



Monitoring Network of Tunisian Justice during the transition

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Introduction :

The Justice Monitoring Network (known as the ROJ) is a project launched in the wake of the Tunisian revolution by the Ordre National des Avocats de Tunisie (known as ONAT) (the bar association), Tunisian League of Human Rights (LTDH), Avocats Sans Frontières (ASF) (Lawyers Without Borders) in order to promote international standards in the administration of justice. The ROJ mobilizes civil society, law professionals (such as lawyers/solicitors, magistrates, lawyers) and defenders of human rights to observe the administration of criminal justice during the transition period and to contribute, on the basis of the collected data, to a work of analysis and recommendations for reforming the legal/justice system in Tunisia.

The ROJ is quite unique of its kind both in Tunisia and in the Arab world. Even though other justice monitoring actions (such as observations of emblematic trials) had already been carried out in the last few years by civil society, it is the first time that a monitoring project aims to systematically collect, centralize and preserve information which will make it possible to have both a quantitative and qualitative analysis as well as an effective monitoring of the administration of justice.

In Tunisia it was noted that there is a lack of available information and reliable data on the present functioning of the legal system which is subject to all kinds of criticisms which generally are poorly or not at all evidence-based and this led to the creation of the ROJ. The ROJ is setting up a standardized data collection system with an innovative methodology comprising two distinct mechanisms for observation and information collection, reporting tools and specific encoding and a participative data analysis for the formulation of constructive recommendations which constitute an essential task for a good reform of the legal system.

This report is the first of a series of data analysis reports which will be drafted within the next 12 months.

As this is the first report, the pilot project, namely the justice monitoring network, is described in detail. The following are expounded in the first part:

1/ the action of the ROJ, i.e. the context within which the project came up and the objectives which guide its activities; **2/ its stakeholders**, i.e. the different parties involved in the creation and activities of ROJ; **3/ its main founders**. The second part describes the methodology: the data collection and analysis system and the reporting tools which have been set up. Finally the report describes the state of progress of the ROJ project in the first few months of activity. All the working documents are to be found in the annex.

This report is to be a medium to enable the different stakeholders involved in the justice system and civil society in Tunisia to become familiar with the methodology created and used by the ROJ so that it can be disseminated. But it could also be used in other contexts apart from Tunisia so as to inspire, if need be, similar initiatives as far as the monitoring of justice is concerned.

This is a methodology reference document which has been prepared for the monitoring of the administration of justice and this report can also be used as a tool in order to capitalize on the work which has been done since the 1st of June 2012, which is the date on which ROJ was started.

1) The Justice Monitoring Network

A) Action of ROJ :

The revolution was sparked off on the 14th January 2011 and led to Tunisia's commitment to a process of political transition. On 23rd of October 2011, Tunisians elected a Constituent Assembly so as to draft the constitution of the 2nd Republic and to launch institutional reforms which are necessary for the setting up of a democratic regime. One of the main challenges of this transition and recognized as such by all the Tunisians is the setting up of conditions for an independent legal system capable of delivering impartial justice and guaranteeing the rights and freedoms of all those due to be tried without any discrimination whatsoever.

It is within this context that the ROJ, the justice monitoring pilot project, was born with the aim of encouraging the adoption and effective application of international standards in the administration of criminal justice in Tunisia and to ensure the effective participation of civil society and law professionals in the justice/legal reform process.

All the project activities gravitate around the creation and animation of a network of monitoring/observation, collection and analysis of data on the administration of justice during the transition period.

Reference to international standards of justice is the project's core point as membership to the ROJ means accepting to measure the administering of Tunisian justice with reference to these standards which then become an objective reference tool. The reference to international standards enhances the "technical" dialogue and provides the stakeholders with an independent and apolitical platform for observation, reflection and analysis which should make it possible to transcend some of the divisions and frictions inherent in any society in transition.

This network together with its 3 partner organisations (LTDH, ONAT and ASF) is to be open and inclusive: other civil society organisations can become members and contribute towards the action as well as any law professional or member of civil society can become observers provided that they respect the principles of the action (independence, transparency, openness and non-discrimination) and they undertake training for that purpose. The observers are recruited throughout the country so as to get a good geographical coverage and to obtain representative results on a national scale.

The ROJ's action is to be resolutely constructive: there is no question of "putting justice on trial", but rather to work on recommendations which would be widely supported. The ROJ is to communicate the monitoring results to the key stakeholders of justice and the authorities involved in the reform work, namely the Ministry of Justice and that of Human Rights and Transitional Justice as well as the National Constituent Assembly and to organize, during the round tables, open debates with civil society, the professionals in this domain and those in charge before formulating any recommendations which would be widely disseminated.

Another particular feature of the action is to mobilize different members of civil society (in particular human rights organisations and journalists' organisations) as well as all the law professionals (magistrates, lawyers, clerks of the court, secretaries

of lawyers etc). The latter are both privileged stakeholders and witnesses and particularly well placed to collect information. It is therefore of the utmost importance to encourage them to see to it that the international standards are respected in their daily practice and to obtain their participation in the collection of information (the mechanism for the observation of justice malfunctioning - see below- has been specially designed to facilitate this participation), as well as in the work of analysis and recommendations.

B) Stakeholders involved in the ROJ

Different types of stakeholders are involved with the ROJ. First of all, are the founding organisations of the project which decided to collaborate on the basis of a partnership in order to implement the project. For the project's implementation different organs stemming from the ROJ and thus from the founding organisations have been set up, with the particularity that one of the organs, the observers' network, includes persons who are not necessarily members of the founding organisations. The ROJ's vocation is to involve a great number of stakeholders in the monitoring of justice and in the work of analysis and reflection with the aim of carrying out reforms, and thus links have been established with civil society organisations and other key stakeholders of the justice sector such as the authorities, professional bodies etc.

B.1. Partners (LTDH, ONAT, ASF)

The Tunisian Bar Association (ONAT), the Tunisian League of Human Rights (LTDH) and Avocats Sans Frontières (ASF) are the three founding organisations of the ROJ. A partnership has been set up to implement the project and formalized on the 8th August 2012 through the signing of a memorandum of understanding. With this agreement the parties pledge to jointly work for the project's good implementation and the development of an operational, effective and efficient strategy well adapted to the Tunisian context by sharing their knowledge, experiences and know-how.

LTDH: The Tunisian League of Human Rights, member of FIDH (International Federation of Human Rights Leagues) is an association founded in 1977 for the monitoring and defense of human rights in Tunisia. It is the oldest leader of the leagues of human rights in Africa and the Arab world. By 2012 the LTDH had 3000 members and the association has local sections in each governorate in Tunisia.

ONAT: Ordre National des Avocats Tunisien (Bar Association of Tunisia) represents and includes all the lawyers of Tunisia, approx. 8000 exercising lawyers. The ONAT has a legal status and is financially independent. The Bar comprises the Board and three sections (Tunis, Sfax and Sousse) and has representations in 21 cities in the country.

ASF: Avocats Sans Frontières is an international NGO created in 1992 in Belgium whose mission it is to contribute towards the establishment of institutions and mechanisms which would make it possible to have indiscriminate access to an independent and impartial justice capable of guaranteeing the protection of fundamental rights (civil, political, social and economic rights) and especially the right to a fair trial.

The respective statutes and complementarity of the partners constitute the project's strong points. The LTDH is a major stakeholder of Tunisian civil society, the Bar association represents the lawyers, law professionals at the heart of judicial action

and ASF has a long international experience in implementing activities in support of the good administration of justice.

B.2.The ROJ's Organs

The network comprises three components or distinct organs for the project's operational implementation; each organ has its own role and responsibilities.

- The Executive Committee:

The executive committee is the organ responsible for the orientation, coherence, strategic planning and the representation of the ROJ. It exclusively comprises the partner associations and each is represented by two persons in charge of project monitoring on behalf of their own organisation.

The executive committee functions on the principle of an equal status amongst its members. Each decision is taken on a consensual basis so as to preserve the spirit of unity in the project's strategic orientation. The executive committee was scheduled to meet once a month but in view of the frequent needs of orientation and decision the meetings now take place twice a month.

As a decision-making body the executive committee is responsible for validating the different work propositions stemming from the coordination team, as for example, the intervention themes, the training and awareness creation plans, the different tools developed for the collection of information, the reports and publications.

It is also a proactive body which directly participates in the ROJ's activities and thus contributes to the creation of a group of observers and to the identification and mobilization of observers, individuals and organisations associated with the action. It also contributes to the collection and verification of information.

The working relationships and links between the Executive Committee and the ROJ's coordination team are very close. These are two organs with well defined responsibilities and roles but whose complementarity and mutual support are vital for the implementation of the activities and the operationalisation of the network.

- The Project Coordination Team

The coordination team works under the supervision of the executive committee and its task is to ensure the project's operational implementation. At present it comprises 3 persons, a project coordinator and two project assistants. A communication officer's position will soon be available for recruitment so as to ensure the best possible visibility of ROJ and its action.

The Coordinator is responsible for implementing the activities according to the project schedule. He ensures the organisation of training sessions and round tables, the organisation of monitoring activities, the collection and analysis of data. The Coordinator is also a member of the executive committee and thus participates in the ROJ's orientation and strategic planning. His/her work is supported by two assistants who ensure the monitoring of the collection activities, verify the data, manage the database, analyze the data and manage the internet site as well as the administrative, logistic and communication tasks linked to the project.

- The Observers' Network

The observers are first-line field stakeholders as far as the monitoring of justice is concerned. They are natural persons with the necessary knowledge about the justice system (lawyers, magistrates, professors of law, members of specialized associations etc...) who are identified, recruited and trained by ROJ so as to observe and collect data in accordance with specific reporting tools.

The training sessions provided by the ROJ aim to create reserves of active volunteer observers in several cities in the country. The observers are trained to monitor the trials and also to observe any justice administration malfunctioning¹.

Number of observers per governorate - December 2012

Four months after the effective start up of the project, the ROJ managed to establish itself in nearly all of the country's governorates. In some regions such as those in the centre, visibility campaigns were organized to mobilize a greater number of persons. The visibility campaigns made it possible to identify 200 law professionals in 8 towns interested in engaging to work with the ROJ. These persons will be trained on the monitoring of justice administration malfunctioning at the beginning of 2013 and will join in the activities of the ROJ as soon as their training has been completed.

Map n°1 : Number of ROJ observers per governorate as of 20 December 2012.



¹ Observation activities of the trials and justice administration malfunctioning are explained later on in the report.

B.3. Stakeholders associated with the ROJ: civil society organisations and key stakeholders in the justice sector.

