

# Supporting Trial Monitoring in Libya

**A handbook for democratic transition  
through justice and accountability**





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No Peace Without Justice (NPWJ) is an international non-profit organisation founded by Emma Bonino and born of a 1993 campaign of the Transnational Radical Party (TRP) to protect and promote human rights, democracy, the rule of law and international justice.

NPWJ undertakes its work within three main thematic programs: International Criminal Justice; Female Genital Mutilation; and Middle East and North Africa Democracy. NPWJ is a Constituent Association of the TRP and a Member of its Senate and a founding member of NGO Coalition for the International Criminal Court and a member of its Steering Committee.

NPWJ would like to thank Pipina Katsaris for drafting this Handbook as well as the Libyan legal professionals whose feedback and insights contributed to this publication.



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## INTRODUCTION

Trial-monitoring projects have been implemented in various contexts, both at the international and national levels. They constitute a unique tool for those who are interested in enhancing the fairness, effectiveness and transparency of judicial systems. Indeed, at its most basic level, trial monitoring is an activity which supports the right to a public trial and contributes to the transparency of the judicial process. Trial monitoring can serve as a diagnostic tool for assessing the manner in which key aspects of the justice system function and can therefore play a unique role in supporting judicial reforms, especially when organised as a wider and longer-term project.

### **a. Background to the drafting of the Handbook**

Following the Libyan revolution that began in February 2011, there is a clear desire and expectation within Libya for justice and accountability to form part of the backbone of Libya's transition from dictatorship to democracy. In particular, Libya has to address past violations during the conflict in 2011 (and subsequent events) and during the 42 years of the Gaddafi regime, to support an effective transition from authoritarianism to democracy and the rule of law. To reach these goals, it is important for the nascent Libyan civil society to have the necessary capacity and the knowledge to engage effectively with political actors and with grassroots constituencies in the conceptual development and implementation of transitional justice solutions.

No Peace Without Justice (NPWJ) has been working on the Libyan transition since early 2011 and has been on-the-ground since early October 2011. It has had a permanent presence in Tripoli since March 2012 and has been working to create a network of Libyan actors to engage different sectors of Libyan society on transitional justice. Its work in Libya combines the provision of transitional justice information (both in cooperation with the institutions and in partnerships with civil society), including on outreach and documentation, with research and analysis of public expectations and perceptions.

NPWJ is engaging civil society from across the country, partnering with a wide range of organisations, including both more established and emerging ones. It aims to help build and reinforce the capacity of Libyan actors to play their role in incorporating accountability, human rights and the rule of law in the democracy transition and post-conflict reconstruction of their country. NPWJ has organised a number of successful outreach campaigns on transitional justice across Libya, including a very successful Youth Day, organised in collaboration with the Libya Youth Union. NPWJ has also facilitated the establishment and ongoing work of an informal Steering Committee, comprised of a diverse range of Libyan civil society, including NGOs, academics, lawyers and media, public authorities and opinion-leaders.

On the institutional side, NPWJ is working with the Ministry of Justice, and its Higher Judicial Training Institute, in providing training and expertise to the judges and prosecutors who have been charged with the enormous task of dealing with those suspected to have committed or directed atrocities during the conflict, and during the previous regime. One hundred and thirty-seven judges and prosecutors have so far received training about the basic components of both international and Libyan law as it relates to the atrocities committed, discussed strategies for collecting and analysing the large quantities of information needed to successfully prosecute such complex crimes and covered a number of important practical issues. NPWJ has also organised six colloquiums with civil society and the legal profession about Libya's transitional justice process and judicial reform.

NPWJ has also established a trial monitoring program, which is being run in collaboration with the Tripoli Bar Association and aims to promote transparency and accountability within the Libyan judiciary. NPWJ facilitated training in The Hague and a study

visit to Tunisia for three senior lawyers who then returned to Libya to share their experience in trial monitoring principles with junior lawyers. The conclusion of this training was the establishment of the Libyan Trial Monitoring Network, which aims to engage lawyers, civil society and the media in monitoring Libya's trials concerning the conflict and previous human rights violations in a professional and constructive manner.

## **b. Aims, content and background to the Handbook**

To maximise their effectiveness, trial-monitoring activities should be designed to respond to the concrete needs of a specific justice system in a particular domestic context. The present Handbook aims at assisting the efforts of the developing network for trial monitoring in Libya in establishing an effective project that will have the ability to follow high-profile cases as they arise and to contribute to justice sector reforms in the national justice system. It can be used as a check-list comprising important steps for the establishment of trial monitoring projects and as a source of guidelines for their operations.

The Handbook comprises of three main parts: first, it describes the concept of trial monitoring, its scope and its working methodology. Second, it provides certain guidelines that project managers in particular may wish to follow in order to set up a trial-monitoring project on solid foundations. Third, in the context of implementing the project, the Handbook outlines certain best practices in connection with each of the main activities of a trial-monitoring project, namely information gathering, analysis, internal and external reporting, and other advocacy. Finally, a number of sample documents are included in the annexes, providing a point of reference for Libyan monitors to develop their own working documents and monitoring methodology.

The present Handbook is largely inspired by the extensive experience of the Organization for Security and Cooperation in Europe (OSCE) in trial monitoring activities, as well as of such activities carried out in other parts of Africa and at the International Criminal Court. It is firmly based on the best practices and lessons learned and distilled in the 2012 Revised edition of the document "Trial Monitoring: A Reference Manual for Practitioners" published by OSCE/Office for Democratic Institutions and Human Rights (ODIHR), from which much of this Handbook is drawn. This Handbook endeavours to adapt the various trial-monitoring practices to the Libyan context and to the specific circumstances prevalent in the country.

NPWJ wishes to thank Pipina Katsaris for drafting the Handbook, based on the documents described above and informed by her communications with the staff of NPWJ and through direct discussions with Libyan legal professionals interested in participating in a trial monitoring network, which took place during a field visit in the country from 14 to 17 June 2013.

## PART 1: GENERAL CONCEPTS REGARDING TRIAL MONITORING ACTIVITIES

### Chapter 1 Trial Monitoring: General functions, scope and limits

#### 1.a General functions of trial monitoring

At its essence, trial monitoring increases the transparency of the judicial process and is an expression of the right to a public trial,<sup>1</sup> carried out by persons with a professional interest in a case. Monitoring individual cases may serve to call attention to serious deficiencies in the judicial process, as well as to improve the fair and effective administration of justice. In the longer term, trial monitoring can raise the awareness of judicial and other legal actors regarding human rights and fair trial standards. In turn, this can lead to an increase of the public's confidence in the judicial system.

Depending on its design, trial monitoring can serve wider justice sector reforms. By gathering accurate and objective information on how justice is administered in individual cases, it can project how justice is administered more broadly in the system. The reliable data and conclusions of such a project can benefit the judicial, executive and legislative branches of government, local civil society, the public and the international community. Its recommendations can further influence and guide stakeholders to remedy shortcomings and strategise positive reforms. For instance, trial monitoring analysis and recommendations can encourage judges to cease practices that do not comply with fair trial standards or to implement best practices from elsewhere to solve problems in their courtroom. They can also assist the government and international donors to prioritise the allocation of funds in areas where they are most needed, encourage the parliament to amend laws to meet international human rights standards, or prompt NGOs to target their efforts in problematic areas previously unseen.

Last but not least, trial monitoring projects can enhance the knowledge of judicial, legal and human rights professionals regarding human rights standards, as well as build the capacity of local lawyers and other professionals who participate as monitors.

#### 1.b Scope of monitoring activities

The coverage of trial monitoring activities may vary depending on how it is conceptualised, the priorities for action, numbers of monitors and numbers of cases. Strictly perceived, trial monitoring may be confined to observing closely public court proceedings and to focusing on the conduct of judges, the prosecution, the defence and others present at the trial. This kind of project may also obtain access to public court documents, such as the indictment and judgment, and include these in the analysis. Often, trial monitoring in its strict sense is selected for projects that may be new, have a short overall duration, or have inadequate access to legal professionals and other persons or institutions involved in the justice system. It may also be the most convenient course of action for monitors who have limited time to devote to the project's activities and may therefore be unable, due to the circumstances, to engage more widely with the justice system as part of the monitoring team.

However, trial monitoring in its strict sense sees only a small part of the whole picture of the legal process. In order to understand the root causes of problems observed in trial proceedings, to verify information gathered in trials, and to make sustainable recommendations, it may be necessary to observe the functioning of additional institutions related to the courts or to seek further sources of information.

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<sup>1</sup> See Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR).

A number of programs have therefore defined their activities in a broader sense, as justice sector or legal system monitoring.<sup>2</sup> This would comprise the observation not only of trials, but also of other aspects of the proceedings or other institutions that are in some way connected to the courtrooms, such as prisons, judicial training institutions, disciplinary bodies, bar associations and their process of admitting, training or disciplining lawyers, etc.<sup>3</sup> Understandably, wider monitoring of the justice sector is a demanding task and would require additional time, diverse resources and expertise, as well as, possibly, special access agreements.

Overall, trial monitoring projects try to strike a balance between strict trial monitoring and broader justice system monitoring, so that they can cover the areas necessary to achieve their aims, while, at the same time, avoid overstretching their capacities or losing their focus. Therefore, even trial monitoring projects that choose to have a narrower scope regarding their activities, may seek on a case-by-case basis to make contact with other actors or institutions in the wider justice system.

### 1.c Limits of trial monitoring

In addition to the limits of strict trial monitoring described above, trial monitoring may not always be the most appropriate activity to support justice reform. This can be the case in situations where there is no political will for monitoring or for reform, or where governments are actively complicit in violating fair trial standards and selectively impede monitors' access, with the aim of using the presence of monitors in certain proceedings to legitimise a flawed process. Moreover, if available monitors are more interested in the outcome of a concrete case, such as by providing advice to a certain party to the proceedings and, therefore, directly influencing the substance of the verdict, rather than maintaining a more distant and objective stance in relation to the case, it is best that they do not seek to undertake trial monitoring. Consequently, projects should carefully consider both the strengths and limits of trial monitoring in determining whether and how they can achieve their aims.

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2 Justice-sector and legal-system monitoring can generally be used as synonyms (e.g., the former term is used in the OSCE Mission to Bosnia and Herzegovina (BiH) and the OSCE Presence in Albania, while the latter is used in the OSCE Mission in Kosovo).

3 For example, if a detained defendant mentions in court that the defence was not prepared with the defendant's lawyer because the telephone at the detention centre is located within hearing-range of the security guards' sitting area, access to the detention facility may be sought to verify whether this information is accurate and whether this is a wider practice.

## Chapter 2 Basic Principles of trial monitoring projects

Three main principles regulate the conduct of trial monitoring projects and allow them to achieve their goals. These are the principles of non-intervention in the judicial process; of objectivity; and of agreement with the local authorities.

### 2.a Principle of non-intervention in the judicial process

The principle of non-intervention (or non-interference) aims at respecting judicial independence. The precept of judicial independence demands that “both the judiciary as an institution and the individual judges administering justice in particular cases must be able to exercise their professional responsibilities without being unduly influenced by the executive, the legislature, or any other inappropriate sources”.<sup>4</sup> Therefore, non-intervention requires that, through its design and practices, trial monitoring not only respects but also strengthens the independence of the courts. Similarly, due respect should be paid to the independence of prosecutorial authorities and of lawyers. The very fact of monitoring a court might urge judges and legal actors to present their best self. This does not of itself constitute inappropriate intervention: on the contrary, this can be considered a positive effect that opening a trial to the public can have in limiting arbitrariness and breaches of human rights.

Different projects have had different interpretations of the principle of non-intervention and have adjusted their activities accordingly. At a minimum, all trial monitoring projects agree that non-intervention signifies the necessity to avoid interacting with the court on the merits of concrete cases and to refrain from influencing –directly or indirectly– their outcome, even when this influence might result in a fairer decision in an individual case.

Nonetheless, certain projects have implemented non-intervention in an absolute manner and have required that their monitors avoid any interaction with judges, prosecutors, or lawyers. Such an approach aims at ensuring that the demeanour or the views of monitors do not influence the court in its decision-making or other legal actors in how they present their case in court. It further seeks to prevent any misperception that monitors have attempted to exercise such influence. Rather, discussions with the judiciary in these projects are undertaken at higher levels or in more collective settings, i.e. only monitoring managers meet with higher judicial officials or they exchange views with legal actors at roundtables organised to discuss report findings.

However, on the basis of clear guidelines, many projects allow communication even of monitors with judicial officials on general legal matters, administrative challenges or issues that do not have an impact on the officials’ duty to decide independently, impartially and in accordance with the law and evidence. For instance, monitors can ask the judges’ permission to access a court-file or seek their opinion on general legal trends. This approach is based on the conviction that judicial independence should not be invoked as an excuse to limit disproportionately the judges’ freedom of expression and opinion compatible with their function, nor be used to cover up bad behaviour.

### 2.b Principle of objectivity

According to the principle of objectivity or impartiality, trial monitoring projects should examine and report accurately and reliably on legal proceedings and the conduct of all legal professionals involved, without any bias in favour or against any legal actor or institution. Consequently, a project is able to identify concerns and good practices deriving from all sides, while its approach encourages all stakeholders to accept its findings, conclusions and recommendations. Although priorities can be set, for example when deciding to compile a thematic report with shortcomings in the effectiveness of defence counsel, this does not mean that the

<sup>4</sup> See Office of the United Nations High Commissioner for Human Rights, “Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers”, Professional Training Series #9, 2003, p. 115.

conduct of other legal actors goes unnoticed. Rather, future reporting can be diversified to address challenges pertaining to other legal professionals as well.

A broad perspective on concerns allows a project to determine the level of contribution of different stakeholders to an issue of concern. For instance, in examining the reasons for the failure to complete a trial within a reasonable time, a monitor needs to assess a wide range of issues, potentially including the judges' trial management skills, the ability of the prosecution to prepare and present the evidence adequately, the intentions of the defence to speed up or delay the proceedings, any strikes of court administration personnel, or other practical obstacles in producing the detained defendant before the court.

A project's objectivity and perception of impartiality should also be maintained vis-à-vis its possible partner organisations and its donors. Regarding possible partner organisations, it is generally considered that trial monitoring projects should not operate under the auspices of organisations that provide direct assistance to the judicial process. This can cause complications, such as when trial monitoring is undertaken by a network of lawyers affiliated with a bar association, which of necessity is directly connected to the judicial process broadly speaking. In that situation, it will be necessary to ensure its independence from any directions the bar association may wish to provide and to make clear to other stakeholders that it is not bound by such directions. It will be important to establish it by word and by deed. For example, such a network of lawyers should not neglect examining the conduct of lawyers participating in monitored proceedings, who may even be fellow-members of the bar, and it must have the resolve to report on their shortcomings during the proceedings.

Similarly, a monitoring project should be mindful of the need to be transparent and to make strategic moves in relation to the funding of its operations. It is imperative that a monitoring project does not unduly compromise its methodology or aims by blindly following donors' instructions, as donors may have at times different political or other interests than those of the monitors. It is advisable that such issues be clarified at the beginning of the cooperation, in order to avoid subsequent unhelpful interventions by donors in the work of the monitoring project or misunderstandings.

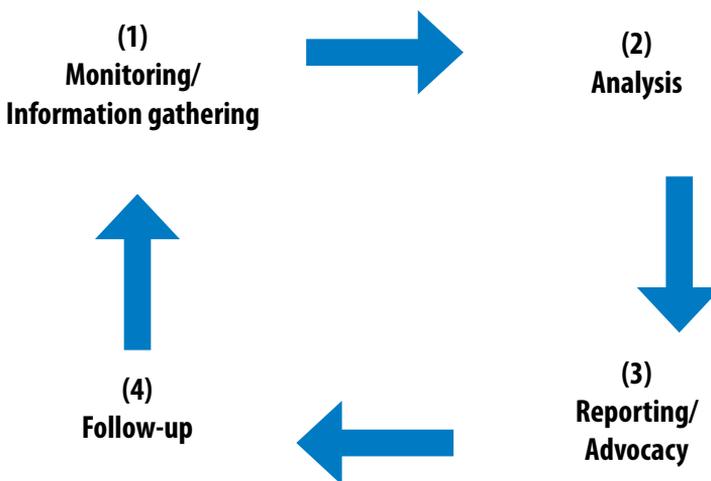
Finally, considering that increasing the public's confidence in the justice system is among the ultimate goals of trial monitoring projects, monitors should be aware that achieving this may be a lengthy process for systems undergoing reforms. Therefore, they must not conceal or deliberately underestimate concerns in order to present a better picture of legal proceedings than what is really the case. Rather, by recommending improvements and working towards their implementation, a project can contribute more steadily to raising the public's confidence in the administration of justice.

## 2.c Principle of agreement

Parties to International Covenant on Civil and Political Rights (ICCPR) and to other international and regional human rights documents, such as the African Charter on Human and Peoples' Rights (ACHPR), have undertaken to respect a set of fair trial and human rights standards, such as the right to a public and fair hearing, the right to be tried without undue delay and the right to be judged by an independent and impartial tribunal. In their discussions with the national authorities, trial monitoring projects can highlight the role they can play in assisting a State with its legal obligation to give effect to these rights. At the operational level, reaching a common understanding with the national authorities about the purpose of monitoring can lift obstacles to access, make the stakeholders more receptive to monitoring conclusions and encourage them to implement recommendations promptly. Consequently, representatives of a trial monitoring project should have a clear understanding of its purpose and *modus operandi*, so that they can persuasively convey these to the national authorities to obtain agreement and general support for the project's activities.

### Chapter 3 General working methodology of trial monitoring: The Trial Monitoring Cycle

Most trial monitoring projects, particularly those which engage for a longer term in the justice system, apply a similar working methodology in their operations. This consists of four consecutive stages: 1) monitoring and other information gathering; 2) analysis of monitoring findings; 3) reporting and other advocacy on monitoring findings; and 4) following-up on the implementation of recommendations. To follow-up on whether recommendations have taken effect usually requires further information gathering, so additional monitoring and analysis may be necessary. Accordingly, the entire process conceptually resembles a “cycle”, otherwise known as the “trial monitoring cycle”, which is schematically represented as:



The first step includes monitoring in courts and/or other information gathering regarding various aspects of the justice system. The second step refers to the analysis –review and verification – of the findings in accordance with domestic and international legal standards, after which conclusions can be reached and recommendations can be formulated. An initial analysis of findings may be done by an experienced monitor or undertaken by a specialised legal analyst within the project who can further review similar findings in several cases. The third step refers to reporting to external actors on the findings and conclusions. The project may also choose to use other advocacy activities to implement its recommendations alternatively or in addition to reporting. Although certain projects may opt for completing a monitoring activity with the issuance of a report, it is generally deemed important to proceed to the fourth step of the monitoring cycle and follow up through targeted monitoring whether and how the recommendations made in a report are implemented.

It may be noted that the different steps may at times overlap, since it is not uncommon to seek further information to complement the analysis made on previous monitoring findings. It is, nevertheless, significant that the entire monitoring team has a good understanding of the trial monitoring cycle and the different activities each step involves. In this way, a project can ensure, among other things, that information gathered is not shared externally prior to its analysis or reporting. Moreover, breaking down the different activities allows project managers to compose the monitoring teams effectively, taking into account the number and expertise of persons required for each step of the cycle.

