

# Lawyer at the Police Station Door:

How REPLACE Provides Legal Aid in Nigeria



OPEN SOCIETY  
JUSTICE INITIATIVE

## Introduction

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In Nigeria's jails, around seven out of every ten prisoners have not been convicted. They are in pretrial detention, waiting for a trial date—a wait that can stretch from days to months to years in some cases. Most are too poor to afford “the three B’s” of Nigeria’s criminal justice system: bail, bribe, or barrister. Many of these pretrial detainees are held over minor offences that should allow them to be released pending trial. Others will languish behind bars for long periods of time before finally being tried and found innocent. Nigeria’s official legal aid scheme offers some help, but it is woefully underfunded and understaffed. The result is an excessive use of pretrial detention that wastes human lives and perverts and undermines Nigeria’s criminal justice system.

In 2004, Nigeria’s Legal Aid Council and the Open Society Justice Initiative began a joint project to address the overuse of pretrial detention. In 2006, Nigeria’s Rights Enforcement and Public Law Centre (REPLACE) became the main implementing partner for the project, which set out to demonstrate that things can be different. The central element of the project, the Police Duty Solicitors Scheme (PDSS), sought to reduce the excessive use of pretrial detention by providing free legal advice to suspects at police stations—the point at which the decision to detain or to release pending trial is made. The pilot project had three key elements:

- It used the services of young lawyers who are completing their compulsory national service. Instead of serving in elite law firms, they were deployed as duty solicitors to police stations in the states of Imo (in the South East), Kaduna (North West), Ondo (South West) and Sokoto (North West).
- The creation of a computer-based system, known as Criminal Justice Information Management System (CRIMSYS), to monitor the movement of cases from the point of arrest to the conclusion of the case.
- Clear directions to magistrates in the four states regarding the need to ensure that the duration of pretrial detention is limited to a specified number of days.

A 2011 survey of the scheme concluded it had facilitated the release of over 10,000 criminal suspects from police stations and prisons over its five years of operation (2005-2010). It was also expanded to two more states: Edo (South South) and Kebbi (North West). In a criminal justice system marked by inefficiency and injustice, the PDSS shows one way forward.



## Pretrial Justice in Nigeria: Dysfunctional System, Broken Lives

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Nigeria's criminal justice system comprises a complicated mix of federal, state, and local authorities, many of which overlap. The federal institutions (including the police) are often uncomfortable sharing information with state institutions (including most courts) and state-level authorities are often reluctant to interact with their federal counterparts. This creates a system where there is no central coordinating institution responsible for ensuring efficiency and effectiveness, and no mechanism for systemic data collection. People are arrested and brought into the system in droves, but getting out is not so easy—especially for those too poor to afford a bribe or legal representation.

The system's inefficiency is best illustrated by Nigeria's use of the “holding charge,” which allows the criminal justice system to detain an individual over long periods before he is charged. In this arrangement, an arrestee is brought before a magistrate who has limited jurisdiction, and a holding charge is assigned, although the police have not conducted an investigation and are not yet in a position to proffer formal charges. Often, the holding charge is used with the intent to extort bribes. Nigerian law permits the magistrate to use the holding charge to remand the individual to pretrial detention while the police investigate and obtain legal advice from the prosecution service, but does not grant the magistrate the power to otherwise move the

case forward. The detainee is now effectively in limbo, at the mercy of authorities who can often keep him there indefinitely until he pays a bribe or is able to find a lawyer to intervene. While Nigerian detainees under the holding charge are ostensibly under a lawful remand order, their custody is essentially indefinite, since no court is truly seized of their case.

Nigeria ranks 153 of 186 countries listed on the United Nations Human Development Index for 2012. Of a population of 170 million, 70% live on less than \$2 per day. Although Nigeria has approximately 100,000 lawyers, the lawyer to citizen ratio is abysmal (1:1,700). The provision of legal service is expensive and many Nigerians cannot afford the services of a lawyer. In 1977, the government of Nigeria established the Legal Aid Council to fill this gap. Regrettably, the council is so under-resourced that it is only able to provide about two lawyers in every state—a number that makes it virtually impossible to make any impact on the country's excessive use of pretrial detention.

By the end of April 2013, Nigeria's 227 prisons held 53,816 detainees, of which only 31% had been convicted. (Many other detainees are held in police lockups where data is especially hard to get.) In other words, Nigeria's criminal justice system was jailing over 37,000 people who should properly be considered innocent until proven guilty and released pending trial. Instead, many pretrial detainees—especially those detained under the holding charge—spent months and even years in jail, waiting for their day in court. The PDSS set out to incrementally address Nigeria's pretrial detention crisis.

