

LEAVING THE WOODS TO SEE THE
TREES: LOCATING AND REFOCUSING
THE ACTIVITIES OF NON-STATE
ACTORS TOWARDS THE EFFECTIVE
PROMOTION OF ACCESS TO JUSTICE
OF PERSONS WITH DISABILITIES

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Summary

The article conceptualises the place of non-state actors in international law and the important roles they ought to play if functioning well. It argues that most non-state actors remain underutilised in the realisation of their mandates or objectives that they are created to achieve. It has been argued that this possibly is premised on the paucity of human rights education, knowledge of international human rights instruments and their application in national laws. Considering the wide range of perceptions of non-state actors the article examines the emergence of law clinics in several Nigerian universities as non-state actors. It argues that the lack of engagement and adequate training of law clinics in enhancing access to justice of persons with disabilities as envisaged in article 13(2) of the Convention on the Rights of Persons with Disabilities is responsible for the underutilisation of law clinics as non-state actors. In addition, the article advances the argument that the continued poor engagement is also linked to a lack of appreciation and understanding of the relevant human rights instruments, especially with respect to the CRPD. Consequently, the article construes non-state actors as effectively being in the woods (human rights discourse) but unable to effectively see the trees (enhancement of access to justice of persons with disability). The article adopts a restricted quantitative methodological approach to collect and analyse data (knowledge and perception) by engaging in informal unstructured interviews with law clinic coordinators and students in Nigeria as it pertains to the question of access to justice of persons with disabilities. The article proposes that law clinics should be effectively positioned to make a greater impact on access to justice of persons with disabilities. To achieve this the article proposes the development of quality human rights education to enhance, among other things, the understanding and perception of the disability concept, access to justice, and an appreciation of relevant human rights instruments.

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1 Introduction

The challenges that face people living with disabilities are not in doubt. The obvious disadvantages range from discrimination to a lack of reasonable accommodation. Persons with disabilities remain at the lower rung of societal disadvantages. In the discourse about persons with disabilities the various forms commonly discussed are disabilities such as hearing impairment, sight and mobility. The limited or low discourses of challenges of persons with mental disabilities suggest that persons with mental disabilities in most circumstances are not countenanced within the general theoretical discourse.¹

The concept of non-state actors generally in international law suggests the involvement of groups that engage in either war or other obnoxious activities in and outside a state.² Non-state actors also engage in business activities that impact the realisation of human rights in society. For instance, the International Monetary Fund (IMF) and other international institutions are also argued to be subject to international law regulations.³ In early times the question as to liability of non-state actors has led to much debate. It is argued in several quarters that non-state actors as subjects of international law should also be part of treaty making and negotiations.⁴ On the other hand, the extent to which states should be held responsible and accountable for the acts of non-state actors is another unresolved aspect in international law. The article advances the concept of non-state actors to include the activities of non-governmental organisations (NGOs) and the extent to which they should engage in the question of access to justice.

Access to justice generally deals with the ability of an aggrieved individual to obtain reprieve for any form of injustice. It deals with both substantial and actual access to the architecture of the rule of law in a state.⁵ A major factor affecting persons with mental disabilities is the perception and assumption that these persons lack the ability to make decisions for themselves. According to Ofuani, the challenge this may present is surmountable by relying on the provisions of article 12 of the

1 P Bartlett 'The United Nations Convention on the Rights of Persons with Disabilities and mental health law' (2012) 75 *Modern Law Review* 778.

2 KS Gleditschy et al 'International conventions and non-state actors: Selection, signalling, and reputation effects' (2016) *Journal of Conflict Resolution* <http://eprints.lse.ac.uk/id/eprint/66556> (accessed 5 September 2017).

3 See generally A Clapham *Human rights obligations of non-state actors* (2006).

4 MH Zarei & S Azari 'The status of non-state actors under the international rule of law: A search for global justice' (2015) *Rethinking International Law and Justice* 233.

5 United Nations 'Toolkit on disability in Africa: Access to justice for persons with disabilities' <https://www.un.org/development/desa/technical-cooperation/2016/11/18/toolkit-on-disability-for-africa/> (accessed 27 August 2017).

Convention on the Rights of Persons with Disabilities (CRPD).⁶ It therefore is imperative to interrogate the veracity of this claim. Assuming this position to be true, the questions arises as to what efforts are effectively put in place to aid the realisation of access to justice of persons in this category.

An emerging concept in human rights advocacy and education is the growing influence of law clinics. Law clinics more often are located in law schools and have contributed immensely to the growth in driving the human rights concerns of people.⁷ Law clinics generally have been noted to support the work of the United Nations (UN) and regional human rights entities in several human rights discourses.⁸ The effectiveness of the law clinics generally has been adjudged as being excellent, but this not ignoring the fact that several areas of impact still loom large. The basis on which they are properly placed but unable to achieve more than they have done could be traceable to the issues of limited knowledge. Based on this, it might be safe to suggest that the law clinics are well located within the woods of human rights discourse but remain unable to see the trees. The article will set out to ground the discourse of access to justice of persons with mental disabilities and the role law clinics can play in enhancing this. The article is structured in five parts, dealing with the introduction; the conceptualisation of non-state actors as agents of international law application; and a discourse on applicable international instruments that deal with access to justice and mental disability. In addition, the position of the law clinics and the impact they are capable of having are discussed in light of collated data. The article finally makes recommendations and draws conclusions.

