



A Critical Appraisal of the Law Protecting Persons with Mental Health Conditions in Zambia

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ABSTRACT: Mental health is widely recognised as an important part of the proper functioning of an individual and contributes to the overall well-being of a person. A human rights based approach states that all members of society should be catered for in the eyes of the law and have equal access to justice. However, there is not much importance placed on mental health in the Republic of Zambia and there is a lot of discrimination against persons with mental conditions. The aim of this research is to critically appraise the Mental Health Act of 2019 and hereafter educate the public on mental health. In addition, the research seeks to investigate how Zambia has dealt with mental health, analyse the improvements made in the Mental Health Act, 2019, and make proposals for solutions to the shortcomings identified in how the provisions of the law are carried out.

This research was essentially desktop based and reviewed statutes. The desk review involved the qualitative analysis of the provisions of the Mental Health Act in determining its significance. Analysis of books, articles, and other various online sources was also used to collect the information contained in this research.

The findings revealed that the legislation on mental health in Zambia is progressive but lacks practicality. There are no workable guidelines, either legislative or judicial, which accommodate persons living with varying degrees of mental challenges. Arising out of this analysis it is recommended that the Mental Health Act should be amended to include in-depth definitions of the major conditions that could affect members of the public and incorporate mental health services in existing health establishments to increase access to these facilities by people with mental health difficulties.

KEY WORDS: Appraisal, Judicial System, Mental Health, Zambia.

INTRODUCTION

Every person's mental health is very crucial to their well-being and functionality both on a personal level and in society. Unfortunately, mental health is not taken as seriously as it should be in Zambia and has led to a negative connotation being attached to it. This research looks at how the Zambian legal system accommodates those who have mental health conditions. In general, the research critically appraises the mental health legislation in Zambia in order to understand how mental health challenges are addressed and provides suggestions on how this group of vulnerable people could be better accommodated. In the year 1951 the Mental Disorders Act was enacted to protect individuals suffering from mental conditions in Zambia (formerly known as Northern Rhodesia).¹ This was one of the first legal accommodations made for those who were mentally ill and provided some sort of protection. However, not all their rights were covered in the Act and there was no treatment facility in the country at the time leading to Zambian patients being taken to and admitted in Zimbabwe, a neighboring country for psychiatric care. Chainama Mental Hospital (hereinafter referred to as 'Chainama') was established in 1962 following concerns of the lack of a mental hospital in the country.² There were no trained professionals to work in the establishment, so priests and nuns of the Catholic Church in the United Kingdom were brought in to provide their services; this development led to the patients that were being treated in Zimbabwe relocating back to Zambia to continue their treatment at Chainama.³

¹ Mental Disorders Act 1951, Preamble

² Jedrin Ngungu and Julian Beezhold, 'Mental health in Zambia- challenges and way forward' (2009) *Research Gate*

³ Jones Muna, 'History of mental health in Zambia' (2020) <https://www.youtube.com/watch?v=L_lhgI6PG_g&t=8s>



After gaining independence in 1964, Zambia saw some improvements in the mental health department; nurses were being trained to provide care for patients and there was an introduction of the study of psychiatry in the country which led to the availability of professionals.⁴

Over the years, the Mental Health Association of Zambia was introduced to handle affairs concerning mental health. It worked with the Ministry of Health to ensure that the rights of those with mental challenges were respected and protected, it also dealt with legal issues involving patients who violated the law.⁵

The subsequent law on mental illness that was used in the country was the Mental Disorders Act. One of the provisions of the repealed law⁶ stands out because of the terms used to describe those with mental health issues, the fifth section to be exact. It deals with classification and uses terms such as ‘mentally infirm’, ‘idiot’, ‘imbecile’, ‘feeble-minded person’ and ‘moral imbecile’. This language is discriminatory and degrading and we consider it is absurd that such wording was used in the Act and the Penal Code⁷ alike. The narrative goes on to suggest that these individuals are not capable of taking care of themselves and managing their own affairs which is disadvantageous. While it is true that some individuals are incapable of doing certain things for themselves, there are numerous individuals that may fall under some of those classifications who with access to proper medication, therapy or other forms of aid, could be functioning members of society. Making blanket statements about those with mental disorders in legal documents (and also in ordinary conversation) disadvantages and dehumanises them.

The wording used in official documents and in official spaces to refer to those suffering from mental disorders in Zambia clearly shows how this group has been stigmatised not only by common citizens but also by those in positions of power who are expected to be more informed and sensitive to such issues. It is such practices that set the low standard of how people with mental disability are treated in society and the legal system.

