

TRIAL OBSERVATION AND MONITORING THE ADMINISTRATION OF JUSTICE



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A. Key concepts



- **Trials are observed for multiple purposes: in particular, to generate empirical evidence for a broader analysis of the system of administration of justice in a particular country, to support efforts to reform the justice system, and to communicate concerns about a particular case or process.**
- **Different institutional models exist for monitoring trials, but the most common are:**
 - “ad hoc” monitoring, which targets a single case, or groups of related cases;
 - “thematic” monitoring, which targets a certain category of case or a particular judicial practice; and
 - “systemic” monitoring, which encompasses both the observation of courtroom proceedings and a broader examination of the administration of justice as a whole.
- **Trial observation principles include impartiality, non-intervention/non-interference, informed observation, and working constructively with State authorities.**
- **The conduct of human rights officers (HROs) observing trials must be beyond reproach. Observers should display the highest levels of professionalism, discretion and knowledge. They must at all times be impartial, and be seen to be impartial, in particular by not publicly commenting on proceedings in progress.**
- **Reporting on trial observation is a strategic mechanism: not only for presenting the findings, but also for generating recommendations for judicial system reform and for initiating dialogue with stakeholders.**



B. Introduction

Trial observation/monitoring is simultaneously the exercise and the observation of a fundamental human right: the right to a fair and public hearing. While legal systems may vary in both process and substance, all must comply with the fundamental norms and standards set out in the international human rights framework. States must ensure that trials are fair and (usually) open to the public. Those in attendance, including observers, must be in a position to observe the evidence proffered, the witnesses testifying, and the judicial actors carrying out their functions. The public's attendance at a trial allows scrutiny of its fairness and acts as a bulwark against judicial arbitrariness. Events observable in the courtroom and in publicly available documents provide significant indicators of the state of the system, but in trial observation/monitoring it is also borne in mind that much of what is relevant to a particular trial takes place "behind the scenes", i.e., outside the courtroom.

Trial observation/monitoring can also serve multiple purposes beyond reinforcing the right to a fair and public hearing. It can help assess strengths and weaknesses in the system, identify and counter biases and stereotyping by judicial actors, foster transparency, engage local legal professionals, feed into capacity-building resources and training, and at times it can prompt judicial actors to comply with international human rights norms and standards. Trial observation is also an information-gathering mechanism that can lead to empirically based recommendations for systemic improvements to the justice sector.

Historically, trial observers assessed fairness principally out of concern for the rights of the accused. While that function remains a priority, more recently trial observation has been increasingly used to assess whether justice has been achieved, whether impunity is being afforded to human rights abusers, or whether complainants, victims, survivors, witnesses and the accused are treated fairly and in a gender-, child- and disability-sensitive manner.

Trial observation efforts of the Office of the United Nations High Commissioner for Human Rights (OHCHR) have varied considerably over time, with differences in mandate, capacity, resources and host-country context. Structurally, observation undertaken by OHCHR, including its field presences, generally follows one of these **three models**:

- (1) *Ad hoc observation*: Attending particular trials (or hearings) because of an identified human rights concern relating to that case.
- (2) *Thematic observation*: Monitoring a certain type or category of trial (e.g., cases involving war crimes, domestic violence or the death penalty, or appellate proceedings), or how a certain law, rule or practice functions within the judiciary (e.g., "plea bargaining", sentencing, rules of procedure, victim and witness protection, physical and economic accessibility or the provision of legal aid).
- (3) *Systemic observation*: Assessing not only what happens in the courtroom but the justice system as a whole, in all its phases – from arrest to exhaustion of appeals to release – and possibly all types of trials: **civil, criminal and administrative**. Systemic observation can include observing the education and training of legal professionals; the available guidance and protocols for judiciaries; judicial selection processes; deliberations, rulings/decisions and decision making; detention and prison systems; influence wielded by other actors such as political or religious bodies; threats to or offences against legal professionals including judges; budgets and infrastructure; and barriers to accessing justice, including harmful stereotypes, social norms, discrimination and other violations of civil, political, economic, social or cultural rights, where relevant.

This chapter provides organizational and operational guidance for implementing a trial observation programme. It is based primarily on good practices of OHCHR field presences that have conducted such observation programmes. While the systemic and thematic sections address broader issues, the overall focus of the chapter is on the public phase of trial proceedings.¹

The chapter is concerned primarily with the objectives and methodology of trial observation, rather than the actual substance of the fair trial rights themselves. It begins, however, with an overview of the international human rights norms and standards that govern trials, especially criminal trials.² Assessing compliance with those norms and standards remains at the heart of trial observation efforts. Next come the principles that guide the observer and the observation itself, such as impartiality and non-interference. They are followed by a discussion of the most frequent structural and staffing models, and the primary concerns that arise with regard to the management and operation of observation programmes. The latter will be defined notably by the country context, the legal system, the programme's budget, the staff, and the timeframe. The conduct of observers before, during and after trials – including how they interact with trial participants and the media – is key to the success of trial observation, and the chapter devotes considerable attention to these areas. It concludes with a discussion of analysis, reporting and advocacy as the key outcomes of trial observation. The undertaking will ultimately be judged on its impact – that is, on whether or not the justice system improves its compliance with international human rights norms and standards as a result of the observation.

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Definition of terms

The word “tribunal” is used to refer to courts, tribunals and any other body, “regardless of its denomination, that is established by law, is independent of the executive and legislative branches of government or enjoys in specific cases judicial independence in deciding legal matters in proceedings that are judicial in nature.”³ The terms “justice system”, “legal system” and “system of administration of justice” are used interchangeably in this chapter. The term “judiciary” refers essentially to courts and judges, but in some contexts it may also include court staff or legal professionals working in the courts, such as prosecutors. Religious courts and traditional courts, where established by law and meeting the criteria of independence, are also “tribunals” as defined here.

“Observation” primarily means being present in a courtroom observing a trial or hearing.

“Monitoring” overlaps with “observation” and refers primarily to longer-term efforts that may include multiple instances of trial observation, examining broader, systemic issues. The term “observer” is used to describe the individual monitoring the administration of justice or observing a particular trial on behalf of the UN, usually a human rights officer.

- 1 Other tools to assist in broader assessments of the judiciary include OHCHR's *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers* (Professional Training Series No. 9); *Rule-of Law Tools for Post-Conflict States: Monitoring the Legal Systems*, or the American Bar Association's Judicial Reform Index (available at http://www.americanbar.org/advocacy/rule_of_law/publications/assessments/jri.html).
- 2 Further information on the implementation of fair trial standards can be found in the Human Rights Committee's General Comment No. 32. See also *Human Rights & the Administration of Justice: A Facilitator's Guide on Human Rights for Judges, Prosecutors & Lawyers*, Professional Training Series No. 9, Add. 1 (2011). See also OSCE/ODIHR, *Legal Digest of International Fair Trial Rights* (Warsaw, 2013); M. Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (2nd ed.) (Kehl, NP Engel, 2005), pp. 305-307; Report submitted by Sub-Commission members Stanislav Chernichenko and William Treat, UN Doc. E/CN.4/Sub.2/1994/24 (1994); and the Human Rights Committee's compilations, for example, CCPR/C/113/4 and CCPR/C/116/3. For customary law, see also ICRC, *Customary IHL Study*, Rule 100, among others.
- 3 See Human Rights Committee, General Comment No. 32, para. 18, addressing article 14 of ICCPR and the use of “courts and tribunals”.



C. International fair trial norms and standards – points for observation

“In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”

International Covenant on Civil and Political Rights (ICCPR), article 14

Trials serve as a mechanism of accountability, a vehicle of due process, and a provider of remedies for victims of crime or injustice. As such, it is essential for them to be fair, and to be seen to be fair. The right to a fair and public hearing is in fact a bundle of key human rights protections that serve to safeguard the rule of law through procedural means. These rights feature prominently in several international human rights instruments and arguably form part of customary international human rights law.⁴

Individual fair trial rights are set out below; however, the right to a fair trial is broader than the sum of the individual guarantees, and depends on the conduct of the entire trial.

1 Right to a Competent Tribunal Established by Law: article 14 (1) ICCPR

This right applies to the determination of criminal charge/s and to rights and obligations in a suit at law (e.g., civil suits, administrative cases). A competent tribunal is one that is established by law, which defines its jurisdiction/competence over the subject matter being tried.⁵

- Is the relevant national law identifiable and sufficiently clear?
- Was the tribunal hearing the case properly established under national law? (In other words, was the substantive, geographic, temporal and personal jurisdiction of the tribunal set out in the law?)
- Did the tribunal respect the legal parameters? (For example, was the appropriate number of judges – and, where applicable, jurors – present and participating)?
- Were all the judges consistently present throughout the proceedings, and if not, why not? Did the judge/bench remain attentive throughout (e.g., not speaking on the telephone, reading the newspaper, etc.)?
- Where specific juvenile courts have been established and are competent, are any juveniles being tried in a non-juvenile court?⁶

4 ICCPR, article 14. See also UDHR arts. 10, 11; ICRC, Customary International Humanitarian Law Study, Rules 100-105. See also Judge Patrick Robinson (ICTY, ret.), “The Right to a Fair Trial in International Law”, *Berkeley J.L. Int’l L.*, vol. 3, 2009, p. 5 (“That the provision of article 14 on the right of an accused to a fair trial reflects customary international law is beyond dispute.”).

Regional treaties guarantee the right to a fair and public trial. Article 8 (5) of the American Convention on Human Rights provides that criminal proceedings shall be public, while article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms establishes the right to a public hearing for everyone in the “determination of his civil rights and obligations or of any criminal charge against him...” See also article 7 of the African (Banjul) Charter on Human and Peoples’ Rights, which guarantees every individual “the right to have his or her cause heard” alongside “the right to be tried by an impartial court or tribunal.”

5 Human Rights Committee, General Comment No. 32, paras. 16–18; Basic Human Rights Reference Guide: Right to a Fair Trial and Due Process in the Context of Countering Terrorism, October 2014, para. 29(a) (“Firstly, the tribunal must be established by law, which requires that the judicial system is established and sufficiently regulated by law emanating from the legislature and that the composition of each tribunal is in all cases in accordance with the legal requirements for such composition.”).

6 A/RES 40/33. United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“the Beijing Rules”), paras. 2.3, 11.1 and 14. 2.

- If the tribunal was a “special” or military court, was it established by law? Were civilians tried in such courts when (ordinary) civilian courts were available and competent?⁷

2 Right to an Independent and Impartial Tribunal: article 14 (1), ICCPR⁸

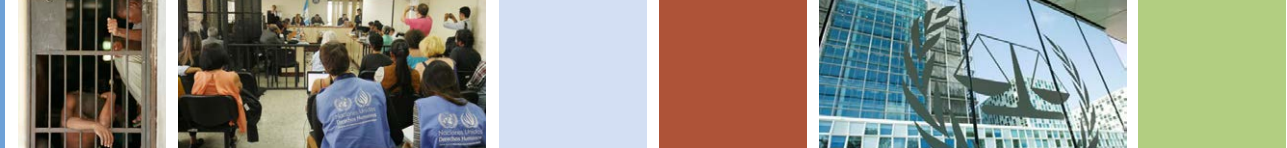
The tribunal must be independent, impartial and free from improper influence. There are no exceptions to this requirement. There must be a separation of powers between the judiciary and the executive or legislature (with functions clearly distinguished). The executive must not exercise control over or direct the judiciary with regard to the determination of cases before it, or in relation to the allocation of cases to individual judges. Nor may any political or religious body exert undue influence on a tribunal or on its decisions. Decisions by tribunals may not be revised by any institution other than a superior judicial tribunal.

- What was the procedure for the selection and removal of judges, and did it serve and promote the personal and institutional independence of judges? For example, what was the role of the executive branch in the appointment and removal of judges, and was it “carried out according to objective and transparent criteria based on proper professional qualification”⁹?
- Was the court financially autonomous?
- Was there evidence of interference by the executive, or by any other body or institution, at any time in the case, including during its assignment to particular judges/a particular bench?
- Were there any signs of corruption, intimidation, harassment or threats, or defamation? Were these based on the gender of any individual (judge, lawyer, prosecutor, victims or witnesses)?
- Was the personal security of judges, prosecutors, lawyers and their families, victims and witnesses, as well as the security of the court premises, sufficiently safeguarded?
- Had any judge previously taken part in the case in another capacity (e.g., as prosecutor or defence lawyer)?
- Were politically/financially/criminally influential individuals present in the courtroom and/or interacting with the judges?
- Did anyone from the public, NGOs, counsel or the press cast doubt on the independence or impartiality of judges? If so, why?
- Did any judge have an interest (personal, financial, political, ethnic or ideological) in the case, or any potential conflict of interest? Did any judges recuse themselves? If so, on what grounds?
- Did any judge have a personal relationship with any of the parties, counsel or witnesses?
- Did any judge seem to have preconceptions about the case or the parties involved? Did any judge appear to guide the witnesses or the evidence in a certain direction, or to avoid relevant topics? Did any judge ask questions or make comments indicating a preference for a certain outcome?

7 Human Rights Committee, General Comment No. 32, para. 22. Trying civilians in such courts is not prohibited, but “requires that such trials are in full conformity with the requirements of article 14 and that its guarantees cannot be limited or modified because of the military or special character of the court concerned.” The trial of civilians in military or special courts may raise serious problems where the equitable, impartial and independent administration of justice is concerned. “Trials of civilians by military or special courts should be exceptional, i.e., limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials.” Ibid.

8 Basic Principles on the Independence of the Judiciary (1985), adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan from 26 August to 6 September 1985, and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. International Commission of Jurists, *International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors – A Practitioners’ Guide* (Second edition, 2007). See also ECOSOC Res 2006/23 Strengthening basic principles of judicial conduct, Annex: *Bangalore Principles of Judicial Conduct*.

9 Ibid., see also Human Rights Committee, General Comment No. 32, para. 19; Universal Charter of the Judge, article 9.



- Did any judge seem to have preconceived beliefs or assumptions that might result in judicial stereotyping?¹⁰
- Was anyone who was not present during the trial involved in the judgement – for example, was the judgement signed by judges who did not attend the proceedings?

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Judicial stereotyping

“Judicial stereotyping” is the practice where judges:

- ascribe to individuals particular attributes, characteristics or roles by reason only of their membership in a particular social group (e.g., women, or religious minorities),
- perpetuate harmful stereotypes through their failure to explicitly address and challenge wrongful stereotyping, for example by lower courts, by parties to legal proceedings, or in laws under consideration in a specific case.

Source: Simone Cusack, *Eliminating Judicial Stereotyping: Equal Access to Justice for Women in Gender-based Violence Cases*. Prepared for the UN Office of the High Commissioner for Human Rights (2014), p. 2.

3 Right to a Public Hearing: article 14 (1), ICCPR

An accused person has the right to an open and public hearing. This right is qualified, however, in the human rights treaties: the press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. Even in cases in which the public is excluded from a trial, the judgement – including the essential findings, evidence and legal reasoning – must be made public.¹¹

- Was the hearing public and were members of the public able to attend it? Were any groups or individuals excluded from the trial?
- Were the time and venue of the hearing made public (e.g., posted on a notice board, published in the media)?
- Was the indictment publicly available?
- Were any groups or individuals intimidated in an attempt to prevent their attendance at trial (e.g., media, civil society observers or, in particular, women or girls)? If so, how?
- If all or some of the public were excluded, were reasons given that come under the permissible exceptions (e.g., national security, witness protection, morals, public order, respect for privacy, the interests of justice)?
- Was any judgement read out in court or otherwise made public? If not, what, if any, were the reasons given (e.g., protection of victims or witnesses)?¹²

¹⁰ See Simone Cusack, *Eliminating Judicial Stereotyping: Equal Access to Justice for Women in Gender-based Violence Cases*. Prepared for the UN Office of the High Commissioner for Human Rights (2014). <http://www.ohchr.org/Documents/Issues/Women/WRGS/StudyGenderStereotyping.doc>. For more about gender stereotyping generally, how it is defined and its discriminatory effects, see Simone Cusack, *Gender Stereotyping as a Human Rights Violation: Research Report*, prepared for the UN Office of the High Commissioner for Human Rights (2013), <http://www.ohchr.org/Documents/Issues/Women/WRGS/2013-Gender-Stereotyping-as-HR-Violation.docx>.

¹¹ Human Rights Committee, General Comment No. 32, paras. 28-29 and 48-49.

¹² Ibid. Note also that article 14 (1) of the ICCPR allows this where the interests of juveniles otherwise require, such as in matrimonial disputes or those concerning the guardianship of children.

- How long after the trial ended was the judgement made available?
- How long after trial was the judgement executed (or not), and was this made public?

4 Right to a Fair Hearing, Equality before Courts and Tribunals: articles 14 (1) and 26, ICCPR; articles 1, 2 (c-g), 3 and 15, CEDAW; and article 10, UDHR

Article 14 (1) ICCPR sets out a general guarantee of equality before courts and tribunals that applies regardless of the nature of the proceedings. The notions of fairness and equality include a guarantee to a fair hearing, equal access, equality of arms, being treated equally by the court, and ensuring that all the parties enjoy the same procedural rights unless distinctions are based on law and can be justified on objective and reasonable grounds not entailing actual disadvantage or other unfairness to the defendant.¹³ Fairness does not equate to an absence of error.¹⁴ The right of access to courts and tribunals, and the right to equality before them, applies to all individuals – without bias or discrimination on the basis of sex, gender identity, ethnicity, income, location, or any other distinction, exclusion or restriction made on the basis of the specific characteristics of an individual, and regardless of nationality or statelessness, or whatever their status (asylum seeker, refugee, migrant worker, unaccompanied child or other persons) – who find themselves in the territory and subject to the jurisdiction of a State.

- Were the parties treated equally by the judge or bench?
- Was any judicial stereotyping and/or favouritism perceptible or visible?¹⁵
- If multiple accused were tried at the same time, was the treatment of each defendant and each of their counsel equal to that of the prosecution?
- Were any accused treated differently because of their political or other opinion, age, sex, religion, ethnicity, sexual orientation, gender identity, disability, income, profession/line of work,¹⁶ etc.?
- Did the prosecution have broader procedural rights than the defence, for example to compel the appearance of witnesses, order expertise (e.g., ballistics, forensics, autopsies), or to appeal a decision?
- Were the parties given the same access to court documents?
- Were the parties given equal opportunity to submit argumentation and evidence? Was any evidence declared inadmissible, and if so, why?
- If trial was by jury, did the judge give impartial instructions to jurors, and were they presented in an impartial manner?¹⁷
- If trial was by jury, was the jury selected in a manner sensitive to gender, race, disability and other factors?

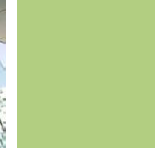
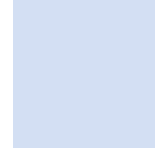
13 For this and other “equality of arms” issues see Human Rights Committee, Communication No. 1015/2001, *Perterer v. Austria*, para. 10.6; Human Rights Committee, General Comment No. 32, para. 13.

14 Communication No. 273/1988, *B.d.B. v. Netherlands*, Views adopted by the Human Rights Committee on 30 March 1989, para. 6.3; Human Rights Committee, General Comment No. 32, para. 26. Violations of other guarantees may also violate the right to a fair hearing, for instance unequal treatment constituting a violation of the right to equality before courts and tribunals, denial of the right to be present during trial, or the use of evidence obtained by torture. The right to a fair hearing is broader than the sum of the individual, detailed provisions set out in international instruments.

15 In one trial observation, an observer noted the use of the “informal” language variant between the judge and the prosecutor, while with defence lawyers only the “formal” variant was used. Also, during breaks in proceedings, the prosecutors and the judge left through the same door at the back of the courtroom, while the defence remained in the courtroom.

16 For example, sex workers may be treated differently owing to pervasive harmful stereotypes about them.

17 Especially in death penalty cases, instructions to the jury “must be impartial and fair in that both the case of the prosecutor and that of the defence must be presented in such a way as to ensure the right to a fair hearing ...” OHCHR, *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers* (Professional Training Series No. 9), Chapter 7 (*Judge’s instructions to the jury*), p. 262. See also Human Rights Committee, General Comment No. 32, para. 26; Communication No. 253/1987, *Kelly v. Jamaica*, Views adopted by the Human Rights Committee on 8 April 1999, para. 5.13; Communication No. 349/1989, *Wright v. Jamaica*, Views adopted by the Human Rights Committee on 27 July 1992, para. 8.3.



