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Mental Health and Disability Law in Nigeria: A Call for Affirmative Interpretation

Akinsola Idowu Akinwumi[1,2]* Olorunfemi Ogunwobi[3,4] Akintayo David OlaOlorun[5,6] Adegboyega Ogunwale[7,8]
1. Department of Family Medicine, Afe Babalola University, Ado-Ekiti, Nigeria
2. ABUAD Multi-System Hospital, Ado-Ekiti, Ekiti State, Nigeria
3. Department of Medicine, Bowen University, Iwo, Osun State, Nigeria
4. Old Age Mental Health Unit, Department of Clinical Services, Neuropsychiatric Hospital, Aro, Abeokuta, Ogun State, Nigeria
5. Department of Family Medicine, Bowen University, Iwo, Osun State, Nigeria
6. Department of Family Medicine, Bowen University Teaching Hospital, Ogbomoso, Oyo State, Nigeria
7. Forensic Unit, Department of Clinical Services, Neuropsychiatric Hospital, Aro, Abeokuta, Ogun State, Nigeria
8. Department of Forensic and Neurodevelopment Science, Institute of Psychiatry, Psychology and Neuroscience, King's College, London, United Kingdom
*Email of the correspondence author: akinsolakinwumi247@gmail.com, akinsola.akinwumi@huji.ac.il, drakinwumi@abuad.edu.ng

Abstract
Nigeria is the most populous African country, with an estimated population of over 200 million people, with about 20% to 30% of the population experiencing mental health disorder (MHD). Mental disorders have been associated with significant disability. Nigeria's first mental health regulation came into force in 1916, and it was christened the Lunacy Ordinance.The use of the word, lunacy is not only discriminatory and derogatory; it also falls short of the World Health Organization's definition of MHDs, violates the rights of persons living with mental disabilities, and discourages their inclusion into the society. Furthermore, since its enactment in 1958, the Lunacy law is yet to be amended, hence its failure to keep pace with modern mental health challenges, and realities. Unfortunately, mental health disabilities are not conspicuously addressed in the current disability law, the Discrimination against Persons with Disabilities (Prohibition) Act 2018, which appears heavily slanted towards physical disabilities based on the tone of its specific provisions.The crux of this paper is that the legislative intention of bringing mental health-related disability under the general rubric of disability should be given affirmative action in terms of interpretation of the terms of the law and the implementation thereof. The extreme focus of the law on physical disability, being the more obvious variety of functional limitation, will serve to impose double jeopardy on the mentally-ill if their equally disabling state of health is subordinated to physical disability. Therefore, we advocate equivalence of focus in terms of both physical and mental disabilities.
Keywords: Mental health, Disability law, Nigeria, Affirmative interpretation
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Introduction

Nigeria is the most populous African country, with an estimated population of over 200 million people, with about 20% to 30% of the population experiencing mental health disorder (Suleiman, 2016). Mental disorders have been associated with significant disability with as much as 78% of patients with schizophrenia reporting disability (Fakorede et al., 2020). In line with the definition of the International Classification of Impairment, Disability and Handicap, any condition which results in interference with activities of the whole person in relation to the immediate environment can be termed as a disability (World Health Organization, 1980). With this definition, many mental disorders could be potentially disabling. Results from the World Health Organization (WHO) Collaborative Study on Psychological Problems in General Health Care demonstrated that, psychological disorders were consistently associated with increased disability when compared with physical illnesses if the severity of the physical disease is controlled for (Ormel, 1994). The study also noted that while physical disease severity was independent of disability, the effect appeared to be weaker than that of mental disease in overall disability (Ormel, 1994). Therefore, the severity of the mental disorder directly correlated with disability.

The global response to disability has been to provide international conventions and develop country-level legislations meant to protect the rights of persons with disability (Discrimination against Persons with Disabilities (Prohibition) Act, 2018; United Nations, 2006). The United Nations' Department of Economic and Social Affairs described disability laws and acts as "instruments through which countries abolish discrimination against persons with disabilities and eliminate barriers towards the full enjoyment of their rights and inclusion in

society" as enshrined in the adopted 2006 Convention on the Rights of Persons with Disabilities (United Nations Department of Economic and Social Affairs, n.d.).

The Mental Health and Disability Law in Nigeria

As a form of protection of the mentally-ill from pre-colonial times, Nigeria's first mental health regulation came into force in 1916, about 44 years before her independence from the British colonial administrators in 1960, and it was christened the Lunacy Ordinance (Ogunlesi & Ogunwale, 2012; Ugochukwu et al., 2020). The ordinance allowed confinement of persons with mental illness in asylum untreated or with less than adequate treatment, and it was without provision for the establishment of psychiatric hospitals or formal treatment by psychiatrists (Ugochukwu Ude, 2015). The main goal was to prevent people with mental disorders from roaming the streets, and ensure safety of the society (Ugochukwu Ude, 2015).