Zambia has a long way to go concerning the attitude towards those experiencing the effects of mental conditions. The sooner this group of people is legally and institutionally treated humanely, the sooner it will be evident to the masses that they are a vulnerable group which needs to be respected and treated with special care rather than shunned and denied the access to the help they need in order to function in society.

The current law on mental health in Zambia is the Mental Health Act which was enacted on 11th April 2019. Its functions are to promote and protect the rights of persons living with mental conditions, establish the National Mental Health Council, provide mental health services for inmates in correctional facilities, give effect to international instruments that provide protection to persons with mental illness to which Zambia is a state party and to repeal the Mental Disorders Act, 1949.

The Mental Health Act 2019 was enacted to promote and protect the rights of those with mental conditions in society. In addition to this, an Act such as this one is designed to provide people with a sense of inclusivity and a safe space to seek help when needed, however, mental health is not taken seriously in the country as a whole. Individuals plagued with mental conditions are often shunned in their communities and their symptoms are attributed to demon possession or being bewitched; causing them not to have access to the help they need.

There are many misconceptions about mental illnesses and most Zambians are ill-informed on the topic of mental health, resulting in denial, shame, self-stigmatization and the stigmatization of others which has ultimately led to many unreported cases and affected individuals not getting assistance and treatment. In addition, the lack of proper information on conditions of the mind has caused locals to have a poor attitude towards them, therefore, making it important to promote more education on this topic. This research, therefore, examines the extent to which Zambian law protects the rights of persons with mental disabilities and provides suggestions on the improvements that can be made.

An individual’s mental health is equally as important as their physical health and ought to be treated as such. It impacts their productivity, mood and quality of life in general making good and stable mental health a crucial part of one’s wellbeing. Considering the rise in suicide cases as well as anxiety and depression diagnoses, it is necessary to figure out how to reduce on these numbers and help the general public. This research is beneficial to those who are struggling as a result of their mental conditions as it provides

⁴ ibid

⁵ ibid

⁶ Mental Disorders Act 1951, s5

⁷ Penal Code Act 1931, s139



them an avenue for a better understanding of their rights and the accommodations that they are entitled to. It also benefits the government by providing suggestions on how they can do a better job of catering to the needs of this vulnerable group in society. There exist numerous literatures on the topic of mental health. Firstly, it was noted by Martin Prince et al⁸ that mental disorders are important as they are linked to the physical ailments that most individuals suffer from. It is further stated that the importance of mental health is often overlooked because people do not see the connection between physical and mental health and fail to realise that there can be no health without mental health.

This research concurs with the views above; it highlights the importance of caring for the mental well-being of the individual and shows the negative attitude of the public towards those struggling with their mental health. Additionally, it shows how physical and mental health are linked by discussing how mental conditions greatly affect the physical health of a person.

In an appraisal of the case of *Gordon Maddox Mwewa & Others v Attorney-General & Another*⁹, Kalunga and Nkhata¹⁰ noted that the Zambian High Court did not fully respect the rights of the petitioners when interpreting this case. Evidence of involuntary admission to medical facilities, poor treatment by medical staff, bad living conditions and inadequate food and clothing were given to the courts by the petitioners but the Court still refused to declare the Mental Disorder Act(MDA) of 1949¹¹ unconstitutional despite the fact that it is discriminatory against those with mental conditions.¹² The court failed to ensure the prevalence of justice in this case by shutting down the claims of the petitioners despite there being clear infringement on their right to human dignity, liberty, informed consent to medical treatment and security of the person.

Similarly, in 2017 three individuals with psychosocial disabilities made a petition arguing that the MDA 1949 was discriminatory and unconstitutional; also giving evidence that they experienced mistreatment and forced psychiatric treatment under the same Act and that these practices were done with no court orders and solely because of their disabilities.¹³ In addition, Zambia ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD) in 2010¹⁴ which aims at ensuring that persons with disabilities enjoy their rights and freedoms; but failed to act quickly when it was brought to their attention that the MDA 1949 was incompatible with the law in the aforementioned convention.

This research analyses the current law on mental health and critiques some of the more questionable provisions concerning persons with mental conditions. It seeks to bring to the attention of the government and the public how some parts of the legislation is unjust and also provides recommendations on how best this vulnerable group of people can be accommodated through its provisions and also in court.

