



International Commission of Jurists

TRIAL OBSERVATION MANUAL

PREFACE

This manual which was prepared by the International Commission of Jurists (ICJ) aims to provide a practical tool for ICJ trial observers and other non-governmental organisations engaged in trial observation.

This manual was developed by *Bárbara Oliveira* and *Linda Besharaty-Movaed* and has drawn from the experience of already-existing resources on trial observation. The following sources were of particular use to the development of this manual:

- ◆ David Weissbrodt, *International Trial Observers*, Stanford Journal of International Law, 1982
- ◆ *Fair Trial Manual*, Amnesty International, 1998
- ◆ *Manual for Trial Observation*, Norwegian Institute of Human Rights, 1996
- ◆ *Trial Observation and Monitoring the Administration of Justice*, Training Manual on Human Rights Monitoring, Office of the High Commissioner for Human Rights, 2001
- ◆ *What is Fair Trial? A Practical Guide to Legal Standards and Practice*, Lawyer's Committee for Human Rights, 2000

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INTRODUCTION TO THE MANUAL

W WHY WAS THIS MANUAL DEVELOPED?

The aim of this manual is, above all, to provide a practical tool to ICJ trial observers.

The ICJ saw the necessity of developing a new manual on trial observation that would specifically address instances where the independence or impartiality of judges and lawyers is threatened or fair trial standards are not guaranteed.

This manual is based upon basic principles and guidelines identified by the ICJ and other organisations and individuals who have experience in trial observations.

T TO WHOM IS THIS MANUAL ADDRESSED?

This manual is primarily targeted to ICJ trial observers. However, the manual can also be used as a resource tool for other individuals and organisations undertaking trial observations as it incorporates generally recognised guidelines for trial observation.

H HOW TO USE THIS MANUAL

It is advisable that you read this manual thoroughly before undertaking the trial observation. Besides providing practical assistance the manual gives you a general view of the position of the ICJ and the ICJ's basic expectations for trial observations.

It is impossible to develop a set of fixed guidelines for each and every trial observation; each observation has to be tailored to the specific trial and the particular situation encountered by the observer. Consequently, your discretion and experience is vital for a successful trial observation.

The ICJ encourages you to try, as much as possible, to take into consideration these guidelines when making your decisions on the ground.

S STRUCTURE OF THIS MANUAL

The manual has 5 different main sections:

◆ Introduction to the Manual: lays the foundation and describes basic concepts applicable to trial observation.

- ◆ Before the Trial Observation: includes issues such as briefing, travel arrangements, etc.
- ◆ During the Trial Observation: includes issues as meetings, attendance in the courtroom, communications with the ICJ, etc.
- ◆ After the Trial Observation: provides guidelines on debriefing, report and follow up.
- ◆ International Standards: provides an easy reference to basic human rights standards applicable to fair trial and their basic interpretation under international law.

The first three sections - Before, During and After the Trial Observation - encompass the main body of the operational guidelines. These sections were developed following a timeline of possible situations and issues that could arise during the trial observation mission. However, certain issues might require more attention at different stages of the trial observation.

WHAT IS TRIAL OBSERVATION?

Human rights monitoring can broadly be described as the active collection, verification and immediate use of information to address human rights problems. Human rights monitoring includes gathering information about incidents, observing events (elections, trials, demonstrations, etc), visiting sites such as place of detention, refugee camps and others. It can also be used to evaluate whether international human rights standards or norms are met in domestic settings.

Trial observation is a type of human rights monitoring which is widely used. It is based on sending persons – observers – to a certain country to attend trials and conduct interviews in order to prepare a report for the sending organisation based on the fairness of proceedings. Trial observation may be part of a broad analysis of the administration of justice, including the actual functioning, qualifications and training of judges, court clerks, prosecutors, lawyers, other court personnel, police, prison officials and other law enforcement personnel.

Others organisations are also engaged in trial observations, such as the various agencies of the United Nations, Amnesty International, the Norwegian Institute for Human Rights, Lawyers Committee for Human Rights, International Helsinki Federation and the American Bar Association.

OBJECTIVES OF TRIAL OBSERVATION

The generally recognised objectives of a trial observation are to:

- ◆ Encourage the tribunal to provide a fair trial. The presence of an observer at a trial indicates that the tribunal is under scrutiny and, in this way, may positively influence the tribunal's conduct.
- ◆ Bring international attention to the proceedings.
- ◆ Provide moral support and/or international assistance to the defendant. The observer's presence often gives defendants a sense of renewed confidence.
- ◆ Provide the ICJ with first hand information necessary to encourage the government to provide fair trials.

- ◆ Prepare an independent, impartial and objective report on the fairness of the trial.

Conflict of Objectives

There is a possibility of conflicting objectives. Conflicts may arise for example regarding the objective of providing moral support and/or international assistance to the defendant and the objective of conducting an impartial observation.

You should use your own judgement when faced with conflicting objectives. However it is important to remember that your main role as a trial observer is to carry out the ICJ mandate and objectives.

Some trial observations may include additional objectives in order to fit the particular circumstance.

T TYPES OF TRIALS TO BE OBSERVED

Undertaking trial observations is one of the core activities of the ICJ's Centre for the Independence of Judges and Lawyers (CIJL).

The ICJ primarily observes trials or legal proceedings in respect of which a judge or lawyer is under prosecution or faces disciplinary sanctions on charges arising out of activities associated with the legitimate exercise of professional duties.

To illustrate, in 2001, the ICJ sent an observer to Gibraltar to observe the proceedings against the Chief Justice. The criminal charges were based on a violation of the Motor Vehicle Test Regulations and there were allegations that the trial could be politically motivated.

Early in 2002, the ICJ sent trial observer to observe disciplinary proceedings undertaken by the Judicial Service Commission against judges of the Malawi High Court. The ICJ was concerned that a debate in Parliament on the removal of the judges violated the principle of separation of powers and would negatively impact the disciplinary proceedings.

The ICJ may also observe criminal trials (including trials by special or military courts or tribunals) where there are reasons to believe that the judiciary may not be independent or impartial.

Occasionally, the ICJ may monitor certain civil proceedings. These will generally be a defamation suit brought against judges and/or lawyer by government bodies.

It is essential to know exactly what type of proceedings you will be observing, as differences may exist regarding the application of certain fair trial guarantees.

See Legal Standards for Fair Trial - chapter 5 - for information on applicable standards

The ICJ will not necessarily send an observer to every proceeding that falls under these categories. Others factors, such as the significance of the trial itself, the representative nature of the trial, the existence of structural irregularities, the possible negative effects of a trial observation and the ICJ's priorities, amongst others, play a role in the decision to send an observer.

T

TRIAL OBSERVERS

What is the profile of an ICJ trial observer?

- ◆ legal background (Common and/or Civil Law)
- ◆ experience as practising judge or lawyer
- ◆ experience in conducting fact finding missions and trial observations
- ◆ knowledge of legal system of country where trial observation will be held, including the structure and functioning of the judiciary
- ◆ preferably, knowledge of the language of the country to be visited
- ◆ human rights knowledge and experience, mainly with respect to the right to fair trial
- ◆ ability to work in a team
- ◆ sound judgement
- ◆ impartiality and objectivity
- ◆ promptness with deadlines