



Centre for Health Ethics Law and Development

POLICY BRIEF

NATIONAL MENTAL HEALTH ACT 2021

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CONTENTS



02

ABBREVIATIONS

03

INTRODUCTION

05

MENTAL HEALTH IN NIGERIA

08

MENTAL HEALTH ACT 2021

14

WHAT NEXT? IMPLEMENTING THE
MENTAL HEALTH ACT

15

CALL TO ACTION

ABBREVIATIONS

APN	Association of Psychiatrists of Nigeria
FCT	Federal Capital Territory
HRW	Human Rights Watch
NMHA	National Mental Health Act
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
WHO	World Health Organisation



INTRODUCTION

Mental health is an integral part of health and well-being.[1] It has been estimated that about 1 in 4 in Nigeria that is about 50 million persons are living with mental illness, according to WHO.[2] Mental illness in Nigeria ranges from minor disorders to severe ones. Whilst the minor ones range from stress-related conditions to acute stress reactions such as generalised anxiety, and phobias of diverse kinds, the severe types include effective disorders, chronic depression, schizophrenia, etc.[3] Nigeria is said to have the highest caseload in Africa with regard to depression.[4] Untreated depression usually results in drug or alcohol addiction, strained relationships, low productivity at the workplace, low perception of the individual, strokes, coronary artery disease, heart attack, weight loss, insomnia, and suicide being the worst. [5] Cases of suicide are equally on the rise in Nigeria. In 2017, suicide mortality in Nigeria was the highest in Africa – 9.5 per 100,000 according to WHO.[6] It was reported that in 2021, 51 suicide cases were recorded, an increase of 17 in comparison to 34 cases reported in 2020.[7] It should be noted that the figures are more than stated due to underreporting of cases. However, despite the crucial importance of mental health, and the number of persons in Nigeria suffering from mental conditions,

this area of health has been severely neglected for many years.[8] The violation of human rights of persons with mental health conditions is rampant. A 2019 Human Rights Watch report described the ill-treatment and violations of human rights of persons including chaining and seclusion of persons with mental health conditions. [9] According to HRW, the abuse, and violent treatment of persons with mental health disorders is not limited to rehabilitation centres, traditional healing centres, and Christian and Islamic faith-based health facilities but also pervades government-owned health facilities.[10] Discrimination, stigmatisation and undignified treatment of persons with mental health disorders are ongoing challenges. Even persons that have access to mental health facilities do not get standard mental health care. [11]

Historically, the trajectory of Nigeria's mental health law can be traced to the colonial era. The first mental health law – the Lunacy Ordinance was enacted in 1916.[12] In 1958 the Lunacy Ordinance was amended and renamed the Lunacy Act, 1958.[13] With the amendments, the Lunacy Act empowered medical practitioners and magistrates to detain a person in an asylum on suspicion that the individual is a lunatic.[14]

Although the amended Lunacy Act is of 1916, its provisions date back to the 1800s, a period over two centuries.[15] In its determination to meet the current global best practices on mental health in the 21st century, a bill on mental health was initiated by the National Assembly, but sadly, after more than six years of its introduction, the bill did not see the light of the day. [16] In 2013, as part of the “National Policy for Mental Health Services Delivery,” a new bill was initiated aimed at creating foundations for rendering care to persons with mental, neurological and substance addiction issues.[17] This bill was also dropped as a result of a lack of support for its passage. The current Act was introduced in 2019.

Nigeria is a party to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and the Optional Protocol. Nigeria ratified both instruments in 2007 and 2010 respectively.[18] It was not until January 23, 2019, that a national law for the protection of the rights of persons with disabilities was signed into law. However, it is instructive to note that prior to the enactment of the Discrimination Against Persons with Disabilities (Prohibition) Act 2018, about seven states had enacted disability laws. As of December 2022, only 19 states had legislation on disability.[19] Although Nigeria has enacted the disability law at the national level as well as in aforesaid states in line with article 4 of the UNCRPD which enjoined States Parties to promote the full realisation of the human rights and fundamental freedoms of people with disabilities without any discrimination whatsoever on the basis of disability;