During a police raid, Okeke was arrested along with several other individuals on the streets of Lagos. They were required to pay bribes in return for their release. Unfortunately, Okeke did not have any money on him and could not find anyone who could pay his bribe. He was detained through the weekend in a police station and subsequently arraigned before a magistrate court for the offence of armed robbery. At no time during the course of his arrest or detention was he informed of the crime for which he was arrested. He was not represented by a counsel in the magistrate court. Upon viewing the charge sheet, the magistrate declined to assume trial jurisdiction, because only more senior high courts could deal with a crime as serious as armed robbery. However, the magistrate did assume jurisdiction to remand Okeke on a holding charge, pending advice from the directorate of public prosecutions. Okeke has been in detention for ten years and the advice has yet to be ready. During his years of incarceration, Okeke did not appear before the magistrate or any other judicial officer. His remand warrant did not indicate when he should appear before a court.



## The Intervention: How PDSS Advances the Course of Justice

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The PDSS pilot initially deployed 16 duty solicitors, working under the supervision of the more experienced legal staff of Nigeria's Legal Aid Council, in four states. With the expansion to six states, the number of duty solicitors increased to 24.

Project partners provided training for duty solicitors before deployment. The Police Force designated police stations to which these solicitors were assigned on a rotating basis. They visited the police stations (and later, prisons) within the designated areas to interview and counsel criminal suspects.

The focus on police stations was intended to tackle the problem at the point of entry into the criminal justice system. Later, the solicitors also went into prisons, essentially to make contact with those who were missed at the arrest stage.

## How It Works:

Duty solicitors interview arrestees and solicit personal information, including name, address, details of family members or next of kin, offence for which they were arrested, date of arrest, date of arraignment before a court, and other relevant details. They also provide information about detainees' rights and the criminal justice system. Where appropriate, they assist with bail applications, contact family members or next of kin, and monitor cases in court. On a monthly basis, the supervising lawyer sends a report of the activities of duty solicitors to the headquarters of the Legal Aid Council in Abuja and a copy of that report to REPLACE, thus providing some of the data-gathering and data-monitoring that Nigeria's criminal justice system otherwise lacks.

Years of personal diplomacy and institutional bridge-building led to the signing in 2006 of a memorandum of understanding (MoU) by the inspector general of police, the Open Society Justice Initiative, and the Legal Aid Council, establishing the project's parameters. Under the MoU, police provide PDSS lawyers with access to detention facilities and suspects. Some police officers have objected to the presence of PDSS duty solicitors in police stations, but diligent advocacy and coalition-building have kept the MoU in place. Interestingly, experienced police officers are generally more accepting of having duty solicitors in their stations, understanding that their presence is not a hindrance, but actually helps the whole system run more smoothly.

## The Results

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From 2005 to 2010, REPLACE's 16 duty solicitors secured the release of 13,886 persons from police stations and courts across the four focal states. Nearly 81% of these releases were at the police stations. Without the duty solicitors' intervention, many of those 13,886 people would have lost their jobs, had family ties severed, and been exposed to the abuse, violence, and disease that are common to pretrial detention. Although some of the 13,886 detainees released through the scheme's efforts would likely have been released even without the intervention, it is also true that many of them would still be behind bars today if not for the duty solicitors.

**Fig. 1: Total PDSS-linked releases in police stations and courts from 2005-2010, by state**

State	No. of Releases in Police Stations	No. of Releases in Courts	Total Releases
Sokoto	3,142	895	4,037
Ondo	6,363	88	6,451
Imo	1,644	247	1,891
Kaduna	42	1,465	1,507
<b>TOTAL</b>	<b>11,191</b>	<b>2,695</b>	<b>13,886</b>

Significantly, the number of pretrial detainees released through the duty solicitors' intervention increased over time. In the first year of the project, only 432 persons were released from police stations and prisons across the four states. By 2009, the number had risen by nearly 600% to 3,394 with the same number of duty solicitors.

**Fig. 2: Total PDSS releases in police stations and courts from 2005-2010, by year**

Year	No. of Releases in Police Stations	No. of Releases in Courts	Total Releases
2005	128	304	432
2006	1,783	765	2,548
2007	1,757	575	2,332
2008	2,158	443	2,601
2009	3,084	310	3,394
2010	2,281	298	2,579
<b>TOTAL</b>	<b>11,191</b>	<b>2,695</b>	<b>13,886</b>

In terms of duration in pretrial detention, 8% of those detainees aided through PDSS secured their freedom on the day of arrest, and 79% left within the first 10 days of detention. In a system known for its slow pace, this shows that the PDSS not only gets people out of pretrial detention, but does so relatively quickly. Getting people released within 10 days of arrest means they can avoid the worst aspects of pretrial detention, such as loss of employment or contracting disease. Only 1.6% of those detainees

“The PDSS is a rescue scheme which targets the usually forgotten, sometimes unrecognized right to counsel at the earliest contact of the suspect with the justice system. It is also a constant reminder to the police to respect the suspect’s rights while the investigation proceeds. It is worthwhile and truly deserves a national legislative approval.”