## PART 2: CONSIDERATIONS PRIOR TO ESTABLISHING A TRIAL MONITORING PROJECT

This part of the Handbook notes the principal considerations for setting up a trial monitoring project and as such is mainly addressed to project organisers and managers. Such considerations may again come into play if project managers need to adjust the monitoring structure to carry out activities more efficiently or when there is a perceived need to diversify or expand the project's focus.

### Chapter 4 Conducting a preliminary assessment

Prior to establishing a trial monitoring project, project organisers will already have a general idea regarding the chief problems in a judicial system and whether there are national professionals with the necessary credentials, will and ability to support reforms by trial monitoring. Nonetheless, making an informed preliminary assessment of the domestic context and of the capacity to create a concrete monitoring structure will assist project managers to delineate accurately the focus of their endeavour, organise an adequately-staffed team and present a complete and realistic plan to donors and other partners.

#### 4.a Evaluating in-country conditions

A preliminary assessment should first evaluate the current situation in the country as regards the manner in which the justice system functions and its respect for fundamental fair trial rights in practice. Apart from personal experience that local project managers may have, a review of the applicable laws and of prior reports on human rights compliance in the justice system can provide additional insight on the matters that need prompt reform. Consultations with judicial authorities and domestic and international organisations engaged in the field of justice can be of great importance in indicating areas where trial monitoring can be of added value. Such consultations can also serve to gauge the reactions of the national authorities towards the creation of a monitoring project.

Most trial monitoring projects tend to focus, at least initially, on the criminal justice system, considering the grave effect it can have on a person's life and freedom, in addition to the interest of the wider public in criminal responsibility. The civil and administrative justice systems, however, may well merit the attention of trial monitoring projects, since possibly even more citizens resort to their jurisdiction in transitional societies, while the decisions of these courts can also have serious consequences on an individual's rights and legal interests.

During preliminary consultations, it is also possible to record the interest of other entities that have the capacity to cooperate or partner with a trial monitoring project, if not for all its activities, at least in certain aspects. Domestic or international organisations may be willing to become part of a network or provide analysis and assistance in processing findings, or to contribute to the capacity building of the monitoring team.

It is also crucial that the preliminary assessment record the activities of other organisations, in order to ensure that the trial monitoring project does not duplicate existing work performed effectively by other bodies. Rather, consultations can reveal areas for synergy of efforts, through formal partnership or information-sharing agreements. For example, whereas a trial monitoring project may gather information from defendants in detention regarding their "access to justice" issues – including whether they receive the summons of the court, have unsupervised communication with their lawyers, or have been subjected to pressure while in detention, etc. – another organisation may have more specialised expertise in assessing the conditions of detention, monitoring hunger strikes, or examining cases of torture and inhumane treatment in prisons and detention centres.

## 4.b Evaluating organisational capacities

A project's priorities, scale, duration, structure and methodology will also depend on the anticipated human and financial resources. Project organisers should carefully match, on the one hand, the desired aims and form of the trial monitoring project with, on the other hand, the professionals interested to join the project and the available funds. Indicatively, when monitors are experienced lawyers, expectations can be raised as to their analytical skills for internal and external reporting. However, if lawyers contribute to the monitoring project only on a voluntary basis and in parallel to their other duties, expectations may be lowered as regards the time and effort they can reasonably devote to it. Likewise, the number and location of available monitors will determine the project's scale and geographic coverage. The prior or current work of a professional or of an organisation seeking to engage in trial monitoring may also have an impact upon the ability to conduct these activities effectively. Project organisers should ensure that monitors who participate in the project do not carry out activities that jeopardise the perception of their objectivity and that of the project as a whole.

To assess the organisational capacity, project organisers may also opt to hold a wider meeting with interested individuals, to outline the initiative and the stage it is at, gauge their interest to become involved and invite them to present their ideas for the way forward.<sup>5</sup>

## 4.c Evaluating anticipated access

As noted, the type of access to court proceedings and to other aspects of the justice system that the project is likely to have will influence its form and focus. If access to investigations or to court files is never allowed by law or by practice to any third party, it may be unrealistic to construct a project proposal around having that type of access. If a project intends to monitor certain high-profile cases, but accessing the court will most probably be impeded by practical obstacles, such as checkpoints by hostile actors with whom there is no agreement to monitor, again this will create reservations as to whether monitoring is feasible in the circumstances. At times, the lack of trial schedules or alternative reliable information on the scheduling of selected hearings can also pose informal obstacles cancelling access. Such realities would need to be factored in during the preliminary assessment and due weight may be given initially to monitoring the right to a public trial and to negotiating access as a priority. Chapters 8.2 and 14.2 and following include references to methods aimed at increasing access to proceedings and can assist the managers' planning in this regard.

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<sup>5</sup> The meeting of interested professionals organised by NPWJ in Sabratha, Libya, between 14 and 16 June 2013, largely contributed to this purpose.

## Chapter 5 Deciding on the main objectives, focus and type of the trial monitoring project

On the basis of the aforementioned findings during the preliminary assessment, project organisers will need to define the objectives and the corresponding focus of the trial monitoring project. In parallel, they will need to decide on the type of the project, namely whether to create a thematic scheme or a systemic project to observe more comprehensively the wider legal system, or a combination of the two.

Under the overall aim of a project, which may be to assist the authorities in implementing judicial reforms towards a more human-rights compliant justice system, defining the specific objectives with sufficient clarity will enable the members of the project to have a well-understood mandate. Project objectives can also be grouped as long-term, mid-term and short-term objectives. Project organisers should always endeavour to set objectives that can be adequately measured when assessing the project's impact at the end of its duration or at regular intervals, depending on the length of the project.

Short-term objectives may be practical and explicit, such as making reference to monitoring criminal cases randomly or focusing on a specific type of cases or problems, in order to assess how judicial actors implement legal standards. The output of such a objectives could be defined as the public issuance of a comprehensive review of the fair trial problems that arose in the cases monitored over six months, or two thematic reports, for example on the effectiveness of defence counsel and the challenges noted in high-profile cases of defendants associated with a previous regime. Short-term objectives and outputs are possibly the easiest to determine, as they correspond to the most pressing challenges that the managers have identified during their preliminary assessment and have set as priorities for the project's operations at its beginning.

Mid-term objectives may also include an expansion of activities, such as from focusing on a certain type of cases to monitoring other types of proceedings, thereby widening the circle of actors who may benefit from positive recommendations. Naturally, if the project's continuation is subject to the availability of further funding, this would also need to be noted.

Longer-term objectives can be defined in more general terms, for example that criminal proceedings comply with fundamental human rights and fair trial standards, that cases of torture be adequately investigated and prosecuted, that legal practitioners become more aware of fair-trial standards and use them in their litigation and so forth.

The set objectives will also determine the type of the monitoring project. The most common structures of projects employing local professionals to monitor proceedings in the *domestic* context are *systemic* trial monitoring and thematic trial monitoring.<sup>6</sup>

*Systemic* trial monitoring is the type of program conducted as part of a wide, well-resourced and long-term project, which has a general mandate and aims at supporting broad justice-sector reforms. Apart from monitoring court proceedings, it also gathers other kinds of information and observes additional institutions that have an impact on the effective administration of justice. It may monitor all types of cases before the courts, including also civil and administrative cases, but usually defines certain priority proceedings, which may change overtime. It is established as a long term program, hence it gains a comprehensive and in-depth view of the system's functions. Nevertheless, these programs are usually created pursuant to a far-reaching mandate, require long-term funding and necessitate staff who are employed full-time.

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<sup>6</sup> A third type of monitoring, ad hoc monitoring, has also been employed to monitor a specific case or limited number of cases through a monitoring structure that is created only for this purpose and which ceases to exist after these cases are completed. Ad hoc monitoring has a particular methodology and special administrative considerations. However, as it is not likely type of monitoring that will be followed in Libya, it is not further explored in this Handbook.

*Thematic* trial monitoring is the type of project that focuses on a specific category of cases or phase of proceedings that pose a grave concern to a particular justice system. Among the themes monitored by this type of projects are war crimes proceedings, the investigative stage, trafficking in human beings, organised crime, proceedings with juvenile defendants, etc. Thematic projects can also operate over an extended period of time; hence, depending on the type of cases followed, it may be possible even for a thematic project to draw broader conclusions regarding the manner in which the justice system functions. These projects adapt their working methodology to the needs of the type of cases monitored, since they often require access to additional information or stakeholders. In this way, they are also able to build closer relationships with the officials working on the concrete issue. The confidence built between the national officials and the monitors can also allow for more effective and targeted advocacy activities. Thematic monitoring allows for more in-depth review of identifiable issues, therefore such projects seek to engage monitors who have a corresponding specialisation or they assist the monitors to develop this promptly. The number of cases to be monitored is inevitably lower compared to those followed by a systemic program, so establishing a project with a thematic focus may be advantageous when a limited number of monitors are available.

Considering the main characteristics of the aforementioned types of projects, it is more likely that a thematic-type of monitoring structure be created in Libya. Indeed, proceedings charging individuals with human rights abuses prior to the revolution or during the conflict constitute a theme of high public interest that would understandably attract attention for trial monitoring. Pending the processing of these cases, it cannot be excluded that a project may be interested also in following other criminal proceedings not falling strictly within its set priorities. Overall, the extent to which a monitoring structure may decide to focus initially on one or more thematic areas or to expand its activities to monitor more widely criminal or other proceedings remains the prerogative of project organisers.

## Chapter 6 Choosing a trial monitoring model

Organisers will need to decide on which structural model can function in the domestic context. International organisations, such as the OSCE, have carried out their monitoring activities mainly by employing full-time staff (staff model) or by contracting local staff who are supervised by and report to staff of the international organisation (project model).

There are also experiences with domestic networks of monitors that have operated independently from international organisations. As an example, the coalition “All for Fair Trials” operates in the Former Yugoslav Republic of Macedonia, since 2003. This coalition was formed in accordance with domestic law, consisting of approximately 20 non-governmental organisations. It has operated through an elaborate structure involving a general assembly, an executive board and a network of 80 observers covering the whole country.<sup>7</sup> Subsequently it established a permanent supervisory body. It has published a number of reports since 2004, including some commissioned for international organisations, such as the OSCE, the Soros Foundation and the Swedish Helsinki Committee for Human Rights. Its monitoring activities resulted in the 2004 publication of the report titled “Countrywide Observation of the Implementation of Fair Trial Standards in Domestic Courts and the Assessment of the Functioning of the Judiciary”, while it has also focused on trafficking in human beings, corruption, organised crime and election-related offences. Having developed its trial monitoring methodology, it also worked with the OSCE Mission in the country to enhance its fundraising capacity, so that it can engage independently with donors in project development without the financial assistance of the OSCE.

Through this and similar experiences, a number of best practices and lessons learned are available to project organisers contemplating the establishment of domestic trial monitoring networks, as is currently the case in Libya.

In the first instance, the relevant local law should be consulted to determine the possibility of registering a network as a body and whether other legal requirements should be met. Obtaining access to the relevant proceedings and information has at times been difficult for such bodies, therefore this matter will need to be coordinated accordingly prior to operations. Domestic networks will also need to decide whether they can operate as a “staff model” with permanent and full-time staff at least for certain functions, such as analysis and external reporting, or as a “project model” which may have a permanent core structure but contracts professionals as needed, in order to be able to process an occasionally heavier workload or to cover cases that are geographically dispersed.

Among the challenges that domestic monitoring networks will need to counter are capacity building, decision-making and coordination. More specifically, such a body will rely on local actors with an interest or relevant background, usually in law or human rights, but most likely without prior experience in trial monitoring. Increasing the knowledge of these professionals in international human rights and relevant national legal standards, as well as providing the skills to monitor and report effectively, will be of utmost importance. To this end, training, experience-sharing with other monitoring bodies from abroad and the development of monitoring guidelines and legal reference materials can greatly contribute to the timely development of expertise (see Chapter 11 for capacity building of monitors).

Decision-making and coordination may also test the coherence of monitoring networks, considering the independence of NGOs, the fact that professionals may be engaged on a part-time basis, or when participation takes place on a voluntary basis. Consequently, it may also be expected that project managers will seek to obtain guidance in managing, both substantially and financially, an independent network, especially as participation increases and coordination becomes more cumbersome. In any case, project managers or an executive board should seriously consider agreeing on the decision-making process in advance (including whether decisions are taken by consensus or majority). They must additionally have a clear structure for the division of work, such as elect/assign individuals in charge of substantial, financial and administrative matters. As examples of areas of responsibility, an executive board may need to select its representative(s) for advocacy issues; decide on how external reports are drafted and cleared for

<sup>7</sup> Its structure can be seen at its website, [http://www.all4fairtrials.org.mk/Site\\_Eng/0\\_Koalicija.html](http://www.all4fairtrials.org.mk/Site_Eng/0_Koalicija.html) (accessed on 30 June 2013).

publication and who may have the ultimate responsibility for this; establish procedures and criteria for contracting monitors; clarify who is in charge of managing the finances of the network and its fundraising efforts; and agree on how the substantive direction of the project is evaluated. It may be needless to say that a permanent supervisory body can ensure the continuation and efficacy of operations more effectively, but to this end project managers will need to be sincere regarding the time they are likely to devote to the network's functions.

It is noteworthy to mention that project managers of a domestic monitoring network that seeks to continue its operations over a longer term should also gain the necessary knowledge on project development issues and fundraising. To this end, more experienced organisations can offer guidelines and advice, so that project managers will develop the confidence to approach diverse donors, rather than rely on a specific organisation for continuous financial support.

## Chapter 7 Drafting a project paper

When the preliminary assessment has been completed, project organisers should have a clear concept of the project they wish to create. It is highly advisable that they distil this concept in a document that can serve the function of a project proposal or project paper. Drafting this paper will enable project organisers to touch upon all main aspects of the project and make their expectations more concrete. This in turn will serve as a reference to explain the project to those wishing to engage in it and to the national authorities whose cooperation will be sought. It can further constitute the basis for the development of other support material and training, whereas it is also essential for attracting donor contributions, if funding is not already obtained.

Inspired by the factors reviewed during the preliminary assessment, as a minimum, the project paper, should include:

- *The title of the project, its purpose objectives, and general focus*

Under these headings, project organisers should highlight why the project is needed and what it seeks to accomplish. Clearly articulating the purpose and objectives of the project gives a sense of direction to its participants and can motivate external actors to support it. Success indicators can be included, as well as risk factors (for example, inability to gain access to specific proceedings) and possible responses (for example, plans to enhance access through agreements). These can assist subsequent evaluations on whether the project is meeting its goals. Additionally, the project paper should describe what the scope of the monitoring activities is, such as whether it plans to focus on courtroom monitoring or look wider into other institutions as well.

- *The methodology of the project*

The project paper should outline the proposed methodology, for instance how cases will be selected and monitored, how their findings will be gathered<sup>8</sup> and analysed and what type of reports or other advocacy activities the project intends to undertake. It should describe the scale and structure of the project (for instance, the number of monitors and analysts it seeks to employ; in what location and whether they will be engaged on a full- or part-time basis); the staffing particularities (such as whether lawyers or other professionals will participate and what experience they need to have to perform each activity);<sup>9</sup> what type of monitoring project was chosen (i.e. thematic or other); and which trial monitoring model can be applied (i.e. network of lawyers and NGOs, or other). Any forthcoming partnerships or affiliations with other bodies or civil society should also be recorded, including their planned contribution to the project.

- *The anticipated timeframe for implementation and estimated costs*

The timeframe for the project's implementation can include: a preparatory stage, during which hiring and training monitors, drafting support material and guidelines and negotiating access can be completed; an implementation phase, during which access is secured and actual monitoring activities are performed; and a final phase, until which the project will have produced its outputs, which may be defined by the issuance of a report and a period for engaging in related advocacy activities. If project managers anticipate the continuation of activities beyond this timeframe, they may indicate this and the conditions under which extension will occur.

To the extent possible, the anticipated costs of the project should be estimated and recorded, such as stipends or salaries, purchasing electronic equipment or printing facilities if these do not exist, expenditures for travel to courts that are not likely to be monitored by local professionals and so forth. Although it may not be possible to prepare a detailed budget at the stage of the project paper, it is important to estimate the likely expenditures, as this will assist the project to present an organised plan to donors, if funding has not yet been secured.

<sup>8</sup> For information management systems, see Chapter 13. For internal reporting, see Chapters 12 and 16.

<sup>9</sup> For team structure and staffing issues, see Chapter 9.

## Chapter 8 Establishing and increasing access

The effectiveness of monitoring activities depends both on the ability of the project to identify properly the cases it wishes to monitor and on its ability to be physically present during these proceedings and gather related material. For example, if a project intends to monitor cases of grave human rights violations that occurred during a conflict, it must make the necessary arrangements to be informed consistently, accurately and in a timely manner about which proceedings these are (especially when they concern defendants not widely known to the public because of their lower-level criminal responsibility), when these trials take place and where. Similarly, it should ensure that its monitors can physically access the courtroom and obtain the case material necessary to make an assessment of the proceedings according to project objectives. To obtain the necessary access, project managers will need to review the applicable legal framework for the publicity of proceedings and discuss the practicalities with national officials and reach agreement about those practicalities.

### 8.a Identifying the legal framework

Project managers should examine both the international and domestic legal framework for provisions that support trial monitoring activities. The international obligation of States to respect the right to a public trial, enshrined in Article 14(1) of the ICCPR, can be invoked for this purpose. Article 14(1) of the ICCPR also foresees that “any judgement rendered in a criminal case or in a suit at law shall be made public” with certain exceptions. Domestic legislation, such as the Constitution, criminal procedural codes or other specialised laws may also guarantee the right to a public trial and may regulate access to court documents, such as indictments and judgments. Certain jurisdictions confine access to court documents to the parties, while others define these documents as public, sometimes under certain conditions. Additionally, some jurisdictions allow for the presence of experts even in hearings closed to the public; trial monitoring projects have used this argument in negotiating their access as experts to such hearings. Careful review of both international instruments and domestic legislation is a good starting point to identify provisions that support monitoring activities.

### 8.b Methods to increase access for monitoring projects

Having the legal right to access proceedings may not be sufficient if the authorities are sceptical towards being monitored and pose obstacles to access, or if the information sought is not organised sufficiently for monitors to retrieve it. Many monitoring projects have therefore sought to secure and increase access by raising awareness, involving and agreeing with judicial stakeholders regarding access.

#### *8.b.i Raising awareness and obtaining support for the monitoring project*

Monitoring projects, especially new ones, may encounter distrust and suspicion from certain key stakeholders in the justice system or the executive, which can be owed to ignorance or misperception about the trial monitors’ intentions. Indeed, even the term “monitoring” in certain languages might signify to justice sector professionals that the project will observe their conduct closely with the intention to second-guess their decisions and possibly seek to embarrass them if their conduct is not to its liking. As has been explained in this Handbook, the purpose of monitoring is far from this, as it intends to assist the stakeholders in understanding where problems lie and help correct

them, therefore supporting and facilitating justice sector professionals in performing their work more effectively and fairly.

To this end, projects have deemed it helpful to their work to clarify the purpose of monitoring to all levels of judicial actors, if possible. At the commencement of the project, managers may seek to make a list of the stakeholders who can have a role in the success of the project and assess their reaction to monitoring activities. It is crucial that project representatives, usually managers, prepare well for any meetings they plan to hold, anticipate negative reactions and formulate their responses to these.

