The Law Industry Trends

Revisiting Nigeria's Mental Health Legislation

Nigeria's legislation on Mental health is largely based on the United Kingdom's mental health acts of 1959 which has been repealed and replaced with the Mental Health Act of 1983 and the current law is the Mental Health Act 2007

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Nigeria, the most populous country in Africa has a multi-ethnic and poly-religious population totalling about 200 million. According to the World Health Organization, One in Four Nigerians- about 50 million people are suffering from some sort of mental illness.

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The history of mental health regulation in Nigeria dates back to the pre-colonial era through the English Statutes of 1845 and 1890, applicable to Nigeria as a Statute of General Application. In 1906, the Lunacy Ordinance was passed in the then Southern Province. The Ordinance among other things, authorized the government to establish a Lunatic asylum. This led to the building of the asylums in Yaba (Lagos), Lantoro (Abeokuta) and Calabar in 1907.

The Lunacy Ordinance assumed the status of law rather than an Ordinance in 1958. It is the current legislation in the Country and has been adopted by different states within the Federation. The latest versions of this Act has made some minor alterations in terms of language and certain stipulations (e.g size of fine) in order to reflect current realities but the principles of the Ordinance have remain unchanged. While the existing mental health legislation has been able to address certain basic issues relating to mental healthcare, its age (almost a century) distinctly suggests that it suffers from misplacement in certain areas such as;

- the altered political and social climate;
- the outdated definitions and terminologies;
- non-application of later developments in mental healthcare, which plainly provided alternatives to custodial care ;
- non- incorporation of certain human rights charters (e.g Universal Declaration of Human and People's Rights 1948 and United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, 1991).

A more fundamental issue that is related to the foregoing is the World Health Organization documentation on recommendations for drafting acceptable and effective mental health legislation (WHO 2005). The major areas of deficiency in the existing legislation include its failure to define "mental disorder" or "mental disability" its overwhelming emphasis on custodial care, and also its use of outright derogatory terms such as asylum, lunatic and idiot. The law does not accord specific recognition to the human rights of persons with mental disorders as recommended by the World Health Organization. It also has no provision for vulnerable groups who may fall within its scope. Apart from using archaic terms, the use of certain words such as "unsound mind" has the potential for fluid, broad interpretation. The European Court of Human Rights has said that the term should not be given definitive interpretation because of its fluid nature. The World Health Organization has also stated that because the term has no clinical definition, use in legislation will likely impair dialogue between medical and legal disciplines.

It must be said that the Lunacy Act managed to ensure some degree of compliance with the World Health Organization's recommendations in the areas of provisions for emergency and involuntary admissions. The Act requires two elements to commit a person against his will:

- A Magistrate must find that the person is a lunatic;
- A Medical Practitioner must examine and certify the person a lunatic.

Once these elements are met, the Magistrate then has the discretion to make a final determination of lunacy. (Section 13 of the Lunacy Act). If a medical officer believes it necessary to detain a person for observation, that person may only be detained for 7 (seven) days without the authorization of a Magistrate.

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Some of the procedural elements provided in the Act leave room for potential abuse. For example, Section 15(1) provides that when a Magistrate has decided to inquire into a particular person's state of mind, he may issue a warrant for that person's arrest if he fears that the person would not appear in Court. Such detention may last up to a month.

A final notable aspect of the Act is not found within the text but in what is silent in it. The Act makes no mention of treatment nor does it use any words synonymous with treatment. The extent of the reasons provided for the detention of a person under the Act is that a person is a lunatic and a proper subject of confinement. In fact, the full title of the Act is "an Act to provide for the custody and removal of lunatics". The absence of any provision for treatment may be one of the biggest factors influencing the movement for reform of Nigeria's mental health law.

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Mental disorder was defined in the United Kingdom 1983 Act as any disorder or disability of the mind excluding those of severe mental impairment and psychopathic disorder. This definition has further widened the term and persons that fall under the definition of mentally disordered persons as this category is now not limited to just persons suffering from the now omitted ailments but also other persons that were not or might have been envisaged under the 1959 Act with exceptions to learning disability or alcohol dependence.

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RECENT EFFORTS

Despite prominent voices making calls for reform, no movement in the direction of change has materialized. A bill to repeal the Lunacy Act was originally proposed in 2003. The Mental Health Bill was sponsored by two serving Senators at the time who were Medical Practitioners, one of whom was a psychiatrist. The Bill passed the first reading on the floor of the Senate. Unfortunately, in the interval between the first and second reading, the Bill suffered a setback with the expiration of life of that Senate and the death of the lead sponsor.

An analysis of the provisions in the Bill shows that its enactment into law would have made a huge difference in making Nigeria's mental health legislation into reflecting current trends in mental healthcare.

First, the Bill would have narrowed the coverage of the existing law by removing the broad definition of "lunatic" and replacing it with the term "mental disorder". The latter term is much more accessible to the medical community and the definition specifically excludes "social deviance or conflict alone" from coverage. The Bill also defined additional terms which would have provided more guidance in application than the Lunacy Act.

The Bill would also have provided additional procedural protections for those subject to it by creating three types of compulsory admissions: temporary admission for observation, admission pursuant to emergency application and admission for treatment. Magistrates would no longer play a role in the admission decision, which would have relied solely on medical classification.

For each type of admission, the applicant (i.e the person applying to admit another person) would have to base the application on two grounds ;

a. the subject is suffering from a mental and behavioural disorder of nature or degree which warrants his compulsory admission;

b. the subject sought to be so detained in the interest of his own safety or with a view to protecting the safety and interest of other persons.

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The Bill clearly identified treatment as the purpose of detention. The Bill would also have placed restrictions on the type of treatment provided and the circumstances under which it could be provided

CONCLUSION

As it stands, an individual with mental health issues that do not require custodial treatment, are not adequately protected under the law. In order to achieve the desired target of having adequate mental health legislation, all stakeholders from politicians, to psychiatrists and psychologists, persons living with mental disorders and their families must be given attention and work together to garner support for reforms and pressure lawmakers to act. Assistance from the World Health Organization or other entities such as the Nigerian Bar Association, Nigerian Medical Association may help smoothen the process, but ultimately change must come from Nigerians as they are the internal forces needed to drive the process.

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