

**CAPACITY OF PATIENTS TO CONSENT TO TREATMENT: A CASE FOR MENTAL HEALTH LAWS IN NIGERIA\***

**Abstract**

*The issue of mental health cuts across time, landmark and civilization, and the question of a mentally ill person's ability to have a say in their own treatment is a core issue in the context of Psychiatry, Human Rights and Medical Law. The purpose of this paper is to examine mental health laws in Nigeria and how they affect a mentally health patient's right to consent to their own treatment. This paper adopted a doctrinal method of research which involved the use of primary sources such as the repealed Lunacy Act, the new National Mental Health Act of 2021, and case laws; in addition to secondary sources of law such as textbooks, journals and articles. Concepts such as Informed Consent and Capacity were examined. The study also examined the rights and challenges of mental health patients in Nigeria. The study found that the Lunacy Act which governed mental health in Nigeria for sixty-five years before it was repealed, was barbaric, and failed to provide for the treatment and care of persons with mental health conditions. This led to a wrong mindset towards mental health that made the country fall behind other nations in the mental healthcare sector. Therefore, this paper recommends that lawmakers work with mental health activists in accordance with WHO provisions /guidelines and other international frameworks, to amend the existing laws on mental health in Nigeria to fully protect the rights of mentally ill persons to consent to their treatment and avoid a repeat of cruel laws like the Lunacy Act that violated their right to consent. It further recommends an adequate implementation of the law on capacity of mental health patients to consent to treatment.*

**Keywords:** Mental Health, Patient, Consent, Capacity, Treatment

**1. Introduction**

For sixty-five years, the law on treatment of mental health patients in Nigeria had fallen behind global best practices, because of the inhumane framework built on the outdated Lunacy Act of 1958. The Lunacy Act robbed mental health patients of their right to voluntarily agree to and have a say in their own treatment. The Act did not provide for their care and treatment, nor did it provide any form of medical intervention for them. As a result, the idea of consent was never in the conversation whenever the issue of mental health patients came up. The legislation assumed that persons with mental illness were automatically incompetent merely because they were not mentally healthy. They were tagged 'lunatics' and 'idiots' and subjected to several violations of their rights to liberty and autonomy by forcefully being captured and thrown into asylums where they were chained, starved, beat up and often forgotten.<sup>1</sup> The country faced a human rights emergency in mental health due to poor governmental attitude towards mental healthcare. Figures suggest that approximately 80% of individuals with serious mental health needs in Nigeria could not access care, with fewer than 300 psychiatrists for a population of more than 200 million, most of whom were based in urban areas. Poor knowledge of mental disorders at the primary healthcare level meant that caring for people with mental illness was typically left to family members.

The prevalence of community-based and primary healthcare services meant that access to care was restricted to the most severe cases, usually in the form of psychiatric inpatient care or makeshift institutions. The result was a chronically under-resourced mental health system that only met the needs of just one in eight Nigerians on estimate, who suffered from mental illness. Several attempts were made to reform the outdated Lunacy Act guiding mental healthcare at the time. In 2003, a bill for the establishment of a new Mental Health Act was introduced by two Senators, but was later withdrawn in April 2009 due to the death of one of the senators and no considerable progress of the bill thereafter. Four years later, in 2013, the bill was reintroduced to the National Assembly but failed again. The failed bill would have marked significant progress in Nigeria's mental healthcare laws, pushing it forward towards modern international standards. The bill emphasized informed consent, giving mental health patients the right to withdraw from treatment at any time and recognizing their ability to make decisions regarding their treatment. Subsequently, after the mental healthcare system and legislation had deteriorated and plunged the country into a mental health crisis, a new piece of legislation on mental health in the form of the National Mental Health Act of 2021 was signed into law in 2023. This Mental Health Bill was created to change the course of mental health in Nigeria, and provides, among other things, for the treatment of mental health patients in the country. This research therefore, seeks to know if there are provisions in this new law and other existing laws regarding consent of mental health patients to their treatment, and whether such provisions are sufficient to protect the rights of such persons in circumstances where they are unable to give consent to their own treatment