In order to establish the widest ranging possible dialogue which is a prerequisite for the beginning of a consensus on the reforms to be carried out for an independent and impartial justice system in Tunisia, the ROJ is trying to associate the maximum number of stakeholders in the process.

1. Civil society organisations (CSO)

The ROJ establishes links with other civil society stakeholders (organisations, journalists etc.) and with those that wish it, also sets up effective forms of collaboration for the monitoring of criminal justice in Tunisia and/or the formulation of recommendations with the aim of introducing reforms which will guarantee the application of international standards in the administration of justice.

A collaboration framework between the ROJ and the CSOs has been elaborated and is in the course of being signed with some of them.

This collaboration framework defines how the civil society organisations can pool their efforts to contribute towards the monitoring of justice in the most complete manner as possible. In general it means participating in the ROJ activities of identification, collection, analysis and formulations of recommendations depending on the area of activity and capacities of the association concerned.

The ROJ pledges to train the volunteers and the staff of the organisation, to include the data collected by the latter² in the database and to share the results of the data analysis. The collaboration framework also provides for the ROJ to refer the victims of justice administration malfunctioning identified within the framework of the project, such as for example the victims of ill-treatments, towards organisations which would then take care of such victims (psycho-social care or legal support).

Finally informal ties could also be set up with other international organisations which are active in the sector of justice in Tunisia.

2. Sector key stakeholders: professional bodies and authorities

The justice sector key stakeholders, namely the professionals and established law entities, as well as the line authorities within the Ministries of Justice and Transitional Justice and Human Rights which administer justice on a daily basis and which are the first who have to "answer" for any malfunctioning, must be involved as much as possible in the work being done by the ROJ and this involvement takes place on several levels.

A particularity which has already been pointed out as one of ROJ's strong points is that the National Bar Association (of Tunisian lawyers) is engaged as a founder and active partner to implement the project. For reason due to the status and the necessary independence of the judicial authorities, the magistrates' organisations preferred not to be a formal partner of the ROJ. Ties have nevertheless been established to start a dialogue and to have an exchange of information with these professional associations and their respective initiatives.

² After data verification in accordance with the ROJ procedure

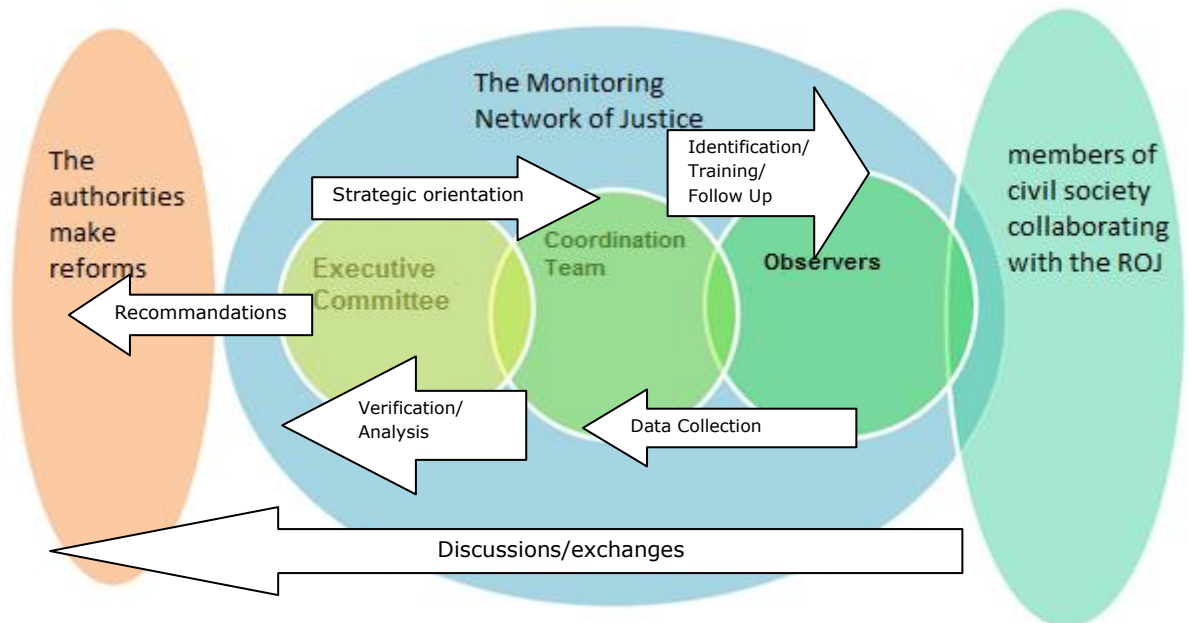
Furthermore, as explained above, the observers' network, a ROJ organ, is also composed of sector professionals, such as lawyers, magistrates, clerks of the court and bailiffs who can, whilst respecting their duty to discretion and their obligations in connection with professional secrets, pass on information to the ROJ.

3. Setting up the dialogue

No matter what their effective contribution was to the work of monitoring/observation and data collection, the results of monitoring and data analysis will be made available and discussed with civil society and the key stakeholders. Round tables representing the different intervening parties, including the commissions of the National Constituent Assembly in charge of reforms, will be organized (the first meeting has already taken place in December) and the aim is to listen to the observations of others, to initiate a dialogue and to provide food for thought on the reforms to be carried out.

These exchanges of views will also make it possible to formulate highly relevant recommendations in view of the different perspectives and furthermore, the stakeholders' participation in the debate will give them more clout. These recommendations will be addressed for the attention of the authorities in charge of the reforms and will be shared by all the stakeholders involved.

Plan 2: representation of the relations between the key stakeholders in the ROJ work



C) The ROJ principles

The Justice Monitoring Network (ROJ) is guided by the following principles inherent to its objectives and activities, namely independence, transparency, openness and the promotion of a constructive dialogue and non-discrimination. These fundamental principles are enshrined in a charter (see annex 1).

To be used as a reference tool and guardian of the smooth working of the observation task, all the different stakeholders involved (members of the executive committee, employees of the coordination team, the observers, civil society organisations etc) pledge to respect these principles in connection with their activities with the ROJ.

Independence:

The network ensures its objectivity, neutrality and impartiality by remaining independent of any sphere of influence, whether it be from the political powers, partisan or religious considerations.

Transparency:

The ROJ submits its recommendations to the decision-makers and its activities must be clear, visible and accessible for all to ensure that its work is reliable. Thus the methodology, the data collection process, data verification and analysis as well as ROJ's mode of functioning are open to public scrutiny whilst at the same time preserving the confidentiality of the data.

Openness and promotion of a constructive dialogue:

To establish an independent justice system which would guarantee the fundamental rights and freedoms of all the citizens means the involvement and the representation of all the citizens. This dialogue is to be constructed through the sharing of data and the regular organisation of "round tables". This open dialogue would make it possible to contribute towards re-establishing the trust of the Tunisian people in an independent and impartial justice.

Non-discrimination:

The ROJ's action is to promote a non discriminatory access to a fair trial, without any distinction of race, sex, origins or religion. This principle can be found, for example, in the reporting³ tools used by ROJ which make it possible to monitor the administration of justice from the point of view of the victim, the accused or the defendant.

The network's member observers which are the stakeholders in the forefront, pledge to respect these principles during their monitoring/observation so as to guarantee objective data. An observation mandate has been elaborated to that effect to strengthen the charter's principles and to preserve discretion and the objectivity of the collected data.

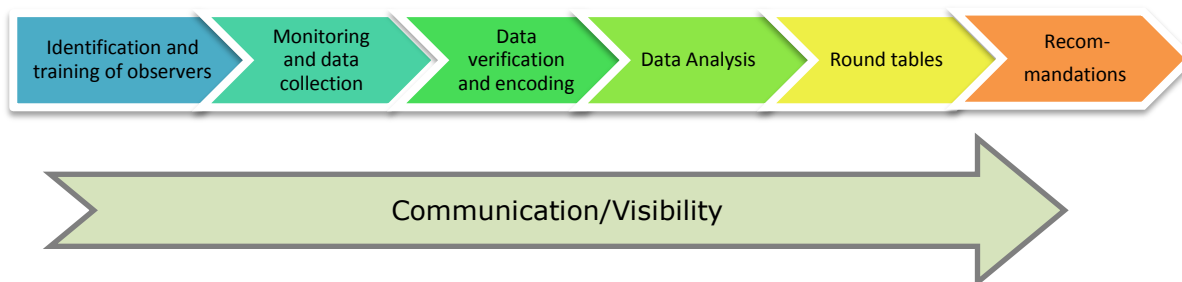
³ Trial observation form and malfunctioning monitoring form (these tools are described later in this report).

2) The ROJ activities

Multiple activities are necessary for the smooth running of ROJ such as communication and visibility activities to make the project known, the identification and training of observers, organisation and monitoring of observations, data verification and analysis, organisation of round tables to communicate and ensure an exchange of view on the results and recommendations.

The most important stages schematically are as follows:

Plan No.3: ROJ work stages:



A) Communication/Visibility

To achieve its objectives, the ROJ must be known to the justice stakeholders, the authorities and the population. Apart from its action which must be rigorous and credible, the very fact of its existence is one way of promoting international standards and drawing attention to the necessity of reforms. The ROJ's work is based on daily monitoring/observation and thus the more stakeholders are involved the better will be the results.

A press conference was organized on 22nd of August 2012 to launch the project. The conference convened the TV and radio medias and the written press, this launching was reported in 10 newspapers, 5 radios and 3 TV stations.

internet website⁴ and a Facebook page have been created and will be updated regularly to disseminate the evolution of the ROJ's activities. The reference texts (international conventions, jurisprudence...) are online on the site. The observers can also download the monitoring forms.

Visibility Campaign:

Following the observation that the existence of the ROJ and its activities were not well known in some regions (especially in the Centre and the North West), the executive committee decided to organize a visibility campaign in Siliana, Sidi Bouzid, Kasserine, Gafsa, le Kef, Jendouba, Gabes and Sfax. The campaign lasted one day in each town and consisted of a stand in the ONAT office in each courthouse. The law professionals going through this office were informed of the project and its activities. Those interested expressed their wish to participate in the ROJ's activities and will be trained in 2013 so that they can then be integrated into the observation activities.

An additional specially trained communication resource person is to be recruited to join the coordination team so as to ensure proper circulation of information within the network and also to the outside world.

⁴ www.roj-tunisie.com

B) Identification and training of observers

Identification of observers:

The identification of observers is done jointly by the members of the executive committee and the coordination team. It is done during the visibility actions in the law courts, meetings, universities, the press and the networking system. The selection is done by the Executive Committee on the basis of the needs as assessed (a pre-determined number for each courthouse) and the candidates' profiles including their competences, motivation and their neutrality.

