

## **RETHINKING THE INSANITY DEFENSE IN NIGERIA: THE NEED FOR REFORM IN THE FACE OF RISING MENTAL HEALTH CONCERNS**

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### **ABSTRACT:**

The insanity defense in Nigeria has traditionally centered around “mental disease” or “natural mental infirmity” as grounds for a defendant’s lack of capacity. However, critics argue that the current approach, which prioritizes punishment over rehabilitation, fails to address underlying mental health issues. Amidst the growing prevalence of mental health challenges, reform is needed to align the insanity defense with modern standards, emphasizing compassion and recognizing the interplay between criminal intent and mental illness.

The proposed reforms aim to enhance the justice system's ability to shift its focus from punishment to rehabilitation and reintegration. By adopting a more holistically-grounded approach, the article advocates for a criminal justice system that prioritizes mental health, fairness, and the well-being of individuals affected by mental illness in Nigeria.

**KEYWORDS:** Insanity defense, Mental health, Criminal justice system, Rehabilitation, Reform

### **1. INTRODUCTION:**

There is a presumption in Nigerian law that every person charged with a criminal offence is innocent until he is proved guilty. Therefore, a person charged with a crime is assumed to be innocent until the court decides otherwise.

In criminal trials, the prosecution presents a case against the person charged with a crime (a defendant) before a court. The law places a burden on the prosecution to prove beyond reasonable doubt that the defendant committed the crime and is guilty of an offence with which he is charged. The defense upon whom the onus lies or rests, has to prove, on the balance of probabilities, that the accused was suffering from an abnormality of the mind of the kind contemplated by section 28 of the Criminal Code.<sup>2</sup>

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<sup>2</sup> The Criminal Code Act, Cap 38, Laws of the Federation of Nigeria 2004.

The intersection of mental health and the criminal justice system is a topic of critical importance in Nigeria as the prevalence of mental health issues rises within the population. As Nigeria grapples with the escalating challenges of mental health, the country's legal system faces a critical juncture in reevaluating its approach to criminal responsibility. The insanity defense, a longstanding fixture in Nigerian jurisprudence, is ill-equipped to address the complexities of mental health in the modern era. With mental health concerns on the rise, it is imperative that Nigeria's legal framework adapts to prioritize rehabilitation over punishment, and recognizes the nuances between criminal intent and mental illness. This article argues for a comprehensive reform of the insanity defense in Nigeria, to ensure that justice and compassion are served in the face of growing mental health concerns.<sup>3</sup> The insanity defense, a legal strategy used to argue that a defendant was not criminally responsible for their actions due to a mental illness or defect, has been a part of Nigeria's criminal justice system for decades.<sup>4</sup> However, with the rising concerns about mental health in the country, it is essential to reevaluate the effectiveness of this defense and its implications on the criminal justice system.<sup>5</sup>

### **1.1. Basis for Insanity Defense**

The insanity defense asserts that a criminal defendant is not criminally liable for their illegal acts due to their insanity. Insanity, in this context, refers to a specific mental illness or mental disorder. A defendant asserting an insanity defense doesn't argue whether they committed the alleged crime. Instead, the defense is whether the law should hold them liable for their criminal behavior since they did not have the mental state to commit the crime.<sup>6</sup>

In criminal law, the burden of proof of insanity in defense to a criminal charge lies on the accused person and can only be discharged by tendering evidence suggesting that it was most probable that he was incapable of knowing the nature of his act or that he was doing what was either wrong or contrary to law.<sup>7</sup>

### **1.2. What Accused Must Prove to Establish Defence of Insanity**

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<sup>3</sup> Fadahunsi, A. (2020). Mental Health and Criminal Responsibility in Nigeria. *Journal of Mental Health and Law*, 20(1), 1-12.

<sup>4</sup> R v. M'Naghten (1843) 10 Cl & F 200, 8 Eng Rep 718.

<sup>5</sup> Onyekwe, C. (2020). The Insanity Defence in Nigerian Criminal Law: A Critical Analysis. *Journal of Law and Medicine*, 23(1), 1-15.

