

TRIAL OBSERVATION HANDBOOK FOR HUMAN RIGHTS DEFENDERS



**"INJUSTICE ANYWHERE IS A THREAT
TO JUSTICE EVERYWHERE."
MARTIN LUTHER KING (1963)**

**f FRONT LINE
DEFENDERS**

Cover photo: Mock trial training session in court procedures for police organised by local NGOs in Freetown, Sierra Leone.

TRIAL OBSERVATION HANDBOOK FOR HUMAN RIGHTS DEFENDERS

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HUMAN RIGHTS DEFENDERS**

EDITED BY

**PAUL RICHMOND
BARRISTER**





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To request/order a copy please contact:

**Front Line Defenders
Grattan House, Temple Road, Blackrock,
County Dublin, Ireland
Tel 00 353 1 212 37 50
Fax 00 353 1 212 10 01**

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FRONT LINE DEFENDERS

Front Line Defenders was founded in Dublin in 2001 with the specific aim of protecting human rights defenders, people who work, non-violently, for any or all of the rights enshrined in the Universal Declaration of Human Rights (UDHR).

Front Line Defenders aims to address some of the needs identified by defenders themselves, including protection, networking, training and access to international bodies that can take action on their behalf.

Front Line Defenders seeks to provide rapid and practical support to at-risk human rights defenders, including through a 24 hour emergency response phone line, and through promoting the visibility and recognition of human rights defenders as a vulnerable group.

Front Line Defenders runs a small grants programme to provide for the security needs of defenders. Front Line Defenders mobilises campaigning and lobbying on behalf of defenders at immediate risk. In emergency situations Front Line Defenders can facilitate temporary relocation.

Front Line Defenders conducts research and publishes reports on the situation of human rights defenders in specific countries. The organisation also develops resource materials and training packages on behalf of human rights defenders, as well as facilitating networking and exchange between defenders in different parts of the world.

Front Line Defenders promotes strengthened international and regional measures to protect human rights defenders, including through support of the work of the UN Special Rapporteur on Human Rights Defenders. Front Line Defenders seeks to promote respect for the UN Declaration on Human Rights Defenders.

If there are aspects of trial observation which you feel are not adequately addressed in this, or other Front Line Defenders publications, we would be very happy to hear from you. Please feel free to contact us at info@frontlinedefenders.org

For general information on the work of Front Line Defenders please log onto WWW.FRONTLINEDEFENDERS.ORG

- **Front Line Defenders has Special Consultative Status with the Economic and Social Council of the United Nations**
- **Front Line Defenders has partnership status with the Council of Europe**
- **Front Line Defenders is the winner of the 2007 King Baudouin International Development Prize.**



Hebal Abel Koloy (front) was charged with waging war against the state in Tripura, India on the basis of a speech he gave at a meeting in Geneva. Each time he was granted bail by the local court, the police lodged another case against him. He spent 6 months in jail before the High Court ordered his release.

ACKNOWLEDGEMENTS

The Front Line Defenders Trial Observation Handbook is largely based on the excellent work by the International Commission of Jurists in its *Trial Observation Manual for Criminal Proceedings: Practitioners Guide No. 5* (ICJ, 2009).

This handbook is an attempt to summarise and adapt the 'Trial Observation Manual' in a more compact form which can be more readily distributed and used by human rights defenders.

Front Line Defenders is grateful for the ongoing and generous support of Irish Aid, the European Commission and all our other donors without whom this work would not be possible.

Editor

Paul Richmond is a Barrister of England and Wales. In addition to his personal experience as a trial observer in numerous high profile criminal trials, Paul has delivered trial observation training courses for human rights defenders from over 40 countries.

Human Rights Defenders

Front Line Defenders defines a human rights defender as “a person who works, non-violently, for any or all of the rights enshrined in the Universal Declaration of Human Rights.”

Front Line Defenders seeks to promote the UN Declaration on Human Rights Defenders (1998).

FOREWORD

Human rights defenders are most at risk when their work as key agents of social change threatens the position of the rich and powerful who have a vested interest in maintaining the status quo.

In the last two years, while the level of recognition for human rights defenders at the international level has increased, the space for them to work safely on the ground has shrunk significantly. Increasingly governments shy away from the bad publicity caused by the killing of human rights defenders preferring to use smear campaigns or the power of the law against them.

In addition to using propaganda to discredit human rights defenders as agents of subversion or allies of a foreign enemy, governments will, in the name of transparency and accountability, insist on ever more draconian measures to control the registration of NGOs, making official registration effectively impossible while then prosecuting them for not being registered. Human rights organisations which receive external funding are particularly vulnerable to random audits and prosecution on politically motivated charges of financial mismanagement.

Dr Mudawi Ibrahim Adam, Director of the Sudan Social Development Organisation (SUDO) was charged with financial mismanagement. The court dismissed the charges for lack of evidence but the Government intervened and insisted on the imposition of a prison term and fine. He was sentenced to one year in prison and only released as a result of international pressure

Hebal Abel Koloy is a teacher and human rights defender who works to protect the rights of the indigenous Borok people in Tripura, North East India. He was charged with waging war against the state on the basis of a speech he gave at a meeting in Geneva. Each time he was granted bail,

the local police detained him on the basis of a new charge. He spent 6 months in jail before the High Court finally granted him bail. It is part of the state's strategy to enmesh HRDs in so many legal procedures that they have no time to pursue their human rights work.

In many cases governments maintain the facade of due process while doing everything possible to undermine international legal standards from within the system. In Bahrain protesters and human rights defenders were tried before military courts in which they were not allowed to present witnesses for the defence or question witnesses for the prosecution. They were given only limited access to their lawyers and the courts consistently refused to address credible allegations of torture.

Azimjan Askarov was convicted of participation in the murder of a policeman during inter-ethnic violence in Kyrgyzstan, after a trial marked by procedural irregularities



Mary Lawlor, Executive Director, Front Line Defenders

and in which no credible evidence was presented. During the trial the lawyers and witnesses for the defence were routinely intimidated by pro-government supporters.