Funding is another cause for concern in relation to the advancement of mental health. A policymaker revealed that only about K300,000 (about US\$15,000) was allocated to the mental health department in the year 2018.¹⁵ The insufficient funding makes it almost impossible to develop this area; activities such as training of mental health experts, payment of existing health care providers, acquisition of drugs and proper equipment, building better psychiatric facilities and education of the public among others all suffer because the government does not prioritise mental health as it does other conditions such as HIV and cancer, for example. Munakampe¹⁶ suggested linking mental health to other high-priority conditions such as the ones mentioned above in order to attract

⁸ Martin Prince, Vikram Patel, ShekharSaxena, Mario Maj, Joanna Maselko, Michael Phillips and Atif Rahman, 'No Health Without Mental Health' (2007) *The Lancet*

⁹ 2017/HP/204

¹⁰Felicity KayumbaKalunga and ChipoNkhata, 'Protection of the of persons with mental disabilities to liberty and informed consent to treatment: a critique of Gordon Maddox Mwewa& others v Attorney-general & another' (2018)

¹¹ Mental Disorders Act 1949

¹² n8

¹³ Felicia Mburu, 'Zambia High Court Calls for Review of Mental Health Law' (2017) *Validity*

¹⁴ n 10

¹⁵Margarate Nzala Munakampe, 'Strengthening mental health systems in Zambia' (2020) *International Journal of Mental Health Systems*, 14,28

¹⁶ *ibid*



more monetary allocation. Studies also show that the positive mental and emotional state of a patient can to a lot of extent speed up their recovery process.¹⁷

The connection between life threatening conditions and poor mental health in Zambia has been explored in this research; it highlights the effects that physical illnesses have on the mental health of citizens and how common mental illness is among those with venereal diseases.

Mental conditions can potentially affect an individual's ability to function properly be it in society or in their own daily lives; these difficulties range from being unable to sustain employment to failing to maintain a basic level of personal hygiene. McKnight and Kashdan¹⁸ mentioned that the functional impairment that comes with depressive disorders not only affects the individual but extends to those around them such as friends and family. Severe cases of ill mental health may cause people to turn to harmful coping mechanisms such as drugs and or substance abuse which would ultimately lead to financial strain. Other negative effects include the loss of personal relationships such as friends, children, and spouses, exposure to disease through drug use and risky sexual behaviour and a decline in physical health due to self-neglect.

Aside from mental illness, individuals with mental disabilities are also a cause for concern. People with mental disabilities are among the most neglected members of society and despite needing a lot of care and assistance, are usually neglected and abused by the very individuals entrusted with the responsibility of caring for them.¹⁹ Benedet and Grant²⁰ noted that women who are mentally challenged often do not get the justice they deserve when they fall victim to sexual assault; this is so because unlike an average woman, they are usually not able to communicate their aversion to sexual activity due to the fear they have of their caregivers or lack of understanding of the activities they are forced to engage in. This unfortunately is the case in many parts of the world especially here in Africa where the rights of the mentally handicapped are not paid much attention.

This research looks at the spectrum of functionality that exists among persons with mental conditions, both physically and mentally. It also looks at how diverse the symptoms of certain ailments are, how some conditions present differently from person to person despite falling under the same name and diagnostic criteria. The research also considers the various accommodations that could be helpful to affected parties and shows the importance of availing these options to the affected group of people.

Stigmatization is very prevalent where mental health issues are concerned in Zambia. A series of interviews conducted by Kapungwe and others²¹ revealed that a negative view of mental health conditions was evenly spread among sufferers, family members and health care providers. Responses to various questions ranged from parents of patients expressing shame from being associated with children who are mentally ill and sufferers confirming that their immediate family is to blame for their feelings of self-disdain to general health care providers expressing their dislike for mental patients and feeling like the patients are not worth their efforts.²²

In addition, ignorance on mental illness and health contributes to the discrimination of persons who are mentally ill. More responses from the interview mentioned above showed that people thought mental illness was a sign that someone was a wrong-doer and was bewitched as punishment for their misdeeds. Most people have formed a negative opinion of Chainama Mental Health Hospital facility itself, associating the name of the establishment (Chainama) with a dumping site for people who have no hope of recovery.²³ These beliefs are nothing new and have been passed down through many generations, and are probably not going to change easily. This unfortunate reality, however, does not mean all hope is lost; a positive change is likely to be seen as more people get educated on the topic. A shift in perspective will be very beneficial for the people of Zambia as mental illness is not selective and can affect

¹⁷SanneM.A.Lamers, et al, 'The impact of emotional well-being on long-term recovery and survival in physical illness: a meta-analysis' (2012) *Journal of behavioral medicine* vol. 35, 5-8

¹⁸ Patrick McKnight and Todd Kashdan, 'The importance of functional impairment to mental health outcomes: A case for reassessing our goals in depression treatment research' (2009) *Clinical psychology review*, 29(3), pp.243-259.

