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MENTAL ILLNESS IN THE CRIMINAL JUSTICE SYSTEM: ERASING THE STIGMA ON A GLOBAL SCALE

INTRODUCTION

While society has always been eager to quickly and effectively treat physical illness, mental illness has long been misunderstood and severely stigmatized worldwide.[1] Rather than being offered prompt and proper treatment like someone with a severe physical illness would be, many people with mental illness are quickly labeled as "crazy" or "weird," and are not taken seriously.[2] Several hundred years ago, most countries treated mental illness by isolating patients from society rather than providing them a semblance of humane treatment.[3] This methodology continued into the 1600s and beyond, where mentally ill individuals were ripped away from their families and communities and treated worse than animals, being thrown into dirty, overcrowded asylums.[4] Not even one century ago, archaic methods such as lobotomy[5] and electroconvulsive therapy[6] (ECT) were introduced, with ECT still being used

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1. Michael Friedman, *The Stigma of Mental Illness is Making us Sicker*, PSYCH. TODAY (May 13, 2014), https://www.psychologytoday.com/us/blog/brick-brick/201405/the-stigma-mental-illness-is-making-us-sicker.

2. *Id.*

3. Tricia Hussung, *A History of Mental Illness Treatment: Obsolete Practices*, CONCORDIA U., ST. PAUL (Oct. 14, 2016), https://online.csp.edu/blog/psychology/history-of-mental-illness-treatment/.

4. *Id.*

5. A lobotomy is the severing of nerves in one lobe or between lobes of the brain, resulting in disrupted communication within or between these brain lobes. *Lobotomy*, ENCYC. BRITANNICA, https://www.britannica.com/science/lobotomy (last visited Feb. 18, 2021). This procedure was thought to relieve symptoms of severe mental illnesses such as schizophrenia or bipolar disorder. *Id.* While the procedure was popular through the mid-20th century, it is now largely obsolete. *Id.*

6. Electroconvulsive Therapy involves inducement of brief seizures while a patient is under anesthesia. William McDonald & Laura Fochtmann, *What is Electroconvulsive Therapy?*, AM. PSYCHIATRIC ASS'N, https://www.psychiatry.org/patients-families/ect (last visited May 10, 2021). While it has been found to relieve symptoms of major depression, it is generally now regarded as a last resort and is used in conjunction with medication and psychotherapy. *Id.*

in some cases today.[7] Only as recently as the 1990s did the United States seek to make major ethical improvements to how the mentally ill were treated and, for once, attempt to integrate those individuals into society rather than segregate them as social pariahs.[8] In 2014, a reported 450 million people around the world suffered from mental illness.[9] As of 2014, 90% of the developing world's population living with mental illness were completely untreated.[10] Unfortunately, this mistreatment and stigmatization is not limited to social situations, but is also present in the legal and criminal justice realms.[11] The severe stigmatization of mental illness is alive and well around the world and, in turn, legal systems worldwide are still struggling with how to best address mentally ill defendants.[12]

This Note will first analyze, compare, and contrast the treatment of mental illness in court systems on an international scale, examining Western countries—such as the US and the United Kingdom (UK)—and African countries, specifically Uganda and Ghana. Next, this Note will address the serious issues with treatment of mentally ill defendants in Uganda where legislation, such as the Mental Health Act of 1964, is not designed to provide defendants with adequate protections against improper legal consequences. This Note will then analyze and address the Ghanaian legal system's treatment of mentally ill defendants. While Ghana has made more progress than Uganda by way of proposing improvements in the treatment of mental illness within their legal system, much work has yet to be done.[13] Though the problems that each of these countries face are not identical, all of their shortcomings trace back to a single root: a deep-seated stigma towards mental illness that has not been addressed.

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7. *Id.*

8. *See* Nannette A. Baker, *Mental Health Courts*, 54 JUDGES J. 1, 1 (Spring 2015).

9. Friedman, *supra* note 1.

10. *See Mental Health for All by Involving All*, TEDGLOBAL 2012, https://www.ted.com/talks/vikram_patel_mental_health_for_all_by_involving_all/transcript#t-5023 (last visited Apr. 19, 2021).

11. *See generally* Adam Brett, *Psychiatry, Stigma and Courts*, 10 PSYCHIATRY PSYCH. & L. 283 (2003); *see* Baker, *supra* note 8, at 1.

12. *See generally* Brett, *supra* note 11.

13. *See generally* Samuel Adjorlolo, *Diversion of Individuals with Mental Illness in the Criminal Justice System in Ghana*, 15 INT'L J. OF FORENSIC MENTAL HEALTH 382 (2016).

Though numerous international treaties focus on promoting human rights,[14] there is markedly little focus on the protection of individuals with mental illness, specifically in international legal fora.[15] In order to effectively change the treatment of people with mental illness in court systems internationally, these treaties must be altered to include two requirements: (1) that countries all meet basic standard guidelines regarding mental illness education and treatment and (2) that countries with plentiful resources for treatment and education assist countries that do not have such resources. The amount of aid that a country would be required to give to other nations would be based on its own wealth, as well as the extent and credibility of its resources. Thus, countries such as the US and Canada, where mental health courts are prevalent, might instruct other countries on how to successfully train judges and attorneys in handling individuals with mental illness, with the ultimate goal being that these countries would eventually create mental health courts of their own. Wealthier countries would also be expected to donate educational materials to doctors, lawyers, and potentially the public at large so that people would be better informed. While it might still take several generations for major implementations of this requirement to take hold and for the stigmatizations surrounding mental illness to be fully dissipated, it is crucial to take this step now in order to facilitate needed change.

I. MENTAL ILLNESS IN THE LEGAL SYSTEM ON AN INTERNATIONAL SCALE

While less-wealthy regions are often the first areas targeted for their mistreatments of individuals with mental illness, stigmatization does not discriminate based on wealth; in the UK, 70% of individuals suffering from mental illness reported that they were mistreated due to their illness.[16] Mental illness

14. *The Core International Human Rights Instruments and their Monitoring Bodies*, UNITED NATIONS OFFICE HIGH COMM'R, https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx (last visited May 10, 2021) [hereinafter *Core Int'l Human Rights Instruments*].

15. *Id*. (None of the core human rights treaties set forth by the United Nations focuses on ensuring sound mental health of all individuals.)

16. Andrew Chambers, *Mental Illness and the Developing World*, GUARDIAN (May 10, 2010, 10:09 AM EDT),

has become an enormous worldwide economic burden in dire need of better treatment options.[17] In lower-income regions, resources for treatment of mental illness are severely lacking, largely due to insufficient funds to establish the necessary programs and care for people living with mental illness.[18] While mental health treatment has improved in some regions,[19] archaic and uninformed methods of handling mentally ill individuals remain prevalent and extend into the legal system.

Individuals with mental illness who are subjected to the complexities of legal and judicial systems worldwide face a unique challenge: not only must they obtain an attorney to represent them in court, but they must also ensure that their advocate understands both how mental illness might inform criminal actions and how to best represent a mentally ill client.[20] Lawyers are known for their skills in interpreting and applying the law, but are not necessarily renowned for expertise in handling clients with various personal backgrounds and potential mental illnesses.[21] This immediately puts mentally ill defendants at a severe disadvantage as compared to their healthy counterparts.[22] Countries where mental illness is not well-understood are at the highest risk for this problem.[23] Nations without proper educational resources are at a higher risk of perpetuating harmful stigmatizations, leading to mistreatment of individuals with mental illness in legal systems worldwide.[24] Rather than receiving proper psychiatric treatment, mentally ill people who commit crimes are instead thrust into the confusing and intimidating confines of the judicial system, often-

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https://www.theguardian.com/commentisfree/2010/may/10/mental-illness-developing-world.

