

## CLINICAL LEGAL EDUCATION AND THE FUTURE OF PRO-BONO IN NIGERIA: A GUARANTEE FOR ACCESS TO JUSTICE FOR ACCUSED PERSONS AWAITING TRIAL

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### **Abstract**

The idea of access to justice is strongly related to the doctrine of the rule of law, and the effectiveness of a nation's judicial system is mostly evaluated by its citizens' access to justice. Human rights are guaranteed and protected by instruments including the Constitution of the Federal Republic of Nigeria 1999 (as amended). However, when these rights are not protected (fair hearing, access to court) owing to financial constraints and lack of access to legal counsel, justice cannot be guaranteed. The large number of accused persons awaiting trial in Nigeria is ascribed to several factors, including missing files, inability to post a bond or provide surety, delay in the DPP's advice to the police over which case to pursue, the police's failure to promptly investigate and prosecute, among others. In Nigeria, despite the voluntary legal services provided by the government, lawyers, and clinical law students, the legal system towards indigents does not abate. This article explores the problems and potential solutions to providing increased legal aid services to accused persons awaiting trial in Nigeria. An interdisciplinary approach was adopted in this study, where primary data was gathered from prison visits made by Nigerian Law School,

Yola Campus Law Clinic to the Yola and Jimeta medium security correctional centres. The barriers to accessing legal aid in light of the available legal aid services are critically examined here.

## 1. INTRODUCTION

The phrase awaiting trial has been used to describe individuals that are in prison custody without a formal charge before a Court of competent jurisdiction, and in this paper, it will include those that are in prison custody, that have been charged before a Court, but their cases are still pending in Court while they remain in detention.<sup>1</sup> Some of these detainees remain in prison custody for years before their cases are decided, and sometimes transferred from one judge to another to commence *de novo* due to the retirement, transfer, or elevation of a judge.<sup>2</sup> Therefore, we have a situation where people are in prison or have been in prison for years, but they have not been convicted for any crime, for which they are serving a sentence.<sup>3</sup> It has been submitted that over sixty-five percent of the inmates in Nigerian prisons fall under this category.<sup>4</sup> Such people are generally described in this paper as prison detainees awaiting trial. It is pertinent to state that some people have been detained in police cells for prolonged

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<sup>1</sup> Olubiyi I and Okoeguale H. 'The Nigerian Criminal Justice System: Prospects and Challenges of the Administration of Criminal Justice Act, 2015.' *African Journal of Criminal Law and Jurisprudence* 1: (2016).

<sup>2</sup> Okocha U.O. 'Rethinking Trial De Novo in Nigeria: Law Reforms.' *The Nigerian Lawyer*. November 2020.

<sup>3</sup> Joseph O.E., 'Prison Overcrowding Trend in Nigeria and Policy Implication on Health.' *Cogent Social Science* (2021) 7: 1956035 <https://doi.org/10.1080/233118862021.1956035>

<sup>4</sup> Ibid.

periods, sometimes stretching into months without a formal charge against them before a Court of competent jurisdiction and without committing such detainees into prison custody.<sup>5</sup> Therefore, detainees in the context of this work will include those that are detained in police custody as well as those that are detained in prison custody. The average pre-trial detention period of detainees awaiting trial has been placed at 3.7 years,<sup>6</sup> this goes contrary to the presumption of innocence guaranteed under the Constitution of The Federal Republic of Nigeria.<sup>7</sup> The principle of presumption of innocence enshrined in the Constitution of the Federal Republic of Nigeria, does not presuppose punishing a person for a crime before the person is pronounced guilty of the crime by a court of competent jurisdiction,<sup>8</sup> but the protracted period of detention is in violation of this right.<sup>9</sup> The gravity of the offenses that the individuals are charged with is a determining factor for a consideration of whether they can be admitted on bail or not,<sup>10</sup> and those in Police custody, charged with offenses that are not ordinarily bailable, may remain in Police custody after an investigation of some sort, awaiting

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<sup>5</sup> Uwazuruike, Allwell Raphael. '#EndSARS: The Movement Against Police Brutality in Nigeria.' *Harvard Human Rights Journal* (2020) ORCID: 0000-0002-3746-9254.

<sup>6</sup> Ezekwem, U. 'Exploring Non-Custodial Sentencing in Magistrate Courts.' 2017 Orientation Course for Newly Appointed Magistrates. [https://nji.gov.ng/images/Workshop\\_Papers/2017/Orientation\\_Newly\\_Appointed\\_Magistrates/s5.pdf](https://nji.gov.ng/images/Workshop_Papers/2017/Orientation_Newly_Appointed_Magistrates/s5.pdf) accessed 19th November 2023.

<sup>7</sup> Section 36(5) Constitution of the Federal Republic of Nigeria 1999 (As Amended).

<sup>8</sup> Adeyanju, Folasade O. 'Safeguarding the Legal Provision of the Presumption of Innocence of Pre-trial Detainees.' *Redeemer's University Nigeria, Journal of Jurisprudence and International Law* 3:1 (2023).

<sup>9</sup> Ibid.

<sup>10</sup> Ojeih, C.A. and Udemezue, S. 'An Appraisal of Emerging Issues in the Law and Practice Relating to Bail, Bondsperson and Forfeiture of Recognizance in Nigeria.' *SSRN Electronic Journal* (May 2021).

the Director of Public Prosecution's legal advice.<sup>11</sup> Consequently, some detainees may remain in prison for a term that may be as long as, or even exceeding the jail term if they were convicted for the offense that they were allegedly apprehended for.<sup>12</sup>

### 1.1. Condition of The Nigerian Prisons

Statistics have shown that about 70 percent of inmates in Nigerian prisons are awaiting trial,<sup>13</sup> this number is not only alarming but is worsened by the conditions of Nigerian prisons which include poor hygiene, overcrowding, and poor feeding among others.<sup>14</sup> The deplorable condition of the prison is responsible for health challenges faced by the inmates, including mental health issues among others.<sup>15</sup> Recreational and rehabilitation facilities are grossly inadequate,<sup>16</sup> defeating the aim of correction and rehabilitation of inmates to become more useful to themselves and society. The government of the Federal Republic of Nigeria has made efforts in trying

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<sup>11</sup> Hon. Justice Peter A. Akhiero. 'Arrest, Remand and Awaiting Trial Syndrome in Criminal Justice: Fixing the Jigsaw to End Prison Congestion.' A Paper Presented at the Law Week of the Ekpoma Branch of the Nigerian Bar Association, July 2018. P.8.

<sup>12</sup> Agwu, Sunday. 'Literacy and Fundamental Rights of Pretrial Detainees in Nigeria.' *Research Gate* (2021). <https://www.researchgate.net/publication/351248748>.

<sup>13</sup> World Prison Brief. Institute for Crime & Justice Policy <https://www.prisonstudies.org/country/nigeria>.

<sup>14</sup> Onyekachi, J. 'Problems and Prospects of Administration of Nigerian Prison: Need for Proper Rehabilitation of Inmates in Nigeria Prisons.' *Journal of Tourism and Hospitality* 5:4 (2016) DOI:10.4172/2167-0269.1000228.

<sup>15</sup> Ogunlesi A.O, Ogunwale A. 'Correctional psychiatry in Nigeria: dynamics of mental healthcare in the most restrictive alternative.' *BJPsych Int.* 15:2 (2018):35-38. doi: 10.1192/bji.2017.13. PMID: 29953117; PMCID: PMC6020904. Accessed 20<sup>th</sup> Novemeber, 2023

<sup>16</sup> Obioha, Emeka O. 'Challenges and Reforms in the Nigerian Prison System.' *Journal of Social Sciences* 27:2 (2011): 95-109.

to reverse this trend by establishing the Legal Aid Council<sup>17</sup> saddled with the responsibility of providing *pro-bono* services to indigent clients. The National Human Rights Commission of Nigeria was established to check Human Rights abuses through the investigation and prosecution of cases reported to the Commission.<sup>18</sup> However, the sheer number of clients the Commission has to attend to is overwhelming, coupled with new arrivals into the prisons daily to join the queue of inmates awaiting trial.<sup>19</sup> The Administration of Criminal Justice Act and the Administration of Criminal Justice Laws of the various States<sup>20</sup> is meant to improve the speed at which criminal cases are disposed of, but it seems the impact of the laudable legislation is yet to be seen.<sup>21</sup>

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<sup>17</sup> The Legal Aid Council of Nigeria was first established by the Legal Aid Decree No. 56 of 1976, which has been repealed and replaced by the Legal Aid Act, 2011 with the core mandate of providing free legal services to indigent Nigerians. <https://legalaidcouncil.gov.ng/historical-profile-of-the-council/>.

