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COMPARATIVE ANALYSIS OF THE LEGAL APPROACH TO MENTAL HEALTH IN NIGERIA AND NETHERLANDS

Iyadah John Viko* & Queen Ekanem Essien**

Abstract

Awareness on mental health is gradually gaining prominence around the globe as many people are beginning to speak up. Some persons suffering from these illnesses have reduced their encounters into books which have further been translated to movies and plays. Attention for mental health is now on the rise as Non-Governmental Organizations (NGOs) are supporting the cause, laws and policies are being put in place to promote mental wellbeing. The work brought about the enlightenment of the legal approach to mental health in Nigeria and the Netherlands, to ensure that more people are well-informed aware on how the wrong attitude to mental health can pose a great challenge to the cause, and to adopt a more advanced and working system for a better mental health approach in Nigeria. The paper adopted the doctrinal method of research, made use of primary and secondary sources of materials. The legal approach to mental health in Nigeria is developing slowly as there is a considerable distance in the level of awareness, response and treatment of mental health and wellbeing of most people in Nigeria. The paper concluded that there is the need for mental health policies in Nigeria to be in line with World Health Organization (WHO) guidelines especially the creation of mental health courts and adequate budgetary allocation for mental health facilities and service providers. It is recommended that for Nigeria to guarantee the highest standard of mental and physical well-being for its populace, the WHO guidelines must be adhered to.

Keywords: Mental health, mental health care, mental health law, lunacy law, insanity law, World Health Organization, Nigeria, Netherlands

1. Introduction

It can be said that the concept of mental health relates to the mind, the social and emotional well-being of people and communities. To understand mental health better, it is important to pay attention to the way one is thinking, feeling, attitude and disposition in general. It stretches to the physical health, productivity and the likes. As humans, there are times we feel resilient, strong and optimistic, regardless of the happenings around us. There are also times we do not feel resilient, strong or optimistic about life regardless of how beautiful or perfect things may seem. In situations where we feel low for a sustained period of time, it most often than not impacts significantly on how we think, feel and act in many parts of our lives, including relationships, productivity at work, sense of connection to peer groups, our personal sense of worth, physical health and

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motivation. If these feeling lingers, it could lead to the development of a mental health condition such as anxiety, depression, post-traumatic stress disorder, substance abuse etc. Mental health is concerned with wellness rather than illness and is not merely the absence of a mental health condition. It relates to the enjoyment of life, ability to cope with stress and sadness, the fulfilment of goals and potential, and a sense of connection to others. Just like our physical health, our mental health is not fixed¹. It exists on a continuum, or range from positive, healthy functioning at one end, through to a severe symptom of mental health conditions at the other.

Mental Health is an integral and essential component of health. The WHO states that “health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”². An important implication of this definition is that mental health is more than just the absence of mental disorders or disabilities. Mental health is a state of well-being which individuals assess their abilities to cope or to balance the difficulties that come with everyday living and still make meaningful contribution to their community.³ Mental health is fundamental to our collective and individual ability as humans to think, emote, interact with others, earn a living and enjoy life. On this basis, the promotion, protection and restoration of mental health can be regarded as a vital concern of individuals, communities and societies throughout the world.⁴

Mental illness was originally considered supernatural and a reflection of the battle between good and evil. Hippocrates was a proponent of the idea that psychological disorders were biologically caused. Other well-known philosophers like Plato and Aristotle, wrote about the importance of fantasies, dreams, and this anticipated, to some extent, the field of psychoanalytic thought and cognitive science that were later developed. They were also the first advocates for humane and responsible care for individuals with psychological disturbances. In time past, people with mental health concerns were often seen to be insane or lunatic, and were subjected to situations that would be ethically questionable in today’s human right laws, as they were subjected to stigmatization, discrimination, victimization and criminalization. These treatments also extended to people within their social space.⁵

¹ United Nations Workplace Mental Health and Well-Being Strategy <<https://www.un.org/en/healthy-workforce/files/Understanding%20Mental%20Health.pdf>> accessed 6 July 2021.

² World Health Organisation <https://www.hsl.gov.uk/media/202146/5_kim_who.pdf> accessed 6 July 2021.

³ Ibid.

⁴ WHO <<https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response>> accessed 11 October 2021.

⁵ Ibid.

In present time, the relevance of mental health in the society is very much noticeable, and as a result of its germane nature, it is safe to say that people with mental health illness have had their human rights either protected or trampled upon as the case may be, leading to the emergence of laws and policies to regulate the cause. This continuous progress in mental health awareness has helped to debunk the myths and misconceptions of the medieval era as more people are not only heavily researching on it, but people with lived experiences are also telling their stories, thereby creating more awareness.