2 Access to justice and international law

In conceptualising the term ‘access to justice’, it is important to underscore the key components of the concept. In the first place the term ‘justice’, as most social phenomena, defies a definite definition. What might be called justice to A invariably could not mean justice to B. For instance, in the field of transitional justice a debate remains about which should be projected, justice or peace.⁹ While many scholars will advocate peace, some advocate justice. However, a seemingly acceptable premise is to appreciate that whichever approach is followed, the position of the victim must be

6 A Ofuani ‘Protecting adolescent girls with intellectual disabilities from involuntary sterilisation in Nigeria: Lessons from the Convention on the Rights of Persons with Disabilities’ (2017) 17 *African Human Rights Law Journal* 550.

7 See Generally MM Qafisheh ‘Clinical legal education in Palestine: A clinical case under military occupation’ (2015) *Clinical Legal Education in Asia* 113.

8 The Clinics at the Centre for Human Rights University of Pretoria are good examples of this. The author has in the past served as coordinator for some of the clinics.

9 See generally N Biggar (ed) *Burying the past: Making peace and doing justice after civil conflict* (2003).

appreciated and protected.¹⁰ Another important component of the justice concept is the representation of fairness, accountability and equity. These notions also are not devoid of the challenges facing the concept of justice. With this challenge in mind, Lord Denning, as he then was, advocated in the popular case of *UAC v Macfoy*¹¹ that justice must not only be done but must be seen to be done. Justice, broadly, covers criminal justice, civil justice and administrative justice, and can be exerted either via reliance on established systems or via self-help. The article deals more with the formal system of justice in line with state creations and the rule of law. The question of access mainly deals with the process through which individuals are able to access state-created structures in the quest to find justice when they feel aggrieved. Issues affecting access to justice are identified as a lack of funds, language barriers and institutional bureaucracies.

In international law the concern about the concept of access to justice can be traced back to the Universal Declaration of Human Rights (Universal Declaration).¹² This instrument sets out the twin tenets of a fair hearing, known as a person being heard in his case and a person not been a judge in his own matter. These two principles were further enunciated in the International Covenant on Civil and Political Rights (ICCPR).¹³ While these provisions deal with access to justice of accused persons in the criminal justice system, the same principles invariably can be extended to other bases of the pursuit of justice. At the regional level the African Charter on Human and Peoples' Rights (African Charter) also provides that no individual is to be prevented from having access to justice.¹⁴ The African Commission on Human and Peoples' Rights (African Commission) also has developed a guide to access to justice, namely, the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.¹⁵ All the instruments enumerated above generally have provisions that are non-specific to access to justice for persons with disabilities.

10 See generally G Ortiz-Barreda, C Vives-Cases & D Gil-González 'Worldwide violence against women legislation: An equity approach' (2011) 100 *Health Policy* 125; LE Powers & O Mary 'Violence and abuse against people with disabilities: Experiences, barriers and prevention strategies' (2004) *Portland: Oregon Health and Science University Center on Self-Determination*.

11 Appeal 67 of 1960, <http://www.nigeria-law.org/LawReporting/1961/Benjamin%20Leonard%20MacFoy%20v%20United%20Africa%20Company%20Ltd.htm> (accessed 5 September 2017).

12 Universal Declaration of Human Rights. Arts 10-13 specifically speak to the provisions of access to justice.

13 Art 14 Universal Declaration.

14 Art 17 Universal Declaration.

15 http://www.achpr.org/files/instruments/principles-guidelines-right-fair-trial/achpr33_guide_fair_trial_legal_assistance_2003_eng.pdf (accessed 5 November 2018).

However, despite the perceived shortcomings mentioned above, it is important to commend the provision of the Sustainable Development Goal (SDG) that seeks to ensure a just, peaceful and inclusive society.¹⁶ Interestingly, for the realisation of the goal, the need to ensure that strong institutions are built is underscored. In this respect the position buttresses the need to ensure the establishment of law clinics as institutions capable of driving this aspiration.

The challenges facing persons with disabilities in every facet of society formed a core concern for the international community and subsequently heralded the entry into force of the CRPD. The Convention's core interest was to ensure that persons with disabilities are not sidelined in their day-to-day living. The CRPD particularly makes provision for the right of access to justice of persons with disabilities, which is discussed in the next section of the article. As a follow-up to the CRPD, it was important to ensure that the pursuit of justice was done on an equal footing. To this effect, it has been noted that 'equality before the law is a basic general principle of human rights protection and is indispensable for the exercise of other human rights'.¹⁷ Accessibility is as important as equality. It is argued that a fair hearing, as advanced in international law, cannot be possible where equality is denied. The importance of access is stressed in General Comment 9 which provides definite and specific parameters for grounding accessibility to justice of persons with disabilities.¹⁸

2.1 Access to justice for persons with mental disabilities

Understanding the challenges affecting persons with disabilities generally would be a good basis to proceed on before narrowing in on the specific situation of persons with mental disabilities. It is emphasised that, generally, persons with disabilities remain the most widely discriminated against in several areas of society.¹⁹ Due to both the medical and social construction of the concept of disability, several persons with disabilities have been dehumanised and made to look less human than non-disabled persons.²⁰ The medical construction of disability focuses on the individual with such a disability and does not in any way attempt to alleviate the

16 <http://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-16-peace-justice-and-strong-institutions.html> (accessed 5 November 2018).

