

1. Basic principles of monitoring

Most guidelines on monitoring start with an enumeration of basic principles of monitoring, and certainly European NPMs are already well aware of these principles. For that reason, the following chapter is kept rather concise. Nevertheless, it is worth repeating and shortly explaining some of the most important principles, as even the most experienced monitors should from time to time reflect whether they truly apply them in their daily work.

Principles of Monitoring

- Do no Harm
- Sensitivity
- Confidentiality
- Respect
- Trust
- Inquisitiveness and critical mindedness
- Dialogue

Number one on the list of basic principles is the “**Do no harm**” rule, which entails that monitors should be aware that most of their actions, particularly during a visit to a place of detention, have consequences, and that these consequences could be harmful for persons concerned, whether they are detainees or staff. Monitors, even if they have the best intentions, are therefore sometimes inadvertently contributing to a deterioration of the situation of the persons they work for and with; in the worst case, they can even put the life and security of these persons at risk. Hence, while it is important for monitors to gather as much objective information as possible, this should not be done at any cost. *For example, if a person has been traumatised by an act of violence against him or her, it could be that an insensitive interview with a monitor leads to re-traumatisation and suffering for this person.* Particularly in cases of allegations of ill-treatment (whether credible or not), but also other allegations such as corrupt practices within the detention facility, the monitor will have to apply the do-no-harm principle and seriously reflect whether the disclosure of this information

could lead to grave consequences for the informant, such as reprisals or further ill-treatment.

A number of other important rules of conduct for monitors derive from the do-no-harm principle. For one, the monitors must possess a certain amount of **sensitivity** for the particular situation and mood interview partners find themselves in, including gender sensitivity, cultural sensitivity, and sensitivity vis-à-vis previously experienced suffering, such as violence against this person, but also suffering that could be based in the crime the person is accused or convicted of.

Moreover, the do-no-harm principle entails that the monitors must be able to keep certain information that could lead to reprisals or other unwanted consequences **confidential**. However, there are limits to confidentiality, and professional monitors need to discuss these limits with their interview partners before encouraging them to tell them more. *For example, while many NPMs are exempted by law from reporting information that possibly contains criminal elements (e.g. allegations of ill-treatment or corruption), others might be under an obligation to report such allegations to the relevant authorities.* If this is the case, interview partners who are about to reveal criminally relevant information – staff and detainees alike – should be made aware of this obligation and enabled to decide whether they would like to disclose further information. Generally, monitors should have clear guidelines on how to proceed in case they come across criminally relevant information. Another important limit to confidentiality lies in the prevention of self-harm: If the person concerned indicates that they think about committing suicide or self-harming, the monitor will have to clarify that this kind of information will have to be forwarded to medical and/or psychological staff and the management.⁶

Naturally, **equal respect** for all the persons held and working in a detention facility is of primary importance. This principle entails *inter alia* awareness of the fact that the prison cell is the place where detainees live, sleep and keep their personal belongings. A monitor should therefore not enter a cell without asking permission, not sit on a detainee’s bed or the only chair in the cell without being invited, etc. Equally, prison staff deserve respect for the oftentimes very difficult work they have to carry out, and any service they render for the monitoring team, such as unlocking doors or bringing files, should not be seen as a matter of course. Respect should also be paid to the smooth running of a detention facility, including security arrangements in place. It is not always avoidable that a visit by a monitoring delegation to a detention facility disrupts the daily routine, but

6. More information about Confidentiality and data protection here. <https://www.apr.ch/taxonomy/term/310>

such disruptions should be kept to a minimum and detainees should not have to suffer serious deprivations, *e.g. of food, visiting or telephone time, outside exercise time etc.*, because the monitors insist on talking to them during mealtimes, visit times and so on.

As stated, the work of NPMs should be first and foremost concerned with human beings, rather than systems or structures. Therefore, an element of trust in all dealings with management, staff and detainees of a detention facility is vital. The management has to trust the monitors that their endeavour is to improve the functioning of the detention facility by objective findings and relevant recommendations; the staff have to trust that the monitors are interested in their workplace situation and problems they are facing when dealing with detainees; and persons deprived of their liberty have to trust that the monitors strive to uphold their rights. There are many approaches on how to gain trust, and the following precepts are only exemplary: A monitor should never make promises they cannot or will not keep; a monitor should never lie to an interview partner; a monitor should keep an open mind for all kinds of information, and not convey that they do not believe an interview partner; a monitor should not be prejudiced vis-à-vis certain groups (*e.g. special groups of detainees, persons accused or convicted of a specific crime, foreign detainees, etc.*); a monitor should be capable of a certain amount of empathy for the person concerned while keeping a professional distance.

A professional monitor is akin like an investigator, who has to try to gather as much objective information as possible while visiting a detention facility. They should therefore keep questioning until satisfied that the different viewpoints on a specific topic have been heard and other evidence gathered. While it is not necessary to suspect that all interview partners are lying, it is still a fact that detainees, staff and management alike sometimes have ulterior motives to tell or not to tell a monitor a specific version of events. Hence, members of the monitoring delegation should **cross-check** all information they receive. *E.g. if assessing the quality of regime activities for detainees, the monitors should not only speak to the educator responsible, but also to a range of detainees who are participating in these activities.*

In addition to **inquisitive mindedness** when carrying out a visit, keeping a **critical mind** vis-à-vis existing structures or rules can be of high value for a professional monitor. In principle, NPMs have a certain responsibility to act as guarantors of legality and verify that the running of the penitentiary system complies with existing national legislation, including bylaws and internal regulations. However, the role of NPMs goes further than just ensuring that national laws are upheld. If national legislation is in contradiction with European or international human rights law, contradicting the spirit of the European Commission Recommendation, then avenues have to be found to discuss legal changes.

Finally, NPMs are in a unique position: on the one hand, they are statutory bodies, established by the state. On the other hand, they are ideally completely independent from the state executive branch, and their loyalties should ultimately be with the human rights of persons deprived of their liberty. A balance has to be struck between a **cooperative dialogue with the authorities and constructive criticism if necessary**. Such a balance can best be achieved if NPMs demonstrate at all times that they take professionalism seriously, and that they base their criticism on sound findings and analyses.