The Ordinance transformed into "Lunacy Act" in 1958 (Ugochukwu et al., 2020; Ugochukwu Ude, 2015). In spite of its overt recognition, and institutionalization of the social welfare approach, and relegation of the human rights approach, over the years, the current law has managed to comply to some extent with the WHO recommendations in the areas of provisions for emergency and involuntary admissions, the level of professional competence required for the diagnosis of mental disorders, the provision of oversight and review mechanisms, as well as incorporation of a segment to deal with offences committed by asylum officials and award of appropriate sanctions (Ogunlesi & Ogunwale, 2012).

However, the Lunacy Act is fraught with shortcomings such as its description of "mental illness as lunacy; and according to this law, 'lunatic' includes idiots and any persons with unsound mind". The use of these words is not only discriminatory and derogatory, it also falls short of the WHO's definition of mental health disorders and violates the rights (to respect for the person) of persons living with mental disabilities (Ugochukwu Ude, 2015), and discourages their inclusion into the society. In addition, the law gives priority to institutionalized care without adequate provision for treatment in the community, it does not accord specific recognition to the human rights of persons with mental disorders as recommended by the WHO (Ogunlesi & Ogunwale, 2012), and it empowers the medical professionals and magistrates to confine individuals diagnosed with mental illness (Ugochukwu et al., 2020). Due to its asylum orientation, it also fails to carefully separate mental health institutions from the criminal justice system with colonial administrative prisons and purpose-built prison settings being designated as mental asylums in the first half of the 20th century in Nigeria (Ogunlesi & Ogunwale, 2018). Since its enactment in 1958, the Lunacy law is yet to be amended, hence its failure to keep pace with modern mental health challenges, and realities (Ogunlesi & Ogunwale, 2018; Ugochukwu et al., 2020).

The gamut of evidence from research suggests heterogeneity of outcomes for individuals with mental illness. It also reveals the enormousness of the benefits of reducing stigma and discrimination against people challenged with mental illness, and ensuring their inclusion into the wider society; as well as continuing the emphasis on deinstitutionalization, and discouragement of forced admissions that disregard, and neglect the human rights of those with mental illness. The foregoing stresses the urgency of the necessity to make a paradigm shift from hospital-based care to community care in order to improve the quality of life of people living with mental illness, and prevent their segregation and exclusion from the society which would effectively amount to discrimination. In spite of these, the Lunacy law of 1958 remained in force with many unsuccessful attempts at challenging it during the Nigerian military era, until 2003 when a more remarkable attempt was made by two then serving senators, one of whom was a psychiatrist. However, the passage of the bill was unsuccessful within the lifespan of that senate (Ogunlesi & Ogunwale, 2012; Ugochukwu et al., 2020).

At present, the Mental Health Bill, 2020 which was passed in the senate in December 2020 and received concurrence in the Federal House of Representatives in February 2021 is yet to be given the presidential assent needed to enact it into Law. This Bill when enacted will address many of the failings of the Lunacy Act of 1958 and bring Mental Health Legislation in Nigeria closer to global best practices. This bill provides for the protection of rights of persons with mental disorders, attempts to ensure equal access to treatment and care, discourages stigma and discrimination towards persons with mental disorders, sets standards for mental health treatment, promotes access to mental healthcare and services, provides for both voluntary and involuntary treatment, and proposes mechanisms to implement the provisions of the Mental Health Bill (National Mental Health Bill, 2020).

Given the deficiency in mental health law in Nigeria, it would seem reasonable to expect that some level of protection for the mentally-ill would be offered by disability laws within the country. Unfortunately, it is noteworthy to state that in Nigeria, mental health disabilities are not conspicuously addressed in the current disability law, the Discrimination against Persons with Disabilities (Prohibition) Act 2018 (Senate of the Federal Republic of Nigeria, 2019). This act appears heavily slanted towards physical disabilities based on the tone of its specific provisions (Senate of the Federal Republic of Nigeria, 2019). In spite of this, its interpretation section (s. 57) is quite helpful in additionally describing a person with disabilities as "a person with long-term physical, mental, intellectual or sensory impairment which in interaction with various barriers may hinder their full and

effective participation in society on equal basis with others". Thus, the specific mention of "mental" and "intellectual" impairment gives a broad-based applicability to the provisions of the law in terms of the variety of mental disorders which may come under its purview. The law emphasizes the rights of people living with disabilities, the importance of them enjoying highest possible quality of life, the need for unhindered access, devoid of any form of discrimination to public infrastructures and transportation facilities, assistive devices, free education up to secondary school level, equal employment opportunities (at least 5% of employment is reserved for them in all public organizations), living accommodation, free health in all public health institutions, participation in politics and public life and recommendation of sanctions against individuals, and institutions that violate their human rights, and/or discriminate against them (Senate of the Federal Republic of Nigeria, 2019). Furthermore, the law authorizes issuance of certificate of disability either temporarily by a medical doctor with the approval of the National Commission for Persons with Disabilities (expires after 180 days) or permanently by the Commission based on professional evaluation, and recommendation of a medical doctor, after which the individual begins to enjoy all the rights, and privileges as contained in the Act (Senate of the Federal Republic of Nigeria, 2019).

