

**FIGHT FOR JUSTICE:
CHALLENGES TO THE APPROACHES OF LAW CLINICS IN PRETRIAL
JUSTICE IN NIGERIA**

by

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Abstract

Pretrial Justice encompasses pretrial detention, early access to legal assistance, rights of pretrial detainees, and a fair pretrial system. Unfortunately, in Nigeria, there are human rights violations observed within the pretrial system. For instance, pretrial detention is an indispensable tool within the pretrial system that allows the temporary restriction of the personal liberty of arrested persons by either the investigating authority or the court. However, the application of pretrial detention has been susceptible to abuses and arbitrary use, thereby subjecting pretrial detainees to several human rights violations like torture, unfair trial, no access to justice, no legal representation, etc.

Law clinics, originally conceived to provide practical training to law students, have proven instrumental in promoting pretrial justice by promoting the protection of pretrial detainees' rights to counsel, fair trial, personal liberty, and overall access to justice. Since its inception in 2004, Law Clinics in Nigeria have adopted several approaches to promote the protection of the rights of pretrial detainees. While they have achieved remarkable success in these approaches, thereby attaining recognition as non-state legal aid providers among justice actors in Nigeria such as the Legal Aid Council, Nigerian Bar Association, Judiciary, Law Enforcement, and the Correctional Services, these successes do not come without strong challenges.

The main questions this research addresses are: What are the approaches of the law clinics in promoting pretrial justice and what challenges do the law clinics face in this regard? This research adopts a qualitative approach that extends existing literature addressing the approaches and challenges of law clinics by Sekinat Adalakun, Ernest Ojukwu et al, and Odi Lagi et al, and provides up-to-date insights through interviews with law clinic students and law clinic coordinators/staff, and with the Network of University Legal Aid Institutions, which is the network/body of all law clinics in Nigeria. The focus on recent approaches and challenges of the law clinic provides up-to-date insight on the data from the literature which is at least 5 years old. To answer the question, this research hinges on Open Society's definition to elucidate pretrial justice, outlines the rights of pretrial detainees, and reviews the flaws in Nigeria's pretrial system. Additionally, it describes what law clinics are, their operations, their approaches to promoting pretrial justice, and their challenges. The findings of this research show that law clinics adopt approaches such as pro bono services/legal aid, advocacy, mentorship, and collaboration in promoting pretrial justice. Furthermore, the findings identify challenges, highlighting prison breaks security and ethical dilemmas.

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INTRODUCTION

Law Clinics around the world have been instrumental in criminal justice and pretrial justice. As part of its social justice component, law clinics offer pro bono services to members of their community including persons in the criminal justice and the pretrial system and this is no different for the law clinics in Nigeria. One of the early advocates of Law Clinics in Nigeria, Ernest Ojukwu, has authored literature that examines law clinics' contribution to legal aid in Nigeria¹ and, how the law clinic interacts with the different institutions and criminal procedures of the criminal justice system in Nigeria.² Through its approaches, the law clinic has achieved success in pretrial justice. Samuel Chukwu highlighted some of these successes which include the “symbiotic relationship” that was created between the Abia State University (ABSU) Law Clinic and the Abia State Prison in 2008 that fostered legal aid to pretrial detainees in the prison from 2008 till-date. Also, the successes of the University of Abuja in securing the release of pretrial detainees, in 2014, it secured the release of 34 pretrial detainees from prison.³ Under the Reforming Pretrial Detention in Nigeria (RPDN) Project, participating law clinics provided pro bono legal services to 507 pretrial detainees between 2018-2022, and by 2022 through the law clinics' efforts, 121 of the pretrial detainees' cases were completed (“56 pretrial detainees discharged; 49 released on bail; 5 acquitted; 5 cases were struck out and 6 pretrial detainees

¹ Ernest Ojukwu and Mahmud Yusuf, “Mapping the Role of Law Clinics Under the Legal Aid Act of Nigeria, ” (2022) International. Review of Law, Volume 11, Issue 3. Pg 202-204 <https://journals.qu.edu.qa/index.php/IRL/article/view/2922> Last Accessed 17 May 2024.

² Ernest Ojukwu, Yemi Akinseye-George, Isa Hayatu Chiroma; Sam Erugo; Idorenyin Eyo; C.K. Nwankwo; Amari Omaka “Handbook on Prison Pre-trial Detainee Law Clinic”, (Network of University Legal Aid Institutions Nigeria 2012). <https://nulai.org/document/handbook-on-prison-pre-trial-detainee-law-clinic/> Last Accessed 17 May 2024.

³ Odinakaonye Lagi; Dr. E.E. Akhigbe; Stanley Ibe; Tosin Oke; Joy Maduafor; Onuche Samson Ojodomo; Samuel Chukwu; Bernard Ajegba; Emmanuel C. Emerenini. “Campus-Based Law Clinics in Criminal Justice Administration in Nigeria”, (Network of University Legal Aid Institutions Nigeria, 2019). <https://nulai.org/document/campus-based-law-clinics-in-criminal-justice-administration-in-nigeria/> Last Accessed 17 May 2024.

were convicted and sentenced”).⁴ Though they achieve successes, the law clinics also face a lot of challenges in their quest to promote pretrial justice.

This research primarily focuses on the challenges Law Clinics experience in their role as non-state⁵ actors in promoting pretrial justice in Nigeria. The country’s legal aid system is overwhelmed and some of the biggest challenges are funding, and insufficient staff, all of which have contributed to the flaws in Nigeria’s pretrial justice.⁶ Awareness, publicity, and accessibility to the Legal Aid Council of Nigeria is another challenge because many Nigerians in need of legal aid lack the information on what the Legal Aid Council is and how to access it.⁷ The Law Clinics have tried to breach the gaps in legal aid in Nigeria. Law clinics are located within all law schools or tertiary institutions with a law faculty, thus creating an awareness of its existence and its pro bono services are available to all members of the communities. Through reviews of scholarly literature and qualitative data gathered the author examines the approaches that the law clinics adopt as non-state actors in promoting pretrial justice in Nigeria, and the challenges it also faces in doing so.

This research adopts a socio-legal and qualitative methodological approach. It reviewed the below-mentioned literature as well as conducted semi-structured interviews, in which open-ended questions were used, allowing participants to give as much information as they were willing to share in line with the research theme. The goal of adopting this methodology is to

⁴ Network of University Legal Aid Institutions Annual Report (2022). <https://nulai.org/document/nulai-nigeria-2022-annual-report/> Last Accessed 17 May 2024.

The Law Clinics that participated in the RPDN project are: Baze University Law Clinic, Nasarawa State University Keffi (NSUK) Law Clinic, Nile University Law Clinic, and the University of Abuja Law Clinic. These law clinics provided pro bono legal services to pretrial detainees at the Medium Security Custodial Centers in Keffi, Kuje and Suleja.

⁵ Supra Ojukwu & Yusuf (2022).

⁶ Unini Chioma, Legal Aid in Nigeria: Challenges and Prospects, (2022). https://thenigerialawyer.com/legal-aid-in-nigeria-challenges-and-prospects/#_ftn9 Last Accessed 17 May 2024. Adewumi Ibrahim Adeyemi, The Legal Aid Council in Nigeria: Challenges and Possible Solutions, (2017) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3547025 Last Accessed 17 May 2024.

⁷ Ibid. Adeyemi

give a human experience to the literature reviewed, thus creating a practical understanding of the law clinics' challenges in pretrial justice.

The first chapter of this research focuses on Pretrial Justice. One cannot talk about pretrial justice without talking about pretrial detention. This is because Pretrial detention is imperative to the criminal justice system. After all, it is an exception to the rights to personal liberty, and freedom of movement, thus allowing the temporary custody of persons suspected to have committed a crime. While it is indispensable for ensuring justice, the excessive use, arbitrary, and other forms of abuse of pretrial detention have formed human rights violations that are often overlooked.⁸ Victims of arbitrary pretrial detention could experience several forms of human rights violations such as torture or cruel treatment, denied access to legal representation/legal services, prolonged detention without fair trial, and denied access to justice, etc. There are no formal definitions of pretrial justice. But the one definition that could fit it is published by the Open Society. It refers to Pretrial Justice as encompassing human rights-based policing, lawful pretrial detention or effective alternatives to pretrial detention, early access to legal assistance, accessible, fair, and transparent justice systems, and in the Nigerian context, speedy trial⁹. All these fundamental rights and components in pretrial justice are provided for in the Nigerian Constitution and other Laws governing the Nigerian Criminal Justice Sector. However, there is a big challenge with its implementation. This chapter discusses the legal provisions for pretrial justice and identifies the gaps in what the law says and how the law is not implemented. To achieve this, the author engaged works of literature such as “Mapping the Role of Law Clinics under the Legal Aid Act of Nigeria” by Ojukwu &

⁸ Open Society Justice Initiative “Improving Pretrial Justice: The Roles of Lawyers and Paralegals” (Open Society Foundations 2012). <https://www.justiceinitiative.org/uploads/ce76d68b-747d-4743-a594-4cd18d1759cb/improving-pretrial-justice-20120416.pdf> Last Accessed 26 March 2024.

⁹ <https://www.justiceinitiative.org/publications/what-pretrial-justice> Last Accessed 26 March 2024.

Yusuf,¹⁰ the “Handbook on Prison Pre-trial Detainee Law Clinic” by Ojukwu et al¹¹, Law Clinics and Access to Justice for Pretrial Detainees in Nigeria by Omidoyin & Oniyinde,¹² Pre-Trial Detention: An Abuse of Human Rights and a Major Contributor to Prison Congestion in Nigeria -A Critical Analysis by Obiora Anne Amuche,¹³ and Improving Pretrial Justice: The Roles of Lawyers and Paralegals” by the Open Society Justice Initiative.¹⁴ The engagement provides a good understanding of the different institutions and criminal procedures of the criminal justice system in Nigeria, the law clinics as a non-state actor that provides legal aid under the Nigerian Legal Aid Act 2011, the interaction between law clinics and other actors of the pretrial system in Nigeria, challenges of pretrial justice in Nigeria caused by arbitrary or abuse of pretrial detention, and the challenges that pretrial detainees experience. It also referred to the Nigerian Constitution, the Legal Aid Act of Nigeria 2011, the Administration of Criminal Justice Act 2015, and other relevant Laws to understand the use of pretrial in the criminal justice system in Nigeria.

The second chapter focuses on the general concept of Clinical Legal Education, the Law Clinic, and its approaches to pretrial justice in Nigeria. An understanding of law clinics is incomplete without an understanding of Clinical Legal Education. This is because CLE is the foundation upon which law clinic was formulated. Alper Uyumaz and Kemal Erdoğan referred to legal clinic or law clinic as a term used for where law school students receive a hands-on or practical experience by utilizing the theoretical information they are taught to practice. It is also referred to as a teaching methodology to teach law students how to apply their abstract and theoretical

¹⁰ Supra Ojukwu and Yusuf 2022.

¹¹ Supra, Ojukwu, et al, 2012.

