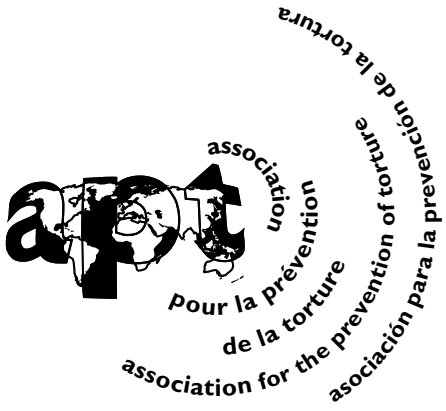
Study

The Impact of External Visiting of Police Stations on Prevention of Torture and Ill-Treatment

Founded in 1977
by J.-J. Gautier

P.O. Box 2267 CH-1211 Geneva 2
Tel. (4122) 734 20 88 Fax (4122) 734 56 49 E-mail apt@apt.ch
Postal account 12-21656-7 Geneva

Consultative status with ECOSOC of the UN and with the Council of Europe, observer status with the African Commission on Human and Peoples' rights.



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"In the end lay visiting needs to be appreciated for what it can and cannot deliver under both the best and worst of policing circumstances"[1].

Geneva, January 1999

1 VAN DER SPUY, Elrena, (1995): *From Little Ad Hoc Assault to Systematic Patterns of Torture: Does Lay Visiting to Police Detainees Make a Difference?*, paper delivered at VII International Symposium, "Caring for Survivors of Torture: Challenges for the Medical and Health Professions", Cape Town, 15-17 November 1995.

LIST OF ABBREVIATIONS

ACPO	Association of Chief Police Officers
APT	The Association for the Prevention of Torture
COLPI	Constitutional and Legislative Policy Institute
CPT	The European Committee for the Prevention of Torture
EPA	Emergency Provisions Act
HHC	Hungarian Helsinki Committee
LCCC	Local Community Consultative Committee
MCPC	Monitoring Committee of Police Cells
MPD	Metropolitan Police District
NALV	National Association for Lay Visiting
NGO	Non-governmental Organisation
NI	Northern Ireland
PACE	The Police and Criminal Evidence Act
PANI	Police Authority of Northern Ireland
PCA	Police Complaints Authority
PCCG	Police/Community Consultative Group
PHQ	Police Headquarters
PWV	Pretoria, Witwatersrand, Vereeniging
RUC	Royal Ulster Constabulary
SAP	South African Police
SAPS	South African Police Service
UK	United Kingdom

AUTHOR'S NOTE

At the beginning of 1998, the Association for the Prevention of Torture commissioned this study on external visiting mechanisms to police stations. The objective was to determine the extent to which such mechanisms can contribute to the prevention of torture and ill-treatment of persons detained by the police.

The study was compiled over a period of five months. Early on in the research process it became clear that external visiting mechanisms to police stations only exist in a few countries, and that people with a substantive knowledge of such mechanisms are few and far between. It must thus be noted that the empirical basis of the study is relatively small, as is the number of different sources used to compile the information.

The research material has been collected by way of interviews with individuals involved in different ways with the various visiting mechanisms, who were also helpful in steering me in the direction of relevant written material on the subject. It should be noted, however, that apart from the UK schemes, very little written material exists in English on the external visiting mechanisms, which in part explains the relatively limited number of different sources used for the descriptive part of the study.

A field trip to London was undertaken, which, with the kind assistance of the National Association for Lay Visiting, included a visit to the Euston Station detention facility, operated under the auspices of the British Transport Police.

To the many persons who were extremely helpful to me in writing this report I want to extend my deeply felt thanks. Special thanks go to Mollie Weatheritt, Deputy Director of the Police Foundation in London, who, apart from being a well of information about lay visiting schemes, also did her best to make me understand the complexities of the policing structures in the United Kingdom.

It is my hope that this report will contribute to a debate about external visiting mechanisms and provide some insight into the issue for anyone contemplating the establishment of such a mechanism.

Lene Johannessen Wendland
Consultant

FOREWORD

Nearly fifty years ago in Strasbourg the Council of Europe was founded to make concrete an ideal which is a great desire of us all - that of a Europe where individual freedom, human rights, political liberty and the rule of law are respected and protected. One important way in which the Council of Europe furthers this common aim of the 40 member States is to draft international legal instruments to which countries can become a signatory. More than 160 treaties now form the basis on which member States in Europe amend and harmonise their domestic legislation.

Why is this information relevant for you, the reader of this excellent study undertaken under the auspices of the Association for the Prevention of Torture (APT)? The reason is that the prohibition of torture and ill treatment is a core principle of European human rights law, enshrined in Article 3 of the European Convention on Human Rights (ECHR). The absolute nature of the right not to be subjected to torture, inhuman or degrading treatment or punishment has been interpreted by the European Court of Human Rights as encompassing a wide protection imperative. Another key Council of Europe pre-emptive mechanism is that embedded in the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT). Under this Convention a committee of independent experts (the CPT) has been established to promote dialogue on international standards of treatment in detention, through visits to places of detention and a system of ongoing dialogue.

The Conventions developed within the Council of Europe system have led to standard-setting and the building of human rights protection mechanisms. The question is still open, however, as to what really happens in daily practice in prisons and police stations. Ensuring that the fundamental human rights of those who 'visit' these institutions are safeguarded is a responsibility for every democratic country. That protection from exposure to torture or inhuman or degrading treatment or punishment is in fact enjoyed by everyone cannot depend solely on an European institution somewhere far away in Strasbourg.

The fact that you have opened this publication about 'lay-visiting schemes' hopefully signals that you are interested in finding out if you, as individual or as organisation, can play an active role in the process of guaranteeing basic rights to people deprived of their liberty. As a police officer myself, I have experienced the value of bringing together State authorities, national and international non-governmental organisations (NGOs), and individuals in this task.

This belief has been a strong element of my work, both with the police in my home country, and in my present position as Programme Manager of a special Council of Europe Programme *'Police and Human Rights 1997-2000'*. The fostering of active partnerships between NGOs and police authorities, in order to facilitate openness and transparency within the work of police services in securing human rights, is one of the aims of this Programme. It was initiated as a result of the recognition of the need to take a co-ordinated and structural approach to creating human rights awareness in the police forces in Europe.

I am therefore particularly delighted to have been asked to respond to the publication of this important study. 'Lay visiting schemes' provide a special opportunity on the national level for exchange between civil society and the police, encouraging the participation of the community in a joint force to protect human rights, and creating the potential for prevention of torture and ill treatment in custody. 'Lay visiting schemes' can also complement, and contribute to enhancing the effectiveness of the supranational monitoring process embodied in the ECPT, although it is important to bear in mind that the methods, functions and powers of the CPT can differ in significant ways from those which constitute such schemes.

The present APT commissioned study provides a much needed insight in the requirements for efficient and effective 'lay visiting schemes'. Identification of the factors which optimise the operation of 'lay visiting schemes' in different social and political contexts comes at a crucial time. A group at the Parliamentary Assembly earlier this year launched an initiative[1] to urge the setting up lay visiting schemes in all member States of the Council of Europe. Further, the construction of a framework for monitoring member State commitments in relation to police and human rights will be one of the focuses of the Committee of Minister's Monitoring Procedure for 1999.

The challenge posed by the opportunities for partnership opened up by discussion of 'lay visiting schemes' may often seem impossible. I am sure, however, that this study will provide you, as an interested reader, with new ideas and encouragement, particularly, in drawing on the experiences of the progressive systems operating in some of the new democracies of Europe.

I hope that the study will serve as a source of inspiration for creating national monitoring mechanisms, and for instituting more active partnerships between civil society and State authorities in the area of police and human rights. Within the programme *'Police and Human Rights 1997-2000'* we have been inspired and will certainly use this publication as a basket of good practice and advice. I hope you draw the same inspiration for re-forging the impossible as the possible.

Anita Hazenberg
Programme Manager
'Police and Human Rights 1997-2000'
Council of Europe

1 Motion of Ms Gelderblom-Lankhout: *"Setting-up of special committees in the member states of the Council of Europe to visit police stations and other detention centres"*; 4/05/1998; Doc 8810

EXECUTIVE SUMMARY

The aim of the study was to identify and analyse existing external visiting mechanisms in order to determine the extent, if any, to which they have an impact on preventing torture and ill-treatment of detainees.

The external monitoring mechanisms which were the subject of the study are those non-institutional or external mechanisms in which an organisation or a group of people not associated with any state or statutory institution are authorised to make unannounced visits through which random checks can be made on the detention and custody of persons held in police stations.

During the course of the research process it became clear that the development and impact of the visiting mechanisms appear to be closely linked to the particular political and legal contexts in which the schemes were conceived and in which they operate. Thus, a direct comparison of the impact of different schemes operating in completely different contexts was not considered helpful.

On the basis of this observation, the schemes were divided into groups determined by the political context of the various countries. For want of more precise criteria the schemes were divided into some very broad categories, namely those which operate in countries with a long tradition of parliamentary democracy and democratic accountability, and, on the other hand, those which operate in transitional societies, with relatively short traditions of multiparty democracy and democratic accountability on behalf of those in power.

The schemes operating in England and Wales and in certain regions of The Netherlands were considered to fall into the first category, the Hungarian and South African schemes in the second.

Yet another category were found to be illustrated by the Northern Ireland example; a society, which on the one hand is part of a stable, larger democratic structure with a relatively low crime rate, but which at the same time has been experiencing extensive sectarian violence and arguably even a low scale civil war during the last 30 years. Although it could well be argued that Northern Ireland in its own way is a transitional society, the particular problems of policing and police accountability presented there were found to warrant a separate discussion of the concept and experiences of independent visiting schemes.

Although the schemes operating in parts of the United Kingdom are the most comprehensive and have been in operation for the longest period of time, it is admitted that a disproportionate part of the report was devoted to those schemes. This is not an indication that the other schemes were not perceived to be as interesting or important, but mainly a reflection of the fact that more information in English was available about those schemes than about the others.

While the schemes operate in very different ways, the description of each scheme includes broadly the following information:

- historical background;
- the legal or regulatory framework;
- the composition of the lay-visiting team (how the visitors are chosen, training);
- the modalities for carrying out visits (unannounced or not, regularity);
- the content of the visit (material conditions; discussion in private with detainees, access to files);
- the results of the visits (reporting, to whom, recommendations and their impact);
- follow-up after reporting on the visits.

Because the legal and political context in which the schemes are operating was found to be important for a determination of the preventive impact of the visits, brief overviews have been provided where possible of policing and other accountability structures in the respective countries.

Summary of Observations Relating to the Lay Visiting Schemes in England and Wales

- The lay visiting schemes undoubtedly have the potential to contribute to the general well-being of detainees by dispensing of "little favours" and putting pressure on the police and the Police Authorities to ensure that the physical conditions of the cells meet acceptable standards;
- To the extent the work of the schemes is known to the general public, it is probable that they contribute to increase public confidence in the police;
- In the particular British context it is not necessarily a problem that the schemes are not given statutory status. However, this position does not automatically apply in countries where the political and legal context is different;
- The fact that the schemes, although nominally autonomous, are very closely associated with the local Police Authorities might not in fact affect the public credibility of the schemes. However, one should keep in mind that in other societies such a close association with a (local or national) government structure could render such a scheme without credibility as an independent oversight mechanism;
- The great variations in practice between schemes could be the subject of some improvement and standardisation. It would enhance the standing and credibility of *all* schemes if greater effort were made by all Police Authorities to ensure that lay visiting fulfils at least the requirements set out in the Home Office circulars. Over and beyond that, there is scope to develop and adjust according to local circumstances;
- Police Authorities should account more critically on lay visiting performance in their annual reports as a way of ensuring greater vigilance and better accountability of the schemes;
- While lay visiting has a role to play in letting the police know that they can be monitored, lay visiting schemes were not conceived and do not operate in a way meant to deal with serious transgressions like torture and ill-treatment by the police. The most efficient safeguard against physical abuse is the right to have a lawyer present during the interview, to have access to a doctor and to have a strong regulatory framework with explicit, transparent review and complaints procedures in case of alleged transgressions;
- Lay visiting relates primarily to a moral accountability of the police service and cannot take the place of other measures–constitutional, legal, political, administrative, administrative or managerial–designed to ensure *and* enforce accountability on behalf of the police.

Summary of Observations Relating to the Dutch Monitoring Committees for Police Cells (MCPC's)

- The MCPC's have a positive impact on the physical conditions of police cells and in dispensing "little favours" to detainees;
- Members of the MCPC's are professionals as opposed to the English *lay* people. However, in societies with a relatively high standard of policing and clear, transparent police complaints procedures, the impact of the external visiting schemes does not depend too much on whether its members are professionals or *lay*. The most important test is the extent of the independence of the schemes and the extent to which their recommendations are being followed;
- The relevant Dutch ministry/ministries should issue national guidelines, recommending or even requiring that police regions establish MCPC's and set out minimum requirements for the operation of the MCPC's.

- MCPC's are closely associated with the Police Authorities, which raises the same questions of credibility as those raised with regard to the British schemes.
- It is of concern that one MCPC has members who are magistrates, albeit not local ones.
- It is a problem that the procedure for reporting back to the corps manager is informal;
- It is recommended that the proposal by the Amsterdam MCPC that the regional police board and the corps manager respond explicitly to every recommendation made by the MCPC and that accepted recommendations be implemented within a term of two to three years after their acceptance should be adopted;
- The same points about the impact of the MCPC's in preventing torture and ill-treatment can be made as those made with respect to the British lay visiting schemes on this subject.

Summary of Observations Relating to the Hungarian Police Cell Monitoring Programme

- The programme is an innovative and creative model for how one can introduce an element of civilian oversight of the police in a society without an otherwise developed tradition for civil society scrutiny and involvement with the exercise of police powers;
- The fact that the programme has not as yet initiated much change in the conditions of police cell detainees is not surprising, given the history and the pervasive lack of trust between police and citizens in post-communist Hungary. The fact that the programme has been continued is a good sign on behalf of the political leadership of the police for a more transparent and potentially more respected police force;
- Racism, torture and duress during interrogation can be inhibited by an improved system of monitoring in the longer term;
- The programme is a good example of how an external oversight mechanism has been developed and adjusted to function in the particular political and legal context in which it is going to operate. In a society with a history of police repression it appears appropriate to have a strong national NGO, with professionally skilled people as opposed to individuals with no particular professional skills, undertake the task of monitoring;
- In a country like Hungary the close institutional connection between police authorities and external visitors found in Britain and The Netherlands could render the scheme without credibility and therefore essentially meaningless;
- The Hungarian situation is an example of the problems that would be encountered if one were to merely import a system of civilian oversight without making allowances for the context in which such scheme was to operate. For example, one cannot assume that a system of external oversight will have the same impact in a society with an as yet largely "untransformed" police force as in a society where the police have grown accustomed to the idea of civilian oversight of their work.

Summary of Observations Relating to the South African Community Visiting Schemes

- The amount (or rather lack) of information obtained provides very little basis for observations and recommendations;
- The history of police abuse in South Africa calls for the introduction of a watchdog function over how the police exercise their powers as well as for measures to help promote public confidence in the police;
- Community visiting schemes cannot and should not function in isolation. With a number of statutory oversight and complaints institutions coming into place, the community visiting schemes stand a better chance now of having a positive impact on police accountability at a national level than they did in the period 1993-1995.

- Visitors must be seen to be conspicuously independent of local political and communal factions in order to achieve credibility. While visitors need to be representative, they should not been seen as delegates of one group or another. This might be difficult to achieve if the institutional base for community visiting schemes continues to be the Community Police Forums;
- One might reconsider whether only lay people from the local community should perform the task of external visiting;
- The necessary community goodwill for community visiting schemes might decrease in view of the current climate of a high crime rate in South Africa;
- The experiences and shortcomings of community visiting schemes from 1993 to 1995, which were imported "almost lock, stock and barrel from British textbooks", shows the difficulties in adopting a system from the outside without adjusting it to local conditions.

Summary of Observations Relating to Northern Ireland Visiting Schemes

- Lay visiting to the holding centres for security detainees would have to operate in a legal environment in which security regulations rule and where it is not inconceivable that visitors could risk reprisals for participating in the visiting programme;
- In a context of grave sectarian strife it would appear that there is an even greater need for an external oversight mechanism to ensure that no violation of fundamental, non-derogable rights occurs. However, lay visitors may not be the best to perform this role;
- A "soft" oversight body like lay visitors could never be a stand-alone body in a society with serious sectarian violence. Its watchdog role should be complemented by a much more powerful institution, which has the power to enforce more than a moral kind of accountability on behalf of the police;
- A civilian oversight body consisting of *lay* people might not be the most appropriate in that kind of society;
- The most fundamental safeguard against abuse would be to extend the rights guaranteed in PACE (NI) to security detainees;

Summary of Concluding Remarks and Recommendations

- The external visiting schemes to police stations have the potential to influence the conditions and treatment of detainees in individual cases;
- Local external visiting schemes can complement the work of supranational bodies like the European Committee for the Prevention of Torture by providing more frequent and regular oversight;
- If external visiting schemes are seen as credible by the local community they have the potential to promote public confidence in the police;
- The extent to which visits can have a preventive effect on torture depends on a number of factors beyond the visit itself, including the following:

- There must be a clear legal framework setting out the standards of police treatment of detainees;
- There must be a clear, efficient and transparent report and complaints system, which can be relied upon to adequately discipline any police officers found guilty of transgressions against detainees;
- Visitors must be ensured, either in law or *de facto,* against any reprisals as a result of a critical report on the police. If visits take place in a situation where intimidation and reprisals are not inconceivable, one might consider recruiting the visitors on the basis of specific criteria or organisational links;

- If the visiting schemes do not enjoy credibility, any reports of transgressions by the police are not likely to have great effect;

• External visiting schemes must be set up in a way which takes into account the particular political, legal and in some cases also historical context in which they operate;
• A country or region contemplating setting up an external visiting scheme to police stations should consider the following factors when working out the form and content of such a scheme:

- External visiting schemes require an infrastructural capacity to check on the well-being of detainees, to process complaints of detainees speedily and to have all their recommendations taken seriously;
- External visiting can never be a stand-alone measure of police accountability;
- While it may not be necessary to make an external visiting scheme a statutory body, it should be ensured that at least a national or regional framework is provided which is clear and transparent, but which also makes allowances for variations in local circumstances;
- Certain minimum requirements should be set;
- Consideration must be given as to whether the particular local circumstances are best served by *lay* visitors or by visitors with particular professional capabilities.

INTRODUCTION

The founder of the Association for the Prevention of Torture (the APT), Mr Jean-Jacques Gautier, was of the opinion that the only effective weapon against torture is a system of inspection through regular visits to all places where individuals are kept in detention[2]. Starting from the fact that torture is practised in closed places, Mr Gautier felt that prevention of torture could be effected through an "opening up" of these places, which should be visited regularly by an independent body. The idea was based on the perception of the failure of existing international legal provisions and their implementation procedures to eradicate torture, on the one hand, and the successful work of the International Committee of the Red Cross under the Geneva Conventions, on the other.[3]

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment[4] is widely credited as coming into being as a result of Mr Gautier's original idea and efforts. The Convention provides for a committee of experts to visit any place within the jurisdiction of the States Parties where persons are deprived of their liberty. The committee is referred to as the Committee for the Prevention of Torture (hereafter the CPT).

Other international and regional instruments also incorporate visits to places of detention as part of their activities in the fight against torture and ill-treatment.[5]

Furthermore, a draft Optional Protocol to the 1984 United Nations Convention against Torture, which introduces a universal system of prevention through visits to places of detention, has been contemplated by a Working Group of the United Nations Commission on Human Rights since October 1992.

