SICK AND FORGOTTEN: EXAMINING THE RIGHT TO HEALTHCARE FOR MENTALLY ILL INMATES IN NIGERIAN PRISONS

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ABSTRACT

This article examines the right to healthcare for mentally ill inmates in Nigerian correctional facilities, looking closely at the gap between what the law promises and what actually happens in practice. Mentally ill inmates are caught between two systems, criminal justice and healthcare and are consistently let down by both. Despite the enactment of the Nigerian Correctional Service Act 2019 and the Mental Health Act 2021, both important steps forward, this article argues that Nigerian law, as it stands and as it is currently applied, fails to properly protect the right to healthcare for this group of people. Drawing on the constitutional guarantee of human dignity under Section 34 of the Constitution of the Federal Republic of Nigeria 1999, and drawing comparisons with the UN Nelson Mandela Rules and the South African constitutional framework, this article identifies serious gaps in Nigeria's laws and institutions when it comes to mental healthcare in prisons. The article closes with specific recommendations for legislative and institutional reform, arguing that how Nigeria treats mentally ill inmates is ultimately a measure of its real commitment to human dignity and to a fairer criminal justice system.

Keywords: *Mental health, Nigerian prisons, Right to Healthcare, Correctional Service Act 2019, Mental Health Act 2021, criminal justice reform*

Introduction

Inside Nigerian correctional facilities lives a population that society has made invisible twice over people who are both imprisoned and mentally ill. They sit in an uncomfortable middle ground between the criminal justice system and the healthcare system, and they are let down by both. They are too sick to be ignored and too criminal to be prioritised. The result is a quiet crisis unfolding behind prison walls.

Nigeria's correctional system holds a significant number of people with mental illness, whether they arrived with pre-existing conditions or developed them during imprisonment. Overcrowding, violence, poor nutrition, and the sustained trauma of incarceration create conditions that make mental illness worse. Yet the legal frameworks governing these facilities have historically treated healthcare as an afterthought, and mental healthcare as something barely within reach.

The enactment of the Nigerian Correctional Service Act 2019 and the Mental Health Act 2021 were important steps forward.[70] On paper, these laws signal a move toward treating inmates more humanely and with greater awareness of their rights. In practice, however, the gap between what the law promises and what happens inside those facilities remains enormous and has largely been ignored in Nigerian legal scholarship.[71] This article examines that gap.

This article argues that Nigerian law, as it is currently written and applied, fails to properly protect the right to healthcare for mentally ill inmates. Despite the constitutional guarantee of human dignity under Section 34 of the Constitution of the Federal Republic of Nigeria 1999,[72] and the progressive provisions of the Correctional Service Act 2019[73] and the Mental Health Act 2021,[74] mentally ill inmates remain among the most consistently overlooked groups in Nigeria's healthcare and criminal justice landscape.

This article proceeds in five parts. Part II sets out the background, defining who this article is concerned with and the legal basis for the right to healthcare in detention. Part III looks at the relevant Nigerian legislative framework and where it falls short. Part IV examines the disconnect between what the law says and what actually happens in correctional facilities. Part V draws briefly on the South African experience and the UN Nelson Mandela Rules as points of comparison.[75] Part VI concludes with specific recommendations for legislative and institutional reform.

Background: Who Are We Talking About?

Before turning to the legal framework, it is important to be clear about who this article is concerned with. When we talk about mentally ill inmates, we are really talking about at least three different groups of people. The first are those who entered correctional facilities with pre-existing mental

[70] Nigerian Correctional Service Act 2019; Mental Health Act 2021.

[71] A review of major Nigerian legal databases including the Nigerian Law Journal and the African Journals Online (AJOL) reveals limited scholarship specifically addressing mental healthcare in Nigerian correctional facilities.

[72] Constitution of the Federal Republic of Nigeria 1999, s 34, this provision guarantees every individual's right to the dignity of the human person and prohibits torture, inhuman or degrading treatment.

[73] Nigerian Correctional Service Act 2019, ss 2, 23: establishing the objectives of the correctional service and making provision for healthcare services in custodial centres.

[74] Mental Health Act 2021, s 12: establishing the right of persons with mental illness to access treatment and care without discrimination.

[75] United Nations Office on Drugs and Crime, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (UN Doc A/RES/70/175, 2015).

health conditions whether those conditions were identified at the point of admission or went undetected. The second are those who developed mental illness during incarceration, something that research has consistently shown, given how damaging prison conditions can be. The third group and perhaps the most legally complicated are those found unfit to stand trial or not guilty by reason of insanity, who end up held indefinitely in facilities that are entirely unsuited to their needs.

