

TRIAL MONITORING MANUAL



**ETHIOPIA HUMAN
RIGHTS PROJECT**

ETHIOPIA HUMAN RIGHTS PROJECT (EHRP)



TRIAL MONITORING MANUAL



TABLE OF CONTENT

Introduction

I. The objectives of trial monitoring

II. The right to fair trials and legal standards

2.1. What is fair trial?

2.2. Basic legal standards of fair trial

III. Scope and forms of trial monitoring

3.1. *Scope of trial monitoring*

3.1.1. The pre-trial procedures

3.1.2. The actual trial or Hearing

3.1.2. The post-trial Procedures

3.2. *Forms of trial monitoring*

IV. The role of a trial monitor

4.1. Pre-trial or before the courtroom procedure

4.2. During the trial or In the courtroom

4.3. Post-trial or after the courtroom

V. Basic principles of trial monitoring

VI. Security risk assessment



INTRODUCTION

The main aim of this manual is intended primarily to assist local trial monitors in Ethiopia to provide them practical guidelines on how to conduct observation in the courtroom and how to monitor the proper functioning of the judicial process through the proceedings of the trial. This guide deals with three major issues: how to monitor, document and report political trials. At the same time the manual provides basic information about the legal standards of fair trials and key elements that support trial monitors to identify and assess security risk factors during their mission.

In the development of this manual most of the elements have drawn from the experience of already-existing resources on trial observation. The following sources were used to the development of this manual:

- ✿ "Trial Observation Manual for Criminal Proceedings", Practitioners Guide No. 5, Geneva, prepared by International Commission for Jurists, 2009.
- ✿ "What is a fair trial? A basic guide to legal standards and practice", Lawyers Committee for Human Rights, March 2000.
- ✿ "Trial Monitoring: A reference manual for a practitioner", Office for Democratic Institutions and Human Rights (ODIHR), revised edition 2012.
- ✿ "Trial Monitoring" Manual on Human Rights Monitoring an Introduction for Human Rights Field Officers, Chapter 8, University of Oslo, Norwegian Center for Human Rights.
- ✿ "Trial Observers Handbook for Human Rights Defenders", Front Line Defenders, 2012.

HOW TO USE THIS MANUAL?

EHRP's trial monitors should read this manual and all other recommended materials thoroughly before undertaking their monitoring mission. Particularly for monitors who have no legal background this manual is more than a practical guideline. In addition to providing practical assistance it contains also basic principles and ethics of trial monitoring, risk assessment technics, relevant legal provisions of fair and public trials.



I. THE OBJECTIVES OF TRIAL MONITORING

Trial monitoring is a very essential tool for observing the application of domestic and international guarantees of fair trial rights, particularly in the cases involving political offenses. The monitoring mission has aim on two perspectives of fair trial: the protection of the rights of the accused and those of victim, and second, to ensure the proper administration of justice.

In general, the aim of trial monitoring is to assess whether the applicable provision of international and domestic legal standards guaranteeing a fair trial haven been properly implemented and respected. Therefore, EHRP has developed this trial monitoring manual based on the following objectives:

- To observe, document and report the general practice of the legal proceedings in Ethiopia, mainly in relation with political trials;
- To assess the functioning of key elements of the judicial process;
- To ensure that the accused received fair trials;
- To assess the justice system's compliance with international standards of fair trial;
- To evaluate how rigorously the court upholds the burden of proof in political cases;
- To obtain more information about the conduct of the trial, the nature of the case against the accused and the legislation under which s/he is being tried; and
- To collect general background information about the political and legal circumstances leading to the trial and possibly affecting its outcome.

II. THE RIGHT TO FAIR TRIALS AND LEGAL STANDARDS

2.1. What is fair trial?

Fair trial is one of the basic rights guaranteed for individuals under Article 10 of the Universal Declaration of Human Rights (UDHR) and Article 14 of the International Covenant on Civil and Political Rights (ICCPR) which provides that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." The 1995 Constitution of Ethiopia also recognizes this right and stated it under Article 20. This right is designed to protect individuals from any unlawful and arbitrary restriction or deprivation of other basic rights and freedoms, mainly the right to life and liberty.