17. *See* Friedman, *supra* note 1 (mental illness cost $2.5 trillion in 2010 and is expected to cost $6 trillion by 2030).

18. *See Mental Health: massive scale-up of resources needed if global targets are to be met*, WORLD HEALTH ORGANIZATION (June 6, 2018), https://www.who.int/mental_health/evidence/atlas/atlas_2017_web_note/en/.

19. Chambers, *supra* note 16.

20. Mulumba Moses, *Analysis of the Uganda Mental Treatment Act from a Human Rights and Public Health Perspective*, PSYCH RIGHTS 12 (July 2007), http://www.psychrights.org/Countries/Uganda/UgandasMentalHealthLaw.pdf .

21. *See id*. at 12–13.

22. *Id*. at 13.

23. Chambers, *supra* note 16.

24. *See* Raymond H. Brescia, *Introduction: The Criminalization of Mental Illness*, 8 ALB. GOV'T L. REV. vii, vii (2015).

times ultimately being sentenced to prison and—worse yet—left untreated.[25]

The United Nations has set forth nine major human rights treaties, collectively known as the Core International Human Rights Instruments.[26] These treaties are ineffective in addressing mental illness as they either do not acknowledge mental health at all or, when they do, fail to create specific, clear, and uniform mental healthcare standards by which countries must universally abide.[27] The treaties address an array of social issues in great detail, such as racial discrimination,[28] sex discrimination,[29] rights afforded to children,[30] and the right to humane and fair work conditions,[31] all the while no more than glossing over the problem that mental illness presents around the world. This sets a general precedent that mental health is less important than the aforementioned issues. There are but two applicable treaties with regards to mental health: the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR),[32] but even these covenants leave much to be desired.

The ICESCR sets forth broad guidelines for providing fundamental human rights to citizens of UN member countries, such as the rights to basic human autonomy,[33] education,[34] and proper living conditions, such as adequate food and housing.[35] While the treaty consists of thirty-one articles, mental health is mentioned but once throughout the entire document and in a very vague context: "The [parties] to the present Covenant rec-

25. *See id.*

26. *Core Int'l Human Rights Instruments*, *supra* note 14.

27. *Id.*

28. *See generally* International Convention on the Elimination of All Forms of Racial Discrimination on Civil and Political Rights, *opened for signature* Dec. 21, 1965, 212 U.N.T.S. 660.

29. *See generally* Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 14 U.N.T.S. 1249.

30. *See generally* Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 3 U.N.T.S. 1577.

31. *See generally* International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Dec. 18, 1990, 3 U.N.T.S. 2220.

32. See *Id.*; *see generally* ICCPR *supra* note 28.

33. ICESCR, *supra* note 31, art. 1.

34. *Id.* art. 13.

35. *Id.* art. 11.

ognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."[36] There is no definition set forth as to what the "highest attainable standard" might be and no acknowledgment that this standard might differ from country to country. The vagueness of this language opens the door for varied interpretation among the UN member countries and does not oblige them to adhere to one universal standard. The treaty does not address mental health at any other point, implying that the topic of mental illness was not deemed particularly important or worthy of much attention at the time the treaty was drafted.[37] The same holds true for another relevant treaty, the ICCPR.

The ICCPR, in a similarly broad fashion to the ICESCR, provides for general civil and political freedoms of persons worldwide among the UN member nations.[38] This includes a list of special situations where the death penalty is strictly forbidden because of age or specific health reasons.[39] In setting forth these exceptions, the treaty notably excludes the mental illness of a defendant as a valid reason to forbid execution, stating: "Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women." [40]

This language, similar to that used in Article 12 of the ICESCR, allows for a wide range of individual country discretion—other than in cases of individuals who are pregnant or younger than eighteen years old, no other specific guidelines are set forth regarding when the death penalty is universally forbidden. Hence, some countries might decide that serious mental illness is a sufficient reason to bar the death penalty, while others might decide otherwise and face no consequences for doing so.[41] This power of discretion has proven problematic

36. *Id*. art. 12.
37. *See* i*d*.
38. *See generally* ICCPR, *supra* note 28.
39. *Id*. art. 6.
40. *Id.* art. 6.
41. Hiroko Kashiwagi & Naotsugu Hirabayashi, *Death Penalty and Psychiatric Evaluation in Japan*, 9 FRONTIERS PSYCHIATRY 1, 1 (2018) (as recently as 2018, numerous Japanese defendants were sentenced to death despite findings of severe mental illnesses that are known to impact culpability, such as schizophrenia and delusions).

even in the most progressive countries.[42] Despite the fact that there has been a general moral consensus that the death penalty should not be used on mentally ill defendants, the failure to outwardly and specifically express this consensus in writing creates a lack of uniformly humane action—even within countries, the treatment of mentally ill defendants and prisoners is not necessarily uniform.[43] Thus, while these treaties are certainly useful in promoting general standards for the most basic human rights worldwide, they are unhelpful in the more specific realm of mental healthcare. In turn, there are uneven standards of care for mentally ill individuals worldwide and large-scale stigmatization still runs rampant.[44] Though this language has encouraged some nations to take action and provide better resources for mentally ill defendants, this is only the case in a select few countries where resources and funding are plentiful and where pervading stigmas are actively challenged, such as the US and Canada.[45]

Both the US[46] and Canada[47] have created unique mental health courts that specifically handle defendants who have committed crimes directly in connection with a mental illness.[48] These courts fall into the overarching category of "problem-

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42. *See Death Penalty and Mental Illness*, AMNESTY INT'L (May 18, 2017), https://www.amnestyusa.org/issues/death-penalty/death-penalty-facts/death-penalty-and-mental-illness/ (while many countries' laws prohibit the execution of mentally ill defendants, even in the most progressive countries regarding mental health, such as the US, people have been executed in the past fifteen to twenty years despite prior knowledge that they suffered from severe mental illness).

43. *Id*. (In the United States, the Supreme Court held in *Ford v. Wainwright* that the execution of persons deemed to be insane is unconstitutional, but the Constitution still fails to adequately protect mentally ill prisoners. [INSERT CITE]. States are left to their own devices to determine sanity, which has led to dozens of prisoners still being placed on death row and executed despite suffering from serious mental illness. [INSERT CITE])

44. Yvonne I. Larrier, Monica D. Allen & Irwin M. Larrier, *The Role of Stigma in the Global Mental Health Crisis: A Literature Review*, GCSCORED, INC. (May 31, 2017), https://everypiecematters.com/jget/volume01-issue01/the-role-of-stigma-in-the-global-mental-health-crisis-a-literature-review.html.

45. *See* Baker, *supra* note 8, at 1; *See* Mark Reiksts, *Mental Health Courts in Canada*, 33 LAWNOW 3134 (2008).

46. Baker, *supra* note 8, at 1.

47. *See generally* Reiksts, *supra* note 50.

48. *See* Baker, *supra* note 8, at 1.

solving courts" due to their intention of fixing the root causes of crime rather than simply reacting to the effects.[49] Mental health courts sentence defendants to long-term rehabilitation and treatment programs rather than prison sentences and are equipped with judges who have a deep understanding of how mental illness might color a defendant's actions.[50] These courts have only come into existence in the past twenty years.[51] For the most part, mentally ill individuals are tried and sentenced the same as a perfectly healthy individual, leading to a disproportionate number of prisoners with mental illness.[52] It is likely that many of these prisoners would receive better treatment and have a higher chance at rehabilitation in a facility specifically geared towards handling mentally ill defendants.