What these three groups share is a particular vulnerability. They are disproportionately poor, they often lack both the means and the voice to speak up for themselves, and they are held within a system the correctional system that does not have the facilities or trained staff to properly care for them. Their situation touches on both the right to liberty and the right to health, yet they keep falling through the gaps of both systems.

The legal basis for the right to healthcare in correctional settings works on two levels. At the national level, Section 17(3)(d) of the Constitution of the Federal Republic of Nigeria 1999 directs the state to ensure adequate medical and health facilities for all persons.[76] Internationally, Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) to which Nigeria is a state party recognises the right of everyone to the highest attainable standard of physical and mental health.[77] The UN Nelson Mandela Rules go further and spell out what this means in practice within prisons, providing that inmates shall enjoy the same standards of healthcare available in the wider community, without discrimination on the grounds of their legal status.[78]

Together, these provisions establish a clear minimum standard: persons deprived of their liberty do not lose their right to healthcare. The state, by taking custody of someone, takes on a stronger duty of care toward that person. The question this article addresses is whether Nigeria's legal framework properly fulfils that duty, and the answer, as the sections below demonstrate, is that it does not.[79]

The Legal Framework: What the Law Says and Where It Falls Short

A. The Nigerian Correctional Service Act 2019

The Nigerian Correctional Service Act 2019 marked a real shift in how Nigeria thinks about its custodial institutions. By renaming the Nigerian Prison Service the Nigerian Correctional Service, the legislature signalled a desire to move away from purely punishing inmates and toward helping them return to society.[80] Section 23 of the Act makes provision for healthcare delivery, requiring the Service to maintain basic health facilities and provide medical treatment to persons in its custody.[81]

The problem with this provision, however, is what it leaves out. While Section 24 of the Act addresses mental health providing a mechanism for referral where an inmate appears to be of

[76] Constitution of the Federal Republic of Nigeria 1999, s 17(3)(d).
[77] International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, art 12.
[78] UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) (UN Doc A/RES/70/175, 2015), r 24.
[79] See Anselm Chidi Odinkalu and Osaze Lanre Ehonwa, *Behind the Wall: A Report on Prison Conditions in Nigeria and the Nigerian Prison System* (Civil Liberties Organisation 1996).
[80] Nigerian Correctional Service Act 2019, s 2.
[81] Nigerian Correctional Service Act 2019, s 23.

unsound mind, the Act does not require psychiatric screening on admission, does not require mental health professionals to be employed as a matter of course, and does not set aside any dedicated budget for mental healthcare. The phrase 'basic health facilities'—the language Section 23 uses cannot, by any reasonable reading, cover the specialised, sustained, and often resource-heavy interventions that serious mental illness requires. The Act's silence on mental health is not accidental. It reflects a deeper failure to treat mental health as real healthcare at all.

B. The Mental Health Act 2021

The Mental Health Act 2021 was a major piece of legislation, replacing the outdated Lunacy Act of 1958 and bringing Nigeria's mental health law into more modern territory. The Act establishes the right of persons with mental illness to access treatment and care without discrimination[82] and sets out minimum standards for facility-based treatment.[83]

The Act's key weakness, however, is how little it does for people inside correctional facilities. While sections 46 to 58 deal with the treatment of persons with mental health conditions in criminal proceedings, these provisions do not set out a full framework for the conditions under which mentally ill people may lawfully be held in prisons. There is nothing that compels correctional institutions to bring mental health services in-house, no standard setting minimum treatment conditions within custodial settings, and no clear process for moving mentally ill inmates from correctional facilities to proper psychiatric institutions. What the Act does well for people in the community has not carried over in any meaningful way to those inside correctional facilities.

C. Constitutional Provisions and Their Limits

The constitutional picture presents a problem that is familiar in Nigerian law. Section 17(3)(d) of the 1999 Constitution directs the state toward the provision of adequate medical and health facilities, but this provision falls within Chapter II the Fundamental Objectives and Directive Principles of State Policy which is expressly made non-justiciable by Section 6(6)(c).[84] A mentally ill inmate cannot, on the strength of this provision alone, successfully sue the state for failing to provide adequate mental healthcare.

Section 34, by contrast, is justiciable. The right to dignity of the human person which prohibits torture, inhuman or degrading treatment has been read by Nigerian courts in an increasingly broad way.[85] There is a strong argument, supported by decisions from other jurisdictions that holding a mentally ill inmate in conditions that make their illness worse, or that deny them any treatment, amounts to inhuman or degrading treatment within the meaning of Section 34. This argument has not yet been fully tested in the Nigerian courts, but it remains one of the more promising routes for constitutional reform.