¹² Taiye Joshua Omidoyin and Omolade Oniyinde. Law Clinics and Access to Justice for Pretrial Detainees in Nigeria. Nnamdi Azikiwe University Journal of International Law and Jurisprudence Vol 10, No.1 (2019)

¹³ Obiora Anne Amuche Pre-Trial Detention: An Abuse of Human Rights and a Major Contributor to Prison Congestion in Nigeria -A Critical Analysis. (2018) Port Harcourt Law Journal, 2018, Volume 7, Number 2.

¹⁴ Supra, Open Society Justice Initiative 2012.

information while solving juridical disputes.¹⁵ This research engages works of literature such as *Challenges and Prospects of Legal Education in Nigeria: An Overview* by Madubuike-Ekwe, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice* by Jane H. Aiken and Stephen Wizner, and *Clinical Legal Education as an Instrument to Address Access to Justice: A Critical Analysis of the Clinical Movement in Germany* by Hannah Franz. This chapter examined what Clinical Legal Education means, and its history and evolution in the world, and Nigeria. To give more insight into the approaches and activities adopted by law clinics in Nigeria in pretrial and criminal justice, the author interviewed law clinic teachers and students, and engaged texts such as *The “Campus-Based Law Clinics in Criminal Justice Administration in Nigeria”* by Odi Lagi et al¹⁶, and *Role of Clinical Legal Education in Social Justice in Nigeria* by Olanike Sekinat Adalakun.

The third chapter focuses on the challenges of the law clinics in pretrial justice. The literature by Odi Lagi et al, Ojukwu et al, and Adalakun (mentioned above) was engaged to give a background on some of the challenges that the law clinics face. Furthermore, the research includes data obtained from interviews conducted with law clinic participants. The “Campus-Based Law Clinics in Criminal Justice Administration in Nigeria” by Odi Lagi et al, amongst other things, explores the historical development of pretrial detainee law clinics in Nigeria, and the role of campus-based law clinics in the administration of criminal justice in Nigeria and the challenges of the law clinics in its pro bono legal services. These include law clinics’ capacity to continue providing legal assistance to its clients, and the limitation of students’ practice in Nigeria.¹⁷ *The Role of Clinical Legal Education in Social Justice in Nigeria* by Olanike Sekinat Adalakun analyses the approaches employed by some of the Nigerian universities in their

¹⁵ Alper Uyumaza, Kemal Erdoğanb. *The Theory of Legal Clinic in Education of Law*, 2015. <https://www.researchgate.net/publication/277656406> *The Theory of Legal Clinic in Education of Law* Last Accessed 3 May 2024.

¹⁶ Supra Odi et al 2019.

¹⁷ Ibid.

clinical legal education program, highlighting some benefits of CLE and giving a background to some of the general challenges law clinics in Nigeria. These include funding, the level of acceptance, and the availability of qualified staff.¹⁸ The Handbook on Prison Pre-trial Detainee Law Clinic by Ojukwu et al, gave a detailed breakdown of the different institutions and criminal procedures of the criminal justice system in Nigeria, and the challenges of pretrial law clinics¹⁹. While the literature by Odi et al was published in 2019 (5 years ago), Adalakun was in 2017 (7 years ago), and Ojukwu et al were 2012 (12 years ago), some of the challenges identified by them still exist. However, some of the challenges identified have taken different dimensions and there are new challenges that the law clinics face that were not addressed by the literature. This could be attributed to the changes in policies in the education system in Nigeria and the criminal justice system, the creation of new law clinics, the expansion of clinical projects, and recent happenings. To identify these new challenges, this chapter engages law clinic students and law clinic teachers, through interviews, to discuss the challenges that their law clinics experience in its pretrial justice activities. There was also an interview with the Network of University Legal Aid Institution, the institution that pushed for the establishment of clinical legal education and law clinics in Nigeria, as well as the network/body of all law clinics in Nigeria. NULAI through its Access to Justice objective has been a foundational support to the law clinics, especially in their promotion of pretrial justice in Nigeria. Since the author of this research could not interview all the law clinics in Nigeria working on pretrial justice, the interview with NULAI looked at the challenges peculiar to law clinics in Nigeria that engage in pretrial projects.

¹⁸ Olanike Sekinat Adalakun, Role of Clinical Legal Education in Social Justice in Nigeria (2017) Asian Journal of Legal Education, volume 5 https://www.researchgate.net/publication/321173756_Role_of_Clinical_Legal_Education_in_Social_Justice_in_Nigeria Last Accessed 28 March 2024.

¹⁹ Supra Ojukwu, et al 2012

These texts are relevant to this research because they address related themes such as clinical legal education, the law clinic, and its connection with pretrial justice and criminal justice, as well as highlight challenges the law clinics face which also affect the clinic's approaches to pretrial justice. The Campus-Based Law Clinics in Criminal Justice Administration in Nigeria and The Handbook on Prison Pre-trial Detainee Law Clinic were written by authors who participated in the development of law clinics including pretrial law clinics in Nigeria, showcasing a description of the practical experience approach. The Role of Clinical Legal Education in Social Justice in Nigeria by Adelakun employed a literature review approach and questionnaires to law clinic students who participated in law clinic competitions like client interviewing and counseling competitions to identify the benefits of CLE and as well-conducted interviews with law clinic administrators to identify the general challenges of law clinics in Nigeria. This research supports the claims of Adelakun, Ojukwu et al, and Odi et al, regarding the approaches and challenges of law clinics as analyzed in their texts. It expands on these claims through interviews with six participants comprised of law clinic teachers, law clinic students from various law clinics in Nigeria, and the programs manager of the Network of University Legal Aid Institutions (NUALI) Nigeria. The research highlights recent approaches such as collaborations, and it identifies the challenges faced by law clinics in pretrial justice in Nigeria including prison break, ethics, and security.

CHAPTER ONE: PRETRIAL JUSTICE SYSTEM IN NIGERIA

Identifying the Flaws in Pretrial Justice in Nigeria.

Keywords: pretrial justice, pretrial system, criminal justice, criminal procedure, pretrial detention, and rights of a pretrial detainee.

Introduction

This chapter examines the pretrial justice system in Nigeria highlighting its inherent flaws. The pretrial justice system is part of the larger criminal justice system. There are different definitions of the criminal justice system²⁰ but this research adopts Ilo & Imosemi's definition of the criminal justice system which is "the whole gamut of criminal laws (substantive and adjectival), the institutions which include the Nigeria Police Force and other law enforcement agencies, the Attorney-General and Minister/Commissioner for Justice including prosecuting law officers, the Judiciary, and the Nigeria Correctional Service Centers."²¹ An individual's initial contact with the criminal justice system typically involves law enforcement (often the police), usually via arrest, after which the individual is subjected to the criminal procedure which is the legal step-by-step process to determine the guilt or innocence of a suspect. The criminal procedure encompasses the pretrial stage (begins with arrest, investigation and concludes with the case disposition through the end of the investigation or arraignment in court), trial stage (begins with prosecution, then defense and ends with a court judgment of guilt or acquittal) and post-trial

²⁰ A.M Adebayo, Administration of Criminal Justices System in Nigeria, (2012), referred to criminal justice system as an 'institution and practices of Government whose focus is to mitigate and deter crime, uphold social control and sanction individuals who violate the set laws of a specific state with rehabilitation and criminal penalties'. Panel Stan Crowder and Brent E. Turvey, Chapter 1 - Ethics in the Criminal Justice Professions Author links open overlay, Ethical Justice Applied Issues for Criminal Justice Students and Professionals,(2013) Academic Press Publication, 2013, defined the criminal justice system as "comprising of multiple interrelated pillars, consisting of academia, law enforcement, forensic services, the judiciary, and corrections. These pillars are fashioned to support the ideals of legal justice..." Supra Ojukwu et al 2012, referred to the criminal justice system as a sequence of decision-making stages where each stage is dependent on the previous stage, and offenders are either passed on to the next stage or are taken out of the system. Clare, P. K. and Kramer, J. H, Introduction to American Corrections, Boston, M. A., Holbrook Press Inc., 1977.

²¹ Babajide Olatoye Ilo, Adekunbi Folashade Imosemi, Prospect and Challenges of Criminal Procedures in Nigeria: A Review. (2022) UNNES Law Journal: Jurnal Hukum Universitas Negeri Semarang 8(2). <https://journal.unnes.ac.id/sju/ulj/article/view/56482/23165>

stage (sentencing and appeals). Ojukwu also outlines this procedure starting with an investigation, followed by arrest, detention, charge, arraignment, bail, prosecution, and ending with imprisonment, discharge, acquittal, or conviction.²²

The pretrial system encompasses arrest, investigation, pretrial detention, and the rights of pretrial detainees²³, including the right to counsel, presumption of innocence, due process, bail, a speedy and fair trial, and protection against self-incrimination.²⁴ With the above understanding of the pretrial system, this research adopts the Open Society's definition of pretrial justice which encompasses human rights-based policing, lawful pretrial detention or effective alternatives to pretrial detention, early access to legal assistance, accessible, fair, and transparent justice systems, and in the Nigerian context, a speedy trial²⁵. Pretrial justice can only exist where detention is lawful, detainees' rights are respected and protected, the investigation is swift and the trial is speedy.

Understanding the criminal justice and pretrial systems in Nigeria, including its stages from arrests to the institution of a criminal trial in court, the rights of the pretrial detainees, and the flaw in the system is pertinent to appreciate the research question on the intervention of the law clinics in promoting pretrial justice. Globally, Law clinics help to bridge the gaps in the legal system and support the overburdened state legal aid systems. This is particularly important in Nigeria which faces issues of prolonged detention sometimes arbitrary and without trial, lack

²² Supra Ojukwu et al 2012. Pg 29- 40

²³ Suspect is a term used under Nigerian Law for persons in the pretrial system yet to be charged to court. They are those whose cases are still undergoing investigations by the law enforcement agencies. Generally, investigations ought to have been completed before an arrest is made, but the Law permits an arrest to be conducted pending the completion of an investigation. Badru Abdulfatai, Distinction between Suspect Accused Defendant Convict and Ex-convict in Nigeria, (2022) Law Pavillion. <https://lawpavilion.com/blog/distinction-between-suspect-accused-defendant-convict-and-ex-convict-in-nigeria/> Last Accessed 27 March 2024.

²⁴ <https://www.justiceinitiative.org/publications/what-pretrial-justice> Last Accessed 26 March 2024. Marie VanNostrand, Ph.D., Gena Keebler, Luminosity, Inc., "Our Journey Toward Pretrial Justice". (2007) Federal Probation: A Journal of Correctional Philosophy and Practice, Volume 71, Issue 2.

²⁵ <https://www.justiceinitiative.org/publications/what-pretrial-justice> Last Accessed 26 March 2024.

of legal representation because the pretrial detainee cannot afford a lawyer, and an underfunded government legal aid agency. To this end, sub-chapter 1.1 of this chapter briefly analyses the procedures at the pretrial stage of the Nigerian criminal justice system, while sub-chapter 1.2 reviews the legal rights at the pretrial stage, and sub-chapter 1.3 examines the implementation of these rights to show the discrepancies between legal provisions and what is practiced.

