



## APPRAISAL OF THE RIGHTS OF PERSONS WITH MENTAL ILLNESS IN NIGERIA HEALTH CARE SYSTEM

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### Abstract

*The Mental Health Act 2021 in Nigeria marks a pivotal development in the country's efforts to address the complex challenges surrounding mental health care. This article provided a comprehensive appraisal of the Act, focusing on the rights, challenges and prospect of persons with mental health. Using the doctrinal approach, it offers valuable insights into the current state of mental health phenomena in Nigeria. Our findings showed that there are crucial provisions of the Act that safeguard the rights of persons with mental illness and enhanced their access to mental health services. These provisions of the Act aligned with international standards. The Act faces challenges in the effective implementation, inadequate funding, shortage of trained mental health professionals, infrastructural deficiencies, stigma, and cultural barriers to seeking help. In spite of these challenges, the Act presents promising prospects for improving mental health care in Nigeria. It provides a legal framework for protecting the rights of individuals with mental illness, promoting community-based care, and integrating mental health services into the broader healthcare system. The research recommendations include increasing funding for mental health services, strengthening the mental health workforce, enhancing infrastructure, combating stigma, fostering multi-sectoral collaboration, and conducting ongoing evaluation and research amongst others.*

**KEYWORDS: MENTAL HEALTH, MENTAL ILLNESS, RIGHTS, HEALTHCARE, MENTALHEALTH GOVERNANCE**

### INTRODUCTION

Mental illness is caused by different circumstances like trauma, childhood abuse, neglect from loved ones, social isolation and loneliness. Other causes of mental illness could be genetic history (having a family member with a similar illness), unhealthy habits like not having enough sleep, bereavement (losing someone close to you), and a long-term physical health condition. Mental illnesses do not only affect the individual, but also have a great impact on their family members and society at large. Individuals suffering from mental disorders struggle with varied symptoms such as delusions, hallucinations, manic episodes, impaired cognitive function, low self-worth, and sadness amongst others while their family members who usually are their major carers often bear the financial burden of the treatment, in addition to providing emotional and physical support they also undergo stress and face stigma and discrimination from members of the community. The impact of mental illnesses further extends to the society which usually leads to economic loss owing to a reduction in productivity.

Positive health is the basis for a long life and is a matter of serious concern. This is so irrespective of age, status, gender or even ethnicity. A positive and stable health status includes well-being in the body and mind, illness in any of these areas would limit productivity, and embarking on responsibilities or participating in daily obligations could be hugely impeded. This is why serious attention needs to be paid to both physical and mental health.

Sadly, despite the relevance of mental health and the effects of mental illness, the concept of mental illness has been largely misunderstood and disregarded throughout time. Historically, persons suffering from mental disorders were regarded as “demon-possessed”, “insane”, “mad” or “lunatic”, they were ostracised from society and chained in their homes, kept in workhouses of the church and eventually in lunatic asylums. Mentally ill persons were also subjected to varying forms of painful and inhumane treatments such as lobotomies (insertion of a sharp object into the brain), water therapy (hot and ice-cold-water baths), medically induced seizures (electro-convulsive therapy) and restraint through chains or



cages. However, a new era emerged when other forms of mental illness were recognised and there was a shift from viewing the illness as lunacy and serious regard was now paid to the rights of persons with mental illness leading to a change in the approach used in caring for the mentally ill, then the anti-psychotic drugs was introduced as a mode of treatment for mental illnesses leading to obsolescence of treatments such as hydrotherapy and insulin shock therapy. With the adoption of international instruments such as the United Nations (UN) Declaration on the Rights of Mentally Retarded Persons 1971, Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care 1991 and the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities 1993; right to medical care, the right to give consent to treatment, the right to privacy, the right to employment and education were recognised. Nevertheless, mental illness is still a growing concern in the present day.

In Nigeria, the treatment of mental disorder patients still lags behind best global practices significantly, because of the erstwhile weak and inefficient legal framework, premised upon the archaic Lunacy Act 1958. The conversation on mental health is still low-pitched in Nigeria because of the strong cultural beliefs, stereotypical stigma, shame and abuse associated with mental illness, although research has proven that mental health is key to an individual living a fulfilled and functional life. In 2019, a survey on mental health in Nigeria, by *Africa Polling Institute (API) and Epi AFRIC* showed how awareness of mental health is low in Nigeria, with most respondents being aware that they have mental health disorders, recognising it to be commonly caused by drug abuse, possession by evil spirits, sickness of the brain and majority of the patients are taken to a prayer house for spiritual interventions.<sup>1</sup>

The issue of human rights emergency on mental health in Nigeria is fuelled by poor societal attitudes towards mental illness, poor implementation practice, inadequate resources, inadequate facilities, and mental health staff. Although Nigeria is currently under multiple public health challenges just like many other countries around the world, such as shortage of health workers, health and social workers' burnout, suicidal episodes of patients, communal violence and insecurity; despite having legal frameworks that have addressed issues like these, the persistent re-occurrence of these issues reflects poor implementation culture of laws in Nigeria. The National Mental Health Act is not exempted from it. With fewer than three hundred (300) psychiatrists for a population of more than two hundred million (200,000,000)<sup>2</sup> most of whom are based in sub-urban areas; with poor knowledge of mental disorders at the primary healthcare caring for people with mental illness is typically left to family

members. The scarcity of community-based and primary healthcare services means that access to care is restricted to the most severe cases, usually in the form of psychiatric inpatient care or makeshift institutions, the result of this is a chronically and dangerously under-resourced mental health system catering to the needs of an estimated one in eight Nigerian people who suffer from mental illness.

