

How to guide:

How to provide better quality legal representation
for awaiting trial prisoners:

Create a clearing house

What is the J4A ‘How to’ series?

The guide is part of a series of products developed by J4A to communicate lessons learned from projects and pilots, to provide stakeholders with guidance on how to adapt and replicate the initiative in their own context.

Who is this ‘How to’ guide for?

Influencers and decision makers in the justice sector (police, prisons, judiciary and civil society).

Reference tools

Accompanying reference tools are available at www.j4a-nigeria.org or by request from info@j4a-nigeria.org

The problem

- At least 70 per cent of inmates in Nigerian prisons are awaiting trial.
- There is severe overcrowding in prisons, and this is largely due to the problem of delayed criminal trials leading to too many accused persons being held too long on remand in prison.
- Some awaiting trial prisoners (ATPs) have spent more time in prisons awaiting trial than they would have spent had their cases been promptly concluded with a conviction.
- The poor are disproportionately affected – most ATPs cannot afford legal services, which means they are at higher risk of not being granted bail or their case not being progressed fast enough.

Background

Current prison statistics reveal that, of the 50,000 inmates in Nigerian prisons, at least 70 per cent of them are awaiting trial. If a person does not have legal representation, they are less likely to be granted bail and also there is a greater risk that their case will not progress quickly through the system. Yet the majority of ATPs are poor and many cannot afford legal representation. In some cases, ATPs spend more time in prison awaiting trial than they would have spent serving a sentence if convicted. And if an ATP is found innocent, then spending too long a time – usually many years – awaiting trial, is a clear injustice.

Justice for All (J4A), in collaboration with its partner Prisoners Rehabilitation and Welfare Action (PRAWA), implemented two pilot projects in Enugu and FCT which aimed firstly to understand the causes of delays in the criminal justice system, and then to agree with local justice partners ways of reducing those delays. The Clearing House scheme was one initiative that emerged from this work. It is a mechanism for speeding up criminal trials by ensuring that accused persons being held on remand in prison have access to good quality, free legal representation, if they are unable to pay for such services themselves.

What you can do

A clearing house is a scheme which provides a mechanism for ensuring that those ATPs who cannot afford legal representation, are provided with free legal services to give them advice and representation in relation to their case.

- Identify ATPs who need free legal representation.
- Identify lawyers who are willing to provide pro bono services.
- Create a mechanism for matching ATPs with lawyers.
- Ensure that quality legal representation is provided to ATPs.

What you can achieve

- Fairer and more affordable access to justice for ATPs, and reducing cases where an accused spends more time in prison than they would have spent serving a sentence if found guilty.
- Reduce the number of ATPs in prison and contribute to the decongestion of prisons.
- Decrease the time inmates spend awaiting trial.
- Contribute to better co-ordination amongst criminal justice agencies because a defence lawyer can help ensure a case is being progressed through the system.

The situation for awaiting trial prisoners in Nigeria

There are numerous challenges facing the administration of criminal justice in Nigeria. Prison facilities across the country were built to house inmates who have been convicted after a fair and prompt trial.

However, current prison statistics reveal that, of the **almost 50,000 inmates in Nigerian prisons, at least 70 per cent of them are awaiting trial**. This causes congestion of prisons which in turn overstretches the facilities in such prisons, in many cases leading to conditions which are in breach of universally accepted human rights.

Many of the **awaiting trial prisoners (ATPs) have spent very long periods of time awaiting trial** and in some cases; some have spent more time in the prisons awaiting trial than they would have spent had their cases been promptly concluded with a conviction. Given that all accused persons are innocent until proven guilty, and all have a right to a fair and speedy trial, if an ATP turns out to be innocent, then a situation where they have spent many years in overcrowded conditions awaiting trial is a clear injustice.

A diagnostic study conducted by Justice For All (J4A) in collaboration with its partner Prisoners Rehabilitation and Welfare Action (PRAWA), indicates that the **high number of ATPs can be traced to the various challenges facing criminal justice administration**.