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Gender stereotyping

The denial of a fair trial to a woman is very often based on gender stereotypes or a misunderstanding of women's experiences. While women suffer violations that are also suffered by men, most of the violations of the human rights of women are gender-specific.

5 Right to be Informed of the Charge/s: articles 9 (2) and 14 (3) (a), ICCPR

The accused must be informed promptly and in detail, in a language they understand, of the nature and cause of the criminal charge/s against them. The charge/s should be stated either orally (if later provided in writing) or in writing, indicating both the law and the alleged general facts on which the charge/s is/are based.¹⁸

- Were the accused informed of the charge/s, including the date, time and place of the crime alleged, with details sufficiently specific to enable them to mount an effective defence? If so, by whom?
- After arrest or detention, how much time passed before the accused received the detailed charge/s?
- Were the accused given information about the relevant law and its provisions? If so, by whom?
- In what language was/were the charge/s conveyed, and did the accused understand that language? Was adequate interpretation, or an adequate translation, provided where necessary?
- Was/were the charge/s given to, and received in person by, the accused? Was this done orally or in writing? If in writing and any accused were illiterate, was/were the charge/s read out to them? Was any accommodation made, or necessary, for an accused person with a disability?

6 Right Not to be Tried Twice for the Same Offence: article 14 (7), ICCPR

An accused may not be tried or punished again for an offence for which they have already been finally convicted or acquitted in accordance with the law and penal procedure of the relevant country.¹⁹

- Is/are the charge/s based on an act or omission for which the accused has already been convicted or acquitted?²⁰

7 Right to be Presumed Innocent: article 14 (2), ICCPR; article 11 (1), UDHR

Anyone charged with a criminal offence should be presumed innocent until proven guilty according to law. The burden of proving the charge/s is imposed on the prosecution. No guilt can be presumed until the charge/s has/have been proved beyond reasonable doubt.²¹

- Was the burden of proving the charge/s on the prosecution throughout the proceeding?
- Did the judge(s) avoid asking questions or conducting the trial in a way that required the accused to prove their innocence? Did the judge prevent the prosecution from doing so?

¹⁸ Human Rights Committee, General Comment No. 32, para. 31.

¹⁹ Also known as *ne bis in idem*.

²⁰ In order to understand whether any two charged offences are the same, observers should be aware of local charging rules and the way in which different crimes are characterized.

²¹ Human Rights Committee, General Comment No. 32, para. 30.

- Did any judge make a statement suggestive of the guilt of the accused before the delivery of the verdict?
- Was the judge/bench provided with or exposed to the prosecution's case file prior to the trial?
- Did the State reveal any portion of its evidence or other incriminating or prejudicial material to the media prior to the commencement of the trial?
- Did any influential persons (e.g., minister of justice) make public statements before or during the trial regarding the innocence or guilt of the accused, or that perpetuated harmful stereotypes and/or defamed the accused?
- Were the accused allowed to wear civilian clothes or were they in a prison uniform? Were they in handcuffs or other form of restraint, suggestive of a presumption of guilt?
- Were any comments made or published by any public authorities, which indicated that the accused were presumed to be guilty, or that perpetuated harmful stereotypes about the accused that might have led to such a presumption?
- Where trial was by jury, were the instructions given by the judge to the jury clear as to the applicable legal standard for conviction?
- Did the accused or the accused's counsel have the opportunity to speak last at the close of the trial?

8 Right to Defend Oneself or be Defended by Legal Counsel of One's Choosing: article 14 (3) (d), ICCPR

In the determination of any criminal charge/s, the accused are entitled to defend themselves in person or through legal counsel of their own choosing.²² The interests of justice may require the assignment of a lawyer against the wishes of the accused, particularly in cases involving a person who is substantially and persistently obstructing the proper conduct of the trial.²³ In any case in which the interests of justice so require, legal assistance must be provided for accused persons, without payment by them if they do not have sufficient means to pay for it. In cases involving capital punishment, the accused must be effectively assisted by counsel at all stages of the proceedings.²⁴

- Was the right to defend oneself explained to the accused, and was the right afforded?
- Was the accused given the opportunity to choose their own counsel? If the accused was unable to choose their own counsel because of insufficient means, was counsel provided free of charge? Was counsel provided in a manner that was gender-, child- and disability-sensitive?
- If counsel was appointed, was that person competent? How were counsel selected, and was the selection process consistent with the principle of judicial independence? Were concerns about competence and independence raised by the accused or by others? If so, did the accused have an opportunity to change counsel?²⁵ Was any action taken on such concerns?
- If counsel was appointed, did the same counsel represent multiple defendants in the same case? If so, did this affect their ability to represent each defendant effectively (e.g., by preventing defendants from presenting opposing theories of the case or from casting blame on each other)?

22 See also *Basic Principles on the Role of Lawyers* (1990), adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September, 1990, para. 1.

23 Human Rights Committee, General Comment No. 32, para. 37.

24 Communication No. 2013/2010, *Grishkovtsov v. Belarus*, Views adopted by the Human Rights Committee on 1 April 2015, para. 8.5; Human Rights Committee, General Comment No. 32, paras. 10 and 38.

25 Note that the ability to change counsel who have been appointed or otherwise provided by the State is limited. See Communication No. 677/1996, *Teesdale v. Trinidad and Tobago*, Views adopted by the Human Rights Committee on 1 April 2002, para. 9.6; Communication No. 225/1987, *Pratt and Morgan v. Jamaica*, Views adopted by the Human Rights Committee on 6 April 1989, para. 13.2.



- If the accused chose to be represented by legal counsel, was their meeting beset by undue delays or obstacles?
- If any accused was a foreigner, did the authorities inform them of the right to contact their consular representatives in line with the Vienna Convention on Consular Relations (article 36); and were such consular representatives contacted?
- Did counsel, whether chosen by the accused or appointed, take action (e.g., question witnesses, make motions or arguments) that was aimed at assisting the accused?
- Did counsel appeal the verdict, if appropriate?
- In death penalty cases, was legal representation made available not only at the trial (first instance), but also in appellate proceedings? Was it provided in a way that adequately and effectively ensured justice?²⁶

9 Right to Adequate Time and Facilities to Prepare Defence: article 14 (3) (b), ICCPR

In the determination of any criminal charge/s, the accused and their counsel must be given sufficient time to prepare the defence, to communicate confidentially with one another and to access documents and other evidence. Factors relevant to whether adequate time is given include: the complexity of the case, access to evidence, and procedural time limits.²⁷

- Were adequate time and facilities given for the preparation of the defence? Did counsel raise this issue in court?
- Was the accused informed of their right to communicate with counsel? If so, could the accused meet promptly with their counsel? Were they allowed to communicate confidentially?²⁸
- If counsel was appointed by the State, was the appointment made sufficiently in advance of the hearing? Was counsel appointed on the day of the trial?
- If counsel represented multiple defendants, did counsel have sufficient time to devote to each case? Did counsel seem sufficiently familiar with each client's particular circumstances?
- What types of resources were available to the defence team for the conduct of investigations?
- How often could counsel meet with the accused?
- Did the defence have adequate access to the documentation and evidence (i.e., the case file/dossier) necessary for preparing the defence?

10 Right to be Tried without Undue Delay: articles 9 (3) and 14 (3) (c), ICCPR

In the determination of any criminal charge/s, whether a trial is unduly delayed depends upon a range of factors, including: the complexity of the case,²⁹ the seriousness of the offence, the conduct of the authorities, whether the accused is detained, and the conduct of the accused. In cases where the

26 Communication No. 232/1987, *D. Pinto v. Trinidad and Tobago*, Views adopted by the Human Rights Committee on 20 July 1990, para. 12.5. See also OHCHR's *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers* (Professional Training Series No. 9), p. 274 (The right to effective legal assistance in death penalty cases).

27 Human Rights Committee, General Comment No. 32, paras. 32-34.

28 Communications No. 1117/2002, *Khomidova v. Tajikistan*, Views adopted by the Human Rights Committee on 29 July 2004, para. 6.4; No. 907/2000, *Siragev v. Uzbekistan*, Views adopted by the Human Rights Committee on 1 November 2005, para. 6.3. See also Basic Principles on the Role of Lawyers (1990), adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September, 1990, para. 8.

29 Communications No. 1060/2002, *Deisl v. Austria*, Views adopted by the Human Rights Committee on 27 July 2004, para. 11.6; No. 203/1986, *Mūnoz Hermoza v. Peru*, Views adopted by the Human Rights Committee on 4 November 1988, para. 11.3; No. 514/1992, *Fei v. Colombia*, Views adopted by the Human Rights Committee on 4 April 1995, para. 8.4.

accused is denied bail by the court, they must be tried as expeditiously as possible. This right applies from the formal charge/s to the final judgement on appeal.³⁰

- Was the accused in pre-trial detention? If so, how long did the accused remain there prior to the start of the trial?
- Is the law regulating pre-trial detention clear and in line with international human rights standards? If so, how long can an accused be held in detention without judicial review? If the accused was held in pre-trial detention for an extended period, was the detention prolonged in accordance with the relevant legal provisions? What were the grounds for prolonging detention?
- Was the trial delayed? If so, was this delay determined by the judiciary, and if so, why? If the delay was attributable to law enforcement or the prosecution, what were their reasons?
- Did the accused seek a delay, or were delays attributable to the conduct of the accused?

11 Right to be Present at Trial: article 14 (3) (d), ICCPR

In the determination of any criminal charge/s, accused have the right to be present during their trial. The limited exceptions to this general rule include situations in which the accused have disrupted proceedings,³¹ have unreasonably failed to appear, or have explicitly agreed to be tried in their absence. Trials *in absentia* – where the trial proceeds in the absence of the accused – are permissible only in exceptional circumstances, such as when the necessary steps have been taken to summon the accused in a timely manner, to inform them about the date and place of their trial, and to request their attendance, but they have explicitly waived the right to attend, or refuse to, or are evading arrest.³² If convicted *in absentia*, the accused have the right to seek a retrial upon appearance; such trials do not violate the principle of *ne bis in idem*.³³

- Was the accused present at all hearings?
- Was the accused excluded from any parts of the trial?
- If so, were adequate reasons given for the exclusion? Did the exclusion impact negatively on the fairness of the trial?
- When excluded, was the accused represented by counsel at the trial/hearing?
- Was the trial held *in absentia*? If so, was the accused informed of the proceedings in a timely manner?
- If the accused was convicted, could the verdict rendered *in absentia* be appealed, or was a retrial granted when the person convicted eventually appeared?³⁴

30 Human Rights Committee, General Comment No. 32, para. 35.

31 International Criminal Tribunal for the former Yugoslavia. IT-02-54-T, *Prosecutor v. Milošević*, Reasons for decision on assignment of defence counsel, 22 September 2004, paras. 32-33.

32 See Human Rights Committee, Communication No. 16/1977, *Mbenge v. Zaire* (1983), Views adopted by the Human Rights Committee on 25 March 1983, para. 14.1 (permissible to hold a trial *in absentia* when the accused, although informed of the proceedings sufficiently in advance, declines to exercise his or her right to be present); Human Rights Committee, General Comment No. 32, para. 31. See also *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, OHCHR, Professional Training Series No. 9, 2003, Chapter 7, pp. 280-282.

33 Human Rights Committee, General Comment No. 32, para. 54.

34 Communication No. 699/1996, *Maleki v. Italy*, Views adopted by the Human Rights Committee on 27 July 1999, para. 9.5. See also *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, OHCHR, Professional Training Series No. 9, 2003, Chapter 7, p. 282; European Court of Human Rights, Grand Chamber, Application No. 56581/00, *Sejdovic v. Italy* (2006), para. 126.



12 Right to an Interpreter: article 14 (3) (f), ICCPR

In the determination of any criminal charge/s, if the accused cannot understand or speak the language used in court, an interpreter must be provided without charge.

- Did the accused need an interpreter? If so, was an interpreter provided promptly and free of charge?
- Was the interpreter present at all times?
- Was the interpreter competent, independent and impartial?
- Was defence counsel able to understand the language of the court and of the accused?
- Were essential documents translated, or was the accused able to obtain the translation of specific documents?³⁵

13 Right to Obtain the Attendance and Examination of Witnesses: article 14 (3) (e), ICCPR

In the determination of any criminal charge/s, the accused must be allowed to examine, or to have examined, the witnesses against them, and to obtain the attendance and examination of witnesses on their behalf under the same conditions as the witnesses against them.

- Was the accused informed in advance of the names of the witnesses to be called by the prosecution?
- Did the accused receive this information with enough time to prepare the defence?
- Was the accused allowed to be present during the testimony of prosecution witnesses?
- Was the accused or the accused's counsel allowed to examine witnesses for the prosecution?
- Was the accused allowed to obtain the attendance of defence witnesses? Expert witnesses too? If not, what reasons were given? Was there any indication that the defence was prohibited from calling witnesses or presenting evidence?
- If a relevant witness was called but failed to appear voluntarily, was the witness brought before the court by way of a subpoena or other form of judicial compulsion?
- Were witnesses present in the courtroom prior to their testimony/questioning?

14 Right not to be Compelled to Testify against Oneself, or to Confess Guilt: article 14 (3) (g), ICCPR

In the determination of any criminal charge/s, accused have the right not to be compelled to testify against themselves, and the right to be informed of this right. There are limits to the adverse inferences that may be drawn against an accused who chooses not to testify.³⁶

- Was the accused informed of the right not to be compelled to testify against oneself? Did the court ensure that the accused understood this right?
- Were there indications that the accused had been interviewed without counsel present?³⁷

35 Note that if the accused does not speak the language of the proceedings, but is represented by counsel who is familiar with that language, it may be sufficient for the relevant documents to be made available to counsel. See Communication No. 451/1991, *Harward v. Norway*, Views adopted by the Human Rights Committee on 15 July 1994, para. 9.5.

36 Human Rights Committee, CCPR/C/79/Add 55, para. 17. See also Rome Statute of the International Criminal Court, article 67 (1) (g) (such silence cannot be "a consideration in the determination of guilt or innocence"). See also European Commission of Human Rights, *John Murray v. the United Kingdom*, Application No. 18731/91, 27 August 1991.

37 Observers should be aware that domestic legislation may pose stricter limits on the ability of the State to question suspects without counsel present. International human rights law requires that detainees and accused have "access to counsel" at "all stages of the proceedings". See, for example, Human Rights Committee, Concluding Observations, Togo, CCPR/C/TGO/CO/4, para. 19. See also Human Rights Committee, General Comment No. 35, para. 35; General Comment No. 32, paras. 32, 34 and 38.

- Were there any indications or allegations that evidence from the accused had been obtained by coercion, including through harassment, threats, ill-treatment or torture? If so, what was the response of the court? Was the evidence excluded?
- If the accused alleged that a confession or other evidence was coerced, what was the response of the judge/bench and the prosecutor?
- Did the court attempt to intimidate the accused into giving evidence or confessing?
- Were any inferences drawn from the fact that the accused did not testify?

15 Right to Have a Conviction and Sentence Reviewed by a Higher Tribunal: article 14 (5), ICCPR

Every person convicted of a crime has the right to have the conviction and sentence reviewed by a higher tribunal according to law. An appeal should entail a substantive review of the conviction and sentence based on the sufficiency of the evidence and on the law: it should not be limited to the form or legal aspects of the conviction.³⁸ Appellate proceedings must be undertaken within a reasonable time. The right to have one's conviction reviewed means that the convicted person is entitled to have access to a duly reasoned, written judgement of the trial court and to other documents, such as trial transcripts, necessary for them to enjoy the effective exercise of the right to appeal.³⁹

- Was the opportunity to appeal the conviction and/or sentence explained to the person accused/convicted at the close of the trial? Was the convicted person in fact given the opportunity to appeal?
- Did an excessive amount of time pass between the conviction and the appeal?
- Were written transcripts taken? If not, how were proceedings recorded? Were transcripts and other materials made available to the parties?
- Was the trial court's judgement "duly reasoned" (i.e., supported by factual and legal assessments), so that the appellate court could assess it properly?
- Was there any indication that the judge or bench based the verdict on evidence or information that was not in the case file or presented at trial?
- Was there a period of deliberation by the appellate court, and if so, how long was it?
- Did the appellate court conduct a substantive review of the conviction and sentence, based on the sufficiency of the evidence and on the law?
- Was the scope of the review inappropriately limited, and if so, in what way?

16 Treatment of Children: article 14 (4), ICCPR; articles 2, 3 (1), 12, 16, 37 (d) and 40, CRC⁴⁰

In addition to enjoying the guarantees and protection provided in article 14 CCPR, children accused of a crime are to be afforded special protection and procedures that promote their sense of dignity and worth, put emphasis on diversion, and – when resorting to formal proceedings – take into account their age and the desirability of promoting their rehabilitation. Such measures include establishing an appropriate juvenile criminal justice system that focuses on rehabilitation and reintegration and ensures that children are treated in a manner commensurate with their age and sensitive to their gender. Regard should also be had to the United Nations Standard Minimum Rules for the Administration of

38 Human Rights Committee, General Comment No. 32, para. 48.

39 Human Rights Committee, General Comment No. 32, para. 49. In trial by jury, where the factual basis for the verdict is not explained, the appellate court assesses the judge's instructions to the jury.

40 See also OHCHR, Access to justice for children, A/HRC/25/35, paras. 11-12.



Juvenile Justice (1985) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990).⁴¹

- Were the parents or legal guardians permitted to be present with the child throughout the proceedings, including during interviews by the police or other officials and during the trial?⁴²
- Did the child have the assistance of counsel, a *guardian ad litem*⁴³ or other person, throughout the proceedings?
- Was the child given the right to express his or her views, in a manner appropriate to her or his age, before and during court proceedings?⁴⁴
- Was the treatment of the child gender-sensitive in the sense of respecting the different experiences, views and needs of girls and boys?
- Did the prosecution, court or other court officials engage in judicial stereotyping based on the child's age and gender?⁴⁵
- Was the child informed promptly and in detail of the charge/s against him or her, using child-sensitive language?
- Was the child detained or released into the custody of their parents or legal guardians?
- Which diversion measures were considered and used by the court?
- If detained pre-trial, was the child kept separately from adults and other convicted children?
- Was the privacy of the child respected? What measures were taken to protect their privacy?

17 Right not to be convicted under Retroactive Criminal Laws: article 15, ICCPR

An accused may not be held guilty of a criminal offence which was not an offence under national or international law at the time of the relevant acts or omissions.⁴⁶ The penalty handed down may not be heavier than that which was applicable at the time when the offence was committed. If a lighter sentence is subsequently promulgated, the accused must benefit therefrom.

- Was the offence one that existed in national or international law at the time of the relevant acts or omissions?
- Were its elements sufficiently clear to permit the accused to regulate their conduct accordingly?
- Was the law under which the accused was charged in force on the date on which the offence was allegedly committed?

41 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) (1985), adopted by General Assembly resolution 40/33 of 29 November 1985; United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), adopted by General Assembly resolution 45/113 of 14 December 1990; the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules). See also the Convention on the Rights of the Child, especially article 40.2 (b); Committee on the Rights of the Child, General Comment No. 10 on children's rights in juvenile justice. See also the Report of the High Commissioner for Human Rights on the protection of human rights of juveniles deprived of their liberty, A/HRC/21/26, para. 5, and the Report of the High Commissioner for Human Rights on access to justice for children, A/HRC/25/35.

42 Committee on the Rights of the Child, General Comment No. 10, paras. 53-54.

43 A *guardian ad litem* (GAL) is a person, often an attorney, who is appointed by the court for the duration of a court case. The GAL represents the child (or other person, as necessary) throughout the proceedings. A GAL is not a substitute for defence counsel in a criminal proceeding, but is rather a fact-finder for the court on the situation of the child, to assist the court in determining the child's best interests. A GAL may be assigned, for example, in divorce proceedings or situations of child abuse.

44 CRC article 12 (2).

45 Multiple and intersecting harmful stereotypes about children, adolescence, and gender can lead to wrongful judicial stereotyping (e.g., "boys will be boys", "adolescent boys' sexual urges are biological and uncontrollable", "adolescent girls are weak, vulnerable and fragile", "girls are incapable of making rational decisions", etc.).