Generally, reforms are made in law to improve upon or remedy an existing deficiency discovered in a previous legislation; the same is the case of Nigeria's National Mental Health Act 2021, it was enacted due to several crucial issues previous legislations did not consider, this current mental health act stems from the Lunacy Ordinance 1916; the first regulatory instrument to address the treatment of mental illness in the country. It was later amended into law and called the Lunacy Act 1958. One notable development of this act is that it made provision for the protection of patients' rights, and gave medical practitioners and magistrates the ability to determine who is a lunatic, when to detain and how long such a person should be detained. In a bid to reform this law due to its inconsistency with international standards and human rights provisions, the National Mental Health Policy 1991 was enacted. It provides that mental health should be integrated into general health services at all levels and placed a larger responsibility of ensuring comprehensive access to mental health care on the primary health system. All these previous legislations defined mental illness to narrowly mean lunacy leaving out cases like anxiety, trauma and so on; non-governmental organisations like the National Mental Health Stakeholders Forum (NMHSF), National Association of Psychiatric Nurses (NAPN) and their likes raised awareness for Nigeria to adjust her laws to be in line with provisions of international conventions in which Nigeria was a signatory. In 2003 and 2013, a gap of ten years, two bills were sent to the legislative houses of the National Assembly but they did not make it to the 3<sup>rd</sup> reading. In 2021 the upper and lower houses of the National Assembly harmonised the two bills and passed it. Former President Muhammadu Buhari signed the bill into law as the National Mental Health Act, 2021 in January 2022. The Act redefined mental health in Nigeria moving away from mental illness being lunacy and to a more acceptable term- 'mental illnesses'.

## OVERVIEW OF THE NATIONAL MENTAL HEALTH ACT 2021

The newly enacted act<sup>3</sup> is scheduled into five (5) parts and fifty-eight (58) sections. It tackles several issues ranging from the rights and protection of persons with mental illness to public safety, that is, when people with mental illness pose a threat to themselves and the society at large. One notable development of this act is the mental health service department that ensures proper implementation of the provisions of the act and oversees the delivery of mental health services in Nigeria.

<sup>1</sup> EpicAfric, 'Mental Health in Nigeria Survey' available at <https://africapolling.org/wp-content/uploads/2020/01/Mental-Health-in-Nigeria-Survey-Report.pdf> accessed on 15 January 2024.

<sup>2</sup> Okpalauwaekwe U, Mela M and Oji C. 'Knowledge and Attitude to Mental illnesses in Nigeria A Scoping' *World Mental Health Surveys JAMA.* (2004)291: 2581-2590.

<sup>3</sup> National Mental Health Act, 2021

The treatment of mental illness often requires the service of specialists who have been professionally trained in that field, like psychiatrists, psychologists, Clinical social workers, therapists and other medical practitioners and these services are often expensive, making large numbers of people in Nigeria with mental illness to receive their treatment mostly from traditional carers, and religious institutions within the community. Just a few who can afford the cost gets treatment at the hospitals which is why so many people resort to government medical institutions for subsidised treatment. Despite this, the budget for the sector is small and does not meet its expensive management demand. This is why there are only few affordable and accessible medical services in the country. The newly enacted Mental Health Act has made significant provisions to tackle these concerns as the extent of protection and rights available in the act is very essential to individuals with mental health conditions and the society at large.

The mental health sector is categorised under the public health system and the public health system is divided into three (3) tiers namely; the primary healthcare system, secondary healthcare system and tertiary healthcare system. The primary healthcare system is managed by the local government councils in collaboration with the state government and some international donor organisations such as the World Health Organisation (WHO). The primary healthcare system is mostly accessible in rural areas and when there are any critical situations, some cases are referred to the secondary or tertiary healthcare system. The secondary healthcare system consists of comprehensive health centres and general hospitals managed by the state government. The tertiary healthcare system which consists of federal medical centres, specialist hospitals and teaching hospitals are overseen by the federal government and in a few cases by the state government. The newly enacted Mental Health Act have made remarkable steps in its provisions to spread and regulate mental healthcare across all levels of the public health system and these points out to how urgent Nigeria needs to put in place practical steps to implement the Act.

It cannot be over-emphasised that the Mental Health Act has ushered in a new era for mental health in Nigeria and will play a vital role in facilitating the treatment of people with mental illness. The Act will strike a balance between the protection of patient's rights and ensuring their safety and that of society. It will prevent the discrimination and stigmatisation of people with mental illness even though the extent to which the Act does this needs to be examined. The provision of the Act will ensure people are treated with dignity and respect and are provided with safety against involuntary hospitalization or unwarranted restrictions. The implementation of this Act will create an environment where people are encouraged to seek help without the fear of the repercussions of such a decision. It is a strategic instrument for treatment plans as patients now have the right to actively participate in decisions that involve their treatment.

Mental health is a critical but often marginalised aspect of public health. Nigeria like many other nations has faced long-

standing challenges in delivering effective mental health. The enactment of the National Mental Health Act in 2021 represents a landmark development to combat these challenges, despite its commitment to address the lacunas of the previous legislations on mental health; the Act still have a few multifaceted challenges. One significant challenge of this Act is the allocation of resources. If the objectives of the act will be achieved, the budget need to be increased. Adequate funding is essential for the successful execution of mental health programmes and services outlined in the Act. Limited financial resources may impede the establishment of mental health facilities, training programmes for healthcare professionals, and awareness campaigns that will hinder the comprehensive implementation of the Act.

Stigma is another challenge the provision of the act might not be able to solve totally, because the stigma surrounding mental health remains a pervasive obstacle. Despite legislative efforts, societal misconceptions and discrimination persist, preventing individuals from seeking timely and appropriate mental health care. Overcoming these challenges requires sustained, targeted awareness campaigns to de-stigmatise mental health issues and encourage open conversations within communities. The act outlines ambitious goals, but the shortage of psychiatrists, psychologists, and other specialized professionals poses a barrier to providing comprehensive mental health services; one major problem the whole health system is facing in Nigeria is the shortage of staff, most practitioners get trained and relocate to countries with better remuneration.

