MENTALLY DISABLED OFFENDERS AND NIGERIA'S CRIMINAL JUSTICE SYSTEM: AN APPRAISAL

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Abstract

Mental disability is a disorder in thought or mood so substantial that it impairs judgment, behaviour, perception of reality or the ability to cope with ordinary demands of life. This paper identified the challenges facing mentally disabled persons in criminal prosecution in Nigeria to include lack of specialized mental health units in the institutions that make up the criminal justice system in Nigeria, absence of personnel who are skilled in areas of distinguishing those who are in psychiatric crises from true violators of the law, absence of mental health literacy, inadequate infrastructure leading to inadequate care for inmates among others. The paper concluded that the setting up of mental evaluation units at both the police, court and correction service will reduce the stress of managing mentally disabled offenders before, during and after prosecution. It then recommended that the strengthening of mental health services within the stakeholders' domain in the Nigerian criminal justice system, will go a long way in assisting in the prosecution of fake persons claiming to be mentally disabled.

Keywords: Mental disability, crime, justice, justice system.

1. Introduction

The term criminal justice connotes the machinery, procedure, personnel and processes which have to do with the operation and administration of criminal law.[1] The criminal justice system involves the procedure applicable from the time of arrest to prosecution, conviction and sentencing. The criminal justice system connotes the complex decision-making network devoted to the control of crimes in our society.[2] However, the criminal justice system is the glue that holds the criminal process, the decision network, which moves individuals from free citizens to suspects, to defendants, to convicted offenders and to inmates.[3] The criminal process normally begins when police set out to investigate a crime, either because they have received a report that a crime was committed or that a crime is about to be committed.[4]

The Nigeria justice system comprises of three major elements that is police, court and the correctional service.[5] The orderly procedure of criminal justice system seem to typify the industrial production process of which justice is expected to be the output of the process including a consideration of the mental disability of persons accused of certain offences.

This consideration of the mental health of persons alleged to have committed offence is very crucial because facing criminal prosecution is practically difficult for anyone whose ability to understand the proceeding, to communicate effectively with a lawyer, to give instructions and

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1 Ani C., 'Criminal Justice and the Mentally Disabled Offenders'. *legalpediaonline.com*. Accessed 29/3/2025.

2 Newman, D.J., *Introduction to Criminal Justice, Third E*dition, New York Library of Congress, 1985, 1.

3 *Ibid*.

4 *Ibid*.

5 Dada, A.A., Dosunmu, A.G., and Oyedeji, G.O.K., Criminal Justice Sytem: The Nigeria Scenario. *www.researchpublic.com*. Accessed 2/4/2025.

to make decisions is impaired by mental disability, whether inform of mental illness, intellectual challenges, brain injury or other related condition or disease.

This category of individuals face barriers at all stages of their interaction within the criminal justice system, hence the need to introduce a mental evaluation unit within the three components of the Nigeria criminal justice system. This will help in alleviating the challenges failed by persons with disability alleged to have committed offences.

2. Conceptual Issues

2.1 Mental Disability

Mental disability connotes the inability to perform some functions, especially as it relates a person with mental disability given his relationship with another person.[6] The Black's Law dictionary defines mental disability or mental illness as a disorder in thought or mood so substantial that it impairs judgment, behaviour, perception of reality or the ability to cope with the ordinary demands of life.[7]

Under the criminal code, a person is not criminally responsible for an act or omission if at the time of doing the act or making the omission, he is in such a state of mental diseases, or natural mental infirmity as to deprive him the capacity to understand what he is doing or of capacity to control his actions, or of capacity to know that he ought not to do the act or make the omission.[8]

Again, the M'Naghten rule which has been around since 1843 clearly states that to establish a defence on the ground of insanity, it must be proved that, at the time of committing the act, the party accused was labouring under such a defect of reason, from the disease of the mind, as not to know the nature and quality of the act he was doing or, if he did know it, that he did not know he was doing what was wrong.[9] However, this position of M'Naghten remains the test for relieving of criminal responsibility.[10] The contention of this paper is that the above rule should not be the only test for determining the degree of mental disability in relation to the commission of crime, rather psychiatric desks should be set up in the various institutions making up the criminal justice system for proper evaluation, from the time of arrest to investigation, prosecution, conviction and sentencing.