46 Also known as *nullum crimen sine lege*. This right does not prejudice the trial or punishment of a person for acts committed which were criminal under general international law, including violations of customary international law such as war crimes, torture, slavery, genocide, etc. (see ICCPR article 15 (2)).

- If the accused was convicted, was the penalty in line with, or less severe than, the law applicable at the time of the offence?

18 Special considerations for victims and witnesses during court proceedings⁴⁷

See chapter on *Protection of victims, witnesses and other cooperating persons* 

Many justice systems have a formal system of support, protection and representation for victim(s) and witnesses.⁴⁸ Such systems are designed to secure their rights and interests whether or not they testify, and the support should be extended before, during and after the trial, without discrimination. The foundations for these measures are articulated in various international human rights instruments.⁴⁹ Being cognizant of these issues, observers should assess the trial from the perspective of victims and witnesses and should be cognizant of their rights, agency/participation and treatment, especially for children and survivors of sexual violence.

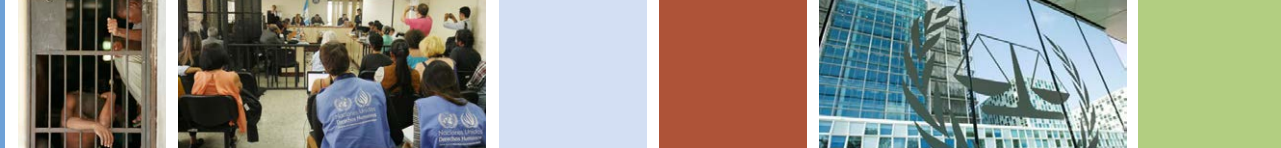
- If victims and witnesses were present or participated, how were they treated by the prosecution, defence counsel, judge and other court officials?
- Were the victims informed by the court of their right to participate in the process, in particular their ability to be civil parties (where appropriate)? Were measures to ensure the participation and treatment of victims and witnesses gender- and child-sensitive?
- Could the victim(s) follow and understand the process? Was the language used during the proceedings one they understood, or were they provided with interpreters? If relevant, was the language used child-appropriate?
- Were victim(s) or victim-witnesses given any support before, during or after the trial?⁵⁰ Were the personnel providing the support trained (e.g., to deal with trauma, to interview children)? Were they independent of the prosecution?
- In trials where they were present or participated, did victims and victim-witnesses have a legal representative, including – in case of a child – a parent, legal guardian or other appropriate body or individual legally responsible for the child? If so, was it a representative of their own choice, or was someone appointed? Was it free of charge? Could the legal representative access the file? With sufficient time to review it properly? Could the legal representative file submissions, make oral presentations, put forward arguments, proffer evidence?
- Did the prosecution, defence counsel, judge or other court officials invoke harmful stereotypes about the victim or witness? If so, how was this responded to?
- Were witnesses able to testify freely, without pressure or coercion? Were the witnesses or victims influenced in any way by the prosecution or defence, so that they altered their testimonies, or were they “coached” prior to testifying? Were they influenced by actors outside the court, such as members of their family, their community, the media or other influential actors? How did the media portray the victims and witnesses? Did its portrayal impact on court proceedings?

47 See UN Doc, A/63/313, paras. 16 and 20-29; A/HRC/12/19, para. 33; UNODC “Good practices for the protection of witnesses in criminal proceedings involving organized crime”; *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, ECOSOC Resolution 2005/20 (Annex).

48 The term “victim” is used in this chapter in the legal sense, in line with the guidance provided in Chapter 12, “Trauma and Self Care”, p. 5, “Terminology”.

49 See Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, A/RES/40/34; UNODC “Good practices for the protection of witnesses in criminal proceedings involving organized crime”; Joint Principles, E/CN.4/Sub.2/1997/20/Rev. 1, Annex II; E/CN.4/2005/102/Add.1, Set Of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity (updated impunity principles); Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc, A/63/313, paras. 20-29; Report of the Office of the High Commissioner for Human Rights, Right to the truth, A/HRC/12/19, para. 33.

50 For example, briefings on what to expect, medical or psycho-social assistance, financial assistance for transportation, accommodation and childcare, protection measures (e.g., confidentiality), including against stigma, etc..



- Were the testimonies of various witnesses given equal weight? If not, was the difference based on an objective assessment of credibility, or on other reasons?⁵¹
- What measures, if any, were taken to protect witnesses before, during or after the trial?⁵²
- If the case involved child witnesses, were any special measures taken in view of their age and gender, throughout the proceedings, taking into account that the child's right to privacy usually takes precedence over the principle of publicity of judicial proceedings? Were interactions conducted in a child-sensitive manner in a suitable environment that accommodated the special needs of the child, in accordance with his or her abilities, age, intellectual maturity and evolving capacity? Were measures taken to limit the number of interviews, statements or hearings, for example through the use of video recording? Were prosecutors, judges and other court officials specialized in dealing with children?
- Where relevant, were gender-sensitive and child-appropriate reparations adopted, and were the victims involved in defining the form and scope of these reparations?

D. Objectives of trial observation by the United Nations

There are multiple objectives in trial observation by United Nations observers. One is **exercising and enforcing the right** to a public trial.⁵³ Public trials foster transparency in the justice system, and the UN presence serves to remind the judiciary, the State and the public that anyone can attend a trial. If the trial is controversial, or involves a party that is unpopular, the UN presence might embolden supporters of one side or the other to attend.

Trial monitoring can also be an **evidence-based diagnostic tool** that contributes to an assessment of an individual trial or of the functioning of a country's justice system overall. It provides a mechanism for evaluating the strengths and weaknesses of the system as well as the court's compliance with international human rights norms and standards. Alongside rules and legislation, observers can evaluate processes and infrastructure, guidance, protocols and rules of procedure, as well as the training, qualifications and practice of court clerks, lawyers, judges, prosecutors, court personnel, police, prison officials and other law enforcement personnel, and their compliance with international human rights norms. Monitoring can also identify and draw attention to wrongful judicial stereotyping. The information gathered forms the basis of independent and impartial reporting on the proceedings. The results can be shared with the government, with a view to supporting justice system reform efforts, and they may also be made public: for advocacy purposes, to foster the engagement of civil society and to allow OHCHR to speak authoritatively about the issues of concern.

Finally, as an observer is a representative of the UN, their presence reflects **international concern** about the fairness of the proceedings. The fact that the UN is attending a trial makes the participants – in particular the judge and prosecutor – aware that they are under scrutiny. This, in turn, can provide the space for them to make decisions that are in line with international human rights norms and standards. The attendance of UN observers thus serves a **protective function** for the rights of defendants, but

51 Wrongful gender stereotyping, for example, can lead to the testimony of a woman being given less value than the testimony of a man in legal proceedings. See *supra*, footnote 10.

52 For example the use of pseudonyms or the non-disclosure /redaction of their name, address or other identifying information; use of close protection; use of voice distortion, disguising the face, physical screens, video testimony, etc.; excluding the public/media from all or part of the trial; court order to protect identity; safe houses or witness relocation programmes, or other forms of witness protection. In reference to measures taken to protect witnesses (e.g., testifying anonymously), it is necessary to acknowledge the need for a proper balance with the potential impact on the rights of the accused (e.g., confrontation rights under ICCPR article 14 (3) (e)).

53 The right to a public trial is a right that defendants enjoy but also one that members of the public are able to invoke.

also for those of victims and witnesses. Similarly, the UN's presence can give parties or participants that may be facing threats – whether the defendant, the defence attorney and supporters, or the prosecution, the victims and their supporters – a sense that the international community is watching, which in turn may increase their confidence. With monitoring programmes that extend over time, the presence of UN staff fosters an awareness and an acceptance of a range of fair trial rights.



Guatemala

Between 2014 and 2016, seven human rights defenders (HRDs), the majority of them indigenous leaders from the northern Huehuetenango region in Guatemala, were held in pre-trial detention pending criminal investigations stemming from acts carried out in defence of their ancestral lands and natural resources. HROs from OHCHR's Guatemala office observed and reported on the investigations, which were fraught with irregularities. Ultimately the seven were absolved of the criminal charges and released. The HROs' observation effort led to a technical assistance agreement with the office of the State Attorney General: under the agreement, a protocol is now being developed that fosters human-rights-compliant investigations in all future cases involving criminal charges against HRDs.

E. Principles of trial observation

The following principles should guide the engagement of observers in trial observation.

1 Impartiality

As a representative of the United Nations, an observer must never show a preference for any party or any result in a judicial proceeding being observed. The principle of impartiality demands that observers treat all actors/parties involved equally. Observers must avoid any behaviour that could give rise to an appearance of partiality. In practice, this has far-reaching effects that may range from case selection to where an observer sits in the courtroom, from whom the observer meets or engages in discussion to the selection of interpreters, and from the content of a report to the phraseology of a public statement.⁵⁴

Impartiality in reporting is also important. The report constitutes the lasting record of the observers' conclusions regarding the conformity of the proceedings with international human rights norms and standards. Monitoring programmes will need to determine, for example, whether to report only on causes of concern, or also on the positive aspects. Impartiality would suggest the latter, while the mandate of addressing human rights concerns would indicate the former. Beyond the choice of content, the language used in reports must also reflect an impartial assessment: one that avoids harmful stereotypes and emotive characterizations in favour of fact-based descriptions.

⁵⁴ See *infra*, section G. "Qualities of observers".



2 Non-intervention/non-interference

The principle of non-intervention is a core tenet of trial observation. Based in part upon the principle of the independence of the judiciary,⁵⁵ it requires observers to refrain from any act that interferes with (or appears to interfere with) the ordinary functioning of the court, even if a violation is observed.⁵⁶ Especially forbidden is any conduct that seems aimed at influencing the decisions of judges or prosecutors. The principle extends to all facets of the monitoring programme, including management, public statements and reporting.

Observers must be prudent when attending trials or when advocating for change based upon their findings. Even a few words spoken by an observer in the margins of a trial, for example concerning the expected outcome, can alter public perceptions of judicial independence. Observers must exercise discretion and judgement at all times while monitoring – skilfully and diplomatically navigating that sometimes-delicate balance between human rights advocacy in the face of a perceived violation, and non-intervention. Observers should also bear in mind that one of the principal roles of a UN operation is to encourage the authorities to improve their behaviour, not for observers to take over governmental responsibilities or services. An observer’s role is to encourage the State to implement policies and practices that conform to international human rights norms and standards and that will remain in place after the UN has withdrawn.

In most cases, the intersection of the two principles – judicial independence and non-interference – does not amount to a prohibition on meetings with judges. Rather, the approach of the observer is to emphasize judicial independence in such meetings.⁵⁷ Observers should be cautious in asking questions, ensuring that, where legal points are clarified, this is done in the abstract, without reference to a specific case. The principle of non-intervention does not apply to interactions with other actors in the justice system – such as prison officials, defence lawyers, prosecutors, police or clerks – unless such individuals are involved in a case or are otherwise influential in outcomes.⁵⁸ In this vein, observers should be cognizant of the different levels at which advocacy can take place and should consider whether some issues might be better raised by programme management, rather than directly with officials involved in a trial.

55 This independence means that the judiciary as an institution and the individual judges deciding particular cases must be able to exercise their professional responsibilities without being influenced by the executive, the legislature or any other sources. See *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, OHCHR, Professional Training Series No. 9, 2003, pp. 113-131.

56 A limit on the principle of non-intervention may arise in systemic or thematic monitoring programmes where monitoring activities also take place outside the courtroom, for example in detention centres. If serious human rights violations are observed, such as the torture or ill-treatment of a suspect, they should be brought immediately to the attention of the appropriate authorities, security conditions permitting (see Monitoring Manual Part V, *Monitoring and Documenting Human Rights Violations*). Where an allegation of torture is made in court, the observers should note the judge’s response. It may also be appropriate, depending on the context, for the allegation to be reported within the UN and suitable follow-up action taken.

57 It is generally permissible, even advisable, for observers to seek a meeting with a presiding judge in order to introduce themselves before observing any trial, to articulate clearly the objectives of the monitoring programme and to highlight their impartiality (see section E. “Principles of trial observation,” subsection “Principle of Impartiality;” and section H. “Conduct at courts and during trials;” section L. “External contacts and meetings”, subsection “Meeting the presiding judge”).

58 For example if a police officer was also a witness in the case.

3 Informed observation

When monitoring a trial, observers should be as well informed as possible of the country's relevant history, politics, economics and law and the social, cultural⁵⁹ and human rights conditions⁶⁰ there, as well the justice system, and the trial itself. This is especially important as many factors relevant to the conduct of a particular case will not be visible during the actual trial. The observer should review the code of criminal procedure, criminal code, relevant constitutional provisions, legal documents, reports by past observers, reports by human rights and other civil society organizations, media reports and other related background documents concerning the events that led to the trial. In addition, the observer should be aware of the names of the key actors, such as judges, prosecutors, lawyers, defendants and other parties. For thematic or systemic monitoring (see below), the history and background of any particular case will be less important than a thorough knowledge of the procedural rules and practices of the court.



Judicial proceedings

The process for the selection and removal of judges may have an impact on the independence of the judge(s) in individual cases, as may the process for assigning judges within a jurisdiction to a particular case. Domestic politics may impact on a prosecutor's decision to pursue one case but not another. The country's economic situation may have repercussions on the salaries of judges and other legal professionals, the number and qualifications of judicial staff, the quality of witness protection measures, courtroom infrastructure, the availability of qualified interpreters, the quality of transcripts, and detention conditions.

Observers should be aware of key aspects of the case and trial procedures, as a means of maximizing their ability to gather information and make an accurate assessments thereof. The assistance of local legal professionals will be indispensable in this regard. Misunderstanding courtroom events or procedures owing to a lack of prior research not only reflects poorly on the observer and the UN but can lead to incorrect conclusions and misguided recommendations.

Unlike *ad hoc* observation, systemic and thematic trial observation programmes (see below) are usually developed from a previously undertaken "**needs assessment**" that identifies core areas of concern and matches the available human and financial resources to the requirements of the project's goals. While needs assessments can vary greatly in scope, they will generally examine issues around the functioning of the legal system itself, including the academic and professional training of the various legal professionals, their working conditions, their material resources, their roles, and what assistance/training they believe would be useful. Needs assessments generally also examine the applicable law, both procedural and substantive, for gaps as well as for the adoption of, and adherence to,

⁵⁹ This should include an awareness of social norms in the society, including gender inequalities and the potential for judicial gender stereotyping. For example, harmful practices such as FGM or child marriage may be sustained by social norms that perpetuate male dominance and the inequality of women and children, on the basis of sex, gender, age and other intersecting factors. The judiciary can play a role in addressing these practices or in perpetuating them.

⁶⁰ Assessments of the judiciary and of the human rights situation in the country generally, for example Communications involving the State submitted to the Human Rights Committee or the Working Group on Arbitrary Detention under the reporting procedures of the treaty bodies; information emanating from the Universal Periodic Review; reports of special rapporteurs, commissions of inquiry or fact-finding missions, and similar.



international human rights norms and standards (e.g., fair trial rights and due process, access to justice, provision of remedies, non-discrimination, etc.). Informed observation means that the observers understand how these issues manifest themselves in the course of judicial proceedings. Well-designed observation templates (see Annexes) will be key to ensuring that observers capture the relevant facets of a trial process.

Finally, observers must keep in mind their own background, education and training, together with any conscious and/or unconscious biases or stereotypes they may hold, and how these may influence their observation. Different legal systems in different countries may protect rights in an altogether different manner. While international human rights law does not impose any one particular judicial model, whatever model is in effect must comply with the applicable norms and standards. The focus of observation must therefore remain on measuring the practices observed against the norms and standards, rather than on any differences between them and one's own judicial system or personal views. Similarly, especially when proposing reforms that emerge from observation, "one size does *not* fit all". What may work well in country A may not be appropriate in country B.⁶¹



Needs assessment

In 2009 the UN Mission to Timor-Leste sponsored "an independent and comprehensive needs assessment" of the country's justice system in order to identify challenges and set out recommendations to help chart the reform process. It assessed the legal framework, the appointment and training process for judges, the case tracking system, the prosecution and police services, public defenders and private lawyers, the prison/correction service, and judicial independence within the constitutional structure, among other aspects.

Source: "The Justice system of Timor Leste, an Independent Comprehensive Assessment", available at https://unmit.unmissions.org/sites/default/files/old_dnn/ICNA.pdf

4 Relationship with State authorities

As international human rights norms and standards require trials, with limited exceptions, to be public, the agreement of State authorities for an observer to attend a trial is unnecessary. Nevertheless – and with the additional goals of promoting transparency, avoiding misunderstandings as to the purpose of observers in courtrooms, and ensuring greater access for observers – the UN generally seeks to inform the authorities, including in writing, about the purpose, scope and methodology of the observation, and to record any agreement in a memorandum of understanding (MoU). Where trial observation already forms part of the mandate of a field presence, however, such an MoU may be unnecessary.

The goal of any MoU should be to clarify the purposes of the observation programme and to secure unfettered access. Especially for systemic and thematic monitoring, the MoU should address the types and locations of the trials to be observed (court, level, pre-trial detention facilities); should contain clear provisions on access both to case files (i.e., trial dossiers) and to closed hearings; should make a general reference to the fair trial rights under observation; should set out the obligations of the


⁶¹ See *infra*, section N. "Preparation, substance and timing of reports", subsection "Recommendations".

observers (i.e., impartiality, non-intervention, confidentiality);⁶² and should contain any agreements on reporting, including whether reports will be shared with the government prior to public release.

Even with a government-backed MoU, the judiciary itself, or particular judicial professionals, may not be amenable to the presence of observers. It is not prudent for observers to use an MoU as a means to demand entry to trials, especially closed hearings, or in an attempt to gain access to dossiers. Doing so could undermine the principles of judicial independence by suggesting that the executive branch can force courts to comply. Rather, observers should seek to negotiate access directly with the court president, or the individual (presiding) judge, by recalling the right to a public trial. Reference to the agreement reached with the government can be made if there is any question concerning the mandate or the role of the observer during the proceedings, but not as a means of exerting pressure on a judge or court official.

F. Observation models

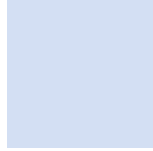
1 Ad hoc

Ad hoc observation: The UN may send observers to attend particular trials or hearings because of an identified human rights concern relating to the case in question. Typically, the cases are politically sensitive, high-profile or otherwise controversial in the domestic or international context, such as trials against opposition politicians, for example, or trials for crimes under international law. Unlike other models (see below), *ad hoc* monitoring tends to focus on the merits of the case as well as the process, whereas other models focus primarily on process. Besides reporting what they see at the trial, observers may need to undertake some of their own fact-finding in relation to the case, for example to see whether pressure is being brought to bear on a participant, or whether the judge is biased (see chapter on *Interviewing* ).

Observing an individual case from start to finish, within the socio-political and legal context in which it occurs, provides the UN with first-hand information on the case itself and also on the judiciary trying it. The UN can assess the overall fairness of the trial and decide whether it should express concern (publicly or not) or take other action. Like other models, *ad hoc* observation will have as a core aim the drafting of recommendations for reform if issues of concern are identified. If no such issues are identified or communicated, the UN presence tends to lend credibility to a proceeding.

Ad hoc observation can be conducted either by observers from a UN human rights field presence or by observers who arrive from outside the country solely in order to observe the trial. Coming from outside presents several challenges, as these observers must familiarize themselves not only with the case, but also with the situation in the country and with its legal system. Moreover, trial scheduling can be unpredictable. A hearing the observers have flown in specially to attend may be postponed and re-scheduled for a week or a month later. On the other hand, when an *ad hoc* case to be observed is controversial or high-profile, it may be prudent for the UN to rely more on outside observers and less on existing field staff or local legal professionals.

⁶² It should be made clear that such obligations apply also to locally hired staff, such as translators and interpreters. For example, interpreters would be bound by a duty of confidentiality surrounding any witness protection measures about which the observers are informed. See *infra*, section M. “Translators and interpreters”.



Ad hoc monitoring

The United Nations Support Mission in Libya (UNSMIL), in cooperation with the Office of the United Nations High Commissioner for Human Rights (OHCHR), observed the trial of 37 members of the Qadhafi regime accused of committing crimes during the 2011 uprising and armed conflict. While noting that the conduct of the trial represented “significant progress” compared to the trials held under the Qadhafi regime, serious due process concerns plagued the proceedings, which were ultimately deemed to have fallen short of international standards. The report concluded with recommendations for specific legislative and institutional reform.