The bedrock of mental health is human rights which have been the subject of every advocacy for mental health reform in Nigeria. The provisions of the 2021 Act have made efforts to ensure the protection of these human rights, making certain that the care of mental health in Nigeria is in line with international best practices including those outlined by the United Nations and World Health Organisation. The Act defines and protects the rights of Nigerians with mental illnesses and provides equal access to treatment, and care. It discourages stigma and discrimination, and sets standards for psychiatric practice in Nigeria, among other provisions. The Act came into force with these clear objectives.

(a) To provide direction for a coherent, rational and unified response to the delivery of mental health services in Nigeria.<sup>4</sup>

(b) To promote and protect the fundamental human rights and freedom of all persons with mental health conditions and ensure that the rights are guaranteed.<sup>5</sup>

(c) To ensure a better quality of life through access to integrated, well planned, effectively organised and efficiently delivered mental health care services in Nigeria.<sup>6</sup>

(d) To promote the implementation of approved national minimum standards for mental health services in Nigeria.<sup>7</sup>

<sup>4</sup>Section 1(a), National Mental Health Act, 2021.

<sup>5</sup>Section 1(b), *ibid*.

<sup>6</sup> Section 1(c), *ibid*.

<sup>7</sup> Section 1(d), *ibid*

(e) To promote recovery from mental health conditions and enhance rehabilitation and integration of persons with mental health conditions into the community.<sup>8</sup>

(f) To facilitate the adoption of a community-based approach to the provision of mental health care services.<sup>9</sup>

(g) To facilitate the coordination of mental health services delivery in Nigeria.<sup>10</sup>

The Mental Health Act, 2021 was carefully drafted to meet up with human rights needs of persons with mental illness in Nigeria. The Part I made provisions that protect the fundamental rights of individuals with mental health conditions and made efforts to improve the quality of life for these individuals by providing efficient and integrated mental health care services. It seeks to provide the adoption of community-based approaches to mental health care and aims to facilitate the coordination of mental health service delivery. Overall, the act seeks to promote recovery, rehabilitation, and integration of individuals with mental health conditions into society.<sup>11</sup>

Part II and Part III of the Act made provisions for the rights of persons with mental health conditions and Facility-based treatment or care. The provisions ensure the proper protection of persons with mental illness through rights and quality standards of treatment. Unlike the Lunacy Act of 1958 that allows admitting a person against his will of which in most process amount to abuse, the Act<sup>12</sup> provides that a person can only be involuntarily admitted where a medical officer has determined that because of the mental health condition, there is a serious likelihood of imminent harm to themselves or another person; or where there is evidence that failure to admit the person is likely to lead to a serious deterioration of that person. Generally part of the NMH Act<sup>13</sup> provides that the principle of the least restrictive alternative must be applied, and the person (or their legal representative) has the right to appeal against involuntary admission. It also provides that persons with mental illnesses should be protected from the use of forced treatment, seclusion, and any other method of restraint in facilities, including physical, mechanical, and chemical restraints<sup>14</sup>. It took a special recognition as regards the protection of children with mental health conditions, it provides that the best interest of the child shall be priority and that the rights of such child receiving mental health care shall be in accordance to the Child's Right Act (No.6 2003).<sup>15</sup>

Part IV of the Act made provision for criminal proceedings of persons with mental health conditions, this section of the Act allows a court to order the admission of a persons suspected of having a mental disorder to a hospital for observation. If medical evidence confirms the mental disorder and the patient

is likely to benefit from hospital treatment, the court may issue an order for the patient's detention and treatment in the hospital. The patient must be discharged once they have made sufficient improvement, and they have the right to appeal to the Mental Health Review Tribunal. If a patient does not show improvement, the court may issue a compulsory order for their detention and treatment. The Minister or Governor may also direct the transfer of a person serving a prison sentence to a hospital for treatment if they have a mental health condition. This transfer directive will have the same effect as a hospital order issued by a court.<sup>16</sup>

Part V of the Act highlights the process and intricacies of handling the property and affairs of persons with mental health conditions. It made provisions for the legal procedures for admission of the mentally ill to psychiatric facilities, the management and administration of their property<sup>17</sup> and their affairs and also the punishment for violating the rights of these peoples. The Act also outlines the punishment for refusal to supply information required by the department and the forgery or false entry of statements, Section 56<sup>18</sup> highlights the limitation of placing a lawsuit against the Ministry, before starting legal proceedings against the Ministry or its officers, the plaintiff must give 30 days' notice in writing, stating the cause of action, details of the claim, their name, and address, and what relief they seek. The notice and any related documents can be delivered in person to the Minister or sent by registered mail to the Ministry's address.

## RIGHTS AND PROTECTION PROVIDED IN THE MENTAL HEALTH ACT, 2021

The National Health Act, has made succinct provisions that addressed issues bordering on rights and protections of the mentally challenged persons within the Nigerian society. These rights range from their fundamental human rights to proprietary rights and to rights in criminal proceedings; they directly align with the various provisions of the Nigerian Constitution and international bodies like the United Nations and the World Health Organisations. This Act systematically itemised these provisions for ease of reference, enforcement and promotion. It outlined procedures on how they should be treated.

### Protection of Persons with Mental Illness

Since the adoption of the United Nations Convention on the Rights of Persons with Disabilities in 2006, different countries have made policies and laws to protect and promote mental health in their countries, few have adopted or amended the relevant laws and policies on the scale needed to end violations and promote human rights of the mentally ill. The WHO mental health ATLAS indicates that as at 2020 up to 87% of the WHO member state are responding to making

<sup>8</sup> Section 1(e), *ibid.*

<sup>9</sup> Section 1(f), *ibid.*

<sup>10</sup> Section 1(g), *ibid.*

<sup>11</sup> Sections 1 a-g, *ibid.*

<sup>12</sup> Section 28, *ibid.*

<sup>13</sup> National Mental Health Act, 2021.

