



MONITORING ATROCITY CRIMES TRIALS

A GUIDE

OPEN SOCIETY
JUSTICE INITIATIVE

OPEN SOCIETY FOUNDATIONS

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A journalist watches the trial of a Khmer Rouge leader on video monitor in a room adjoining the Extraordinary Chambers in the Courts of Cambodia.

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ACKNOWLEDGMENTS

This guide grows out of many years of work monitoring and evaluating international criminal trials by staff and consultants of the Open Society Justice Initiative. Since 2007, the Justice Initiative has been monitoring some of the most significant trials of our time. The Justice Initiative trial monitoring program began when the Special Court for Sierra Leone shifted the venue of the Charles Taylor trial from Sierra Leone to The Hague, and it became evident that an independent form of outreach was needed to enable West African audiences to witness the Taylor trial. By engaging journalists and lawyers from the region as court monitors and establishing a website to carry their independent coverage of the Taylor trial, the Justice Initiative sought to ensure that news and analysis from the trial were available to audiences around the world.

Using a similar model, the Justice Initiative—through our International Justice Monitor project (www.IJMonitor.org)—has monitored every International Criminal Court (ICC) trial to date. IJMonitor.org has also expanded to cover select domestic jurisdictions prosecuting atrocity crimes, working with in-country monitors in countries such as Kenya and Guatemala. IJMonitor.org not only follows what is happening in the courtroom, but also publishes commentary and analysis with emphasis on the voices of victims and others at the local level. This two-way flow of information and communication is important to understanding the full impact of a court's work.

The Open Society Justice Initiative wishes to thank the many people who contributed to the creation of this guide. The guide was primarily written by Janet Anderson. Project management was provided by Taegin Reisman and Fiona McKay. David Berry edited the text. Special thanks to the many dedicated colleagues who provided valuable input, including Tom Maliti, Wakabi Wairagala, Jennifer Easterday, Beini Ye, Sharon Nakandha, Alpha Sesay, Jo-Marie Burt, Alix Vuillemin Grendel, Mohamed Osman, Erika Dailey, Robert O. Varenik, and Nina Ippolito.

Public information and outreach are essential to raising awareness about transitional justice and bringing a court's work to affected communities. At a time marked by ongoing ICC cases, new universal jurisdiction trials in Europe, and calls for justice mechanisms capable of addressing international crimes from Mexico to Liberia, independent and responsible monitoring of new trials will be crucial. It is hoped that this guide will contribute to the invaluable work of monitoring international criminal trials in the future.

INTRODUCTION

This guide is intended for non-governmental organizations (NGOs), journalists, and other individuals who are monitoring or intend to monitor atrocity crimes trials (also known as international criminal trials; the terms are used interchangeably here). It is intended to help monitors better carry out their function of observing and reporting on international criminal trials, including guidance on what to monitor, how to convey important information, and how to reach key audiences. While the guide generally assumes that monitoring will take place in the courtroom where the trial is unfolding, it is important to recognize that monitors and interlocutors can be found outside the courthouse as well. Thus, this guide also aspires to provide information for groups and individuals living in countries where the ICC has an active investigation, in post-conflict locations where trials for atrocity crimes are being discussed at the local level, or for those seeking to better understand and document universal jurisdiction cases in Europe. As public debate around post-conflict accountability increases and the number of international criminal trials expands, so does the need for monitoring.

Given the variety of courts and tribunals that deal with atrocity crimes, it has become increasingly difficult to provide a “one size fits all” approach to monitoring. Therefore, this guide is not exhaustive, nor specialized in one type of court or process. Instead, it provides a broad set of principles to consider as you plan your monitoring, including basic guidance and checklists, bolstered by additional resources for further exploration and learning. It can be downloaded as an entire guidebook or as stand-alone chapters, depending on your need.

Like any specialized activity, monitoring atrocity crimes trials is demanding. Courts have their own rules, languages, culture, and history. Audiences can also be demanding, and it is incumbent on monitors to be transparent with them about the principles guiding your work. In all monitoring and reporting, it is essential to operate with impartiality, accuracy, and fairness.

You may have many motives for wanting to report on atrocity crimes trials: providing information to victims, creating a historical record, helping to address past wrongs, and even due to personal experience. But regardless of your motives for reporting on justice processes, you need to have the basic tools to do it. This guide is intended to provide those tools.

The guide is divided into short chapters and sub-sections, and each chapter ends with a brief checklist of key information. There are four main chapters, plus an appendix defining important terms and profiling important institutions.

Chapter 1 concerns the initial phase of creating a trial monitoring program, including the purpose of monitoring, the audiences you hope to reach, and forming the team that will do the work.

Chapter 2 will guide you through the basics of trial monitoring, including key tasks, deciding what to cover, and how to interact with a court.

Chapter 3 is about communicating your work to the public, including structuring and disseminating your work to reach your target audiences.

Chapter 4 provides further examples and resources, including links to other organizations engaged in trial monitoring and international justice, as well as to other existing monitoring guides.

The Appendices provide basic information on international criminal law, including definitions of key terms, profiles of significant courts, and an overview of court procedures.

THE GUIDE WILL INTRODUCE YOU TO:

The process of establishing
a monitoring program, including goals
and roles.

The actual work of monitoring, including
what to report on.

Target audiences and ways to
communicate your work.

Basic legal terms and the body of
international law under which the
courts operate.

The primary courts in which atrocity
crimes are tried.

CHAPTER 1

ESTABLISHING A TRIAL MONITORING PROGRAM

Effective trial monitoring programs can be of almost any size. You may be working as an independent consultant or as part of a large staff, but either way you will need to start by defining your goals. You will need to establish clearly and precisely the objectives you are trying to achieve through your monitoring program. Once you have established your goal (the big-picture result you are working toward) and objectives (the specific, measurable actions you are taking toward the goal), you should have an understanding of the work that awaits you.

This chapter explores setting goals and objectives, measuring impact, setting up a trial monitoring team, publication decisions, and understanding your rights as a trial monitor.

1.1

GOALS AND OBJECTIVES

It is essential to establish clear goals for your monitoring program and the specific steps you will take to reach them. Make sure your goals are sufficiently well defined that your colleagues or funders can easily understand them. A concrete plan that articulates your goals, objectives, and how you will structure your work is very important.

What you need to know:

Start with a specific goal or goals. One way to identify your goal is to ask: what is the purpose of your monitoring? Based on your big-picture goals, you will need to set objectives—the smaller steps that will help you achieve that goal.

Potential goals in monitoring international atrocity trials include:

- Provide an accurate account of events
- Distribute impartial summaries of proceedings
- Contribute to local /national /regional debates on accountability
- Strengthen the rule of law
- Support increased efficiency in justice institutions

- Help improve the legal framework for atrocity proceedings
- Improve information for and about victims
- Build regional cooperation via lessons learned
- Encourage the court or judge to provide a fair trial
- Make the participants aware that they are under scrutiny
- Ensure that the accused receives a fair trial and that his/her judicial guarantees are respected
- Obtain more information about the conduct of the trial, the nature of the case against the accused, and the legislation under which he/she is being tried
- Collect information on the fairness of the trial for campaigning and advocacy purposes.

“When I was monitoring for an academic organization, we were largely monitoring for posterity: to create a neutral record and information, because there were few groups with sustained monitoring programs in Sierra Leone at that point. Over time, our monitoring goals shifted to also address problems we had with the court, with the goal of reporting on challenges with how the court was upholding its mandate.”

Jennifer Easterday — Trial monitor with Open Society Justice Initiative (OSJI) and UC Berkeley War Crimes Studies Center (now Center for Human Rights and International Justice)

Identifying a clear goal and the objectives that will help you achieve your goal is important because doing so may help determine the choice of trial to be observed, who will fund you, who should work as your trial observers, and many other steps in how you prepare for trial observation.

Clearly defined goals and objectives will also help with any advocacy strategy you wish to pursue. The reports that you write should have a clear audience in mind and a specific purpose. (Communications are addressed more fully in Chapter 3.) Your initial choices regarding goals and objectives will affect the reports you will write and how you will use them.

“As you're writing a report, you need to be clear: what's the purpose of this report? Why are we doing this monitoring? What impact do we want to make? What can really help someone use the material?”

Jennifer Easterday — Trial monitor with OSJI and UC Berkeley War Crimes Studies Center (now Center for Human Rights and International Justice)

Example: Explaining the Purpose of Monitoring

The International Bar Association (IBA) has published regular reports on developments at the ICC. They cover recent events and significant issues identified at ICC trials. The reports also make specific recommendations that form part of the IBA's advocacy strategy. In the following example from 2010, the IBA comments on changes it believes are needed in how the ICC's Office of the Prosecutor (OTP) conducts investigations:

“In the report the IBA noted that in general a number of unanswered questions remain concerning very important issues at the ICC; most notably in relation to the Investigations Division of the OTP and the Court's relationship with intermediaries. The role and status of intermediaries, generally defined as local non-governmental organisations who play an important role in supporting the Court's work, including through facilitating investigations, has become a major issue in at least two of the trial cases at the ICC. Given the importance of their role, the IBA recommends in the monitoring report that the ICC takes steps to urgently review and streamline its policy and practice towards intermediaries”



https://www.ibanet.org/ENews_Archive/IBA_26July_2010_Enews_IBA_ICC_8th_Monitoring_Report.aspx

1.2

MEASURING IMPACT

Once it is clear why you are monitoring a trial, you can then set some indicators to check whether you are meeting (or making progress toward) your objectives. Trial monitoring can be a resource-intensive business. You will want to be able to show whoever is providing your funding that you are doing what you promised and that your monitoring is serving its purpose. However, keep in mind that it can be difficult to measure impact.

What you need to know:

Trials of atrocity crimes—whether held locally or internationally—are part of the political, legal, social, and economic fabric of a society. The attention that is paid to them can be seen as part of the work of civil society activists, legal experts concerned with access to justice, and victims' rights groups, to name just a few. It is possible to evaluate the impact of your monitoring program within multiple narratives, such as the Sustainable Development Goals or the adherence to the rule of law in a country.

Example: Linking Monitoring to Other Goals

Sustainable Development Goal 16 focuses on peace, justice, and institutions. Many NGOs, civil society organizations, United Nations bodies, and governments are committed to implementing all the SDGs by 2030. Each goal has a number of indicators. You can use those indicators as yardsticks to report on the quality of the trials you are monitoring.

For example: Goal 16.3 addresses the need to “Promote the rule of law at the national and international levels and ensure equal access to justice for all.” Your trial monitoring work can be seen as contributing to the fulfillment of Goal 16.3.

Your trial monitoring reports can help provide information and examples that push criminal justice systems to become more effective, better funded, and more accountable.

The impact(s) of your monitoring can be measured in numerous ways, depending on your goal. Some trial monitoring programs may only be concerned with the size or location of the audience, so analytics (i.e., data on your audience size) can be a helpful tool. However, other programs may look for a more qualitative or subjective impact, such as stronger support for judicial institutions. In the latter case, measuring impact can be especially challenging.

“It is essential that you really understand why you're doing this, who is your audience, and what are they interested in. What is your main goal? What is your theory of change? Monitoring day-to-day can be tedious, and it's important to remember why you're monitoring and who you're doing it for.”

Jennifer Easterday — Trial monitor with OSJI and UC Berkeley War Crimes Studies Center (now Center for Human Rights and International Justice)

1.3

THINKING ABOUT AUDIENCES

There may be a wide range of audiences you think will be interested in your monitoring product. But it is important to be clear which one is most important to you and which others may be secondary.