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<sup>1</sup> J Sadowsky, *Imperial Bedlam: Institutions of Madness in Colonial Southwest Nigeria* (California: University of California Press, 1999) p180

## **2. Conceptual Clarification**

### **Mental Health**

According to the World Health Organization (WHO),<sup>2</sup> health is a state of complete physical, mental and social well-being, and not merely the absence of disease. Mental health is an integral part of health, and is therefore more than just the absence of mental disorders. The term ‘Mental Health’ can be examined as a psychosocial function and well-being, as a disease, and as a social construct. Psychosocial function and well-being associate mental health with emotional distress and psychological impairment such as a depressive episode. It sees poor mental health and mental illness as distinct concepts and not mutually exclusive. In other words, a person could be mentally healthy and have a mental illness, and a person could have poor mental health without suffering from any mental illness. The term ‘Mental health’, when examined as a disease revolves around specific mental illnesses, their causes and treatment. It is a purely medical definition, and highly supported in the psychiatric field. Social construct looks at mental health through the lens of society, under a specific context that often includes both economic and political factors. A good example of this definition is found in the WHO’s definition of mental health, where mental health was defined as a state of mental well-being that enables one to cope with the stresses of life, realize their abilities, learn and work well, and contribute to their community<sup>3</sup>.

### **Mental Health Patient**

A mental health patient is a person who is obtaining treatment for a mental disorder. It is sometimes used as an umbrella term for all persons with mental illness. This use is inaccurate, however, because not every person who has mental health disorders is undergoing treatment or care. There are several persons suffering mental health challenges who have gone untreated. Such persons cannot be said to be ‘patients’ as they are not admitted to any facility to treat or care for them. Thus, a more correct umbrella term for all mentally ill persons would be, simply: ‘persons with mental health conditions,’ as it covers both patients and non-patients in the mental health context.

### **Treatment**

Collins Dictionary defines treatment as a noun used ‘in the sense of care.’ Merriam-Webster<sup>4</sup> defines it as ‘the action or way of treating a patient or condition medically or surgically.’ In mental health, treatment is any care, service or procedure to address, diagnose and treat an individual’s mental health condition, including but not limited to, electroconvulsive or other convulsive treatment, medication, and admission to and retention in a healthcare facility, with the intention of providing aid, promoting recovery, and reintegration into mentally healthy society. Treatment in mental healthcare is known as Psychotherapy, and it refers to a variety of treatments that aim to help a person identify and change troubling emotions, thoughts and behaviors. Psychotherapy takes place when a licensed mental health professional, such as a psychiatrist, and a patient meet one on one or with other patients in a group setting. Psychotherapy can be used as an alternative to or alongside medication and other treatment options for general illnesses. A variety of psychotherapies and interventions have shown effectiveness in treating mental health disorders. Often, the type of treatment is tailored to the specific disorder. For instance, the treatment approach for a person who suffers from obsessive compulsive disorder is different from the approach to a person who suffers bipolar disorder. Psychiatrists may use one primary approach or incorporate other approaches depending on their training or assessment of the patient’s condition.

### **Consent**

According to Wikipedia, Consent occurs when a person voluntarily agrees to the proposal or desires of another. In medicine, consent is about giving a patient the special knowledge that helps them take decisions about their ailment and circumstances revolving around their ailment. This is known as Informed Consent. Informed Consent has four basic elements: capacity, voluntariness, decision-making and knowledge. Capacity is the ability to understand the nature of treatment and the consequences of treatment. Voluntariness is the willingness to undergo treatment. Decision-making refers to the cognitive process of evaluating options and selecting a course of action or choice. It involves the ability to process relevant information to make well-informed choices in alignment with values, goals and overall wellbeing. Knowledge has to do with sufficient information given to the patient to understand the nature and implications of treatment. It also involves making the patient’s family members aware of the patient’s condition, proposed treatment, as well as risks and benefits of such treatment. Any available alternatives complete with the risks and benefits involved would also be revealed to them. For consent to be legally valid, it has to possess the above-mentioned elements. In the mental health context, consent often has a slightly different essence. Generally, all persons are presumed to have the ability to make rational decisions which comprises of different cognitive abilities such as understanding, logical reasoning, effective communication, and appreciation of the significance of the information received. However, persons with mental health conditions can be robbed of this cognitive power due to certain mental

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<sup>2</sup>WHO is the directing and coordinating authority for health in the United Nations System.