17 See General Comment on Article 12 on equal recognition before the law, prepared pursuant to Rule 47, paras 1 and 2 of the Committee's Rules of Procedure (CRPD/C/4/2) and para 54 of the Committee's Working Methods (CRPD/C/5/4).

18 See General Comment on Article 9 on accessibility prepared pursuant to Rule 47, paras 1 and 2 of the Committee's Rules of Procedure (CRPD/C/4/2) and para 54 of the Committee's Working Methods (CRPD/C/5/4).

19 H Hahn 'Introduction: Disability policy and the problem of discrimination' (1985) 293 Sage Journals]; NE Groce 'Adolescents and youth with disability: Issues and challenges' (2004) 15 *Asia Pacific Disability Rehabilitation Journal* 13.

20 S Peters 'Is there a disability culture? A syncretisation of three possible world views' (2000) 15 *Disability AND Society* 583; JM Camilleri 'Disability: a personal odyssey' (1999) 14 *Disability and Society* 845.

limitations presented by the environment. Conversely, the social model of disability attempts to reconstruct the limiting barriers, but places a great responsibility on an individual when a disability does not present in clear and certain forms.²¹ Ranging from the right to reasonable accommodation to the right to education, persons with disabilities have harrowing experiences. These persons are exploited in all spheres, from economic to educational.²² In certain circumstances persons with disabilities may be either maimed or killed.²³ In this category of serious violations are persons with mental disabilities who suffer the most with issues pertaining to their dignity.²⁴ A person with a mental disability may suffer name-calling and may have to face assumptions that they are unable to make decisions, coupled with an inability to access justice. The obligation placed on the state to ensure capacity building and knowledge dissemination regarding the importance of ensuring accessibility as a means of realising access to justice of persons with disabilities should be embraced by all major stakeholders.²⁵

In curbing the challenges of persons with disabilities the CRPD, particularly in article 13, attempts to alleviate the challenge of access to justice of persons with disabilities. In this attempt, the CRPD focuses on the role of government; the question of direct and indirect participation; enhanced and targeted positive measures to alleviate discrimination; and ensure adequate promotional and educational approaches to increasing the human rights experiences of persons with disabilities.

A perusal of the intent of article 13 reveals that the responsibility to enhance the human rights of persons of disabilities is enhanced by ensuring adequate training of institutions involved in access to justice. Bearing in mind that human rights obligations are of both horizontal and vertical application, the article focuses on the role of non-state actors in giving flesh to the aspirations of the CRPD.

Section 36(1) of the Nigerian Constitution of 1999 is the basis for access to justice in the country. It provides for the basic tenets of fair

21 See generally 'The social and medical model of disability' <https://www2.le.ac.uk/offices/accessibility/staff/accessabilitytutors/information-for-accessability-tutors/the-social-and-medical-model-of-disability> (accessed 20 March 2018).

22 N Stein 'A society disabled: State of the right to education for people with disabilities in China' (2014) 47 *New York University Journal of International Law and Politics* 501.

23 This challenge currently is very common among persons with albinism in several cities in Africa. See generally MP Mostert 'Stigma as barrier to the implementation of the Convention on the Rights of Persons with Disabilities in Africa' (2016) *African Disability Rights Yearbook* 3.

24 LÓ Gostin & G Lance 'The human rights of persons with mental disabilities: A global perspective on the application of human rights principles to mental health' (2009) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1435443 (accessed 1 August 2017).

25 See generally General Comment on Article 12: Equal recognition before the law CRPD/C/11/4 <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/DGCArticles12And9.aspx> (accessed 5 November 2018).

hearing and the removal of all forms of impediments that will hinder the pursuit of justice by any individual. As part of realising access to justice, the Nigerian Legal Aid initiative is put in place to aid any individual who is unable to obtain legal services, mainly in criminal matters. Several justice sector reform initiatives have also been put in place to ensure that no one is denied access to justice.²⁶

Despite these initiatives, access to justice in Nigeria remains confronted by a number of challenges, among which is citizens' limited knowledge of their rights. According to Okogbule.²⁷

There is a wide gulf between official pronouncements of respect for human rights and their actual implementation. The explanation for this appears to be that there still exists a number of substantive and procedural obstacles or impediments that not only inhibit the actual implementation of such measures but preclude the masses in general from having access to justice in Nigeria.

In this regard the inability of law clinics, as shown in the article, to engage in issues concerning persons with disabilities attest to the position above and the need to ensure a shift away from this. The place of legal education in enhancing access to justice is described as one that is key and pivotal and should not be ignored.²⁸ It is therefore premised on the above the next sections of the article discuss the importance of law clinics in realising access to justice, particularly as it pertains to persons with disabilities. In this regard the non-state actors examined in the article are the law clinics that are housed in law schools in Nigerian universities. The importance of this focus is the fact that law clinics have the potential of driving the desired enhancement of access to justice of persons with mental disabilities.