Source: Report on the trial of 37 former members of the Qadhafi regime (Case 630/2012), available at www.ohchr.org.

2 Thematic

Thematic observation: Monitoring a certain type of case, a particular procedure or practice, or a specific stage of proceedings over a period of time or over a number of different cases gives the UN a good insight into a particular piece of the overall puzzle. Based on the “needs assessment” undertaken previously, or a problem brought to the UN’s attention, thematic observation can normally yield significant, targeted results in relation to specific problems. For example, it can examine certain types of cases or particular categories of crime (e.g., war crimes, sexual violence, or corruption), an aspect of the procedure (e.g., witness protection or plea bargaining), a stage in the proceedings (e.g., pre-trial, first instance or appellate), a single systemic issue (e.g., defence capacity, use of the death penalty, the judicial appointment process, access to justice,⁶³ or the provision of legal aid), or even a single discrete issue such as how a certain law, rule or practice is applied within the judiciary (e.g., the assignment of cases to judges).

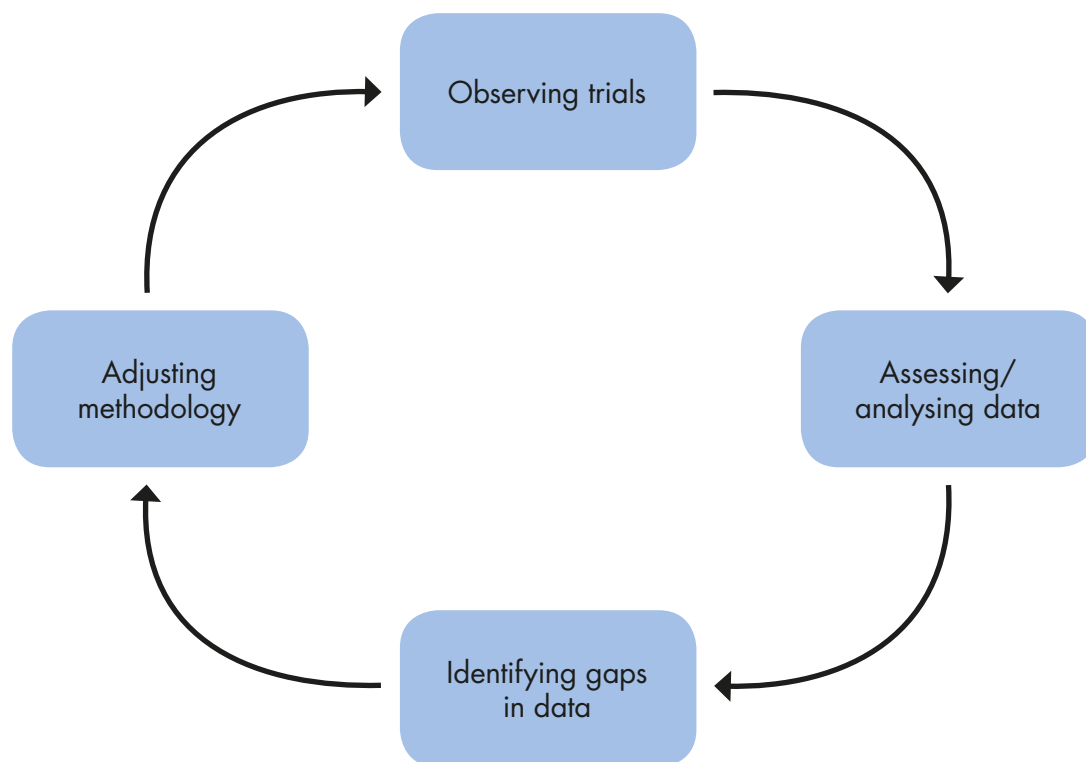
The difference between thematic and systemic observation (see below) is primarily a matter of focus and prioritization. Thematic observation takes the most serious problems facing the judiciary and examines them in detail, in multiple iterations and in multiple locations; whereas a systemic model will also examine that issue, but alongside many other issues. Thematic observation can also vary significantly in size and scope. For example, monitoring war crimes trials can be a more limited exercise if only a handful of cases exist and they are all in a single court. In other contexts, trials in the aftermath of an armed conflict can go on for decades. Moreover, observing a large number of trials involving a particular category of crime, from the pre-trial through to the appellate stages, can begin to resemble systemic monitoring, given the array of issues and the quantity of data the programme will encounter. For these reasons, much of the methodology and most of the procedures for thematic observation resemble those of systemic monitoring.

When undertaken over a longer term, both thematic and systemic monitoring can benefit from two methodological processes known as **monitoring cycles** or feedback loops – one internal and one external.

⁶³ See Committee on the Elimination of Discrimination against Women, General Recommendation No. 33 on women’s access to justice.

Internally, i.e., within the observation programme, the monitoring cycle allows the UN to spot issues and make adjustments to its methodology and approach over time as the monitoring proceeds. By refining its methodology, the programme should benefit from increasingly accurate data collection. For example, the monitoring template may require adjustment if gaps appear in the data collected.

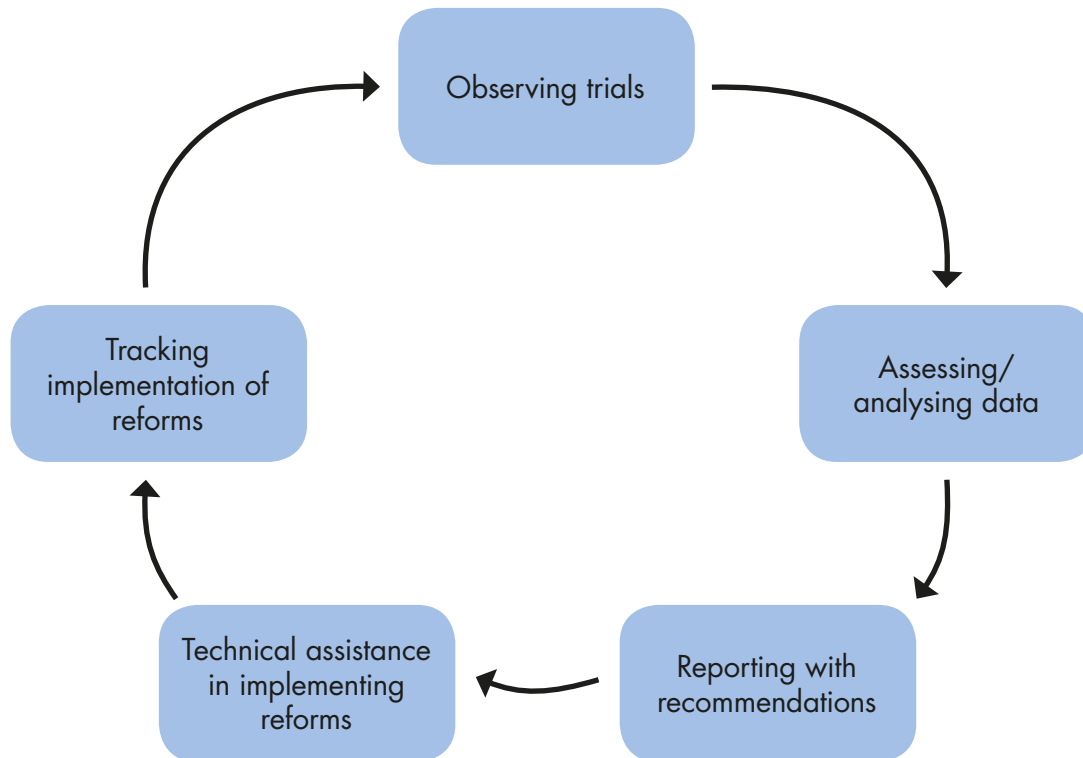
Internal



Externally, the feedback loop enables the programme to monitor the implementation of its recommendations and/or any other reforms that have grown out of the monitoring process. By observing the new or modified practices in the courtroom, the programme can propose further adjustments if necessary.

Along with trial observation, UN engagement may take the form of technical assistance whereby HROs assist the host State in implementing the reforms identified. The external feedback loop recognizes that some reforms might result in changes to the justice system that are not visible during courtroom observation. For example, reforms proposed to a court's witness protection practices might lead the State to create a victim/witness support unit, or to ensure that a social worker is available to support a child being interviewed. Depending on the observation model, the programme may choose to monitor how these reforms are translated into practice, in order to assess whether additional improvements in the court's treatment of witnesses and victims are necessary.

External



Of course neither process is necessarily linear. The stages often overlap, or occur simultaneously.

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Good practice on gathering case information

- Request the court president or justice ministry to provide a **liaison** who will periodically submit case/docket info and scheduling info.
- Develop relationships with **legal professionals in the local community** who can recount their cases, or those of others they are aware of, that fall into the programme's priority areas.
- Seek out counterparts in **civil society** who follow cases.
- Scan the **media** and police reports for information on arrest/detention, prosecutions and trials.

Case selection in thematic models

To ensure that their methodology is sound and their reporting accurate across the sector being observed, programmes should follow certain principles when selecting cases:

1. Begin with the **needs assessment**: Assuming the needs of the justice sector were assessed before the monitoring mission was begun (see section on "Informed Observation", above), the difficulties identified should indicate the priority areas in case selection.
2. A wide, representative **cross-section**: Even when limited by the chosen "theme", cast the monitoring net sufficiently wide to ensure as much diversity as possible within the theme. Gather data on cases from different geographical areas, different legal fields, different types of parties, different courts, different judges, different levels, etc.

3. Avoid **“easy” cases**: A programme’s results can quickly become skewed if observers fall into the convenience trap. A judge or prosecutor who is forthcoming, a court located in an easily accessible area, or an observer with a penchant for a certain area of law might lead to too many cases of a certain type, which in turn leads to data that is not representative.

Case selection can be more difficult in countries where case information may not be publicly available in advance of the trial. Observers will need to develop and rely on contacts cultivated within the legal community (defence counsel, prosecutors) as well as those administering the courts (clerks, court presidents). While doing so may assist in gathering case information, it could also have a deleterious effect on scope or randomization, for which programmes should account.

Policy should be developed within the programme to deal with **requests from parties** to observe their upcoming or ongoing cases. Where the programme has strict selection criteria, dealing with such requests is relatively straightforward. Where criteria are more flexible and/or reactive, a programme might choose to send observers to cases brought to its attention by parties, but it must recognize the risk that observation data overall will be impacted by the lack of systematization.

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Thematic monitoring

Between 2005 and 2014 the United Nations Assistance Mission for Iraq (UNAMI) monitored trials involving the death penalty. Together with OHCHR, the mission published its assessment of the trials, focusing extensively on human rights violations observed during the proceedings. Coerced confessions, lack of right to pardon, and the execution of those under 18, were among the most grievous violations. The report concluded with a recommendations to the Government, the judiciary and the international community.

Source: “Report on the Death Penalty in Iraq,” UNAMI/OHCHR, Baghdad, October 2014, available at ohchr.org.

3 Systemic

Systemic monitoring differs from *thematic* and *ad hoc* monitoring in both length and scope. It seeks to gather information about the entire justice system, including what is visible at trial, but also other processes before and after hearings. Systemic monitoring may encompass all types of trials – **civil, criminal and administrative** – as well as all levels: **trial, appellate, supreme/constitutional** and possibly special courts (tax, juvenile, military, traditional). It can include a range of judiciary-related facets, including the qualifications, education and training of legal professionals (including clerks and other court personnel); judicial selection processes; budgets, and infrastructure. It may reach too into associated institutions such as prisons and the police, and should have a comprehensive geographical scope. Systemic monitoring requires a review of the penal code; penal, civil and administrative procedure codes; court rules; and other rules, practices and dispute resolution mechanisms. In short, it is the system itself that is studied.⁶⁴ Observers monitor how the various parts of the whole interact with one another, and can thus pinpoint more readily where the challenges appear. Where *ad hoc* or

⁶⁴ The dividing line between systemic and thematic monitoring is not always clear. Programmes that have broad aims across a justice system may not be able to reach trial courts in remote areas, or access certain pre-trial detainees. They would nevertheless still be considered systemic, as they are not intentionally excluding any process or area. Thematic systems are defined by their selection of defined categories, to the exclusion of others.



thematic observation models might provide limited bases for analysis, given the comparatively small sample size, a systemic analysis will give observers a thorough understanding of the entire system. This analysis should help identify the root causes of rights violations, which should in turn lead to more accurately targeted recommendations for change.

While systemic monitoring has the advantage of being comprehensive, it also has its drawbacks. Of the three models, it is the most resource-intensive, and it requires a long-term commitment. Perhaps more than with other models, the quality of the results will be heavily influenced by the scope of the access afforded. Historically, successful programmes have been those whose staff have had access to court files/dossiers and could attend closed hearings, meet judicial actors, observe pre-trial proceedings, and visit detainees.⁶⁵



Examples of systemic monitoring

The OSCE Mission to Bosnia and Herzegovina “monitors, reports and assesses judicial responses to war crimes, hate crimes and trafficking in human beings, enabling the identification of obstacles to fair and efficient criminal justice.” The mission uses the analysis that resulted from the broad-based observation to advise the government and judiciary on reforms.

Source: <http://www.osce.org/mission-to-bosnia-and-herzegovina/rule-of-law>.

An example of a **civil society** organization undertaking systemic trial monitoring is the Coalition “All For Fair Trials” in the former Yugoslav Republic of Macedonia.⁶⁶ The coalition, which was set up in 2003, deploys law students, qualified lawyers and other legal professionals to the courts around the country, where they observe hundreds of trials every year and report periodically on weaknesses observed in the implementation of procedures and laws, including those identified through an analysis of statistical data.

Source: all4fairtrials.org.mk.

G. Qualities of observers

The selection of trial observers should not be taken lightly. Because the presence of observers at a trial has implications for the judicial process, their conduct must be beyond reproach. In high-profile cases especially, the conduct of observers will be scrutinized for any appearance of bias, any attempt to influence the outcome, or any indications of flaws in the monitoring process. Even unwittingly, observers can send signals that will be picked up, interpreted, and perhaps exploited by interested parties. Observers must therefore be possessed of a number of professional and personal qualities.

⁶⁵ OHCHR has produced a useful text designed to inform UN staff undertaking system-wide monitoring in a post-conflict environment. Many of the matters raised there are relevant to systemic monitoring in a trial observation context. See “Rule of Law Tools for Post-Conflict States: Monitoring Legal Systems” available at <http://www.ohchr.org/Documents/Publications/RuleofLawMonitoring.pdf>.

⁶⁶ At the time of publication, an agreement had been reached to change the country’s name to the “Republic of Northern Macedonia”.

1 Professional and ethical qualifications

Professionalism

Observers should conduct themselves in a manner consistent with representing the United Nations. They should demonstrate the highest degree of professional integrity, while being dignified, diligent and personable. The observer should treat all interlocutors and co-workers with decency and respect. Observers should be well prepared, dress professionally, and arrive promptly at the court. Acute attention to detail and proficiency in the language used at trial are important for the observer to gain a full understanding of the process.

Impartiality⁶⁷

Being impartial, and being perceived as such, must permeate every aspect of an observer's conduct. It will affect which cases are selected,⁶⁸ who observers meet, where they sit and what they write. The observer must continually and vigilantly safeguard their impartiality, both within their own thought processes, and with respect to those who may be scrutinizing their behaviour. Impartiality is vital for a proper assessment and analysis, as there is a risk that important points will be missed or misrepresented if one side is favoured. The appearance of impartiality can also be decisive for the credibility of the results, as readers will dismiss them if they perceive bias in the text or believe the content to have emanated from a biased source. Observers must under no circumstances accept any gift or favour from any of the parties. Nor should they be seen to give anything, e.g., through gifts of money, documentation or materials, or by facilitating transport, etc. Observers must be particularly careful not to give the impression that they favour the victims.

Knowledge and credibility

Knowledge of the domestic legal system and the social, cultural and political context, as well as knowledge of international fair-trial norms and standards, is fundamentally important for the observer. While not necessarily a pre-requisite, most observers with such knowledge may have previously trained as judges, prosecutors, lawyers, academics or others with experience in the administration of justice. Alongside substantive legal knowledge, however, there is a need for a thorough understanding of how international human rights norms and standards are applied in practice.



Democratic Republic of Congo

Since 2013, legislation in the Democratic Republic of the Congo has given civilian courts jurisdiction over international crimes. In the first such case, monitored by the UN Mission, 32 defendants were charged with genocide and crimes against humanity. Early in the process, the complexities of the domestic procedural laws applied to international crimes emerged, and they ultimately led to the exclusion of key evidence the prosecution had intended to present. The HROs' firm grasp of domestic law meant that they were well positioned to monitor proceedings, keep mission leadership informed, and assist judicial professionals with the intersection of local and international law. The experience has helped identify a need for capacity building which is now being addressed.

⁶⁷ See chapter on Basic principles of human rights monitoring .

⁶⁸ For example, HROs should be prepared to deal with requests by parties to upcoming cases who approach them seeking the observation of their case. See *infra*, Thematic Observation, *Case selection*.



The seniority of the observer may also be important, depending on the type of observation. For example, *ad hoc* observations for high-profile trials may require senior-level judicial professionals as observers. In some contexts, especially where the observer meets the presiding judge, it would be perceived as demeaning if the observer had far less experience and yet was “evaluating the performance” of a senior judge. Later, conclusions and recommendations may be undermined if those targeted by them can point to “inexperienced” observers. In systemic or thematic programmes, where observations take on a more technical, data-gathering approach, such issues of seniority are usually less pronounced. Also, high-profile trials may last months, and observers may rotate. In this context, the importance of thorough and consistent reporting requires competent, professional observers – attributes that may be just as important as seniority, if not more so.

Credibility is crucial to successful monitoring. Observers should be sure not to make any promises they are unlikely or unable to keep, and must follow through on any promise they do make. If those involved in the process do not trust the observer, they will be unwilling to cooperate or share reliable information.

2 Discretion and confidentiality

Although trials are normally public, and much information in the possession of an observer will emerge from public events, observers must be capable of handling sensitive information with discretion. Observers will undoubtedly develop opinions and assessments as a case (or a programme) proceeds. They will be privy also to the assessments of the others. The premature disclosure of such assessments could harm the judiciary, or the United Nations, or could impact on an individual case (see the principles of impartiality and non-intervention). Observers are duty-bound not to disclose such information prior to a thorough analysis of all the available material, or before a decision by OHCHR to share such assessments. Interpreters and translators assisting observers must also be bound by confidentiality obligations.

Equally, observers may receive sensitive information by virtue of attending closed hearings or being present at meetings or through inadvertent disclosures while monitoring.⁶⁹ Such information must be strictly safeguarded in light of the sensitive nature of trials in general, the programme’s overall objective and, most importantly, the rights of the parties, witnesses and victims. While the trial they are observing is ongoing, observers should not discuss it in a public place, even informally.

Interaction with the members of the press is of particular concern, given the media’s ability to shape public opinion quickly. Observers should speak to the media only with permission and deliver only agreed-upon messages, or should simply identify themselves and explain the purposes and principles of the UN’s trial monitoring activities. (See Section L. *External contacts and meetings ... Public Statements*, above.)

For the above, see also the chapter on *Basic principles of human rights monitoring* .

⁶⁹ The HRO may come across personal information about protected witnesses, for example.


H. Conduct at courts and during trials

One important way in which a trial observation programme demonstrates its principles is through the conduct of its observers. Those “observing the observers” may scrutinize the observer’s behaviour, looking for signs of bias or any other reason to dismiss their findings. Many programmes choose to draft guidelines or protocols for observers to follow as a way of ensuring that expectations are clear.⁷⁰ Among the issues such texts address are:

1. Travel accommodation

- a. In demonstrating impartiality, choices of accommodation may be important. To avoid visibly identifying with either side, the observer should be aware of any signals that their choice or location of accommodation might send, as well as whether anyone related to the trial (lawyers, witnesses, etc.) are also accommodated there. For example, is the owner of the hotel associated with either party?