<sup>14</sup> Section 28, *ibid.*

<sup>15</sup> Section 39, *ibid.*

<sup>16</sup> Section 45, National Mental Health Act, 2021.

<sup>17</sup> Section 49, *ibid.*

<sup>18</sup> National Mental Health Act, 2021.



stand-alone policies and plan,<sup>19</sup> and Nigeria have followed suit by reforming her laws in accordance with international best practices to protect persons with mental illness. In S.23<sup>20</sup>, it is an offence to ill-treats persons with mental illness. It provides that any health professional or person in the employment of a facility who strikes, ill-treats or neglects any person with a mental health condition or violates or neglects any rule or regulation made under this Act in relation to the treatment or care of persons with mental health conditions commits an offence.

### Protection against Discrimination

Scholars and scientists have pointed to persistent stigma as a major barrier to the success of mental health reform. Stigma occurs and it needs to be addressed at multiple levels of society including the structural level of institutional practices, laws, and regulations. Stigma has a negative effect on those seeking treatment or those that will want to seek help, its leads to low self-esteem and slow down recovery, it has led so many into deeper darkness of mental illness, some to depression, some to suicide or even murder of someone else. The Mental Health Act, 2021 have made a notable provision that prohibit any sought of discrimination against persons with mental illness in all legal and social sense and this provision is seen as a fundamental human right and is captured in S.12(1)(a)(b) and S.42 (1) of the Constitution of the Federal Republic of Nigeria 1999(As Amended).

The Act further provides that persons with mental illness shall have equal access to social amenities like medical and legal services just like every other person in the society.<sup>21</sup> And their illness will not be the reason to restrict them from receiving care or assistance from family or the government.<sup>22</sup> It frowns against any act that will restrict mentally challenged persons from engaging in educational or vocational training or any other leisure recreational activities just like every other person in the society.<sup>23</sup>

### Protection from any Form of Abuse

The general practice before the Act<sup>24</sup> came in can be regarded as abuse, where people perceived to be mentally unstable are chained down, taken to the beach and whipped to have the spirit of insanity cast out and so many unspeakable and inhumane treatment meted on their person. Abuse is the improper usage or treatment of a thing, often to unfairly or improperly gain benefit. Abuse can come in many forms, such as: physical or verbal maltreatment, injury, assault, violation, rape, unjust practices, crimes, or other types of aggression.<sup>25</sup>

<sup>19</sup> World Health Organisation, 'Mental Health ATLAS 2020' available at <<https://www.who.int/publications/i/item/9789240036703>> accessed on 11<sup>th</sup> march 2024.

<sup>20</sup> National Mental Health Act, 2021.

<sup>21</sup> S. 12(2)(a), NMHA, 2021.

<sup>22</sup> S. 12(2)(h), NMHA, 2021.

<sup>23</sup> S.12(2)(c)(d), NMHA, 2021.

<sup>24</sup> National Mental Health Act, 2021.

<sup>25</sup> Advanced English Dictionary, 10th edition.

Human Rights Watch found that people with actual or perceived mental health conditions, including children, are placed in facilities without their consent, usually by relatives. In some cases, police arrest people with actual or perceived mental health conditions and send them to government-run rehabilitation centres. Many are shackled with iron chains, around one or both ankles, to heavy objects or to other detainees, in some cases for months or years. They cannot leave, are often confined in overcrowded, unhygienic conditions, and are sometimes forced to sleep, eat, and defecate within the same confined place. Many are physically and emotionally abused as well as forced to take treatments.<sup>26</sup> The NMH Act has made a notable change to this stance; it prohibits any form of inhumane treatment against persons with mental illness.<sup>27</sup> protects persons with mental illness from physical and mental abuse and any form of exploitation, forced labour, violence, torture, cruel, inhuman or degrading treatment or punishment, including chaining.

### Voluntary Admission.

Voluntary Admission is when a patient willingly gets admitted into medical facility without any form of coercion. It is also referred to as voluntary commitment or voluntary hospitalization. The Oxford Concise Medical Dictionary defines it to be entry of a patient into a psychiatric hospital with his (or her) agreement.<sup>28</sup> The Department of Developmental Disability NeuroPsychiatry<sup>29</sup> opines that you are a voluntary patient if you choose to go to hospital for mental health treatment. The doctor might advise that staying in the hospital would be a good idea to help your mental health, they can help you decide if staying in a mental health hospital will help you but then it is your choice whether to stay in the hospital or not. This type of hospitalisation can end whenever the patient deems fit, unlike involuntary hospitalisation, the length of which is determined by the hospital. When a person willingly submits themselves for treatment, they get to have access to a comprehensive range of treatments, which are based on the best available evidence about what is most effective for their mental illness; treatment may include talk therapy, medication, and other interventions. The professionals work with them to help them get better; If their mental illness does not improve, or their health is at risk, and/or they are unable to remain as voluntary patient, they may be assessed for a 'Community Treatment Order'(A CTO is an order made by your responsible clinician to give you

<sup>26</sup> Reliefweb, 'Nigeria: People With Mental Health Conditions Chained, Abused' available at <<https://reliefweb.int/report/nigeria/nigeria-people-mental-health-conditions-chained-abused>> accessed on 6 march 2024.

<sup>27</sup> S.12(2)(b) NMHA, 2021.

<sup>28</sup> Concise Medical Dictionary, 'Voluntary Admission' available at <<https://www.oxfordreference.com/display/10.1093/acref/9780199557141-e-7141.001.0001/acref-9780199557141-e-10824?rsk=11807>> accessed on 28 Febuary 2024.

