

## **Competency to Stand Trial Evaluations in Africa**

**Samuel Adjorlolo, PhD<sup>12</sup>**

**&**

**Kofi Boakye, PhD<sup>34</sup>**

---

<sup>1</sup> Samuel Adjorlolo, PhD, Lecturer, Department of Mental Health, School of Nursing and Midwifery, University of Ghana, P. O Box LG 43, Legon, Accra.

<sup>2</sup> Executive Director, Research and Grant Institute of Ghana. P. O Box GP 4325, Accra Ghana.

<sup>3</sup> Kofi Boakye, Ph.D, Senior Lecturer, School of Humanities and Social Sciences, Anglia Ruskin University, United Kingdom

<sup>4</sup> Affiliated Fellow, Violence Research Centre, Institute of Criminology, University of Cambridge, United Kingdom

## **Abstract**

Competency to stand trial is an important legal safeguard for persons accused of a crime. Defendants have the right to fully participate in any criminal proceedings that involve them. However, for this right to be realized and to ensure procedural fairness, the legal system must ensure that persons accused of crime are of “sound mind” to stand trial. The very nature of the adversarial system of trial requires that defendants are in a position to assist their attorneys by providing them with relevant information about the case and locating witnesses. When issues of incompetency are suspected, or raised, before or during the trial, the court has a duty to request for evaluation from forensic mental health professionals. The outcome of the evaluation is intended to assist the court to decide whether to proceed with a trial or not. Although competency to stand trial is to ensure due process rights and judicial integrity, it has received little scholarly attention across Africa. This chapter will examine competency to stand trial in jurisdictions across Africa. The chapter will first review the history and definition of competency as used in the legal system. Next, we provide an overview of legislations across Africa and selected high income countries. The third section will discuss the evaluation of competency to stand trial, with a focus on the administration of competency evaluation instruments and collateral sources of data. The last section will focus on the disposition of incompetency and competency restoration of incompetent defendants. We conclude with recommendations for future research on competency to stand trial in Africa.

## Introduction and Outline

Competency to stand trial (CST, also known as fitness to stand trial, fitness to plead, and adjudicative competency) is a concept of jurisprudence allowing trials for defendants who cannot participate in the criminal process (due to mental incapacitation and intellectual disability) to be postponed. It is frequently and substantially raised more often than the insanity defence, with available data suggesting that about 60,000 adjudicative competence evaluations are requested in the United States annually, costing an estimated annual expenditure of \$300 million (Zapf, Roesch & Pirelli, 2014). Derived from old English common law, CST is one of the procedural requirements for upholding and maintaining due process rights, judicial sanctity and procedural fairness (Adjorlolo & Chan, 2017). Fundamentally, the posture of the law across jurisdictions is that no one should be tried when they cannot contribute meaningfully and satisfactorily to the criminal adjudication process. The essence of CST was summarized by Lord Edmund-Davies in *R v. Podola* (1960) in Britain as “no man may be brought to trial upon any criminal charge unless and until he is mentally capable of fairly standing trial.” The court is obliged to ensure that defendants are actively involved in criminal proceedings. When issues of incompetency are suspected and/or raised before or during the adjudication process, a request for a CST evaluation is normally made by the court. Forensic mental health professionals such as clinical psychologists and psychiatrists are invited to conduct CST evaluations. The evaluation report is intended to assist the court to decide whether proceedings should be continued for those found to be competent or discontinued for those declared incompetent to stand trial. The literature on CST has gained traction over the years because CST issues are raised substantially more than other psycholegal issues (e.g., insanity at the time of offence). However, relatively little information exists with respect to CST from Africa. To fill this important gap in the literature, the chapter focuses specifically on CST in African settings and is organized as follows; the first section will

examine the history and definition of competency as used in the legal system. This will be followed by an overview of CST legislations across Africa and selected high income countries. The third section will discuss the evaluation of CST, with a focus on the administration of competency evaluation instruments and collateral sources of data. The last section will focus on the disposition of incompetency and competency restoration of incompetent defendants.