3 Law clinics as non-state actors and scope of operations

Law clinics in Nigeria are anchored on the Legal Aid project of the country to make justice accessible to every citizen, especially the indigent.²⁹ The legal aid clinics are creations of the state through legislation. The major legislation on legal aid in Nigeria is the Legal Aid Act 2011. The main aim of this Act is to provide for the establishment of legal aid and an access to

26 'Impact assessment of justice sector reforms in three Nigerian states' https://www.unodc.org/documents/nigeria/.../Impact_of_Justice_Sector_Reform.pdf, <http://www.justice.gov.ng/index.php/justice-sector-reform> (accessed 5 November 2018).

27 NS Okogbule 'Access to justice and human rights protection in Nigeria: Problems and prospects' (2005) *Sur Revista Internacional de Direitos Humanos* 100.

28 CIN Emelie 'Legal education and access to justice in Nigeria' <http://www.internationalpolicybrief.org/images/2017/APRIL/RJH/ARTICLE12.pdf> (accessed 5 November 2018).

29 This position is not unique to Nigeria. See generally FS Bloch 'Access to justice and the global clinical movement' (2008) 28 *Washington University Journal of Law and Policy* 111.

justice fund into which financial assistance would be made available to the Council on behalf of indigent citizens to prosecute their claims in accordance with the Constitution, and further to empower the existing Legal Aid Council to provide justice in certain matters or proceedings involving persons with inadequate resources, in accordance with the provisions of the Act.³⁰

The Legal Aid Act also establishes the Legal Aid Council which is mainly responsible for promoting access to justice in the Nigerian legal system. However, the legal aid clinics at Nigerian universities have also been recognised as legal aid providers under the 2011 Legal Aid Act.³¹ According to a guide published by the Network of University Legal Aid Institutions (NULAI), the legal aid clinics at Nigerian universities at the time of this research stood at 18.³² These law clinics are guided by the policies of NULAI,³³ an NGO established in October 2003 as a non-profit organisation dedicated to generating sufficient interest in the legal education sector and the promotion of legal education, access to justice and human rights.³⁴

NULAI thus far has pioneered the establishment of 14 law clinics at universities across Nigeria, while influencing the establishment of several others.³⁵ In this article, the focus will be placed on three law clinics at three Nigerian universities, namely, Abia State University; the University of Abuja; and the University of Ilorin. Law clinics examined are hosted in government institutions. It is important to restate the premises of conceptualising law clinics as non-state actors, premised on the basis of the status they are able to assume as NGOs. The impact of these three law clinics will be examined in relation to the CRPD. The reason behind the examination of these three law clinics is primarily premised on the fact that they are among the first generation of law clinics; represent law clinics in different geo-political zones in Nigerian law faculties, and because of the author's personal knowledge and interactions.

Legal education in Nigeria has the sole responsibility of educating individuals that are motivated towards the law profession. A historical view of the legal education curriculum in Nigeria suggests one that was highly laden with the British style of education (considering the colonial history of Nigeria). It entailed a structure that was lecture-based and that prepared students for theoretical examinations to become qualified lawyers. At the successful completion of his educational training a candidate is admitted as both solicitor and advocate of the Nigerian

30 See Explanatory Memorandum for the Legal Aid Act, 2011.

31 Sec 17 of the Legal Aid Act, 2011.

32 *Compendium of campus-based law clinics in Nigeria*, published by Network of University Legal Aid Institutions (NULAI Nigeria) 2014, www.nulai.org (accessed 30 July 2017).

33 As above.

34 NULAI Nigeria 2011 Annual Report 2.

35 As above.

Supreme Court. The educational training is structured in two major folds: first, five years of university education and, second, one year at the Nigerian Law School.

Considering the deteriorating quality in the nature of lawyers produced, the system of over-reliance on the theoretical framework of legal education took was under scrutiny in the country.³⁶ The high rate of rejection of poor and incompetent lawyers produced by the legal education framework necessitated a review of the process.³⁷ In a bid to follow the global trend, the system of law clinics was adopted in major law schools in Nigeria.³⁸ One of the core bases that gave credence to the embracing of law clinics is hinged on the fact that legal education should basically enhance human knowledge and societal interaction of the lawyer.³⁹ Another important basis was the need to ensure a grasp of means of advocacy to drive the basic tenets of human rights. According to Wilson, law clinics are originally configured to ensure that the justice model of the law is practically imbibed.⁴⁰ Scholars such as Ojukwu and Egbewole advocate the importance of clinical legal education as a major means of ensuring an integrative approach to learning, community engagement, access to the rule of law and demystification of the challenges often identified with access to justice.⁴¹ According to Omoragbon, law clinics came into being in Nigeria as from 2004 and were conceptualised to function as a bridge to the challenge of access to justice, particularly in light of the high cost of legal services.⁴²

According to Zarei and Safari, the allusion to the concept of non-state actors mostly is inclined towards the activities of armed groups.⁴³ However, broadening the scope of the concept of non-state actors, it includes 'actors that include private sector, social partners, trade unions

36 See generally <http://thenationonline.ng.net/50-years-of-legal-education-in-nigeria-a-critique/> (accessed 23 March 2018).

