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Reimagining Mental Health Rights Protection in Nigeria: Legal and Institutional Dimensions

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Abstract

Persons with mental health conditions around the world, including Nigeria, experience human rights violations either while receiving treatment or while carrying out their daily activities and need adequate protection. Contrary to the 1958 Lunacy Act, which included discriminatory terms and failed to protect the rights of persons with mental health conditions, the newly enacted Mental Health Act 2021 aligns more with international standards as it promotes and protects these rights. The study employs a qualitative research methodology to analyse the rights of persons with mental health conditions established in the Mental Health Act. It identifies the challenges that would restrict the effectiveness of the Mental Health Act and prevent the realisation of the rights of PWMHC. The study specifies that insufficient budgetary allocation to Mental Health Systems, inadequate resources of PWMHC to access treatment, lack of knowledge of the existence of the Act and its human rights provisions and limitations in accessing justice must be addressed to promote an efficient mental health system that complies with extant legislation. It concludes that the protection of the rights of PWMHC in Nigeria is a priority, and appropriate steps must be promptly taken to make this a reality.

Keywords: Mental Health, Human Rights, Nigeria, Legal, Institutional Dimensions

1. Introduction

All human beings are entitled to enjoy the highest attainable standard of health that would enable them live in dignity.[1] Mental health is an essential element of health. Consequently, the mental well-being of an individual is a key determining factor in recognizing a person as healthy. According to the first director-general of the World Health Organization (WHO), 'without mental health there can be no true physical health'.[2] WHO defines mental health as 'the state of well-being in which the individual realises his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and can contribute to his or her community.'[3] Mental health aids individual and societal development. It supports people's abilities to make choices, both individually and collectively and to build relationships.[4] Mental health is significant in achieving the 2030 Agenda for Sustainable Development, adopted by countries in the United Nations to promote prosperity and development. The third goal seeks to 'ensure healthy lives and promote well-being for all at all ages' and the fourth target, meant to realise this goal, focuses on promoting mental health and well-being.

Mental disorders include: anxiety disorders, depression, bipolar disorder, post-traumatic stress disorder, schizophrenia, eating disorders, disruptive behaviour, neurodevelopmental disorders, dementia and intellectual disabilities.[5] Some factors determine the mental health of persons, such as emotions, substance abuse, genes, exposure to unfavourable social, economic, geopolitical and environmental circumstances, including poverty, violence, war, displacement and environmental deprivation. Risk factors that happen during sensitive developmental phases, particularly childhood, are usually more damaging to the victim, for example, harsh punishments, bullying and sexual abuse. The extent of frequency and severity of the above-stated factors plays a great role in determining the magnitude of mental illness a person may experience.[6]

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[1] Olaitan O. Olusegun & Oluwadamilola A. Adejumo, Legal Prescriptions for Medical Practitioners: A Handbook of Medico-Legal Issues and Rights Protection (2023) 3.
[2] Lisa Cosgrove & Allen Shaughnessy, 'Mental Health as a Basic Human Right and the Interference of Commercialized Science', (2020) 22(1) Health and Human Rights Journal 61-68.
[3] Pan American Health Organisation and World Health Organization, 'Mental Health' (June 17, 2024) <https://www. paho.org/en/topics/mental-health#:~:text=The%20World%20Health%20Organization%20(WHO,to%20his%20or %20her%20community%E2%80%9D> accessed June 17, 2024.
[4] World Health Organisation 'Mental Health', https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response, <https://www.who.int/southeastasia/news/detail/10-10-2023-world-mental-health-day-mental-health-is-a-universal-human-right> accessed June 17, 2024.
[5] Geoffrey M. Reed et al., 'Innovations and Changes in the ICD-11 Classification of Mental, Behavioural and Neurodevelopmental Disorders' (2019) 18(1) World Psychiatry 3-19.
[6] World Health Organization, (n 4).

Mental disorders have been stated to be one of the leading causes of disease burden globally, which necessitated the identification of mental health as a global priority by international health organisations.[7] The WHO in 2017 estimates that worldwide, '450 million people have a mental disorder, and 25% of the population will suffer from mental illness at some times in their lives.[8] The United Nations, in a more recent report, also state that about one in eight people suffer from mental health conditions (MHC) globally and three out of four of these persons do not receive adequate care.[9] especially in low- and middle-income countries (LMICs).[10]

Mental disorders constitute a form of disability. The Convention on the Rights of Persons with Disabilities (CRPD) defines persons with disabilities (PWD) to include those with 'long-term…mental, intellectual or sensory impairments and persons whose involvement in societal activities cannot be effectively realized like other individuals.[11] Persons with mental health conditions (PWMHC) experience more difficulties and human rights violations than persons with other forms of disabilities. Apart from the stigmatization and discrimination they experience in societies and workplaces, they are also prone to physical and sexual abuse,[12] arbitrary detention, inadequate access to treatment and coercive practices.[13] Coercive practices in mental health care could be formal in nature, and include: compulsory or involuntary admissions, seclusion, physical restraints and mechanical or chemical restraints. Informal coercive practices on the other hand, controls PWMHC in a less apparent way through the use of psychological and social methods like forceful persuasion or indirect threats.[14] Mental disorders exist in all countries but with a more severe impact in LMICs and on disadvantaged PWMHCs, that is, those who live in poverty, reside in rural areas or belong to minority ethnic and religious groups.[15]