Law versus Reality: The Gap in Implementation

[82] Mental Health Act 2021, s 12.

[83] Mental Health Act 2021, ss 24–25; see also ss 46–58 which address treatment of persons with mental health conditions in criminal proceedings.

[84] Constitution of the Federal Republic of Nigeria 1999, s 6(6)(c).

[85] *Gbemre v Shell Petroleum Development Company Nigeria Ltd & Others* (Suit No. FHC/B/CS/53/05) [2005] AHRLR 151 — the Federal High Court held that the rights to life and dignity under ss 33 and 34 of the Constitution could be read broadly beyond their literal terms; this approach has been invoked by analogy in arguments that s 34 extends to conditions of detention that aggravate mental illness.

The gap between what Nigeria's laws say and what mentally ill inmates actually experience in prison is, to put it plainly, enormous. Reports by the Prison Advocacy, Reform and Welfare Action organisation (PRAWA) have consistently shown that the majority of Nigerian correctional facilities have no resident psychiatrist, no access to psychotropic medications, and no formal mental health screening process at the point of admission.[86] The National Human Rights Commission's annual reporting has similarly flagged conditions in correctional facilities as falling well below minimum international standards.[87]

The problem is deep and runs through multiple layers. When it comes to physical infrastructure, Nigerian correctional facilities are severely overcrowded, operating, in many cases, at over two hundred percent of their intended capacity.[88] The physical and psychological effects of such overcrowding fall hardest on mentally ill inmates, who are less able to manage the social pressures of overcrowded incarceration and more exposed to exploitation and harm.

When it comes to staffing, there is a serious absence of mental health professionals within the correctional system. Nigeria faces a severe national shortage of psychiatrists with approximately 250 certified psychiatrists serving a population of over 200 million and what little exists is concentrated in metropolitan teaching hospitals, not in prisons.[89] In practice, this means that mentally ill inmates get no psychiatric assessment, no medication management, and no therapy of any kind. Their conditions get worse, not because the law ignores them, but because the facilities and staff needed to help them simply do not exist.

The human cost of this failure is documented in specific facilities. At the Makurdi Medium Security Correctional Facility in Benue State, research has confirmed that inmates with mental health conditions receive no resident psychiatric care, with occasional referrals to the Federal Medical Centre representing the full extent of the facility's mental health provision.[90]

At Agodi Correctional Centre in Ibadan, studies have shown a facility in which over ninety percent of inmates are awaiting trial, creating conditions of prolonged uncertainty that are well known to trigger and worsen mental illness.[91] Most shockingly, Amnesty International's documented visits to ten correctional facilities across Enugu, Kano, Lagos, and the Federal Capital Territory revealed a system in which persons with mental illness are brought to prison by their own families and classified as 'civil lunatics' held without conviction, without treatment, and without any legal mechanism compelling the state to provide either. In one documented case, a woman held in these circumstances remained in a cell with eleven other inmates for nearly three years before the intervention of a non-governmental organisation secured her transfer to hospital.[92]

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[86] PRAWA, *Prison Health Care in Nigeria: An Assessment* (PRAWA 2018).
[87] National Human Rights Commission, *Annual Report on the State of Human Rights in Nigeria* (NHRC 2021).
[88] Penal Reform International, *Global Prison Trends 2023* (Penal Reform International 2023).
[89] Federal Ministry of Health, *National Mental Health Policy* (FMOH 2021); CE Okechukwu, 'Shortage of Psychiatrists: A Barrier to Effective Mental Health-Care Delivery in Nigeria' (2020) 5 International Journal of Noncommunicable Diseases 22.
[90] E Nwefoh and others, 'Depression and Experience of Incarceration in North Central Nigeria: A Situation Analysis at Makurdi Medium Security Prison' (2020) 14 International Journal of Mental Health Systems 76.
[91] JO Abdulmalik and others, 'Prevalence and Correlates of Mental Health Problems Among Awaiting Trial Inmates in a Prison Facility in Ibadan, Nigeria' (2014) 43 African Journal of Medicine and Medical Sciences 193.
[92] Amnesty International, *Nigeria: Prisoners' Rights Systematically Flouted* (AFR 44/001/2008), the report documented visits to ten custodial facilities in Enugu, Kano, Lagos and the FCT. One documented case involved a woman held as a 'civil lunatic' without conviction for nearly three years before NGO intervention secured her transfer to hospital.