<sup>18</sup> The National Human Rights Commission of Nigeria was established by the National Human Rights Commission Act 1995 (As Amended), with the mandate of protecting and promoting human rights in Nigeria generally and the rights of pre-trial detainees are one out of several other categories of rights that the commission seeks to protect and promote. <https://nigeriarights.gov.ng/about/overview.html>.

<sup>19</sup> Ibid n.9 at p.5.

<sup>20</sup> See Administration of Criminal Justice Act, 2015. Section 1 spells out the purpose of the Act, which includes the speedy dispensation of justice and the protection of the rights and interests of the suspect, the defendant, and the victim among others.

<sup>21</sup> Waziri-Azi, F. 'Compliance to the Administration of Criminal Justice Act, 2015 in Prosecuting High Profile Corruption Cases in Nigeria (2015-2017).' *Journal of Law and Criminal Justice* 5:2 (2017).

## 1.2. The Role of The Police in Administration of Criminal Justice In Nigeria

The Police Act clearly defines the role and responsibility of the Police in Nigeria. Section 4 of the Act in particular provides for the general duties of the Police which includes the preservation of life and property, prevention and detection of crime, preservation of law and order, and the enforcement of laws among others.<sup>22</sup>The manner in which the Police carries out its responsibilities impacts directly on pretrial detainees. The Nigerian Police is known to have prolonged investigation, and reported cases of missing files and critical evidence<sup>23</sup> needed to prosecute a case which accounts in part for prolonged trials in court, and consequently prolonged pretrial detention periods. While investigation, search, and retrieval of missing files, and evidence is ongoing, the defendant is usually committed to prison custody under a remand order,<sup>24</sup> until a bail application is made where appropriate, and bail conditions met. This negatively impacts on the human rights of the pretrial detainees.<sup>25</sup>

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<sup>22</sup> See Section 4 Police Act.

<sup>23</sup> Ladapo, Oluwafemi A. 'Effective Investigation, a Pivot to Efficient Criminal Justice Administration: Challenges in Nigeria.' *African Journal of Criminology and Justice Studies* 5:1-2 (2011): 79-94.

<sup>24</sup> Kanu, Ugocukwu C. et. al. 'Scrutinizing the Constitutionality of Remand Order Proceeding under the Administration of Criminal Justice Legislation in Nigeria: A Comparative Analysis.' *Beijing Law Review* 13:4 (2022).

<sup>25</sup> Madabuike-Ekwe, Ndubisi J and Obayemi, Olumide K. 'Assessment of the Role of the Nigerian Police Force in the Promotion and Protection of Human Rights in Nigeria' *Annual Survey of International & Comparative Law* 23:1 (2019): 19-30.

## 2. COLLECTION AND ANALYSIS OF PRIMARY DATA

In 2022, the Nigerian Law School Law, Yola Campus Law Clinic did a random survey of the male inmates in Yola and Jimeta medium security prisons, where 31 inmates responded to the survey, and were interviewed. The details of their responses are analysed below. The objective of the survey was;

1. Ascertaining the number of inmates that are awaiting trial.
2. Ascertaining the number of inmates that have access to a lawyer.
3. Ascertaining the period spent in detention by the inmates
4. Ascertaining the nature of the offence for which the inmates are charged with as either bailable or non bailable offences.

### 1<sup>st</sup> OBJECTIVE: TO SHOW THE NUMBER OF AWAITING TRIAL INMATES IN THE PRISON POPULATION

**Statistics Table 1**

<b>Number of Valid</b>	<b>31</b>
<b>Mean</b>	<b>1.06</b>
<b>Median</b>	<b>1.00</b>
<b>Std. Deviation</b>	<b>.250</b>

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**Variance** .062

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**Source: Field Survey, 2022**

**Frequency Table 2**

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**Status of Case**

	<b>Frequency</b>	<b>Percent</b>	<b>Valid Percent</b>	<b>Cumulative Percent</b>
<b>Awaiting Trial</b>	<b>29</b>	<b>93.5</b>	<b>93.5%</b>	<b>93.5</b>
<b>Convicted</b>	<b>2</b>	<b>6.5</b>	<b>6.5%</b>	<b>100.0</b>
<b>Total</b>	<b>31</b>	<b>100.0</b>	<b>100.0%</b>	

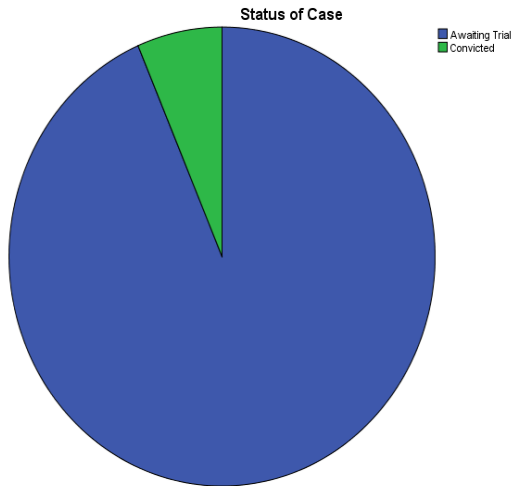
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**Source: Field Survey, 2022**

Table 2 above presents the analysis of the status of cases in both Yola and Jimeta prison population awaiting trial. The analysis revealed that 29(93.5%) are all awaiting trial while 2(6.5%) have been convicted already. Therefore, the analysis suggests or shows that majority of the prisoners (inmates) are all awaiting trial.



**A PIE CHART DIAGRAM SHOWING THE STATUS OF CASE**



**2<sup>nd</sup> OBJECTIVE: TO ASCERTAIN THE NUMBER OF AWAITING TRIAL INMATES THAT HAVE ACCESS TO A LAWYER**

**Statistics Table 3**

<b>Number of Valid</b>	<b>29</b>
<b>Mean</b>	<b>1.90</b>
<b>Median</b>	<b>2.00</b>
<b>Std. Deviation</b>	<b>.310</b>
<b>Variance</b>	<b>.096</b>

**Source: Field Survey, 2022**

**Frequency Table 4**

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**Access to Lawyer**

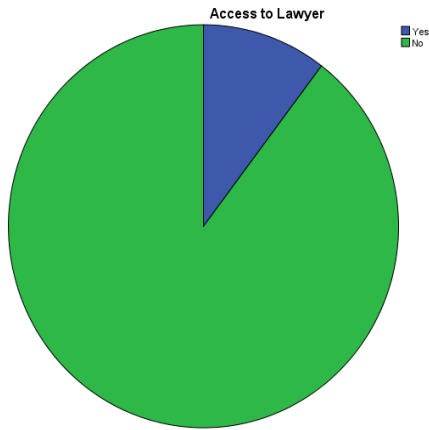
	<b>Frequency</b>	<b>Percent</b>	<b>Valid Percent</b>	<b>Cumulative Percent</b>
<b>Yes</b>	<b>3</b>	<b>10.3</b>	<b>10.3%</b>	<b>10.3</b>
<b>No</b>	<b>26</b>	<b>89.7</b>	<b>89.7%</b>	<b>100.0</b>
<b>Total</b>	<b>29</b>	<b>100.0</b>	<b>100.0%</b>	

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**Source: Field Survey, 2022**

Table 4 above presents the data analysis of the number of inmates awaiting trial that have access to lawyer in both Yola and Jimeta prison population. The analysis revealed that 3(10.3%) have access to lawyer, 26(89.7%) do not have access to lawyer. Therefore, the analysis suggests or shows that majority of the prisoners or inmates do not have access to a lawyer.