¹⁹ Paul Hunt and Judith Mesquita, 'Mental Disabilities and the Human Right to the Highest Attainable Standard of Health' (2006) *Human Rights Quarterly* 28, no. 2

²⁰ Janine Benedet and Isabel Grant, 'Sexual Assault and the Meaning of Power and Authority for Women with Mental Disabilities' (2014) *Feminist Legal Studies* 22, 131-154.

²¹ A Kapungwe et al, 'Mental illness – stigma and discrimination in Zambia' (2010) *African Journal of Psychiatry*

²² *ibid*

²³ *ibid*



people from all classes in society; it will allow people to stop feeling shame and actually seek help when they need it and become more supportive and less judgmental towards those affected.

This negative view of mental health is very detrimental to people who have these conditions and has been further discussed in this paper. The research brings to light the effects a negative attitude towards mental health can have on those affected and the other members of the public alike; it also seeks to normalize the topic of mental health in general and among the Zambian population especially.

On a more positive note, Phiri²⁴ highlights teletherapy as a new way to provide help to those who are struggling in Zambia. In relation to the previous points, the stigma that comes with mental conditions is a huge burden for people to bear and many shy away from seeking help before their problems get too serious while others avoid it all together. With this new form of therapy people have access to counselling anonymously which removes the aspect of shame; additionally, it also cuts on transportation cost making it more affordable than traditional therapy. This method comes with a few drawbacks such as, potential clients being difficult to reach because of unanswered calls and lack of physical interaction with clients (which removes the element of reading body language and observing facial cues)²⁵ but overall seems like a step in the right direction. One lady reported an improvement in her depression and a decline in suicidal ideation upon completion of a teletherapy program offered by Strong Minds Zambia.²⁶

This research suggests a new way of looking at how to promote mental health in Zambia; rather than attempting to change decades of problems that have been ingrained into society as quickly as possible, it gives suggestions on how to work around the situation Zambia is currently faced with in the area of mental health by finding new and more creative ways to provide help while simultaneously deconstructing society's negative view of mental health.

METHODOLOGY

The methodology used in this research is qualitative. The outcomes of this study were reached by carrying out a desktop research. Case law, statutes, relevant books and journal articles and internet sources were analysed and reviewed in order to gather the information that was used in this research.

Defining Mental conditions Prevalent in Zambia

Next we analyse definitions of mental conditions and look into the most common conditions among the Zambian population. There exists a wide variety of mental conditions human beings may suffer from; these range from disabilities such as Autism Spectrum Disorder to psychological conditions such as general obsessive-compulsive disorder and clinical depression to mention a few. With the proper medication and care these conditions can be managed and, in some cases, even completely cured. The focus here is on definitions from the literature, local and international policy documents and legislation.

Mental disorders or illnesses are defined by the World Health Organization as significant disruptions in a person's cognition, behavioral and emotional regulation.²⁷ Terming these ailments as mental conditions is a broader way of encompassing all psychological disabilities, mental disorders and other defects that may have a substantial effect on an individual's mental wellbeing. From the Zambian law, the Persons with Disabilities Act, 2012 provides a general definition of 'disability' which encompasses:

Permanent physical, mental, intellectual, or sensory impairment that alone, or in a combination with social or environmental barriers, hinders the ability of a person to fully or effectively participate in society on an equal basis with others.²⁸

This definition of disability means that all different forms of mental conditions can be termed as disabilities and to that extent, the provisions of the Persons with Disabilities Act applies. Some of the relevant provisions in this law include rights that these stakeholders must be guaranteed.

Some of the mental conditions are characterized by the inability to adequately understand speech and other various forms of communication within society; this includes but is not limited to failure to understand and/or process social cues, failure to articulate

²⁴ Prudence Phiri, 'Removing Obstacles to Mental Health Care – Over the Phone' (2021) *Global Press Journal*

²⁵ *ibid*

²⁶ *ibid*

²⁷ 'Mental Disorders' (2022) *World Health Organisation*

²⁸ Persons with Disabilities Act, s1



oneself properly and difficulties in using language and speech to express oneself or the complete inability to speak and socialize.²⁹ Complications with speech arise when an individual finds it difficult to engage in vocal communication which results in distorted sounds, slurred, stuttered and unintelligible speech; on the other hand, challenges with the use of language typically present as a lack of understanding when being spoken to and problems with expressing emotions, sharing ideas and passing on information to others.³⁰ Such conditions are referred to as communication disabilities and individuals often need speech aids such as communication devices or in other cases a translator to help them convey the messages that they want to get across and also understand the information being shared by others.

