

## How to guide:

How to make evidence-based  
prosecutorial decisions:

Adopt a case analysis worksheet

## **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](http://www.j4a-nigeria.org) or by request from [info@j4a-nigeria.org](mailto:info@j4a-nigeria.org)

## The problem

- Poor prosecutions lead to delays in the administration of criminal justice.
- Weak and ineffective decision-making processes affect the quality of prosecutions.
- Analysis of unsuccessful outcomes in prosecuting agencies revealed weak evidence was used in the prosecution of many cases.
- Many criminal cases have no realistic prospect of conviction due to lack of robust evidence.

## Background

Weak prosecution is a major cause of delays in the administration of criminal justice and also leads to poorer justice outcomes both for victims and accused persons. J4A worked with some Federal-level prosecuting agencies – including the Federal Ministry of Justice (MoJ) and several anti-corruption agencies – to develop a tool aimed at addressing this problem of weakness in prosecution called a case analysis worksheet (CAW). It can be used by any prosecutor – including police prosecutors and state MoJ prosecutors – to ensure that only cases supported by robust evidence and with a realistic chance of conviction are referred to court.

## What you can do

A CAW is a simple analysis and case review tool that provides an analytical framework to help prosecutors make better prosecutorial decisions. The worksheet contains a total of 23 questions which the prosecutor should apply to his or her analysis of a case. If used in full, the CAW should ensure that prosecutors do the following:

- Ensure that prosecutors **understand the elements** of the proposed charge and have sufficient evidence to support each element.
- **Recognise evidential gaps** and other weaknesses in a case, which suggest it should not be charged.

- **Charge/prosecute only those cases with strong evidence** and a realistic prospect of conviction.
- **Embed a process where all prosecutorial decisions are based on transparent, honest, consistent and objective evidence.**

The full CAW is available for reference, along with an example of how it can be applied to a hypothetical criminal case study.

## What you can achieve

- More successful prosecutorial and court outcomes.
- Improved court efficiency.
- Reduce prison congestion by ensuring accused persons are not held on remand for too long when there is no realistic prospect of a conviction.
- Higher standards of professional ethics in the prosecutorial decision-making process.
- Better collaboration between investigators and prosecutors in anti-corruption agencies.
- Low cost means of improving prosecutions, and ultimately increasing the number of successful prosecutions.

## Factors contributing to weak prosecutions

Research carried out by J4A in Federal-level prosecutorial agencies found a range of factors that contribute to poor outcomes for prosecution cases.

- A review of cases revealed that vital ingredients required for a strong prosecution case were missing and many had no realistic prospect of conviction.
- A number of skills gaps that contribute to this problem were identified in prosecutors, including: weak analytical skills and low ability to apply legal reasoning to develop superior legal arguments.
- Interviews with Judges (from State High Courts, the Federal High Court and Court of Appeal) revealed the following problems:
  - Criminal cases were poorly reviewed and/or not well analysed and lacked robust evidence.
  - Prosecutors demonstrated a poor understanding of the elements of offences, what needed to be proved, the materials and foundations required to prove, and how to prove offences.
  - Prosecutors submitted too many applications to amend charges, thus causing unnecessary delays.



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The poor outcomes of anti-corruption agencies revealed that the cases prosecuted had weak evidence.

## Impacts of weak prosecution

Poor prosecutions contribute to a number of negative impacts on individuals, the courts and the justice system as a whole, due to both the delays to the trial process and poor trial outcomes:

- Victims have to wait longer for justice to be done, thus adding to their trauma.
- More unsuccessful prosecutions, means victims may be less willing to report the crime and/or co-operate with the prosecution.
- The above also increases the likelihood of criminals going unpunished.
- Accused persons are held for too long on remand in prison whilst waiting for trial, thus contributing to prison congestion.
- The cost (in terms of time, money and human effort) of the trial process is too high.
- The public lose faith in the ability of the justice system to bring criminals to justice.



## The case analysis worksheet

### Steps for implementation

**Step 1:** Secure the buy-in of the Head of the Prosecution Agency for introduction of the CAW, including an explanation of the benefits.

**Step 2:** Hold a workshop involving a cross-section of judges, lawyer-managers and prosecutors to introduce the CAW tool and its benefits, explain how it is applied in practice and discuss if it needs to be adapted in any way for the local context. *A guidance note on how to apply the CAW to a criminal case-study* is available for reference.