and to implement the same with the adoption of legislative, administrative and other measures to that effect, the level of implementation is abysmal. Simply put there is no significant progress even with the enactment of the Disability Act. Article 1 of CRPD describes “persons with disabilities to include those who have long-term physical, mental, intellectual or sensory impairments which in interactions with various barriers may hinder their full and effective participation in society on an equal basis with others”. On the other hand, NMHA describes mental health conditions as “impairments, activity limitations and individual and participatory restrictions arising from diagnosable mental disorders ...and include intellectual, psychosocial or cognitive disabilities”. The descriptions above show that a person suffering from mental health conditions has disabilities. And one central message pervades both the UNCRPD and NMHA – the elimination of discrimination of any kind on the basis of disability to ensure that human rights and fundamental freedoms are enjoyed on an equal basis in society.[20] Article 14 of the UNCRPD protects the liberty and security of persons with disabilities by enjoining States Parties to ensure that they are not deprived of their rights unlawfully and arbitrarily and where such deprivation occurs, it must be in conformity with the law. This provision aligns with section 28 of NMHA which allows for involuntary detention of persons with mental conditions where a health care provider is of the opinion that such is necessary for the person and society.[21] This policy brief creates awareness of the rights of persons with mental health disorders, especially with regard to discrimination, abuse, and stigmatisation.



MENTAL HEALTH IN NIGERIA

In Nigeria, the responsibility for mental health conditions is very high with limited or no access to mental health services. Where the service is available, affordability becomes the problem.[22] Mental health disorders in Nigeria are managed by psychiatrists,[23] nurses, social workers, etc.[24] Mental health cases are equally managed by religious clerics and traditional care attendants. As stated above, mental health care management has to do with services such as diagnosis, counselling, and treatment as well as rehabilitation of persons suffering from mental health conditions.

Managing mental health conditions in Nigeria is not easy due to some factors such as:

- Myths and traditional beliefs;
- Inadequate mental health facilities;
- Inadequate number of mental health professionals, etc.[25]

There are only 300 psychiatrists in Nigeria to treat a population of over 200 million people.[26] There is an equally acute labour shortage in the areas of clinical psychologists, psychiatric nurses, social workers, occupational therapists and other mental health professionals.

There are only 300 psychiatrists in Nigeria to treat a population of over 200 million people.



Furthermore, mental health problems in Nigeria are compounded by inadequate mental health facilities, considering the fact that there are only 9 neuro-psychiatric hospitals in the 36 states and the Federal Capital Territory (FCT), located in the six geo-political zones of the federation offering mental health services to patients.[27] Although there are 5 states' neuro-psychiatric hospitals owned by Abia, Akwa-Ibom, Anambra, Kano and Sokoto[28] as well as some university teaching hospitals offering mental health services to patients.[29]

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9

Neuropsychiatrist hospitals in 36 states and the FCT

5

State-owned neuro-psychiatrist hospitals owned by Abia, Akwa-Ibom, Anambra, Kano and Sokoto states

NATIONAL MENTAL HEALTH ACT 2021

On the 28th day of December 2022, a new era was dawn in Nigeria as President Muhammadu Buhari signed into law the National Mental Health Bill 2021. The National Health Act (NMHA), 2021 (hereinafter referred to as the NMHA) amongst others makes provisions for the promotion and protection of the fundamental human rights of all individuals with mental disorders and ensures that their rights are guaranteed.[30]

The NMHA's inherent objectives are to:

- provide direction for a coherent, rational and unified response to the delivery of mental health services in Nigeria;
- Promote and protect the fundamental human rights and freedom of all persons with mental health conditions and ensure that their rights are guaranteed;
- Ensure a better quality of life through access to an integrated, well-planned, effectively organized and efficiently delivered mental health care services in Nigeria;





51

cases of suicide reported in 2021
according to the WHO

9.5

per 100,000. Suicide mortality
rate in Nigeria

1 in 4

Nigerians living with mental
illness

28

December 2022. Date the
National Mental Health Act was
signed by President Buhari

- Promote the implementation of approved national minimum standards for mental health services in Nigeria.
- Promote recovery from mental health conditions and enhance rehabilitation and integration of persons with mental health conditions into the community.
- Facilitate the adoption of a community-based approach to the provision of mental health care services. and
- Facilitate the coordination of mental health services delivery in Nigeria.[31]

Essentially, it is no longer business as usual as it was in the era of the Lunacy Act. The NMHA has restored the dignity of persons with mental health conditions and has shown that they are no less human than were hitherto perceived by the Lunacy Act wherein they were referred to as “lunatics”. [32] The rights of persons with mental health disorders as provided in the NMHA include the:

Rights of persons in need of mental health conditions services

An individual shall continue to enjoy the same fundamental rights as fellow citizens even though they require mental health conditions services. Such persons shall not be subject to any form of discrimination simply because they are suffering from mental health disorders. This implies that persons with mental health disorders shall at all times be treated humanely and with dignity.[33] Inherent in this, is the right to:

- Access medical, social and legal services;
- Protection from physical and mental abuse and any form of exploitation, forced labour, violence, torture, cruel, inhuman or degrading treatment, including chaining;
- Engage in educational activities or vocational training;
- Partake in leisure or recreational activities;
- Take part in activities that promote the individual’s social, physical, mental and emotional well-being;
- Human and dignified treatment at all times.[34]

An individual shall continue to enjoy the same fundamental rights as fellow citizens even though they require mental health conditions services.