This paper will draw a comparative analysis of the legal attitude to mental health in Nigeria and the Netherlands, by first delving into the historical perspective of what fuelled the mass awareness in mental health. It will analyse the legal framework regulating the mental health space of the Netherlands and Nigeria, and how effective the legal attitude to mental health have been in these countries, and by so doing, proffer best practice options that will help shape the legal attitude to mental health in a positive light. To that effect parts one and two of the paper is comprised of introduction as well as a brief history of mental health awareness and how it has gained the attention of governments and people overtime. Parts three, four and five have a combined discussion on the legal approach to mental health in Nigeria and the Netherlands respectively while identifying gaps in their legal framework which formed the basis of the overall argument. Part six of the work concluding section of the paper.

2. History of Mental Health Awareness

Mental health awareness has its origin traced back to developments in public health, in clinical psychiatry and in other branches of knowledge. Although reference to mental health as a state can be found in the English language well before the 20th century, technical references to mental health as a field of discipline are not found before 1946⁶. In that year, the International Health Conference, held in New York, decided to establish the World Health Organization (WHO) and a Mental Health Association in London.⁷

Increased awareness about mental health can be traced to Clifford Beers' book titled 'A mind that found itself.'⁸ In the book, Beers shares his experience through his mental illness journey, where he gave details of the attitude of physicians and attendants in psychiatry homes and how patients were treated while on admission to three different hospitals. The impact of this book led to the creation of the National Mental Hygiene society in 1909. In 1919, the internationalization of activities of this commission led to the establishment of

⁶Jose Bertolote, 'The Roots of the Concept of Mental Health; Department of Mental Health Organization, Geneva, Switzerland' <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2408392>> accessed 1 July 2021.

⁷ Ibid.

⁸ Christopher W Beers, *A Mind that Found itself* (1st edn, New York, 1908 Doubleday, Draw & Co, 1937).

some national associations concerned with mental hygiene; in France and South Africa in 1920, and in Italy and Hungary in 1924. From these national associations, the International Committee on Mental Hygiene was established and later superseded by the World Federation of Mental Health.⁹ Mental hygiene movement was concerned with the humanization of the care of the insane; eradication of abuses, brutalities and neglect from which the mentally sick have traditionally suffered. The progress of the movement brought to the fore mental health disability and how it can be suppressed. As a result of this effort results showed that mental disorders are traced to early childhood and youthful experiences which is also in line with Sigmund Freud's psychodynamic theory. It further stressed that if preventive measures are applied at an early stage, it would be the most effective for mental health care.¹⁰

3. Legal Approach to Mental Health in Nigeria

There is a bad perception about mental health in Nigeria, which is largely rooted in the level of education, social status, culture/tradition, and religious beliefs - as we are a people who pray and wish every untoward thing away. The average Nigerian recognizes and connects more with the overt signs of mental disorder much more than covert signs. The belief is that a mental illness has to do with the loss of consciousness with reality, leading to the point of insanity, so if a person is brainsick on the street, with torn clothes and eating out of the bin, that fellow is indeed mentally ill.

Those with a good knowledge of mental illness encounter difficulties with gaining access to a mental health treatment system due to poor funding. The psychiatry hospitals are mostly located out of reach of the targeted patients and most often, poorly funded. This problem is further exacerbated by stigmatization of persons with mental illness and by their own inappropriate behaviour. For instance, the untold story of an ex-super eagle striker Rashidi Yekini, who died of depression in a herbal home which is seen as an issue of utmost neglect of special people in need of attention by the state.¹¹

It is also common tradition in Nigeria that before a person is given into marriage; a search is conducted to check for any history of insanity in the family. Once such investigation indicates a history of insanity, parties are usually advised against going through the process. The stigma associated with mental illness also prevents people with diagnosable mental illness from seeking treatment and by so doing, develop a great risk of substance abuse disorders and as such, increase visibility to law enforcement, with the likelihood that they would become mired

⁹ Jose Bertolote (n 6).

¹⁰ Ibid.

¹¹ The Rashidi Yekini Case and the State of Mental Health Law in Nigeria <<https://www.mondaq.com/nigeria/healthcare/293624/the-rashidi-yekini-case-and-the-state-of-mental-health-law-in-nigeria>> accessed 22 August 2021.

in the criminal justice system and could eventually be housed in jails or churches rather than in a mental health hospital.