These include:

- **Lack of capacity on the part of the law enforcement agencies** to carry out effective and efficient investigations and prosecution.
- **Non-attendance of court by witnesses** to testify in criminal trials.
- **Absence of accused persons in court** due to challenges with transportation on the part of the prisons.
- **Long and undue adjournment of cases** and the absence of quality legal representation for inmates.

The clearing house scheme

A defence lawyer often plays a key role in ensuring that a case progresses, that various agencies such as the police, prosecution and courts are playing their role properly in moving the case forward, and that the accused gets a fair trial. A defence lawyer is also essential to ensuring that an accused person – particularly those who are poor and of low education levels – are aware of their rights and understand the criminal process. Therefore, the clearing house scheme was developed to ensure that all ATPs have access to a defence lawyer who can provide legal advice and representation.

It is a basic human right – and in a Nigeria a constitutional right – to have a fair and speedy trial, as well as to have access to legal representation if accused of a crime.

The clearing house scheme seeks to reduce the length of time accused persons spend in prison awaiting trial and also the number of awaiting trial prisoners without legal representation.

Implementing partners

The following were the key partners for the clearing house pilot schemes in FCT and Enugu.

Partner	Roles
<p>Nigerian Prison Service</p> <ul style="list-style-type: none"> • State Controller of Prisons • Officers in Charge of Prisons • Prison Officials 	<p>The support and buy-in of the senior prison officials in the state is essential, to ensure that ATPs who can benefit from the scheme are identified and lawyers have access to the prisons to provide advice to their ATP clients.</p>
<p>Legal service providers</p> <ul style="list-style-type: none"> • The Nigerian Bar Association (NBA) • Legal Aid Council of Nigeria (LACON) 	<p>Essential to consult on the design of the scheme so that it is adapted to suit the local context. (Note: as explained below, the approach to administration of the Clearing House was slightly different in Enugu than in FCT in light of preferences and capacities of local stakeholders.)</p> <p>Provide support for promoting the scheme amongst member organisations, and helping to identify lawyers who are willing to participate in the scheme. In FCT, the pro bono lawyers for the clearing house are made up of LACON lawyers and the members of the Unity Bar (NBA Abuja), while in Enugu the lawyers are from Enugu, Nsuka and Oji River branches of the NBA.</p> <p>In the case of the FCT pilot, the LACON Abuja office was the administration headquarters for the scheme. The unit was headed by the LACON FCT director who was assisted by a lawyer who co-ordinated the day-to-day activities of the office. The assignment of cases was performed by the director.</p>
<p>Civil society organisations (CSOs)</p>	<p>CSOs who work on criminal justice issues locally, particularly those who provide support and other services to awaiting trial prisoners, should be consulted on the design of the scheme.</p> <p>Many CSOs provide pro bono legal services and therefore may be able to provide legally qualified staff members to participate in the scheme.</p> <p>A CSO can be a good choice to administer the scheme. For example in Enugu, PRAWA (a CSO that works on prison related issues nationally, and has a strong track record in Enugu) administered the scheme from their Enugu office. (This was in addition to being J4A's key implementing partner for the wider Speeding up Criminal Justice projects in Enugu and FCT, as noted above.)</p> <p>CSOs who work directly with accused persons can also be involved in monitoring and evaluating the scheme, helping to assess if implementation is successful or not.</p>