Right to Employment

A person with mental health conditions is not deprived of his employment right as a result of their conditions. It should be noted that an individual with mental health conditions shall continue to enjoy equal access to work and employment opportunities and shall be remunerated with the same salary for work done similar to that payable to an individual devoid of mental health conditions.[35]

An employer is barred from terminating or relieving a person with mental health conditions from work or depriving such persons of the benefit to which they are entitled merely because of their

present or past mental health conditions or while the individual is undergoing treatment for their mental health conditions.[36] An employer who has reasonable cause to believe that a worker is suffering from mental health condition seriously enough to affect the worker's output, the employer shall do the needful by assisting such worker to seek medical service or treatment.[37]

Right to Housing

A tenant cannot be evicted from their apartment by a landlord merely because the tenant develops mental health conditions.[38] This implies that a property owner shall not on the basis of a tenant suffering from a mental health disorder issue a notice to quit to a tenant terminating the tenancy.

Right to mental health services

An individual with a mental health disorder has the right mental health services such as:

- physical and mental health care and services;
- counselling;
- rehabilitation, and;
- aftercare support, aimed at facilitating integration into the community.[39]

It is worthy of note that in the determination of the type of mental health care and treatment to be administered to an individual with a mental health disorder, it behoves the attending health care worker to ensure that the mental health disorder of the individual is taken into consideration.[40]

Consequently, every mental health facility shall ensure that mental health services are provided in a manner that the dignity of the individual with mental health disorder is upheld and taken seriously,[41] takes into consideration and equally grants the treatment options that would help an individual with a mental health condition to manage the condition and still involved in the political, social, and economic facets of their life,[42] as well as make provisions for all reasonable accommodation to people with mental health conditions. [43] By this provision, it is the responsibility of an attending health care worker to ensure mental health facilities provide their services to persons with mental health conditions with respect and allowed for treatment alternatives that would aid the individual with a mental health condition to manage the situation. These treatment alternatives are intended to ensure that a person with a mental health condition continues their involvement in political, social and economic aspects of life.

Right to quality and standard treatment

Any person with mental health disorder is entitled to quality and standard treatment. It implies that the same treatment that is administered to an individual with physical health problems must equally be administered to a person with a mental health condition. This provision prohibits discrimination.

An individual with a mental health condition in a mental health facility has the right to access and spend personal money for personal purchases, except where their mental capacity does not allow it.[44]

Right to appoint a legal representative

A person suffering from mental health condition has the right to appoint a legal representative where they can make such a decision.[45] A person so appointed as a legal representative is cloth with the power to decide for the individual with mental health conditions as regards their care and treatment where they lack the capacity to do so. [46]

disorder of the individual is taken into consideration.[40]

It is the right of a person with a mental health disorder to be fully involved in the development of their treatment plan[47]. Thus, where an individual with mental health condition lacks the capacity to exercise that right consequent upon the nature of the condition, their legal representative shall be involved in the development of the treatment plan.[48]

Right to privacy and dignity

Any person with a mental health condition has the right to a visit from relations, a legal representative and other individuals in private.[49] But where they are violent and pose a danger to others, there may be a need for them to receive visitors under the supervision of an officer of the facility.[50] They have the right to be examined in private, in the presence of their representative, or

attending health care workers especially required for the consultation or examination.[51]

Right of access to information

Any person with a mental health condition or their representative is accorded the right to access information irrespective of their mental and other health status.[52] Information regarding a person with a mental health condition such as their health status, treatment and stay in a mental health facility remains confidential in accordance with section 26(1) of the National Health Act, 2014.[53] However, such information could be disclosed where:

- the patient consents to the disclosure in writing;
- a court orders such disclosure or any law requires such that disclosure;
- in case of a minor, with the request of a parent or guardian;
- in the case of a person who lacks the capacity to grant consent, on the request of a guardian or personal representative; and
- where failure to so disclose the information would represent a serious threat to public health[54]