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[7] Julian Eaton, 'Human Rights-Based Approaches to Mental Health Legislation and Global Mental Health' (2019) 16(2) J Psych International, 37–40.
[8] United Nations, Uphold Mental Health as Universal Human Right to Build Healthier World Where Everyone Thrives, Secretary-General Urges International Observance Message <https://press.un.org/en/2023/sgsm219 68.doc.htm> accessed June 17, 2024).
[9] Ibid.
[10] OHCHR, 'Mental Health and Human Rights', <https://www.ohchr.org/en/health/mental-health-and-human-rights> accessed May 27, 2024.
[11] See CRPD, art 1.
[12] Michael Dudley, Derrick Silove & Fran Gale, Mental Health, Human Rights and their Relationship: An Introduction in Michael Dudley, Derrick Silove and Fran Gale (eds) Mental Health and Human Rights: Vision, Praxis and Courage 5 (2012).
[13] Ifeoma P. Okafor et al, Role of Traditional Beliefs in the Knowledge and Perceptions of Mental Health and Illness amongst Rural-Dwelling Women in Western Nigeria (2022) 14 African Journal of Primary Health Care & Family Medicine 3547-3555.
[14] Deborah Oyine Aluh, et al. 'Experiences and Perceptions of Coercive Practices in Mental Health Care Among Service Users in Nigeria: A Qualitative Study' (2022) 16(1) International Journal of Mental Health Systems 1-11.
[15] Dudley, Silove & Gale (n 12).

The pathway to the protection of the rights of PWMHCs in Nigeria has, however, been cleared with the recent enactment of a new legislation on mental disability in the country, known as the Mental Health Act 2021. This study aims to examine the rights of PWMHCs recognized in the legislation. Existing literature on mental health in Nigeria focuses on the repealed Act, and only a few have appraised the new mental health legislation and its contents. For example, Westbrooke analysed the Lunacy Act with a specific focus on discriminatory practices experienced by PWMHCs during their involuntary commitment in Nigerian facilities.[16] Bamidele and Olusegun also identified the limitations of the Lunacy Act and highlighted the need for a new legislation that would protect the rights and wellbeing of PWMHC.[17] This study will further expand on existing literature by highlighting the rights of PWMHCs established in the Mental Health Act 2021, analysing the implications of these rights for the PWMHCs in Nigeria, as well as the challenges that would restrict the effective implementation of the legislation.

This article is divided into five sections. Section one serves as an introduction, while section two explains the meaning and nature of mental health as a human right. Section three analyses the legislation that regulated mental health in Nigeria before the 2021 Mental Health Act was established, and the forms of human rights violations PWMHCs experience. Section four highlights the challenges that are bound to restrict the effective implementation of the 2021 Mental Health Act, and section five discusses the strategies that should be employed to surmount those challenges and concludes.

2. Method

This research employs a doctrinal methodology to analyse the Mental Health Act 2021, a comprehensive law enacted to protect the rights of PWMHC in Nigeria. The research focused on primary sources like national statutes for example, the Lunacy Act 1958 and the Mental Health Act 2021 and international legal framework like the Universal Declaration of Human Rights 1948 and the Convention on the Rights of Persons with Disabilities 2006. Furthermore, it interpreted and contextually reviewed secondary sources including books, journal articles, policy papers and credible documents from the internet that are relevant to the domain of mental health law. The above-stated methodological approach promotes knowledge on the rights of PWMHC and the complexities that limit the implementation of these rights in Nigeria.

[16] Westbrook AH, 'Mental Health Legislation and Involuntary Commitment in Nigeria: A Call for Reform' (2011) 10(2) Washington University Global Studies Law Review 397- 410.
[17] Ifeoluwayimika Bamidele & Olaitan Olusegun, 'Mental Health Law in Nigeria: An Urgent Call for Action' (2017) 3(1) Journal of Private and Business Law, Nassarawa State University 223-239.

3. Analysis or Discussion

3.1. Mental Health as a Human Right in International Law

Human rights are a significant part of the human race as it indicates the value associated with the lives of human beings and enable them to make progress, without arbitrary inhibitions.[18] As stated by Mann and others, 'human rights are not only entitlements that have a legal and ethical force but also fundamental pillars of justice and civilisation'.[19] Protecting the human rights of disadvantaged and marginalised groups enable them to achieve their maximum capability.[20]

Mental health and human rights are linked in several ways. First, human rights violations like discrimination and torture are harmful to the mental health of individuals and conversely, respecting human rights improves the mental health of persons.[21] Second, PWMHCs are usually subjected to human rights violations.[22] Human rights form a crucial element in balancing the interests of the mentally disordered and the public. It helps to monitor and evaluate mental health policies and programmes, which are vital in promoting the quality of health in the entire society.[23] Human rights protect PWMHCs from harm while carrying out their normal activities or trying to get a cure.

International and regional legal instruments recognize the rights of PWMHCs. These instruments have thus set standards that States are expected to fulfil to realise the right to mental health for their citizens. For example, Article 1 of the Universal Declaration of Human Rights (UDHR) provides that 'all people are free and equal in rights and dignity,' which translates to the fact that PWMHCs are entitled to rights which other persons enjoy. Also, the International Covenant on Economic, Social and Cultural Rights (ICESCR) in Article 12(1), recognises the 'right of everyone to the enjoyment of the highest attainable standard of physical and mental health'. Article 12(2)(d) provides that to achieve this right, States are expected to create suitable conditions that would enable sick persons receive adequate medical services and attention when they require it.

