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A Critical Appraisal of the Criminal Responsibility of the Insane Person Under the Nigeria Legal Jurisprudence.

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Abstract

Since the acquittal of Daniel M'Naughten, the paranoid wood turner from Glasglow by reason of insanity in 1843, insanity or mental illness remained one of the excusing conditions for crime. The issue of non-responsibility for crime because of insanity has resulted in a series of controversial judicial decisions. This paper x-rays the fate of the insane person under the Nigerian criminal system. It presents the origin of the concept of non-responsibility of the insane person because of insanity. The paper asserts that the insanity defence in Nigeria is governed by the common law conception outlined by the provisions of the M'Naughten Rules sequel to the acquittal of M'Naughten by reason of insanity in 1843. Statutory provisions and judicial decisions are also presented. The discourse also asserts that in assessing the criminal responsibility of the insane person, the burden of proof shifts from the prosecution to the defence. The paper concludes that, presently, the position in Nigeria is that if it is established that the accused person was insane at the time the alleged crime was committed, he or she will not be held criminally liable. But if found insane at the time of trial, the accused will be committed to an asylum or a mental health hospital or facility until he or she is deemed fit to stand trial.

Key words: Criminal Responsibility, Insanity, Defence.

1. Introduction

The legal concept of responsibility is concerned primarily with the various conditions under which an offender can be held liable for an act or omission.[1] As a result of the complex nature of the concept, it becomes rather difficult to come out with an apt definition.

However, Black's Law Dictionary defines responsibility in criminal terms to mean "a person's mental fitness to answer in court for his or her action".[2] Though criminal responsibility can be viewed as a singular concept, but in judicial application, it is often interwoven with the defendant's competency to stand trial.[3] Again, Black's Law Dictionary says competency to stand trial means a "criminal defendant's ability to stand trial, measured by the capacity to understand the proceedings, to consult meaningfully with counsel, and to assist in the defence".[4]

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[1] G. W. Ekaikitie "The Defence of Insanity" – Being an LL.M Thesis submitted to the Faculty of Law, Ambrose Alli University, Ekpoma, 2003, 11.

[2] Garner, B. A., Black's Law Dictionary (9th Edition) (USA), West Thompson Reuters, Business, 2009, 1427.

[3] R. G, Meyer,and Weaver, C. M, Law and Mental Health – A Case Based Approach, London, The Gullford Press, 2006, p.114

[4] Garner, B. A., Black's Law Dictionary, 322.

The rule is that "no man may be brought to trial of any crime unless and until he is mentally capable of standing trial."[5] Insanity is a form of mental disorder. A person who is insane is considered to be "*non compose mentis*" meaning "not sound in mind" and it is generally accepted that the concept is not a medical term but rather, a legal one as far as the defence is concerned.[6] It is employed primarily in legal setting to denote that a person cannot be criminally held responsible for his or her action in a court of law due to psychological distress. Hence, civilized societies have deemed it "a violation of fundamental principles of fairness and morality" to punish mentally sick persons in that to do so "would thwart two major tenets of punishment – retribution and deterrence".[7]

2. The Defence of Insanity

The defence of insanity is one of the most controversial issues in medical jurisprudence as criminals commit crimes for a variety of reasons.[8] The law presumes that individuals commit crime rationally and thus merit some form of punishment.[9] However, some offenders are so mentally disturbed that they are found to be incapable of acting rationally.[10]

An accused person with mental disorders or impairments who is found competent to stand trial may seek acquittal on the claim of insanity, alleging that he is not criminally responsible for his actions at the time that offence was committed.

Under common law, there are three basic elements of crime.[11] They include "the mental state or level of intent to commit the act (known as the *mens rea or guilty mind)";* "the act itself or conduct associated with committing the crime (known as *actus reus or guilty act)";* and a "concurrence in the time between the guilty act and the guilty mental state".[12] It is the duty of the state to prove beyond a reasonable doubt that the defendant committed the alleged criminal act with the "requisite intent to convict a person of a particular crime".[13]

A person's mental status plays a significant role while determining whether a defendant is required to stand trial to face criminal charges.[14] Before any defendant can be criminally prosecuted, the court must be convinced that the accused is competent to stand trial.[15] This means that the defendant must understand the charges brought against him or her and have "sufficient rational mental capacity to assist counsel with the defence".[16]