3.1 The Lunacy Act of 1958

The federal law regulating mental health in Nigeria is the Lunacy Act of 1958. This law came into force to make provision with respect to the care, treatment and control of persons who are mentally ill and the management of their estates. Before this period, Nigeria's intervention approach was mainly traditional treatment, including the use of herbal medicine.¹² According to the Act, a mentally ill person 'is a person who, owing to mental illness requires care, treatment or control for his own good or in the public interest, and is for the time being incapable of managing himself or his affairs.'¹³ It is necessary to note that the Act uses terms like 'lunatic' and 'idiot' to refer to an insane person¹⁴ which is in itself derogatory to the human person and has a potential for broad fluid interpretation.¹⁵ These terms are no longer used to refer to mental illness in standard parlance today. The law in content and context violates the fundamental human rights of persons with mental health and psychosocial disabilities. There is no mention of prevention, promotion and treatment, and this derogates from the human right of everyone to enjoy the highest standard of physical and mental health.¹⁶

Section 12 of the Act provides for the procedure for admitting persons to admission centres. By this provision, a medical practitioner is authorized to make such findings, which begs the question of clarity, in that, merely stating a "Medical Practitioner" simply means that the law is not being specific on the kind of medical practitioner that should be responsible for this duty. It is submitted that a better designation would be a psychiatrist. Section 12(2) further vests the power of involuntary admission into an admission centre to a justice of oath in various circumstances, including:

- (2) Where a person informs a justice of oath that;
 - (a) He believes any other person to be a mentally ill person, and

¹² Paul Ugochukwu Ude, 'Policy Analysis on Nigeria's Lunacy Act (1958): The Need for a New Legislation' <www.longdom.org/open-access/policy-analysis-on-nigerian-lunacy-act-1958-the-need-for-a-new-legislation-2378-5756-1000343.pdf> accessed 16 August 2021.

¹³ Lunacy Act 1958, s 4.

¹⁴ Ibid s 5.

¹⁵ Andrew Hudson Westbrook, 'Mental health Legislation and Involuntary Commitment in Nigeria: A Call for Reform' Washington University School of Law <www.openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1022&context=law_global_studies> accessed 16 August 2021.

¹⁶ International Convention on Economic, Social and Cultural Rights (1966) art 12(1).

(b) such other person is without sufficient means of support, or is wandering at large, or is discovered committing an offence against the Law or in circumstances which may reasonably lead a person to suspect that such other person was about to commit some offence against the law, such justice may by order under his hand require a member of the police force to apprehend such other person and to take him to the nearest convenient exam centre.¹⁷

The above provision vests a justice of oath with the power to commit a person to an asylum involuntarily and by so doing, hindering the individual's physical freedom which is an infringement of the constitutional right to liberty¹⁸. According to Dicey, the right to liberty is the right not to be subject to imprisonment, arrest and any other physical coercion in any manner that does not admit of legal justification¹⁹. This right is further emphasized in Article 9 of the Universal Declaration of Human Rights (UDHR)²⁰ which provides that no one shall be subjected to arbitrary arrest, detention or exile.

The Law provides for the detention of a mentally ill person without mentioning the provisions for treatment and the circumstances within which such treatment should be provided. By all indication, a mentally ill person who has committed a crime is best fit in a rehabilitation home, where adequate treatment will be provided as it will be futile to detain a mentally ill person with no treatment. The Lunacy Act of 1958 is not only moribund, but violates human right provisions, and is reflective of a period when mental illness was severely misunderstood.

3.2 1999 Constitution of the Federal Republic of Nigeria (as amended)

Section 34 of the constitution provides for the right to dignity of the human person and that no person shall be subjected to torture or to inhuman or degrading treatment.²¹ Section 42 deals with the right to freedom from discrimination. It provides that a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not by reason only that he is such a person, be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions are not made subject: or be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens

¹⁷ Mental Health Act 45, 1958 <www.legislation.nsw.gov.au/view/pdf/asmade/act-1958-45> accessed 6 July 2021.

¹⁸ S 35 Constitution of the Federal Republic of Nigeria, 1999 (as amended).

¹⁹ Cited in *Oba Gabriel Okogie v AG Ondo State* [1982] 3 NCLR, 349 per Justice Orojo.

²⁰ Universal Declaration of Human Rights 1948.