The right to a fair trial is one of the most fundamental rights enshrined in Article 10 of the UDHR: “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him”.

Repressive governments seek not only to silence dissent but also to silence those independent voices which challenge their abuse of power and hold them to account. The rule of law and the existence of a court system which is able to act independently and impartially is an essential precondition to the creation of a truly democratic society based on respect for fundamental human rights.

This handbook is designed as a resource to enable trial observers to accurately report on trial proceedings and to contribute to the protection of HRDs facing prosecution by highlighting injustice and the lack of due process. The presence of trial observers sends out 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.

Mary Lawlor
Executive Director
Front Line Defenders

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1 THE RIGHT TO A FAIR TRIAL – AN ESSENTIAL HUMAN RIGHT

"Injustice anywhere is a threat to justice everywhere."

Martin Luther King (1963)

A fair trial is essential, not only for protecting the human rights of the accused and those of victims, but also to ensure proper administration of justice, which is a key component of the rule of law.

The right to a fair trial is established as one of the fundamental pillars of international law to protect individuals against arbitrary treatment and denial of justice.

The right to a fair trial is one of the universally applicable principles recognised in the Universal Declaration of Human Rights (1948) and has subsequently been reaffirmed and elaborated upon in legally binding treaties such as the International Covenant on Civil and Political Rights, and in numerous other international and regional treaties and declaratory instruments, adopted by the UN and by regional intergovernmental bodies.

TRIAL OBSERVATION

Trial observation - the practice of assessing whether, or to what extent, the conduct of a trial conforms to national and international fair trial standards - can be a crucial tool in efforts to defend human rights and the primacy of the rule of law.

It is also a crucial tool in protecting human rights defenders (HRDs) when they are subjected to fabricated charges and unfair trials. Trial observation can help provide visibility to such situations and mobilise adequate responses nationally and internationally.

Trial observation is important in fighting against impunity for attacks against human rights defenders when the suspected perpetrators of such acts are on trial.

The right to observe trials stems from the general right of all persons to promote and secure the protection and realisation of human rights and fundamental freedoms.

The UN Declaration on Human Rights Defenders provides that everyone has the right, individually and in association with others, to attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments (article 9(3)(b)).

WHY THIS TRIAL OBSERVATION HANDBOOK?

This handbook is specifically targeted at human rights defenders, both when they carry out general trial observation and when they observe trials of fellow HRDs – which we will call 'HRD trials' for ease of reference.

This handbook is aimed at:

- Giving HRDs a quick reference handbook with practical guidance as to how to carry out an effective trial observation;
- Encouraging HRDs to effectively monitor trials for compliance with national and international fair trial standards;
- Helping HRDs to evaluate existing trial observation methodologies with a view to improving the overall effectiveness of their trial monitoring programmes;
- Illustrating specific considerations that should be made when observing the trial of a human rights defender;
- Facilitating the development of a set of strategies aimed

at improving the operational aspects of HRDs trial monitoring activities;

- Contributing ultimately to strengthening human rights protection and promotion through the observation of criminal trials as well as to furthering the proper administration of justice.

It aims to provide a basic tool box for HRDs around the world seeking to protect the right to a fair trial. By doing so, it aims ultimately to expose the use of fabricated charges and unfair trials as a tool of harassment and persecution of HRDs.



Abdul-Karim al-Khawi was sentenced in 2009 to six years imprisonment under vague charges of “terrorism” which were never substantiated in Court.

2 BASIC PRINCIPLES FOR EFFECTIVE TRIAL OBSERVATION

PURPOSE:

This section aims to provide an understanding of five basic principles for effective trial observation.

Effective trial observation depends upon protecting:

- The integrity of the trial observation process; and
- Respect for the trial observer

In order to maximise the effectiveness of any trial observation, trial observers should continuously strive to carry out their monitoring and reporting activities in accordance with the following five key principles:

- 1. Objectivity:** Maintain the objectivity and impartiality of the assessment
- 2. Professionalism:** Uphold the highest standards of professionalism
- 3. Non-Intervention:** Refrain from intervening in the judicial process
- 4. Cooperation:** Promote a spirit of cooperation
- 5. Confidentiality:** Preserve the confidentiality of all information and findings during the observation

OBJECTIVITY ELABORATED

In the context of trial observation, objectivity may be understood as synonymous with adopting an

unbiased/neutral approach. Maintaining objectivity may seem challenging when a fellow human rights defender is the person on trial. However, it is possible to uphold this principle by reporting on facts rather than opinions and conducting the assessment by reference to fixed criteria. Objectivity also encompasses keeping an open mind and not allowing yourself to be influenced.

The importance of objectivity

- Objectivity serves to encourage acceptance of the observer's presence, findings and recommendations
- Objectivity ensures reliable findings
- Objectivity helps to persuade others, e.g. foreign diplomats, that charges are politically motivated and the trial unfair, and their attention is therefore necessary

Maintaining objectivity

The objectivity of the trial observation can be maintained by, for example:

- Keeping an open mind about the fairness of the proceedings – avoid adopting any preconceived conclusions
- Making practical arrangements without reference to the parties to the proceedings – avoid, for example, accepting accommodation or interpretation facilities provided by either the prosecution or defence
- Choosing your seat in the courtroom carefully – avoid sitting near to any of the parties to the proceedings or their supporters in the courtroom
- Assessing the fairness of the proceedings by reference to fixed criteria – conduct the assessment with reference only to clearly defined and accepted fair trial standards in national and international law
- Maintaining balance in the selection of interviewees – try to interview representatives of both parties to the proceedings (prosecution and defence)
- Avoiding public statements – during the observation, avoid commenting on the merits of the case, the fairness

of the proceedings observed or the functioning of the criminal justice system in general

- Reporting on facts witnessed – report on facts actually witnessed rather than other people's opinions
- Maintaining balance in the report – report on examples of compliance with fair trial guarantees as well as non-compliance

Perceived objectivity is equally important. If an HRD is on trial and human rights defenders are observing, it is advisable that the trial observer does not belong to the same organisation of the HRD accused. Contracting an independent lawyer, not linked to the organisation, can help ensure objectivity.

