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The Rights of the Mentally Ill and the Nigerian Society: Enhancing Dignity in Mental Health through Legislation

Abdulwasiu Ojo Akorede YUSUFF, PhD
Department of Public Law, Faculty of Law, Obafemi Awolowo University, Ile-Ife, NIGERIA

Abstract
This paper examined the negative societal attitude and misconceptions about mental illness especially in Nigeria. It argued that the existing legal presumptions and templates concerning mental illness and the mentally ill reinforce the grossly abusive societal attitude. The paper surmised that the rights and entitlements of the mentally ill to the recognition and protection of their dignity, among other rights, are covered by well-known national and international legal and policy frameworks. Although the relevant laws are noted to be dysfunctional and the few positive ones have largely been disregarded, the paper nevertheless concluded that necessary turn around must be built on reform in substantive law and their application consistent with international best practices.
Keywords: Rights, Mental Illness, Patient, Dignity, Law, Nigeria.

1. Introduction

Currently, there is no composite Federal legislation regarding management of mental health in Nigeria. The Lunacy Act 1916 as amended by the Lunacy Act 1959, which used to apply to managing mental health issues,[1] is as good as moribund because it was not included in the Laws of the Federation of Nigeria 2004.[2] The law is largely a derivative of the common law and old legislation in the U.K. The equivalent Lunacy law of some of the federating states of Nigeria is not in any better position. The Mental Health Bill 2013 which would have significantly improved the situation is yet to be seriously considered and or passed to law by the National Assembly of Nigeria. Consequently, the existing mental health law in Nigeria remains largely custodial, fear mongering, and woefully compares with similar legislation in other parts of the world. In fact, as a colonial heritage, it can be considered a 'legal antique'.[3]

Mental disorder is widespread in Nigeria but the plight of the mentally ill in the country is quite appalling. Horrendous report of murder, rape, assault, neglect and diverse maltreatment is commonplace. The mentally ill are further subjected to series of indignities, prejudices, discrimination, stigmatisation, abuse and general degrading treatment. It is not uncommon to see mentally ill patients under treatment being 'chained to trees or beds, locked in a cage, left without food for many hours, deprived of family support, and subjected to inadequate personal hygiene'.[4] It is natural to look to or expect the law to provide some succour or redress the situation. On the contrary however, it appears the law, in reality, is complicit in the distasteful and pitiable situation.

This paper takes a critical and comparative look into the role of law in changing extant societal attitude and misconceptions about mental illness. It equally underscores the imperative of changing the dysfunctional legal templates and assumptions which appear to reinforce and perpetuate the prevailing but unacceptable social attitude. The paper proceeds on the premise that the mentally ill are human beings who are not less deserving of the protection of their human dignity recognized by well-known national and international frameworks of law, policy and human right documents and discourses. The paper provides a highlight of some of the legal consequences of being deemed to be of 'unsound mind', in other words, being mentally ill, and suggests an urgent change consistent with international best practices and constitutional requirements in Nigeria.

2.0 The concept of Dignity

According to Michele Funk, et al, dignity can be defined as 'the inherent and inalienable worth of all human beings irrespective of social status such as race, gender, physical or mental state'.[5] Traditionally, the concept of human dignity 'acknowledges the intrinsic worth of all humans; it is an engine of individual empowerment,

[1] Onyeama, W.P.C., "The law and Mental Illness", in Umerah, B.C., ed, Medical Practice and the Law in Nigeria, Nigeria: Longman Nigeria Limited, 1989, p. 158.
[2] The current law seems to be the Mental Health Act 1959 which was a review of the Lunacy Act 1916. The law obviously has become obsolete in addressing relevant mental health issues in Nigeria. See, Afeez Hanafi, 'Depression forces 800,000 to commit suicide yearly', *The Punch* (Newspaper), Friday, October 23, 2015, p. 12.
[3] Onyeama, W.P.C., *op.cit,* p.160.
[4] Credited to Dr. Matshidiso Moeti, Editorials, *The Nation* (Newspaper), Thursday, October 22, 2015, p.11.
[5] Funk, M., Drew, N. and Baudel, M., "Framework for Dignity in Mental Health: Supporting Dignity through Mental Health Legislation", Dignity in Mental Health-World Mental Health Day, 10th October, 2015, World Federation for Mental Health, p.14.

reinforcing individual autonomy and the right to self-determination'.[1] The concept of dignity had long been recognized in the history of protection of human rights. For instance, the preamble to the Universal Declaration of Human Rights states that 'recognition of the inherent dignity and of equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world.[2] Ronald Dworkin, Cohen-Almagor wrote, sees dignity as the central aspect of the intrinsic importance of human life.[3] Thus, 'a person's right to be treated with dignity is the right that others acknowledge his or her critical interests: that they recognize that he or she has a moral standing, and that it is intrinsically, objectively important how his or her life goes'.[4] In plain and direct terms, dignity 'is the fact of being given honour and respect by people' and/or 'a sense of your own importance and value'. Dignity is therefore a two way value flowing from the manner of treatment and attitude of others to a person and the individual perception of self, of one's personal worth and importance. Both are intrinsically linked, as the inner perception of an individual of his own worth, value and importance may have to be recognized and reinforced by others to be sustained. In the context of mental health and illness, the seeming lack of attention to mental health issues by the law and the catalogue of abuses, stigma and discrimination against mental illness and the mentally ill provide evidence of denial of dignified treatment of the mentally ill in the Nigerian society. Furthermore, human dignity in the context of mental health and mental illness does not translate only into avoiding abuses and harmful dealings and or respecting basic rights of the affected persons but also to recognizing that they have legitimate claims and entitlements which should not be denied on flimsy or perfunctory grounds. As Valdes, referring to Joel Feinberg, noted, what is called 'human dignity' may simply be the recognizable capacity to assert claims. To respect a person then or to think of him as possessed of human dignity, simply is to think of him as a potential maker of claims.[5] The situation where mentally ill persons are denied of decisional capacity on nearly all grounds, for nearly all issues and at nearly all times, merely by the fact of diagnosis of mental health challenges, seems to be an obliteration of their dignity when no clear and justifiable basis for such exists.

Although the concept of dignity is contested and had been described by an author as 'a useless concept in medical ethics' because it is considered vague and imprecise,[6] concerns about care deficiencies had prompted considerable activity regarding the development of dignity declarations, policy, scholarship and research.[7] Its importance is further borne out by the feeling of affected people that 'we lack dignity when we find ourselves in inappropriate circumstances, when we are institutionalised, where we feel foolish, incompetent, inadequate or unusually vulnerable'.[8] This, as would be shown below, is exactly how the mentally ill are treated.