In the same vein as the ICCPR and ICESCR, the African Charter on Human and Peoples Rights (The Charter), enacted in 1981, also largely neglects mental illness.[53] The Charter contains merely one reference to mental health where it announces an individual's right to "the best attainable state of . . . mental health."[54] This reference provides no clear-cut definition of "best attainable state," nor any guidance as to what methods might be employed to help citizens reach this state. These vague allusions allow countries too much leeway in deciding how to address mental illness, resulting in varying levels of mistreatment around the world.

As mentioned above, physical illnesses receive far more attention and more effective treatment than mental illnesses, and unfortunately, this holds particularly true in countries where severe deadly diseases run rampant, as in many African countries.[55] According to the World Health Organization (WHO), mental health problems account for 14% of all global health conditions while disproportionately receiving less than

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49. *Id*.

50. Reiksts, *supra* note 50, at 32.

51. Baker, *supra* note 8, at 1.

52. *Id*.

53. *See generally* African Charter on Human and Peoples' Rights, June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58.

54. *Id*., art. 16.

55. *Id*. (In countries where the "big three" communicable diseases—HIV/AIDS, malaria, and tuberculosis—are common and where international aid is needed, the aid provided is almost completely centralized around these diseases, despite the fact that mental health issues are also extremely prevalent.)

1% of most countries' healthcare budget.[56] It follows, then, that insufficient funding for mental healthcare creates a vicious cycle where individuals with improperly treated mental illnesses remain within court systems that lack the requisite expertise regarding mental illness.[57]

II. LACK OF PROPER LEGISLATION AND EDUCATION IN UGANDA HAS RESULTED IN MISHANDLING OF MENTAL ILLNESS IN THE UGANDAN LEGAL SYSTEM

Uganda is recognized by the UN as a Least Developed Country (LDC), a determination based on three criteria: income, human assets, and economic vulnerability.[58] Uganda's national income and human assets indices are far below the average among all LDCs, indicating that the country is severely lacking in monetary resources that, in turn, results in a multitude of human rights violations and a low quality of life.[59] Nearly 85% of the Ugandan population lives below the poverty line.[60] Ugandan citizens are subject to high infant mortality rates, low literacy rates,[61] and many health issues, both physical and mental.[62]

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56. *Id.*

57. *See id.*

58. *UN List of Least Developed Countries*, U.N. CONF. TRADE DEV., https://unctad.org/topic/least-developed-countries/list (last visited Apr. 19, 2021); *See LDC Identification Criteria & Indicators*, U.N DEP'T ECON. SOC. AFF., https://www.un.org/development/desa/dpad/least-developed-country-category/ldc-criteria.html (last visited Feb.18, 2021)

59. *Uganda 2020*, AMNESTY INT'L, https://www.amnesty.org/en/countries/africa/uganda/report-uganda/ (last visited May 20, 2021) (these violations run the gamut from violent limitations on freedom of expression to forced evictions to lack of accountability for the use of torture. [INSERT CITE]. Furthermore, non-governmental organizations (NGOs) that promote the improvement of human rights conditions for Ugandan citizens are frequently attacked and robbed. Oftentimes, these attacks are never investigated or prosecuted. [INSERT CITE])

60. *Mental Health Systems in Selected Low- and Middle-Income Countries: A WHO-AIMS Cross-National Analysis*, WORLD HEALTH ORGANIZATION [WHO] 17 (2009), https://apps.who.int/iris/bitstream/handle/10665/44151/9789241547741_eng.pdf;jsessionid=59EAAD6F2359B44AF3881A0FF9EE2B55?sequence=1 [hereinafter WHO Mental Health Systems Report].

61. *Id.* (per this report, only 68.9% of the adult Ugandan population is literate).

62. *See id.*

Treatment for mental illness is available in Uganda, albeit in limited areas and with limited capabilities.[63] Due to the disparity in resources between urban and rural areas in Uganda,[64] only persons located to urban centers have reasonable access to mental health facilities and care. This disparity is also contrary to the distribution of Uganda's overall population—the overwhelming majority of the Ugandans live in rural areas, but the vast majority of its mental health care is offered only in urban centers.[65] Furthermore, the facilities that do exist maintain a low staff-to-patient ratio, meaning that the doctors' time and resources are thinly spread among a large volume of patients.[66] Thus, while available, mental healthcare is not readily accessible to the majority of the country and does not offer significant individualized care.[67]

Further, as is common in underdeveloped countries, mental illness receives little attention in Uganda.[68] As a result, Ugandans with mental illness often live their entire lives without proper recognition or treatment and, consequently, are subject to a decreased quality of life.[69] Furthermore, the sparse treatment that mentally ill individuals do receive is frequently abusive.[70] The few psychiatric hospitals that exist in Uganda are notoriously overcrowded and understaffed.[71] Patients are treated as lesser beings and are provided with poor sanitary conditions, which is especially problematic in a country where HIV/AIDS and malaria are extremely prevalent.[72] This abuse is not limited to psychiatric institutions, however—in a survey of existing attitudes towards mental illness and the mental health system in Uganda, it was reported that the stigma to-

63. Sara Cooper, Joshua Ssebunnya, Fred Kigozi, Crick Lund, Alan Flisher, & The Mhapp Research Programme Consortium, *Viewing Uganda's Mental Health System Through a Human Rights Lens.* 22 INT'L REV. PSYCHIATRY 578, 582 (2010) [hereinafter *Uganda's Mental Health System Through a Human Rights Lens*].

64. *Id.* at 585.

65. *Id.* at 582.

66. *Id.*

67. *See id.*

68. *See generally* WHO Mental Health Systems Report, *supra* note 64.

69. *See generally id.*

70. *Uganda's Mental Health System Through a Human Rights Lens*, *supra* note 67, at 581.

71. *Id.* at 582.

72. *Id.* at 581.

wards mental illness in Uganda is so severe that people may be denied employment based on their illness.[73] If they are employed, they are often treated differently by employers, sometimes being compensated less than coworkers simply due to their condition.[74]

With a stigma this deeply-rooted and a society so prone to abusing mentally ill individuals, it is no surprise that defendants in the Ugandan legal system are offered virtually no adequate protections.[75] While the passage of the Mental Health Act of 1964 (the Mental Health Act or the Act) might have seemed encouraging at the time of its passage, today it exists as a problematic reminder of how little progress has been made in the realm of protecting mentally ill Ugandans and, more specifically, mentally ill defendants.[76]

A. The Mental Health Act of 1964 Does Not Offer Protections for Ugandan Defendants with Mental Illness

Though seemingly a step in the right direction, the highly criticized Mental Health Act is rife with flaws, leaving mentally ill defendants largely helpless in the Ugandan adjudicatory process.[77] First and foremost, the Act was passed in 1964 and has not been revised since, meaning that the language used in the Act and the general attitude it promulgates towards mental illness are outdated.[78] For example, the Act uses offensive and archaic language such as "idiots"[79] or as people having "unsound minds."[80] This type of language in and of itself perpetuates the deep-seated stigma that people with mental illness are simply "crazy," and are lesser people not deserving of the same treatment as people without mental illness. While it might be argued that this language is only viewed as offensive when read through a Western lens, several of the most scathing critiques of the Act have been written by Ugandan citizens them-

73. *Id.* at 580.
74. *Id.* at 583.
75. *See generally* Moses, *supra* note 20.
76. *See generally id.*
77. *See generally id.*
78. *See id.* at 3; *See* Chrispas Nyombi, Alexander Kibandama & Ronald Kaddu, *A Critique of the Uganda Mental Health Treatment Act, 1964*, 3 MENTAL HEALTH L. & POL'Y J. 505, 513 (2014).
79. *Id.* at 521.
80. *See* Moses, *supra* note 20, at 2.

selves.[81] These critiques focus on the outdated and offensive nature of the language, indicating that this vocabulary is viewed as demeaning not only in Western cultures but throughout Uganda, as well.