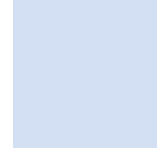
2. Arrival at the courthouse

- a. Observation is important both inside and outside the courtroom. Observers should arrive early and begin observation upon arrival by noting the behaviour and interactions of the parties, judicial actors, witnesses, lawyers, police and court personnel (see list, below). Security arrangements at the court may be relevant. One might observe, for example, how the court accommodates a sizeable crowd, or whether anyone is denied entry. A good subject for general observation is whether the court displays or publicizes its schedules in a manner accessible to people with disabilities.
- b. *Visibility*: Under normal circumstances, observation programmes want observers to be visible. In some places, for either tactical or security reasons, it may be preferable for observers to mingle with the public and not to be immediately recognizable. This choice is to be made by the observer in consultation with programme management. It must be clear, however, that security concerns always take precedence. An observer should not attend a hearing where their security, or that of their co-workers, would be in jeopardy (see chapter on *Using presence and visibility* .

3. Arrival in the courtroom

- a. The observer should arrive well in advance of the beginning of the trial.
- b. As trials are public, observers usually have the right to enter a courtroom – however, where an agreement between the field operation and the government is in place, the observer may be required to present credentials upon arrival.
- c. Trial observers may want to be introduced in open court so that their presence is officially recognized by the participants and the public. This tactic may increase the observer’s impact. The observer must take care to preserve the appearance of impartiality by arranging to be introduced by a neutral party, such as the presiding judge or the president of the local bar association.
- d. Observers should always stay until the end of the hearing, as an early departure could be misconstrued or be disruptive. If the observer cannot remain for the entire trial, an introduction by the presiding judge (see above) may focus undue attention on their subsequent departure, which might be unwise.

⁷⁰ For a sample of such text, see “Code of Conduct and Other Guidelines for Monitors”, in OSCE/ODIHR, *Trial Monitoring: a Reference Manual for Practitioners* (rev. ed. 2012), Annex I.



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Issues for observation outside the courtroom

- a. *Improper influence*, interference or threats by administrative officials, the ministry of justice, military, police or others (media, religious leaders, mobs, etc.); instances of *corruption*, bribes, etc.
- b. Insufficient *numbers of judges*, prosecutors, lawyers, court personnel, defence lawyers, etc.
- c. Lack of or poor *training* of judicial officials, need for improvements in the training system, obstacles thereto.
- d. Lack of *materials necessary for the functioning* of courts, such as basic office equipment (computers/typewriters, tables, chairs), a vehicle, etc.
- e. Poor *infrastructure* (e.g., leaking roofs, lack of plumbing or heating, no disabled access, etc.).
- f. Judicial professionals or court staff showing a *lack of will* to pursue tasks, appear for work, conduct investigations, create dossiers or offer remedies; exhibiting (or holding) biases or beliefs that lead to harmful stereotypes; restricting access to victims/survivors, witnesses or the accused; or meting out other discriminatory treatment, etc.
- g. Insufficient information on whether police *investigations* or judicial *inquiries are actually occurring*.
- h. Lack of gender-sensitive measures to encourage participation and to ensure that no one is denied access to justice.
- i. Lack of *complaint* or accountability mechanisms.
- j. Lack of *publicly available information or disaggregated statistics* on arrests, the filing of charges, scheduling of hearings, trials or appeals, and
- k. Lack of capacity *at the court management* and leadership levels.

4. Seating in the courtroom

Once inside, the observer must decide where to sit. Generally, this should be in a prominent yet neutral location, where they can see and hear well. They should not sit with the supporters or sympathizers of either side. Because every courtroom has its own configuration, the observer may need to seek some accommodation to preserve an appearance of impartiality and to facilitate their observation of the trial, for example by asking for chairs to be placed in a certain location. It is good practice, where possible, to visit the courtroom prior to the first hearing. If any seating issues are evident, there may be time to raise them in a meeting with the president of the court or the presiding judge before the start of the trial. It is inappropriate to raise what were foreseeable concerns about seating when the trial is about to commence.



Seating

Seating can be an important choice for observers. Sitting close to the supporters of one side or the other can give rise to perceptions of bias. On the other hand, observers need to maximize what they hear and see during hearings. They should find a place as close to the front as possible, but one that still allows them to be seen as impartial. If necessary, they should seek special seating arrangements.

5. Note taking

- a. Observers should generally take detailed notes during the trial, even when the proceedings are recorded or transcripts are produced. This establishes an independent record of proceedings that allows observers to assess the accuracy of the court's records. It also permits analysis to begin immediately rather than waiting for the "official" written record.
- b. Note taking can be facilitated by, and complementary to, the use of checklists, observation tools or templates (see Annexes).
- c. To ensure accuracy, notes should be reviewed immediately after the trial and any gaps or discrepancies should be resolved with co-observers and/or the interpreter.
- d. The observer should be aware, however, that some countries forbid the taking of notes by anyone except participating lawyers and the press. As mentioned, this should be clarified in meetings prior to the trial.
- e. Another difficulty with taking notes, particularly after meeting interviewees and other informants, is ensuring the confidentiality and security of those notes. Observers working in less secure settings should therefore not take thorough notes, and should prepare their full report only after reaching a secure location.

6. Interacting with participants

- a. Observers must never give legal advice or offer anything that could be perceived as instruction or guidance; in addition to jeopardizing the programme's credibility, giving advice interferes with the integrity of the judicial process.
- b. Observers must set limits on their relationships with justice officials, lawyers involved in the case, and parties.⁷¹
- c. Observers must never interrupt or interject anything during proceedings. Observers cannot question witnesses or seek to influence the fairness of the fact-finding procedure.⁷² Even if asked to comment, or asked whether they have questions for a witness by a judge or a party during a trial, the observer must politely and firmly refuse to comment.
- d. Observers should anticipate requests from judicial actors for technical assistance and should consider them in circumstances where such assistance may be necessary. Observers must never, however, make promises with respect to such assistance.
- e. If requests for assistance are made by the accused, by victims or by other parties, observers should make an appropriate referral and help them access the relevant services.
- f. As noted, observers must not comment to anyone (interlocutors, media, court staff) about a judicial process being observed, or reveal findings or opinions, until the programme management makes the decision to do so.

⁷¹ Limits might include, for example, accepting gifts or invitations to social events, sharing transport, etc.

⁷² Even if observers observe a clear violation in the courtroom, they must resist the temptation to interfere at that moment. See *supra*, section E. "Trial observation principles", subsection "Non-intervention/non-interference."



I. Management and operations

A successful observation programme involves activity in the courtroom, of course, but also significant support from those managing the programme in the human rights field presence. Alongside traditional management activities,⁷³ attention must be given to methodology, information handling and security, the generation of accurate reporting, advocacy, quality control, and general support to the monitors in the field.

1 Methodology

Trial observation methodology is multi-faceted, involving at the most basic level the creation of guidelines and templates on what the observers are to look for and how they should record what they observe. Recording information includes both physical recording – i.e., whether voice recording, questionnaires or note taking is preferred – but also the way in which events are characterized. To illustrate: managers may provide guidance on how much detail observers should include when describing the postponement of a trial, or a failure to respect the presumption of innocence, for example. Observers should not only indicate that the issue of concern arose, but should also relate their understanding of why it happened, based on the facts before them, insofar as they can ascertain the cause(s). How and to what extent observers describe the issue will play a role in the later stages of *analysis and reporting*.⁷⁴ Such guidance should also be clear and regularly updated, in order to ensure consistency between the material produced by various observers. Templates and questionnaires are frequent tools of trial observation, as they can be tailored to match the priorities of the programme and ensure the systematization of data collection. (Samples of observation questionnaires can be found in the Annex.) They must be adapted to the local context and carefully designed to capture and record a range of facts and issues, including those that are not obvious or that appear as patterns only when large amounts of data are analysed.⁷⁵

2 Information security and handling

Justice systems in many countries are vast, with an untold number of variables that might be captured or described by the observer. The sheer volume of potential information that programmes can generate risks inundating them with data that may ultimately be of little use if not properly managed, organized and secured. Especially in the thematic and systemic models, which must account for multiple cases over time, information management requires significant forethought.

HROs will be subject to existing information-handling protocols which should include a system with controlled access for storing, managing and protecting confidential and sensitive information. Before embarking on observation, human rights field presences should review **database** and information management options. The programme will require a well-constructed database wherein observation reports, interview forms and all the other information collected about a case can be centralized and used in analysis. The database should be configured with pre-established fields and controlled

⁷³ For example, recruitment, personnel appraisals, internal reporting, training, budgeting, etc.

⁷⁴ Compare excerpts from the following two hypothetical reports: 1. There were three defendants brought to trial, and they were all provided with counsel. 2. Three defendants were brought to trial, and one lawyer represented all three of them. Clearly, the latter report would raise questions about the effectiveness of the representation provided, a point that someone reading the former report might miss.

⁷⁵ For example, certain forms of systemic discrimination might only appear (or be demonstrable) with disaggregated data from monitoring over an extended period.

terminology that match the trial observations templates (see Annexes), which themselves should be tailored to the justice system and the type of cases being monitored.

If the programme uses a new database, it should begin by defining a smaller set of priority areas and focus on assessing those well, especially early in the life of the programme. Once the forms have been tested and databases are up and running, additional focus areas can be added.

The managers of observation programmes should carefully consider which method of recording incoming information is most suitable and ensures the highest level of security within the overall context in which the observation takes place. Inside the courtroom, usually only notebooks, and possibly audio recording, are permitted.⁷⁶

3 Analysis of incoming information

Some concerns over fair-trial rights will be immediately apparent, for example a failure to provide interpretation for a defendant who clearly does not understand the language of the court. Other issues may be less obvious, and understanding the underlying causes of concern may be more challenging. Some violations are ascertainable only after a thorough assessment of domestic and international law. For example, the right to be tried “without undue delay” has no fixed deadline in terms of months or years. HROs might make a determination as to **when** such a violation may have occurred based on the relevant factors set out in international human rights norms and standards. Understanding **why** the “undue delay” occurred in a particular case is another assessment altogether. Systemic programmes are designed to identify both such issues of concern and to ascertain, for example, whether the concerns are isolated – perhaps located within a specific court or the practice of a certain judge – or are rather the result of broader issues affecting the system as a whole.

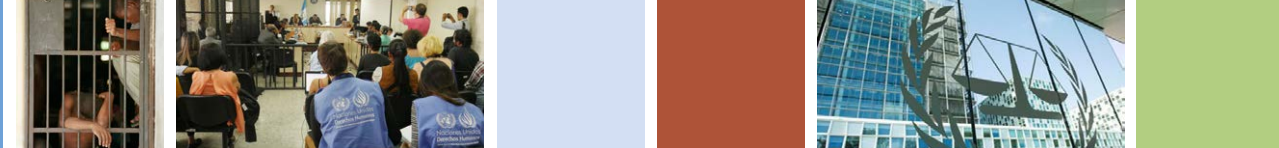
HROs, whether observing in a courtroom or analysing reports in the office, must be trained to identify issues, including those that are less apparent. An understanding of statistics and data analysis is important in the pre-deployment phase, to make sure that templates and questionnaires are devised to capture indicative information. Managers must give due consideration to the cycle of information generation, information analysis and problem identification. If this is done properly, the results should indicate the causes of obstacles, which will in turn lead to reporting that is accurate, to the identification of potential remedies, and to recommendations for change that are empirically supported.⁷⁷

4 Training and deployment of, and support for, observers

Human rights field presences undertaking trial monitoring need to pay attention to matters of observer deployment and support. Guidelines and protocols will be useful to observers, but are insufficient in themselves. Guidance should be supplemented with **training**. Knowledge of substantive human rights and law (both domestic and international), as well as observation methodology, comportment as observers, reporting and advocacy, should be engendered as appropriate through initial (pre-deployment) and periodic training events. Managers should consider role-playing situations that arise

⁷⁶ Laptops might be acceptable, although the noise from typing on a keyboard can be distracting to participants and the public. If a laptop or recording device is being considered, its use should be discussed with the presiding judge prior to trial. See *infra*, section L. “External contacts and meetings”, subsection “Meeting with the presiding judge.”

⁷⁷ Moreover, the monitoring cycle can continue, with HROs observing the implementation of the changes put in place as a result of the programme’s earlier recommendations. (See Monitoring Cycle.)



during observation, such as contacts with media, meeting judges and prosecutors, or interviewing trial participants and accused.

Management should also give due attention to **deployment**. It is good practice for observers to deploy in pairs. Observers can divide the labour, for example, with each observing different aspects of a trial. Pairing also assists in verification and covering gaps if something is missed. For trials that last over several sessions, having two monitors can ensure that contacts and institutional knowledge are preserved should one person be absent or subject to staff changes. Another advantage is having mixed genders⁷⁸ or nationalities⁷⁹ to foster diversity. On the other hand, having multiple observers at a single trial may mean less extensive coverage overall – a factor that is to be weighed against a programme’s capacity and objectives.




Guatemala

Cases observed by HROs are often high-profile and politically charged. It is not uncommon for supporters of one side or the other to demonstrate hostility towards UN observers. In Guatemala, an HRO sought to observe the criminal trial of a high-level figure from the security apparatus but was accosted upon arrival by friends and family of the defendant. The HRO phoned HQ seeking back-up, which arrived quickly in the form of additional observers and the mission security officer. The HROs spoke to the president of the court, who in turn bolstered the court’s security presence. The trial went forward, and the HROs attended without further incident.

Other deployment considerations involve rigorous attention to security for observers (a primary concern especially in post-conflict environments), rotation to different geographical areas or different courts, and staff wellbeing in light of the often-difficult circumstances observers may face in terms of subject matter and living conditions.

5 Findings and recommendations

OHCHR’s monitoring programmes generate substantial diagnostic information on a country’s justice system. Analysis of the data puts the UN in a position to generate recommendations for reforms that can be shared, depending on the circumstances, with stakeholders and the public (see chapter on *Advocacy and intervention with the national authorities* ⁸⁰). Human rights field presences managing thematic and systemic observation programmes should hold regular meetings with officials from the ministry of justice to inform them of progress, to share preliminary findings, and to raise any particularly serious matters that may fall within the purview of the executive branch.

⁷⁸ Having mixed-gender teams fosters diversity and, in some contexts, facilitates the team’s ability to meet interlocutors or victims/witnesses who are more comfortable meeting with someone of a particular gender.

⁷⁹ Diversity in this context can include both local and international HROs, two different international HROs, or two national HROs of differing ethnicities, for example.

⁸⁰ See *infra*, section N. “Preparation of reports”, subsection “Recommendations”.

J. Staffing models

Perhaps the biggest key to success in trial observation is staffing. Observers require a varied skillset in light of the multiple, challenging tasks.⁸¹ In addition to personal and professional qualities, how the programme is structured in terms of personnel deployment will also bear heavily on results. Most human rights field presences use as observers their own international staff, a combination of international and national staff (e.g., including language assistants supporting international HROs), or – where circumstances and security allow – national staff on their own.⁸² *Ad hoc* models, as noted, might bring in outside observers. Other models engage local legal professionals or NGOs in monitoring, either instead of or alongside UN HROs. Having local expertise can help international observers understand the peculiarities of the domestic justice system and the language, but might have a negative impact on perceived impartiality, depending on the circumstances. Another positive aspect of engaging local observers is that this strengthens their capacity. National legal professionals participating in the programme increase their awareness of the practical implementation of international fair-trial norms and standards in their country's courts. Security considerations, always at the forefront, take on an added dimension with the engagement of local staff in observation.⁸³

Particularly with systemic and thematic observation efforts, better results are achieved when the base of information is as large and as broad as possible. Some observation programmes have increased their scope by engaging additional observers through **partnerships with civil society**. By offering training and support to such teams, incoming information is multiplied. Long-term benefits are equally compelling, as UN missions or programmes will ultimately close down, while locally recruited observers might be able to continue monitoring and advocacy after the UN departs or a programme has ended.

K. Access to hearings and materials

A complete picture of a trial requires not only courtroom observation, but also access to materials in the trial dossier and perhaps also to hearings or meetings that take place outside of the regular courtroom sessions. The observation programme must clarify with local judicial counterparts, at the outset, the level of access it will have in these areas. In systemic models, human rights field presences should seek to have provisions on access set out in an MoU with the ministry of justice or the president of each court,⁸⁴ unless they have already been included in the presence's mandate. For *ad hoc* models, access might be negotiated when meeting the trial judge or prosecutor.

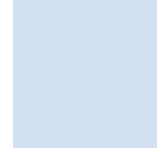
When negotiating, human rights field presences should seek the broadest possible access, ideally including all stages of the proceedings, all types of documents and all manner of hearings, including closed hearings where relevant. UN observers have been admitted to military hearings and hearings concerning sensitive security matters, from which the public is ordinarily excluded. While not demanding access to closed hearings, observers can emphasize the improved quality of the analysis and reporting if they are able to observe all facets of the trial. They may also highlight the commitment of all observers to confidentiality, which will have been set out clearly in any MoU and which constitutes a core observation principle.

81 See *supra*, section G. "Qualities of observers".

82 Owing to the high-profile nature of many observed trials, it may not be wise to expose national staff – who may be known to the participants – to the security risks and the possibility of retaliation.

83 See OHCHR *Manual on Human Rights Monitoring* (Hereafter "Monitoring Manual"), Chapter 30 "Presence and visibility". HROs should scrupulously follow DSS protocols.

84 See *supra*, "Relationship with State Authorities".



Cambodia

In Cambodia, particularly in rural courts, public attendance is difficult because hearing schedules are not systematically made public. In one provincial court, for example, a week may pass with no trials set, and then numerous hearings are scheduled for the same day, at the same time, with little or no advance notice. Observers raised the issue with court officials, prompting one court to begin consistently posting information on public notice boards, in advance, about the time and date of each hearing. In another court, after the observers' intervention, court officials sought and received a notice board from the ministry of justice so that the schedule of hearings could be publicly displayed.

There may, however, be legitimate reasons for a judge to exclude the public and the media from certain parts of a trial – for example when child witnesses testify, or when the court is taking evidence on a matter of national security. In such cases the judge may also decide to exclude a UN observer. If so, this should be noted in any reporting on the trial. When admitted to closed hearings, observers must be especially vigilant in safeguarding the information, handling it securely at all times.⁸⁵

Where access to a hearing is not granted, an observer may seek information about what took place from the parties who attended. When analysing and reporting on the trial, the observer should then consider the impact on the findings of having only partial, and possibly third-party, information.

Observers should also be aware that access to materials may be limited owing to a lack of resources. In some contexts, indictments are available on the internet. In others, even where there is a willingness to provide documents, it may be difficult to find a functioning photocopy machine or to bear the expense of printing the often-lengthy materials. Observers should be creative in finding solutions to resource problems.

1 Access to the dossier (case file)

One of the most important aspects of a successful observation is access to the trial dossier. The contents of dossiers vary from country to country and between common law and civil law systems, but they provide an important insight into what occurred before the trial phase. The dossier generally contains key texts,⁸⁶ many but not all of which will be used in the courtroom, but which are nevertheless essential to a full understanding of the process. In some countries, parts of the dossier are public and may be readily collected by observers, while other systems limit access to the dossier, or to certain texts therein, by law. Access might also be limited temporarily, for example until the trial phase has been completed. Observers should keep in mind that – especially in systemic models, where timing is less important – access to the dossier *after* the trial is over may be equally helpful to the analysis.

⁸⁵ See also *infra*, section G. “Qualities of observers”, subsection “Discretion and confidentiality”.

⁸⁶ In criminal cases, the ability to review the indictment and understand the charge/s against the accused is critical. Observers should make every effort to obtain or read the indictment before the start of the trial. There may be cases in which witness names have been redacted from an indictment, but the names of the accused and the charge/s against them should generally be public.

Good practice on access to dossiers and hearings

- Access should be negotiated prior to beginning the observation, preferably via a formal agreement/an MoU. Such agreements should be as broad-ranging as possible and, depending on the observation model, should ensure access to pre-trial processes.
- Access should be not only to documents, but also to courtrooms and other hearings, court scheduling and information about the types and nature of cases relevant to the monitoring programme.
- The MoU should clearly identify who is responsible for providing access to documents.
- The MoU should refer to the commitment to confidentiality binding all observers.
- While it is generally preferable to review the dossier prior to trial, *post hoc* access can also be helpful.
- When given access to the dossier, observers should take only copies, and only if necessary for the programme's assessment; if copies are not permitted, then observers should take notes of the contents.
- While preferable to obtain access to documents from the court/judge, if such access is not given, then observers should attempt to secure access via a lawyer or prosecutor.
- Dossiers may include confidential witness information. The observer is under an obligation to handle such information with due care.
- If the observers are excluded from part or all of the trial, as much information as possible about what occurred should be secured from the participants.
- If access is denied to any part of the trial or to the dossier, the reasons for the denial should be noted and communicated to programme management.