<sup>29</sup> Department of Developmental Disability NeuroPsychiatry, 'Being Voluntary Patient in a metal hospital' available at <[https://www.3dn.unsw.edu.au/sites/default/files/documents/3DN\\_MHA\\_Voluntary\\_ERv1.pdf](https://www.3dn.unsw.edu.au/sites/default/files/documents/3DN_MHA_Voluntary_ERv1.pdf)> accessed on March 1, 2024.

supervised treatment in the community. This means you can be treated in the community for your mental health problem, instead of staying in hospital. But your responsible clinician can return you to hospital and give you immediate treatment if necessary.<sup>30</sup>) – which would require specific treatment at regular intervals, or an ‘Inpatient Treatment Order’ (An inpatient treatment order authorises the compulsory treatment of a person with a mental illness in a treatment centre. People who are subject to an inpatient treatment order are required to receive psychiatric treatment, even if they do not want to<sup>31</sup>) – which would require them to stay in a treatment centre for a period of time. On voluntary admission, Section 27<sup>32</sup> provides thus —

(1) A person who presents himself voluntarily to a hospital or other

health facility for treatment for a mental health condition shall be entitled to —

(a) receive appropriate care and treatment of the same standard as a

person with physical health problems and shall be treated on an equitable

basis, including quality of in-patient food, bedding, sanitation, buildings, levels

and qualification of staff, medical and related services and access to

essential medicines; and

(b) be referred to an appropriate facility.

(2) No treatment shall be given to a person for voluntary care or admission

unless consent is obtained in accordance with section 26 of this Act.

(3) At the time of admission, a person for voluntary care or admission

shall be informed that he has the right to be discharged at any time and that

the person shall not be denied of such right, unless he meets the requirements

of involuntary care at the time the request is made.

(4) Where the person for voluntary care or admission requests a discharge

from a facility against medical advice, the facility shall grant the request within

24 hours unless the person meets the conditions for involuntary admission at

the time of making the request.

(5) The head of the facility shall report cases of long term stay to the

Committee.

## Involuntary Admission/Treatment

Involuntary Admission is a major step in the treatment of mental healthcare and is globally practised according to the domestic laws of each sovereign nation. It is regarded as Involuntary Hospitalisation or Involuntary Commitment. The Medical Encyclopaedia defined it to be a legal process through which an individual who is deemed by a qualified professional to have symptoms of severe mental disorder is detained in a psychiatric hospital (inpatient) where they can be treated involuntarily.<sup>33</sup> The British Health Emergency opined that Involuntary admission can only happen if you are not willing to go into hospital and have one of the following conditions: a mental illness, significant intellectual disability and severe dementia. In the United States of America involuntary admission is regarded as a civil commitment or involuntary hospitalisation; it is a legal process of hospitalising or confining patients to a psychiatric hospital to treat them of mental disorder against their will. Following the era of de-institutionalization, there were notable court cases that tried to shape the procedures and laws on civil commitment. In *Lake v. Cameron*,<sup>34</sup> the criteria for confinement to the least restrictive setting were derived, Mrs. Lake (plaintiff) was confined to a state hospital after a police officer found her wandering, unaware of her surroundings. Lake was admitted to the hospital, pending commitment proceedings, and was diagnosed with a senile brain disease associated with ageing and accompanied by memory loss. Two hospital psychiatrists noted that at times Lake could not remember the date or where she was. While awaiting her commitment hearing, Lake filed a writ of habeas corpus in a United States District Court, naming the hospital’s superintendent, Cameron, as a defendant. Lake’s writ was summarily dismissed, but she appealed. While her habeas appeal was pending, Lake was committed to the hospital by state-court order based on the testimony of the two hospital psychiatrists who concluded that Lake’s condition left her unable to care for herself. Meanwhile, a United States court of appeals remanded the district court’s habeas dismissal for a hearing.

At Lake’s habeas hearing, another psychiatrist noted that Lake had wandered away from the hospital for 32 hours and suffered a minor injury after being chased by a group of boys, but overall Lake’s condition had improved during her hospitalization. Lake had also been molested once while wandering in her demented state, but she believed that she could live safely without hospitalization. Lake was supported by her husband and sister, who did not have adequate resources to care for Lake but shared the desire that she not be confined to the state hospital. The district court denied Lake’s release again but stated that she could reapply if she found an adequate care facility. A new law became effective after the

<sup>30</sup> Mind Organisation, ‘Quick Fact’ available at <[<sup>31</sup> Department of Health, ‘Treatment Order’ available at <<https://www.health.vic.gov.au/mental-health-and-wellbeing-act-handbook/treatments-and-interventions/treatment-orders> > accessed on 4<sup>th</sup> March 2024.](https://www.mind.org.uk/information-support/legal-rights/community-treatment-orders-ctos/overview/#:~:text=A%20CTO%20is%20an%20order,you%20immediate%20treatment%20if%20necessary.> accessed 3<sup>rd</sup> March 2024.</a></p>
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<sup>32</sup> National Mental Health Act, 2021.

<sup>33</sup> Medical Encyclopedia, ‘Involuntary Commitment’ available at <[https://en.wikipedia.org/wiki/Involuntary\\_commitment#cite\\_note-2](https://en.wikipedia.org/wiki/Involuntary_commitment#cite_note-2)> accessed on 5<sup>th</sup> March 2024

<sup>34</sup> 124 U.S.App. D.C. 264, 364 F. 2d 657 (1966).

district court's decision, encouraging courts to consider the entire spectrum of available services when ordering involuntary mental-health treatment. Lake then appealed the district court's habeas dismissal.<sup>35</sup> The court determined that all patients who were not dangerous "should not be confined if a less restrictive alternative is available."<sup>36</sup> To this day, because of this ruling, psychiatrists who complete emergency evaluations are required by law to recommend the least restrictive level of treatment that will meet the needs of non-dangerous psychiatric patients<sup>37</sup>