**Step 3:** Before introducing the CAW, if possible, gather information that can be used as a 'baseline' or starting point against which to measure the extent to which the CAW leads to more successful prosecutions. This might include:

- the number of cases submitted to the prosecution agency or department for legal advice in a set period (e.g. the last year)
- the number of these cases where a decision was taken to prosecute
- the number of successful and unsuccessful prosecutions from amongst those charged to court in this set period
- the reason/factors for the unsuccessful or adverse prosecution outcomes of the cases selected.

**Step 4:** Hold training and/or mentoring sessions with prosecutors who will be required to apply the CAW, to ensure that they understand how to apply it and can practice with some 'live-cases'. The CAW template is available for reference.

**Step 5:** Deploy the CAW and establish a management oversight system that will ensure it is being used in full by all prosecutors as an analysis and case review worksheet and applied to all cases.

**Step 6:** Periodically (e.g. every three or four months) evaluate the impact of the new process, by gathering updated figures on the information set out at Step 3. Review any challenges faced in implementation – for example by consulting with prosecutors using the tool, and lawyer managers. Review unsuccessful prosecutions since the CAW was introduced and consider if the CAW was applied correctly and in full. Agree any actions required to overcome such challenges with the Head of the Prosecution Agency or Department, such as further training or stronger management oversight.

**Step 7:** Ensure a system is in place for more senior prosecutors to train and mentor new/junior prosecutors on an ongoing basis in how to apply the CAW in practice.

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## Template

1. Case name.
2. What is the offending/wrongdoing in this case?  
Consider a précis or summarising as you would to a layperson.
3. Consider preliminary issues such as:
  - (a) time limits on proceedings
  - (b) prerequisite consents
  - (c) jurisdiction/venue.
4. What are the proposed charge(s)?

**IT IS MANDATORY THAT YOU READ AND CONSIDER THE WORDING AND EACH LETTER OF THE STATUTE CREATING THE OFFENCE TOGETHER WITH THE INTERPRETATION ACT**  
[www.nassnig.org/nass2/acts.php](http://www.nassnig.org/nass2/acts.php)

5. Do the proposed charges reflect or cover the offending? If no, what charge(s) will reflect or cover the offending?
6. What are the elements of the charge(s)?  
Read the law and list them.
7. What is the available evidence in support of each of the listed elements? List them.
8. What is the strength of each item of evidence listed?
9. Do you have independent corroboration of your key evidence?
10. Have you identified any gaps in evidence?
11. What action plan is necessary to fill the gaps?  
Potential evidence? Or further lines of enquiry?
12. Consider the necessary foundations to be laid for each item of evidence.
13. Consider the prerequisite conditions for the admissibility of all your evidence.
14. Consider what your available evidence can prove.
15. Do you need to consider framing a charge in line with your evidence?

**WHAT ALTERNATIVE CHARGES ARE APPROPRIATE IN LIGHT OF THE EVIDENCE-LED CRIMINALITY AND POTENTIAL ORDERS ON CONVICTION?**

**When selecting or framing charges – consider proportionality, public interest and the cost and use of public resources in prosecutions.**

16. What are the available defences to the charge(s)?  
List them.
17. How will you successfully challenge and negate each of the defences?

**REVIEW THE CASE FROM THE PERSPECTIVE OF A DEFENCE COUNSEL:**  
**Think like a defence counsel**

18. If you were defending this case and charge(s), what gaps and loopholes would you exploit?
19. Can you identify any weaknesses?
20. What defence tactics would you employ?

**Prosecution strategy:**

21. How will you as prosecutor ensure you are armed to deal with defence tactics and negate their attack?
22. Is there sufficient evidence to give the prosecution a realistic prospect of a conviction? Can you prove the case?
23. How will you prove the case?

**REMEMBER RULE 37, RULES OF PROFESSIONAL CONDUCT:**  
**Be ethical – the bar is set higher for a prosecutor.**

## Lessons learned

The following are some lessons learned from the J4A pilots which introduced the CAW in a number of Federal-level prosecutorial agencies.