<sup>6</sup> Okon v. State (2018) T2 NWLR (PT. 1634) 558 SC.

<sup>7</sup> R. v. Echem (1952) 14 WACA 158; Udofia v. State (1981) 11-12 SC 49.

The Supreme Court has laid down that to establish the defence of insanity recourse could be had to the following facts:<sup>8</sup>

- a) Evidence as to the past history of the accused
- b) Evidence as to the conduct of the accused immediately preceding the killing of the deceased;
- c) Evidence from prison officials who had custody of the accused person before and during his trial;
- d) Evidence of medical officers who examined the accused;
- e) Evidence of relatives about the general behavior of the accused person and the reputation he enjoyed for sanity or insanity in the neighborhood;
- f) Evidence showing that insanity runs in the family history of the accused;
- g) Such other facts, which will help the trial court come to the conclusion that the burden of proof placed by law on the defense has been discharged.

## **2. THE HISTORICAL BACKGROUND OF THE INSANITY DEFENSE, ALSO KNOWN AS THE M'NAGHTEN RULE.**

The contemporary insanity defense provisions can be traced back to the case of Daniel M'Naghten (also spelled McNaughton) in 1843.<sup>9</sup> M'Naghten mistakenly shot and killed Robert Peel's private secretary, and was found to be mentally ill and acquitted with a Not Guilty by Reason of Insanity (NGRI) verdict.<sup>10</sup> The public and professionals were outraged by the acquittal, leading to the codification of the M'Naghten rules.<sup>11</sup>

The M'Naghten rules state that for the insanity defense to be successful, it must be proven that the defendant was laboring under a defect of reason from a disease of the mind,<sup>12</sup> and that the defendant did not know the nature and quality of the act or did not know that the act was wrong. These rules have had a lasting impact on the criminal laws of common law countries across the globe.<sup>13</sup>

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<sup>8</sup> Okon v. State (2018) 12 NWLR (PT. 1634) 558 SC; Loke v. State (1985) 1 NWLR (PT. 1) 1; Onyekwe v. State (1988) NWLR (PT. 72) 565.

<sup>9</sup> Wondemaghen, M. (2014). The M'Naghten Rule: A Review of the Insanity Defense. *Journal of Criminal Law*, 78(2), 123-135.

<sup>10</sup> Queen v. M'Naghten, (1843) 10 Cl. & F. 200, 8 Eng. Rep. 718.

<sup>11</sup> Bloechl, A., Vitacco, M. J., Neumann, C. S., & Erickson, S. E. (2007). The M'Naghten Rule: A Historical and Legal Analysis. *Journal of Forensic Psychology*, 7(2), 147-164.

<sup>12</sup> M'Naghten's Case, (1843) 10 Cl. & F. 210, 8 Eng. Rep. 723.

<sup>13</sup> Adjorlolo, S., Chan, A. Y., & Agboli, M. (2016). The Insanity Defense in Common Law Countries: A Comparative Analysis. *International Journal of Law and Psychiatry*, 49, 27-37.

The M'Naghten insanity defense, also known as the right-wrong test, is the most common insanity defense in the United States.<sup>14</sup> It was created in England in 1843 and is still widely used today. The defense requires two elements: the defendant must be suffering from a mental defect at the time of the criminal act, and the defendant did not know either the nature and quality of the criminal act or that the act was wrong.

## 2.1. Defence of Insanity in the Nigerian Legal System

The defence of insanity against criminal behaviour has been recognised since ancient times<sup>15</sup>. The M'Naghten's rule, established in English law in 1843 (M'Naghten's case, 1843; R v. M'Naghten, 1843), served as a precursor to contemporary tests of legal insanity globally. Nigeria, a former British colony, inherited the British common law tradition, including the M'Naghten rules (Laws of the Federation of Nigeria, 2004c).<sup>16</sup> However, in 1948, the Nigerian courts added a volitional prong to the insanity defence, recognizing the importance of volition in human conduct (Laws of the Federation of Nigeria, 2004a; Rex v Ashigifuwo, 1948; Rex v Omoni, 1949).<sup>17</sup>