In addition, principle 29 of the **UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment** provides that:

> "In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment."[6]

Thus, it is fair to say that the idea of independent visits to places of detention has obtained some support at the international and regional level as a preventive measure against torture. However, international and regional mechanisms, even if they were to function optimally, are inherently limited in the number of countries and places they can visit. It is inevitable that even a body like the CPT will pay infrequent or no visits at all to most places of detention. In the words of Dr Karoly Bard, Scientific Director of the Constitutional and Legislative Policy Institute in Hungary:

> "However highly we regard the activities of the Council of Europe Committee we cannot seriously think that their visits every five years can solve the detainees' problems."[7]

Thus, one can ask to what extent national independent monitoring mechanisms can play a role in complementing the efforts made by international or regional instruments in order to ensure a broader and more frequent penetration of places of detention at the national level.

It is in this context that the following study was commissioned by the APT to focus on such national mechanisms which are concerned with visiting police stations.

2 See DE VARGAS, Francois (1980 [1979]): "History of a Campaign", in *Torture: How to Make the International Convention Effective*, *A Draft Optional Protocol*, ed. by the International Commission of Jurists and the Swiss Committee against Torture, Geneva 1979 and 1980, pp.41-47.
3 Ibid.
4 Adopted in 1987, entered into force in 1989.
5 See the Inter-American Commission on Human Rights, the International Committee of the Red Cross, the Special Rapporteur on Prisons and Conditions of Detention of the African Commission on Human and Peoples' Rights and the United Nations Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions. For a general overview of the functions of these bodies, see *Standard Operating Procedures of International Mechanisms Carrying Out Visits to Places of Detention,* Report of Workshop, 24 May 1997, The Association for the Prevention of Torture, Geneva, November 1997.
6 Adopted by General Assembly resolution 43/173 of 9 December 1988.
7 The Hungarian Helsinki Committee and the Constitutional and Legislative Policy Institute (1998): *Punished Before Sentence – Detention and Police Cells in Hungary 1996*, Budapest 1998, p.12.

More specifically, the subjects of this study are non-institutional or external mechanisms in which an organisation or a group of persons are authorised to make unannounced visits through which random checks can be made on the detention and custody of individuals held in police stations

Not many countries have extended the idea of independent visiting to focus exclusively on police stations.[8] This is despite the fact that the CPT has reported allegations of ill-treatment of detainees during the initial period in police custody[9] and has made calls to governments to consider the possibility of empowering an independent authority to inspect on a regular basis the conditions of detention in the lock ups and other holding facilities staffed by the police.[10]

The aim of the study is to explore and analyse those mechanisms in order to determine to what extent, if at all, they can contribute to prevent torture and other forms of ill-treatment of detainees.

Four different visiting mechanisms have been identified and will be described and analysed for the purposes of this study: the independent visiting schemes operating in parts of the United Kingdom; the Committees for the Monitoring of Police Cells presently operating in certain cities and police regions in The Netherlands; the Police Cell Monitoring Programme implemented under the auspices of the Hungarian Helsinki Committee in co-operation with the Constitutional and Legislative Policy Institute in Hungary; and finally, some information about attempts in South Africa to set up independent monitoring schemes will also be included.

At the outset, the idea behind the study was to analyse *and* compare the various visiting mechanisms. However, in the course of the research process, it became clear that the development and impact of the mechanisms appear to be closely linked to the particular political and legal contexts in which they were conceived and operate.

Most schemes have come about as a result of particular local or national developments, and those particular developments have influenced how the schemes were set up to function. Similarly, the impact and weight of the various schemes seem to be dependent not so much on the way they are set up formally (they all have very weak regulatory foundations), but on the political and legal framework surrounding them and the traditions (if any) of democratic accountability on behalf of the police in the respective countries. Thus, it is submitted that only to compare the functioning of the schemes, some of which might appear very similar in their operational set-up but which function in completely different contexts, will not provide a comprehensive picture of their true value and possible impact on prevention of torture.

For example, it seems obvious that a critical observation reported by an external visitor about a police officer in a situation where there are no clear remedies or where police accountability might be entrenched in law but not in practice, will have a different impact from a critical observation reported in a situation with clear and transparent complaint procedures with a tradition of democratic accountability on behalf of the police.

On the basis of this observation, the mechanisms have been divided into groups determined by the political context of the various countries. For want of more precise criteria, they have been divided into some very broad categories, namely those which operate in countries with a long tradition of parliamentary democracy and democratic accountability, and, on the other hand, those which operate in transitional societies, with relatively short traditions of multiparty democracy and democratic accountability on behalf of those in power.

The visiting mechanisms operating in England and Wales and in certain regions of The Netherlands can be considered to fall in the first category, the Hungarian and South African schemes in the second.

8 In some countries with an independent ombudsman institution, the ombudsman often has the right of on site inspection following a petition or an investigation. However, the functions of the ombudsman rarely extend to include regular, unannounced visits to police stations as a way of preventing abuse and ill-treatment of detainees.

9 See for instance European Committee for the Prevention of Torture (1991): *Report to the Austrian Government*, CPT/Inf. (91) 10, paragraph 7.

10 See for instance European Committee for the Prevention of Torture (1996): *Report to the Maltese Government on the Visit to Malta from 16-21 July 1995*, CPT/Inf (96) 25, paragraph 43.

Yet another category can be said to be illustrated by the Northern Ireland example; a society, which on the one hand is part of a stable, larger democratic structure with a relatively low crime rate, but which at the same time has been experiencing extensive sectarian violence and arguably even a low scale civil war during the last 30 years. Although it could well be argued that Northern Ireland in its own way is a transitional society , the particular problems of policing and police accountability presented warrant a separate discussion of the concept and experiences of independent visiting schemes there.

In the following chapters the main features of each of the schemes will be analysed, and comparisons will be made between schemes falling into the broad categories as outlined above.

In addition to looking at the schemes themselves, an attempt will be made in each case to sketch what other measures of accountability exist in order to determine to what extent the external visiting mechanisms are stand-alone measures of accountability or form part of a comprehensive accountability bundle. This goes back to the submission that to look at the schemes in isolation might lead to wrongful assertions as to their impact.

Although the schemes operating in parts of the United Kingdom are the most comprehensive and have been in operation for the longest period of time, it is admitted that a disproportionate part of the report has been devoted to those schemes. This is not an indication that the other schemes were not perceived as interesting or important, but mainly a reflection of the fact that more information in English has been available about those schemes than about the others.

However, the description of each scheme will include broadly the following information:

- historical background;
- the legal or regulatory framework;
- the composition of the lay-visiting team (how visitors are chosen, training);
- the modalities for carrying out visits (unannounced or not, regularity);
- the content of the visit (material conditions; discussion in private with detainees, access to files);
- the results of the visits (reporting, to whom, recommendations and their impact);
- follow-up after reporting on the visits.

It should be noted that the fact that so few different schemes have been identified whose focus is to conduct visits to police stations obviously makes the empirical value of the study rather limited. Nevertheless, it is the belief of the author that a number of valuable observations can be made from each of the studied schemes, although such observations may carry limited empirical weight.

It should also be noted that in order to comprehensively assess the impact of the various schemes in the respective countries, one would need to provide a more in-depth analysis of the schemes, as well as the political, legal and historical contexts in which they operate. The time and resource constraints of this study do not permit that, and this fact obviously affects the value of the observations and recommendations.

Part I

Independent Monitoring Schemes in Established Democracies

1 Lay Visiting Schemes in England and Wales

1.1 Introduction

Independent visiting schemes to police stations exist at present in England, Wales and Northern Ireland under the name "Lay Visiting" schemes.[11] The English and Welsh schemes started in 1986, whereas the Northern Ireland schemes only commenced in 1991. Although the schemes are very similar, there are special issues of concern in Northern Ireland which warrant a separate discussion of the Northern Ireland schemes, as mentioned above in section 1.

In order to obtain a comprehensive understanding of the lay visiting schemes, it is important to understand the policing context in which they operate and to assess their impact in view of other measures designed to hold the police accountable for the treatment of detainees in police stations. Thus, before looking at the role of the lay visiting schemes, a brief overview of the policing structures and the role of statutory civic oversight bodies will be provided, as well as a short description of the most important statutory provisions designed to prescribe the treatment of detainees by the police and to hold the police accountable.

1.2. Police Structures and Accountability

Police Structures in England and Wales

Since the introduction of the 1964 Police Act, the system of democratic accountability in England and Wales has been based on a tripartite structure made up of the Home Secretary, the local Chief Constable and the local Police Authority.[12] An important exception to this model are the Metropolitan Police, currently accountable only to the Home Secretary.[13]

There are 41 Police Authorities in England and Wales in addition to the City of London, which is a separate police district, and the Metropolitan Police District (MPD). In 1994, the Police and Magistrates Courts Act of 1994 shifted the balance away from elected representation in the Police Authorities. Until then elected local councillors comprised two-thirds of the Police Authority membership[14]; now elected representatives are in a majority by just one member.

Responsibility for the democratic oversight of the police is split between the Home Secretary and the Police Authorities. There are overlapping responsibilities between the Home Secretary and the Police Authorities: while the Police Authorities have the responsibility for maintaining an "efficient and effective police force", the Home Secretary has responsibility for promoting police efficiency. The Home Secretary sets national standards for policing, while the Police Authorities implement them. There is no clear line of responsibility and the Police Authorities do not fall under the Home Secretary in a sub-ordinate relationship.

In the context of lay visiting, the Home Secretary sets the national standards for lay visiting, and the Police Authorities have the responsibility for implementing them along the lines of those national standards, because the Home Secretary has the statutory responsibility for police efficiency.

The local Police Authorities are the institutional base for lay visiting, and they are the most important means through which lay visiting schemes can exercise pressure on Police Constables.

Alongside the concept of civic oversight there exists the English doctrine of the operational independence of the Chief Constable. The 1964 Act made Chief Constables responsible for the

11 In Scotland, the Scottish Office in consultation with the Association of Chief Police Officers (ACPO) (Scotland) and the Convention of Scottish Local Authorities decided not to implement lay visiting on the grounds that there was no real need or demand and because members of the various Police Authorities already had an open invitation from Chief Constables to visit police stations on the basis of prior appointments; see KEMP, Charles & MORGAN, Rod (1990): *Lay Visitors to Police Stations – Report to the Home Office*, Bristol and Bath Centre for Criminal Justice 1990, p.16. There are however indications in 1998 that Scotland might introduce lay visiting in the future.

12 Police Authorities have seventeen members, nine councillors from local government, five appointees chosen by the other members of the Authority from a short list over which the Home Secretary exerts some influence, and three magistrates.

13 O'RAWE, Mary & MOORE, Linda, Dr (1997): *Human Rights on Duty – Principles for Better Policing: International Lessons for Northern Ireland*, Committee on the Administration of Justice, Belfast 1997 p.136. Proposals to set up a local Police Authority for London is pending, but it is not clear when it will be established.

14 Appointed magistrates made up the remaining one third.

direction and control of their forces. In exercising that direction and control, Chief Constables are, under the Police and Magistrates Courts Act of 1994, required to have regard to the local Police Authority, which sets the strategic direction of the force. The Chief Constables also have to report to the Police Authorities on the performance of the force, but there is no legal obligation on them to accept the Authority's advice.

The Police and Criminal Evidence Act (PACE) 1984

The formal introduction of lay visiting schemes in 1986 was preceded by the adoption of the Police and Criminal Evidence Act (PACE) of 1984. PACE represented a fundamental review of police powers and procedures and it is now the broadly accepted framework governing police work in England and Wales.

Though it was the subject of vociferous criticism at the time, and critics continue to scrutinise its limitations[15], the Act is now widely accepted as representing a significant step forward in relation to the rights of persons held in police stations.[16]

The main aspects of PACE insofar as police detention is concerned are the following:

- A detainee has the right to have a third party informed of his or her detention. This right is guaranteed by PACE with exceptions defined and procedures laid down in the event of notification being delayed by the police.[17] Research evidence suggests that this right is invariably honoured by the police.[18]
- PACE guarantees a detainee the right to have access to legal advice, with exceptions defined and procedures laid down in the event of access being delayed by the police[19]; an infrastructure of free legal services in the police station is provided; suspects have the right to have their lawyer with them during interrogation, save in exceptional and defined circumstances.[20]
- The Codes of Practice issued under PACE stipulate the right of a detainee to request and be examined by an independent medical doctor of his or her choice.
- The Codes of Practice also lay down in great detail the conduct of police interrogations, and special safeguards are provided for particularly vulnerable suspects such as juveniles and the mentally disordered. It is *inter alia* prescribed that vulnerable suspects cannot be interrogated without the presence of a so-called "appropriate adult", i.e. a parent, guardian or any other person who has, for the time being, assumed responsibility for the welfare of the detainee.

The rights and safeguards established within the framework of PACE are regarded by the CPT as a model, and reports from the Committee show that the safeguards of detainees laid down by PACE compare favourably with other European jurisdictions.[21]

Police/Community Consultative Groups (PCCG's)[22]

As with the lay visiting schemes themselves, the idea that there should generally be some formal mechanism through which police/community consultation could take place is attributable to Lord Scarman's Report on the disturbances in Brixton in April 1981. Lord Scarman judged that the Police Authorities would act more vigorously if they were given a statutory duty to organise consultative arrangements "at police divisional or sub-divisional levels". Lord Scarman's recommendation was accepted by the Government and was implemented as section 106 of PACE. It is now section 96 of the Police Act of 1996.

15 See for instance SMITH, G (1996): "Playing Politics with the Law", in *Legal Action,* London, November 1996.
16 MORGAN, R., (1996): Custody in the Police Station: How do England and Wales Measure up in Europe?", *Policy Studies*, 17: 1, at 55.
17 See Annex B of Code C of PACE . Among the listed reasons for delaying the notification of arrest is if there are reasonable grounds for believing that it will lead to interference with or harm to evidence connected with a serious arrestable offence or that it will lead to the alerting of other people suspected of having committed such an offence.
18 DIXON, D., BOTTOMLEY, K., COLEMAN, C., GILL M & WALL, D., (1990): "Safeguarding the rights of suspects in police custody", *Policing and Society*, pp.115-140.
19 See Annex B of Code C of PACE.
20 According to section 6.9 of Code C: "The solicitor may only be required to leave the interview if his conduct is such that the investigating officer is unable properly to put questions to the suspects." Explanatory note 6D set out that "paragraph 6.9 will only apply if the solicitor's approach or con duct prevents or unreasonably obstructs proper questions being put to the suspect or his response being recorded. Examples of unacceptable conduct include answering questions on a suspect's behalf or providing written replies for him to quote."
21 MORGAN, R (1996), p.70.
22 Unless otherwise indicated the information about the PCCG's contained in this section is taken from MORGAN, R. (1995): *Making Consultation Work – a handbook for those involved in police community consultation arrangements,* London, The Police Foundation .

The Act requires that "arrangements shall be made in each police area for obtaining the views of people in that area about matters concerning the policing of the area and for obtaining their co-operation with the police in preventing crime in the area".[23]

Consultation can be about a wide range of issues, but there are two areas in which discussion is not considered appropriate: particular complaints against named officers (for which there exists a formal procedure) and particular cases which are the subject of criminal proceedings (where *sub judice* rules apply).

Although the communities must be consulted and can advise the police, the police are not obliged to follow this advice. This has been the subject of some criticism by observers.[24]

The Police Complaints Authority[25]

The Police and Criminal Evidence Act 1984 replaced the Police Complaints Board with the present Police Complaints Authority (PCA).

The powers and procedures are now set out in the Police Act 1996. The PCA consists of a chairman appointed nominally by the Queen, plus at least eight additional members (none of whom may be a former police constable) appointed by the Secretary of State.

The principal task of the PCA is to investigate serious complaints about the conduct of police officers. It does not carry out investigations itself; these are always carried out by police officers. The PCA supervises investigations into the most serious complaints and reviews the reports of every investigation, whether supervised or not, to decide whether disciplinary charges should be brought against an officer, if it is not already the Chief Officer's intention to do so.[26]

The PCA can also, however, in certain circumstances deal with non-complaint issues voluntarily referred by the police services themselves.

Despite the existence of the PCA, civil actions against the police are gaining popularity as an alternative to the police complaints process.[27]

The Magistrates Court Act

The Magistrates Court Act of 1952 grants magistrates an official right of oversight of police stations and other places of custody which serve the court on which they sit. Although this Act gives magistrates the power to visit such places of detention, it is a power which is rarely, if at all, exercised, and thus not relevant in practice as a tool to enhance police accountability.

1.3 Background to the Lay Visiting Schemes in England and Wales

The introduction of lay visiting schemes throughout England and Wales was one of a number of governmental measures intended to make the police more professional and more accountable within the existing tripartite constitutional arrangements for police governance.[28]

It is generally agreed that the idea of introducing lay visitors to police stations as a way of expanding civic oversight of the police was effectively first put forward in Lord Scarman's Report on the 1981 Brixton disturbances. Lord Scarman recommended that provision be made for "random checks by persons other than police officers on the interrogation and detention of suspects in the

23 Section 106 of PACE.
24 BROGDEN, M., JEFFERSON, T & WALKLATE, S. (1988): *Introducing Police work*, London: Unwin Hyman; quoted in O'RAWE & MOORE (1997), p.137.
25 The information in this section is largely based on a paper by NEFF, Stephen C. and AVEBURY, E. entitled *Human Rights Mechanisms in the United Kingdom,* delivered at the "International Conference on International Experiences in Institutions of Human Rights Protection and Ombudsman Organizations: What Lessons for Ethiopia", 18-22 May 1998.
26 http://webworlds.net/cathus/police15.html
27 SMITH, G.: "Playing Politics with the Law", *Legal Action*, London, November 1996, p.8.
28 KEMP & MORGAN (1990), p.10.

police station".[29] He thought that a body whose members "had the right to visit police stations at any time and the duty to report upon what they observed" would have a "salutary" effect.[30] Thus, although he felt unable "to offer a blue-print for legislation", he recommended that some statutory system of lay visiting be introduced, "on the interrogation and detention of suspects in the police station".[31]

Following discussion of the idea of lay visiting and a number of pilot projects, the Home Office produced a draft circular recommending "the establishment of lay visiting schemes wherever they are wanted". But in view of scepticism as to the necessity of lay visiting in rural areas, "it was agreed that there was no case for attempting to place lay visiting on a statutory basis".

A draft Home Office circular began its rounds in the autumn of 1984 and the final version was issued in February 1986.

1.4 The Regulatory Framework for Lay Visiting in England and Wales

While Lord Scarman had advocated a statutory arrangement for lay visiting, the Home Office, unlike in the case of the PCCG's, nevertheless approved a lay visiting system which was non-statutory, as mentioned above.

The reasons for adopting the non-statutory approach are not entirely clear, other than the above reference to a scepticism as to the necessity of lay visiting in rural areas.

However, one can speculate that the Home Office did not wish to upset the police further in the wake of the introduction of the controversial PACE. The introduction of lay visiting schemes was in fact delayed, partly due to objections from the Association of Chief Police Officers, which did not wish lay visitors to be able to give advice, guidance or instructions to prisoners.[32] It is possible that the introduction of a statutory scheme, which could be seen by the police as yet another measure in which outsiders could "come and tell them how to do their job" would have created significant objections from the police.

Among the lay visitors associated with the fieldwork, there have been few calls for statutory powers, though in London and Merseyside some lay visitors believe that the scheme "lacks teeth" and has become "a public relations exercise on behalf of the police" partly because it has no statutory basis.

Overall, the lay visitors themselves feel that if the schemes were to become statutory they:

> "would alter our relationship with the police enormously if we had the power to change their behaviour ... I feel if we have powers it might not go awfully well with what I feel is the absolutely crucial thing of being seen to be impartial. Not on anybody's side. Not grinding any particular axe. Just there to cast an impartial eye. But if we had powers ... [another lay visitor] We would just become civil servants."[33]

This view was confirmed by the author during interviews with individuals involved with lay visiting in England in 1998.

