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Recent Publications

Ernest Ojukwu *et al Handbook on Prison Pre-trial Detainee Law Clinic*

Network of University Legal Aid Institutions (2012) 225 pages

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1 Introduction

The clinical legal education movement in Nigeria owes its formal origins to an exchange visit sponsored by the British Council to understudy clinical legal education in South Africa. Professor Ernest Ojukwu, then deputy director-general of the Nigerian Law School, led a team of academics on that exchange visit. The seed sowed on that trip grew and took on a life of its own by June 2003 when an expanded team of academics attended the first All-Africa Clinical Legal Education Colloquium in Durban, South Africa. On their return, Professor Ojukwu and his colleagues co-founded the Network of University Legal Aid Institutions (NULAI Nigeria), modelled after the Association of University Legal Aid Institutions (AULAI).

Since its registration in October 2003, NULAI Nigeria has led the clinical movement in Nigeria and, over the last three years, in West Africa. It has supported the establishment of new clinics, trained faculties, facilitated exchange visits, organised client-counselling competitions and provided peer learning for other law clinics and law clinic associations around the world.

NULAI's pioneer clinics were generalist in orientation. This is understandable given the resources – financial and other – required for establishing specialist law clinics, particularly for a nascent clinical movement. In the last five years, however, law clinics have begun the move towards specialisation so that today there are law clinics specialising in women's human rights, criminal justice and mediation, amongst other areas.

With specialisation comes the need for resources to guide students and their teachers. Although NULAI has a standard curriculum for learning in all its affiliate clinics, it had yet to venture into publishing for its specialist clinics. Its new *Handbook on Prison Pre-trial Detainee Law Clinic* (*Handbook*) is therefore a welcome addition to the literature on law clinics and clearly a first on specialist law clinics in Nigeria.

This review takes a critical look at the *Handbook* – identifying good points, revealing missing fundamentals and offering ideas on how to improve output.

2 Overview of the *Handbook*

The handbook brings together ten chapters, an index and a page about the authors. It opens with a two-page chapter which sets out the objectives and scope of the Prison Pre-Trial Law Clinic. This extremely short chapter misses an opportunity to introduce the subject to a new reader in a compelling manner. It neither describes what clinical legal education is nor what role law clinics play in this relatively new form of legal education. Pre-trial law clinics suffer the same fate.

In addition, the *Handbook* appears to use 'prison pre-trial detainee law clinic' and 'prison pre-trial law clinic' interchangeably. It is not clear if this is the intention of the authors. The lack of clarity about the authors' choice of words also extends to the title of the *Handbook* where 'prison pre-trial detainee law clinic' is used. Perhaps an explanation in the opening chapter or a glossary of terms at the end of the text could have dealt with this. I can only surmise that the authors may have determined to focus on pre-trial detainees held in prisons. This is crucial because police and other detention facilities hold pre-trial detainees.

The preface responds to the question of *what* the text is about but not *why* it is necessary or why focus on pre-trial detention. There is no attempt to review any literature or say that none on the subject matter exists. The 'how to use' this *Handbook* is seemingly implicit in the suggestion that 'teachers and students will find this handbook (as well as the *Manual on Prison Pre-trial Law Clinic*[1] that supports it) very useful'. I can surmise that the *Manual* and *Handbook* will be used together.

Chapter two usefully discusses the criminal justice system to provide a fitting background to the subject of pre-trial detention. It opens with a set of three 'outcomes'[2] *Handbook* users should expect,

1 E Ojukwu & O Lagi *Manual on Pre-trial Detainee Law Clinic* (2012).

2 The outcomes read like questions at the end of the chapter, eg, discuss and explain the nature, scope and concept of the Nigerian criminal justice system. E Ojukwu *et al Handbook on Prison Pre-trial Detainee Law Clinic* (2012) 3.

but does not follow the format of chapter one in that it fails to address objectives.[3]

The first of the outcomes, which relates to the nature, scope and concept of Nigeria's criminal justice system, forms the basis of discussion under 2.2. Curiously, only the last of eight paragraphs[4] actually attempts to describe criminal justice in the context of Nigeria. The prior seven paragraphs engage conceptual clarifications of terms such as 'system', 'justice sector' and 'criminal justice'.

The second outcome addresses institutions involved in the criminal justice system. Section 2.3 identifies the police and other law enforcement agencies, the judiciary and the prisons service. For some unexplained reason, it fails to include prosecutions, which is often a shared function between the police in lower magistrate courts and the Department of Public Prosecutions – a department of the Attorney-General's office in Abuja and the 36 states of Nigeria.[5]

Chapter three is a fairly elaborate 56-page section, introducing the procedure for instituting criminal proceedings. The length of this chapter is indicative of the complexity of the subject given the different competing legal traditions in Nigeria.[6]

The chapter impressively identifies and discusses the stages involved in prosecuting a crime in Nigeria, taking care to distinguish what is required in Northern Nigeria from what is required in Southern Nigeria. There is, however, a controversial statement on page 61 suggesting that '[g]one are the days when a magistrate acting upon an application for remand by the police merely orders a remand'. In the context of Lagos state, those days are certainly gone,[7] but this is not exactly the case with the other 35 states and the federal capital territory, Abuja.[8]

Chapter four provides an overview of the human rights of prisoners/pre-trial detainees in Nigeria. It is rather superfluous to include 'human' in a topic on rights relating to prisoners. Prisoners are clearly human.