2.2. Basic legal standards of fair trial

The Presumption of Innocence

ICCPR, Art. 14(2): "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."

The Ethiopian (FDRE) Constitution, Art. 20(3): "During proceedings accused persons have the right to be presumed innocent until proved guilty according to law and not to be compelled to testify against themselves."

The right to be presumed innocent has three main aspects:

- It requires all public authorities to refrain from making public comments about the guilt or innocence of the accused.
- It requires the operation of rules of evidence that guarantee that the prosecution retains the burden of proof.
- It requires that the benefit of the doubt belongs to the defendant (the in dubio pro reo principle).

Right to be tried without undue delay (ICCPR 14(3)(c))

ICCPR, Art. 14(3)(c): "In the determination of any criminal charge against him, everyone shall be entitled ... to be tried without undue delay."



FDRE Constitution, Art.

- The right to be tried 'without undue delay' must be balanced with the adequate time.

Equal access to, and equality before, the courts and the right for fair and public hearing

ICCPR, Art. 14(1): "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

- This, on the one hand, means that establishing separate courts for different groups of people based on their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status would be a contravention of Article 14(1).
- The second sentence of Article 14(1) relates to the right to a fair and public hearing by a competent, independent and impartial tribunal established by law.
- The right to a public hearing means that the hearing should as a rule be conducted orally and publicly, without a specific request by the parties to that effect.

The Right to Present and to confrontation of Witnesses

ICCPR 14(3) (e): "In the determination of any criminal charge against him, everyone shall be entitled ... to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him."

FDRE Constitution, Art. 20(4): "Accused persons have the right to full access to any evidence presented against them, to examine witnesses testifying against them, to adduce or to have evidence produced in their own defence, and to obtain the attendance of and examination of witnesses on their behalf before the court."

- These provisions are designed to guarantee to the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution.

Free assistance of an interpreter if the defendant cannot understand or speak the language used in court

ICCPR 14(3) (f): "In the determination of any criminal charge against him, everyone shall be entitled ... to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

FDRE Constitution, Art. 20(7): "They have the right to request for the assistance of an interpreter at state expense where the court proceedings are conducted in a language they do not understand."

- Is it attempted nullification by governmental declarations that a particular language is 'official' and therefore is understood and/or spoken by the defendant.
- If the accused cannot understand or speak the language used in court he is entitled to the assistance of an interpreter free of any charge.

The Right to Legal Counsel

ICCPR 14(3) (d): "... everyone shall be entitled ... to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it".

FDRE Constitution, Art. 20(5): "Accused persons have the right to be represented by legal counsel of their choice, and, if they do not have sufficient means to pay for it and miscarriage of justice would result, to be provided with legal representation at state expense."

Adequate time and facilities for the preparation of the defence (ICCPR)

ICCPR 14(3) (b): "... everyone shall be entitled ... to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing."

FDRE Constitution, Art. 20.

- denying defence counsel any access at all to the files of a case or refusals to provide counsel any information about the case until the day of the trial,
- Access to documents and other evidence which the accused requires to prepare his case



The Right to Humane conditions of Detention and Freedom from Torture

ICCPR, Art. 7: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

ICCPR, Art. 10(1): "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

FDRE constitution, Art. 18(1): "Everyone has the right to protection against cruel, inhuman or degrading treatment or punishment."

Protection from Double Jeopardy or retrial for the same offence

ICCPR 14(7): "No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country."

FDRE constitution, Art. 22(1): "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence at the time when it was committed. Nor shall a heavier penalty be imposed on any person than the one that was applicable at the time when the criminal offence was committed."

○ Observer may find that the prosecuting authorities have recharacterised an offence or filed additional and related charges against an individual in order to detain him or her in custody after an acquittal or to rearrest him or her on release after completing a prison sentence.