According to Kemp & Morgan, there is not a strong case for putting lay visiting schemes on a statutory footing or giving lay visitors statutory powers. "The success of lay visiting depends more on the commitment of the people who are appointed and the support they receive from their appointing police authority."[34]

29 SCARMAN, Lord (1981): *The Brixton Disorder April 10-12 1981*, London: HMSO; quoted in KEMP & MORGAN (1990), p.5.
30 SCARMAN (1981), section 7.9.
31 Ibid., section 7.10.
32 KEMP & MORGAN (1990), p.6-7.
33 Quoted in KEMP & MORGAN (1990), p.96.
34 KEMP & MORGAN (1990), p.115

It has, however, been acknowledged in an interview with Professor Morgan that this view is closely linked to the particular British situation, with, on the one hand, a common law system which provides for flexibility and, on the other, a strong statutory protection of detainees under PACE and the institutional backing of lay visiting by the Police Authorities. In other words, the arguments about whether or not lay visiting schemes should become statutory are very country specific and cannot necessarily be expanded to cover other countries.

Furthermore, when looking at the impact (or in some instances the lack thereof) of statutory bodies like the PCCG's and the Prison Board of Visitors, one can at least conclude that being statutory is not *in itself* a guarantee of more impact and influence.

In assessing the necessity or not of making lay visiting statutory, it should also be kept in mind that Home Officer circular advice carries a lot of weight, and compliance with what is prescribed in such circulars is expected.

Thus, instead of being established as statutory bodies, Home Office Circular 12/86, issued in 1986, recommended the implementation of lay visiting schemes. Within four years, all but five of the Police Authorities in England and Wales, and all but two of the London boroughs, had established schemes. However, the survey conducted by Kemp and Morgan in 1990 revealed that many schemes, especially those outside London, were rudimentary and ineffective, and their report recommended some amendments to the guidelines.

In July 1991, the Home Office issued revised guidelines to lay visitors in the MPD. The new guidelines sought to formalise practice which had evolved on a "local agreement" basis over the years, and also to reflect "comments from lay visitor panels and the police".

In September 1991, the Home Office issued Circular 74/1991 allowing provincial lay visiting schemes access to remand and sentenced prisoners in police cells (MPD schemes had been given access to such detainees in May 1988).

In January 1992, Home Office Circular 4/1992 was issued. It contained revised guidelines for provincial schemes. The circular "endorsed the conclusions in the [Kemp & Morgan] research report" and aimed to "clarify" grey areas "in visiting practices and procedures, and to provide clearer guidance on such issues as recruitment, appointment and visiting programmes".[35]

The provincial guidelines cover in varying depth eight main topics: objectives; organisation of visits; appointment of visitors; accreditation and training; visiting programmes; conduct of visits; confidentiality; and reports and follow-up action.

The London and provincial guidelines are, in fact, broadly similar and in parts identical (for example, much of the section dealing with the conduct of visits). Nonetheless, they contain important differences which reflect the unique constitutional background to policing in London and the specific experience of the Lambeth pilot scheme.

The guidelines are expected to be revised into one set of guidelines governing both the provinces and the MPD.[36]

35 HALL, C., & MORGAN R. (1993): *Lay Visitors to Police Stations: An Update,* National Association for Lay Visiting, University of Bristol Centre for Criminal Justice, p.3.
36 VIEIRA & WEATHERITT, forthcoming.

1.5 Objectives and Responsibilities for Lay Visiting Schemes

The principles of lay visiting are indivisible from its purpose: to provide independent oversight of the detention of persons in police custody. Home Office Circular 2/86 states in its opening paragraph:

> "The purpose of lay visiting arrangements is to enable members of the local community to observe, comment and report upon the conditions under which persons are detained at police stations and the operation in practice of the statutory and other rules governing their welfare, with a view to securing greater understanding of, and confidence in, these matters. These arrangements also provide an independent check on the way police officers carry out their duties with regard to detained persons."

In Kemp & Morgan (1990), lay visiting is described as:

> "concerned with the making of unannounced visits ... by independent persons on the detention and custody of suspects in police stations. Lay visitors are authorised to enter police stations and, subject to the consent of prisoners, are entitled to talk to detained persons about the conditions of their detention and welfare in police custody and to read their custody record. Before leaving the police stations, lay visitors are expected to fill out standard reports, and where appropriate, to raise matters on the spot with custody officers or the officer in charge."[37]

The responsibility for setting up lay visiting schemes outside London lies with each Police Authority in consultation with its Chief Constable. In 1997, almost all Police Authorities in England and Wales reported that they had lay visiting schemes.[38]

Changes in the composition and legal responsibilities of the Police Authorities, which took effect on 1 April 1995, have led to some changes in the way provincial schemes are organised and financed. However, the actual practice of lay visiting has been little affected.

1.6 Organisation

Provincial schemes

Kemp and Morgan found that provincial schemes were, by and large, organisationally weak, and that even those which operated a panel system did not necessarily have any real autonomy.

Subsequently, Circular 4/1992 recommended that schemes be organised, if possible, on the basis of panels linked to police divisions, sub-divisions, and/or local Police/Community Consultative Groups, and that panels (or their equivalents) be largely autonomous and responsible for the day-to-day operation of their scheme, for example, by arranging their own rotas. Furthermore, Circular 4/1992 recommended that administrative support be provided by authorities to enable visitors to hold meetings and produce reports.

Hall & Morgan found in 1993 that the panels still varied in their degree of organisational autonomy, although they did record "a substantial shift away from" Police Authority based schemes towards community-based schemes.

37 KEMP & MORGAN (1990), p.13.
38 VIEIRA & WEATHERITT, forthcoming.

These trends have continued. Three-quarters of Authorities now operate a panel system[39], very few schemes are dominated by the Police Authority, and almost all recruit from the general public.[40]

Most schemes operate on a formal rota basis, and most Police Authorities have some degree of organisation to ensure that visits take place periodically.

Recent research shows that the most successful schemes are those run by scheme administrators who see their role as one of active management and development and who act as champions of lay visiting. Police Authority support is crucial for this.[41]

Each provincial Police Authority appoints its own visitors and each lay visiting scheme is directed by its own local handbook and guidelines.

MPD Schemes

The Home Secretary is the Police Authority for the Metropolitan Police Service and the Home Office was responsible for setting up lay visiting arrangements in the MPD.

The MPD schemes are required by the guidelines to develop an organisational structure through which they can be serviced, administered and monitored.

Lay visiting schemes in the MPD are divided according to the London boroughs. The MPD guidelines of July 1991 recommended that each borough scheme be organised on the basis of panels which should meet regularly and make an annual report to the Home Office. Members must elect their own chairpersons and maintain links with their local Police/Community Consultative Group.

Each London panel operates under its own constitution or terms of reference consisting of guidelines on procedure and practice.

In comparison with provincial schemes, London panels are still considerably more autonomous than those in the provinces, but the gap has closed somewhat due to the move toward recruiting visitors directly from the public in the provinces.

1.7 The National Association for Lay Visiting

The National Association for Lay Visiting (NALV) was established in 1993, among other things to support and promote lay visiting and to help formulate and publicise good practice. NALV's objectives are the following:

- to support and promote lay visiting of police stations;
- to ensure that detainees' rights are observed at all times and to comment on issues relating to their welfare while in police custody;
- to provide a forum for discussion of matters of concern to lay visitors;
- to publish a regular newsletter for the membership;
- to assist the Home Office, Police Authorities and lay visiting panels in the formulation of best practice for lay visiting schemes;
- to arrange an annual conference of lay visitors;
- to promote regional organisations of lay visitors;
- to advise and assist with the training of lay visitors;
- to commission research relevant to lay visiting.

39 Defined as a group of lay visitors, overseen by a co-ordinator, convenor or chairperson.
40 VIEIRA & WEATHERITT, forthcoming.
41 VIEIRA & WEATHERITT, forthcoming.

NALV is funded at present by a grant from the National Lottery and in part by the Police Authorities who are in membership.

NALV stresses particularly the importance of lay visitors undergoing sufficient training.

Police Authorities comprise NALV's membership which then automatically includes an Authority's lay visitors. Only where a Police Authority is not an NALV member are lay visitors afforded individual membership.

NALV publishes a quarterly newsletter called *Visiting Times,* which is sent to lay visitors, Police Authorities, police stations, Home Office officials and politicians.

1.8 Eligibility, Recruitment and Representation of the Lay Visitors

Eligibility

The guidelines prescribe that visitors must be "independent persons of good character", who can make informed judgements in which the community can have confidence and which the police will accept, where appropriate, as constructive criticism. Anyone who has been convicted of an offence punishable with imprisonment within the last five years may not be deemed suitable.[42]

Both sets of guidelines stress the importance of visitors being independent of the criminal justice system. The Home Secretary will therefore not appoint an ex-police officer or a serving Justice of the Peace. Applications from ex-Special Constables will be considered in the light of where and when they served.

Recruitment

Home Officer Circular 12/86 left open the question of whether the Police Authority should recruit from its own elected membership.

One of the recommendations of the 1990 Kemp & Morgan report was that the provincial guidelines be amended to encourage wider recruitment of lay visitors from members of the public and the development of a more autonomous structure, i.e. panels. This recommendation was based on the observation that schemes wholly or largely dependent on elected councillors as lay visitors tend to run into difficulties in maintaining visiting programmes. Councillors, it would appear, often lack the time for the task; or they accord it a lower priority than lay visitors appointed specially for the purpose.

Subsequently, Circular 4/1992 recommended that visitors be appointed directly from members of the public through open advertisement, from consultative groups or by word of mouth. Since then, the general trend has been to extend the pool of lay visitors in accordance with the recommendations of Circular 4/1992[43], although with some exceptions. Schemes dominated by a Police Authority are now rare and only one scheme draws its membership solely from the Authority.

The actual appointment of lay visitors is the responsibility of the Police Authorities.

Each of the panels in the MPD is responsible for its own selection and recruitment, though appointments are made by the Home Secretary.[44] Recruitment practices vary little between the London panels. The majority use advertising in one form or another, if needed. Other means of

42 Home Office Circular 4/92.
43 HALL & MORGAN (1993), p.11.
44 National Association for Lay Visiting and The Police Foundation (1995): *Lay Visiting – a working guide for Lay Visitors,* p.5.

attracting candidates include leaflets, posters, notices in public libraries and council free-sheets, local radio and television, and appeals issued through Police/Community Consultation Groups and other local organisations. Some panels rely on word of mouth.[45]

The Home Office guidelines make few recommendations about the recruitment process, aside from suggesting the use of local press advertisements and/or consultative groups. The NALV guidance is more expansive. It suggests, among other things, that recruitment be planned on the basis of predicted need; that application forms invite potential lay visitors to say why they are applying, as well as seeking basic personal information, and that applicants be interviewed, ideally to test their suitability against a formal lay visitor specification.

Representation

Despite the widening of the pool from which lay visitors are recruited, recent research by the Police Foundation shows that only one provincial scheme felt that its lay visitors were representative of its community. Less than half of the administrators were not happy with the situation, and almost all were concerned at the lack of young lay visitors and those from minority ethnic communities.

The MPD guidelines state that:

> "The Home Secretary ... will take into account the composition of the panel and try to achieve a balance in terms of equal representation of men and women, persons from the ethnic minorities and age range."

In London, the panels are considered to be more representative of the communities, although the issue is still a cause for concern in some areas.[46]

Relatively little is being done to redress the issue of representation, either in the provinces or in London. There is some monitoring of applications but for some administrators non-representation is a non-issue; they feel, that targeting would result in fewer lay visitors. They also feel that it would require too much of the administrators' time and effort, compared to the chances of actually succeeding in obtaining a higher degree of representativeness.[47]

1.9 Training

The guidelines place the onus for arranging lay visitors' training on the Chief Constable. Vieira & Weatheritt reported that while recognising that the police must be involved in training lay visitors, some respondents felt that the expectation that they should arrange it conflicted with the expectation that lay visitors should be independent of the police.[48]

Most schemes report having some sort of training for their visitors, though a few appear to offer no training at all.

The training usually covers the basic provisions of PACE, the Home Office guidelines for visitors and a visit to a police station. Some schemes show the Home Office video "The Open Door", and some do role plays.

The most comprehensive training is generally offered by those schemes which recruit visitors from the general public. Some of the community-based schemes give refresher courses and some arrange guest speakers.

45 HALL & MORGAN (1993), p.19.
46 VIEIRA & WEATHERITT, forthcoming.
47 Ibid.
48 Ibid.

All schemes pair up new visitors with experienced ones for initial visits.

NALV arranges a number of training sessions, for new visitors and refresher courses for those who already have some experience in lay visiting.

1.10 Modalities and Frequency of Visits

Visiting programmes are based on the central premise that visits should be made unannounced and not at regular or predictable times.

For reasons of shared understanding, safety and corroboration in case of need, lay visits are advised to be undertaken in pairs. Pairs can be rostered to make a specified number of mutually agreed visits.

Lay visitors should also take into account the size, location and importance of police stations; prevailing relations between police and particular sections of the local community; and the views of consultative groups. In addition, visits should not be so frequent as to interfere with the administrative or operational efficiency of police stations.

Visiting frequency

In the provinces, the majority of lay visiting schemes have adopted the Home Office suggestion and set general target schedules of one visit every one to four weeks for designated stations and custody centres. A few schemes have set lower frequencies, and a minority of schemes have made no recommendations but left the matter to the lay visitors themselves.[49]

In 1997 most schemes met or exceeded visit expectations. Overall, the average visiting rate was 72 % of the targeted number of visits. However, this figure conceals some large variations in performance between stations within the same Authority.

Relatively infrequent scheduling, combined with low actual visiting rates, results in a significant number of stations receiving fewer than 12 lay visits each year.

In London, where most borough panels operate in pairs on a rota basis, weekly or fortnightly visits are the recommended norm. All the London panels keep statistics on visits and most achieve their intended frequency. The majority of police stations are visited once a week.

Overall, the average visiting rate by the London panels is 85 % of the targeted number of visits.

1.11 The Content of the Visit

There are two aspects of a lay visit: the welfare and treatment of detainees and the conditions and environment of their detention. All lay visitors are instructed to be familiar with the Codes of Practice for the Detention, Treatment and Questioning of Persons by Police Officers (Code C) of PACE.

As for the conduct of visits, the Home Office guidelines lay out in some detail what lay visitors can and cannot do. All parts of the custody area are open to lay visitors. Additionally, cells, detention rooms, medical room (but not the drugs cabinet), showers and relevant storage areas are all accessible, but not the operational areas. They can also speak to detained persons and examine the documentation relating to their detention and treatment but not the investigation of the alleged

49 VIEIRA & WEATHERITT, forthcoming.

offence(s) for which they are being held. The lay visit itself will also be recorded on the custody records of visited detainees.

Contrary to what Lord Scarman had originally suggested, lay visiting does not include the observation of interrogation and interviews.

Most of the persons seen by lay visitors are detained under PACE. Other categories to be seen by lay visitors are Home Office prisoners[50], both in police cells and in magistrates court cells (except those waiting for their case to be heard), immigration detainees[51] or so called "people at risk".[52]

Detainees may not be visited unless they have agreed. The escorting officer should, within the hearing of the lay visitor, explain to the detainee that lay visitors are present.[53] Many schemes provide the police with an agreed verbal or written introduction. After the visit the custody officer should check with the detainee on whether the lay visitors may see his or her custody record. If permission is denied, the detainee's wishes must be respected.

Normally, when detainees are asleep, the lay visitors can have them woken to seek their permission for a visit, at the discretion of the escorting officer. With those detainees who are comatose, intoxicated or deemed violent, the lay visitors can observe them through the cell inspection hatch. In this situation the lay visitors are allowed to examine the custody record without the consent of the detainee.

The Home Office guidelines of 1991 provide that in exceptional circumstances the police may judge that it is necessary for a detained person not to be seen by lay visitors in order to avoid any possible risk of prejudicing an important investigation. Any decision to deny visitors access to a detained person can be taken only by a Superintendent or above. An explanation of the reasons for refusal should be given to the visitors on each occasion and recorded in the custody record. The guidelines stipulate that a decision to deny access should be taken on each case in the light of all relevant circumstances. There should be no presumption that access should automatically be denied to any particular category of detainee or that because a decision has been made that a person should be held incommunicado, access by lay visitors should automatically be denied.

Lay visitors are escorted during their visit in the interest of their security and safety. The escorting officer should remain out of hearing during the discussions with the detainees, wherever practicable, but will be present during visits to Home Office prisoners (the reason for this distinction is not clear). If exceptionally the police decide that the escorting officer should hear the conversation, this decision must be taken by the Duty Officer or some other senior officer at the station and an explanation given to the lay visitors.

Under no circumstances should a cell door be closed with a lay visitor inside.

Other qualifications on visits imposed by the Home Office guidelines include the following:

- Lay visitors "should not take up individual cases or make representations on behalf of detained persons".
- Lay visitors should not convey messages.
- Lay visitors must respect the confidentiality of detainees and sign an undertaking not to release information relating to a detainee's identity except in special visits arranged beforehand.

50 Sometimes remanded and sentenced prisoners who would normally be held in prison are held instead at selected police stations or in magistrates court cells. They are known, in the police context, as Home Office prisoners.

51 Immigration detainees are held under the Immigration Act 1971 and are people subject to deportation proceedings or who are waiting to be removed from the UK as illegal entrants. They may be held in police cells, for want of more appropriate accommodation, for up to five days (and in certain exceptional circumstances, for up to seven days).

52 Under the Mental Health Act 1983, the police may hold people who are mentally disturbed in a police station for their own protection. Under the Child Act 1989 they may take into police protection children who they believe would otherwise suffer significant harm. Both categories can be held for up to 72 hours.

53 *Lay Visiting – A working guide for Lay Visitors* (1995), section 2.18.

Unlike a prison board of visitors, lay visitors do not have statutory rights and "where a lay visitor is in breach of these rules of guidance or acts in a way which is thought by the escorting officer to exceed the rules then the matter should be brought to the attention of the police authority". The Police Authority has the power to strike a lay visitor off the list.[54]

1.12 Issues Arising Out of Visits

Issues arising from visits fall into three broad types: those relating to visit procedures; prisoner welfare (including the welfare of particular groups of detainees, such as immigration detainees) and basic conditions of detention; and the PACE Codes of Practice.

Procedural Issues

Kemp and Morgan found in 1990 that visitors often encountered difficulties gaining access to the custody suites (meaning the waiting area, the charge area, the medical room, the toilet and washing areas, the interview rooms and the cells). In order to remedy this situation, Home Office Circular 4/1992 says that

> "Visitors should be admitted immediately to the custody area... It is inappropriate for access to be delayed because the custody officer is busy. In such circumstances the visitors should be admitted to the custody area but invited to wait until the custody officer or another officer is available to escort them on the visit. It is recommended that access should be delayed only where the visitors may be placed in danger..."

Vieira & Weatheritt report that several of their respondents were able to recall major breaches of procedure, or visits which had been mishandled in ways that reverberated beyond the custody suite and caused considerable upset. Although these incidents assumed a firm place in respondents' perception of the history of their scheme, they were regarded as exceptional. Lay visitors and police officers concurred that the procedural issues which were most likely to cause lay visitors difficulty were delays (particularly unexplained delays) in granting lay visitors access to the custody area and escorting officers' introductions.[55]

Physical Conditions

The principal concerns of visitors from both the provincial schemes and the MPD schemes are about physical conditions and hygiene within the custody suite.