In meetings and discussions, they can involve the stakeholders in the process and inquire about the problems they face in their work, describe clearly the purpose and manner of monitoring operations and demonstrate how monitoring will assist these professionals in carrying out their responsibilities. It is important that project managers stress the credibility of the project, for instance the expertise of the monitors or the control that supervisors exercise regarding the veracity of information and its analysis prior to its release. It is also important for project managers to be aware of and use certain striking examples of challenges in the justice system, which can induce agreement on the part of the authorities that positive changes are needed.

Through meetings and discussions, stakeholders may support the initiative, while others may appear distrustful. Project representatives should carefully listen to criticism, be patient and avoid becoming confrontational. Project managers will then need to assess strategically whether and how they can persuade reluctant actors, possibly also through engaging the influence of those stakeholders who do support trial monitoring.

### *8.b.ii Fields in which access may be sought*

In addition to securing access to courtroom hearings, certain projects have also sought to gain access to the main documents of a case or the court case file, to hearings closed to the public, detention hearings and other investigation or pre-trial hearings. Project managers will need to consider carefully what types of information are truly necessary to achieve the project goals that have been set and negotiate the corresponding access.

Reviewing or obtaining photocopies of important case documents, such as the indictment, judgment, detention orders and the official record of hearings, will largely depend on domestic law, practice and the willingness of the authorities to allow access. Accessing the entire case file can provide a more comprehensive picture of the case and may give information about the evidence obtained during investigations. Furthermore, if appeals proceedings in a jurisdiction are mainly completed on the basis of case file review, monitors wishing to examine how a case was adjudicated on appeal will need to have some access to the appeals file or the appeals proceedings and the appellate decision. Nonetheless, it may be expected that negotiating access to entire court case files might be more challenging than that to specific documents.

Access to closed hearings has also been obtained in certain settings, since it was deemed important to monitor proceedings involving, among others, juvenile offenders or protected witnesses in rape cases, etc. Projects have sought to observe whether fair trial rights are duly respected in closed hearings where the scrutiny of the public was not possible. However, most projects must negotiate this access at a higher level at their commencement, or with the court, or apply to judges for permission to attend on a case-by-case basis. Project managers will also need to weigh the advantages of such access against the possible risks, such as the potential for increased security concerns for the monitors attending these hearings and the additional burden it puts on the project to safeguard the confidential information gathered from these hearings.

Last but not least, monitoring investigative proceedings may be appealing for projects interested in the human rights compliance of investigative actions, such as whether the suspect was promptly informed of the charges against him or her, whether detention was imposed in accordance with the law, or why certain types of cases – such as trafficking in human beings or crimes with a political

trait – rarely reach the trial stage. Nonetheless, access to such proceedings will almost exclusively depend on whether an agreement on this can be reached with the authorities, whether at the commencement of a project or later. Monitoring projects will need to present convincing arguments about the benefits that such monitoring will have for justice reforms, as well as to their ability to ensure information gathered remains confidential. Alternatively, if formal access to investigations cannot be granted, relevant information may be gathered indirectly, such as through the case file or by interviewing relevant actors.

### *8.b.iii Memorandum of Understanding*

Assuming that there is an appropriate level of support for trial monitoring activities at the higher levels of national officials, project managers should seriously consider the advantages and disadvantages of seeking to formalise an agreement for conducting monitoring activities.

A number of projects have concluded a Memorandum of Understanding (MoU) with the relevant local institutions, which records the rights and obligations that the monitoring body and the relevant local authorities have in relation to monitoring activities. MoUs are not viewed as a legal precondition for conducting trial monitoring and many projects have operated without such formal agreements when the required access was secured in practice and informally. Rather, the conclusion of an MoU has been employed as a means to secure and maximise access and to build confidence with the local authorities. The same effect has in other contexts been achieved through an “exchange of letters” between high-level representatives of the monitoring project and the local authorities.

If an MoU is pursued, it should be concluded at a high level with an authority that can administratively “bind” those actors in the justice system who are responsible for operationally allowing the type of access that the project requires to meet its objectives. At the very least, it should indicate to these actors that there is a will at the political or high judicial level for monitoring to be conducted effectively. In the past, MoUs have been concluded with, for example, the Ministry of Justice, the Supreme Court and representatives of the government to the international organisation that will conduct trial monitoring.

The content of an MoU can vary according to the circumstances. It may make reference to: the legal basis, the purpose and focus of monitoring (i.e. which type of proceedings and cases or courts); any additional access that should be granted to types of proceedings or documents (i.e. access to court case files or hearings closed the public); and other matters that the parties to the MoU may wish to include. For example, past MoUs have reflected the right of the monitoring organisation to request court documents through the Ministry of Justice if these could not be obtained from the courts, or the obligation of the Prosecutor-General to identify for the project any cases involving domestic violence. Monitoring projects have also committed to reasonable obligations, such as not intervening in individual cases, treating as confidential certain information gathered from monitoring activities and providing the opportunity to national authorities to state their views on reports prior to their publication.

### *8.b.iv Contacts with stakeholders in the justice system*

Experience has shown that is good practice to inform, in writing, the local courts and legal practitioners that the project will be conducting monitoring activities in the court where they work and to request their cooperation to the extent required. Project managers have addressed letters to court presidents, chief prosecutors and heads of bar associations, describing the above, asking politely for cooperation and requesting a meeting to elaborate on the project. If an MoU has been concluded, the letters can make a reference to that as a demonstration of political will of the entity signing the MoU.

Such introductory letters have usually been followed by meetings between a project’s representative with the heads of institutions.

These meetings have provided an opportunity to introduce the project, address any concerns that are expressed and obtain support or agreement regarding certain modalities of monitoring methodology (i.e. it can also be agreed that court presidents share the statistics they compile on the their courts' processing of cases, or assign a focal point within the court to inform monitors about the scheduling of interesting cases). In letters and in person meetings, project managers can also ask the heads of institutions to inform the judges, prosecutors or lawyers they cooperate with regarding the presence of monitors or request permission to hold courtesy meetings with them. If a monitor is already assigned to observe the functioning of the court, project managers may introduce that monitor during such meetings. At times, if conditions and methodology permit, the monitors may introduce themselves at a later stage.

### *8.b.v Identification cards and information material*

Access has sometimes been facilitated through the presentation of monitor identification cards or material containing information about the project.

Certain projects have deemed it important to make their monitors identifiable for reasons of personal security and transparency, as the monitor's presence may have a special significance in the eyes of the public and the courts. It has also resulted in cooperation when monitors sought to remain in the courtroom for closed hearings, if this was granted through an MoU. Other projects have decided to observe public hearings as regular members of the public, without identifying themselves in advance as monitors. Consequently, they observed that judicial actors sometimes acted differently when they were not aware that a monitor is present in the courtroom. In any case, projects should carefully evaluate the advantages and disadvantages of adopting either approach for all or some of their activities.

Finally, it is good practice for monitors to possess, each time they observe hearings or perform other project-related tasks, any official documents regarding the project, such as the MoU. Some projects also prepared brochures with information on the project, which they presented to interested actors in advance of the hearings or at the introductory meetings.

## Chapter 9 Project structure and staffing

### 9.a Trial-monitoring team structure

All three main activities of the trial monitoring cycle<sup>10</sup> – monitoring/information gathering, analysis and reporting/advocacy – need to be adequately covered by a project’s working structure. In general, projects establish a three-level structure to correspond to the key activities. From the bottom up, these are: 1) the monitor level; 2) the analyst level (also middle management); and 3) the senior management level. The responsibilities of each are described in the following paragraphs.<sup>11</sup>

#### 9.a.i Monitoring level

Monitors constitute the backbone of a trial monitoring project and are the face of the monitoring project in courts. Their main responsibilities feature in the box below:

<b>Main responsibilities of monitors</b>
<ul style="list-style-type: none"> <li>• monitoring cases (including attending hearings and making notes in the courtroom, reviewing documents and collecting other information);</li> <li>• reporting internally on the cases monitored, including the facts and possibly a first-level analysis;</li> <li>• identifying interesting cases and tracking their progress;</li> <li>• communicating with justice actors at the field level, if monitoring methodology allows;</li> <li>• reviewing project material and internally-shared or published reports; and</li> <li>• attending training sessions.</li> </ul>

In recruiting monitors, best practices indicate that it is preferable to engage professionals who have obtained a legal degree, as this background allows them be familiar with legal proceedings, and who have practiced as lawyers for a minimum of two years, as prior legal experience is well-viewed by the judicial actors. Nonetheless, effective monitors have also been persons with experience in human rights and enthusiasm to engage in this sector, as well as lawyers freshly admitted to practice, as they can be more open to the need for reforms and perceptive to international human rights standards. In any case, recruiters should endeavour to gauge the level of dedication of the candidates to the project, especially if they are to be contracted part-time, their ability to respect the principles of trial monitoring and their observation and drafting skills.

Monitors should not have prior or alternative engagements that jeopardise their impartiality or independence. Several projects have used foreigners to undertake monitoring activities, either exclusively at least at the initial stages of operations, or in conjunction with local actors, to counter issues of security or to benefit from their experience in international human rights standards. While there is

<sup>10</sup> See above Chapter 3 “General working methodology of trial monitoring: The Trial Monitoring Cycle”.

<sup>11</sup> Monitoring projects frequent rely on support personnel for certain functions, such as legal assistants for research or secretarial support for administrative issues. These functions are not further analysed in this Handbook, but they may be considered by managers for the establishment of a project.

a preference for engaging competent local monitors, project managers can have this possibility in their mind as an alternative that may be used in exceptional circumstances, if local capacity cannot cover certain exigencies of the project.

As to the number of monitors to be engaged, project managers should carefully correspond the number of cases or hearings anticipated and their geographical location, to the number of monitors and their working area.

### *9.b.ii Legal Analyst level*

Trial monitoring projects usually foresee a level of legal analysts or legal advisers in their structure, who are a crucial link between the work of numerous monitors and a single or limited number of senior managers. For this reason, they often represent the middle-management level. The main responsibilities of legal analysts feature in the box below:

<b>Main responsibilities of legal analysts</b>
<ul style="list-style-type: none"><li>• reviewing internal case reports of monitors and providing feedback to them;</li><li>• coordinating the work of monitors at the operational level, advising and guiding them;</li><li>• identifying and organising concerns on the basis of internal reporting and maintaining statistical data;</li><li>• researching domestic and international law;</li><li>• drafting internal reports to supervisors, if project methodology requires;</li><li>• drafting public and other external reports;</li><li>• informing and advising management on the status of the legal system, on operational aspects of the project and on substantive legal issues; and</li><li>• representing the project and carrying out advocacy activities at the operational level, if project methodology allows.</li></ul>

The number of legal analysts will depend mainly on the number of monitors engaged, the number of monitoring reports produced and on the external reporting requirements of the project. It is possible that project managers may envisage undertaking themselves the analysis and reporting functions. It is also possible that experienced monitors with the appropriate drafting skills will be willing to assume the in-depth analysis and reporting responsibilities. A two-tier structure is sometimes functional for small-scale projects or at the initial stages of a project where mentoring takes place and the project is not yet fully staffed. Project managers should be attentive to the workload of the project and the capacities of their team members, should the intermediate level of legal analysts need to be created or further supported and management responsibilities delegated. In recruiting legal analysts, emphasis should be placed on the incumbent's legal reasoning and drafting skills, in addition to what is considered for hiring monitors.

*9.b.iii Higher management level*

The higher manager level, be it a single project manager or an executive board, commonly have the following responsibilities:

Higher management responsibilities
<ul style="list-style-type: none"><li>• developing project strategy, determining the scope and methodology of monitoring activities and assessing the project's impact;</li><li>• directing operations, including case selection and identification, ensuring access;</li><li>• approving at the final level the content of public reports;</li><li>• providing regular support to monitors, including training and educational materials, as well as resolving security issues;</li><li>• managing administrative issues, including the budget and personnel issues; and</li><li>• representing the project externally and advocating at senior levels.</li></ul>

Project managers should commit to their responsibilities until the end of the project or for a substantial length of time. Although this is desirable for professionals at all levels, it is even more significant for the higher-level posts, as a long-term commitment can ensure that a monitoring strategy is implemented as planned, while the results of trial monitoring activities may take time to materialise. As with other members of the monitoring team, project managers should have the necessary qualifications to carry out the aforementioned functions and must refrain from engaging in activities that compromise the main principles underlying trial monitoring.

When a board manages the trial-monitoring project, it is of crucial importance to establish coordination and decision-making mechanisms and to be forthcoming regarding the anticipated level of engagement in the operations of the project. It is possible that certain members assume the responsibility of representation, while others take on more operational roles, such as providing direction and clearing reports. Whoever takes on what responsibility, however, the flow of information between all members should be maintained.

Although higher-level managers and legal analysts may not assume regular monitoring responsibilities, it is advisable that they attend proceedings at a local court as trial monitors at least once. This will allow them to have direct experience on the work of monitors and the challenges they may face.

## Chapter 10 Standards of conduct and monitoring guidelines

### 10.a Code of conduct

Adhering to common standards of conduct ensures that the monitoring team has a uniform and professional approach towards its work, in accordance with the limits set by project managers and any agreements that the project has entered into, while also ensuring the team members are accountable for their behaviour in all monitoring activities. Establishing a code of conduct in writing and agreeing to it upon signing a contract has been deemed as a necessary practice in virtually all instances. A sample code of conduct is included in Annex 1.A.

For developing a code of conduct, project managers can be inspired by recent efforts at the international level to develop a model set of ethical commitments for human rights professionals.<sup>12</sup> These ethical guidelines can be further discussed with the team members and can be consulted as to the appropriate course of action when novel or complicated situations or dilemmas arise .

The basic principles included in most codes of conduct developed for trial monitoring projects are the duties of non-intervention, of impartiality, of professionalism and of confidentiality. These are elaborated below.

#### *10.a.i Duty of non-intervention*

The essence of the principle of non-intervention has already been analysed in Chapter 2.1. At this stage, it may be mentioned that most monitoring projects agree that monitors, and by analogy legal analysts and project managers:

- Should never interrupt trial proceedings or communicate with legal actors or participants during the trial.
- Should never intervene in a trial or attempt to influence the outcome of a trial.
- Should never instruct or advise legal actors with regard to a course of legal action they may take or not take.
- When asked by external actors about the judicial process or if invited to offer an opinion, they should explain their role as an observer, the principle of non-intervention, the purpose of monitoring and decline to comment. They may direct any questions to supervisors of the project, according to the monitoring guidelines. If asked about their role, they should duly explain, as mentioned previously.

Certain projects have introduced an exception clause from non-intervention where monitors witness egregious human rights violations during their duties or when they receive credible information about an on-going human-rights violation. For instance, if they witness the ill-treatment of a defendant, from a human rights perspective it would be essential to take steps to end the violation, although this would run contrary to the duty of non-intervention. In such circumstances, monitors should immediately notify their supervisors, who will determine how to best address the issue. Additionally, a variety of highly unlikely, yet extremely problematic situations may be envisaged, in which monitors can face a conflict of duties and will need to use good judgement to overcome the dilemma. Managers may discuss such hypothetical dilemmas in advance and can include advice in the monitoring guidelines.

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<sup>12</sup> See the “Guiding Principles of Human Rights Field Officers Working in Conflict and Post-conflict Environments”, launched in 2008 at the Palais des Nations, Geneva, by the Permanent Representative of Ireland to the United Nations, with the participation of diplomats, NGOs and representatives of the major human rights inter-governmental organisations that deploy field officers.

Finally, project managers may decide that the principle of non-intervention does not apply in their interactions with non-judicial actors, such as the police or at detention centres, hence more direct discussions may be allowed in such contexts.

### *10.a.ii Duty of objectivity*

The principle of objectivity or impartiality has been outlined in Chapter 2.2. Operationally this duty would require that, in the courtroom, monitors sit apart from both the prosecution and the defence. If monitoring methodology allows monitors to interact within limits with legal actors, this duty would suggest that monitors should contact not only the prosecution, but also the defence, on matters of interest, without passing on information gathered from the other party. This will be all the more important for cases where there is a strong public preference for one party to the proceedings over another.

### *10.a.iii Duty of professionalism*

Especially since monitoring teams work with the highly formal judicial sector, it is expected that they be held to the highest standards of professionalism when carrying out their duties. Standards of conduct on the issue of professionalism have concentrated on the appearance of monitors, their behaviour and their attitude towards their work. For instance, monitors are expected to arrive to courtrooms well in advance of the scheduled hearing, wear respectful clothing and carry visibly their monitor identification card when foreseen, be attentive to the proceedings and take accurate and comprehensive notes, behave with dignity and respectfully even in difficult situations, for example when they are denied access to proceedings apparently without good reason. They should further understand and internalise the monitoring guidelines, adhere to the monitoring principles and take all necessary steps to familiarise themselves with developments in the law and the project's material. Often, projects also expect that their professionals behave ethically at all times, even after working hours, and that they do not engage in criminal or unethical conduct that can expose themselves or the project to criticism, such as visiting places where trafficking in human beings is known to occur.

### *10.a.iv Duty of confidentiality*

The duty of confidentiality ensures that a trial monitoring project is reliable. On the one hand, it prevents the release of non-public information that may be gathered by a project, for example sensitive information presented in closed hearings. On the other hand, it protects the project's strategic interests by ensuring that even public information, such as information produced during a public court hearing, is not released prematurely by monitors prior to the necessary verification, analysis and decision to share with external actors. Therefore, without permission, no internal case reports or accounts from monitored hearings should be shared outside the project, even if they pertain to public hearings.

As an example, the coalition "All for Fair Trials" includes in its code of conduct that: "The observers are not allowed to give a statement or any kind of information related to specific cases to the media (...) [and] if such information is requested from them, they should refer the representative of the media to the project coordinator who will further direct them to the spokesperson of the Coalition."

## 10.b Monitoring guidelines

Different from the code of conduct, which governs all monitoring activities, monitoring guidelines instruct team members on how to carry out basic work responsibilities, such as monitoring and reporting. Project managers can develop monitoring guidelines with a view to having a clear understanding of the division of work and harmonised practices by the different team members. Annex 1.B includes a sample of such a document. Monitoring guidelines can cover the following areas:

- *Case-identification methodology and case-selection criteria.*

Relevant guidelines can define who is responsible for identifying which cases to monitor. They can also list the different criteria for selecting cases, such as when to monitor lower-level defendants charged with human rights violations.

- *Case-monitoring methodology.*

These guidelines can include ways in which to gain access and how to monitor or interview legal actors.

- *Reporting methodology.*

These instructions relate to the focus and content of reporting and how reporting templates should be completed.

- *Advocacy methodology.*

These guidelines can define who is responsible for advocacy with external actors and acquaint those responsible with advocacy aims and techniques.

- *Minimum monitoring obligations.*

Projects with contracted monitors may clarify how many cases need to be monitored each week, when internal reports should be submitted and when compensation is provided. For instance, monitors may be required to submit internal reports within 3 days from the monitored hearing, whereas compensation is provided only upon approval of a satisfactory report.

- *Other types of guidelines.*

Additional guidelines may include the protocol for sharing information, how to address conflict of duties, how to treat security concerns and similar issues.