Training of observers:

Monitoring takes place according to two procedures and thus covers two parallel activities, those of monitoring/observing the trial and observing any malfunctioning. Training sessions are organized in Tunis and in the regions for each of these two activities. Trial monitoring/observation training sessions last for two days and are facilitated by a team of two experts, namely a Tunisian expert and an international expert selected for his/her experience in the monitoring of justice, their knowledge of international standards and their knowledge of the Tunisian context.

Monitoring training sessions on malfunctioning last for one day and are facilitated by a Tunisian expert and an international expert. This training focuses on awareness creation and the network's themes, international standards and the reporting system.

Simulated trials are organized during the training sessions so that the future observers come to grip with real conditions. Practical case examples make it possible to learn the lessons in a concrete manner and to highlight any misunderstandings. The participants also played an active role in the correction, adaptation and finalization of the forms through their comments, criticisms and recommendations.

Once the observer has been trained he becomes part of the "observers' network" which is divided into two groups, namely the trial observers and the observers for any Malfunctioning.

The coordination team organizes the monitoring of the observers and comments on the quality of their reports and eventually any errors made so as to improve the observation work. Periodical meetings are to be organized so as to keep the observers informed and motivated about the evolution of the ROJ's activities.

C) Monitoring and data collection

Observation focuses on respecting international standards in the administration of justice (independence, absence of corruption, reasonable administration deadlines, fair trials, the right to defence and respect for human dignity) and any eventual problems in gaining access to justice. A specific methodology has been developed to ensure that the ROJ's founding principles (independence, non-discrimination, transparency, openness and the promotion of a constructive dialogue) are respected.

Area of observation:

No limits or territorial constraints have been imposed. On the contrary, the ROJ wants to have the widest possible geographical coverage and deploy its activity in all the courts of law (1st instance tribunal and Court of Appeal) throughout the country.

The ROJ intends to cover the whole Tunisian territory and thus a choice had to be made as to what type of trial is to be monitored. As the administration of justice covers a very wide range of possible areas of observation, the Executive Committee, whilst recognizing the importance of monitoring/observing the administration of administrative and civil justice, decided to give priority to the monitoring of criminal justice in view of the generally much more frequent violations of human rights and impediments to a fair trial.

Not all trials can be the subject to monitoring/observation even within the framework of criminal justice, and the Executive Committee has established a list of criteria on the basis of the present prevailing context in Tunisia and any trials to be monitored must comply with these criteria.

The list indicates the trials which can be monitored:

- Trials during which the accused may incur the death sentence
- Trials involving minorities (such as Jews, Christians, homosexuals, single women, Tunisian Blacks etc.).
- Trials involving those wounded in the revolution and the martyrs of the revolution
- Trials involving freedoms (the freedom of expression, freedom to demonstration and freedom of conscience)
- Trials against Ben Ali, his family and his clan
- Trials against persons considered to be particularly vulnerable (a minor, a woman or man without any income)
- Trials involving acts of torture
- Trials where an association collaborating with the ROJ has requested that the trial be monitored.

Data collecting process:

The monitoring takes place on two levels:

1. Trial monitoring which means that a form has to be filled out (the ROJ tool) and sent to the ROJ coordination team.
2. Monitoring of justice administration malfunctioning of which a person has been either a witness or a victim and which necessitates the drafting of an incident report (the ROJ tool) that is sent to the coordination team.

- 1) Trial Monitoring:

The monitoring is made by observers who are members of the ROJ, either justice professionals or members of civil society who have been trained for that purpose and who were mandated by the ROJ to do the monitoring. The observers can also request the ROJ to organize the monitoring of a specific court case.

- Selection of court cases/ trials to be Monitored:

To ensure that a relevant choice has been made in the court case to be monitored, the ROJ coordination team collects all the details pertaining to the court case. The information may come from different sources such as the ROJ member observers, the medias, civil society organisations and the members of the Executive Committee. On the basis of these details, the team analyses to see if the court case complies with the criteria as defined by the executive committee, if the resources are available (observers) and if there is enough time to prepare the mission correctly. Depending on this analysis, the team decides whether the trial is to be monitored or not and fills out a trial description form which will be sent out to the members of the executive committee for information and also to explain the motivations. In case of disagreement the executive committee can (through common agreement) intervene to refuse the monitoring.

- Organisation of the monitoring of the court case:

Once the decision has been made, the ROJ team identifies and selects an observer⁵ from its database on the basis of the following criteria: the place of the court case, availability and neutrality or absence of a conflict of interest in connection with the court case (for example, if the observer militates in an association for the defence of martyrs, then he cannot act as an observer in a trial involving martyrs).

Objectivity, neutrality and discretion are part of the principles the observer must respect during his monitoring to ensure reliable data collection. The observer signs an observer mandate⁶ for each mission which defines the objectives of his/her mission, the code of conduct to be followed as well as the terms upon which the report is to be submitted. To guarantee discretion and preserve the ROJ's neutrality, the mandate specifies that it is prohibited for the observer to speak or represent the ROJ within the framework of his function or to talk to the press in the name of the ROJ.

Monitoring activities are organized on a volunteering basis, but an allowance is provided to cover the mission costs, depending on the number of hearings being covered.

- The Form, a Reporting Tool⁷:

Once the observer has been mandated, he is then to collect the information through a reporting tool specially created for that purpose and this is the **Criminal trial monitoring form**. This tool has been thoroughly thought out and created to cater in the best possible manner for the needs of data collection.

⁵ Each observer will be offered the opportunity to monitor a trial. The coordination team will then take into consideration, during the selection, the quality of the reports of the observer as well as his degree of seriousness in following the hearings.

⁶ See the observation mandate annex 2

⁷ See annex 4

The form is made up of three parts: 1) primary information, 2) monitoring grid and 3) the narrative report. It is composed of 158 numbered information boxes so that the data can be easily introduced into the database.

Primary information:

This primary information pertains to the trial and indicates the number of the court case, the tribunal and the court where the case is being tried, the degree of jurisdiction, the legal basis for instituting the legal proceedings etc.

Monitoring grid:

The grid is divided into 16 sections⁸ each containing situations which make it possible to observe whether international standards are being respected during the hearing. For each situation 4 answers are available (no information, not applicable, yes or no) and only one answer can be validated by the observer. A box is reserved for each situation in order to identify the source of the information (lawyers, judges, victim, observer or the accused).

Narrative report:

The narrative report has four sections: a presentation of the facts, the observer's general impression of the case, the observer's opinion about the decision/judgment made and the recommendations. Were the victim and/or the accused and/or the lawyer treated any differently? In this part the observer is given more latitude to express his own personal comments and opinions. This section makes it possible to produce qualitative and representative details of how the hearing is taking place and this is useful for the analysis so that the collected quantitative data can then be contextualized.

This report has been designed to collect the data in as precise a manner as possible as this is necessary for a quantitative and objective restitution of the administration of justice in transition and also to reduce as much as possible the observer's margin of interpretation.

Trial monitoring process:

At the beginning of December 2012, the military tribunal at le Kef started its first hearing at a trial. The legal basis for the prosecution are articles 131, 132, 264 and 304 of the criminal code for belonging to an organized gang which aimed to carry out an attack. The charges were against 57 trade unionists being defended by 9 lawyers.

The hearing lasted 3H25 and the ROJ observer noted all particularities pertaining to this court case on his criminal trial reporting form.

The report tells us that the publicity aspect at this hearing had been respected and only the written press was admitted but not the TV. It also tells us that some of the families of the accused declared that some of the accused has been ill-treated in the tribunal's jails and that at least one of the lawyers was not able to express himself freely during the hearing.

During the hearing the different requests of the prosecutor and the lawyers were accepted by the judge except that of one of the lawyers of one of the accused. The observer found that the judge had treated at least one of the accused in a humiliating manner.

This trial is not yet over and several hearings will take place during 2013. The observer will attend the forthcoming hearings and will continue with his activity until the end of the trial.

⁸ The right to a lawyer, the treatment of the accused in the jails of the tribunals, the behaviour of the police at the tribunal, publicity about the hearing, the right to an impartial tribunal, the treatment of the victim, the treatment of the accused during the hearing, the treatment of the lawyer during the hearing, the respect of the principle of equality of arms, intervention of the victim's defence during the hearing, intervention of the defence of the accused during the hearing, intervention of the prosecutor during the hearing, the presentation of supporting evidence for/and against during the hearing, the deliberation of the court and personalization of the sentence.

- 2) Monitoring of any justice administration malfunctioning:

For observing justice administration malfunctioning, the data collected is assessed as the need arises by the justice professionals or by civil society when they are either witnesses of, or victims of, a serious malfunctioning or miscarriage of justice administration. They then draft an incident report and send it to the coordination team. The methodology takes into account (through the reporting tool and the data verification mechanisms adapted for that purpose) the principles of discretion and the obligation of respecting professional secrecy to which some of the stakeholders are bound.

- Organizing the monitoring of the justice administration malfunctioning (from the lodged of the complaint to the sentence)

An observer spontaneously transmits the monitoring of the justice malfunctioning to the ROJ. In contrast to the monitoring of a court case, this mechanism does not necessitate a prior mandate and the ROJ does not necessarily intervene upstream to select the court cases. The idea is rather to enhance the voluntary flow of information which can occur in three types of situation:

- 1- **The law professionals, the defenders of human rights and associated militants** transmit the information on justice administration malfunctioning they are faced with in their daily practice. When they are faced with a serious malfunctioning in the administration of justice they fill out the report and send it to the ROJ. If the observers also happen to be the lawyer dealing with the case, he then completes the report and adds the supporting documents.
- 2- **The ROJ trial observers** can also be observers of any justice malfunctioning and can use this form to fill in the information of the trial they are observing (pre-trial and post-trial stages) and send it along with the trial monitoring report.
- 3- **The ROJ team may have recourse to an observer** and request him to monitor the justice malfunctioning in a case they have heard of (through the medias, the associations or other professionals).

Malfunctioning in the course of justice administration:

In the Sidi Bouzid region, during a demonstration on social claims, 11 young adults were arrested by the national guards. The demonstration led to road blocks and tyres being burned and regular traffic circulation being impeded. The charges against these persons are to have committed acts of violence against persons and property.

The justice administration malfunctioning report submitted by the ROJ observer mentions that the information (the facts, time of the beginning and end of the police custody) contained in the report of the police custody are exactly identical for the 11 persons in police custody.

It also mentions that the police reports did not mention the compulsory medical examination or that the public prosecutor had been informed of the arrest. Also, the police reports indicate the facts and the charges but no legal reference.

Finally, the observer also noted that from the 11 police reports not one had been signed and only the finger prints were used as a signature.