UN trial observers should never seek to obtain original documents or evidence, but should secure copies (or photos/scans) in order to study the texts later. While it is preferable to obtain access to documents from the court or the judge, if such access is not given observers should attempt to secure access via a lawyer or prosecutor.



Making the best of the situation

One OHCHR field presence attempted to attend a hearing in the criminal trial of a high-profile political opponent of the government who had been accused of offences relating to private property ownership. The hearings attracted great media attention, and large crowds of the defendant's supporters gathered outside the court house because they viewed the prosecution as politically motivated. The presiding judge decided to hold the hearings behind closed doors, citing "security concerns". The decision to exclude also applied to HROs, thereby denying them access to the hearings. Despite advocacy with the presiding judge, focusing on the role of HROs and the purpose of monitoring, access was not granted. HROs nonetheless monitored events from outside the courtroom, and collected information through the legal representatives of both parties, which made it possible to conduct a post-hoc analysis of the case and the proceedings.



L. External contacts and meetings

The types of external contacts and meetings an individual observer or programme managers pursue will depend in part on the observation type and the country circumstances. However, a number of good practices based on overarching principles have emerged. They take into consideration the sensitivity of such contacts and meetings on the one hand, and the need for ensuring an understanding of the aims and practices of the observation effort on the other.

1 Informing the authorities of observation

Before beginning any model of observation, it is generally appropriate **to notify the government**, usually via the ministry of justice, of both the objectives and the modalities of the programme, as well as the intention to send observer(s) to a specific trial. This is an important trust-building step, as there can be misunderstandings as to the purpose of observation activities, with some believing the UN is there to impose its will or to influence outcomes. Monitors should not “seek permission” to attend regular trial proceedings, as observers should aim to reinforce the public nature of trials.⁸⁷

2 Informing the president of the court

The court’s most senior officer should be informed of the observation programme. As when informing the government, the aim of this contact with the senior officer is to explain clearly the programme’s objectives and procedures, as well as the intention to send observer(s) to any particular trial. It is good practice to send a letter initially and then to seek a follow-up meeting. The letter may include a copy of the MoU, if deemed appropriate.⁸⁸ If a follow-up meeting is granted, the head of the human rights presence should meet with the court president. Issues to be discussed include the challenges facing the court along with any particularities of the court itself, for example how scheduling or case-assignment works.

In the letter and/or meeting, the observer may choose to indicate, for example, the number of observers and their names, if known; to describe how interpretation will work, if relevant; and to broach the subject of note taking/recording. It is also good practice to inform the president of the intention to meet all the parties to the proceeding(s) and to seek permission to meet with the presiding judge(s).⁸⁹ If appropriate, the observer may raise the question of access to the dossier(s). Finally, they should record any understandings reached in a letter.

3 Meeting the presiding judge(s)

The practice in many UN trial observation efforts has been to seek meetings with the presiding judge, unless there is a context-specific reason not to do so.⁹⁰ As with other meetings, the purpose is to introduce the observers, to explain their presence in the courtroom, to set out the goals and methods of the observation, and to offer an explanation for any whispering/translation and/or note taking/

87 See *supra*, section E. “Principles of trial observation”, subsection “Relationship with State authorities”.

88 *Ibid.* As noted, an MoU with the government should not be used as a means of pressuring the judiciary but it may be helpful in the event of questions concerning the mandate or the role of the observer during the proceedings.

89 If permission is not granted, the observer may seek to submit questions to the judge in writing, via the court president.

90 An example might be where the government has stated clearly that it does not want observers meeting with judges, and will regard such meetings as a breach of the mandate/agreement, or where the judge has already made it clear that they do not want to meet observers, or perhaps where the trial is already underway.

recording that may be taking place during the hearing(s). Where access to the trial dossier has not yet been granted, the meeting should be a forum in which to assuage any concerns, to emphasize the observer's commitment to confidentiality and impartiality, and to reinforce the principle of judicial independence.

It is essential in these meetings to refrain from entering into topics that might be perceived as attempts to influence the judge in any particular direction, and to avoid inadvertently communicating information received from other parties that should remain confidential.

It is permissible – even advisable – to discuss with the judge any perceived problems of the judiciary *in abstracto*, and to seek the judge's views about possible solutions. This is especially the case where challenges to the judiciary are not necessarily visible during courtroom observation. After this preliminary meeting, and once the trial starts, the observer should not meet the judge. If meeting him or her inadvertently, for example in a hallway of the court, the case should not be discussed.

Finally, it is understandable if any individual judge, especially the one presiding over the case being observed, chooses not to meet with observers. This decision should be respected. It may be advisable to meet instead with the most senior judge of the court or, depending on how the court is organized, the most senior official.

4 Meeting other parties and participants

In line with the principle of impartiality, an observer should endeavour to meet all the parties involved in the trial under observation. If not all sides agree to meet, the observers should consider whether accepting any meeting could be viewed as compromising impartiality. As with other meetings, the purpose is to explain the goals and methods of observation, with particular emphasis on clarifying that HROs are not permitted to influence proceedings in any way. The parties may be asked about any particular areas of concern, and their experience during interactions with the justice system.



Be – and be seen to be – impartial

To help ensure HROs are seen to be impartial, before a criminal trial starts they normally approach the defence, the prosecution and the judge, and introduce themselves. One OHCHR programme advised its observers to sit in the section of the courtroom assigned to journalists – as opposed to the areas where the supporters of either side are seated – in order to avoid any appearance of bias.

If the HRO meets the accused, it should be made clear that the observer is not attending the trial for any other reason than to support international human rights norms and standards on fair trial rights. Any discussion with the accused should be restricted to facts pertaining to the process. No promises should be made nor sympathy nor aversion displayed. Meetings should be in a location that permits maximum confidentiality while allowing the observer to assess the accused's mental and physical state and the conditions of detention, if relevant. The observer should consider whether to conduct the meeting alone or with defence counsel present.



Where witnesses are slated to testify at trial, no meetings should be scheduled with them before they have appeared in court. In addition, such meetings should be held only after discussion with programme managers, and for specific programmatic ends. Once they have testified, and there is no possibility of their being recalled, the sensitivities surrounding meeting witnesses are lessened; the observer should, however, be cognizant of the potential for retraumatization.

Witnesses and victims (e.g., victims of sexual violence) may be able to provide information about the manner in which the State's investigation was conducted, how they were treated by the police, investigators and prosecutors, and what support they were afforded, if any.⁹¹ As noted, it may be appropriate in some contexts for the observer to be of the same gender as the interviewee.

Observers may also seek to meet family members of the accused, and defence lawyers, who might be able to provide information on access to the accused during pre-trial detention and also on allegations of ill-treatment or torture, forced confessions, and similar. Defence lawyers might also provide information on a number of other due process rights that should have been afforded to the accused, for example whether there was adequate time to prepare the defence, the ability to call necessary witnesses, or whether they had access to all the prosecution's evidence in advance of the trial.


5 Public statements before, during and after observation

Guidelines on interactions with the media should be drawn up so that all observers clearly understand expectations. In general, before the trial has ended observers should not make any public statements about their findings or any evaluation of the process. When cases receive media attention, a journalist may approach observers with a microphone and a rolling camera. Some observation programmes may authorize observers in such situations to introduce themselves and describe the goals and the role of trial observation and/or to make generally applicable statements about the importance of fair trials, due process and the independence of the judiciary. Other programmes, however, only allow the observer to state, calmly and politely, that they are not authorized to speak to the media.

In some situations it may be appropriate for the observer/senior programme managers to issue a public statement at the beginning of a visit to explain the purpose of the trial observation. Senior managers may also seek to issue a public statement at the end of an observation to report on the findings and to announce any subsequent steps. A public statement made during the appeal process may have the effect of keeping international attention on the case. For each of these public statements, its anticipated usefulness must be weighed against its potential consequences, including any impact on judicial independence. Senior programme managers must determine how best to use the findings and recommendations to advocate for reform.


⁹¹ See *supra*, section C. "International fair trial standards", subsection "Special considerations for victims and witnesses during court proceedings".

M. Translators and interpreters

Ideally the observers will speak the language used at trial. In some instances, they may need to call on interpreters to aid them with the observation and to conduct interviews, and on translators to read judgements, laws and other legal texts. Interpreters must be highly skilled, as simultaneous interpretation during legal proceedings is difficult. Trials can go on for hours, often without breaks, and the speakers often use technical and nuanced language. Interpreters must usually whisper in the ear of the observer(s) during trial proceedings, which is especially difficult when multiple observers attend. The choice of interpreter therefore should be undertaken with care. Observation programmes must be cognizant of the fact that, even with the best interpreters, it is extremely difficult to get as complete an understanding of the information and events as would a native speaker (see chapter on *Interviewing* )

The choice of interpreters and translators is important not only for their skill, but also for the perception of the independence, impartiality and impact of the observer. Many people will associate the interpreter/translator with the observer or will believe the observer is subject to the interpreter's influence. Depending on the gender, ethnicity, race, etc. of the interpreter, some people may be unwilling to meet the observer.

A number of good practices have been identified to guide the selection and use of interpreters and translators:

- Translators/interpreters should be impartial and perceived as such.⁹²
- Unless the use of local dialects is a necessity, observers should recruit translators/interpreters from areas outside the location where the trial observation takes place.
- Only translators/interpreters who are knowledgeable, trustworthy and familiar with legal terminology should be selected.
- The interpreter should be secured early, well before observers arrive at the courthouse, in order to allow time for briefing, familiarization and perhaps even training, if appropriate (see chapter on *Interviewing* )
- The translators'/interpreters' contract documents should include guarantees of confidentiality, i.e., a prohibition on the disclosure of any of the information they are exposed to in the course of their work.
- Observers should raise the need for interpretation with the presiding judge or court president in a meeting prior to the start of the trial, informing him or her of the nature of interpretation that will be used (simultaneous, whispering, recording, etc.).
- Most judges do not allow talking in the public seating areas, so observers should ask the interpreter to whisper in order to keep any disruption to a minimum.
- If interpreting for two observers simultaneously, the interpreter should sit between them with the observers leaning in from each side.
- Where recording in the courtroom is allowed, observers should consider taping the voice of interpreters as they whisper, thus allowing the observer to focus on the visible cues at trial and, afterwards, helping them fill in any gaps in their notes.
- Guidelines should be developed for the recruitment, training and use of interpreters and translators.


⁹² If a translator or interpreter is proposed by, or comes from, an organization, political party or group to which any of the parties to the proceedings belongs, it may reflect negatively on the observation and may even pose a security risk to the translator or the observer. Similarly, the observer should not rely on the services of a translator provided by the government.



N. Preparation, substance and timing of reports

Just as there are different institutional models of observation, the reporting from an observation programme can vary in scope, purpose and timing. Be it in individual case reports, thematic reports or comprehensive periodic reviews, most reporting is intended to inform and influence stakeholders. When made public, the final report represents the authoritative account of observation activities. Thus, reporting will be judged not only by its relevance and legal accuracy, but perhaps most importantly by the quality of the recommendations that flow from the analysis. Reforms built upon accurately undertaken and impartially reported analysis have the best chance of ensuring the proper administration of justice in line with international human rights norms and standards. Observation programmes should focus considerable attention and resources on their analysis and reporting.

1 Analysis

Analysing compliance with international human rights norms and standards during trial observation does not differ substantially from analysing human rights violations generally, a topic addressed in Chapter 8 of the Monitoring Manual (“Analysis”). Analysis begins prior to the information-gathering stage, with the design of questionnaires, templates and observation reports. These tools provide the empirical foundation upon which the analysis is built, especially in systemic and thematic programmes. They must be well thought through, take into account the needs assessment, and be employed consistently by observers. (See Annex for examples.) Analysis should not, however, be limited to processing such information, but should rely also on information gathered from meetings and interviews with judicial actors and should be informed by the viewpoints of those outside the trial framework, such as academics and legal professionals uninvolved in the trials observed. While many interlocutors will focus on budgetary and infrastructure constraints, such as a lack of staff, office space or computers – seeing them as lying at the heart of most problems, which may certainly be true for many issues – good analysis, undertaken properly, seeks the root causes of problems by identifying their underlying components: whether legislative, budgetary, structural, process-oriented, etc. Such analysis is key to generating successful proposals for the reform of the justice system (see chapters on *Human Rights reporting*, and on *Advocacy and intervention with national authorities* ).⁹³

In assessing issues of concern, observers must examine domestic proceedings in light of domestic law as well as international law. Some violations will be obvious, for example a failure to allow the defence to question prosecution witnesses in a criminal trial. Others may require research, both factual and legal, to determine whether a violation has occurred. Observers involved in systemic and thematic models should be particularly attentive to trends or patterns that emerge from the analysis, especially those that might not be obvious from observing an individual case. For example discrimination in the sentencing of convicted persons may only be noticeable when numerous similar cases are compared over time. It is worth recalling that when a procedural violation is observed in a case, it does not necessarily translate into a finding that the entire trial was unfair. Moreover, if a trial court’s error is addressed on appeal, one can consider that the system, taken as a whole, has functioned as it should.

⁹³ See *infra*, section N. “Preparation, substance and timing of reports”, subsection “Recommendations”.

2 Timing

With *ad hoc* observation, the principal responsibility of the observer is to **produce the report promptly**, that is, as quickly after the end of the trial process as possible.

Although a programme may choose to hold off publication in order to safeguard independence if an appeal has been filed, most *ad hoc* observations release findings as soon as the analysis is completed. If an agreement is in place to share preliminary versions with the host government for comment prior to release,⁹⁴ a deadline for the receipt of such comments should be negotiated in order to ensure that the release is not delayed. Normally, for *ad hoc* observation to be effective, the report should be released while the government is still sensitive to authoritative, independent comments and to public opinion.

Systemic and thematic models generally report periodically, as their findings are not tied to a single case, and they do not attempt to seize upon any particular government or judicial sensitivities. Strategic choices might impact on timing, for example to make the release coincide with a particular legislative reform initiative or a judiciary-related media event.

3 Content

While the content of trial observation reporting will also depend upon the institutional model, as a baseline, reports should include the following elements:

■ *Ad hoc* criminal trials

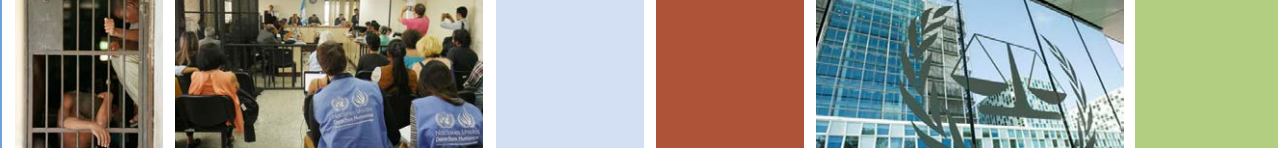
- (1) the programme's **aims**, mandate or **terms of reference**, including the **methodology** of observation;
- (2) the **background and context** of the case, with an overview of the trial process;
- (3) a summary of the **charge/s**, applicable laws and any relevant pre-trial procedures;
- (4) the **facts** as revealed at trial, including those that were in dispute and the prosecution (and defence) evidence used to prove them; summaries of key testimony;
- (5) the **mental and physical condition of the accused** and the conditions of confinement;
- (6) **judgement** (if any), and subsequent proceedings;
- (7) analysis and **evaluation of the fairness** of the proceedings and treatment of the accused, assessed against both national and international human rights norms and standards; and
- (8) **conclusions** with **recommendations**.

■ Thematic or systemic reporting


- (1) the programme's **instructions, mandate or terms of reference**;
- (2) a description of the **methodology** of observation, including reference materials and the individuals interviewed (to the extent consistent with security concerns);
- (3) **data** on the number and types of cases observed, locations, timespan, level, etc.;
- (4) an **evaluation** of the proceedings, applicable laws and treatment under national and international human rights norms and standards;
- (5) a selection of **emblematic cases**⁹⁵ to illustrate the shortcomings observed; and
- (6) **conclusions** with **recommendations**.

⁹⁴ See *supra*, section E. "Trial observation principles", subsection "Relationship with State authorities", discussion on MoUs.

⁹⁵ Unless important for understanding the case, information identifying the trial participants should be removed.



■ The **report might append**:

- (1) a copy of the order of trial observation, memorandum of understanding or similar instructions setting out the terms of reference;
- (2) copies of relevant procedural rules, court decisions and laws;
- (3) copies of charges, transcripts and judgements (see chapter on *Human rights reporting* ).

A decision will need to be made between whether to report only on issues of concern, or to include also an analysis of the positive aspects observed within the system. The answer depends in large part on the host-country context, as well as the relationship between the country and the human rights field presence. In general, there are few downsides to reporting both weaknesses and strengths, and a number of benefits. For example, it balances the violations identified and puts them in perspective. It may help avert a sense among judicial actors that they are being singled out for criticism, and may also help with the implementation of recommendations, as it provides a clearer picture of the judiciary overall. One downside is that, if some positives and some negatives are included in the report, the reader may be left wondering about the quality of those aspects of the judiciary that were not mentioned.

An issue that may arise in reporting is whether to single out any particular judge. Decisions of this nature are highly context-specific, and while practice is generally to avoid language that could be perceived as infringing on judicial independence, in particularly egregious situations it may be necessary to do so. For example, it may be permissible where the identity of the judge and his or her practices are already in the public domain, or if the judge is no longer practising (e.g., has resigned/retired, is deceased, etc.).⁹⁶ It may also be warranted in order to ward off a practice that risks serious harm (e.g., the admission of evidence garnered through torture).

Finally, it is important to keep the **target audience** in mind when drafting. Given the subject matter, it may be that the extensive use of legal terminology is to a degree unavoidable. A report aimed primarily at justice professionals may even be seen as more credible when authors have evidently mastered national law, processes, and associated terms of art. Reporting which has raising awareness as its goal, however, or which is aimed at the general public, must employ accessible language.

4 Recommendations

To be successful in effecting reforms, the recommendations must be:

- *Targeted* – identifying the stakeholder (legislature, judges' associations or councils, court, donors, civil society, etc.) from whom action is required.
- *Sufficiently detailed* – providing clear, precise indications of the action necessary with respect to each issue of concern identified in the report.⁹⁷
- *Supported empirically* – founded on data generated from observations coupled with expert (legal) analysis; the link between the root cause and the proposed solution must be explicit.
- *Constructive and practicable* – based on a thorough understanding of the existing practice in the national system, which can be effectively upgraded and/or based on similar practice in another jurisdiction, which can be adapted.

⁹⁶ Particularly difficult or sensitive issues should be discussed with senior programme management prior to their appearing in a public report.

⁹⁷ Recommendations such as "improve training" or "refine procedural rules" are too vague. They should specify exactly what part of training should improve, and in what way, or exactly which rules should be refined, and how.

- *Sustainable* – offering long-term solutions. A recommendation that suggests training, for example, must consider who will conduct the training in the future, and/or how it will be integrated into the legal education system.

With regard to **sustainability**, systemic monitoring programmes should support mechanisms designed to enable local actors to identify and resolve future challenges to the judiciary. For example, human rights field presences might promote independent civil-society initiatives that conduct trial monitoring and offer recommendations, or might assist a local bar association to become engaged in reform efforts.

Proposals for reform can focus on a wide range of targets. Legislative reform initiatives may be designed to bring domestic law into line with international human rights norms and standards, while policy-level initiatives may take aim at a certain practice within a court (such as the case-assignment system). Often, problems will be identified at the structural or institutional level, and may give rise to proposals such as implementing an alternative dispute resolution mechanism or ensuring functioning accountability mechanisms (e.g., independent prison inspections or a police complaints mechanism). Other problems may lie in a lack of adequate training and awareness-raising, for example on international human rights norms and standards and their application in the domestic legal system. As noted, some root causes will undoubtedly relate to infrastructure, budget and resources. Here, the programme may be in a good position to advocate for changes with the government and the donor community.