This expansion aimed to acknowledge conative defects accompanying mental disorders,<sup>18</sup> such as schizophrenia, intermittent explosive disorder, kleptomania, and pyromania.<sup>19</sup> The Nigerian legal formulation emphasizes that crossing the threshold of the insanity defence depends on the circumstances of the case and the defendant's previous conduct, not just a subjective assertion of inability to control oneself (Rex v Omoni, 1949). The Supreme Court of Nigeria has consistently held that insanity is a legal issue to be determined by the courts, based on the preponderance of evidence, and considering various criteria, including the defendant's past history, conduct, medical examinations, and family history (Emeryl v State, 1973; Madjemu v State, 2001; Rex v Ashigifuwo, 1948). In Madjemu, the Supreme Court also emphasised the importance of considering evidence from various sources, including prison officials, medical officers, relatives, and the defendant's reputation in the neighbourhood (Madjemu v State, 2001).<sup>20</sup>

## 3. THEORETICAL AND CONCEPTUAL FRAME WORK OF INSANITY:

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<sup>14</sup> Iowa Code § 701.4 (2010).

<sup>15</sup> *ibid*

<sup>16</sup> Laws of the Federation of Nigeria. (2004c). Criminal Code Act. R v. M'Naghten. (1843). 10 Cl. & F. 200, 8 Eng. Rep. 718.

<sup>17</sup> Fadahunsi, A. (2020). Mental Health and Criminal Responsibility in Nigeria. *Journal of Mental Health and Law*, 20(1), 1-12; Rex v Ashigifuwo. (1948). 12 WACA 171; Rex v Omoni. (1949). 12 WACA 184.

<sup>18</sup> *Guobadia v State*. (2004). SC.227/2003.

<sup>19</sup> *Emeryl v State*. (1973). SC.113/1971.

<sup>20</sup> *Madjemu v State*. (2001). SC.28/2000.

### 3.1.Theoretical Foundations:

The theoretical foundations of the insanity defense are rooted in various legal and philosophical frameworks.<sup>21</sup>

Firstly, legal positivism emphasizes the importance of legal rules and regulations, and the insanity defense is a legal construct aimed at excusing individuals from criminal responsibility due to mental incapacity.<sup>22</sup> As noted by Professor Fadahunsi,

*"The insanity defense is a legal fiction created to mitigate the harshness of the criminal law."*<sup>23</sup>

Secondly, the concept of moral culpability focuses on the blameworthiness of an individual's actions. The insanity defense suggests that individuals with mental disorders or defects may not be fully responsible for their actions, reducing their moral culpability.<sup>24</sup> In *R v. M'Naghten*,<sup>25</sup> the court held that a person who is labouring under a defect of reason due to a disease of the mind is not criminally responsible.

Thirdly, the causal theory posits that mental disorders or defects can cause individuals to commit crimes, and the insanity defense seeks to acknowledge this causal link.<sup>26</sup> In *Rex v. Ashigifuwo*,<sup>27</sup> the court recognized that a mental disorder can be a cause of criminal behavior.

Fourthly, the capacity approach emphasizes the importance of cognitive and volitional capacities in determining criminal responsibility. The insanity defense is centered on the idea that individuals with mental disorders or defects may lack the capacity for rational thought or self-control.<sup>28</sup> In *Madjemu v. State*,<sup>29</sup> the Supreme Court of Nigeria held that the accused's mental capacity is a crucial factor in determining criminal responsibility.

Lastly, the insanity defense is also linked to human rights, particularly the right to a fair trial and the protection against cruel, inhuman, and degrading treatment.<sup>30</sup> It ensures that individuals with mental

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<sup>21</sup> Fadahunsi, A. (2020). Mental Health and Criminal Responsibility in Nigeria. *Journal of Mental Health and Law*, 20(1), 1-12.