²¹ The various ways in which the mentally ill are often treated in the Nigerian society is a direct contravention of this provision.

of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions... this provision strengthens the protection of the right of the disabled. In spite of this provision, people with mental illness have continued to be stigmatized and subjected to inhumane treatment which is also a contravention of the Convention on the Elimination of all forms of Racial Discrimination and the Convention against torture to which Nigeria is a signatory.²²

3.3 Criminal Code 1990

The Nigerian Law absolves an insane person of the liability for his actions where the defence of insanity is proven. In the Criminal and Penal Codes, an accused is exculpated from criminal liability where it is shown that the person was of an unsound mind or deluded at the time of committing an offence. Section 28 of the Criminal Code provides:

that where such a person is in a state of mental infirmity as to deprive him of capacity to understand what he is doing, or capacity to control his actions or capacity to know that he ought not to do the act or make an omission. A person whose mind, at the time of his doing or omitting to do an act, is affected by delusions on some specific matter or matters, but who is not otherwise entitled to the benefit of the foregoing provisions of this section, is criminally responsible for act or omission to the same extent as if the real state of things has been such as he was induced by the delusions to believe to exist.

It can be seen from the above section the different levels of mental diseases that can be a justifiable reason for one not to be punished for what they hitherto did not know what they were doing or could not have controlled their actions even where it can be shown that they knew or understood what they were doing.

3.4 Penal Code 1960

Section 226 provides that any person who attempts to kill himself is guilty of a misdemeanour. The idea of criminalizing suicide without recourse to possible mental health conditions of the victim is not just a selfish act from the state, but a monstrous decision taken on a person who has already found life unworthy of living, and by subjecting such a person to further bitterness and degradation shows how perverse the current law is, as it omits the provision of therapy for the victim, and this is tantamount to the state reiterating that in an attempt at suicide, one must ensure not to fail and so by all means, must ensure to succeed in ending their lives regardless of the circumstance. One must also be careful not to think that anyone that is suicidal suffers from any mental disease. It can be said that people have different understanding and expectations about life and where certain expectations are not met or are cut short due to a huge loss one can exhibit some signs of mental diseases but in the real sense there is none.

²² Arts 1 and 5 the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (1965); art 5 the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1984); art 5 of the UDHR 1948.

The principle of criminalizing suicide is traced to the abolished common law doctrine of which, the reasoning behind it was spiritual²³ and temporal.²⁴ This doctrine goes on to promote the reasoning that, the state has some generalized and disembodied interest in the preservation of life.²⁵ It is rather appalling in this present age for a person who attempts suicide to be imprisoned by the state.

3.5 Mental Health Policy in Nigeria

Though not part of the legal framework in terms of its legal effect or force, the mental health policy was adopted in 1991 by the federal government to be implemented by the Federal Ministry of health²⁶. The policy reaffirms the commitment to provision of quality services to be accessible to people with Mental Neurological and Substance Abuse (MNS) disorder in the country. It placed the provision of mental health services at the Primary Health Care level. The policy addressed the stigma, discrimination and social exclusion that are commonly experienced by people with mental health problems through ensuring equitable access to care and specific activities aimed at challenging negative attitude to mental health in the communities²⁷. The protection of human right is also addressed in a separate legislation submitted to the Federal Government.

The policy provides that, government shall aim to;

- 1) Integrate MNS into primary care services,
- 2) Make provision for acute in-patient care for persons with mental and neurological disorders at every teaching hospital, general hospital, and every federal medical centre, while discouraging unnecessary long-term institutionalization;
- 3) Provide for out-patient care in all of these settings; and
- 4) Provide for rehabilitation services, including occupational service, social service and clinical psychological service at every facility where persons with MNS problems are treated. Hospital admissions shall be provided for those in need but for as short a duration as essential, and preferably on voluntary basis

²³ By spiritual, this implies evading the prerogative of the almighty, and rushing into his presence uncalled for and by temporal, violating the king's duty of ensuring protection for his entire subject.

²⁴ Lawrence T Hammond Jr, 'Criminal Law: Attempted Suicide' *North Carolina Law Review* <www.scholarship.law.unc.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=5997&context=nclr> accessed 6 July 2021.

²⁵ 'The State's Interest in the Preservation of Life: From Quinlan to Cruzan' <www.scholarship.law.missouri.edu/facpubs/323/> accessed 2 October 2021.

²⁶ National Policy for Mental Health Services Delivery (August 2013) <https://cheld.org/wp-content/uploads/2015/02/national_policy_for_mental_health_service_delivery__2013_.pdf> accessed 6 July 2021.

²⁷ Ibid.

except where otherwise permitted by the application of the appropriate sections of the Mental Health Act.²⁸ It is worthy of note that the policy was not only suspended, but is yet to see the light of day.