## Chapter 11 Capacity building for the monitoring team and other support mechanisms

Building the capacity of the monitoring team at all levels is crucial in any context, even more so when the trial monitoring structure is new in a country, the team consists of local professionals with no prior experience in the relevant fields, or there is no established know-how on monitoring operations in the domestic circumstances. Certainly, the experiences of trial monitoring projects working abroad can be a source of inspiration for project managers. This part of the Handbook outlines several good practices that have been adopted by trial monitoring projects and have assisted the teams to enhance their knowledge and skills, as well as coordinate and maximise the effectiveness of their work.

### 11.a Legal reference materials

Legal reference materials encompass the applicable domestic legislation and international instruments, landmark jurisprudence, official commentaries to the legal texts, legal articles by recognised jurists and relevant analyses by various actors include non-governmental organisations. It is essential to ensure that the trial monitoring team has such documents at its disposal at the earliest stages of the project's operations, as it cannot always be assumed that all professionals will have them in their possession or that even the domestic legislation they possess are the most up-to-date.

Legal reference materials could overall include:

- The constitution and the national procedural and substantive codes (i.e. criminal code and criminal procedural code) applicable to the cases that will be monitored, including credible commentaries on these, if they exist.
- The international documents on human rights and fair trial standards, such as the texts of the ICCPR and regional applicable conventions, i.e. the ACHPR. The relevant case-law, textbooks and compilations of jurisprudence will also be of use for those performing analysis of monitoring findings.<sup>13</sup>
- Landmark jurisprudence by national higher courts.
- Copies of administrative laws pertinent to monitoring, including laws regulating the posting of trial schedules, regulations on the functioning of courts and codes of ethics for judges, prosecutors and lawyers.
- Reports by international and national organisations on the justice system or domestic legal periodicals, if these exist.
- A list of websites where legal documents, case law, and fair trial manuals can be accessed electronically, such as the case law of the United Nations Human Rights Committee.
- Information on the structure of the domestic justice system, such as organisation charts, which will be relevant especially for monitors without a legal background.

In post-conflict and transitional settings, it is also quite possible that even legal actors are not aware of the latest developments in the legislation they apply, as it is not rare that amendments to codes are not duly disseminated. If that is the case, it may also be a concern noted by monitors. Project managers should make a serious effort to research and make these available to the entire monitoring team, so that it performs its duties on the basis of the actual applicable law. When international texts or documents are relevant to monitoring work, but not translated in the local language that monitoring personnel speak, translations should be made, at least of relevant parts as the needs arise.

<sup>13</sup> Of particular relevance can be the publication of ODIHR, "Legal Digest of International Fair Trial Rights", available in English at <http://www.osce.org/odihhr/94214> (accessed on 30 June 2013), among a number of other compilations also available electronically.

Project managers can further encourage all trial monitoring team members to share interesting articles or legal amendments they come across. Certain projects have assigned focal points to complete this function. Legal reference material available electronically can also be stored centrally, so that its information can be easily retrieved as the need arises.

Accessing legal reference materials may have additional costs if these are to be purchased. Making internet connection or other electronic equipment available to the monitoring team may also entail costs. To the extent necessary, project managers should consider including these costs in budget proposals to donors.

## 11.b Legal reference manual

If resources exist, projects should seriously consider developing a legal reference manual, which can explain the applicable fair trial and human standards related to the project's focus and include under each standard the relevant provisions from the applicable national legislation.

Trial monitoring projects have opted for the development of such a manual for a variety of other reasons, including that it ensures more effectively that monitors familiarise themselves with the relevant legal materials than if copies of these documents are simply provided. The legal reference manual can follow the structure of the internal report the monitoring team uses to record its observations from trial monitoring, so it can be used as a point of reference that monitors can consult when drafting their internal reports. The creation of such a manual in local language can also help overcome any language barriers, as many international legal reference materials may not be available in the language mainly spoken by the monitoring team. Such a document can further be used for building the capacity of the local legal community in international human rights standards, should this type of advocacy be selected by project managers, or it may be shared eventually more widely with other monitoring organisations.

## 11.c Training

It is preferable that comprehensive training be organised at the commencement of a project's implementation, so that the monitoring team acquires the legal knowledge and skills required to carry out the monitoring work. Training sessions can additionally be organised at later stages for newly engaged monitors, if the project changes focus, or if the need for specialised expertise arises. Initial training should, at least, address:

- *Substantive legal knowledge.*

Applicable international human rights and fair trial standards and national laws should be presented on the basis of practical examples, if possible closely related to the domestic context.

- *Monitoring methodology and responsibilities.*

Trainers should explain the project's methodology and present best practices and lessons learned from other experiences in monitoring, interviewing and other information gathering, reporting, advocacy, conduct and so forth. Practical examples and mock exercises can greatly increase how information is absorbed by participants. Additionally, training for project managers may be sought in terms of building their capacity in project development and fundraising.

Project organisers should determine whether training can be done with the existing internal capacity or whether external trainers are required for some or all topics. Foreign experts may be particularly useful for training on international fair trial standards and

monitoring skills, such as observing hearings in court, legal writing or negotiation skills. Focal points from the project should prepare the training with the external trainers so that the agenda and the substance of the training is as relevant and targeted to the actual needs as possible.

National experts, such as prominent judges, prosecutors, lawyers and law professors should also be asked to share their views and advice. Involving persons from the justice system in trainings can help provide the opportunity to reinforce the project's connections with the local legal community.

Projects should consider organising trainings and other types of informative meetings within the country. Participation in such events can constitute not only an educational opportunity, but also a chance to share monitoring conclusions more widely. Similarly, if funds are available, project managers can consider the participation of team members in events organised abroad, depending on its efficacy and cost effectiveness.

## 11.d Support and coordination mechanisms

Project managers should develop methods to increase the coordination and cooperation between the members of the team, while all professionals should be responsive to these initiatives. The following paragraphs describe certain methods that have been used in projects to increase the effectiveness of the teams' work.

- *Regular feedback on monitoring and reporting*

Providing regular feedback to monitors on the internal case reports they submit can promptly improve the quality of reporting and the professional development of monitors. It also ensures that legal analysts who receive the internal reports have the ability to clarify with monitors any uncertain issues swiftly, while memory is still fresh about the events that took place in the courtroom. Communicating with monitors is important especially at the early stages of a project, when the methodology may not be yet clear for all. Feedback should include both praise on good practices, as well as constructive criticism on issues that can be improved.

- *Regular team meetings*

Holding team meetings at regular intervals or ad hoc when the need arises allows the monitoring team to exchange and supplement information, share concerns, or propose and agree on initiatives. Regular meetings between individuals at different geographical locations and between the different levels of the monitoring structure can also improve the management and coordination of work. Meetings should be well-planned and the members of the team should be consulted in advance in case they wish to add a point to the agenda, so that there is adequate preparation.

- *Sharing internal reports*

While it is imperative that the management levels receive the internal reports of monitors, monitoring projects have found it useful for monitors to share their internal reports with their colleagues. Being aware of how other monitors draft their reports and of which practices are prevalent in other monitored courts enhances the monitoring and reporting skills of individual monitors. Managers should anticipate any complications with sharing information and make all necessary arrangements so that sensitive or confidential information is not shared more widely than necessary.

- *Monitor pairing and rotation*

Assigning monitors to work in pairs is a method that has been employed by certain projects to strengthen the capacity of new

monitors, lessen the possibility of external pressure upon individual monitors and enhance the objectivity of monitoring findings. Monitor pairing has also been used in crucial hearings which may last for long periods of time and where there is no access to the official court record, since two monitors may be better equipped than one to observe all aspects of the proceedings, then analyse their findings through discussions. As monitors become more experienced, or where court observation can be sufficiently covered by one person, pairing is less relevant, since it inevitably demands more human and financial resources at the expense of wider monitoring coverage.

While there are many benefits from having a specific monitor covering one or more courts for a longer term, monitor rotation may be used by projects to counter any risks of monitors forming too close relationships with the local judicial and legal actors and generally compromising their independence. Rotation, even temporarily, can equally be used in cases where there is an attempt to exercise undue influence or pressure on a monitor who lives or is based in the area of a particular court.

- *Structures for ensuring monitors' security and well-being*

The security of monitors is a matter that all trial monitoring projects take very seriously, especially when they operate in post-conflict societies, employ local staff, or observe sensitive proceedings with wider security implications, such as those of organised crime. Personal security should outweigh the need to gather information in proceedings. While security concerns cannot be underestimated, it should be noted that actual incidents against monitors have been rare, possibly since the role of monitors is not to intervene in the outcome of concrete proceedings, but rather to contribute to wider judicial reforms.

Among the steps taken by project managers to minimise security risks are: informing in advance candidates for monitoring positions about the types of proceedings that they may be required to follow and alerting them towards even the remote possibility of risks; issuing identification cards to monitors as a means to enhance their security; and disseminating information about the non-intervention principle that monitoring projects abide by, so as to dispel possible misunderstandings.

Project managers should also undertake regular risk assessment and mitigation, including developing concrete guidelines on how to react to security threats. As an example, the monitor guidelines of the OSCE Mission to Moldova prescribe that: "It is essential that monitors take no action which might put their own safety and security at risk in any way. In this regard, monitors should: 1) Discontinue monitoring and immediately leave the court if they feel intimidated, at any point for any reason, or if any threat is made against them and inform the National Co-ordinator [ . . . ]. Report all security-related incidents to the National Co-ordinator immediately, even those that may appear to be minor."<sup>14</sup> Being mindful of the short-term and longer-term consequences for monitoring operations, project managers should consider their course of action. They could use monitor rotation or pairing, report the incident to the authorities, where appropriate, and take all necessary precautions based on seriousness of the threat.

Furthermore, certain trial monitoring projects that focus their activities on cases that can be a source of stress for those who attend them regularly, have paid attention to the possible creation of secondary trauma of monitors and have organised activities and structures to counter these negative effects. Project managers should be alert to this possibility occurring and take appropriate steps to address it effectively from the outset.

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14 See "Security of Monitors" in the "Sample guidelines for Trial Monitors" prepared for the OSCE Mission to Moldova's Trial Monitoring Programme.

## Chapter 12 Deciding on the type of internal reporting

Prior to beginning project implementation, project managers should decide what type of internal reporting should be adopted for the project. Internal reporting is the way in which monitors communicate their observations from trials and their assessment of the proceedings to the rest of the monitoring team. Establishing a concrete form for internal reporting can guarantee the accuracy, consistency and standardisation of internal communication. Internal reporting templates can also be established for internal reports that legal analysts may produce, however, this is a practice generally adopted in larger-scale projects and is therefore not further examined in this Handbook.

Since the credibility of the project is founded on the accuracy of its information, internal reporting forms must be formulated in such a way that all necessary identification data, the facts of the hearing and the preliminary legal analysis regarding a case can be recorded. This in turn allows for verification and further analysis of the information. In terms of accuracy, it should be mentioned that if a piece of information does not derive from courtroom observation, but from an interview or from observation of events that occurred outside the courtroom, internal reporting forms should envisage space for monitors to include this information and its source. Consistency and standardisation in internal reporting prevents legal analysts from losing sight of important matters, assists analysts in retrieving information and helps guarantee that all monitors will examine all issues that are of interest to a project. Therefore, internal reporting forms should set out the issues that are of primary interest and urge monitors to use an identical, but sufficient, legal framework for their analysis. However, if monitors deem it important to report on additional themes or resort to further sources of law, this can be encouraged, so long as they meet the requirements set by the project.

Internal reports drafted by monitors may be either case reports or hearing reports. Case reports are compiled when the project intends to monitor specific cases through to their end. Appeals proceedings and even Supreme Court proceedings in a specific case may be the focus of monitoring projects, to have a comprehensive view of the proceedings across the entire case. Hearing reports are compiled when specific hearings are observed, without necessarily following the case from beginning to end; for instance, a project may choose to monitor hearings in different cases randomly, in order to see whether judges properly instruct witnesses as to their rights and obligations. However, since most monitoring projects opt for observing cases that fall under a priority thematic focus, this Handbook concentrates on the features of case reports. Moreover, it is highly likely that hearing-based monitoring can be covered by the same or similar case reporting format.

### 12.a Basic components of a case report

A case report should include three basic components: case information, fact reporting, and legal analysis and findings. More specifically:

- *Case information:* Recording basic information about the case assists the project in identifying the proceedings and in ensuring it has adequate administrative data on it. Such data can be obtained from the case file, through court administration or interviews, or, if no access is allowed to these sources of information, it can be obtained through the hearing itself. Projects should review what type of case information is really required, to avoid placing an unnecessary burden on the monitor and rendering the case report cumbersome to read.
- *Fact reporting:* Case reports usually include a section where the monitor summarises or, when necessary, records in detail, what occurred during the monitored proceedings. It should recount all major activities of the court and parties, it can

pertain to the motions the parties raised during the hearing and the decisions of the judge, the principal points of witness testimony, etc. What detail is accorded to fact reporting will need to be decided by project managers. Monitors may also exercise good judgement and coordinate with managers on what is actually important to record in this section.

- *Legal analysis and findings*: Legal analysis and findings are at the core of most case reports, as they highlight the conclusions of monitors on the specific issues of interest to the project. Compliance with fair trial standards and domestic laws is always front and centre in this section, whereas certain projects also comment on best practices or improper conduct of legal actors.

As will be seen below, certain types of internal reports may not always encompass all three components described above; questionnaire-type reports especially may not include space for fact reporting or further analysis. While this may be a choice of project managers, it should be noted that creating an internal reporting form that lacks basic elements about the case or hearing can seriously hinder further analysis and reporting on monitoring findings.

### 12.b Selecting a case reporting system

Most trial monitoring projects have relied on two basic types of standardised case-reporting systems: the narrative and the questionnaire. A third type of standardised form has developed over time as a hybrid of the narrative and the questionnaire that combines the best features of each. Which system is selected for a new project will depend on a number of factors, such as the depth of analysis in individual cases, monitors' experience, the need for quantification of problems observed, access limitations, the duration of the monitoring project, etc.

#### 12.b.i Narrative internal case reports

In narrative internal reports, the template has a limited structure, generally following the stages of proceedings and requires that the monitor uses narration to present the facts and the analysis. A sample form of the narrative template is available in Annex 2.A. This type of template provides the greatest degree of discretion to monitors. When problems are recognised, monitors are required to describe in detail the concern, provide a summary of the facts, include the appropriate legal references and reach a conclusion as to the application of the domestic law and legal standards. This template allows in-depth analysis, but its structure does not flesh out categories of concerns, unless the monitor structures the report to reflect them.

In projects using narrative reporting templates, monitors are usually provided with a checklist of issues to be monitored, guiding them in their observations and analysis (see Annex 3). Checklists can include questions to alert monitors as to whether fair trial standards have been met for each stage of the proceedings monitored. Also, monitors are required to report in the same template for each different hearing, so that in the end the case report reflects the entire case history. To distinguish new additions from older entries easily, monitors may highlight the parts they have most recently added.

#### 12.b.ii Questionnaire reporting systems

A questionnaire-type reporting system expects monitors to answer a set of standardised questions about the case monitored. Questionnaires are normally used for less experienced monitors. They also allow for findings to be compiled more easily and quantified

into statistics about specific practices that may reveal the compliance of specific aspects of the hearings with fair trial standards. The templates of questionnaires are highly structured, providing detailed questions to which monitors are required to answer mainly “yes” or “no” or “not applicable”. Therefore, unless a box is included for further observations, they do not give discretion to highlight other concerns observed in a case. Indeed, it is often the case that, no matter how comprehensive questionnaires attempt to be, they cannot cover all possible aspects of concerns that may be noted in proceedings. Any type of analysis is usually left to persons reviewing the questionnaires. However, since a separate questionnaire needs to be compiled for each hearing even in a single case, it may at times be difficult to have a prompt picture of the issues that arose in a case in question. Additionally, it may take monitors several hours to complete a questionnaire and substantial time to review it, even when no concerns have been observed. Moreover, questionnaires rarely include a box for the description of case facts or narrative examples to substantiate a concern, which then leaves legal analysts handicapped if they need to use facts from a case to illustrate concerns in external reports. An excerpt from a sample questionnaire is included in Annex 2.B.

### *12.b.iii Hybrid reporting templates*

Certain monitoring projects have endeavoured to combine features of narrative and questionnaire-type reports, producing a “hybrid” template. Such hybrid internal reports have a firm structure covering the most common fair trial and human rights, thereby ensuring more consistent issue coverage and easier compilation of findings, and also require narrative analysis on the part of the monitor. Hybrid templates include space where monitors can raise additional issues if they wish. Such a format may be selected by project managers who seek to retain the option of in-depth case analysis and also intend to make systemic conclusions using quantitative approaches. An example of such a hybrid template is used by the OSCE Mission to Bosnia and Herzegovina and can be seen in Annex 2.C.

## Chapter 13 Establishment of an information management system

Project managers will need to consider how internal reports and other notes with information will be organised at a central level, with a view to collecting, storing, systematising and easily retrieving the information gathered without undue delay. To make an informed decision on which type of information management system is most suitable, they should assess the type and amount of information that will be gathered over the project's duration.

Project managers should take all appropriate steps to ensure that their filing systems have the capacity to share and store securely confidential information that may be gathered during monitoring activities. Issues regarding confidential information should be developed in monitoring guidelines and methods can include marking documents as "confidential" or "sensitive" and restricting their circulation, to protecting electronic documents through passwords, or handing over confidential reports to supervisors in person and storing them in a secure facility.

- *Case-registration charts*

For projects of a more limited scale, a simple information management system that keeps a register of cases and a corresponding filing system may be adequate. This should preferably be organised electronically, rather than in hard copy. Therefore, well-organised filing systems and a spreadsheet may be sufficient to track and compile relevant information and analysis.

- Other advanced information-management systems

For large-scale and complex programmes, it is more appropriate to develop an advanced information management system than to use a simple case registration chart. Such systems also enable the compilation, systematisation and comparative analysis of many different practices, with a view to drawing overarching conclusions about systematic issues and challenges across many cases. These systems are often implemented through the use of electronic databases.

- *Systems for recording other types of information*

In addition to information and data obtained from hearings and courts, trial monitoring operations inevitably gather also other types of information, which may or may not be related to specific cases that are being monitored by the project. Such types of information include information regarding non-monitored cases, which can present good practices or corroborate other concerns; information gathered through interviews with legal actors and other stakeholders; media reports on monitored cases; and minutes of seminars attended. While such information may be exchanged in emails or notes for the file, it may be hard to retrieve at a later stage. Therefore, project managers should also find ways to organise those types of information centrally.

## PART 3: PROJECT IMPLEMENTATION

### Chapter 14 Trial monitoring and other information gathering and verification

The core activity of trial monitoring is observing court proceedings to gather information on how the system functions. This activity also distinguishes trial monitoring projects from other initiatives that gather information about the justice system mainly on the basis of reviewing court decisions or conducting interviews with justice actors. However, trial monitoring projects should not underestimate other sources of information regarding cases presented in court or the functioning of the legal system. Therefore, interviews and document reviews can supplement or corroborate the observations of trials and may be conducted as needed. This Chapter outlines best practices regarding information-gathering activities, starting from case identification.