What you need to know:

Not everyone is an expert on the details of court processes. Not everyone is even interested. By defining clearly who you are talking to—part of the goal and objectives you have established—you can then decide how long your reports should be, which format they will take, which language(s) you need to use, and how to deal with complex legal terms.

Example: Monitoring for Posterity

Monitoring reports can also be a repository of information for audiences to explore well after a trial process has finished. For example, the Kenyan website Never Again has gathered information about the Kenya cases at the ICC as a platform for comment and interaction:

““Never again” is a memory platform for the victims of Kenya’s 2007/08 post-election violence and other atrocities. Share your thoughts here and on our social media pages.”

The audiences you are able to reach may change over the course of your monitoring as your work becomes more broadly known and your audience grows and becomes more knowledgeable. Not everyone will be interested all the time, so you should expect changes in how your audience reads and accesses your reports.

If your reports are seen as accurate and reliable, you may be quoted by other sources, such as newspapers or scholars. However, they may not be your primary audience, especially if your reports are designed for advocacy purposes.

““The legal scholars will be looking at the legal process and the legal argument. How they consume your written reports is very different from, you know, the average Joe and Jane in the streets.”

Tom Maliti — Trial monitor with OSJI



<https://www.neveragain.co.ke/>

1.4

SETTING UP A TEAM

Successful trial monitoring requires a team of the right people, with the right skills, provided with the right support.

What you need to know:

Several different factors can come into play as you are finding the right people to work with on a monitoring program. They include:

- gender balance
- legal skills
- experience with international human rights law
- knowledge of the legal system of the country
- knowledge of the context in which the crimes occurred
- journalistic skills.

However, the essential elements for a monitor are their independence, impartiality, knowledge, and experience.

Although you may have only a single monitor in the courtroom, that person will require support. For example, someone on the team may need to furnish the monitor with copies of the key documents. This is particularly important in countries where a file (dossier) is prepared by an examining magistrate or a public prosecutor. In other cases, monitors should endeavor to obtain as much documentation as possible on the prosecution and defense cases. This will enable them to have a better understanding of the proceedings.

If the court cannot provide files, the defense lawyer or the legal representative of the victims should have access to the file and may be able to provide any necessary documents. Sometimes documents are not publicly accessible, which makes the task for monitors more complicated.

“ Making contacts within the court system is part of the monitor's job. People can provide you with documents and information quickly. In some countries, in fact, there's so little transparency that forming working relationships with court staff is the only way you can stay informed and have the right documentation about a case.”

Tom Maliti — Trial monitor with OSJI

1.5

MANAGING A TEAM

Everyone in the team will have a role. But you will need to be clear who is taking responsibility for the final product, and what everyone must do to make sure you meet your goal.

What you need to know:

No one can walk straight into monitoring without some research and support. Make sure your team members have:

- information on the trial to be observed: the background to the case, identity of the accused, nature of the charge, location of the trial, the identity of the judge(s);
- previous press coverage or monitoring reports;
- relevant (inter)national legislation (for example, the relevant Criminal Code and Code of Criminal Procedure, and statutes on the establishment of the court);
- background on the court structure, roles of the different organs of the court, and justice system in which the trial operates;
- relevant prior judicial decisions relating to the trial being monitored and/or legal issues; and
- background information on the history, politics, law, administration of justice, and general human rights conditions of the country concerned.

Monitoring can be very hard. The hours can be long. The sessions can be boring. The uncertainty of whether a case may be closed to observers or adjourned at any moment can be very stressful. In addition, listening to harrowing witness testimony can be very difficult, including the risk of secondary trauma.

It is difficult to judge how people will react to the stress of listening to such testimony: it can vary depending on the person, time, and context. When managing a monitoring program, it is important to proactively support the monitors and make sure they are aware of some of the stressors they may be experiencing and how to deal with them.

Some of the symptoms could be:

- psychological – feelings such as anger, anxiety, shame, depression, guilt, jealousy, and suspicion, as well as mood swings;
- behavioral – passive or aggressive behavior, irritability, increased food or alcohol consumption, disturbed sleep;
- physical – frequent colds or other infections, palpitations, breathlessness, chest pain, faintness, headaches, indigestion.

Different people may need different ways to deal with stress. Taking regular breaks, meditating, or talking with friends and colleagues may be helpful to some monitors. Others might benefit from sleep, shutting off from (social) media, or spending time talking to a therapist.

In some countries, there may be security risks for human rights defenders, including trial monitors. A security risk assessment might recommend, for example, establishing a list of emergency contacts or a system of daily communication. In all human rights work, including trial monitoring, personal safety and security must always be paramount.

“My team and I work very closely with local and international organizations to assess security risks and ensure our own safety. But we are also interested in identifying harassment of the stakeholders in the process—the victims, human rights lawyers, journalists—and reporting these publicly. We have found that shining a light on such practices puts pressure on the authorities to be more responsive in ensuring better security all around, and stopping, or at least mitigating, targeted harassment inside and outside of the courtroom.”

Jo-Marie Burt — Trial monitor with OSJI and political science professor at George Mason University

If the monitoring of any particular trial or court work is especially demanding, two observers may be needed.

1.6

PUBLICATION DECISIONS

How you publish your monitoring reports, what information they will contain, and how frequently you publish is up to you. It depends on the goal of your monitoring, the type of audience you intend to reach (see 3.1), as well as the frequency of the actual trial hearings. Some necessary prerequisites to publishing include ensuring accuracy, balance, and clarity of reports for your audience and establishing a schedule of when readers should expect material from you.

“The most important role of monitoring is to provide a neutral and accurate source of information about the trial.”

Jennifer Easterday – Trial monitor with OSJI and UC Berkeley War Crimes Studies Center (now Center for Human Rights and International Justice)

1.7

CONTENT

Trial monitoring should be independent, objective, and impartial. Monitoring reports should contain sufficient detail for readers to have all the information they need, but not overwhelm the reader or reduce their comprehension.

If there is material in your monitoring that is specifically critical of a court proceeding, then you should be clear on sourcing the critique and providing specific national and international fair trial standards against which any process should be measured.

Quotations from proceedings, examples, and context will help the audience better understand events in the courtroom and their importance. Your direct observations should form the basis of your work. Your observations can be supplemented by interviews and direct quotations from important case materials, such as court rulings or a judgment.

Any report should include background information about the subject of the trial as well as any necessary information on procedures and key issues involved. In addition to describing the main events of the day, monitoring reports can also anticipate the next stages as a guide for the audience.

Regular monitoring reports describe what happened at the trial and give a brief account of what was said during the hearings and by

whom (the prosecution, the defense, other parties to the proceedings, witnesses, experts, and judges), as well as any important procedural issues raised. Sometimes the legal debates and how they were conducted will be the most important substance to document. Other times, it will be witness testimony that will form the most compelling part of a report.

Example: Quoting a Witness

Witnesses can provide interesting, dramatic, and useful details that your audiences will be interested in:

“Michael Oryem told the court Ongwen had a portable radio he played for the civilians and they danced to the music on radio. Oryem said LRA leader Joseph Kony once ordered: ‘The radio that makes civilians dance should be taken away.’”

It is difficult to ascertain how much your audience already knows, and whether general information about the judges or the courts is always needed. For people who are not fully aware of all the background information, the reports may need to identify where the court sits within the structure of the justice system, what its jurisdiction is, and what stage of the justice process the court has reached.

There will regularly be times when summaries are needed to remind readers of the legal basis for the case against the defendant, describe the facts of the case, and the charges against the defendant.



<https://www.ijmonitor.org/2019/06/witness-says-ongwen-regularly-talked-with-civilians-while-commanding-an-lra-battalion/>

Example: Providing Background Information

On this web page, readers can find an extensive timeline of court proceedings, and description of all the parties to the trial, key issues, and all published reports (link at right).



<https://www.ijmonitor.org/category/charles-taylor/>

1.8

PUBLICATION

It may be necessary to spend significant amounts of time researching and gathering information, if your objectives include producing longer, more complex reports aimed at exploring in depth a specific issue or case. Conversely, daily or weekly monitoring requires the production of regular and frequent reports to meet the expectations of the audience and keep them up to date.

Trials can have protracted timelines and irregular rhythms, at times leaving observers at a loss on how to proceed, such as when hearings are closed to the public or adjourned for long periods of time. Depending on your objectives, this may be time to publish

longer supplemental work that looks at larger issues or considers the background and context of the trial.

Many organizations conduct monitoring in order to publish trial reports. Putting the material out into the public domain means that monitors are satisfied with the accuracy and balance of the reporting. Once a report is published, it cannot be taken back. So it can be important to have someone read your work before publication to double-check spellings, the accuracy of quotes, and overall comprehensibility. You can lose credibility with your audience if you make mistakes or only report on one side of the case. If you have written a major monitoring report, you may want to publicize it beyond your target audience, for example by contacting journalists to inform them of your work. (This is addressed further in Chapter 3).

1.9

YOUR ROLE, YOUR RIGHTS, YOUR RESPONSIBILITIES

Your job is to provide unbiased, factually accurate reports. That is more difficult than it sounds. You will need to work hard to be clearly neutral in some situations. That does not mean boring writing or refraining from commentary. It means being clear to the audience so they can distinguish between factual reporting and opinion-based commentary.

As for your rights: essentially, you are a member of the public with no special rights. You may see your monitoring work as important or even essential, but under certain circumstances trial judges can decide to exclude the public, including trial monitors. Your responsibility is to the organization you represent and to your audience to deliver what you promise.

What you need to know:

Not every court wants or supports monitoring. Monitors may require formal permission in order to observe a trial.

“It's an important principle that the public should be able to attend a trial and see what is happening. Seeing a powerful figure in the dock is empowering for victim communities. It is also critical that trial monitors and civil society groups are able to monitor what is happening inside the courtroom; it is a way to hold the courts accountable. Sometimes courts have the legal authority to close trials to the public, as occurred with the second trial against Guatemalan dictator Efraim Rios Montt, who was found to be mentally incapacitated. The trial continued but with no public access. There was nothing we could do. But on another occasion when an appeals court tried to unduly restrict public access, we fought and won, and reported on the proceedings.”

Jo-Marie Burt — Trial monitor with OSJI and political science professor at George Mason University

Although most criminal trials will take place in open proceedings, with members of the public afforded a right of access (in accordance with the right to a fair hearing), international standards permit courts to exclude the public, completely or partially, in certain exceptional, strictly defined circumstances.

In addition, some countries and courts have established proceedings in camera (behind closed doors) for certain testimony or types of criminal offenses.

Courts are empowered to prosecute people for contempt of court, which can include intimidating a witness, revealing the name of a protected witness, or refusing court orders to testify or produce documents. You should know the rules of the court and abide by them.

CHECKLIST FOR ESTABLISHING A PROGRAM

- ✓ Have a clear plan with an established goal and objectives.
- ✓ Impact can be difficult to assess, but it is important to be clear with your team and your audience about what you are trying to achieve.
- ✓ Choose a specific target audience based on your goals.
- ✓ People bring different skills to monitoring, but the commitment to fairness and accuracy is paramount.
- ✓ Monitoring is hard work. Make a plan to support monitors, especially awareness of secondary trauma and techniques to deal with stress.
- ✓ It is up to you to decide on the content, timing, and publication of your monitoring reports, based on the reasons that led you to undertake the monitoring.
- ✓ Be aware of the needs and expectations of the audience.
- ✓ Accuracy and reliability in your monitoring will help build credibility with your audience.
- ✓ Represent your organization and work for your audience.
- ✓ Know the rules about access, and what can and cannot be reported.