However, the insanity defence standard has four basic elements – "presence of a mental disorder, presence of a defect reason; a lack of knowledge of the nature or wrongfulness of the act; and an incapacity to refrain from the act".[17] The presence of a mental disorder has remained the most significant part of the insanity defence. The other elements are varied over the years, for example,

[5] G.W., Ekaikitie. "The Defence of Insanity" op. cit. p.36.
[6] Ibid.
[7] B. I., Sadock, and others Comprehensive Textbook of Psychiatry, Vol. II, (7th edition) New York, Lippincott Williams and Williams, 2000, p.3286.
[8] Ibid, op. cit. p. 3286
[9] Ibid.
[10] Ibid.
[11] B. I., Sadock, and others Comprehensive Textbook of Psychiatry, op cit, p. 3286.
[12] Ibid
[13] B. I., Sadock, and others Comprehensive Textbook of Psychiatry, op cit, p. 3285.
[14] Ibid.
[15] B. I., Sadock, and others Comprehensive Textbook of Psychiatry, op cit, p. 3285.
[16] Ibid.
[17] Ibid, p. 3286

in the United States of America – depending upon which state or jurisdiction has control over the defendant raising the defence.[18]

The key issues in the evolving law on insanity are the following – "what are the legal criteria for insanity; who bears the burden of proof on insanity defence (prosecutor or defence), and what is the appropriate legal standard (preponderance, beyond reasonable doubt, etc.".[19]

The insanity defence is limited to defendants who cannot appreciate the wrongfulness of their acts (i.e. the cognitive prong of the defence).[20] In fact, in the United States of America, for example, a number of jurisdictions as well as in federal law (Comprehensive Crime Control Act), the burden of proof has shifted from the prosecution to the defence.[21] This is also the situation in the Nigerian jurisprudence.

The extent to which insanity is a defence is governed by the common law conception outlined by the principles laid down in 1843 following the case of the famous Wood Turner from Glasgow. M'Naughten held a "delusional belief"tharet Britain's Tory Party (and at other times the Jesuits or the Pope) where responsible for his difficulties in life, and he saw the Prime Minister, Sir Robert Peel as his chief prosecutor.[22] In an attempt to assassinate the Prime Minister, Sir Robert Peel, he shot and killed the Prime Minister's Secretary, William Drummond in a mistaken belief that Drummond was Robert Peel. M'Naughten was apprehended and an interview with him revealed both his "delusional thoughts and his generally confused thinking".[23]

At the trial, the judge instructed the Jury that he should be acquitted if they believed that he was insane at the time of the crime. The Jury was apparently influenced by the "progressive thinking of Isaac Ray – from his 1853 text "A Treaty on the Medical Jurisprudence of Insanity" which spoke of a "defect of reasoning due to mental unsoundness that embraced his criminal act".[24] M'Naughten was acquitted.

The verdict created such a public outcry and the Judges of England's highest court were convened and directed to determine a strict rule defining when an insanity acquittal would be justified. They settled on the following tests:

> *That the jurists ought to be told in all cases that every man is to be presumed to be sane and to possess a sufficient degree of reason to be responsible for his crimes until the contrary is proved to their satisfaction; and that to establish a defence on the ground of insanity, it must be clearly proved that at the time of committing the act, the party accused was laboring under such a defect of reasoning, from disease of the mind, as to know the nature and quality of the act he was doing, or if he knows it, that he did not know he was doing what was wrong… and whether the accused at the time of doing the act know the difference between right and wrong.*[25]

[18] Ibid.
[19] R. G., Meyer, Weaver, C. M, Law and Mental Health – A Case Based Approach, London, op. cit. p.115.
[20] B. I., Sadock, and others Comprehensive Textbook of Psychiatry, op cit, p. 3287.
[21] Ibid.
[22] R.G. Meyer, Weaver, C. M, Law and Mental Health – A Case Based Approach, London, op. cit. p.115.
[23] Ibid.
[24] The author in this text is of the view that an accused person, if found to be of unsound mind at the time of committing the offence should not be held liable.
[25] Ibid.

