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Stigma and Mental Health in Nigeria: Some Suggestions for Law Reform

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Abstract
Nigeria has a significant number of people with mental health challenges. Unfortunately, this is perhaps the most neglected area of health in the country. This paper argues that this neglect is both caused and exacerbated by stigma. Stigma remains the most basic, cultural and moral barrier to the relief of mental health challenges. As a result of this, human rights abuses with deep roots in the stigma attached to mental illness continue to flourish largely unrestrained, impacting negatively on the dignity of mentally disabled persons as human beings. In this Article, therefore, I discuss stigma, a key challenge that affects persons living with mental illness in Nigeria. I review the effects of stigma and propose some reforms to law and the law making process as one way to reduce stigma and its adverse effects.
Keywords: mental health, stigma, mental illness, law reform, legislation, rights, discrimination.

1. Introduction

Nigeria has a population of about 180 million people. It is estimated that about 20 per cent of this population suffers some form of mental health challenge.[1] Yet other reports place the figures at about 30 per cent.[2] This is a significant number, running into millions of persons suffering some form of mental health challenge in Nigeria. Unfortunately, many of these persons have little recourse in terms of treatment, protection of their rights, rehabilitation or other support. Mental health remains one of the most neglected areas of health in Nigeria.

The challenges of mental health in Nigeria are multi-faceted. The World Health Organisation AIMS report on mental health services in Nigeria[3] indicates that mental health services are grossly inadequate. Thus mentally disabled persons face several other challenges namely: poor mental health services, poor financing of mental health, limited access to available services and a limited number of providers. In terms of mental health financing, health financing in Nigeria is generally poor.[4] Of this poor government financing, only about 3.3% of the health budget of the Federal government goes to mental health, with over 90% of this going to mental hospitals.[5] Unfortunately, much of the inadequate funds available are not provided to the people who provide direct care to the mentally ill - families and friends. Reliance on certain alternative methods outside Western psychiatry has not often provided relief or reduced suffering and has, in many cases, promoted human rights abuses. Yet many people continue to use these avenues for lack of effective services. As a result, there continues to be deep suffering for the mentally challenged in Nigeria.

Until recently, the policy for mental health was also outdated. There is some evidence that this is changing, at least at a policy level. The new National Health Policy (2016) notes the increasing numbers of persons with mental health issues and the need to address mental health.[6] A policy for mental health services delivery was developed in 2013: National Policy for Mental Health Services Delivery Nigeria, 2013.[7] However, several of the key provisions, including establishing a body at the Federal Ministry of Health to be focused on mental health, are yet to be implemented.

The lack of a legal framework for protecting the human rights of people with mental disability is also emblematic of the gross neglect of mental disability. The 1951 Lunacy Act is outdated containing provisions which are not aligned with current international human rights standards.

In short, there are myriads of problem facing mental health. Yet there are very few advocates for mental health issues, inclusion of mentally challenged persons and promotion of the rights of mentally ill persons.[8] One of the reasons for this situation is, in my view, the stigmatisation of mentally ill persons in Nigeria. Stigmatisation of mental illness and mentally ill persons in Nigeria is very high in the country.[9] Stigma remains the most basic, cultural and moral barrier to the relief of mental health challenges. As a result of this, human rights abuses with deep roots in the stigma attached to mental illness continue to flourish largely unrestrained,

[1] WHO-AIMS Report on Mental Health System in Nigeria, WHO and Ministry of Health, Ibadan, Nigeria, 2006
[2] MHLAP, Mental Health Situation Analysis in Nigeria, 2012 at 4.
[3] WHO-AIMS Report on Mental Health System in Nigeria, WHO and Ministry of Health, Ibadan, Nigeria, 2006.
[4] Mental Health Situation Analysis, p.4.
[5] Mental Health Situation Analysis, 2012 p. 4).
[6] Federal Ministry of Health, *National Health Policy*, 2016 (Abuja, Nigeria).
[7] Federal Ministry of Health, National Policy for Mental Health Services Delivery Nigeria, 2013 (Abuja, Nigeria).
[8] (WHO-AIMS Report 2006; Mental Health Situation Analysis, 2012).
[9] WHO-AIMS Report, 2006

impacting negatively on the dignity of mentally disabled persons as human beings. In this Article, therefore, I discuss stigma, a key challenge that affects persons living with mental illness. I review the effects of stigma and propose some reforms, from a legal perspective, that are necessary to address these challenges. Much of the article is borne out of my personal experiences as a carer, an advocate, and a policy expert.