In the provinces, the main conclusion drawn by Kemp & Morgan from their national survey in 1990 was that most issues arising from visits were "not serious" and seldom entailed "adverse comments" on the police. They were often said to concern small matters of housekeeping and decoration: for example, the prisoner wanted a blanket; the police were very busy and dirty plates had not been removed from the cell. The main inference was that the police are doing their best, often in difficult circumstances, and that there are no real grounds for serious criticism.[56]

In the MPD, there was also a widely felt concern with general conditions and facilities for custody and detention in police stations.

Both in the provinces and in the MPD, the police are reported to be generally very supportive of lay visitors in raising these issues.

54 *Lay Visiting – A working guide for Lay Visitors* (1995), section 2.18.
55 VIEIRA & WEATHERITT, forthcoming.
56 KEMP & MORGAN (1990), p.82.

It appears that, at present, issues relating to the physical conditions of detention are still the main focus of lay visitors, certainly in the provinces but also in the MPD schemes.

PACE related issues

Kemp & Morgan noted in 1990 that the evidence from their survey and the paper traces left by visits revealed that there were marked differences between schemes in their capacity as watchdogs. Some of the London and Cheshire panels were seen to be more professional and assured in taking up all issues which properly concerned them. By contrast, although provincial schemes concerned themselves with the physical conditions in which prisoners were held, few appeared to monitor police procedures or the implementation of the PACE Codes of Practice.[57]

In the 1993 study by Hall and Morgan, this pattern seems to be largely unchanged. In the provinces very few schemes had any complaints about the way detainees were processed at the police stations. A few of the spokespersons, however, felt that local duty solicitor schemes were not meeting the needs of detainees properly.

In the MPD, few panels expressed concern about duty solicitor schemes, with the exception of services for immigration detainees. However, a few raised the question of delay, with the consequence that prisoners were being held for an unnecessary length of time. There was also concern about advice being given over the telephone, or by a person other than the solicitor.

1.13 The Results of the Visit

It is recommended in the lay visitors' guide that specific concerns about a detainee always be raised at the time of a visit so that custody staff can remedy the situation.

As regards reports and follow-up action, the Home Office guidelines suggest standard triplicate visit reports with one copy staying at the station, one going to the Chief Constable and one to the Police Authority. They also recommend that any unsatisfactory matters should be noted on the reports and, if urgent, brought up with "the officer in charge of the station" on the spot. They single out in this respect allegations of assault or ill-treatment made by prisoners and injuries not recorded on the custody reports.

All schemes have their own lay visit report forms and train their members in their completion. The reports provide the police, Police Authority and panels with feedback on conditions of detention, actions taken and procedures followed.

Information noted in the lay visit report can include identification of the station visited, date and starting and finishing time of the visit, the number of persons in custody and matters brought to the immediate attention of the officer in charge. It can also contain tick boxes for lay visitors to indicate whether matters were resolved locally or if a response from the chief superintendent is required. There can be a section for general comments. The signatures of the lay visitor and the supervising officer are required.

It is the responsibility of the scheme administrator/panel co-ordinator to look at trends that may be developing and report such trends. For example, with the increasing use of contractors for cleaning and food preparation, the comments about one station may, together with those from others in the area, point toward a slipping of standards.

57 KEMP & MORGAN (1990), p.92.

The feedback from a lay visit depends on the structure in place at the particular locality. Some schemes involve their local community groups, others route their reports directly to the Police Authority (often to a "Quality of Service" sub-committee in larger authorities) that has the responsibility for overseeing lay visiting.

The level and effectiveness of feedback systems are generally most developed in areas where schemes have been established the longest. Formal feedback seems to be most effective when a senior officer (for example an Assistant Chief Constable) has responsibility for replying to concerns.[58] It is stated in the Lay Visiting Guide that "in an ideal situation all concerns would be replied to by both the police and the police authority. Information feedback generally works best at a local divisional or individual station level. This is dependent on 'personalities' and while effective on many occasions, should not supersede the formal structure".[59]

The extent to which the lay visiting panel is taken seriously by the local Police Authority and the extent to which the Police Authority ensures that it knows what the lay visitors report are determining factors of how much impact the lay visitors' reports have in changing critical conditions in the police cells. As mentioned before, the local Police Authority, as the institutional base for lay visiting, is the most important means through which the lay visitors can exercise pressure on a "local" Police Constable.

Some concern has been raised about the procedure for feedback to the London panels. Although the direct feedback from the local Police Commander is reportedly good in most boroughs, the feedback from the Home Office in its capacity as Police Authority for the MPD is apparently less satisfactory.

The overall impression, however, is that most schemes are satisfied with the feedback they receive on issues raised during a visit.

1.14 Publicity and Accountability

There are different ways in which lay visiting panels can account publicly. Of the Police Authority based schemes in the provinces, accountability to the public consists, for the most part, in having an item on the agenda of the Police Authority meeting. For the public-based and PCCG-based schemes, however, the PCCG is a major forum for disseminating information about lay visiting. In addition, each Police Authority now has the opportunity to report publicly on the operation of its lay visiting arrangements in its annual report.

Only two or three schemes used the press in any way. However, many say that because there is "nothing much to report" (i.e. that lay visitors rarely find anything particularly newsworthy), the public are mostly uninterested in, or totally ignorant of, lay visiting. Under these circumstances they report that it is difficult to engage the attention of the press.[60]

Hall and Morgan's 1993 report showed that in spite of efforts to publicise the activities of lay visiting schemes, nearly all panels reported little or no feedback from the public on lay visiting, and many wanted a more centralised and concerted effort to bring lay visiting to the attention of the public.[61]

Vieira & Weatheritt found that both police and lay visitors stressed the latter's role in reassuring the community that the police were behaving with propriety, but felt that this was undermined by the fact that lay visiting was so little known.[62]

58 *Lay Visiting – a working guide for Lay Visitors* (1995), section 2.35.
59 Ibid.
60 HALL & MORGAN (1993), p.17.
61 HALL & MORGAN (1993), p.25.
62 VIEIRA & WEATHERITT, forthcoming.

1.15 Police Perceptions of Lay Visiting

Kemp & Morgan concluded in 1990 that the police have benefited most from lay visiting:

> "Schemes, as they stand, allow the police justifiably to reiterate the claim that they have nothing to hide and that, contrary to some expectations, there is no blood on the walls... Lay visiting enables the police to demonstrate their willingness to enter into partnership with the community at minimal cost to themselves in terms of inconvenience and the diversion of resources."[63]

Overall, the police respondents in Vieira & Weatheritt's report welcomed lay visiting and saw it as a necessary and unexceptionable part of the patchwork of arrangements for securing the accountability of the police. Senior officers were particularly committed to lay visiting, seeing it both as an aid to managers (lay visitors acted as independent quality assessors of standards in custody areas and alerted managers to any shortcomings in the conditions of custody and the treatment of detainees) and, most importantly, as a concrete demonstration of the police service's commitment to openness to public scrutiny and transparency of operation.[64]

This general impression was confirmed by the author of this study during a visit to the Euston Police Station in May 1998, where the custody officer confirmed that the police welcome lay visits as a way of convincing the public that the police are not guilty of any illegal transgressions against detainees.

1.16 Observations on the Lay Visiting Schemes in England and Wales

There are many positive things to say about lay visiting schemes in England and Wales. They undoubtedly have the potential to contribute to the general well-being of detainees by dispensing of "little favours" and putting pressure on the police and the Police Authorities to ensure that the physical conditions of the cells are kept at an acceptable standard. The importance of this for the persons kept in the cells could easily be underestimated by those of us who have never been, and probably never will be, confined to such cells.

To the (limited) extent that lay visiting and the reports of the lay visitors are known by the general public, it is probably also the case that lay visiting contributes to a greater trust in the police by the communities it serves. In other words, it enhances the democratic and popular accountability of the police, which is arguably in everybody's interest.

The fact that the lay visiting schemes are not given statutory status could be considered a weakness. It does not sit well with the traditional theory of rights and accountability that a measure introduced to enhance accountability is not there by right but merely as a privilege – and thereby, at least theoretically, could be withdrawn on a whim.

However, from interviews with individuals involved in lay visiting, the author has become convinced that making lay visiting schemes statutory will not in itself necessarily enhance their impact and their prospects of fulfilling their objectives. The success of the schemes has been proved to depend mostly on the commitment of the visitors, and the extent to which they have the (personal) capacity to engage constructively with the police in order to improve the conditions of detainees. Some lay visitors, as we have seen, have indeed welcomed the flexibility of the present arrangement, which they feel gives them more room to improve the situation in view of the particular situation in their own area.

63 KEMP & MORGAN (1990), p.112.
64 VIEIRA & WEATHERITT, forthcoming.

These observations are to some extent due to the political and legal context in which lay visiting operates in England and Wales. This means that the particular circumstances there, which do not seem to necessarily warrant the introduction of a statutory system, cannot automatically be applied to other countries, where the political and legal context may be different.

Another issue which comes to mind when looking at the British schemes is the fact that the schemes, although nominally autonomous, are very closely associated with the Police Authorities. This might not in fact affect the public credibility of the schemes – after all, the Police Authorities are part of democratic oversight structures, and the majority of their members are local councillors elected by the public. However, one should keep in mind that, while lay visiting anywhere arguably needs some form of institutional back-up in order to have an impact, in some countries a close institutional association with a (local or national) government structure could render such a scheme without credibility as an independent oversight mechanism.

Despite the undisputed positive aspects of the lay visiting schemes, it can still be argued that the way the schemes operate at present, with great variations in practice, could be the subject of improvement and standardisation. It must be considered a weakness of the system as a whole that certain schemes are allowed to function under the name of lay visiting scheme when they carry out only very infrequent visits, or where no efforts are made to make the reporting system transparent and effective.

The national guidelines are presently under review, but they set out some form of minimum standards on how lay visiting should be implemented. In addition, NALV has drafted a set of minimum requirements for recruitment, training, selection, frequency of visits, reporting procedures, etc. It is submitted that it would enhance the standing and credibility of *all* schemes if greater effort were made by all Police Authorities to ensure that lay visiting in their respective areas fulfils at least the requirements set out in the Home Office circulars. Over and beyond that, there is scope to develop and adjust according to local circumstances.

It is submitted that the Police Authorities should account more critically on lay visiting performance in their annual reports as a way of ensuring greater vigilance in the performance of some schemes.

It has been submitted that lay visiting undoubtedly has the potential to contribute to the general improvement of the physical conditions of detention and to the dispensing of "little favours". The question remains, however, to what extent lay visiting, in its present form, has an impact on preventing torture of and physical assault on detainees in police cells.

It was generally agreed by all the persons interviewed for the purpose of this report that there is at present no significant physical abuse of detainees in police stations in England and Wales–in the words of some: "There is no blood on the walls!"

Can this be attributed to lay visiting? The number of persons seen by visitors represents a tiny fraction of the total number of persons held in the designated stations. Even if the number of visits were to quadruple, this would still mean that less than two per cent of all detainees were receiving a visit.

It is submitted that lay visiting certainly has a role to play in letting the police know that any transgressions against detainees run the risk of being detected. But considering the way the lay visiting schemes were conceived and the way they operate, they are not intended to deal with serious transgressions by the police. Visitors are not necessarily doctors; they are not necessarily lawyers. The fact that they, by definition, are *lay* people is a good thing when it comes to having the local com-

munity 'buy into' the policing of their own area and to ensure relatively frequent visits to any local police station, but it is submitted that when it comes to torture and physical abuse and the prevention thereof those are not the skills which are first and foremost in demand. It is submitted that the most efficient safeguard against physical abuse is the right of detainees to have a lawyer present during the interview and to be able to call a doctor at any time. In addition to this, there needs to be a strong regulatory framework with explicit, transparent review and complaints procedures in case of alleged transgressions. These functions are provided by PACE, not by lay visitors, although lay visitors admittedly can identify the more obvious signs of ill-treatment. This means that lay visiting should never be a stand-alone measure to prevent torture in police cells.

It is important to note, when viewing lay visiting schemes within a broader notion of police accountability, that given their (justifiable) lack of direct powers over the police, they relate primarily to a moral accountability of the police service and that they cannot and do not take the place of other measures – constitutional, legal, political, administrative or managerial – designed to ensure *and* enforce accountability on behalf of the police. Nevertheless, as one element in an accountability bundle, lay visiting can be expected to play its part in enhancing the professional accountability of the police, both generally and with regard to prevention of physical ill-treatment of detainees.

2 Committees for the Monitoring of Police Cells–The Netherlands[65]

2.1 Introduction

A system of external oversight of police stations has been in place in certain parts of The Netherlands since 1988. It operates very differently from the UK schemes outlined above, but the objective of conducting unannounced visits to police cells is the same.

It has proved difficult to obtain information (in English) from different sources about the functioning of the Netherlands monitoring schemes, which explains the limited number of sources used to compile this section and the relative brevity of the section in comparison with section 3.1. It must be stressed that the brevity of this section does not in any way suggest that the work done by the committees is not considered important.

Before looking more closely at the functioning of the monitoring committees, a very brief overview of the Dutch structures for the police and other accountability mechanisms will be presented, in order to illustrate the framework in which the monitoring committees operate.

2.2 Police Structures and Accountability

The Police Act of 1993 divides The Netherlands into 25 police regions, subdivided into territorial divisions (districts), whose boundaries do not necessarily correspond with those of municipalities in the police region.

These regions are governed by regional police boards. Each regional police board is presided over by a *corps manager,* who is the mayor of the most important city in the region. In addition to the *corps manager*, the regional police boards consist of all mayors (*burgomasters)* of the municipalities whose territory falls within the police region, and of the chief public prosecutor and the chief commissioners (who are the highest ranking police officers in a region).

Police cells are intended to accommodate suspects during the first phase of police investigations only. This phase encompasses a first term of 6 hours (plus the time between 24.00-09.00 hours), necessary for questioning the suspects. After this the suspect can be kept in police custody for two times a three-day maximum. If necessary to obtain the real identity of the suspect, the first term of six hours can be extended once. If remand custody is ordered by the court, the person should be transferred to a remand centre. Within three days of his or her arrest, the suspect should be brought before a magistrate who checks the legality of his or her detention.

All rights and duties of a police detainee can be seriously affected by orders of the public prosecutor and/or the examining magistrate. The Code of Criminal Procedure empowers the public prosecutor to order that a suspect, already in the very first phase of detention, may be forbidden to have contact with third parties (in writing, via telephone), may not receive any visits (except those of his or her lawyer) and may have no contact with fellow detainees. The same powers can be exercised by the examining magistrate in the course of a preliminary investigation. An appeal can be lodged against orders to keep the detainee *incommunicado* with the court that will eventually handle the case.

The Police Complaints Procedure

The 1993 Police Act offers the legal framework (in its para. 61-66) for handling complaints about alleged maltreatment by the regional police. It is up to the regional police boards to instruct the

65 Unless otherwise indicated, the information in this section is based on the paper by DE JONGE, Gerard, *Issues and Mechanisms for Preventing Torture and Ill-treatment in Northern Europe*, presented at the conference of the APT and the British Institute of Human Rights, 5-6 September 1997, Kings College, London.

regional police on the more practical details of the intake, processing, investigation and disposing of complaints about the behaviour of police officers. The Police Act determines that complaints have to be lodged with the mayor of the municipality where the police misbehaviour is alleged to have taken place (para. 64.1).[66]

The mayor starts a preliminary investigation of the complaint and sends his or her findings to the *corps manager*, who has to ask the advice of the regional police committee for police complaints cases. This advisory committee consists of independent members, appointed by the regional police board, after having been nominated as such by the *corps manager*. The number of members and their term of appointment may vary per police region.

It is the *corps manager* who must finally decide whether the complaint is valid or not. When the complaint concerns an alleged criminal offence committed by the police, it will not be handled as long as criminal investigations are going on. The decision of the *corps manager* is final and cannot be appealed.

There are indications that the complaints procedure as formulated in the Police Act 1993 is going to be in accordance with chapter 9 of the *Algemene Wet Bestuursrecth* (Act on Administrative Law) which will deal with complaints procedures in general.

National Ombudsman

When the complainant is not satisfied with the decision of the *corps manager*, he or she is free to submit the same complaint to the Dutch National Ombudsman, who is legally obliged (provided that the complaint has been made known to the police in an earlier stage or unless the request is manifestly ill-founded) to investigate the matter again and may very well reach a conclusion which differs from that of the *corps manager*. The Ombudsman, whenever he or she thinks this is of any importance for his or her investigations, is free to visit any police station in which the maltreatment allegedly took place and is entitled to examine any document applying to the case of the complainant. The final report of the ombudsman is not only sent to the parties involved, but also made public.

2.3 Background to the Establishment of the Committee for the Monitoring of Police Cells

As in the UK, a dramatic event led to the introduction of external oversight of police stations, namely the death of the squatter Hans Kok during his custody in an Amsterdam police cell in 1985.

The death of Mr Kok was investigated by the public prosecutor. This, however, never led to the prosecution of any law enforcement officer, because the responsibility for his death could not be pinned individually on one or more of the policemen in charge of the many arrested squatters present in the police office on the night of 24 October 1985.

In January 1986, Mr Kok's lawyer submitted the case for investigation to the National Ombudsman. In March 1987, the Ombudsman made his report public.[67] He was also unable to put the blame on one or more individual police wardens, but he was very positive in his final conclusion that during the night preceding his untimely death, Mr Kok had not received the material and medical care to which he was entitled. The Ombudsman found that lack of care was due to organisational chaos in the cell block. Such chaos was found not to be accidental, but rather a structural feature of the treatment of detainees in this specific police station.[68]

66 In practice complaints can also be lodged (orally) at the police office of the municipality where the alleged misconduct happened. All regional police corps have a complaints co-ordinator, who can also receive complaints.
67 Nationale Ombudsman, Openbaar rapport van 30 maart 1987 (No. 87/R276).
68 Nationale Ombudsman, I.c., p.129.

Mr Kok's death and the subsequent investigations into its circumstances, provoked a fierce national debate on the responsibility of the police for the physical and mental well-being of persons deprived of their liberty.

Although the mayor of Amsterdam, who is administratively and politically accountable for the way the police treat their detainees, always denied responsibility for the death of Hans Kok, he decided in 1988 to install an inspecting body for the municipal police cells: the 'Commissie van Toezicht voor de Politiecellen' or the Monitoring Committee for Police Cells (the MCPC)[69] The MCPC has been operating ever since and publishes a yearly account of its activities. This model has been followed in The Hague (1991) and the police regions of Brabant-Noord (1994) and Flevoland (1996).

2.4 Regulatory Framework

As just mentioned, the Amsterdam MCPC came about as a result of a particular case and on the initiative of the mayor of Amsterdam. There is still no national framework for the establishment of MCPC's in other regions, so it is left to the initiative of the management of the various police regions to set one up – or not. As a result, in only 4 out of 25 police regions is the treatment of detainees in police cells being monitored by an MCPC.

The task and competence of the committees are fixed in a *Regulation*, drafted by the *corps manager* in the particular region. Thus, in the absence of a national framework or guidelines the existing committees operate independently of each other and have developed in different ways. However, although the regulations for the various MCPC's may differ in wording, and the number and qualifications of their members may vary, the mandate of all committees is the same: to exercise random, periodic controls on the way police treat their prisoners and report back to the *corps manager*.

2.5. The Amsterdam MCPC

Objectives and Organisation

The tasks of the Amsterdam MCPC are:

- to monitor the treatment of persons detained in police cells;
- to advise and inform, spontaneously or on request, the *corps manager* on matters regarding the police cells in the region Amsterdam-Amstelland.

Since the reorganisation of the Dutch police in 1993, the Amsterdam MCPC has formally been a standing advisory committee to the regional board of the police region "Amsterdam-Amstelland", which encompasses the city of Amsterdam together with the territory of 5 other municipalities. The committee was installed by the *corps manager* (the mayor of Amsterdam), but is said to function completely independently.

A civil servant is appointed by the *corps manager* as secretary to the MCPC.