The rule also provided that:

> *Where a criminal act is committed by a man under some insane delusion as to the surrounding facts, which conceals from him the true nature of the act he is doing, he is under the same degree of responsibility as if the acts were as he imagined them to be.*[26]

The provisions of the M'Naughten rules have been widely applied in a number of cases in the insanity defence. In *R v. Kemp*[27] the defendant suffered a blackout during which he attacked his wife with a harmer causing her serious bodily harm with intent to murder her. The evidence adduced revealed that the defendant suffered from "*acterial scieroris"* a condition which restricted the flow of blood to the brain. The trial judge ruled that for the purpose of the defence of insanity, the distinction was to be drawn between disease of the mind and disease of the body affecting the operation of the mind. It was argued that the defendant's defect of reasoning also from a physical cause and not from mental illness. This argument was rejected and it was held that the defendant was suffering from a disease of the mind. Similarly, in *R v Windle,*[28] the appellant was convicted at a Birmingham Azzizes for the murder of his wife by administering an over dose of Aspirin tablets to her. It was admitted in evidence that the man was weak in character and was married to a woman 18years older than himself who was always complaining of the feeling of committing suicide. The appellant assisted his wife in achieving her feeling by administering 100 tablets of Aspirin. The appellant on interrogation told the police "I suppose they will hang me for this". Medical evidence suggested that he suffered from some kind of insanity, but that he knew he had done wrong. In upholding the conviction, Goddard C.J. held:

> *Courts of law may distinguish between that which is in accordance with the law and that which is not… In the opinion of the court, there is no doubt that in the M'Naughten rules, "wrong" according to the opinion of one man or of a number of people on the question whether a particular act might or might not be justified.*

3. The Nigeria Experience

In Nigeria, the criminal law is primarily statutory in form.[29] While the Criminal Code Act, Cap C28, 2004 is operational in Southern States, the Penal Code (2009) applies to the Northern States of the Federation. Both code or legislation make appropriate provisions for the defence of insanity. It is imperative to state that the provisions of both codes are invariably linked to the provisions of the M'Naughten rules but with minor modifications.

Section 28 of the Criminal Code 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 he is in such a state of mental disease, or natural mental infirmity, as to deprive him of capacity to control his actions, or of the capacity to know that he ought not to do the act or make the omission. A person whose mind at the time of his doing or omitting to do the act is affected by delusions of some specific matter or matters but who is not otherwise entitled to the benefit of the foregoing provisions of this section, is criminally responsible for the act or omission to the same extent as if*

[26] C. F., Padfield, Law made simple, (London, The Chancer Press Ltd, 1973), 323.
[27] (1957) 1 QB 399
[28] (1951) 2 All E.A.
[29] See section 36 (12) 1999 Constitution (as amended). This section provides that a person shall not be convicted of a criminal offence unless the offence is defined and the penalty thereof is prescribed in a written law.

> *the real state of things had been such as he was induced by the delusions to believe to exist.*[30]

The Penal Code, on its part, states that:

> *Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.*[31]

Similarly, the Criminal Procedure Act provides that:

> *When a judge holding a trial or a magistrate holding a trial or an inquiry has reason to suspect that the accused is of unsound mind and consequently incapable of making his defence, the judge, jury or magistrate, as the case may be shall in the first instance investigate the fact of such unsoundness of mind.*

Furthermore, **section 230(1)** of the Criminal Procedure Act states that:

> *Whenever the finding states that the accused person committed the act alleged, the court before which the trial has been held shall, if such act would but for incapacity found to have been constituted an offence, order such person to be kept in safe custody in such place and manner as the court thinks fit and shall report the case for the order of the Governor.*

Section 230(2) concludes that:

> *The Governor may order such a person to be confined in a lunatic asylum, prison or other suitable place of custody during the pleasure of the Governor.*[32]

In the Nigerian Criminal Procedure, the defence of insanity can be raised at different stages. It may be that the accused was insane at the time "of committing the act or making the omission" which constitutes the offence, or "at the time of trial" or "before trial commences".[33] This was one of the issues for determination in a recent Court of Appeal case of *Yahaya v State.*[34]

