

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.

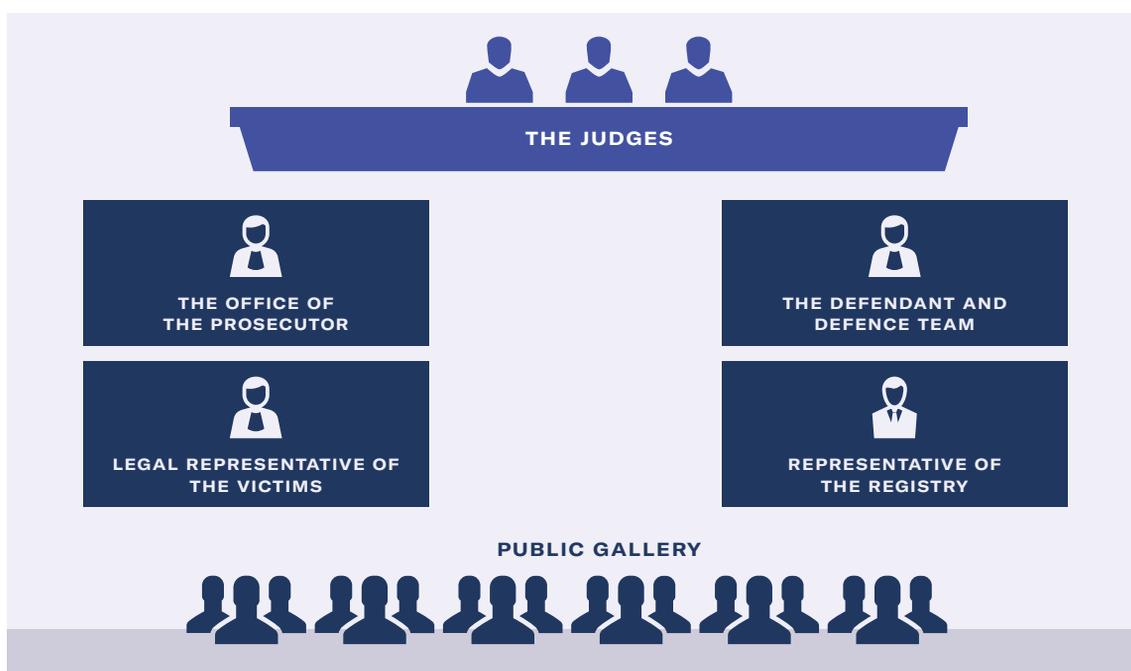
Example: Monitoring at the ICC

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.