Clearing house: steps for implementation

1	Hold meetings with local partner organisations (Prison Service, NBA, LACON, CSOs with an interest in criminal justice/prison issues) to sensitise them on the potential benefits of the scheme, including sharing lessons learned and evidence of successes from the pilots in Enugu and FCT. Use these meetings to ensure buy-in and support, and agreement to participate in the design and implementation of the scheme.
2	Hold a workshop which brings together key partners to design the high-level structure of the Clearing House Scheme in the local context. Who will administer the scheme and where will its administrative HQ be located? How will costs be covered? What roles will various partners play? A Terms of Reference or Memorandum of Understanding could be developed to formally clarify various roles.
3	Set up staff and furnish the clearing house office once it has been agreed where it will be located. (In Enugu it was in the PRAWA office, and in FCT in the LACON office). The office in FCT was run by two LACON lawyers in co-ordination with two NBA lawyers and assisted by six paralegals.
4	Develop clearing house forms and processes. Refer to resources and tools for examples of templates developed for the Enugu and FCT pilots.
5	Create a database for information about lawyers offering pro bono services and ATPs in need of legal representation.
6	Work with local partners such as the NBA, LACON and CSOs to identify and screen lawyers and paralegals who are available and willing to participate in the scheme. In FCT, the NBA created a Screening Committee, headed by a senior member of the Unity Bar. The committee reviewed lawyers' applications and developed a list of pro bono lawyers (108 lawyers) which was then shared with the clearing house. The LACON office invited lawyers to express interest and deployed those interested (48 lawyers and six paralegals). Templates used in FCT and Enugu for firms and individuals to register for the scheme are available for reference (see resources and tools).
7	Train the pro bono lawyers and paralegals on work in the clearing house. Training topics to include: an introduction to the clearing house system and its processes, how to complete the forms, how to interview ATPs, key considerations in determining the quality of legal services and an introduction to the prison system, including the standard minimum rules for the treatment of prisoners.
8	Identify and screen the ATPs from the various prisons. In Enugu and FCT, we collaborated with the Prison Service to undertake prison visits and interview awaiting trial persons. The Welfare Department compiled a list of ATPs for submission to the clearing house. The pro bono lawyers and the paralegals then conducted interviews to screen candidates and determine if they qualified for legal assistance. A client request form was completed for each qualifying ATP.
9	Assign specific cases to the lawyers or paralegals. In FCT, the LACON Director in charge of the clearing house assigns cases in consultation with the NBA representative. In Enugu, the officer managing the clearing house does the assignment. To facilitate their access to the prisons, the lawyers were given official letters from the clearing house.
10	Lawyers and paralegals provide legal representation to ATPs they have been assigned to advise and provide updates to the clearing house administration office on the case progress. In FCT and Enugu pilots, each lawyer had to complete a clearing house update form after every court appearance. Template available for reference (see resources and tools).
11	Monitor lawyers and paralegals in court to ensure quality legal services are delivered to the ATPs. In FCT and Enugu pilots, this was done weekly.
12	Host a monthly meeting for pro bono lawyers to share experience, learn from each other and confront challenges together. It is also a forum for the lawyers to claim out of pocket expenses incurred.
13	Monitor and evaluate the effectiveness of the clearing house. In Enugu and FCT, we tracked the number of cases concluded and the number of ATPs released during the first year of the clearing house's operations.

Cost implications

- Lawyers provide free legal services to the ATPs. They are **reimbursed for transportation** (NGN3,000 within the city and NGN5,000 outside the city) and **expenses incurred** in court processes and to obtain certified true copies of records.
- The **costs of setting up the clearing house office**, such as furniture and equipment, are estimated at approximately NGN400,000. The exact costs will depend on where the office is located and whether it has access to existing resources or needs new ones.
- **Ongoing administrative costs** such as communications and printing are estimated at NGN10,000 per month.
- The cost of **hosting monthly meetings for lawyers** is estimated at approximately NGN80,000 per month.

Resources and tools

Pro bono registration form (firm)

The form is used to obtain the details of a firm that is interested in participating in the project through the provision of pro bono services for ATPs.

Pro bono registration form (lawyers)

The form is used to obtain details of individual lawyers who are interested in participating in the scheme as individuals. It contains personal data as well as experience in handling criminal cases.

Client request form

The client request form is completed either by, or on behalf of an ATP who wants to receive legal representation from the lawyers of the clearing house. The form contains personal details, the duration of stay of the ATP and the offence for which they are being kept in custody.

Clearing house update form

The form is used to update the status and progression of the cases of the ATPs. When a lawyer goes to court and the ATP is granted bail for instance, he or she then completes the update form and submits it to the clearing house, which is then used to update the central data.

Lawyers' claim form

The form is used by lawyers to make claims for expenses incurred in the course of legal representation of ATPs. This includes transportation, fees for filing of applications in court and for the processing of court processes and records.