<sup>3</sup> World Health Organization, <<https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response>> accessed 20 March 2024

<sup>4</sup>Merriam-Webster is an American company that publishes reference books, mostly dictionaries.

illnesses that can impair the core determinants of their decision-making. This affects their ability to understand the information they are given, and their ability to reason and make the right decisions for their treatment. However, there is still a hard and fast obligation on clinicians to seek the consent of mental health patients before treatment as it is a fundamental human right. Article 6 of the Universal Declaration on Bioethics and Human Rights 2005 provides that ‘any preventive, diagnostic and therapeutic medical intervention is only to be carried out with the prior, free and informed consent of the person concerned, based on adequate information.’ In this day and age, the important of consent as a concept in Psychiatry and Medical Law could not be overemphasized, and informed consent forms the basis of any fiduciary relationship existing between the patient and clinician. It is absolutely essential in the treatment and diagnosis of patients, particularly mental health patients.<sup>5</sup>

### **Capacity**

Capacity and competency are often used in the same breath. However, it is important to differentiate between competency and capacity. While Capacity is a functional assessment and clinical determination about a specific decision that can be made by any clinician familiar with a patient’s case, Competency is a global assessment and legal determination made by a Judge in court. So, competency is often used in a more general sense while the word capacity is connotative of a medical context. Capacity of patients is the ability to utilize information about an illness and proposed treatment options to make a choice that is in line with the patient’s values and preferences. It involves reasoning and decision making, and a patient without such ability is said to ‘lack capacity.’ Mental Capacity represents a juncture between ethics, law, medicine and social science, representing the gap between physical and mental healthcare. Assessment of mental capacity has become a key component of daily clinical practice all over the globe, emphasizing that the understanding of the word ‘capacity’ and determination of capacity of mental health patients in making decisions is crucial in clinical practice and the legal sphere. In colonial Nigeria, and decades after, mental health patients were viewed as lacking capacity *ab initio*, due to the popular perception that mental illness disrupts reasoning faculties in patients. However, deciding that a person lacks capacity is not an end in itself. Therefore, tools have been invented, in the international sphere, to assess and test the ability of mental health patients make informed decisions. These are known as Capacity Assessment Tools. Such tools include the MacArthur Competence Assessment Tool for Treatment (MacCAT-T), Assessment of Capacity to Consent to Treatment (ACCT), Hopkins Competency Assessment (HCA), among others.<sup>6</sup> The capacity of mental health patients is first tested before consent is sought as a means to maintain the patient’s safety and well-being. Capacity is not a unitary concept but rather refers to specific decisions, tasks or domains. To conceptualize Capacity as a global construct— for instance, by referring to a person as ‘lacking capacity,’ is contrary to human rights of autonomy and minimizing intrusion, which in essence is contrary to the principle of legal rights. Therefore, the concept of an ‘incapable person’ or ‘incapacitated person’ as is used in legislations worldwide is flawed. By stating that Capacity is task or domain specific, we ensure that it is specific to the particular type of decision made, which in this context is consent of mental health patients to their own treatment.