### **Competency to Stand Trial Legislations**

The concept of CST originated from the British judicial system (Rogers, Blackwood, Farnham, Pickup, & Watts, 2008). Historically, English common law has prevented defendants from being processed via the judicial system on the grounds that they are mentally competent to participate in their trials (Zapf et al., 2014). That is, the English common law primarily allowed for an arraignment, trial, judgment or execution of a defendant to be stayed until he or she is declared competent. Just like the insanity defence legislation, the English common law concept of CST has had significant influence on CST legislation across the globe, particularly countries constituting the Commonwealth of Nations and the United States (Zapf et al., 2014). Nevertheless, countries have formulated legislation for determining whether a defendant is competent or incompetent to stand trial. This is sometimes based on a landmark ruling which subsequently becomes the standard for CST.

In England and Wales, this is based on the professional interpretation of *Pritchard criteria* (1836) which defined CST as follows; (1) ability to plead; (2) ability to understand evidence; (3) ability to understand court proceedings; (4) ability to instruct a lawyer; and (5) knowing that a juror can be challenged (Rogers et al., 2008). In the United States, CST standard was formulated in *Dusky v US* (1960) where CST is stated as follows; (1) the defendant must have sufficient present ability to consult with defence counsel with a reasonable degree of

rational understanding and (2) a rational as well as factual understanding of the proceedings against him or her. Section 2 of the Criminal Code of Canada 1992 lists the essential ingredients of CST as; abilities to (a) understand the nature or object of the proceedings, (b) understand the possible consequences of the proceedings, and (c) communicate with counsel. In Australia, CST is determined on the basis of the *Presser criteria*, which comprise the following: (1) ability to understand the charge; (2) ability to plead to the charge and exercise the right to challenge; (3) understanding of the basic nature of the proceedings; (4) ability to follow the course of the proceedings in broad terms; (5) ability to understand the substantial effect of any evidence and be able to make a defence or answer to the charge, including the ability to instruct counsel; and (6) have sufficient capacity to be able to decide what defence strategy will be relied upon and make this known to the court and counsel (White, Batchelor, Pulman, & Howard, 2012). In Hong Kong, a former British colony, the legal provision relating to CST is contained in section 75(1) of the Criminal Procedure Ordinance which states that an individual is not competent to stand trial if he labours “under any disability such that apart from this Ordinance it would constitute a bar to his being tried”. Owing to the confusion associated with the terminology ‘under disability’ the Hong Kong court in *R v Leung Tak-Choi* (1995) elaborated on the CST legislation by defining “under disability” as when the defendant lacks ability to understand the charges, instruct defence counsel, challenge jurors, understand the evidence against him or her, and give evidence in defence.

Despite differences in the wording of CST legislations, it is interesting to note similarity in the CST indicators across jurisdictions. As can be seen in Table 1, the discrete court-related functions that are indicative of CST are evident in the CST legislations or standards in England and Wales, United States, Australia and Hong Kong (Adjorlolo & Chan, 2017).

Table 1: *Indicators of Competency to Stand Trial across Jurisdictions*

1	Ability to understand the arrest process
2	Ability to make decisions after receiving advice
3	Ability to understand the current legal situation
4	Ability to maintain a collaborative relationship with counsel and help plan legal strategy
5	Ability to understand the charges, both in nature and severity
6	Ability to understand relevant facts
7	Ability to follow testimony for contradictions or errors
8	Ability to understand the legal issues and procedures
9	Ability to testify relevantly and be cross-examined if necessary
10	Ability to understand potential legal defences
11	Ability to challenge prosecution witnesses
12	Ability to understand the possible dispositions, pleas, and penalties
13	Ability to tolerate stress at trial and while awaiting trial
14	Ability to appraise the likely outcome
15	Ability to refrain from irrational and unmanageable behaviour during trial
16	Ability to appraise the roles of the defence counsel, prosecutor, judge, jury, witnesses, and defendant
17	Ability to disclose pertinent facts surrounding the alleged offence
18	Ability to protect oneself and utilize legal safeguards available
19	Ability to identify witnesses
20	Ability to appraise the likely outcome of the case
21	Ability to relate to counsel in a trusting and communicative fashion
22	Ability to comprehend instructions and advice