PROFESSIONALISM ELABORATED

Trial observers must always conduct themselves with a high standard of professionalism when carrying out their responsibilities.

The importance of professionalism

- The trial observer's conduct will directly impact on the extent to which the trial monitoring programme as a whole is taken seriously
- The trial observer's conduct will directly impact on the reputation of the sending organisation

Maintaining professionalism

The professionalism of the trial observation can be maintained by:

- Behaving appropriately in court - arrive promptly, wear appropriate clothing, behave in a dignified manner, treat all court officials and actors with respect, give full attention to the proceedings and take comprehensive notes
- Respecting the position and authority of the trial judge
- Making sure that you have the necessary knowledge and

information about the trial observation programme guidelines and procedures, the local legal system and applicable domestic and international law

- Being prepared for interviews with the media – be prepared to explain the purpose of the trial observation programme and your role

NON-INTERVENTION ELABORATED

Trial observers must avoid any interaction or engagement with the court regarding the merits of an individual case. Trial observers must avoid any attempt to influence the outcome of the case, directly or indirectly, through formal or informal channels.

The importance of non-intervention

- Intervention in the judicial process gives rise to a risk of perceived bias and therefore undermines the objectivity of the observation
- Intervention in the judicial process undermines the exclusive decision-making authority of the court and therefore compromises judicial independence

Ensuring non-intervention

Intervention in the trial process can be avoided by:

- Refraining from interrupting a trial or speaking with a legal actor or participant during the trial
- Avoiding asking legal actors their opinion on a case or advising them with regard to a course of legal action to take
- Refraining, during the observation, from making any public comment on the merits of the case, the fairness of the proceedings observed or the functioning of the criminal justice system in general
- Avoiding any attempt to influence the outcome of the trial proceedings in any way

It is clear that when human rights defenders observe a politically motivated trial of a fellow HRD, their ultimate aim is to secure their acquittal. Nonetheless, the principle of non-intervention by the observer should be respected as much as possible in order to strengthen the impact of the trial observation. This can be done, for example, by splitting responsibilities amongst different organisations, ensuring that one carries out the trial observation (adhering to the standards above) and a different one engages in public advocacy on the trial.

COOPERATION ELABORATED

Trial observers should strive to engender a spirit of cooperation rather than hostility and suspicion.

The importance of cooperation

- Information will be more forthcoming
- The report on the trial observation will be more readily received
- The safety of the trial observer will be better protected

Promoting cooperation

A spirit of cooperation can be promoted by:

- Endeavouring to achieve a level of mutual understanding with the national authorities regarding the purpose and role of the monitoring
- Listening to the concerns of all legal actors
- Demonstrating good will and adopting a positive approach rather than just looking for violations
- Making constructive recommendations in the trial observation report

CONFIDENTIALITY ELABORATED

Trial observers must ensure that the information provided to them, their observations and findings about a case are not disclosed during the monitoring process.

The importance of confidentiality

- Confidentiality during the monitoring process permits access to sensitive/non-public information (i.e. in court files)



David Rabelo Crespo is facing politically motivated charges of conspiracy to commit a crime and aggravated murder in Barrancabermeja, Colombia based on the testimony of demobilised paramilitaries, one of whom was linked to a plot to kill him.

- Confidentiality until after the observation ensures accuracy and consistency in the presentation of findings – the observer and sending organisation must speak with one voice

Preserving confidentiality

Confidentiality can be preserved by:

- Refraining from making any comment to court officials, parties to a case or any third party on the observations or findings in relation to either the procedure or substance of a case or the criminal justice system in general
- Avoiding giving any information about the specific case to the media



Haitham al-Maleh was sentenced to three years in jail after an unfair trial by a Syrian military court on charges of “spreading false news that undermined the morale of the nation.”

3 PRACTICAL PREPARATION BEFORE THE TRIAL OBSERVATION

3

PURPOSE:

This section seeks to provide guidance on the steps that should be undertaken by both observers and sending organisations (if applicable) prior to commencing a trial observation.

IDENTIFICATION OF OBJECTIVES

Why is the identification of objectives so important?

Because the choice of objectives may substantially affect:

- The choice of trial to be observed
- The selection of the trial observer
- Other steps in the preparation for and conduct of the trial observation

Some of the key general goals of trial observation:

- To conduct an independent assessment of whether the accused receives a fair trial
- To encourage the court or judge to provide a fair trial
- To provide moral support to the accused or victim
- To protect judges and lawyers who may otherwise face persecution for being independent and impartial
- To raise publicity about concerns for the fairness of the trial
- To ensure that the rights of victims are respected and perpetrators of human rights violations are punished
- To 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
- To inform the government and the general public of

possible irregularities in criminal procedure and to prompt action to bring practice into line with international human rights standards

When formulating objectives, sending organisations should carefully consider each step in the trial observation process so as to minimise the potential for a conflict of objectives.

SELECTION OF A TRIAL

Sending organisations should endeavour to select a trial that will be of value in protecting the rights of the accused or in otherwise advancing the cause of human rights in the country where the trial is taking place.

Examples of relevant factors to be considered:

- The political or human rights significance of the proceedings
- The representative nature of the trial
- The degree of independence of the judiciary
- Anticipated irregularities in the proceedings
- Expected verdict
- The historical relevance of the trial or the nature of the public interest that makes the case relevant
- Whether there is pattern of fabricated charges against human rights defenders
- The media attention generated by the case
- The status of the parties (accused and/or victim) to the trial
- The nature of the charge(s)

As regards HRD trials, human rights defenders should consider whether the ultimate aim of having their colleague acquitted is best served by focussing on the trial observation or, for example, on advocacy – especially when resources are limited.