Furthermore, the key players in Ugandan court systems—namely judges and attorneys—have no directive or incentive to treat mentally ill defendants with respect and dignity, and are instead encouraged to focus on keeping these defendants away from the public using whatever means possible.[82] This lack of incentive is most visible in the dearth of specially-trained advocates and specialized tribunals for defendants who are diagnosed with mental illness.[83] Despite this fact, many Ugandans believe that people with mental illness should be treated with the same level of care as people with physical illness.[84] A judge with no experience or background knowledge in the area of bankruptcy adjudicating a bankruptcy case being tried by an attorney who also had no experience in bankruptcy law would give most people pause. This scenario is not completely dissimilar from a court or tribunal that is untrained and unequipped to handle a mentally ill defendant but does so anyway—without knowledgeable judges and attorneys, a defendants' rights cannot be adequately protected. Because most attorneys are not trained to handle clients who suffer from mental illness, defendants are largely on their own to fight for their rights.[85] Oftentimes, however, defendants themselves are not even aware of what their rights entail.[86] If the judge and attorney are both largely uneducated in the area of mental illness and the defendant is unaware of their own rights, chances are slim that the defendant will be properly and fairly represented in legal proceedings.

Another problem with the Mental Health Act of 1964 is its failure to distinguish between various mental illnesses, their symptoms, and how they might present to the unknowing eye, which perpetuates misconceptions in courtrooms.[87] This failure to distinguish these illnesses is especially problematic in coun-

81. Nyombi, Kibandama & Kaddu, *supra* note 82, at 517.
82. *See* Moses, *supra* note 20, at 14.
83. *See id*. at 12–13.
84. *See id*. at 8, 15.
85. *See id*. at 12–13.
86. *Id.* at 13.
87. *Id.* at 12.

tries like Uganda where treatment and educational resources are limited, as it allows for prejudices and stereotypes about mentally ill people to survive since citizens are severely limited form accessing resources with reliable information.[88] For instance, it is often the case that only severe, untreated personality or mood disorders, such as schizophrenia[89] and bipolar disorder,[90] are immediately noticeable through overt behaviors, while others are far less apparent.[91] The Mental Health Act does not make a clear distinction between the breadth of mental illnesses and their varying pathologies, instead grouping all mentally ill individuals into one category.[92] Thus, when a mentally ill defendant is on trial, if their symptoms do not present in a manner that has been societally accepted as indicative of mental illness—namely, behavior that makes it immediately obvious to the naked eye that this person is ill and different from healthy individuals—they may not be treated any differently from a defendant who does not suffer from mental illness.[93]

Finally, even if a defendant is determined to be fit for a psychiatric institution rather than prison, the Mental Health Act does not set forth sufficient protocols for treatment within those institutions, leading to severe human rights violations even beyond the courtroom.[94] As previously mentioned, psychiatric institutions are still riddled with problems such as overcrowding, disease, and abuse by staff.[95] The Mental Health Act does not set forth any standards that these psychiatric institutions must follow, leaving patients unprotected and further vio-

88. Nyombi, Kibandama & Kaddu, *supra* note 82, at 513, 518.

89. Symptoms of schizophrenia include hallucinations, delusions, and thought disorders, all of which are obvious to the plain eye. *Schizophrenia*, NAT'L. INST. MENTAL HEALTH, https://www.nimh.nih.gov/health/topics/schizophrenia/index.shtml (last visited May 10, 2021).

90. Symptoms of bipolar disorder include intense mood swings and periods of mania, depression, or both. *Bipolar Disorder*, NAT'L INST. MENTAL HEALTH, https://www.nimh.nih.gov/health/topics/bipolar-disorder/index.shtml (last visited May 10, 2021). During a manic episode, one might engage in extremely reckless and self-destructive outward behavior, such as overspending. *Id*.

91. Adjorlolo, *supra* note 13, at 384.

92. Moses, *supra* note 20, at 2.

93. *See id*. at 12.

94. *See generally Uganda's Mental Health System Through a Human Rights Lens*, *supra* note 68.

95. *See generally id*.

lating their basic human rights by failing to ensure that they will be treated according to any humane protocol.[96] The Mental Health Act, passed in 1964 when worldwide attitudes towards mental illness were less informed than they are today, was not focused on protecting the rights of mentally ill people, but instead focused on protecting the healthy public by keeping those with mental illness isolated from society and cut off from protections offered to others.[97]

While the Mental Health Act might initially appear to be a good step in the protection of mentally ill individuals and seem to provide a solid framework for courts in their treatment of defendants with mental illness, upon a deeper read, it becomes evident that the Act does not meet these standards.[98] It fails to address and conquer stigma, neglects the intricacies of and differences between various mental illnesses, and does not set forth specific guidelines for how advocates and judges or magistrates should handle mental illness within their courts.[99] Thus, while a revised Act would be a welcome change to the Ugandan legal system, the overarching problem remains in the lack of education and the remaining prevalence of harsh stigmatization throughout the country.

B. Ugandan Defendants Sentenced to Psychiatric Care Remain at Risk of Mistreatment Due to Immense Stigma Towards Mental Illness

As of 2012, attempted suicide is a criminal offense in Uganda; this fact alone speaks volumes in demonstrating how mental illness on the whole is viewed within the country, as it effectively criminalizes depression and other illnesses that frequently result in suicide.[100] The act of attempted suicide is a misdemeanor punishable by up to two years' imprisonment.[101]

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96. *Id.*

97. *Id.*

98. *See Developing and Adopting Mental Health Laws in Africa*, WORLD HEALTH ORGANIZATION [WHO] 3 (2010), https://www.who.int/mental_health/policy/development/n_11_lessons_learned_legislation.pdf.

99. *Id.*

100. Heidi Hjelmeland, Eugene Kinyanda & Birthe Loa Knizek, *Mental Health Workers' Views on the Criminalization of Suicidal Behaviour in Uganda,* 52 MED. SCI. & L. 148, 148 (2012).

101. *Id.*

In a study conducted in 2012, approximately one-third of surveyed Ugandan mental health providers were either unsure of their feelings about the law or believed that attempted suicide should remain criminalized, as they believed that it would serve as a deterrent for people who were considering committing suicide.[102] The criminalization of attempted suicide is, in effect, the criminalization of mental illness. While not every person who attempts suicide is mentally ill—for instance, a person with a terminal and painful illness who seeks assisted suicide—attempted suicide has been confirmed to be linked with mental illness.[103] Criminalizing attempted *assisted* suicide is a debate founded in the ethical dilemma of assisting another person in taking their own life and whether such an act strips a person of their autonomy, which is a discussion for another day.[104] This same argument does not apply to attempted suicide generally, even in the absence of mental illness, as the issue of autonomy is no longer ambiguous. Due to the linkage between attempted suicide and mental illnesses such as depression, a person would potentially face trial on criminal charges not only as a mentally ill person, but simply for *being* mentally ill.[105]

One might argue that criminalizing attempted suicide could act as a deterrent for individuals who might be considering suicide, as the mental health professionals in the aforementioned study have.[106] Just as one cannot be prevented from contracting a physical disease by the enactment of a law, however, it is unreasonable to expect that a person will be deterred from being mentally ill or expressing suicidal behaviors simply because a law was passed criminalizing such actions.[107] The criminalization of any behavior that is a direct result of mental illness

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102. *Id.* at 149–50.