Civil commitment in The USA finds its origin in the concepts of police powers and *Parens Patriae* in English law. *Parens Patriae* refers to the power of the king to act as "the general guardian of all infants, idiots, and lunatics"<sup>38</sup>. By assuming this role, they had the duty to cater for all persons who were incompetent to care for themselves, the police powers denote the power of the state to safeguard the welfare, safety, health, and morals of the public. The power to order the involuntary hospitalisation of a mentally ill person, being one which leads to a restriction of liberty, cannot be exercised arbitrarily.<sup>39</sup> In the case of *O'Connor v. Donaldson*<sup>40</sup> it was determined that a finding of 'mental illness' alone cannot justify a State's locking a person up against his will and keeping him indefinitely in simple custodial confinement, the court noted that a State cannot constitutionally confine, without more, a non-dangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends. In the case of *Lessard v. Schmidt*,<sup>41</sup> The court held that she ought to have been given sufficient notice of the committee hearing and that such notice should include the necessary details as to the date, time, reason for the detention, and the standard used. The court in *Lake v. Cameron*<sup>42</sup> also emphasised the need to consider the least Restrictive Alternative in civil commitment. Hence, where alternatives are available instead of institutionalisation/hospitalisation, they should be employed to ensure that the restriction of liberty is as minimal as possible, given the circumstances surrounding commitment. Another important factor to note regarding involuntary hospitalization is that it does not connote involuntary treatment. Hence, where a person is admitted involuntarily,

they may become competent to give consent to treatment, and where they refuse treatment such a decision may be upheld.<sup>43</sup>

In Nigeria before the enactment of the Mental Health Act 2021, the previous legislation and practice empowers the magistrates and doctors to determine when to detain a patients. Involuntary admission was used but not with a clear procedure like that of the USA; which was why there were lot of incident of human right infringement, incessant abuse and inhumane treatment, and all these issues were part of the major reasons the reforms of the previous laws were advocated for; these were the driving forces for the emergence of the new Act. Section 28 of the Mental Health Act 2021 made provision for Involuntary admission in Nigeria.

## When to Admit or Treat Involuntarily in Nigeria

A medical officer or head of the facility may, upon application, admit a person with mental health condition involuntarily, or involuntarily admit a person who had been admitted voluntarily, where he determines that the person has a mental health condition and (a) because of the mental health condition, there is a serious likelihood of imminent harm to that person or to other persons or (b) where there is evidence that the mental health condition is so severe that failure to admit the person is likely to lead to a serious deterioration in the condition of that person, or hinder the provision of appropriate treatment that can only be given by admission to a facility in accordance with the principle of the least restrictive alternative: Provided that the involuntary admission of a child with mental health condition or involuntary detention of such child who had been admitted voluntarily shall be a matter of last resort and shall only be applicable where community based alternatives are unavailable, unlikely to be effective or have been tried and failed.<sup>44</sup>

## Persons that can Apply for Involuntary Admission/Treatment

- Parents or guardian of the patients, if they are not available or unwilling then.<sup>45</sup>
- The Spouse of the patients if they are unwilling or not available then.<sup>46</sup>
- Any other legal representative.<sup>47</sup>
- where persons under paragraphs (a), (b) and (c) are not available or willing to make the application, by any other person, including a medical officer, law enforcement officer, appropriate government agent or any other person who has reasonable cause to believe that there is a deterioration in the mental

<sup>35</sup> *Lake v. Cameron* 364 F.2d 657 (1966).

<sup>36</sup> *Ibid.*

<sup>37</sup> *Megan Testa and Sara G west, 'Civil Commitment in United State' NLM (2021) 7(10) PP 30-40.*

<sup>38</sup> *M. S. Thomas, 'Parens Patriae and The States' Historic Police Power' SMU Law Review, (2016) (69) 759-762. available at <<https://scholar.smu.edu/smulr/vol69/iss4/4>> accessed 10th march 2024.*

<sup>39</sup> *Odusote A, 'Manifestation and Treatment of Mental Health in Nigeria: A Call for Responsive and Efficient Legislation in Compliance with Global Best Practices' Beijing Law Review, (2021) (12), 1268-1283. available at <<https://doi.org/1.4236/blr.2021.124065>> accessed 8th march 2024.*

<sup>40</sup> 422 U.S. 563 (1975).

<sup>41</sup> 414 U.S. 473 (1974).

<sup>42</sup> 364 F.2d 657 (1966).

<sup>43</sup> *Mariam Olajide, 'Appraisal of The Legal Frame work of The Mental Health in Nigeria' available at <*

*file:///C:/Users/user/Downloads/AppraisalofLegalFrameworkonMentalHealthinNigeria%20(1).pdf> accessed 5<sup>th</sup> March 2024.*

<sup>44</sup> S.28(1)(a)-(b) NMHA, 2021.

<sup>45</sup> S.28(2)(a) NMHA, 2021.

<sup>46</sup> S.28(2)(b) NMHA, 2021.

<sup>47</sup> S.28(2)(c) NMHA, 2021.

health condition of the person in respect of whom the application is made.<sup>48</sup>

### When an Involuntary Patient can Change Status.

The Act made it a right for patient who was admitted involuntarily to change his own status to a voluntary admission when a qualified medical professional certified that the person under involuntary care is reasonably capable of understanding the nature of the decision to change status; and such a change is in the patient's best interest.<sup>49</sup> Also notwithstanding the provision of subsection (1), the next of kin or Legal representative of the person shall be entitled to challenge the change of Status at the Committee within two days, Provided that such period may be extended by the Committee where the next of kin or legal representative shows good cause.<sup>50</sup> The act made it a criminal offence to still hold on to a person that no longer meets the criteria for involuntary admission.<sup>51</sup>