3. The hideous trajectory of ill-treatment and discrimination against the mentally ill in Nigeria

Funk, et al., observed

> *...all around the world, many people with mental and psychosocial disabilities are deprived of their human rights. They are not only discriminated against but also subject to emotional, physical and sexual abuse in mental health facilities as well as in the community.*[9]

Societal attitude to the mentally ill in Nigeria is worse than described above. It is not only shameful and distasteful but is largely criminal. The mentally ill are seen as dangerous individuals, regardless of the type of the mental disorder, to such an extent that they become easy target of assault and prey of the criminally minded at the slightest provocation. Many who manifest psychotic disorder and are outside of a 'protected' environment (medical treatment centres, under close watch by loving family members) are often publicly stoned and beaten, chased with cudgels and offensive weapons, stigmatised and deprived of rights essential to a dignified living and generally abused on many fronts. Many other ones with mild or less serious mental illness are taken advantage of easily. Some are seen on the streets tied loosely together with ropes by the hands with begging bowls in hand. Usually, they have some presumed minder, care giver or coordinator who somewhat assumes responsibility for

[1] Bubela, T and Caulfield, T., "When Human Dignity is not enough: Embryonic Stem Cell Research and Human Cloning in Canada", p. 2. (Details of publication information could not be ascertained at the time of writing).
[2] United Nations General Assembly (1948), Universal Declaration of Human Rights, General Assembly Resolution 217A (III), UN Doc A/810, New York, United Nations General Assembly Official Records. The paper will later on focus more on the legal frameworks for the protection of human dignity.
[3] Cohen-Almagor, R., "Patient's Right to Die in Dignity and the Role of Their Beloved People", in Byrd Sharon B., Hruschka, J., and Joerden, J.C., eds, Annual Review of Law and Ethics, Band 4 (1996), Berlin: Duncker and Humblot, 1996, p. 217.
[4] *Ibid*.
[5] Valdes, E.G., 'Dignity, Human Rights, and Democracy', Rationality, Markets and Morals, Vol. 0, Issue 17, Perspectives in Moral Science, ed, Baurmann, M and Lahno, B., 2009, p.253-265 at 263.
[6] Mary Chambers, Ann Gallagher, Rohan Borschmann, Steve Gillard, Kati Turner and Xenya Kantaris, 'The experiences of detained mental health service users: issues of dignity in care', *BMC Medical Ethics,* 2014, 15:50, p.1. Available at-http://www.biomedcentral.com/1472-6939/15/50. (May 16, 2016).
[7] *Ibid.*
[8] *Ibid*.
[9] *Op cit,* p. 14.

them and who ultimately reaps the gain of their begging activities. While on the streets these persons are exposed to lot of vagaries and risks. They are often victims of hit and run drivers, subject to abuses and beatings and chased with cudgels, easily pick injuries and infections that are often neglected and untreated for a long time, fall prey to kidnappers for ritual and fetish purposes. The list of what they are exposed to is endless. Many, regardless of sex, have often been victims of sexual abuses, rape and sexual violence. The tragedy of this situation is that they are equally deprived of the sympathy and protection of the law. In the first instance, poor quality of care due to a lack of adequate qualified health and mental health professionals and dilapidated mental health facilities exacerbate the violations.[1]

The mentally ill are considered in many societies, inclusive of Nigeria's, to be dangerous and are dealt with accordingly. The attitude of many to the mentally ill is comparable to the attitude of majority of people to snakes. The general attitude to snakes is that of fear that every snake is dangerous, venomous and has an irresistible desire to bite, hurt and possibly kill. The consequence is that people either impulsively run away from all snakes and everything bearing semblance to it or take quick steps to strike first with intent to scare, inflict grievous harm or indeed kill it. This analogy between societal attitude to snakes and the mentally ill is quite apposite and is not exaggerated at all, at least in Nigeria. Every 'lunatic' is a suspect of dangerousness and is at best avoided altogether or pre-emptively scared away or impulsively attacked.

Nothing could be further from the truth.[2] Of course, some mentally ill persons with possibly psychotic conditions might portend some danger to themselves and others without being provoked. Such category of mentally ill persons are not significant, probably no more than ten per cent of all cases of mental illness, severe or otherwise.[3] Any mentally ill who displays propensity to attack should be dealt with as the case might demand, including forceful arrest, detention, restraint, incapacitation and compulsory treatment.[4] The situation where the mentally ill are abused and attacked on sight is horrendous and should be intolerable in any civilized society. It does not give any recognition to the dignity inherent in being a human being.

Furthermore, certain legal presumptions of incapacity or deprivation of competence of the mentally ill to enter into legal relationship or take decisions on some issues which affect them, perhaps more than any other factor, contributes to the appalling treatment meted to the mentally ill in Nigeria . These legal presumptions unwittingly reinforces the social perception and attitude that the mentally ill are 'disabled', 'incapable', 'dangerous' and 'unfit' and perhaps create the impression that the mentally ill are not under any form of legal or state protection. A brief highlight of the legal disabilities to which the mentally ill are subjected is apposite to the thesis of this paper.

4. Legal implications of being mentally ill or deemed to be of unsound mind in Nigeria

Although there are several legal implications of being mentally ill or deemed to be of unsound mind in Nigeria,[5] there is no proper legal definition of mental illness or mental disorder. Generally, law is engaged with the mentally ill on three key levels. One, legal provisions for the care, containment and or confinement of the mentally ill for the purpose of treatment. Two, legal rules governing rights, responsibilities and liabilities of the mentally ill in civil law and, three, responsibilities and liabilities or otherwise of the mentally ill for crimes and punishment. Some of these legal implications are briefly discussed.

4.1 Legal provisions for care and compulsory medical treatment of the mentally ill

Generally, mental illness or disorder could, in psychiatry terms, mean psychosis, neurosis, schizophrenia, brain disorder, multiple personality disorder, serious depression and such other state of mental defect arising from lack of proper or complete development of the brain, mind or mental ability, whether congenital or acquired. In most cases, law permits compulsory hospital admission or involuntary confinement of the mentally ill whose illness cause them to be a source of 'nuisance' or danger to themselves or others and whose appreciation of the fact is too affected to voluntarily seek and or accept the protection and treatment required. The number of those falling within such a category is probably not more than ten per cent of the whole.[6] In such cases, the law recognizes the

[1] *Ibid*.
[2] Kaiser, H.A., 'Mental Disability Law', in Downie, J., Caulfield, T. and Flood, C., eds, Canadian Health Law and Policy, 2nd ed, Canada: Butterworths, 2002, p. 272.
[3] Onyeama, *op cit*, p. 158; Kaiser, H.A., *ibid*, pp. 274-275; Mason, J.K. and Laurie, G.T., Law and Medical Ethics, 7th Ed, Oxford: Oxford University Press, 2006, p. 714.
[4] For example, a Nigerian court absolved a police officer of murder when he shot dead a mentally diseased person who went berserk inflicting machete cuts on people on the street. *State Vs Okojie* an unreported case (Charge No. HAU/16c/76) of an Auchi High Court. It was held that the officer acted reasonably in defence of others.
[5] This, generally, includes permission of compulsory admission to treatment institutions, contractual capacity, matrimonial capacity, testamentary capacity, criminal responsibility, political office competence, management of property and or finances and so on.
[6] Onyeama, W.P.C., *op. cit*, p. 158.

need to separate, confine, restrain if necessary, and treat the persons without their consent 'until such a time as they are well enough to resume their place in society without risk to themselves or to others'.[1]