CHAPTER 2

HOW TO MONITOR ATROCITY CRIMES TRIALS

It may seem straightforward, but the actual monitoring of atrocity trials is hard work. You will need a lot of preparation, determination, and consistency to get it right. There are many decisions to make in order to fulfill your goal.

2.1

LOGISTICS OF MONITORING

You do not necessarily have to be in the courtroom to follow a trial—if it is livestreamed. However, most atrocity crime trials are not on the internet, so the monitor's physical presence in the courtroom is usually essential.

What you need to know:

Since each courtroom has a different seating arrangement, it is not possible to stipulate where observers should sit. Most important is that monitors should be able to clearly observe, hear, and follow all aspects of the proceedings. Depending on the goal of your monitoring, you may need to consider whether to sit in a prominent place because you need to maximize the impact of your presence or to sit in a neutral position, to retain a lower profile.

You may want to avoid being identified closely with any of the parties, witnesses, or family members of the accused or victims or their supporters. While you may want access to some of these parties in order to get comments from them, it is essential to maintain both neutrality and the appearance of neutrality.

The section of the courtroom reserved for the general public may be the only spot available for you, but that may not maximize the impact of your presence. In addition, sitting in the public gallery can make it difficult to observe the proceedings closely.

Atrocity crimes trials are often high profile, so it is not unusual for public hearings to be held in crowded courtrooms, in high security courtrooms, or in places other than court buildings, especially if the number of defendants is large.

Some courts ask for monitors to present credentials or register with a court official. Members of the press usually need a special badge or ticket, and journalists may have to provide additional documentation, including letters from their media outlet or press passes. Some courts may have written rules, such as the ICC's Rules of Decorum, on attending hearings, which can provide helpful information in advance of a trial.

Access to any courthouse areas beyond the public courtroom may be restricted.

“I was used to the Kenyan courts where lawyers, the public, journalists, and the accused all enter court through the same door. After a hearing, everyone flows into the corridors where lawyers, journalists, and the public easily mingle. Generally, I monitor the ICC from a distance. Whenever I am there in The Hague, I'm struck by how cool and clinical it feels—everything is still at a distance. You don't get to interact with the court at all when you are in the audience.”

Tom Maliti— Trial monitor with OSJI

Every court has rules about what you are allowed to carry into the courtroom. It is common for electronics, including mobile telephones and cameras, to be prohibited. This means that trial monitors must come prepared with paper and pens. During the trial observation, monitors should make clear notes on what is happening. This is important to generate accurate reports, and because to be seen to be taking notes may help indicate that close attention is being paid to the trial and that the conduct of all parties is under scrutiny.

But note that in some countries, people other than the participating lawyers and the media are forbidden from taking notes. In such cases, it may be necessary for you to ask the court to make an exception.

Even if note taking is permitted, monitors should understand the risk of their notes being confiscated or looked at by the police or other authorities. If such security concerns are a problem, then taking rough notes and avoiding documenting anything that might put other people at risk is essential.

In other cases, where the security risks are low, extensive and detailed note taking is advisable for both accuracy and the historical record. There is a good chance you will need to keep notes for future

reference because key names and places will often be mentioned several times throughout the course of a trial.

It is important to be polite and respectful to court staff. Building friendly relationships can be helpful in some situations; court staff can sometimes assist trial monitors to get recordings or documents for their work.

Members of civil society and journalists who cover courts and tribunals often know each other and may be members of (in)formal associations that share information. This can be a useful source of contacts and information.

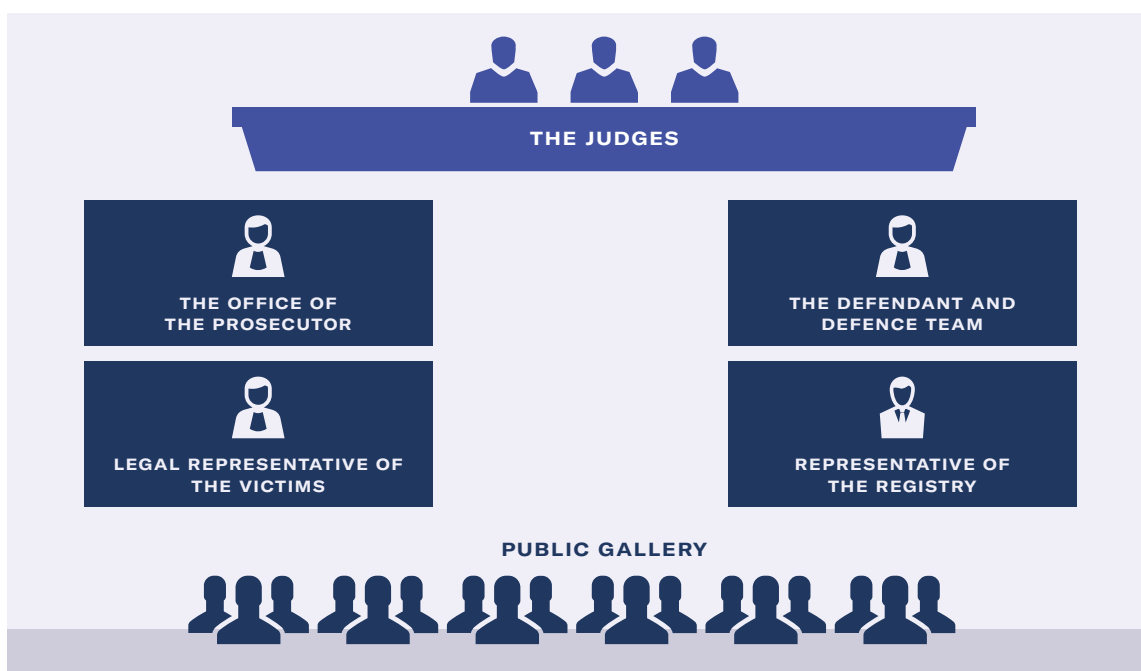
Example: Monitoring at the ICC

You enter via several layers of security. You sit behind a glass partition in the public gallery. There are headphones for you to hear what is happening in the court, and screens to see close-ups of individuals.

In the center of the courtroom you will see a bench of three judges, who make up the trial chamber.

On one side of the courtroom is the prosecution team and on the other, the defense. The accused sits off to the side, behind the defense team. The witness being questioned will sit in the center of the courtroom. If a protected witness is testifying, their name is not revealed, and those seated in the public gallery cannot see them.

The working languages of the ICC are French and English and there will almost always be simultaneous translation into both of these languages via headsets.



2.2

WHAT TO COVER

There are no absolute rules here: what you choose to write about depends on your main goal. However, you do need to make conscious choices so that you are consistent and provide your audiences with what they expect.

“In monitoring atrocity crimes trials, there may be a temptation to focus on high drama points. For example, some lawyers may be particularly high energy or flamboyant while presenting their case. However, a trial monitor’s energy is better spent on summarizing for readers the key points in the testimony or proceedings that appear to speak to the charges, to previous evidence, or to the case of the party that is advancing this evidence.”

Wakabi Wairagala — Trial monitor with OSJI

What you need to know:

In general, you may monitor and write up anything that is said in the courtroom. Often that means covering the testimony given by witnesses. However, when sensitive evidence is being given or when a witness has a fear of retribution, measures might be taken to protect the witness's identity, such as hiding them from view or distorting their voice. In some cases, the court may go into closed session in which case all spectators have to leave the courtroom or the courtroom itself will be shielded from the public.

“Anyone who is describing a sexual or gender-based crime as a firsthand witness has already gone through extreme psychological pressure as a result of what happened, and having to recount the events with questions and cross-examination in a courtroom can only add to that stress. Witnesses may also face severe stigmatization in their communities for having lived through sexual violence. To make sure they can go back home and pick up their lives after testifying, their anonymity must be guaranteed. It's important that monitors fully report what any witness has to say, but respect any protective measures that have been put in place to keep the identity of the witness anonymous. There can

be horrible details shared in court. Monitors need to report factually and avoid sensationalization."

Alix Vuillemin Grendel — Senior advisor at Women's Initiatives for Gender Justice

Example: Sensitive Testimony

This monitoring report from the ICC trial of Jean-Pierre Bemba recounts the details of the testimony of a victim from the Central African:

"Victim a/0542/08 talked about the stigmatization she has suffered as a result of the assault. She has also suffered health complications resulting from the rape, and her husband has abandoned her.

Watching the ordeal, the victim's daughter cried.

'I told them that I was not in good shape and that I was having my period and can't have sexual intercourse,' said the victim. The Congolese soldiers dismissed her pleas. 'One of them spread my legs and put the barrel of the gun into my vagina.'

After the assault, the soldiers walked away laughing and making fun of her. 'They abused me and I wonder whether that is the way they act in their own country. To put a barrel of a gun in a woman's vagina is unacceptable,' she stated."

In addition, any person under the age of 18 who is identified as a victim, or a defendant, or appears as a witness, will often be specially protected, with automatic restrictions on what can be reported. For example, their name, their school, their place of work—any details that could identify them—must not be disclosed in a report.

As a general rule, you may not talk to witnesses before or after they give testimony. Courts cannot prevent journalists from tracking down witnesses, but both prosecutors and defense lawyers instruct witnesses not to speak to journalists. That is to prevent stories that conflict with their testimony from appearing in the press.

Some expert witnesses may have previously published books or journal articles, and their work can be examined. Also, any documents and photographs presented in open court can be reported on.



<https://www.ijmonitor.org/2012/06/victim-my-daughter-cried-when-she-saw-bembas-men-assaulting-me/>

Example: Providing Historical Background

This monitoring report examines a key issue from an ICC trial, to help audiences understand what defense lawyers are asking for and why their request is important:

“This is the first time since the ICC began work in 2002 that Article 31 has been invoked by a defense team. To date, no trial chamber has had to rule on who is responsible for presenting evidence in relation to the provisions of Article 31. In addition, no trial chamber has ruled on the level of evidence needed to prove the grounds of defense under Article 31.”

Part of your monitoring could involve talking to the prosecution, the defense, or even the judges. Sometimes this can be for background information and sometimes for a public quote or interview. You can develop your own sources and contact members of the prosecution, defense, and judiciary directly. It is for your sources to decide if they want to speak to you.



<https://www.ijmonitor.org/2019/02/ongwens-lawyers-ask-judges-to-rule-on-evidence-required-to-prove-mental-disease-and-duress-defense/>

“ I do understand that a monitor is providing a snapshot. And therefore, I don't think I can cover every single detail that happens. I mean, I'm one person covering a trial. The legal teams in court are much larger. And therefore, obviously, they are in a better position to know all the details of a case.”

Tom Maliti — Trial monitor with OSJI

Research into a case or a court is essential before the trial starts. The court's basic legal texts, indictments, court calendar, decisions, profiles of judges and other staff members, as well as transcripts and possibly live video streaming of courtroom proceedings, may be available. There may also be regular press and media mailings you can subscribe to. Be aware of any press conferences or briefings that you can attend.

“ Initially, of course, one doesn't have the full detail of the charges in the top of your head, but over time you become familiar with the document and the charges, because you constantly refer to them. So one of the things I would do, when I'm monitoring a new case, is a quick word search at the end of the monitoring day to check if some detail is in the document containing charges or the pre-trial brief.”

Tom Maliti — Trial monitor with OSJI

A defense lawyer or a legal representative of the victim and/or his/her relatives may also have access to the file and may be able to provide any documents that may be necessary.

“I’ve set up my newsfeed in such a way that any information concerning that particular country or region concerned with the trial shows up at the top of my newsfeed. And I look for background reports and books to provide a broad view of what happened.”