1.1. Pretrial Stage

The pretrial stage commences with an investigation into the allegation of the commission of an offense. Investigation in Nigeria is conducted by the Police and other law enforcement upon receipt of a petition or complaints or facts that create suspicion of the commission of a crime. The investigation aims to identify; if the elements of a crime (the actus reus and the mens rea) exist; circumstances surrounding the commission of the crime; the suspect's motive; the existence of a relevant defense, co-suspect and/or conspirators and/or aiders/abettors (if any); identification of the victim of the crime (if any); etc.²⁶ At this stage, the offender is referred to as a suspect. While generally, an investigation comes before an arrest, it may come after an arrest where the offender was caught in the act of committing the crime, and except in such circumstances, during the investigation stage, the suspect can only be questioned but not arrested.

Where, at the end of the investigation, the investigating authority is convinced that there is a prima facie case, then an arrest is made.

²⁶ *Supra* Ojukwu et al., 2012. Actus Reus is the act itself (commission or omission of an action) which constitutes a crime by Law. While Mens Rea is the intention of the offender when he carried out the criminal act. While Actus Reus refers to the crime itself, Mens Rae refers to the mental state of the offender at the moment the crime was committed.

Expanding on Lafaye's definition, Gless defines arrest as "taking custody of a person to conduct a criminal proceeding."²⁷ Section 3 of the Administration of Criminal Justice Act (ACJA) 2015 states that "a suspect or defendant alleged or charged with committing an offense established by an Act of the National Assembly shall be arrested, investigated, inquired into, tried, or dealt with according to the provisions of this Act, except otherwise provided under this Act". Arrest is a type of pretrial detention because it is the temporary confinement of a suspect or defendant either with a warrant by a judge, magistrate, or justice of peace, or without a warrant. For instance, the Police Act of 2020 gives police officers the power to arrest without a warrant in certain circumstances including where the offense does not mandate a warrant by Law, where the offense was committed in the presence of the officer, or where the officer reasonably suspects that a crime has been or is about to be committed.²⁸ In addition to an arrest, the ACJA provides another form of pretrial detention which is the Remand by Magistrates. To enable the police and any other law enforcement agency to complete its investigation, the ACJA allows magistrates to remand an individual suspected of having committed an offense outside the magisterial jurisdiction.²⁹ The duration of this remand shall not exceed 14 days, and the magistrate can only grant this remand order a maximum of two times in a given case.³⁰ At the expiration of the remand order, the suspect must be properly charged before a court of competent jurisdiction or be released. If the suspect is yet to be charged, the magistrate is obligated to issue a hearing notice to the Inspector General of Police, the Commissioner of Police, or the relevant authority in whose custody the suspect is held. This notice aims to give the authority the opportunity to convince the court why the suspect should not be released unconditionally.³¹ Arrested suspects have certain rights including the right to bail. However,

²⁷ Alan G. Gless, Arrest and Citation: Definition and Analysis, (1980) Volume 59, Issue 2, Nebraska Law Review. 279. W. Lafave, Arrest, The Decision to Take a Suspect into Custody 3-4 (1965) Remington ed.

²⁸ Sections 24, and 25 of the Police Act 2020.

²⁹ Section 293 (1) of the Administration of Criminal Justice Act (ACJA) 2015.

³⁰ Section 296 (1) and (2) ACJA 2015.

³¹ Section 296 (4) ACJA 2015.

bail is discretionary, dependent on the offense alleged, and the arrested suspect must meet all the bail conditions which include providing a surety and bail bond. Bail at this stage is called administrative bail.³²

Once an investigation is completed and subsequent arrest is made, an investigation report is drafted and submitted to either the office of the Department of Public Prosecution of the Ministry of Justice or the legal department of the law enforcement agency that conducted the investigation and arrest. Upon submission, the investigation report is reviewed to determine if there is a prima facie case and if there is enough evidence to prosecute the suspect. If convinced that a prima facie case exists and there is enough evidence, the Ministry of Justice, or the legal department of the law enforcement agency³³ would Institute Criminal Proceedings against the suspect before a court of competent jurisdiction. There are different modes of instituting criminal proceedings in the different courts, such as the First Information Report (FIR) used to institute criminal proceedings in Magistrate Courts and Area Courts (for the North), while a Charge is used to institute criminal proceedings in the High Courts, and the Federal High Court.

Once criminal proceedings have been instituted, the suspect is now referred to as a Defendant. Upon the institution of the criminal proceedings, the defendant will be arraigned before the court where s/he would enter a plea (either admitting guilt or maintaining the innocence of the offense charged). After the plea, the court may at that point remand the defendant in prison to ensure subsequent presence at court hearings for the case or it may grant the defendant bail. If the defendant pleads guilty, the court can deliver judgment and pass its sentencing. However,

³² Section 27 of the Police Act 2020 makes provision for administrative bail for a person arrested without warrant.

³³ Aside from the Military whose prosecuting powers are limited to the members of the armed forces; all other law enforcement agencies could prosecute if the offense committed falls within their objectives by Law. Section 8 (2) of the National Drug Law Enforcement Agency (NDLEA) Act, Section 13 (2) of the Economic and Financial Crimes Commission (Establishment) Act 2004, and Section 61 of the Corrupt Practices and Other Related Offences Act 2000. Etc.

if the defendant pleads not guilty the prosecution will present its case, on behalf of the State, to convince the court beyond a reasonable doubt that the defendant indeed committed the crime and intended to do so. At the end of the prosecution's case, the defendant has 3 options. Option one is to enter a 'No Case' submission which is the defendant's way of telling the court that the prosecution has not been able to prove the defendant's guilt beyond reasonable doubt and it is not the duty of the defence to prove this guilt. Secondly, the defendant could also decide to Rest on the Prosecution Case, the meaning of this is the same with the No Case Submission. Thirdly, the defendant can then enter their defense to prove their innocence.

In practice, all the stages before the defense are generally categorized as the pretrial stage, particularly those involving a First Information Report (FIR). Under the FIR, the trial stage commences when the defendant enters defense, if he/she decides to, while the post-trial stage encompasses appeals and post-judgment proceedings. Additionally, the Nigerian Correctional Services in its statistics and category of inmates refer to those awaiting judgment/conviction as "Awaiting Trial Inmates".³⁴ However, it should be noted that this is the author's observation of what is in practice. Notably, this contrasts with the Nigerian Criminal Procedure Laws, which consider the pretrial stage to end at the point of arraigning the defendant in court. But for this research, the term 'pretrial detainee' extends to both suspects arrested by law enforcement or police and defendants detained by the court.

1.2 The Law and Rights at the Pretrial Stage

Nigerian Laws, which incorporate provisions of ratified international human rights laws such as the Convention Against Torture, and the International Convention on Civil and Political Rights, ensure that suspects/defendants are treated justly within the criminal justice system.

³⁴ https://www.corrections.gov.ng/statistics_summary Awaiting trial is also pretrial.

Specifically, the Nigerian Constitution and the Administration of Criminal Justice Act 2015³⁵ provides certain rights that protect individuals subjected to criminal procedures.

Chapter 4 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) guarantees the fundamental rights of every person in Nigeria. These rights include the right to life, the right to personal liberty, the right to a fair hearing, the right to dignity of a person, the right to privacy, freedom of movement, freedom of thought, religion and conscience, freedom of expression, etc.³⁶ This research focuses on the right to personal liberty, the right to a fair hearing, and the right to personal liberty because they are the crux of pretrial justice. To complement the provisions of the Constitution, the Administration of Criminal Justice Act (ACJA) was enacted in 2015 and it spells out certain rights that are enjoyed by persons within the criminal justice system. The Act regulates the administration of the criminal justice system to ensure pretrial justice such as speedy dispensation of justice, protection of the society from crimes, and the protection of the rights and interests of suspects, defendants, and victims in Nigeria.³⁷

Every pretrial detainee is guaranteed the right to dignity of person as enshrined in section 34 of the Constitution. Save in certain exceptions such as the execution of a court sentence or order, this guaranteed right forbids anyone within the criminal justice system from being subjected to inhumane or degrading treatment, torture, slavery or servitude, and forced labor.

In addition to their right to dignity, pretrial detainees have the right to personal liberty established in Section 35 of the Constitution. In the instances of executing a court sentence, enforcing a court order, an arrest to bring a person before a court, or arrest upon suspicion of

³⁵ Similar provisions apply to all the Administration of Criminal Justice Laws of the different States.

³⁶ Sections 33 – 46 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) provide for the Fundamental Rights of Persons in Nigeria. These rights are similar to the rights under the United Declarations of Human Rights and the African Charter on Human and People's Rights. They are also not just limited to citizens alone but everyone in Nigeria.

³⁷ Explanatory Memorandum, Administration of Criminal Justice Act, 2015.

committing a crime, the right to personal liberty may be suspended. This section provides the foundational rules guiding arrests and pretrial detention which ensure that pretrial detainees have the right to remain silent and must be taken before a court of law within 24 hours of the arrest or 2 days if the court of competent jurisdiction is more than forty kilometers. It further mandates the unconditionally or conditionally release of pretrial detainees where it is not possible to bring them before a court of law within the specified time.

Additionally, section 8 of the ACJA reinforces the rights to dignity and personal liberty of pretrial detainees. It prohibits inhumane and torturous treatment of suspects and mandates that suspects be brought before a court within the specified time or be released conditionally or unconditionally.

Section 36 of the 1999 Constitution guarantees pretrial detainees' right to a fair hearing (also called fair trial) of pretrial detainees. It includes the right to counsel of choice, the right to be brought before a court within a reasonable time, the right to be informed of the offense, the right to an interpreter, and the right to resources to defend himself. The ACJA also reinforces these rights and extends it to cover the right of the detainee to be informed of their rights to keep silent until after consultation with their lawyer, legal representation, or legal aid, information about the offense, and bail³⁸

Bail, as explained earlier, is the temporary and conditional release of a pretrial detainee either by the court or the arresting authority. Under the ACJA pretrial detainees suspected or accused of non-capital offenses have a right to conditional release by the arresting agency and the court.³⁹ However, where the offense alleged carries capital punishment, bail is not a right and it can only be granted in exceptional circumstances such as ill health, extraordinary delay in

³⁸ Section 6, 14 and 163 of the ACJA.

³⁹ Section 30, 31 and 158 of the ACJA

investigation, arraignment and prosecution that exceeds one year, or any other circumstances that the judge may consider to be exceptional. Granting such bail is solely at the discretion of the court.⁴⁰ When making its decision to grant bail, the court must consider factors such as whether the defendant will pose a flight risk, the likelihood of the defendant committing another crime while on bail, the likelihood of the defendant interfering with the case or destroying evidence, and whether granting bail will undermine the justice system.⁴¹ Furthermore, because bail is a conditional release, the defendant must fulfill conditions such as providing a surety and depositing a bail bond or some form of security that will be returned after the trial.⁴²

1.3 Law-in-Practice

Implementation of the ACJA is not limited to the Nigeria Police Force but rather it extends to all law enforcement as well as prosecuting agencies in Nigeria. The Act references the Police because the Police are often the first contact an individual has in the pretrial system due to the extensive jurisdiction over criminal matters that the Constitution conferred on the Police. Similarly, the provisions of the ACJA are reflected in the Police Act of 2020.