It is instructive to note that where a health worker or any health care provider who has access to the health records of a patient may disclose such personal information of the patient to any other person, health care provider or health establishment as is essential for any lawful purpose within the ordinary course and scope of their duties where such disclosure is in the interest of the patient.[55] With the authority of a patient, the head of the health institution concerned and the relevant health

research ethics committee, a health care provider may examine the records of a patient for study, teaching or research purposes.[56] Consequent upon the sensitive nature of a patient's information, a head of a health care facility is mandated to ensure that they establish "control measures to prevent unauthorised access to those records and to the storage facility in which, or system by which, records are kept".[57] This suggests good data administration aimed at thwarting unauthorised access to a patient's information. It is an offence for any person to gain unauthorised access to a record or record-keeping system. [58]

Protection of persons with mental health conditions

Any health professional or an individual in a health facility who strikes or violently abuses any individual suffering from a mental health condition during treatment commits an offence.[3] This provision protects a person with a mental health condition from being ill-treated by persons who are in charge of their medical care. The provision ensures that health professionals treat persons with mental health conditions humanely and compassionately at all times notwithstanding the circumstance hence they commit an offence when they do otherwise.

Right to appeal against involuntary admission

A person suffering from mental conditions or a legal representative may appeal against involuntary admission or extension of the period of involuntary admission[59]. An appeal of such nature must receive an expedited hearing and the Committee must reach a decision within three days of the filing of the appeal. This is to ensure that the right of a person with a mental health condition is not trampled upon simply because they are suffering from mental health conditions.

Protection of a child

A mental health facility can only admit a child with mental health disorder where the child and adult are not kept in the same area and the Ministry of Health must certify in writing that the facility has the necessary equipment to administer treatment to the child.[60] This implies that the well-being and overall best interest of the child shall be paramount in all actions relating to the child[61].




WHAT NEXT? IMPLEMENTING THE NMHA

The enactment of the NMHA is revolutionary. It brings significant changes to the way and manner mental illnesses have been hitherto managed. There is now a need to start its implementation forthwith. To this end, two immediate actions are necessary:

Firstly, the Department of Mental Health Services in the Federal Ministry of Health should be created. This is paramount as the Department is saddled with the responsibility of administering and implementing the provisions of the NMHA.[62] Once established, the Department must commence implementation of its provisions. Secondly, the Mental Health Assessment Committee should be

established and its Chairman and members constituted by the Minister of Health and their work should commence immediately.[63] This is fundamental for it to do the following in accordance with the fundamental rights provisions in relevant laws and the Constitution of the Federal Republic of Nigeria, 1999 (as amended):

- to hear and determine appeals filed against the decisions of mental health care facilities in respect of persons suffering from mental health disorders;[64]
- receive and investigate complaints of persons under admission;[65]
- review periodically persons who are admitted to mental health facilities involuntarily with mental health conditions,[66] etc.



Mental Health At Work

CALL TO ACTION

This entails creating awareness for:

Sensitising the public and relevant stakeholders on the National Mental Health Act

This involves raising awareness of both state and non-state actors, particularly those involved in the health and mental health space such as the Ministries of Health, the Association of Psychiatrists of Nigeria, the Nigerian Medical Association, medical experts, clinical psychologists, Non-Governmental Organisations (NGOs) on health matters, etc. It is also crucial to raise awareness with those who are likely to interact with persons suffering from mental health conditions in the course of their duties, for example, law enforcement agents, teachers, etc.

The implementation of the NMHA by various stakeholders

This involves putting into effect the provisions of the NMHA by state and non-state actors as regards the treatment of persons with mental health conditions. This is geared towards the elimination of discrimination and stigmatisation against persons with mental health conditions and treating them with the dignity they deserve as humans.

Ensure financial support for the implementation of the NMHA

This involves providing the necessary financial support for the various stakeholders to put into effect the NMHA through advocacy.

Building the capacity of service providers

This entails training service providers with regard to their responsibilities towards persons with mental health conditions and respect for their human rights, notwithstanding their mental health conditions.

Adoption of the NMHA by states who do not have mental health laws

This involves raising awareness of states that have yet to enact a law on mental health to do the needful by adopting the NMHA. As of April 2023, only Lagos and Ekiti States have enacted laws on mental health.[67]

Adoption of NMHA by private organisations on the treatment of personnel with mental health conditions in their organisations

This involves raising awareness of private organisations to adopt the NMHA with regard to the treatment of persons with mental health conditions in their organisation.[68]

Adoption of NMHA by hospitals and other health facilities on the treatment of persons with mental health conditions in their facilities

This entails the full implementation of the NMHA by hospitals and other health facilities by ensuring that service providers in their health facilities respect and treat persons with mental health conditions with dignity.

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