Tom Maliti — Trial monitor with OSJI

Monitoring may be concerned solely with due process and that a trial is fair, not necessarily with the substance or merits of the case in question. If this is the case, monitors will be assessing compliance with international standards on the implementation of due process by an independent, impartial, and competent court.

In general, trial monitors have no role in evaluating the evidence and arguments put forward by the parties or in weighing the guilt or innocence of the accused. Rather, the monitor’s job is to report what they see and hear.

“It’s very common for the testimony of prosecution witnesses to be heavily reported on and widely dispersed and discussed. And then defense witnesses aren’t so widely reported or their testimony is not recorded in as much depth. That could be a lack of neutrality, or where we make our own internal assumptions on credibility. But that’s really for the judges. We should understand and report the fact that the witness claims or the witness says, as the witnesses are telling it. Otherwise we’re not reporting it like facts.”

Jennifer Easterday — Trial monitor with OSJI and UC Berkeley War Crimes Studies Center (now Center for Human Rights and International Justice)

However, some trials may require the monitor to consider the merits of the court itself. Proceedings against human rights defenders, journalists, and political figures for the legitimate and peaceful exercise of their human rights should be a cause for concern. Such proceedings could indicate the trial is a show trial rather than a genuine and legitimate pursuit of truth and justice.

CHECKLIST FOR HOW TO MONITOR ATROCITY CRIMES TRIALS

- ✔ You will have to choose what you are focusing on for your reporting.
- ✔ Do full research so that you know all the relevant details on the case.
- ✔ Be aware of restrictions on witnesses and mindful of protections put in place by the court.
- ✔ Your job is not usually to evaluate the evidence but you may have to discuss fair trial rights.

CHAPTER 3

COMMUNICATIONS

Before beginning your monitoring project, it is important to think through how you want to communicate your reporting, and to whom. In the era of multiple media and social media outlets, constant information bombardment, and fears of fake news, you will need to be open with your audience about who you are and why you are doing this work. You also need to plan for how you will distribute your reporting, use social media, and build relationships with other observers, including journalists. You need to build trust with your audience so that your communications will be received with interest and your work have an impact.

What you need to know:

There are several aspects that underpin the communication of your trial monitoring:

- **Accuracy:** All actors in atrocity trial processes have a right to expect that their arguments will be accurately reported.
- **Balance:** Monitoring must be objective and fact-based, and you must always bear in mind that every accused person has the right to be presumed innocent until proven guilty.
- **Clarity:** This requires you to learn about court proceedings and the language of the law and legal jargon, and translate them into terms that your audience can understand.
- **Transparency:** Your audience needs to know who you are and what credentials you have for doing this work.

Example: Statements of Transparency from Monitoring Programs

“This report was realized within the Justice programme of the EU, and co-financed by the Office for cooperation with NGOs of the Government of the Republic of Croatia and City of Zagreb. The content of the report is the sole responsibility of the publisher and under no circumstances can it be considered to reflect the attitude of the European Union, the Office for cooperation with NGOs of the Government of the Republic of Croatia and the City of Zagreb.”

“International Justice Monitor was created to expand awareness and understanding of the role of international justice in holding accountable those responsible for atrocities, particularly war crimes, crimes against



<https://www.documenta.hr/en/izvje%C5%A1taj-obra%C4%87enju-su%C4%91enja-za-ratne-zlo%C4%8Dine-u-2017.-godini.html>

humanity, and genocide. It is operated by the Open Society Justice Initiative, part of the Open Society Foundations, and since 2007, our trial reporting has been an accurate, concise, and trustworthy source of information on some of the most significant trials of our time.”

“The KRT Trial Monitor has monitored daily proceedings at the KRT [Khmer Rouge Tribunal, also known as the Extraordinary Chambers in the Courts of Cambodia, ECCC] for more than 10 years, and this report aggregates the work of trial monitors over the course of 274 days of proceedings in this case. The report does not prescribe suggestions or assess the court’s conduct, but rather summarizes testimony and evidence from the two years of evidentiary hearings and points to six of the most prescient legal or procedural issues.”

“This guest post, part of an IJ Monitor series of summaries on the Hissène Habré trial, was produced by a group of Senegalese law school graduates, with the assistance of TrustAfrica. The views expressed below do not necessarily reflect the views of the Open Society Justice Initiative.”

3.1 COMMUNICATING WITH YOUR TARGET AUDIENCE

Part of your planning must include defining who your audience is and what you expect to provide for them.

What you need to know:

There can be multiple audiences for your work. But you will have to decide who the main target is. Potential target audiences include, but are not limited to:

- Victims’ communities
- Legal professionals
- Human rights activists
- Academics
- Diplomats or other government decision-makers
- The public at large

You will be explaining key concepts differently to each of those groups (see later in this section), and using different language. You may also have different channels that you use to communicate with them, including print publications, websites, social media, or videos.



<https://www.ijmonitor.org/about-this-website/>



<https://handacenter.stanford.edu/publications/another-trial-review-case-00202-second-trial-nuon-cha-and-khieu-samphan-extraordinary>



<https://www.ijmonitor.org/2016/02/hissene-habre-trial-before-the-extraordinary-african-chambers-december-hearings/>

Example: Television as Communication Component

This Cambodian based project used video via local TV channels to provide regular reports on proceedings at the ECCC.

“In this new batch of 6 weekly episodes, ‘Facing Justice’ covers the announcement of the trial judgment in Case 002/02 at the Extraordinary Chambers in the Courts of Cambodia (ECCC), the second and final trial against the surviving Democratic Kampuchea senior leaders Nuon Chea and Khieu Samphan. ‘Facing Justice’ is sponsored by the British Embassy in Phnom Penh. It is produced by KMF (Khmer Mekong Films) with editorial partner WSD HANDA Center for Human Rights and International Justice at Stanford University. The six new episodes are shown weekly on Cambodia’s top TV channels MyTV and CTN.”



<https://handacenter.stanford.edu/videos/facing-justice-episode-59>

3.2 LEGALESE

You are covering processes that have a language of their own: a shorthand and set of words or acronyms that are not always immediately understandable to outsiders. Part of your role is to interpret or translate. How do you do that?

What you need to know:

Legal language is complex and obscuring. It can take intense study to master it. As a monitor, you have to interpret this language for your audiences. That means you have to know it or be able to find out what it means.

Your audiences do not necessarily need a moment-by-moment account of what happens at the trial. However, you have to know legal terms in order to follow the events in the courtroom, decide if they are significant enough to report on, interpret them accurately, and convey them to your audience in terms they can understand. Interpreting legalese will often require rephrasing court filings and judgments in order to attain clarity; however, that does not mean you should completely refrain from verbatim quotes.

A good way to decide whether something is useful or not is asking on your audience’s behalf: why did the judge deny a motion? Why is the defense upset? If you can explain the details of a court case in clear language, or find people to quote who provide an explanation, you will be serving your audiences.

“ You have to know what specific terms mean, as a monitor. And then you have to find ways to explain those terms for non-specialized audiences. I check with experts to make sure I know what a legal term means. Reading the court’s rules and regulations also helps. Getting the 'translation' right for a broader audience is not easy. But it's essential so that people really understand what is happening in court, and what all the arguments are. That helps to prevent wild theories and the spread of misinformation.”

Wakabi Wairagala — Trial monitor with OSJI

Example: Explaining the Court’s Ruling

At the Extraordinary Chambers in the Courts of Cambodia (ECCC), which seeks to address crimes committed under the Khmer Rouge regime in Cambodia, judges were asked to rule on whether evidence obtained by torture was allowed in court. The monitoring report explains why evidence obtained by torture is generally not accepted in courts. But the report also explains that in this case, because the evidence was obtained via the alleged crimes the defendants are charged with, the judges decided the evidence could be presented.

“Excluding the use of torture-tainted evidence is intended to eliminate an incentive to use torture to obtain information, to prevent those that torture from benefiting from their actions, and to preserve the integrity of judicial proceedings...Neither the prosecution nor the accused at the ECCC are suggesting that evidence obtained by torture be used against persons that were subject to torture. However, both the prosecution and the defendants are asking the chamber to modify its earlier bright line test and allow reference to the substance of some evidence obtained by torture.”



<https://www.ijmonitor.org/2015/06/potential-hazard-eccc-trial-chamber-considers-expanded-use-of-evidence-tainted-by-torture/>

3.3

KEY CONCEPTS FOR AFFECTED COMMUNITIES

It can take a long time for an atrocity crime to be investigated, for there to be arrests, a trial or hearing, and for there to be a judgment or even reparations. When working with affected communities, finding ways of explaining and engaging without getting people’s hopes too high can be a challenge.

Those who live or have lived in places where atrocities have occurred may see that many different types of people are involved in examining and investigating a crime and supporting steps toward accountability. These can include national and international human rights NGOs,

journalists, investigators, court officials, and development NGOs. Your role may not be entirely clear to members of affected communities who are sorting through all these different actors. Additionally, court proceedings or other transitional justice processes can often happen at a great distance, the terminology can be challenging, and there may be language barriers.

To help affected communities, your job in monitoring trial processes may also involve explaining key concepts for them. Make sure you know the terminology and its meanings yourself. Be honest and transparent with communities about what is known and what is unknown. Be clear about your role and its limitations.

Example: Explaining a Legal Term

In this article, the monitor quotes the judge directly and then goes on to explain the practicalities of having a witness declared hostile by a court.

“As a preamble to the decision, Judge Eboe-Osuji gave a definition of a hostile witness.

‘A hostile witness is a witness who is not desirous of telling the truth to the court at the instance of the calling party,’ said the judge.

The declaration means senior trial lawyer Anton Steynberg, who has been questioning Witness 743, can now cross-examine him on his testimony against his statement to the prosecution and explore any inconsistencies between the two. If the witness had not been declared hostile, Steynberg would have been required to ask him open-ended questions, and he could not challenge the witness on any contradictions between his testimony and previous statements to the prosecution.”

Depending on the platform used to publish your trial monitoring reports, you may find that affected communities want to engage with your reports and ask questions about the trial process. Robust debates can take place on the margins of the trial monitoring work, so it is important to stick to the facts, remain neutral, and not take sides.

“Your responsibility as a monitor is to be strictly accurate. Only by sticking to the facts can you build trust in the communities who are following a trial. When we were monitoring trials at the Special Court for Sierra Leone, there were many commentators on the website—from affected communities—with one strong point of view, and others who passionately disagreed. It was not our job to support one side or another. But as we responded to comments we would try to stick to the precise facts of what happened in court, so that any debate was based on that. We were very pleased to see the debates, and the level of interest in what was happening in court.”

Alpha Sesay — Trial monitor with OSJI and the Sierra Leone Court Monitoring Programme



<https://www.ijmonitor.org/2015/01/trial-chamber-declares-witness-743-a-hostile-prosecution-witness/>

3.4

STRUCTURING MONITORING REPORTS

All monitoring reports need to have enough detail to enable audiences to understand what transpired. Audiences will appreciate information that has a clear beginning and end. Sometimes it is difficult to be clear about what elements of the story to include and what should be left out.

What you need to know:

The structure of your monitoring report will depend on the audience you are writing for and how you are distributing or publishing the report. But all audiences need to be able to clearly follow the structure of your report and appreciate the elements you have chosen to highlight.

A whole week or even a single day of court proceedings can sometimes be difficult to summarize. It is important to be conscious of which parts of the proceedings are linked to the charges against the defendant, and highlight those areas for the audience. There may also be information or witnesses that are of particular interest to specific audiences, and you may want to focus on these.