2. Stigma as a Challenge

Persons living with mental health challenges have many challenges. In this Article, I consider the challenge of stigma. Undoubtedly, this is not the only challenge faced by persons living with mental illness in Nigeria. Other key challenges include lack of mental health services, limited financing for mental health services, and lack of support for carers of persons living with mental illness and limited support for advocacy movements to champion the cause of mental health in Nigeria. For the purposes of this Article, however, I have chosen to look at stigma, a key challenge that needs to be addressed in order to enhance the lives of persons living with mental illness.

Cultural taboos and religious practices affect the ways in which people cope with social adversity, manifest emotional distress and mental disorders, and seek care. In Nigeria, this often means a resort to religious explanations for mental illness and to traditional and religious healers for care during mental illness. In several cases, some approaches of these avenues have resulted in significant physical, emotional and human rights abuses. In addition, there is very little information on, and public education about, how to counter unproven claims, or about mental health challenges generally speaking, or the available help. Further, there are no mechanisms for protecting the rights of the mentally ill. The extant legislation on mental health, the Lunacy Act, 1958, is outdated and its provisions not in accord with current realities and modern understandings of mental health. Thus, there is presently no clear regulation of mental health care, no direct legal protections including policies relating to involuntary admissions, and no financial or welfare provisions for mentally ill persons. Yet there is no major advocacy movement towards changing this state of affairs.

The result is an atmosphere of intense stigma. In this atmosphere, mental illness is a burden carried by affected persons and their families alone, such persons are more likely to hide their illness, fail to seek help, and when they seek help do so surreptitiously without much information or support. Persons who have received effective care through orthodox means are not encouraged to speak openly about their illness or the care that they have received. Stigma affects not only the individual with mental illness; it affects professionals who are involved in mental health care. Importantly, it has been found that health policy experts are also affected by discrimination and stigma, resulting in a harmful shrinking back from necessary work on mental health policy.[1] This adversely affects any desire to address issues such as the human rights abuses that go on in religious, traditional, avenues of mental health care (including those instances such as physical abuse (flogging, chains), neglect, and other kinds of abuse. This, in turn, adversely affects uptake of treatment even in cases where treatment would prove efficacious. Indeed, studies in Nigeria have found that “stigma continues to be a strong barrier to accessing mental health services.[2]

Stigma manifests itself in all sorts of discrimination – from the personal (marriage, relationships) to external matters like employment and appointments. There are places in Nigeria where mentally ill persons are chained and left outside in all conditions of the weather, and then beaten up from time to time in order to “heal” them, where mentally ill persons are beaten by their spouses to exorcise the evil spirits, where some unscrupulous mental health professionals give out diagnoses without due investigation.

The upshot is a society where mental health issues and challenges are hidden because of the perceived stigma. Yet the secrecy does not ensure a mental health challenge free society. What is more likely accomplished is merely a driving underground of people with mental health challenges, with many adverse consequences. Among these consequences are continuing low uptake of treatment, needless suffering, and a lack of public education resulting in lack of support for the mentally ill and those who care for them. A lack of public education also engenders a vicious cycle of stigma and discrimination.

Thus, stigma remains a very critical barrier to accessing treatment. In addition, due to the limited education available on mental disorders, many mentally ill persons end up in the hands of quacks, both of the medical and spiritual variety, where they suffer unnameable horrors and terrible violations of human rights. This leads one to ask what regulations we have established to protect the mentally ill and the mentally challenged.

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[1] See for example, Jean Wallace, “Mental health and Stigma in the Medical Profession” (2012) 16:1 Health (London) 3-18; Claire Henderson et al, “Mental health-related stigma in health care and mental health-care settings” (2014) 1:6 Lancet 467.

[2] See for example, Izibeloko Omi Jack-Ide et al. “Barriers to mental health services utilization in the Niger Delta region of Nigeria: Service Users Perspectives (2013) 14 Pan African Medical Journal 159.

3. The Law and Mental Health Stigma

The law has not been helpful to stigma reduction and may even be argued to have exacerbated it by its non-recognition of stigma and its adverse effects on mental health and the rights of the mentally ill. Indeed, when mental health is mentioned in our legislation, generally speaking, it is not to provide for human rights coverage, it is generally to exclude on the grounds of "insanity."

Some of the rights violations that mentally ill people suffer from the most are equality rights and right to freedom from discrimination. At the present time, discrimination is not specifically addressed in law since there is currently no legislation on mental health. However, the Constitution of the Federal Republic of Nigeria, 1999 prohibits discrimination.[1] It does not specifically identify health status as one of the grounds on which discrimination is prohibited, however. Perhaps in recognition of this, the law has specifically addressed discrimination against persons living with HIV/AIDS and disabilities. Thus legislation such as the HIV/AIDS Anti-Discrimination Act, 2014, and the various anti-discrimination laws of Enugu, Ekiti and other states, and Lagos State's Special People's Law, 2011. However, there is no law specifically addressing discrimination on the basis of mental health status.