103. *Suicide Prevention*, AM. PSYCHIATRIC ASS'N, https://www.psychiatry.org/patients-families/suicide-prevention (last visited May 10, 2021) (while the Center for Disease Control and Prevention (CDC) reports that approximately half of those who died by suicide did not report a mental health condition, many of these individuals may have been suffering from undiagnosed mental health problems. Furthermore, suicide is linked to depression and alcohol use disorders).

104. Abdi Sanati, *Does Suicide Always Indicate a Mental Illness?*, 23 LONDON J. PRIMARY CARE 93, 93 (2009).

105. *See id.*

106. Hjelmeland, Kinyanda & Knizek, *supra* note 104, at 149.

107. *Id.* at 151.

indicates both that mentally ill defendants are not afforded proper treatment in the Ugandan courts and that Uganda is complacent in allowing mental illness to remain wildly misunderstood within its criminal justice system. Furthermore, the fact that Uganda lacks specially-trained judges or specialized courts or tribunals of any type for handling mentally ill defendants only corroborates this apparent complacency.[108] Thus, persons working in both the mental health profession and in the legal field must be better educated in order to work with patients and defendants more effectively.

Mentally ill individuals in Uganda face general discrimination in many realms of life, largely due to inadequate or discriminatory legislation and processes.[109] Persons suffering from mental illness are not protected from suffering horrific work conditions on the basis of their illnesses.[110] Thus, when this culture pervades throughout Ugandan society, it comes as no shock that defendants with mental illness are not offered adequate protections. Even outside of the courtroom, they are treated as lesser citizens and may legally be discriminated against or even imprisoned simply due to their struggles.[111]

Unfortunately, these problems are not unique to Uganda—countries around the world face similar problems with regard to the stigmatization of mental illness and the mistreatment of mentally ill defendants.[112] In Ghana, progress has been slightly more encouraging as plans have been proposed to divert mentally ill defendants away from prisons and into psychiatric institutions, but legislation is still lacking and leaves much to be desired. Most notably, the insanity defense as spelled out in Ghanaian law is outdated and objectively ignores the various expressions of mental illness, leaving many defendants without proper protections by way of this defense.

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108. *See* Moses, *supra* note 20, at 12–13.

109. *See generally Uganda's Mental Health System Through a Human Rights Lens*, *supra* note 68.

110. *Id.* at 583.

111. *See id.*

112. *See* Friedman, *supra* note 1.

III. TREATMENT OF MENTALLY ILL INDIVIDUALS IN THE GHANAIAN CRIMINAL JUSTICE SYSTEM IS ARCHAIC, LEADING TO FAILED DIVERSION ATTEMPTS AND INCORRECT USAGE OF THE INSANITY DEFENSE

Ghana has an upper hand over Uganda in this realm simply due to its greater capital and status as a more developed country.[113] Though Ghana's population of 28.2 million pales in comparison to Uganda's of over 41 million,[114] Ghana's gross national income per capita exceeds that of Uganda by nearly threefold.[115] Thus, Ghana has more monetary resources to dedicate to areas such as mental health. It has more psychiatric hospitals and more outpatient programs as well, indicating an overall greater commitment to mental health.[116] That said, while Ghana has recognized efforts of other countries in adjudicating more fairly for persons with mental illness—such as the implementation of diversion programs and mental health courts—it has done little by way of implementing these practices in its own courts.[117] Similar to judges and attorneys in Uganda, legal professionals and law enforcement officials are not extensively trained in mental illness detection and how to best handle defendants with mental illnesses.[118] This once again leaves defendants largely on their own to defend their rights, if they are even aware of such rights.[119] Similar to the situation in Uganda, this is mainly due to the severe stigma towards mental illness that is equally prevalent in Ghana. Furthermore, though Ghana's GDP is greater than Uganda's,[120] it has still proven insufficient for the creation of mental health courts such as those that are present in some Western countries.

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113. *UN List of Least Developed Countries*, *supra* note 61 (Ghana is not considered a Least Developed Country under the United Nations standards).

114. *Uganda*, WORLD HEALTH ORG., https://www.who.int/countries/uga/ (last visited May 10, 2021) [hereinafter Uganda]; *Ghana*, WORLD HEALTH ORG., https://www.who.int/countries/gha/ (last visited May 10, 2021) [hereinafter Ghana].

115. *Ghana*, *supra* note 118; *Uganda*, *supra* note 118.

116. *Ghana*, *supra* note 118; *Uganda*, *supra* note 118.

117. Adjorlolo, *supra* note 13, at 382.

118. *Id.* at 383.

119. *See id.*

120. *GDP Per Capita (Current US$)*, WORLD BANK, https://data.worldbank.org/indicator/NY.GDP.PCAP.CD (last visited Apr. 19, 2021).

While it is encouraging that the Criminal Procedure Act, 1960 (Act 30) and Section 27 of the Criminal and Other Offences Act, 1960 (Act 29) exist to implement an insanity defense in Ghana, the statutes themselves and their applications are in many ways outdated.[121] Similar to the Mental Health Act of 1964, the statutes were enacted decades ago when the universal understanding and attitude towards mental illness was even more problematic than it is today.[122] Furthermore, the statute does not provide protections for certain behaviors that other countries' insanity defenses do, indicating that improvements could be made.[123] Overall, similar to Uganda, Ghanaian society does not offer adequate support and protection for mentally ill defendants.

A. The Futility of Ghana's Criminal Justice Reform for the Mentally Ill

Ghana has historically struggled with the overrepresentation of mentally ill defendants in its criminal justice system and has at least acknowledged the existence of this problem, but it has not yet implemented successful solutions.[124] Several reports by Ghanaian experts cite lack of proper law enforcement training and persistent, overt stigmatization of mentally ill individuals in society as contributing factors in Ghana's failure to divert mentally ill defendants out of the criminal justice system and into psychiatric care.[125] Despite the passage of the Mental Health Act in 2012 (Act 846), which provides clear instructions for diverting defendants with mental illness and indicates ex-

121. Samuel Adjorlolo, Jacob Mensah Agboli & Heng Choon (Oliver) Chan, *Criminal Responsibility and the Insanity Defence in Ghana: The Examination of Legal Standards and Assessment Issues*, 23 PSYCHIATRY, PSYCH., L. 684, 686–88 (2016).

122. *Id.*

123. *Id.* at 690.

124. *See generally* Adjorlolo, *supra* note 13.

125. *Id.* at 385–86. *See generally* Antonia Barke, Seth Nyarko & Dorothee Klecha, *The Stigma of Mental Illness in Southern Ghana: Attitudes of the Urban Population and Patients' Views*, 46 SOC. PSYCHIATRY PSYCHIATRIC EPIDEMIOLOGY, 1191; *Maye A* Omar, Andrew T Green, Philippa K Bird, Tolib Mirzoev, Alan J Flisher, Fred Kigozi, Crick Lund, Jason Mwanza, Angela L Ofori-Atta & Mental Health and Poverty Research Programme Consortium, *Mental Health Policy Process: A Comparative Study of Ghana, South Africa, Uganda and Zambia*, 4 INT'L J. MENTAL HEALTH SYS, 1.

actly which institutions are required to divert,[126] these institutions are still struggling with diversion procedures. This traces largely to a lack of education surrounding health and the law.[127] For instance, law enforcement officers are not properly trained in how to detect mental illness so as to effect diversion before the defendant even sets foot in a courtroom.[128] While officers might be able to detect a severely schizophrenic person simply by listening to them speak or observing their actions, other illnesses are more difficult to detect or are related to illnesses that do not normally induce criminal behavior.[129] This is where officers lack training and, in turn, thrust less-obviously mentally ill defendants into the criminal justice system.[130] Thus, the opportunity for diversion at the time of arrest is often missed. From that point, the odds of a defendant being diverted to psychiatric care become even smaller, as the attorneys who represent them are similarly untrained.[131] The country's most prominent law schools do not offer any electives in the areas of mental health law or even health law more generally, which results in many attorneys ultimately representing mentally ill clients without having received any formal training or education in mental health as it pertains to the law.[132] This problem has presented itself in two high-profile Ghanaian cases, where problems arose regarding the defendants' fitness to stand trial. In the following cases, major debates took place over whether the defendants were properly evaluated for mental illness and whether the cases were properly adjudicated on the basis of these evaluations.