37 AO Popoola 'Restructuring legal education in Nigeria' <http://www.aelx.com/media/MFA/THE%20PROBLEMS%20OF%20LEGAL%20EDUCATION%20IN%20NIGERIA.pdf> (accessed 6 September 2017).

38 'Development of clinical legal education in Nigeria' <http://www.nulai.org/index.php/blog/83-cle> (accessed 7 September 2017).

39 SL Buhai & K Ved 'The role of law schools in educating judges to increase access to justice' (2011) 24 *Pacific McGeorge Global Business and Development Law Journal* 161.

40 RJ Wilson 'Training for justice: The global reach of clinical legal education' New York Law School Clinical Research Institute Research Paper Series 07/08 9 *elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1595&context=psilr* (accessed 20 July 2017).

41 E Ojukwu, S Erugo & C Adekoya *Clinical legal education curriculum lessons and materials* (2013) 7-8; WO Egbewole 'Clinical legal education and the future of legal training' Paper presented at the University of Cape Coast, Ghana, February 2014.

42 KM Omoragbon 'Celebrating a decade of clinical legal education in Nigeria: It is not yet Uhuru!' <http://northumbrialawblog.wordpress.com/2012/08/07/celebrating-a-decade-of-clinical-legal-education-in-nigeria-it-is-not-yet-uhuru/> (accessed 14 February 2014).

43 Zarei & Azari (n 4) 233.

and civil society organisations' and, in this case, the law clinics at Nigerian universities. Article 6 of the Cotonou Agreement⁴⁴ provides for the expansive interpretation of the actions and status of non-state actors. Private entities such as civil society organisations have had their status settled as non-state actors on different occasions, including acting as *amici curiae* before treaty bodies and supra-national judicial bodies. It is argued that the underlying theme of a body to be recognised as a non-state actor primarily is being an organisation, a legal personality and independent from government activities and supervision.

Building on this, it is assumed that the nature of law clinics in Nigeria would safely place them within in the ambit of non-state actors. For instance, the law clinic at the University of Ilorin was established on the premise of rendering *pro bono* services to communities in the vicinity; embarking on advocacy initiatives and contributing to the promotion of human rights of indigent citizens generally.⁴⁵ Despite the wide scope of the operations of the law clinics, the level of their efficiency has come under heavy criticism and will be analysed in the next section.

3.1 Within the woods and yet not seeing the trees: Factors limiting the efficiency of law clinics

Generally, the metaphor of seeing the woods from the trees is advanced by Freris and Laschefski.⁴⁶ The two authors laud the need for and importance of efficiently engaging the economic advantage presented by the flourishing Amazon forest. However, they bemoan the inability to fully utilise the presented opportunity due to several factors, especially illegal logging and corruption. In the context of this article, the metaphor is construed from the perspective of law clinics having the potential to advance the cause of human rights generally. It is the general assumption that the activities of law clinics in Nigeria still are in the early stages. However, it is important to examine the scope of their operations with a view to ascertaining the extent of their efficiency thus far and possible room for improvement.

Primarily, the law clinics, as stated, are well situated within the confines of contributing extensively to the issues of human rights discourse in Nigeria, particularly on building the jurisprudence of disability rights and the access to justice of persons with mental disabilities. To ascertain the challenges and factors that blur the vision of law clinics from effectively

44 See https://ec.europa.eu/europeaid/regions/african-caribbean-and-pacific-acp-region/cotonou-agreement_en (accessed 6 September 2017); http://www.europarl.europa.eu/intcoop/acp/03_01/pdf/mn3012634_en.pdf (accessed 6 September 2017).

45 The author was one of the three lecturers that drafted the scope of activities of the Law Clinic.

46 F Nicole & K Laschefski *The ecologist* (2001) 31.

seeing the trees from the woods, three law clinics were selected⁴⁷ with the sole purpose of ascertaining the extent of knowledge regarding the CRPD and disability rights generally. Preliminary findings identify some general challenges which are discussed below.

3.1.1 Poor knowledge and appreciation of relevant laws

The functioning and application of international law generally is not particularly encouraging. A cue from the challenges faced in the implementation of international treaties shows that legal practitioners generally are more inclined to apply municipal laws than international law. In several areas of law, such as environmental rights, the right to health and the right to education, more interest is shown in the functions of municipal laws. The perception is that lawyers generally are unaware of the development of international law in these areas. Consequently, areas such as disability rights, which encompass the right to inclusive education and the protection of the rights of persons with albinism, have remained low on the scale.

At the University of Ilorin, for instance, the law clinic's core focus from inception has been on prisons. Current advocacy on the right of persons with disabilities revealed an embarrassing lack of knowledge on the part of students on the application of the CRPD and construing disability law generally. Academically, the module attracts a two-credit load and in some circumstance attracts a poor attitude and approach to the academic aspect. However, it is noted that the University attaches great importance to the module, ensuring that it is a compulsory and required module. This *lacuna* in knowledge extends also to the judiciary, as the traditional approach to litigation of emerging areas of laws. These continue to affect areas such as inclusive education, maternal health and socio-economic rights generally.