### Lesson 1

It is important to convince prosecuting agencies of the **efficiency and efficacy savings** that introducing the CAW tool can bring. Applying the CAW to ‘live’ cases to demonstrate how the tool can be applied in practice is a very effective way of convincing leadership. There are multiple examples where the CAW has been used to rescue cases from certain defeat. Recently, there was an ongoing case of fraud and conversion in FCT High Court, where the prosecutor had closed her case but had not tendered in evidence, the most crucial item of evidence. The prosecutor was sent on the mentoring scheme after she had closed the prosecution’s case. The CAW was applied to her case and she identified the gap in evidence. The prosecutor subsequently introduced the item of evidence during cross-examination. The accused was convicted and sentenced. The judge made mention of the late introduction of the item of evidence that founded the conviction.

### Lesson 2

When first introducing the CAW, ensure that at least some, if not all, of the **senior prosecutors are fully conversant with how to apply the tool**, and are tasked with using it to mentor more junior and inexperienced prosecutors.

### Lesson 3

It is important that **prosecutors, who are ‘technical experts’, are persuaded to embrace a mechanism for evidence-based legal reasoning and prosecutorial decision-making**. Demonstrating evidence of the impact on prosecution success rates will be one means of addressing this. It is also critical that the head of the prosecution agency concerned and senior managers provide sufficient oversight and guidance to require and ensure all prosecution staff are applying the tool fully and accurately.

### Lesson 4

It was found that **most prosecutors had become ‘administrative officers’** in that they would carry out prosecutorial instructions (do as told), without documenting or recording their own evidence-based views. The CAW empowered them to develop superior evidence and integrity based arguments and make decisions to challenge and defeat weaker, sentiment-based decisions.

### Lesson 5

Strong leadership is critical to the success of this initiative. The head of the agency and senior prosecutors **must visibly demonstrate** that they are committed to the successful prosecution of any case brought before the courts, and require all prosecutors to carry out robust review and analysis of cases using the CAW tool to ensure they have a reasonable prospect of conviction.

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## Successes

**The context:** prosecutorial decisions go beyond and are not limited to trial and charge decisions. Successful prosecutions are not entirely dependent on the prosecution agency. The courts, judges, prisons, police, etc. play significant roles. The CAW is to ensure that, insofar as it depends on the prosecuting agency, any decision is objective, evidence-based, consistent and transparent.

The following are successes from the pilot introduction of the CAW tool in various Federal-level prosecution agencies:

1. The **Director of Public Prosecution of the Federation at the Federal Ministry of Justice (MoJ) embraced the CAW** and instructed prosecutors to apply them to their cases.
2. The **Code of Conduct Bureau (CCB) adopted the CAW** as its case review template.
3. The **Economic and Financial Crimes Commission (EFCC) has adopted the CAW** as part of its internal guidelines.
4. The prosecutors and their team leaders **embraced the CAW** when they witnessed the immediate benefits, namely confidence to take a decision not to prosecute, and increase in the success rate for those cases that were prosecuted.



## Policy developments

The Department of Public Prosecution of the Federation at the Federal Ministry of Justice **instructed all its prosecutors to apply the CAW** in its reviews.

The Code of Conduct Bureau adapted the CAW tool template to create its own CCB process guide. A copy of this CCB template is available for reference.

### Evaluation

‘The Department of Public Prosecution of the Federation has adopted the Case Analysis Worksheet template as the basis for reviewing cases for trial...it helps the prosecutors to analyse files in detail.’

Olufemi Fatunde, Former Director of Public Prosecution of the Federation

‘The CAW template is a valuable tool that has developed the prosecution skills of the CCB prosecutors.’

Sam Yahaya, Head of Legal, Code of Conduct Bureau

‘This intervention fostered intra agency and inter agency relationships and helped in creating teamwork between the investigation and prosecution teams.’

Chile Okoroma, Director of Legal/Prosecutions, EFCC

‘The CAW has impacted positively on our law officers ... leading to more effective prosecutions of criminal cases.’

‘The ministry has made significant improvements in the prosecution of crimes, in building the capacity of its staff to prosecute complex matters including economic crimes, to improve on the administration of criminal justice...’

Honourable Attorney General and Minister of Justice Mohammed Bello Adoke



## Contact

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+234 (0) 709 812 1548-9  
info@j4a-nigeria.org  
www.j4a-nigeria.org

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