### **Competency to Stand Trial Legislations in Africa**

As noted previously, the CST provisions in several African countries are influenced by English common law. These provisions allow for arraignment, trial, and judgment of defendants to be placed on hold if there are indications that the defendant is not competent to stand trial. The

legal provision relating to CST in Ghana is contained in Section 133 (1) of Criminal and Other Offences (Procedure) Act, 1960 (Act, 30; henceforth Act 30) which states that “Where in the course of a trial or preliminary proceedings the Court has the reason to believe that the accused is of unsound mind and consequently incapable of making a defence, it shall enquire into the fact of such unsoundness by causing the accused to be medically examined and shall after the examination take medical and any other available evidence regarding the state of the accused's mind” (see Adjorlolo, Chan, & Agboli, 2016, p.2). The CST in Nigeria is very similar to the CST provision in Ghana. More specifically, Section 223 of the Nigerian Criminal Procedure Act (1963) provides that when a judge or a magistrate holding a trial has reason to suspect that the accused is of unsound mind and as a result is incapable of making his defence, the court shall investigate it, either in the presence of the accused or in his absence if his presence would be against public decency or against his or other persons’ interest. Section 77 of the South African Criminal Procedure Act (CPA) 51 of 1977 also states that “If it appears to the court at any stage of criminal proceedings that the accused is by reason of mental illness or mental defect not capable of understanding the proceedings so as to make a proper defence, the court shall direct that the matter be enquired into and be reported on in accordance with the provisions of section 79” (see Pillay, 2014, p.49). The CST legislations in Africa and elsewhere have recognized essentially that only defendants who are competent to stand trial should be processed via the justice system. Compared with the legislations from outside Africa, it is evident that the African CST legislations are somewhat vague and ambiguous. With the exception of understanding trial proceedings which appear to resonate across the legislations, other specific indicators of whether a defendant is competent to stand trial or otherwise are not explicitly provided. Nevertheless, the processes involved in determining whether defendants are competent for trial proceedings, or

otherwise, appear universal and they include the following: (1) raising the question and requesting for competency examination; (2) the CST evaluation stage; (3) judicial determination CST; (4) disposition and provision of treatment to incompetent defendants; and (5) re-hearings on competency of incompetent defendants, or release of incompetent defendants (Adjorlolo, Chan, et al., 2016). These are discussed briefly below under the broad heading of CST evaluations in accordance with the focus of this chapter.

### **Competency to Stand Trial Evaluations**

CST is a legal, rather than a mental health concept, which means that the ultimate decision relating to the competency or otherwise of a defendant is the sole decision of the court. The decision-making process of the court is, however, aided by assessment reports relating to the defendants mental states. Because mental health problems and intellectual disabilities are the major factors contributing to incompetence to stand trial, the courts tend to rely on mental health professionals for their expert opinion which is contained in the assessment report. Issues relating to a defendant's CST can be raised by the defence and prosecution attorneys and sometimes the judge or magistrate. When the issue is raised by the defence or prosecution attorney, the court must be convinced or satisfied with the reasons or facts presented before a request for a CST evaluation can be made. To ensure due process rights and to uphold sanctity of the judicial system, the courts normally grant requests for CST evaluation. Yet, in some instances, such requests can be denied by the courts for several reasons, including the perception that raising issues relating to CST is a strategy to prolong the criminal adjudication process or the reasons proffered are not convincing. This is illustrated by an ongoing high-profile case, *Republic vs. Daniel Aseidu* (2018) in Ghana where the defendant, Daniel Asiedu was accused of murdering a member of parliament of Ghana. A request by the defence attorney during one of the court

proceedings to have the defendant mentally examined for CST, had been turned down by the sitting judge following a brief interaction with the defendant (Adjorlolo, 2016). There are also instances where CST is not raised during the trial process although the defendant's utterances and contemporaneous behaviors are suggestive of incompetency. This mostly happens when there is a lack of, or inadequate legal representation of defendants from poor socioeconomic backgrounds because of the high cost of legal fees, thus, making it possible for their mental status to be overlooked during the adjudication. One such case, *Republic vs. Charles Antwi* (2016) that has attracted public attention in Ghana involved Charles Antwi who was accused of attempting to murder then sitting president, John Dramani Mahama. The defendant, after his arrest, made several exaggerated and illogical claims (e.g., the presidential seat belongs to him and was stolen by the president) suggestive of mental incapacitation. This was widely reported by both print and electronic media in Ghana. The defendant's mother also told local media that her son had mental health problems. However, neither the police nor the court referred him to a psychiatric hospital or requested a mental state examination (Adjorlolo, 2016). Last, although a defendant can waive the right by not asserting it, the court and the prosecution would fail in their duty of ensuring a fair trial if they did not raise the matter of CST when reasonable grounds exist (Afolayan & Onoja, 2017).

