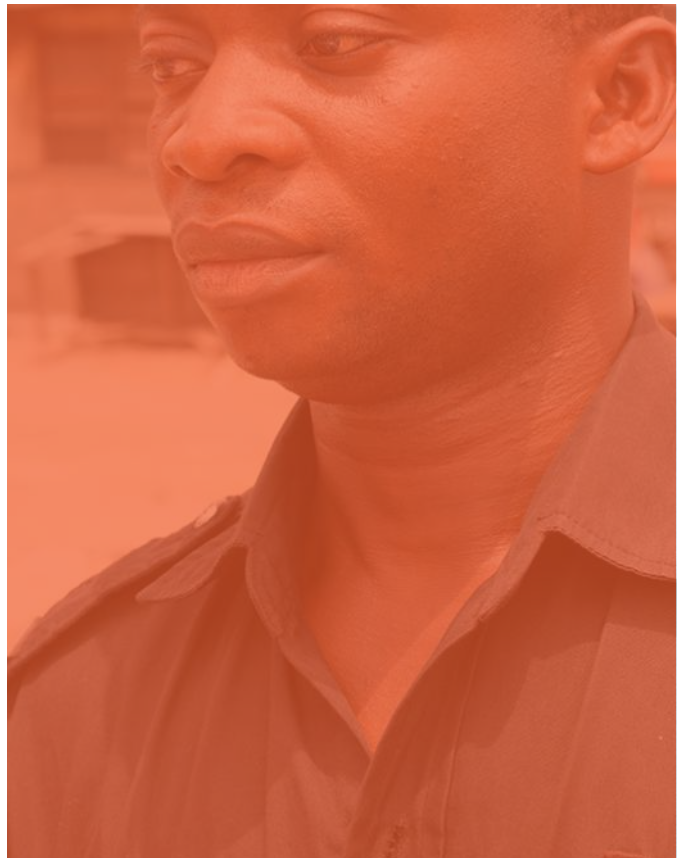


RULE OF LAW AND ANTI-CORRUPTION IN NIGERIA

**How to
activate
judicial
inspection of
places of
detention**



WHAT IS THE 'HOW TO' SERIES?

The guide is part of a series of products developed by RoLAC 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.

The full series can be downloaded from www.justice-security.ng

WHO IS THIS 'HOW TO' GUIDE FOR?

Influencers and decision makers in the justice sector (judiciary, lawyers, police, anti-corruption agencies, and civil society).

PROBLEM

- The Police and other law enforcement agencies rightly have powers of arrest and detention.
- There are many cases of wrongful arrests and prolonged pretrial detention. Detainees are often denied access to legal representation, the right to a fair trial within a reasonable time, and other due process rights.
- This has resulted in the loss of public confidence in arresting authorities and criminal justice administration.

“

I have observed and received several complaints of the horrific incidents of police brutality, inordinate arrest, detention, and extortion of innocent Nigerians by officers across the country. ”

Justice Onnoghen, former Chief Justice of Nigeria

BACKGROUND

The powers of the police and other law enforcement agencies to arrest and detain criminal suspects are regulated by law. However, in many cases, these agencies abuse their powers; some detainees are tortured and extra-judicial killings also occur.

The abuse of power thrives because there is little scrutiny of law enforcement decisions to arrest and detain and few officers are held accountable for their actions. This has contributed to the poor public perception of the police and other arresting authorities, undermining the administration of justice. In October 2020, mass protests organised under the hashtag #EndSARS raged for weeks, demanding the dissolution of the Nigerian Police's Special Anti-Robbery Squad (SARS) over gross abuses including extortion, torture, and extra-judicial killing. The same year, the National Human Rights Commission (NHRC) recorded 41,040 complaints of unlawful arrest and detention against law enforcement agencies.¹

The Administration of Criminal Justice legislation at federal and state levels² responded to this serious issue by creating a scheme for the judicial oversight of detention. Magistrates and Judges are obligated to periodically inspect detention facilities to scrutinize records, ask questions, and ensure that detention practices comply with constitutional and international standards for the treatment of persons in custody. However, these provisions of the law are not applied in most jurisdictions.

The Rule of Law and Anti-Corruption (RoLAC) programme worked with stakeholders to promote the implementation of the ACJ provisions. Capacity building of the judiciary (Magistrates and Judges), and the police was undertaken. In states that do not have oversight visit provisions in their ACJ laws, the programme supported the amendment of laws to include provisions on oversight visits.