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3 There is a general lack of uniformity in the structure of the *Handbook*. Eg, chapters three and four end with a 'conclusion'; others do not.

4 6.

5 Interestingly, sec 2.3.14 titled 'Ministry of justice, attorney-general and director of public prosecutions' describes the ministry of justice as 'an organ of the government established to prosecute and defend matters on behalf of the government'. See 19.

6 Eg, there is a federal Criminal Procedure Act and states Criminal Procedure Laws applicable to Southern Nigeria. The Criminal Procedure Code applies to Northern Nigeria as well as the Federal Capital Territory, Abuja. While states like Lagos have Administration of Criminal Justice Law in addition.

7 The Administration of Criminal Justice Law of Lagos State, 2007 provides a maximum of 60 days for detainees to be returned to court for trial.

8 There are no concurrent laws in the other states. Rather, most states still maintain remand laws that ostensibly allow magistrates without trial jurisdiction to remand criminal suspects, often indefinitely.

The chapter provides a set of definitions for terms such as 'prisoner' and 'pre-trial detainee'. This is remarkable given that these terms have been used throughout the *Handbook* with concrete descriptions. The choice of Black's *Law dictionary*[9] as a source for the definition of 'pre-trial detainee' is rather unfortunate in that it is not context specific.[10]

Under section 4.5, dealing with the entitlement of prisoners/pre-trial detainees to human rights, there is a reference to the right of 'everyone to take part in the government of his or her country directly or through freely-chosen representatives'.[11] The authors do not express an opinion as to whether this right exists in practice or is restricted in Nigeria. The correct position is that there is no law restricting prisoners from voting during elections although they have never enjoyed this right.[12]

Chapter five opens with a rather discriminatory description of the term 'access to justice', namely, 'the substantive and procedural mechanisms designed to ensure that the *citizens* have opportunity of seeking redress for the violation of their legal rights'.[13] I am unable to agree with the idea that access to justice is restricted to citizens. It ought to be available to everyone within the jurisdiction of Nigeria. Beyond this, the chapter acquits itself well on this interesting topic by identifying challenges to access to justice and discussing the operation of legal aid. The chapter also makes concrete proposals for enhancing access to justice.

Chapter six makes a useful contribution in that it addresses a question that should have been addressed earlier in this *Handbook*, namely, what is the role of law clinics in prisons. It chooses a two-pronged approach to this – the problem(s) clinics are designed to solve and the objectives for which they exist. The authors rightly suggest that law clinics are designed to supplement existing legal aid and assistance programmes, amongst other objectives. However, they also conclude that interventions made by existing legal aid and assistance programmes 'have made no impact at all'.[14] This is rather unfortunate given that it is not supported by any empirical evidence. Nonetheless, it raises interesting questions about not just existing legal aid interventions but also access to legal aid.

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9 89.

10 Blacks defines a pre-rial detainee as a 'defendant who is held before trial on criminal charges either because the established bail could not be posted or because the release was denied'. In Nigeria, there are other circumstances in which a suspect can await uncertain trial, eg where a court of competent jurisdiction has yet to determine the charge against the suspect.

11 91.

12 Dr Chidi Odinkalu, Chairperson of the National Human Rights Commission, recently canvassed this position arguing, as I do, that there is no legal restriction on the right of prisoners to vote. See I Chiedozie 'NHRC advocates voting rights for prisoners' *Punch* http://www.punchng.com/news/nhrc-advocates-voting-rights-for-prisoners/ (accessed 9 August 2013).

13 121.

14 157.

I think that access to legal aid is less than optimal. This is clearly due to more structural problems, namely, the low lawyer-to-population ratio,[15] coupled with the penchant for the legal profession to be uncomfortable with paralegal services provision, particularly if non-lawyers offer this service. The chapter does not provide a balanced debate on this subject, but it does say something about the activities of pre-trial detention clinics.[16]

Chapter seven offers an interesting diet on professional responsibility and ethics. It raises and adequately responds to an interesting question about the applicability of the Rules of Professional Conduct[17] to law students. On the subject of ethical issues relating to prison work, the authors seem to suggest that there are seven principles from which the code of ethics are derived,[18] but list and discuss only six.[19]

Chapters eight and nine discuss interrelated subjects of interviewing and counselling as well as report and opinion writing. The former extracts useful tips from a highly-regarded handbook for professional legal training[20] on the functions and golden rules for interviews, while the latter presents concise but rich guidelines for writing a report and an opinion.

The concluding chapter of this *Handbook* focuses on file management from the perspective of a law office or clinic.