Cambodia

Trial monitoring carried out by OHCHR and a partner NGO in Cambodia revealed that pre-trial detention was used in approximately 80% of all criminal cases. In 2014 the ministry of justice promulgated a new pre-trial detention template which had been prepared with technical support from OHCHR-Cambodia and took into account the best practices of the Extraordinary Chambers in the Courts of Cambodia, the UN-backed hybrid court. The new template required judges to consider the specific facts of each case, the personal situation of the charged person and all parties' arguments, before making a decision – the reasoning for which had to be elaborated in the text. Additionally, judges were able to order pre-trial detention only for a set period. In order to reduce further the use of pre-trial detention and to decrease overcrowding in prisons, three circulars on alternatives to detention were issued by the justice ministry to provide mechanisms for judicial supervision, community service and suspended sentences.



Examples of recommendations from OHCHR Trial Monitoring Reports

- Review the penal code to ensure all crimes are based on clearly defined criminal conduct, avoiding general definitions that could open the door to extensive interpretation.⁹⁸
- Review the code of criminal procedure (CCP) and other legislation to ensure their compliance with international law and standards in the administration of justice, and in particular . . . [a] mend article 106 of the CCP to ensure that defendants are guaranteed access to lawyers and informed of their rights during the pre-trial phase, and that, in the absence of a lawyer of their own choosing, they are given legal aid and State-appointed lawyers during questioning by police or judicial authorities.⁹⁹
- Take the time necessary for the preparation of court hearings to avoid trials without victims or civil parties; ... [and] draft a checklist of the different steps to be followed and important deadlines to be respected in the preparation, conduct and conclusion/evaluation of each hearing.¹⁰⁰

98 OHCHR and United Nations Support Mission in Libya, *Report on the Trial of 37 Former Members of the Qadhafi Regime* (Case 630/2012), 21 February 2017, p. 55.

99 Ibid.

100 Bureau conjoint des Nations Unies aux Droits de l'Homme (HCDH – MONUSCO), Bureau de Terrain de Goma, *Rapport d'Observation des Audiences Foraines Tenues à Kitchanga en Territoire de Masisi (Province du Nord Kivu)*, 17 février – 7 mars. Tribunal Militaire de Garnison de Goma, p. 14. (*Translated from French*. The original reads: « De prendre le temps nécessaire pour la préparation des audiences foraines pour éviter des procès sans victimes ou parties civiles ; à cet effet, d'élaborer une liste (checklist) des différentes étapes à suivre et délais importants à respecter dans la préparation, la conduite et la conclusion/évaluation de chaque audience foraine. »)

O. ANNEXES

- I. Case tracking template – example (Français/English)
- II. Free text (open) observation report – example (Español/English)
- III. Closed observation report – example (English)

Annex I. Case tracking template – example¹⁰¹

Etat général du cas : *General case status*

Le cas fait-il l'objet d'un suivi par les autorités judiciaires ? Oui / Yes Non / No
Is the case subject to judicial proceedings?

Qualité de l'accusé [exemples]
The nature of the defendant [examples]

Si oui, à quel stade se trouve le cas en date du _____
If yes, at which stage is the case as of date _____

Tick all that apply

- Enquête/Instruction / *Inquiry/Investigation* Oui / Yes Non / No
- Classement sans suite / *Case closed without further action* Oui / Yes Non / No
- Dossier fixé et renvoyé devant la juridiction de jugement Oui / Yes Non / No
File is set and transferred to the relevant court
- Procès en première instance / *First instance trial* Oui / Yes Non / No
- Procès en appel / *On appeal* Oui / Yes Non / No
- Autres recours / *Other remedies* Oui / Yes Non / No
- Exécution du jugement / *Execution of judgement* Oui / Yes Non / No
- Dossier clôturé (jugement définitif exécuté) Oui / Yes Non / No
File is closed (final judgement executed)

Dans ce cas, avez-vous enregistré au cours du processus judiciaire :
In this case, have you registered any of the following during the judicial process:

Des ingérences ? / *Interference?* Oui / Yes Non / No

Des violations graves des normes en matière de procès équitable ? Oui / Yes Non / No
Serious violations of fair trial norms?

Des problèmes de protection pour les témoins ou victimes ? Oui / Yes Non / No
Problems with witness or victim protection?

L'auteur (Les auteurs) présumé(s) est-il (sont-ils) en détention ? Oui / Yes Non / No
Are the suspects in detention?

¹⁰¹ Adapted from a template used by the UN Joint Human Rights Office in the Democratic Republic of the Congo.

Onglet 1 : Détention – Statut du ou des prévenus au cours du processus judiciaire

Tab 1: Detention – Status of the accused during the judicial process

Nombre de prévenus poursuivis : / *Number of accused*

	En détention <i>Detained</i>	En liberté <i>Released</i>	Mandat d'arrêt mais en fuite <i>Warrant for arrest but absconded</i>	Mis en liberté provisoire <i>Provisional release/ conditional discharge/ release on bail</i>
Instruction <i>Preliminary examination</i>				
Procès en 1^{ère} Instance <i>First instance trial</i>				
Procès en Appel <i>Appeal</i>				

Détails / *Details*

- En cas de détention : / - If detained:

Date d'arrestation / *Date of arrest*

Lieu de détention / *Place of detention*

Légalité de la détention / *Legality (legal basis) of detention*

Torture ou TCID au cours de la détention Oui / Yes Non / No

Torture or cruel, inhuman or degrading treatment during the detention

Si oui, détails / *If yes, details*

- Assistance d'un avocat à toutes les étapes du processus ? Oui / Yes Non / No

- Assistance of a lawyer at all stages of the proceedings?

- En cas de libération provisoire : / - If discharged/released on bail:

Date / *Date:*

Motif / *Reason:*

L'accusé a-t-il comparu à la procédure après sa libération provisoire ?

Oui / Yes Non / No

Did the defendant appear at the proceedings after being discharged/released on bail?

- En cas d'évasion avant la fin du procès : / - In case of flight prior to the end of the trial:

Date / *Date:*

Circonstances de l'évasion : / *Circumstances of the flight/escape:*

Autres observations : / *Other observations:*

Onglet 2 : Enquête/Instruction Tab 2: Inquiry/Investigation

- Durée de l'enquête/instruction / *Length of the inquiry/investigation*

Début : Fin Durée :
Start: End: Length:

- Autorité chargée de l'enquête : / - *Authority in charge of the investigation:*
 No./Num.

- Plainte de la victime : / - *Complaint by the victim:* Oui / Yes Non / No

Si oui, détails relatifs à la plainte (auteur, date, copie, attestation d'indigence, etc.) :

If yes, details relating to the complaint (complainant, date, copy, evidence of poverty, etc.):

Déroulement de l'instruction / *Course of the investigation*

- Actes d'instruction posés (descente sur terrain, nombre de témoins entendus, réquisition à un médecin ou à un psychologue) :

- *Examination documents (field visits, number of witnesses heard, order made to doctor or psychologist):*

- Ingérences constatées au stade de l'enquête/instruction : Oui / Yes Non / No

- *Interference detected at the investigation stage:*

Si oui, lesquelles : / *If yes, which:*

- Menaces/intimidation ou représailles contre la victime au cours de l'instruction :

Oui / Yes Non / No

- *Threats/intimidation or reprisals against the victim in the course of the investigation:*

Si oui, détails : / *If yes, details:*

- Difficultés rapportées au cours de l'instruction :

- *Difficulties noted in the course of the investigation:*

- Autres observations relatives à l'instruction :

- *Other observations relating to the investigation:*

Résultat de l'instruction : / *Result of the investigation:*

- Transmission du dossier au Tribunal pour fixation : Oui / Yes Non / No

- *Transfer of the file to the Tribunal for registration:*

Si oui, date de la requête aux fins de fixation ou décision de renvoi :

If yes, date of the request for registration or order of reference:

- Juridiction de jugement : / - *Trial court:*

- Date de l'ordonnance de fixation : / - *Date of the registration order:*

- Préventions retenues par le Ministère public :

- *Preventive measures adopted by the Public prosecutor:*

- Classement sans suite / - *Case closed without further action* Oui / Yes Non / No

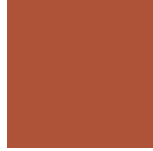
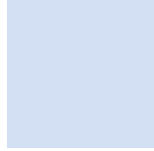
Si oui, motif : / *If yes, why:*

- Amende transactionnelle/Règlement à l'amiable / - *Fine/Settlement*

Oui / Yes Non / No

Si oui, détails : / *If yes, details:*

Autres observations : / *Other observations:*



Onglet 3 : Procès en première instance

Tab 3: First instance trial

Jurisdiction : / *Court*

Date : / *Date:* Début du procès : / *Start of trial:* Fin du procès : / *End of trial:*

Durée totale du procès : / *Total length of the trial:*

Chefs d'accusation : / *Charge/s:*

Saisine de la juridiction : / *How court seized*

par le / *by*

Citation directe / *Summoned*

Comparution volontaire / *Appeared voluntarily*

Identités des parties au procès : / *Parties to the trial:*

Prévenus : / *Charged/accused:*

Parties civiles : / *Victims (civil parties):*

Ministère public : / *Public prosecutor:*

Etat : / *State (as party to the proceedings if potentially responsible for damages):*

Déroulement du procès / *The trial*

Résumé du déroulement de l'appel : / *Summary of course of the trial:*

Comptes rendus d'audiences : / *Hearing reports:*

Evaluation/Analyse d'ensemble de l'appel : / *Overall assessment/analysis of the trial:*

Respect des normes internationales en matière de procès équitable :

Respect of international fair trial norms:

Les victimes et témoins ont-ils été victimes de menaces, intimidations ou représailles au cours du procès ?

Oui / *Yes* Non / *No*

Did the victims or witnesses face threats, intimidation or reprisals during the trial?

Si oui, détails : / *If yes, details:*

Y a-t-il eu des ingérences/blocages au cours du procès ?

Oui / *Yes* Non / *No*

Were/was there any obstacles/interference during the trial?

Si oui, détails et mesures prises : / *If yes, details and measures taken:*

Jugement / *Judgement*

Date : / *Date:*

RP : / *Number of the Trial case file:*

Copie du jugement / *Copy of the judgement*

Acquittement / *Acquittal*

Oui / *Yes* Non / *No*

Condamnation / *Conviction*

Oui / *Yes* Non / *No*

Peine de mort / *Death penalty*

Oui / *Yes* Non / *No*

Dispositif du jugement (détails des peines et dommages et intérêts)

Judgement (details of penalties and damages)

Motivation du jugement : / *Reasoning of the judgement*

Autres observations : / *Other observations:*

Onglet 4 : Procès en Appel Tab 4: Appeal processJuridiction d'appel : / *Appellate Court*Parties ayant interjeté appel : / *Parties having appealed:*Motif de l'appel : / *Reason for the appeal:*Portée de l'appel : / *Scope of the appeal:* Générale / *General* Restreinte / *Restricted*Si restreinte, détails : / *If restricted, details:*RPA : / *Case file number on appeal:*Chefs d'accusation : / *Charges:*Date : Début du procès : / *Start of trial:*Fin du procès : / *End of trial:*Durée totale du procès : / *Total length of the trial:***Déroulement du procès / *The trial***Résumé du déroulement de l'appel : / *Summary of course of the appeal:*Comptes rendus d'audiences : / *Hearing reports:*Evaluation/Analyse d'ensemble de l'appel : / *Overall assessment/analysis of the appeal:*

Respect des normes internationales en matière de procès équitable :

Respect of international fair trial norms:

Les victimes et témoins ont-ils été victimes de menaces, intimidations ou

représailles au cours de l'appel ?

 Oui / *Yes* Non / *No**Did the victims or witnesses face threats, intimidation or reprisals during the appeal?*Si oui, détails : / *If yes, details:*

Y a-t'il eu des ingérences/blocages au cours de l'appel ?

*Were there any obstacles/interference during the appeal?*Si oui, détails et mesures prises : / *If yes, details and measures taken:***Décision / *Decision***Date : / *Date:*RPA : / *File number of appeal judgement*Copie de la décision : / *Copy of the decision:*Acquittement / *Acquittal* Oui / *Yes* Non / *No*Condamnation / *Conviction* Oui / *Yes* Non / *No*Peine de mort / *Death penalty* Oui / *Yes* Non / *No*Dommages et intérêts / *Damages* Oui / *Yes* Non / *No*

Montant des dommages et intérêts accordées :

*Amount of damages awarded:*Autres observations : / *Other observations:*

Onglet 5 : Autres recours**Tab 5: Other remedies/relief**

Type de recours : / *Type of remedy/relief:*

Motif du recours : / *Grounds for the remedy/relief:*

Partie ayant introduit le recours : / *Party seeking the relief/remedy:*

Parties concernées par le recours : / *Parties concerned by the remedy/relief:*

Juridiction compétente : / *Competent court:*

No. de référence du recours : / *Reference number of the remedy/relief:*

Durée de la procédure de recours : / *Length of the proceedings:*

Début : / *Start:*

Fin : / *End:*

Résumé du déroulement du recours : / *Summary of the proceedings:*

Respect des normes internationales en matière de procès équitable :
Respect of international fair trial norms:

Observations générales : / *General observations:*

Comptes rendus d'audiences : / *Hearing summaries:*

Décision : / *Decision:*

Analyse de la décision : / *Analysis of the decision:*

Copie de la décision : / *Copy of the decision:*

Autres observations : / *Other observations:*

Onglet 6 : Exécution du jugement**Tab 6: Execution of the judgement****Acquittement / Acquittal**

Libération du/de la/des prévenu(e)(s) : / *Accused were released :*

Oui / Yes Non / No

Date de remise en liberté : / *Date released:*

Peine d'emprisonnement / Prison sentence

Incarcération du/de la/des condamné(e)(s) : / *Incarceration of the convicted:*

Oui / Yes Non / No

Lieu de détention : / *Place of detention:*

Evasion : / *Absconded:*

Oui / Yes Non / No

Si oui, précisez la date et les circonstances:

If yes, note the date and the circumstances:

Dommages et intérêts / Damages

Paiement effectif des dommages et intérêts aux victimes :

Payment of damages to the victims:

Oui / Yes Non / No Partiellement / Partially

Prévoir des statistiques : / *Provide statistics:*

En cas de paiement, date du paiement : / *In case of payment, date of payment:*

En cas de non paiement, pourquoi ? / *In case of non-payment, why?*

Autres observations : [Onglet au remplissage libre]

Other observations: [Tab/section to be filled in freely]

Annex II. Free text (open) observation report – example¹⁰²

FICHA DE OBSERVACIÓN CASOS JUSTICIA DE TRANSICIÓN Transitional Justice Case Observation Sheet

1. Detallar día y hora de la audiencia (<i>Date and time of the hearing</i>):
2. Detallar las partes procesales presentes (detallar nombres de los presentes) (<i>The parties present, details of names</i>):
3. Tomar nota de las pruebas presentadas (de manera general) (<i>Note the proof/evidence presented, in a general manner</i>):
4. Avances procesales del día. (Ejemplo: testigos escuchados, elementos de los peritajes que sean significativos, algún incidente o recurso presentado por la defensa, entre otros) (<i>Procedural progress of the day. Example: witnesses heard, elements of expert reports that are significant, incidents or appeals filed by the defence, etc.</i>):
5. Indicar si alguna de las pruebas presentadas brindó un aporte sustantivo o altamente significativo al proceso (<i>Indicate if any of the evidence presented made a substantive or highly significant contribution to the trial</i>):
6. Describir el clima de la audiencia en general y detallar si existió algún acto de intimidación, amenaza u otro (<i>Describe the general atmosphere during the hearing and detail any acts of intimidation, threats or similar</i>):
7. Indicar hora de la próxima audiencia y algún tema logístico importante (<i>Indicate the time of the next hearing and any important logistical matters</i>):

Nombre de la persona que llena la ficha / *Name of person filling out the form*: _____

La ficha deberá ser entregada a _____ o en su ausencia a _____, el día posterior de haber hecho la observación a la mayor brevedad posible.

The form must be delivered to _____ or in his/her absence to _____, as soon as possible, the day after conducting the observation.

¹⁰² Adapted from the OHCHR Guatemala Office's observation report template.



Annex III. Closed observation report – example¹⁰³

CRIMINAL TRIAL MONITORING CHECKLIST A. General Trial Information

1. OVERVIEW				
1 Date trial began (first hearing date):	day / month / year		Start Time: End Time:	Court Room Number:
1(a) Date(s) of subsequent hearing(s)	day / month / year		Start Time: End Time:	Court Room Number:
1(b) Monitors:				
1(c) Party bringing the case:	<input type="checkbox"/> Civil party(ies) Overview: Date of incident/crime:		<input type="checkbox"/> Prosecution <input type="checkbox"/> I/U	
1(d) Judge:	1st 2nd 3rd			
1(e) Prosecutor:				
1(f) Clerk:				
1(g) Lawyer(s):				
1(h) Defendants <i>(use extra sheets as necessary)</i>	Total number of defendants:			
	Name:	Gender: M / F / Other	Present/Absent: P / A	Adult/Juvenile: A / J
	Name:	Gender: M / F / Other	Present/Absent: P / A	Adult/Juvenile: A / J
	Legal Person - Representative:	Name:	Present/Absent: P / A	Other info:
1(i) Victims <i>(use extra sheets as necessary)</i>	Total number of victims:			
	Name:	Gender: M / F / Other	Present/Absent: P / A	Adult/Juvenile: A / J
	Name:	Gender: M / F / Other	Present/Absent: P / A	Adult/Juvenile: A / J
	Legal Person - Representative:	Name:	Present/Absent: P / A	Other info:
1(j) In which prison was the defendant detained?				<input type="checkbox"/> N/A <input type="checkbox"/> I/U

¹⁰³ Adapted, with thanks, from the Cambodian Centre for Human Rights' report template. Key to abbreviations: N/A – Not Available, I/U – Information Unknown or Unclear.

FAIR TRIAL RIGHTS

2. RIGHT TO A PUBLIC HEARING	
2(a) Was notice of the hearing publicly available?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2(b) Were members of the public or media prevented from entering or dismissed from the courtroom?	<input type="checkbox"/> Yes <input type="checkbox"/> No Reason:

3. RIGHT TO BE INFORMED OF THE NATURE OF THE CHARGE(S)	
3(a) Did the judge state all the relevant charges against all defendants?	<input type="checkbox"/> Stated all <input type="checkbox"/> Stated some <input type="checkbox"/> None <input type="checkbox"/> N/A
3(b) Did the judge state the relevant law?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3(c) Did the judge state the date of the offence?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3(d) Did the judge state the place of the offence?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3(e) Did the judge state the parties involved?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3(f) If required, was an interpreter provided?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not required
3(g) If required, were provisions made for those with disabilities?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not required
If yes, what disability was provided for?	<input type="checkbox"/> Hearing <input type="checkbox"/> Sight <input type="checkbox"/> Other Comment:

4. EXPLANATION OF RIGHTS	N/A		
4(a) Did the judge inform (I) and explain (E) to the accused the right to legal representation or to defend oneself?	<input type="checkbox"/> I only	<input type="checkbox"/> I and E	<input type="checkbox"/> Neither I nor E
4(b) Did the judge inform (I) and explain (E) to the accused the right not to answer?	<input type="checkbox"/> I only	<input type="checkbox"/> I and E	<input type="checkbox"/> Neither I nor E

6. PRESENTATION OF EVIDENCE

6.1(c) Live witness evidence

Did any party challenge the evidence?

 Yes No N/A

If Yes, which party?

 Defence Civil Party Other:

Details:

6.1(d) Expert evidence

Type: Forensic Other: Medical N/A

Expert present or statement/report read out?

 Present Absent N/A

If absent, give reason:

 I/U

Did other parties agree with the expert evidence?

 Yes No N/A

If No, who and why?

 Defence Civil Party Other:

Details:

If read out and expert not present, were any submissions concerning this made by any party? Give details.

 Yes No N/A

If Yes, which party?

 Defence Civil Party Other:

Details:

6.1(e) Prosecution witnesses
(use extra sheets as necessary)

Total number of prosecution witnesses:

Name:	Gender:	Protection	Adult/
Number:	M / F / Other	measures?	Juvenile:
		Y / N	A / J

Challenges to the witness or evidence by a party?
(Describe nature of challenge) Yes No N/A

If there were any challenges, which party made them?

 Defence Civil Party Other:

Details of challenge:

Summary of testimony:

Challenges to the witness or evidence by any other party?

 Yes No N/A

If there were any challenges, which party made them?