Casework table

The table is used to collate data relating to the operations of the clearing house. It provides an overview of the number of ATPs in custody, how many have been granted bail, released based on acquittal, lack of diligent prosecution and the upholding of a no-case submission.

All resources and tools are available at:

- **LACON/NBA Clearing House Office**, Federal Secretariat (phase 1)
- **PRAWA**: www.prawa.org
- **J4A**: www.j4a-nigeria.org, info@j4a-nigeria.org

Lessons learned

The following are lessons learned from the pilot clearing house schemes introduced by J4A/PRAWA in Enugu and FCT:

1. **Involve partners from the planning stages** of the initiative, as they will be vital for ensuring that the clearing house scheme is designed to suit the local context and that those involved in implementation fully understand and are committed to their roles. Although the basic principles of the scheme were the same in the Enugu and FCT pilots, there were some differences in the partners and the specific roles they played (as noted on page 2).
2. **Integrate sustainability plans** for the project from the very beginning – for example, consider how the scheme will be funded in the long term, how will new lawyers be attracted to join the scheme? How will it be monitored and evaluated to ensure that results are being achieved? In the FCT pilot, running costs were integrated into the institutional budget of the host agency.
3. **Ensure partners take ownership** of the initiative and adapt their internal processes in their respective organisations, so that the scheme is not over-reliant on any one individual's support and will survive changes in personnel. For example, following the successes recorded by the FCT pilot, LACON decided to implement the initiative nationwide.
4. Experience in Enugu and FCT suggests that the clearing house **scheme needs at least 18 months to make an impact**. The design and consultations (almost two months); setting up of the processes (one month); the collection and input of information on providers of legal services and ATPs in need of legal services; sorting data; and assigning cases. All of these steps need to be completed before court appearances can commence.
5. Undertake **an effective assessment of ATPs** to determine whether or not they do not have lawyers.
6. Engaging federal institutions is enabled when the **head of the institution is involved** and buy-in is secured from the beginning.
7. There is an **absence of a pro bono culture amongst the lawyers**, which should be addressed through the training at the onset of the project.



Successes

The following provides evidence of successes resulting from the Enugu and FCT clearing house schemes:

1. From July 2013 to April 2014, the FCT clearing house has added 530 ATP cases to its database, while in Enugu the clearing house has 125 cases, all of which have been assigned to lawyers.
2. Of that amount the FCT clearing house has successfully completed over 200 cases ranging from acquittal, conviction, and discharges; while in Enugu 26 cases have been successfully completed.
3. Through the FCT clearing house, 231 ATPs have been released from detention through bail and perfection of same, while Enugu clearing house released longest ATP who has been in pre-trial detention for 16 years, 11 months and two weeks.

Policy developments

Building on the implementation of the clearing house project, the **Legal Aid Council of Nigeria plans to conduct a national mapping exercise** to develop a national database that will contain names of all legal aid providers in Nigeria and updated names of ATPs across the country that need legal representation.

This will result in the development and implementation of a **national clearing house** that will provide quality legal representation for ATPs across the country.

Project highlight

The project recorded a significant milestone in February 2014 when lawyers secured the release on bail of Mr Hyginus Ajibo, the longest-serving ATP in Enugu State. Mr Ajibo spent the last 16 years awaiting trial for murder.

Mr Ajibo's case would not have been discovered but for the clearing house project that periodically reviews the Nigerian Prison Case Management System with a view to identifying overdue list of ATP cases.

'The release of the longest serving ATP in Enugu, Mr Hyginus Ajibo, from prison after 16 years awaiting trial underscores the importance of the clearing house project to reducing the number of ATPs and the length of time awaiting trial by ATPs.'

Chioma Anuna
Clearing House Project Officer
PRAWA Enugu

'This intervention has greatly improved the performance of LACON lawyers. It has not only increased the number of discharges recorded from the courts but also motivated LACON lawyers to the extent that lawyers who before now were not willing to go to court, now enjoy going to court.'

Oseni Agboghaiyemeh
Director, Legal Aid Council of Nigeria
FCT Office





Contact

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