**A PIE CHART DIAGRAM SHOWING THE INMATES ACCESS TO LAWYER**



**3<sup>rd</sup> OBJECTIVE: TO ASCERTAIN THE PERIOD OF DETENTION SPENT BY INMATES AWAITING TRIAL**

**Statistics Table 5**

<b>Number of Valid</b>	<b>29</b>
<b>Mean</b>	<b>5.48</b>
<b>Median</b>	<b>4.00</b>
<b>Std. Deviation</b>	<b>4.603</b>
<b>Variance</b>	<b>21.187</b>

**Source: Field Survey, 2022**

**Frequency Table 6**

**Period in Custody (In three Categories)**

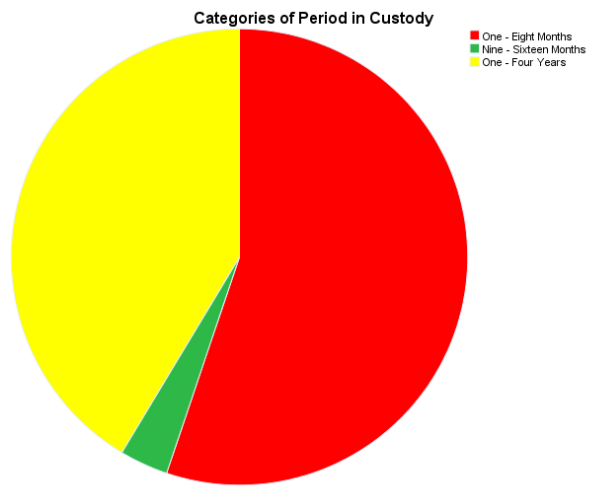
	<b>Frequency</b>	<b>Percent</b>	<b>Valid Percent</b>	<b>Cumulative Percent</b>
<b>One-Eight Months</b>	<b>16</b>	<b>55.2</b>	<b>55.2%</b>	<b>55.2</b>
<b>Nine-Sixteen Months</b>	<b>1</b>	<b>3.4</b>	<b>3.4%</b>	<b>44.8</b>
<b>One-Four Years</b>	<b>12</b>	<b>41.4</b>	<b>41.4%</b>	<b>100.0</b>
<b>Total</b>	<b>29</b>	<b>100.0</b>	<b>100.0%</b>	

**Source: Field Survey, 2022**

Table 6 above presents the data analysis of the period in custody which was categories into three phases such as One to Eight Months, Nine to Sixteen Months and One to Four Years respectively of inmates (prisoners) in both Yola and Jimeta prisons that are still awaiting trial in the prison population. The analysis revealed that 16 (55.2%) of the population have spent One to Eight Months, 1 (3.4%) of the population have spent Nine to Sixteen Months and 12 (41.4%) of the population have spent One to Four Years and are still awaiting trial respectively. Therefore, the analysis suggests or shows that majority of the prisoners (inmates) have spent One to Eight Months with the following frequency and percentage respectively 16 (55.2%) followed by One to Four Years 12

(41.4%) and Nine to Sixteen Months 1 (3.4%) respectively and they are all still awaiting trial.

**A PIE CHART DIAGRAM SHOWING THE PERIOD IN CUSTODY OF INMATES**



**4<sup>th</sup> OBJECTIVE: TO ASCERTAIN THE NATURE OF OFFENCE FOR WHICH INMATES AWAITING TRIAL ARE CHARGED WITH**

**Statistics Table 7**

<b>Number of Valid</b>	<b>29</b>
<b>Mean</b>	<b>1.48</b>
<b>Median</b>	<b>1.00</b>
<b>Std. Deviation</b>	<b>.509</b>
<b>Variance</b>	<b>.259</b>

**Source: Field Survey, 2022**

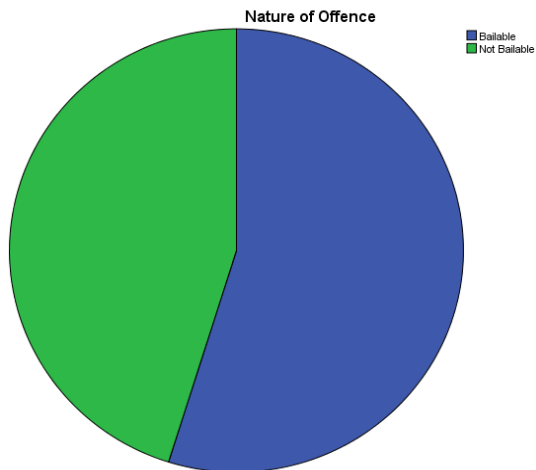
**Frequency Table 8**

<b>Nature of Offence</b>				
	<b>Frequency</b>	<b>Percent</b>	<b>Valid Percent</b>	<b>Cumulative Percent</b>
<b>Bailable</b>	<b>15</b>	<b>51.7</b>	<b>51.7%</b>	<b>51.7</b>
<b>Not Bailable</b>	<b>14</b>	<b>48.7</b>	<b>48.7%</b>	<b>100.0</b>
<b>Total</b>	<b>31</b>	<b>100.0</b>	<b>100.0%</b>	

**Source: Field Survey, 2022**

Table 8 above presents the data analysis of the nature of offence of inmates in both Yola and Jimeta prisons that are still awaiting trial in the prison population. The analysis revealed that 15 (51.7%) are bailable while 14 (48.7%) are not bailable. Therefore, the analysis suggests or shows that majority of the prisoners (inmates) are bailable and are still awaiting trials.

## A PIE CHART DIAGRAM SHOWING THE NATURE OF OFFENCES OF INMATES



The summary of the above survey is that 93.5% of the respondents were awaiting trial, and out of those that are awaiting trial, 89.7% of them do not have access to a lawyer. In addition, 41.4% of the respondents spent between one to four years in prison, and 48.7% of the population are in custody for bailable offences.

### 3. STATE OF PRETRIAL DETAINEES IN CUSTODIAL CENTERS

There appears to be a relationship between prolonged detentions and the socio-economic status of the detainee. Most of the detainees that have been in prison custody

awaiting trial for unduly prolonged periods are incidentally indigent individuals,<sup>26</sup> people living under poor conditions, below the poverty line and who cannot afford to retain a lawyer to make a simple bail application on their behalf, how much more briefing a lawyer to handle the case substantively? Such individuals may remain in custody indefinitely unless some interventions are made by various stakeholders.<sup>27</sup> As awaiting trial detainees, there is the possibility that they may not be found guilty for committing the alleged crimes, and some of them eventually die in prison awaiting trial.<sup>28</sup>

### **3.1. A Clinical Legal Education Approach to the Pretrial Detainee Situation**

The despicable state of the Nigerian pretrial detainee situation underscores the need to come up with innovative Law Clinic practices, that will produce more results in terms of the number of awaiting trial detainees whose cases are concluded under the clinical project in view. Not all the Law Faculties in Nigeria have Law Clinics, and where they do, Clinical Activities are restricted to 4<sup>th</sup> and 5<sup>th</sup>-year students.<sup>29</sup> Most of the universities have Pre-Trial Detainee Units, with their focus mainly on prison

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<sup>26</sup> Omodiyi, Taiye and Oniyinde, Omolade. 'Law Clinic and Access to Justice for Pretrial Detainees in Nigeria.' <https://www.researchgate.net/publication/353368484>

<sup>27</sup> Some of the interventions made on behalf of indigent pretrial detainees include the visit of the Chief Judge of the state to evaluate and release inmates that have been in custody for a considerable period of time, interventions by the Legal Aid Council, and other organizations including the Law Clinic.

<sup>28</sup> Ayuk, A.A., Owan E.J. and Ekok O.C. 'The Impact of Prison Reforms on the Welfare of the Inmates: A Case Study of Afokang Prison, Calabar, Cross River State, Nigeria.' *Global Journal of Human Social Science* 13:2 (2013).

<sup>29</sup> Ernest Ojukwu, Odinakaonye Lagi and Mahmud Yusuf. *Compendium of Campus-Based Law Clinics in Nigeria*, Network of Universities Legal Aid Institutions (NULAI), 2014.



visits.<sup>30</sup> At the Nigerian Law School, for example, less than one percent of the student take part in Clinical Activities that involve Pre-Trial detainees. However, more can be done if Nigerian Law Clinics choose to be more innovative in their approach to Clinical Legal Education. This paper, therefore, considers innovative practices by Law Clinics aimed at achieving the dual objectives of Clinical Legal Education, which are experiential learning and access to justice.<sup>31</sup>

#### **4. LEGAL FRAMEWORK FOR ACCESS TO JUSTICE BY INDIGENT DETAINEES IN NIGERIA**

It will be very important to consider the legal framework for access to justice by indigent detainees in Nigeria. Justice is meant for everyone, but it must be accessed through the channel of the relevant institutions saddled with the responsibility of dispensing justice, which in most cases is the court.<sup>32</sup> Therefore, a person that cannot afford the services of a competent legal practitioner, to present his case before the Court, will only see justice through the Courts as an illusion, a mirage, unreachable and falling out of reach. For this work, we will consider a few provisions of the Legal Aid Act, 2011, The National Human Rights Commission Act, 1995, The

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<sup>30</sup> Ibid.