Recruitment and Tenure

The members of the committee are appointed and discharged by the *corps manager*, after consultation with the regional board. They have no fixed term. New members are recruited by co-option.

69 Originally the committee was called "Commissie van Toezicht voor de Amsterdamse Politicellen". This name was changed to "Commissie van Toezicht voor de Politicellen Amsterdam-Amstelland" after the Police Act of 1993.

The Amsterdam MCPC counts at least three and at the most seven members. The *corps manager* appoints the chairperson of the MCPC. The *Regulation* does not require special qualifications for members of the committee, but says that the *corps manager* should strive for the inclusion of a wide spectrum of relevant skills. There is also an attempt to recruit members from minority groups.

In 1996, the Amsterdam MCPC consisted of seven persons: two jurists, one of whom used to be a member of parliament, one medical doctor, a pedagogue, a teacher, a sociologist and a probation officer (3 men, 4 women).

In 1996, the Amsterdam MCPC consisted of seven persons: two jurists, one doctor, a pedagogue, a teacher, a sociologist and one probation officer (3 men, 4 women).

Training

Initially, members' working backgrounds of law, the judiciary, rehabilitation and medicine rendered training unnecessary as it was believed that the individuals' experience was sufficient.[70] However, the secretary and chairman of the committee now provide information for newcomers. New members, furthermore, always work together with more experienced ones.

Modalities and Frequency of Visits

Each member of the MCPC monitors a specified number of police stations and visits them regularly, but without advance notification. To prevent too deep an involvement in the inspected bureaux and their police personnel, the members of the MCPC rotate between the districts. Rotas also ensure both day and night visits, during weekdays and weekends, and whenever deemed necessary, such as after a riot.

The goal is that every police station in the region be visited at least once a month. During 1996, members of the Amsterdam MCPC made 221 monitoring visits.

During their visits to the police offices, the MCPC members talk with detainees, police officers and personnel charged with the daily care of the prisoners. The detainees are not obliged to see the visitors, but if there is consent from the detainee, the duty sergeant withdraws to allow for a "quiet discussion". A member of the MCPC interviewed for the purposes of this report has said that most detainees are willing to see the committee.

The Content of Visits

The committee monitors the conditions in police cells through direct observation. To carry out this task it disposes of the following facilities:

- The committee and its members at all times have unlimited access to all places on police premises where persons are deprived of their liberty, with the exception of places where people are questioned in the course of a police investigation;
- The committee and its members are entitled to receive all information asked for from all police officers. The members are allowed to inspect all documents regarding the police cells, including lists of people arrested, 'arrest books' and transfer lists;
- The committee is authorised to seek immediate contact with the chief commissioner on all matters regarding its task and competence.

70 National Association for Lay Visiting (1995): *Visiting Times*, 2: 4, p.17.

When interviewing detainees a standard checklist of questions is asked, for example:

- has the detainee's family been notified;
- has he/she been informed of his/her legal rights;
- the quality of the meals;
- ask about any possible complaints;
- ask about washing facilities;
- check the above on the computerised system of activities delivered by personnel.

Washing facilities are checked as well as opportunities for exercise. Graffiti are checked for signs of discrimination and immediate removal of offensive texts and swastikas is requested.

The MCPC does not restrict its monitoring to the position of the detainees, but also keeps an eye on the working conditions of police personnel, because these can affect the general work climate in any police office and the treatment of persons held in custody.

The Amsterdam MCPC is not entitled to handle complaints communicated to it by individual detainees during visits to police stations (only the Flevoland committee has this task). The committee can only give the complainants information on the police complaints procedure.

Issues Arising Out of Visits

One of the items the Amsterdam MCPC has occupied itself with is the question of how many police cells in its region meet legal requirements. In 1995, members of the committee personally measured all relevant spatial dimensions of the cells and adjoining corridors and checked whether necessary alterations and renovations (asked for in the preceding years) had been completed. The MCPC had to conclude that a substantial part of all police cells did not meet legal standards.

Another subject which concerns the MCPC are persons who are deprived of their liberty in police cells but who should not, according to their legal status, be there at all. The committee distinguishes four categories:

1) Persons deprived of their liberty for not paying fines, who are formally allowed to be kept in police cells for two night only and after this term should be transferred to a remand centre.
2) Persons arrested because they still have to serve some (short) prison term. These should also be transferred to a remand centre (provided the term is no longer than 3 months, in which case they have to be transferred to a regular prison).
3) Persons on remand. These should be transferred to a remand centre.
4) Persons detained as aliens. This category should also not be kept detained in police cells too long.

From the start, the Amsterdam MCPC has signalled the serious problem of how to take care of – often homeless – mental patients who are a nuisance and sometimes a threat to their surroundings, and who are locked away in police cells temporarily, lacking sufficient possibilities to be referred to a psychiatric institution.

The Results of the Visits

A written report is made of every visit and a copy of the report is sent to the head of the inspected station.

Once every three months the MCPC meets to discuss its reports with the highest police officer, the deputy commander.

An annual report is submitted for discussion during a public meeting of police councils' committees on police matters.[71] There is great media interest in the reports issued by the MCPC.

The European Committee for the Prevention of Torture (CPT), in its report on a 1992 visit to The Netherlands, expressed the view that it considers the MCPC's activities as an effective means of preventing the ill-treatment of persons held by the police, and, more generally, ensuring satisfactory conditions of detention in places of detention. The CPT invited the Dutch authorities to consider extending a supervisory system of this kind to all police and gendarmerie detention areas.[72]

2.6 Monitoring Committees in Other Police Regions

As there is no legal obligation to do so, regional police boards are free to decide whether or not to install a monitoring committee. Since the Amsterdam committee started in 1988, only three other police boards have done so.

The city of **The Hague** was among the first to follow the Amsterdam model. As in Amsterdam a particular event – in this case a fire in the detention department of the central police station in 1991 – triggered the establishment of the monitoring committee. The Hague installed a monitoring committee in 1991, which, after the reorganisation of the police in 1993, was extended to the police region "Haaglanden". This region counts 23 police stations to be monitored.

The Hague MCPC comprised 12 professional people (in 1995), of whom three were magistrates (but not local). Members are not drawn from the general public.

For its inspections the committee uses a very detailed checklist, with over a hundred items, arranged under the headings: Construction, Fire Safety, Inventory, and Treatment and Care.

In four years (1991-1995) the committee was refused access to detainees only twice.

During 1996, police cell complexes in this region were visited 281 times. During 70 of those visits detainees were interviewed about their treatment. In 20 cases this led to critical remarks on their treatment.

A written report is made of every inspection and a copy of it is sent to the head of the inspected police stations.

This committee is "not unsatisfied" with the reactions of the regional police force to its recommendations, but would like to see them implemented a bit more speedily. The general feeling of this committee is that the police personnel entrusted with the daily care of detainees are performing better and better.

71 Although the Regulation on the Monitoring Committee does not say explicitly that these reports are public, in practice they are.
72 Committee for the Prevention of Torture (1992): *Report to the Dutch Government on the Visit to the Netherlands Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 August to 8 September 1992*, CPT/Inf (93)15, para. 52.

Every two months the most important remarks and recommendations are reported to the management of this police region. However, the findings and recommendations of the monitoring committees are not binding on the police in any way.

The Hague committee is always informed by the police whenever a large-scale police action is being prepared, for instance against hooliganism before and after soccer matches.

Since 1994, there exists a monitoring committee for police cells in the police region of **Brabant-Noord**. As the region counts only three police cell complexes, this committee operates with three persons (a professor of criminal law, a defence lawyer and a medical doctor). An interesting feature of this committee is the attention given to the in-service training of personnel (partly hired from private security firms) in charge of the daily care of detainees. For this group the committee organises annual training in handling special categories of detainees, like foreigners, women, drug addicts, etc. The committee also keeps an eye on the selection and recruitment of such personnel.

This committee does not handle complaints of individual detainees, but will forward these to the official police complaints committee. Nevertheless, once a year all complaints are analysed by the monitoring committee in view of possible recommendations on the general treatment policy to the *corps manager*.

The secretary of this particular monitoring committee regrets that the establishment of such committees is not mandatory. He would like the Police Act to be completed with provisions of this kind.

In June 1996, a monitoring committee started its activities in the predominantly rural police region of **Flevoland**. The task of its five members is to monitor six police cell complexes. In its first report the committee says that during the last six months of 1996 its members visited the police cells 18 times and talked with 49 detainees. Apart from some minor criticism regarding the dimensions of some rooms used by detainees during the daytime, the committee said it had the impression that the police and those who took care of the prisoners had a keen eye for reasonable treatment of the detainees.[73] A special feature of the Flevoland committee is that the cell monitoring committee and the police complaints committee are one and the same.

In the police regions of Gelderland-Midden, Drenthe and Utrecht, police cell monitoring committees are being planned, but the exact date of their establishment was not yet known by late 1997.

2.7 Observations on the Monitoring Committees in The Netherlands

Even though the visiting mechanisms in The Netherlands function in many ways differently from the UK lay visiting schemes, there are many overlapping features as well. And their respective purposes are identical.

As in the case of the British lay visiting schemes, it seems beyond a doubt that the Dutch MCPC's have the potential to make an impact on the physical conditions of detention in police cells and to dispense "little favours" to the persons detained in police stations visited.

The composition and the duties of the existing MCPC's seem to be modelled on the CPT; members are from particular professions and are expected to make more professional contributions to the monitoring. This is in contrast to the British schemes, which are designed explicitly to encompass a *lay* element in the monitoring. There appear to be pro's and con's associated with both

73 Jaarverslag Commissie van Toezicht voor de Politiecellen in de Politieregio Flevoland 1996.

approaches to the composition of the panels. However, it is submitted that in societies with a relatively high standard of policing and clear, transparent police complaints procedures the impact of independent monitoring schemes does not depend too much on whether its members are professionals or so-called *lay* persons. Rather, what seems to be the most important test is the extent to which the schemes can be considered independent and to what extent their recommendations are followed.

Although they seem to operate very similarly in terms of modalities and content of visits, the regulatory framework for the Dutch MCPC's is even weaker and more decentralised than its British counterpart, where at least lay visiting is subject to national guidelines issued by the Home Office. It is submitted that the relevant Dutch ministry/ministries should issue national guidelines, recommending or even requiring that police regions establish MCPC's and set out minimum requirements for the operation of the MCPC's.

Like the UK schemes, the Dutch schemes are very closely associated with the authorities in charge of the police, acting as they do as an advisory committee to the regional police board. This entails the same dangers to credibility of the Dutch schemes as outlined above in relation to the UK ones.

It is of concern that one of the committees, the Hague MCPC, has members who are magistrates, albeit not local ones. It is submitted that by including magistrates the scheme runs the risk of being associated too closely with *official* oversight bodies. This takes away a necessary element of formal independence, which could potentially affect the credibility of the committee as a non-official watchdog – without carrying any of the advantages and powers which a statutory, internal oversight body might enjoy.

It is also a problem, but maybe an unavoidable one given the foundation of the MCPS's, that the procedure for reporting back to the *corps manager* is informal. Even though, in fact, it is most probably the case that the MCPC's are indeed listened to, in theory they can only hope that their voice will be heard and their recommendations taken seriously. They have no political or administrative power whatsoever. The only thing their members can do is to quit if they feel they are being ignored.

Well aware of its position, the Amsterdam MCPC has now proposed that the regional police board and the *corps manager* respond explicitly to every recommendation made by the committee and that accepted recommendations be implemented within two to three years after acceptance. It is submitted that the adoption of this proposal would go some way toward ensuring the implementation of any accepted recommendation.

When it comes to the impact of the MCPC's in preventing torture and ill-treatment, reference can again be made to what was said about the UK schemes on this subject, although the fact that doctors and lawyers are represented on the MCPC's provides a better foundation for detecting whether any transgressions have taken place. And the mere fact that the police stations can be visited at any given time does of course, as in the UK, contribute to opening up to the public what goes on in the cells and to police awareness of this fact. But, regarding prevention of torture, it is submitted that even a more professional visiting mechanism can not fulfil the role of a strong legislative framework spelling out in detail the rights of detainees and the conditions of their detention, like the British PACE.

Part II

Independent Visiting Mechanisms in Transitional Societies

1 Hungarian Police Cell Monitoring Programme

1.1 Introduction

The transition from a long period of dictatorship to a full fledged parliamentary democracy is not an easy process which can be accomplished overnight. One area where the difficult and painful process of transition can be seen relates to the reform of the police and the penitentiary systems in the former socialist countries.[74]

It is in this context that the Hungarian Police Cell Monitoring Programme should be placed. Since 1996, this very different kind of independent monitoring scheme has been in operation at various times in Hungary. It is completely different from the UK schemes, in terms of scope, context and recruitment of monitors. The only comparable element is the fact that the Hungarian Police Cell Monitoring Programme provides an until now unknown element of external, civilian oversight (of and insight into) the conditions in police jails.

The Hungarian Programme presents a unique model of how external monitoring can be exercised in a transitional society, where the idea that the police can be held accountable to the public for their treatment of detainees is a relatively new concept. Although civil control over closed institutions is a well-known phenomenon in the West, in the countries of Central and Eastern Europe the public have been kept at a considerable distance for a long time. The co-operation of the Hungarian authorities in implementing the project is, therefore, also an important element, because the police authorities thus openly accepted public scrutiny of their activities.[75]

1.2 Background to the Police Cell Monitoring Programme

In the early 1990's, following Hungary's transition to democracy and its becoming a member of the Council of Europe, a number of oversight bodies and organisations focused their attention on the conditions for detainees in Hungarian police jails.

The Hungarian Prosecutor General's Office, which has the obligation to oversee police detention, found in its 1991-1992 report that police jails were in an extremely bad physical state. In the wake of this report, a number of jails were closed down as unfit for human habitation and, with the utilisation of considerable funds, the reconstruction of police jails was initiated.

In 1994 the European Committee for the Prevention of Torture (CPT) visited Hungarian places of detention, and as a consequence of its report[76] another 23 police jails were closed down. The CPT's visit had a considerable impact on the democratic transformation and humanisation of the Hungarian criminal justice system, particularly on the way pre-trial detention is implemented.[77]

Also in 1994, the Prosecutor General's Office conducted a study on the handling of complaints against police officers for using duress during interrogation. According to the findings of this study, the investigative practices of police officers and the treatment of persons under preliminary detention often give reason to suspect the use of duress during interrogation, but to prove that in court is not possible in most cases.[78]

The Parliamentary Commissioner for Civil Rights and her general deputy also conducted several investigations concerning the effectuation of the civil rights of persons confined in correctional institutions and police jails. On the basis of these investigations, they recommended that the National Chief of Police pay particular attention to the conditions in places of confinement, to the observance

74 Professor Arie Bloed: "Preface II" in *Punished Before Sentence – Detention and Police Cells in Hungary 1996*, (1998), p.9.
75 Ibid. p.9.
76 European Committee for the Prevention of Torture (1996),: *Report to the Hungarian Government on the Visit to Hungary by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, November 1-14, 1994,* CPT/Inf. (96) 15
77 KOVER, Agnes Dr: *CPT Standards in Action – A Critical Review of the CPT's Visit to Hungary*, paper presented at the joint APT/COLPI "Central European Seminar on Prevention of Torture", 18-19 June 1998.
78 VITEZ, Miklos Dr (1995),: "Experiences Concerning the Judgement of Complaints against Police Officers for the Offence of Interrogation under Duress" (translation of the original Hungarian title) *Belugyi Szemle* (name of the journal), 1995-6, pp.19-28. Also see KOSZEG, Ferenc (1997): "The Police Officer and the Citizen", *Belugyi Szemle* 1997/2, pp.3-16, about cases of police brutality and low success rate of investigations, and KOSZEG, F.: *Are Police Officers Punishable?*, paper presented at Symposium on Public Interest Law in Eastern Europe and Russia, July 15-20, Oxford, UK.

of the decree on jails, to the implementation of the various health regulations and to regular medical examinations, which should not be omitted. The National Chief of Police accepted the recommendation.[79]

Following this barrage of critical investigations into the conditions in police detention cells, the Minister of the Interior indicated to the Parliamentary Human Rights Commissioner that he supported the idea of civilian oversight of police activities.

Referring to this statement, the Hungarian Helsinki Committee (HHC) submitted a proposal for a Police Cell Monitoring Programme to the Minister of the Interior.

The Minister facilitated contact to the police authorities in charge of the police jails, and subsequently a co-operation agreement with the headquarters of the National Police was signed in early 1996, initially providing access for representatives of the HHC to monitor the situation of detainees in police jails in five counties and in Budapest. At the beginning of September an additional four counties were added to the programme. A circular was subsequently issued by the Deputy of the National Chief of Police for Public Security, setting out the details of the programme and instructing the relevant police agencies to grant access to the monitors on the conditions set out in the co-operation agreement.[80]

The programme was executed by the HHC in co-operation with the Constitutional and Legislative Police Institute (COLPI). COLPI provided financial support for the programme and also provided for the participation of Dr Agnes Kover, who was a professional leader of the project jointly with Dr Jano Somogyi of the HHC.

The monitoring was conducted in two phases, from February 15 to June 30, 1996, and from September 15 to December 15, 1996. In the second phase of the programme, with the permission of the Minister of Justice, the visits were extended to the correctional institutions in four counties and in Budapest. The visits to correctional institutions only focused on the conditions of pre-trial detainees.

The reason for focusing the monitoring programme on the conditions of those detained in police cells where suspects are held, as opposed to the conditions of prisoners, was that comparatively speaking, the situation of those held under pre-trial detention is worse than that of those serving prison sentences, even if the regulations are in harmony with international requirements.[81]

According to Hungarian law, pre-trial detention should be implemented in correctional institutions.[82] However, according to the correctional service, of the 6,708 persons in pre-trial detention in 1996, only 3,500 were placed in correctional institutions. This means that almost 50 % were kept in police cells, on the basis of an option intended for use only in exceptional cases.[83] This proportion is almost 100 % for suspects in the investigative phase of proceedings. Suspects spend an average of three to six months in closed institutions designed and suitable only for a much shorter stay, and one-tenth actually remain there for 10 to 12 months.[84]

79 OBH 9333/1996.
80 A copy of the circular is enclosed as Appendix 2/a in *Punished Before Sentence* (1998)
81 *Punished Before Sentence* (1998), p.15.
82 Par. [1] of Section 116 of Law Decree of 1979 as amended by Act XXXII of 1993.
83 Par [3] of Section 116 of Law Decree of 1979 as amended by Act XXXII of 1993: "...until the conclusion of the investigation, pre-trial detention may also be implemented in a police...jail."
84 *Punished Before Sentence* (1998), p.15-16.

1.3 Regulatory Framework

The regulatory basis of the Police Cell Monitoring Programme is a single sentence in the **Decree of the Minister of the Interior on Regulations of Police Jails** in which it is stated that

"the detained persons can maintain communication under supervision, but without surveillance, with members of organisations licensed by the Hungarian laws to protect human and civil rights." [Decree No. 19/1995 (XII.13) para. 3, point 4 (b)]

However, the meaning of this provision is unclear, since there is no law entitling any organisation (with the exception of that of the ombudsman) to exercise special rights in protecting human rights.

In the absence of a clear legal regulation, the General Prosecutor, whose task it is to exercise legal control over prisons and police cells, raised serious objections.

1.4 The Aim and Content of the Programme in 1996

The initial aim of the project was to gather empirical data about the situation of pre-trial detainees in police cells in Hungary so as to compare it with Hungarian legal standards and Hungary's international legal obligations in this field.[85]

The co-operation agreement between the Hungarian Helsinki Committee and the National Headquarters of Penitentiary Institutions set out how the programme was to be executed.