4. Legal and Institutional Framework for Mental Health in the Netherlands

The Netherlands has a robust mental health policy covering several areas like awareness, response, treatment of mental health/wellbeing, insurance, employment etc. There are presently seven hundred and fifty thousand patients of all ages who receive mental health care from fifty-thousand professionals annually, which is usually organized in thirty different professional organizations. Mental health care is now available all over the country and is well financed, mainly from insurance²⁹. On March 30, 2007, the Netherlands was amongst the first countries to sign the UN Convention on the Rights of Persons with Disabilities, but is yet to ratify its optional protocol³⁰, by which redress for violations can be obtained. The country also has an extensive framework on anti-discrimination legislation, consisting of a general equality and anti-discrimination clause in the Constitution, as well as the 2003 Act on equal treatment on grounds of disability or chronic illness.³¹

Various anti-discrimination provisions in the Dutch Criminal Code most especially Section 137³² uses different terms to refer to persons with a mental disorder or intellectual disability, and the term applied would usually depend on the context the person finds themselves, and the type of law involved. People with this disability are equally entitled to all other human rights recognized under the Constitution and other human rights treaties the Netherlands is a party to. However, the anti-discrimination provisions of the Criminal Law with respect to mental disorder or intellectual disability are yet to be invoked in criminal law cases.

4.1 Equal Treatment on Grounds of Disability or Chronic Illness Act 2003 of Netherlands

The equal treatment Act offers general protection against discrimination on grounds of religion, beliefs, political opinion, race, sex, nationality, heterosexual

²⁸Ibid.

²⁹ AH Chene and others, 'Mental Health Care Reform in the Netherlands' <<https://onlinelibrary.wiley.com/doi/full/10.1034/j.1600-0447.2001.1040s2074.x>> accessed 16 August 2021.

³⁰ Nigeria ratified both the Convention and the Optional Protocol.

³¹ Jan Tymowski, 'The Employment Equality Directive: European Implementation Directives' <[www.europarl.europa.eu/RegData/etudes/STUD/2016/536346/EPRS_STU\(2016\)536346_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536346/EPRS_STU(2016)536346_EN.pdf)> accessed 6 July 2021.

³² Criminal Code <www.legislationline.org/download/id/6415/file/Netherlands_CC_am2012_en.pdf> accessed 16 August 2021.

or homosexual orientation or civil status.³³ Section 7 of the Act provides that it shall be unlawful to discriminate in offering or permitting access to goods or services, in concluding, implementing or terminating agreements on the subject, and in providing career orientation and advice or information regarding the choice of educational establishment or career if such acts of discrimination are committed:

- (a) in the course of carrying on a business or exercising a profession;
- (b) by the public service;
- (c) by institutions which are active in the field of housing, social services, health care, cultural affairs or education or
- (d) by private persons not engaged in carrying on a business or exercising a profession, in so far as the offer is made publicly.

Section 7(a) of the Act further provides that it shall be unlawful to discriminate on the ground of race in social protection, including social security and social advantages.³⁴ By this provision, the Law clearly provides for the equal treatment of persons regardless of their disability or chronic illness, and this is in line with the second generation of Human right on economic social and cultural right as it is provided for in the International Covenant on Economic, Social and Cultural Rights of 1966.³⁵

4.2 Patient Right Care Sector Act³⁶

This law provides that everyone who lives in the Netherlands is entitled to care. This right is enshrined in the Exceptional Medical Expenses Act (AWBZ) and a host of other legislation and is implemented through the broad basic health insurance provided for under the healthcare insurance Act. It provides that all forms of care - preventive care, general medical care (including acute care) and long-term care-must be available and accessible to all. Patients must also be able to rely on continuity of care. Insurers have a duty of care, which means that, in general, right to care is sufficiently guaranteed. The aim of the Act is to give patients the right to good care, and what form it should take.

4.3 The Constitution of the Kingdom of the Netherlands 1998

Article 1 of the constitution provides ‘that all persons in the Netherlands shall be treated equally in equal circumstances, discrimination on the grounds of religion, belief, political opinion, race or any other grounds whatsoever shall not be permitted’. The purport of this provision is to protect the minority, those considered to be the vulnerable in the society. Protecting the minority from the

³³ Equal Treatment (Disability and Chronic Illness) Act

³⁴ Ibid.