Open Society outlined some of the global challenges with criminal procedure at the pretrial stage which includes the excessive use of pretrial detention. While the International standard for detention concerns deprivation of liberty upon commencement of a formal criminal proceeding, it provides the condition for pretrial detention from the point of arrest to be that a criminal charge against the arrested suspect must be promptly brought before a judge or other judicial officer. Open Society further explains that one-third of the people in prison are being held in pretrial detention; In America, 25.2% of its total prison population are pretrial inmates,

⁴⁰ Section 161 of the ACJA

⁴¹ Section 162 of the ACJA

⁴² Section 165 of the ACJA

in Europe, it is 20.5% and in Africa, it is 35.2%. The reasons for excessive use of pretrial detention include national legal frameworks that do not reflect international standards, law enforcement agents/agencies' strategies to avoid strict enforcement of the Law, lack of clear enforceable time limit because international laws and many national laws use the term 'reasonable time', the criminal justice system and judicial procedure makes detention the default position with little or no review mechanism in place once a person is kept in pretrial detention, etc. Other challenges with the pretrial stage include bad professional culture and corrupt practices within law enforcement, the absence of the suspects' full engagement, and lack of transparency and accountability.⁴³

Reflecting on the Nigerian pretrial system, the aforementioned challenges are visible. Excessive use of pretrial detention is a huge challenge and while Nigerian criminal law as well as its fundamental human rights provisions reflects international standards, unfortunately, pretrial detention has been the default position in the Nigerian criminal justice system. Section 35 (4) of the Constitution of Nigeria limits pretrial detention to a reasonable time which is twenty-four hours, however, sub-section 5 of the same section allows for pretrial detention to a maximum period of 2 months. Also, Section 293 (1) of the ACJA allows Magistrates to remand arrested suspects to a maximum of 14 days or 28 days (in case of renewal), and the review mechanism for this remand is not effective in practice because it puts the responsibility on the authority seeking the remand to charge the suspect or release the suspect, and where there is a need for further investigation, it requires that the authority puts forth convincing arguments to the court on why the initial 14 days remand should be renewed. Also, the application for this

⁴³ Supra. Open Society Justice Initiative 2012. Open Society Justice Initiative, *The Socioeconomic Impact of Pretrial Detention* (New York: Open Society Foundations, 2010), p. 11. See also, R. Walmsley, *World Pretrial/Remand Imprisonment List* (2008) London: International Centre for Prison Studies. <http://www.kcl.ac.uk/depsta/law/research/icps/downloads/WPTRIL.pdf>. https://www.prisonstudies.org/sites/default/files/resources/downloads/world_prison_population_list_13th_edition.pdf Last Accessed 16 June 2024.

remand is done via an Ex-Parte Motion (without the notice of the arrested suspect), thereby denying the suspect the opportunity to challenge the remand application. As explained by Agbonika, the provisions of the ACJA on remand are counterproductive as it retain the holding charge practice that the Act aimed to repeal. Holding charge was a practice where law enforcement, especially the police, would get an order from the magistrate or an area court judge to keep a suspect arrested in detention pending arraignment before a court.⁴⁴ Furthermore, Open Society research indicated that “In Nigeria, persons arrested may in practice be kept in custody whilst the police seek a prosecution decision from the Director of Public Prosecutions (DPP), and it is reported that delays of more than five years are not infrequent.”⁴⁵ All of these contribute to the overcrowdedness of the Nigerian Custodial Centers (prisons) and the detention facilities of the Nigeria Police. A practical example of the effect of excessive use and abuse of pretrial detention is the real-life case below:

In 2020, amidst nationwide protests against the abuse of power by the Special Anti-Robbery Squad (F-SARS) of the Nigeria Police, the federal government took decisive action by dissolving the controversial unit.⁴⁶ As a result, detainees held at the squad's headquarters in Abuja were transferred to Keffi, Kuje, and Suleja Custodial Centers according to section 293 of the Administration of Criminal Justice Act (ACJA) 2015. However, what should have been a brief remand period of 14 or 28 days, if renewed, stretched into nearly two years. In June 2022, the Nasarawa State University Law Clinic, as part of its pretrial justice efforts under the Reforming Pretrial Detention in Nigeria (RPDN) project, visited the Keffi Medium Security Custodial Center (MSCC Keffi), where they identified 36 pretrial detainees who had been

⁴⁴ John Agbonika, 'Delay in the Administration of Criminal Justice in Nigeria: Issues from a Nigerian Viewpoint' (2014) 26 Journal of Law, Policy and Globalization. Pg 130-135 https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/jawpglob26§ion=16 Last Accessed 16 June 2024.

⁴⁵ Supra Open Society Justice Initiative 2012. A. Nwapa, “Building and Sustaining Change: Pretrial Detention Reform in Nigeria,” in Open Society Justice Initiative, Justice Initiatives: Pretrial Detention (Open Society Foundations, 2008), pp. 88 and 89.

⁴⁶ <https://www.bbc.com/news/world-africa-54499497> Last Accessed 26 March 2024.

remanded from the disbanded F-SARS detention center. Shockingly, these individuals had not been charged by the police and had been forgotten in prison. Through relentless advocacy efforts by the law clinic, there was an intervention by key stakeholders including the Federal Capital Territory (FCT) Magistracy, the Legal Aid Council of Nigeria, the Ministry of Justice, and the Network of University Legal Aid Institutions. As a result, 30 of the detainees were released, while the remaining 4 were formally charged and provided with pro bono legal representation by the law clinic⁴⁷. Similarly, Baze University Law Clinic had such clients who were remanded at MSCC Kuje, and in partnership with the pro bono lawyers assigned to the law clinic students, they filed a Fundamental Rights Enforcement Action at the High Court of the Federal Capital Territory and their client was released, after having spent 4 years in detention (including the time he spent at the SARS detention).⁴⁸

In addition to the excessive use of pretrial detention, one of the many challenges to the justice system is that the practice of law enforcement in Nigeria is outside the existing legal framework. Under the Nigerian criminal procedure laws, an arrest should be made after the investigation is completed however as Amuche explained, in practice, investigations commence after an arrest has been made. While the investigation is ongoing, the arrested person is detained either arbitrarily or with a remand order until the completion of the investigation. Furthermore, the lack of coordinated information and communication between the different state actors in the justice system and denying arrested suspects access to legal advice or legal representation when they first encounter law enforcement are part of the many challenges that face the criminal justice system.⁴⁹

⁴⁷ <https://www.facebook.com/share/p/cgaJx8ejvK36zGJ3/?mibextid=oFDknk> Last Accessed 26 March 2024.

⁴⁸ Data was obtained from the interview with the Coordinator of Baze University Law Clinic.

⁴⁹ Supra Obiora Anne 2018 Pg. 4.

Also, the bad practices of the state actors in the justice system pose a big challenge. For law enforcement agencies these practices includes corruption, the ill-treatment of the arrested suspects, abuse of power and brutality,⁵⁰ the use of handcuffs when the suspect is not resisting an arrest, the force used in making an arrest, in some cases preventing the suspect from contacting a lawyer or family for a period exceeding 24 hours, obtaining a statement from the suspect in the absence of his legal representation and/or without allowing the suspect first contact with legal representation upon arrest, in many cases obtaining confessional statements by force or with the use of torture, the parading of suspects before the media and the language used to address the suspects by both the journalists and the law enforcement agents such as ‘criminals’ which suggests their guilt thereby violating their right to be presumed innocent until the court delivers a guilty verdict, etc. For the courts, this bad practice includes the misuse of its discretionary powers which could lead to a miscarriage of justice.⁵¹

There have been attempts to ensure pretrial justice in the criminal justice system, however, these attempts have not achieved the desired results. One such attempt is the non-custodial sentencing. As earlier noted, the challenge of overcrowding in Nigerian custodial centers (prisons) and the detention facilities of the Nigeria Police are some of the biggest criticisms of pretrial detention in Nigeria. 69% of the total population of inmates in the Nigerian custodial centers are pretrial detainees (referred to as Awaiting Trial Inmates).⁵² Although Awaiting Trial Inmates/Detainees are generally not the same as Pretrial Detainees, however, as explained by Omodoyin and Oniyinde, these two concepts are often confused to mean the same thing

⁵⁰ Oluwagbenga Michael Akinlabi, “Do the police really protect and serve the public? Police deviance and public cynicism towards the law in Nigeria”. (2016). *Criminology & Criminal Justice* Volume 17, Issue 2. Pg. 161-162 <https://journals.sagepub.com/doi/full/10.1177/1748895816659906#bibr22-1748895816659906> Last Accessed 15 June 2024.

⁵¹ Ngozi E. Nwafor and Onyeka Christiana Aduma, Problems of The Administration of Criminal Justice System in Nigeria And the Applicability of Alternative Dispute Resolution. (2020) *Nnamdi Azikiwe Journals, JCPL* Vol. 7, Issue 2, UNIZIK\, Pg 133. <https://journals.unizik.edu.ng/jcpl/article/view/476/448> Last Accessed 15 June 2024.

⁵² https://www.corrections.gov.ng/statistics_summary Last Accessed 30 March 2024.

especially because in Nigeria for instance, a good number of pretrial detainees are kept in prison custody pending the duration of their trial.⁵³ To address this challenge, the Nigerian Correctional Service Act of 2019 introduced non-custodial measures to limit the use of detention. This significantly helped during the COVID-19 pandemic where the COVID-19 court delivered non-custodial punishments to violators of the Quarantine Act, and violators arrested were neither detained by law enforcement nor were they remanded by the courts.⁵⁴ Unfortunately, at the end of the COVID-19 Courts era, law enforcement and the regular courts returned to arrests and detention, and custodial sentencing.

The ACJA was also a solution that was attempted. The Act addressed the challenge of excessive and arbitrary detention by introducing judicial oversight visits to detention centers. Under the ACJA chief magistrates, or anyone designated by him/her are obliged to inspect the police stations or other detention within his/her jurisdiction except the custodial centers (prisons). The officer-in-charge of the agency authorized to make an arrest shall make available to the visiting Chief Magistrate or anyone designated by him/her the following documents which the magistrate must review:

- a) the full record of arrest and record of bail.
- b) applications and decisions on bail made within the period, and
- c) any other facility the Magistrate requires to exercise his powers under that subsection.⁵⁵

The visiting magistrate is also obliged to direct the arraignment of a suspect, and grant bail to any suspect where appropriate and where bail has been refused and the offense for which the suspect is held is within the jurisdiction of the Magistrate.⁵⁶ Where the detention facilities

⁵³ Supra. Omidoyin and Oniyinde. Pg 102.

⁵⁴ Odi Lagi, Mahmud Yusuf, Oluchi Elendu, Sarah Ogunkunle, Kenechuwku Agwu & Uwais Abdulrahman, "COVID-19 Pandemic: Human Rights & Access to Justice in Nigeria Report", (Network of University Legal Aid Institutions 2020). <https://nulai.org/wp-content/uploads/2020/12/COVID-19-Pandemic-Human-Rights-and-Access-to-Justice-2020.pdf> Last Accessed 8 MAY 2024.