### **3. Evolution of Mental Healthcare in Nigeria**

Nigeria is a very cultural country in which the status quo is often maintained, even to the detriment of its citizens. While much of the world were enacting or revising their legislation to protect and serve the mentally ill, Nigeria’s mental healthcare was still governed by old colonial law. The British introduced western-style treatment of mental illness in the late 19<sup>th</sup> century in reaction to what they called ‘an apparent swarm of lunatics on the streets.’ At the time, western-style treatment focused only on confinement, which the authorities put into effect by building asylums. This led to the asylums erected in Yaba (Lagos), Lantoro (Abeokuta), and Calabar in 1907.<sup>7</sup> These asylums were no different from prisons, and mental health patients were treated no better than convicted criminals. They were beaten, chained and starved. As many as forty men were forced into a cell the size of a small bedroom. The existence of a regulatory legislation did not improve the situation, rather it gave impetus for further abuse of mental health patients by referring to them in derogatory terms such as ‘idiot’ and ‘lunatic.’ This legislation was the Lunacy Ordinance. The Lunacy Ordinance was enacted in 1916 and became the source of regional laws for mental health across the country. This ordinance authorized the detainment of anyone suffering from mental illness. Through this law, conditions for mental healthcare in Nigeria remained poor, even after the colonial era and in the 21<sup>st</sup> century. The Indirect Rule Policy influenced colonizers to preserve the status quo which supported the norm of not treating mental health patients.<sup>8</sup> In 1958, the Lunacy Ordinance became law, and was adopted by states in Nigeria. The core principles of the Ordinance remained unchanged, causing the Act to suffer from the same misplacements the Ordinance had. It failed to incorporate certain human rights charters such as Universal Declaration of Human and People’s Rights of

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<sup>5</sup>‘Consent in Psychiatry- concept, application and implications’, (2020), *The Indian Journal of Medical Research*.

<sup>6</sup>S Lamont, ‘Assessing Patient Capacity to Consent to Treatment: an integrative review of instruments and tools’<<https://doi.org/10/1111/jocn.12215>> accessed November 15, 2023.

<sup>7</sup>J Sadowsky, *Imperial Bedlam: Institutions of Madness in Colonial Southwest Nigeria* (California: University of California Press, 1999) p180.

<sup>8</sup>AE Afigbo, *The Warrant Chiefs: Indirect Rule in South Eastern Nigeria 1891-1929* (Ibadan History Series) xv, 338 (London: Longman Group Ltd, 1972) p4.

1948 or the United Nations Principles for Protection of Persons with mental illness and the improvement of mental healthcare, 1991. Further, some of the procedural elements in the Act left room for potential abuse. In 2003, there was an attempt to reform the lunacy law, in the form of the Mental Health Bill. The bill passed its first reading on the Senate floor, but failed due to the death of the lead sponsor, the expiration of the senate's tenure and a general lack of interest by subsequent lawmakers to revive the bill. It was withdrawn in April of 2009. On 20<sup>th</sup> March 2013, the bill was reintroduced but not passed. For close to a decade after that, lawmakers tried, and failed, to put a new mental health law in place. After the Covid-19 global lockdown of 2020, a burst of awareness ignited in Nigerians the need for therapy and mental healthcare which gave birth to several NGOs. Concerted efforts were made by various medical practitioners, lawyers, scholars and passionate human rights activists to push for better mental healthcare. The Association of Psychiatrists in Nigeria (APN), was at the forefront of the mental health reform, along with personalities like Dr. Victor Hugo and his Mentally Aware Nigeria Initiative (MANI), a non-profit organization that focuses on mental health issues for young persons in Nigeria. Also, a desk officer was appointed by the Federal Ministry of Health with a mandate of working with relevant stakeholders to push bills like the mental health bill of 2003 and sponsor them up to the House of Assembly. The National Human Rights Commission (NHRC) subscribed to existing charters that strengthen human rights. These and other legislative efforts led to the Mental Health Act of 2021. On 5<sup>th</sup> January 2023, President Muhammad Buhari signed the Mental Health Act of 2021 into law, replacing the Lunacy Act.

#### **4. Legal Regime on Capacity of Patients to Consent to Treatment in Nigeria**

##### **National Mental Health Act 2021**

On January 5<sup>th</sup>, 2023, President Muhammad Buhari signed the Mental Health Bill of 2021 into law. The Mental Health Act replaces the Lunacy Act of 1958, which is outdated and does not reflect current realities. The Act established human rights protection, particularly right to consent to treatment for those with mental health issues.<sup>9</sup> Section 12(1) gives them fundamental rights due to all citizens, and freedom from discrimination. Section 12(2) gives them access to medical, social, and legal services. Section 15 provided same with emphasis in subsection (1) on aftercare, counseling and rehabilitation. Section 18 gave persons with mental health conditions the right to participate in the planning of their own treatment, in line with section 26 which provides:

- 1) No treatment shall be administered without the prior written consent of the person with the mental health condition voluntarily given after the attending healthcare worker has provided the person with relevant information pertaining to his state of health and necessary treatment relating to the — (a) range of diagnostic procedures and treatment options available to the patient; (b) benefits, possible pain or discomfort, risks, costs and consequences associated with each of the treatment options ; and (c) patient's right to refuse treatment and the implications and risks of such refusal.
- 2) The health professional shall ensure that the information provided to the person under subsection (1) is given in the language the person understands and in a manner which takes into account the literacy level of the person: Provided that where the person with mental health condition is unable to understand the information relevant to the decision where provided using simple language, visual aids or any other means or unable to retain, use or weigh the information or to communicate his decision by talking, using sign language or any other means, provisions shall be made by the medical officer for supported decision making at no cost to the person with mental health condition.

Moreover, provisions were also made for voluntary and involuntary treatment of adult and child,<sup>10</sup> as well as criteria for persons who no longer need involuntary care.<sup>11</sup> The Act listed out clear stipulations for the limitations of involuntary treatment and entitlements which mental health patients could exercise to protect their interests. The Act in section 32 further gave persons with mental health conditions the right to appeal in cases of involuntary admission,<sup>12</sup> giving them power to sue against the prospect of an involuntary admission or the extension of an existing one. The Mental Health Act of 2021 is a most welcome development, as it ushered a fresh and positive approach to mental health laws in Nigeria.

##### **Lagos State Mental Health Law 2018**

In 2018, the State House of Assembly enacted the Lagos State Mental Health Law. The law repealed the Lunacy Law of Lagos State and established a system for mental health service in Lagos State. The law provided for the rights of persons living with mental health conditions, including the right of such persons to consent to their treatment in the highest attainable standard of care in the State.<sup>13</sup> The law outlines the process for appointing a guardian or proxy where a person lacks mental capacity or requires assistance in decision-making, and the law provides an opportunity for

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<sup>9</sup> NMHA 2021 Section 26

<sup>10</sup> National Mental Health Act, Sections 27& 28

<sup>11</sup> National Mental Health Act, Section 30

<sup>12</sup> National Mental Health Act, Section 32

<sup>13</sup> Lagos State Mental Health Act, Sections 52-58

such consent to be reviewed by the court.<sup>14</sup> Further, the law prohibits the performance of special treatments such as sterilization and Electro-Convulsive Therapy (ECT) without the clear informed consent of the patient or his personal representative.<sup>15</sup> The Lagos State Mental Health Law equally provided for voluntary treatment of mental health patients, including outpatients care and admission where the nature of the mental illness demands.<sup>16</sup>

### **Ekiti State Mental Health Law 2021**

On the 11<sup>th</sup> of October 2021, the Ekiti State Governor, Dr Kayode Fayemi, signed the state's Mental Health Service Bill into Law. The Act is aimed at providing a framework to protect, provide care, and treat person's living with mental health disorders or substance abuse. The Law provides for the establishment of the Ekiti State Mental Health Service Steering Committee.<sup>17</sup> First of all, the law sets a high standard for treatment of mental health patients, stipulating that such treatment must address all patient's needs through a disciplined care-plan approach and in the least restrictive way possible.<sup>18</sup> Further, the law gives persons with mental health conditions the right to autonomy and access to information.<sup>19</sup> Section 50(c) and (d) gives mentally ill persons the right to give free and informed consent where possible, before any treatment or care is provided, and such consent would be recorded in the patient's clinical records. The law also gave patients the right to withdraw consent if they so wished. Section 53(3) provided for child patients, and it stated that children under the age of eighteen years who are mental health patients would be represented by their parent or guardian in regards to giving consent to treatment. Section 53(6) stipulated that the opinions of the child patient and the child patient's guardian regarding treatment must be taken into consideration. Section 57(3) gives the Court power to appoint another person as guardian to make decisions and give consent where the patient is found incompetent or lacking capacity after being examined by a clinical team of mental health professionals including a psychiatrist. The law in subsection (4) further gave conditions for determining whether a mental health patient lacks ability to make decisions regarding their treatment. By section 57 (5), a mental health patient has the right to appoint the person who will make decisions and give consent on his behalf. The appointed guardian must seek the opinion of and consent of the mental health patient, where it is possible to do so, before making any decisions regarding the patient's treatment.<sup>20</sup> Furthermore, in cases of special treatment such as ECT or surgical procedures and other major medical interventions, the law gives that none of such treatments will be carried out without the patient's informed consent or the informed consent of the patient's representative in cases where the patient is unable to give consent.<sup>21</sup> In circumstances where a patient's inability to give consent is likely to be long term, the law instructs that the patient's matter be referred to the Steering Committee.<sup>22</sup> In addition, if there is a delay in obtaining consent and such a delay would endanger the patient's life, the law gave that the treatment be carried out with the condition that the Steering Committee be duly informed at the earliest possible time after the procedure.