³⁵ Equal Treatment on Grounds of Disability or Chronic Illness Act 2003

³⁶ Dutch Patient Right Act.

majority is the whole essence of a working democratic system of government it is this reason that a law was separately enacted for the Equality Treatment (Disability and Chronic) Act,³⁷ to protect the mental health illness and other health challenges that could leave a person in a disadvantaged position.

4.4 Criminal Code Act of Netherlands

Section 13 of the Act provides that a convicted offender sentenced to imprisonment may be admitted to a custodial institution for the treatment of persons detained under an entrustment order, if he is eligible for such admission by reason of mental disease or defect. If a convicted offender has been sentenced to imprisonment in combination with detention under an entrustment order with compulsory treatment, a review of whether the convicted offender should be placed in a custodial institution for the treatment of persons detained under an entrustment order shall be conducted regularly.

Chapter 2 of the Act provides for a psychiatric hospital and detention under an entrusted order. Section 37 of the Act provides that the court may order the admission of a person, who cannot be held responsible for committing a criminal offence by reason of mental disease or defect, to a psychiatric hospital for a term of one year, but only if he poses a danger to himself, to others, or to the general safety of persons or property. This order may only be issued after a reasoned, dated and signed opinion issued by no fewer than two behavioural experts of different disciplines - one being a psychiatrist - who have examined the person in question, has been submitted to it. Such opinion shall be given jointly by the behavioural experts or by each of them separately. Where the date of this opinion precedes the commencement of the trial by more than one year, the court may only rely upon it with the consent of the Public Prosecution Service and of the defendant.³⁸

4.5 The 1992 Psychiatric Hospitals (Compulsory Admissions) Act³⁹ 1992

This Act applies to persons with mental disorder from 12 years and above. If such a person does not agree with the admission to or treatment in a psychiatric institution the Thematic Legal Study on Mental Health and Fundamental Rights provisions and procedures of the Act applies. In case of children below the age of 12 the general rule is that the parents or guardians have the authority to decide about care and treatment (including the admission to a psychiatric hospital). However, if the parents of a child below the age of 12 disagree with one another, the provisions of the present Dutch Act apply as well.

³⁷ Ibid.

³⁸ Criminal Code of Netherlands.

³⁹ Thematic Legal Studies on Mental Health and Fundamental Rights <<https://fra.europa.eu/sites/default/files/frauploads/2157-mental-health-study-2009-NL.pdf>> accessed 16 August 2021.

The 1992 Psychiatric Hospitals (Compulsory Admissions) Act may also apply to persons with addictive behaviour (if the addiction is related to a mental disorder). Offenders with mental disorders are dealt with in the criminal justice system, on the basis of specific legislation (criminal law). In most cases this will result in the placement of the offender in an institution within the criminal justice system. In a number of situations offenders with mental disorders may be transferred to an institution that is governed by the provisions of the Psychiatric Hospitals (Compulsory Admissions) Act. Provisions regarding persons under guardianship can be found in the Dutch Civil Code.⁴⁰ However, under Dutch law a guardian does not have the power to order the involuntary placement or treatment of the person under guardianship. If such a person requires involuntary placement and/or involuntary treatment the criteria and procedures of the Psychiatric Hospitals (Compulsory Admissions) Act have to be met.⁴¹ The objectives of the Act are as follows:

- (a) To clarify and strengthen the rights of persons with a mental disorder (including intellectual disabilities and dementia); and
- (b) To protect individuals and society from dangerous acts performed by persons with a mental disorder). In actual practice other objectives play a role as well (rehabilitation, restoring self-determination etc).

The Act further regulates involuntary placement and involuntary treatment of persons with a mental disorder, and this may only be carried out after the fulfilment of some criteria laid down in the Act and in the absence of less intrusive measures. The criteria for involuntary placement is strict on the assessment of a psychiatric disorder requiring involuntary placement, the maximum duration of involuntary placement and the legal procedures to be followed⁴². In addition, the law distinguishes between two types of compulsory admission. The first type is the common procedure, whereby a judge determines whether legal conditions have been met. The second type involves emergencies, whereby compulsory admission is decided by the mayor or a member of the municipal council in the town or city in which the emergency takes place. This decision is based on a written medical report by a physician or psychiatrist who is not the therapist of the patient in question. Within a few days, a judge then decides whether the admission is to be continued.

Also, in the fields of employment, education and social security, other distinctions are made by the law. For example, the Act on Social Employment is applicable onto individuals with physical, intellectual or mental restrictions. The

⁴⁰ Dutch Civil Code (Civil Code of the Netherlands).