The United Nations General Assembly adopted the CRPD in 2006 to protect the rights of PWD. The CRPD affirm that all forms of rights enjoyed by others must apply equally to all PWD.[24] It protects PWD from human rights violations including non-discrimination, torture, cruel, inhuman and degrading punishments, exploitation,

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[18] Dudley, Silove & Gale (n 12) 3.
[19] Sebastian Porsdam Mann, Valerie J. Bradley & Barbara J. Sahakian, 'Human Rights-Based Approaches to Mental Health: A Review of Programs' (2016) 18(1) *Health and Human Rights Journal* 263-275.
[20] Dudley, Silove & Gale (n 12) 3.
[21] Artin A. Mahdanian et al, 'Human Rights in Mental Healthcare; A Review of Current Global Situation' (2023) 35(2) International Review of Psychiatry, 150-162.
[22] Mann, Bradley & Sahakian (n 19).
[23] Ibid.
[24] Mahdanian et al (n 21).

violence and abuse, immobilization, isolation or coercive actions[25] and seeks to guarantee their safety in situations of risk, including armed conflicts and humanitarian emergencies.[26]`The Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment No. 14,[27] explain that the right to mental health does not mean laying claims against the government when an MHC arises, but it instead translates to the right to enjoy facilities and services that would promote treatment and cure for the individual. Paragraph 12(a) of the CESCR describe the essential elements of the right to health which must be applied by States to ensure efficient health systems that protect the rights of their citizens. These elements include: availability, accessibility, acceptability and quality. When applied to mental health, availability translates to States having operational and sufficient healthcare facilities, equipment, professionals and essential drugs, to care for PWMHC. Accessibility in relation to mental health means that PWMHC should have access to care without any form of discrimination. Facilities and services must therefore be available physically and affordable to all persons who need them.[28] Acceptability can be interpreted to mean that all mental health facilities comply with the principles of medical ethics, like confidentiality, and respect the culture of persons and their gender requirements.[29] Paragraph 12(d) mentions that quality cuts across good mental health facilities and services, qualified health practitioners, approved drugs and equipment that are in good condition, available clean water and a clean environment.

The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (hereinafter referred to as the Special Rapporteur) submitted a report in 2020.[30] The report asserts that 'there can be no good mental health without human rights.' Thus, the significance placed on human rights will determine the effectiveness of investments made in mental health systems by countries.[31] The report notes that key human rights principles that must be adhered to in the treatment of PWMHC include dignity and autonomy. Consequently, PWMHCs should, as much as possible, be allowed to make informed decisions concerning their care, with adequate support provided, where necessary.[32] Another principle is social inclusion, which signifies that PWMHC are encouraged to secure and maintain personal relationships and connections with the

[25] CRPD, art 14 & 15.
[26] CRPD, art 11.
[27] UN Committee on Economic, Social and Cultural Rights (CESCR) General Comment 14: The Right to the Highest Attainable Standard of Health (Art 12 of the Covenant) 11 August 2000, E/C12/2000/4.
[28] Para 12(b).
[29] Para 12 (c).
[30] Human Rights Council, 'Report of the Special Rapporteur on the Right of Everyone to The Enjoyment of The Highest Attainable Standard of Physical and Mental Health', A/HRC/44/48, 15 April 2020.
[31] Para 1.
[32] Para 57.

society.[33] Furthermore, the right to equality and non-discrimination is a basic entitlement of all persons regardless of their medical condition or other status. Thus, PWMHCs should not be deprived of services which other persons enjoy, including health care and treatment. The Special Rapporteur notes in the report that discrimination is rife in mental health systems and patients are deprived of several rights, including the rights to decline care, to legal capacity and to privacy.[34] Also, the relationship between the providers and users of mental health services is to be based on 'mutual respect and trust'. Coercive methods of treatment affect this relationship and do not align with a rights-based approach.[35] To enhance the quality of care received by PWMHCs, the Special Rapporteur encourages collaborations between the users and providers of mental health services, as well as their families and caregivers.[36]

In May 2013, WHO adopted a Mental Health Action Plan (MHAP) at the 66th World Health Assembly (WHA), which was to be operational between 2013 and 2020. Further updates were made to the MHAP in September 2021, which was adopted by the 74th WHA.[37] The MHAP notes that due to the widespread human rights violations experienced by PWMHCs, it is crucial to employ a human rights perspective to address the high rate of mental disorders. The MHAP suggests a shift from facility-based care to community-based treatment, which brings services closer to the people, promotes the participation of PWMHCs in their care,[38] and reduces human rights violations, often recorded in facilities.[39]

3.2. Mental Health System in Nigeria Before the 2021 Mental Health Legislation

MHCs are widespread in several LMICs, including Nigeria.[40] It has been estimated that between 20 per cent and 30 per cent of Nigeria's population have a MHC.[41] Before the colonial era, Nigerians made use of spiritual homes and healers who had expertise in the treatment of physical and mental health problems. Depending on the perceived cause of the illness, these traditional healers employed different

[33] Para 59.
[34] Para 61.
[35] Para 64.
[36] Para 66.
[37] Om Prakash Singh, 'Comprehensive Mental Health Action Plan 2013–2030: We Must Rise to the Challenge' (2021) 63(5) Indian Journal of Psychiatry.
[38] Pan American Health Organization and World Health Organisations, Protection and promotion of Human Rights
in Mental Health, (May 12, 2024, 11:20 PM) <https://www.paho.org/en/topics/protection-and-promotion-human-rights-mental-health> (accessed May 12, 2024).
[39] Mahdanian et al (n 21).
[40] Abdullahi Tunde Akorede et al, 'People Living with Mental Disorder in Nigeria Amidst COVID-19: Challenges, Implications and Recommendations' (2022) 37 The International Journal of Health Planning and Management 1191-1198.
[41] Cheluchi Onyemelukwe, 'Stigma and Mental Health in Nigeria: Some Suggestions for Law Reform' (2016) 55 JL Pol'y & Globalization 63.

modes of treatment such as herbs, incantations, rituals and sacrifices.[42] The British introduced the Western-style treatment of mental disorders in the late nineteenth century as a response to the need for improved mental health of Nigerians.[43] The Aro Neuropsychiatric Hospital in Abeokuta, South-west Nigeria, headed by the late Professor Thomas Adeoye Lambo, the first Nigerian psychiatrist who was trained in England, played a major part in advancing psychiatry in Nigeria.[44]