<sup>31</sup> M.A. (Riette) Du Plessis. "Clinical Legal Education: Determining the Mission and Focus of a University Law Clinic and Required Outcomes, Skills, and Values". *De Jure Law Journal*. 48:2 (2015).

<sup>32</sup> Omidoyin, T.J. 'Law Clinics and Access to Justice for Pretrial Detainees in Nigeria.' *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 10:1 (2019).

Administration of Criminal Justice Act, 2015, The Administration of Justice Commission Act, 2004 and the Legal Practitioners Act, 1975.

#### **4.1. The Legal Aid Council Act 2015**

The Legal Aid Council Act, 2011 established the Legal Aid Council of Nigeria, and the provision of free legal services to the indigent client is pivotal in providing access to justice for indigent detainees in Nigeria. The explanatory memorandum to the Legal Aid Act gives us a clear insight into the purpose and intent of the Act. It clearly states as follows;

...in line with international standards, provide for the establishment of legal aid and access to justice fund into which financial assistance would be made available to the Council on behalf of indigent citizens to prosecute their claims...<sup>33</sup>

In addition to the above, Section 8(1) of the Act provides the areas for which grant of aid could be made by the Council to include Criminal Defence Services, Advice, and Assistance in civil matters including community legal services based on an indigence

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<sup>33</sup> Explanatory Memorandum to the Legal Aid Act, 2011. The explanatory memorandum plays the role of a preamble to the Act which gives us the general purpose of the Law and the reasoning for enacting the Law.

test.<sup>34</sup> The question of what the indigence test is, was highlighted by section 10(1) of the Act as any person whose income is not up to the national minimum wage.<sup>35</sup> However, there is a provision for contributory funding of worthy cases for individuals whose income is more than the national minimum wage, even for those whose income is up to ten times the national minimum wage.<sup>36</sup> This, therefore, shows that the Act intends to provide legal services for individuals that have worthy cases and cannot afford to pay for legal services at all as well as those who cannot afford to pay for legal services in full.

The selection of the second category of beneficiaries, which is not purely on the ground of indigency should ordinarily depend on the complexity of the case that will require such huge funding as well as the other financial responsibilities of the individuals with income over and above the national minimum wage which may warrant the assistance of the Legal Aid Council, as well as the socio-political status of the applicant, which may be a factor affecting access to justice by the applicant.

Another key provision of the Legal Aid Act that can be a basis for engagements of the Legal Aid Council and Law Clinics is Section 17 which recognizes law clinics as part

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<sup>34</sup> Section 8(1) Legal Aid Act, 2011.

<sup>35</sup> Section 10(1) Legal Aid Act, 2011. The National Minimum Wage in Nigeria is Thirty Thousand Naira per month, which is about seventy US Dollars if converted at the official rate.

<sup>36</sup> See Section 10(3) Legal Aid Act, 2011.

of organizations and bodies that the Council can partner with in providing access to justice.<sup>37</sup> Law Clinics should take advantage of this provision to engage the Legal Aid Council in different ways that can bring about access to justice for more pre-trial detainees.

#### **4.2. The National Human Rights Commission Act (As Amended), 1995**

The National Human Rights Commission Act (As Amended), 1995 is another law that is critical in providing access to justice for indigent persons in Nigeria. The Act created the National Human Rights Commission of Nigeria.<sup>38</sup> Section 5 of the Act provides for the functions of the Commission to include dealing with matters that have to do with the promotion and protection of Human Rights as enshrined in the Nigerian Constitution as well as those contained in other treaties that Nigeria is a party to. Section 5(c) of the Act includes assisting victims of the violation of human rights to seek appropriate redress and remedies as part of the core functions of the Commission.<sup>39</sup> Detaining a person without trial is a violation of human rights unless the detention is made according to the provision of extant laws. Therefore, the National Human Rights Commission of Nigeria has a key role to play in providing access to justice for pre-trial detainees in Nigeria.<sup>40</sup>

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<sup>37</sup> See Section 17 Legal Aid Act, 2011.

<sup>38</sup> Section 1(1) National Human Rights Commission Act (As Amended), 1995.

<sup>39</sup> Ibid Section 5(c).

<sup>40</sup> Ibid n.23 at p. 107.

### 4.3. Administration of Criminal Justice Act 2015

One of the biggest innovations in providing access to justice in the criminal justice system in Nigeria is the Administration of Criminal Justice Act, 2015. The Act generally provides for expeditious disposal of criminal cases in Nigerian Courts as well as several provisions to check the abuse of powers of the Police in the administration of criminal justice in Nigeria. Section 1(1) of the Act provides for the Act as follows:

The Purpose of the Act is to ensure that the system of administration of the criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime, and protection of the rights and interests of the suspect, the defendant and the victim.<sup>41</sup>

It is very clear from the wording of the section, what the intention of the Act is. Presently, thirty States and the Federal Capital Territory have passed the Administration of Criminal Justice Law, while the administration of Criminal Justice Act applies to the FCT, with Anambra as the first State to pass the Administration of

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<sup>41</sup> Section 1(1) Administration of Criminal Justice Act, 2015. This provision of the Act is *in pari materia* with the provisions of the Administration of Criminal Justice Laws of the various states of the Federation.

Criminal Justice Law in 2010.<sup>42</sup> The ACJA or the ACJL as the case may be replaced the provision of the Criminal Procedure Act in the Southern States and the Criminal Procedure Code in the North which has become somewhat archaic in the administration of criminal justice in Nigeria. Highlights of some of the provisions of the Law include; the number of adjournments that can be taken and the period between one adjournment and another,<sup>43</sup> prohibition of *de novo* on the ground of the elevation of a judge,<sup>44</sup> unlawful arrest and detention including an arrest in place of a suspect,<sup>45</sup> magisterial monitoring of police arrests,<sup>46</sup> alternatives to custodial sentencing,<sup>47</sup> plea bargaining<sup>48</sup> among others.

Most of these provisions have not been explored by the Courts, and legal practitioners, which may be due to the lack of sufficient training of judges and legal practitioners on how to utilize the provisions of the Act under different circumstances. This leaves room for Law Clinics to engage with the various actors in the administration of

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<sup>42</sup> ACJL Tracker, Rule of Law and Empowerment Initiative (Partners West Africa Nigeria). <https://www.partnersnigeria.org>

<sup>43</sup> Section 396 ACJA, 2015.

<sup>44</sup> Section 396(7) ACJA, 2015.

<sup>45</sup> Section 7 ACJA, 2015 prohibits the arrest of a person instead of the actual suspect, so it is unlawful for the Police to arrest family members of the suspect in place of the suspect. Section 18 ACJA, 2015 provides for circumstances under which the police may arrest without warrant, any arrest made outside the given circumstances and without warrant will be an unlawful arrest.

<sup>46</sup> Sections 33 and 34 ACJA, 2015.

<sup>47</sup> Section 460 ACJA, 2015. The section provides for suspended sentencing and sentencing to community service notwithstanding the provision of the law creating the offense and it includes offenses that are punishable for a term exceeding three years.

<sup>48</sup> Section 270 ACJA, 2015.

criminal justice for a speedy disposal of criminal cases and decongestion of the Nigerian prisons.<sup>49</sup>

#### 4.4. Administration of Justice Commission Act 2004

In addition to the above and in a bid to curb the non-availability of access to justice for all, the Administration of Justice Commission Act<sup>50</sup> was enacted to ensure that:

- a. courts systems in Nigeria are generally maintained and well-financed;
- b. officials of the courts follow the Code of Ethics of their office;
- c. matters, particularly criminal matters are speedily dealt with;
- d. less congestion of cases in courts;
- e. reduction of prisons congestion to the barest minimum;
- f. persons awaiting trial are, as far as possible, not detained in prison custody;
- g. There is the existence of a cordial relationship and maximum cooperation amongst the departments carrying out the administration of justice for the core effectiveness of the system of administration of justice in Nigeria.<sup>51</sup>

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<sup>49</sup> Chukwu, A.O. et.al. 'Administration of Criminal Justice Act 2015: Its Relevance to Law Clinics in Nigeria.' *Journal of Common Wealth Law and Education* (2020).

<sup>50</sup> Administration of Justice Commission Act, CAP. A3 L.F.N. 2004.

<sup>51</sup> *Ibid.* s3.