As stated earlier, the extant law in Nigeria is the Lunacy Act 1959 which provides for the compulsory hospitalisation of the 'lunatic' by the magistrate upon certification of mental diagnosis and need for detention by medical practitioner. The Act failed to provide a detailed, case specific definition of mental illness or the so-called 'lunatic'. Apart from the use of the highly objectionable term 'lunatic' to describe someone with any type of mental disorder, it simplistically provides that a lunatic includes an idiot and any other person of unsound mind. This follows the prevailing definition in the old English Lunacy Ordinance which generally reflects an outmoded and constrictive understanding of mental health and which put emphasis on admission and detention of mentally ill patients rather than their care and treatment for the improvement of health and wellbeing of such patients.[2] It was basically a law to remove nuisance from the streets or wherever they might be found. It also leaves too much discretion to medical practitioners and magistrates to decide who a lunatic is and whether a treatment order would be necessary besides giving members of the community an opportunity to swear to an affidavit stating that another person is mentally ill; a source of danger to others and refuses to voluntarily accept treatment. The Act made no provision whatsoever for patient consent, offers no opportunity to the persons affected by detention order to contest it or appeal against the detention and defects grossly on provisions for the management of the affairs and properties of the affected person.[3] In the words of Onyeama, the essential features of the Nigerian Lunacy Act are that

> *All the old judicial authority for compulsory treatment is retained and…the procedures themselves are ponderous, inflexible and hedged around with the sort of archaic terminology and obsolete judicial formulations that have long since been abandoned in the more modern Mental Health Acts adopted in other countries.*[4]

A proposed Mental Health Bill 2003 would have made notable improvements in the extant law but it suffered progressively in the National Assembly of Nigeria till it was eventually thrown out in 2009.[5] The Bill, if passed to law, would have, for example, replaced the nomenclature 'lunatic' with 'mental disorder' defined under the Bill as 'any disability or disorder of mind or brain, whether permanent or temporary, which results in an impairment or disturbance of mental functioning'. Furthermore, the Bill appears to focus more on treatment as the goal of hospitalisation rather just removing a nuisance.[6]

These and other provisions introduced in the 2003 Bill are, without doubt, commendable but there is yet no need to rejoice. First, the Bill had been thrown out for reasons best known to the legislators and there is no predicting when, or if, it would be reintroduced successfully anytime soon. Second, even at its best, the Bill covers treatment of the mentally ill through compulsory admission but does not seem to particularly require respect for dignity and protection of human rights of the mental patients on admission. Thus, the catalogue of abuses may possibly continue against the patients.

4.2 Patient Decisional Autonomy and Consent to Medical Treatment

One of the cardinal principles governing modern day medical practice is that of respect for autonomy of patients. Practitioners are required by law and ethics to respect and defer to medical decision choices made by patients as opposed to substituting their own judgment.[7] Right to patient autonomy of medical decision making seems however to be particularly reserved for adult patients of sound mind.[8] This right is otherwise referred to as the right to consent or withhold consent to medical treatment. The right to consent is premised on the fact that every individual is entitled to his or her personal integrity and each person's body is inviolate. Consent therefore amounts to respect for the dignity of the person and recognition that every individual is an independent moral agent entitled to make choices consistent with his or her goals and desires in life. Without obtaining a legally

[1] *Ibid*.
[2] See Puteri Nemie Jahn Kassim, Law and Ethics relating to Medical Profession, Malaysia: International Law Book Series, 2007, p. 203.
[3] Esan, S. and Ijadunola, K., "Promoting Dignity in Mental Health", A presentation at the Symposium Organized by Foundation for the Care and Resettlement of the Mentally Ill (CAREMI) to mark the World Mental Health Day 2015, held at Obafemi Awolowo University Teaching Hospitals Complex, Ile-Ife, on Thursday, October 15, 2015.
[4] *Op. cit*., pp. 159-160.
[5] Esan and Ijadunola, *op cit*.
[6] *Ibid.*
[7] Yusuff, A.O. , "The Significance of the Supreme Court of Nigeria's Decision on Patients' Consent to Medical Treatment in *Dr. Rom Okekearu* v. *Danjuma Tanko*", *The Appellate Review*, Vol. 1, No. 1, September 2009, pp. 52-65.
[8] Ireh Iyioha and Yusuff, A.O., "You Give me Welfare but take my Freedom: Understanding the Mature Minor's Autonomy in the face of the Court's Parens Patriae Jurisdiction", *Quinnipiac Health Law Journal*, Quinnipiac University School of Law, Connecticut, Vol. 13, No 2, 2010, pp. 279-315; Yusuff, A.O., "Best Interest on Trial: Medical Decision Making on Behalf of the Incapable Child", *Akungba Law Journal*, (Faculty of Law, Adekunle Ajasin University, Ondo State), Vol. 1, No 3, January 2009, pp. 17-36.

valid consent prior to treatment, a doctor will be committing trespass to person and may even be found negligent and if the consequence of the consent failure is grave enough, a health professional may be liable in criminal assault and battery.[1] However, a patient may be denied the right to consent if he or she is considered incapable or legally incompetent to consent. This may result from inability to understand and or properly process necessary information relating to the treatment, its nature, purpose and options, the risks and implications of the treatment and prognosis of the underlying medical condition. The major problem, however, is that the mentally ill are readily and perfunctorily denied and deprived of this right to make treatment choices. It is often assumed that the mere fact of the mental condition of the patient inescapably means legal incapability or incompetence to consent to treatment. Hence, practitioners usually do not bother to give such patients necessary and required information that would have enabled a decision one way or another. This failure of interaction affects trust, negatively impacts on cooperation with treatment plans and is considered demeaning by many mentally ill patients. In a research detailing experiences of mentally ill patients on admission in some U.K. hospitals conducted by Chambers, et al, the result showed that the service users, that is the mentally ill patients on admission, considered their dignity and respect compromised by

1) not being 'heard' by staff members,
2) a lack of involvement in decision-making regarding their care,
3) a lack of information about their treatment plans particularly medication,
4) lack of access to more talking therapies and therapeutic engagement, and
5) the physical setting/environment which felt more like a restraining prison yard than a hospital and lack of daily activities to alleviate their boredom.[2]

This shows that failure to go through the painstaking processes of obtaining patient consent is antithesis to the idea of respect for dignity. As noted earlier, it would adversely affect treatment outcome as such patients deprived of information and opportunity to participate in making decisions regarding their care will be less likely to cooperate with practitioners and or comply with treatment plans being coercively forced down their throats. Besides, there are respected scholarly views and judicial decisions to the effect that mental impairment does not necessarily raise a presumption of decisional incompetence.[3] Accordingly, healthcare practitioners in charge of caring for the mentally ill ought to show enough empathy with the patient and treat them as persons on a case by case basis without denying decisional capacity to otherwise competent patients. In any case, capacity for medical decision making depends in part on the extent, gravity or degree of the intervention proposed and fluctuates constantly especially in instances of mental illness. Disagreement with health care professionals or other persons by the mentally ill on treatment decisions or plans does not necessarily imply incompetence.[4]

4.3 Response of the society to crime inclined mentally ill persons

Under the Criminal Code Act of Nigeria[5] 'insanity' is 'a state of mental disease or natural mental infirmity' which deprives a person 'of 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'.[6] The law generally is that any person found by the court to be insane at the time of committing an offence would not be pronounced guilty but is subject to being detained for the purpose of treatment at the pleasure of the state.[7] The experience however is that many individuals who are insane and who on account of that condition commits some wrongs are dealt with more severely and ruthlessly than those not affected. Hence, it is not uncommon to see mentally ill persons who commit petty theft on account of hunger being beaten up and violently attacked when not killed. This is part of

[1] McHale, J., Fox, M. and Murphy, J., Health Care Law-Text and Materials, London: Sweet and Maxwell, 1997, p. 319. Also, see Yusuff A.O., "Healthcare Institutions, Practitioners and Patient Relationship: Avoiding a collision course with the Law", *NIALS (Nigeria Institute of Advanced Legal Studies, Abuja) International Journal of Legal Studies,* Vol. 1. No. 1, 2013, pp.1-34

[2] Mary Chambers, et al, *op. cit*., p. 1.