Today, traditional medicine is still relevant in the treatment of MHC in Nigeria and varies according to the culture of existing ethnic groups.[45] A study of about 1000 PWMHCs revealed that about 80% of the participants sought mental health care from traditional providers.[46] Another study affirms the reliance on traditional healers as the first point of call to treat mental disorders, while Western medicine was a secondary option.[47] Factors that contribute to the reliance on traditional medicine to treat MHC include: limited access to affordable mental health treatment, poverty and beliefs in the spiritual and supernatural causes of MHC.[48] Anjorin and Yusuf report that an estimated 80% of PWMHCs lack access to mental health services and treatment, a situation which is worse in rural areas.[49]

It has been reported that mental health awareness is low in Nigeria, and mental disorders are misunderstood by many people.[50] Apart from the false perception that PWMHCs are violent and dangerous, the causes of such conditions are usually attributed to curses, evil possession and genetic inheritance rather than biomedical causes.[51] PWMHCs are thus often stigmatised and subjected to discrimination. While employing indigenous methods of treatment, their human rights are violated through physical, sexual and psychological abuse and forced treatments.[52] They are

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[42] Berhe Kenfe Tesfay, Hailay Abrha Gesesew and Paul R. Ward, 'Traditional Healing Practices, Factors Influencing to Access the Practices and Its Complementary Effect on Mental Health In Sub-Saharan Africa: A Systematic Review' (2024) 14(9) *BMJ Open*, e083004.
[43] Ifeoluwayimika Bamidele & Olaitan Olusegun, 'Mental Health Law in Nigeria: An Urgent Call for Action' (2017) 3(1) Journal of Private and Business Law, Nassarawa State University 223-239.
[44] Oye Gureje, 'Psychiatry in Nigeria' (2023) 1 Int Psychiatry 10-12.
[45] World Health Organisation, Legal Status of Traditional Medicine and Complimentary/Alternative Medicine: A Worldwide Review (May 12, 2024, 12:00 PM) <who.int/medicinedocs/en/jh2943e/432/html> accessed May 12, 2024.
[46] Omolayo Anjorin & Yusuf Hassan Wada, 'Impact of Traditional Healers in The Provision of Mental Health Services in Nigeria' (2022) 82 Annals of Medicine and Surgery 104755- 104759.
[47] Dung Ezekiel Jidong et al, 'Nigerian Cultural Beliefs About Mental Health Conditions and Traditional Healing: A Qualitative Study' (2021) 16 The Journal of Mental Health Training, Education and Practice 285-299.
[48] Ogunwale Adegboyega, Babatunde Fadipe & Oladayo Bifarin. 'Indigenous Mental Healthcare and Human Rights Abuses in Nigeria: The Role of Cultural Syntonicity and Stigmatization' (2023) 11 Frontiers in Public Health 1122396.
[49] Anjorin & Yusuf (n 46).
[50] Nicholas Aderinto, Opanike Joshua & Oladipo Elizabeth, 'Accessing Mental Health Services in Africa: Current State, Efforts, Challenges and Recommendation' (2022) 81 Annals of Medicine and Surgery 104421-104425.
[51] Okafor et al (n 13) 3552.
[52] Ogunwale, Fadipe & Bifarin (n 48).

beaten, deprived of food, chained to trees, placed inside cages and sheds, and forced to stay outdoors notwithstanding the harsh weather, due to the belief that those actions will force out the evil spirits inside them.[53]

Discrimination and stigma are also experienced by PWMHCs in areas like employment and housing.[54] Stigma is harmful to the patient's quality of life and negatively affects his access to quality treatment and care.[55] A study reveals that coercive practices and other human rights violations also occur in large psychiatric hospitals in Nigeria. They include flogging and restraints to ensure the usage of medications and to prevent escape from facilities.[56] Some are admitted in these facilities against their will and abandoned there by their families to prevent stigma associated with their condition. It has also been reported that basic facilities and resources like beddings, personnel and funds are not sufficiently available in mental health facilities in Nigeria.[57]

The previous legislation regulating mental healthcare in Nigeria, known as the Lunacy Act 1958, had been a major subject of concern to stakeholders, including scholars, human rights advocates and health professionals, due to its several limitations and gaps. For example, they declare that the legislation is obsolete and does not recognize the human rights of PWMHCs, contrary to international human rights standards.[58] The title of the Lunacy Act, that is, "A Law to Provide for the Custody and Removal of Lunatics" and other terms used in the legislation to describe PWMHCs, including 'lunatic', 'idiot' and 'unsound mind', are derogatory.[59] Another weakness of the Lunacy Act is the absence of 'treatment' or 'care' in its provisions, with more emphasis placed instead on 'custodial care'.[60]

Efforts at establishing a comprehensive mental health legislation in Nigeria began in 2003 when a Mental Health Bill was put forward to the National Assembly and subsequently in 2008, 2013 and 2016. However, these efforts received little support from the legislators.[61] Subsequently, advocacy efforts by CSOs in the field of mental health increased for the passage of the Bill, including over 30 of these organisations