2.2 Crime

A crime is a legal wrong for which the offender is liable to be prosecuted and if convicted, punished by the state.[11] Crime has been in existence since the dawn of history and there is no gain saying, nor is it an exaggeration to say it is product of the society.[12] The American Law Institute's Model Penal Code probably considered the above statement in formulating what might be taken as the proper objectives of the substantive law of crime in a modern legal system.[13]

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6 Anyanwu, A., Assessment of the Mental Disability Offenders and the Right to Special Treatment for Disabled Persons, *https://journals.ezenwotenetorc.org*.. Accessed 3/4/2025.

7 Garner, B.A., *Black's Law Dictionary Seventh Edition*, West Group, St. Paul Minn, 2001, 999.

8 *Section 28* Criminal Code Act Cap C38 LFN, 2004.

9 UK Law, M'Naghten Rules: Knowledge of Wrong and the Windle Case, *www.lawteacher.net*. Accessed 5/4/2025.

10 Okonkwo, C.O., *Criminal Law in Nigeria, Spectrum Bones Limited*, Abuja, 2009, 129.

11 Cross and Jones, Introduction to Criminal Law.

12 Chukol, K.S., *The Laws of Crime in Nigeria*, Zaria, Almadu Bello University, Press, 1988, 1.

13 Smith, J.C., and Brain Hogan, *Criminal Law 4th ed*, London, Butterworth , 1978, 3.

Such objectives include: to forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual or public interest, to subject to public control persons whose conduct indicate that they are disposed to committing crime, to safeguard conduct that is without fault from condemnation, to give fair warning of the nature of the conduct declared to be an offence and to differentiate on reasonable grounds between serious and minor offences.[14]

The importance of the subject matter of crime in law can be captured from these objectives formulated by the American Law Institutes Model Penal Code. Hence many views and definitions of crime by many scholars and eminent writers can be associated with these objectives. Under the common law, eminent writers have sought varying results postulate such definition of crimes as an act committed in violation of public law forbidding or proscribing it, and also violation of public rights and duties to the whole community.[15]

Crime, however refers to an act or omission which constitutes an offence punishable by law and prosecuted by the state or its authorized agencies. In both the criminal and penal codes, the word offence is used rather than crime, although there is a nexus between both words as they are used interchangeably. Crime is put in the provision of the statute, with punishment prescribed for violation of the law and enforced by the machinery of the state through the instrumentality of the state.[16] Hence, mentally disabled offenders are not exempted.

3. Mentally Disabled Offenders and the Nigerian Criminal Justice System

The provision for criminal offenders suffering from mental illness to receive the best available mental health care is indeed very important in considering the detention, prosecution and sentencing of a mentally disabled person.[17] Medical health disorders are not uncommon and the global burden of mental health disorders as estimated, increases by 15% annually.[18] Hence, the presumption in criminal law is that every person is presumed to be sane at all times relevant, and subject to liability until the contrary is proved. This is fundamental in the Nigerian criminal justice system. The criminal process commences from when a crime is reported through investigation, arraignment, trial, judgment, sentence and enforcement of the decision and appeal.[19]

However, medical science has identified numerous forms of mental illness, of which, for purposes of crime, must inhibit the mind of the offender before the time or date of his action, necessitating the criminal process.[20] Apart from psychoses and schizophrenia, other factors including substance abuse, personality disorder, developmental disorder and neuro-cognitive impairments, are correlated with many violent crimes.[21] While medical science approaches mental illness from the perspective of treatment, the criminal process determines the extent to which mental illness can absolve perpetrators of responsibility for their actions and how they should be handled by the criminal justice system.