**Ademola Enikuomehin, Secretary, Ondo State Judicial Service Commission and former Chief Magistrate I**



released through the PDSS intervention had been in detention for more than one year. But in an illustration of the criminal justice system’s problem with data collection, 12% of the detainees did not have a record of the duration of their pretrial detention.

**Fig. 3: Time spent in prison or police custody by detainees who were released due to PDSS**

Duration in Custody	No. of Suspects
Same day	1,162
1-10 days	9,820
11-30 days	822
31-366 days	148
Above 366 days	226
Without record	1,708
<b>TOTAL</b>	<b>13,886</b>

In terms of the offences for which suspects were detained, only 4.6% (636 persons) were charged with the more serious offences of murder, attempted murder, manslaughter, armed robbery, attempted robbery, robbery, culpable homicide punishable with death, and culpable homicide not punishable with death. The remaining 95.4% (13,250) were held on less serious offences such as affray, breach of peace, or mischief. Simply put, people charged with such low-level crimes should not be held in pretrial detention at all—let alone for months or even years.

By making duty solicitors available at no cost to the detainees, the PDSS offers a potent tool to address the lack of access to legal representation, and by extension reduces the number of detainees and duration they would have awaited trial.

### **Releasing Prisoners Saves Lives and Money**

Over the years, many politicians, judges, and police officials have talked about the need to reduce Nigeria’s pretrial detainee population, yet the number of people awaiting trials continues to grow. Nigeria’s federal government currently spends N5.5 billion (approx. US \$33.8 million) per year to feed inmates who are awaiting trial. This means the cost of feeding the awaiting trial population alone in Nigeria is N15 million (approx. US \$92,000) per day. PDSS solicitors were paid just N15,000 (approx. US \$92) a month by REPLACE, or N4.3m (approx. US \$26,412) a year for all 24 solicitors in six states.



It is far harder to calculate the other direct and indirect costs associated with excessive pretrial detention, but in addition to saving the authorities money, a more efficient criminal justice system would reduce prison overcrowding, with its resulting risks to health and personal safety. And it would benefit the families and dependents of detainees, who otherwise lose a potential breadwinner and face the additional costs for food, travel, and medical care that result from having a family member in jail.

## Next Steps

The PDSS pilot has resulted in a number of important policy developments:

- A regular, mandatory review of cases has been introduced by the chief judges of Ondo and Sokoto states. Reviews must be carried out every three months and can only be carried out three times, ensuring a maximum period of pretrial detention of nine months.

- A new Legal Aid Act was adopted in 2011 following a consultative drafting process involving lawyers from the duty solicitor project and other stakeholders. The act provides for a legal aid and access to justice fund and gives the Legal Aid Council the authority to access and inspect detention facilities across the country.
- Nigeria's Legal Aid Council has taken over the management of the duty solicitor scheme and is committed to expanding it to other states. This follows an independent review of the scheme that highlighted its impact and recommended institutionalisation within the Legal Aid Council.

Building on these developments, REPLACE is expanding the duty solicitor scheme in Nigeria, including adding services in the state of Nasarawa through the support of the Swiss government. Consultations are also underway to advocate for the introduction of a Police Force Order which would require the police to inform suspects of their right to legal assistance and facilitate access to a duty solicitor. These steps present the most viable strategy to ensure that every arrested and detained person receives legal assistance. The duty solicitor scheme has done much to reduce the overuse of pretrial detention in Nigeria, and can still do much more.

# DETENTION OF PRISONERS BOARD

DAY :- TUESDAY DATE :- 24/6/2014

S/NO	NAME	SEX	DATE	OFFENCE	I.P.O	REMARKS
1	Ademola Joseph	m	24/6/14	Ass/acc/threat	sgt Edman	
2	Kayode Aina	m	24/6/14	ORBT	Cpl Segun	
3	John Igwe	m	24/6/14	Ass/threat	Cpl Awole	
4	Timothy Samuel	m	23/6/14	AS duct	multip	peni
5	Olufunmilayo	m	—	ORBT	Cpl Segun	
6	Luke Ajibade	m	22/6/14	Ass/acc/threat	In Sgt	
7	Ademola Sola	m	—	—	—	—

For more information, please visit [www.PretrialJustice.org](http://www.PretrialJustice.org)  
 or contact [Stanley.lbe@OpenSocietyFoundations.org](mailto:Stanley.lbe@OpenSocietyFoundations.org)  
 or Felicitas Aigbogun-Brai at [faigbogun@replaceportal.com](mailto:faigbogun@replaceportal.com)

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