In this case, the Court of Appeal was to determine whether a court can investigate or inquire into the mental state of an accused when the defense of insanity has not been properly raised or proved before it. The issue in this case bordered on the medical evaluation of the psychiatrist. The Appellant's counsel argued that since the issue of the mental health condition of the Appellant was raised, the lower court should not have continued with the trial of the case against the Appellant without first determining the true status of his mental condition. The Court of Appeal, per Ebiowei Tobi, JCA stated that there was no evidence before the lower court to the effect that as at when the Appellant was alleged to have committed the offence, he was mentally unstable. The learned Justice also stated that there is also no evidence that as at when he was standing trial and specifically testifying in court, he was mentally unstable and that when the Appellant was

[30] Section 28, Criminal Code Act, Cap C38, 2004.
[31] Section 51 Penal Code Act
[32] Criminal Procedure Act, Cap 41, 2004, paras 25, sections 223, 230(1)(2)
[33] G.W., Ekaikitie. "The Defence of Insanity" op. cit. p.29.
[34] (2021) LPELR – 53451 (CA)

testifying, did not show any sign of mental instability. The court added that the mental instability came into focus after the case had been adjourned for address. The Appeal Court added:

> *To establish a defence of insanity, it must be clearly pleaded and proved that at the time of committing the act, the accused was suffering from a defect of reasoning from disease of the mind so as not to know the nature and quality of his act or that what he was doing was wrong. The court is concerned only with the state of mind of the accused at the time of the act. Once the issue of insanity is pleaded, the court must determine whether or not the accused was conscious at the time of doing the act and that the act complained of was one which he ought not to do or which was contrary to law… In the instant case, not only that the learned counsel for the Appellant did not raise any issue of insanity before the trial court, he did not bring to the notice of the prosecution that he was going to raise the issue of insanity. In our system of criminal trial, the judge as an umpire is not expected to descend into the arena of contest… If the application for psychiatric examination is meant to arrest the trial on ground that the appellant was not mentally fit to stand trial by reason of insanity, learned counsel, as I have alluded to, has not sufficiently provided the materials for the learned trial judge to act upon. The issue of the mental health of the Appellant was not raised during the trial either about his capacity to testify or when he was alleged to have committed the offence but rather it was only mentioned when the case was adjourned for address.*

The learned Justice concluded thus:

> *I make bold to say that the defence of insanity was not and is not available to the Appellant as there is no evidence of insanity at the time of committing the alleged offence or insanity preventing the Appellant from defending himself at the trial.*

However, in Nigeria, there are certain ingredients which an accused person must provide to establish the defence of insanity. They include:

(1) That the accused person was at the relevant time suffering from either mental disease or from natural mental infirmity.

(2) That the mental or the natural mental infirmity as the case may be, was such that at the relevant time, the accused person was as a result deprived of capacity to;

   (a) Understand what he was doing;

   (b) Control his action;

   (c) Know that he ought not to do the act or make the omission.[35]

The issue of not being liable to control his actions was the accused's defence in *Edohor v State.*[36]In this case, the appellant was charged with the murder of one Akanimo Jacon Edoho. At the trial, the appellant relied on the defence of insanity through witchcraft. He alleged that the incident was

[35] A. M., Adebayo, Criminal Code Act and other Related Acts Annotated with Cases ((Lagos) Princeton Publishing Co, 2012).131.
[36] (2001) all FWLR (Pt. 530) 1262 SC

"beyond his control as he was then under the spell of witchcraft". Dismissing the appeal, the Supreme Court held that:

> *The onus of proving insanity is on the accused person who should make available evidence to satisfy the court that he was insane at the time he committed the offence. By section 27 of the Criminal Code, there is a presumption that every person is/was of sound mind at any time which covers the period in question, until the contrary is proved.*

The Apex Court added that the accused person can satisfy this burden of proof imposed on him by section 141(3) of the Evidence Act if he can show that he was insane within the meaning of section 28 of this Act, adding that the standard of proof of the accused person "is proof on the balance of probabilities or preponderance of evidence and not beyond reasonable doubt".

4. Means of Proving Insanity

It is trite law that an accused person who relies on the defence of insanity (in answer to a criminal charge) has the burden of introducing evidence that at the time of the commission of the offence, or of making the omission, he was affected by insanity by reason of which any of the specified capacities was impaired.[37]

Section 159 of the Evidence Act provides that an accused person is always a competent witness for the defence.[38] However, experience has shown that an accused person is hardly able to "prove his sanity through his sole testimony,[39] hence the need for other sources of testimony to buttress the accused's plea of insanity.