#### 4.5. The Legal Practitioner Act (As Amended) 1975

Finally, we need to consider the provision of the Legal Practitioners Act (As Amended), 1975. The Legal Practitioners Act is relevant in the Administration of Criminal Justice because a litigant finds audience before the Court through a legal practitioner, and it is a known fact that the services of lawyers could be expensive depending on the nature and complexity<sup>52</sup> of the case, the individual is standing trial, the pedigree, expertise, and skills<sup>53</sup> of the lawyer sought to be engaged in the matter.

The Legal Practitioners Act prescribes who a legal practitioner in determining who can appear and practice before Nigerian Courts. Section 2(1) of the Act provides for who may practice generally in Nigeria as follows: 'Subject to the provision of this Act, a person shall be entitled to practice as a barrister and solicitor if, and only if, his name is on the roll.'<sup>54</sup> A few exceptions are provided for under S2(2) of the Act for those that may practice by warrant of the Chief Justice of Nigeria<sup>55</sup> and that does not include students involved in the activities of a Law Clinic. Thus, it has been argued and recommended that the Legal Practitioner Act should be amended to allow students in

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<sup>52</sup> Scale III Schedule to the Legal Practitioners (Remuneration for Legal Documentation and Other Land Matters) Order, 1991. See also Rule 52, Rules of Professional Conduct for Legal Practitioners, 2007.

<sup>53</sup> Ibid.

<sup>54</sup> Section 2(1) Legal Practitioners Act (As Amended), 1975.

<sup>55</sup> Section 2(2) (a) and (b) Legal Practitioners Act (As Amended), 1975. The CJN may by warrant generally permit a person who is qualified to practice in another country with a legal system that is similar to that of Nigeria. Secondly, the CJN may permit a person to practice in Nigeria for a particular proceeding upon payment of a prescribed fee.



a Law Clinics to practice under specified conditions.<sup>56</sup> The Amendment of the Legal Practitioners Act may not be achieved within a short period because of legislative procedures and the political intricacies involved. This calls for innovation on the part of Law Clinics to come up with strategies that would yield cogent and verifiable results.

## 5. ACCESS TO JUSTICE BY INDIGENT DETAINEES IN NIGERIA.

Access to Justice has two aspects or dimensions, the first aspect is access to substantial justice,<sup>57</sup> while the other is access to Court.<sup>58</sup> A person cannot access substantial justice without recourse to the Courts, that is why the Court of Law is regarded as the last hope of the common man. The Court is a means through which justice can be accessed,<sup>59</sup> the right to fair hearing and the right to fair trial are guaranteed in the Constitution of the Federal Republic of Nigeria,<sup>60</sup> and access to the Court is a condition precedent for obtaining substantial justice.

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<sup>56</sup> Bamgbose, O.J. 'Clinical Legal Education in Nigeria: Envisioning the Future ', *Australian Journal of Clinical Education* 10:1 (2021).

<sup>57</sup> Babalola, A. 'Role of a Strong and Independent Judiciary in a Nation (3)' <https://www.abuad.edu.ng> accessed 20<sup>th</sup> November 2023.

<sup>58</sup> Welsh, Nancy A. "Remembering the Role of Justice in Resolution: Insights from Procedural and Social Justice Theories." *Journal of Legal Education* 54:1 (2004): 49–59. <http://www.jstor.org/stable/42893836>. Accessed 20<sup>th</sup> November 2023.

<sup>59</sup> Letto-Vanamo, Pia. 'Access to Justice: A Conceptual and Practical Analysis with Implications for Justice Reforms.' *IDLO Voices of Jurist Paper Series* 2:1 (2005).

<sup>60</sup> Section 36(1) and (4) Constitution of the Federal Republic of Nigeria, 1999 (As Amended).

However, this may not be the reality for a good number of Nigerians that cannot afford to approach the Courts because of the cost of retaining a lawyer, due to the fact that majority of the populace live below the poverty line and cannot access justice through the Courts, which is considered the privilege of the rich. Access to justice begins with a just society as the principle of justice has to be in the minds of the members of society, and institutions to ensure its security.<sup>61</sup>

Justice is regarded as the fair and proper administration of law.<sup>62</sup> Access to Justice is therefore the ability to make use of the court and other relevant institutions to efficiently protect and enforce rights. Justice is a human need while access to justice is a human right.<sup>63</sup> Justice is naturally expected to be dispensed fairly without fear or bias that is the reason it is expected that the principle of justice is included in the constitution.

### 5.1. Definition of Justice

Therefore, it is pertinent that we examine the scope and meaning of access to justice and the importance of having effective and efficient access to justice in Nigeria. There

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<sup>61</sup> Ibid n. 61.

<sup>62</sup> B. A Garner (ed), *Black's Law Dictionary* (9<sup>th</sup> Edn. ThompsonWest, New York, 2009) 942.

<sup>63</sup> C.O Oba, *Third Party Litigation Funding and Access to Civil Litigation: Prospects and Challenges in Nigeria'* (2013)  
[https://www.academia.edu/43980785/Third\\_Party\\_litigation\\_funding\\_and\\_Access\\_to\\_Civil\\_Litigation\\_Prospects\\_and\\_Challenges\\_in\\_Nigeria](https://www.academia.edu/43980785/Third_Party_litigation_funding_and_Access_to_Civil_Litigation_Prospects_and_Challenges_in_Nigeria)

is no universally accepted definition of "access to justice" as the word means different things to different people as a result of its broadness. In the case of *Amadi v Nigerian National Petroleum Corporation*, Kabuki Whyte, JSC opines that no provision in the Constitution gives special privileges to any class or category of persons, any provision aimed at the protection of any class of person from the exercise of the court of its constitutional jurisdiction to determine the right of another citizen seems to be inconsistent with the provision of Section 6(6)(b) of the Constitution.<sup>64</sup> On the other hand, another jurist describes "access to justice" as the political order and the benefit accruing from the social and economic development in the State. Access to justice refers to access to court without restraint.<sup>65</sup>

## 5.2. Dimensions of Access to Justice

One aspect of discussing access to justice is a lack of clarity about what seems to be the problem. Is it access to justice in the procedural sense, that is, access to legal assistance and processes, or is it access to justice in the substantive sense, that is, access to a just resolution of legal dispute and its problems?<sup>66</sup> Access to justice can be looked at from two main perspectives: the narrow and the wider senses. In the narrow sense

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<sup>64</sup> [2000]10NWLR (Pt 674) 76.

<sup>65</sup> N. Okogbule, 'Access to Justice and Human Rights Protection in Nigeria: Problem and Prospects' (2005) *International Journal on Human Rights* <https://sur.conectas.org/en/access-justice-human-rights-protection-nigeria/>

<sup>66</sup> Deborah L. Rhode, 'Access to Justice: An Agenda for Legal Education and Research' (2013) 62 *Journal of Legal Education* 531 <https://jle.aals.org/home/vol62/iss4/2/>

of the term, it can be said to be co-extensive with access to the law courts while in the wider connotation it embraces access to the political order, and the benefits accruing from the social and economic developments in the State.<sup>67</sup>

As a result, access to justice includes other factors such as the venue of the court and the quality of human and material resources available.<sup>68</sup> On the contrary, access to justice entails more than just the ability to appear in court. It includes the availability of means to access justice in all aspects, such as career opportunities, and political, educational, and economic advancement. According to Oputa, access to justice can be viewed in two ways: narrowly or broadly. Access to justice, in its broadest sense, includes access to 'political order and the benefits accruing for social and economic development in the State'. In a narrow sense, access to justice refers to the ability to seek redress in a court of law.<sup>69</sup>

It has been observed that providing equal access to the benefits and protection of the law is one of the most persistently elusive challenges to democratic legal systems worldwide.<sup>70</sup> In the case of *Idris v. Agumga*, the Court of Appeal held that access to the court implies an unrestricted approach or means of approaching the court. According

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<sup>67</sup> Chukwudifu A. Oputa, *In the Eyes of the Law* (Friends Law Publishers, 1992), p. 50.

<sup>68</sup> E. Ojukwu, *et al*, '*Handbook on Prison Pre-trial Detainee Law Clinic*' (Abuja: Network of University Legal Aid Institution, 2012) p. 121.

<sup>69</sup> C.A Oputa, '*Rights in the Political and Legal Culture of Nigeria 2nd Idigbe Memorial Lectures*' (Lagos: Nigerian Law Publications Ltd, 1989), p.50.