⁴¹ Compulsory Admission and Involuntary Treatment of Mentally Ill Patients-Legislation and Practice in EU-member States.

⁴² Ibid.

Act on employment and income⁴³ depending on labour capacities differentiates between individuals who are completely and lastingly unfit to work and individuals who are partially labour disabled. In the field of education, four types ('clusters') of special education are distinguished, including cluster 3 type education aimed at pupils with intellectual and / or physical restrictions and cluster 4 type education targeted at children with educational difficulties and pupils with long-term mental illnesses.⁴⁴ All these laws and related by-laws define mental disorders and intellectual disabilities in terms of functional and social impairments. According to social security laws, disabilities can be measured and expressed in terms of a percentage, with only people who are more than 35 per cent 'unfit to work' entitled to a social benefit.

4.6 The Exceptional Medical Expenses Act

The Exceptional Medical Expenses Act (AWBZ) helps to provide opportunities for the achievement of the health system goals and to increase efficiency. This provided finances for the major part of mental health care until 2008⁴⁵. Until 2008, the Act financed the major part of mental healthcare. In 2008 the financing structure was fundamentally reformed. The first 365 days of mental health treatment became part of basic health insurance and are thus financed under the Health Insurance Act (Zvw).⁴⁶ The funding of preventive mental healthcare was transferred to the Social Support Act (Wmo), which means that the responsibility for organizing this care was shifted to municipalities. Since 2014 the first three years of (inpatient) mental treatment is financed through the Health Insurance Act.⁴⁷

4.7 Youth Assertive Community Treatment (Youth Act) / Intensive Rehabilitative Mental Health Services (IRMHS)

The Youth Act provides for an intensive, comprehensive and non-residential rehabilitative mental health service. These services are delivered using a multidisciplinary team approach and are available 24 hours a day, 7 days per week, Youth ACT/IRMHS teams work intensively with youth having severe mental health or co-occurring mental health and substance use issues to assist them with remaining in their community while reducing the need for residential or inpatient placements. Teams also work with youth discharging from these

⁴³Netherlands Employment and Labour Laws Regulation 2021 <<https://iclg.com/practice-areas/employment-and-labour-laws-and-regulations/netherlands>> accessed 16 August 2021.

⁴⁴ Special Needs Education
<www.mext.go.jp/en/policy/education/elsec/title02/detail02/1373858.htm> accessed 16 August 2021.

⁴⁵ Health System in Transition, Netherlands (18) 2 2016
<<https://www.apps.who.int/iris/rest/bitstreams/1280609/retrieve&ved>> accessed 16 August 2021.

⁴⁶ Ibid.

⁴⁷ Ibid.

placements to ensure a smooth transition back to their home, family and community. Services are delivered in an age-appropriate and culturally sensitive manner designed to meet the specific needs of each client.⁴⁸

5. Issues and Challenges of Mental Health Laws in Nigeria and the Netherlands

The progress of mental health in the Netherlands is very commendable, as it very organized with appropriate Laws put in place to promote the cause, and by so doing, has continued to evolve on the bright side. Nigeria on the other hand, is developing slowly after that of the Netherlands, as there is a wide divide needing urgent attention. On the other hand, the Legal attitude to mental health in Nigeria is facing a very considerable challenge with awareness, policies and the need to repeal draconian laws regulating the cause, as well as issues regarding funding and implementation of the provisions of the laws already in existence.

The defect in the provisions of the Lunacy Act is innumerable. Apart from not meeting the international requirements for a good policy, it does not recognize human rights, including: equality and non-discrimination, the right to privacy, liberty, individual autonomy, physical integrity, right to information/participation, freedom of movement etc. The law also violates the right of persons from enjoying the highest attainable standard of physical and mental health, which is a fundamental right guaranteed under the Constitution. Additionally, the policy must be able to address and recognize the 25 principles outlined in the protection of persons with mental illness and the improvement of mental health care adopted by the United Nations in 1991.⁴⁹ The Act further confines the mentally ill to a non-therapeutic, overcrowded, unsanitary and dilapidated facility.⁵⁰

The current Mental Health Bill,⁵¹ containing better provisions for the regulation of mental health activities, and which should have been a replacement of the Lunacy Act, is yet to be assented to, and as such, its relevance, is yet to be verified. By leaving this bill in abeyance, the Lunacy Act continues to serve as the primary legislation regulating the mental health space.

⁴⁸ Youth Assertive Community (Youth ACT)/Intensive Rehabilitative Mental Health Services (IRMHS) www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=DHS16_181612 accessed 12 October 2021.