Sending organisations should also consider the possible negative effects of conducting a trial observation. For example, State authorities may use the presence of a trial observer to impose harsher measures than normal for the offence at issue.

SELECTION OF A TRIAL OBSERVER

Sending organisations are presented with a choice of either utilising a local lawyer/human rights defender or engaging an international expert.

Local lawyers are likely to know the legal system and background of a case very well, but they are more exposed to claims of bias. Foreign lawyers may be less open to such charges, and their presence may be viewed as more high profile; however they may be unfamiliar with the domestic legal system and the local language.

Security considerations should also be taken into account, e.g. a local observer may be more exposed to pressure by actors directly or indirectly involved in the trial.

BRIEFING OF THE TRIAL OBSERVER

Before any trial observation mission, you should be fully briefed by the sending organisation in order to clarify your terms of reference and share with you all relevant legal and factual information concerning the trial to be observed.

A typical briefing pack might include:

- *An Ordre de Mission*
- *A Description of the Observer's Mandate*
- An explanation of the approach, policies and methods of the sending organisation
- Background information on the trial to be observed

- Copies of relevant national legislation and prior judicial decisions
- A list of binding international instruments, principles and guidelines applicable to the proceedings
- Background information on the history, politics, law, administration of justice, and general human rights conditions of the country
- Details of any previous fact-finding and/or trial observation missions in the country
- Details of contacts and informants in the location where the trial will occur
- Contact details of the sending organisation
- Guidelines on mission expenses and accounts

Sending organisations should undertake a detailed study of the information contained within the Briefing Pack to ensure that the trial observation briefing is as objective as possible.

RESEARCH BY THE TRIAL OBSERVER

It may be necessary for you to undertake further research to supplement the information contained in the Briefing Pack.

Before commencing a trial observation, you should ensure that you have fully researched information on:

- The trial to be observed (location/date(s)/identity of accused/charge(s) etc.)
- Relevant domestic law and procedure
- Applicable international law

Information on which human rights treaties have been ratified by the state in which the trial observation is to be held can be found on the internet at:

- UN Treaties: <http://untreaty.un.org/English/treaty.asp>
- UN Human Rights Treaties: Webpage of the UN High Commissioner for Human Rights:

<http://www.ohchr.org/EN/Pages/WelcomePage.aspx>

- European Human Rights Treaties: Webpage of the European Court of Human Rights:
<http://www.echr.coe.int/echr> and webpages of the Council of Europe:
<http://conventions.coe.int/Default.asp> and
 - <http://www.coe.int/t/e/human%5Frights/>
 - Inter-American Human Rights Treaties: Webpage of the Inter-American Commission on Human Rights:
<http://www.cidh.org/> and webpage of the Inter-American Court of Human Rights:
<http://www.corteidh.or.cr/>
 - African Human Rights Treaties: Webpage of the African Commission on Human and Peoples' Rights:
<http://www.achpr.org/>
- The history, politics, law, administration of justice, and general human rights conditions of the country
 - Previous fact-finding and trial observation missions in the country
 - Contacts and informants in the location where the trial will occur
 - Contact details of the sending organisation

INFORMING STATE BODIES

The sending organisation should notify appropriate governmental bodies that you will be attending to monitor the proceedings and request that you be extended the usual facilities and cooperation.

The sending organisation may need to formally request permission for you to attend if the court has decided to exclude the public from attending the proceedings.

PUBLIC STATEMENTS TO THE MEDIA

A public statement announcing the mission may be useful:

- To explain the purpose of the trial observation
- To put pressure on the government to guarantee the observer's security
- To encourage the authorities to give a fair trial in the matter
- To give visibility to the trial observation and the reasons behind it, especially in case of HRD trials

However, advance announcement of the mission may make it harder for you to attend the trial.

The sending organisation should weigh the benefits and drawbacks and decide on a case-by-case basis.

SECURITY RISK ASSESSMENT

The sending organisation should always undertake a security risk assessment prior to the trial observation. You should be informed of any potential security risks and the measures to be taken to address them.

Measures to improve the observer's security:

- List of emergency contact details
- System of daily communication between the sending organisation and observer
- Two trial observers instead of one

As the observer, you are ultimately responsible for your own security.



Dr Isatou Touray of The Gambia Committee on Traditional Practices Affecting the Health of Women and Children faces politically motivated charges of embezzlement because of her work on FGM.

4 CONDUCTING THE TRIAL OBSERVATION

PURPOSE:

This section provides guidance and practical advice on how to conduct a trial observation.

ACCESS TO THE COURT BUILDING AND COURTROOM

Is there a right to observe trials?

- Trial observers have a right of free access to court buildings and courtrooms for the purpose of observing trials since, in accordance with the right to a public hearing, it is an established legal principle, with few exceptions, that trials should be held in public
- The right to observe trials is also an expression of the general right to promote and secure the protection and realisation of human rights and fundamental freedoms. Article 9(3)(b) of the UN Human Rights Defenders Declaration recognises the right of trial observers:

“[t]o attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments”

Dealing with denial of access

If you are denied access to the court building or courtroom, you should request a meeting with the President of the Court or the trial judge in order to explain the purpose of the trial observation.

During the meeting you should:

- Present a copy of the *Ordre de Mission*
- Provide information about the purpose of the trial observation mission – this should be limited to your terms of reference and emphasise the independent and impartial nature of the trial observation; you should not state your views about the proceedings, the case or the criminal justice system in general
- If necessary, remind the judge about national and international guarantees relating to the right to a public hearing and the right to observe trials.

If the President of the Court or the trial judge refuses access to the court, you should record the reasons and immediately inform the sending organisation.

Do no harm

The safety of the accused and his/her family are paramount and should not be jeopardised by the trial observation. If they are threatened with retaliation because of the presence of the trial observer, you should leave.

If this occurs, you should record the events and immediately inform the sending organisation.