[3] Buchanan, A. and Brock, D., Deciding for Others: The Ethics of Surrogate Decision Making, Cambridge: Cambridge University Press, 1989, p. 19; Brazier, M., 'Competence, Consent and Proxy Consents', in Brazier, M. and Loibjoit, M., eds, Protecting the Vulnerable: Autonomy and Consent in Health Care, London: Routledge, 1991, p.37; Lee, R. and Morgan, D., 'A Lesser Sacrifice? Sterilisation and Mentally Handicapped Women', in Lee, R. and Morgan, D., eds, Birthrights: Law and Ethics at the Beginnings of Life, London: Routledge, 1989, pp.143-144; Fennell, P., Treatment Without Consent, London: Routledge, 1996, p.257; *In the Estate of Park* [1954]; *Re T (Adult: Refusal of Treatment)* [1992] 4 All E.R. 649; *Re C (Adult: Refusal of Treatment)* [1994] 1 All E.R. 819; *B v Croydon District Health Authority* [1995] 1 All E.R. 683. See generally, McHale, J., Fox, M. and Murphy, J., Health Care Law-Text and Materials, London, Sweet and Maxwell, 1997, pp.267-285.

[4] Kaiser, H. A., 'Mental Disability Law', in Downie, J., Caulfield, T. and Flood, C., eds, Canadian Health Law and Policy, 2nd ed, Canada, Butterworths, 2002, p. 277.

[5] Criminal Code Act, Cap C38, Laws of the Federation of Nigeria 2004.

[6] *Ibid*, s.28.

[7] See generally, Okonkwo, C.O., Okonkwo and Naish: Criminal Law in Nigeria, 2nd Ed, Ibadan: Spectrum Books Limited, 2009, pp.132-149.

the unfortunate attitude of an uninformed society to either treating the mentally ill with respect to their dignity or affording them the legal presumption in favour persons considered insane.

4.4 Denial of Contractual Capacity

Mentally ill persons are generally presumed unable to make a valid contract because agreements that the law will recognize and give effect to require free and full consent and meeting of the conscious minds to bind the parties. Consequently, a person known to be suffering from a mental illness cannot normally make a valid contract unless it is certified that his/her mind was clear, composed and understanding at the time of making the contract.[1] Although this principle of contract was designed in part largely to protect the mentally ill from contractual exploitation, it is often used to their detriment by those seeking to avoid legal obligations and liabilities arising from contract with a mentally ill persons. In addition, the principle denies such persons of ability to freely enter into contractual agreements even when apparently able and competent to do so. This deprives the mentally ill of liberty to manage their affairs, estate and property as they choose. It equally allow others acting on their behalf to exploit them and choose options that may not necessarily be in the best interest of the affected persons or indeed that they are known to vehemently oppose. This is damaging to a person's sense of worth, dignity and self-determination foisting on them a condition of complete helplessness and frustration which may aggravate their condition.

4.5 Marriage and Matrimonial Causes

Mental illness may act as impediment to marriage and may act as ground for divorce or annulment of already contracted marriage.[2] S. 18 of the Marriage Act of Nigeria provides, for instance, that persons of unsound mind cannot consent to the marriage of his/her child under the age of 21 years. Furthermore, s.3 (1)(d)(iii) of the Matrimonial Causes Act of Nigeria provides that parties to a legally valid marriage must consent to it. A marriage is thus void where the consent of either of the parties is not a real consent because the party is mentally incapable of understanding the nature of the marriage contract. Similarly, under s. 5 (1)(b) Matrimonial Causes Act, marriage is voidable where at the time of the marriage either party to the marriage is (i) of unsound mind, or (ii) a mental defective, or (iii) subject to recurrent attacks of insanity or epilepsy. The Act was gracious enough to offer a definition of 'mental defective' as

> *A person who, owing to an arrested or incomplete development of mind, whether arising from inherent causes or induced by disease or injury, requires oversight care or control for his own protection or for the protection of others and is, by reason of that fact, unfitted for the responsibilities of marriage.*[3]

It does not stop there; mental illness may also be a ground for divorce or dissolution of marriage if a party to the marriage petitioning for dissolution claims that 'since the marriage the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent'.[4] Section 16 of the Act shed light on the relevant kind of behavior which is relied on for the dissolution sought. This, by s. 16(1)(g), is that the respondent is of unsound mind and unlikely to recover; or confined in an institution for the care of unsoundness of mind.

The above shows clearly that the odds are clearly stacked high against the mentally ill in the marriage context. It appears immaterial that the party seeking to void or annul the marriage was aware of the underlying mental condition of the affected party prior to the marriage and was not deceived into the marriage. It therefore leaves room for the party seeking to come out of the marriage to do so only after having exploited or exhausted the resources of the other party. Besides, the law seems to make no exception to where the mental condition started after the marriage or perhaps caused directly or indirectly by the petitioner! Thus it legalizes or encourages desertion and or avoidance of responsibility to take care of the spouse as a result of onset of mental illness. One may not insist that the law should bind an individual to a marriage where one of the parties suffer from or is under treatment for a mental illness for a prolonged period, nevertheless, presumption of annulment or dissolution should not be readily made to the detriment of encouraging remedial steps and support in aid of the affected party.

4.6 Testamentary Capacity and Mental Illness

Technically, a Will is 'a testamentary and revocable document voluntarily made, executed and witnessed according to law by a testator with sound disposing mind wherein he disposes of his property subject to any

[1] Onyeama, *op cit*., p. 162.
[2] Ibid, p.163. See also Nwogugu, E.I., Family Law in Nigeria, 3rd Ed, Ibadan: Heinemann Education Books (Nigeria) Plc, 2001, pp. 142, 166.
[3] S. 5(2) Matrimonial Causes Act (MCA).
[4] S. 15 (2)(C) MCA.

limitation imposed by law and wherein he gives such other directives as he may deem fit to his personal representatives otherwise known as his executors, who administer his estate in accordance with the wishes manifested in the Will'.[1] Generally, under the law in Nigeria, every adult person may make a Will. However, for a Will to be legally valid, a testator must have a sound mind and memory. In other words, must have the mental capacity to understand the nature of the act s/ he is involved in at the time the Will is made including a clear appreciation of her/his properties and estate as well as clear intent to bequeath her/his possessions to people s/he intends or is obliged to.