⁵⁵ Section 34 ACJA

⁵⁶ Ibid

belong to other Federal Government agencies authorized to make an arrest, the High Court having jurisdiction shall conduct similar visits to the detention facilities for the same purpose.⁵⁷

The author has personally gone on some of these magistrate visits in the Federal Capital Territory, and while this has been significantly helpful it has not been able to solve the bulk of the problem. It is worth noting that the Administration of Criminal Justice Monitoring Committee has been very instrumental in facilitating and motivating the Chief Magistrates and High Courts to conduct the visits as often as possible. However, there are still some Chief Magistrates and High Courts who do not conduct these visits regularly as stipulated by the Law.

Conclusion

This chapter has not only given a detailed understanding of Nigeria's pretrial system but importantly, it has highlighted the flaws in the Nigerian pretrial justice system. This helps the readers appreciate the law clinics' contributions to promoting pretrial justice which is discussed in the next chapter.

⁵⁷ Section 354 of the ACJA

CHAPTER TWO: LAW CLINIC

Law Clinics' Approach to Pretrial Justice.

Keywords: Clinical Legal Education, Law Clinics, History of Law Clinics, Pretrial Law Clinics, Approaches of Law Clinics, Collaborations, Advocacy, Legal Aid, and Pro bono Legal Services

Introduction

Law clinics have been working in Nigeria to bridge gaps in the pre-trial justice system using different approaches. One major approach is providing pro bono legal services (also referred to as legal aid) to pretrial detainees in the capacity of non-state actors/non-governmental organizations. This is complemented by other approaches such as mentorship, advocacy, and collaboration with both state and non-state actors in the criminal justice system such as the Judiciary, the Legal Aid Council of Nigeria, the Law Enforcement Authorities, the Nigerian Correctional Services, the Nigerian Bar Association, the Ministry of Justice, and other non-governmental organizations involved in legal aid.

These approaches are guided by the principles of Clinical Legal Education. As emphasized at the beginning of this research, Law Clinic is an important aspect of Clinical Legal Education (CLE) which is a teaching approach rooted in experiential learning where students apply their knowledge by handling real-life cases and navigating legal issues through both legal and non-legal assistance they provide to real-life clients. The European Network of Clinical Legal Education (ENCLE) defined CLE as a method of legal teaching that is based on experiential learning that fosters the growth of knowledge, personal skills, and values, and as well promotes social justice at the same time.⁵⁸

⁵⁸ <https://encle.org/about-us/what-is-cle> Last Accessed 27 March 2024.

In sub-chapter 2.1, this chapter explores the evolution of CLE and the history of law clinics in Nigeria. As law clinics expanded and CLE evolved, it was essential for the clinics to have a structured operation. Therefore, sub-chapter 2.2 examines law clinics' operations in Nigeria. With an understanding of law clinics and how they operate, sub-chapter 2.3 focuses on law clinics' approaches to contribute to advancing pretrial justice in Nigeria.

2.1 The History and Creation of Law Clinics in Nigeria

Before the early twenties, legal education across the world was mostly theoretical and was faced with certain challenges, notably that it lacked the necessary practical training for law students. Some countries like the United States had the 'apprenticeship' module incorporated into their legal education which allowed law students to learn from practicing lawyers who acted as mentors; however, this module was also criticized as not being complete and being restrictive.⁵⁹ As Ekwe explained, Nigeria's initial education curriculum was passed down from the colonial masters and it was challenging because the strict adherence to the very theoretical traditional methods of teaching this curriculum did not provide the law students with relevant practical skills like research, communication, client interviewing and counseling, legal drafting, negotiation, and problem-solving⁶⁰.

In discussing the history of CLE, Romano explained that CLE came into existence in the early twenties to complement the theoretical mode of legal education by providing the hands-on practical learning missing in legal education. It started in the United States of America before

⁵⁹Maria Concetta Romano, The History of Legal Clinics in the US, Europe and Around the World. (16 Diritto & Questioni Pubbliche 2016). Pg 27. https://heinonline.org/HOL/Page?handle=hein.journals/dirquesp2016&div=11&g_sent=1&casa_token=&collection=journals Last Accessed 27 March 2024.

⁶⁰ NJ. MADUBUIKE-EKWE: Challenges and Prospects of Legal Education in Nigeria: An Overview. (2017) Nnamdi Azikiwe University Journal of International Law and Jurisprudence. NULAI: "The Development of Clinical Legal Education", <https://nulai.org/the-development-of-clinical-legal-education/> Last Accessed 27 March 2024.

spreading to other countries and continents like Canada, Great Britain, India, Africa, Europe, and Asia.⁶¹

Clinical Legal Education is essential in the meticulous teaching and training of law students to become legal practitioners. Hands-on engagement and live case experiences build their capacity and develop the requisite skills necessary for legal practice.⁶² These skills include client interviewing, law office management, communication, legal drafting, analytical thinking, problem-solving, etc, all of which significantly enhance their employability status upon graduation. Comprising two integral components, Clinical Legal Education consists of both the Teaching and the Service components. The first is the supplement to theoretical legal education by providing the students with the knowledge and training needed for a smooth transition into the legal profession after studies. The second component is the social justice aspect, where free legal services are offered to marginalized groups of people who need legal support, and students are exposed to other practical experiences as well as skills.⁶³ Law clinics were thus created to effectively implement these two components.

The Network of University Legal Aid Institutions (NULAI) Nigeria moved for the development and introduction in Nigeria. Founded by Ernest Ojukwu, the organization's efforts successfully ensured the introduction of CLE in Nigeria in 2005, which developed with the creation of four pilot law clinics namely: Abia State University Law Clinic, University of Maiduguri Law

⁶¹ Supra Romano. Pg 27-40.

⁶² Francina Cantatore, "The Impact of Pro Bono Law Clinics on Employability and Work Readiness in Law Students" (2018) International Journal of Clinical Legal Education 2018, Volume 25 https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/clled25&id=147&men_tab=srchresults Last Accessed 28 March 2024.

⁶³ Hannah Franz, Clinical Legal Education as an Instrument to Address Access to Justice: A Critical Analysis of the Clinical Movement in Germany. (2023). International Journal of Clinical Legal Education Volume 30, Pg 133-158. https://heinonline.org/HOL/Page?handle=hein.journals/clled30&div=21&g_sent=1&casa_token=&collection=journals Last Accessed 28 March 2024.

Clinic, Adekunle Ajasin University Akungba Law Clinic, and University of Uyo Law Clinic.⁶⁴

The first pretrial law clinic in Nigeria was under the Abia State University (ABSU) Law Clinic. Established in 2004, the ABSU Law Clinic created the ABSU Prison Legal Clinic in 2008 where clinical law students were engaged in experiential learning in pretrial cases that served the needs of the prisoners in Abia State Prisons.⁶⁵ There was also the Adekunle Ajasin University Law Clinic, which implemented pretrial projects. Due to the general success of law clinics, there has been a rapid implementation of the CLE in Nigeria. Also, the successes of these pretrial law clinics motivated other clinics in Nigeria to either create pretrial law clinics or engage in pretrial services. This might be attributed to the important role in delivering legal services to indigents⁶⁶.

According to David McQuoid-Mason, who is the pioneer of the introduction of CLE in South Africa (the first African country CLE was introduced),

“The well-supervised use of law students will significantly ease limitations under which most of the general programs in Africa now work; it is only through student programs that there is any possibility in the near future for legal services becoming widely available to the poor.”⁶⁷

NULAI’s data shows that in Nigeria, there are 49 Law Clinics across the Universities and the Nigerian Law School campuses in the 36 States and the Federal Capital Territory, and about 40% of these law clinics either have a pretrial law clinic or implement pretrial projects. Importantly, through NULAI’s efforts, the new Benchmark Minimum Academic standards now tertiary institutions and law schools offering law programs must have a functioning law clinic

⁶⁴ NULAI 2005 Report. Ernest Ojukwu, Sam Erugo & Charles O Adekoya, Clinical Legal Education: Curriculum Lessons and Materials, (Network of University Legal Aid Institutions Nigeria 2019). https://www.researchgate.net/publication/335277194_CLINICAL_LEGAL_EDUCATION_CURRICULUM_LESSONS_AND_MATERIALS Last Accessed 28 March 2024.

⁶⁵ Supra Odi et al 2019.

⁶⁶ Oke-Samuel, O. (2008). Clinical Legal Education in Nigeria: Developments and Challenges. *Griffith Law Review*, 17(1), 139-149.

⁶⁷ David McQuoid-Mason, ‘The Delivery of Civil Legal Services in South Africa’, (2000), 24 *Fordham International Law Journal* 5111. Pg 9. David is the pioneer of CLE in Africa.

registered with NULAI to get their program accredited by the National Universities Commission (NUC) and the Council for Legal Education.⁶⁸

2.2 Operations of Law Clinics

A simple explanation of a Law Clinic's operation can be seen in the definition of Law Clinics by Network University Legal Aid Institutions (NULAI) "...a law office in a university managed by law students in the discharge of pro bono or voluntary services..."⁶⁹ Participation in the law clinic may require enrolment with students earning credits for their involvement.

For instance, the University of Abuja Law Clinic serves as an in-house clinic where aspiring lawyers gain practical experience while providing essential legal services to the community. The law clinic's curriculum reflects the comprehensive two-year program developed by NULAI for Nigerian Universities to equip students with the practical skills necessary for modern legal practice. The teaching component spans four courses over two semesters each for 400 and 500-level students, the curriculum covers a broad range of legal skills and ethics such as training in client interviewing and counseling, legal writing, legal research and analysis, field/clinical work, professional ethics, discipline, professional responsibility, information and communication technology, alternative dispute resolution, law office practice management, public interest lawyering, access to justice. Enrolment in the clinic's courses is elective, and each course earns students four credit units, reflecting the depth and rigor of the curriculum.⁷⁰

⁶⁸ NULAI Annual Report 2021. <https://nulai.org/document/nulai-nigeria-2021-annual-report/> Last Accessed 28 March 2024. Reforming Pretrial Detention In Nigeria (RPDN) Project NULAI's Project Reflections and Lessons Report, <https://nulai.org/document/reforming-pretrial-detention-in-nigeria-rpdn-project-reflections-report/> Last Accessed 28 March 2024.

April 2018-April 2023 NULAI Project Reflections and Lessons Report National Universities Commission, Core Curriculum and Minimum Academic Standards for the Nigerian University System (LAW) 2022 mandates that the school's curriculum must include a 4-credit course on law clinic. <https://nuc-cmas.ng/disciplines/> Last Accessed 28 March 2024.

⁶⁹ Network of University Legal Aid Institutions is a network of law clinics in Nigeria and the organization that moved for clinical legal education in Nigeria. NULAI "Law Clinics and Pretrial Detainees" <https://nulai.org/law-clinics-and-pretrial-detainees/> Last Accessed 27 March 2024.

⁷⁰ University Of Abuja Law Clinic https://resources.gaje.org/wp-content/uploads/gravity_forms/27-61ffabe162d29b7fe6c279abe68e27eb/2013/12/UNIVERSITY-OF-ABUJA-LAW-CLINIC-PROGRAM-AN-OVERVIEW.pdf Last Accessed 10 May 2024.