### **CST Evaluation Process**

As stated previously, when the court is satisfied that CST is needed to aid the adjudication process, a request for CST evaluation is made. In Ghana and Nigeria the request is directed to the head of any nearby public psychiatric hospital in the country. In South Africa, the referring court often appoints a panel of two or three psychiatrists if the alleged offence involved serious violence and the discretion to appoint a clinical psychologist as well (Swanepoel, 2015). In line

with international practice, the referral letter must specify the kind of request needed and must contain other pertinent information to assist in the evaluation. This is because the assessment protocols appear to be specific to the psycholegal question, which include mental state at the time of offence (insanity evaluation), mental state during criminal adjudication (CST evaluation) and mental capacity for custody (mental capacity to undertake custodian roles). In some African countries like Ghana, the request can be ambiguous - The letter does not explicitly inform mental health professionals on the kind of psycholegal issue the court is interested in resolving with their professional help. Therefore, the kind and depth of assessment conducted is mostly guided by professional discretion, the facts of the case, and experience with forensic assessments. Just like insanity evaluations, the CST evaluation is data driven. Data is obtained from different sources and carefully integrated to form an opinion. In addition to the review of past medical and social histories, psychiatric or psychological assessments are conducted to examine the defendant's mental state. The tests conducted are traditional, mainstream psychiatric or psychological tests that were designed as forensic mental health assessment tools. The major reason underpinning the continuous use of traditional psychiatric assessment measures to assess competency is the lack or limited number of forensic mental health professionals on the African continent (Mars, Ramlall, & Kaliski, 2012; Ogunlesi, Ogunwale, Roos, De Wet, & Kaliski, 2012). In Ghana, there are no mental health professionals with extensive training in forensic mental health issues, including assessment and rehabilitation. The usual practice, therefore, is to extend mainstream psychiatric or psychological practice to the forensic arena through experience. The practice is that the accused is often referred to a qualified and licensed psychiatrist for examination, although under some limited circumstances, clinical psychologists may be called upon to perform this assessment. The law recognises clinical psychologists as

experts on mental health issues, provided they document and demonstrate their expertise through training, practice and experience (Adjorlolo, Agboli, & Chan, 2016). In Western countries, specialized tests called competence assessment tools have been developed. Early tests include the Competency Screening Test, the Competency Assessment Instrument, the Interdisciplinary Fitness Interview and the MacArthur Competence Assessment Tool-Criminal Adjudication (Zapf et al., 2014). These assessment instruments are developed and validated on forensic samples and are intended to assess distinct but somewhat interrelated aspects of competency. For example, the MacArthur Competence Assessment Tool-Criminal Adjudication was developed to assess three main indicators of CST: understanding, reasoning and appreciation. The Interdisciplinary Fitness Interview, on the other hand, assesses both legal and psychopathological aspects of CST. Despite the debate over which of the assessment tools is best for CST evaluation, there is a general consensus that these tools are effective and have contributed significantly to clinical opinion formation in relation to CST (Pirelli, Gottdiener, & Zapf, 2011). However, the utility of these tests in the African context could be limited or raise several professional and ethical issues given that they are not standardised on African samples. This casts doubt on the extent to which they could accurately, reliably or validly address the psycholegal questions, as the acceptance and utility of forensic assessments partly depend on the question of validity and reliability of the evaluations (Hilsenroth & Stricker, 2004). It is not uncommon for tests validated or developed on Western samples to be administered in African samples. However, given the implication of the assessment results on the integrity and sanctity of the judiciary, adherence to due process rights and upholding the fundamental human rights of defendants, assessment instruments that incorporate specific cultural nuances may appear more promising and practically useful. It is against this background that the Specialty Guidelines for Forensic Psychologists explicitly

admonish forensic evaluators to ‘use assessment instruments whose validity and reliability have been established for use with members of the population assessed’ (Adjorlolo & Chan, 2015).

Upon completion of the assessment, evaluators are expected to furnish the court with reports that are not excessively burdened with jargon and to summarise the method employed in gathering the relevant data, findings and observations. The report of the enquiry also includes a diagnosis of the defendant's mental condition. Information about the background of the evaluators may be provided, including training, qualifications, experience and competence. The courts usually accept mental health professionals’ judgments about competency, particularly when a major psychiatric disorder has been diagnosed. Indeed, across several African countries, issues of competency are raised when there are indications that a defendant is not mentally sound (Adjorlolo, Chan, et al., 2016; Swanepoel, 2015). Thus, a confirmation of unsound mind or mental disorders by a mental health professional and his or her conclusions regarding competency is usually accepted by the court without any detailed review as it is normally the case for assessment in insanity defence trials.