1. Case of Charles Antwi

In July 2015, Charles Antwi was arrested after he arrived at the Ringway Assemblies of God Church bearing a gun and allegedly claiming that he planned to kill the President of Gha-

126. *Id.* at 384.
127. *Id.*
128. *See id*.
129. *Id.*
130. *Id.*
131. *See id*. at 383.
132. V.C.K. Doku, A. Wusu-Takyi, and J. Awakame, *Implementing the Mental Health Act in Ghana: Any Challenges Ahead?*, 46 GHANA MED. J. 241, 244 (2012), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3645169.

na.[133] A mere two days after his arrest, Antwi was convicted and sentenced to ten years in prison, twice the maximum sentence limit for this offense.[134]

Debate sparked as to whether a thorough investigation of Antwi's mental state was conducted, and it was ultimately found that no such investigation had taken place.[135] He had not been properly evaluated for mental illness or been afforded an opportunity to raise an insanity defense, despite abundant evidence that he was unable to appreciate the gravity or consequences of his actions.[136] At the time of his arrest, Antwi asserted he was entitled to the Presidential title and felt "cheated" of that title[137]—behavior that points to delusional thoughts generally associated with schizophrenia.[138] Regardless, he was convicted, though the Human Rights Division of the Accra High Court ultimately overturned the decision and ordered that a psychiatric evaluation be conducted.[139] Despite the fact that a psychiatric evaluation was ultimately ordered, the initial proceedings of the case are problematic. Had Antwi's lawyer been better trained in mental health law, he would have had a better sense of how to best defend such a client. But because training in this area is lacking in Ghanaian law schools, it is nearly impossible for mentally ill defendants to obtain proper representation by attorneys who are educated in this area.[140]

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133. Nii Smiley Byte, *Gunman Arrested on Sunday with a Gun in the President's Church Jailed Ten Years on Tuesday: So We Can Carry Out Such Swift Justice in Ghana?*, GHANA CELEBRITIES (July 28, 2015, 4:19 PM), https://www.ghanacelebrities.com/2015/07/28/gunman-arrested-on-sunday-with-a-gun-in-the-presidents-church-jailed-ten-years-on-tuesday-so-we-can-carry-out-such-swift-justice-in-ghana/ [hereinafter Gunman Arrested].

134. *Id*.

135. Nii Smiley Byte, *Charles Antwi – The Man Sentenced After Being Arrested for Trying to Kill the President Has Been Released*, GHANA CELEBRITIES (Aug. 31, 2015, 3:13 PM), https://www.ghanacelebrities.com/2015/08/31/charles-antwi-the-man-sentenced-after-being-arrested-for-trying-to-kill-the-president-has-been-released/ [hereinafter Charles Antwi].

136. *See id*.

137. Gunman Arrested, *supra* note 137.

138. *Schizophrenia*, MAYO CLINIC, https://www.mayoclinic.org/diseases-conditions/schizophrenia/symptoms-causes/syc-20354443 (last visited May 10, 2021).

139. Charles Antwi, *supra* note 139.

140. *See* Doku, Wusu-Takyi & Awakame, *supra* note 136, at 244.

2. Case of Daniel Asiedu

In 2016, Ghanaian politician J.B. Danquah-Adu was found stabbed to death in his home.[141] The primary suspect, Daniel Asiedu, was arrested by police and was represented by attorney Augustine Obour.[142] In this case, unlike in Antwi's case, the defendant was correctly taken to a psychiatric hospital to be evaluated for mental illness prior to standing trial.[143] Here, Obour correctly requested that the court order Asiedu to undergo a psychiatric evaluation rather than sentence him immediately.[144] After the evaluation took place and Asiedu was deemed fit to stand trial, however, concerns arose as to whether this evaluation had been conducted correctly.[145] The psychiatrist who conducted the evaluation, Dr. Sammy Ohene, did not provide a full report to the court and instead only provided a letter indicating that Asiedu was fit to stand trial.[146] Obour objected to this, taking issue with report's dearth of detail and doubting whether Dr. Ohene truly assessed Asiedu or simply "looked at him and told the court he [was] normal."[147] Thus, the validity of psychiatric evaluation and how seriously these examinations are taken is an issue in Ghanaian courts. Obour was concerned about his client being fairly treated despite the fact that a psychiatric evaluation did take place.[148] While some level of evaluation seems better than none at all, this is not always the case. A haphazard and biased evaluation might serve as a cover-up for a true, thorough evaluation, corrupting the process and creating difficult barriers to justice for mentally ill defendants. This problem is also prevalent in Ghana's insanity defense, which has not been revised in several decades and leaves gaps in protection for many individuals.[149]

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141. Malik Sullemana, *Ghana: J.B. Danquah-Adu Murder Case – Father, Sister of Accused to Assist in Mental Assessment*, ALLAFRICA (June 4, 2019), https://allafrica.com/stories/201906040640.html.

142. *Id.*

143. *Id.*

144. *Id.*

145. *See* Joseph Ackah-Blay, *J.B. Danquah-Adu trial; Murder Suspect Lawyers Challenge Medical Report*, MODERN GHANA (2019https://www.modernghana.com/news/946455/jb-danquah-adu-trial-murder-suspect-lawyers.html

146. *Id.*

147. *Id.*

148. *See id.*

149. Adjorlolo, Agboli & Chan, *supra* note 125, at 690.

B. Ghana's Outdated Insanity Defense and its Implications for Mentally Ill Defendants

While the insanity defense is available in Ghana, it is widely recognized that many aspects of the defense are problematic and do not afford adequate protections for defendants.[150] In Ghana, as in numerous other jurisdictions including the US, the M'Naghten rule is the basis of the insanity defense. This rule comes from the 1843 *M'Naghten* case, where the defendant M'Naghten murdered the secretary of the British Prime Minister, believing that the Prime Minister was conspiring against him.[151] M'Naghten was acquitted and placed in a psychiatric institution, and the case led to the development of the standard for insanity that is used in many countries today.[152] By definition, the M'Naghten standard provides that:

> [a] person is not guilty by reason of insanity if, at the time of the alleged criminal act, the defendant was so deranged that [they] did not know the nature or quality of [their] actions or, if [they] knew the nature and quality of [their] actions, [they were] so deranged that [they] did not know that what [they were] doing was wrong.[153]

This is the general basis of Ghana's standards for criminal responsibility and the guideline for the country's insanity defense, which are set forth in Act 29 and Act 30.[154] In sum, the M'Naghten rule sets forth the nearly universal idea that a person who is wholly unaware of their actions or that their actions were wrong because of insanity may not be found guilty.[155] Section 27 of Act 29 identifies the two conditions for the application of the insanity defense in Ghana: (1) a defendant was prevented, due to "idiocy, imbecility, or any mental derangement or disease affecting the mind" from knowing the impact of his criminal actions or (2) a defendant committed the action "under the influence of an insane delusion of such a nature" that would, "in the opinion of the jury or of the Court," absolve him

150. *See id.*

151. *Insanity Defense*, LEGAL INFO. INST. , https://www.law.cornell.edu/wex/insanity_defense (last visited Apr. 19, 2021).