Intellectual disabilities refer to the limitations an individual may have with their cognitive function which is the ability to learn, think, solve problems and reason properly. Limitations are also observed where adaptive behavior is concerned; these are basically social and general practical life skills that people make use of in their day-to-day lives. When looking at intellectual impairments, there are four levels that need to be considered, namely, mild, moderate, severe and profound.³¹

Intellectual disabilities appear in various ways and there is no clear-cut representation of such conditions as they fall on a spectrum. Symptoms may range from social immaturity and slower understanding to needing constant supervision and being completely unable to comprehend simple instructions.³² The following section considers which mental conditions are most common in Zambia.

The Most Common Mental Conditions in Zambia

There are no readily available statistics on the prevalence of mental conditions in Zambia³³ but this does not mean that the citizens do not experience the effects caused by them. Fortunately, there exists mental health care institutions and a few trained medical practitioners in this field of study who keep records of their patients.

The most common mental disorders in Zambia include but are not limited to alcohol and substance abuse, depression and psychotic ailments.³⁴ The aforementioned conditions fall under psychiatric disorders and to get a better understanding of them, we examine the different categories they are classified in as explained below.

Anxiety Disorders

This is a disorder that affects a person's response to a situation or certain stimuli. People who suffer from this will react with intense fear and panic; their reactions are usually accompanied by physical symptoms such as a rapid heart rate, sweating and trouble breathing (this is known as a panic attack).³⁵

Mood Disorders

These disorders are also known as affective disorders and commonly occur when one experiences persistent feelings of sadness or periods of feeling overly happy, or fluctuations from extreme happiness to extreme sadness and vice versa. The most common mood disorders are depression, bipolar disorder and cyclothymic disorder (a mood disorder that causes emotional highs and lows).³⁶

Psychotic Disorders

These involve distorted thinking and awareness. The two most common symptoms of these disorders are hallucinations and delusions. Hallucinations are sensory experiences which are not real, but are created in a person's mind, for example, hearing voices speaking in one's head or seeing things that no other person in the room is able to see. Delusions are fixed, false beliefs that conflict

²⁹ African Disability Protocol, art 27(e)

³⁰ Robyn May White, Juan Bornman, Ensa Johnson and DianahMsipa, 'Court accommodations for persons with severe communication disabilities: a legal scoping review' (2021)

³¹ Musculoskeletal Disorder (MSD) Manuals

³² *ibid*

³³ EmeldaMwitwa, 'Mental health vis-à-vis family support' (2020) Zambia Daily Mail Limited

³⁴ *ibid*

³⁵ Steven Hyman, et al, 'Mental Disorders in disease control priorities in developing countries' (2006) New York: Oxford University Press

³⁶ *ibid*



with reality, which a person affected is strongly inclined to believe and cannot be convinced of the contrary despite an overwhelming amount of evidence. An example of such a disorder is schizophrenia.³⁷

An issue of importance that should be noted is that there seems to be a link between the above disorders and HIV/AIDS.³⁸ During the early 2000s, there was a rise in HIV cases among Zambian citizens; because the disease was fairly new to the country and people did not know how to manage it, there were high rates of infection leading to many deaths. When people found out about their positive HIV status, they saw it as a death sentence and usually developed depression due to the disease or turned to heavy alcohol and drug abuse which they used to distract themselves from their reality; which in turn induced mental illness.

The following are the findings of a study that was conducted among Zambian men and women over the age of eighteen:

Among 300 individuals reporting any alcohol use, 165 agreed to screening. 155 participants were recruited, including 93 men and 62 women. Nearly all screened 146 (94.2%) had unhealthy alcohol use and 9 (5.8%) had low to moderate alcohol scores. Comorbid mental health issues were present in 72 % of unhealthy drinkers, most commonly depression 46 (31.5 %) and trauma 35 (24 %). Non-alcohol substance use (7.6 %) comorbidities were less prevalent than mental health comorbidities among those with unhealthy alcohol use.³⁹

Contrary to popular belief, mental conditions are actually a growing concern in Zambia and have the ability to drastically decrease the quality of life of the affected individuals. This issue has been serious enough to get the attention of the government which has made legislation and tried to improve on it over the years.

We now look at the provisions of the Mental Health Act, 2019 and some of the beneficial provisions that are contained within it.

Positive Changes to Mental Health Legislation in Zambia

Some of the positive changes to mental health legislation and how it provides its stakeholders with legal protection are examined here. The Mental Health Act of 2019 (hereinafter referred to as 'the Mental Health Act') was enacted to protect and promote the rights of people suffering from mental illnesses, disabilities and other mental impairments.⁴⁰ It is the most recent legislation concerning mental health that has been passed in Zambia and is the current law that caters for persons with mental conditions.