### **Difficulties with CST Evaluations**

In conducting CST evaluations, mental health professionals are faced with substantial challenges linking the assessment finding to the psycholegal issue. This difficulty arises mostly because of the nature of the CST legislations on the continent, as noted above. For example, the key words in the legislations in Ghana and Nigeria are “unsound mind” and “incapable of making a defence”. Clinical enquiries into “unsound mind” and its causal factors appear very broad and may not be restricted to only the presence of a mental disorder, but also other conditions such as physical illnesses and brain injuries. The inherent difficulty is linking the “unsound mind” to “incapable of making a defence”. The term “incapable of making a defence”

may seem imprecise, broad and ambiguous to psychiatrists and psychologists without the requisite training in forensic mental health or are not familiar with forensic practices. The terminology may encompass several of the abilities enumerated in Table 1, such as understanding the charges, and the nature of proceedings; (2) ability to instruct and consult with the defence counsel; (3) understanding the evidence, and also to challenge witnesses, and jurors; (4) understanding the roles of the judges, the prosecution and the defence counsel. Without insight into these specific indicators of CST, many mental health professionals would offer an opinion that the court may not find useful. Indeed, the mere presence of a mental disorder or evidence of unsound mind does not indicate incompetency unless it is linked to some agreed upon indicators. According to the Criminal Code of Canada (1992) clinicians, for instance, can formulate their clinical opinion based on whether the defendant can “(a) understand the nature or object of the proceedings, (b) understand the possible consequences of the proceedings, or (c) communicate with a counsel”. On this basis, others have argued for a revision to be made to the legislations to contain some salient indicators of CST to help streamline the assessment and opinion formation processes (Adjorlolo, Chan, et al., 2016). Another important consideration relates to whether “incapable of making a defence” encompasses competency to waive counsel, and competency to plead guilty. This concern has also been raised in Canada about whether competency is a unitary construct, or whether there should be different thresholds of competencies for different offences (Adjorlolo, Chan, et al., 2016). Although these have not been resolved concretely, there is some understanding and agreement, at least among researchers, that the evaluation and the opinion formation are guided by the specific demands and circumstances of each referral question (See Grisso, 2003; Zapf et al., 2014). Therefore, the courts in Africa must indicate the specific competency abilities required in each case.

Across the continent, there is a significant backlog of individuals referred for CST or insanity evaluations, putting pressure on mental health facilities and the courts. These backlogs are mostly due to; (1) examinations requested directed mainly to psychiatrists, (2) the limited number of psychiatrists, (3) limited number of forensic mental health facilities in the country and (4) limited follow-up by the referring court (Adjorlolo, 2016; Pillay, 2014). In 2012, a position statement by the South African Society of Psychiatrists (SASOP) noted with concern that there were only 10 units in the country designated to conduct CST examinations (van Rensburg, 2012). The complexity of the case at hand and variations in the assessments across institutions appear to contribute to delays. Whereas some facilities use a multidisciplinary team approach, others rely on the services of a sole professional. There are notable consequences of having long lists of defendants awaiting assessments. These include the (1) potential for harm such as suicide, self-harm, and victimization given that symptoms of mental illness worsens in the absence of treatment; (2) overcrowding of jails and mental health facilities; and (3) increase financial costs to taxpayers. Obviating these challenges calls for several interventions, including expanding the pool of evaluators (e.g., including more psychologists), increasing the number of evaluation facilities and screening and triaging of referred cases (Gowensmith & Robinson, 2017)

### **Disposition of Incompetent to Stand Trial Defendants**

Defendants declared incompetent to stand trial would have the charges stayed or proceedings postponed, while they are committed to treatment for competency restoration (Adjorlolo, Chan, et al., 2016; Afolayan & Onoja, 2017; Swanepoel, 2015). In this regard, the Criminal Procedure of Act of Ghana (Act 30) theoretically provides two routes (i.e., government commitment and self-commitment to treatments) to competency restoration; however practically, incompetent

