



Court monitoring



Mary Muthoni
Court Monitor, Kenya

As part of a multi-year engagement in Kenya, the Basel Institute’s International Centre for Asset Recovery is monitoring the progress of certain corruption cases in court. The aim is to identify reasons for delays in major corruption trials, as a basis for developing reforms to streamline and speed up the court process. In this quick guide, our Court Monitor Mary Muthoni explains the what, why and how of court monitoring more generally.

What is court monitoring?

Court monitoring refers to the process of observing and recording court procedures and practices in particular cases.

Court monitoring is primarily a diagnostic tool. It is used to assess an area of concern with the aim of contributing to improvements in the justice system. You might want to find out, for example, why some cases take longer than others and at which stages of the court proceedings. Or you may wish assess corruption risks that could be impairing the proper functioning of the criminal justice system.

The monitoring not only identifies problems, but gathers information that can be used to develop specific evidence-based measures to solve them. In anti-corruption, these measures might include:

- improvements to policies, procedures or laws;
- guidelines to assist court users (such as judges, magistrates, prosecutors or clerks) in doing their jobs more efficiently;
- internal controls to mitigate corruption risks in the court process;
- the provision of targeted funding or training to fix resource or capacity gaps that are hindering the justice process.

Court monitoring can also be used to gather data to inform a routine update of policies and procedures, or planning and budgeting for future court needs.

What can court monitoring achieve?

The specific achievements of a court monitoring project depend on the objectives set. But well-designed projects have been shown to contribute to significant improvements in laws and practice.

One example is the Eyes in the Courtroom Kenyan court monitoring programme focused on improving outcomes in wildlife crime cases. The programme was triggered by rising poaching rates, indulgent penalties and legal loopholes.

Operating since 2013, the programme identified crucial problems like trial documents disappearing, difficulty in accessing court files and overly lenient sentences. The evidence supported advocacy efforts which, in time, led to significantly easier access to court files and the establishment of a specialised wildlife unit in the public prosecutor's office. The conviction rate in relevant cases reached 95 percent by 2019.

The findings also contributed to significant changes in legislation. These include the enactment of the Wildlife Conservation and Management Act in 2014, which repealed the 1989 Wildlife Act and established harsher penalties. Amendments were passed in 2019 to, among other things, introduce new offences like poisoning of wildlife.

The court monitoring also spurred increased collaboration, illustrated by the establishment of an annual judicial forum for dialogue bringing together all stakeholders involved in handling any aspect of environmental crimes in Kenya.

In addition, the Eyes in the Courtroom reports over the years has resulted in a valuable set of data on wildlife crimes and enforcement actions, which are used by academics and conservation or policy organisations worldwide.

Models: systemic, thematic, ad-hoc

The design of court monitoring programmes differs according to the context, research question, and time and funding available. Typically they fall into one of three categories:

1. **Systemic:** This takes a broad, long-term perspective that examines the wider criminal justice system – including the conduct and impact of not just court users but others involved in the administration of justice like the police. Despite the more comprehensive approach, there is still a need to identify a priority area, for example the reasons for a case backlog in criminal proceedings generally.
2. **Thematic:** This examines a specific category of cases, a specific phase of proceedings, or a specific subject matter, or a combination of these. An example may be examining corruption cases that have been appealed or have a value over a specific amount, or looking at outcome trends for environmental crime cases (How many were convicted? Acquitted? What were the fines imposed?). An advantage is that it allows the court monitor to dive deep and generate specific data which can later inform any required reforms.
3. **Ad-hoc:** Court monitors may be deployed as a direct response to an event, for example court cases arising out of post-election violence or war. This monitoring is more focused on informing advocacy activities and seeking solutions to resolve these cases than identifying where the systemic problems are. It may however highlight systemic problems.

The ideal court monitor...

Ideally, a court monitor should be fully independent and objective. Monitors often come from civil society or non-profit organisations involved in efforts to improve the justice system in a particular area.

Court monitors should follow basic principles of:

- **non-intervention** in the judicial process or outcomes of a particular case;
- **objectivity** and accurate reporting in line with clear practices and procedures
- **confidentiality**, including no leaking of information obtained from confidential sources and no release of court monitoring information prior to review and analysis.

A variety of information sources

Depending on the research question, a court monitor may need to gather information from:

- physical attendance at trials as an observer;
- case files and related documents held in the court registry;
- public documents issued by the judiciary and other relevant institutions, for example practice guidelines, reports or manuals;
- media articles;
- academic papers;
- best practices or precedents from other courts and countries;
- conversations and interviews with individuals or organisations with relevant expertise.

A court monitor will often need to obtain authorisations and collaborate with individuals who hold specific information that is not publicly available, such as confidential case files or internal policies and reports.

Impact and measurement

A court monitor's report usually provides the basis for recommendations to solve the problems identified, for example through reforms to laws, new policies, procedures and guidelines, capacity building or allocation of funding.

Impact will therefore depend on whether and how well the recommendations are implemented. This means a court monitoring programme needs to have a follow-up plan and indicators in place. For example:

- measuring the impact of a capacity building recommendation may focus on the knowledge and actions of those trained as a result of the recommendation;
- measuring the impact of new guidelines on granting bail could involve conducting another court monitoring activity surveying judicial officers' judgements and gathering statistics on the number of suspects granted bail before and after the change.

Trust and good relationships with the stakeholders in charge of evaluating and implementing the recommendations are therefore essential, to prevent the report being filed away and forgotten in a dusty drawer.

Impact may be hard to establish in the short term, especially in the criminal justice system where cases may take a long time to proceed through court. The longer a court monitoring programme is in place, the more effectively it can measure impact over time and ensure that reforms are sustainable.

Further reading

- Learn more about court monitoring in the OSCE's comprehensive [Trial Monitoring: A Reference Manual for Practitioners](#).
- Other useful resources are available on the [UN Women Virtual Knowledge Centre to End Violence against Women and Girls](#) and the [Eyes in the Courtroom](#) repository.

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