Oftentimes, the validity of a Will may be challenged on the ground that the testator was mentally ill at the time of making the Will and consequently his/her wishes should not be respected. Families, particularly those who felt aggrieved by the terms of a Will, have been known to raise the issue of insanity of their beloved deceased in order to invalidate the Will and have courts share the properties in a manner contrary to the expressed wishes of the testator. This practice which is not infrequently encountered in Nigeria constitute another assail on the life and dignity of a mentally ill persons. It seems not enough that nearly all his life he is denied the power of self-determination and respect for his autonomy and opinion but also after his death there is no respect for his memory and last desires.

Indeed, a person declared to be a lunatic or of unsound mind may be unable to inherit from the Will of the parents or other persons[2] and this may also be at the instance of those who wish to disinherit the mentally ill even when the affected person might not be as affected as unable to inherit or manage properties. Mental illness might also be adduced as a ground to take over the inheritance of the affected persons on account of preventing the property of their beloved departed from being wasted or thrown away by the legitimate owner who is adjudged incapable of managing his properties.

Indeed, aside the context of Will and inheritance, a mentally ill person may also be deemed incapable of managing real properties or finances leading to appointment of managers who may totally disregard the wishes of the affected person in making management decisions. The pervasive general assumption of incapacity of the mentally ill persons to handle or manage properties, in the absence of evidence or facts to that end, is remarkably demeaning and insulting and on its own can lead to depression and despondency.

4.7 Corporate Management and Employment capacity

The mentally ill suffers from legal disability to form or be part of the formation of a company in Nigeria. According to s.20 of the Companies and Allied Matters Act, 'an individual shall not join in the formation of a company if …he is of unsound mind and has been so found by a court in Nigeria or elsewhere'.[3] In a similar vein, 'a lunatic or person of unsound mind' is disqualified from occupying the office of a director of a company and if already a director, must vacate such office if he becomes of unsound mind.[4] Thus, the state of mental illness deprives an otherwise resourceful, industrious, experienced and promising entrepreneur of capacity to be involved or contribute to the running of a company even without or before any concern about his mental state arises. It also does not matter that the mental condition is mild, curable, manageable or temporary. The mentally ill is thus doubly afflicted, by the condition and by operation of unsympathetic law.

Another equally disheartening situation persists in Nigeria in the context of employment and the fate of the mentally ill. It is common for employers to fire an employee who becomes mentally ill or shows traits of mental illness on the job, this notwithstanding that the employment contributes to the health condition of the employee. Such employees can actually be summarily dismissed without any benefit or disability allowance being paid. Evidence also showed that when some mentally affected persons are offered employment or kept employed, they suffer myriads of discriminations, stigma and abuses.[5] According to Drew, et al,

> *The denial of the right to work because of stigma and discrimination is a frequent rights violation with far reaching consequences….Difficulties begin at the stage of finding work, even when the person is well qualified...*[6]

The authors also reported the experience of a person with mental disorder who was lucky to be employed thus

> *We [people with mental and psychosocial disabilities] tend to be underpaid and overworked. We are considered unprofessional, dangerous and incapable…Our years of experience and performance are totally disregarded because we always receive entry-level pay and do not get benefits that others do'.*[7]

[1] Abayomi, Kole, Wills: Law and Practice, in Egwaatu O.A., 'Limits of a testator on freedom of Will Testament', *The Guardian*, Tuesday, November 18, 2008, p.113.
[2] *Ibid*. See also, Nwogugu, *op. cit*, pp373-380.
[3] Companies and Allied Matters Act, Cap C20, Laws of the Federation of Nigeria, 2004.
[4] *Ibid,* ss. 257and 258.
[5] Drew, N, et al, *op. cit*, pp. 1666-1667.
[6] *Ibid*.
[7] *Ibid*.

The tragedy of this later situation is that the mentally ill who is able to work is deprived of that opportunity and is thus unable to earn a living to take care of him/herself. Yet, there is no social insurance, free healthcare, disability allowance, caring family or supportive community to attend to the various need of the affected person. It should not be surprising at all that people who find themselves in this situation become agitated and hostile to the society and often descend into aggravated depression and ultimately die miserably.

4.8 Political Disqualification and Incapacity

The Constitution is replete with provisions disqualifying certain persons from occupying some political offices in Nigeria or removal of such individuals from office on account of their being adjudged to be a lunatic or of unsound mind or otherwise declared unable to perform the functions of their offices.[1] It is unarguable that the best brains in the country should be called upon to rule and implement laws and policies for the good governance of the country. Any person who therefore shows signs of incapacity, incompetence or unfitness to optimally occupy or perform the functions of the relevant offices especially on the ground of ill-health, physical, mental or psychosocial should properly be excused.

If this is a given, the provisions should not be allowed to be used for political vendetta, witch hunting and mud smearing to score cheap points and destroy the ambitions of political rivals and members of the opposition. There had been incidents in Nigeria for instance where unsubstantiated allegations of history of mental illness had been made against aspirants to political offices (or even against some of their generations beyond memory) simply to damage their chances as denial of such allegations often does not offer much help to the smeared reputation. A history of mental illness ought not to be allowed to stand as a perpetual bar to legitimate aspirations of individuals save where it could be proved that the affected individual remains uncured or continue to manifest symptoms of the mental illness till the material time.

As a result of the constitutional provisions on disqualification due to unsoundness of mind, and the stigma associated with the condition of mental illness, a good number of otherwise competent persons avoid coming forward to serve in political offices. Some other persons' reputation is damaged for life with the multiplier effects on their prospects in future outside of politics as well as possible devastating impact on their children and family members as a whole. The overall implication is that the dignity of affected persons is obliterated in manners that cannot at all be remedied even by recourse to civil courts in defamation or similar suits.

The discourse above clearly shows that certain laws and policies, in substantive provisions as well as their implementation, grossly and negatively impact upon the mentally ill in Nigeria.

Although attempts have been made to deconstruct some of the misconceptions and clearly wrong assumptions, it is still needful to reinforce the role of law in supporting respect for the dignity of the mentally ill in Nigeria. The ultimate goal is to urge a change to the dysfunctional, discriminatory and phantom legal templates which appear to perpetuate the prevailing but objectionable societal attitude to mental illness and the mentally ill in the country. The paper therefore next highlights some national and international legal framework for the protection of the human rights and respect for the dignity of mentally ill persons in Nigeria.

5. National and International Legal Frameworks for the protection of persons with mental disability

It is perhaps paradoxical that defects in law or its implementation will attract a suggestion for more legal intervention. Nevertheless, in the particular instance, that is perhaps the most promising option combined with substantial public enlightenment for a change of attitude. Nigeria is not lacking in appropriate legal frameworks that might be invoked for the protection of the human rights and dignity of the mentally ill. Some of its obligations under international law as well as best practices in other jurisdictions might equally present a complementary framework to support the rights of the mentally ill. It is to these ends that the following brief highlights are made.