<sup>70</sup> Rekosh *et al*, '*Access to Justice: Legal Aid for The Unrepresented Pursuing the Public Interest*' (New York: Columbia University School of Law, 2001) p.21.

to the preceding judicial dictum, access to justice includes not only the opportunity granted to citizens to approach a court of law but also the availability of resources to approach a court without restraint.<sup>71</sup> Section 17(2)(e) of the Federal Republic of Nigeria 1999 Constitution (as amended) states that 'in furtherance of the social order- the independence, impartiality, and integrity of courts of law, as well as easy access to them, shall be secured and maintained. Section 14 (2) (b) of the same Constitution makes citizens' security and welfare the priority of the government. When the welfare of citizens is pushed to the bottom of the government's priority list, injustice will always take precedence, and access to justice becomes a luxury.<sup>72</sup> Access to the courts cannot thrive in a society where the majority of the population is impoverished due to unequal distribution of the society's collective resources. The current standard of living in Nigeria has revealed that the welfare of the people of Nigeria is never the primary goal of the government.<sup>73</sup>

The International Bar Association (IBA) adopts access to justice as a broad concept that encompasses all stages of the process of resolving civil or criminal justice issues. It begins with the existence of rights enshrined in laws, as well as awareness and

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<sup>71</sup> [2015] 13 NWLR (Pt.1417) 441 at 463.

<sup>72</sup> Ogun, Festus, 'Non-Justiciability of Chapter Two of the 1999 Constitution: A Hindrance to Nigeria's Development' (July 30, 2020). Available at SSRN: <https://ssrn.com/abstract=3663868> or <http://dx.doi.org/10.2139/ssrn.3663868> accessed 20th November 2023.

<sup>73</sup> I. Ig awe & A. Bassey, 'Review of the Impacts of Poverty on Access to Justice in Nigeria' (2021) 12(2) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* <https://www.ajol.info/index.php/naujilj/article/view/215407>

comprehension of such rights. It includes access to dispute resolution mechanisms as part of both formal (state-established institutions) and informal justice institutions (institutions established by the authorities of a community). The International Bar Association concluded that effective access includes the availability and accessibility of counsel and representation, as well as the ability of such mechanisms to provide fair, impartial, and enforceable solutions.<sup>74</sup>

From the above definitions, one may therefore say that access to justice implies access to social and distributive justice. It is however important to underscore the point that these perspectives are not necessarily disconnected since the extent to which one can have distributive justice in any system is largely determined by the level and effectiveness of social justice in the country. The consequence of this is that any discussion of one aspect of the concept will necessarily entail a reference to one or more components of the other. This is because, without access to justice, it is impossible to enjoy and ensure the realization of any other right, whether civil, political, or economic.

Bearing this in mind, one may therefore say that access to justice simply refers to the substantive and procedural mechanisms existing in any particular society designed to

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<sup>74</sup> J. Beqiraj & L. McNamara, 'International Access to Justice: Barriers and Solutions' (2014) International Bar Association, *Bingham Centre for the Rule of Law Report* 02/2014.

ensure that citizens have the opportunity of seeking redress for the violation of their legal rights within that legal system. It focuses on the existing rules and procedures to be used by citizens to approach the courts for the determination of their civil rights and obligations.

### 5.3. Access to Justice for The Pretrial Detainee

The term pre-trial detainee is frequently confused with “a prisoner” possibly because a large number of these detainees in Nigeria are held in prison custody alongside prisoners serving a jail sentence within the period of their trial.<sup>75</sup> A pre-trial detainee is a defendant who is being held before trial on criminal charges because the set bail could not be posted or the release was denied.<sup>76</sup>

Pre-trial detainees are frequently held in prison for extended periods, particularly in countries with slow criminal justice administration systems, such as Nigeria. Even worse, some detainees end up staying in prison for longer than the maximum sentence they could have received if convicted of the offense for which they were charged. Nonetheless, there is a clear distinction between a pre-trial detainee and a prisoner. A prisoner is defined by the Nigerian Prison Act as any person lawfully committed to prison custody who has been convicted by a court of law and is serving the terms of

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<sup>75</sup> T. Omidoyin & O. Oniyinde, ‘Law Clinic and Access to Justice for Pretrial Detainees in Nigeria’ (2019) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* <https://www.researchgate.net/publication/353368484>

<sup>76</sup> Bryan A. Garner (ed.) *Black’s Law Dictionary* 8th edition 480

imprisonment ordered by the court.<sup>77</sup> In essence, a prisoner is a person who is legally serving a prison sentence.

On the other hand, a person is regarded as indigent when he/she cannot afford the necessities of life. An indigent detainee is entitled to be provided a legal presentation by the court as the case must be heard in court whether he can afford the representation or not.<sup>78</sup> The provision of the Legal Aid Council Act does not make it a right for an indigent person to be provided with legal assistance, an applicant must meet the indigency, subject to available resources. In capital offences however, it is mandatory for the defendant to be represented by counsel, in the absence of one, the court can appoint one on behalf of the indigent person.<sup>79</sup>

## **6. THE LAW CLINIC AS A HUB FOR LEGAL ASSISTANCE TO PRE-TRIAL DETAINEES IN NIGERIA**

The Network of University Legal Aid Institutions (NULAI) of Nigeria defines a law clinic as a law office in a university managed by law students in the discharge of pro-

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<sup>77</sup> CAP P29 LFN 2004.

<sup>78</sup> T. Omidoyin & O. Oniyinde, 'Law Clinic and Access to Justice for Pretrial Detainees in Nigeria' (2019) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* <https://www.researchgate.net/publication/353368484>

<sup>79</sup> Akingbehin, Emmanuel O. 'Observance of Due Process Rights in Capital Offence Trials: Assessing Nigeria through the Lens of International Instruments.' *Journal of Law and Criminal Justice* 9:1 (2021): 36-51 also see *Josiah V State* [1985] 1NWLR (Pt.1) 125.



bono or voluntary services and an accused person awaiting trial is a person detained in a prison by the state for an offense committed against the laws of the state before or pending trial.<sup>80</sup> A law clinic has been observed to be the experience-based<sup>81</sup> or service hub of a clinical legal education program that serves as a teaching method that includes both academic and delivery elements.<sup>82</sup> The law clinic is central to both clinical legal education learning and service delivery, and vice versa.<sup>83</sup>

It is a well-known legal principle that a pre-trial detainee is presumed innocent until proven guilty by the court.<sup>84</sup> In essence, the pre-trial detainee is not yet a convicted person as he or she still has the right to be presumed innocent, but their continued detention is an infringement or denial of their rights as a result of the delay in prompt access to justice whether or not guilty of the offense he or she has committed. Some of the rights available to such a detainee include the right to counsel of his or her choice, the right to bail, the right to remain silent, the right to dignified human treatment, and the right to a prompt trial among others.<sup>85</sup> Unfortunately, it has been discovered that

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<sup>80</sup> NULAI, "Law Clinics and Pretrial Detainees" <http://www.nulai.org/index.php/blog/82-improving-access-to-justice-for-pre-trial-detainees-in-nigeria-project>

<sup>81</sup> E. Ojukwu, S. Erugo & C. Adekoya, 'Clinical Legal Education: Curriculum Lessons and Materials ' (2013) 5 *NULAI Nigeria, Abuja* 12-13.

<sup>82</sup> Ernest Ojukwu *et al*, 'Handbook on Prison Pre-trial Detainee Law Clinic' (NULAI Nigeria, Abuja 2012) [https://www.academia.edu/40131714/Handbook\\_on\\_Prison\\_Pre\\_trial\\_Detainee\\_Law\\_Clinic](https://www.academia.edu/40131714/Handbook_on_Prison_Pre_trial_Detainee_Law_Clinic)

<sup>83</sup> Sam Erugo, 'Legal Assistance by Clinical Law Students: A Nigerian Experience in Increasing Access to Justice for the Unreported' (2016) 3(2) *Asian Journal of Legal Education* 1-14 [https://www.academia.edu/30345466/Legal\\_Assistance\\_by\\_Clinical\\_Law\\_Students\\_A\\_Nigerian\\_Experience\\_in\\_Increasing\\_Access\\_to\\_Justice\\_for\\_the\\_Unrepresented](https://www.academia.edu/30345466/Legal_Assistance_by_Clinical_Law_Students_A_Nigerian_Experience_in_Increasing_Access_to_Justice_for_the_Unrepresented)

<sup>84</sup> s36 *Constitution of the Federal Republic of Nigeria 1999 (as amended)*.