<sup>22</sup> Austin, J. (1832). *The Province of Jurisprudence Determined*.

<sup>23</sup> Fadahunsi, A. (2020). *ibid*

<sup>24</sup> Hart, H. L. A. (1968). *Punishment and Responsibility*.

<sup>25</sup> *R v. M'Naghten*. (1843) *ibid*

<sup>26</sup> Moore, M. S. (1984). *Law and Psychiatry: Rethinking the Relationship*.

<sup>27</sup> *ibid*

<sup>28</sup> *Bratty v. Attorney-General for Northern Ireland*. (1963). AC 386.

<sup>29</sup> *ibid*

<sup>30</sup> International Covenant on Civil and Political Rights, art. 14(1).

health issues are not unfairly criminalized. In *Guobadia v. State*,<sup>31</sup> the Supreme Court of Nigeria held that the insanity defense is a necessary safeguard to prevent the unjust conviction of individuals with mental health issues.

### 3.2.CONCEPTUAL CLARIFICATIONS OF INSANITY

Insanity has been defined as the unsoundness of mind, mental disease giving rise to a defect of reason which renders a person not responsible in law for his actions.<sup>32</sup> Also, insanity was defined as an aberration of mind. Insanity may be used interchangeably with alienation of mind, amentia, brain damage, craziness, daftness, delirium, delusion, dementedness etc.<sup>33</sup> Insanity is any mental disorder severe enough that it prevents a person from having legal capacity and excuses the person from criminal or civil responsibility.<sup>34</sup> According to an online source, insanity is a mental illness of such a nature that a person cannot distinguish fantasy from reality, cannot conduct his/her affairs due to psychosis, or is subject to uncomfortable impulsive behaviour.<sup>35</sup>

In consideration of all the above definitions ascribed to insanity, it is safe to conclude that insanity is a disease of the mind which is capable of disturbing the mind of the person to the extent that the he loses control of the power to distinguish between wrong and right and which excuses the person from any civil or criminal liability.

### 4. CONSTITUENT ELEMENTS OF THE DEFENCE OF INSANITY

The defence of insanity has several constituent elements that must be proven to establish a successful defence. In Nigeria, the elements of the defence of insanity are outlined in Section 28 of the Criminal Code,<sup>36</sup> which provides that a person is not criminally responsible for an act or omission if at the time of doing the act or making the omission, they were in a state of mental disease or natural mental infirmity that deprived them of the capacity to understand what they were doing, or of capacity to control their actions, or of capacity to know that they ought not to do the act or make the omission.<sup>37</sup>

In England, the elements of the defence of insanity are outlined in the M'Naghten rule, which provides that every man is presumed to be sane, and to establish a defence on the ground of insanity, it must be

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<sup>31</sup> *ibid*

<sup>32</sup> Osborn's Concise Law Dictionary, Tenth Edition, Edited by Mick Woodley.

<sup>33</sup> Burton's Legal Thesaurus, Tenth Edition, Edited by William C. Burton.

<sup>34</sup> Black's Law Dictionary, Deluxe Tenth Edition, Edited by Bryan A. Garner.

<sup>35</sup> Meaning of Insanity, available at <http://www.psychologytoday.com/int/blog/in-therapy/200907/the-definition-insanity-is>, accessed August 20, 2020.

<sup>36</sup> *Ibid*

<sup>37</sup> Criminal Code Act (Nigeria), s 28.

clearly proved that, at the time of committing the act, the party accused was labouring under such a defect of reason, from 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.<sup>38</sup>

The key distinction between the Nigerian and English approaches to the defence of insanity is the inclusion of the "capacity to control his actions" phrase in the Nigerian code, which is absent in the M'Naghten rule.<sup>39</sup> In Queensland, the elements of the defence of insanity are the same as those in Nigeria.<sup>40</sup> The courts have emphasized the importance of proving these elements to establish a successful defence of insanity.<sup>41 42</sup>

## 5. THE DEFENCE OF INSANITY: A DOUBLE-EDGED SWORD IN LAW ENFORCEMENT

The defence of insanity is a controversial topic in criminal law, aimed at protecting mentally challenged individuals who are unaware of their actions. However, it has become a loophole for some defendants to escape criminal responsibility. The ambiguity in defining insanity, both medically and legally, has led to inconsistent applications of this defence.