5.1 The Constitutional framework in Nigeria

The Nigerian constitution clearly imposes some restrictions on the right of the mentally ill or persons of unsound mind. S 35 (1) (e) states:

Every person shall be entitled to his personal liberty and no person shall be deprived of

[1] I999 Constitution of the Federal Republic of Nigeria, Vol. 3, Cap C 23, Laws of the Federation of Nigeria 2004. Particularly, section 66 (1) (b) dealing with the qualification for membership of the National Assembly; s. 107 (1)(b) on qualification for membership of State Houses of Assembly; s. 137 (1) (c) on qualification for occupying the exalted office of the President of the country; s. 144 (1) (a) & (2) on removal of the President from office on account of incapacitation to discharge the functions of his office as a result of suffering from such infirmity of body or mind; s. 182 (1) (c) on qualification for the office of the Governor of a state; s. 189 (1) & (2) on removal from office of a Governor suffering from infirmity of mind or body hindering the discharge of the functions of his office and lastly s.201 regarding qualification and removal from office of certain other state functionaries.

such liberty save in the following cases *and in accordance with a procedure permitted by law*-
(e) in the case of persons...of unsound mind...*for the purpose of their care or treatment or the protection of the community*;[1] (emphasis added)

This provision allows restriction of the liberty and freedom of persons of unsound mind when it is necessary for the purpose of caring for or treating them or the protection of the society. Thus, the mentally ill can compulsorily be admitted or committed to an institution for necessary psychiatric attention and cannot otherwise be restrained contrary to law. This is the essence of the constitutional provision that any restriction for care and treatment of the mentally ill must be *in accordance with a procedure permitted by law*. Unfortunately, many mentally ill individuals are subjected, even in so called care and treatment institutions, to conditions and experiences that could never have been permitted by law. Apart from all sorts of abuses to which the generality of members of the society subject the mentally ill, as detailed above, many so called mentally ill care centres and institutions rub salt on existing injuries of the mentally ill through unprofessional and unethical practices. The worst case scenarios are traditional healers and certain 'faith' or 'spiritual' based psychiatry homes where the mentally ill are subjected to unpalatable experiences.

Several other provisions of the constitution however create an extensive regime of protection and rights which the mentally ill are entitled to enjoy and not at all precluded from enjoying. These include-

(i) Right to dignity of the human person-

s.34 (1) provides that every individual is entitled to respect for the dignity of his person, and accordingly-
(a) no person shall be subjected to torture or to inhuman or degrading treatment;
(b) no person shall be held in slavery or servitude

This provision embraces the mentally ill as well. It is therefore unconstitutional to subject the mentally ill to torture, to abuses, deprivation of food and other needs, beatings and enslavement. Using the mentally ill to raise money through street begging and other forms of highly degrading and condescending manners they are treated are also unconstitutional. Even while on admission in hospitals, it amounts to torture and degrading treatment to chain or bound the mentally ill when other more respectable methods of restraint are available, where restraint is necessary due to violent behaviour. Very harmful treatment practices are also common in traditional healing centres and faith/religious based mental health centres. This is indeed a much worse scenario since there is less scrutiny or proper official monitoring of such mostly privately owned and run centres.

Besides, poor living conditions in mental health facilities and psychiatric hospitals are also part of the inhuman and degrading treatment. Problems such as overcrowding, outbreaks of preventable and contagious diseases caused by unsanitary conditions, appalling state of infrastructural facilities and conveniences and terrible nutrition may jointly and severally impede effective treatment and recovery.[2] In the words of a mentally challenged person on admission in a psychiatric institution in Zambia, as reported by Drew, et al,

> *Alas, the place of my treatment and care turned out to be a horrible place to live in. It was characterized [by] unhygienic living conditions, physical abuse, nakedness, and lack of food. This experience taught me that mental hospitals are more of a torture chamber causing more mental anguish and torment than ameliorating the mental situation of patients…It led to feelings [of] worthlessness, helplessness and hopelessness.*[3]

While such situation also exist in prisons which, at least in part, was expected to be a place of rehabilitation, it is much worse in the case of mental health facilities because the 'inmates' were not there on account of any wrong or crime committed against the state. Either way, it is highly condemnable that rights recognized and guaranteed by the constitution are willfully flouted and persons are treated worse than animals.

(ii) Right to life-

The Constitution guarantees that every person has a right to life and no one shall be deprived intentionally of his life except, among few other grounds, by an execution order resulting from conviction for crime by a court of law.[4]

Without an iota of doubt, many mentally ill/challenged persons are treated as if their life is worth nothing and is expendable with no questions asked. A good number are stoned and fatally wounded in public or attacked with dangerous weapons on account of unfounded fear that they are dangerous and threatening. In some cases too, as a result of lack of understanding of the nature and manifestations of mental illnesses which may involve hallucinations and delusions, members of the public in mob and execution fashions, attack mentally ill persons allegedly for confessing to be witches and responsible for the death or misfortune of certain other persons. Some are killed in the process with no one held responsible as if they were doing a great public service in the murder of fellow citizens. If the right to life is to be meaningful, it must translate to protection to all

[1] I999 Constitution of the Federal Republic of Nigeria, s. 35.
[2] Drew, et al, *op. cit.* p.1667.
[3] *Ibid*, p.1668.
[4] S. 33, 1999 Constitution of the Federal Republic of Nigeria.

persons regardless of their mental state.

(iii) Right to Private and family life-

S. 37 of the 1999 constitution of Nigeria also recognizes the right of every person to private and family life, including the right to marry and found a family. However, as had been shown in this paper, people with mental and psychosocial disabilities are denied the right to marry or remain married, and have children. Parental rights of the mentally ill are also terminated at will when no cause for such is shown or arrangements made for the mentally ill to regularly see and interact with the children. Thus, unwittingly, the system removes a possible therapeutic avenue from the mentally ill who might benefit to a considerable degree from opportunities to see, bond and interact with members of the family, especially children.

Apart from their underlying mental disability, many are further subjected to reproductive disability through non consented sterilization procedures. The fear is that they may pass genetic traits of their condition to future offspring. Even where such a fear is founded, other less intrusive medical options should be adopted to avoid or prevent the harm feared. Courts in some jurisdictions, particularly Canada, have decided on the illegality of such procedures when it is not otherwise justifiable. For instance in *Muir v. Alberta*[1] a woman who was sterilized without her knowledge or consent was awarded compensation with the court holding that the sterilization was high-handed, contemptuous, offends the community's and court's sense of decency and so little respected Muir's human dignity.[2] A similar conclusion was reached by the Supreme Court of Canada in *Eve v. E. (Mrs)(Re Eve)*[3] where the court held that health decisions made on behalf of decisionally incapable persons such as mentally ill individuals must be based on their interest, not the interests of others. Thus, the court reiterated, the sterilization procedure proposed by the mother of a mentally affected individual, Eve, which is non-therapeutic or required by the condition of the patient and may have permanently deleterious effect cannot be permitted.[4]

The implication is that the right of the mentally ill to private and family life must be respected and cannot be taken away in the absence of particularly compelling reasons.

(iv) Right to freedom from discrimination-

The constitution also recognizes the right to freedom from discrimination. S. 42 (1) provides that a citizen of Nigeria shall not be subjected to discrimination expressly or in the practical application of any law or by any executive or administrative action. As a follow up, s 42 (2) states that no citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

It is unarguable that persons with mental illness suffers a lot of discrimination and are subjected to deprivations that others are not subjected to on account of their conditions. The paper highlighted several fronts on which the mentally ill are discriminated against; this is in clear contravention of the constitutional provisions which forbid such practices. Urgent steps should therefore be taken to redress this anomaly and restore dignity to the mentally ill through equal treatment as far as is possible.