3.1.2 Lack of institutional framework

Apart from the poor knowledge and appreciation of the relevant laws, another major inhibitor is the lack of institutional framework. Judicial institutions and structures in Nigeria still face the challenge of reasonable accommodation. This challenge also is obvious at universities, with access to facilities that are disability-friendly remaining lacking. The curriculum content of education, language and social construction continue to place heavy restrictions on the institutions that are meant to drive the knowledge of disability laws generally.

47 The selection of the clinics to be studied was carried out by a simple random sampling selection influenced by the author's access to both coordinators and students working on the different law clinics.

For instance, in the Nigerian law school there is an absence of sign language interpreters for students with hearing impairments. The basic education teaching style of teachers is still laden with nursery rhymes and jingles that discriminate and dehumanise the human dignity of individuals with some form of disability.⁴⁸ On the front of mental disability and access to justice, there is an absence of knowledge of the legal framework of the CRPD and particularly the aspirations of article 13. Interaction with a few academics revealed a large vacuum in this area, illustrating why the activities of the law clinics are mainly focused on the traditional civil and political rights. It is noted that the choice of cases undertaken by the clinics often is influenced by the knowledge and interest of the clinicians. Apart from institutional support that is lacking, the lack of motivation is another factor.

3.1.3 *Lack of motivation*

Motivation and passion are the core bases that drive any human rights advocacy initiative. In the University of Ilorin clinical legal education is an integral part of the moot and mock advocacy module. The absence of a specific curriculum on disability rights results in there being a reliance on the course facilitator to include these aspects of disability rights.

Facilitators and coordinators see this as an extra burden on their finances and time that could be used for other initiatives. The students engage with personal funds to carry out a few select activities, and are easily burnt out in the course of the semester. The import of this is that rigorous engagement on the various projects that would aid data gathering or access is largely hampered by the economic burden of the implementation of such projects.

3.2 **A case-by-case overview of the selected law clinics**

The information relayed here was gathered either via telephonic interviews or personal interactions with the respective law clinics.

3.2.1 *Abia State University Law Clinic*

The Abia State University (ABSU) Law Clinic was established in 2005 as one of four pilot clinics under the Network of University Legal Aid Institutions (NULAI) with support from the Open Society Justice Initiative (OSJI).⁴⁹ However, it should be noted that the support received

48 See generally A Ogbuotobo *Ejiofor Okocha* – Portion Music PC 003; AC Onuora-Oguno ‘Nigerian stand-up comedians and differently abled persons from a human rights lens’ <http://ohrh.law.ox.ac.uk/nigerian-standup-comedians-and-differently-abled-persons-from-a-human-rights-lens/> (accessed 30 October 2018).

49 NULAI Nigeria (n 32).

in this regard is an isolated situation, as other law clinics do not receive same support. The objectives of the law clinic as of its establishment were to provide free legal aid and advisory services to the underserved members of the University community and its environs and also to provide a platform for the students to acquire the requisite skills and exposure to real-life cases in order to help them develop their lawyering skills.⁵⁰

The ABSU Law Clinic focuses on four areas:

- (a) community human rights education;
- (b) child rights education at primary and secondary schools;
- (c) freedom of information community education and support; and
- (d) prison pre-trial detainee unit.

In the execution of its focus, the ABSU Clinic since 2005 has served over 400 individual clients, especially under its access to justice for prison pre-trial detainees and community human rights education projects. Under the prison pre-trial unit the law clinic works with the Umuahia, Okigwe and Aba Prisons to improve access to justice for detainees that cannot afford to appoint lawyers. The Clinic has secured the release of over 50 detainees. Notable cases include the release of a detainee after seven years of pre-trial detention. The accused was charged with armed robbery when he was 16 years of age. Another was the release of Mr CA after eight years of pre-trial detention.

The Clinic conducted an anti-sexual harassment and human rights enlightenment campaign in five secondary schools, namely, the Federal Government Girls College *Umuahia*; International Secondary *Uturu*; Fatima Technical Secondary School *Isiukwuato*; Girls Senior Secondary School *Umuahia*; and the Federal Government College *Okigwe*.

The Clinic also launched its Freedom of Information Unit in 2013, starting with educating the faculty and students on the Freedom of Information Act. It was confirmed that the clinic had no activity covering the enhancement of access to justice of persons with disabilities in line with the CRPD.⁵¹ It was emphasised that the ABSU Law Clinic's efforts were rather directed towards pre-trial detention matters, the training of students in advocacy contests and the freedom of information awareness project.

50 As above.

51 In a telephonic interview conducted with the coordinator of the ABSU Law Clinic, Dr Sam Erugo, on 4 September 2017.

3.2.2 University of Ilorin Legal Aid Clinic

According to a report,⁵² the process of the establishment of the University of Ilorin Legal Aid Clinic began in November 2011 and the Clinic became fully operational in February 2012 with approval by the Faculty Board. The objectives of the Law Clinic at its establishment were to train students using clinical methods, thereby preparing them for practice as soon as they graduated; to provide *pro bono* services to the indigent people within the Ilorin metropolis; and to create awareness about people's rights and responsibilities at Ilorin.