### **5. Challenges of Mental Health Patients in Nigeria**

In Nigeria, there is a significant imbalance between demand and supply of mental health services. Although there are policies aimed at addressing mental health issues in the country, in-depth information on mental health services is non-existent. This makes it difficult to identify areas of need, coordinate activities of advocacy groups, and make an informed decision about policy direction. As a result, there is continued neglect of mental health issues. About 25-30<sup>23</sup> percent of Nigerians suffer from mental illness,<sup>24</sup> and less than 10 percent of the population have access to professional assistance. The World Health Organization estimates that only about three percent of the government's budget on health goes to mental health. The state of mental health in Nigeria gives rise to several challenges for mental health patients and persons suffering from mental illness. These challenges include:

- **Shortage of Psychiatrists and Mental Health Support Workers:** An estimated one out of four Nigerians, about 50 million people are living with some form of mental illness.<sup>25</sup> According to the Nigerian Medical Association, 350 psychiatrists currently serve Nigerians with an estimated population of about 200 million people. Shortage of mental health professionals has resulted in about 80 percent of persons with serious mental illness who are unable to access adequate care.

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<sup>14</sup> Lagos State Mental Health Act, Section 64-66

<sup>15</sup> Lagos State Mental Health Law, Section 67

<sup>16</sup> Lagos State Mental Health Law, Section 31

<sup>17</sup> Ekiti State Mental Health Law, Sections 2 & 3

<sup>18</sup> Ekiti State Mental Health Law, Section 43

<sup>19</sup> Ekiti State Mental Health Law, Sections 49 & 50

<sup>20</sup> Ekiti State Mental Health Law, Section, 57(6)

<sup>21</sup> Ekiti State Mental Health Law, Section 60(1)

<sup>22</sup> Ekiti State Mental Health Law, Section 60(2)

<sup>23</sup> A Kemi, 'Anxiety, Depression Takes Toll on 30% of Nigerians amid Covid-19' <https://businessday.ng/health/article/anxiety-depression-takes-toll-on-30-of-nigerians-amid-covid-19/> accessed November 23, 2023.

<sup>24</sup> Premiumtimesng, 'World Mental Health Day: How Outdated Legislation, COVID-19 worsens situation in Nigeria' <https://www.premiumtimesng.com/news/headlines/489202-world-mental-health-day-how-outdated-legislation-covid-19-worsen-situation-in-nigeria.html?t2tc=1> accessed November 23, 2023.

<sup>25</sup> Devex, 'Short of Mental Health Professionals, Nigeria takes a new approach' <<https://www.devex.com/news/short-of-mental-health-professionals-nigeria-tries-a-new-approach-98176>> accessed November 23, 2023.