#### 14.a Identification of cases to monitor according to monitoring priorities

Monitoring guidelines should clarify who and how cases that fall within the focus of the project are identified and selected for monitoring. While project managers may wish to make the ultimate decision, it would be wise to empower monitors and legal analysts to make proposals. Certain criteria should be set, such as the type of the crime charged, the level of the defendant's criminal responsibility in grave human rights violations, the political or other affiliations of defendants, their age or gender, etc. The monitoring team should avoid only following cases processed by "model" judges who may also be the most cooperative in sharing their schedules. When cases are monitored with a view to drawing wider conclusions about the justice system, monitoring a certain type of priority case may need to be supplemented by further observing other representative proceedings.

As to the practical considerations of how to identify cases for monitoring and how to be informed about when they are heard, administrative regulations should be consulted to establish how hearing information is provided, whether through the public posting of trial schedules or other means. In fact, the compliance of courts with administrative rules on the publicity of trials, as it relates to the right to a public trial, can be among the first issues monitored. Project managers and monitors can further discuss what other arrangements can facilitate their prompt identification of trials falling within the scope of monitoring, including establishing regular contacts with court administration or other officials at the regional or local level for this purpose. Moreover, the monitoring team can also be alerted to police reports, newspapers and other informal sources of information regarding upcoming trials.

#### 14.b Best practices for accessing courtrooms

Access issues have been discussed previously in the Handbook. Assuming that an agreement, formal or informal, has been reached with the national authorities facilitating access to courtrooms, monitors may still be confronted with a range of practical impediments. For instance, non-State actors may impede access to hearings, police controls in the courts may be excessive, or the number of members of the public who wish to attend a hearing may be more than the seats available. To counter practical obstacles to access:

- Monitors should arrive at the court well in advance of a hearing, to have sufficient time to locate the courtroom and find an appropriate seat. In selecting a seat, they should opt for a location where they can hear clearly the oral statements and view clearly the judge and the parties. In demonstrating their objectivity, they should avoid sitting too close to the parties or, where this is not possible, rotate their seats at different hearings of the case. They should also take into account that certain

members of the public sitting next to or behind them may be interested in reading the courtroom notes a monitor takes; monitors can therefore try to take a seat that minimises the potential for this to occur. At times, court security personnel can be cooperative in reserving a seat for the monitor.

- Monitors must be prepared to show project identification and other relevant documents, and be able to state clearly the legal basis (e.g. right to public trial, MoU), purposes and objectives of the project to those inquiring and especially to those refusing access.
- If access is still denied, the monitor should notify project managers. A meeting with the judge should be requested to explain the legal basis, purpose and objectives of the project, if this has not already occurred. If denial persists, the monitor should inquire as to the specific legal basis or reason why the right to a public trial in the case is limited.
- Monitors should report and analyse the reasons for denial of access to the judicial hearing in an internal report.
- Monitors should never threaten court officials and they should remain professional at all times in exercising their responsibilities.

The above best practices should also be considered in relation to accessing closed hearings, if the project reaches agreement with the national authorities in this regard.

### 14.c Trial observation in courtrooms

Once in the courtroom, monitors should always abide by the instructions for order in the courtroom that the law and the judge provide, such as turning off mobile phones. In addition to refraining from making any positive or negative comments, they should also keep a neutral attitude and avoid showing any kind of emotion in response to what takes place in the courtroom. Monitors are generally required to sit in hearings until their adjournment, even if no concerns are identified. An early departure will not only deprive the project from having a complete view on the case, but may also disrupt the proceedings or be perceived as contempt.

Monitoring instructions in other contexts usually require that monitors take extensive notes of the proceedings (courtroom notes). This means that monitors use either laptops or blank page notebooks to record either verbatim or in summary what is stated in the courtroom and what occurs therein. For the purpose of internal reporting, it is advisable that they highlight in their notes any special issues of concern and note the reason for that concern in a manner that is easily understandable upon later review. To the extent that it is allowed, monitors may also use audio recorders to supplement their notes, especially if access to the official court record is not allowed or is delayed. Regardless of whether the official court minutes can be obtained later – and this should be pursued by the project – monitors should not neglect taking their own notes, since a written record may be inaccurate, while an audio record may be unreliable in terms of who said what.

What should monitors pay attention to while in the courtroom? The simple answer is “everything”. Monitoring guidelines and project managers can advise monitors regarding the issues or conduct they should focus on. However, once in the courtroom, monitors should have their eyes and ears open to all occurrences and statements. Monitors should observe the conduct of the judge, the parties, the defendants and the witnesses. This entails listening to their submissions, but also noting their tone of voice, body gestures, general behaviour and interactions. For example, monitors should take note if a party arrives late or falls asleep during the trial, whether the judge is overly friendly with only one of the parties, whether the judge reprimands the public for interrupting the order in the courtroom, and so forth. Monitors should also be attentive to the reactions of the public, of the court secretaries and of court security. For instance, they should note if members of the public appear to intimidate a witness. They should also observe the

courtroom setting and other types of issues, i.e. whether the size of the courtroom is large enough to accommodate the members of the public, whether the microphones work and whether defendants are handcuffed during the proceedings.

Providing clear guidance on what should be observed is a complex matter. However, the more knowledgeable monitors become of the domestic law and international human rights standards, the more competent they become regarding identifying challenges in court proceedings. Developing a legal reference manual (see Chapter 11.2) can be of great added value in this regard. Annexes 3.A and 3.B, which are included for the perusal of monitoring teams, outline certain human rights issues to be alert about during legal proceedings and a checklist of possible conduct that could indicate corresponding problems. More comprehensive lists of issues and more detailed checklists regarding fair trial rights can also be found in certain publications.<sup>15</sup>

#### **14.d Access to case files**

When access to case files or case documents is obtained by the project, the following represent certain good practices in this regard:

- Whenever possible, the right to access documents should be included in an MoU and addressed at the beginning of the monitoring project. A procedure for obtaining documents should also be specified as far as possible.
- Depending on the access agreement, it is generally preferable under the principle of impartiality for monitors to access the court's case file rather than that of the prosecution or defence. This should be measured against effectiveness: at times, the parties have been willing to provide copies of important documents, when access to them would be otherwise impossible.
- For the convenience of the court, documents should be obtained in a systemised manner, e.g. through appointment with the secretary of the judge or receiving them electronically.
- It is important for monitors to review case files carefully, before the hearing if possible, and an effort should be made to avoid multiple requests.
- Negotiations may include the ability to make photocopies of court documents, or the ability to take notes.
- Monitors may also make arrangements to be able to access case files when they have been transferred to higher courts for adjudication.

#### **14.e Interviews for information-gathering purposes**

Meeting with actors who are in some way involved in the justice system can provide monitoring projects with invaluable information to supplement or corroborate findings obtained from monitoring hearings or reviewing documents. As mentioned earlier, project managers need to decide whether they allow monitors or other team members to communicate with judicial officials or the parties. However, the following paragraphs can serve as a reminder on which actors can be relevant sources of information for a monitoring project. Good practices for monitors to follow when meeting with the respective officials or stakeholders are also included. Additionally, Annex 4 provides a list of issues that can be discussed with stakeholders.

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<sup>15</sup> I.e. ODIHR, Legal Digest of International Fair Trial Rights, op. cit., note 13.

In other contexts, and depending on project methodology and guidelines adopted in each case, monitoring projects have found it useful to conduct interviews with:

- justice actors and stakeholders, judges, prosecutors and legal representatives;
- bar associations, legal clinics or legal aid groups;
- defendants, especially when deprived of liberty;
- injured parties, witnesses and organisations involved in supporting vulnerable individuals;
- the police;
- governmental officials, judicial and prosecutorial councils, training and disciplinary bodies; and
- representatives of the international community and NGOs present in a country.

Project managers should request that notes be compiled about the main points that were discussed during the interview if these are not otherwise recorded in the internal case-reports, while ensuring confidential views expressed during such interviews are properly protected. Project members should arrive at interviews well-prepared and should have agreed with project managers on what information can be shared by the monitoring project. As can be expected, meetings should be scheduled in accordance with any protocol that may exist, e.g. it may be required that court presidents be informed prior to communicating with an individual judge. The meetings should be set well in advance and team members should explain the reason they are asking for a meeting to allow stakeholders to prepare.

### **14.f Information gathering on the basis of questionnaires**

At times, certain trial monitoring projects have used questionnaires or surveys to gather information from judges, prosecutors, defence counsel and other stakeholders on issues of interest. On some occasions they have outsourced surveys to professional companies.

While questionnaires can be used to supplement interviews with certain actors, they could also be employed if direct interviews are not possible, either because of project policy, time constraints or if the individual is located at a remote place, etc. They are also a good alternative when a project needs to gather information on a large number of issues from multiple actors in a short time. However, questionnaires need time to be developed effectively, they may not build confidence as interviews can and the response rates may be low or the answers unclear. As such, whether or not to use questionnaires will be a decision that has to be taken on a case-by-case basis.

In formulating questionnaires, the following practices have been found useful:<sup>16</sup>

- Having a clear concept of the questionnaire's objective and the information it is expected to generate;
- Making a well-thought through list of the recipients;
- Providing clear instructions in writing on the purpose of the questionnaire, possible confidentiality and anonymity clauses, how it should be completed, a deadline for completing, and the process for returning it and the focal point for receiving them or providing clarifications;

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<sup>16</sup> A number of papers provide guidance on the formulation of questionnaires, such as the one provided by the Loughborough University, UK.

- Keeping the questionnaire as concise as possible;
- Including both closed and open questions, formulated clearly and neutrally;
- Placing the most important questions first, go from the factual to abstract, and from closed to open questions; and
- Testing the questionnaire in advance, either internally, by using it in an interview, or possibly through a pilot stage, e.g., with a few actors or a single court.

### **14.g Review of media reports on trials and other cases**

Media reports can be a good source of information on on-going cases, criminal incidents of interest to the public, expert opinions on judicial developments and so forth. Monitoring projects have taken such reports into account to identify cases for monitoring, to corroborate findings, or to spot possible root causes for challenges observed. The media may also reflect threats to judicial independence or statements by officials that compromise the presumption of a defendant's innocence. Last but not least, they can mirror the public's views on the functioning of the justice system.

Monitoring projects should also incorporate media reports into their sources of information and therefore duly foresee the compilation, organisation and dissemination to team members of relevant information that is published in the media.

## Chapter 15 Analysis of Trial-Monitoring Findings

This chapter makes reference to the different steps that monitors or legal analysts will need to undertake to analyse trial monitoring observations, in order to draft their internal or external reports and for other advocacy activities.

### 15.a Problem identification

The main responsibility of monitors is to determine whether problems exist in a legal system and, if possible, specify what kind of problems these are. To perform this task, monitors should have a satisfactory knowledge of the law and of human rights standards. Where inexperienced monitors are engaged, the identification of legal problems falls onto the shoulders of legal analysts, based on the descriptive internal reports of monitors.

At times, problematic actions or omissions are obvious, although they are not always straightforward. Therefore, it is important that monitors and legal analysts be alert and willing to examine further any suspicions they have about the facts or the law. As mentioned in the chapter on capacity building (Chapter 11), monitors and analysts should have at their disposal all relevant material and receive proper training to enhance their capacity to identify concerns and good practices, both in judicial practice and the local law's compliance with international standards.

It should be highlighted that even if the monitoring team finds that a procedural action contravenes human rights standards, this does not automatically mean that the trial as a whole is not fair or that an appellate court would find a violation has occurred. Monitoring conclusions resemble the criticism that legal scholars exercise in their writings on judicial practices and decisions. An appellate court might also have different considerations to take into account, such as the parties' submissions in a specific case, so it may not find a violation of fair trial standards where monitors have raised a concern. This does not in turn mean automatically that a project's findings and conclusions are irrelevant or faulty or that the appellate court has made an incorrect decision.

### 15.b Problem verification

If a monitoring project's conclusions are not properly based on accurate facts and pertinent law, its credibility can be lost. Therefore, verification of the facts and the law must take place prior to any publication of the findings. Understandably, if information cannot be corroborated, then projects should weigh its credibility and decide whether they can refer to it or not.

Monitors must ensure that the facts they convey in their internal reports are accurate and legal analysts provide a second level of review. For instance, tools to verify facts can include relevant documents or interviews, whereas legal provisions invoked in court should always be checked with the original text of the law. Despite the fact that public monitoring reports do not always mention all sources of information, projects should always register them properly in case their facts or conclusions are ever questioned. Moreover, in determining whether a problematic practice is systemic or an isolated occurrence, a project should gather sufficient comparative data in terms of numbers of cases and/or their geographic distribution. If reports refer to an isolated breach or a problem that is infrequent, this would need to be mentioned.

In addition to corroborating the facts, monitoring projects should also ensure that laws or jurisprudence they invoke in their analyses are relevant and authoritative. If different interpretations of a legal standard exist, and if the program's analysis is not based on the most prevalent one, it should be accompanied by a convincing explanation for choosing another interpretation.

### **15.c Identification of root causes and appropriate remedies**

Since the objective of most monitoring projects is to support reforms in the justice system, projects will need to try to establish the root causes of a challenge observed to present realistic recommendations in this regard. By examining the different components of a problematic practice and putting it into perspective, it can be possible to estimate whether it is caused by shortcomings in the domestic law, in the structure of the system, in the available human and financial resources, or whether it is owed to other systemic or personal factors.

Since monitors are usually those who observed a problem, they are in a unique position to give a first impression on its possible causes. Consequently, they should be encouraged to include in internal reports their opinion on the possible causes of identified breaches of fair trial rights. This provides legal analysts with an initial idea upon which they can build their subsequent research.

Legal analysts and experienced project managers are best positioned to have a more comprehensive understanding of the possible root causes of a specific type of breach, since they have an overview of numerous cases and are aware of wider political developments, institutional shortcomings and challenges in capacity-building. Statistical or quantitative analyses, when possible and relevant, can also assist in this process. Thus, together with project managers, legal analysts can formulate targeted and realistic recommendations for resolving the problems identified by the project.

### **15.d Monitoring developments after identifying and making note of an issue**

Since monitoring projects focus on how the justice system works, they should examine whether the system itself can identify any breaches of human rights and remedy them. For instance, if a first-instance court does not pronounce its verdict publicly and the defence does not include this omission in its appeal, this could indicate weaknesses in the effectiveness of defence counsel. If the defence does mention this breach in the appeal, but the second-instance court rejects it without justification, this failure is a further sign of systemic dysfunction.

After a monitoring project has reported an observed problem to the authorities, it has a vested interest in monitoring whether the authorities acknowledge the problem and take steps to remedy it. If the problem persists, the monitoring project or the authorities will need to adapt their approaches accordingly. Keeping a record of developments enables the project to evaluate the level of cooperation by the authorities and their willingness to promote reforms.

Monitoring whether recommendations are implemented also offers one means of evaluating a project's achievements. If remedies are not applied as foreseen, or if feedback indicates a flaw in the analytical process, a project may need to review its approach and implement any necessary adjustments.

## Chapter 16 Internal Reporting

Monitoring projects require internal reporting so that there is a flow of information and the opportunity to use monitoring findings when appropriate. Projects have foreseen internal reporting as a fundamental duty of monitors, but legal analysts may also be required to report internally to project managers, or to the project as whole, on the basis of the monitoring reports they receive. Depending on the size of the organisation, additional internal reports may be required. For the purposes of this Handbook and based on the anticipated capacity for trial monitoring in Libya, the following paragraphs concentrate on internal reporting by monitors. Any possible internal reporting by legal analysts can follow the same principles by analogy.

### 16.a Best Practices regarding internal reporting by monitors

After monitors return from court proceedings to their office, they should promptly consult their courtroom notes and begin completing the case report template that project managers have approved for the project (see Chapter 12). It is advisable that they draft the internal reports the same day or within a few days after the actual trial, while the hearing is still fresh in their memory.

#### 16.a.i *Using instructions to ensure a clear reporting methodology*

Providing clear instructions to monitors on how to complete internal case reports can ensure consistency in reporting, facilitate the reading of the report by other team members and render information easily retrievable in the future. If a monitoring project develops a manual for its operations, the manual should include a reporting template and instructions on how to use it. Without reporting guidelines, monitors may expand on irrelevant issues or bury critical information. Such internal reporting instructions may provide:

- An overview of the issues to be reported;
- The sequence of the elements to be included in the analysis, e.g. facts first, legal standards second;
- The applicable international standards and domestic laws to be applied in the analysis; and
- A list of relevant questions to help provide guidance in addressing the issue.

While reporting instructions are similar to a checklist of issues to monitor (see Annex 3), instructions are more specialised in that they are linked directly to a particular reporting template. Annex 5 includes an example of internal reporting instructions.

#### 16.a.ii *Simplifying the reporting of facts*

Whether a trial-monitoring project concentrates on procedural violations or the reporting of evidence and facts, such as those monitoring war crimes proceedings, it can benefit from limiting the reporting to facts that are strictly necessary to have a good overview of the merits of case. Otherwise, extensive reporting on evidence can unnecessarily lengthen reports and shift attention away from procedural violations that normally constitute the main focus of trial monitoring projects.

To this end, projects have instructed monitors to report on those facts that help illustrate how fair trial standards are applied. For instance, it would be difficult to assess a court's application of essential rights, such as the right to confront witnesses, the right to present evidence and the right to be represented by effective counsel, without some reference to the facts of the case. To this end, monitors can summarise the relevant motions and the decisions that were made, or even state "word-by-word" what the defence

lawyer said that indicated that he or she had not studied properly the case of his client. Similarly, in assessing witness protection issues where earlier statements are recanted, it will be interesting to reflect in the report the main points of the investigative statement read out in trial and how they contradict the statement given during the trial.

## Chapter 17 External reporting

Reporting to external stakeholders and the wider public is the main means by which trial monitoring projects make their observations, conclusions and recommendations known. As such, it is a significant step towards effecting reforms. The majority of external reports are public, although monitoring projects also issue semi-public or confidential reports to selected external stakeholders. Projects are advised against using the internal reports of monitors per se as their public reports: not only may they not be processed in terms of accuracy and analysis, but they may contain personal estimations of the monitor that he or she intended only for his or her colleagues.

A description of best practices as to the preparation and dissemination of public reports are outlined in the paragraphs below.

### 17.a Target audience of public reports

Despite the fact that most trial monitoring reports are public in the sense that they are freely available, their legal nature implies that reporting is not usually aimed at the general public. Rather, reporting by monitoring projects is targeted at institutions and individuals with official responsibilities for the functioning of the legal system and those interested and able to influence reforms in the legal sector. These can range from legal actors to government officials and donors or civil society. The media may also be a secondary target of reporting. Clarifying in advance the main recipients of a report is important for three main reasons:

- *It defines which aspects of a problem will be elaborated in the report*

For instance, in relation to witness protection issues, protection measures applied in the courtroom are of interest mainly to the legal and judicial actors sitting in court, while out-of-court protection analysis will involve the police and other structures as well.

- *It determines the level of detail required in the analysis*

To persuade legal actors that their practices do not comply with domestic law or international standards, a report will need to include convincing factual and legal analysis.

- *It has an impact upon the language to be used in the text*

When addressing a legal audience, accurate legal terminology may or should be used, whereas this is not recommended if a report is aimed at raising awareness among the public at large.

