

# 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](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.