3 Critique of the *Handbook*

The authors appear to assume that the audience is knowledgeable about the topic and therefore make little or no effort to provide a background or explain certain concepts. For example, there is a reference to the Criminal Procedure Act and Criminal Procedure (Northern States) Act in the context of power of arrest[21] without an effort, even if by footnote, to explain why there are two legislations on the same subject in the same country. In the same passage, there are references to 'indictable' and 'non-indictable' offences as well as 'arrest with warrant' and 'arrest without warrant'. To find answers to

15 Nigeria currently has nearly 100 000 lawyers to a population of 150 million – a ratio of 1:1 500.

16 157-169.

17 *Rules of professional conduct for legal practitioners* (2007) http://www.afrilegstud.com/calsreview/PDF/professional_conduct.pdf (accessed 23 August 2013).

18 181.

19 Dignity/integrity at work, confidentiality, legal requirements, conflict of interest, dilemmas, and competence/diligence. See 181 for the list and 182-192 for the discussion.

20 *Professional legal training handbook* of the Faculty of Law Clinic, University of Durban-Westville, South Africa, referenced on 200. University of Durban-Westville is now a campus of the University of KwaZulu-Natal.

21 8.

the first two terms, the reader has to move to pages 46[22] and 48.[23] There is, however, no answer provided in the text for circumstances under which one may be arrested with a warrant as distinct from an arrest without a warrant. Perhaps the authors expect that readers would have gone through a course of instruction in criminal law or procedure by the time they use this *Handbook*.

Similarly, the concept of 'holding charge' is first mentioned in the context of what happens when a defendant is before a magistrate's court for an offence over which the court has no jurisdiction. The reader is left to wonder what 'holding charge' means until page 54.[24]

The authors also use a number of legalese, including *de facto*,[25] *inter alia*,[26] *locus standi*,[27] *de novo*,[28] *cause list*[29] and *pre-action notice*[30] without explaining what these words or phrases mean. Again, this may have been informed by the assumption that the reader ought to know. These terms would have been usefully explained in a glossary of terms.

There is an attempt to extract usually long commentary from reported cases. While this may have been an exercise in allowing the judges to speak for themselves, it could have been better managed. Clearly, the decision to devote almost two full pages to reporting *verbatim* the decision in *Munir v Federal Republic of Nigeria*[31] merits further scrutiny. The main points of that decision could have been highlighted and, where necessary, the judge's statements could have been quoted with minimal distraction. This is not an isolated case. There are similar extensive quotations with respect to the cases of *Timothy v Federal Republic of Nigeria*,[32] *Jimoh v Commissioner of Police*,[33] *Lufadeju v Bayo Johnson*[34] and *Uwazurike & 6 Others v Attorney-General of the Federation*.[35]

22 n 34 cites sec 2 of the Criminal Procedure Act which defines 'indictable offence' as 'any offence which on conviction may be punished by a term of imprisonment exceeding two years or by imposition of a fine exceeding four hundred naira'.

23 n 38 describes 'non-indictable' offence as one 'which upon conviction may be punished by a term of imprisonment not exceeding two years or by imposition of a fine below four hundred naira'.

24 Sec 3.4.7 is devoted to explaining the subject of 'holding charge'. For more on the subject, see O Agbakoba & S Ibe *Travesty of justice: An advocacy manual against the holding charge* (2004).

25 139.

26 63.

27 135.

28 133.

29 134.

30 136.

31 69-71.

32 40-41.

33 56-57.

34 58-59.

35 67-68.

The information in the book is generally accurate up to the date of publication. There is one notable exception, however, where the authors say that '[t]he Ministry of Internal Affairs supervises the Police Service Commission and the Police'.[36] The Presidency supervises the Police Service Commission,[37] while the Ministry of Police Affairs supervises the Nigerian Police Force.[38]

For readers interested in further exploring the subject of this *Handbook*, they may have to literally extract the resources used as there is no bibliography. The absence of this tool is a profound missed opportunity.

The absence of a section or chapter on funding law clinics is another omission. Funding is one of the more significant challenges law clinics in Africa face, and therefore an undertaking such as the one under review ought to devote some attention to addressing the question of how to fundraise for law clinics.

4 Conclusion

The *Handbook* is a useful tool for navigating the relatively new idea of pre-trial law clinics in Nigeria. It presents the most relevant information in a reader-friendly fashion. Although there are a number of missing fundamentals, it is still a veritable resource material for those seeking to understand how pre-trial law clinics work in Nigeria.

36 10.

37 The Police Service Commission is established as an executive body of the Federal Republic of Nigeria under sec 153 of the 1999 Constitution and the Police Service Commission (Establishment) Act of 2001. See the website of the Commission, http://www.psc.gov.ng/node/47 (accessed 9 August 2013).

38 The core mandate of the Ministry is to 'administer the NPF (Nigeria Police Force) in such a manner that it operates at the highest level of professionalism, dedication and discipline to ensure public safety and internal security of the country'. See the website of the Ministry, http://www.policeaffairs.gov.ng/ (accessed 9 August 2013).