WHAT YOU CAN DO

- Publicise the benefits of implementing judicial scrutiny

of law enforcement arrests and detentions to key stakeholders in your state. Highlight the need for implementation across every law enforcement authority with the powers of arrest and detention.

- Build capacity of agencies that have responsibility for oversight visits (law enforcement agencies, judiciary and the Administration of Criminal Justice Monitoring Committees), and others who can contribute to strengthened judicial scrutiny of arrests.
- Support the emergence or strengthening of strategic partnerships that expand legal assistance to detainees who may not have access to support in wrongful arrest and detention cases.

“

At all times and in all places, persons deprived of their liberty are vulnerable and at risk of being mistreated and even tortured. This means that they must be afforded enhanced protection by monitoring their conditions of detention. ”

Monitoring Places of Detention:
A Practical Guide –The Association for
the Prevention of Torture (APT),
Switzerland

¹ See 2020 Annual Report of the National Human Rights Commission: <https://www.nigeriarights.gov.ng/publications/annual-report/2019-2020-annual-report.html>

² Section 34 of the Administration of Criminal Justice Act (ACJA); section 36 of the Adamawa Administration of Criminal Justice Law (ACJL); section 34 of the Edo ACJL; section 51 of the Kano ACJL; and section 283 of the Lagos ACJL

WHAT YOU CAN ACHIEVE

Consistent judicial inspection of places of detention will reduce the incidences of unlawful arrest and detention. The knowledge that judicial officers could visit at a moment's notice to inspect detention records and facilities can inspire attitudinal and behavioural change, especially in police stations.

The threat of oversight visits can lead to a reduction in the duration of pre-arraignment detention, and overcrowding in police stations and other places of detention. Visiting Magistrates are empowered to grant bail and/or order that detainees be charged to court or released.

Increased professionalism in the management of suspects in police detention and custody. During inspection visits, Magistrates can give directives that guarantee respect for the rights of the detainee, which the police are obliged to follow. This process strengthens due process safeguards for detainees, thereby protecting them from torture and other cruel, inhuman and degrading treatment in law enforcement custody.

Expanded access to legal aid through the Police Duty Solicitor Schemes (PDSS) and other legal aid schemes. This can be achieved where lawyers from the PDSS or other legal aid schemes collaborate with visiting Magistrates to follow-up and ensure compliance with their directives.

“

At the time Magistrates began visiting detention centres in the state, the centres held many suspects. But with time, the numbers of suspects found in the centres reduced. As a result of these visits, sanitary conditions have improved, suspects are now being fed more frequently, and many are quickly charged to court. ”

M. Adebayo, Chief Magistrate, Edo State



HOW TO ACTIVATE JUDICIAL INSPECTION OF PLACES OF DETENTION

STEP 1 The Administration of Criminal Justice Monitoring Committee (ACJMC) should lead the process

1

Implementing a programme of judicial oversight visits requires good organisation and coordination. The ACJMC has the mandate to ensure and monitor compliance with the ACJ Law and should lead the process. In the absence of a committee, another institution or body with a coordinating mandate, (e.g. the state justice reform team or the criminal justice committee) can play that role. The ACJMC should engage with heads of the relevant institutions to gain their cooperation.

STEP 2 Establish the statutory basis for conducting oversight visits in your state

2

If your state Administration of Criminal Justice or the applicable criminal procedure law does not provide for the conduct of oversight visits, you may fall back on section 34 of the ACJA and the Chief Justice of Nigeria's directive to all Chief Judges of States to promote the implementation of section 34. You may also seek a legislative amendment of your State's ACJ or criminal procedure law to include a provision that replicates section 34.³

STEP 3 Design or adopt guidelines and templates for conducting and documenting inspection visits

3

Guidelines and templates already exist in many states; these can be adapted to suit the peculiarities of your state and should be validated by key stakeholders (including law enforcement agencies and the judiciary). The guidelines and templates should provide clear standards and checklists for conducting and documenting interviews with detainees, observations regarding cell conditions, judicial directives that were issued during an inspection visit, and other noteworthy occurrences during an inspection visit. Documenting inspection visits is essential for building records of practice relating to managing suspects in law enforcement custody and may inform remedial interventions to address observed failures in processes and practices maintained by places of custody.