One of the accepted methods of proving insanity is through the testimony of the relations of the accused person. In this respect, the defence is entitled to call evidence from friends and relations of the accused with the view to establishing that the mental disorder is genetic or otherwise. This was one of the issues in the case of *Edoho v State (supra)*where the Supreme Court held that "it needs to be borne in mind that the evidence of insanity of the accused's ancestors or blood relations is admissible, but medical evidence, though probative, is not essential".[40]

This was also the issue in *Alfa v State.*[41]The Appellant as the accused was arraigned before the Kogi State High Court, sitting at Okpo for committing culpable homicide, an offence punishable under *section 221(a) of the Penal Code.* The appellant, Pastor Sunday Alfa, on the fateful day of 24th February, 2014, left his bedroom and entered the bedroom of his wife, Rose Alfa, the deceased at about 3:00 am and thereafter inflicted several cuts on her with the use of a cutlass. She suffered injuries and died on the way to the hospital. The trial Judge, in its considered judgment convicted and sentenced the Appellant to death by hanging despite the plea of insanity. Dissatisfied with the judgment of the trial court, the Appellant appealed to the Court of Appeal. On whether it is the court that determine if an accused person was insane when he committed the offence, the court held that it is solely for the judge to determine whether the accused person was indeed insane or suffering from insane delusion, that is, mentally deluded at the time of committing the offence. It

[37] *Ogbenevite* v *State* (1982) 1-2 SC 130, p. 134.
[38] Section 159, Evidence Act.
[39] G. W., Ekaikitie. "The Defence of Insanity" op. cit. p.37.
[40] (2010) All FWLR (Pt. 530) 1262 S.C.
[41] (2016) 14 W.R.N. CA 115.

added that any medical report available to the court is only a guide and does not tie and bind the hands of the court.

Also, in *Adamu v State,*[42] the court in defining insanity stated that it is "any mental disorder severe enough that it prevents a person from having legal capacity and excuses the person from criminal or civil responsibility". The court added that "it is a legal, not a medical standard". In a number of other cases, the courts have demonstrated that insanity can be established by relying exclusively on evidence of insanity as narrated by the relations of the accused person. In *R v Iyang,*[43] the court upheld this defence of insanity based on the testimony of the accused's relations that prior to the accused's killing the deceased, the accused suffered from severe headaches, used to wonder about at night – speaking in meaningless manner, laughing insanely and either throwing away his food or urinating in his food.

Similarly, the court gave recognition to the evidence of relations in *R v Ashigifuwo,*[44] where the relations of the accused testified that he had been made on earlier occasions and had to be given medicine purposely to improve his condition.

Another method available in the defence of insanity is the use of medical evidence of psychiatrists and other competent experts. This has however been controversial and has generated a lot of controversies as a result of the argument whether insanity is a medical or legal construct. In other words, between the judges and the expert witness who should have the last verdict in determining the criminal responsibility of the accused person relying on the defence of insanity?

Decided cases appear to show that the conditions precedent to the admissibility of psychiatric evidence are seldom complied with by medical experts. The courts have rightly spurned the testimonies of psychiatrists or experts on grounds of hearsay. The decision of the Supreme Court of Nigeria in *Aiworo v State*[45] attests to this. In this case, the accused was standing trial for the murder of his six months old son and two other persons. He raised the defence of insanity. He claimed to have understood what happened at the time he committed the offence. He attributed his actions to a wrap of Indian Hemp which he claimed a friend had given to him. A psychiatrist who saw him eleven months after the commission of the offence testified on his behalf that he suffered from a disease of the mind called *schizophrenia.* The expert testimony was neither based on "any medical or clinical examination" of the accused but in facts obtained from the accused's relations about his background. The court rightly rejected the medical evidence on grounds of hearsay.

Furthermore, testimonies of psychiatrists seem not be authoritative or devoid of conflicts. One is often compelled to regard their evidence as mere "users work".[46] It is not unusual to find conflicting expert psychiatrist evidence in respect to the insanity defence or otherwise of the accused. The trial which led to the acquittal of John Hinckley, the would-be-assassin of President Ronald Regan in 1982, for example, produced conflicting psychiatrist evidence and this and many more conflicts in evidence of psychiatrist have successfully work distrust for psychiatrists.