What is perhaps most troubling is that mentally ill inmates are frequently subjected to forms of management that are not only inadequate but actively harmful. Solitary confinement, used informally to manage disruptive inmates is well documented to make mental health conditions worse. Physical restraints are also reportedly used in place of proper clinical care across different facilities. These are not the practices of a system that takes seriously its duty to protect the health and dignity of the people in its care.

V. A Comparative Look: South Africa and the Nelson Mandela Rules

A. The South African Framework

South Africa's constitutional and legislative framework offers a useful comparison for Nigeria, not because South Africa's prison system is without its own problems, but because its legal framework provides tools that Nigeria's does not. Section 35(2)(e) of the Constitution of the Republic of South Africa 1996 expressly guarantees every detained person the right to conditions of detention consistent with human dignity, including adequate medical treatment at state expense.[93] This provision is directly justiciable and has been enforced by South African courts in ways that have actually improved conditions of detention.

The Mental Health Care Act 17 of 2002 adds another layer of protection. It applies broadly to include persons in the criminal justice system and specifically protects the rights of mentally ill people who are detained, including those held in correctional facilities.[94] The Act sets out clear processes for moving mentally ill offenders from correctional to psychiatric facilities and prescribes minimum standards for the care of mentally ill persons in detention. Nigeria has no comparable legislation.

B. The Nelson Mandela Rules as an International Standard

The UN Standard Minimum Rules for the Treatment of Prisoners—widely known as the Nelson Mandela Rules represent the most widely recognised international standard for treating people in detention. Rule 109 specifically addresses prisoners with mental disabilities, stating that such prisoners should not be held in prisons and that steps should be taken to move them to mental health facilities as soon as possible.[95] Rules 24 to 35 set out broader healthcare standards, requiring that inmates have the same access to healthcare as people outside prison, and that health personnel in prisons are held to the same professional ethics as practitioners in the community.[96]

Nigeria has not incorporated the Nelson Mandela Rules into domestic law, and there is no indication that these Rules played any role in drafting or applying the Correctional Service Act 2019. The fact that Nigeria's legislative framework makes no reference to, or engagement with, these international standards is itself a telling sign of the gap between Nigeria's commitments on paper and what happens in practice.

VI. Recommendations and Conclusion

A. Recommendations

[93] Constitution of the Republic of South Africa 1996, s 35(2)(e).
[94] Mental Health Care Act 17 of 2002 (South Africa), s 1.
[95] Nelson Mandela Rules (n 8), r 109.
[96] ibid, rr 24–35.

Based on what this article has examined, there are several key areas where reform is needed. This article puts forward three recommendations as priority areas.

First, the Nigerian Correctional Service Act 2019 should be amended to include a specific and mandatory mental health framework. This should cover mandatory psychiatric screening for all inmates on admission, requirements for mental health professionals to be employed within correctional facilities, minimum standards for managing mentally ill inmates, and a clear process for transferring inmates to appropriate psychiatric facilities where medically necessary.[97]

Second, the Mental Health Act 2021 should be amended to strengthen its provisions relating to people within the correctional system. While sections 46 to 58 form a starting point, they do not go far enough to require that mental health services be built into prison care, nor do they set minimum standards for holding mentally ill persons in such facilities. Regulations under the Act should specifically address this gap and should require coordination between the Nigerian Correctional Service and the Federal Ministry of Health for integrated mental health service delivery.[98]

Third, the Nigerian government should, as a matter of urgency, put its obligations under the Nelson Mandela Rules into practice within the correctional context. This should include directing the Nigerian Correctional Service to review all conditions of detention against the standards in the Rules and to produce an implementation plan with clear deadlines for bringing those conditions into compliance.

B. Conclusion

The treatment of mentally ill inmates in Nigeria's correctional system is, at its core, a constitutional question. Section 34 of the Constitution guarantees the dignity of every person, not every person who has never committed an offence, or every person who is mentally well, but every person.[99] Systematically denying inmates' mental healthcare and leaving them to deteriorate in neglect goes against this guarantee.

The Nigerian Correctional Service Act 2019 and the Mental Health Act 2021 are real legislative progress. But progress on paper means nothing to a mentally ill person held in a facility with no psychiatrist, no medication, and no legal mechanism compelling the state to provide either. The law has moved. The institutions have not followed.

This article has argued that closing that gap requires more than goodwill, it requires specific legislative changes, real institutional reform, and a conscious decision to treat mentally ill inmates as rights-holders rather than administrative inconveniences. The measure of a legal system's commitment to human dignity is found not in how it treats those it most admires, but in how it treats those it most easily forgets. Nigeria's mentally ill inmates have been forgotten for long enough.

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