### 17.b Functions of public reports

Public reporting can serve different functions in the reform process, such as accurately documenting dysfunctional aspects of the justice system and abuses of rights, rather than relying on anecdotal evidence or one-sided experiences, providing a good starting point for further documentation and analysis of the problems identified and educating legal and other actors on human rights and fair trial standards.

While observing trials can render a wealth of information to a project about existing dysfunctions, project managers and drafters of reports should carefully select and prioritise the concerns that merit reporting at a given stage. The gravest concerns usually attract attention, particularly for young projects seeking to make an impact with their findings and recommendations.

## 17.c Types of public reports

Trial monitoring reports have been quite diverse in terms of focus. Monitoring projects have issued:

- *Comprehensive justice-system reviews*

Such comprehensive reports examine various themes based on the monitoring of a broad range of case types and address the work of many actors involved in the justice system. They assess how justice systems apply local law and whether their practices and the domestic legislation meet international fair trial and human rights standards. They have often been launched by newly established programs that seek to have a long-term engagement in monitoring. However, these types of reports are the most demanding in their monitoring methodology, as well as complex and time-consuming in their drafting.

- *Thematic reports*

Like comprehensive reports, thematic reports also assess the manner in which domestic law is implemented and whether this complies with international standards. However, they do this by focusing on specific aspects of the judicial system. They are not concerned with a specific case but, more broadly, with the procedures applied in a sector of the system, such as a specific court, or in a type of cases, such as war crimes.

- *Reports on single cases of major public interest or on a set of such cases*

The particular domestic context may induce a project to issue a report on a set of cases, or even on a single case of special importance. In such a report, the application of criminal law, witness protection or victims' rights may be more specifically examined. When a set of cases is reviewed, the report may resemble a thematic report, but generally the report on a single case or set of cases will include also other information, such as a more detailed reference on the facts of the case, or on practices such as charging and sentencing, in addition to or instead of direct assessment of compliance with human rights standards.

- *Regular reports on contemporary issues of concern*

Projects with an appropriate capacity in legal analysis and drafting have also engaged in regular reporting and publishing short analyses of contemporary problems. For instance, reports of approximately two pages may be issued on a monthly or quarterly basis. Periodic reporting has also allowed for more regular contact with the justice authorities.

Titles of the different types of reports are included in Annex 6 for further reference.

## 17.d Confidential and semi-public reports

Unlike public reports, confidential reports contain protected or sensitive information, which cannot be shared beyond a limited number of identified recipients. Therefore, they normally contain a specific warning that they should be treated as confidential. Issuing such reports may be necessary for legal, political or strategic reasons. Confidential reports have been used to share certain information deriving from closed hearings or information that was shared with the project on the condition that it be treated confidentially. Moreover, projects have sometimes agreed with disciplinary bodies for judges and prosecutors to provide on a confidential basis any reports that document egregious misconduct by particular judicial actors.

Semi-public or limited-distribution reports are those addressed to certain types of recipients. Such reports have limited distribution due to their specialised nature, but they do not contain confidential information. Therefore, if additional actors request them or if

they are disseminated further, no sensitive interest is compromised.<sup>17</sup>

Confidential or semi-public reports could also be used at the commencement of a project, if there is a strategic decision by project managers to first build confidence with authorities who are skeptical about public reporting. In such a case, project managers will need to weigh carefully the benefits of public reporting versus more restricted reporting.

Project managers may need to develop information-sharing protocols for information that is not included in public reports, but is of interest to external stakeholders. For instance, international organisations may be interested to obtain statistics that a project keeps, or may ask the project's views on the fairness of a decision in a high profile case, although the project does not intend to report publicly solely on that. The relevant protocols should establish who may decide to share internal information, when, with whom and how, so as to not compromise the project's integrity and its ability to deliver on its principal objectives.

## 17.e Organising public trial monitoring reports

The following paragraphs outline some good practices regarding report drafting, so that trial monitoring reports can be clear and persuasive. Such advice can be included in reporting guidelines developed by project managers. Reporting guidelines can also include methods that ensure that reports are drafted efficiently and in a timely manner.

### 17.e.i Structure of analysis in reports

Many trial monitoring projects follow the structure of legal reasoning for the structure of their reports. This entails:

- *Opening with a statement of the problem*

Stating clearly the problem and its consequences in a couple of sentences at the beginning of the analysis allows readers to understand immediately the focus of the analysis and the position of the project.

- *Summarising the relevant applicable law*

In this paragraph, both domestic law and international human rights or other standards that apply to the problem are clearly articulated.

- *Briefly describing the relevant facts*

At this point, the factual findings of the problem that was observed are summarised. One or more vivid examples may be provided. Statistics can be used also to supplement the example.

- *Applying the law to the facts and reaching a conclusion*

Under this paragraph, it should be demonstrated how the problematic practice does not meet the legal standards. In addition to drawing a conclusion, the possible root causes of the problem may be addressed in this paragraph.

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<sup>17</sup> For instance, the monthly reports that the OSCE Mission in Kosovo shared in the past with the UN Mission in Kosovo (UNMIK) were semi-public. From 2005 onwards, the program decided to share these reports with all local justice actors and eventually to publish them on the OSCE webpage.

- *Issuing recommendations*

In this final paragraph, the analysis should include specific recommendations to the competent authorities on how they can resolve the problem more generally.

### *17.e.ii Components of public reports*

Most public trial monitoring reports follow the following structure:

- *Title, copyright issues, abbreviations and table of contents*

The title of the report should accurately reflect the content. The publication date and the drafter, usually the project itself rather than the specific individual, should also be featured on the cover. Any copyright restrictions that the project deems necessary to impose should be included at the beginning of the document. As monitoring projects normally aim at the widest possible dissemination, a possible example is: "All rights reserved. Permission to reproduce and distribute this document is hereby granted provided that this notice is retained on all copies, that copies are not altered and that [the project] is credited."<sup>18</sup> A list of abbreviations or acronyms used in the text should be visible, preferably at the beginning. The first time an acronym or abbreviation is used in the text it should be indicated in parenthesis following the full name or term to which it refers. Finally, a table of contents should always be included at the beginning of a report, even for shorter reports, as it helps readers navigate the document.

- *Executive summary*

An executive summary sets out in brief the main observations, conclusions and recommendations included in a report. It informs readers of the essence of the report, so even if they do not have the time to read it entirely, the main ideas will be conveyed.

- *Introduction*

The introduction sets out the background and the basis for a monitoring report. It can be used to make a brief description of the project. It should state what the report includes and what it seeks to achieve. Acknowledgements to the main authors, if security concerns are not an issue, may be made by name at the beginning or introduction of the document, as well as acknowledgements to project donors.

- *Methodology*

The methodology used in gathering information and compiling the report should be described in a separate section following the introduction, as this supports the accuracy of the project's findings and can raise its profile. Monitoring methodology can include how cases were selected and monitored, the number of cases observed, or the monitors' qualifications. It can also clarify that the report's analysis does not seek to second-guess the judicial decisions on the merits. It can also clarify whether the report focuses only on problematic practices or whether it includes both good and problematic practices. If only negative points and drawbacks are reported, justice officials may perceive the monitoring program to be biased, rather than presenting a balanced view of overall challenges and achievements, and consequently reject its findings. Therefore, a project may try to reflect both positive and negative practices in reports. Other projects prefer to report only when problems are observed and offer solutions, rather than consume efforts in praising the judiciary for doing its work, although they may include references to particularly good practices, with a view to encouraging others to follow them. Reports may also highlight improvements made following earlier project reports and recommendations. Each project should consider which approach to adopt relative to the circumstances particular to its assignment.

<sup>18</sup> Creative Commons licenses are usually useful as they provide a wide range of options to choose from and are well-known: see <http://creativecommons.org/licenses/> (accessed on 30 June 2013).

- *Presentation of findings and legal analysis*

Under each issue presented in the report, the methodology for analysing the findings under Chapter 17.5.1 can be used. Additional good practices for the presentation of findings and analysis are to use a few current and sufficiently detailed examples from monitoring to illustrate the argument made. Reports may also avoid using case names, unless those cases are the specific focus of the report, or the names of judicial actors that were involved in them, which can allow readers to concentrate on the problems highlighted, rather than perceive the report as attempting to embarrass specific persons. It is also good practice to avoid overburdening the report by including only useful statistics or graphic illustrations.

- *Conclusions*

Conclusions should be clear and flow naturally from the cases monitored and legal analysis presented. While conclusions can be included in each separate chapter, key conclusions should also be summarised in a separate chapter at the end of the report and in the executive summary at the beginning of the report.

- *Recommendations*

Recommendations urging the authorities to take steps to resolve the problems observed are one of the most important parts of any report and should be carefully drafted. They are significant in terms of providing the project with the opportunity to make concrete suggestions to overcome the problems observed and to effect judicial reforms. They can also trigger additional advocacy activities by the project. To formulate recommendations, the views of team members at all levels should be considered. Prior to publication, the project may also seek the views of representatives of the institutions who will receive the recommendations on how obstacles can be overcome. Finally, recommendations should be both specific and be addressed to a particular institution or official position.

- *Annexes*

If certain information is valuable, but would overly burden the length of the report, it can be provided in annexes.

## **17.f Maximising the impact of public reporting**

Apart from making a report available on their website and delivering hard copies of it to interested actors, trial monitoring projects have employed a number of methods to maximise the dissemination, overall acceptance and impact of public reports. At a minimum, a cover letter from project representatives should accompany the report when it is delivered to the authorities and interested stakeholders. The cover letter should also invite the recipient to provide feedback to the project.

If possible, it is advisable to gauge the views of the authorities on the issues to be reported and on the formulation of recommendations while the report is being drafted. This allows for a certain “transparency” on the reporting process and gives the authorities a sense of involvement in the report, which can foster good cooperation after the report is published. Certain projects go further in their cooperation with the authorities: for instance, they send a copy of the final draft to selected authorities for comments and corrections on facts, making clear however that any feedback does not bind the project to change the content of the report.

A number of projects also hold roundtable discussions around the country with justice sector actors in order to discuss the published report. It is common that representatives from institutions who are supportive of the project and who may be recipients of recommendations are invited to be in the panel that discusses the importance of the report. Finally, most reports will hold a press conference and issue press releases after issuing a report.

## **Chapter 18 Other advocacy activities of trial monitoring projects**

Apart from issuing reports, trial monitoring projects should consider undertaking additional advocacy activities to disseminate their conclusions and to assist the implementation of their recommendations. While project managers may undertake advocacy roles more actively, there is also space for qualified legal analysts and monitors to assist in this regard.

For example, project representatives are frequently invited to participate in seminars and discussions that focus on the state of the judicial system that are organised by the national authorities, NGOs, or the international community in a country and abroad. It is common for the media to invite project representatives to give interviews or write articles for publication. The project may also be invited to observe or participate in working groups established by the national authorities to plan legal system reforms, as has been the case with many programs in the past. Furthermore, due to the insight trial monitoring can gain on judicial practices, project representatives are often invited to provide training or share their findings and knowledge of international standards at events organised by judicial and prosecutorial training centres or by bar associations.

## **Chapter 19 Measuring the impact of trial monitoring activities**

By way of conclusion to this Handbook, it should be highlighted that trial monitoring projects can provide a unique service in support of justice sector reforms in a domestic context. Nevertheless, since they monitor proceedings on the basis of ambitious yet concrete objectives, they should endeavour to measure the impact that their activities have. Already while preparing the implementation of the project, managers should consider what they will strive to achieve and develop criteria to measure whether they will be successful in their goal. Formal impact assessments may be postponed to the end of a project's life. However, conducting them at reasonable intervals can provide project managers with an idea of whether their activities are effective, whether they need to be patient and persistent, or whether they should adapt their operations to a reality different than the one anticipated, in order for the project to be relevant and effective.

## ANNEXES

### Annex 1 - Sample code of conduct and monitoring guidelines

#### 1.A. Sample code of conduct

##### CODE OF CONDUCT FOR TRIAL MONITORS

###### Professionalism

Monitors shall:

- Familiarise themselves in advance of the trial with all available information related to the case, including the date and time of the hearing to be observed, the location of the court building, identities of the defendants, their legal representatives, prosecutors and judges and the legal charges;
- Arrive at court early enough to have sufficient time to gain access to it;
- If an interpreter is needed, sit so that interpretation can be made during the trial without disturbing the proceedings;
- Pay full attention to the proceedings and take notes diligently;
- Strictly obey the court rules;
- Show respect for official representatives of the host State at all times; and
- Carry identification documents.

###### Non-interference (non-intervention)

Monitors shall:

- Not influence a proceeding in any way, even in the interests of a fairer outcome;
- When engaging with third parties, explain the purpose of trial observation, including the principle of non-intervention; and
- When asked questions about or invited to engage in the judicial process, explain their role as observers and the principle of non-intervention and decline to comment or act.

## Objectivity and impartiality

Monitors shall:

- At no time in observing or reporting express bias;
- Not make any statement to court officials, parties to a case or any other third party, including the media, on the proceedings;
- When in the courtroom, to the extent possible, sit apart from the prosecution, defence, other participants in proceedings and apparent supporters of a party, and take notes visibly and contemporaneously to the observed proceedings;
- When collecting additional information through meetings, attempt to contact opposing parties and collect a variety of views;
- Not engage in conversations in a manner that might give the impression of taking sides and, in particular, avoid protracted conversations with parties to the proceedings; and
- In reporting, indicate clearly where a piece of information is hearsay, allegation, opinion and the like.

## Confidentiality

Monitors shall:

- Not disclose to court officials, parties to a case or any other third party, including the media, observations or their findings; and
- Ensure safety and confidentiality of hand-written notes, electronic data and other monitoring information, especially when they contain personal data or private or confidential sources.

## Access to court

If access is denied or performance of their duties is hindered by the host State's officials, monitors should identify themselves and explain the State's commitment to allow observers at trials, if such commitment has been obtained. A monitor should never demand access or threaten court officials and should remain respectful and courteous at all times. Any obstacles with court access should be reported to the team leader.

## Security

Monitors shall:

- Choose a safe place for appointments and secure means of communication, particularly with private sources;
- Report security-related incidents or serious concerns immediately to the team leader, and discontinue observation immediately if they feel unsafe at any point, for whatever reason; and
- Not contact any third parties if there is a possibility that this could affect the security of the monitors.

I, \_\_\_\_\_, born on \_\_\_\_\_, national of \_\_\_\_\_, selected as a monitor for \_\_\_\_ [observation activity] in \_\_\_\_\_,

acknowledge having received a copy of the Code of Conduct, understand and accept all the provisions thereof, and undertake to perform my duties in accordance with them.

Should I have any doubts or questions with regard to the Code, I will report them immediately to the team leader or the designated contact point at [the project].

Signature

Date

## 1.B Sample guidelines for monitors

### Drafted by the OSCE Mission to Moldova

#### I. Basic Principles for Trial Monitors

##### - The Right to Observe/Monitor

All OSCE participating States have committed themselves to allow the presence of observers at trials in order to increase transparency and build public confidence in the judiciary. The right to observe trials stems from the right to a fair and public trial, which is enshrined in the International Covenant for Civil and Political Rights, the European Convention on Human Rights and domestic law of the OSCE participating States.

##### - Preliminary Notification of State Bodies

The OSCE/ODIHR and the OSCE Mission to Moldova shall inform the President of the Superior Council of Magistrates of the Republic of Moldova of the beginning of the Trial-monitoring Programme.

Under the Memorandum of Understanding which was concluded with the Superior Council of Magistrates, the latter will support the programme observers in their monitoring efforts. In particular, the President of the Superior Council of Magistrates shall inform all court presidents about the launched programme and ask them to assist the monitors with getting access to trials, files on criminal cases, minutes from the trials and sentences.

By the beginning of the monitoring in February 2006, the OSCE/ODIHR will distribute copies of the Memorandum of Understanding with the Superior Council of Magistrates to all monitors.

##### - Procedural Focus

The focus of the Trial-monitoring Programme is on procedural issues and not on substantive justice or the merits of the cases monitored. Accordingly, programme monitors should remain particularly attentive to violations of procedural rights.

It is not the monitor's task to evaluate the evidence or otherwise engage in balancing the various considerations that arise in the course of the trial.

The monitor should focus on compliance with legal procedures.

##### - The Role of OSCE/ODIHR Programme Monitors

In line with the objectives of the Trial-monitoring Programme and the Trial-monitoring Guidelines referred to herein, the role of the monitors under the OSCE/ODIHR programme is to provide accurate and concise reports on the trials they monitor. The monitors do not have the status of OSCE/ODIHR staff members.

##### - Access to the Court Building and Courtrooms

If the hearing is public, according to the national legislation free access to the court building and courtroom is a constitutionally

guaranteed right. Observation of this legal norm in practice is part of the monitoring exercise.

Accordingly, the observers, first of all, should try to get into the court building and the courtroom while not drawing attention and not standing out from the main public. The only visual differential sign of the monitor at this stage will be a badge with the name of the programme and emblems of the programme organizers (see Identification section on page [...]).

In case of problems with free access, the monitor should undertake the following actions:

In the event that access is denied by court officials (policeman at the entry to the court building, court clerk at the entry to the courtroom, judicial officer and other), the programme monitor should request a meeting with the presiding judge so as to explain the purpose of his/her presence.

In the event that, after the conversation, during which the monitor should briefly list the programme objectives and tasks and explain his/her role, access is still denied, the programme monitor should request a meeting with the Court President or his/her representative.

If a meeting with the Court President is allowed, the monitor shall present the Identification Badge issued by the programme organizers and the copy of the MoU signed with the Superior Council of Magistrates and the programme organizers. The Identification Badge shall indicate that the respective person is a monitor in the OSCE /ODIHR Trial-monitoring Programme.

If the Court President denies access to hearings, the monitor shall record the reasons given in the reporting template and inform the national co-ordinator thereof.

The monitor should never demand access to the trial and should remain respectful and courteous at all times.

In general, when writing a descriptive report, the monitor should detail all the aspects of his/her entry to the court and events taking place in the courtroom.

### **- Non-Intervention**

It is a matter of courtesy that the monitor introduces himself or herself to the president of the court and the presiding judge, and explains that he or she plans to attend the trial. If meeting with the presiding judge is difficult, the monitor may consider notifying the judge or other court officials in advance that he or she will be attending.

The observer should wear formal attire and sit where she or he can see and hear clearly, if possible. If an interpreter is needed, the observer should sit so that interpretation can be made during the trial without disturbing the proceedings. Detailed notes should be taken, particularly on the nature of the proceedings. Remember that the role of a trial monitor is to assess the fairness of the trial, not the guilt or innocence of the accused. Note the presence and behaviour of judicial officers and the treatment of the accused and victim during the trial.

Do not interrupt the procedure, intervene or talk to court officials, the accused, witnesses or the defense lawyer during the trial. The observer should be careful not to be identified with either the defence or the prosecution.

Special comments focusing, in particular, on whether the court proceedings appeared to comply with OSCE and other fair-trial commitments should be written down. Such comments should make clear any issues of concern in this regard. The comments should take into account that the trial is part of a judicial process, not a single event, and should, therefore, be written to include the broader legal context and circumstances. For example, if the court proceedings appear technically correct, but the defendant was forced to confess while in detention, this would still be a violation of the defendant's right to a fair trial. Or, while a trial may be fair, the comments might include indications that a person has been the victim of human rights violations. Any such circumstances should

be noted. The comments should include official court references (case numbers, charges, names of witnesses, etc.). This can be especially important if further follow-up is contemplated. It should be made clear how much of the trial the monitor has actually attended. It may not be possible to draw fair conclusions about a trial if the monitor has only attended one session. On the other hand, in some instances, one session may be sufficient for it to be clear that there are valid concerns about the fairness of a trial.