 Defence Civil Party Other:

Details of challenge:

Summary of testimony:



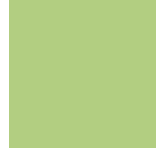
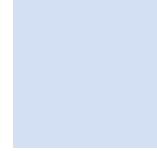
6. PRESENTATION OF EVIDENCE

6.2 DEFENCE	<input type="checkbox"/> N/A								
6.2(a) Summary of the defendant's confession in the hearing, if any	<input type="checkbox"/> N/A								
6.2(b) Documentary evidence	<p>Summary of contents:</p> <p style="text-align: right;"><input type="checkbox"/> N/A</p> <p>Reason (if known) that evidence was read and witness not present:</p> <p><input type="checkbox"/> I/U <input type="checkbox"/> N/A</p> <p>Were any submissions made by any party concerning the reading out evidence rather than calling the witness?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If Yes, which party?</p> <p><input type="checkbox"/> Prosecutor <input type="checkbox"/> Civil Party <input type="checkbox"/> Other:</p> <p>Details:</p> <p>Did any party disagree with the content?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If yes, which party?</p> <p><input type="checkbox"/> Prosecutor <input type="checkbox"/> Civil Party <input type="checkbox"/> Other:</p> <p>Details:</p>								
6.2(d) Defence witnesses <i>(use extra sheets as necessary)</i>	<p>Total Number of defence witnesses:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 25%;">Name/ Number:</td> <td style="width: 25%;">Gender: M / F / Other</td> <td style="width: 25%;">Protection measures? Y / N</td> <td style="width: 25%;">Adult/ Juvenile: A / J</td> </tr> </table> <p>Challenges to the witness or evidence by a party?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If there were any challenges, which party made them?</p> <p><input type="checkbox"/> Prosecution <input type="checkbox"/> Civil Party <input type="checkbox"/> Other:</p> <p>Details of challenge:</p> <p>Summary of testimony:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 25%;">Name/ Number:</td> <td style="width: 25%;">Gender: M / F / Other</td> <td style="width: 25%;">Protection measures? Y / N</td> <td style="width: 25%;">Adult/ Juvenile: A / J</td> </tr> </table> <p>Challenges to the witness or evidence by a party?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If there were any challenges, which party made them?</p> <p><input type="checkbox"/> Prosecution <input type="checkbox"/> Civil Party <input type="checkbox"/> Other:</p> <p>Detail:</p> <p>Summary of testimony:</p>	Name/ Number:	Gender: M / F / Other	Protection measures? Y / N	Adult/ Juvenile: A / J	Name/ Number:	Gender: M / F / Other	Protection measures? Y / N	Adult/ Juvenile: A / J
Name/ Number:	Gender: M / F / Other	Protection measures? Y / N	Adult/ Juvenile: A / J						
Name/ Number:	Gender: M / F / Other	Protection measures? Y / N	Adult/ Juvenile: A / J						

6. PRESENTATION OF EVIDENCE	
6.2(e) Expert evidence (use extra sheets as necessary)	<p>Type: <input type="checkbox"/> Forensic <input type="checkbox"/> Medical <input type="checkbox"/> Other: <input type="checkbox"/> N/A</p> <p>Expert present or statement read out? <input type="checkbox"/> Present <input type="checkbox"/> Absent <input type="checkbox"/> N/A</p> <p>If absent, reason given: <input type="checkbox"/> I/U</p> <p>Did other parties agree with the expert evidence? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If No, who and why? <input type="checkbox"/> Prosecutor <input type="checkbox"/> Civil Party <input type="checkbox"/> Other: Detail:</p> <p>If read out and expert not present, were any submissions concerning the reading out of the evidence made by any party? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If Yes, which party? <input type="checkbox"/> Prosecutor <input type="checkbox"/> Civil Party <input type="checkbox"/> Other: Detail:</p>
6.2(f) Protection Measures	Describe any particular witness protection measures undertaken:
6.2(g) Defence put forward (e.g., alibi, self-defence, etc.)	Summary: <input type="checkbox"/> N/A
6.3 CIVIL PARTIES	<input type="checkbox"/> N/A
6.3(a) Documentary evidence	<p>Summary of contents: <input type="checkbox"/> N/A</p> <p>Reason (if known) that evidence was read and witness not present: <input type="checkbox"/> I/U <input type="checkbox"/> N/A</p> <p>Were any submissions concerning the reading out of evidence (rather than calling the witness) made by any party? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If Yes, by whom, and why? <input type="checkbox"/> Prosecutor <input type="checkbox"/> Defence <input type="checkbox"/> Other: Details:</p> <p>Does any party disagree with the content of the evidence? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If Yes, which party? <input type="checkbox"/> Prosecutor <input type="checkbox"/> Defence <input type="checkbox"/> Other: Details:</p>

7. RIGHT TO FULL DISCLOSURE/ EQUALITY OF ARMS

<p>7(a) Was anything said during the hearing, or did anything happen, to suggest that any party was not given the opportunity to present evidence?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, which party?</p> <p><input type="checkbox"/> Prosecutor <input type="checkbox"/> Defence <input type="checkbox"/> Civil Party</p> <p>Comment:</p> <p>If yes, was a formal application made for the evidence to be admitted?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>7(b) Was there anything to suggest that any party was not given the opportunity to question witnesses?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If yes, which party?</p> <p><input type="checkbox"/> Prosecutor <input type="checkbox"/> Defence <input type="checkbox"/> Civil Party</p> <p>Comment:</p> <p>If yes, was a formal application to question the witness made at any stage during the hearing?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>7(c) Was there anything to suggest that any party did not have an opportunity to view the case file prior to the hearing?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>If yes, which party did not have access to the case file prior to the hearing?</p> <p><input type="checkbox"/> Prosecutor <input type="checkbox"/> Defendant (if self-represented)</p> <p><input type="checkbox"/> Defence Counsel <input type="checkbox"/> Civil Party</p> <p>Comment: [Please provide details as to why it is suggested that the relevant party did not have access to the case file]</p>
<p>7(d) Was the defendant or defence counsel denied the opportunity to have the last word?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p><input type="checkbox"/> Defendant <input type="checkbox"/> Defence Counsel</p> <p>If no, comment:</p>



8. INDEPENDENCE, IMPARTIALITY AND CONDUCT OF THE JUDGE(S) INVOLVED

8(a) Did the judge(s) behave in an intimidating manner towards any party?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please explain:
8(b) Did the judge(s) make discriminatory or biased comments about any party?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, was the discriminatory comment based on the party's: <input type="checkbox"/> Race <input type="checkbox"/> Gender <input type="checkbox"/> Religion <input type="checkbox"/> Other: Please explain the nature of the comment:
8(c) Did any party leave the courtroom during the hearing?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, which party? <input type="checkbox"/> Judge <input type="checkbox"/> Prosecutor <input type="checkbox"/> Lawyer Please explain reason: <input type="checkbox"/> I/U
8(d) Did any party speak on a mobile telephone during the hearing?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, which party: <input type="checkbox"/> Judge <input type="checkbox"/> Prosecutor <input type="checkbox"/> Lawyer How? <input type="checkbox"/> Spoke briefly and hung up <input type="checkbox"/> Conducted a conversation If yes, was the ring tone: <input type="checkbox"/> Audible <input type="checkbox"/> On silent/did not ring

9. DELIBERATION

Finish time:			
9(a) Was there a deliberation?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, how long: If no, comment:	<input type="checkbox"/> Next day	<input type="checkbox"/> I/U
9(b) Was there anything to suggest that any party entered the deliberation room during the deliberation?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, which party? <input type="checkbox"/> Prosecution <input type="checkbox"/> Civil Party	<input type="checkbox"/> N/A <input type="checkbox"/> Defence <input type="checkbox"/> Court Official	<input type="checkbox"/> I/U

10. ASSESSMENT OF EVIDENCE

10(a) Did the evidence presented substantiate the necessary elements of the offence?	Elements of offence:	Relevant evidence:	
10(b) Summaries of closing arguments:	Prosecution	Defence	Civil Party

11. VERDICT

11(a) Was a verdict delivered on the day of the hearing?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	If no, was the date on which the verdict would be delivered announced during the hearing?	
	<input type="checkbox"/> Yes	<input type="checkbox"/> No		
11(b) Date of verdict:	_____			<input type="checkbox"/> N/A
11(c) How many judges were present when the verdict was delivered?	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> I/U
11(d) Was the verdict announced in public?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> I/U	
	If no, please comment:			
11(e) Summary of judge's reasons for verdict:				<input type="checkbox"/> I/U
11(f) Were the lawyers representing the parties present during the verdict?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> N/A	<input type="checkbox"/> I/U
11(g) Was there anything to suggest that the judge based his or her verdict on evidence that was not in the case file or presented at trial? If yes, please provide details:	<input type="checkbox"/> Yes	<input type="checkbox"/> No		

TOTAL TIME OF HEARING:

ADDITIONAL OBSERVATIONS:



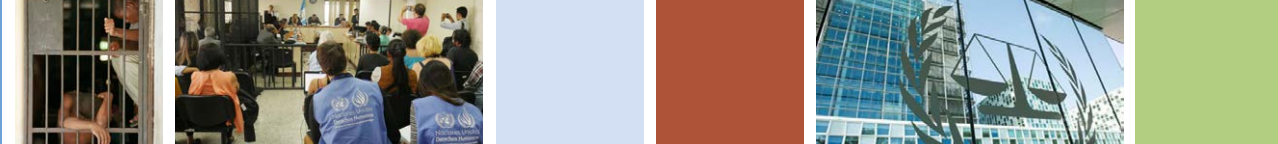
B. Individual Defendant Information

12. CRIMINAL RESPONSIBILITY					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
12(a) Was the defendant a juvenile at the time the offence was committed? (Please complete Annex 1 for each juvenile defendant)	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

13. LEGAL BASIS OF CHARGES					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
13(a) Charge against defendant	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanour <input type="checkbox"/> Petty Offence	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanour <input type="checkbox"/> Petty Offence	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanour <input type="checkbox"/> Petty Offence	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanour <input type="checkbox"/> Petty Offence	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanour <input type="checkbox"/> Petty Offence
Offence: Relevant law: Relevant article of the law:					
13(b) Elements of offence to be proven in order to secure a conviction:					

C. Pre-Trial Rights

14. RIGHT TO LIBERTY AND TO BE TRIED WITHOUT UNDUE DELAY					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
14(a) Date of alleged offence:	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U
14(b) Date of arrest:	Date: _____ <input type="checkbox"/> I/U <input type="checkbox"/> N/A	Date: _____ <input type="checkbox"/> I/U <input type="checkbox"/> N/A	Date: _____ <input type="checkbox"/> I/U <input type="checkbox"/> N/A	Date: _____ <input type="checkbox"/> I/U <input type="checkbox"/> N/A	Date: _____ <input type="checkbox"/> I/U <input type="checkbox"/> N/A
14 (c) Was there judicial supervision?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U
14 (d) Was there provisional detention?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I/U
If Yes, on what date did provisional detention begin?	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U
On what date did provisional detention finish?	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U	Date: _____ <input type="checkbox"/> I/U
14 (e) Was there an application for bail?	<input type="checkbox"/> Yes	<input type="checkbox"/> No		<input type="checkbox"/> I/U	
If Yes, Summary of defence application and any proposed conditions of judicial supervision:					<input type="checkbox"/> N/A
Summary of prosecutor's comments:					<input type="checkbox"/> N/A
Summary of civil party(ies) comments:					<input type="checkbox"/> N/A
Judge's decision and reasons:					<input type="checkbox"/> N/A



15. RIGHTS DURING INTERROGATION AND THE PROHIBITION AGAINST TORTURE

Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
15(a) Was there anything to suggest the defendant was interrogated without a lawyer present? If yes, please explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
15(b) Was there anything to suggest that threats were made to coerce the defendant into confessing to the alleged crime? If yes, please explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
15(c) Was there anything to suggest that violence and/or torture were used to coerce the defendant into confessing to the alleged crime? If yes, please explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

16. PRE-TRIAL RIGHT TO SPEAK WITH A LAWYER AND RIGHT TO ADEQUATE TIME AND FACILITIES TO PREPARE A DEFENCE

Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
16(a) Was there anything to suggest that the defendant's lawyer was assigned on the day of the appeal hearing? If yes, please explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
16(b) Was the issue of adequate time and facilities for preparation raised by the defence? If yes, please explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

D. Trial Rights

17. RIGHT TO BE PRESENT AND TO LEGAL REPRESENTATION					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
17 (a) Was the defendant present?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
17 (b) Was the defendant represented by a lawyer?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
17(c) Did any of the lawyers represent more than one defendant?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, was there a conflict between the interests of two or more of the defendants represented by the same lawyer? Details:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

18. PRESUMPTION OF INNOCENCE					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
18(a) Did the defendant appear before the court in prison uniform?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
18(b) Was the defendant handcuffed throughout the hearing?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
18(c) Were any statements made by the judge about the guilt of the defendant prior to the delivery of the verdict? If yes, please provide details:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
18(d) Was there anything to suggest that the judge drew an inference of guilt from the silence of the defendant? If yes, please explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A



19. PROHIBITION AGAINST DOUBLE JEOPARDY

Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
19(a) Was there anything to suggest that the defendant had been tried and sentenced for this offence previously? If yes, please explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

20. PROHIBITION AGAINST THE RETROSPECTIVE APPLICATION OF PENAL LEGISLATION

Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
20(a) Was the law under which the defendant was charged in force on the date the offence was allegedly committed? If no, please explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

21. VERDICT I/U

Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
21(a) What was the court's ruling?	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial	<input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> Re-investigated <input type="checkbox"/> Pre-trial
21(b) Did the judge refer to the article of the law under which the defendant had been charged?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
21(c) Did the judge refer to the evidence presented?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
21(d) If the defendant confessed to the alleged offence at any stage prior to or during the trial, did the judge rely on the confession as evidence? (if no confession – N/A)	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/> I/U

22. SENTENCE <input type="checkbox"/> N/A <input type="checkbox"/> I/U					
Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
22(a) Was the defendant sentenced to imprisonment? Length: Prison: Probation:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
22(b) Was the defendant ordered to pay a fine? Amount:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
22(c) Was the Defendant ordered to pay compensation? Amount:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
22(d) Was there any alternative sentence? If yes, please provide details:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
22(e) Was the sentence heavier than that which could have been imposed at the time of the crime?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

ANNEX: JUVENILE DEFENDANT

23. AGE					
Juvenile Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
23(a) Age at the time of the offence	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17
23(b) If the juvenile defendant was under the age of 14 at the time of the offence, did the judge immediately acquit him/her?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

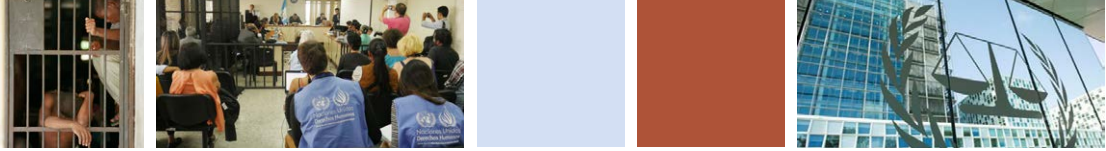
24. PRE-HEARING DETENTION					
Juvenile Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
24(a) Age at the time of pre-hearing detention?	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17 <input type="checkbox"/> N/A	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17 <input type="checkbox"/> N/A	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17 <input type="checkbox"/> N/A	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17 <input type="checkbox"/> N/A	<input type="checkbox"/> <14 <input type="checkbox"/> 14 – 15 <input type="checkbox"/> 16 – 17 <input type="checkbox"/> N/A
24(b) Was there anything to suggest that the juvenile was not separated from adults? Comment:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

25. APPEAL HEARING <input type="checkbox"/> N/A					
Juvenile Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
25(a) Were any measures taken to protect the privacy of the juvenile during the hearing? Details:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
25(b) Did the judge give each juvenile the chance to express his or her views freely, either personally or through a representative such as a lawyer or parent?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

26. FINAL SENTENCE

Juvenile Defendant	Defendant 1	Defendant 2	Defendant 3	Defendant 4	Defendant 5
26(a) Was the defendant sentenced to imprisonment? Probation:	<input type="checkbox"/> Yes <input type="checkbox"/> No Length: Prison: Length:	<input type="checkbox"/> Yes <input type="checkbox"/> No Length: Prison: Length:	<input type="checkbox"/> Yes <input type="checkbox"/> No Length: Prison: Length:	<input type="checkbox"/> Yes <input type="checkbox"/> No Length: Prison: Length:	<input type="checkbox"/> Yes <input type="checkbox"/> No Length: Prison: Length:
26(b) Was the defendant ordered to pay a fine or compensation? Amount:	<input type="checkbox"/> Fine <input type="checkbox"/> Compensat. <input type="checkbox"/> Neither	<input type="checkbox"/> Fine <input type="checkbox"/> Compensat. <input type="checkbox"/> Neither	<input type="checkbox"/> Fine <input type="checkbox"/> Compensat. <input type="checkbox"/> Neither		
22(e) Was the sentence heavier than that which could have been imposed at the time of the crime?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No





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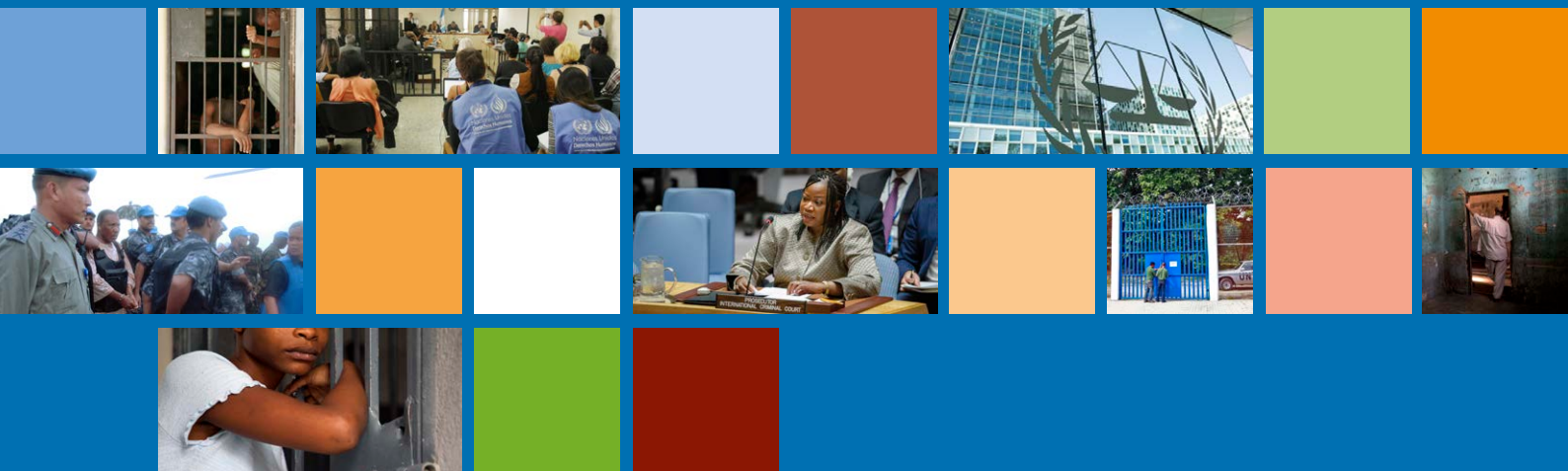
MANUAL ON human rights MONITORING

This chapter forms part of the revised *Manual on Human Rights Monitoring*. Following the success of its first edition, published in 2001, the Office of the United Nations High Commissioner for Human Rights has updated and restructured the *Manual*, to provide the latest and most relevant good practices for the conduct of monitoring work by human rights officers, under the approach developed and implemented by the Office.

The revised *Manual* provides practical guidance for those involved in the specialized work of human rights monitoring, particularly in United Nations field operations. This publication comprehensively addresses all phases of the human rights monitoring cycle, setting out professional standards for the effective performance of the monitoring function. It also outlines strategies to maximize the contribution of monitoring to the protection of human rights.

While each chapter has been made available separately, linkages with other chapters are highlighted throughout. A full reading of the *Manual* is thus recommended for a comprehensive understanding of human rights monitoring.

This tool has been tailored to the everyday needs of United Nations human rights officers in the field. The methodology it sets out would, nonetheless, be of equal relevance to others tasked with human rights monitoring functions. Its wider use and application by regional organizations, national human rights institutions, non-governmental organizations, relevant governmental bodies and others is strongly encouraged.



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