[42] (2014) Vol. 32 WRN S-C-1, 1-181.
[43] (1946) 2 WACA (Pt. 5) pp.6-7.
[44] (1948) 12 WACA, 389
[45] (1988) 1 NWLR (Pt. 72), P. 565.
[46] L., Atsegbua Law of Evidence (Benin City), Justice Jeco Printing and Publishing Global, 2012, p.515.

However, the Supreme Court in *Madujemu v State*[47] stated the relevant facts needed to establish the defence of insanity. In that case, the appellant was arraigned for the murder of his wife. He pleaded not guilty to the charge on grounds of insanity. At the conclusion of the trial, the trial court found him guilty as charged and sentenced him to death because from available evidence, there was no proof that the appellant was insane, or that he was suffering from natural mental infirmity that deprived him of the capacity of understanding what he was doing, or from controlling his actions. His appeal to the Court of Appeal was dismissed. He further appealed to the Supreme Court which also dismissed his appeal and upheld his conviction. In dismissing the appeal, Igu, JSC stated that to establish the defence of insanity, recourse could be had to the following relevant facts namely;

(i) Evidence as to past history of the accused person.

(ii) Evidence as to the conduct of the accused immediately preceding the killing of the deceased.

(iii) Evidence from prison officials who had custody of the accused person before and during trial

(iv) Evidence of medical officers who examined the accused.

(v) Evidence of relatives about the general behaviour of the accused person and to the reputation he enjoyed for sanity or insanity in the neighbourhood.

(vi) Evidence that insanity was in the family of the accused and such other facts which will help the trial court come to the conclusion that the burden of proof placed by law on the defence has been dismissed.

The court further held that the raising of the defence of insanity provided in *section 28* of the *Criminal Code "is prima facie* an acceptance of responsibility for the act complained of". In *Edoho v State*[48] (*supra*), the Supreme Court while deciding whether when the defences of provocation and plea of insanity as raised by an accused presupposes and amounts to an admission by the accused held that both defences when raised by an accused person presupposes and amount to an admission that the death of the deceased was as a result of the act of the appellant.

Under the Nigerian legal jurisprudence, the defence of insanity must adduce evidence to establish insanity to disprove the presumption of sanity provided in *section 27 of the Criminal Code.* The courts in *Guobadia v State*[49] *and Ani v State*[50] held that in all criminal charges, there is the general presumption that every person is sane with "sufficient reasoning and mental faculty", that he is responsible for his crime. The court further added that when an accused person charged with an offence pleads insanity or insane delusion, he has the burden to prove before the court that at the time of committing the offence, "he was so afflicted or that he had such a mental block of mind that he did not know the nature of the act or did not know that he was doing a wrong thing".

The provisions of *section 28 of the Nigerian Criminal Code* are substantially similar to the provisions of the M'Naughten Rules. For example, the latter clauses of the **section** represent an extension of the basic "right and wrong" test of the M'Naughten Rules mentioned earlier in accepting as a mitigation of responsibility, the "uncontrollable action" as irresistible impulse".

[47] (2001) FWLR (Pt.52) 2210 SC.
[48] (2011) 192 LRCN, 59
[49] (2004) 6 NWLR (Pt.869) 360
[50] (2008) 10 NWLR (Pt. 776) 644

However, a satisfactory definition of what constitutes an irresistible impulse has proved difficult to attain. This position has been unhelpful in determining issues of insanity and criminal responsibility in many cases. In *R v Omoni,*[51] the Court of Appeal remarked that this condition "allows a defence that the accused was acting under an irresistible or uncontrollable impulse".