According to the agreement, the National Commander in Chief of Penitentiary Institutions should:

- give permission to the co-workers of the Committee to enter the designated penitentiaries;
- countersign the Letters of Commission drawn up by the Hungarian Helsinki Committee;
- inform the Commanders in Chief of penitentiaries of the details of the programme;
- undertake to make observations on the report of the Committee before its publication.

On the other side, the agreement stipulated that the HHC should:

- designate persons participating in the programme and draw up Letters of Commission for them;
- undertake the cost of the programme;
- inform its co-workers on the rules on conduct to be presented at penitentiaries which formed part of the agreement;
- make the questionnaires intended for use available to the penitentiaries;
- undertake to furnish the final report of the programme to the penitentiaries.

According to the rules for executing the programme, attached to the co-operation agreement, the monitoring should comprise the following:

- conditions of the detention buildings and their sections;
- treatment of the detainees;
- conditions of detention;
- ensuring rights of the detainees;
- care for detainees' physical and other, e.g. medical and hygienic, needs;
- quality of relations between detainees and cell guards.

85 According to Directive No. 1/1990 of the Prosecutor General, the prosecutor's office exercises supervision at the conditions of confinement in police jails and correctional institutes. Accordingly, the prosecutor visits the jail once a month to check the situation, and he makes a report of his findings to the chief prosecutor of the county (or Budapest) and to the chief of the police headquarters involved; see *Punished Before Sentence* (1998), p.9.

The monitoring groups were permitted to visit police facilities covered by the programme at any time, even at night, without any advance notice. The members of the groups were authorised to view the holding and booking areas, cell blocks and cells, to converse with persons held under arrest or pre-trial detention.[86] The groups were not allowed to enter the cells after jails were closed for the night, but they could view the cells through the opening designed for serving food, or they could speak with detainees who were awake.

The monitors were allowed to converse with the detainees under security control, although without the security guard listening in on the conversation.

The three-member groups visiting the jails were led by practising attorneys who had worked in human rights programmes or in human rights advisory offices. The other two members were either physicians, sociologists, psychologists, teachers or social workers. These members were mainly recruited from certain groups of human rights activists.[87] Thus, the composition of the groups allowed the organisations to respond directly and in a professional manner to rights violations.

None of the members of the groups were employees of any state organ or local government.

Each group had permission to visit police cells in one county or in Budapest, and a couple of participants working close to the HHC had general permission for all counties and cities included in the programme.

There was no formal training programme for the monitors, but there were several meetings and professional debates on problems of pre-trial detention with all participants.

During the survey periods in 1996, the groups made 216 visits to police jails and other facilities where persons were kept in detention. They conducted 218 interviews, and detainees completed 473 questionnaires. The questionnaires included questions concerning the circumstances of arrest and pre-trial detention, as well as the protection of their rights during detention. In the second half of the programme, two further questionnaires were developed to survey the physical state of the jails and both the working conditions and opinions of officers serving on jail duty. 34 questionnaires of the first type and 40 of the second were completed.

If the detainees reported conspicuous irregularities or violations of their rights, the monitors reviewed with their consent the personal documents relating to their detention.

According to a circular issued by the Deputy of the National Chief of Police, the head of the branch of service involved with the activities of the Committee should send a report on the opinions of the observers expressed at the site to the head of the National PHQ Public Order Department, together with a report on the actions taken or proposed for the elimination of any discovered shortcomings.[88]

During the survey, police headquarters generally proved willing to co-operate with the monitoring groups and gave them access to information and records as specified in the agreement. Overall, the monitoring programme was conducted as agreed with the police authorities and without any major hitches, and the number of exceptions declined in the second six-month phase following the revision of the agreement.[89]

86 Appendix 2/a: Letter of Authorization, *Punished Before Sentence* (1998), p.133.
87 See Appendix 5 of *Punished Before Sentence* (1998) for a list of the names and professions of the members of the work groups.
88 Circular No. 3/1996, printed in Appendix 2/a of *Punished Before Sentence* (1998).
89 *Punished Before Sentence* (1998), p.19.

1.5 The Findings of the Police Cell Monitoring Programme

In the way the programme was implemented in 1996, it had primarily a fact-finding character, looking at the treatment and conditions of pre-trial detainees.

A summary report on the first half-year of the Police Cell Monitoring Programme was published by the HHC, and later a comprehensive report of the findings of the monitoring groups for both phases of the programme was published in the book *Punished Before Sentence*. It was published in Hungarian in late 1997 and in English in 1998.

The overall picture is not a heartening one. It describes a situation of deplorable physical conditions and frequent allegations by detainees of physical abuse.

According to Professor Karoly Bard, the research director of COLPI, the conditions in pre-trial detention cannot be explained merely by a shortage of funds:

> "A lack of funds can hardly justify the racism of the physician who refers to all Gypsies with the derogatory name 'Lala Kolompár'. It cannot explain the behaviour of detectives compensating for their own miserable situations by torturing detainees. Nor can it explain the lack of basic medical care, which results in a lasting deterioration of detainees' health. It is not simply human failings that are involved here, but quite often conduct that is prohibited by law: the use of duress in interrogations, brutality in official proceedings, or endangering others in the exercise of one's profession are criminal offences."[90]

In the course of the programme, the monitors immediately reported physical abuse in four cases. In 18 cases (with the permission of the commanding officer on duty), they entered a note in the jail log in order to put an end to a legally objectionable situation. And in 35 cases they recorded their remarks in the medical log concerning the health care provided for detainees. As a result of the latter, the police took direct measures in 16 cases.

As to the physical conditions, a few quotes by some of the work group reports published in *Punished Before Sentence* illustrate some of the conditions found:

> "While viewing Cell 5, I came upon an indescribable stench caused by fermenting urine. The plastic bucket standing next to the door was nearly full to the brim with urine. On the walls a mass of small, winged insects could be seen. When asked, those in the cell told me that they were allowed to clean up the cell only once a week; this was the explanation for the 'dirt' found there."[91]

> "At the Szolnok County PHQ, there were four persons in cells designed for two; two detainees were sleeping on foam mattresses on the floor. But the mattresses could not be fully spread out because there was not enough room, so they had to be folded against the wall. The detainees could not even stand up, let alone move, because of the mattresses."[92]

> "The detainees store food, their clothes, and personal belonging on the floor... According to the head of the sub-department, frequently there are roaches, partly because they cannot get strong enough cleansers. Bedding is torn and dirty; sheets are changed every second week. Detainees kept for 72 hours said that they

90 *Punished Before Sentence* (1998), p.10.
91 *Punished Before Sentence* (1998), p.53.
92 *Punished Before Sentence* (1998), p.49.

> are not given sheets; they may use the bare mattress and the blanket...Waste is collected in cardboard boxes; often the waste, the urine container, and the food are placed next to each other, because of the lack of room."[93]

According to the findings on the monitoring role of the General Prosecutor, the prosecutorial inquiries are not always able to meet the goals determined by law. The work groups obtained their information and impressions concerning the supervisory role of the General Prosecutor from the prosecutorial logs kept in the jails, from talking with and interviewing detainees, and from questionnaires. The work groups observed that prosecutors do not make entries in the prosecutorial log regularly, at each visit, and this fact was often interpreted by the work groups as if the prosecutors' visits had not been made. In fact, prosecutors, as borne out by later inquiries, visit the jails much more often than indicated by the entries in the log.[94]

Approximately half of the detainees surveyed claimed that they did not know anything about the prosecutorial inquiries and that they had never heard of prosecutorial visits and check-ups in the jail.

The work groups did not find any data on brutality against detainees in the reports of the prosecutors. This is in contrast to the findings of the work group.

Significant changes are promised by the new practice being established on the basis of Circular 2/1995 Luh, which requires the county corrections supervisory prosecutors to visit correctional institutes and police jails in their jurisdiction every month and to send an annual report of their experience to the Corrections Supervisory Department of the General Prosecutor's Office.

1.6 Reactions of the Authorities to the Findings of the Monitoring Groups

As mentioned before, the regular reports of the groups were published in *Punished Before Sentence* in late 1997.

According to the co-operation agreement, the National Commander in Chief was obliged to make observations on the report of the HHC before its publication.

Upon reading the manuscript of the report prior to the publication the Deputy Chief of the National Police responsible for the police cells described it as "fair".

However, following the publication of the report, as the press gave wide coverage to cases of ill-treatment during arrest and detention in police cells, a spokesman for the police stated that "the report was based on uncontrolled stories of criminals".

1.7 Police Cell Monitoring from 1997

Following the completion at the end of 1996 of the initial two phases of the monitoring, the HHC wanted to renew the agreement. However, the General Prosecutor raised objections and suggested that the decree of the Minister of the Interior authorising the project be amended in order to set up a legal basis for lay oversight.

Later on a draft amendment of the ministerial decree was rejected by the General Prosecutor on the basis that, in his view, the amendment would give too broad rights to outside organisations to monitor police detention. Thereafter, the General Prosecutor no longer objected to the agreement between the HHC and the police based on the already existing decree.

93 *Punished Before Sentence* (1998), p.56.
94 *Punished Before Sentence* (1998), p.97.

All this resulted in a nine-month delay in the commencement of the new phase of monitoring. In August 1997 the HHC finally managed to sign a new agreement with the police that did not limit the project either geographically, or temporally and contained essentially the same provisions as the previous agreement.

Contrary to the agreement for the 1996 programme, the 1997 agreement between the HHC and the National Chief Commissioner of Police specifies that the HHC shall immediately inform National Police Headquarters of any exceptional mistreatment. The agreement stipulates that in case one of the monitoring teams' members encounters a sign of illegal treatment, he or she shall report it to the General Prosecutor's office with the authorisation of the detained person exposed to the injustice, and with the consent of the HHC, while informing National Police Headquarters at the same time.

In its present phase, the Police Cell Monitoring Programme covers the entire country, but is less intensive than in the fact-finding period. It now has a preserving character; the primary aim is to make the police understand that they can be controlled. It also aims to monitor any changes occurring in the conditions of pre-trial detention.

The HHC regularly writes letters to the heads of the local police, raising concrete objections to conditions in police cells and the treatment of detainees.

The issues raised are sometimes rejected, for legal reasons or due to financial constraints.

1.8 Observations on the Hungarian Police Cell Monitoring Programme

The Police Cell Monitoring Programme presents an innovative and creative model for how one can introduce an element of civilian oversight of the police in a society without an otherwise developed tradition for civil society scrutiny and involvement with the exercise of police powers.

It is a truism that transformation of a country's police and penitentiary system cannot be accomplished overnight, no matter how great the political will to do so. Apart from the financial implications of upgrading detention facilities to the standards modern democratic societies have come to expect, there is the problem of overcoming hostility and set traditions by the police themselves.

It is thus perhaps not too surprising that the findings of the Police Cell Monitoring Programme were rather negative, both with regard to the physical conditions and to widespread allegations of ill-treatment of the detainees. Similarly, it is submitted that one should not be too disheartened by the relatively small impact of the programme so far. According to Mr Ferenc Köszeg, Executive Director of the HHC, the monitoring programme did not initiate much change in the situation of the police cells. There have been some changes in the legal regulation of detention, but no notable positive effects on police custody.

While one could have hoped for a more immediate positive impact of the monitoring programme, this might have been unrealistic, given the history and the pervasive lack of trust between police and citizens. At the same time, the fact that the programme has been continued is a good sign that the political leadership of the police (the Minister of the Interior) wants a more transparent and potentially more respected police force.

It is submitted that racism, torture and duress during interrogation can be inhibited by an improved system of monitoring in the longer term. In a situation where the whole society is in the process of transformation (this process will inevitably also influence the police) and where there is a political will to improve the situation, a permanent and regular visiting mechanism might have a great preventive potential.

The Police Cell Monitoring Programme is a good example of how an external oversight mechanism has been developed and adjusted to function in the particular political and legal context in which it is going to operate. In a society with a history of police repression it would be unthinkable for individuals – lay people – to go into places of detention and monitor the police. It therefore appears to be highly suitable for a national non-governmental organisation (NGO), which forms part of a large international network, to undertake this task. Only such an organisation, it is submitted, will have the political and organisational clout to penetrate police stations and stand its ground firmly against any opposition by the police.

Similarly, in a situation where the conditions of the detainees are indeed very bad, the need for people with particular skills – legal, medical, etc. – is also imperative in order to be able to address any medical or legal emergencies immediately.

Also, in a country where there is a lack of trust between the public and the police, close institutional connections between the police authorities and an external visiting scheme could easily make the scheme incredible in the eyes of the general public. And without enjoying credibility, it is submitted that an external monitoring scheme might as well be terminated.

Thus, the Hungarian situation is a good example of the problems one would encounter if one were to merely export a system of civilian oversight, like the British lay visiting scheme, without making allowances for the context in which such schemes were to operate. It is submitted that there are very great structural and political differences between a country in the process of transforming itself from a dictatorship to a full-fledged parliamentary democracy and a country which has a well-established democratic tradition. Transformation from the ground up of structures like the police and penitentiary institutions often takes a lot longer than changing the overall political system. It is submitted that it would very dangerous to assume that police behaviour necessarily changes with the same speed as that of the government. Similarly, it is submitted that one cannot assume that a system of external oversight will have the same impact in a society with an as yet largely 'untransformed' police force than in a society where the police have become accustomed to the idea of civilian oversight of their work.

2 Community Visiting Schemes in South Africa

2.1 Introduction

In late 1992, when the political reform process in South Africa was beginning to show promise of being irreversible, the concept of lay visiting or community visiting schemes (as they are known in South Africa) was introduced. In 1993 some pilot schemes were started and it appears that some regional and local schemes have operated since then.

Information about lay visiting schemes in South Africa has turned out to be rather elusive; everybody seems to know that they exist in some form or another, but when it comes to the actual form and content of the schemes, with a few exceptions, everybody seems to think that everybody else knows about it. Thus, it has proved to be very difficult to obtain information from a variety of sources as well as about more recent developments of the South African schemes. Rumour has it that the Ministry for Safety and Security is about to launch a framework for a national scheme, but despite repeated promises by the ministry to provide information, it has as yet proved to be impossible to get hold of more specific data.

The result is that this section will only be able to give a rather superficial and possibly outdated outline of the background to the introduction of the schemes, as well as how they functioned in certain areas up until about 1995.

This also means that the outline of the community visiting schemes in South Africa incorporates only to a very limited extent, if at all, the developments in the area of rights of detainees and police accountability which have occurred as a result of the adoption of South Africa's Interim Constitution of 1994 and the final Constitution of 1996. Furthermore, in the last years, a number of oversight and accountability bodies like the Office of the Public Protector (an Ombudsman-like institution), the Independent Complaints Directorate (a body established to deal with complaints about the police) and the Human Rights Commission (a statutory body with a mandate to protect human rights) have been established. Although not all of these bodies necessarily perform as well as one could hope, as yet the very fact that they exist as statutory bodies with differing degrees of power will have an impact on the context in which community visiting schemes operate.

As a final disclaimer, it must be stressed that the whole area of policing and policing structures in South Africa is incredibly complex, closely linked as it is to the historical, political, constitutional and (not least) racial context and transformation of the country. This section in no way purports to address those complexities in a comprehensive manner.

2.2 Background to the South African Community Visiting Schemes[95]

When considering community visiting schemes in South Africa it is imperative to keep in mind the history of South African policing. Rooted in a colonial style of politics, the police, for most of the twentieth century, were the servants of a white minority government. From the 1960's onward, as resistance to white minority rule increased, security legislation gave ever wider powers to the police. It is against the backdrop of this security legislation, which provided for detention without trial and solitary confinement, that alleged human rights violations on the part of the police constitued a persistent and recurring theme in South African history. In particular, allegations of the mistreatment of detainees in custody of the South African Police, actual torture of political detainees and police complicity in deaths in detention.

95 The following sections are based almost entirely on research by Ms Elrena van der Spuy, who is a criminologist at the University of Cape Town. Three papers by Ms Van der Spuy have been forthcoming:
VAN DER SPUY, E., (1995a): *Civilian Scrutiny of Once Forbidden Territory: Reflections on Lay Visiting Schemes to Detainees in Police Custody, South Africa*, unpublished paper delivered at IDASA conference: Civil Involvement in Correctional Services, Johannesburg, 17-18 March 1995;
VAN DER SPUY, E. (1995b): *From Little Ad Hoc Assault to Systematic Patterns of Torture: Does Lay Visiting to Police Detainees Make a Difference?*, paper delivered at VII International Symposium: Caring for Survivors of Torture: Challenges for the Medical and Health Professions, Cape Town, South Africa, 15-17 November 1995;
VAN DER SPUY, E. (1995c): *Civilian Scrutiny of Once Forbidden Territory: Reflections on Lay Visiting Schemes to Detainees in the Custody of the South African Police,* paper prepared for the inclusion in the training curriculum of police officials at Technicon level.

The idea of community visiting schemes as a way of remedying this situation was introduced in the era of political reform and police restructuring in late 1992. The policing reforms embraced the philosophy of community policing with an emphasis on partnership, consultation and accountability to the people. It is within this paradigm that community visiting acquired a particularly attractive status. The concept itself was imported directly from the UK experiences with lay visiting schemes.

South African interest in the system of lay visiting arose most directly out of new allegations concerning deaths in detention made in 1992 by a forensic pathologist, Dr Gluckman.[96] It was very much in response to Dr Gluckman's allegations that the then Minister of Law and Order, Hernus Kriel, in a letter to the Police Board[97] (dated December 1992) expressed concern about "the perceptions which have been created and which are worsened by every death which occurs" in police detention. He requested that the Police Board advise him on the possibility of lay visitor schemes along the lines of the British system so as to "convince the public that the South African Police has nothing to hide".

In subsequent Police Board deliberations, which stretched over a period of 12 months, the British scheme for lay visiting formed the backbone of a draft policy document suited to South African conditions.

In late 1993, pilot lay visitor schemes began at selected South African police stations. Six months later, limited assessment of the pilot project was undertaken, and upon finalisation of a set of national guidelines in 1994 by the Police Board, lay visiting schemes were then open to nationwide implementation.

2.3 The Content of the National Policy Guidelines

The content of the national policy guidelines shows how much they were based on the UK lay visiting schemes.

According to the policy guidelines the purpose of the Community Visitor System was presented as follows:

> "The purpose of the Community Visitor System is to enable members of the local community to independently observe, comment and report on the conditions under which persons are detained in police cells and the operation in practice of the statutory and other rules governing their welfare and in accordance with the fundamental human rights, with a view to securing greater public understanding and confidence in these matters. Community visitors serve as a watchdog with regard to the detention and custody of suspects in police stations. The community visiting system is aimed at promoting public confidence in the work of the Police and to bring the Police and the community closer together."[98]

Later in the guidelines, the institution of community visiting is described almost word for word in the same way as Kemp & Morgan did in their 1990 report (quoted above). In the South African national guidelines it is described in the following way:

> "Community visiting is concerned with the making of unannounced visits through which random checks can be made by independent persons on the

96 See the South African *Sunday Times* Newspaper, July 26, 1992.
97 In the early period of negotiation for transformation in South Africa, the National Peace Accord was signed in 1991 with a view to addressing political violence. It introduced a number of structures to address political conflict. Through such structures some community and political organisations began to engage in aspects of policing policy. Among others the Police Board was created, consisting of an equal number of civilian experts and South African Police Generals. Its powers were limited to carrying out research and making public recommendations to the Minister of Law and Order (National Peace Accord, section 3.3) and the Board was meant as an advisory structure to the Minister.
98 POLICY GUIDELINES: COMMUNITY VISITOR SYSTEM, para. 2.