<sup>85</sup> *Ibid*.

such a pre-trial detainee cannot fully enjoy these rights unless a legal service is provided to ensure that these rights are not violated. As a result, if a detainee lacks legal representation while awaiting trial, he or she is almost helpless in the administration of the justice system in Nigeria. To make matters worse, many of these detainees lack basic knowledge of their legal rights. As a result of their ignorance, those who do not have legal representation continue to be unaware that they have rights under the law as accused persons.

From the definition of law clinics given above, law clinics are generally managed by university law students. The students provide legal aid services that ensure pre-trial detainees in Nigeria have adequate access to justice. The students further make provision for them with additional legal services such as companionship for rehabilitation, provision of necessary items for good living, and so on. Law students' exposure to the administration of criminal justice procedures in Nigeria has been observed to help them become better lawyers.

In general, law clinics conduct their operations in a variety of ways, including assisting parties to a dispute in resolving minor disputes, client interviews and counselling, visits to prisons to assist detainees in accessing justice, and visits to police stations to

secure suspect bail.<sup>86</sup> They also take up minor criminal offenses at the Magistrate Court level, make bail applications in capital offenses at the High Court, help prison inmates reconnect with family members, pay advocacy visits to the Chief Judge of the state, pay advocacy visits to the Commissioner of Police in the state, and provide rehabilitation services and counselling to released prison inmates. In some cases, they follow up by providing legal advice to awaiting trial inmates at the Director of Public Prosecutions' office. Similarly, after each prison visit, law clinics usually refer complex cases or capital offenses to the state's Legal Aid Council for further action and follow-up.<sup>87</sup>

It should be noted that the concept of law clinics is to provide law students at the University, and at the Law School who do not yet have a right to an audience before competent courts and tribunals with the opportunity to handle cases under the supervision of qualified members who have been called to the Nigerian Bar.<sup>88</sup> Apart from assisting indigent members of society in accessing justice pro bono, the clinical legal education program also exposes law students to some practical criminal justice administration procedures in Nigeria, thereby assisting law students in becoming better lawyers who, upon becoming lawyers, would be well inclined to render pro

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<sup>86</sup> O. Oke-Samuel, 'Clinical Legal Education in Nigeria: Developments and Challenges ' (2008) 17 (1) *Griffith Law Review*, 141.

<sup>87</sup> O. Bamgbose, 'Access to Justice through Clinical Legal Education: a Way Forward for Good Governance and Development ' (2015) *African Human Rights Journal*, 387-388.

<sup>88</sup> *Ibid.*

bono services to indigent members of society.<sup>89</sup> The purpose of legal aid is to provide all citizens, especially the poor, with access to justice. Poverty has been defined as the inability to participate effectively in society, and in Nigeria it includes the lack of basic amenities like food, clothing, shelter, medical care and education.<sup>90</sup> As a major stakeholder in the criminal justice sector, the law clinic's role is to provide *pro bono* legal services to the community in the areas of legal advice, assistance, and legal representation for crime suspects who are detained or imprisoned. As a result, law clinics in Nigeria seek to supplement the functions of government legal aid agencies.<sup>91</sup>

### 6.1. The Goal of Legal Aid

The goal of legal aid is to ensure that every litigant has access to justice. In essence, justice should not be based on a litigant's financial capability but should be available to all whether rich or poor when it comes to legal aid. At a conference on the Rule of Law in a Free Society in Delhi in 1959, the International Commission of Jurists declared that "equal access to the law for rich and poor alike is essential to the maintenance of the rule of law." It is therefore critical to provide adequate legal advice

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<sup>89</sup> Ibid.

<sup>90</sup> Ucha, Chimobi. 'Poverty in Nigeria: Some Dimensions and Contributing Factors.' *Global Majority E-Journal* 1:1 (2010): 46-56.

<sup>91</sup> O.S Adedokun-Odewale, 'Role of Clinical Legal Education in Social Justice in Nigeria' (2017) 5(1) *Asian Journal of Legal Education* <https://journals.sagepub.com/doi/10.1177/2322005817730148>

and representation to all those who are threatened with their life, liberty, property, or reputation but cannot afford it.<sup>92</sup>

Additionally, the overall goal of the law clinic is to provide legal aid to the community. The United Nations Principles and Guidelines define legal aid as "legal advice, assistance, and representation for persons detained, arrested, or imprisoned, suspected or accused of, or charged with a criminal offense, and for victims and witnesses in the criminal justice process that is provided at no cost for those without sufficient means or when the interests of justice so require." Furthermore, the term "legal aid" is meant to encompass the concepts of legal education, access to legal information, and other services provided to individuals through alternative dispute resolution mechanisms and restorative justice processes.<sup>93</sup> Countries, including Nigeria, have aligned with the United Nations' position on legal aid by enacting enabling legislation to improve the provision of legal services to citizens. For example, Nigeria enacted th.

e Legal Aid Act, 2011 and established the Legal Aid Council to provide legal aid or free legal services to indigent Nigerians.<sup>94</sup> However, for many indigents and

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<sup>92</sup> The Rule of Law in a Free Society: A Report on the International Congress of Jurists, New Delhi, India, 1959 <https://www.icj.org/wp-content/uploads/1959/01/Rule-of-law-in-a-free-society-conference-report-1959-eng.pdf>

<sup>93</sup> United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems: General Assembly Resolution 67/187, paragraph 8 <https://digitallibrary.un.org/record/748365?ln>

<sup>94</sup> Legal Aid Act, 2011 s17(2)

vulnerable Nigerian citizens, access to justice remains a dream that is yet to become a reality to them as most of them are still in custody with those already convicted and serving their sentences.

The United Nations system collaborates with national partners to develop national strategic plans and programs for justice reform and service delivery to improve access to justice. Monitoring and evaluation; empowering the poor and marginalized to seek responses and remedies for injustice; improving legal protection, legal awareness, and legal aid; addressing challenges in the justice sector such as inhumane prison conditions, and lengthy pre-trial detention among others.<sup>95</sup> However, the legal and institutional framework of legal aid schemes in Nigeria is inadequate, resulting in a significant gap in achieving the United Nations' goal of increasing the availability of free legal services and the right to access justice for all human beings. Hence, law clinics across Nigeria help to fill the gap left by government legal aid programs.<sup>96</sup> Despite the help of the law clinics in Nigeria's administration of criminal justice, some limitations or challenges bedevilled the clinicians. Amongst which are:

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<sup>95</sup> United Nations and the Rule of Law: Access to Justice <https://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/>

<sup>96</sup> T. Omidoyin & O. Oniyinde, 'Law Clinics and Access to Justice for Pretrial Detainees in Nigeria' (2019) 10 (1) *Nnamdi Azikwe University Journal of International Law and Jurisprudence*, 101-102

**a. Right of representation in Court**

Under the provision of the Legal Practitioner's Act, only a qualified legal practitioner has the right to practice as a Barrister and Solicitor<sup>97</sup> and with the right to practice comes the right of audience and appearance in any Court in Nigeria provided all requirements are met.<sup>98</sup> Law clinicians, however, do not have these rights as they are not yet qualified to represent detainees in Court. Thus, their impacts are limited in the administration of justice. Law clinicians, therefore, play a significant role in ensuring that these detainees awaiting trial have access to competent legal representation to defend their cases. They can as well approach qualified legal practitioners in the faculty for assistance in taking over detainees' case files in court. The law clinic can also collaborate with the Nigerian Bar Association and the Legal Aid Council to find lawyers who will work on *pro bono* cases as stated in the Legal Aid Act.<sup>99</sup>

**b. Lack of financial capability**

It is well understood that financial resources are required to fund the activities of law clinics involved in criminal matters. Although, legal services to pre-trial detainees are provided for free, a significant amount of resources are required be it from the University, the Government, the Legal Aid Council, or Non-Governmental

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<sup>97</sup> Legal Practitioner's Act, 1975 s.2.

<sup>98</sup> Ibid. s7.

<sup>99</sup> Legal Aid Act, 2011 s17(2).

Organizations. Funding appears to be a common challenge for law clinics globally<sup>100</sup>. Often, Clinical Legal Education is established through seed funding provided by foreign donors. These funds generally have a limited lifespan, and at the expiration of the fund, most clinics become financially constrained. It is of utmost importance to note that when detainees' cases are already on trial, the financial obligation increases because there is always a need to file processes, arrange for logistics on each adjourned date, and mobilize witnesses' transportation costs, and other ancillary expenses required at the trial.