One of the fundamental principles underlying trial monitoring is respect for the independence of the judicial process. Accordingly, OSCE/ODIHR monitors must never intervene in or attempt to influence trial proceedings in any way whatsoever.

In accordance with the principle of non-intervention, monitors should:

Never interrupt proceedings. In the event that a monitor is asked by any of the parties to respond to a question, the monitor must stress her/his non-interventionist role and decline to comment. Otherwise, s/he would violate the principle of non-intervention into the proceedings.

Never tell or indicate to the judge or any of the other parties what course of action they should take. If monitors have concerns over the work of individual judges or any other party, the relevant information is to be sent to the national co-ordinator. Under no circumstances should monitors confront the individual or request an explanation for the conduct in question.

Never express their opinion on the case they are following, either inside or outside the courtroom.

Under no circumstances engage in conversation with the mass media or give comments on behalf of the OSCE/ODIHR or the OSCE in general.

If mass media try to ascertain the monitor's opinion on a certain case being monitored, the monitor may only inform of her/his intention to observe and of the programme objectives. Furthermore, the monitor should refer the journalist to the programme co-ordinator. The co-ordinator, after consultations with the OSCE/ODIHR, will make relevant comments in exceptional cases.

### **- Confidentiality**

The OSCE/ODIHR monitors can provide general information on the nature and objectives of the trial-monitoring programme to court officials and parties to the case.

However, OSCE/ODIHR monitors should never comment on the procedural or substantive nature of the case, or the criminal justice system in general, to court officials, parties to the case or any other third party.

### **- Security of the Observer**

It is particularly important that monitors do not take any action that might be detrimental to their security. In this regard, OSCE/ODIHR monitors should:

Report all security related incidents, no matter how unimportant they may appear, to the National Co-ordinator;

Discontinue their monitoring immediately and inform the National Co-ordinator if any threat is made against a monitor;

Discontinue their monitoring immediately and inform the National Co-ordinator if they feel intimidated at any point, for whatever reason; and

Not contact any of the parties to the case if there is a possibility that this could impact negatively on the security of the observer.

### **- Code of Conduct**

The trial monitors should:

As far as possible, know well in advance the date, time and location of the trial. It is necessary to describe in the special comments whether it was easy to get such information in advance, and whether such information was accurate. When possible, they should attach the most interesting procedural documents to the report.

Arrive early enough to ensure that they have sufficient time to gain access to the court, locate the courtroom and identify where they will sit. It is necessary to clearly describe this preparation for monitoring in the special comments.

## **Identification**

Monitors should have their OSCE/ODIHR Identification Badge with them at all times. Monitors should not misuse their OSCE/ODIHR Identification Badges. The primary use of the badge is to facilitate access to the trial, and it should not be worn outside the courtroom or at any other time.

## **Conduct in the court**

Monitors should at all times:

Maintain polite, civil and respectful relations with all court officials and parties to the case.

Be appropriately dressed and behave in a dignified manner. It is important that monitors under the OSCE project treat all parties and court officials with respect and courtesy.

Be seen to be taking extensive notes, as this indicates that close attention is being paid to the proceedings.

Take care to ensure not to leave trial notes lying around, as they may contain sensitive information.

## **Appearance of independence and impartiality**

Monitors should:

Find seating that will enable them to observe, hear and follow all aspects of the proceedings. In order to maintain the appearance of independence and impartiality, the monitors should sit in a neutral position. It is important that monitors do not sit next to either the defence or prosecution.

Not express any views on the trial, either inside or outside the courtroom.

Not discuss the case with any of the witnesses.

## **- Reporting**

All monitors should carry out monitoring in pairs. A report prepared only by one monitor and not supported with the paired report will not be considered.

Each of the monitors should develop her/his own report, consisting of descriptive and formal parts (checklists and special comments).

When preparing a report, monitors should:

Make detailed notes of everything happening in the court building from the moment of entering, and particularly in the courtroom.

Copy the materials of the case, minutes from the trial, and sentences (only if it is possible to make copies of such documents).

Fill in the Checklist provided.

Also submit a descriptive part of the report (special comments), where there should be a free narration of the witnessed events and actions on the day of monitoring or during hearings on the monitored case.

Promptly produce reports based on their notes and own findings, with attached copies of the documents (if available).

Ensure that the information contained in the trial reports is accurate and consistent.

The majority of information included in the trial report should be based upon what the monitor has directly observed. Where information from other sources is included, it is important to clearly reference these sources (conversation with the defence counsel, conversation with the prosecutor, etc.). In addition, facts should be clearly distinguished from third-person allegations and assessments.

Include in the report their recommendations on how to eliminate systematic violations that monitors face during the monitoring process.

Include in the report the citations from conversations with the judges, prosecutors, defence lawyers and others that illustrate regular problems or provide examples of positive phenomena and initiatives (the name and position of the interviewee should be indicated precisely and double-checked)

Once a month, choose one obvious case of typical violations and formulate it as a narration, which then should be submitted to the National Co-ordinator.

As far as possible, mention in their reports information related to the material conditions and technical equipment of the courts.

Submit the report by e-mail no later than two days after the monitoring by e-mail.

The National Co-ordinator, after receiving the reports, will contact the monitors for any necessary clarification of details. These actions should not be interpreted as doubting the information provided by the monitors. Additional clarifications and verifications will guarantee reliability of the information that will form the basis of the comprehensive report to be prepared.

## Annex 2 – Sample internal reporting templates

### 2.A Sample Narrative Report

<b>Legal Systems Monitoring Section</b> <b>Tracking Memo</b>
<b>To: Chief of LSMS</b> <b>Cc: LSMS Legal Analysts</b> <b>From:</b> <b>Date:</b> <b>Re: Case Name</b>
<b>I. Case Information</b> <ul style="list-style-type: none"><li>• Defendant(s), date of birth, ethnic group(s)</li><li>• Court</li><li>• Prosecutor</li><li>• Defence counsel</li><li>• Injured party (parties), date of birth, ethnic group(s), representative</li><li>• Pre-trial judge</li><li>• Confirmation judge</li><li>• Trial or retrial panel</li><li>• Charge(s)</li><li>• Dates of detention and of release</li><li>• Verdict</li></ul>
<b>II. Stages of the Proceedings</b> <p>Each time you mention a case in dailies, you have to systematically copy and paste it in this form in order to have all information related to the case in the same document.</p> <ol style="list-style-type: none"><li><b>1. Police custody</b></li><li><b>2. Detention</b></li><li><b>3. Investigation pre-indictment</b></li><li><b>4. Indictment</b></li></ol>

**- Summary of indictment**

**- Date of the indictment**

**5. Confirmation hearing**

**6. Trial**

**7. Verdict**

**- Date of announcement of the verdict**

**- Date of the filing of the written verdict**

**8. Appeal/Supreme Court**

**9. Retrial**

**10. While serving sentence**

**III. Concerns/remarks**

(For use if the information does not fit into any of the above-mentioned sections.)

## 2.B Sample Excerpt from Questionnaire

Source of Information	Don't know	No	Yes	
<b>Right to a lawyer</b>				
				16 The lawyer/s had enough time to visit their detained client before the hearing
				17 The lawyer/s found all the necessary facilities to visit the accused before the hearing
Explain:				
				18 The judge appointed a lawyer to each of the accused who doesn't have a representative
				19 The judge postponed the hearing to ask the board of lawyers to appoint a lawyer for each of the accused who has no representative
				20 The prison management refused to allow the lawyer to visit despite receiving permission to visit
<b>21- Treatment of the accused in the Court cells</b>				
				22 The accused was exposed to physical or verbal mistreatment by the security agents in charge of supervision
23- If yes, describe it				
				24 The accused was exposed to physical or verbal mistreatment by other inmates
25- If yes, describe it				
				25 The judge made special equipment available to allow one of the accused who is ill to attend the hearing
27- If yes, describe it				

Source of Information	Don't know	No	Yes	
<b>28- Behaviour of Security Agents in Court-</b>				
				29 A family member of one of the plaintiffs was exposed to physical and/ or verbal abuse from security agents
				30 A family member of one of the accused was exposed to physical and/ or verbal abuse from security agents

				31 The lawyer of one of the plaintiffs was exposed to physical and/ or verbal abuse from security agents
				32 The lawyer of one of the accused was exposed to physical and/ or verbal abuse from security agents
33-Publicity of the hearing				
				34 Hearing is public
				35 The judge evacuated the hearing chamber in whole or in part
				36 Print media were able to attend the hearing
				37 The written press were able to take notes
				38 Photographers were allowed to attend -
				39 Photographers were allowed to take pictures
				40 TV press were allowed to attend
				41 TVpress were allowed to take videos
42 The right to an impartial tribunal				
				43 The judge has a relationship with one of the plaintiffs
44 If yes, please explain:				
				45 The judge has a relationship with one of the plaintiffs' lawyers
				46 Hearing If yes, please explain:
				47 Hearing he judge has a relationship with one of the accused
48 If yes, please explain:				
				49 The judge has a relationship with one of the lawyers of the accused
				50 The judge has a relationship with one of the lawyers of the accused

## 2.C Sample of a Hybrid Internal Reporting Template

Example of an Open Organised Reporting Template	
I. CASE INFORMATION	
Hearing date:	
Nature of hearing:	
Defendant name(s):	
Case name:	
Court file number:	
Indictment number:	
Charge:	
Date indictment confirmed:	
Plea:	
Date of plea:	
Date of court ordered custody:	
Date first preliminary motion made and type:	
Defendant age/ethnicity/gender/citizenship:	
Victim age/ethnicity/gender/citizenship:	
Court:	
Judge(s):	
Prosecutor:	
Defence attorney (private/ex officio):	
Next hearing date:	
Verdict and sentence:	
II. PROCEEDING/HEARING INFORMATION	
Summary	
III. ANALYSIS OF ADHERENCE TO HUMAN RIGHTS STANDARDS	
1. Custody	
2. Independence and impartiality of the tribunal and presumption of innocence	
3. Instruction on rights	
4. Right to a public trial	
5. Right to have the free assistance of an interpreter	

6. Right to effective legal assistance
7. Adequate time and facilities for the preparation of the defence
8. Right to examine and have examined witnesses
9. Reasonable length of proceedings
10. Verdict: publicity, timeliness of delivery, reasoning, sentencing
11. Right to appeal
12. Witness related issues
13. Mental incapacity
14. Equality of arms principle
15. Other issues
16. Practices of relevance

## Annex 3 – Monitoring court proceedings – issues and sample forms

### 3.A Common issues monitored in legal proceedings

#### (A) Issues monitored at the trial stage

- Right to a public hearing.
- Right to a competent, independent and impartial court.
- Right to be present at trial and to defend oneself (including having adequate time and facilities to review the evidence and prepare a defence).
- Right to legal counsel at trial (including instruction on this right, right to free legal assistance in certain circumstances and effectiveness of defence counsel).
- Equality of arms (including right to present evidence, call and examine witnesses and to have adequate time for preparation of defence).
- Application of the presumption of innocence and burden of proof.
- Right not to be compelled to confess guilt and right to silence at trial.
- Right to be tried without undue delay (reasons for delays and other problems related to postponing and adjourning hearings).
- Right to an interpreter.
- Right to security and liberty (also connected to the right to be tried without undue delay while in detention).
- Right to a public and reasoned judgement on guilt and punishment.
- Victim's rights issues, including right to a lawyer, compensation, and protection and support mechanisms.
- Application of other domestic procedures and rules related to the conduct of effective and fair trials.
- Professionalism and performance issues related to legal practitioners.
- Specific victim and/or witness rights, juvenile justice, or the implementation of other laws in open, closed or non-public hearings (if closed trial hearings are monitored).

### **(B) Issues monitored in relation to pre-trial proceedings**

- Right to a competent, independent and impartial judicial authority.
- Right to prompt judicial review upon arrest, and related issues (legal basis of custody, opportunity of detainee to be heard by a judicial officer and regularity of custody review).
- Right of the suspect to be informed of her or his rights upon questioning.
- Right of the suspect to information at the time of judicial review of custody (including right to be informed of charges).
- Right to be free from torture and other inhuman and degrading treatment.
- Right to legal counsel at the pre-trial stage, including at the custody hearing.
- Right to trial within a reasonable time after detention.
- Right to an interpreter.
- Rights of witnesses/victims to security (protection) and support (i.e. psychological and other).
- Other specific issues for vulnerable victims, witnesses and suspects (including respect for their situation and existence of relevant institutions and mechanisms in this regard).

### **(C) Other issues that may be monitored through additional sources of information**

- Rights upon arrest (including the right to be notified of reasons for arrest, right to counsel, right not to be compelled to confess guilt, right to silence and right to an interpreter).
- Right of detainees to have access to the outside world.
- Right to humane conditions and to be free from torture.
- Right to challenge lawfulness of detention.
- Right to appeal judicial orders, decisions and verdicts.
- Rights of witnesses/victims to security (protection) and support (psychological and other).
- Perception of the justice system by the public.
- Right to a competent, independent and impartial court (including indications of threats to justice actors, corruption, etc).
- Effectiveness of court administration (availability of courtrooms, case-management systems and facilities, accessibility of criminal records, etc.).

### 3.B Possible issues to examine when monitoring trial proceedings

The sequence adopted below follows the list in Annex 3.A.

#### ► Right to a public hearing

Check whether:

- A trial schedule is compiled and, if it is, whether it accurately depicts all hearings and is placed in public view (e.g. on an announcement board) or is easily accessible to the public;
- There is a culture among judges of accepting in the courtroom members of the public with no direct interest in the proceedings and whether attendance at proceedings is allowed without bias as to the affinity of the public with one party or another;
- The courtroom assigned to a specific hearing is too small relative to the expected public interest and despite the fact that a larger courtroom could have been allocated;
- The hearing takes place in the office of the judge, without due reason;
- There are unreasonable restrictions placed on the public entering the courtroom after the proceedings are in session;
- Media are permitted to enter a courtroom and whether any permission required is denied without explanation;
- The court strikes a case-by-case balance of interests in declaring a trial or hearing closed and whether it considers other less stringent measures to protect the concerned interests; and
- Other such measures, less stringent than declaring the hearing closed, are available in the legal system (e.g., the assignment of pseudonyms or testimony provided by video-link as alternative protective measures for vulnerable witnesses).

#### ► Right to a competent, independent and impartial court

Check whether:

- There are any objective or perception-based indicators that judges assigned to a case do not have the legal qualifications to try them (e.g. a civil court judge being assigned to a panel on a war crimes case);
- A diversity of competent judges is promoted, thus avoiding perceptions that qualified persons of different genders, ethnic or religious backgrounds are deliberately excluded from administering justice in specific cases;
- The judges assigned to a specific case are appointed on the basis of an objective system – such as a lottery – and, if random

assignment is overridden, that this is done on the basis of a reasoned decision;

- Judges are enabled by the system to decide independently on a matter, or whether they consider themselves bound by external factors, (e.g. a judge refusing to review an administrative instruction or considering her or himself unable to review well-grounded suspicion for the continuation of pre-trial detention);
- Judges treat favourably or more cordially one party in relation to another in their communication, or whether trial judges or higher level judges publicly express an opinion that jeopardises the presumption of innocence in a case;
- Judges adjudicating a case are continuously present during the trial and the bench is properly composed;
- There have been threatening statements made against the judiciary by political actors or parties to the proceedings in relation to the outcome of a case;
- Allegations of corruption or undue influence on the judges of a case are made by parties or there is such a perception of lack of integrity among the public;
- The court appears not to take due notice of the arguments or proposals made by the defence or prosecution, or rejects them without due justification;
- The decisions and judgments of the court contain justifications as to the evidence or law they have considered in reaching them;
- Evidence not presented in court is taken into consideration in reaching a verdict (also connected to the right to oral proceedings and the right to a public trial);
- The system provides judges with security of tenure and decent compensation; and
- The evaluation of judges takes into account factors that limit their independence and has an impact on their conduct (e.g. giving negative evaluations of judges who express minority opinions).

### ► **Right to be present at trial and right to defend oneself**

Check whether:

- The court has duly summoned a defendant for proceedings, and whether defendants tried in absentia have a real opportunity to challenge verdicts reached in their absence;
- A defendant removed temporarily from proceedings is represented by counsel and informed about what took place in her or his absence;
- The accused is given a real opportunity to present evidence in her or his favour, and whether she or he has access to evidentiary material, especially if she or he so requests;

- There are claims or indicators suggesting that the prosecution has suppressed exonerating evidence;
- A defendant's testimony has allegedly been extracted under pressure, the defendant claims to have received threats aimed at preventing her or him from presenting a defence, or the defendant is alleged to have been pressured into covering up other co-perpetrators, and whether such allegations are properly investigated;
- The defendant has a real opportunity to review the record of any testimony she or he provides and signs;
- The defendant has adequate time to prepare a defence against evidence presented by the prosecution or gathered by the court; and
- Witnesses called by the defence are pressured not to testify.

▶ **Right to legal counsel at trial (including instruction on this right, right to free legal assistance in certain circumstances, and effectiveness of defence counsel)**

Check whether:

- The defendant has the opportunity to engage counsel of her or his own choice, who is willing, competent and independent;
- The court or prosecution clearly and understandably instruct the defendant as to his or her rights at the appropriate time;
- The defendant has the opportunity to consult confidentially with counsel and is given reasonable time for this prior to the proceedings;
- There are any restrictions placed on defence counsel accessing their client in detention (e.g. detention centres asking defence counsel to obtain the written permission of the court in order to visit the defendant in detention);
- The defendant is content with the counsel assigned and whether the court takes action to protect the rights of the accused and assign different counsel in the event the appointed counsel is blatantly indifferent or not competent to represent the accused; and
- Defence counsel is present during trial in the event the defendant refuses to attend.

▶ **Equality of arms (including the right to present evidence, to call and examine witnesses, and to adequate time for preparation of defence)**

Check whether:

- Defence or prosecution motions are rejected without due justification;
- The court openly or blatantly favours the prosecution over the defence, or vice versa, and whether both parties are given

- adequate time and opportunity to gather evidence and present it; and
- The accused appears to have an opportunity equal to that of the prosecution to request that expert evidence be provided.

### ► **Application of the presumption of innocence and burden of proof**

Check whether:

- The court makes statements during trial that demonstrate bias against the accused prior to rendering the verdict;
- Judges give great value in their verdicts to circumstantial or contradictory evidence without due reasoning and whether this points to arbitrariness rather than judicial discretion;
- The court asks the accused to prove her or his innocence, in contravention of the law;
- The court takes into account investigative statements by the accused that were made in her or his capacity as a witness without being provided information as to her or his rights as a suspect;
- The court and prosecution disregard a defendant's claim of having been tortured or mistreated during investigation without investigating it properly;
- Testimony by a co-defendant or convicted co-perpetrator is the only evidence leading to the conviction of a co-accused;
- Justice officials or other governmental officials make public statements treating the accused as already guilty of the crime(s); and
- Documents showing that a failed negotiation had taken place in the context of a plea or immunity agreement are taken into account in establishing guilt.