Example: Finding the Key Detail

“During a trial hearing at the International Criminal Court (ICC), it emerged that Ugandan President Yoweri Museveni’s half-brother may have tried to help Dominic Ongwen leave the Lord’s Resistance Army (LRA).”

Other monitors may be focusing more directly on fair trial standards by examining the extent to which a trial is complying with national or international standards. Their reports will make reference to the legal framework which forms the benchmark for the reporting.

As always, accuracy, transparency, and clarity will be essential to making your reports useful for the audience.

For example, if you are reporting on the examination of a witness by the prosecution, the report needs to have sufficient background information about what the trial is about and the current stage of the proceedings in order to provide context for the reader. After that, it



<https://www.ijmonitor.org/2017/01/witness-ugandan-presidents-half-brother-may-have-tried-to-help-ongwen-escape-lra/>

is up to the monitor to pick the essential quotes and exchanges that illustrate exactly what one of the protagonists in the court is trying to do through their line of questions. In many ways, the monitor is the eyes and ears of the audience and has to pick elements that help the audience get a full sense of—and insight into—the proceedings. Sometimes it is difficult to find the precise ‘story’ through a day of legal motions and maneuvering; not every day features dramatic witness testimony.

The monitor should also be conscious that this report might be one of many—particularly if you are reporting daily or weekly—and that providing a snapshot is very useful. What happens at another stage of a trial will be covered then. It is impossible to cover everything in one report. Inevitably, a single report may focus more on prosecution or defense. That should be balanced by a focus on the other side at a future trial stage.

“You can’t achieve neutrality only by counting articles and reports. You also need to seek balance in the way that you gather information, craft headlines, and report on proceedings. Is that really neutral? Is that playing fair? Do you report equally on defense? Are you explaining the terminology you use? Are you attributing statements to the prosecution or the defense of the victims appropriately? Are you adding in your own bias?”

Jennifer Easterday — Trial monitor with OSJI and UC Berkeley War Crimes Studies Center (now Center for Human Rights and International Justice)

Example: Summarizing for an Annual Report

“The legal team of Documenta – Centre for dealing with the past, Center for peace, nonviolence and human rights from Osijek, and Youth initiative for human rights Croatia (YIHR), monitored hearings in 23 criminal proceedings for war crimes trials at the four county courts in Croatia, as well as 12 public sessions in appeals before the Supreme Court of the Republic of Croatia.

The report on war crimes trials in Croatia provides an overview and key findings of all first instant verdicts as well as finished cases, which are of importance to the public. For the full insight in the course of the individual proceedings and their findings, the previous annual trial reports are also relevant. The report focuses on the work of prosecutors and specialized courts, the analysis of the indictments and verdicts in individual cases, critical observation of the judiciary, and offers conclusions and recommendations.”



<https://www.documenta.hr/assets/files/Izvestaji%20sudjenja/REPORT-ON-WAR-CRIME-TRIALS-IN-CROATIA-DURING-2017.pdf>

3.5

DISTRIBUTION OPTIONS

From the outset of your project, you should be thinking about how your target audience will receive and read your reports. Knowing about your audience and how it prefers to consume information will help shape both your reporting and how your reports are disseminated. You will need to think about how to distribute your work most effectively.

What you need to know:

Most organizations already have a website or other digital space that can be used to publish trial monitoring reports. Posting your reports online is important, even if not all of your audience has internet access. Printing costs a lot of money, and events at which you display your work can also take a lot of resources. You will want your product to be available and to be seen by your target audience (and you will want to measure the numbers you reach), so the digital space can be very useful.

In addition to creating a repository for your work, you will also want to pass the information on to others. Apart from using social media (discussed later in this section), you may also use email, in the form of a listserv or digital newsletter. There are many options available and most are low-cost. The number of avenues through which you distribute your reporting will depend on the resources available to you and which avenues you find to be most effective. Keep in mind, if you collect information about your audience, including their email addresses, you will need to have their agreement and promise to protect their data and comply with strict privacy rules, such as the European Union's General Data Protection Regulation (GDPR).

“ I find it is useful to have a direct channel of communication. In my case, it’s a mailing list of people that I send occasional updates to. Not every day, not every week, but I can get feedback via that list every so often. So I get a sense that people know what I’m doing. And at events, sometimes people share with me directly what they think. In some cases, people who haven’t yet been introduced to this work also become my new readers.”

Tom Maliti — Trial monitor with OSJI

Your target audience may not only be people who simply want to receive your monitoring reports, but also those who want to talk about your reports or interact with you or your project. In this era days of social media, no communication is solely one way. People expect to be able to react and feed into your work. By interacting with readers, you can test assumptions, make your conclusions more robust, and make the business of amplifying or advocacy smoother. There is also considerable opportunity for learning—on all sides—when you have an active community engaged with your monitoring.

3.6

SOCIAL MEDIA

In social media, the entry costs can be very low: it is easy to set up a Facebook page or a group or to start tweeting. However, building expertise and using social media channels takes time and effort. And there are drawbacks that are important to consider.

What you need to know:

In many countries, Facebook is the major digital channel through which people get their news. In others, WhatsApp rules on people's mobile phones. For some journalists and academics, Twitter is their daily lifeblood. Each social media space has its own rules, and its own types of audiences. It is important for you to have: clarity on why you want to use a particular channel (or combination of channels), an understanding of what you plan to use it for, and a way to make it part of your content planning. Someone on your team should be assigned to create posts and engage with followers, and there should be a system of checks to make sure that person has sufficient support.

Sometimes it is difficult to transfer the same tone from one channel to another and you can be in danger of not being clear with your audience about the nature of your work and what they should expect from you. Sometimes social media channels change their rules, and you can be left without the space you thought you had. Although you will not have total control over the channel you are using, social media is still an important way to disseminate your work directly to interested people. Social media can provide good spaces to build like-minded communities who want to share information.

“I have live-tweeted from the major trials in Guatemala. Many people are eager to know exactly what is going on in these trials. It's a great way to get the news out, and to communicate the perspectives of the victim communities. I also use Twitter to raise specific issues—such as the recent effort by the Guatemalan Congress to impose an amnesty law—or the implications of a procedural problem. Social media brings the issues to a wider audience, gets discussion going. But it can be a double-edged sword. You very well may face online harassment. If you're going to use social media, it's a good idea to have policies in place to know how you will deal with critics.”

Jo-Marie Burt — Trial monitor with OSJI and political science professor at George Mason University

3.7

TRADITIONAL MEDIA

Liaising with local or international print, radio, and television media outlets can also be a useful way to amplify your work. Press releases with a large amount of background detail may seem commercial or old-fashioned, but journalists and traditional media outlets will still appreciate news or specific information if your monitoring work is of interest to their audiences.

Bear in mind that journalists' priorities may be different from your own and that they may have specific deadlines for their work. Becoming known as a reliable source of expertise on a particular trial or court will lead journalists to approach you more readily and can help make the work of your monitoring project be seen by a wider audience. However, editors of a different platform will be controlling how your words are presented, so building relationships and trust is at the heart of a useful symbiosis.

CHECKLIST FOR COMMUNICATIONS

- ✓ Stick to the ABC's: accuracy, balance, and clarity.
- ✓ Tell the audience who you are and why you are doing this work, as part of your communication.
- ✓ There may be multiple audiences: decide which ones you will prioritize.
- ✓ Translate legal concepts so that your audience can follow your reports.
- ✓ Remain factual and considerate when moderating discussions about contentious issues.
- ✓ Include enough background information to enable the audience to follow the report.
- ✓ Provide balance over time: it is acceptable for a particular report to focus on a specific actor or element of the trial.
- ✓ Think about how your audience will use your reports.
- ✓ Decide where and how your audience will access your reports.
- ✓ Choose a low cost method of distribution.
- ✓ Social media can be useful for you to raise your profile and tap into like-minded communities, but has risks.

CHAPTER 4

ADDITIONAL RESOURCES

This guide is designed to be light and readable. That means not all elements can be covered in depth. We have put checklists in each section. Here we provide further reading and resources.

4.1

COURTS AND TRIBUNALS

International Criminal Court

<https://www.icc-cpi.int/>

The Nuremberg Trials

<https://encyclopedia.ushmm.org/content/en/article/the-nuremberg-trials>

International Military Tribunals for the Far East

<http://imtfe.law.virginia.edu/>

International Criminal Tribunal for the Former Yugoslavia

<http://www.icty.org/>

International Criminal Tribunal for Rwanda

<https://unictr.irmct.org/>

International Residual Mechanism for International Tribunals

<https://www.irmct.org/en>

Extraordinary Chambers in the Courts of Cambodia

<https://www.eccc.gov.kh/en/node/39457>

Extraordinary African Chambers

<http://www.chambresafricaines.org/>

Special Court for Sierra Leone

<http://www.rscsl.org>

Special Panels for Serious Crimes in East Timor

<https://www.wcl.american.edu/impact/initiatives-programs/warcrimes/resource-court-information-and-external-links/resources/special-panels-for-serious-crimes-in-east-timor/>

The War Crimes Chamber in Bosnia and Herzegovina

<https://hybridjustice.com/the-war-crimes-chamber-in-bosnia-and-herzegovina/>

Iraqi High Tribunal

<https://hybridjustice.com/iraqi-high-tribunal/>

Kosovo Specialist Chambers

<https://www.scp-ks.org/en>

International Commission against Impunity in Guatemala

<https://www.cicig.org/>

International Crimes Division in the High Court of Uganda

<https://www.judiciary.go.ug/data/smenu/18/International%20Crimes%20Division.html>

4.2

OTHER TRIAL MONITORING MANUALS

International Commission of Jurists

Trial Observation Manual for Criminal Proceedings

“This Practitioners Guide provides the prospective trial observer with practical advice on how to carry out a trial observation. It outlines the various criteria and operational aspects that need to be borne in mind when preparing for, and conducting, a trial observation. It also provides a systematic overview of the international norms and standards relating to fair trial and due process in criminal proceedings.”

<https://www.icj.org/criminal-trials-and-human-rights-a-manual-on-trial-observation/>

Organization for Security and Co-operation in Europe (OSCE)

Trial Monitoring: A Reference Manual for Practitioners

“This manual is intended primarily for practitioners involved in trial monitoring. It will, however, be of interest to anyone seeking information on trial monitoring and should also be useful to anyone involved in reforming the justice system.”

<https://www.osce.org/odihr/94216>

United Nations Human Rights Office of the High Commissioner

Training Manual on Human Rights Monitoring: Trial Observation and Monitoring the Administration of Justice

<https://www.ohchr.org/Documents/Publications/MonitoringChapter22.pdf>

Amnesty International

Fair Trial Manual

“A practical and authoritative guide to international and regional standards for fair trial. These standards set out minimum guarantees designed to protect the right to a fair trial in criminal proceedings. The Manual explains how fair trial rights have been interpreted by human rights bodies and by international courts.”

<https://www.amnesty.org/en/documents/POL30/002/2014/en/>

Frontline Defenders

Trial Observation Handbook for Human Rights Defenders

“This handbook is designed to enable trial observers to accurately report on trial proceedings and contribute to the protection of HRDs facing prosecution by highlighting injustice and the lack of due process. The presence of trial observers sends a clear message that the right to a fair trial in which all the evidence can be heard and examined without prejudice is a fundamental human right.”

<https://www.frontlinedefenders.org/en/resources-hrds>

Institute for War & Peace Reporting

A Handbook on Covering War Crimes Courts

“Whatever drives you to report on justice, you need to have the tools to do it. That is what this handbook sets out to provide. It is intended for journalists undertaking one of the most challenging, important and potentially rewarding of tasks: reporting on the trials of war crimes suspects or investigating war crimes on the ground.”