> detention and custody of detainees in police cells. Community visitors are authorised to enter police stations and, subject to the consent of detainees, are entitled to talk to detained persons about the conditions of their detention and welfare while in police custody and to peruse their custody records. After completion of visits community visitors submit written reports on their experience to relevant parties (i.e. the Station Commander and District Commissioner)."[99]

The guidelines also stress that they (the guidelines) are "intended to provide a broad framework which would allow for the successful implementation of the Community Visitor System" in all police stations, but that they should not be taken as "strict rules". The document should therefore be interpreted "flexibly, according to local circumstances".[100]

In terms of the operational guidelines for community visiting such schemes were to function as a sub-committee of the Local Community Consultative Committee (LCCC) as set up in terms of the Police Accord. In the absence of such forums–which seemed to be the case in many black areas–there was no organisational structure from which the visiting could be launched. Before long, Community Police Forums took over from the LCCC's and became enshrined in the Constitution and the Police Act. All police stations are now required to have Community Police Forums.

The guidelines also stipulated that visitors must be persons of good character, over the age of 21 and resident in the area served by the police station. In most instances, the consultative committees nominated or seconded interested individuals for the lay visiting panels.

Visitors were to operate in pairs when making unannounced visits to police stations. They should have access to areas of the police station where persons are detained. A police officer should accompany them on visits to cells. Upon obtaining consent from detainees, visitors could conduct interviews with them. The guidelines prescribe that such interviews should take place out of hearing, but in sight, of the escorting police officer.

On completion of the visit standardised written reports were to be completed in triplicate by the visiting panel. One copy of the report was to be submitted to the police officer in charge of the station, another to the district commissioner, with the third remaining in the possession of the visitor panel.

Items to be monitored included:

- the condition of cells;
- accessibility to legal advice;
- whether parents of juveniles have been informed;
- access to medical attention

There was lastly a section on "individual complaints" and one for "general remarks".

Lay visitors' reports were channelled in verbal or written form to Community Police Forum meetings.

By 1995, there was very little in the way of a resourced secretariat to service the community visiting schemes. In most cases it was the administrative structure of the police that was made available to community visitors–for example, when monthly reports were compiled and typed for Community Police Forum meetings.

99 Ibid., para. 4.1.
100 Ibid., para 1.

In 1993, there were 25 schemes, 147 visitors were appointed and 35 visits were reported to have been made. By 1995 the number of schemes had risen to 237 and 832 visitors were appointed. The last data on recorded visits are for 1994, in which 256 visits were reported to have been made.[101] These statistics illustrate that the implementation of lay visiting country-wide still had a long way to go in 1995.

2.4 The Practical Implementation of the Community Visiting Schemes in Selected Regions

As mentioned in the introduction to this section, it has not been possible to obtain information about how the community visiting schemes functioned/function outside of a few regions. More specifically, information has been provided about the functioning of the schemes in the Cape Peninsula up until 1995 and in the then PWV region[102] until about the same period.

Cape Peninsula

In 1995, criminologist Elrena van der Spuy visited a number of police stations in the Cape Peninsula in order to get an idea of the operational dynamics of the schemes operating at the time.

Comparing the eight police stations she visited, there appeared to be some variation in the ways in which specific visiting panels operated. There was a variation in the frequency of the visits; in the levels of enthusiasm and professionalism emanating from visitors; in the manner in which complaints were processed; and, in the degree of operation at independence of the schemes. Furthermore, the number of interviews conducted seemed to confirm that there was support among both constituencies (civilian and police) for the system of community visiting. Senior police, for example, appeared to think that the benefits of the system outweighed the costs. (One of the costs frequently commented on concerned the additional administrative burden created by the system.)

As a pressure group, lay visitor panels did manage to exercise some influence – at one police station the cells were closed down (not fit for human detention) because of lay visitor pressure. In some instances, police management admitted that the system functioned as a kind of disciplinary mechanism to keep rank and file police in line. Others saw the visiting panels as a potential leverage to be used by the police in their frustrating battle to get the Department of Public Work to do its job regarding the general maintenance, upkeep and upgrading of physical structures.

From the visitors' reports, physical conditions of detention predominate in the complaints. Issues relating to hygiene, food and medical complaints head the list.

In the case of complaints, of abuse registered by the visitors, it is clear, in the view of Ms Van der Spuy, that the need for a centralised structure to monitor such complaints becomes all the more pressing. Local visitors had no recourse beyond the local station commander, and this was seen as a serious obstacle to the realisation of the full potential of lay visiting schemes as a mechanism of civilian oversight.

PWV region

In 1993/4 the Community/Police Sub-Committee of the Wits/Vaal Peace Secretariat attempted to draft a lay visiting scheme based mainly on the British lay visiting system. However, just when progress was being made, the South African Police Service[103] said that they wanted to introduce a national system.

101 Figures provided by Office of Visible Policing Division, Pretoria.
102 PWV stands for Pretoria, Witwatersrand and Vereeniging. The PWV region covered the area defined by these geographical entities. In approximately 1995 this region was renamed Gauteng.
103 Before the 1994 Interim Constitution, the police were called "the South African Police". After the transition to a democratic South African a name change was deemed necessary, so the police became "the South African Police Service".

There are also indications of other kinds of police interference with the plans to introduce visiting schemes in the region. In an open letter from *Amnesty International's* Secretary General, Mr Pierre Sane, to the then South African State President, Mr F.W. de Klerk, dated December 1993, it is stated that the Wits/Vaal Peace Secretariat's proposals for a lay visitors scheme in the PWV region "have also been directly overridden by Pretoria Police Headquarters, whose more recently proposed scheme seeks to control the composition of the panels of visitors and restrict their access to the police cells with respect to time and categories of prisoners".

Nothing further was heard about the scheme until approximately 1995, when an NGO representative on a body called The Police Reporting Officers Board again mooted the concept. It is unknown what happened to this initiative.

2.5 Evaluation of the Community Visiting Schemes

On evaluating the impact and merit of the visiting schemes, Ms Van der Spuy suggests that the system holds the potential for more congenial interaction between community representatives and police; it allows for co-operation in the area of community safety. In some instances, lay visiting has been extending the policing capacity of communities at a very local level. Also, as in the UK, visitors are instrumental in dispensing "little favours", and in doing so community visiting holds the potential for improving the quality of social life for those behind bars.

On the more symbolic level, Ms Van der Spuy notes that, in stark contrast to the colonial model of policing which prevailed under Apartheid, the philosophy of "community policing" stresses the virtues of "accountability", "transparency" and "consultation". Much like other reforms pertaining to the theory and practice of police work, community visiting schemes attempt to give practical content to the political values enshrined within community policing. In the South African case, the opening of cell doors to representatives of the community is a matter of no small symbolic significance. By making police cells more public, less secretive and socially more visible, lay visiting signifies a crucial break with what some have called the "dark and grim" past of human rights violations by the armed forces.[104]

Yet, while acknowledging the symbolic importance of lay visiting, the critical question in the South African context will of historical necessity be whether lay visiting schemes do in fact contribute to the actual prevention of human rights abuses by the police, ranging from the smaller *ad hoc* assaults to the more systematic patterns of torture:

> "Thus the acid test is really whether lay visiting schemes hold the potential not only to **allay fears** concerning the mistreatment of persons in police custody, but **actually prevent** such abuse from taking place." (emphasis in the original text)[105]

Without answering her own question directly, Ms Van der Spuy suggests that for community visiting schemes to make a real and effective contribution to the prevention of the mistreatment of persons in police custody, substantial adjustments will be required. The real challenge is to make all mechanisms of civilian oversight as structurally sound and effective as possible. To that end it is imperative to provide the kind of monitoring and infrastructure through which both small and serious complaints as recorded by lay visitors are speedily processed and attended to. In the case of serious complaints lay visitors need to have recourse beyond the local station.

104 FOSTER, D. et al. (1987): *Detention & Torture in South Africa: psychological, legal and historical studies*, Cape Town: David Philip, at iv.
105 VAN DER SPUY, E. (1995c).

The second requirement is to weave community visiting schemes into a much thicker tapestry of surveillance mechanisms. "A dense network is required to offset the chance that lay visiting simply contributes to the displacement of the abuse of detainees to places other than police cells."

On the practical level, and inspired by the UK experiences, she suggests a need for professionalisation of the visiting schemes through, *inter alia,* proper training; the provision of organisational resources and infrastructural support for lay visitors; the creation of opportunities for networking among lay visitors as fulfilled in the UK by the National Association for Lay Visiting (NALV); proper national monitoring schemes; publication of an annual report as well as national assessments; providing supportive structures, such as the position of a custody officer, within the command structure for the mechanism of community visiting; considering regional, provincial and national lay visiting schemes which can attempt to circumvent the displacement of questionable police practices to places other than police cells.

2.6 Observations on the South African Community Visiting Schemes

The amount (or rather lack) of information obtained for the purposes of this report provides very little basis for observations and recommendations over and beyond those put forward by Ms Van der Spuy. In the absence of more recent material it is also impossible to establish whether community visiting schemes were a passing fancy or a more enduring matter.

Nevertheless, a few general points will be put forward:

The history of police abuse in South Africa certainly calls for measures to watch over how the police exercise their power as well as for measures which can help promote public confidence in the police. Indeed, despite all the efforts made since 1994, the transformation of the police and the penitentiary institutions in South Africa, as in the Hungarian situation, is a slow, ongoing process, and allegations of police abuse are not only a thing of the past, as frequent reports in the local media and civil and criminal cases brought against police officers attest.

It is again important to note that community visiting schemes cannot and should not function in isolation and cannot and should not be seen as a "quick fix" solution to police brutality. In any country community visiting can at best be one of a number of measures designed to ensure police accountability. A number of statutory bodies have been established in South Africa since the first democratic election in 1994 which are aimed at promoting accountability and transparency on behalf of government agencies, including the South African Police Service. With many more oversight and complaints institutions in place, it is submitted that community visiting in South Africa, if set up properly, stands a much better chance of having a positive impact as a watchdog and confidence promoting institution at a national level than it did in the period from 1993 to 1995.

Without knowing the content of the national framework for community visiting which apparently is in the process of being approved by the Minister for Safety and Security, a few suggestions can be made with regard to the recruitment of visitors in South Africa.

It is submitted that in the South African context, with a still ongoing situation of mistrust and even violence between different sectors of society, visitors must be seen to be conspicuously independent of local political and communal factions in order to achieve credibility. This might be difficult to achieve, if the institutional base for community visiting continues to be the Community Police Forums. The political fortunes of the Community Police Forums are bound to affect related initiatives such as visiting schemes. As much as community visiting needs to be apolitical and neutral, in reality ideological conflicts in the community can seep into the Community Police Forums.

While visitors certainly need to be seen to be representative of different sections of the community, they should not be delegates of one grouping or another. They should be individuals appointed for the purpose because they have the personal qualities necessary to do the job.

Such personal qualities would include a sufficient amount of confidence to battle with station officers to get the facilities and arrangements that they would need to do the job properly – coming from a long tradition of repressive police attitudes, such qualities cannot be taken for granted in most people, who would have an in-built fear of the police and of repercussions resulting from criticising the police. Indeed, at least in certain areas of South Africa, there might be merit in temporarily considering a Hungarian model, where a powerful, independent NGO can perform the visiting.

A model with groups other than strictly local lay people performing the task of external oversight could also be relevant in a situation with decreasing community goodwill toward lay visiting initiatives. Such goodwill may not continue to exist in a context where fear of crime and experiences of criminal victimisation are on the increase. Compared to the early days of policing reform, the political context has shifted considerably. Many people are not concerned about the welfare of police detainees in the current climate of high crime in many parts of South Africa. It is an issue which needs to be addressed in any longitudinal analysis of the rise and decline of such schemes. Without community goodwill and commitment to those detained there is not much momentum for such schemes unless, perhaps, recourse is had to a professionalisation of the schemes, possibly in the form of granting access to NGO's.

While there is obvious merit in looking at how an external oversight mechanism functions in another country and possibly getting inspiration from that when designing one's own, the South African community visiting schemes, as they operated from 1993 to 1995, are illustrative of the problems in attempting to copy a system from a completely different context, without making substantial allowances for contextual differences.

In the words of Ms Van der Spuy, the concept of community visiting schemes in South Africa "was imported almost lock, stock and barrel from British textbooks."[106] However, it would appear that while copying the actual implementation of lay visiting from the UK schemes, the strong institutional back-up to the UK systems in the form of the local Police Authorities might not have been reflected in the LCC's and later in the Community Police Forums. It is submitted that the absence of a strong (and credible) institutional base is at least part of the reason for the problems encountered in introducing community visiting to South African police stations.

It is hoped that the new national framework for community visiting which is being contemplated at present will to a larger extent make allowances for the historical, political and legal context in which it is to operate.

106 VAN DER SPUY, E. (1995c), p.1.

Part III

Lay Visiting in Northern Ireland

1 Introduction

The British province of Northern Ireland in many ways presents a paradox with regard to its policing situation; it is a community which, on the one hand, has a comparatively low crime rate and which is, on the other hand, a community marred by many years of sectarian violence.

Lay visiting to local police stations in Northern Ireland has been in operation since 1991, largely along the same lines as in England and Wales. However, throughout its history the Northern Ireland lay visiting scheme has been dogged by one major controversy: the exclusion of lay visitors from the holding centres in Northern Ireland where persons arrested under the emergency laws are detained.[107]

The Northern Ireland example illustrates some of the difficulties in attempting to adapt a system, designed largely as a "soft" confidence building measure between police and the community in a relatively non-contentious situation to operation in a very different situation with serious friction and violence.

The following account of the Northern Ireland lay visiting scheme will briefly outline the main aspects of the scheme, since many of the aspects will be identical with those outlined in Part I, and then focus on the issue of external oversight of security detainees.

2 Background to the Northern Ireland Lay Visiting Schemes

As in England and Wales, Northern Ireland also has a tripartite system of accountability: the Police Authority for Northern Ireland (PANI), the Chief Constable of the Royal Ulster Constabulary (RUC), and the Secretary for Northern Ireland.[108] PANI's twin roles are to act as an oversight body supervising the actions of the Chief Constable on issues relating to efficiency and use of resources, and to act in a consultative role by liaising with local communities about policing issues.[109] The system is built along the same principles as the English model with one exception: unlike Police Authorities in England and Wales, PANI has no democratic input – its members are directly appointed by the Secretary of State.[110]

Also as in England and Wales, the introduction of lay visiting schemes followed the implementation on 1 January of PACE (NI) Order 1989, equivalent to the Police and Criminal Evidence Act 1984 (PACE). The PACE (NI) legislation contained a draft of new procedures for the treatment of persons while detained in police custody, but it did not make provision for the appointment of lay visitors to police stations.

The PACE Code of Practice explicitly stated in its opening subparagraph that the code does not apply to persons arrested or detained under the Prevention of Terrorism (Temporary Provisions) Act 1989.[111]

The Police Authority for Northern Ireland[112] proposed to set up a lay visiting scheme for the Province. A pilot scheme involving members of the Authority commenced in February 1990, and during this time a number of people from various sections of the community and from different walks of life in Northern Ireland were approached about taking part in the scheme. In August 1990 interviews for interested candidates were held and appointments were made early in 1991. The five Northern Ireland panels began operating in April 1991.

107 DICKSON, B & O'LOAN, N, (1994): "Visiting Police Stations in Northern Ireland", *Northern Ireland Legal Quarterly*, 45: 2, at 215.
108 Police Act (NI) 1970; see O'RAWE & MOORE (1997), p.139.
109 WALKER, C. (1990): "Police and Community in Northern Ireland", *Northern Ireland Legal Quarterly*, 41: 1.
110 O'RAWE & MOORE (1997), p.140.
111 Such persons are protected while in the holding centres by the Code of Practice which was issued under section 61 of the Northern Ireland (Emergency Provisions) Act 1991 and came into force on 1 January 1994. While this Code is very similar to PACE Code C there are material differences reflecting the differences in the enabling legislation; DICKSON & O'LOAN (1994), at 217.
112 The Authority was set up by the Police Act (NI) 1970. For a description of its role, DICKSON, B. (1988): "The Police Authority for Northern Ireland", *Northern Ireland Legal Quarterly*, 19, p.277.

3 Brief Overview of the Main Aspects of the NI Lay Visiting Schemes

The NI lay visiting scheme operates along the same lines as the English and Welsh schemes. The police stations which can be visited under the scheme are the 21 "designated" stations to which persons must be brought by the police if their detention for a period longer than six hours is required.[113] Visitors can turn up at any time and on any day but they must visit in pairs; usually the pairs consist of one man and one woman but there is no requirement that a female detainee must be seen by at least one female visitor.

The visitors' chief task is to ensure that the provisions in the PACE Code of Practice on the Detention, Treatment and Questioning of Persons by Police Officers are being complied with and to this end they are entitled to inspect all the facilities in the custody "suite": the waiting area, the charge area, the medical room, the toilet and washing areas, the interview rooms, and the cells. They speak with the sergeant in charge and discover whether there is currently anyone in custody.

Within the hearing of the visitors the custody sergeant must draw their presence to the attention of persons in custody in case they wish to speak with the visitors. Persons being held on remand after a court appearance are not distinguished from those held in custody prior to being charged or appearing in court. The sergeant should make it clear to the detainees that the visitors are completely independent of the police and the Police Authority. The detainees must also be asked whether they consent to their custody record being disclosed to the visitors, but otherwise the police should reveal no information concerning the reasons for their detention.

An especially vulnerable group of detainees are juveniles, i.e. those under 17 years of age. The PACE Order and Codes of Practice contain special provisions seeking to protect them. In particular, the police cannot interview a juvenile except in the presence of an "appropriate adult", usually a parent, guardian or social worker.[114] Likewise, lay visitors are currently advised not to speak with a juvenile except in the presence of such a person. However, the lay visitors themselves are of the view that lay visitors in Northern Ireland should enjoy the same access to juveniles as their counterparts do in England and Wales, where a young person can agree to a visit by lay visitors without the approval of a parent or appropriate adult.

The issue was raised at the Lay Visitors' Annual General Meeting held in May 1997. The Chief Constable, Mr Ronnie Flanagan, agreed in principle to adopt the prevalent Great Britain practice. The Police Authority and the RUC are currently agreeing a form of words for a force order which will amend the current rules with regard to this issue.[115]

Visitors can make detainees aware of their right to lodge an official complaint if they allege to have been assaulted by the police, but they cannot themselves take up the complaint on the detainee's behalf beyond including a reference to it in their report on the visit and mentioning it to the custody sergeant.

If a detainee does make an official complaint there are procedures in place to enable a different police officer to take over responsibility for the custody of the complainant. Complaints will be investigated by the RUC's Complaints and Discipline Branch, which in turn is answerable to the Independent Commission for Police Complaints.[116]

This Commission was created by the Police (Northern Ireland) Order 1987. It supervises the investigation of complaints by the public against members of the Royal Ulster Constabulary and also reviews disciplinary action and monitors the operation of an information dispute resolution procedure.[117]

113 Stations are designated under art. 36 of the PACE (NI) Order 1989. None of the holding centres for security detainees are "designated" stations.
114 PACE Code of Practice C, para. 11.10.
115 Police Authority for Northern Ireland (1998): *Ensuring Detainees Rights – 1998 Lay Visitors' Annual Report*, p.1.
116 This body was created under the Police (NI) Order 1987 and replaced the former Police Complaints Board, created under the Police (NI) Order 1977.
117 NEFF & AVEBURY (1998).

Since this system for dealing with complaints against the police is not considered to be sufficiently independent, plans are in progress to establish a Police Ombudsman for Northern Ireland.[118]

Having spoken with the detainees, the visitors can ask the sergeant to deal with any matters raised, such as allowing the detainee to have a shower, smoke a cigarette or read a newspaper. The visitors then write a short report on their visit on a *pro forma*, copies being given to the custody sergeant and sent to both the Chief Constable and the Police Authority. All personal information acquired about detainees must be kept confidential.