Moreover, mental illness is not well recognised as a disability issue in law. Moreover, disability has not been effectively addressed in law around the country – Lagos State remains a notable exception. The Lagos State Special Peoples Law, 2011, for example, addresses many aspects of disability, and establishes a special agency to manage issues around disability and offer a voice to persons living with various types of disability. However, it does not mention mental health nor does it provide any interventions in this regard.

In my view, much of the problems that stem from the abuse of powers to commit a person involuntarily to a facility also stem from stigma, a form of de-humanisation and *othering* that permits the commitment of persons that may not necessarily fit the idea of 'normal. Under what circumstances can a mentally ill person be legally restrained or detained in Nigeria? Who makes that call and when? Previous research in this area that has shown that involuntary commitment or detention in Nigeria is of long standing, beginning with the British colonial masters in pre-independence Nigeria.[2] There are, of course, circumstances in which a person who is mentally ill can be involuntarily detained against their will: when persons are a danger to themselves or to others. But human rights principles require that certain measures be taken to ensure that any involuntary restraint in the context of mental health be done within certain, defined, parameters. The *UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care* 1991 and the Guidelines made thereunder provide clear guidance in the context of mental health as do several World Health Organisation documents. The Constitution of Nigeria also provides certain rights which are as applicable to mentally ill persons as they are to other citizens of this country. Generally speaking, involuntary detention should only occur when the person is likely to harm themselves or another person. It is not clear that many psychiatrists and others in the medical profession in Nigeria either truly understand this or apply this appropriately. The result is wariness in recognising psychiatrists and other medical personnel as acting ethically and in line with the best interests of the patient and the society when they make certain judgement calls regarding treatment of mentally ill persons.

Stigma is therefore a key challenge that must be addressed from several angles. Increasingly, more awareness is being created, particularly in social media circles like Facebook and Twitter, but also in the e-health realm.[3] Persons are sharing personal experiences with mental illness, thus humanising it and potentially changing existing narratives. These types of approach to stigma reduction are worth investigating. In this paper, however, I advocate the legal angle: a law reform approach.
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4. Suggestions for Law Reform

Below I make some suggestions for reforms that address the challenge of stigma from a legal perspective discussed in this paper. Key among the suggestions is to enact law to replace the Lunacy Act. They are certainly not exhaustive, being primarily from a law reform perspective.

a) **Mental Health Legislation**

Nigeria's current legislation on mental health is the Lunacy Act, 1958 and dates from the 1900s. Starting with its title, which is now considered derogatory, it is a law belonging to another time, a time when mental illness was more poorly understood, and when the human rights of the mentally ill were taken much less seriously. There is currently no clear regulation of mental health care, no direct legal protections, and no financial or welfare provisions for mentally ill persons. New mental health legislation was introduced in the National

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[1] The Constitution of the Federal Republic of Nigeria, Section 42.

[2] See Andrew Hudson Westbrook, Mental Health Legislation and Involuntary Commitment in Nigeria: A Call for Reform, 10 Wash. U. Global Stud. L. Rev. 397 (2011), <http://openscholarship.wustl.edu/law_globalstudies/vol10/iss2/7> (March 8, 2016).

[3] See for instance, PsyndUp, a mental health project that aims to bring people in contact with help virtually.

Assembly in 2003. Over a decade later, that Bill is yet to be passed. Enacting a well-considered law to address key questions on the rights of the mentally ill and the safeguards for involuntary commitment is overdue, crucial and urgent. The current Policy on Mental Health notes the importance of law reform and its impact on human rising stating that "protection of human rights is also addressed in separate legislation submitted to the Federal Government." [1]

Many of the developments in new mental health law have been in the areas of expanding rights for mentally challenged persons and allowing for them to be treated in the least restrictive manner. The WHO has worked extensively in the area of developing mental health legislation,[2] and provides guidelines on how to develop effective mental health legislation. The WHO has identified certain steps that need to be taken in developing good mental health legislation. These include those listed by the WHO such as:

> **1)** Identifying the principal mental disorders and barriers to the implementation of policy and programmes in the country concerned;
> **(2)**Identifying (or mapping) existing mental health laws or general laws that address mental health issues and looking for legal aspects that are lacking or in need of reformulation;
> **(3)**Studying international conventions and standards related to human rights and mental health and identifying obligations and internationally accepted norms under international human rights instruments that have been ratified by the country;
> **(4)**Studying components of mental health legislation in other countries, especially countries with similar social and cultural backgrounds;
> **(5)**Consulting and negotiating for change.[3]

To address the key challenge of stigma, which frequently results in non-voluntary commitment, the Mental Health Bill must include certain key provisions, including provisions on rights and competency/capacity. As described above, Nigerians with mental illness typically face degradation and stigmatization. People with mental illness may be confined, against their will, in institutions, and deprived of their freedom, dignity, and basic human rights. People with illness face discrimination generally in society, and specifically in matters such as finding housing or employment. For people with mental illness, in particular, the clear articulation of human rights protections in legislation is therefore especially significant, perhaps even more so than for people with other disabilities. Thus even where there are other human rights legislation incorporating general rights for the population, it is important to specifically include a section on rights guaranteeing and emphasising the basic rights of persons with mental illness the right of people. Such inclusion of rights is important to guarantee mentally ill persons equality and full participation in society.

The aim of including rights in Nigeria's draft mental health legislation is, therefore, to cover ground that may not be covered in other provisions for rights, for example, in the Constitution. It is also for emphasis. In this regard, the inclusion emphasises the government's willingness to recognise the importance of the fundamental rights of mentally ill persons and provides protections for such persons in Nigeria. This is especially important, given the current context where discrimination and many violations of human rights persist against people living with mental health challenges. The rights that are most relevant include the right to life, the right to freedom from inhumane, cruel or degrading treatment, right to equal protection under the law, right to dignity of the human person, right to adequate and appropriate health services, right to privacy, and the right to freedom from unjustifiable detention.[4]

This last right, that is, the right to freedom from unwarranted detention is particularly relevant for the second challenge discussed in this paper: involuntary commitment. Safeguards must be put in place to ensure that persons who are not mentally ill are not detained on grounds of mental illness. It is important, then, to set criteria in the legislation for determination of competency or capacity. Competency refers to the degree of mental soundness that is needed, legally speaking, to make decisions about a specific issue or to execute a specific act.[5] All adults are generally presumed to be competent unless found otherwise by a court. Thus,

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[1] Federal Ministry of Health, National Policy for Mental Health Services Delivery Nigeria, 2013 (Abuja, Nigeria), at 5.
[2] There are several WHO documents on the subject, including: WHO, "A Systematic Approach to Developing and Implementing Mental Health Legislation" (2005).
[3] WHO, *Mental Health Legislation and Human Rights*, (Geneva, WHO, 2003) at 14.
[4] See Peter Bartlett and Vanja Hamzic, "Reforming Mental Disability Law in Africa: Some Practical Tips and Suggestions" Human Rights Law Centre, University of Nottingham and Nuffield Foundation, 2010.
[5] Ralph Leo, "Competency and the Capacity to Make Treatment Decisions: A Primer for Primary Care Physicians" (1999) 1:5 Prim Care Companion J Clin Psychiatry.131–141.

competence is a legal matter rather than a medical issue. Lack of competence is defined by one's functional deficits as a result of mental illness, or mental retardation. A finding of incompetence means that a person has been judged to be unable to meet the demands of a specific decision-making situation, with respect to the potential consequences of making such decision. Only a court can make a determination of incompetence. In line with international standards on developing mental health legislation and a rights-based approach, it would be appropriate to include a section in the draft legislation which explicitly states that persons are competent until found otherwise. Criteria must also be clearly set for determining capacity, which refers to an individual's ability to make an informed decision. A finding of capacity, unlike competency, can be made by a physician. An individual who lacks capacity to make an informed decision or give consent may need to be referred for a competency hearing or need to have a guardian appointed. According to international standards, mental health legislation now places a premium on the rights of individuals to make free and informed decisions unless mental illness renders them incapable of doing so. Clauses indicating the need for informed consent and the capacity to provide such consent are therefore essential within Nigeria's proposed mental health legislation.

b) Involvement of the Mentally Ill and Family Members in Policy Development and Decision-Making