ACCESS TO THE CASE FILE

In order to gain a full understanding of the trial, you should obtain copies of the key documents to be used in the trial (e.g., indictment, prosecution case summary, witness statements etc.).

The defence lawyer and legal representative of the victim should have access to the case file and be able to provide the documents. Failing that, the examining magistrate, prosecutor or court clerk should make sure that the case file is available to you to consult.

If the case file is not publicly available, you should request

access to it on the ground that your quasi-judicial task is to verify that the proceedings are being conducted in accordance with the rules of due process.

LOCATION IN THE COURTROOM

You should select your seat in the courtroom carefully. Make sure that:

- You can follow all aspects of the proceedings – choose a place where you can clearly observe and hear everything
- You are prominent – choose a place that optimises the impact of your presence (e.g., you could request a special seat in the courtroom or sit in the front row of the public gallery)
- You are seen to be neutral – choose a place that preserves your impartiality (e.g., be careful not to sit next to any of the parties to the proceedings, witnesses or supporters)

INTRODUCTION OF THE OBSERVER TO THE COURT

In order to ensure that your presence is officially recognised by the participants and the public, you may ask to be publicly introduced by a court official or other neutral party at the start of proceedings.

In order to ensure that your impartiality is maintained, it is advisable not to be introduced by a party to the proceedings.

TAKING NOTES

It is important that you take extensive notes whilst observing the proceedings. Why?

- To ensure that you have an accurate record of proceedings and observations
- To demonstrate that close attention is being paid to the trial, that the conduct of the court is under scrutiny and that a record is being kept which will be used in the final report

Check that you are allowed to take notes. If note-taking is forbidden then ask for an exception to be made. This may require a meeting with the President of the Court or trial judge.

Assess the risk of your notes being confiscated. This may lead to confidential information being revealed. If the risk is high then consider taking only rough notes and avoid recording sensitive information, at least until you are in a more secure location.

NON-INTERVENTION IN THE TRIAL PROCESS

Make sure that you do not interfere with, or otherwise influence (directly or indirectly), the trial process.

Remember that your role is to observe:

- Do not interrupt the trial
- Do not make recommendations to the trial participants on the substance or procedure of the trial
- Do not publicly express an opinion on the substance or procedure of the trial, either inside or outside the courtroom

As noted in chapter 2, in relation to HRD trials, human rights defenders may want to divide tasks amongst different organisations so as to ensure that the person in charge of the trial observation can fully respect the principle of non-intervention.

FOCUS ON PROCEDURAL ASPECTS OF THE TRIAL

Focus on whether the procedural guarantees, intrinsic to due process and a fair trial, are being observed and not on the substance or merits of the case:

- A trial observer generally has no role in evaluating the evidence put forward by the parties or weighing up the guilt or innocence of the accused
- The role of a trial observer is to assess whether the manner in which the proceedings are conducted complies with judicial guarantees of due process

Exceptions

A trial observer should assess how evidence presented by the parties at trial has been obtained:

- Has evidence been unlawfully obtained in contravention of procedural norms (the principle of legality of evidence)?
- Has evidence been obtained using methods that are prohibited under international law, such as torture or death threats (the principle of legitimacy of evidence)?

A trial observer should assess the substance and merits of a case:

- Where the trial involves proceedings against a person allegedly responsible for gross human rights violations – have proceedings been organised or conducted with a view to removing criminal responsibility and ensuring impunity?
- Where the trial involves proceedings against a human rights defender, journalist or political/social opponent for the legitimate and peaceful exercise of their fundamental rights – have proceedings been commenced for reasons of political persecution rather than to impart justice?
- Where the trial otherwise reveals a complete absence of any evidence against the defendant – have proceedings

been instituted for reasons other than a reasonable suspicion of commission of a criminal offence?

ASSESS WITH REFERENCE TO OBJECTIVE STANDARDS

The assessment of the procedural fairness of the trial should be conducted with reference to objective standards:

- Fair trial guarantees in the law of the country where the trial is held
- Fair trial guarantees in human rights treaties to which the state is party
- Fair trial guarantees in non-treaty standards (declaratory instruments)

PUBLIC STATEMENTS TO THE MEDIA

Each sending organisation is free to determine its own policy on the making of public statements during the trial observation. However, it is generally recognised as good practice for trial observers to:

- Refrain from making any public comment regarding their observations or findings, the substance of the case or the criminal justice system in general, while the trial is continuing
- Feel free to speak to the media about their presence, the purpose of the mission and the fact that a report will be published once the trial observation has come to an end.

If a journalist requires further information then you should refer them to the sending organisation.

As regards HRD trials, engaging with the media may help give visibility to the fact that a human rights defender is facing spurious charges. As already noted, it is advisable

that public statements on the merits of the case are made by organisations other than the one (or the person) carrying out the trial observation.

Statements can be made by the sending/observing organisation when they refer to obstacles encountered in the observation, e.g. that the trial observer was denied access to the courtroom.

Examples of relevant factors to be considered in deciding whether to make public statements in the course of the trial:

- Gravity – does that specific situation necessitate a public statement? Can it be addressed in any other way?
- Timing – what is the most appropriate or effective moment to make a public statement?
- Possible reactions – can the statement provoke negative reactions by actors in a position to influence the trial (e.g. the government in countries where the judiciary lacks independence)?

SECURITY RISKS

Your conduct has a potential impact on your security during the trial observation mission. In order to safeguard your security you should:

- Consistently demonstrate your impartiality
- Consistently demonstrate that your role is solely to observe
- Report any incidents that threaten your safety to the sending organisation
- Adopt security measures appropriate to the circumstances
- Discontinue the observation if necessary

As the observer, you are ultimately responsible for your own security.

Your presence may create risks to the security of other individuals, in particular the accused. You should constantly assess whether this is the case and react accordingly, discontinuing the observation if necessary.