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[53] Aluh et al. (n 14) 54; Lewys Beames & Juliana Onwumere, 'Risk Factors Associated with Use of Coercive Practices in Adult Mental Health Inpatients: A Systematic Review' (2021) 29 J Psychiatry Ment Health Nurs 220-239.
[54] Onyemelukwe (n 41).
[55] Sheila Wildeman, 'Law and Mental Health: A Relationship in Crisis?' (2010) 33 The Dalhousie Law Journal 1-14.
[56] Aluh et al (n 14).
[57] Aderinto, Opanike & Oladipo (n 50).
[58] Akanni OO & Edozien LC, 'The New Nigerian Mental Health Act: A Huge Leap Before Looking Closely?' (2023) 64 Niger Med J 838 – 844.
[59] Deborah Oyine Aluh Et Al., 'Nigeria's Mental Health and Substance Abuse Bill 2019: Analysis of Its Compliance with the United Nations Convention on the Rights of Persons with Disabilities' (2022) 83 International Journal of Law and Psychiatry 101817-101821.
[60] Ibid.
[61] Ozota Gerald O et al., 'Nigeria Mental Health Law: Challenges and Implications for Mental Health Services' (2024) 30 South African Journal of Psychiatry 2134-2140.

signing an open letter to government officials.[62] On November 28, 2022, President Muhammadu Buhari signed the National Mental Health Bill into Law in January 2023. The Bill is the first legislative reform adopted in the field since the country's independence.

3.3. Rights Protection of Mentally Ill Persons Under the Nigerian Mental Health Law

The 2021 Mental Health Act is a major milestone in Nigeria's efforts to improve mental health in the country. It fills the gaps and corrects the deficiencies in the Lunacy Act, while seeking to protect the rights of PWMHC and improve mental health services.[63] Contrary to the provisions of the 1958 Lunacy Act, one of the objectives of the new legislation is to protect the rights and interests of PWMCHs. Another objective seeks to ensure that such persons live an improved quality of life through the provision of adequate care and treatment that effective mental health services would offer to them.

The Mental Health Act removes all derogatory terms found in the Lunacy Act and replaces them with terms that connote respect and non-discrimination. For example, it replaces the term 'lunatic' with 'mental disorder'. It establishes some committees and services that would promote the rights of PWMHCs. For example, the legislation in sections 2-5, establishes a Department of Mental Health Services in the Federal Ministry of Health. The Department is mandated to administer the provisions of the Act and perform other functions that would strengthen mental health systems in Nigeria.[64] The Mental Health Act also establishes a Mental Health Fund that would facilitate the availability of resources for the implementation of its provisions. Without the Mental Health Fund, the resources needed to achieve the objectives of the Act would be challenging to obtain.

Part II codifies the rights of persons with mental and substance use-related disorders. Section 1 specifies that PWMHCs are entitled to rights that others enjoy, notwithstanding the nature of their past or current MHC. Section 2 provides that persons who have past or current MHC are not to experience any type of discrimination. According to Section 12(3)(b), PWMHCs are to be protected from all forms of abuse, violence, cruel treatment and exploitation. They must have the freedom to access information, express themselves and receive appropriate care and support from their family members, legal representatives and the government.[65] Section 12(4) mandates persons who witness a PWMHC being

[62] Solomon Odeniyi, 'CSOS Seek Passage of Mental Health Bill', (2024) <https://punchng.com/csos-seek-passage-of-mental-health-bill/> accessed 7 July 2024.
[63] Aloysius Ugwu and Beti Baiye, 'From the Lunacy Act to the First Mental Health Act in Nigeria: Five Takeaways' (2023) (May 28 2024, 10:10 AM) <https://articles.nigeriahealthwatch.com/from-the-lunacy-act-to-the-first-mental-health-act-in-nigeria-five-takeaways/> accessed May 7, 2024.
[64] Mental Health Act, s 2-5.
[65] Mental Health Act, s 12(3)(c-h).

subjected to abuse to report to the police. Other rights specified in the Act are discussed below.

The Mental Health Act protects the employment rights of PWMHCs and provides that they are not to be deprived of opportunities related to work or employment. Furthermore, those who are employed are entitled to receive payments similar to the rates paid to other persons.[66] Previous or current MHCs should not be a basis for terminating an employee's appointment or depriving him of a benefit he has a right to receive.[67] Section 13(3) expects that an employer who believes that an employee has an MHC which affects their productivity at work should assist the employee to search for advice or treatment from a medical expert. Moreover, section 14 of the Mental Health Act prohibits the eviction of tenants from their places of residence solely on the grounds of developing an MHC. The employment and housing rights of PWMHCs raise questions as to whether due consideration was given to all parties relevant to these rights. For example, the Act does not include exceptions for a PWMHC who becomes violent and destroys the property of the landlord or an employee whose productivity reduces to the extent that the employer begins to lose profit as a result of the person's condition.

Also, as pointed out by Akanni and Edozien, the inability of the PWMHCs to pay the housing rent or bills might also be a factor that the landlord considers to evict a tenant with an MHC, and this is also not considered in the Act.[68] Section 15(1) of the Mental Health Act provides that PWMHCs have the right to 'appropriate, affordable, accessible physical and mental health care and services; counselling; rehabilitation; and after-care support to facilitate reintegration into the community'. Services provided by mental health facilities must not violate the right to dignity of service users. Facilities must also have treatment options that manage the condition of PWMHCs and enable them to join in 'political, social and economic' activities. The type of clinical and nonclinical treatment made available should help to improve their condition and quality of life. Section 15(3) also states that reasonable accommodation should be provided to PWMHCs, which means that adjustments would have to be made to enable PWMHCs to have access to facilities, services and information that would have otherwise been difficult to access.[69]

The Mental Health Assessment Committee (hereinafter known as the Committee) is established under section 9 of the Act. The Committee is instrumental to the rights of PWMHCs, especially those who have been admitted into mental healthcare facilities for treatment and care. Their responsibility encompasses ensuring that PWMHCs are not just abandoned in these facilities by receiving and investigating

[66] Mental Health Act, s 13(1)
[67] Mental Health Act, s 13(2).
[68] Akanni & Edozien (n 58).
[69] See the CRPD, art 2 for the definition of 'reasonable accommodation'.

complaints made by them or their representatives. In Section 11(1), the Committee is mandated to occasionally review the conditions of persons admitted to a healthcare facility either involuntarily or for long-term treatment. Where it is discovered that PWMHCs have improved and they should no longer be subjected to involuntary or long-term admissions, the Committee has the power to discharge such persons. Section 11(2) provides that decisions made by the Committee should be in accordance with human rights principles. Section 17 of the Mental Health Act provides that PWMHCs are entitled to appoint someone as their legal representative where they have the capacity to do so. The legal representatives are responsible for making decisions on behalf of PWMHC that lack the required capacity. These include decisions concerning the treatment plan, the appointment of a legal practitioner and making complaints to the committee as appropriate.