Facing criminal prosecution is difficult, especially for a person whose ability to understand the proceedings to communicate effectively with a lawyer, to give instructions and to make

14 *Ibid*.
15 Enemaku, O., *The Concept of Crime and the Rights of an Accused Person under the Nigeria Criminal Justice Administration* [2009] Journal of Contemporary Legal Issues (Vol. 1, No. 1) 35.
16 Chukol K.S., *supra* 6.
17 Anyanwu, A., supra.
18 *Ibid*.
19 Afolayan, A.E., and Onoja, E.O., *The Plight of Mentally ill Persons under the Criminal Justice System in Nigeria*.
20 *Ibid*.
21 *Ibid*.

decisions is impaired by mental disability, whether in form of mental illness, intellectual challenges, brain injury or other related conditions or diseases.[22]

However, such a person or persons face barriers at all stages of their interaction with the legal system, from the point of dealing with the police to retaining and briefing a lawyer to dealing with the judicial system and finally to their being imprisoned in correctional service centres.

Hence, it is paramount that in criminal trial, consideration of the mental condition of an accused person at the time of commission of the alleged offence was committed and during trial must be taken into account challenges to mentally disabled offenders in the Nigeria criminal justice system. Mentally disabled individuals in Nigeria criminal justice system face significant challenges.[23] Such challenges prevent them from getting the desired justice whenever they face prosecution among such challenges are discussed hereunder.

4. Challenges of Mentally Disabled Individuals in the Nigerian Criminal Justice system

4.1 Lack of specialised support and inadequate training

The Nigerian criminal justice system, comprising of the police, judiciary, and correctional service, often lacks the training to effectively handle cases involving individuals with mental disability. This leads to inappropriate responses. There should specialized support system put in place in the various institutions in the criminal justice system comprising of the police, court and correction service, where persons with mental disability could be supported by way of proper and adequate care as they are human beings as well.

4.2 Discrimination in accessing justice

People with mental disability face heavy barriers in accessing the justice system. Physical accessibility to courts and police stations is a problem to them as they are not given attention because of their disability, hence they are faced with inadequate investigation and prosecution in cases involving them.

4.3 Lack of awareness of their rights

Many people with mental disability are unaware of their rights within the criminal justice system, which can lead to unfair treatment against them, such as illegal detention, and absence of enforcement of their human rights as provided by the law. Such awareness is vital to persons with mental disability as much as they can understand.

4.4 Absence of interpreter and interpreting equipment

Police stations where investigation starts, to court where prosecution holds down, to correctional service centres where convicted persons are sent to serve out their sentences, lack interpreters and equipment to accommodate the needs of individuals with mental disabilities. This may either lead to miscarriage of justice or difficulties in accessing the justice system in Nigeria.

4.5 Inadequate infrastructural facilities and resources:

In Nigeria, the police is saddled with the duty of arrest and investigation. At the investigative stage, there are no facilities put in place to enable the police to ascertain the mental health

[22] Ani, C., *supra*.

[23] Atoyebi, O.M., Mental Health and Criminal Responsibility under the Nigerian Law. *omaplex,com.ng*. Accessed 6/4/2025.

situation of a suspect. This situation, however makes it difficult for the police to be able to find out actually if an accused person is faking a mental disorder or not. This is a challenge to the investigative prowess of the Nigeria police.

4.6 Limited access to legal Representation:

Mentally disabled individuals may have difficulty accessing legal representation, particularly if they are unable to effectively communicate their case or if they lack the resources to hire an attorney.

4.7 Weak Enforcement of Laws:

Laws protecting the rights of persons with disability appear to be weak in protecting persons with mental disability. This is so because the rights of persons with disabilities are not always effectively enforced, and there may be a lack of political will to ensure their implementation.

4.8 Detention in Regular Prison:

Mentally disabled persons are often detained in detention centres and correctional service centres. The police have no provision for detaining a person with mental disability in a special cell for instance, rather, they are usually detained with other accused persons in the same cell and correctional centres, thereby not giving attention to their mental status.

4.9 Lack of Rehabilitation Programs:

Under the Nigerian criminal justice system, there are no effective rehabilitation programs to help individuals with mental disabilities reintegrate into the society after their release, thereby causing their stigmatization. Even where they force themselves into the society, they are not accepted.

