suffering from mental illnesses.<sup>44</sup>

The National Mental Health Act defines mental health conditions as "impairments, activity limitations, and individual and participatory restrictions arising from diagnosable mental disorders that involve significant changes in thinking, emotion, or behaviour and cause distress or problems in the individual's interaction with his environment, including intellectual, psychosocial, or cognitive disabilities."<sup>45</sup>

Part II of the Act addresses the rights of those suffering from mental illnesses. People in need of mental health assistance have the same fundamental rights as other citizens and are not to be discriminated against.<sup>46</sup> Section 42 of the CFRN 1999 provides for the right of Nigerian citizens to be free from discrimination based on their community, ethnic group, place of origin, gender, religion, political viewpoint, or birth circumstances. Health (including mental health) was not recognized as a criterion for not discriminating against someone. Those suffering from mental illnesses have the right to medical, social, and legal help.<sup>47</sup> At a time when legal services are out of reach for many Nigerians owing to economic concerns, as well as the woeful inadequacy of the Legal Aid System, the application of this provision remains to be seen. In order for this right to be realized, Nigeria's healthcare crisis must also be addressed.

Section 12 (1) of the Act supplements the right to dignity enshrined in Section 34 of the 1999 Constitution, and it is a direct response to the cruel and humiliating methods prevalent in many "treatment" facilities. Physical and mental abuse, as well as any type of exploitation, forced labour, aggression, torture, cruel, inhuman, or humiliating treatment or punishment, including chaining,<sup>48</sup> are all prohibited for mental health patients. The Act mandates anybody who sees any type of abuse against a person with a mental health problem to promptly report the event to the authorities.<sup>49</sup>

Employment rights are closely tied to the right to be free from discrimination. Persons with mental health issues are so entitled to equal access to work and job prospects, as well as payment for work done compared to that payable to a person without a mental health condition.<sup>50</sup> They are equally protected from being fired or denied benefits to which they are entitled just because of their mental health condition or while seeking treatment.<sup>51</sup> When a worker's mental health problem is serious enough to impair production, the Act compels the employer to support the worker in seeking medical counsel or treatment.<sup>52</sup> These measures, if implemented and enforced, would assist to reduce the stigma and prejudice that exacerbate mental health issues by allowing those suffering from them to seek professional care without fear of discrimination, job loss, or loss of other benefits. It is also worth noting that mental illness, like some physical disorders, can be work-related. Depression and

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<sup>42</sup> Section 1 (b).

<sup>43</sup> Section 5 (d).

<sup>44</sup> Section 9, *ibid.*

<sup>45</sup> Section 37, *ibid.*

<sup>46</sup> Section 12 (1) (a) and (b).

<sup>47</sup> Section 12 (2) (a).

<sup>48</sup> Section 12 (2) (b)

<sup>49</sup> Section 12 (3)

<sup>50</sup> Section 13 (1)

<sup>51</sup> Section 13 (2)

<sup>52</sup> Section 13 (3)



Post-Traumatic Stress Disorder (PTSD) are widespread problems among members of the military services and veterans.<sup>53</sup>

The Act protects this vulnerable group's housing rights, stating that a tenant who develops a mental health condition shall not be removed from his place of residence merely on the basis of his mental health condition. The phrasing here raises various questions: Would the same regulation apply if the renter neglected to disclose a pre-existing mental health condition? What recourse is available to a landlord when a tenant's mental health condition interferes with his capacity to renew his rent? In the first case, it is argued that a renter who fails to provide prior disclosure is nonetheless protected by the anti-discrimination provision. Also, any leasing agreement that requires previous disclosure of a mental health issue is discriminatory. In the second case, it is thought that the standard norms governing landlord-tenant relationships would apply.<sup>54</sup> The word 'solely' implies that additional causes, other than the mental health condition, might be grounds for eviction.

The right to adequate, affordable, and accessible mental health care;<sup>55</sup> the right to quality and standard treatment;<sup>56</sup> the right to select a legal representation;<sup>57</sup> and the right to participate in the creation of his treatment plan<sup>58</sup> are all additional rights afforded to the mentally ill. When a mental health patient is unable to engage in treatment planning due to his or her condition, his or her legal representative must do so.<sup>59</sup>

A mental health patient should not be isolated; instead, he or she has the right to private visits from families, legal practitioners, and others. If there are reasonable grounds to fear that the patient would be aggressive or a threat to others, such visitation must be supervised.<sup>60</sup> The Act guarantees the right to information on one's mental health and other health status, as stated in the National Health Act<sup>61</sup>. When read in conjunction with the right to participate in the formulation of the treatment plan (section 18), this right encompasses the patient's right to know the medication being prescribed as well as any potential side effects; the right to be informed of alternative courses of treatment and their respective benefits and drawbacks. The Act also guarantees the right to privacy. Health data, specifically those pertaining to mental health, are extremely sensitive and vulnerable to abuse, particularly when they come into the hands of the wrong people. The risk is particularly acute in Nigeria, where there are several myths and misconceptions about mental health disorders.