○ The observer should make a clear distinction between resumption of a trial justified by exceptional circumstances and a retrial prohibited pursuant to the principle of *ne bis in idem*.

The right to appeal convictions and sentences

ICCPR 14(5): "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."

FDRE Constitution, Art. 20(6): "All persons have the right of appeal to the competent court against an order or a judgment of the court which first heard the case."

III. SCOPE AND FORMS OF TRIAL MONITORING

3.1. Scope of trial monitoring

The right to a fair trial on political charges is considered three categories or time periods of the trial process. It has to start from the date on which State activities substantially affect the situation of the person concerned. Therefore, in this regard trial monitors make sure that they have full picture of the whole trial process. There are three categories or time periods of trial process. These are: pre-trial, the actual trial and the post-trial procedures.

3.1.1. The pre-trial procedures

a) The moment of arrest

The prohibition on arbitrary arrest and detention

ICCPR, Art. 9(1): "everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

FDRE, Art. 17 (2): "No person may be subjected to arbitrary arrest, and no person may be detained without a charge or conviction against him."

The right to know the reasons for arrest

ICCPR, Art. 9(2): "Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and



shall be promptly informed of any charges against him.”

FDRE, Art. 19(1): “Persons arrested have the right to be informed promptly, in a language they understand, of the reasons for their arrest and of any charge against them.”

The right to legal counsel

ICCPR 14(3) (d)

FDRE, Art. 20(5)

b) The moment the investigation against the accused commences

The right to a prompt appearance before a judge to challenge the lawfulness of arrest and detention

ICCPR, Art. 14

FDRE, Art. 20(1)

The right to be informed with sufficient particulars of the charge

ICCPR, Art. 14

FDRE, Art. 20(2)

The right to be presumed innocent until proved guilty (Article 20(3) of Eth. Constitution)

ICCPR, Art. 14(2)

FDRE, Art. 20(3)

The prohibition on incommunicado detention

ICCPR, Art. 7

FDRE, Art. 21(2): “All persons shall have the opportunity to communicate with, and to be visited by, their spouses or partners, close relatives, friends, religious councilors, medical doctors and their legal counsel.

3.1.2. The actual trial or Hearing

- Equal access to, and equality before, the courts and the right for fair and public hearing
- The right to prompt notice of the nature and cause of criminal charges
- The right to adequate time and facilities for the preparation of a defense
- The right to a trial without undue delay
- The right to defend oneself in person or through legal counsel
- The right to examine witnesses
- The right to an interpreter
- The prohibition on self-incrimination
- The prohibition on retroactive application of criminal laws
- The prohibition on double jeopardy

3.1.3. The post-trial procedures

The right to appeal

ICCPR, Art. 14(5)

The right to compensation for miscarriage of justice

ICCPR, Art. 14 (6): “When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him”



3.2. Forms of trial monitoring

According to internationally organization's trial monitoring standards there are three different forms or types of monitoring. These are:-

a) Systematic trial monitoring: it is a long-term or wide-ranging trial monitoring aimed at assessing parts of the justice system in order to promote justice reforms.

b) Thematic trial monitoring: it aims on one specific or several areas of the trial proceeding with an in-depth focus.

c) Ad hoc trial monitoring: it is mainly focuses on high-profile cases or individuals or group of such cases.

EHRP will implement or use one of the three forms of trial monitoring or all simultaneously according to its plan and main objectives. This will be decided by the organization (EHRP) which one of the three techniques should be used according to the nature of the case that would be monitored.

IV. THE ROLE OF A TRIAL MONITOR

The duty of the trial monitors is not limited in his/her physical presence in the courtroom. Observing the courtroom is only part of the proceedings. The role of the monitor should start and continue, before and after the courtroom proceedings.