5. The Position in Other Jurisdictions Compared to Nigeria

Nigeria, many police stations and court buildings are not physically accessible to people with mental disability, including those who use wheelchairs, thereby impeding their access to justice. Nigeria, being a signatory to the United Nations Convention on the Rights of Persons with Disability,[24] is compelled to take steps to ensure that disabled people have access to equal justice.[25]

Under the United Kingdom jurisdiction, this access to justice is covered under Equality Act[26]. This Act places an obligation on the Scottish Courts and Tribunal Service to take an anticipatory duty to make provisions for reasonable adjustments so that disabled people have equal access in court.[27] Reasonable adjustments include providing a sign language interpreter, Braile materials, an accessible courtroom and allowing for alternative modes of communication, by persons with all forms of disability, including mental disability.

In Nigeria, despite the fact that the main goal of the Discrimination against Persons with Disability (Prohibition) Act[28] is to ensure equal treatment opportunities and inclusion for persons with disabilities in the legal system, provision of these materials is still a far cry from expectations. Under the United Kingdom jurisdiction, materials of such nature are put in place to assist persons with mental disability to access justice equally with normal persons.

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24 *Hereinafter* called UNCRPD.

25 See *article 13* of UNCRPD 2006.

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27 Gomley, C., and Watson, N., Inaccessible Justice: Exploring the Barriers to Justice and Fairness for Disabled People Accused of a Crime. *https://eprints.gla.ac.uk*. Accessed 6/4/2025.

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Mentally disabled persons navigate the criminal justice pathway (police, court and prisons) and the mental health pathway. The system considers various factors when dealing with individuals, including their ability to understand charges, participate in court and the potential impact of custody on their condition. By so doing, the police courts and prison may divert individuals with mental health needs from criminal justice system to specialized mental health service. The goal is to prevent unnecessary imprisonments and provide opportunities appropriate for treatment. This is not the case in Nigeria, rather they are sent to prison.

Under the South African jurisdiction, the criminal justice system deals with mentally disabled offenders by first assessing their fitness to stand trial from the police investigative level before going into trial. Once it is discovered that the individual or individuals are mentally unfit, they may be detained for observation and treatment potentially in a psychiatric hospital or a rehabilitation centre, for further consideration based on forensic assessment.[29] Under the United States criminal justice system jurisdiction, mental health courts are put in place as an alternative to navigate the criminal justice system for people with mental health disability.[30] There is no such courts in Nigeria.

6. Conclusions/Recommendations

Mentally disabled persons in Nigeria suffer from several challenges in the Nigerian criminal justice system. This is notwithstanding the fact that Nigeria adopted the United Nations Convention on the Right of Persons with Disabilities. Access to effective justice, just as a fundamental right, is still far from realization for such class of persons. Meanwhile, the Nigerian criminal justice system's approach to mentally disabled offenders is guided by legal principles that aim to ensure fairness and due process while also addressing the needs of individuals with mental disabilities.

The system acknowledges the presumption of sanity and, at the same time, recognises the importance of assessing and accommodating mental illness in criminal proceedings. However, despite this acknowledgement, the implementation of principles is challenged by several constraints. Hence the need to reform the Nigerian criminal justice system.

Flowing from the above, there is need to reform the Nigeria criminal justice by instituting a specialized personnel desk for forensic psychiatrist/social work in each police station for purposes of assisting the investigating police officer whenever there is need to examine mentally disabled offenders before prosecution. This will help in assessing and managing such persons.

It is also recommended that there be a greater coordination between the criminal justice system, mental health system and community support network to effectively address the needs of mentally disabled offenders. Again, Nigeria's criminal justice system must align with international human rights standards, such as the Convention on the Rights of Persons with Disabilities, which emphasizes on the rights of individuals with disabilities to be treated equally before the law, due process and freedom from discrimination

[29] Pienaar, L., Considering Mental Health Courts for South Africa: Lessons from Canada and the United States of America. *https://orcid.org/1000-0001-6296-4647*. Accessed 8/4/2025.

[30] Mental Health America, Mental Health Courts. *https://mhanational.org*. Accessed 8/4/2025.