5.2 Statutory framework in Nigeria-Prohibition of Violence against persons

The provisions of the Criminal and Penal Codes of Nigeria criminalize assault and battery,[5] wounding and intentional infliction of grievous harm,[6] kidnapping and unlawful restraint,[7] rape,[8] stealing and cheating[9] and homicide- murder or manslaughter[10] of another, which are clearly applicable in the way mentally ill persons are treated in Nigeria. Those who maltreat, sexually abuse, injure or kill mentally ill persons should be treated as criminals deserving the full weight of the law. There should be serious commitment to the apprehension, prosecution and punishment of those found culpable, to create awareness and serve as deterrence to others who turn the mentally ill into easy preys.

Apart from clear cases of blatant criminality, there are other cases of domestic violence perpetrated against the mentally ill in Nigeria, by family members, guardians, traditional and orthodox health practitioners, neighbours, acquaintances and work mates, employers and total strangers in chance encounters. The law prohibiting violence against persons should be fully deployed for the protection of the mentally ill in the country. For example Violence Against persons (Prohibition) Act, 2015 prohibits and provide punishment for a range of violence and domestic abuse including, rape, inflicting physical injury on a person, coercion, forceful ejection

[1] *Muir v. Alberta* (1996), 179 A.R. 321 (Alta. Q.B.).
[2] Kaiser, H. A., *op. cit*., p.261.
[3] *Eve v. E. (Mrs)* (1986), 31 D.L.R. (4th) 1 (S.C.C.).
[4] Kaiser, H.A., *op. cit*., pp. 125-126.
[5] Criminal Code Act, Cap. C 38, LFN 2004, Ss. 252-253; Penal Code, Cap P 8, LFN 2004, Ss. 240, 262
[6] Criminal Code Ss. 295, 338-339; Penal code, s.244-2247.
[7] Criminal Code, Ss. 364-365; Penal Code, Ss 254, 271-273.
[8] Criminal Code, Ss.357, 360; Penal Code s. 282. See also s.1 of the Violence Against Persons (Prohibition) Act, 2015.
[9] Criminal Code, Ss.383, 419; Penal Code s.286, 320.
[10] Criminal Code, Ss. 306, 315-317; Penal Code, ss. 220-228.

from home, depriving a person of liberty, forced isolation or separation from family and friends, emotional, verbal and psychological abuse, abandonment of spouse, children and other dependants without sustenance as well as harmful traditional practices.[1]

In addition to the criminal prosecution option, victims of domestic abuse and violence may also rely on the tort law system to obtain redress and appropriate remedies for trespass to the person-assault and battery, false imprisonment, intentional nervous shock and so on. Impediments to seeking these remedies should be promptly removed.

5.3 International Law Framework-

International law, especially international human rights documents, provides a veritable useful template for the protection of the rights of the mentally ill. States, parties to the respective human right declarations, particularly the Universal Declaration of Human Rights, The African Charter on Human and Peoples Rights, and the International Covenants, must be held accountable and responsible for their adequate implementation.

The United Nations Universal Declaration of Human Rights 1948[2] in the Preamble recognizes the inherent dignity and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world. Article 1 provides that 'All human beings are born free and equal in dignity'. Other Articles provide, among others, for the right to be free from discrimination and distinction of any kind, right to life, liberty and security of the person, freedom from servitude or slavery, freedom from torture, cruel, inhuman or degrading treatment and the right to be recognized as a person.[3] The International Covenants and the African Charter has similar provisions all of which enjoins proper respect for the rights of individuals free from abuse by the state, its functionaries and other bodies or persons. Nigeria is a signatory to these documents and ought to be held fully accountable for their implementation in the protection of the rights of the mentally ill persons.[4]

Furthermore, the United Nations Convention on the Rights of Persons with Disabilities [CRPD] and the Optional Protocol is a compendium of rights of persons with disabilities imposing duties and obligations on state parties to guarantee and protect such rights by all means possible.[5]

The Preamble to the Convention, inter alia, recognizes that 'discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person' and the 'importance of international cooperation for improving the living conditions of persons with disabilities in every country, particularly in developing countries'. It is necessary to refer to extracts from the provisions of the CRPD because of their importance to the main thesis of this paper.

The General principles of the Convention, among others, include (a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons; (b) Non-discrimination and (c) Full and effective participation and inclusion in society;[6]

State parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability and accordingly undertake

(a) to adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;

(b) to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;

(c) to take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;…..[7]

Furthermore, the Convention emphasizes the concept of equality and non-discrimination[8] and enjoins state parties to undertake to adopt immediate, effective and appropriate measures

(a) to raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;

(b) to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those

[1] Violence Against Persons (Prohibition) Act, 2015, see Ss 1, 2, 3, 9, 10, 11, 13, 14, 16 and 20. See also Law to Provide Protection Against Domestic Violence of Lagos State, Jigawa State, and Ebonyi States of Nigeria.

[2] Adopted and proclaimed by General Assembly Resolution 217 A (III) of 10 December 1948.

[3] See Articles 1-10.

[4] Nigeria had indeed domesticated the African Charter making its provisions binding and enforceable in Nigerian courts.

[5] Convention on the Rights of Persons with Disabilities and the Optional Protocol. Available at- www.un.org/disabilities/documents/convention/convoptprot-e.pdf (May 16, 2016).

[6] *Ibid*, Article 3.

[7] *Ibid*, Article 4.

[8] Art. 5.

based on sex and age, in all areas of life .....[1]

It is also important to note that the Convention mandates states to take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities from being subjected to torture or cruel, inhuman or degrading treatment or punishment and from all forms of exploitation, violence and abuse.[2]

In whole, the Convention has a lot of provisions requiring that persons with disabilities be treated with respect acknowledging their entitlement to physical and mental integrity and protective of their dignity as humans.

Nigeria is a state party to the CRPD although not yet a signatory, [3] nevertheless, the country should be alive to its internationally recognized responsibilities.

A careful evaluation of all these provisions, national and international, reveals important protective framework for the mentally ill which ought not to be discountenanced as is presently the case in the Nigeria.

6. Enhancing dignity in mental health through Legislation

Existing legal and service delivery framework for the management of mental illness in Nigeria is grossly defective. It does not reflect current developments in psychiatric knowledge and best international practices in the area. There is consequently an urgent need to establish robust and pragmatic mental health law, policy and regulation. The law should advance strategic policy measures for the prevention of mental illness. There must also be informed, evidence-based definition and recognition of the wide range of mental disorder to encourage early detection, growth of expertise and the adoption of case specific treatment protocols rather than lumping all cases of mental disorders together. Furthermore, legislation should set appropriate standard for practice in the area of mental health at all levels of service delivery-orthodox/western medical practice, faith or religious based psychiatric practice, and traditional or complementary alternative medical practice. Emphasis must be given to specialization and the provision of dignified mental health care at all levels thus bringing a radical change to the delivery of mental health services in the country in general.