<https://iwpr.net/printed-materials/reporting-justice-handbook-covering-war-crimes-courts>

4.3

MORE BACKGROUND READING

Some useful glossaries of legal terms:

- <https://www.ijmonitor.org/glossary-of-legal-terms/>
- <https://dictionary.law.com/>

To better understand international humanitarian law:

https://www.icrc.org/en/doc/assets/files/other/what_is_ihl.pdf

More on universal jurisdiction and related cases:

<https://ijrcenter.org/cases-before-national-courts/domestic-exercise-of-universal-jurisdiction/>

To understand the Genocide Convention:

<https://www.un.org/en/genocideprevention/genocide.shtml>

An explanation of the range of measures involved in transitional justice processes:

<https://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf>

More on the principle of complementarity and the ICC:

<https://www.ictj.org/sites/default/files/subsites/complementarity-icc/>

More on sexual and gender-based crimes:

<https://4genderjustice.org/call-it-what-it-is/>

More on protecting children:

- <https://www.cps.gov.uk/legal-guidance/safeguarding-children-victims-and-witnesses>
- <https://www.cps.gov.uk/legal-guidance/reporting-restrictions-children-and-young-people-victims-witnesses-and-defendants>
- https://www.unodc.org/documents/justice-and-prison-reform/Justice_in_matters...pdf

More information on secondary trauma:

- <https://www.openglobalrights.org/evidence-of-trauma-impact-of-human-rights-work-on-advocates/>
- <https://www.amnesty.org/en/latest/news/2019/02/how-activists-and-reporters-can-protect-themselves-from-secondary-trauma/>
- <http://eyewitnessmediahub.com/research/vicarious-trauma>

Organizations with specialized support for secondary trauma:

- <https://dartcenter.org/resources>
- <https://dartcenter.org/content/self-care-tips-for-news-media-personnel-exposed-to-traumatic-events#.Va-k2mRVhHx>
- <https://www.frontlinedefenders.org/en/resources-wellbeing-stress-management>

More on best practices regarding security:

- <https://holistic-security.tacticaltech.org/>
- <https://securityinabox.org/en/>

4.4

ADDITIONAL EXAMPLES

It is important to monitor political events that may affect court processes. In this case, the report is about diplomatic discussions around the potential presence of Kenyan president Uhuru Kenyatta at the ICC.

“The African Union (AU) has resolved that no serving president or prime minister should appear before any court or tribunal and asked the United Nations Security Council to act on the organization’s pending request for the suspension of the trial of Kenya’s President Uhuru Muigai Kenyatta, which is due to start on November 12.

The decision of African leaders over the weekend raises the possibility that Kenyatta will not attend his trial at the International Criminal Court (ICC). When asked to clarify what would happen if the suspension request was not acted on by November 12, Ethiopian Foreign Affairs Minister Tedros Adhanom Ghebreyesus told journalists that AU leaders had asked Kenyatta not to attend his trial until the AU’s request had been accepted.”

<https://www.ijmonitor.org/2013/10/au-asks-kenyatta-not-to-attend-trial-until-deferral-request-is-acted-on/>

A full summary of what happened in court, what is at stake, and the context can be very useful.

In this report from Guatemala, the monitors portray some of the atmosphere, and explain the trial process and reactions from key groups:

“In a tense and packed courtroom, Guatemalan High Risk Court “B” delivered its verdict on Wednesday evening in the retrial of José Mauricio Rodríguez Sánchez for the crimes of genocide and crimes against humanity against the Maya Ixil population....

Evidence included testimony from some 100 survivors and families of victims, official documents, and expert witnesses. The atrocities included the destruction of at least 50 villages in the Ixil region, massacres, the widespread use of torture and sexual violence, especially against women, and search and destroy operations against the displaced population who, fleeing army violence, went to live in the mountains. The court affirmed that the structural racism and discrimination against the indigenous population that has characterized Guatemalan history was the underlying factor pushing the army’s counterinsurgency strategy towards acts of genocide....

Human rights organizations representing the victims lamented the court's decision to acquit Rodríguez Sánchez. Edgar Pérez, of the Human Rights Law Firm and lawyer for the AJR, said that he believed the plaintiffs had provided ample evidence, including military documents, expert testimony about the role of military intelligence in the design, implementation, and supervision of military plans and operations, and witness testimony, to convict Rodríguez Sánchez. He said despite his disagreement with this aspect of the court's ruling, he saw the ruling as a victory because it acknowledged what the victims have been saying for more than 30 years: that the army committed genocide."

<https://www.ijmonitor.org/2018/09/court-finds-guatemalan-army-committed-genocide-but-acquits-military-intelligence-chief/>

APPENDICES

BASICS OF INTERNATIONAL CRIMINAL LAW

APPENDIX 1

INTRODUCTION TO INTERNATIONAL CRIMINAL LAW

This section outlines the basic concepts and history of international criminal law in practice over the past several decades. It is not a substitute to a law, history, or international relations degree, and to supplement your knowledge, you are encouraged to consult the resources and organizations listed throughout this guide.

As you start developing a trial monitoring program, it is important to know the trial you are working on is not happening in isolation. There are multiple ways in which the system of international criminal justice has developed over time. Having a basic understanding of this background will help you better appreciate the current context in which atrocity crimes trials are happening.

Terminology

The language used during atrocity crimes trials can be highly complex. It is important for you, the trial monitor, to understand the terms being used in the courtroom so you can better inform your audience. There are glossaries of legal terms available, such as <https://www.ijmonitor.org/glossary-of-legal-terms/>. Here we cover some of the basic terms.

The trials you monitor may concern a variety of specific crimes, ranging from torture to violations of immigration law. There are three broad categories of crimes that you are likely to come across regularly:

- War crimes;
- Crimes against humanity; and
- Genocide.

These are crimes either under treaty law or under customary international law. Treaty law exists when states have signed on to an international agreement. Customary international law is the unwritten

body of law that has developed through consistent state practices that, according to the International Committee of the Red Cross, are so “widespread, representative and virtually uniform” that they are universally accepted as general rules by which states are bound. The terms “war crimes,” “crimes against humanity,” and “genocide,” as well as other important terms, are defined below, in alphabetical order.

Complementarity

Complementarity is a principle enshrined in the Rome Statute of the International Criminal Court, which states that the ICC “shall be complementary to national criminal jurisdictions.” It means that the ICC can only investigate and prosecute crimes under its jurisdiction when national institutions are unable or unwilling to do so genuinely.

Crimes Against Humanity

Under the Rome Statute, crimes against humanity are defined as:

“[A]ny of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- Murder;
- Extermination;
- Enslavement;
- Deportation or forcible transfer of population;
- Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- Torture;
- Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender ... or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- Enforced disappearance of persons;
- The crime of apartheid;
- Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”

Crimes against humanity can be committed during war or peacetime.

Fair Trial Rights

Any accused is entitled to a fair trial. The fair trial principle contains a set of rules that protect anyone who is accused of a crime, including:

- Right to a public hearing
- Right to a legally-constituted, competent, independent, and impartial tribunal
- Right to appeal
- Right to be defended by a lawyer and to legal aid
- Right to be presumed innocent until proven guilty according to the law
- Right to a reasoned judgment
- Right to an equal position to make their case under conditions that do not place them at a substantial disadvantage to the prosecutor
- Right to a trial within reasonable time
- Right to know what the charges are
- Right to remain silent
- Right to have time to prepare the defense
- Right to attend the trial

Some of those rights can be restricted for certain reasons. For example, hearings can be closed to the public if it is necessary to protect a witness.

The fair trial principle is enshrined in many international treaties and national constitutions. The detailed rules are mostly based on domestic laws and international jurisprudence.

Genocide

The Convention on the Prevention and Punishment of the Crime of Genocide came into effect in January 1951.

The treaty defines genocide as “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such.” These acts include:

- Killing members of the group
- Causing serious bodily or mental harm to members of the group
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part
- Imposing measures intended to prevent births within the group
- Forcibly transferring children of the group to another group.

More than 130 nations have ratified the 1951 treaty, requiring them to take measures to prevent and punish actions of genocide committed in war or in peacetime. However, it was many years later with the establishment of international criminal tribunals, which included genocide as a crime in their statutes, that prosecutions took place.

International Humanitarian Law

International humanitarian law is a set of rules that intends to limit the harmful effects of an armed conflict by protecting certain people and prohibiting certain methods of warfare. It is not based on a single document; instead, it is based on a series of conventions, including what is generally referred to as the Geneva Conventions, which define many of the rules.

International humanitarian law does not regulate whether a state may or may not wage war. Instead, it applies to all parties to the conflict once an armed conflict is underway. Its aim is to limit civilian casualties and to minimize suffering.

Modes of Liability

This is an evolving field. It focuses on which individual is responsible and thus can be prosecuted for a crime. This depends on how the person is linked to the crimes.

Crimes can be committed directly by a person. They can also be committed by several people together according to a joint plan, making all of them responsible. A person who orders or helps another person to commit a crime can also be responsible for that crime. If a commander or leader has control over someone who commits the crime, the commander or leader can be responsible if he or she knew about the crime and did not prevent it or punish the direct perpetrator.

These are examples of different modes of liability. They depend on the law that applies in each case. For example, if it is a domestic court, it will use domestic laws.

Sometimes the technical aspects of a case need to be the focus of the monitoring and form the basis of your reporting. Misinformation based on misunderstanding can spread quickly. Getting the balance between complex legal language and clarity is not always easy.

Example: Explaining Modes of Liability

In this example, the report examines the issue of modes of liability in a case at the International Criminal Court. The defense lawyer is submitting that the pre-trial chamber did not adequately link the defendant to the crimes as charged. For an audience that was not reading the full submission itself, the report needed to provide sufficient context to explain the defense submission.

“[The defense lawyer, Odongo] said Pre-Trial Chamber II’s decision confirming the charges did not specify Ongwen’s role in relation to some of the charges. Odongo said the decision also did not define Ongwen’s intent when allegedly committing those crimes he has been charged with. In the language of the Rome Statute, the ICC’s founding law, these are the modes of liability.

Odongo said there are counts Ongwen has been charged with that are broad and have many elements to them, but the decision confirming the charges does not specify which of those elements apply to him...‘In plain language, does the CoC [Confirmation of Charges] Decision articulate or ‘make out’ the elements of the crimes and modes of liability charged against Mr Ongwen and support each element with factual allegation?’”



<https://www.ijmonitor.org/2019/02/defense-asks-judges-to-dismiss-41-counts-against-ongwen/>

Sexual and Gender-Based Crimes

Sexual crimes can include rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.

Gender based crimes are those crimes committed against persons, whether male or female, because of their sex and/or socially constructed gender roles.

“It’s important to recognize that sexual violations aren’t just limited to wartime, but are deeply rooted in discrimination and structural issues in every society. Sexual and gender crimes are characterized by humiliation and domination.”

Alix Vuillemin Grendel, Senior advisor at Women’s Initiatives for Gender Justice

It is important to know the context in which sexual violence occurs and why it is being prosecuted as an international crime.

Example: Sexual Violence as a Crime Against Humanity

Below is an excerpt from a report about a trial in a national court discussing sexual violence as a crime against humanity.

“A court in Guatemala has found two former senior military officers guilty of crimes against humanity in a case involving murder, sexual slavery and other atrocities committed at the Sepur Zarco army base in the east of the country in 1982 and 1983...