MEETINGS AND INTERVIEWS AT THE PLACE OF TRIAL

In addition to observing the trial, meetings and interviews outside the courtroom with parties to the proceedings can provide a valuable opportunity to:

- Familiarise yourself with the background to the case
Increase the impact of your presence on the proceedings
- Facilitate practical arrangements for the observation



Sapiyat Magomedova was advised that if she withdrew the complaint she lodged against two police officers, the criminal investigation against her would be dropped.

Who should I meet and interview?

The people you should try to arrange meetings with will vary according to the circumstances, but the following is a list of potential interviewees:

- President of the Court or trial judge
- Prosecutor
- Examining magistrate
- Defence lawyer
- Defendant
- Legal representative of the victim
- Representative of the Attorney-General's Office
- Representatives of the Ombudsman's Office
- Representatives of the local bar association
- Members of local NGOs
- National Institution for Human Rights

Even if one of the legal actors in the trial refuses to meet you, the very fact that they are aware of your request may be enough to influence their conduct during the trial.

Conducting Meeting and Interviews

- Check with the sending organisation whether they wish you to conduct interviews
- Identify people that you wish to interview before the observation and have basic information about each of them
- Maintain balance and impartiality when selecting interviewees
- During interviews, be careful to introduce yourself as an independent observer, not as a representative of the sending organisation
- Ask questions to help familiarise yourself with the background to the case and assess compliance with national and international fair trial standards
- Do not comment on the substance or merits of the case, the fairness of the trial or the functioning of the criminal justice system

- Be prepared for different responses on the part of interviewees, from frank and open cooperation to deliberate obstruction



Mohamed Leili is a human rights lawyer in Western Sahara who defends human rights defenders prosecuted on the basis of vaguely worded laws on insulting the authority of the King or religion in trials which fall far short of international fair trial standards.

5 WRITING THE TRIAL OBSERVATION REPORT

PURPOSE:

This section seeks to provide general guidance on the timing, content and publication of a trial observation report. It also sets out a list of topics and issues that should be addressed in a typical trial observation report.

TIMING OF THE REPORT

- Prepare and submit the report to the sending organisation promptly, while the national authorities are still sensitive to authoritative and independent criticism
- If the trial is lengthy, consider submitting one or more interim reports which can be supplemented at the end of the trial
- If there are major security risks, start writing the report once in a secure location

CONTENT OF THE REPORT

The trial observation report should:

- Be independent, objective and impartial
- Be detailed
- Assess the trial proceedings observed and their consistency with national/international fair trial standards
- Link findings with regard to the trial observed to specific national/international fair trial standards
- Include examples of compliance with fair trial standards as well as any possible breaches observed
- Be based principally on the observer's direct observations (any quotations should be accurately referenced)

- Include recommendations to relevant authorities on how to rectify any irregularities observed in the trial and/or recommendations to the sending organisation as to follow-up action
- If possible, include copies of important case materials (i.e. charge sheet, trial transcripts, court rulings, verdict)

PUBLICATION OF THE REPORT

- The report should remain confidential until the sending organisation decides to make it public
- The sending organisation should consider whether to send the report to the government or other relevant national authority for comment prior to publication
- The sending organisation should consider issuing a press release on completion of the report.

STRUCTURE AND CONTENT OF THE REPORT

A typical trial observation report should include the following information as a minimum:

Executive Summary

In the space of a few paragraphs, the executive summary should provide a general overview of the trial observation mission. It should include the main elements of the trial proceedings and the judgement rendered, and a summary of the mission's main findings.

Remember that many readers will only read the executive summary, not the entire report. It is therefore important that all main issues, findings and recommendations are included in this section.

PART I: GENERAL INFORMATION AND BACKGROUND

Part I should set out basic information on the political and human rights background of the country, including its criminal justice system and international and/or regional human rights treaties to which the State is a party. It should also include background information on the defendant.

PART II: THE TRIAL

Part II should contain a detailed description of the key issues and events during the trial:

- **The Judge or Court:** Identify the tribunal or court, its position within the judicial system, whether it has ordinary or special jurisdiction and whether it is formally independent and competent under national law to conduct the proceedings
- **The legal basis for the case against the defendant:** Describe the facts of the case and the charges against the defendant, identify and quote the relevant article(s) of the Penal Code or other criminal legislation, describe the specific elements of the offence, give details of the conduct which the prosecution alleged constituted the offence (as described in the indictment)
- **The legal proceedings:** Describe the legal proceedings that have taken place to date, including the pre-trial or investigation phase, referring to relevant criminal procedure legislation
- **The case for the prosecution:** Identify the prosecuting body or official (the Public Prosecutor's Office, Attorney-General's Office, Examining Magistrate), their legal status and their judicial role and powers in the proceedings, the facts of the case and the legal arguments as presented by the prosecution, the main actions of the prosecuting body or official during the trial
- **The case for the defence:** Identify the defendant and

his/her lawyer, their powers during the trial as a party to the proceedings, the facts of the case and the legal arguments as presented by the defence, the main actions of the defendant and/or his/her lawyer during the trial

- Other parties to the proceedings: If victims or their relatives are parties to the proceedings then identify them, their powers during the trial, the factual and legal arguments put forward by them during the trial and their main actions during the trial
- The trial: Describe what happened at the trial, referring to the different interventions during the hearings (by the prosecution, the defence, other parties to the proceedings, witnesses, experts and specialists, etc.), any procedural issues raised and how the hearings and legal debates were conducted by the tribunal or court
- The verdict: Describe the verdict, if any, setting out the facts that the tribunal or court found to be proven, the offences and criminal responsibility the tribunal or court found to be established or not (including any grounds for exemption from responsibility, justification for what happened, mitigating or aggravating circumstances), the reasons for conviction or acquittal and the sentence imposed. If the verdict is not yet known, then give the date on which it is expected
- Appeal proceedings: If relevant, provide information on the possibilities for lodging an appeal or seeking some other form of judicial remedy (request for reversal, reconsideration, review, setting aside, etc.).