### ► **Right not to be compelled to confess guilt and right to silence at trial**

Check whether:

- The silence of the accused is considered by the court as a sign of guilt;
- There are any indications that the accused has been bribed, threatened or lured into confessing guilt;
- Ethical rules of conduct in reaching plea agreements are respected; and
- The defendant is duly informed of her or his rights, and whether she or he is reminded of these during proceedings, if and when appropriate.

▶ **Right to be tried without undue delay, and overall efficiency of trial proceedings (reasons for delays and other problems related to postponing and adjourning hearings)**

Check whether:

- Postponements are granted by the court without due cause;
- The prosecution or defence purposefully protracts proceedings;
- The presentation of expert or other evidence takes an unreasonably long time and the court does not seek to expedite this;
- It is obvious that the court does not manage proceedings effectively (e.g. case management or other support staff consistently fail to send out summons and case documents within the legal deadlines, or the court repeatedly calls too many witnesses to testify on a given day);
- The panel takes due measures to ensure the presence of critical witnesses who are unwilling or unable to come to court (e.g. reviewing the service of summoning, fining and/or protecting them; or the court does not even attempt to summon key witnesses that may be abroad); and
- The court disciplines unruly parties, defendants or members of the public according to the law.

▶ **Right to an interpreter**

Check whether:

- The defendant is provided with a professional and independent interpreter to follow the proceedings if she or he does not understand the language of proceedings; and
- Court documents are provided to the accused translated into a language she or he or the defence counsel understands; and
- Whether the defendant speaks the language of the proceedings, but does not wish to use it for ideological reasons (the failure to provide an interpreter then may not constitute a violation depending on the circumstances).

▶ **Right to security and liberty (also connected to the right to be tried without undue delay while in detention)**

Check whether:

- Proceedings for a defendant in detention are prioritised over others; and whether there are undue delays attributed to justice or governmental officials;
- Sentences imposed are repeatedly commensurate to the time defendants are kept in detention;

- The panels reviewing pre-trial custody properly review the continued existence of all grounds for detention, which inevitably may subside over time; whether they properly justify their detention decisions with due reference to the insufficiency of measures alternative to detention; or whether certain exceptional grounds for detention are used repeatedly and signify, instead, other reasons for depriving the defendant of liberty (e.g. punitive reasons, rather than preventing escape); and
- The domestic legal framework is elaborate enough compared to international pre-trial detention standards and whether statistics demonstrate an overuse of pre-trial custody (e.g. for a certain category of defendants).

▶ **Right to a public and reasoned judgement on guilt and punishment**

Check whether:

- The judgment is pronounced publicly;
- The judgment contains sufficient arguments to support its conclusions on the basis of law and presented facts, duly considering all submissions significant enough to have an impact on the verdict;
- The sentence pronounced is within the range provided by law and any extraordinary aggravating or mitigating circumstances are duly reasoned; and
- Evidentiary standards for mitigating and aggravating circumstances are applied (i.e. aggravating circumstances may need to be proven beyond reasonable doubt and mitigating ones on the basis of probability).

▶ **Victim's rights issues (including the rights to representation, compensation, protection and support mechanisms)**

Check whether:

- Vulnerable witnesses have access to and actually benefit from the application of protective measures (physical protection and psychological support) by court mechanisms or civil society assistance;
- The law and legal practice allow victims to pursue clear compensation claims in criminal proceedings, or whether there is an accessible system to grant them compensation in civil proceedings;
- A party asks impermissible questions (e.g. questions on prior sexual conduct in rape cases when law or international standards do not permit); and
- The law and practice allows for vulnerable victims to be assisted by free legal counsel during proceedings.

▶ **Application of other domestic procedures and rules related to the conduct of effective and fair trials**

Check whether:

- Deadlines that are prescribed by domestic law are compliant with international standards and whether they are abided by (e.g. deadlines for commencing proceedings after the indictment is issued, or maximum number of days between hearings in a single case); and
- Other indicators of performance required by domestic standards and which bring international standards into effect are complied with (e.g. the number of postponements a judge is allowed to grant in a case).

▶ **Professionalism and performance issues related to legal practitioners**

Check whether:

- Judges, prosecutors and defence counsel have the necessary legal background and skills to handle specific categories of cases (e.g. knowledge of international humanitarian law to deal with war crimes cases or relevant technological knowledge when dealing with organised crime committed through the use of computers, training in questioning rape victims or juveniles when they testify), as demonstrated through their conduct in proceedings and additional information gathered.

▶ **Specific victim and/or witness rights, juvenile justice or the implementation of other laws in open or non-public hearings (if closed trial hearings are monitored)**

Check whether:

- The law and legal practice afford protection, through judicial means or extra judicial protection, to vulnerable witnesses or witnesses under threat;
- Juvenile victims are treated in accordance with international standards in judicial proceedings, or whether juvenile defendants are tried by courts or judges for adults; and
- The media can gain access to public court records according to any freedom-of-information legislation and the right to a public trial.

## **Annex 4 – Conducting interviews: Indicative issues to explore in information gathering interviews**

### **► Court presidents and individual judges**

Monitors may wish to enquire directly with court presidents and individual judges about the following issues, among others:

- How are cases allocated to individual judges within a given court;
- How judges handle statements by political actors attempting to undermine their independence, especially when such statements are made in the public arena;
- Whether judges have material and human resources at their disposal to complete the procedural actions that are required of them;
- Whether the court president or judge ever received threats to her or his, or is aware of threats made to colleagues by parties to the proceedings or outside actors;
- Whether systems for the imposition of disciplinary measures against judges are deemed inadequate or biased;
- Whether there are any problems with judges' remuneration and what implications this might have for their work;
- Whether judges have had sufficient training in the handling of particular types of cases to which special laws and procedures apply, or would appreciate training in a specific field, such as war crimes, or organised or economic crimes;
- Whether judges have easy access to a defendant's past criminal record;
- Whether judges have access to computers, knowledge of how to operate them, and whether they believe electronic databases would be of use in their work;
- Whether judges have any problems in requesting or obtaining evidence from other parts of the country or from abroad;
- Whether judges are aware of and use the services of witness-support personnel or NGOs that carry out such activities;
- How judges organise the drafting of their verdicts in complex cases;
- Whether judges believe there are any efficient ways of managing their work better, such as establishing quotas or moving certain types of offences to lower courts or to the administrative justice system; and
- How judges deal with cases involving vulnerable offenders, such as juveniles, drug abusers and the mentally ill in the event that appropriate institutions do not exist in the host State.

### ► Chief prosecutors and individual prosecutors

In interviews with chief prosecutors and individual prosecutors, monitors may pose the same questions as listed above, but may also explore the following issues:

- Whether the communication between prosecutors and police investigators is effective;
- Whether prosecutors have any difficulties in physically reaching courts within their jurisdiction;
- In cases where witnesses change their testimony between investigations and trials, what reasons do they believe contribute to this;
- Whether there have been cases where they or their colleagues have investigated alleged threats to witnesses or defendants and what obstacles may exist in this regard; and
- Whether prosecutors have adequate information at their disposal regarding sentencing practices, enabling them to negotiate effectively possible plea agreements or immunity agreements with the defence, if these are allowed in the justice system.

### ► Defence counsel

In addition to questions described above for judges and prosecutors, interviews with defence counsel may reveal interesting information about the following matters:

- Obstacles to carrying out the function of legal representation independently and in accordance with internationally and domestically recognised standards;
- Impediments to free, timely and unsupervised communication with their clients in detention centres, courts or police facilities;
- Obstacles to obtaining full and timely access to court or prosecution files for the preparation of an effective defence;
- Withholding by the prosecution of exonerating evidence;
- Lack of material resources or other obstacles to gathering evidence in support of the defence that breaches the equality of arms;
- Unjustified rejection of defence motions by the court;
- Problems with receiving compensation for defence services provided ex officio;
- Avenues to addressing the ill-treatment of or forced confessions by their clients, or similar issues; and
- Background information to a case that may not feature in the case file.

## ► Bar Associations

Facts of interest that can be obtained from bar associations would include:

- The process of gaining admission to the bar and whether this is fair, transparent and un-bureaucratic;
- Attempts to infringe upon the independence of the bar;
- The funds and capacity available to bar associations to carry out targeted training for lawyers;
- Challenges that lawyers face in their work; and
- Their independence, capacity and willingness in imposing disciplinary measures on lawyers violating the code of ethics.

## ► Defendants, especially in detention

The following questions may be posed to defendants, particularly when they are deprived of their liberty:

- Whether detainees are visited by their defence counsel in order to prepare an effective defence;
- Whether they have the opportunity to communicate with their lawyers in person, by phone or otherwise, without supervision or undue interference;
- Whether court documents and summons are served on the defendants, especially when in detention, in a timely manner, and whether the defendants' submissions are duly forwarded to the court or other judicial authorities;
- Whether they are given the necessary facilities to prepare their defence, particularly if they are in detention and not represented by a lawyer;
- Whether they are released from detention immediately in the event no valid detention order exists; and
- In the event information about ill-treatment in detention is provided, monitors may inquire whether the individuals are aware of existing mechanisms for the reporting of such instances, or whether they have conveyed this information to their lawyer, the director of the detention centre, the court or prosecution, any ombudsperson, or any other organisation responsible for these matters.

## ► Injured parties, witnesses and organisations involved in supporting vulnerable individuals

These individual and groups may be asked about such issues as:

- Delays in the processing of cases where they have filed a complaint and instances in which they have not received information regarding their progress;

- Perceptions that the authorities are not genuinely investigating a complaint or a claim;
- Concerns regarding their security;
- Instances in which the court or the investigative authorities have not treated vulnerable witnesses with sensitivity;
- Scepticism as to whether they can be compensated for damages suffered; and
- Inability to engage legal representation, the non-existence of legal aid mechanisms for injured parties, and other similar problems.

In addition to the aforementioned issues, monitors may inquire with representatives of organisations supporting vulnerable persons:

- Whether they have sufficient resources to provide services to all those in need;
- Whether their personnel are adequately qualified and trained and if continuing education is possible;
- Whether they face any difficulties accessing individuals in need; and
- Whether their opinions are taken into consideration by the authorities when submitted.

### ► The police

In meeting with the police, trial monitors may inquire about such issues as:

- The manner in which police officers handle domestic violence cases and the type of training they may have received;
- The training and challenges investigators may face in gathering evidence for war crimes or organised crime cases;
- The diversity of police officers in a given unit that deals with interethnic or gender crimes and the efficiency of cooperation among them;
- What kinds of physical-protection measures exist for witness, judges or lawyers;
- What organisational systems are in place to record cases following riots; and
- What types of supervisory structures exist, especially with regard to prosecutors or senior police officers and whether there are any problems in the cooperation between police and prosecutors.

► **Governmental officials, judicial and prosecutorial councils, and training and disciplinary bodies**

Depending on the competencies of these actors, information of interest to corroborate monitoring findings may include:

- The materials and human resources allocated to the judicial branch and the manner in which these are disbursed to guarantee the judiciary's independence from the other branches of government;
- Efforts taken to ensure the implementation of judicial decisions;
- Systems in place for recording statistical data and general use of information and communication technologies in judicial reform;
- The authorities' efficiency in drafting new laws or amending existing ones, submitting these for public discussion and promoting their prompt review by the legislative body;
- Cooperation with international courts and compliance with decisions or recommendations of international human rights bodies and courts;
- International cooperation and mutual legal assistance with judicial and prosecutorial authorities in other countries;
- Councils' roles in the process of selecting or vetting judges and prosecutors;
- Attempts to infringe upon the independence of judicial and prosecutorial councils;
- The process of examining complaints against judges and prosecutors, the criteria used in applying disciplinary measures and the sufficiency of the resources allocated to reviewing complaints; and
- The effectiveness of training organised for judges and prosecutors, including whether continuing education is compulsory, and the subject matter, frequency and duration of training sessions.

## Annex 5 – Internal-Reporting Instructions

### Example of reporting instructions within a reporting template (OSCE Mission to Bosnia and Herzegovina)

#### I. CASE INFORMATION

This section introduces the reader to the particulars of the case and provides a framework around which the analysis of the hearing will be developed in the remainder of the report. It is essential to complete all information each time a new report is made. Note: Do not leave any entry blank. If there is no appropriate entry, indicate “none” or use the abbreviation “n/a” to assure the reader that the lack of an entry is intentional.

Hearing date: (the date of the monitored hearing corresponding to this report)

Type of hearing: (plea, trial, sentencing hearing, etc.)

#### IV. ANALYSIS OF ADHERENCE TO HUMAN RIGHTS STANDARDS

##### *General instructions*

This is the heart of the report and the analysis set forth here is the key to success of the entire program. The analysis shall be primarily based on assessing the compliance of the domestic law and practice to the internationally recognized fair trial standards. The analysis shall be critical and shall identify fair trial concerns and human rights violations.

This section is divided into sub-headings to enable the evaluation the proceedings to be organized into general “subject” areas that are significant in assessing the adherence to fair trial standards. To provide guidance on the subject matter of each sub-heading, explanations, and relevant questions for analysis are provided below. Monitors must exercise careful judgment as to which category to use for each issue under analysis and refer to these guidelines or contact a legal analyst when in doubt. Monitors should include all important analysis in this section or else it may be lost.

Under each sub-heading:

a) Open with a statement of the problem;

State the problem and its consequences in 2-3 sentences.

b) Give a simple summary of the relevant applicable law that is being breached

- State domestic law;
- State international human rights law, especially if it affords better protection. (NB: Case law of international bodies can be relevant, in addition to the provisions of directly applicable conventions. Likewise, apart from “hard-law”, other international instruments may be of relevance, such as a body of principles.)

c) Apply the law to the facts – give details of the problem

- State the facts;
- Analyze compliance with the law;
- Identify concerns, potential or actual violations of the international fair trial standard. If you are not certain if there is a concern include the information nonetheless, or else it may be lost.

d) Recommendations

The recommendations should be related to addressing the identified issue/concern. They should be specific and have one or several addressees.

*ii) Instructions specific to Sub-headings 1-14*

## 5. Right to have the free assistance of an interpreter

Article 6 (3) ECHR: "... to have the free assistance of an interpreter if he cannot understand or speak the language used in the Court."

If a defendant has difficulties in speaking, understanding, or reading the language used by the Court, the right to interpretation (oral) and translation (written) is crucial to guarantee the fairness of the proceedings. It must be noted that if the defendant does speak the language of the Court adequately, but prefers to speak another language, there is no obligation on the authorities to provide the defendant with the free assistance of an interpreter. Interpreters have to be provided free of charge regardless of the outcome of the trial. The European Court found a violation of the right to free assistance of an interpreter when the authorities sought reimbursement of the cost of the interpreter when the defendant was convicted [footnote: Case of *Luedicke, Belkacem, Koc v. Germany*, ECtHR judgement, 28 November 1978, paras. 47-50].

It is important to note that deadlines start to run from the moment a given document/instruction has been given in a language comprehensible to the defendant and not from the time of delivery of a document in a language he or she cannot understand [footnote: *Id.*, para. 42].

### The domestic legal standard may be found in:

5 (1) BiH/5(1) RS/5(1) FBiH      Right to be given free assistance of an interpreter if he/she cannot speak/understand the language of law enforcement authorities;

185 (5) BiH/96(5) RS/99(5) FBiH      Right to free interpreter and translation.

### Main reference questions:

- Did the defendant have clear problems in expressing (in written or oral form) himself/herself or understanding?
- In case an interpreter was appointed was he or she an official court interpreter selected from the updated list of court interpreters?
- In case an interpreter was appointed was he or she translating in the mother tongue of the defendant or in a third language?
- Did the defendant appear to fully understand the translated questions?
- Did the interpreter appear to have sufficient command of the language in order to understand and adequately interpret for the defendant?

## Annex 6- Examples of different types of public trial-monitoring reports

### Examples of reports providing a comprehensive overview of the justice system:

- *2009 Trial-monitoring Report in Azerbaijan*, OSCE Office in Baku (2010).
- *Preliminary Findings on Monitoring Court Cases in Selected Basic Courts of the host country*, OSCE Mission to Skopje (April 2008).
- *Analytic Report: Observance of Fair Trial Standards and Corresponding Rights of Parties During Court Proceedings*, OSCE Mission to Moldova (2008).
- *Report on the Administrative Justice System in Kosovo*, OSCE Mission in Kosovo (April 2007).
- *Analysis of Criminal Appellate Proceedings in Albania*, OSCE Presence in Albania (2007).
- *Report from the Trial-monitoring Project in Kazakhstan 2005-2006*, ODHR and OSCE Centre in Almaty (2007).
- *First Review of the Civil Justice System*, OSCE Mission in Kosovo (June 2006).
- **Review of the Criminal Justice System**, OSCE Mission in Kosovo (2006).
- *Ensuring Fair Trials through Monitoring*, OSCE Centre in Dushanbe (2005).
- *Final Report, Countrywide Observation of the Implementation of Fair Trial Standards in Domestic Courts and the Assessment of the Functioning of the Judiciary*, Coalition All for Fair Trials, former Yugoslav Republic of Macedonia (2004).

### Examples of thematic reports by the OSCE:

- *Delivering Justice in Bosnia and Herzegovina: An Overview of War Crimes Processing from 2005-2010*, OSCE Mission to Bosnia and Herzegovina (2011).
- *The Mitrovicë/Mitrovica Justice System: Status Update and Continuing Human Rights Concerns*, OSCE Mission in Kosovo (February 2010).
- *Reasoning in War Crimes Judgements in Bosnia and Herzegovina: Challenges and Good Practices*, OSCE Mission to Bosnia and Herzegovina (December 2009).
- *Judicial Proceedings Involving Domestic Violence*, OSCE Mission in Kosovo (November 2009).
- *Pre-trial Detention: National Practice and International Standards*, OSCE Spillover Monitor Mission to Skopje (March 2008).

- *The Treatment of Different Communities in the Kosovo Justice System: A Statistical Overview of Punishments and Trial Outcomes in District, Municipal and Minor Offences Courts*, OSCE Mission in Kosovo (December 2008).
- *The Presumption of Innocence: Instances of Violations of Internationally Recognised Human Rights Standards by Courts of Bosnia and Herzegovina*, OSCE Mission to Bosnia and Herzegovina (2007).

### **Examples of reports on specific cases or types of cases:**

- All regular reports of the Rule 11bis Project of the OSCE Mission to Bosnia and Herzegovina that reported publicly on the progress of the indicted cases transferred from the ICTY to the Court of BiH for trial, pursuant to Rule 11bis of ICTY Rules of Procedure and Evidence (over 60 reports from 2006).
- *The Response of the Justice System to the March 2004 Riots (2005) and Four Years Later, Follow up of March 2004 Riots Cases before the Kosovo Criminal Justice System*, OSCE Mission in Kosovo (2008).
- *Case Report: The Public Prosecutor's Office vs Latif Gashi, Rrustem Mustafa, Naim Kadriu and Nazif Mehmeti: The 'Llapi Case*, OSCE Mission in Kosovo (2003).
- *The Successful Suppression of Election Regularities (The Election Cases)*, Coalition All for Fair Trials, the Former Yugoslav Republic of Macedonia (2005).