4.1. Pre-trial procedure

This is the time for much substantive preparatory work should be done by the trial monitors. Mainly, collecting relevant information about and in relation to the case they plane to monitor. In addition:

- Trial monitors should have basic knowledge or understanding on the norms and standards of trial proceedings, the laws of the country, and also human rights treaties to which that country has rati-fied.
- Trial monitors should have basic knowledge about the legal system of the country in general and the rules of the court proceedings.
- Trial monitors should read relevant materials pertaining domestic and international legal standards of fair trial including: relevant provisions of the Ethiopian Constitution (1995), the Ethiopian Criminal Code and Code of Criminal Procedure, the Universal Declaration for Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and other relevant documents.
- Trial monitors should have a broader knowledge of the human rights situation prevailing in the country. Therefore, it is worthwhile following the reports of local and international human rights organizations and obtaining information on the current situation of the country and particularly re-ports directly relevant to trial observation.
- Based on the guide of this manual, trial monitors should make a preliminary checklist of key con-cerns and points to be covered in their observation mission.

4.2. During the trial or In the courtroom

4.2.1.Documentation: trial monitors should documented the following information as much as the situation allows:

- Copies of relevant procedural rules, court decisions and laws;
- Copies of charges, transcripts and the court's judgment;
- Description of the observer's methodology, and persons interviewed, if it applicable;
- Sensitive material which should be omitted from the published report;
- Copies of newspaper articles referring to the trial or the observer's presence, with the names of the newspapers and the dates of publication;
- Additional information not strictly within the observer's mission (such as information about other prisoners, other trials and recent laws); and



4.2.2. Report writing: trial monitors should prepare their report after every courtroom observation and throughout the hearing procedure. The report be composed to include the following headings:

- The background of the case:

- Brief description of the relevant socio-political conditions in the country;
- If there are reports of previous observations of the same trial and/or similar trials;

- The charges and facts of the case as revealed at the trial (Copies, if available, should be attached to the report as annexes);

- The nature of the prosecution's case and a summary of the prosecution's evidence.

- Describe if there were any compliant on matters such as control or manipulation of evidence,
- Note any problems with low or shifting burdens of proof that require the defendant to help prove the charges against him or her (in violation of the right to be presumed innocent).
- If there are illegally obtained evidence, manufactured evidence, and evidence unlikely to be genuine.

- Applicable laws,

- Provide a brief review of the law applicable or mentioned in the case.
- Mention if any international human rights instruments have included in the case or referred in the trial.

- Pre-trial procedures,

- Trial process,

- Judgment (if any) and Sentence:

- Copies, if available, should be attached to the report as an annex.
- The observer should contact the defence counsel to get the copy of these documents.
- Description of the judgment and sentence (or awards), if any.
- If judgment not yet delivered, information as to the expected date.

-Subsequent proceedings;

- The mental and physical condition of the defendant and the conditions of confinement;

- Evaluation of the fairness of the proceedings,

- All persons shall be equal before the courts and tribunals (ICCPR 14(1)). One aspect of 'equality' is the 'equality of arms' between the prosecution and the defence.
- Every defendant is entitled to be treated the same way as any other similarly placed criminal defendant.

- Treatment of the defendant under national and international standards;

- The independent and impartiality of the judges:

- Describe the structure of the judiciary in general and the specific court conducting the trial,
- Describe the independence and impartiality of the judiciary (the specific court) based on international standards.
- Consider the attitude and approach taken by the presiding judge or judges to the prosecution and the defence.
- Stress respect for the right to be presumed innocent until proved guilty according to law.

- Evaluate the roles played by the prosecutor and the defence counsel:

- In light of the principle of the equality of arms.
- Evaluate the working conditions of defence counsel, including such matters as timely and adequate access to files maintained by the prosecution and/or the procurator;
- The right to present and confront witnesses.
- The name and background of the prosecutor and defence counsel, and (if possible) the criteria for their selection.

- Conclusion

Monitors are not allowed to share their information to the third party or making statements or releasing reports during or after the trial.