Law Clinics operate in either of the following ways:

Sub-Law Clinics- this mode of operation is where the law clinic embodies many sub-clinics. A good example of this is the Baze University Law Clinic which has different sub-clinics under the bigger Baze Law Clinic. Some of the sub-clinics include migration and trafficked persons law clinic, pretrial detention law clinic, international human rights clinic, social justice & public interest law clinic, ethics and anti-corruption law clinic, and the alternative dispute resolution law clinic.⁷¹

Projects- rather than having sub-clinics, a law clinic can also operate as a single clinic that implements diverse projects. With this mode of operation, the law clinic does not have sub-clinics but implements projects and renders services that are related to its general objectives. In Nigeria, many law clinics adopt this model. Law clinics like the University of Abuja Law Clinic, Nasarawa State University Law Clinic, Nile University Law Clinic, Abia State University Law Clinic, Ebonyi State University Law Clinic, Bagauda Law Clinic, University of Ibadan Women Clinic, etc. have similar operations where they offer pro bono legal services and implement projects on Human Rights Education, Freedom of Information, Street Law Advocacies, Pretrial Justice, Community Engagement, etc. Specifically, the Women's Law Clinic of the University of Ibadan is the only law clinic in Nigeria whose objectives only focus on indigent women in society, and its services and projects are designed to protect indigent women and women's rights.⁷²

2.3 Law Clinic Approach to Pretrial Justice in Nigeria

⁷¹ https://www.instagram.com/bazeuni_lawclinic/?hl=en <https://bazeuniversity.edu.ng/law-clinic> Last Accessed 4 June 2024.

⁷² <https://law.ui.edu.ng/content/target-group> Last Accessed 10 May 2024.

The framework for pretrial clinics is legal and socio-economic. With the legal part, the law clinics' focus is the protection of the fundamental rights of every pretrial detainee as provided by the 1999 Constitution of the Federal Republic of Nigeria and the Administration of Criminal Justice Act 2015 specifically the rights to personal liberty, dignity, information, and fair trial which includes the right to legal representation of the detainee's choice. On the socio-economic part, the clinics only take on cases of persons who are indigent as defined by the Legal Aid Act of Nigeria.⁷³

In line with the pretrial justice framework, the law clinic adopts four approaches pro bono legal services, advocacy, collaboration, and mentorship:

2.3.1 Pro Bono Legal Services

It is through this approach that law clinics operate as non-state legal aid providers, which is officially recognized by the Legal Aid Act of Nigeria.⁷⁴

This approach is premised on the rights of pretrial detainees which include the right to legal representation and presumption of innocence, the right to dignity, the right to personal liberty which includes the right against arbitrary arrests and the right to bail, as well as their rights to information and contacting their family. These rights are guaranteed under different International Laws,⁷⁵ the Nigerian Constitution, and the Administration of Criminal Justice Act. Through its pro bono services, law clinics ensure equality of persons before the law which is a core value of human rights as enshrined in Article 14 (3) (d) of the International Convention on

⁷³ Section 10 (1) of the Legal Aid Act of Nigeria, 2011, refers to an indigent as someone who doesn't earn above the minimum wage of the country. Notwithstanding this definition, sub-sections 2 and 3 extends to persons who earn above the minimum wage but might not have access to the funds at that moment. This class of persons also fall within the clients of the law clinic.

⁷⁴ Section 17 of the Legal Aid Act of Nigeria 2011.

⁷⁵ Articles 9,10, and 11 of the Universal Declaration of Human Rights, Articles 10 and 14 of the International Convention on Civil and Political Rights, Articles 6 and 7 of the African Charter on Human and Peoples' Rights, Articles 5 and 6 of the European Convention on Human Rights.

Civil and Political Rights “...to be tried in his presence, and to defend himself in person or through legal assistance of his choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it”.

A look at the analysis by Samuel Chukwu and Joy Maduafor, former law clinicians who worked on pretrial justice projects and became law clinic staff/teachers, and the author’s experience with the law clinic would improve our understanding of how law clinics provide legal aid to pretrial detainees.

Chukwu highlighted some of the pro bono services of the pretrial law clinic which include visits to prisons and detention centers; client interviews and counseling; investigation of facts; contacting detainees’ families; obtaining clients’ details for further action; prison monitoring—observing, assessing, and reporting on prison conditions and violations; filing, processing, and following up on bail applications; participating in jail delivery advocacy with the chief judge and chief magistrates; interventions with the director of public prosecutions, legal aid, and non-governmental organization (NGO) offices; interventions with private practitioners for assistance; assisting in categorizing cases; conducting research, writing legal opinions, and preparing relevant court processes; court monitoring.⁷⁶

Maduafor explained that to begin the pro bono process, law clinicians undergo seminars and capacity building where they undergo training on the Administration of Criminal Justice Act or the Administration of Criminal Justice Law of the State, the rights of pretrial detainees. They also undergo simulation training on client interviews and counseling. After this process then

⁷⁶ **Supra** Odi et al 2019.

they conduct a visit to the prisons or detention facilities where pretrial detainees are held. Before this visit, there must be approval for the visit from the appropriate authority. During these visits, the law clinicians interview indigent pretrial detainees without legal representation, and through the interviews, they gather all the relevant facts of the detainee's case, they also educate the detainees on their rights and offer their services through the detainee consent form.⁷⁷

After undergoing the processes listed by Maduafor, the law clinic students visit the prisons and detention centers to interview pretrial detainees who are indigent and do not have legal representation. During their interactions with the detainees, the clinicians offer their services and explain to the detainees the next steps that they will take on the case. However, they do not make promises or give assurances of actions that are outside their control, e.g., rather than promise or assure the defendant that they will get him/her out on bail, they would explain that because his offense is bailable, they would apply for his bail in court. After the prison visits, the clinicians carry out a case conference where they debrief themselves and their coordinators on the visits, the interviews conducted, the detainees who gave consent to the law clinic to provide legal assistance, etc. At the case conference, the clinicians would then assign the cases amongst themselves (either as individuals or in already-formed groups)⁷⁸. However, because legal practice in Nigeria is restricted to those called to the Nigerian Bar, law clinic students can only offer their services within the scope of paralegals. Therefore, law clinics work in collaboration with the different branches of the Nigerian Bar Association and pro bono lawyers within their jurisdiction. For instance, at Ebonyi State University (EBSU), the Law Clinic works with its alumni who are practicing lawyers to provide these legal services limited to only legal practitioners⁷⁹. Furthermore, through NULAI's existing relationship with the Legal Aid

⁷⁷ Ibid.

⁷⁸ Data from the interview conducted with the Director of the Clinical Legal Education Program of the University of Abuja (UniAbuja Law Clinic).

⁷⁹ Data from the interview conducted with the past Deputy Student Clinic Head of the Ebonyi State University Law Clinic.

Council of Nigeria, the law clinics partner with the Council's branch within their location to provide these limited legal services.⁸⁰

At the end of the case conference, each individual or group would be responsible for their cases from that moment until the end. While the pro bono lawyer offers legal services and court proceedings that are limited to only those called to the bar, the law clinicians offer all other legal services that are not limited to those called to the bar including all the activities outlined by Chukwu, such as: drafting court processes which are reviewed and approved by the pro bono lawyers, appearing in court with the pro bono lawyers, filing court processes, verifying cases, conducting legal research on the case, participating in jail delivery and prison advocacy with the Chief Judge and Chief Magistrates; Interventions with Director of Public Prosecutions, Legal Aid, and non-governmental organization (NGO) offices, contact the families of the detainees, carry out investigations to confirm the facts given by the detainee, follow-up visits to the detainee, assign the cases to their pro bono lawyers, communicate with the detainee or the family to give updates on the case progress, etc.

It is worth mentioning that the pro bono approach extends beyond litigation and court proceedings. In their capacity as paralegals, law clinic students have successfully facilitated pretrial justice in many pretrial cases without the legal services of pro bono lawyers. For instance, by simply contacting the relatives of the pretrial detainees and informing them of the detainee's incarceration, financially able relatives would provide paid legal services. This allows the law clinic to channel its resources to other detainees who need their services. Additionally, the relatives can stand as sureties for the detainee in court, which is a condition for bail if granted.⁸¹

⁸⁰ Data from the interview conducted with the Program Manager of NULAI Nigeria.

⁸¹ Data from the interview conducted with the Coordinator of the Baze University Law Clinic.

2.3.2 Mentorship

The collaboration between the lawyers and the law clinic students in providing pro bono legal services strengthens the mentorship approach. The pro bono lawyers act as mentors to the law students through their collaborative activities on the pretrial cases by guiding the law students in legal practice, drafting legal documents, legal advocacy, legal arguments on behalf of their clients before the court, and filing court documents, etc. They also address practical questions and guide the clinic students on navigating the challenges they might face in legal practice, including ethical issues.⁸² This approach also extends to the law clinic's interactions and collaborations with experts and other professionals in the criminal justice system. A good example of this approach was the mentorship program under the Reforming Pretrial Detention in Nigeria (RPDN) Project where 52 law clinic students from Baze University Law Clinic, Nasarawa State University Keffi (NSUK) Law Clinic, Nile University Law Clinic, and the University of Abuja Law Clinic were mentored by 29 experts⁸³

2.3.3 Advocacy

To support its pro bono approach, law clinics adopt the advocacy approach, especially where the pro bono approach is insufficient when applied alone. They advocate for their client's rights outside the courtroom.

For instance, Baze University Law Clinic advocates for their client's case at the appropriate authority, and this has helped in securing their clients' release from arbitrary detention without going to the courtroom.⁸⁴ Similarly, Ebonyi State University Law Clinic conducts advocacies to the State's Minister for Justice who is also the State's Attorney General to use his

⁸² Data from the interview conducted with the Director of the Clinical Legal Education Program of the University of Abuja (UniAbuja Law Clinic).

⁸³ Reforming Pretrial Detention In Nigeria (RPDN) Project NULAI's Project Reflections and Lessons Report, (2024), Pg 13. <https://nulai.org/document/reforming-pretrial-detention-in-nigeria-rpdn-project-reflections-report/> Last Accessed 28 March 2024.

⁸⁴ Information from the interview conducted.

constitutional power to intervene in complex pretrial cases.⁸⁵ Nasarawa State University Keffi (NSUK) Law Clinic adopted this approach and it brought about the intervention by the FCT Judiciary and other justice actors including NULAI. Through this intervention, 30 SARS detainees in MSCC Keffi were released and the rest were properly charged and arraigned before the court.

Ojukwu et al explained that advocacy is one of the law clinics' prison interventions and one of the ways they advocate for prisoners is to the Director of Public Prosecution (DPP), Attorney General, and Chief Judge of the State hosting the law clinic. The goal of this advocacy to these Constitutional Offices of the Law is to present the prisoners' cases before him/her and the justice challenge of these prisoners, e.g., remanded without court appearances, heavy sentences not proportional to the crime, delayed trials, etc. Ojukwu called it the advocacy with the director of public prosecution and attorney-general, and jail delivery advocacy with the chief judge.⁸⁶

2.3.4 Collaboration

This approach has significantly contributed to the success of the other approaches. Through collaboration with various criminal justice stakeholders such as the legal aid council, the pro bono lawyers, the Nigerian Bar Association, the judiciary, the Ministry of Justice, the Nigerian correctional services, the law enforcement, and academia etc., law clinics have effectively interviewed indigent pretrial detainees in the custodial centers, provided pro bono services including securing pro bono legal representation, conduct advocacy to the chief judge or the attorney general, and implement an effective mentorship program amongst other things. Also, through these collaborations, law clinics act as agents of access to justice ensuring pretrial detainees get justice at no cost.⁸⁷

⁸⁵ Data from the interview conducted with the past Deputy Student Clinic Head of the Ebonyi State University Law Clinic.