The observer was able to append to the report one of the defendant's declaration whereby the criminal investigation police (police judiciaire) resorted to violence during the arrest, (punching, kicking, using the batons and insults). The arrested persons added that he was not given the possibility of reading the report and that his finger print had been obtained by force.

- Reporting form / tool:

This is a concise report which takes no longer than 30 minutes to fill out.

The form describing the justice administration malfunctioning is a form comprising 7 files to monitor/observe stage by stage the whole investigation of a case according to Tunisian laws and international standards.

The files are as follows: 1) the charges; 2) the preliminary investigation; arrest and police custody; 3) the preventive detention; 4) instruction (investigation by the judge); 5) accusation chamber; 6) trial; 7) judgment, sentence and execution of judgment.

Like the trial monitoring form, the justice administration malfunctioning monitoring form reproduces the primary information of the case, i.e. the reference of the criminal file, the court dealing with the case, the degrees of jurisdiction, the nature of the disputed case...).

It is also specified how the observer obtained his/her information (as a lawyer of the victim(s), of the defendant (s); as a representative of an association, or after a discussion with the lawyer of a victim or the defendant). This information is important as it ensures the traceability of the information.

This methodology of data collection respects the secret of the investigation. In fact the information pertaining to any malfunctioning observed in the course of the investigation must not be transmitted to the ROJ before the end of the investigation. Furthermore, any information gathered pertains only to the procedure and form of the investigation and not to the content of the information. All parties concerned who transmit supporting evidence to the ROJ can preserve the secret of the investigation by deleting the confidential information from the document.

In the same logical order, this mechanism is not in contradiction with professional secrecy requirements as the personal details of the persons involved, the judge in charge of the case, the police station where the person had been arrested, are not necessarily indicated...

In this form which is divided into seven files which are sub-divided into sections, each section describes possible situations of justice administration malfunctioning by referring to a legal text. The observer ticks the situation which corresponds to the case being monitored and must, in some cases, provide supporting evidence for the information which he himself has gathered. The observer is not obliged to fill out the seven stages of the procedure and can concentrate on just one or two relevant files for the court case in question.

Example:

FILE III: Preventive detention

The right to access a lawyer during the preventive detention (Art. 70 pcc)

The lawyer systematically has to wait for several hours at the detention centre before being able to see his client.

Specify.....

The penitentiary administration has refused the lawyer's right to visit despite the fact that the lawyer has an authorisation to do so

The lawyer was monitored or his conversations bugged during his visits

What makes you think so?

D) Data verification

The information can come from different sources as already seen. To ensure that the information is reliable, a thorough verification system of the collected information has been set up.

- ***Verification mechanism:***

The coordination team verifies the coherence of the information in different ways depending on the case in question:

- Request for testimony signed by the victim or the lawyer (if he is not the observer)
- Obtaining copies of formal documents as evidence of the malfunctioning
- Triangulation of the information by requesting testimonies from other persons who could have witnessed such a malfunctioning.

To verify the information, the coordination team may have to go to the tribunal or to the town concerned or ask the observer to provide the supporting documents.

As for the justice administration malfunctioning forms, the verification mechanism has made provisions for a sample of the forms to be verified (No.2, 6, 10, 14, 16, 20 etc.). After the 3rd month of collection, the sample to be verified can be either upgraded or downgraded depending on the verification results.

In some particular cases, some forms could be subjected to this verification mechanism even though they are not part of the sample as these are forms which are perceived as being incoherent, or disclaimed by the press or when the person concerned is a public figure.

- ***Test of the collection mechanism***

The verification of the first trial monitoring forms received made it possible to see some of the limits and constraints in connection with the reporting tool. It transpired that in some of the forms the observers had ticked some of the boxes in an incoherent manner.

The identification of these limits has already made it possible to undertake a first adaptation of the tool and its utilization.

Adaptation of the form:

During the verification, it transpired that the observer could not answer correctly because of a problem of formulation. The form was drafted in such a way that it referred to "a defendant" or "a victim" so that the observer was monitoring/observing only one natural person. But in a great number of cases, the hearing involved several defendants and several victims and this formulation in the singular led to a loss of information. The form has been slightly modified so as to highlight the multiplicity of persons being monitored.

Adaptation of utilization:

At the mention "The judge has links with a party involved in the trial", the box ticked is "not applicable" whereas it should have been stated that there is "no access to information".

So as not to distort the analysis, it was agreed that it was "methodologically valid" to modify the ticked boxes during the encoding of the report if the incoherence was obvious and there is no doubt as to the information gathered by the observer. A

telephone call with the observer in question is necessary to check the answer that was given.

Thus it is important to ensure that the observers modify their working practice so that they tick the boxes coherently through personalized monitoring of each observer and through training in the future as well as through regular meetings.

E) Analysis

The analysis can start once the data gathering is over and the data verification and encoding is carried out in the database provided for that purpose.

The objective of this analysis is to indicate a state of progress in connection with the functioning of the administration of Tunisian justice by using reliable information that was gathered.

The analytical method of the data gathered by the ROJ is a quantitative method. The total sum of the information contained in the observation forms makes it possible to have a quantitative vision of the facts observed over a given territory and over a given period of time. But it must be pointed out that this analysis cannot provide representative results for the whole administration of justice as the data gathered is only an aggregation of particular cases and not a representative sample.

An example of a result obtained through the analysis of ill-treatments during police custody would show that the analysis can only indicate a minimum number of cases of ill-treatment during police custody in governorate X during 2013. The analysis would not indicate the number of cases of ill-treatments which occurred during police custody compared with all the cases of ill-treatment suffered by persons deprived of their freedom in 2013.

The analysis is based on the ROJ's internal documents (forms, files) but also on external documents such as reports and data stemming from other organisations (this data is subject to the verification system). When the analysis is carried out using other different documents then this makes it possible to cross-check and to certify the information. An analysis of the ROJ data could, to a certain extent, support or complete the analyses stemming from other sources.

To preserve the impartiality and neutrality of the results, the analysis will be carried out by statisticians. The analysis results will be made public and published through reports containing recommendations for the attention of the public authorities.

F) Round Tables

Once the data has been centralized and encoded, the analysis results are then shared with the civil society organisations collaborating with the ROJ and the different key stakeholders so as to discuss these results and to propose draft reforms or recommendations. This sharing is done in the form of regularly organized round tables. A joint analysis based on neutral and objective criteria stemming from applicable international standards, will make it possible to elaborate unified and structured responses in view of the prevailing situations.

In conformity with the principles of openness and the promotion of a constructive dialogue, the ROJ will invite civil society, the professional organisations, the Ministry of Justice, the Ministry of Human Rights, the members of the National Constituent

Assembly and all the stakeholders involved to discuss the results obtained from the data analyses and also to enhance the formulation of recommendations.

This is a fundamental dialogue platform as it will make it possible for the different stakeholders not only to make observations but also to better understand the views of the other stakeholders. These exchanges of views will feed into the debate at different levels and will also make it possible for the ROJ to best orientate the recommendations which would have gained in terms of relevance and legitimacy from these discussions.

5 round tables are to be organized over a period of 18 months. The first round table took place in December 2012.

G) Recommendations

On the basis of the observations, analysis and the viewpoints expressed during the round tables, the ROJ then formulates concrete recommendations for the political decision-makers. These recommendations will aim at the effective application of international standards in the administration of justice by strengthening the legal processes and through legislative reforms, if necessary, in order to put a stop to some forms of recurrent violations of fundamental rights and liberties.

The observations are restituted through the drafting of reports which focus on the data and the analyses on the state of Tunisian justice during the transitional period as well as the recommendations.

3) State of progress of the ROJ project

The project so far has been favourably received by the key stakeholders and by the authorities who have shown themselves receptive to a dialogue and willing to participate. Meetings have taken place with the Ministry of Justice, the Ministry of Human Rights and Transitional Justice as well as with the organisations of magistrates and those acting in the defence of human rights in order to explain the ROJ's objectives and methodology. The project has been favourably received on the whole and the key stakeholders have shown themselves to be open to exchanges and to collaboration.

The network has already 89 trial observers and 159 justice administration malfunctioning observers which clearly indicates the interest of the sector's professionals.

A number of stakeholders from the Tunisian civil society have expressed their interest in actively collaborating after the round table. So far the ROJ has received 4 signed collaboration documents, 7 more will be signed shortly and discussions are underway with about twenty organisations.

Finally international NGOs active in the domain of human rights in Tunisia such as ACAT, OMCT and RSF... see in the ROJ a project which provides a possibility of contributing towards the setting up of a reliable database which could also be useful for their own fields of activity. These organisations are ready to collaborate with the ROJ.

The trial monitoring as such started in October 2012, and the justice administration malfunctioning started at the end of November 2012. The data entry started in December.

The number of trials monitored and the forms received so far do not make it possible to draw any conclusions or to make an in-depth analysis and this is something that will have to wait whilst waiting for the next reports to come in. Nevertheless, the project's state of progress and the results from the first activities are already worthy of interest.

Training sessions

- 4 training sessions on trial monitoring have been completed
- 8 training sessions on justice administration malfunctioning monitoring have been completed.

These training sessions have thus trained **89** trial observers and **159** justice administration malfunctioning observers.

The ROJ has defined the ideal number of observers⁹ required for each tribunal in view of the average number of court cases being dealt with. The list below indicates the distribution of the observers per governorate and specifies the objectives, the actual number of observers at the end of December and the number of observers to be recruited.

Town	Objectives		Numbers		To be recruited	
	Trial	Malfctng.	Trial	Malfctng.	Trial	Malfctng.
Tunis	23	58	30	76	0	0
Grombalia	3	8	2	0	1	8
Nabeul	5	12	3	2	2	10
Bizerte	5	12	4	4	1	8

⁹ The number of observers to be recruited can be adapted in line with the project's evolution.

Beja	3	8	0	1	3	7
Kef	7	18	3	2	3	16
Jendouba	3	8	3	5	3	3
Siliana	3	8	0	0	3	8
Gabes	5	12	4	9	1	3
Kairouan	4	10	3	6	1	4
Kebilli	3	5	3	0	0	5
Mahdia	4	10	4	2	0	8
Sousse	9	24	8	16	1	8
Gafsa	5	12	5	14	0	2
Monastir	4	10	2	2	2	8
Medenine	5	12	2	5	3	7
Tataouine	4	10	0	3	4	7
Tozeur	4	10	2	0	2	10
Sidi Bouzid	4	10	2	0	2	10
Kasserine	4	10	0	0	4	10
Sfax	11	27	9	12	2	15
Total	118	294	89	159	38	157

Monitoring

- Trial monitoring

The lists of the trials monitored and of the trial observers now make it possible to provide the following information :

Since October 2012:

- a total number of **25 different trials** have already been monitored (2 in Gabes, 2 in Kef, 1 in Medine, 1 in Monastir, 4 in Sfax and 15 in Tunis).
- Out of this total number of 25 trials, 34 hearings have been monitored.
- Out of 19 trials being monitored, one or two hearings have been monitored/observed and the trial has been postponed.
- 5 trials are now over and have been monitored during one or several hearings.
- 10 trials have been monitored in the 1st instance tribunal, 13 in military tribunals and 2 at the court of appeal.
- The types of trials monitored are in connection with the martyrs and the wounded of the revolution, fundamental freedoms and torture.
- As for the 34 hearings monitored, 28 reports have been received and 6 are still pending.