The Way Forward

The crux of this paper is that the legislative intention of bringing mental health-related disability under the general rubric of disability should be given affirmative action in terms of the interpretation of the terms of the law and the implementation thereof. The extreme focus of the law on physical disability, being the more obvious variety of functional limitation, will serve to impose double jeopardy on the mentally-ill if their equally disabling state of health is subordinated to physical disability. This would potentially result in those with mental disability who are already suffering stigmatization in the society being further discriminated against in the community of those experiencing disability. There ought to be equivalence of focus in terms of both physical and mental disability. To achieve this, it is crucial that all arms of government should read the reality of mental disability into the spirit and letter of the current disability law.

Conclusion

Overall, the provision of mental health care in Nigeria remains a daunting challenge to the professionals, and other stakeholders due to the low priority accorded it by the government in terms of policies, funding and dearth of legislative actions to make laws that are in keeping with modern realities regarding deinstitutionalization, emphasis on community mental health care, inclusion of persons living with mental disabilities into the society that is devoid of discrimination, and enforcement of their fundamental human rights. Continuous advocacy directed at the government and engagement of non-governmental stakeholders is imperative in putting mental health care in its rightful place within the construction of the protections available to persons with disability in Nigeria.

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Short Biographies of the Authors

Author1: Akinsola Idowu Akinwumi. (akinsolakinwumi247@gmail.com, akinsola.akinwumi@huji.ac.il, drakinwumi@abuad.edu.ng) MB, ChB (Ife), CDP (FUTA), PHF (Rotary International) FMCFM (Nigeria), MPH (HebrewU, Israel) is a Lecturer and a Consultant Family Physician at the Department of Family Medicine, Afe Babalola University, Ado-Ekiti (ABUAD), Nigeria and ABUAD Multi-System Hospital, Ado-Ekiti, Ekiti State, Nigeria respectively. In the year 2005, he led a group of young people that constructed a bridge over a gully separating two markets in his community (Ileogbo, Osun State, Nigeria) to avert a future occurrence of an incident of drowning of a girl child that occurred during a heavy downpour. In 2010, among other public health interventions, he worked with Bolori community to install a complete water borehole system alongside a generating set for electricity supply to Bolori, Maiduguri, Borno State, Nigeria with the goal of tackling cholera epidemics. He is actively involved in many research groups, and he has published some scientific works that are beneficial to the wider society in books, local and international peer-reviewed journals.

Author2: Olorunfemi Oladotun Ogunwobi (olurunfemi.ogunwobi@bowen.edu.ng) MBBS, FWACP is a Lecturer in the Department of Medicine, Bowen University, Iwo, Nigeria and a Consultant Psychiatrist with the Neuropsychiatric Hospital, Aro, Abeokuta, Nigeria. He completed his basic Medical degree in The University of Lagos in 2005 and his fellowship in Psychiatry from the West African College of Physicians, Faculty of Psychiatry in 2013. He has worked as a lecturer since he completed his fellowship and has been passionate about adolescent mental health. He is a member of the Association of Psychiatrists in Nigeria (APN) and he has a number of Publications in international peer-reviewed journals. He is an avid reader and enjoys playing chess.

Author3: Akintayo David OlaOlorun (akintayo.olaolorun@bowen.edu.ng) BM,BCh, MPH, FMCGP, FRSPH is an Associate Professor of Family Medicine at the Department of Family Medicine, Bowen University, Iwo, Osun State, Nigeria and a Chief Consultant Family Physician at the Department of Family Medicine, Bowen University Teaching Hospital, Ogbomoso, Oyo State, Nigeria. He is also a Public Health Practitioner, and he has been a Clinician for 39 years and a Postgraduate Trainer for 30 years. He served as the Chairman, Medical Advisory Committee of the Bowen University Teaching Hospital, Ogbomoso on two occasions and he is the current Head, Department of Family Medicine, Bowen University, Iwo and Bowen University Teaching Hospital, Ogbomoso. He has authored and coauthored a good number of publications in both local and international peer-reviewed journals.

Author4: Adegboyega Ogunwale (monaolapo@yahoo.co.uk) MBBS, PGD, LLM, MSc, MRCPscyh, FWACP is a Chief Consultant Psychiatrist at the Neuropsychiatric Hospital, Aro, Abeokuta,Ogun State, Nigeria. He holds a Master of Laws Degree (Medical Law and Ethics) from the University of Edinburgh and a Postgraduate Diploma in statistics. He is a member of the International Association of Forensic Mental Health Services and currently serves as the Chair of the Emerging Forensic Systems Interest Group. He is also a member of the Mental Health Law and Policy Institute of Simon Fraser University, Canada and the American Academy of Psychiatry and the Law. He has authored a good number of publications in both local and international peer-reviewed journals and serves on the editorial boards of the Forensic Science International – Mind and Law Journal and the International Journal of Forensic Mental Health. He is a co-editor of the Handbook of Forensic Mental Health in Africa – Routledge (UK).

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