It is crucial that the mentally ill are given the opportunity to make inputs into the law that is being proposed. It is clear that persons in the situation know best what challenges they face and the supports that they need. They must therefore be, as much as is practicable, provided the opportunity to participate in the process of enactment of the law. Aside from those on whom the law may have direct impact, family members in Nigeria provide much of the care needed to mentally ill persons. Given that family members are key care givers to mentally ill persons, it is important the input of such persons be sought as we move forward in the law-making process. The participation of members of the public, particularly family members and users of mental health care services or mentally ill persons is not only a desirable policy, it is essential to provide perspectives that would provide appropriate support to the mentally ill as well as the the carers themselves. At this time, this perspective is sorely lacking due in part to the stigma attached to mental illness in Nigeria. Effort must therefore be made to ensure that a conducive atmosphere for such participation is created by the government, including the law-making arm. Such participation ensures that persons who actually use mental health services and who will be affected by any policies are actively involved. Public participation could also include other lay persons who are ordinarily not part of the mental health delivery.

c) Establishment of Commission for Human Rights of the Mentally Ill

Given the significant numbers of human rights abuses, including involuntary commitment, there is a need to establish a program and an agency where persons with mental illness and those who care for them can obtain redress. The National Human Rights Commission has the mandate to address human rights abuses. However, it requires specific expertise to be effective in this regard. Without the right expertise, the National Human Rights Commission is handicapped in providing effective assistance to those who seek its help. It is essential to establish an office within the Commission whose mandate would be to, amongst other things, investigate allegations of violations, and would conduct trainings in the human rights aspects of mental health from time to time for psychiatrists, other health care professionals and legal professionals involved in mental health care and mental health advocacy in this country.

To establish such a body, amongst other important requirements, we need comprehensive mental health legislation. The legislation should give the mandate for investigation of violations of the rights of the mentally ill. The existence of such a body will help discourage stigmatisation and discrimination.

d) Research to Address Further Questions in the Areas of Law, Policy and Practice

It is important that more research be undertaken to address the two key challenges discussed here and other challenges. Such research should obtain and update existing information on these questions: How do Nigerians as people see mental illness? How much does stigma prevent uptake of necessary care and treatment? How much does the stigma surrounding mental illness and mental health challenges affect not only uptake of treatment but also our humanity, our understanding of what it means to care for others and to uphold their dignity alongside their treatment? Some of these questions require intensive research, which is not yet available. Government and non-governmental funding of such research is essential in the Nigerian context.

5. Conclusion

Issues of mental health in Nigeria are indeed multifarious and need very deliberate, specific and concerted actions. Poverty and consequent stresses associated with poor infrastructure in Nigeria, human rights protections, the pervasive role of religion in a lot of mental problems, accreditation and regulation of faith healers and traditional healers, and availability and accessibility of mental health care facilities are fundamental issues that have to be addressed in order to effectively grapple with the mental health challenges of Nigerians.

The pictures that abound now create an atmosphere of stigma, painting the mentally ill as vulnerable and dangerous, and mental illness as a chronic illness that is the worst possible illness that can afflict a human. Even among and outside health care professionals, including mental health professionals, stigma remains a huge

issue. These pictures have to be changed through public health education via campaigns targeted specifically at stigma reduction. The increasing speaking up on social media is encouraging but remains at nascent stages.
The recent policy on mental health notes that:

> To eliminate social stigma often associated with mental disorders, encouragement shall be given to the promotion of positive attitudes towards the mentally ill among the general population. Government shall work to inform the public about the nature, causes, and treatability of mental disorders. Government will promote the integration of MNS services into every tier of health service delivery, in particular the general and specialist hospitals, and into programmes addressing physical health delivery (with which MNS is intricately associated).[1]

Equity in service delivery is only one way of managing stigma. Much of the practices that are undertaken against persons with mental illness must also be addressed by law and penalised appropriately. There is an urgent need to revive the Mental Health Bill, which began its life in the National Assembly over a decade ago. This legislation would address basic legal protections for the mentally ill and disabled and legal requirements that provide for fair processes and procedures. It would address issues like when a person can be involuntarily committed to a mental health facility, the situations under which seclusion at home or in the community is necessitated, the criteria for such involuntary commitment, who can make such commitment, how and when such a commitment can be brought to an end. It should address how custody matters are determined where a person is deemed to have a mental health challenge.

Further, such law should establish clearly the rights of persons with mental illness, set out penalties for violating such rights, including rights implicated in involuntary commitment and seclusion. The process of enacting the legislation will provide a forum and opportunity to address stigma, improve public education, and engage in important discussion about the desperately needed improvements that need to occur in our mental health system. The suggestions that I have made in this article will help address some of the continuing issues – increasing public education, eliminating stigma and providing safeguards in respect of involuntary commitment would pay great dividends in improving mental health care in Nigeria. Reforming current law is one crucial step towards doing this.

[1] Federal Ministry of Health, National Policy for Mental Health Services Delivery Nigeria, 2013 (Abuja, Nigeria), 3.