- Monitoring of justice administration malfunctioning:

As for the justice administration malfunctioning, 2 observation forms have been received and 11 are being prepared (2 in Tunis, 5 in Gafsa, 1 in Tozeur and 3 in Bizerte). The low number of reports is due to the slower start up of this monitoring mechanism and there is also an operational reason as the form had been finalized only in mid-November so that the activities started much later. Another reason is linked to the mechanism itself which necessitates a proactive attitude from the observers which makes the output of this observation activity more random.

Annex 1 : Documentation

This report is drafted on the basis of the following documents:

- The trial monitoring process
- The justice administration malfunctioning monitoring process
- The trial monitoring report format
- The justice administration malfunctioning monitoring report format
- The database
- The network's charter
- The agreement protocol between the partners
- The conclusions of the round table
- The agendas and the reports of the executive committee's meetings
- The Concept Note
- The terms of reference of the executive committee, the evaluation forms of the training sessions
- The observer's mandate
- The project description file
- The procedure of the classification system.

Annex 2: Charter of the monitoring network of justice during the transition

The Monitoring Network is guided by the principles of Independence, Transparency, Openness and promotion of a constructive dialogue as well as Non-Discrimination as defined hereafter.

The members of the executive committee and the network's observers pledge to respect these principles in their activities in connection with the Monitoring Network.

- Independence

In order to contribute towards monitoring/observing the establishment of an independent, impartial and accessible justice which guarantees the fundamental rights and liberties of all the citizens (with no discrimination whatsoever) and in conformity with the international standards of independence and justice, the Monitoring Network is independent of any political power and never determines its action because of partisan or religious considerations. The Monitoring Network makes recommendations for the decision-makers but retains its neutrality, independence and impartiality.

- Transparency

The Monitoring Network defends the right to a fair and transparent trial and believes that transparency is one of the essential conditions for the construction of a State of Law guaranteeing the fundamental rights and liberties of all the citizens. It thus pledges to act with due transparency and rigorousness especially in terms of data verification and analysis pertaining to the monitoring of the administration of justice and strategic decision-making.

- Openness and the promotion of a constructive dialogue

In contexts of transition as in the case of Tunisia today, an inclusive and constructive dialogue and taking into account the opinions of others no matter what the political or religious opinions may be, is today more than ever indispensable in order to contribute to the construction of a democratic regime which respects the State of Law. The Monitoring Network's stakeholders, even though they come from different professional domains with diverse opinions and beliefs, all converge around a common objective, the establishment of an independent, impartial and accessible justice which guarantees the fundamental rights and liberties of all the citizens. Together they pledge to create and preserve the conditions for a constructive and proactive dialogue to achieve this common objective which transcends their divergences.

- Non – Discrimination

The Monitoring Network strives for the respect of human rights which are inalienable, indivisible and applicable to all, without any distinction of sex, origins, religion or opinion. Every person has the right to be heard fairly, equitably and publicly in a competent, independent and impartial tribunal established in accordance with the law. The Monitoring Network, in its action, refuses any discrimination of race, sex, origins, religion, opinion or class.

Annex 3 : International standards

FILE 2

The right to equality before the law and before the courts and tribunals.

The Principle

Everyone is equal before the law. The right to equality before the law means that the laws must not be discriminatory. It also means that the judges and the representatives of the State must not act in a discriminatory manner when they apply or have the law applied. This fundamental right condemns discrimination in the legislation and also in practice, in all domains covered and protected by the public authorities.

This principle applies :

- to access to justice
- to treatment by justice

LEGAL BASIS

Tunisian Law

Article 6 of the Constitution

« All citizens have the same rights and obligations. They are equal before the law. ».

Standards

Article 2 (1) of the International Covenant on Civil and Political Rights.

«The States Parties to the present Covenant pledge to respect and to guarantee for everyone in their territory and covered by their sphere of competence, all the rights recognized in the present covenant, with no distinction whatsoever of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. »

Article 26 of the International Covenant on Civil and Political Rights.

«All persons are equal before the law and have a right to equal protection by the law without any discrimination. The law must forbid any discrimination and guarantee for all persons equal and effective protection against all discrimination, of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status.»

Article 2 of the African Charter of Human and Peoples' Rights

« Every person has the right to enjoy the rights and liberties recognized and guaranteed in the present Charter without any distinction whatsoever, of race, ethnic group, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status.»

Article 3 (1) and (2) of the African Charter of Human and Peoples' Rights

« All persons are completely equal before the law. »
« All persons have a right to equal protection by the law. »

APPLICATION

The right to equal treatment by the courts and tribunals involves :

- the principle of equality of arms¹⁰;

- The right to the same treatment as the other accused or defendants in a similar situation, meaning without any discriminatory motive on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status. However, equal treatment does not mean identical treatment: each defendant has the right for his case to be treated individually, depending on the specificities of his file, even if his case is in a dossier involving other defendants.

JURISPRUDENCE

The guarantee of equality provided for by the ICCPR (International Covenant on Civil and Political Rights) stipulates that the States should see to it that men and women, but in general all individuals, without any discrimination, have equal access to all the civil and political rights protected by the ICCPR.

This principle does not make all the differences in treatment discriminatory. Are discriminatory only those treatments which do not comply with reasonable and objective criteria¹¹. This principle applies to foreign nationals authorized to enter the territory of a State which is a Party to the Covenant.¹²

¹⁰ See File 3: The Principle of equality of arms

¹¹ Cf. CDH, S.W.M. *Broeks c. Pays-Bas*, Communication 172/1984, 9 avril 1987, Vol. Disponible à <http://www1.umn.edu/humanrts/undocs/session42/172-1984.htm>; aussi, *Zwaan-de Vries c. Pays-Bas* Communication No. 182/1984, 9 avril 1987, <http://www1.umn.edu/humanrts/undocs/session42/182-1984.htm>.

¹² CDH, Observation Générale No 15, paras. 6 et 7.

Annex 4 : Observer's Mandate

Tunis on : /...../.....

OBSERVER'S MANDATE

Between the principal :.....

Status :.....

AND

The authorized person : Name First Name :.....

ID :.....

Status :.....

Personal Address :.....

E-Mail:.....

Telephone :.....

Mission's objectives and deliverables:

Objectives: The mission's objective is to observe the hearings of the trial from the date of the mandate, with full independence and neutrality (see details below). To ensure that the observation /monitoring is as complete as possible, the observer is to attend all the hearings of the trial, have discussions with the different parties to the dispute, consult the indictment file (in agreement with the lawyers involved in the case) and to monitor the judgment so as to gather the maximum of information.

Deliverables: The observer must send in a duly filled out report (in line with the ROJ format) to the ROJ coordination team on each hearing observed/monitored within 5 days after the date of the hearing either by email or fax.

The observer must also send in his/her final report (in line with the ROJ format) on the trial together with a detailed analysis and his conclusions within 7 days after the date of the last hearing.

Authorized person's Code of Conduct

The observer pledges to respect the following principles :

- Objectivity and honesty: the observer must observe things as he sees them and not according to his own personal convictions or expectations and fill in the form according to what he has really noted during the observation.
- Impartiality and neutrality : the observer must not take sides no matter what the circumstances of the case are and declares that he has no conflict of interest with the case to be observed/monitored (he has no professional or family ties with any of the parties of the trials).

- Spirit of initiative : the observer must use his ingenuity to obtain the information. However, he must never use means which could compromise him or compromise the ROJ (e.g. like buying the information).
- The principle of discretion : the observer must remain discrete within the framework of the procedures and not impede the smooth working of justice.

The observer cannot talk on behalf of or represent the ROJ within the framework of his function as observer. Any press interview on behalf of the ROJ is FORBIDDEN.

The observer must inform the ROJ team if for some reason he is prevented from attending a hearing of a trial for which he has been mandated at least 48H in advance so that the coordination team may make suitable arrangements.

Description of the trial to be observed/monitored :

Case No.

The tribunal :

The date of the 1st hearing :

The date of the 1st hearing to be observed/monitored :

A brief description of the facts :

Contacts of lawyers or associations involved in the case :

Mission Location :

Mission Costs :

Mission costs will be between 100 and 200 Dinars and will be estimated once the observer's reports have been validated by the executive committee at the end of the mission.

Any unjustifiable delay in submitting the reports, any absenteeism not notified within a minimum of 48H, any breach of the code of conduct or any report submitted with an obvious lack of seriousness could lead to the non validation of the reports by the ROJ executive committee.

Mission costs include transport costs between the office and the tribunal, communication costs, photocopies and any catering costs incurred within the framework of the mission.

No. of hearing	Allowance amount due in TD at the end of the mission.
≤2	100
≤4	150
>4	200

Signature of the principal

Signature of Authorized Mandated Person :

Annex 5 : Criminal Trial Observation Form

CRIMINAL TRIAL OBSERVATION FORM

ROJ Reference: _____

Type of court : _____

1 Name & first name of Observer : _____

2 Case N°: _____

3 Tribunal dealing with the case (town) : _____

4 Degree of jurisdiction : 1st instance (Magistrates') Appeal

5 Court dealing with the case : _____

6 Date of beginning of trial observation/monitoring : _____

7 Date of first hearing : _____

8 No. of the hearing : _____

9 Starting time of hearing : __h__

10 Time of hearing : From __h__ TO __h__

11 Type of court case : Criminal Civil Criminal Military

12 Legal basis for prosecution (Articles of criminal code/Other) : _____

13 Situation of defendant: Number __ Under arrest Number __ Free

		Parties involved in the case												
		Sex		In capacity of							Age			
		M	F	Funct.	Military	Syndic	Journalist	Police	Political	Rep.P.MO	Other	Maj.	Minor	
14	Private (civil) parties													
15	Defendant (s)													

		Officially appointed	
		Yes	No
16	Lawyer (s) of the civil party		
17	Lawyer(s) Defendant (s)		

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- NB:** 1-Indicate the source of information in the 4th column to the right :the family, the defendant, defendant's lawyer, victim, victim's lawyer, official documents.
2-Put X in the 1st column if you don't have the information (N.info)
3-Put X in the 2nd column if hypothesis is not applicable (N.app)
4-Answer Yes/No if hypothesis is applicable (Put X in corresponding column)
5-To be observed are all lawyers/defendants/victims involved in the case.