- **Cultural and Religious beliefs:** Cultural and religious stereotypes have significant impact on the recovery process of persons with mental health conditions. Studies by Africa Polling Institute in collaboration with Epi AFRIC discovered that many Nigerians associate mental illness with evil spirits, voodoo and other supernatural beliefs.<sup>26</sup> This led to the stigmatization of the mentally ill as they were seen as being inhabited by evil spirits. Further, this misconception prompts family members and friends of mentally ill persons to seek treatment for their sick loved one from religious leaders and traditional healers rather than seeking adequate treatment in healthcare facilities thereby worsening the suffering of the mentally ill person.
- **Low Prioritization of Mental Health by the Government:** Without the government's deliberate effort to execute working policies guiding mental healthcare, mental health patients in Nigeria would continue to suffer from lack of proper care and treatment. Regardless of the willingness of enthusiasts and activists in bringing ideas to better the mental healthcare system, their progressive opinions can only be implemented through political process and action. Therefore, because the issue of mental health in Nigeria is typically not prioritized in the country's political agenda, there is a lack of desire to implement or enforce the rights of mental health patients which were provided for in the National Mental Health Act. This apathy towards the issue of mental health is shown in a statement made by a national representative of the Federal Ministry of Health where it was said that mental illness is 'not a major killer of people,' and that if Nigeria is to develop, the country should focus more on 'diseases that kill people.'<sup>27</sup> Additionally, another clear indication of the low-priority view of government on mental health is how long it took for the Mental Health Bill to be enacted into law. Furthermore, the fact that it took Nigeria sixty-five years to repeal its outdated and barbaric Lunacy Act goes to show that the issue of mental health is not treated with the urgency and attention it requires, and as a result mental health patient suffer.
- **Poor Funding of the Mental Healthcare System:** The Nigerian Federal Government has continuously allocated less than 15% benchmark of the health sector budget agreed on in April 2001 by leaders of the African Union at Abuja in 2018.<sup>28</sup> However, despite the low budget allocation for healthcare in Nigeria, mental healthcare does not have a clearly defined allocation from the total healthcare budget. Funding at the state and local government levels are worse, with total expenditures of 29% and 8% respectively on the care sector.<sup>29</sup> As a result, mental health services are frequently underfunded and thereby understaffed. This is heavily reflected in the sub-standard psychiatric facilities in the country.

## 6. Conclusion and Recommendations

Mental Health is a medical human right that needs coordinated legal and institutional effort. This study examined the National Mental Health Act 2021, and found that it provided for the rights of mental health patients to consent to their own treatment. However, the attitude of lawmakers in taking sixty-five years to make the much-needed law reflects on the reality of mental health legislation in Nigeria. There will be great difficulties in remedying the mental health crisis that has grown out of the country's neglect of mental healthcare. Nigeria's failure to acknowledge the rights of mental health patients, particularly their right to have a say in their own treatment, has led to years of abuse, stigma and shame for mental health patients. This study reveals the need for several changes in Nigeria's mental health legislation and mental healthcare system. This study therefore, recommends that lawmakers work with mental health activists in accordance with WHO provisions /guidelines and other international frameworks, to amend the existing laws on mental health in Nigeria to fully protect the rights of mentally ill persons to consent to their treatment. It further recommends an adequate implementation of the law on capacity of mental health patients to consent to treatment.

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<sup>26</sup>Premiumtimesng, 'Many Nigerians Link Mental Illness to Supernatural Causes' <<https://www.premiumtimesng.com/health/health-news/372686-many-nigerians-link-mental-illness-to-supernatural-causes-survey.html>> accessed November 23, 2023.

<sup>27</sup>J O Abdulmalik, L Kola and O Gureje, 'Mental Health System Governance in Nigeria: Challenges, Opportunities and Strategies for Improvement' <doi:10.1017/gmh.2016.2>accessed November 23, 2023.

<sup>28</sup>THURSDAYLIVE, 'How Poor Funding is Killing Nigeria's Health Sector' <https://www.thisdaylive.com/index.php/2019/09/05/how-poor-funding-is-killing-nigerias-health-sector> accessed December 18, 2023.

<sup>29</sup>Vanguard news, 'Mental Health Treatment Gap in Nigeria Hits 85%-APN President' <https://www.vanguardngr.com/2021/08/mental-health-treatment-gap-in-nigeria-hits-85-apn-president/> accessed December 18, 2023.