### Protection of a Child under the National Mental Health Act, 2021

In a survey of 500 children aged between 5-15 years in a small rural community in Nigeria, 15.0% were found to suffer from mental morbidity. Disturbances of emotion and conduct disorder constituted 66.7% of total morbidity detected.<sup>52</sup> There have been cases of children being maltreated, chained, abandoned in religious houses, some not properly diagnosed, some just locked up like prisoners with no treatment in dilapidated unhygienic structures. British Broadcasting Corporation (BBC)<sup>53</sup> in an article reported that there are cases of child maltreatment across Nigeria, the recent focus has been mostly on the north, triggered in mid-August of 2020 by the story of an 11-year-old who was locked up in a chicken coop in Kebbi State, while his father and step-mothers, who have now been charged to court, lived comfortably inside the house. This is to show the level of treatment received across Nigeria. In 2019 Human Rights Watch called on the government of Nigeria to ban chaining people with mental illness. The 2021 Mental Health Act encapsulate this right in S.12<sup>54</sup> and made provision on how children with mental illness should be treated in Nigeria. S.39<sup>55</sup> provides that notwithstanding anything to the contrary in the Act<sup>56</sup>, a facility shall only authorise the admission of a child with mental health condition where

(a) the living area is separate from that of adult patients; and

(b) the Federal Ministry responsible for Health or a state agency, as appropriate, has inspected the facility and certified in writing that the treatment shall be conducted in the least restrictive environment and that the facility is duly equipped with facilities which cater to the developmental needs of a child, and such other things which the Ministry shall determine to be necessary for the care of a child with mental disabilities.

Notwithstanding anything to the contrary in the Act<sup>57</sup>, the parent or guardian of a person with a mental health condition shall represent the person in respect of any matter under the Act<sup>58</sup> where the person is a child and shall act in his or her best interest : Provided that where an attending healthcare worker is of the opinion that the decisions which are being made by the parent or guardian of the child with a mental health condition are not in the best interest of the child, the attending healthcare worker may apply to the Court for the appointment of an independent legal representative who shall be required to make decisions in the best interest of the child. These provisions are in line with the provision in Principle 2 of the United Nation's Human Right<sup>59</sup>.

### Rights of Persons with Mental Illness

Rights are legal, social, or ethical principles of freedom or entitlement; that is, rights are the fundamental normative rules about what is allowed of people or owed to people according to some legal system, social convention, or ethical theory.<sup>60</sup> Rights are the entitlement of people, and in a sovereign nation, there are some entitlements that is deemed necessary, essential and pivotal they are encapsulated as Fundamental Rights. The following rights are fundamental to persons with mental illness and are protected by domestic and international laws.

### Right to Privacy and Dignity

The right to privacy and dignity of persons with mental illness is fundamental to their well-being and is recognized domestically and internationally as a core human right, every individual, regardless of their mental health status, possesses inherent worth and deserves to be treated with dignity. This means their humanity and value as individuals are recognized. These rights ensure persons with mental illness are not discriminated against or prejudiced based on their condition. This rights birth other rights that allows them to be treated equally and fairly in all aspects of life, including in

<sup>48</sup> S.28(2)(d) NMHA, 2021.

<sup>49</sup> S.29(1)(a)-(b) NMHA, 2021.

<sup>50</sup> S.29(2) NMHA, 2021.

<sup>51</sup> S.30 NMHA, 2021.

<sup>52</sup> AO Abiodun, 'Emotional illness in a paediatric population in Nigeria' *East Africa Medical Journal*, 1992 Oct;69(10):557-9.

<sup>53</sup> Nduka Orjinmo & Salihu Adamu, 'Why some Nigerian families lock up children and the mentally ill' (BBC, 4 october 2020) ><https://www.bbc.com/news/world-africa-53893271>> 8th march 2024.

<sup>54</sup> National Mental Health Act, 2021.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> United Nation, 'Principles for the protection of persons with mental illness and the improvement of mental health care' available at <[<sup>60</sup> Merriam Webster, 'Right' available at < <https://www.merriam-webster.com/dictionary/right>> accessed 8<sup>th</sup> march 2024.](https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-protection-persons-mental-illness-and-improvement#:~:text=1.,dignity%20of%20the%20human%20person.> Accessed on 8 march 2024, adopted 17 1991.</a></p>
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employment as provided in S.13<sup>61</sup> (it allows them to have equal opportunity to a job and not be sacked base on their mental health record), education as provided in S.12(2)(c),<sup>62</sup> healthcare provided for S.12(2)(a)<sup>63</sup>, and social interactions S.12(a)<sup>64</sup>

Respecting the privacy and dignity of persons with mental illness involves empowering them to make decisions about their own lives to the fullest extent possible. This includes respecting their autonomy, choices, and preferences, especially regarding their treatment and care. Right to privacy and dignity is intertwined as the right to dignity entails safeguarding the privacy and confidentiality of the mentally challenged, thereby ensuring their personal information and medical records are handled with sensitivity and respect, in accordance with legal and ethical standards. S.19) (1) <sup>65</sup> of the Act provide thus:

(1) A person with a mental health condition shall have the right to visit from relatives, a legal practitioner and other persons in private.

(2) Notwithstanding the provisions of subsection (1), where there are reasonable grounds to believe that a person will be violent or may otherwise pose a danger to others, he may be required to receive visitors under the supervision of an officer of the facility.

(3) A person with a mental health condition shall have the right to be examined in private, in the presence of his representative or the attending healthcare worker specifically required for the consultation or examination.