152. *Id.*

153. *See* M'Naghten Rule, WEST'S ENCYCLOPEDIA OF AMERICAN LAW, Ed. 2 (2008).

154. Adjorlolo, Agboli & Chan, *supra* note 125, at 686.

155. *Id.* at 688.

of any punishment.[156] While this provision is detailed and provides a clear explanation of the requirements for an insanity finding, several major problems arise from these acts, the first being the fact that both Act 29 and Act 30 were enacted nearly sixty years ago—a time when mental illness was universally met with even greater stigmatization.[157] Ghana has acknowledged that it is working to create a safer and healthier environment for mentally ill defendants and has taken steps to do so, but these acts exist as a reminder of a less-progressive past.[158] One of the clearest indicators of the acts' archaic natures is the language used, as evidenced by terms like "imbecility" and "idiocy." While language such as "mentally deranged" or "insane" is more commonly used in Ghanaian culture, the terms "imbecile" [159] and "idiot" [160] innately carry negative and deeply offensive connotations based in their objective definitions. One might argue that these terms have different connotations depending on the region in which they are being used, but the dictionary definition of imbecile alone—"a stupid person"—is negative and implies an offensive tone towards an individual.[161] Thus, while some terms might be more culturally acceptable depending upon the region in which they are used, terms such as these are universally recognized as offensive, which speaks to the archaic nature of Ghana's insanity defense.

Additionally, the defense fails to account for certain expressions of mental illness and largely relies on the inability to recognize the difference between right and wrong.[162] For instance, the act does not provide any remedy for irresistible impulses, such as those experienced by people with bipolar disorder.[163]

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156. *Id.*

157. Andrew B. Borinstein, *Public Attitudes Towards Persons with Mental Illness*, 11 DATAWATCH 186, 186 (1992).

158. *See generally* Adjorlolo, *supra* note 13.

159. *See Imbecility*, MERRIAM-WEBSTER DICTIONARY, https://www.merriam-webster.com/dictionary/imbecility (last visited Jan. 11, 2020) [hereinafter Imbecility].

160. *See Idiot*, MERRIAM-WEBSTER DICTIONARY, https://www.merriam-webster.com/dictionary/idiot (last visited Jan. 11, 2020).

161. *See* Imbecility, *supra* note 159.

162. Adjorlolo, Agboli & Chan, *supra* note 125, at 689.

163. *Bipolar Disorder*, MAYO CLINIC, https://www.mayoclinic.org/diseases-conditions/bipolar-disorder/symptoms-causes/syc-20355955 (last visited May 10, 2021) (explaining the impulsive tendencies of people with bipolar disorder during a manic episode).

An irresistible impulse does not necessarily mean that the person was completely unaware that the act they were committing was wrong, but rather speaks to how "in control" the defendant was of their own behavior.[164] While some countries criticize the use of the irresistible impulse test, many countries' insanity defense provisions at least explain what an irresistible impulse means in order to demonstrate why this standard should or should not be followed, indicating that Ghana's insanity defense standards are not up to date.[165]

Furthermore, the inclusion of the broad "insane delusion" provision has led to several instances in which defendants have abused the insanity defense, indicating that the defense is in need of revision.[166] While it might seem that such broad language would lead to fairer treatment of defendants, it has in fact had the opposite effect. The failure to define an "insane delusion" has resulted in overuse of the insanity defense such that it is no longer trusted as a valid defense specifically intended to protect defendants with mental illness.[167] The provision has been abused in cases where defendants without any evidence of mental illness claim to have suffered an "insane delusion," and since the term is not defined, numerous defendants have managed to avoid conviction on this basis.[168] This, in turn, harms defendants who actually do suffer from mental illness and need the insanity defense, as it undermines their claims based on other defendants' past dishonesty.[169]

Overall, Ghana has indicated encouraging steps towards creating better conditions for defendants with mental illness in its criminal justice system.[170] The country has enacted diversion procedures; advocated for better education for law enforcement, judges, and lawyers; and acknowledged a need for systems like the mental health courts in the US and Canada.[171] Because of the deep-seated stigma towards mental illness that still exists

164. Adjorlolo, Agboli & Chan, *supra* note 125, at 689.
165. *Id.* at 689–90.
166. Samuel Adjorlolo, Heng Choon (Oliver) Chan, Jacob Mensah Agboli, *Adjudicating Mentally Disordered Offenders in Ghana: The Criminal and Mental Health Legislations*, 45 INT'L J. L. PSYCHIATRY 1, 17 (2016).
167. *Id.*
168. *See id.*
169. *See id.*
170. *See generally* Adjorlolo, *supra* note 13.
171. *See id.* at 387.

within the country and because of outdated laws such as Acts 29 and 30, however, this reform has been largely thwarted.

IV. SPECIFIC STANDARDS FOR CRIMINAL JUSTICE SYSTEMS MUST BE PROMULGATED TO EFFECT MAJOR CHANGE AND PROTECT DEFENDANTS' RIGHTS

An overarching theme in both Ghanaian and Ugandan societies is the continued existence of a severe stigma towards individuals with mental illness. Generally, better resources for education about mental illness would help alleviate this problem, and clearly a solution that works from the bottom up—fixing the problem at its core rather than cleaning up the aftereffects—would be the best long-term solution. A bottom-up solution would not merely serve as damage control after mistreatment occurs but would instead address the root of the problem and prevent it from occurring in the future. Unfortunately, this would not necessarily solve the problems that are more specific to the courts. Several more specifically tailored solutions would be workable to help Ugandan and Ghanaian courts overcome their problems. This mistreatment extends into the legal systems in both countries, indicating a need for rules and regulations that are aimed at how the courts operate. Thus, proposed solutions involve better education for those involved in the criminal justice system, revising the Ghanaian insanity defense, and implementing methods from Western mental health courts to create a more humane environment for mentally ill defendants.

A. Universal Rules Regarding Training and Education for Attorneys and Judges for Mentally Ill Defendants

One of the major problems with the universal human rights treaties set forth by the UN is their vague reference to mental health and how it should be addressed. This is unworkable because it does not create a concrete standard from which countries may base their mental health education and treatment. This loose and vague standard creates a lack of uniformity among societies in general regarding how to handle mental illness; this lack of uniformity in turn extends to court systems. Countries around the world do not all follow the same procedures for training and educating individuals who are involved

in the criminal justice system, so nations are left largely to their own devices to decide what is sufficient.[172] This leads to the mistreatment of mentally ill defendants in countries in countries like Ghana[173] or Uganda[174] where it is decided that a very rudimentary education—or even no education at all—regarding mental illness in the legal system is good enough. Promulgating a treaty to create a detailed, uniform system of educational standards that all attorneys, judges, and law enforcement officers must meet would help alleviate this problem.

An initial concern with a system of this nature might be that nations across the world vary greatly with regards to the resources they have available for this sort of education. This does not only include monetary resources, but also educators, teaching facilities, technology to facilitate the learning process, and so on. This is why such an educational program would need to be universally workable and modifiable based on available resources, and countries with substantial existing resources for mental health education would be obligated to assist countries with little to no resources so as to level the playing field and ensure each nation was receiving equivalent materials for education. Certain standards would be uniform across all countries, such as a set number of learning hours required for successful completion of the program, but other standards might be modified. For instance, in countries where the internet is not as advanced and gaining reliable internet access would impose substantial economic burden, the curriculum would be produced in paper format. This would help ensure that, despite differences in capital, all parties involved in all UN member countries' criminal adjudication processes would receive the same quality of education on this issue without incurring infeasible costs to the government.