However, there has been one instance in Nigeria medical legal history in which *section 28* of the Criminal code was compared with the M'Naughten Rules. This was in the case of *R v. Omoni* **(*supra*)**. This comparison shows that Nigerian legislature has not only departed from the phraseology of the English Judges but has introduced two entirely new factors – "natural mental infirmity" and "capacity to control his actions". In trying to elicit the full meaning of the phrase, "natural mental infirmity", the West African Court of Appeal (WACA) stated in *R v Omoni* **(*supra*):**

> *We must ascribe to them (i.e. the words "natural mental infirmity") an intention to distinguish between "mental disease" and "natural mental infirmity", for otherwise the last words would be redundant. The "natural mental infirmity" mean, therefore, in one's opinion, a defect in mental power neither produced by own fault nor the result of disease of the mind.*

In further examination of the phrase, "to deprive him of capacity to control his actions" West African Court of Appeal (WACA) observed that these words not only departed from the rules of *M'Naughten's* case, but were in direct conflict with the line of English decisions, subsequent thereto in which English Judges declined to accept the defence of irresistible impulse which these words have introduced into Nigerian Law.

5. Recommendations

Although, the defence of insanity is hardly successful in Nigeria, this article recommend a modern insanity test set can be developed for different types of insanity claims, and this tests should involve strict approaches to test severe insanity. Different rules and elements should be employ to test different insanity claims and how it affects the capacity of the defendant.

Harmonization of the Criminal Code and the Penal Code to reflect similar line of thought in resolving similar legal problem. This should be in line with what is practicable in the United States under the 1972 model of Penal Code of the American Law institute that allow for the introduction of medical and psychiatric evidence together with the defence of diminished responsibility/capacity to cure manifest injustice many accused persons are exposed to currently in our system.

6. Conclusion

Most societies in the world over take mental illness into account in their legal systems because the concept is a major factor in determining the criminal responsibility and the competence to face trial of mentally ill offenders.[52] The law of excuses is a deeply entrenched concept in Anglo-American jurisprudence which has persisted since the Middle Ages. The excusing conditions of necessity, duress, and diminished mental capacity lay credence to the accepted principle that a

[51] (1979) 12 WACA, 511
[52] John & La Fond, "Observation on the Insanity Defence and Involuntary Commitment in Europe" available at http://digital.commons.law.senttlea.edu/su/vol7/iss3/3 accessed on 26/5/2018.

"person is not culpable and cannot be held criminally responsible if he had no control over his behaviour".[53]

An excuse is based on the assumption that the accused's behaviour is damaging and condemnable and is to be deployed but, internal or external conditions which influenced the act deprived the actor of choice. Excuse also provides a defence based on the fact that although a defendant committed a criminal or civil wrong, he or she is not considered responsible. In common law countries, a successful plea of insanity has long been a defence to criminal prosecution.

It is a fundamental rule of law that a person cannot be found guilty of a crime if he or she has not the intention (*mens rea*) to commit the crime. This principle of law absorbs from guilt, children and the mentally disordered person.

The Nigerian jurisprudence has also accepted this position where the Supreme Court in *Adamu v State (supra)*[54]stated that insanity means "an affirmative defence alleging that a mental disorder caused the accused to commit the crime". The Apex Court further added:

> *However, unlike other defences, a successful plea of insanity defence may not result in an acquittal but instead in a verdict, "not guilty by reason of insanity…"*

Presently, a successful defence on ground of insanity is based on the defendant's inability, as a result of mental disease or defect, to appreciate the criminality of his or her alleged conduct.

Today, this defence is recognized in Australia, Canada, England and Wales, Hong Kong, India, the Republic of Ireland, New Zealand, Norway and most states in America – with the exception of Idaho, Kansas, Montana and Utah.[55]

Finally, the position in the Nigerian Criminal jurisprudence is that, if it is established that the accused person was insane at the time the alleged offence was committed, he or she will not be held criminally liable. But if found insane at the time of trial, he will be committed to an asylum or a mental health hospital or facility until he or she is deemed fit to stand trial.[56]

[53] Godwin, O. L., Gostin, "Justification for the Insanity Defence in Britain and the United States – the Conflicting Rationales on Morality and compassion" Available at http://wwwjaapl.org.contnt/9/2/100.full.pdf. Accessed on 2/10/2018.
[54] (2014) 32 WRN 1.S.C. Per Ariwoola JSC (P.29) lines 15-20.
[55] "M'Naughten Rules" available at http://en/wikipedia.org/wiki%27Naghen-rules accessed on 20/04/2014
[56] See *Adamu v State* (2014) WRNS.C. 1. p.29.