Aside from that, a law clinic is expected to be well-equipped with the necessary facilities, which includes a dedicated office space for the clinic, with spaces or unit for offices, reception and counselling, computer, printers and other Information Technology Equipment including internet, furniture, stationaries etc.<sup>101</sup> It should be just like a standard law firm capable of providing standard legal services. When financial assistance is not made available, it discourages law clinics that provide legal aid services to detainees from their pockets.

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<sup>100</sup> See Barbara Preložnjak and Juraj Brozović 'The Financial Challenges of Clinical Legal Education: an Example from a Zagreb Law Clinic Practice Report, Clinic, the University and Society' 24(2) *International Journal of Clinical Legal Education* 24:2 (2016) in John, Oludayo. 'Clinical Legal Education in Nigeria: Envisioning the Future' *Australian Journal of Clinical Legal Education* 10:1 (2021): 2-15.

<sup>101</sup> Arimoro, Augustine, E. 'Clinical Legal Education: Vision and Strategy for Start-up Clinics in Nigeria' *International Journal of Clinical Legal Education*, 26:1 (2019):132-157. DOI: 10.19164/ijcle.v26i1.824, Available at SSRN: <https://ssrn.com/abstract=3644584> accessed on 21<sup>st</sup> November 2023.



### c. Limited Access to Detention Facilities by Law Clinicians

Clinicians do not have unhindered access to detention facilities in Nigeria, and insisting to have access on the basis of a right may result in unfriendliness by detaining authorities towards law clinicians posing a major challenge for law clinics in Nigeria in carrying out their humanitarian services to pretrial detainees. Some authors have opined that this could be a result of ignorance, a lack of statutory backing and/or effective implementation of specific legislation establishing law clinics, or other factors unique to each agency.<sup>102</sup>

### d. Undedicated Law Clinicians

Aside from lecturers, law students make up the majority of clinicians in university-based law clinics. Many students' casual attitude toward extra-curricular activities has made it difficult to recruit committed and dedicated clinicians for law clinics towards legal aid services, while the volume of cases requiring legal aid outnumbered the number of clinicians in the law clinic.<sup>103</sup> Particularly at the Nigerian Law School where participating in the Law Clinic is purely voluntary, there is no curriculum supporting it apart from the general teaching methodology, and no credit units are awarded for participating in clinical activities.<sup>104</sup> This leaves the majority of the students

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<sup>102</sup> T. Omidoyin & O. Oniyinde, 'Law Clinics and Access to Justice for Pretrial Detainees in Nigeria' (2019) 10 (1) *Nnamdi Azikwe University Journal of International Law and Jurisprudence*, 101-102.

<sup>103</sup> *Ibid.*

<sup>104</sup> Ojukwu, Ernest et.al. *Compendium of Campus Based Law Clinics in Nigeria*, Abuja: Network of University Legal Aid Institutions, NULAI Nigeria (2014) pp 34-40.

disinterested in the activities, as it is viewed a distraction from the voluminous work at the Law School.

## 7. SOLUTIONS

### a. **Right of representation in Court:**

Changing the present law that prohibits anyone not admitted to the Nigerian Bar from practicing as a lawyer would be essential in improving access to justice. These provisions need to be amended and exceptions are created to accommodate law clinicians. It could be reviewed to enable supervisors (in this case, lawyers) to appoint their students to serve as student attorneys in some issues. The possibility of having student clinicians, particularly those in their final level, represent clients under the directives of their supervisors is desirable in achieving access to justice.<sup>105</sup> The process of amending the existing laws could be cumbersome and time consuming in view of the politics that is involved in the process.

### b. **Undedicated Law Clinicians**

As noted above, CLE is advanced in Nigeria through the efforts of NULAI.<sup>106</sup> Unfortunately, the Benchmark Minimum Academic Standard (BMAS) of the National

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<sup>105</sup> O. Bangbose, 'Access to Justice through Clinical Legal Education: a Way Forward for Good Governance and Development' (2015) *African Human Rights Journal*, 400.

<sup>106</sup> NULAI, "Law Clinics and Pretrial Detainees" <http://www.nulai.org/index.php/blog/82-improving-access-to-justice-for-pre-trial-detainees-in-nigeria-project>

Universities Commission (NUC) which benchmarks the required training and curriculum for legal education in Nigeria has not yet integrated CLE as a compulsory course to be undertaken by students while still in school. Furthermore, although institutions may offer CLE among their list of courses, sometimes CLE is not taken within the university. For example, even though Ajayi Crowther University, Oyo, Nigeria, has included CLE in its curriculum as far back as 2014, the course has never been taken.<sup>107</sup> The experience at the University of Ibadan shows a different approach. Students who enrol in clinical activities are graded and their scores are provided as continuous assessment (CA) scores in some regular law courses taken at the penultimate level. In the foreseeable future, CLE should be included as a four-credit unit compulsory course to be taken by students at a particular level, allowing for students to be graded appropriately through their projects and presentations.<sup>108</sup>

## 6. CONCLUSIONS AND RECOMMENDATIONS

In this paper we have attempted to discuss the regulatory laws on the administration of criminal trials in Nigeria. It also focuses on the current state of Clinical Legal Education in Nigeria while also noting the strengths and limitations of Clinicians in providing legal services to indigent detainees. Efforts have been made to identify possible solutions for consideration in the development of Clinical Legal Education in

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<sup>107</sup> O. Bamgbose, 'Access to Justice through Clinical Legal Education: a Way Forward for Good Governance and Development' (2015) *African Human Rights Journal*, 400.

<sup>108</sup> *Ibid.*

Nigeria in the future. In achieving the desired and projected solutions described, the following recommendations are made:

1. The management of universities and the Nigerian Law School, should employ full time staff for law clinics, sole reliance on volunteer law school academics will not be sufficient in heralding the envisioned clinical education of the future. In identifying suitable leaders, it is also recommended that graduates of Clinical Legal Education are utilized in the administration of Justice process.
2. Law Clinics in Nigeria should engage other stakeholders such as the Nigerian Bar Association and the Legal Aid Council. Clinics can execute their projects in collaboration with the Nigerian Bar Association (NBA) branch within the jurisdiction where the project is to be executed, so that the NBA branch or Legal Aid Council within jurisdiction can provide the lawyers that will appear in court while the clinicians carry out the research and prepare any process that is required. Other stakeholders in the administration of the justice process include The Police, Chief Magistrates, and Attorneys General. Clinicians can engage the Commissioner of Police for example, concerning identified cases of prolonged pre-trial detainees owing to a delay on the part of the Police, such engagement can fast-track and facilitate the dispensation of justice to indigent detainees. Chief Magistrates are mandated under the ACJA to pay monthly visits to the Police Station within their jurisdiction, where the Chief Magistrate

or the Magistrate assigned by the Chief Judge of the State may give directives for the arraignment of certain detainees or make orders which may include admitting the detainees on bail.<sup>109</sup> The Chief Magistrates do not make the visits as frequently as it is provided under the law. The ACJA provides for these visits on a monthly basis. Through stakeholder engagements, law clinics can facilitate such visits on a regular basis by engaging the Chief Magistrate responsible for such visits.

3. Specialized Law Clinics should be established. Most Law Clinics in Nigeria are general, they do not focus on a particular area of practice. Law Clinics will be able to guarantee access to justice to more indigent pre-trial detainees, if clinics can establish units that will focus on serving pre-trial detainees. The unit should not focus on general criminal litigation, but on pre-trial detainees and services to be rendered by such a unit may include defending such indigent detainees in respect of the charge brought against them, to enforcing their fundamental rights when such detention or continuous detention in violation of their constitutionally protected rights.
4. We opined that our criminal administrative justice system should also adopt the frontloading system applicable in pursuing Civil Causes in our Courts. In frontloading system, cases are prepared in the library before trials. With this system, the Prosecutor and defendant are obliged to reveal their cases before

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<sup>109</sup> Section 34 Administration of Criminal Justice Act, 2015

trial, requiring them to exchange pleadings and statements on oath before appearing in court. In other words, where law students have been properly guided by their supervisors in preparing required court processes and documents, the students could play an essential role in assisting indigent clients.

5. We also recommend that our criminal justice system should adopt the the trial by Jury system, where the Jury act as fact finders, and draw a conclusion about whether the defendant has a question to answer in the charge before the Judge. We strongly believe that since a clinician cannot have the right of audience in Court to ventilate the case of an indigent detainee, his involvement as a member of the Jury could help in the administration of criminal justice in Nigeria.