	N.info	N. app	Yes	No	S. of info
18	Access right to a lawyer				
19	The lawyer/all lawyers had enough time to visit the defendant before the hearing.				
20	The lawyer/all lawyers had all the necessary facilities to visit the defendant before the hearing.				
21	Specify				
22	Lawyer's/all lawyers' authorization to visit the defendant has been accepted by the judge				
23	One of the defendants did not have a lawyer & the judge immediately designated one for him.				
24	One of the defendants did not have a lawyer & the judge postponed the hearing so that the bar association could designate one for him.				
25	The penitentiary administration refused the lawyer's right to visit despite the judge's authorization.				
26	Treatment of the defendant(s) in the jails of the tribunals				
27	One of the prisoners had been ill-treated physically or verbally by the surveillance staff.				
28	Describe :				
29	One of the defendants had been physically ill-treated by the co-prisoners.				
30	Describe:				
31	The judge made provisions for specific equipment so that one of the sick defendants could attend the hearing.				
32	Describe:				
33	The behaviour of the police in the tribunal				
34	A family member of one of the victims had been aggressed verb. or phy. by the police in/in front of the courtroom.				
35	A family member of one of the defendants had been aggressed verb. or phy. by the police in/in front of the courtroom.				
36	The lawyer of one of the victims had been aggressed verb. and/or phys. by the police in the courtroom.				
37	The lawyer of one of the defendants had been aggressed verb. and/or phys. by the police in the courtroom.				

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	N.info	N. app	Yes	No	S. of Info
38	Publicity about the hearing				
39	It's a public trial				
40	The judge evacuated the court completely/partially				
41	The written press was able to attend the hearing				
42	The written press was able to take down notes				
43	Photographers were able to attend the hearing				
44	Photographers were able to take photos				
45	TV press was able to attend the hearing				
46	TV press was able to film inside the courtroom				
47	The right to an impartial tribunal				
48	The judge has links with one of the victims				
49	Specify				
50	The judge has links with the lawyer of one of the victims				
51	Specify				
52	The judge has links with one of the defendants				
53	Specify				
54	The judge has links with the lawyer of one of the defendants				
55	Specify				
56	A request to challenge was submitted by one of the victims or his lawyer.				
57	A request to challenge was submitted by one of the defendants or his lawyer				
58	Treatment of the victim during the hearing				
59	The judge treated one of the victims in a humiliating manner				
60	Describe:				
61	The judge refused to listen to one of the victims				
62	The judge asked for one of the victims to be removed from the courtroom				
63	The reason :				
64	The police removed one of the victims from the courtroom by force at the judge's request				
65	The judge ordered one of the victims to be arrested during the hearing				
66	Other (Specify)				
67	Treatment of the defendant during the hearing				
68	The judge treated one of the defendants in a humiliating manner				
69	Describe:				
70	The judge exaggerated the seriousness of the facts				
71	The judge refused to listen to one of the defendants				
72	The judge asked for one of the defendants to be removed from the courtroom				
73	The reason :				

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	N.info	N. app	Yes	No	S. of Info
74 The police removed one of the defendants from the courtroom by force at the judge's order					
75 The judge ordered the arrest of one of the free defendants during the hearing					
76 Others (specify):					
77 Treatment of the lawyer during the hearing					
78 The judge treated the lawyer of one of the victims in a humiliating manner					
79 Describe :					
80 The judge treated the lawyer of one of the defendants in a humiliating manner					
81 Describe :					
82 Others (specify):					
83 Respecting the principle of the equality of arms					
84 The victim/all victims were able to express themselves freely					
85 One of the victims who does not speak Arabic was entitled to an interpreter					
86 The defendant/all defendants were informed of the nature and reasons for the indictment					
87 The defendant/all defendants were able to express themselves freely					
88 One of the defendants who does not speak Arabic was entitled to an interpreter					
89 The victim's (s) lawyer was able to express himself freely					
90 The lawyer/all lawyers of the victim(s) submitted their conclusions					
91 The lawyer(s) of the victim(s) were able to get a copy of the dossier before the hearing.					
92 All lawyer(s) of the victim(s) received copies of the documents submitted by the opponent					
93 The lawyer(s) of the defendant(s) were able to express themselves freely					
94 The lawyer (s) of the defendant(s) were able to submit their conclusions					
95 The lawyer(s) of the defendant(s) were able to obtain a copy of the dossier before the hearing					
96 The lawyer(s) of the defendant(s) received a copy of the documents submitted by the opponent					
97 The prosecutor was able to express himself freely					
98 The prosecutor received a copy of the documents submitted by one of the parties					
99 The requests of all the lawyers of the victim(s) are accepted by the judge					
a Hear the witnesses					

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		N.info	N. app	Yes	No	S. of Info
b	To question the witnesses					
c	Medical checkup					
d	Expertise					
e	Court Appearance of defendant					
f	Confrontation					
g	Provisional release					
h	Hearing postponed					
i	Others (specify)					
100	The requests of all the lawyers of the defendant(s) are accepted by the judge					
a	Hear the witnesses					
b	To question the witnesses					
c	Medical checkup					
d	Expertise					
e	Court appearance of the defendant					
f	Confrontation					
g	Provisional release					
h	Hearing postponed					
i	Others (specify)					
101	The prosecutor's requests are accepted by the judge					
a	Hear the witnesses					
b	To question the witnesses					
c	Medical checkup					
d	Expertise					
e	Appearance of defendant					
f	Confrontation					
g	Provisional release					
h	Hearing postponed					
i	Others (specify)					
102	The judge refused the requests of the lawyer(s) of one of the victims during the hearing					
103	The judge did not give the reasons for refusing the requests of the lawyer(s) of one of the victims					
104	The judge refused the requests of the lawyer(s) of one of the defendants during the hearing					
105	The judge did not give the reasons for refusing the requests of the lawyer(s) of one of the defendants					
106	The judge refused the prosecutor's requests during the hearing					
107	The judge did not give any reason for refusing the prosecutor's requests					
108	Intervention of the victim(s) counsel during the hearing					
109	All lawyers were able to plead during the hearing					
110	All lawyers of the victim(s) were able to plead on public action					
111	All lawyers questioned the victim(s)					
112	All lawyers questioned the defendant(s)					

Monitoring Network of Tunisian Justice during the transition
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	N.info	N. app	Yes	No	S. of Info
113	All the lawyers developed a closing speech based on the rules as defined by law and according to the prosecutor's indictment				
114	All the lawyers developed a closing speech based on the facts of the case and according to the prosecutor's indictment				
115	Intervention of the defendant(s) counsel during the hearing				
116	All lawyers pleaded during the hearing				
117	All the lawyers questioned the victim(s)				
118	All the lawyers questioned the defendant(s)				
119	All the lawyers developed a closing speech based on the rules as defined by law and according to the prosecutor's final submission				
120	All the lawyers developed a closing speech based on the rules as defined by law and according to the prosecutor's final submission				
121	The prosecutor's intervention during the hearing				
122	The prosecutor pleaded during the hearing				
123	The prosecutor questioned the victim (s)				
124	The prosecutor questioned the defendant(s)				
125	The prosecutor questioned the witness(es)				
126	The prosecutor made a written final submission				
127	The prosecutor made an oral final submission				
128	Presentation of exculpatory and incriminatory documents documents during the hearing				
129	Incriminatory evidence was submitted during the hearing				
130	Specify which				
131	Documents/evidence seized were submitted during the hearing				
132	The/all victim(s) or their lawyer(s) discussed the documents/evidence submitted				
133	The defendant(s) or their lawyer(s) discussed the documents/evidence submitted				
134	The prosecutor discussed the documents/evidence submitted				
135	Deliberation of the Court				
136	Deliberation took place in the courtroom				
137	Deliberation took place immediately after the hearing				
138	Deliberation took place after the hearing				
139	Specify				
140	Judgment				
141	Judgment is passed at the hearing				
142	Judgment is passed in the presence of the /all the defendants				

Monitoring Network of Tunisian Justice during the transition
Report N°1, December 2012

	N.info	N. app	Yes	No	S. of Info
143 Judgment is passed by a duly composed tribunal					
144 Passing the judgment is postponed to a later hearing					
145 Judgment is made at the scheduled date					
146 The date for pronouncing the judgment leaves a reasonable amount of time for appealing/quashing the sentence					
147 the lawyer was informed of the day of issuance of the judgement on the forecasted date					
148 Personalisation of punishment					
149 The judge granted the defendant(s) attenuating circumstances					
150 Specify :					
151 The death sentence is declared on the defendant(s)					

Narrative Report	
152	Presentation of facts (introduction and observation/monitoring context) _____ _____ _____
153	Observer's general impression of the court case _____ _____ _____
154	Observer's opinion of the decision made and his recommendations _____ _____ _____
155	Was there any difference in treatment between the victims and/or the defendants and/or the _____ _____ _____
	Observer's Signature

CRIMINAL TRIAL OBSERVATION FORM
Observer's Signature

Annex 6 : Dysfunction monitoring form in the administration of criminal justice (from the complaint to the judgment)

Justice administration malfunctioning form
INFORMATION TRANSMITTED BY THE OBSERVER :

AS LAWYER FOR THE VICTIM(s)
 AS LAWYER FOR THE DEFENDANT(s)
 AS REPRESENTATIVE OF AN ASSOCIATION
Name of the association :
 AFTER DISCUSSION WITH THE LAWYER OF THE VICTIM(s) :
Name and first name of lawyer :
 AFTER DISCUSSION WITH THE LAWYER OF THE DEFENDANT(s)
Nom et Prénom de l'avocat :
 Name and first name of lawyer :
 AFTER DISCUSSION WITH THE FAMILY OF :

Observer's name :

ID N°:

Observer's status :

TEL. N°:.....

Date of drafting of report :...../...../..... ..

Date of reported event :/...../.....

Reference of criminal dossier : Complaint N° :..... / Police report N°..... /

Decision to close preliminary investigation N° : / Case N°

Tribunal dealing with the case : Town

Degree of jurisdiction : 1st degree 2nd degree

Nature of dispute : criminal civil criminal military

Nature of facts judged (qualification of facts or legal grounds) :

.....
.....

Who made the arrest ?

National Guard Criminal Investigation Dept. Military

In a place: Public Private which: What time:.....