In comparison with the old law (Mental Disorders Act), the Mental Health Act has brought about so much positive change. Upon close inspection of the provisions, it is clear to see that the government of Zambia has attempted to correct a lot of the mistakes that were made in the former Act; additionally, a better attitude towards mental health and the persons affected is to be noted as there is now more emphasis on the protection and non-discrimination of this group of people.

Some Parts of the Mental Health Act will be discussed below, highlighting the new and more positive accommodations that have been included to suit the needs of the stakeholders.

Non- Discrimination

One of the more notable additions to the Mental Health Act has been the emphasis placed on non-discrimination of mental patients (hereinafter referred to as 'a patient' or 'patients').⁴¹ Section 6 stresses that no person is to take advantage of a patient or subject them to inhumane and degrading treatment; additionally, it prohibits the use of derogatory language towards these persons on account of their disabilities.⁴² This provision is very significant as it acknowledges the vulnerability of patients and that they are susceptible to being taken advantage of by other members of the public, an important point to note is that it protects stakeholders from being subjected to physical and verbal abuse which has been a problem in Zambia for a long time. The addition of this legislation inspires self-confidence and heightened self-esteem in stakeholders as they are able to enjoy fair treatment within society and can bring action against any person that intentionally mistreats and belittles them.

Additionally, Part II of the Mental Health Act aims to promote mental health and preventative programs. Section 7 provides that the Minister of Health must ensure that they create policies that promote mental health for the benefit of the public and especially

³⁷ ibid

³⁸ T Kanguya, et al, 'Mental Health Comorbidity in HIV-positive Zambian Adults Who Consume Alcohol' (2020) European journal of public health

³⁹ ibid

⁴⁰ Mental Health Act 2019, preamble

⁴¹ ibid, s6

⁴² ibid



the stakeholders.⁴³ The policy measures must be aimed at combating mental illness, educating the masses on mental health and providing training to legal practitioners on how to handle patients among other practices.⁴⁴ This is beneficial to stakeholders as it increases their visibility to the public eye and provides them with proper representation; when more people are educated on mental health, the fight against mental illness will be more successful, thus reducing the number of people affected as well as reducing the stigma directed at people with mental health challenges.

Lastly, training law enforcement officers on how to handle patients improves their (patients) chances at accessing justice, if legal practitioners are able to handle patients appropriately there is a high likelihood that patients will have the same opportunity to receive a fair hearing which in turn will accord them the same opportunity to receive a fair hearing which in turn fulfils the requirement the Constitution places on the government to provide justice to all without discrimination.

The National Mental Health Council

The third part of the Mental Health Act focuses on the establishment of the National Mental Health Council. The functions of the council are spelled out in Section 10 of the Act and include but are not limited to: ensuring the protection and promotion of the rights of a patient, working to end stigma and discrimination against patients, facilitating research on matter involving mental health and promoting the de-institutionalization of patients.⁴⁵

The formation of this council is a big step in the right direction where mental health is concerned; for many years Zambians living with mental conditions have not been paid much attention and in many cases even shunned. The creation of this council shows the shift in attitude towards patients and is an indication that mental health is being taken seriously not only by those affected and those who are passionate about the issue, but also by the government and people in positions of authority; this inspires confidence in patients and awards them a platform to address their issues of concern and observe change in a good amount of time as the council was established specifically for them and is meant to ensure efficiency.

Appropriate Mental Health Care

The aim of the provision under Part four is to ensure adequate access to mental health services for all with emphasis being placed on providing services that meet the minimum requirements of a medical establishment, appropriate accessibility, access to medication, the integration of mental health with general health services and the provision of primary health care among others.⁴⁶ For several years the main establishment that provided mental health care was Chainama, which does not provide the best service according to the minimum requirements placed on medical establishments; the republic of Zambia has since seen a major shift in the availability of mental health services with the establishment of so many private institutions that specialize in the treatment and alleviation of mental conditions across the board. The introduction of legislation requiring patients to be given access to appropriate mental health care puts medical personnel under the obligation to provide proper treatment to affected parties and ensure that no patient gets left behind in their pursuit of treatment and access to mental health care and management. This provision is crucial in ensuring patients have access to adequate health care facilities which would help them manage their symptoms and ailments thus, allowing them to be well adjusted members of society.