In delivering the judgment to a crowded courtroom on Friday, February 26, presiding judge Yassmin Barrios said that rape had been deliberately used at Sepur Zarco as a weapon aimed at destroying the local indigenous Maya Q’eqchi’ community.

The Sepur Zarco trial is the first known example of the prosecution in a national court of the crime of sexual slavery during armed conflict as a violation of international humanitarian law.”



<https://www.ijmonitor.org/2016/02/guatemala-court-finds-both-sepur-zarco-defendants-guilty/>

Transitional Justice

Transitional justice comprises the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past human rights abuses, in order to ensure accountability, serve justice, and achieve reconciliation.

Traditionally, there have been four pillars or approaches to transitional justice. These are: criminal prosecution, reparations, establishing truth, and guarantees of non-recurrence.

Universal Jurisdiction

Universal jurisdiction usually refers to a situation where a state is allowed under its domestic laws to prosecute crimes committed outside of its territory. The specific crimes covered by universal jurisdiction and the requirements to be met for prosecution vary, depending on the laws of each state. In many states that have passed legislation recognizing war crimes, crimes against humanity, and genocide, the laws allow the prosecution of these crimes even if they are committed abroad.

Most states can prosecute such crimes (even when committed abroad) if the perpetrator is their own national. Some states also allow this if the victim is their own national. A few states can prosecute such crimes even if neither the perpetrator nor the victim is their own citizen. In such states, however, the authorities often require that the perpetrator is located in their country. In addition, some treaties, such as the Convention Against Torture, require states to prosecute or extradite perpetrators if they are found in their country.

War Crimes

A war crime is a serious violation of international humanitarian law (which is a mixture of multilateral treaties and customary international law) committed during an international or non-international armed conflict.

Under the Rome Statute—the treaty that established the ICC—war crimes include grave breaches of the Geneva Conventions, such as willful killings and torture, among other acts. It also includes other “serious violations of the laws and customs applicable in international armed conflict.” A non-exhaustive list of examples includes:

- Intentionally directing attacks against the civilian population
- Pillaging a town or place

- Committing outrages upon personal dignity, in particular humiliating and degrading treatment
- Committing rape, sexual slavery, enforced prostitution, or forced pregnancy
- Intentionally using starvation of civilians as a method of warfare
- Conscripting or enlisting children under the age of 15 years into armed forces or using them to participate actively in hostilities.

APPENDIX 2

INSTITUTIONS

Institutions dealing with atrocity crimes may be national, international, or a hybrid of the two, and may deal with many different types of crimes.

Why Use Courts to Address Atrocity Crimes?

Most people have heard of the International Criminal Court, based in The Hague, the Netherlands. It came into being in July 2002 and is the first permanent international court for trying individuals accused of international crimes.

However, establishing the ICC took a long time, and its powers are limited because it is based on a treaty. It is worth understanding what came before it, as well as what other courts exist. Listed below are some of the courts that have addressed or currently are seeking to address atrocity crimes.

Nuremberg

At the end of World War II in 1945, Allied governments created the International Military Tribunal in Nuremberg, Germany and indicted 24 Nazi leaders. This was the first time that leaders of a major state had been put on trial by the international community for committing crimes against peace and humanity. It was a watershed in strengthening the rule of law internationally by acknowledging the existence of crimes against humanity. A similar court was created in 1946, the International Military Tribunal for the Far East, in order to prosecute Japanese war criminals.

After Nuremberg, there was renewed determination to ensure that such crimes would never again go unpunished, and a new body of international rules on the conduct in war was created. However, for nearly half a century, until the ICC came into being, there was no permanent international court to enforce these rules.

UN Tribunals

There have been ad hoc (meaning temporary) UN tribunals.

In May 1993, the UN Security Council created the International Criminal Tribunal for the former Yugoslavia (ICTY). It was the first atrocity crimes tribunal since Nuremberg. A year later, in November 1994, following the genocide in Rwanda, the Security Council voted to create the International Criminal Tribunal for Rwanda (ICTR).

Both tribunals had a mandate to try atrocity crimes suspects from all sides of the conflict, but only a limited number—those most responsible—could be pursued because of limited resources.

At both the ICTY and ICTR, prosecutors investigated and brought indictments, which had to be confirmed by the judges. Trials were conducted in an adversarial manner, with prosecutors and defense lawyers presenting their arguments to judges. With no jury, the judges handed down the final decision.

The ICTY, based in The Hague, has indicted people from all ethnic groups and all sides involved in the wars in the former Yugoslavia, including former Yugoslav President Slobodan Milosevic.

The ICTR was headquartered in Arusha, Tanzania, with the prosecutor having offices in both Arusha and Kigali, Rwanda. Its legacy includes indicting members of the extremist Hutu leadership.

Both tribunals are now closed, but the remaining functions of both are being carried out by the International Residual Mechanism for International Tribunals, based in The Hague and Arusha.

Hybrid Courts and War Crimes Chambers

These are locally based courts, sometimes with international involvement or specialized mandates.

Special Court for Sierra Leone

Sierra Leone's brutal war, which included mass killings, mutilations, and sex crimes, ended in 2002, with international commitment to support a court to punish the worst perpetrators.

To avoid the expense of establishing a new UN tribunal and to ensure that the justice meted out would resonate in Sierra Leonean society, the UN and the government of Sierra Leone agreed to establish the Special Court for Sierra Leone (SCSL) with both Sierra Leonean and international staff, judges, prosecutors, and defense lawyers. The court was based in Sierra Leone's capital, Freetown.

Like the ICTY and ICTR, the SCSL has jurisdiction over international crimes—war crimes and crimes against humanity—as well as crimes under Sierra Leonean law, which include abusing girls under 13 years of age and setting fire to public buildings and dwellings. Genocide was not listed in the court's statute because it is not believed to have taken place in Sierra Leone.

Extraordinary Chambers in the Courts of Cambodia

A similar hybrid court was created in Cambodia based on an agreement between the UN and the Cambodian government for trials of the few surviving Khmer Rouge leaders, who were responsible for the deaths of at least 1.7 million people during four years of terror from 1975 to 1979. Based in the capital Phnom Penh, the Extraordinary Chambers in the Courts of Cambodia (ECCC), also known as the Khmer Rouge Tribunal, has both Cambodian and international staff, judges, prosecutors, defense lawyers, and victims' representatives.

The court began operating in 2006 and has jurisdiction over the same international crimes as the ICTY and ICTR, including genocide, and over crimes under Cambodian law.

Extraordinary African Chambers

After heavy lobbying by victims' groups and massive research by human rights investigators, the Extraordinary African Chambers was established under an agreement between the African Union and Senegal to try atrocity crimes committed in Chad between 1982 and 1990 under the regime of former Chadian President Hissène Habré. The Extraordinary African Chambers opened in 2013 in Dakar, Senegal.

Other Hybrids

In East Timor, the United Nations Transitional Administration established Special Panels, which were specialized units with international staff, but within the local judicial system, to hold war crimes suspects accountable.

In Bosnia and Herzegovina, in the former Yugoslavia, a War Crimes Chamber has been established in close cooperation with the ICTY, and with international staff to try those responsible for crimes committed during the wars in the Balkans. Prosecutions have included individuals whom the tribunal in The Hague considers too low-level for it to deal with.

In neighboring Croatia and Serbia, the judicial systems have also been given international support to overhaul their courts to meet European standards so that they can run effective war crimes trials on their own.

In Iraq, former president Saddam Hussein and other top Iraqi leaders were tried at the Iraqi High Tribunal created jointly by the US-led Coalition Provisional Authority and Iraqi officials.

Other examples include numerous trials involving atrocity crimes in Kosovo run by the United Nations Mission. And more recently, a new set of chambers—part of Kosovo's national system, but based in The Hague with only international judges and staff—has been established to look at atrocity crimes committed during and in the aftermath of the 1998-1999 Kosovo conflict.

National Courts

Many national jurisdictions are taking on atrocity crime trials. Below are two examples.

Uganda has adopted many of the provisions on the Rome Statute into its domestic law and created its own International Crimes Division (ICD) as part of the High Court of Uganda. The ICD deals with terrorism cases, as well as war crimes, crimes against humanity, and genocide. It was established in 2008 as a fulfillment of the peace agreement signed between the government of Uganda and the Lord's Resistance Army rebel group. However, it has taken several years to get started, and only one trial for atrocity crimes has been brought.

In Guatemala, the International Commission against Impunity in Guatemala was established by the Secretary-General of the UN and the government of Guatemala in 2006. Although its mandate primarily focused on the investigation and prosecution of corruption, the creation of high-risk courts in the domestic judiciary also led to several trials for atrocity crimes committed during the country's 36-year internal armed conflict.

This is a non-exhaustive list, intended to provide some sense of the range of efforts to address atrocity crimes.

International Criminal Court

The aim of the International Criminal Court is to try individuals most responsible for atrocity crimes. It is the first permanent court with a global mandate to investigate and try such cases. Until 2002, when it came into being, war crimes trials had been conducted by domestic courts or under the auspices of temporary international or hybrid tribunals.

The Rome Statute—the treaty that established the ICC—was adopted by an overwhelming majority of UN states on July 17, 1998. However, the court could only start operating once 60 countries had ratified the treaty, which took another four years.

The ICC is empowered to try war crimes, crimes against humanity, and genocide. It can also examine aggression, under very strict circumstances.

Contrary to popular belief, it does not have the power to prosecute anyone, anywhere in the world for atrocity crimes. It can only try crimes that were committed after July 2002 and only has jurisdiction over crimes committed in states that have ratified the Rome Statute, or over nationals of those states. However, the UN Security Council can refer to the ICC a state that has not ratified the Rome Statute. Non-member states can also accept the ICC jurisdiction on their own initiative.

A case could be triggered by the court's independent prosecutor, by a country, or by the UN Security Council. As a court of last resort, ICC investigations will only proceed if the court is convinced that the country concerned is unwilling or unable to carry out a trial. Opposition to the court from permanent members of the UN Security Council with veto powers, including the United States, Russia, and China, has meant that referrals from the UN Security Council are very limited.

Trust Fund for Victims

The Trust Fund for Victims is an independent body affiliated with the ICC and has two major functions. It assists victims, for example by giving material support for education and vocational training and access to physical and psychosocial rehabilitation, which is overseen by an independent board of directors. Support for the Trust Fund for Victims comes from governments, foundations, and private donors. The second function is to administer any reparations the court has ordered convicted persons to pay.

APPENDIX 3

COURT PROCEDURE

This appendix explains what happens during a trial. All courts are different, but the processes you will have to deal with are similar. The terms are presented below in roughly the chronological order in which judicial processes usually unfold.

Indictment

An indictment is a detailed list of the crimes a suspect is alleged to have committed. The indictment describes the facts of the case, the evidence gathered to date, and the applicable law. The indictment can go by different names in different jurisdictions; for example at the ICC, an indictment is called the "document containing the charges," and elsewhere it may be known as a "charge sheet."

Once an indictment is issued, it often becomes a public document, and you can quote from it. However, there may be elements of an indictment that are redacted, or not available for the public. It is important to read this document carefully because the information in the indictment forms the basis for your future reports. At this stage, you can describe the suspect as (for example) "a war crimes suspect," but never forget that an accused person is innocent until proven guilty.

An indictment can contain useful background information and lists the charges against a person as a number of "counts." Generally, an incident or series of incidents is described and the counts relating to that incident are listed. Some of the people on trial at the ICC have tens of counts against them.

An indictment is usually prepared by prosecutors at the end of their investigation and before a trial. It serves as the basis for what needs to be proven at trial to convict this person. In some jurisdictions, the indictment issued by the prosecutor has to be confirmed by the judge(s) before the case can go to trial.