Sex of defendant : Male Female

Age of defendant :..... years

Sex of victim : Male Female

Age of victim :..... years

NB: the observer should tick only the boxes where the information is verified

Observer's Signature

FILE 1 : Criminal complaints

A complaint was lodged with the public prosecutor on / / 20..., but it was not transmitted to the Criminal Investigation Dept. until / / 20... even though the plaintiff had identified the author of the charges. Reasons for the absence of due diligence ?

.....

A complaint was lodged with the public prosecutor on / / 20... and was transmitted to the Criminal Investigation Dept. on / / 20... but was not followed up with due diligence even though the plaintiff had identified the author of the charges. Reasons for the absence of due diligence?

.....

A complaint was lodged with the public prosecutor on / / 20... and was transferred to the Criminal Investigation Dept. on / / 20.... and sent back to the public prosecutor on / / 20... but no decision was made by the prosecutor. Reasons for the absence of due diligence?.....

.....

A complaint for ill-treatment and/or torture during the arrest, police custody or detention was lodged by the defendant with the public prosecutor but was not followed by any due diligence since the date of / / 20....Reasons for the absence of due diligence ?

.....

A complaint for ill-treatment and/or torture during the arrest, police custody or detention was lodged by the defendant with the Criminal Investigation Dept. and was transmitted to the public prosecutor but was not followed by any due diligence since the date of / / 20....Reasons for the absence of due diligence ?

.....

A complaint for ill-treatment and/or torture during the arrest, police custody or detention was lodged by the defendant with the Criminal Investigation Dept. and was not transmitted to the public prosecutor. Reasons for the absence of due diligence?

.....

Other malfunctioning – Criminal complaints

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Observer's Signature

FILE II : Preliminary investigation

1/ Arrest

Conditions of arrest (cf.(Book) Livre I Chap I CPC)

In case of flagrancy

- The Criminal Investigation Dept. did not inform the public prosecutor (art13 CPC)
- The Criminal Investigation Dept. resorted to violence during the arrest.

Specify :

In case of absence of flagrancy

- The Criminal Investigation Dept. had no Rogatory commission to make the arrest (art 11CPC)
- The Criminal Investigation Dept. entered a house outside the legal hours (between 06h and 20h - art. 95CPC)

Specify :.....H.....

- The Criminal Investigation Dept. entered a house outside the legal hours (between 06h and 20h - art. 95CPC) without the rogatory commission of the investigative judge . Specify :.....H.....

- The Criminal Investigation Dept. resorted to violence during the arrest .

Specify :

- Persons not part of the Criminal Investigation Dept. participated in arresting the defendant and handing him over to the Criminal Investigation Dept :

:

- During the arrest, the arrested person was ill-treated by a person who is not part of the Criminal investigation dept :

Specify :

Other malfunctioning - arrest

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Observer's Signature

2/ Police Custody

- The legal police custody periods were exceeded (3 to 6 days max) :
Date and time of beginning of police custody
- Date and time of end of police custody
- The public prosecutor was not informed of the police custody
- The investigative judge extended the police custody without his decision being based on legal grounds or facts.
- The defendant has not been notified of the extension of the duration of the custody

The police custody report does not mention ...

- The notification to the person in police custody of the measures taken against him and the reasons why
- Reading out the guarantees as provided for by law for the person in police custody (medical checkup)
- Notification of the family of the person in police custody
- The request of the person in police custody to have a medical checkup
- The request of the family of the person in police custody to have a medical checkup
- The day and hour of the beginning and end of the police custody
- The day and hour of the beginning and end of the interrogation
- The signature of the police officer of the criminal investigation dept.
- The signature of the person in police custody
- Mentioning the refusal to sign by the person in police custody and the reasons why
- The defendant put his fingerprint at the custody report instead of signing although he can read and write
- The defendant put his fingerprint at the end of the custody instead of signing although he can read and write
- The police custody report has been falsified in connection with one of the above indicated mentions. Specify which:
 - The person in police custody declared that s/he did not know the measures taken against him/her and the reasons why
 - The person in police custody declared that his/her rights had not been read out to him/her as provided for by law
 - The family of the person in police custody declared that no notification was given
 - The person in police custody declared that s/he has requested a medical checkup
 - The family of the person in police custody declared that s/he asked to have a medical checkup
 - Day and hour of the beginning and end of the police custody
 - Day and hour of the beginning and end of the interrogation
 - Signature of the person in police custody
 - Mentioning the refusal of the person in police custody to sign and reasons why

The rights of the defence during the interrogation on the basis of the rogatory commission by the criminal investigation dept. (art 57 & 69 CPC)

- The defendant who does not speak Arabic was interrogated in the absence of a professional interpreter
- The defendant was interrogated in the absence of a lawyer
- The lawyer has not been informed of his client's interrogation date
- The criminal investigation dept. has not verified the evidence for release indicated by the defendant
- The criminal investigation dept. did not read out the report for the defendant before signing.
- The criminal investigation dept. obliged the defendant to sign
- The defendant put down his finger print on the report instead of signing it despite the fact that he can read and write.

The right to investigation incriminating and exonerating circumstances

During the confrontation or recognition of the defendant by the victim :

- The defendant is placed between some non-uniformed police officers to be identified by the victim
- The police presented the defendant to the victim as being the person responsible for the charges against him
- The defendants had not been confronted with each other
- The defendant has not been confronted with the witnesses for being detained and for release
- The criminal investigation dept. had influenced the way the confrontation was conducted
- Specify :
- The police did not accept charging or discharging pieces of information that may influence the decision of the file
- The criminal investigation dept. refused the defendant's request to have an evaluation/appraisal carried out
- Specify :
- The criminal investigation dept. refused the defendant's request to redo the appraisal
- Specify.....

The right to dignity and human treatment (UDHR, APCPR, ICCPR)

- The defendant was subjected to violence by other persons in police custody
- The defendant was subjected to violence by police officers from the criminal investigation dept.
- The defendant was subjected to other physical punishments
- Specify :
- The defendant was harassed during the arrest or detention.
- The defendant was threatened by officers from the criminal investigation dept.
- The defendant's physical integrity was violated during the arrest or detention but there are no traces on the body.
- There was violation of the defendant's physical integrity during the arrest or detention but there are no traces of it on his/her body
- There was violation of the defendant's physical integrity during the arrest or detention and there are traces of it on his/her body

Other malfunctioning – police custody

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Observer's Signature

FILE III : Preventive detention

- The investigative judge decided on preventive detention without having heard the accused during the interrogation (offence)
- The investigative judge decided on preventive detention without having heard the accused during the interrogation (art 80CPC)

The right to have access to a lawyer during the preventive detention (art 70 cpc)

<input type="checkbox"/> The lawyer systematically waits for several hours at the detention centre before having access to his client. Specify:.....
<input type="checkbox"/> The penitentiary administration refused the lawyer's right to visit despite his authorisation to do so. Indicate the reason :
<input type="checkbox"/> The lawyer was monitored or bugged during his visits Specify:.....

The situation of the defendant in prison

<input type="checkbox"/> The defendant is held in a cell with convicted persons
<input type="checkbox"/> The defendant is not being allowed to exercise his visit rights or they are being restricted with: <input type="checkbox"/> His family. Specify
<input type="checkbox"/> Others. Specify :.....
<input type="checkbox"/> The defendant was held in a prison far from his/her place of residence Specify: Place of the prison.....Place of residence.....
<input type="checkbox"/> The defendant has no access to necessities such as : <input type="checkbox"/> medication <input type="checkbox"/> clothes <input type="checkbox"/> media <input type="checkbox"/> television/radio <input type="checkbox"/> Others. Specify
<input type="checkbox"/> The defendant has access to a showertimes per month.
<input type="checkbox"/> The defendant was not able to exercise his right to a doctor
<input type="checkbox"/> The defendant has no access to adequate food (at least one meal per day)
<input type="checkbox"/> The size /space in the cell is inadequate for the number of co-prisoners (overcrowding) Specify :

The right to freedom (art 85CPC) :

<input type="checkbox"/> The duration of preventive detention was exceeded (14 months for crimes and 9 months for offences) Specify: Date of detention:..... Duration of excessive period days
<input type="checkbox"/> The investigative judge decided to extend the preventive detention without giving grounds for his/her order
<input type="checkbox"/> The indictment division sent the case to the investigative judge to undertake the necessary acts and this led to exceeding the legal duration of preventive detention.
<input type="checkbox"/> A request for the provisional release of the defendant had been submitted since over four days and the examining magistrate has still not made a decision about the request.
<input type="checkbox"/> The examining magistrate refuses the defendant's provisional release who has his fixed abode in Tunisia and who has never been condemned to a sentence of over 3 months in prison , after 5 days of interrogation and despite the fact that the max. punishment provided for by law does not exceed 1 year. (Article 85.5 of the CPC).

The right to dignity and human treatment (UDHR, APCPR, ICCPR)

The accused was ill-treated physically during his preventive detention ...
<input type="checkbox"/> The defendant was subjected to violence by his co-prisoners
<input type="checkbox"/> The defendant was subjected to violence by the surveillance staff
<input type="checkbox"/> The defendant was subjected to corporal punishment . Specify:
<input type="checkbox"/> The defendant was harassed during the detention. Specify:.....
<input type="checkbox"/> The defendant was threatened by the surveillance staff. Specify:.....

- The defendant was placed in isolation for a period of
- the defendant's physical integrity had been violated during the preventive detention but there are no traces of it on the body
- The defendant's physical integrity had been violated during the preventive detention and there are traces of it on the body .

Other malfunctioning - preventive detention

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Observer's Signature

FILE IV : Investigation

The right to access a lawyer with the first appearance before the examining magistrate (art 72 CPC)

- The investigative judge did not inform the defendant of his/her right to a lawyer
- The investigative judge refused the accused his/her right to call a lawyer
- No court ordered-lawyer was appointed to defend the defendant even though it's a criminal case.
- The defendant who does not speak Arabic did not have access to a professional translator in the course of the investigation
- No court-ordered lawyer was appointed even though the accused is prosecuted for a crime and asked for a lawyer to be appointed for him.
- The defendant's lawyer had not been informed of the date and place of the hearing of his client.
- The defendant's lawyer did not have access to all the file's elements up to 24H before the interrogation.
- The interrogation report does not mention the lawyer's pleadings.
- The investigative judge violated the principle of the investigation secret by receiving during the interrogation persons who were not any of the parties involved in the case.
- The investigative judge refused to acknowledge the obvious traces of torture on the defendant's body.
- The defendant's lawyer did not ask to attend the confrontation between the defendant and the other accused.
- The investigative judge refused the request of the defendant's lawyer to attend the confrontation between the defendant and the other accused.
- The defendant's lawyer did not ask to attend the confrontation between the defendant and the victim.
- The investigative judge refused the request of the defendant's lawyer to attend the confrontation between the defendant and the victim.
- The investigative judge accepted the request of the defendant's lawyer to attend the confrontation between the defendant and the victim.
- The defendant's lawyer did not ask to attend the hearing of the witnesses.
- The investigative judge refused the request of the defendant's lawyer to attend the hearing of the witnesses.
- The investigative judge accepted the request of the defendant's lawyer to attend the hearing of the witnesses.