A basic right of patients who are on hospital admission is access to visitors. This right is relevant to PWMHCs, and the Mental Health Act specifies that the principle of privacy and dignity must be employed in the process of receiving visitors. Thus, relatives, their legal practitioners and other individuals are allowed to visit PWMHCs in private except in circumstances where it is suspected that they could be violent, in which case, an officer of the facility would be present to supervise such a visit.[70] The right to privacy and dignity also comes into play during the examination of PWMHCs, and the Mental Health Act mandates that only their representative and the required health worker on duty should be present.[71] According to section 19(3) of the Act, all information concerning PWMHCs, including their health status, treatment and admission in the healthcare facility, is to kept secret. The principle of confidentiality is established in legal instruments like the National Health Act and mandates medical practitioners not to reveal information patients divulge to them, thus creating trust in the doctor-patient relationship and enabling the utmost care of the patient.

Section 22(1) of the Mental Health Act permits PWMHCs to employ legal practitioners who would handle legal matters on their behalf, for example, making complaints and filing appeals.[72] Section 22(3) specify that in the circumstance where PWMHCs are unable to afford the services of a legal practitioner, such a person would receive assistance from the state where they reside. Even though the law is not specific as to the kind of assistance to be provided, the Legal Aid Scheme would be an appropriate option. The scheme is, however, fraught with challenges in most states that range from insufficient resources for efficient operations to inadequate experienced legal practitioners and the lack of awareness that the scheme exists. The drafters of the Mental Health Act must have considered the fact

[70] Mental Health Act, s 19(1-2).
[71] Mental Health Act, s 19(3).
[72] Mental Health Act, s 22(1).

that many forms of abuse on PWMHC occur in facilities, and thus, a whole section is devoted to their rights while on admission in these facilities.[73] To ensure that quality services are provided to PWMHCs in these facilities, the Federal Ministry of Health is expected to establish minimum standards of treatment and care, in addition to publishing the names of licensed mental health facilities at regular intervals.[74]

The principle of consent is vital to the treatment of patients, and section 26 of the Act provides that consent must be obtained in writing from PWMHCs after all necessary information, including the right to refuse treatment, has been disclosed to them. According to section 26(2), the medical professional must disclose information to PWMHCs in the language and manner they understand, and where it is discovered that they fail to understand the information provided after using other methods of communication, the medical officer is expected to arrange for 'supported decision making' without charging any fee. In supported decision-making, PWMHCs will be able to take actions and make decisions with the necessary accommodations and support, unlike substitute decision-making, where decisions are made for them without their input or participation.[75]

Section 27(1)(a) makes it clear that PWMHCs can be admitted in a health facility for treatment and care, either voluntarily or involuntarily. Persons who present themselves voluntarily should be cared for with the same standards used for patients with physical illness. This provision is important because PWMHCs might not be able to express themselves well enough to demand quality care. The above requirements constitute part of the right to quality care that patients are entitled to, which has been established in the National Health Act and the Patients' Bill of Rights in Nigeria. Referrals to appropriate facilities must also be made promptly upon the discovery that the facility would be incapable of handling the person's condition due to reasons which could range from inadequate personnel or equipment.[76] Section 27(4) provides that PWMHC who request to be discharged must be granted their wish within 24 hours unless they qualify for involuntary admission. Although not indicated in the Act, the insistence of the patient to be discharged contrary to the doctor's advice must be noted in the medical record of the patient. This would help the professional avoid liability in the circumstance that the PWMHC encounters harm after discharge.

Involuntary admissions are utilized when PWMHC have a high chance of causing harm to themselves or other persons; or their conditions are severe and would likely worsen upon the failure to receive medical attention; or it would deter the treatment that would only be effective if given in a facility. In respect of minors, section 28(1)

[73] See Part III of the Mental Health Act.
[74] Mental Health Act, s 25.
[75] See CRPD, art 5; Mahdanian et al (n 21).
[76] Mental Health Act, s 27(1)(b).

of the Mental Health Act expects that involuntary admissions should be the last resort and should only be employed where other measures like community-based care are not available or have proved to be unsuccessful. Section 28(2) provides that involuntary admissions of PWMHCs should only be considered upon applications made by certain persons, including parents or guardians, spouses, legal representatives and other persons like medical officers, law enforcement officers, agents of the government, or other people who reasonably believe that the MHC of the person on whose behalf the application is made has worsened. Section 28(3) states that applications made by the above persons must indicate the rationale for the preference for involuntary admission and how it would serve the best interests of PWMHCs. According to section 28(4), non-relatives who apply for involuntary admissions must also indicate their relationship with PWMHCs and the efforts they made to locate their relatives. Apart from receiving information regarding the location of their loved one, relatives must be traced because they could serve as legal representatives and enable the PWMHC to provide better care.