The focus areas of the law clinic are:

- (a) prison/pre-trial detainees: The University of Ilorin Legal Aid Clinic specialises in prison/pre-trial detainees and members of the Clinic have paid advocacy visits to the prisons and other relevant institutions in the Ilorin metropolis.
- (b) community outreaches on freedom of information;
- (c) alternative dispute resolution (ADR); and
- (d) legal advice on sundry issues.

In the execution of its focus, in 2012 the Clinic coordinators and clinicians visited the Mandala prison for the counselling and interviewing of clients. After the interviews and counselling sessions, approximately 10 cases were signed on for action by the Clinic. In 2013 advocacy visits were paid to the Director of Public Prosecutions and the Legal Aid Council, among others. Students from outside the Faculty approached the Clinic for legal advice and were competently advised. In 2014 the Clinic visited the Chief Justice of Kwara State and the Controller of Prisons, Kwara, to appraise them of the existence of the Clinic as well as its activities. Another visit was paid to the Okekura Maximum Security Prison where students interviewed and counselled awaiting-trial inmates. Approximately 15 cases were eventually signed on, some of which are presently being prosecuted by the Clinic.

In a telephonic interview with the former Clinic leader of the University of Ilorin Law Clinic, Oke Ridwan, on 4 September 2017, he advised that the University of Ilorin Law Clinic did not offer any general assistance specifically to persons with disabilities in line with the CRPD. He emphasised that the Clinic usually offered legal aid on specific cases dealing with prison decongestion and aiding access to justice of individuals on pre-trial detention.

3.2.2 University of Abuja Legal Aid Clinic

According to a report,⁵³ the University of Abuja Clinic was established in 2008 after the University had won the Third National Client Interviewing and Counselling Skills competition. The objectives of the Law Clinic since its establishment were to provide legal aid for indigent members of the community; to advocate access to justice and human rights; to serve as a laboratory where students learn through real legal practice; to provide an opportunity for law students to appreciate the social justice perspective of law; to expose students to new areas of law and vital professional skills; and to serve as an avenue for capacity building for both staff and students of the Faculty.

The focus areas of the UNIABUJA law clinic are:

- (a) community human rights education (street law projects);
- (b) child rights education at primary and secondary schools;
- (c) freedom of information community education and support;
- (d) prison pre-trial detainee projects; and
- (e) public safety projects.

In the execution of these focus points, since 2009 the University of Abuja law Clinic reports that every year approximately 2 000 persons receive basic legal education on their rights and ways in which to enforce these rights. Outreach programmes are organised on a quarterly basis at primary and secondary schools in Gwagwalada to sensitise the young minds about their rights as children in a 'catch-them-young initiative'. Outreach is also conducted to market women and commercial motorcycle associations to educate them on their rights.

The Clinic also provided access to justice to more than 100 pre-trial detainees in Kuje Prison, of which 60 were released between November 2013 and March 2014.⁵⁴ The Clinic also carries out a community mediation project to educate community leaders on how to resolve disputes by adopting modern mediation strategies.

In a telephonic interview with the Clinic head of the University of Abuja legal Aid Clinic, Ms Basil Chioma, on 4 September 2017, she observed that there were no provisions for the execution of the objectives

⁵³ As above.

⁵⁴ For further information into the recent activities of the University of Abuja Law Clinic, see generally <https://www.juridipedia.com/NG/Abuja/464049326959651/University-of-Abuja-Law-Clinic> (accessed 5 November 2018); <http://www.gaje.org/wp-content/uploads/2014/10/UNIVERSITY-OF-ABUJA-LAW-CLINIC-PROGRAM-AN-OVERVIEW.pdf> (accessed 5 November 2018).

of the Legal Aid Clinic in line with the CRPD. She emphasised that there had been no case of providing access to justice for persons with disabilities.

Having examined the three case studies, it is established that the law clinics have had an impact on the Nigerian system. However, there is no confusion about the fact that they have no knowledge of their utility in the expansive human rights discourse, especially in respect of the rights of persons with disabilities.

It is important to note that in a clinical legal education curriculum⁵⁵ published by NULAI in 2013, a brief note was made of disabilities in relation to access to justice. However, no further elaborations were made, and it has been consistently absent from the NGO's agenda and annual reports. This clearly denotes a state of ignorance of the essence of article 13 in the achievement of the goals of legal aid clinics in Nigeria.

4 Law clinics and diverse engagement: Other perspectives

From the foregoing it is important to briefly mention the need to ensure that law clinics are actively engaged with developing trends in society with a view to contributing to the realisation of the respect for the rule of law and human rights. In the author's view, Nigerian law clinics would benefit tremendously from the experience of other climes in the engagement of law clinics in diverse activities.