It is stated clearly in S.18<sup>66</sup> that people with mental illness have a right to partake in their treatment plan; it stated that a person with a mental health condition has a right to, where possible, participate in the formulation of his treatment plan and where a person with mental health condition is incapable of exercising the right under subsection (1) due to the nature of his condition, his legal representative shall be entitled to participate in the formulation of the treatment plan. Also, information about their mental state shall not be hoarded from them<sup>67</sup> and shall be dealt with confidentially.<sup>68</sup>

## The Right to Informed Consent

The nature of mental illness makes it easy to treat patient with such illness without proper consent and it is a matter of law that healthcare providers must obtain consent from their patient, not just consent but informed consent. Informed consent is the process in which a healthcare provider educates a patient about the risks, benefits, and alternatives of a given procedure or intervention; this gives the patient the autonomy and freedom of choice. The patient must be competent to

make a voluntary decision about whether to undergo the procedure or intervention.<sup>69</sup> The duty to inform a patient is on the healthcare provider to disclose adequate information to his patient and to also help such patient to choose an appropriate treatment plan or intervention. According to the provision of Part A S.19 of the Code of Medical Ethics in Nigeria.<sup>70</sup> It is important that the healthcare provider explain to their patient all that it is to the treatment they are about to receive and properly obtain their patient consent ensuring the following elements - capacity, voluntariness, decision-making, and knowledge.<sup>71</sup> Informed consent involves making the patient and family members aware of their condition, the proposed treatment and the risks and benefits of the proposed treatment, the available alternatives, and their risks and benefits.<sup>72</sup> Article 6 of the Universal Declaration on Bioethics and Human Rights 2005<sup>73</sup> provides that any preventive, diagnostic and therapeutic medical intervention is only to be carried out with the prior, free and informed consent of the person concerned, based on adequate information.

Informed consent is so important that it forms the basis of the fiducial relationship existing between the patient and the healthcare provider and it is essential that the health worker have the ability to diagnose and treat patients as well as the patient's right to accept or reject clinical evaluation, treatment, or both. It is provided in the Act<sup>74</sup> that no treatment shall be administered without the prior written consent of the person with the mental health condition voluntarily given after the attending healthcare worker has provided the person with relevant information pertaining to his state of health and necessary treatment relating to the

(a) range of diagnostic procedures and treatment options available to the patient;

(b) benefits, possible pain or discomfort, risks, costs and consequences associated with each of the treatment options and

(c) patient's right to refuse treatment and the implications and risks of such implication.<sup>75</sup>

<sup>61</sup> National Mental Health Act, 2021.

<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> S.19(1) National Mental Health Act, 2021.

<sup>66</sup> Ibid.

<sup>67</sup> S.20 NMHA, 2021.

<sup>68</sup> S.21 NMHA, 2021.

<sup>69</sup> Parth Shah, Imani Thornton, Danielle Turrin and others, 'Informed Consent' National Library of Medicine (2023) Starpearls publishing June 5 available at

<https://www.ncbi.nlm.nih.gov/books/NBK430827/#:~:text=Informed%20consent%20is%20the%20process,undergo%20the%20procedure%20or%20intervention>. Accessed 7<sup>th</sup> March 2023.

<sup>70</sup> Code of Medical Ethics in Nigeria, 2008.

<sup>71</sup> Mariam Olajide, 'Appraisal of The Legal Framework of The Mental Health in Nigeria. Available at <

[file:///C:/Users/user/Downloads/AppraisalofLegalFrameworkonMentalHealthinNigeria%20\(1\).pdf](file:///C:/Users/user/Downloads/AppraisalofLegalFrameworkonMentalHealthinNigeria%20(1).pdf)> accessed 5<sup>th</sup> March 2024.

<sup>72</sup> National Mental Health Act, 2021.

<sup>73</sup> Parth Shah, Imani Thornton, Danielle Turrin and others, Informed Consent, (2023) Starpearls publishing June 5 available at

<https://www.ncbi.nlm.nih.gov/books/NBK430827/#:~:text=Informed%20consent%20is%20the%20process,undergo%20the%20procedure%20or%20intervention>. Accessed 7<sup>th</sup> March 2023.

<sup>74</sup> NMHA 2021.

<sup>75</sup> S.26(1)(a)-(b) NMHA, 2021.

Also the health professional shall ensure that the information provided to the person under subsection (1) is given in the language the person understands and in a manner which takes into account the literacy level of the person, except in a case that the person with mental health condition is unable to understand the information relevant to the decision. Such person shall be communicated with in a simple language or be provided with virtual aid or any other means possible. If the person is unable to retain, use or weigh the information, or communicate his decision by talking; sign language or any other means shall be provided. Provisions shall be made by the medical officer for supported decision-making at no cost to the person with mental health condition.<sup>76</sup>

### Right to Quality and Standard Treatment.

The NMH Act has made it a right that people with mental illness should be given same fundamental rights as other fellow citizens of Nigeria and by that virtue they were also given access to medical facilities like everyone else just as it was stated in S.12(2)(a).<sup>77</sup> The right also ensures that they have right to quality and standard mental health facilities and services in the country to facilitate their integration into the community.<sup>78</sup> provides that a person with a mental health condition has the right to appropriate, affordable and accessible :

(a) physical and mental health care and services, (b) counselling, (c) rehabilitation, and (d) after-care support.

In determining the type of mental health care and treatment suitable for a person with mental health condition, an attending healthcare worker shall take into account the mental health condition of the person. And every facility shall ensure that mental health services are provided in a manner that upholds the dignity of the person with a mental health condition; takes into account and allows for treatment options which help a person with a mental health condition to manage the condition and participate in political, social and economic aspects of the person's life; aims at reducing the impact of the mental health condition and improving the quality of life of the person with mental health condition through the provision of the relevant clinical and nonclinical care; and provides all reasonable accommodation to persons with mental health conditions.

This right prohibit all inhumane method used in treating people with mental illness before the enactment of the National Mental Health Act,2021. It gave them right to access psychotropic medications, necessary medications, and any other biopsychosocial interventions at various levels of care as appropriate.<sup>79</sup> When a person with a mental health condition is unable to exercise his or her right under section 22 (1)<sup>80</sup> of the Act, the person's legal representative may designate a lawyer to act on behalf of the patient in any situation, including in an

appeal or complaint process. In situations where the patient with the mental illness or his or her representative cannot afford the services of an attorney, the State shall provide the patient with leg.

<sup>76</sup> S.26(2) NMHA, 2021.

<sup>77</sup> National Mental Health Act, 2021.

<sup>78</sup> S.15 NMHA, 2021.

<sup>79</sup> S.15 NMHA, 2021.

<sup>80</sup> NMHA, 2021.