Two independent qualified medical practitioners must examine PWMHCs and, if found to indeed require involuntary admission, would record their findings and send a written recommendation to the Committee.[77] Involuntary admissions are only valid for 28 days, during which PWMHCs receive appropriate medical treatment, and after which further extensions can be sought from the committee if the medical officer or head of the facility thinks that it is necessary to carry out further treatments.[78] Section 30(1) mandates that PWMHCs who no longer meet the criteria for involuntary admission must be discharged immediately, whether or not they have spent up to 28 days. According to section 30(2), failure to discharge PWMHCs under this Clause translates to the imprisonment of the offender for a maximum term of five years or the payment of a minimum amount of N1,000,000 or both punishments. A corporate person, on the other hand, shall be liable to pay a minimum amount of N5,000,000. The above provisions made in respect of involuntary admissions protect the rights of PWMHC to dignity and non-coercive treatments and aim to ensure that they are not maltreated, abused or abandoned without adequate care in mental health facilities.

However, Akanni and Edozien are of the opinion that the process of involuntary admission under the Act is impractical and burdensome.[79] For instance, the requirement that independent medical practitioners examine PWMHCs and submit their findings to the Committee before they are admitted involuntarily will be difficult to achieve. This is because these independent medical practitioners are busy in their own hospitals, coupled with the scarcity of psychiatrists and the

[77] Mental Health Act, s 28(6).
[78] Mental Health Act, s 28(10)(e); s 31.
[79] Akanni & Edozien (n 58).

distance between these hospitals.[80] It is instead suggested that another practitioner in the same facility where PWMHCs are being treated does the appropriate confirmation and makes the necessary report. Also, they feel that mandating relatives to write applications for involuntary admissions will be challenging for uneducated persons, especially since the legislation demands that they clearly mention the grounds that would necessitate involuntary admission of PWMHCs.[81] Akanni and Edozien also argue that the 28-day initial admission period for treatment during involuntary treatment, with an extension of 14 days, is too short to stabilize in-patients.[82]

PWMHCs are not to be kept in seclusion, forcefully treated or restrained, except they have been treated for at least 48 hours, after which two medical officers who examined them will certify that such a method of treatment is the only appropriate option that would prevent them from harming themselves. It must also be certain that the head of the facility has approved such a method and the facility has been accredited by the appropriate ministry as having sufficient facilities to carry out the method safely. In the circumstance where qualified psychiatrists are not available to examine PWMHCs, they are expected to be transferred to another facility within 48 hours of restriction.[83] However, according to Akanni and Edozien, it is not practicable to wait for 48 hours before violent and aggressive PWMHCs are restrained, as it puts the lives of workers at risk and slows down the process of treatment.[84] Failure to comply with any of the provisions concerning involuntary admission or forced treatment is an offence, and such offender will, upon conviction, be subjected to a maximum of five years imprisonment or a minimum fine of N2,000,000 or both punishments.[85] Section 36 of the Mental Health Act also prohibits the use of sterilisation as a form of treatment, with convicts liable to seven years imprisonment without the option of a fine. Likewise, section 37 prohibits irreversible treatments like electroconvulsive therapy and psychosurgery, where it is not in the best interest of the person, except that the facility has a valid license, obtains the informed consent of the PWMHC and carries out such treatment in compliance with the prescribed clinical guidelines. The above rules concerning involuntary admission and forced treatment seek to protect the rights of PWMHCs to autonomy, dignity of persons and freedom from torture, which have been established in national and international instruments.

Section 55 of the Mental Health Act considers it an offence for an officer of a mental health facility to engage in sexual relationships with a patient, either male or female,

[80] Ibid.
[81] Ibid.
[82] Ibid.
[83] Mental Health Act, s 34(1), (3).
[84] Akanni & Edozien (n 58).
[85] Mental Health Act, s 34(10).

whether on admission or not. whatever their genders are. Violators who are convicted of this offence are subjected to life imprisonment without the option of a fine.

3.4. Challenges Affecting the Implementation of Mental Health Law in Nigeria

People with intellectual disabilities are more susceptible to human rights violations than other persons living with disabilities. It is thus essential that legislation regulating mental health services expressly protects their rights.[86] The newly enacted Nigerian Mental Health Act has established the rights of PWMHCs; however, some barriers are bound to affect the implementation of the Mental Health Act and the realisation of the rights of PWMHCs. A challenge is the insufficient facilities and psychiatrists available to care for PWMHCs in Nigeria. As mentioned by the CESCR, the availability of health facilities and services is one of the elements that must be present in States for the fulfilment of the right to health of citizens.[87] Unfortunately, availability is threatened by the massive migration of Nigerians, including health professionals, to other countries in search of better employment opportunities and a more befitting standard of living. For example, reports state that more than 5,600 medical practitioners have left Nigeria for the United Kingdom in the last eight years, leaving behind about 24,000 practitioners to care for a population of over 200 million Nigerians, which is a ratio of 1 practitioner to 30,000 patients.[88] A 2022 study reports that Nigeria has fewer than 300 psychiatrists in the government-owned mental health facilities.[89] These psychiatrists are also only available in tertiary hospitals, most of which are located in cities, leaving out primary healthcare centres in rural areas with no access to treatment for PWMHCs.[90]

Another constraint that could restrict the effectiveness of the Act is the financial burden involved in accessing mental health services and treatment in Nigeria, especially for persons who receive a lower income and have to be treated for a longer period.[91] Lack of economic accessibility restricts the right to mental healthcare services of PWMHCs, who might then resort to sub-standard facilities and traditional methods of treatment. The National Health Insurance Scheme (NHIS), which aims to improve access to quality health care services by reducing associated costs, is available in Nigeria. However, coverage is limited with respect to the cost of admission and medications, while it only covers a limited proportion