Consent to Treatment

This part of the Mental Health Act deals with consent to treatment by a patient, their supporter or their guardian.⁴⁷ Previously, patients would be given treatment, medication and were even institutionalized against their will if they resisted because it was believed that they were incapable of making decisions for themselves or even understanding instructions that were given to them. This new addition to the law on mental health shows that patients are regarded as capable members of society who are able to make decisions for themselves; it gives them back their power and responsibility which is automatically taken away once they are deemed unfit to make their own decisions and treatment is imposed despite not being in agreement. The provision is very significant as it

⁴³Ibid, s7(1)

⁴⁴Ibid, s7(a)(b)(d)

⁴⁵Ibid, s10

⁴⁶Ibid, s15

⁴⁷Ibid, s22(1)(a)



allows patients to make their own decisions and solidifies the notion that they are capable of managing their own affairs just like other ordinary members of the public.

This chapter discussed some of the positive provisions that have been included in the Mental Health Act and it brought to light the advantages the legislation would bring to stakeholders. If well executed, the provisions mentioned above would be very beneficial by way of ensuring the protection of the affected persons within society and providing them with fair access to justice. The chapter shows that the government acknowledges the members of the public living with mental conditions and is willing to protect them and cater to their needs.

Shortcomings of the Zambian Legal System in Relation to Mental Health

This chapter will discuss some of the shortcomings of the Mental Health Act, 2019 (hereinafter referred to as 'the Mental Health Act') and the negative effects its provisions might have on the intended stakeholders. Despite the attempts of the Zambian Legal System in being able to accommodate individuals living with mental conditions by amending the law to include more helpful provisions and excluding the discriminatory one, the Zambian government and Zambia as a nation could do a lot more to better suit the needs of such a growing and already stigmatized section of the population. This chapter addresses some of the identified shortcomings, starting with poor execution of the provisions of the Mental Health Act, amongst several others.

Poor Execution of the Mental Health Act

The new law on mental health has been greatly improved following the repeal of the Mental Disorders Act 1949, however, the law has not been carried out effectively. On paper there are laws that exist to protect and accommodate persons with mental conditions but the government of the republic of Zambia has failed to meet the expectations and standard that are set in the Mental Health Act.

Legal Capacity

Legal capacity recognises human beings as persons at law and can be defined as the ability to exercise one's rights and duties under the law. According to common law, a person's right to legal capacity is protected through the presumption of sanity which means that an individual's legal capacity can only be limited by the court after it is proven that they are mentally incapable of enjoying that right. The Mental Health Act unfortunately worsens the position of the law by requiring a mental capacity test to determine whether an individual enjoys legal capacity or not, simply put, a lack of mental capacity mean an individual cannot enjoy legal capacity.⁴⁸ The provision was not thought out carefully as it strips patients of their right to enjoy legal capacity without considering the cognitive abilities of a patient; it insinuates that all patients lack mental capacity when in fact there exists a wide spectrum of cognitive function among mental patients; it tends to be exclusionary because it denies all patients the right to enjoy legal capacity on the basis of them having a mental condition even if it is their constitutional right to enjoy legal capacity.

Additionally, the government has fallen short in the application of Section 7.⁴⁹ There is a lack of sensitization on the importance of Mental Health on public platforms by the government. In general there is not much information spread about Mental health or Mental conditions unless it is done by private entities ; the dissemination of information on Mental health is very crucial for stakeholders as it educates the public on how best to accommodate those with mental conditions and how best to ensure their own mental well-being; the government is doing a disservice to all members of the public by not spreading awareness on such an important issue and is also denying patients their right to proper representation.

Further, there is also a lack of trained legal practitioners where mental health issues are concerned.⁵⁰ Section 7 also provides for the training and sensitization of adjudicators and law enforcement personnel on Mental health issues to ensure that patients have adequate access to justice, however, key informants from superior courts in Zambia have mentioned that they do not undergo Mental health training and that they do not know how to handle such cases appropriately as they are not aware of the accommodations required by patients. This is detrimental to all persons suffering from mental conditions as they have a limited access to justice both in court and in other legal spaces

⁴⁸Ibid, s4

⁴⁹Ibid, s7

⁵⁰Ibid



Accessibility

According to Section 15(i), one of the requirements is that a mental health facility must be geographically and financially accessible to all citizens in the Country that need the service provided at the establishment, however, Zambia's only psychiatric hospital is located in the capital city of Lusaka.⁵¹ This is an issue of great concern seeing as it is not easily accessible to majority of the Zambian population. It is not known exactly how many people suffer from mental conditions in Zambia who need the services provided at Chainama but it is fair to note that an establishment that has a capacity of 500 beds falls way below the requirements of a population of about 19.6 million people.