4.3. Post-trial or after the courtroom

- **The trial monitors should report to the sending organisation as soon as possible after the completion of the mission.**

- **Follow up the availability and effectiveness of appellate proceedings.**

- State whether the defendant may appeal the judgement, the sentence or both to a higher instance court.
- Note whether the appeal is by right or by leave of the lower court.
- If possible, describe the procedures followed by appellate courts in the jurisdiction (whether review is conducted solely on written submissions by the parties, whether there are new hearings, etc.) and evaluate them in light of the principles governing fair trial.
- Provide a brief description of the powers of the appellate level court (e.g., can the court reverse an acquittal, increase a sentence).

- **Meeting people: trial monitors could contact lawyers and other actors who are willing to provide information and documents outside of the courtroom.**

- **Follow up:**

V. BASIC PRINCIPLES OF TRIAL MONITORING

- **The principle of Non-intervention:** is one of the basic and most important principles that monitors should respect.

- Monitors should strictly reserve themselves for not to undermine the independence of the court;
- Trial monitors should never interrupt court proceedings or interfere with the judicial process;
- Trial monitors should also refrain from expressing opinions on the merits of the case during the trial or throughout the proceedings of the trial on any public fora, including on social medias;
- Trial monitors should avoid also any judgments or evaluating the case on its merits, evaluating evidences or arguments put forward by the parties or weighing up the guilt or innocence of the accused;
- Trial monitors must never instruct or advise legal actors with regard to a course of legal action to take or not to take.
- Trial monitors should avoid any interaction with the judicial actors inside the courtroom.

- **The principle of impartiality:** In relation to politically charged cases, trial monitors may show a tendency of bias in favour of one or the other side in the process. Therefore, being impartial helps to provide assurance that the monitoring programme is not biased regarding individual cases and that no single category of actors is targeted for criticism, and also to carry out the monitoring responsibilities in an objective and impartial manner. In addition:

- Trial monitors should maintain impartiality at all times throughout their observation mission.
- They should remain neutral in relation to the case, prosecution, defence and witnesses to convey their independence.
- Trial monitors should observe and examine equally the conduct of all actors involved, without showing any personal preference toward one side over another or toward a specific outcome in a case.
- Trial monitors should not taking side to gathering information.

- **The principle of Confidentiality:** Trial monitors should respect the confidentiality of information they obtained in their observation.

- Trial monitors should take all the necessary measures to avoid any security risks while they are conducting their observation on the judicial process and when they take notes during court proceedings.

- Trial monitors should respect all roles of the court. They should arrive early enough to ensure to observe the opening of the trial, will not disrupt proceedings and will not miss any information by arriving late.



VI. SECURITY RISK ASSESSMENT

In a country like Ethiopia any human rights monitoring activities including trial monitoring is always exposed to different security risks. EHRP is always trying to assess the security risks in relation to its trial monitoring project. However, it is the trial monitor who is in the right position to assess any security risks s/he could face during their mission. Therefore, the monitor should carry out a regular risk assessment before, during and after the trial observation to determine the level of the threat and how dangers can be mitigated. In order to minimise risks trial monitors should remain with low profile on their mission and respect the basic principles of impartiality and non-interference. Trial monitors should also understand the political and security landscape of the country, in particular in their working environment. They should also avoid any incidents that lead them to confrontation or dispute with different parties around the courtroom including security personnel, prosecutors, judges, lawyers or other people.

Key element to minimize security and other related risks during your trial monitoring:

- Trial monitors should avoid any communications with the defendants during the hearing or the trial.
- Choosing your seat in the courtroom carefully and avoid sitting near or next to any of the parties to the proceedings.
- As you are an undercover trial monitor you should avoid introducing yourself as a trial observer to any parties, particularly judicial officials and security officers.
- Avoiding any public discussion or statements during or after the observation, avoid commenting on the merits of the case and on the fairness of the trial.





**ETHIOPIA HUMAN
RIGHTS PROJECT**