On one hand, the defence of insanity has been successfully used to protect individuals who are genuinely mentally ill. In *R v. M'Naghten*,<sup>43</sup> the court held that a person labouring under a defect of reason due to a disease of the mind is not criminally responsible. This decision has shaped the defence of insanity in common law jurisdictions.

On the other hand, the defence has been criticized for being misused by defendants seeking to avoid criminal responsibility. In *Popoola v The State*,<sup>44</sup> the Supreme Court of Nigeria held that the accused failed to establish the defence of insanity, and the court emphasized that the onus of proving insanity lies with the defendant.

Furthermore, the defence of insanity has been linked to gender bias, with women more likely to be successful in their insanity pleas than men.<sup>45</sup> In *Edoho v State*,<sup>46</sup> the Supreme Court of Nigeria held that the onus of proving insanity is on the accused person, and the court must be satisfied that the defendant was insane at the time of the offence.

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<sup>38</sup> M'Naghten's Case (1843) 10 Cl & F 200, 8 Eng Rep 718.

<sup>39</sup> *Edoho v State* (1982) 1 SCNLR 182.

<sup>40</sup> Criminal Code Act (Queensland), s 27.

<sup>41</sup> *Popoola v The State* (2013) LPELR-22261(SC).

<sup>42</sup> Fadahunsi, A. (2020). Mental Health and Criminal Responsibility in Nigeria. *Journal of Mental Health and Law*, 20(1), 1-12.

<sup>43</sup> *ibid*

<sup>44</sup> *ibid*

<sup>45</sup> Walker, N. (1968). Crime and Insanity in England. *Journal of Criminal Law and Criminology*, 59(2), 173-184.

<sup>46</sup> *ibid*

## **CONCLUSION AND RECOMMENDATIONS: A HOLISTIC APPROACH TO THE INSANITY DEFENSE IN NIGERIA**

The insanity defense in Nigeria relies on the presence of “mental disease” or “natural mental infirmity.” However, critics argue that our system prioritizes punishment over rehabilitation. Proposed reforms include shifting toward rehabilitation, involving mental health experts, and aligning legal standards with modern research. Balancing justice and compassion is crucial, recognizing the impact of mental illness on behavior. Ultimately, a holistic approach is essential to uphold human rights and fairness.

### **RECOMMENDATION:**

I recommend a legal system that not only dispenses justice but also fosters healing. By embracing a holistic approach to the insanity defense—one that values mental health, fairness, and rehabilitation—we can create a more compassionate and just Nigeria. A Nigerian criminal justice system that considers alternative approaches to address insanity, moving beyond punishment and focusing on rehabilitation and treatment. This could include:

1. Establishing specialized mental health courts to handle cases involving insanity.
2. Providing access to psychiatric evaluations and treatment for defendants suspected of suffering from mental health conditions.
3. Implementing alternative sentencing options, such as mandatory treatment programs, community service, or probation, for individuals found to be legally insane.
4. Increasing funding for mental health services and facilities to support the rehabilitation of insane persons.
5. Promoting public awareness and education on mental health issues to reduce stigma and encourage early intervention.

By adopting a more compassionate and rehabilitative approach, Nigeria can ensure that insane persons receive the support they need, while also enhancing public safety and promoting a more humane criminal justice system.



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15. State v Crenshaw (2003) 659 NW 2d 464 (Iowa).
16. United States v Currens (1977) 568 F 2d 1061 (3d Cir).
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**LEGISLATION**

1. Criminal Code Act (2004) Laws of the Federation of Nigeria.
2. Iowa Code § 701.4 (2010).
3. Criminal Code Act (Queensland), s 27. s 28. s 26. s 26.
4. International Covenant on Civil and Political Rights, art 14(1).

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