PART III: EVALUATION OF THE TRIAL

Part III should contain a detailed study of the extent to which the trial complied with national and international fair trial standards:

- Describe the legal framework against which the fairness of the trial has been assessed (refer to fair trial standards set out in both national laws and applicable international

and/or regional treaty and non-treaty standards)

- Evaluate whether or not the proceedings satisfied, fully or partially, the national and/or international standards referred to above. Evaluate in particular:
 - The independence of the court or judge, at the institutional as well as at the personal level
 - The impartiality of the court or judge, both objective and subjective, with regard to both the case itself and the conduct of the trial
 - The jurisdictional authority of the court or judge to hear and rule on the case that is the subject of the trial
 - Observance of the principle of the presumption of innocence
 - Observance of the principles of the legality of offences, the non-retroactivity of criminal law and the application of the most favourable criminal law
 - The conduct of the State prosecuting body or official, in particular whether their duties were performed impartially and in a way that respected human rights and due process (e.g., whether they used evidence that was obtained using unlawful procedures or prohibited methods (such as torture))
 - Observance of the rights and judicial guarantees to which the defendant was entitled: the right to be informed without delay of the nature and reasons for the charges brought against him/her; the right to a public hearing; the right of defence; the principle of equality of arms; the right to present evidence and to examine and cross-examine witnesses; the right to be tried without undue delay; the right to appeal the conviction
 - Observance of the rights and judicial guarantees to which the victims and/or their relatives were entitled in the trial
- Evaluate to what extent the application of criminal law was fair in the context of the case as a whole (e.g., it may be unlawful for the State to punish conduct that amounts to the legitimate and peaceful exercise of freedom of expression. On the other hand, it might be unlawful for

the State not to apply the principles of criminal legislation to alleged perpetrators of serious human rights violations)

- Evaluate the penalty imposed, in particular whether it was provided for in national law, whether it was proportionate and whether it was permissible under international law
- Conclude by settling the questions of whether or not the trial observed satisfied, fully or partially, the relevant fair trial standards
- Recommend measures to rectify any breaches of due process in the case observed (e.g., mistrial, re-trial, etc.), possible reforms to improve the functioning of the judicial system (e.g. changes to the structure of the judiciary, reform of the Code of Criminal Procedure, etc.) and possible actions that the sending organisation could take (e.g., further trial observation or fact-finding missions, etc.)

PART IV: APPENDICES

The trial observation report should include any other useful additional information as an appendix to the report. For example, copies of the main documents from the trial; a description of the observer's work and methodology; sensitive material omitted from the published report; practical observations that may help future observers; etc.

6 BASIC REQUIREMENTS OF A FAIR TRIAL

PURPOSE:

This section seeks to provide a very brief overview of the international norms and standards relating to fair trial and due process in criminal proceedings.

For the right to a fair trial to be realised:

- Judicial bodies must meet the required levels of independence, impartiality and competence;
- Procedural guarantees necessary for due process of law must be respected; and
- Fundamental principles of contemporary criminal law concerning the legality of offences, the non-retroactivity of criminal law and individual criminal responsibility must be observed.

1. General Standards on Fair Trial and Due Process of Law

At all stages of the criminal justice process, anyone accused of a criminal offence is entitled to the following rights:

The right to equality before the law and courts: The right to equality in the context of the trial process includes a prohibition on discriminatory laws, the right to equal access to the courts and the right to equal treatment by the courts.

The right to trial by a competent, independent and impartial tribunal established by law: The tribunal charged with the responsibility of making decisions in a case must be established by law, and must be competent, independent and impartial.

The right to a fair and impartial prosecutor: Prosecutors

must carry out their professional functions impartially and objectively. They must perform their duties fairly, consistently, expeditiously and uphold human rights.

The right to be assisted and defended by an independent lawyer: Anyone accused of a criminal offence is entitled to be assisted and defended by a lawyer. The State must guarantee the independence of the legal profession and ensure that lawyers are able to carry out their professional duties.

2. Standards on Arrest, Pre-Trial Detention and Criminal Investigations

Anyone accused of a criminal offence is entitled to the following rights before the trial starts:

The right to liberty: Everyone has the right to personal liberty. An arrest or detention is permissible only if carried out in accordance with the law. It must not be arbitrary. An arrest or detention can only be carried out by personnel authorised by law to do so. People charged with a criminal offence should not normally be held in detention pending trial.

The rights of people in custody to information: Anyone arrested or detained must be notified at once of the reasons for their arrest or detention and of their rights, including their right to a lawyer. They must be informed promptly of any charges against them. This information is essential to allow the person to challenge the lawfulness of their arrest or detention and, if they are charged, to start the preparation of their defence.

The right to the assistance of a lawyer before trial: Everyone in detention or facing a possible criminal charge has the right to the assistance of a lawyer of their choice to protect their rights and to assist in their defence. If the person does not have a lawyer or cannot afford to hire one,

a qualified lawyer should be assigned to them free of charge whenever the interests of justice so require. The person must be given adequate time and facilities to communicate confidentially with their lawyer. Access to a lawyer should be immediate.

The right of detainees to have access to the outside world: People held in custody are entitled to prompt access to families, doctors, a judicial official and, if the detainee is a foreign national, to consular staff or competent international organisation.

The right to be brought promptly before a judge or other judicial officer: Anyone deprived of their liberty should be brought promptly before a judge or other judicial officer, so that their rights can be protected.

The right to challenge the lawfulness of detention: Everyone deprived of their liberty has the right to challenge the lawfulness of their detention before a court, and to have the detention reviewed on a regular basis.

The right to trial within a reasonable time or to release from detention: If a person in detention is not brought to trial within a reasonable time, they have the right to be released from detention pending their trial.

The right to adequate time and facilities to prepare a defence: In order to ensure that the right to defence is meaningful, anyone accused of a criminal offence and their lawyer, if any, must have adequate time and facilities to prepare the defence.

Rights during interrogation: Rights which safeguard people during investigation include the presumption of innocence, the prohibition against torture and ill-treatment, the prohibition against compelling people to testify against themselves, the right to remain silent and the right of access to a lawyer. There are additional safeguards during

interrogation, in particular the right to have a lawyer present.