Additionally, as part of this educational requirement, lawyers, judges, and law enforcement officers would be required to pass a standardized examination as part of their job requirements and/or bar admissions. This examination would be uniform across all jurisdictions, regardless of the severity of the stigma towards mental illness within the country. While it might be argued that loopholes may be plentiful in this sort of

172. *See id.*
173. *Id.* at 383.
174. *See Critique of Uganda Mental Health Act*, *supra* note 83.

system—for instance, the overwhelming volume of attorneys and law enforcement officers within a country might lead to lackadaisical enforcement of the system—there are methods to minimize them. In this system, UN delegates would be assigned to monitor countries' progress on this program and would ultimately receive the test results for all participants in their assigned countries. Delegates would each be assigned to countries in an attempt to evenly distribute attorneys, judges, and law enforcement officers such that no one delegate is overwhelmed by supervising duties. Countries would be given a hard deadline by which test results would need to be submitted and would face sanctions for failing to adhere to this deadline. Sanctions would come in the form of a fair but harsh fine based on each country's capital.

This solution is a direct response to the UN's multifarious but vague human rights treaties, as it creates more specific guidelines for countries to follow in preventing human rights violations in their criminal justice systems. As noted above, the ICESCR[175] and ICCPR[176] address mental illness only briefly, and in no way is it addressed in conjunction with legal systems. A well-developed system to educate attorneys, judges, and law enforcement officers about the effects of mental illness on a person's behavior and how this might impact criminal activity would not only give nations a clear direction on how to handle mental illness, but would also emphasize the urgency of acknowledging mental health within the legal realm at an international level. Brief and vague references to mental health within human rights treaties allude to a sentiment of apathy surrounding the topic, and in order to ensure fair treatment in courts, this sentiment must be changed.

B. Updating and Reworking the Ghanaian Insanity Defense Will Make the Provisions More Favorable to Defendants

As it currently reads, the Ghanaian insanity defense provision is not defendant-friendly, using outdated and offensive language and failing to recognize a broad scope of mental illnesses that might warrant an insanity defense.[177] In order to create a fairer criminal justice system for defendants with

175. *See generally* ICESCR, *supra* note 31.
176. *See generally* ICCPR, *supra* note 28.
177. *See generally* Adjorlolo, Agboli & Chan, *supra* note 125.

mental illness, this provision must be updated in two major ways: "insane delusion" must be defined, and a provision for protecting individuals who act upon "irresistible impulses" must be added to account for a broader range of mental illnesses. Definitions of terms and further specificity regarding various types of mental illness will not only ease the burden on courts to determine what types of actions constitute a valid insanity defense, but they will also demonstrate a good-faith effort by the Ghanaian legal system to adopt a better understanding of mental illness. The replacement of words such as "imbecility" and "idiocy" with less offensive terminology will also help modernize the act and help minimize the stigma that the act currently perpetuates around mentally ill defendants.

Furthermore, the addition of acting upon "irresistible impulses" as a possible insanity defense would broaden the range of mental illnesses that might be covered by the defense, acknowledging that not all mental illness looks the same and the differences between them are not so black and white. While some might cause delusions that absolve one of culpability, others might cause impulses so strong that acting upon them is subconscious, in which case it might be argued that the defendant cannot be held liable for their actions.[178] Thus, including such provision in the defense signals an acknowledgment of the nuances present within the realm of mental illnesses.

While major, long-term ideological and social changes must take place in order for mistreatment of mentally ill defendants in Ghana to truly become a behavior of the past, these small but meaningful steps will at least address the problems of outdatedness and help shift courtroom attitudes towards those bringing an insanity defense.

C. Slow Implementation of Mental Health Court Practices with the Assistance of Countries with Expertise in the Area Would Help Assimilate Uganda and Ghana to These Standards

Though Ghana has taken the step to acknowledge that mental health courts in the United States and Canada are beneficial and have proven successful, they have not yet implemented their own mental health courts largely due to the prevalence of

178. *See Bipolar Disorder*, *supra* note 95 (manic episodes typically involve reckless and dangerous behavior that one would not normally exhibit in the absence of a manic episode).

negative attitudes held by judges and lawyers towards mentally ill defendants.[179] In both Uganda and Ghana, particularly after first beginning the required educational program as aforementioned, specialized mental health courts could begin to be established with the assistance of the United States and Canada, where mental health courts have already been successfully established.

While it might be argued that this would be patronizing to Uganda and Ghana and would not allow them to take matters into their own hands, the process would take place with as little substantive intervention from the US and Canada as possible, and after initial setup, the newly implementing countries would be left to their own devices to run the courts to their liking. This is not to say that Western methods and ideologies are the "best," as there are extremely problematic aspects of how Western culture handles mental illness and the adjudication system for mentally ill defendants is far from flawless.[180] Ghana has, however, recognized the benefits of mental health courts such as those in the US and Canada, and the best way to perpetuate the practices of these courts throughout the world is to assist other countries in establishing them in their own legal systems.

Ideally, representatives from Canada and the United States would create guidelines for the courts and how they might be established and would then help Ugandan and Ghanaian representatives begin the setup process without disturbing the functioning of these countries' own unique legal systems. New lawyers and judges who expressed interest in the topic would be specially trained in mental health law so there would be a trend towards learning more about how to properly advocate for mentally ill defendants. This would also help address the lack of any sort of health law curriculum in Ghana by creating a precedent program that law schools in various jurisdictions could follow. Thus, establishing these courts would not only create better conditions for defendants, but would create a class of lawyers with deeper knowledge regarding how they can be the best possible advocate for clients of all walks of life.

179. Adjorlolo, *supra* note 13, at 387.
180. *See* Brett, *supra* note 11, at 284.

CONCLUSION

The improper manner in which many mentally ill defendants are treated on an international scale is the result of the pervasive stigma and miseducation regarding what it means to be mentally ill, and this stigma seeps into courtrooms worldwide. While some countries have addressed the issue more directly, countries such as Uganda and Ghana have failed to do so, due largely to their lacking resources, which ultimately results in improper adjudications or disputes during the trial as seen in the cases of Charles Antwi[181] and Daniel Asiedu.[182]

In order to fix the problems that mentally ill defendants face in courts, we must address the criminal justice systems specifically rather than the broader human rights approach that has been adopted in current UN treaties. As previously mentioned, these treaties do not adequately address problems with mental healthcare and how mental illness should be addressed within legal and criminal justice systems worldwide. This is why more direct action must be taken—a treaty setting forth a specific educational plan for countries, changes to existing insanity defense acts, and a clear plan for implementing mental health courts are all viable options to begin the process of changing attitudes towards mental illness in courtrooms and criminal justice systems worldwide.

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181. *See* Charles Antwi, *supra* note 139.

182. *See* Ackah-Blay, *supra* note 149.

* B.S., Tufts University (2016); J.D., Brooklyn Law School (2021). Executive Articles Editor, *Brooklyn Journal of International Law* (2020-2021). I would first like to thank Elizabeth Fudge, Elliot Dizon, Michael Cooper, and Ernira Mehmetaj for their diligent work in helping to develop and revise this note. A special thank you to the many Brooklyn Law School professors and fellow alums who helped make my law school experience as unforgettable and enriching as it was. Finally, thank you to my parents, Doug and Debbie Rabbino, for supporting me in everything I do and everything I am. This note is dedicated to those for whom justice has not been served—may we as lawyers work diligently to make change in the world and continually advocate for the betterment of humankind. All errors and omissions are my own.