Sealed Indictment

In some cases, the names of the individuals and the charges against them are not made public in the indictment. A sealed indictment provides the prosecution a better chance of arresting the indicted person. It is common practice at many tribunals.

Warrant for Arrest

An arrest warrant is a document issued by a court or a prosecutor that gives the police permission to arrest someone because that person is suspected of having committed certain crimes. The arrest warrant usually sets out who the suspect is, what the alleged crimes are, and why this person needs to be arrested, such as if the person is a flight risk.

Arrest warrants are not issued in every single case. If the suspect voluntarily comes before the police, prosecutor, or court, they do not need to be arrested but can simply be summoned. Summonses can also be unconditional or conditional; for example, a judge can order a summons be issued with the condition that the suspect not interfere with witnesses either directly or indirectly.

Arrest warrants can be issued at various stages of an investigation, depending on the applicable law. If the suspect is arrested based on an arrest warrant, they can be detained until the trial starts (called pre-trial detention), or released (usually under certain conditions) until the trial begins. Pre-trial detention or pre-trial release usually require approval by a judge.

Initial Appearance

A suspect will usually make an initial appearance before the court, after an indictment has been issued but before the trial begins. This may be to state their identity, be informed of their rights, and to set a date to confirm the charges. Suspects will already have been given time to choose a defense lawyer.

Pre-trial Proceedings

The period before the start of the trial is often called the pre-trial stage. More detailed information about the charges against the defendant often becomes available during the pre-trial phase.

During the pre-trial proceedings, different procedural steps may be taken. The indictment is confirmed by judge(s) where the law requires

this. This is also when the prosecutor usually discloses to the defense the evidence they want to use at trial, so the accused can prepare his/her defense. In some courts this is the point when the pre-trial chamber or single judge may order that assets of the accused be frozen.

Example: Capturing the Details

This report, regarding a guilty plea at the ICC, provides details of exactly what was said in court, and context about what will happen next.

“Ahmad Al Faqi Al Mahdi has informed the International Criminal Court (ICC) that he would like to plead guilty to a single war crime charge of destroying or partially destroying historic buildings in the northern Mali city of Timbuktu. Al Faqi informed the court of his decision on March 1, but the details of what he said have only become public this week.

The Malian Islamic rebel leader made his intention known during a hearing Pre-Trial Chamber I held on March 1 to listen to the prosecution argue why the chamber should confirm the charge against him. During the pre-trial phase of a case, a suspect is not required to enter a plea. The focus of the pre-trial phase at the ICC is on whether the prosecution’s evidence shows there is ‘substantial grounds’ for a case to go to trial.”



<https://www.ijmonitor.org/2016/03/al-faqi-tells-chamber-he-intends-to-plead-guilty-to-war-crime-charge/>

Opening

The prosecution opens, or begins, the trial by explaining the charges and outlining the case. The defense replies. That pattern continues throughout the trial: prosecution first, followed by defense. These initial arguments are sometimes called opening briefs or statements, and they spell out what each side is setting out to prove. They can contain a lot of useful information. In some jurisdictions, lawyers representing victims can also make an opening statement, and sometimes the accused may make an unsworn statement during the opening of a trial.

There may have been meetings before the trial, to sort out technical disputes. These can be more interesting than they may sound: a suspect may be preparing to change a plea to guilty, for instance. The technical side of the trial is guided by the statute and procedures of the tribunal—and these can change. The judges can meet to try to streamline the procedures. It is important to stay on top of any changes.

“Different judges run their courtrooms in different ways. At the Ongwen trial at the ICC, the presiding judge, Judge Schmitt, is very hands-on and tries to make all the parties stick to time.”

Tom Maliti, Trial monitor for OSJI

Presentation of Evidence

Depending their arguments, the prosecution and defense may produce evidence in court to support their theory of the case; for example, they can call witnesses or present recordings or documents that show the role of the accused. The prosecution presents its evidence first, then the defense picks away at that material, trying to show that the prosecution does not have enough proof.

The key way that lawyers from each side try to prove their case is by presenting evidence through witnesses, documents, objects, and, increasingly, other data obtained with new technology. Witnesses can appear in person, remotely via video link, or may submit a written statement. Other evidence can come from documents, such as military orders. Some witnesses are termed “expert” witnesses and provide the court with insight into a specific issue. Expert witnesses are people who did not see or hear anything directly about the alleged crime or the accused, but who have expertise on a specific topic, such as military structure, that is important to the case.

The presentation of evidence is the heart of the trial. It is very important to be able to convey accurately what has been said in court, to pick the most important quotes, and to put daily developments into context for your audience.

Witness Questioning

Each witness testifies by answering questions. In the case of a prosecution witness, the prosecution starts asking questions first. In the case of a defense witness, the defense will question the witness first. When the calling party questions their own witness, it is referred to as direct examination. After that, the other party can ask questions, which is called cross-examination. If needed, sometimes the calling party will ask further questions of their witness, which is known as re-direct examination. In some jurisdictions, the judges and victims’ lawyers can also ask questions.

There can be a lot of robust cross-questioning and if there are several defendants, with several lawyers, they can keep a witness on the stand for hours, if not days. The idea is to give the judges ample opportunity to decide whether a witness is reliable or not.

At the ICC, witnesses will have been made familiar with the courtroom setting by courtroom officials before they testify. In general, lawyers will know what their witnesses will be saying. In some cases, they will have met their own witness to talk through the questions and make sure they know the answers. They will also have tried to anticipate the questions the other side will ask. However, in some court systems this practice, also known as “witness-proofing,” is not allowed.

Protected Witnesses

Witnesses are often worried about possible retaliation and do not want their identities known to the public. The court can offer a range of measures to help protect them, including giving them a pseudonym, concealing their face, disguising their voice, or allowing them to testify behind closed doors. The court may also assist with relocating especially sensitive witnesses. Journalists have been charged with contempt for their roles in revealing the identities of protected witnesses. Any trial monitor could likewise be held in contempt for revealing details related to the identity of protected witnesses.

Example: Covering Witness Testimony

In the trial at the ICC of former DRC Vice President Jean Pierre Bemba, witnesses for the defense were cross-examined by the prosecution about why they had not told their stories earlier to the prosecution.

“A former soldier in the militia group led by Jean-Pierre Bemba today told International Criminal Court (ICC) judges that he refused to meet with prosecutors because he feared he would be prosecuted....

‘Witness D04-13’ is the 34th defense witness in Mr. Bemba’s trial. He was part of the contingent of Movement for the Liberation of Congo (MLC) fighters who intervened in the Central African Republic during 2002 and 2003....

Prior to the opening of the defense case, Mr. Bemba’s lawyers said that unlike prosecutors, they intended to call witnesses who had ‘tangible knowledge’ of the five-month period during which the accused’s soldiers were deployed in the conflict country. However, the defense has in the past stated that some of its witnesses had a fear of self-incrimination....

Most of the prosecution’s questioning of ‘Witness D04-13’ was done in closed session. He is testifying via video link from an undisclosed location with his image and voice distorted in order to conceal his identity.

Also today, prosecutors questioned the witness about inconsistencies between his testimony and documents tendered by the prosecution about the date on which the MLC arrived in the conflict country.”



<https://www.ijmonitor.org/2013/11/former-mlc-soldier-says-he-was-scared-of-being-prosecuted/>

Evidence via New Technology

Investigators and prosecutors are becoming more adept at using new technology in situations where atrocities have occurred. Satellite imagery may offer evidence regarding the destruction of villages.

Analysis of telephone call data is used to link suspects to crime scenes. Recordings of crimes shared on social media may be used. Independent journalists and investigators are specializing in the analysis of such evidence. Human rights groups and lawyers have been working on mechanisms for activists to safely share material and to establish standards by which such evidence can be judged and clearly understood. While this evidence is still relatively new to courtrooms, it is important to be aware of and document how it is used.

“I'm starting to see more technological evidence in the trials I monitor at the ICC. There are lots of challenges though: where does the evidence come from, how can the courts have robust mechanisms to prevent manipulation and do the judges understand how to evaluate it?”

Tom Maliti, Trial monitor for OSJI

Closing Arguments

Once all of the evidence has been presented and the prosecution and the defense have made their cases, the two sides will use their closing arguments to again tell the judges why the defendant is guilty or not guilty of the charges. This is another important moment in the trial. Each lawyer will summarize the most salient points they have made and will try to dismantle their opponent's case. In some jurisdictions, this is accompanied by a written submission. These can be very useful summaries for trial monitors.

In some countries, victims can give a statement about how the crime affected them, called a victim impact statement. It is used by the court to determine the guilty party's sentence. Sometimes the accused may also make an unsworn statement during the closing stage of the trial.

Judgment and Sentence

The judges normally have a set period for delivering a verdict, so you should know when to expect it. This is often the most important part of the trial, and you have to be prepared. The judgement has three main elements:

- whether the person is guilty or not guilty of all or any of the counts against them;
- what sentence they may have to serve; and
- the judges' reasons for coming to this conclusion.

The sentence may be given immediately after a judgment, or may be delivered at a later date. The judges can decide to take into account factors such as the degree of remorse an accused has expressed, the gravity of the crimes, and the degree of the convicted person's

participation in the crimes. In the case of a guilty verdict, some jurisdictions also allow victims of the crimes to request the court to order reparations for their benefit.

“It's important to read carefully how judges have decided on a particular sentence. They can look at all kinds of factors. At the ICC, they've really taken into account how a convicted person has behaved and whether they've expressed remorse. They also consider the gravity of the crimes, [and] the degree of an accused person's participation in their commission. But where there are many counts charged, it is important to understand on which ones a person was convicted, and whether they committed the crime directly or through other people.”

Wakabi Wairagala, Trial monitor for OSJI

If the defendant is found not guilty of all crimes, judges can order the immediate release of the defendant. In some places, the defendant is entitled to compensation for the time spent in detention before and during trial under certain conditions.

Reparations

In some jurisdictions, in case of a guilty verdict, victims of crimes are entitled to reparations. Reparations can take various forms, including monetary relief, rehabilitation programs, and symbolic measures. Courts can order reparations directly to individual victims, or they can be collective, meaning they can benefit an entire community that has been affected by atrocity crimes.

Appeal

After a judgment, one side or the other—or sometimes both—may want to challenge the verdict. A different set of judges is usually tasked with hearing the appeal and rendering a final decision. In some jurisdictions, victims may have the right to appeal as well.

The Open Society Justice Initiative uses strategic litigation, research, legal advocacy, and technical assistance to defend and promote the rule of law, and to advance human rights. We collaborate with a community of dedicated and skillful human rights advocates across the globe, as part of a dynamic and progressive justice movement that reflects the diversity of the world.

Observing and reporting on atrocity crimes trials is a unique challenge. Those who undertake this responsibility must understand the history and context of the trial, as well as complicated legal theories, courtroom procedures, and the key actors involved. Further, they must communicate this complex information in a comprehensible way to audiences that are often far removed from the courtroom.

This guide is intended to help non-governmental organizations, journalists, and others to better understand, describe, and convey the work of international criminal trials. It covers a range of trial monitoring activities, from establishing a monitoring program, to covering daily events in the courtroom, to defining audiences and selecting the best ways to communicate with them.

Trial monitoring is demanding work, requiring knowledge of communications, legal practice, and technical language. Most of all, it requires a commitment to objectivity, accuracy, and fairness. Although trial monitoring is difficult, the growing number of atrocity crimes trials will require an increasing number of skilled monitors. It is hoped that this guide will help meet that demand.