There is not enough space at Chainama to accommodate the growing number of people and patients in the Country and the government is doing a huge disservice to the Zambian people by not extending and renovating the current mental institution. It is also greatly concerning that there is only one public psychiatric clinic in the Country as this limits citizen's access to mental health care if they do not live within the area that the establishment is located; also accessing the services alone would be financially draining because persons are required to fund their own transportation, accommodation, food and pay for the actual services once they are attended to at the hospital. This had led to most citizens shying away from attending to their mental health as doing so would be more of an inconvenience rather than beneficial.

Subsection 3(a) of the Mental Health Act goes on to emphasize that Mental health services shall be integrated into general health care services.⁵² The execution of this provision would involve ensuring the provision of Mental health checks and other services, not only at mental institutions but also at other general hospitals. Ever since the enactment of the Mental Health Act in 2019, there has been no inclusion of Mental health services in hospitals that were already in existence; Chainama remains the only public mental health facility in Zambia and such services are still only exclusively provided there and at other private establishments tailored to mental health.

Shortfalls in other Legislation

The repealed law on mental health is not the only legislation that discriminated against persons with mental conditions, certain provisions in the Penal Code and the Electoral Process 2016 Act, for example, are exclusionary and unfair to the affected parties. The penal code still uses derogatory terms to describe persons with mental illness. Chapter XV provides for defilement of persons with mental conditions and refers to them as imbeciles which is a very offensive term.⁵³ Under the Electoral Process Act 2016 it is provided that the registration commission will not register individuals as a voter if they suffer from a mental disability.⁵⁴ Despite the Mental Health Act being fairly progressive, other laws still have problematic provisions, as a result, the new law may have limited impact.

This chapter has highlighted some of the sections of the Act that require revision in order to serve their intended purpose. It details exactly how these provisions are problematic and gives the possible negative outcomes that persons with mental conditions may face in the event that the Act stays the same.

The next chapter will give suggestions on how best this legislation can be improved to suit the needs of this marginalised group of people and what benefits they are likely to enjoy after amendments, while also concluding the findings of this research.

This research has discussed mental health in Zambia and analysed the extent to which persons with mental conditions are accommodated in the Mental Health Act. It has pointed out that despite the introduction of more progressive laws in the legislation dealing with mental health, people living with mental health conditions are still not adequately accommodated in the eyes of the law. This chapter concludes the research by providing a summary of each chapter and thereafter, providing recommendations on how the government can provide assistance to affected persons by modifying the current state of affairs.

Chapter one provided a brief history on Mental health in Zambia to give the reader an understating of the progression of Mental health legislation and care in the Country; it went on to identify the problem which the research intended to correct. It also looked at various literature relating to Mental health and linked it to the current situation the Republic of Zambia and also explained the method used to gather the information used in this research

⁵¹Chainama hills hospital college'(ZambiaYP)

⁵²Mental Health Act, s3(a)

⁵³ Penal Code, s139

⁵⁴ Electoral Processes Act, s9



Chapter two went on to define mental conditions and give an idea of how different ailments present and the wide spectrum of mental states that fall under the umbrella term mental conditions. It then specifically looked at mental conditions in Zambia and which ones are most common among the members of the public.

Chapter three looked at the Mental Health Act and identified the positive changes that were implemented in the new law and what effect these would have on stakeholders.

Finally, chapter four identified how the Zambian government has fallen short in the execution of the Mental Health Act and what negative effects this lack of proper execution has had on mental health stakeholders in the country.

RECOMMENDATIONS

This research found that the Mental Health Act, 2019 is very progressive and shows that the government is willing to take positive steps to ensure that the law protecting persons with mental conditions is up to date and is actually beneficial to the stakeholders. Based on the findings it is hereby recommended that:

- (i) The Mental Health Act should be amended to include in-depth definitions of the major conditions that could affect members of the public. This should be done in order to deter the generalization of mental patients and will assist in determining what accommodations a person has access to based on their particular symptoms.
- (ii) The Ministry of Health reviews how Chainama hospital manages mental patients with a view of integrating their services with other functions of the hospital meant for people without mental health challenges.
- (iii) The implementation of online mental health services for those who do not have easy access to Chainama.
- (iv) Mental health services be incorporated in existing health establishments in order not to discriminate against and exclude mental patients.
- (v) The Mental Health Act 2019 needs to be amended to make it more effective, friendly and protective to people with mental health difficulties.

In conclusion, the significance of mental health cannot be ignored or over-emphasised. This is because proper mental functioning is essential to all human beings; a healthy mind increases productivity, improves physical health and contributes to a person's overall well-being. This research sought to enlighten the reader on the importance of ensuring that persons living with mental conditions have adequate legal accommodations as these awards them the opportunity to be on the same level with other ordinary members of society.

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