defendants are committed to treatment by the government at a psychiatric hospital or any other place designated by the court. This is explicitly exemplified in Section 76 of the Mental Health Act (2012; Act 846) of Ghana which states that “an offender assessed and found not fit to stand trial shall have the charges stayed while undergoing treatment.” When a defendant is in custody, he or she shall be deemed to be in the lawful custody of the person or the authority in whose custody he or she was at the time of such committal (Swanepoel, 2015). During the course of treatment in Ghana, the head of the psychiatric institution has the obligation to notify the state attorney on whether a defendant is (1) capable of making a defence, and/or (2) fit to be discharged unconditionally. If the state is not interested in pursuing the case further by invoking the jurisdiction of the referral court, the defendant is discharged (i.e., absolute discharge) unconditionally. This practice is similar to the practices in several common law and Commonwealth countries such as England and Wales (Rogers et al., 2008). Analysts have noted that the state decision to discontinue criminal proceedings is influenced by several factors, including (1) the type and severity of the offence; (2) the type and the nature of the mental illness; (3) public interest in and the media coverage of the case; (4) lack of evidence to sustain a conviction; (5) lack of requisite resources (Adjorlolo, Chan, et al., 2016). In other African countries such as Nigeria and South Africa, however, the defendants declared competent to stand trial are taken back to court for proceedings to continue (Afolayan & Onoja, 2017; Swanepoel, 2015). As stated previously, the criminal provisions requires that mental illness or mental defect must be present before the question of whether the accused is competent to stand trial is raised (Adjorlolo, 2016; Swanepoel, 2015). Therefore, the critical first stage is to determine whether the defendant is suffering from a mental illness or psychological or psychiatric factors that are associated with the request for assessment (Swanepoel, 2015). It is, therefore, unsurprising that

Section 138 (1 and 2) of the criminal procedure Act of Ghana Act 30, states that the court shall proceed with preliminary proceedings or trials in the event that the defendant is not insane but simply cannot be made to understand the proceedings. However, in the event that the defendant is tried by a lower court, the decision reached regarding the culpability or otherwise of the defendant shall be forwarded to high court to make an appropriate order (Adjorlolo, Chan, et al., 2016). This procedure raises the possibility that some defendants are only physically present in the law court but mentally absent.

### **Conclusion and Recommendations for Research**

This chapter examined an important criminal procedural issue, competency to stand trial, in the judicial systems of particular African countries. Defendants have the right to fully participate in any criminal proceedings that involve them. The adversarial nature of the criminal justice system across the continent means that the ability of defendants to assist their attorneys by providing them with relevant information about the case and locating witnesses is extremely important. Despite the importance of CST in ensuring due process rights and judicial integrity in a continent known for human rights abuses, scholarly interest in this psycholegal issue is low, compared with the insanity defence. With the exception of South Africa, Ghana and Nigeria, there is a general paucity of empirical literature on CST on the African continent. This observation calls for increased scholarly interest in this topical issue. Among the areas in need of scholarly attention are the base rates of competency, legal and extra-legal factors affecting competency decision making, a comparative analysis of CST across countries in Africa, the characteristics and demographic backgrounds of defendants who have utilized the CST legislation, and how competency registration is undertaken.

On the question of base rate, it would be helpful to identify the number of defendants declared as CST from the total number of defendants who have raised the competency issues and have been referred for assessment. A low base rate would indicate that the majority of people referred for assessment are not found to have mental health condition that affect their competency to stand trial, whereas a high base rate would suggest that more defendant are declared incompetent to stand trial because of presence of mental disorder. Insight into decision making relating to CST is important to ensure that the fundamental human rights of defendants with respect to fair trials are not truncated by personal biases, stigmatization of mental illness, negative attitudes, stereotypes and prejudice against defendants standing trial. Since jurors have instrumental roles in the criminal adjudicative process, it is important to understand their decision-making process, including the impacts of judges instructions on their decision making. Likewise, research into the characteristics of defendants found to be incompetent to stand trial would help forensic mental health professionals to profile defendants raised for CST evaluation. Competency restoration is another crucial research area. Based on the authors experience with the mental health system in Ghana, there is no special CST restoration program beyond improving the behavioral repertoire of the defendants via the psychopharmacological agents and sometimes with psychotherapy. It would be interesting to unearth the practices in other African countries and more importantly to trace how defendants who have been declared competent participate in the trial process by assisting their attorneys and their understanding or demonstration of the discrete court-related functions.