STEP 4 Build the capacity of the principal actors through training and retraining

4

Key actors include Judges and Chief Magistrates who are obligated by law to conduct inspection visits; Police officers and officers of other law enforcement agencies that are authorised to arrest and detain persons; and administrative staff of courts who record the visits. Those responsible for follow-up to ensure compliance with judicial directives given during the visit also need to be properly trained.

Joint training that brings these actors together is often beneficial to build understanding of each other's perspectives and generate confidence and team spirit. Magistrates and Divisional Police Officers from states with experience of inspection visits can serve as trainers to provide practical experience.

STEP 5 Ensure formal communication to judicial officers and heads of detention centres

5

Magistrates and judges should be instructed formally by the Chief Judge to commence inspection visits. The Commissioner of Police should ensure that a signal, or other communication is sent to Divisional Police Officers informing them of the commencement of the programme. This is important due to the command structure of police; even where there is a clear obligation in law, many officers want to be formally instructed by their superiors before they act.

STEP 6 Commence inspection visits

6

Starting with a series of visits by judges or magistrates to pilot locations/detention centres is advisable. Inspection visits should be conducted in line with the guidelines mentioned in step two above. During a visit, the officer in charge of a police station or head of an arresting agency should be encouraged to provide a conducive atmosphere for the visit; show good faith and be transparent, providing full and accurate answers; and comply with orders/directives issued by the judicial officer following a judicial visit.

STEP 7 Perform a post-inspection review

7

The ACJMC (or the coordinating body) should collate reports and data from the pilot inspection visits and identify the lessons that can help improve the process and expand implementation.

STEP 8 Build a partnership with the Bar Association

8

Sometimes, a visiting judicial officer may need lawyers on his visiting team. These should be lawyers who offer their services under a pro bono legal assistance programme (e.g. the Police Duty Solicitor Scheme). This practice assists detainees to access legal services in furtherance of the provisions of the ACJA, which requires police officers to inform detainees of their rights to legal representation.⁴ Lawyers who form part of a visiting judicial officer inspection team must be trained on the relevant provisions of the law that regulate what they may or may not do when interacting with detainees, and how they may lend support to the achievement of the objectives that underpin section 34 of the ACJA.

³ S.34 mandates monthly inspection by a judge or magistrate, to include inspection of records of arrest, and powers to grant bail, order arraignment of detainees in appropriate courts

⁴ Sections 6 and 14 of the ACJA

LESSONS LEARNED

Regular reviews improve outcomes

Integrating iterative cycles of testing, reflection, learning, and adaptation increases the potential gains. Regular reviews with implementing partners provide platforms to evaluate and resolve threats to inspection visits, and to adjustments to approach where necessary.

Peer learning engenders a community of practice

Hand holding processes were built into the support that RoLAC provided to enable Magistrates to support one another across state boundaries. Senior magistrates trained by RoLAC helped build the capacity of other magistrates, and in the process, supported the emergence of a community of magistrates who shared similar interests and passion to check abuses of arrest and detention. Magistrates shared inspirational experiences of surmounting obstacles that others were able to learn from.

Cooperation among the leadership resolves resistance

Ensuring cordial relationships between heads of agencies can help remove obstacles. The Special Anti-Robbery Squad (SARS), a recently abolished unit of the Nigerian Police Force, denied visiting Magistrates access to their detention cells and detainees. However, cordial relations between the leadership of the FCT Police Command and the FCT Judiciary ensured that Magistrates could access SARS detention cell detainees. As a result, in one inspection visits, more than 200 inmates who were unlawfully detained without trial were ordered to be remanded to prison custody. Several of these now have pending cases in various courts.

Participation of legal aid providers increases effectiveness of inspection visits

In Lagos and the FCT, the participation of legal aid providers under the PDSS has contributed significantly to the effectiveness of inspection visits. Legal aid providers who join inspection teams can offer legal services there and then. Some have helped detainees to perfect bail conditions or followed up to ensure that a suspect is discharged or arraigned as ordered by the judicial officer. This in turn had a salutary effect on police officers, who in an attitudinal shift, welcomed the services that the lawyers provided.