⁴⁹ United Nations www.who.int/mental_health/policy/en/UN_Resolution_on_protection_of_persons_with_mental_illness.pdf accessed 16 August 2021.

⁵⁰ The current Mental Health Bill, containing better provisions for the regulation of mental health activities, and which should have been a replacement of the Lunacy Act, is yet to be assented to, and as such, its relevance, is yet to be verified. By leaving this bill in abeyance, the Lunacy Act continues to serve as the primary legislation regulating the mental health space.

⁵¹ National Policy for Mental Health Services Delivery (n 26).

Despite how robust the legal attitude to mental health is in the Netherlands, there are still areas worthy of improvement, and this goes to show the complexity in tackling mental health challenges. The areas needing improvements are discussed below.

5.1 Lack of Diligent Monitoring

The 1992 Psychiatric Hospitals (Compulsory Admissions) Act only to a limited extent stipulates adequate aftercare following involuntary placement. The Act provides that if a person is granted leave or is discharged, the institution has to contact the health care providers who cared for the person before the involuntary placement was effectuated. More specific requirements regarding aftercare are not mentioned in the Act, and because of this, aftercare is not guaranteed, and it is difficult to call individual health and social services to account for their performance. Dutch law does not explicitly include an aftercare arrangement that meets the 'Care Programme Approach', as is the framework for discharge planning and aftercare in the United Kingdom. This approach involves assessing the patient's healthcare and social care needs, developing a care plan agreed by all stakeholders, identifying a key worker or case manager, and monitoring the delivery of the care plan in view of the patient's progress. Effective support comes down to the intensive cooperation of health and social services and the creative handling of essential rules and services.

5.2 Involuntary Placement without Treatment

The 1992 Psychiatric Hospitals (Compulsory Admissions) Act does not see involuntary placement without treatment as a goal in itself. The assumption is that involuntary placement will result in treatment (on a voluntary basis or, under certain circumstances, as an involuntary measure). However, due to the distinction between involuntary placement and involuntary treatment that is incorporated in the Dutch Act, situations of involuntary placement without treatment may occur.

5. Conclusion

In the past, people with mental health issues were treated as underclass, or even worse, when in fact as history shows, the line between sanity and insanity, genius and madness is such a fine line. From the foregoing, it is clear that the Netherlands have a robust legal attitude to mental health as compared to Nigeria, which goes to show their advancement in creating more room for treatment and employability options for persons with mental health disability. It is necessary for Nigeria to take lessons from their counterpart state in effecting a greater development and impact in the mental well-being of its citizenry, as the promotion of mental health, prevention and the treatment of mental disorders are fundamental to safeguarding and enhancing the quality of life, well-being and productivity of individuals, families, workers, communities, and in increasing the strength and resilience of society as a whole. In mobilizing the strategy to ensure a more positive impact on mental health, this would require not just a practical

approach to things, but a continuous step to be taken in caring for persons with mental health disorders. Mental health illness is a complex problem globally, and as such, simple suggestions or solutions cannot be used to solve them. Hence, the theoretical and practical approach will be employed for a greater achievement of the cause, as it goes beyond the theoretical framework but more on the practical approach with more focus on its continuity.

There is a need for the National Assembly to enact a robust mental health law in Nigeria in accordance with WHO guidelines, such that will recognize the human rights of patients once admitted to the mental health facilities, and just like Nigeria is committed to recognizing national/international treaties and charters on human rights, the proposed law must reflect compliance with the standards set by these treaties, in order to guarantee the highest standard of both mental and physical health for the targeted population. There is the need for the creation of a mental health court which will be in form of a specialized court docket for certain defendants with mental illness that substitute a problem-solving model in place of traditional court processing. Participants will be identified through mental health screening and assessments and voluntarily participate in a judicially supervised treatment plan developed jointly by a team of court staff and mental health professionals.

There is a need to provide adequate budgetary allocation for mental health policies and service providers in Nigeria as well as insurance facilities to subsidize mental health care in the country, just like it is done in the Netherlands. There is also the need for stricter implementation and enforcement of policies that tackles quackery in the psychiatry and psychology profession for a better care in the Netherlands and Nigeria. Also, replicating the Friendship Bench Programme as is done in Zimbabwe, New York, Zanzibar (in Tanzania) & Malawi (a community development project which helps in bridging the gap between people in society through having group intervention) in local communities in Nigeria and Netherlands, in order to serve as an option to residents of communities lacking access to care, and by so doing, bridge the mental health treatment gap and enhance mental well-being.