As noted previously, clinical opinion and reports regarding a defendant's CST is largely based on the outcome of the assessment process. This means that issues relating to the validity and reliability of the assessment tools should be prioritized. The majority of the existing forensic

assessment instruments developed for assessing CST are based on samples from Western countries. Given the sociocultural and geopolitical differences between Western and African countries, it follows that measures developed in the former may have little utility in the latter. This observation calls for studies to develop and validate measures to assess for CST in the African context. In doing so, efforts should be made to address gender invariance of the measures to ensure that the assessment measures or scores are not biased (i.e., under or overestimated) for one group. Furthermore, the role and involvement of mental health professionals in the assessment process and decision making in relation to CST should be investigated. For example, it would be useful to understand how assessment of CST is carried out in different jurisdictions across Africa, and whether more considerations are given to some factors than others and why. Also important is understanding the decision-making model utilized to link the vague and ambiguous psycholegal construct of insanity to the clinical findings of mental disorder.

## References

- Adjorlolo, S. (2016). Diversion of individuals with mental illness in the criminal justice system in Ghana. *International Journal of Forensic Mental Health, 15*(4), 382-392.
- Adjorlolo, S., Agboli, J. M., & Chan, H. C. (2016). Criminal responsibility and the insanity defence in Ghana: The examination of legal standards and assessment issues. *Psychiatry, Psychology and Law, 23*(5), 684-695.
- Adjorlolo, S., & Chan, H. C. (2015). Forensic assessment via videoconferencing: Issues and practice considerations. *Journal of Forensic Psychology Practice, 15*(3), 185-204.
- Adjorlolo, S., & Chan, H. C. (2017). Determination of competency to stand trial (fitness to plead): An exploratory study in Hong Kong. *Psychiatry, Psychology and Law, 24*(2), 205-222.
- Adjorlolo, S., Chan, H. C. O., & Agboli, J. M. (2016). Adjudicating mentally disordered offenders in Ghana: The criminal and mental health legislations. *International journal of law and psychiatry, 45*, 1-8.
- Afolayan, A., & Onoja, E. (2017). THE PLIGHTS OF MENTALLY ILL PERSONS UNDER THE CRIMINAL JUSTICE SYSTEM IN NIGERIA. *Ajayi Crowther University Law Journal, 1*(1).
- Gowensmith, W. N., & Robinson, K. P. (2017). Fitness to stand trial evaluation challenges in the United States: Some comparisons with South Africa. *South African Journal of Psychology, 47*(2), 148-158.
- Hilsenroth, M. J., & Stricker, G. (2004). A consideration of challenges to psychological assessment instruments used in forensic settings: Rorschach as exemplar. *Journal of personality assessment, 83*(2), 141-152.
- Mars, M., Ramlall, S., & Kaliski, S. (2012). Forensic telepsychiatry: a possible solution for South Africa? *African journal of psychiatry, 15*(4).
- Ogunlesi, A., Ogunwale, A., Roos, L., De Wet, P., & Kaliski, S. (2012). Forensic psychiatry in Africa: prospects and challenges.
- Pillay, A. L. (2014). Competency to stand trial and criminal responsibility examinations: are there solutions to the extensive waiting list? *South African Journal of Psychology, 44*(1), 48-59.
- Pirelli, G., Gottdiener, W. H., & Zapf, P. A. (2011). A meta-analytic review of competency to stand trial research. *Psychology, Public Policy, and Law, 17*(1), 1.

Rogers, T., Blackwood, N., Farnham, F., Pickup, G., & Watts, M. (2008). Fitness to plead and competence to stand trial: A systematic review of the constructs and their application. *The Journal of Forensic Psychiatry & Psychology*, 19(4), 576-596.

Swanepoel, M. (2015). Legal aspects with regard to mentally ill offenders in South Africa. *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad*, 18(1), 3237-3258.

van Rensburg, B. J. (2012). The South African Society of Psychiatrists (SASOP) and SASOP State Employed Special Interest Group (SESIG) position statements on psychiatric care in the public sector. *South African Journal of Psychiatry*, 18(3), 16.

White, A. J., Batchelor, J., Pulman, S., & Howard, D. (2012). The role of cognitive assessment in determining fitness to stand trial. *International Journal of Forensic Mental Health*, 11(2), 102-109.

Zapf, P. A., Roesch, R., & Pirelli, G. (2014). Assessing competency to stand trial. In I. B. Weiner & R. K. Otto (Eds.), *The handbook of forensic psychology* (4th ed, pp. 281–314) United States: Wiley.

## **STATUTES CITED**

Dusky v United States (1960) 362 US 402.

R v Leung Tak-Choi (1995) 2 HKCLR 32

R v Podola [1960]1 QB 325