⁸⁶ Supra Ernest Ojukwu et al 2012. Pg 176

⁸⁷ Supra, Omidoyin and Oniyinde Pg 107.

For instance, the University of Ibadan Women's Law Clinic, the University of Abuja Law, NSUK Law Clinic and Baze University Law Clinic are some of the law clinics that have adopted this approach. They collaborate with both domestic and international organizations directly or through NULAI (as is the case with the University of Abuja)⁸⁸. Through this collaboration, they can carry out activities that are targeted at promoting pretrial justice. These collaborations provide the clinics with funding, capacity building, and bigger platforms for engagements with criminal justice actors both in Nigeria and outside Nigeria. In the case of the women's law clinic, through these collaborations, they work with justice actors and community members to address the challenges women face in the Nigerian justice system.

Conclusion

Commencing with an exploration of the evolution of CLE within the context of the history of law clinics in Nigeria and concluding with their approaches to pretrial justice, this chapter has illustrated the vital role of law clinics in experiential learning, legal education, and the quality legal practitioners that are produced in Nigeria. Importantly, drawing on the data from the interviews, chapter two has highlighted the significant contributions of law clinics in bridging the gap in Nigerian pretrial justice. These contributions encompass providing pro bono legal services including legal representation to indigent pretrial detainees and facilitating their access to justice, advocating the cases of pretrial detainees to appropriate authorities like the chief judge or attorney general, and collaborating with state and non-state actors to protect the rights of pretrial detainees. All of which has aided the advancement of pretrial justice in Nigeria.

However invaluable the law clinics are to pretrial justice, they are not without limitations, and some of these limitations can be deduced from the discussion on pretrial justice and law clinic

⁸⁸ Data from interviews with the Coordinator of the University of Abuja, Baze Law Clinic, and the Clinic Staff of the Women Law Clinic Ibadan.

approaches, such as the limitation of student practice in the Nigerian legal system, and the demanding nature of law clinic activities. The limitations are analyzed fully in the next chapter.

CHAPTER THREE: CHALLENGES OF LAW CLINICS IN PRETRIAL JUSTICE IN NIGERIA

Established and Emerging Challenges

Keywords: funding, student practice, pretrial detention, prison breaks, strikes, ethical dilemma, security

Introduction

The preceding chapters reviewed the flaws of Nigeria's pretrial justice system and law clinics' efforts to address these flaws and promote pretrial justice. Despite the law clinics' commendable success, they face significant challenges that hinder the full realization of their objectives in promoting pretrial justice. Drawing from literature and the interviews conducted with the law clinic students, law clinic coordinators/staff, and the programs manager of the Network of University Legal Aid Institution, this chapter examines the challenges that the law clinics face in their pursuit to promote the pretrial justice system in Nigeria. The clinical coordinators and students shared the challenges they encounter in their efforts to promote pretrial justice while NULAI provided a broader perspective on the challenges of pretrial law clinics or clinics implementing pretrial projects in Nigeria.

The findings from the interviews show existing challenges already addressed by Adedokun, Odi et al, and Ojukwu et al. Furthermore, the findings identify the increased prison breaks, the ethical dilemma, and the security risk it poses, as recent challenges to the law clinics. Although, not unprecedented in Nigeria, prison breaks rarely occur. However, in recent times, prison breaks have escalated into a big challenge even to the correctional services. For instance, in September 2021, one of the custodial centers in Kogi State was attacked which resulted in the escape of prison inmates.⁸⁹ Similarly, in July 2022, the Medium Security Custodial Center

⁸⁹ Soonest Nathaniel, Kogi Jailbreak: Soldier, Policeman Killed, Two NCoS Officials Missing-FG, (Channels TV 2021). <https://www.channelstv.com/2021/09/13/kogi-jailbreak-soldier-policeman-killed-two-ncos-officials-missing-fg/> Last Accessed 16 June 2024.

(MSCC) Kuje was attacked by a terrorist group that destroyed a part of the facility leading to the escape of the inmates.⁹⁰ Also, in April 2024, some part of the MSCC Suleja's facility was destroyed by heavy rainfall leading to the escape of inmates in this facility.⁹¹

To this end, sub-chapter 3.1 of this chapter applies the data obtained from the interviews to expand on the established challenges identified by the literature of Adelakun, Ojukwu et al, and Odi et al, regarding the approaches and challenges of law clinics as analyzed in their texts. While sub-chapter 3.2 focuses on the emerging challenges such as prison breaks, ethical dilemmas, and security as identified by the participants but not captured by the literature.

3.1 Established Challenges Identified by the Literature.

The challenges of law clinics highlighted by Adelakun include funding, inadequacy of qualified staff, and the level of acceptance of CLE.⁹² Though her literature was published in 2017, however, some of these challenges still exist.

Similar to Adelakun's arguments, Odi et al also identified finance as one of the challenges law clinics face in pretrial justice. Other challenges identified include the demanding nature of the law clinic, the bureaucracy involved in the interaction between the law clinics and criminal justice actors, and academic strikes.⁹³

Furthermore, Ojukwu also highlighted challenges that are peculiar to pretrial law clinics including non-cooperation from the officers of the detention centers like the prisons, illiteracy

⁹⁰ Malik Samuel, Kuje prison break: is Nigeria out of security options? (Institute for Security Studies, 2022) <https://issafrica.org/iss-today/kuje-prison-break-is-nigeria-out-of-security-options> Last Accessed 16 June 2024.

⁹¹ Ozioma Samuel-Ugwuezi, Suleja Jail Break: Inside Collusion Probable Reason For Jail Break, Not Just Collapsed Wall, Says Fisayo Soyombo (Arise TV, 2024) <https://www.arise.tv/suleja-jail-break-inside-collusion-probable-reason-for-jail-break-not-just-collapsed-wall-says-fisayo-soyombo/> Last Accessed 16 June 2024.

⁹² Supra Adelakun.

⁹³ Supra, Odi et al 2019 37-129

of the detainees, poverty, increasing population of pre-trial detainees and prisoners, distrust by relevant authorities and other persons limited resources of the law clinics to effectively offer their services, time constraints, and unstable university calendar, right of representation like lawyers, lack of data or reliable data, lack of cooperation by colleagues, standard training needs of supervisors and students, awareness of the relevance of the law clinics.⁹⁴

The following challenges were expanded on through the interviews:

Funding-: Activities under the law clinics' pro bono service approach require funding. Money is needed for transportation logistics of the students to visit the custodial centers for interviews, to go for investigation and verification of cases, and to go to court. The fund is also needed to sort phone bills for contacting the families of the pretrial detainees, logistics for printing and photocopying court documents, conducting training for the law clinic, as well as the general office administration of the law clinic itself. The absence of these funds or delay in its disbursement poses a challenge.

Adelakun argued that one of the reasons funds are a challenge is because law clinics in Nigeria function on the funds they receive primarily from their universities or law schools.⁹⁵ Akhigbe also explained that inadequate funds hinder law clinic students from effectively completing their pretrial projects, and late disbursement of funds also negatively affects projects.⁹⁶ From the information provided by participants, funding still seems to be a major challenge for some law clinics like EBSU Law Clinic, because it limits their pretrial justice activities and efforts, while it is not a challenge for other law clinics because they secure funding for their pretrial projects through other sources such as organizations like the Network of University Legal Aid Institutions (NULAI), and those the law clinics partner with on projects.

⁹⁴ Supra Ernest Ojukwu et al, 2012.

⁹⁵ Supra, Adelakun Pg 95 – 96.

⁹⁶ Supra Odi et al, 2019.

The Acceptance of CLE: In addition to funding, another challenge put forth by Adedokun is the acceptance of CLE in Nigeria. Although the acceptance of CLE seems to have increased since Adedokun's literature, the CLE program including the establishment of a law clinic is a requirement for the accreditation of a Law Program in Nigeria, and the law programs in the universities include credit courses on clinical legal education. To also show improvement, in comparison to 4 pilot law clinics when the law clinic was introduced in 2004 and 16 law clinics in 2012, there are currently 49 registered and active law clinics in Nigeria according to [NULAI's 2022 Annual Report](#).

However, the data from the interviews show that acceptance of CLE still seems to be a challenge in some of the universities, where the law clinic itself is seen as more of an extra-curricular activity. Even with the credit courses, participants complained that the courses are restricted to some students (either 4th year students or 5th year students or both). Also, the law clinic teachers and staff are stretched because their activities in the law clinic are recognized as a volunteering role which cannot affect their primary role/functions in the university. Finally, out of over 70 law faculties in Nigeria⁹⁷, only 49 have an active law clinic, which shows that the level of CLE acceptance needs to be improved.

Time-Demanding Nature of Law Clinic: For schools that appreciate CLE and have a functioning law clinic that is funded, being able to balance the demanding nature of the law clinic and other academic commitments can be a challenge for law clinic students. Maduakor and Akhigbe argue that finding a balance between managing law clinic activities and other academic courses is challenging for students.⁹⁸ Participants also highlighted this as a challenge, one of the reasons being that the time allotted for the CLE credit course is not enough to

⁹⁷ <https://www.nigerianlawschool.edu.ng/Notices/AccreditedWithQuotas.pdf>

⁹⁸ Supra Odi et al, 2019.

incorporate all the law clinic activities, and students have to combine law clinic activities, working with pro bono lawyers and their academic schedule which is very tasking for them and does not afford them enough time.

Furthermore, the participants express how the over-demanding nature of the law clinic discourages students from participating in pretrial activities. A participant noted that “...sometimes you see that some students will not want to give their best. While others will give their best, but they'll be having issues missing tests, and their academic will suffer...” aligning with Akhigbe (odi et al 2019) In such cases, the law clinic teachers try to assist the students in creating this balance, by obtaining an excuse from the other teachers on the student’s behalf.

Inadequacy of Qualified Staff: One of the arguments put forth by Adalakun is that though there is growing interest in this area of clinical education, most Nigerian lecturers lack clinical legal education training. Because managing a law clinic requires significant effort beyond traditional classroom teaching, involving illustrations, demonstrations, and supervision to ensure ethical compliance. Achieving this requires law clinic teachers to be up-to-date legal practitioners, which is rare in academia.

This research finds that in recent times, this challenge has taken a different dimension. First, in addition to more law clinics, NULAI conducts training for law teachers, and clinical legal education conferences that have built the capacity of clinical legal education teachers, NULAI has also published several manuals, guidebooks, and training resources on CLE and pretrial law clinics. They include [Standards And Best Practices For Clinical Legal Programmes in Nigeria](#), and [Administration Of Criminal Justice Pre-Trial Manual For Law Clinics](#), etc. Some of the published resources include the texts used in this research like the Handbook on Prison Pre-trial Detainee Law Clinic, and the Campus-Based Law Clinics in Criminal Justice

Administration in Nigeria⁹⁹. Second, data gathered from the interview shows that the current challenge is the reluctance of law teachers to take on more responsibility in law clinics. This is because law clinic coordinators, supervisors, or staff roles are voluntary, and many law teachers would prefer to avoid extra workload. For instance, a participant explained, that law clinic supervisors are volunteers and must combine law clinic workload with their regular workload.