One of the major reasons for wrongful denial of rights and deprivation of dignity for the mentally ill in Nigeria is unjustifiable legal stereotypes, presumptions and impediments. Law subjects the mentally ill to certain legal incapacities especially in entering and independently operating in some legal relationships. Mostly, the legal impediments are meant to be protective of the mentally ill. However, and quite ironically, what had been meant to protect the mentally ill from exploitation and abuse in legal relationships often formed the basis of, and reinforces underlying assumption of general incompetence, stigmatization and discrimination against the mentally ill. Legislation should clarify that there is ordinarily a legal presumption of capacity and competence in favour of the mentally ill to manage their affairs and enter into valid legal relationships until the contrary is shown. Denial of capacity to make the most basic decisions about one's life can be irritating, provocative, demeaning, degrading, dehumanizing and lead to depression and suicidal thoughts. It is commendable and necessary that the law should protect the mentally ill from being exploited or taken advantage of. Nevertheless, the issue of legal competence or capacity of the mentally ill should be properly recognized as a matter of degrees which is also subject to fluctuations meaning that they may properly and independently act on most issues some of the time and some issues most of the time. The checks and protective valves of the law can then be engaged whenever it is clear that the mentally ill actually lacks capacity.

Much has been said in this paper and in relevant literature generally about the need for and the problems associated with institutionalized, coercive or detentive care of the mentally ill.[4] Global best practices show an increasing trend to de-emphasise institutionalization in favour of community health systems for the management of mental disorders.[5] This is complemented with an encouragement of voluntary seeking of treatment and provisions of discreet or home service when requested or required. The law in Nigeria can and should reflect this trend. Enhanced training, knowledge acquisition and updating, improved mental healthcare support infrastructures and better understanding of the nature of mental disorders as well as knowledge of more effective and less intrusive ways of treating them can significantly reduce incidence of compulsory admission and institutionalsation of mentally ill patients. It is certainly a worthy goal to pursue.

There is no denying the fact that some cases of mental illness or particular episode concerning a patient would require hospital admission and detention for closer monitoring and perhaps protection of the mentally ill

[1] Art. 8.
[2] Arts. 15 and 16.
[3] See www.ohchr.org/Documents/HRBodies/CRPD_Map_CRPD.pdf (May 16, 2016).
[4] Kaiser, H. A. , *op.cit*., pp. 303-306; Mason, J.K. and Laurie, G.T., *op. cit*., pp. 724-733; Puteri Nemie Jahn Kassim, *op. cit*, pp. 206; McHale, J., Fox, M. and Murphy, J. , *op. cit*. pp. 513-527; Emiri, F.O., Medical Law and Ethics in Nigeria, Lagos: Malthouse Press Limited, 2012, pp. 384-385; Onyeama, *op.cit*., pp. 158-162.
[5] Law Commission of Ontario, A Framework for the Law as it Affects Persons with Disabilities: Advancing Substantive Equality for Persons with Disabilities through Law, Policy and Practice, Toronto: September 2012, pp. 77-82; Puteri Nemie Jahn Kassim, *op. cit*, pp. 207; McHale, J., Fox, M. and Murphy, J. , *op. cit*. pp. 555-563.

or others. In such cases, dignified care should be the goal. However, in some cases it should be possible for a patient on involuntary or compulsory admission to contest the decision or process leading to the hospital retention. Similarly, where there had been a denial or deprivation of legal competence with regard to specific transactions which the mentally ill contests as wrongful, there should be a convenient and uncomplicated means of seeking formal remedy. As such, the law should establish a process of review and appeal at the instance of the mentally ill where some treatment decisions and/or legal presumption against him or her is deemed unjustifiable, unfair, malicious, unfounded and wrong.

It is equally mandatory that humane labour and employment practices with compulsory disability allowance for mental illness while on the job is put in place.

Aggressive enlightenment campaign and advocacy for respect and protection of the dignity of the mentally ill is imperative in Nigeria. This is with a view to ending stigmatization, discrimination, unfair prejudices, animosity and impunity displayed by the society towards the mentally ill. The suggested campaign and awareness creation should be pursued with the same seriousness and commitment given public health awareness and advocacy in HIV/AIDS, Polio eradication and other epidemics which threaten the community. Beyond this however, certain legal and policy measures in recognition, support and protection of the dignity of the mentally ill should as a matter of urgency be put in place. Unfair labour and employment practices against the mentally ill should be curtailed with compulsory disability allowance for mental illness while on the job. Humane labour and employment practices which reduce stress related mental challenges will also be very helpful as preemptive and preventive strategy.[1] Existing provisions of the law which prohibits and punishes violence against persons and abuse, whether physical or emotional, should be vigorously enforced. Abuses should not become tolerated just because it occurred in the hospital and was committed by practitioners in the course of rendering care; those who are not professionally or traditionally qualified at all to care for the mentally ill should be made to feel the heavy hands of the law. Taking the mentally ill off the streets for effective care and rehabilitation would also be a required measure.

Mental disorder is widespread in Nigeria. It has also been reported that WHO statistics suggests mental (ill) health might just be becoming an epidemic in Africa.[2] In the course of life anyone can become mentally ill, it follows therefore that necessary steps should be taken and quite urgently, to establish workable and effective structures for the care and protection of the dignity of the mentally ill. It is unarguable that management of mental health and care for the mentally ill is costly. The country must be prepared to make sufficient budgetary allocation to the health and medical sector and particularly to mental health management, among other pressing needs.

7. Conclusion

Generally, ending discriminations, prejudices and stigmatization of mentally ill persons would be laudable goals that immediately should be pursued by all levels of government in Nigeria.

It is time for law in Nigeria to set in motion the long and difficult process of ending the prejudices, correcting the misconceptions and building a lasting and dignifying framework for perceiving, handling and relating with mental illness and the mentally ill with humaneness and dignity. The first step would be an immediate passage of the Mental Health Bill 2013 with necessary modifications.

However, other necessary actions would have to follow quickly, particularly as it relates to integrating the mentally ill into different facets of activities in the society. All exclusionary practices must stop. The issue of access to services by the disabled in all public institutions must be taken seriously and enforced by law for effectiveness.

About the Author:

A.O.A. Yusuff is a Senior Lecturer in the Department of Public Law, Faculty of Law, Obafemi Awolowo University, Ile-Ife, Nigeria. He was called to the Nigerian Bar in 1995 and started working as an academic staff in 1997. He has the LL.M degrees of the Obafemi Awolowo University, Ile-Ife and the University of Toronto. He equally obtained the PhD degree of Obafemi Awolowo University in 2008. The author teaches, conducts research and publishes in his core areas of scholarly interest, namely, Intellectual Property Law, Health/Medical Law and Policy and Criminal Law. He is an alumnus fellow of the Canadian Institutes of Health Research (CIHR) and a lover of nature, culture and literature.

[1] See Yetunde Ebosele, 'Addressing mental health challenges in workplace', *The Guardian*, Tuesday, October 20, 2015, p. 29; Afeez Hanafi, 'Depression forces 800,000 to commit suicide', *The Punch*, Friday, October 23, 2015, p. 12.
[2] Editorials, "Challenge of mental Health," *The Nation*, Thursday, October 22, 2015, p. 11.