The Act gives a person with a mental health issue the right to choose and appoint a legal practitioner to represent him in any way, including in any complaint procedure or appeal.<sup>62</sup> This is necessary to guarantee that the rights granted by the Act and associated laws are exercised and enjoyed. Furthermore, individuals with mental health issues may be unable to conduct their cases personally in the event of a legal complaint or litigation due to their disability. Because of the vulnerable situation of a mental health patient, both medically and legally, the Act compels the State to give legal help if the patient or his legal representative cannot afford the services of a legal

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<sup>53</sup> B E Dami et al., 'Combat Exposure and PTSD among Military Combatants in North East Nigeria,' *Journal of Psychologist and Clinical Psychiatry* [2018] 9(4) 400-404; A.C. Iverson et al., 'The Prevalence of Common Mental Health Disorders and PTSD in the UK Military: Using Data from a Clinical Interview-Based Study,' *BMC Psychiatry* [2009] 9(1) 1-12, 2009; A Finegan and R Randles, 'Prevalence of Common Mental Health Disorders in Military Veterans: Using Primary Healthcare Data', *BMJ Military Health* <https://militaryhealth.bmj.com/content/jramc/early/2022/01/17/bmjilitary-2021-002045.full.pdf>

<sup>54</sup> National Mental Health Act, Section 14.

<sup>55</sup> Ibid, Section 15.

<sup>56</sup> Ibid, Section 16.

<sup>57</sup> Ibid, Section 17.

<sup>58</sup> Ibid, Section 18 (1).

<sup>59</sup> Ibid, Section 18 (2).

<sup>60</sup> Ibid, Section 19 (1) and (2).

<sup>61</sup> Ibid, Section 20.

<sup>62</sup> Ibid, Section 22 (1) and (2).



practitioner.<sup>63</sup> The present issues linked with Nigeria's Legal Aid Plan throw the viability of this service into doubt. What is certain is that significant resources and ongoing monitoring are required to make the legislation's admirable provisions a reality. It is expected that there will be an increase in demand for attorneys who are familiar with mental health legislation in the near future.

Section 23 of the Act makes it a crime for a health practitioner or someone working in an institution to hit, ill-treat, or mistreat a person with a mental health issue. While the provision did not specify a punishment, Section 51 states that no one shall violate the rights of individuals as defined by the Act, and such behaviour is punished by a fine of at least 500,000 or imprisonment for at least one year.<sup>64</sup>

It is an offense punishable by life imprisonment without the option of a punishment for an officer, staff, employee, health worker, or mental health practitioner to have a sexual connection with a patient<sup>65</sup> while attending to a mental health patient or working at a facility. Furthermore, the wrongdoer may face disciplinary action from his or her professional body.<sup>66</sup>

Apart from the ethical difficulties that surround doctors, health professionals, and patients, as well as their interactions with patients, people suffering from mental illnesses may lack the competence to provide permission correctly. As a result, they are more susceptible than other patients. People with mental illnesses may be sexually abused while in inpatient treatment, and the two most prevalent abusers are fellow patients or nursing or staff personnel. The National Mental Health Act does not specify what behaviours would constitute a sexual connection. Would words be enough, or would sex actions be required for the connection to be sexual?

## 6. Conclusion

Money is a major concern; for example, Nigeria has consistently allocated less than 7% of its national budget on health since 2001. In actuality, World Bank figures show that Nigeria's current health expenditure is a pathetic 3.89 percent of its entire GDP, leaving a substantial gap in the financial resources required to drive the health system. This emphasizes the importance of private investment to augment government initiatives. With a population of over 200 million people, Nigeria is thought to have less than 300 psychiatrists and eight to fifteen federal and state neuropsychiatric institutes.<sup>67</sup> The National Health Insurance Program (NHIS) does not cover mental health, although it should in order to assure access and affordability of care. Some of the difficulties that Nigerian mental health patients experience expose them to maltreatment and prejudice. Ensuring their safety, on the other hand, necessitates a multifaceted strategy that addresses the fundamental causes of the problem while also enforcing current standards and rules. The Nigerian government must enhance financing for mental health treatment, hire more mental health experts, undertake public education and awareness campaigns, enforce the Mental Health Act, and hold abusers responsible. With these safeguards in place, Nigerian mental health patients will be able to receive the treatment and support they require to recover and flourish.

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<sup>63</sup> Ibid, Section 22 (3).

<sup>64</sup> Ibid, Section 51 (1) and (2).

<sup>65</sup> Ibid, Section 55 (1) and (2).

<sup>66</sup> Ibid.

<sup>67</sup> 'Assessing Nigeria's Commitment towards Financing Health Security' *Thisdaylive* 24 Nov 2022) < <https://www.thisdaylive.com/> Accessed 25 March 2023.