EVALUATION

Evaluation activities related to inspection of places of detention should involve interaction between the two principal actors, namely the Magistrates who conduct the visits, and the Divisional Police Officers (DPOs) in charge of the police stations visited. This allows both actors to compare notes of their experiences of inspection visits, understand each other's roles and expectations better,

and consider what changes they might make to achieve the overarching objective of the visits.

The ACJMCs also play a role in evaluating how Magistrates and DPOs cooperate on oversight visits and the impact of the visit programme. The ACJMCs should develop monitoring templates and collect data on stations visited, magistrates participating, problems encountered, and detainees seen. Information may be captured on the length of detention, cell conditions, release orders, detainees admitted to bail, and judicial directives issued during visits. The ACJMC's should continuously evaluate their monitoring role and address changing needs and circumstances.

IMPROVEMENTS

Given the scale and form of abuse historically associated with the pre-trial custody of crime suspects, inspection visits have had a positive impact in two major areas.

1. Reduction in arbitrary arrests and detention

Inspection visits have contributed to reducing arbitrary arrests and detention. Many detainees were held unjustifiably, sometimes on civil matters, a practice which has largely disappeared. Between 2019 and 2021, magistrates reviewed the case diaries of 3,537 detainees during oversight visits in the FCT and 5 RoLAC states. Of these, 263 detainees were discharged, 584 granted bail, 829 orders were given to arraign the detainees, while 444 others were remanded to prison custody. The prospect that arrests could be subjected to such levels of scrutiny at police stations made the police more circumspect about decisions to arrest or detain.

“

The police are now more cautious in the way and manner suspects are treated. At the Ifako police station, a young lady was arrested for possession of a dangerous material which turned out to be pepper spray. I directed that the girl be released. ”

Magistrate Ajayi, Lagos

“

I was arrested for criminal breach of trust and cheating. The Police informed me of the reason they arrested me and allowed me to contact my family. The Magistrate ordered that I should be released on bail, so I can go home to be with my family and sufficiently prepare for my defence. ”

Tanko Abdullahi, 40-year old detainee

2. Improvement in conditions of detention

Before inspection visits were introduced, police detention cells were often overcrowded and poorly maintained. During the training, many Magistrates spoke of cell inmate numbers that exceeded the capacity of the cell by more than 200 per cent. Conditions of detention improved following inspection visits, with overcrowding reduced to the extent that many detention places no longer keep numbers in excess of their capacity. The former Director of Magistrates in the FCT High Court indicated that the number of prisoners had so significantly reduced that some Magistrates do not have much to do when they go on these visits.

“

There is now a significant reduction in the number of suspects arrested for undisclosed offences. This is due to the fact that the visitation of Magistrates to places of detention is usually unscheduled. ”

Magistrate Anifowose, Lagos

“

The quality of detention has changed greatly in the detention centres where oversight visits occur. ”

ACJMC in the FCT

POLICY DEVELOPMENT

The implementation of oversight visits started when the Chief Justice of Nigeria directed State Chief Judges to implement measures to oversee arrest and detention practices in their respective states. Without this directive, states like Anambra and Lagos which did not have equivalents of section 34 in their laws may not have begun a visit programme.

Subsequently, RoLAC support the ACJMC to develop National Guidelines on the Management of Suspects in Custody. The guidelines were issued by the Chief Judge of the Federal Capital Territory in his capacity as the Chairman of the ACJMC. They set a national standard that law enforcement institutions should comply with in their management of detainees.

The guidelines have inspired the development of six ‘Standards of Practice’ for managing suspects in custody by the Nigerian Police Force, which RoLAC also supported. The standards issued by the police cover the following:

1. Arrest and treatment of persons in police detention and custody
2. Conducting criminal investigations
3. Identification of persons
4. Stop and search operations
5. Investigative interviewing
6. Searches and seizures

COST IMPLICATIONS

Implementing inspection visits to places of detention requires an initial investment in the drafting and validation of guidelines and preparation of templates; training of judges, magistrates, and police officers; and sensitization of stakeholders who have a role to play. Running costs include transportation allowances to judges and magistrates who conduct inspection visits and their support staff. Additional running costs may be incurred on the production of reporting templates, data collection and analysis, and review meetings.

Find out more

Rule of Law and Anti-Corruption (RoLAC)

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The Rule of Law and Anti-Corruption (RoLAC) Programme is working to strengthen the application of law and curb corruption. We work at the federal level and in five focal states: Adamawa, Anambra, Edo, Kano and Lagos.

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