Due diligence by the investigative judge :

- The accused is free and has not received a summons from the notary public or through the administration to be interrogated by the investigative judge (art 68CPC).
Specify :
- The investigation was opened on / /20... and since then no investigation act was carried out.
- The investigation was opened on / /20... and closed on / /20...and no measure of enquiry was made.
- The investigation was closed after a period of with no measure of enquiry except the hearing of the victim and/or the defendant.
- The investigation was closed on/...../20... and the last measure of enquiry was made on/...../2013...
- The investigation was closed without the hearing of the victim
- The investigation is closed but the decision for the end of the investigation has not been notified for :
- The investigative judge has not yet decided to close the investigation despite the end of the legal maximum period of preventive detention.
- The defendant/his lawyer did not receive a copy of the report of the end of the investigation despite their request.
- The defendant had been informed of the end of the investigation but not his lawyer.

The rights of the accused to a charged or discharged investigation (art. 50 & next CPC)

- The investigation is based only on the defendant's declarations
- The investigative judge did not undertake the necessary acts of investigation.
Specify :
- The investigative judge refused to carry out acts of investigation which had been requested without giving any reason.
Specify :

The right to an independent tribunal (art 14(1) ICCPR) :

<input type="checkbox"/> Some individuals were outside the tribunal and demonstrated and threatened one party to the trial or the investigative judge. Specify :
<input type="checkbox"/> Some individuals entered the tribunal and publicly threatened one of the parties to the trial or the investigative judge. Specify :
<input type="checkbox"/> The police did not intervene to stop the trouble caused by some individuals during the investigation.
Others :

The qualification of facts by the investigative (criminal offence) :

<input type="checkbox"/> The defendant has not been informed of the transfer of his/her file to the 1st instance tribunal which prevented him to appeal in front of the accusation chamber
<input type="checkbox"/> The defendant's lawyer has not been informed of the transfer of his/her client's file to the 1st instance tribunal which prevented him to appeal in front of the accusation chamber

The right to dignity and human treatment (UDHR, APCPR, ICCPR)

<input type="checkbox"/> The accused was ill-treated during the investigation. Specify:
<input type="checkbox"/> The defendant appeared before the investigative judge handcuffed :

Other malfunctioning : the investigation

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Observer's Signature

FILE V : Indictment chamber

Rights of the defence

<input type="checkbox"/> The file is sent to the indictment chamber and the lawyer was not able to get a copy of the investigation's decision. <input type="checkbox"/> The victim's lawyer was not informed of the decision to end the investigation. <input type="checkbox"/> The lawyer of the accused was not informed of the decision to end the investigation. <input type="checkbox"/> The defendant's lawyer was not informed of the date of the hearing which will decide the transfer to the criminal division. <input type="checkbox"/> The defendant has not been informed of the date of the hearing which will decide the transfer to the criminal division. <input type="checkbox"/> The court of criminal appeal convened because of a request for release on parole and the defendant's lawyer had not been informed of the date of the hearing. <input type="checkbox"/> The indictment chamber convened because of a request for release on parole and the defendant was not informed of the date of the hearing. <input type="checkbox"/> The defendant's lawyer was not able to submit his conclusions. Specify: <input type="checkbox"/> The defendant's lawyer did not plead in front of the indictment chamber. Specify: <input type="checkbox"/> The victim's lawyer did not present his conclusions.

The right not to be detained arbitrarily

<input type="checkbox"/> The indictment chamber's decision does not include the legal qualification of the facts in connection with the charges (art 119 CPC).
--

The right to be tried within a reasonable period of time :

<input type="checkbox"/> The accused is in preventive detention and the indictment chamber only convened days/weeks after the end of the investigation. <input type="checkbox"/> The accused is free and the indictment chamber only convened..... days/weeks after the end of the investigation. Specify the reasons for this slow procedure. <input type="checkbox"/> The decisions of the indictment chamber have not been notified to the parties concerned (article 109). Specify:.....

Other malfunctioning - Indictment chamber

.....

Observer's Signature

FILE VI : The trial

The right to attend his own trial

- The summons procedures have not been respected (art. 134 & following CPC)
- The judgment is made in the absence of the accused who did not receive the summons for the trial.
- The judgment was made in the absence of the accused who received a summons but outside the legal timeline.

The right to a lawyer (art 69 CPC)

- The lawyer was not informed of the date of the hearing
- The court-ordered-lawyer was not designated during the 1st hearing.
- The court-ordered-lawyer was not designated by the Bar section
- The court-ordered-lawyer was not able to get a complete copy of the file.

The principle of the equality of arms

- The judge prevented a party to the trial from expressing himself freely. Specify:
- The judge refused to examine the evidence produced by the defence.
- The judge refused the lawyer's requests without giving any reasons for it.
Specify:
- The judge declared the accused as guilty even though the victim retracted and no further evidence had been produced.
- The judge declared the accused as guilty without checking the authenticity of the scientific/technical evidence despite the lawyer's request. Specify:
- The judgement was based only on the defendant's declarations
- The judgement was based only on the witnesses' declarations
- The judgement was based only on the technical/scientific evidences
- The judgement was based only on the police reports, even though it is about a crime

The right not to be victim of practices which impede the smooth running of justice

- One of the party involved in the case used practices that affect the smooth running of justice administration Specify:
Case of corruption :
- Other cases :

The right to be judged within a reasonable period of time

The accused is in preventive detention

- The accused is in preventive detention and the 1st hearing** took place after more than.....after the decision of the indictment chamber
- The investigation was completed on.....and the judgment was made on
- There werehearings .
-hearings were postponed at the judge's initiative.
-hearings were postponed at the request of the lawyer for the defence .
-hearings were postponed at the request of the victim's lawyer.
-hearings were postponed at the prosecutor's request.
- The hearing were postponedtimes to bring the defendant from the house arrest which is not the usual house arrest : Explain: :.....

The accused is free

- The accused is released** and the 1st hearing took place more than months after the date of the decision of the indictment chamber. Specify the reasons for this slow procedure

The right to an independent tribunal in view of the pressure of the street (art 14(1) IPCPR) :

- Some individuals were present outside the tribunal & demonstrated and threatened one party to the trial or the judges.
- Some individuals entered the courtroom and made public threats against one of the parties to the trial or the judges.
- Some individuals interrupted the hearing process.
- The police did not intervene to stop the trouble caused by some individuals in the course of the hearing.
- Others:.....

Ethics and good practices of law professionals

Lawyers

- The lawyer lacked respect towards : the magistrates his colleagues his client

Specify :

- The lawyer did not transmit his conclusions in good time to his colleagues
- The lawyer did not present his conclusions
- The lawyer did not plead
- The lawyer did not attend the hearing and did not delegate a colleague
- The lawyer did not visit his client during the preventive detention
- The officially appointed lawyer does not know the defendant or his family.
- The second lawyer handling the case did not inform his colleague initially assigned to the case

The Judges

- The presiding magistrate did not enforce discipline in the courtroom
 - The magistrate adjourned the hearing without giving any reason and without explaining the duration of adjourning the hearing
 - The magistrate lacked respect towards : the lawyers the defendant the victim
- Specify :
- The magistrate deliberated with his colleagues in the courtroom.
 - Judgment was made by one single judge without a collegial deliberation.

The right to dignity and human treatment (UDHR, APCPR, ICCP)

The defendant's ill-treatment was raised by the defence of the accused during the hearing but the judge considered that these facts were unfounded without verification.

Other Malfunctioning – trials

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Observer's Signature

FILE VII : judgment, sentence and execution of judgment

The right to an appropriate and proportional sentence

<input type="checkbox"/> The accused is condemned to death. <input type="checkbox"/> The accused was condemned for charges different from those which he was appearing in court for and he was deprived of the right to defend himself. <input type="checkbox"/> The accused did not benefit from any mitigating circumstances in spite of meeting the requirements Specify:.....
--

The right to publicity on the judgment by a duly composed tribunal and in the defendant's presence.

<input type="checkbox"/> Judgment is not pronounced in the courtroom. <input type="checkbox"/> Judgment is pronounced in the defendant's absence. <input type="checkbox"/> Judgment is pronounced by an irregularly composed tribunal. <input type="checkbox"/> The judge condemned the defendant despite the fact that the victim retracted and despite the absence of new evidence against him.
--

Crimes <input type="checkbox"/> The judgment reports are still not available 10 days later after the sentence was passed. (art 166cpc) <input type="checkbox"/> The judgment is not available within 24 hours after the judgment was made.

Offences <input type="checkbox"/> The judgment concerns an offence with the constitution of a civil party and a copy of the judgment is not available 10 days after the judgment is made. <input type="checkbox"/> One of the parties lodged an appeal against the judgment and the copy of the judgment is not available before the first appeal hearing, <input type="checkbox"/> One of the parties lodged an appeal against the judgment and the file is not available at the first appeal hearing. <input type="checkbox"/> One of the parties lodged an appeal against the judgment and the appeal hearing has been postponedtimes to get hold of the file.
--

The right to a written and motivated judgment (art 168 CPC)

<input type="checkbox"/> The judgment does not respond to all the arguments raised by the victim's defence. <input type="checkbox"/> The judgment does not respond to all the arguments raised by the defendant's defence. <input type="checkbox"/> The judgment is not based on motivated facts <input type="checkbox"/> The judgment does not indicate the legal motivation <input type="checkbox"/> The judgment was made only on the basis of the confession of the accused. <input type="checkbox"/> The judgment was made only on the basis of the testimonies. <input type="checkbox"/> The judgment was not made on the basis of scientific/technical evidence. <input type="checkbox"/> The judgment was made only on the basis of the report of the criminal investigation dept. whereas this is a criminal case .

Execution of criminal judgment <input type="checkbox"/> Le The judge responsible for the enforcement of the sentence did not grant release on parole even though the defendant complies with the criteria as provided for by law (art. 353, 354, 355 CPC). Specify the reasons ?..... <input type="checkbox"/> The judgment was not transmitted for execution by the court clerk to the criminal investigation dept. <input type="checkbox"/> The judgment was not executed by the criminal investigation dept. Specify the reasons ?.....
--

Other malfunctioning – Judgment, sentence and execution of judgment

.....

Observer's Signature

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