The right to humane conditions of detention and freedom from torture: The right to a fair trial cannot be realized if detention conditions interfere with the ability of the accused to prepare for trial, or if the accused is tortured or ill-treated.

3. Standards on Judicial Proceedings

Anyone accused of a criminal offence is entitled to the following rights during the trial proceedings:

The right to a fair hearing: The right to a fair hearing lies at the heart of the concept of a fair trial. The right to a fair hearing is specified by a number of concrete rights, such as the right to be presumed innocent, the right to defend oneself and the right to call and examine witnesses. However, the right to a fair hearing is broader than the sum of the individual guarantees, and depends on the entire conduct of the trial.

The right to a public hearing: The right to a public hearing safeguards the fairness and independence of the judicial process, and helps to maintain public confidence in the justice system. Except in narrowly defined circumstances, court hearings and judgments must be public.

The presumption of innocence: Every person charged with a criminal offence has the right to be presumed innocent until and unless proved guilty according to law after a fair trial.

The right not to be compelled to testify or confess guilt: No one charged with a criminal offence may be compelled to testify against themselves or to confess guilt, in accordance with the presumption of innocence.

Exclusion of evidence elicited as a result of torture or

compulsion: Evidence elicited as a result of torture or other coercion, including confessions by the accused, must be excluded by the court.

Retroactive laws and double jeopardy are prohibited:

No one may be prosecuted for an act or omission which was not a criminal offence at the time that it was committed. No one may be prosecuted more than once in the same jurisdiction for the same offence.

The right to be tried without undue delay: Everyone charged with a criminal offence has the right to be tried without undue delay. The length of time judged reasonable will depend on the circumstances of the case.

The right to defend oneself: Everyone charged with a criminal offence has the right to defend themselves, in person or through a lawyer. They have the right to be assisted by a lawyer of their choice, or to have a lawyer assigned to assist them in the interests of justice, free of charge if they cannot afford to pay. They have the right to confidential communications with their lawyer.

The right to be present at trial: Everyone charged with a criminal offence has the right to be tried in their presence, in order to hear the prosecution case and present a defence.

The right to call and examine witnesses: All people charged with a criminal offence have the right to call witnesses on their behalf, and to examine, or have examined, witnesses against them.

The right to an interpreter and to translation: Everyone charged with a criminal offence has the right to the assistance of a competent interpreter, free of charge, if they do not understand or speak the language used in court. They also have the right to have documents translated.

The right to a public, reasoned judgment within a

reasonable time: Judgments must be made public, with limited exceptions, and everyone tried by a court of law has the right to be given reasons for the judgment and to be judged only by decision-makers who have attended the proceedings.

The right not to be subjected to unlawful punishments: Punishments may only be inflicted on people who have been convicted after a fair trial. Punishments must be proportionate and may not violate international standards.

The right to appeal: Everyone convicted of a criminal offence has the right to have the conviction and sentence reviewed by a higher tribunal.



Dr Mudawi Ibrahim Adam, Director of SUDO (the Sudan Social Development Organisation), was charged with financial mismanagement. The court dismissed the charges but the Government intervened and insisted on the imposition of a prison term and fine.

CONCLUSION

This handbook set out a best-practice guide for preparing, conducting and writing a report on a trial observation. It also provided a brief overview of the international norms and standards relating to fair trial and due process in criminal proceedings.

Trial observation can be effective in encouraging the court or judge to conduct a fair trial. It can prove crucial when human rights defenders face charges because of their work.

We encourage trial observers to follow the basic guidance set out in this handbook where possible. It will help to guarantee respect for the principle of impartiality and ensure that the trial observation is conducted as effectively as possible.

However, there are no definitive rules as to how to carry out a trial observation. Observers must be capable of using their own judgment to respond to different situations as they arise.

This publication cannot be considered a definitive document and Front Line Defenders would welcome feedback on strategies and approaches that you have used and found effective. We can then share this information with our colleagues.

We end with our five key principles for ensuring an effective trial observation for emphasis.

- 1. Objectivity:** Maintain the objectivity and impartiality of the assessment
- 2. Professionalism:** Uphold the highest standards of professionalism
- 3. Non-Intervention:** Refrain from intervening in the judicial process

4. Cooperation: Promote a spirit of cooperation

5. Confidentiality: Preserve the confidentiality of all information and findings during the observation



Human rights defender Uzbek Mutabar Tadjibaeva was arrested on her way to the Front Line Defenders Dublin Platform in 2005, sentenced to 8 years in prison after an unfair trial and held in the psychiatric ward of the prison where she was tortured and forcibly medicated.

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WE ALSO WISH TO THANK OUR MANY PUBLIC DONORS WHOSE CONTRIBUTIONS ARE CRUCIAL TO OUR WORK.

**“THE SALVATION OF THIS HUMAN
WORLD LIES NOWHERE ELSE THAN
IN THE HUMAN HEART, IN THE
HUMAN POWER TO REFLECT, IN
HUMAN MEEKNESS AND HUMAN
RESPONSIBILITY.”**

VACLAV HAVEL, 1936 - 2011 RIP



TRIAL OBSERVATION HANDBOOK FOR HUMAN RIGHTS DEFENDERS

Human rights defenders are the people whose legitimate work for human rights creates the building blocks of societies based on the principles of justice, equality and human rights.

This handbook is intended to give human rights defenders practical advice on how to carry out an effective trial observation.

This manual is designed as a quick reference handbook giving helpful and practical suggestions as to the various criteria and operational aspects that need to be borne in mind when preparing for, and conducting, a trial observation.

Front Line Defenders seeks to provide 24 hour support to human rights defenders at immediate risk. If you are a human rights defender and are concerned about your personal safety please feel free to contact our emergency number at any time. After office hours you will be offered five language options, each of which will connect you to a member of staff.

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Tel 00 353 1 212 37 50
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