[86] Onyemelukwe (n 41).
[87] Para 12(a), General Comment No 14.
[88] Okunade Samuel Kehinde & Oladotun E. Awosusi, The Japa Syndrome and the Migration of Nigerians to the United Kingdom: An Empirical Analysis (2023) 11 Comparative Migration Studies 1-18.
[89] Ozota (n 61); Anjorin & Yusuf (n 46).
[90] Yusuf Hassan Wada et al., 'Mental Health in Nigeria: A Neglected Issue in Public Health' (2021) 2 Public Health in Practice 100166-100169.
[91] Jibril Abdulmalik et al., Sustainable Financing Mechanisms for Strengthening Mental Health Systems in Nigeria (2019) 13 International Journal of Mental Health Systems 1-15.

of the population, particularly persons who work in the formal sector.[92] Furthermore, budgetary allocation for mental healthcare in Nigeria is about 3.3–4% of the total budget for healthcare, which is usually insufficient to cover the needs of this sector.[93] Thus, government-owned facilities lack adequate and quality infrastructure, equipment, personnel and medication and are ill-equipped to render efficient services.[94]

Furthermore, inadequate access to justice constitutes a barrier to realising the rights of PWMHCs established in the Mental Health Act. Upon a violation of rights, some PWMHCs or their relatives face restrictions in obtaining justice as they are reluctant to file complaints due to stigma, the lengthy period of proceedings, lack of resources to employ legal practitioners and the unwillingness to endure the stress of court proceedings.

One of the earlier noted points made by the Special Rapporteur emphasises the fact that investments made on mental health systems will lead to unsuccessful outcomes if the human rights of PWMHCs are not implemented. The limited level of awareness among psychiatrists, employers, house owners, patients and other relevant stakeholders concerning the existence of the Mental Health Act and its provisions, including the aspects related to human rights, would restrict the effectiveness of the Mental Health Act. For psychiatrists, more focus is placed on the clinical aspects of their practice, while human rights principles embedded in the practice are ignored.[95]

3.5. Strategies For Realizing the Rights of PWMHC in the Mental Health Law

There must be deliberate and practical steps taken to implement the provisions of the 2021 Mental Health Act. Established under section 2 of the Act, the Department of Mental Health Services in the Federal Ministry of Health has been mandated to perform this function. Members of this Department should thus be set up promptly to ensure that the required steps are taken towards an effective implementation of the Act. The extent of the government's determination will reflect on how promptly the Committee will be established and how swiftly the Mental Health Fund will be funded, which will all ultimately determine the extent of the realization of the rights of PWMHCs.[96] Furthermore, increased budgetary allocation is required for mental health systems in Nigeria to enable an effective implementation of the Mental Health Act. Apart from providing mental health facilities with adequate equipment and infrastructure, psychiatrists and other mental healthcare workers must be well paid,

[92] Nwanaji-Enwerem Onyemaechi, et al., 'Patient Satisfaction with The Nigerian National Health Insurance Scheme Two Decades Since Establishment: A Systematic Review and Recommendations for Improvement' (2022) 14 African Journal of Primary Health Care & Family Medicine 3003.
[93] Wada et al. (n 90).
[94] Aderinto, Opanike & Oladipo (n 50).
[95] Mahdanian et al (n 21).
[96] Akanni & Edozien (n 58).

and funds must also be earmarked for their training on the human rights of PWMHCs.[97] The Mental Health Fund will be significantly helpful in allotting sufficient resources to implement the provisions of the legislation, and it is important that a large part of the increased budget should be set apart for this purpose, as other expected forms of voluntary contributions might not be reliable.

There should be public awareness campaigns and education on the existence of the Mental Health Act and the protection of the rights of PWMHCs established in the Act, so that all relevant stakeholders are aware of their rights and responsibilities.[98] Enhanced collaborations between the government, private organisations, health professionals, scholars and CSOs are required to conduct these awareness and educational programs. CSOs, for example, are in a better position to highlight the needs and challenges of PWMHCs and identify solutions to improve mental health systems in Nigeria. They also contribute to policy-making and implementation. Monetary contributions by private organisations, on the other hand, would go a long way in enhancing the effectiveness of such programs. Also, more qualified medical practitioners are required in the health sector, including those who are specialists in the mental health field. Thus, conditions of work, including salaries, allowances and annual leave, should be improved to encourage Nigerian medical practitioners to stay in the country after their training in medical schools. Access to justice for aggrieved persons should be made easier through faster court processes and the allocation of more resources to the Legal Aid Council.

The Mental Health Act advocates for community-based treatment in accordance with the MHAP 2013-2030.[99] Thus, the needs of PWMHCs, including those in rural areas, should, as much as possible, be addressed through community-based care, with support received from facility-based care. This would promote accessibility to mental health services, both physically and economically.[100]

3. Conclusion

The WHO has declared mental health as a basic human right that must be respected by the health care systems of all countries. The MHAP notes that PWMHCs are vulnerable to human rights violations and emphasises the need for national mental health legislation to protect and promote their rights, in compliance with international human rights instruments. A step in the right direction has been taken in Nigeria by the enactment of the Mental Health Act, which includes the protection of the various rights of PWMHCs in the country. However, these rights would only

[97] Ugwu and Baiye (n 67).
[98] Wada et al. (n 90).
[99] See the Mental Health Act, s 1(f); 24(2)(a); 28(1)(b)2.
[100] Wada et al. (n 90).

be achieved if additional measures are taken to surmount the challenges that could restrict the realisation of these rights.

Thus, addressing challenges including inadequate funding of the mental health system, lack of awareness of the existence of the Mental Health Act 2021 and economic accessibility to treatment, will increase the effectiveness of the Act and enable it to achieve the objectives for which it was enacted. Prevention of mental health disorders should be included in the available services, with adequate funding extended to these centres. It is also necessary that amendments are made in the near future to correct flaws that have been identified in the provisions of the Act.