Consequently, it is noted that the role of law clinics cannot be overemphasised, Quigley makes the point that the continued education of law clinicians is germane in ensuring that social injustices are confronted.⁵⁶ This position supports the argument of the author about the need to ensure proper capacity building for law clinics in Nigeria on issues of disability, and particularly on access to justice of persons with mental disabilities. This approach could be likened to what Karin and Runge describe as an integrated approach.⁵⁷ The need for Nigerian law clinics to embrace a multidimensional approach to clinic education is important as this would enable the clinics to advance beyond the traditional engagement with the civil and political rights advocacy which seems to be the sole focus of the clinics. If the awareness level of the rights of persons with disabilities to access justice is to be enhanced, the role of the law

55 Ojukwu, Erugo & Adekoya (n 41).

56 F Quigley 'Seizing the disorienting moment: Adult learning theory and the teaching of social justice in law school clinics' (1995-1996) 2 *Clinical Law Review* 37.

57 ML Karin & RR Runge 'Toward integrated law clinics that train social change advocates' (2010) 17 *Clinical Law Review* 563.

clinics is crucial, and they must be engaged especially in low focus areas such as the rights of persons with disabilities.⁵⁸ To overcome the challenges identified in the operation of the law clinics and also inculcate a deeper appreciation of the challenges of persons with disabilities, interaction with clinicians is encouraged as this would enhance both the passion of the clinicians and the quest to seek a deeper understanding of the legal framework that has the potential of providing respite.⁵⁹

5 Repositioning the law clinics to see the trees: Enhancing access to justice of persons with mental disabilities

Having established that law clinics have the potential to effectively engage the question of access to justice, it is important to reposition the law clinics to enhance the lived experiences of persons with disabilities with respect to access to justice. An important means of repositioning the law clinics would be the following:

- (i) to enhance knowledge of applicable treaties;
- (ii) to strengthen the institutional framework; and
- (iii) to find a sufficient basis to motivate both the students and the coordinators.

In the first instance, enhancing the knowledge of the participants in the activities of the law clinics, there is a need to engage in the human rights education of all major stakeholders. This position is gleaned from experiences emanating from such programmes available to clinicians in other jurisdictions. In addition, the curricula of the human rights scope of most law schools in Nigeria need to be reviewed with a particular focus on disability laws. In addition, a dedicated effort needs to be focused on the continuing legal education framework of the Nigeria Bar Association to ensure that lawyers and judges appreciate the importance and impact of international law on municipal laws. The application of decisions of treaty-monitoring bodies and other supra-national judicial bodies also needs to be appreciated and effectively applied to the relevant cases that require the jurisprudence.

58 PA Massey & SA Rosenbaum 'Disability matters: Toward a law school clinical model for serving youth with special education needs' (2004) 11 *Clinical Law Review* 271. In addition, for a further advantage of having law schools enhance capacity in other areas that need legal rights intervention, see generally JR Wettach 'Law school clinic as a partner in a medical-legal partnership' (2007) 75 *Tennessee Law Review* 305.

59 This model is argued to have been successful in Asia and should be explored by African law clinics. See generally D McQuoid-Mason 'Law clinics at African universities: An overview of the service delivery component with passing references to experiences in South and South-East Asia' (2008) https://scholar.ufs.ac.za/bitstream/handle/11660/7833/juridic_v33_specialissue_a1.pdf?sequence=3&isAllowed=y (accessed 5 November 2018).

Second, the need to ensure that institutional frameworks are strengthened cannot be ignored. Apart from the judicial institutions, the need to strengthen the legal institutions that oversee the scope of legal education in Nigeria is very important. In advocating institutional strengthening, infrastructural reposition as well as policy reformulation are singled out. Apart from the challenges of reasonable accommodation that should be eliminated, it is important to have policies that are specific to enhancing the experiences of persons with disabilities, with particular reference to access to justice of persons with mental disabilities.

Third, it is important to enhance the motivation of both students and coordinators of the law clinics. The funding of the activities of the law clinics must as a matter of urgency come effectively within the scope of funding by law schools. It no doubt is a reality that the credit assigned to courses at universities provides some motivation. However, it is important to ensure that the students concentrate wholly on the academic and practical aspect of the running of the law clinics and not get involved in attempting to be part of the funding of their activities.

6 Conclusions

Having established that NGOs also fall within the ambit of non-state actors and that they have a very important role to play in the human rights discourse, it has become imperative to examine the activities of law clinics in Nigeria. Law clinics generally are seen as NGOs and should by their composition and legal status be agents of change in the human rights advocacy.

The question of access to justice is very important in every facet of human rights, and its denial goes against the basic tenets of human rights treaties. Identified in the course of the research is the fact that persons with disabilities are more vulnerable, added to the further disadvantage of persons with mental disabilities.

As far as the role of law clinics in advancing the course of access to justice is concerned, it was found that while the law clinics in the select law schools were busy and engaged, their scope of operations was limited in certain areas. Identified factors that could possibly affect the efficiency of the clinics include limited knowledge, and institutional and motivational shortcomings.

In summary, law clinics were effectively identified to be well positioned to make a significant impact on reducing the inability of persons with disabilities to access justice. However, this can be achieved only by improving the capacity and knowledge of the clinicians.