Illiteracy and Language- Ojukwu et al identified the illiteracy of detainees and prisoners as a challenge because they are not aware of their fundamental rights such as human dignity, and how to enforce these rights.¹⁰⁰ The data shows that law clinics find it challenging to investigate the information provided by the pretrial detainees and verify their cases because some of the detainees either have no information or have wrong information about their cases. A participant stated that “...there was also the problem of the inmates themselves, not knowing why they were in detention. There are a lot of inmates that, during the client interview, we asked them questions, and they really could not provide answers for them”. Without having the right data, providing legal aid to these detainees becomes a challenge.

Another significant challenge associated with illiteracy and identified by the participants was language, especially with law clinics in Northern Nigeria where the commonly spoken languages are English language (the official language of Nigeria) and Hausa language (the local language in the North). Client-lawyer communication is vital; however, the challenge occurs when law clinic students cannot communicate with the pretrial detainees because the detainees cannot speak English and law clinic students cannot speak Hausa. Some of them might resort to the popular pidgin English if the client can speak it but, in many instances, the clients are indigent with little to no formal education and can therefore only communicate in the Hausa language. To buttress this point, a participant explained:

⁹⁹ [NULAI Curriculum And Publications – Network of University Legal Aid Institutions \(NULAI\)](#) Last Accessed 11 June, 2024.

¹⁰⁰ Supra Ernest Ojukwu et al, 2012.

“a significant challenge we had during one of the client interviews was the language barrier in that most of the inmates we needed to interview on that day spoke only Hausa language. On that day, we had over 14 clinicians for the interview, and only 2 of the clinicians could understand the Hausa language to be able to communicate. So, there was a lot of backlogs, because we had to rely on predominantly 2 people for the work that 14 people were available...”

Strikes- Another challenge identified by Ojukwu et al was the academic strike. This was a peculiar challenge to the public universities in Nigeria. According to the authors, the frequent disruption of the university’s academic calendar affected law clinic programs because the law clinic projects are done within the academic work of the students.¹⁰¹ Similarly, Stanley Ibe argued that this is the most intractable of the challenges law clinics face because it results in limited communication with clients, and it affects the preparation of their client’s cases.¹⁰² This challenge was also identified by several participants who mentioned that the university strikes often caused by the Academic Staff Union of Universities (ASUU) affect the clinics’ program because the students would have to vacate the school thereby abandoning their cases. Also, they indicated that when cases are abandoned due to strikes, it not only stalls the progress of the cases but also weakens the trust that exists in the relationship between the law clinics and their clients in detention, as well as the collaboration between the law clinics and the correctional services.

To address this challenge of strike, law clinics like the University of Abuja devised a strategy where law clinic students living in Abuja will continue the cases even when school is not in session. This is to ensure continuity and avoid abandonment of the cases. According to a participant, “...we also try to balance that sometimes by making sure that some students stay back to do the cases even when they are on a break”.

¹⁰¹ Supra Ernest Ojukwu et al, 2012.

¹⁰² Supra Odi et al, 2019.

3.2 Emerging Challenges Identified by Participants

Data obtained from the interviews conducted identified 3 emerging challenges not discussed in the literature. One such challenge was the Prison breaks which participants regarded as a direct challenge that has led to other challenges such as Ethical Dilemmas and Security. Below is a review of these challenges:

Prison break- a recurring challenge amongst participants was the occurrence of prison breaks within their jurisdictions. When this happens, the correctional service authorities enforce restrictions on visits to the custodial center, and some of the law clinic clients in detention may escape. These restrictions prevent law clinics from communicating or visiting their clients in detention to ascertain if their clients escaped. This poses a significant challenge to the legal representation they offer to their clients, in terms of stalling court applications and causing their clients to miss court appearances which leads to several adjournments. All of which frustrates law clinics' interventions.

A participant explained "A recent challenge is the issue of prison break. Twice now, within a very short time, the prisons have been broken and inmates have fled. Usually, it becomes imperative that we go back again to prison and re-interview those inmates who are left... Now, while we are working on another pretrial project at Suleja prison, they collapsed the wall and left. So, we are yet to even go back because the prison is not settled yet...and we await to go back and do another kind of review, with the list we have been working on, to find out how many of our cases have left and how many are still there."

Another participant also reiterated "Recently there was a rainstorm that destroyed the correctional center in Suleja where some inmates escaped. Then July 2022, where the Kuje prison was attacked, and the inmates escaped. When a situation like that happens, there's bound to be a restriction by the prison authorities from having students go to these facilities."

Ethics- Law clinic clients who escape during prison breaks create an ethical dilemma for the law clinic, especially the students. As lawyers in training, clinical students are expected to respect the Rules of Conduct guiding the legal profession, which includes ethics. As Abdullahi explained, the essence of the Professional Rules guiding the conduct of the lawyer-client

relationship is to devote his service, knowledge, and expertise to the best interest of his client.¹⁰³

Similarly, the law clinic owes their client the same duties which include confidentiality.

¹⁰⁴However, lawyers including the law clinics as officers of the court owe the courts certain duties which include not acting in a manner that obstructs the administration of justice, and acting in the interest of justice.¹⁰⁵ The ethical dilemma arises when law clinics' clients escape during the prison breaks, and inform the law students about their actions. Even so, where the client has been in custody for many years with so many delays in the trial. Does the law clinic report the client to the authority and the court, or do they uphold their duty of confidentiality to the clients?

According to a participant "...So, your client calls you to let you know that he has absconded from prison and he's in so so place. Do you report to the authority that this person is at this location, or do you say, 'Oh, you've stayed so long there, please enjoy your freedom? We're fighting for that freedom now you've got the freedom, enjoy the freedom'? So that ethical dilemma also came up, and because the students also needed to be truthful to their clients and at the same time, they also had an obligation to the criminal justice system, we had to inform the students if their clients call you and give you this information, please inform your clients that you're obliged to give feedback to the correctional center. So, it's best when the clients get to know that, then they might opt not to contact you again of their own free will. But you know that ethical dilemma came out for one that had been in detention for over 6 years without trial. So that Ethical dilemma also came up significantly for the clinic."

Insecurity- participants identified insecurity as a fallout of the prison break. Over the course of providing pro bono services to their clients, law clinic students build some form of professional rapport with their clients. When there is an incidence of prison break, some clinical students feel unsafe when their clients escape from prison. For instance, a participant mentioned "...then, significantly, after the prison break, because some students had inmates that escaped and called to

¹⁰³ Ibrahim Abdullahi, Ethics, Rules of Professional Conduct and Discipline of Lawyers In Nigeria: An Overview. (2017) International Journal of Public Administration and Management Research (IJPAMR), Vol. 4, No. 1., Pg 8. <https://journals.rcmss.com/index.php/ijpamr/article/view/431/391> Last Accessed 16 June, 2024.

¹⁰⁴ Rule 14 – 25 of the Rules of Professional Conduct (RPC) 2007

¹⁰⁵ Rules 30 and 37 RPC 2007.

explain that they've absconded. Now there was the issue of 'Are we safe?' Because this person might have a grievance against the criminal justice system and might believe that even the clinicians are part of the system that kept them in detention for whatever reason."

Another angle to this challenge participants identified is the general insecurity in Nigeria as a challenge preventing the law clinic students from going to court or carrying out the necessary activities for their client's cases, such as going to court, conducting advocacy visits, filing court processes, monitoring the progress of their cases, case meetings, prison visits, etc.

It was mentioned by another participant "There are times that students will not be able to attend courts because there are some reports of insecurity or some fears of insecurity that maybe because of the location of the courts, and somethings that are likely going to happen bordering on security. This is especially so for courts that are outside the FCT, because we've been having cases in courts in Niger State, Nassarawa State, and in some parts of Kaduna State. So sometimes insecurity is a big issue, and it affects the students."

A participant also mentioned "So also, the security situation in the country. At some point, the Kuje Axis was also not so safe and so it brought up the issue of the Security risk."

Conclusion

In conclusion, all the law clinics' challenges can be viewed from 2 angles: those within their control and those beyond their control. Despite the many challenges such as prison breaks and strikes which are beyond their control, the law clinics have demonstrated commendable efforts in addressing these challenges to the best of their ability. For instance, in the event of a strike, some law clinics like the University of Abuja ensured continuity of case management by encouraging students residing in Abuja to continue the relevant activities on the clinic's cases to prevent case abandonment. Additionally, to address the security challenges, safeguard measures are implemented such as security clearance in the case of private universities such as

Baze University Law Clinic, and the University of Abuja ensures that activities or visits are implemented by at least two students. While these efforts might not be perfect, they have helped the clinic navigate its activities despite the challenges.

However, more can be done to resolve these challenges. One potential solution is to draft an ethical manual to guide the students on ethical dilemmas. Some law clinics already utilize Guide Manuals that are focused on maintaining professional relationships between the clinic students and the pro bono lawyers and address any dispute that may arise. This can be expanded to address concerns bordering on student-client relationships.

Despite several efforts to incorporate clinical legal education in the Nigerian legal education system, there is still more progress to be made. While clinical legal education has gained recognition, some universities have yet to fully appreciate the significance of the law clinic beyond accreditation purposes. Integrating law clinic activities into the law program and assigning grades or credits for participation would help increase the acceptance and engagement rate. This worked for the University of Abuja where students receive grades for their activities in the law clinic. This was also recommended by one of the participants as a solution to get students' commitment to pretrial activities as well as create more time and flexibility to allow students to combine law clinic activities and their other academic commitments.

Finally, the increased acceptance and engagement of law clinics would serve as a solution to the challenge of funding. With a deeper appreciation of the law clinic and recognition of its efforts to promote not only pretrial justice but also social justice, the university will be motivated to allocate more funds to support the law clinic's activities.

CONCLUSION

This research has provided a detailed understanding of Nigeria's pretrial system, highlighting its gaps. With an in-depth understanding of the nature and operations of the law clinics, the findings of this research highlight significant contributions and approaches of law clinics in bridging these gaps and promoting the principle of equal right to access justice for pretrial detainees. The research findings also expanded on the established challenges of the law clinics in pretrial justice and identified emerging challenges law clinics face in pretrial justice.

The research questions were: What are the approaches of the law clinics in promoting pretrial justice and what challenges do the law clinics face in this regard? In advancing pretrial justice this research finds that law clinics provide pro bono legal services to indigent pretrial detainees, carry out legal advocacy on behalf of the detainees, collaborate with other justice stakeholders, and incorporate mentorship to produce public interest lawyers who are conscious of the needs of their community. This research finds that the challenges law clinics face in implementing these approaches include funding, law clinic activities that are time-consuming, acceptance of law clinical legal education, advancing pretrial justice pro bono legal service, illiteracy, and strikes. Aside from these established challenges, there are emerging challenges which include prison breaks, security, and ethical dilemmas. Finally, research findings further suggest solutions that would resolve the challenges especially those within the control of law clinics.

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