Judging by the annual reports of the lay visitors, there is a very high degree of satisfaction as to the standard being achieved in the designated police stations throughout Northern Ireland. Any points raised have been relatively trivial ones.[119]

In 1997 the five Northern Ireland panels made a total of 444 visits to designated police stations. 292 persons were in custody during the time of the visits and 116 persons were seen by visitors.[120]

The lay visiting panels were initially chaired by members of the Police Authority, who together piloted the scheme prior to its official launch. Each panel has since elected it own co-ordinator and secretary. Meetings are held every one or two months to review reports on visits and to discuss any matters arising. Local sub-divisional police commanders are sometimes invited to these meetings to discuss particular matters.

The Northern Ireland panels are affiliated with the English and Welsh National Association of Lay Visitors.

To help publicise the lay visiting scheme a training video has been produced by the Police Authority, as have posters and leaflets. Panels have tried to influence the activities of their local press, and occasional radio interviews have taken place.

In the police stations themselves the officers seem in general to have welcomed the lay visiting scheme. Occasionally there can be some uncertainty on the part of officers at the reception area or at the security barrier of a police station as to the exact role of visitors and certainly very few, if any, detainees have ever heard of the scheme. Probably, despite assurance to the contrary, the general public identifies the scheme with the Police Authority because it is the Authority which appoints, trains and services the panel members. However, the panels have sought to maintain their separate identity.

4 External Oversight of Persons Detained Under the Security Legislation

A prime feature of the conflict in Northern Ireland has been the existence of special laws designed to counteract paramilitary activity. The most contentious provisions in recent times have been the powers to arrest, detain and interrogate paramilitary suspects. Since their exercise is concentrated in the special "holding centres" in Northern Ireland, especially the largest, at Castlereagh, Belfast, police (mal)practices in these settings are often at the core of any disquiet.[121]

Among the important differences in the rights of detainees held according to the special laws, as compared to the rights of detainees held under PACE (NI), are qualifications to the right of access to legal advice. Under Section 47 of the Northern Ireland (Emergency Provisions) Act 1996, a detainee has the right to see a solicitor, but access to a solicitor can be deferred for up to 48 hours if a senior police officer reasonably believes that such access will interfere with the investigation, alert other suspects or hinder the prevention of an act of terrorism. Further, the initial deferral of access can be renewed for further periods of up to 48 hours, although renewal of the deferral is rare.[122]

118 HAYES, Maurice Dr (1997): *A Police Ombudsman for Northern Ireland – a review of the police complaints system in Northern Ireland*, Northern Ireland Office, January 1997. The UN Special Rapporteur on the independence of judges and lawyers, Mr Param Cumaraswamy, recommends in his *Report on the mission of the Special Rapporteur to the United Kingdom of Great Britain and Northern Ireland* that such Police Ombudsman be created; E/CN.4/1998/Add.4.

119 See for example Police Authority for Northern Ireland (1998).

120 Police Authority for Northern Ireland (1998).

121 The holding centres at Castlereagh (Belfast), Strand Road (Londonderry) and Gough barracks (Armagh) were established during the time of internment without trial (1971-1975) to provide facilities for administratively processing detainees by both police and Army prior to their transfer to the internment camp at Long Kesh. After 1975, they became sites for police interrogation; WALKER, C and FITZPATRICK, B (1998): "The Independent Commissioner for the Holding Centres: a Review", *Public Law* at 106.

122 UN Special Rapporteur, para. 39. The UN Special Rapporteur has recommended that the right to immediate access to legal counsel should be respected and that the emergency power of deferral of legal access for 48 hours should be prohibited.

Solicitors are denied the right to be present during the interrogation of detainees in the vast majority of cases falling under section 14 of the Prevention of Terrorism Act 1989, although the RUC has occasionally exercised that discretion.[123]

The meanings and usages of these special powers have engendered prolonged and bitter disputes, even at the level of international diplomacy and law.[124]

In 1994, the European Committee for the Prevention of Torture reported a "significant risk of psychological forms of ill-treatment ... and ... on occasion ... forms of physical ill-treatment" at Castlereagh.[125]

In the context of extensive international and national attention on the conditions of persons detained in the holding centres, it was controversial when a decision was made in December 1992 that lay visitors would not be permitted to visit the holding centres. This despite the fact that most lay visitors and the Police Authority itself were in favour of extending the scheme to include the holding centres.[126]

The Government's main argument for resisting the extension of the lay visiting scheme to the holding centres is that it would be too dangerous for the visitors concerned. It is believed that they would leave themselves open to physical attack by paramilitaries or to being coerced into acting as messengers to and from detainees. The chief officers of the RUC apparently share this view.[127]

Instead the Secretary of State appointed Sir Louis Blom-Cooper, QC, a deputy High Court judge from England, to serve as a part-time Independent Commissioner for the holding centres. Pressure was then mounted to try to get a deputy commissioner appointed from among the ranks of existing lay visitors, but this option too was rejected and in September 1993 Dr William Norris, a consultant psychiatrist, was appointed to the post.[128]

The creation of the post of Commissioner rests on prerogative, not statutory, powers.[129]

The main functions of the Commissioner are to "observe, comment and report upon the conditions under which persons are detained in holding centres" within Northern Ireland and to "provide further assurance to the Secretary of State that persons detained in holding centres are fairly treated and that both statutory and administrative safeguards are being properly applied".[130]

The annual reports of the Commissioner cover visits made by him and his deputy to the holding centres. During the visits, interviews and discussions are conducted where possible and appropriate with detainees, medical staff, solicitors and with uniformed and non-uniformed officers and ancillary staff.

In 1997 the Commissioner made a total of 33 visits to the three holding centres; the Deputy Commissioner made 143 visits.[131]

As a *quid pro quo* for the Government stance against allowing lay visitors access there has been the concession that the Commissioner should have one significant power which lay visitors do not enjoy in the designated stations: the power to have an interview session with a detainee interrupted so that he or she can be asked by the Commissioner whether any ill-treatment has occurred. According to the Commissioner's terms of reference the interruption can be prevented only if "the interview is at such a critical stage that, in the opinion of the officer in charge, interruption would seriously prejudice an important police investigation". In addition, the Commissioner is

123 UN Special Rapporteur, para. 43.
124 See WALKER & FITZPATRICK (1998) for an overview of the cases heard before the European Court of Human Rights.
125 COMMITTEE FOR THE PREVENTION OF TORTURE (1994): *Report to the U.K. Government on the Visit to Northern Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in 1993*, (CPT/Inf.(94) para. 110.
126 DICKSON & O'LOAN (1994), p.216.
127 DICKSON & O'LOAN (1994), p.217.
128 DICKSON & O'LOAN (1994), p.216.
129 The existence of the Commissioner is noted in the Foreword to the NIO, Code of Practice relating to the detention, treatment, questioning and identification of persons detained under the Prevention of Terrorism Act (revised ed., 1996).
130 See Independent Commissioner for the Holding Centres (1994): *First Annual Report*, pp.3-4.
131 Ibid., p.21.

authorised to observe the closed-circuit television monitors which record all the interview sessions. If they are of the opinion that there are grounds for concern about a detainee's welfare, they can demand immediate access to that person.[132]

The Commissioner is not empowered to investigate complaints against the police. Any complaints which he receives must be forwarded to the Chief Constable for Investigation where it may then be reviewed, in due course, by the Independent Commission for Police Complaints.

The most recurrent, prominent and contentious issues to have preoccupied the Commissioner have been access to legal advice[133], the taping of interviews and physical conditions in the holding centres.[134]

In respect of its jailer function, the Commissioner has given the RUC an almost clean bill of health. No physical violence has been observed or uncovered by the Commissioner; allegations of harassment, intimidation and verbal abuse have been made but not substantiated.[135] In the Fifth Annual Report the Independent Commissioner states that:

> "Subject to one matter relating to an incident in February 1994 (the Adams incident) we record once more that there is still not the slightest cause for concern about the care and treatment of detainees held in police custody by uniformed officers at the Holding Centres."[136]

The incident referred to was the case of David Adams, who in February 1998 was awarded 30,000 pounds by the Northern Ireland High Court in damages for the assaults and injuries he received from a police officer in February 1994.[137]

Later in the report the Commissioner's statement is modified slightly:

> "....we simply do not possess the means of satisfying ourselves so that we can be sure that nothing untoward ever happens in the confines of the interview. All we can, and do say is that there is a total absence of any sign of physical injury, let alone physical assault. But we cannot totally exclude conduct short of physical assault which might constitute an impropriety by any of the investigating officers."[138]

The Commissioner nevertheless recommends that all detentions of terrorist suspects should take place in designated police stations, which would also resolve the question of access by lay visitors to detainees arrested under the emergency legislation at a stroke:

> "Regular, unannounced visits to the designated police stations where terrorist suspects were being held could be undertaken by members of the local Lay Visiting Panel. Since the regime for terrorist suspects would then be almost a replica of the interviewing process which other suspected offenders are subjected to, the need for deviation from the normal routine of supervision by Lay Visitors would diminish".[139]

132 DICKSON & O'LOAN (1994), p.217.
133 In 1994, the Commissioner proposed the establishment of a legal advice unit at holding centres, which would modify the present legal aid system in Northern Ireland by granting legal aid only to those detainees arrested under the emergency legislation who choose a government-appointed solicitor from a unit of lawyers associated with the holding centres. The Law Society of Northern Ireland would manage and operate the legal advice unit and it would be funded by the Government. This proposal came under severe criticism on the grounds, *inter alia*, that it violated the principle that a defendant has the right to counsel of his or her choice, and the Commissioner has since abandoned the idea.
134 WALKER & FITZPATRICK (1998), p.109.
135 WALKER & FITZPATRICK (1998), p.109.
136 Independent Commissioner for the Holding Centres (1997): *Fifth Annual (1997) Report of the Independent Commissioner for the Holding Centres (Police Offices)*, submitted to the Secretary of State for Northern Ireland, 23 March 1998.
137 Following the assault Mr. Adams was in hospital for three weeks, receiving treatment for his injuries. The more serious injuries included: a punctured right lung due to fractured ribs; a fracture of the left leg; a wound at the back of the head which required stitches; see for details of the case AMNESTY INTERNATIONAL (1998), *United Kingdom: Ill-treatment of David Adams in Northern Ireland*, AI Index: EUR 45/10/98.
138 Independent Commissioner for the Holding Centres (1997), p.3.
139 Independent Commissioner for the Holding Centres (1997), p.40.

5 Observations on Lay Visiting Schemes in Northern Ireland

Great caution needs to be exercised in any attempt to comment, as an outsider, on a small aspect of a very complex and highly contentious subject like that of policing in Northern Ireland. It should therefore be stressed that the following comments and observations do not in any way pretend to be the final word on the matter, nor to have taken into consideration all aspects of it. Instead they will merely reflect impressions gained from a short period of research.

Lay visiting in England and Wales was designed to function as a confidence building measure in an environment of relatively low tension between community and police.[140] Its watchdog role was largely meant to be in respect of whether PACE was adhered to by the police. And, importantly, there has been no indication that visitors in England and Wales have faced reprisals from police or from other communities for carrying out visits.

Contrary to this, lay visiting to the holding centres would have to operate in a very different legal environment, one in which the security regulations rule in place of PACE and where it is not inconceivable that visitors could risk reprisals for participating in the visiting programme.

In a context of grave sectarian strife where certain fundamental legal safeguards afforded to 'normal' detainees have been departed from in varying degrees, it would appear that there is an even greater need for an external oversight mechanism to ensure that no violations of fundamental, non-derogable rights like the prohibition against torture occur. However, the question is to what extent lay visitors, in their present form, are equipped to fulfil such a watchdog role, not least given the fact that it is questionable to what extent they can fulfil this role even under much more non-contentious circumstances. Without having a clear view on whether or not lay visitors should be admitted in the present circumstances, it is submitted that to an even higher degree than in societies without sectarian violence, a "soft" oversight body with mainly its own power of presence and persuasion available should never be a stand-alone body. The role of lay visitors, if they were to be admitted to the holding centres, would need to be complemented by a much more powerful institution, an institution which has the power to enforce more than a moral kind of accountability on behalf of the police.

The author of this study does not consider herself sufficiently well informed to answer the question of whether the present system with the Independent Commissioner for the Holding Centres does indeed enforce accountability. It is however submitted that, notwithstanding the merits of the work performed by the Independent Commissioner, the most fundamental safeguard against abuse of detainees would be to extend the rights in PACE to detainees in the holding centres. This would give detainees immediate access to a lawyer of their choice and give such a lawye a right to sit in during interviews, constituting the single most important preventive measure against physical or verbal abuse or threats.

It has been argued that the Independent Commissioner system may have been intended to deflect the pressure for lay visiting in the holding centres. However, it is submitted that the two systems are different. The lay visitors have a more pronounced confidence building and educative role which can only be performed by members of the community. Equally, the Commissioner, in theory, has the considerable advantage of technical expertise both in the subject area and as an observer and fact-finder in the particular area of ill-treatment as well as of general conditions.

One could also ask whether an external civilian oversight mechanism in respect of the holding centres should necessarily consist of lay persons, with the inherent risks and weaknesses that this

140 Although the Brixton riots in 1981 were indications of seriously tainted community/police relations, it is submitted that even that level of tension falls short of the kind of friction which exists in the communities in Northern Ireland most involved in the conflict.

entails. While the *lay* aspect is very important in many situations and carries with it a number of advantages – flexibility, frequency, grounding in the local communities being some of them – one could consider whether an organisationally and professionally stronger basis for the visitors might not better serve the particular needs of holding centre detainees, without exposing the visitors to the security risks alleged by the British Government.

Concluding Remarks and Recommendations

CONCLUDING REMARKS AND RECOMMENDATIONS

Reviewing the experiences of external visiting schemes to police stations which have been presented in this paper, it is submitted that such schemes have the potential to influence the conditions and treatment of detainees.

In most instances, external visitors have the potential, depending upon the goodwill of the police, to improve the conditions of detainees in individual cases, for example, by dispensing "little favours" or by making sure that necessary medical attention is provided. Even in the Hungarian example, where the overall evaluation of the impact of the programme was rather negative in the view of one of the persons responsible, there were a number of cases reported in which immediate medical attention was provided or where complaints of abuse were filed which, in all likelihood, would not otherwise have been pursued.

It also seems clear that local external visiting schemes can complement the work of supranational bodies like the European Committee for the Prevention of Torture by providing much more frequent and regular oversight.

It can furthermore be suggested that external visiting schemes which are seen as credible by the local community have the potential to promote public confidence in the police, if they consistently and credibly report that no transgressions take place in police detention.

Going beyond the level of individual detainees and attempting to assess the potential preventive impact of external visiting mechanisms in the field of ill-treatment and abuse, the answer is not quite as straightforward. It must be assumed that the mere fact that the police officers know that they may receive visitors at any time must have a deterrent effect on any planned or spontaneous transgressions, even though such a preventive impact is difficult to measure.

However, the extent to which visits can have such a deterring effect depends to a large extent on a number of factors beyond the visit itself. The list of such factors includes:

- There must be a clear legal framework setting out the standards of police treatment of detainees; in other words, are there clear legal limitations on police behaviour, the observance of which can be checked by the visitors? It is submitted that in order for a visit to have a deterrent effect, there needs to be a framework of standards against which police behaviour can be measured.
- In the case of visitors observing any transgressions within such a legal framework, there must be a clear, efficient and transparent reporting and complaints system which can be relied upon adequately to discipline the guilty police officer. In other words, if there are no remedies beyond the possible embarrassment experienced by a police officer, the preventive effect of a visit is limited.
- In order for a visit to have a preventive effect it is also important that the visitors be protected, either in law or *de facto*, against any reprisals from police officers in case of their exposing transgressions. If visits take place in a situation where intimidation and reprisals are likely, the possibility of visitors reporting transgressions is limited. It is submitted that the individual, organisational and professional capabilities of the visitors in certain situations can have an impact on the extent to which intimidation is likely to have an effect. In certain situations, lay persons are appropriate to staff a scheme, whereas in other situations one will need visitors with either certain professional abilities or organisational links in order to provide a safeguard against intimidation or reprisals. In other words, the

recruitment criteria for visitors must be adapted to the particular circumstances in which a scheme is operating.
- If the visiting scheme is not perceived as being credible by the local community, any reports of police transgressions will not be considered credible and thus will not have the same deterring effect as reports from a scheme which is trusted and credible in the eyes of the public.

One of the fundamental submissions made in this report is that external visiting schemes must operate in a way which takes into account the particular political, legal and in some cases also historical context in which they operate. Thus, while looking at how external visiting schemes function elsewhere and learning from them, it is imperative not to assume that a system which functions very well in one context will necessarily do so in another, if necessary concessions and adjustments to local conditions are not made.

For a country or a region contemplating setting up an external visiting scheme to police stations the experiences of the external visiting schemes suggest that the following factors be considered when working out the form and content of such a scheme:

- For external visiting schemes to be effective as watchdogs and as confidence promoting measures, they require an infrastructural capacity to check on the well-being of detainees, to process complaints of detainees speedily and to have all their recommendations taken seriously;
- It should be understood that external visiting schemes can never be a stand-alone measure of police accountability. A clear framework for the conditions of detention as well as strong legal remedies in case of allegations of abuse should be in place if the external visiting scheme is to perform the role of watchdog;
- While it may not be necessary to make an external visiting scheme a statutory body, at least a national or regional framework should be provided which is clear and transparent, but that also makes allowances for variations in local circumstances;
- Certain minimum requirements should be set with regard to visiting frequency, training, organisation and personal impartiality of visitors (it should be clear in all cases that visitors cannot be past or present members of the police force);
- Consideration must be given as to whether the particular local circumstances are best served by *lay* visitors or by visitors with particular professional capabilities, such as for instance, lawyers or doctors

If these factors at least are taken into consideration when setting up an external visiting scheme, it will have the possibility of fulfilling its potential of being a watchdog and promoting public confidence in the police. But in order that no one harbours unrealistic expectations of what is to be gained by establishing an external visiting scheme, I will end this report with the quote by Elrena van der Spuy which preceded the introduction:

> "In the end lay visiting needs to be appreciated for what it can and cannot deliver under both the best and worst of policing circumstances."

External visiting is not a magic formula which will be able to achieve miracles in respect of conditions of detainees in police stations. But if applied properly it can indeed be a very constructive and positive contribution to a comprehensive system of police accountability.

Bibliography

BIBLIOGRAPHY

AMNESTY INTERNATIONAL (1998), *United Kingdom: Ill-treatment of David Adams in Northern Ireland,* AI Index: EUR 45/10/98.

the ASSOCIATION FOR THE PREVENTION OF TORTURE (1997): *Standard Operating Procedures of International Mechanisms Carrying Out Visits to Places of Detention – Report from Workshop, 24 May 1997*, Geneva.

BRODGEN, M., JEFFERSON, T. & WALKLATE, S. (1988): *Introducing Policework*, London: Unwin Hyman.

COMMITTEE FOR THE PREVENTION OF TORTURE (1991): *Report to the Austrian Government,* CPT/Inf. (91) 10.

COMMITTEE FOR THE PREVENTION OF TORTURE (1993): *Report to the Dutch government on the Visit to the Netherlands Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 August to 8 September 1992*, CPT/Inf. (93) 15.

COMMITTEE FOR THE PREVENTION OF TORTURE (1994): *Report to the U.K. Government on the Visit to Northern Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in 1993,* CPT/Inf. (94) 17.

COMMITTEE FOR THE PREVENTION OF TORTURE (1996): *Report to the Hungarian Government on the Visit to Hungary by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, November 1 – 14 1994*, CPT/Inf. (96) 15.

COMMITTEE FOR THE PREVENTION OF TORTURE (1996): *Report to the Maltese Government on the Visit to Malta from 16-21 July 1995*, CPT/Inf. (96) 25.

CONSTITUTIONAL AND LEGISLATIVE POLICY INSTITUTE & HUNGARIAN HELSINKI COMMITTEE (1998): *Punished Before Sentence – Detention and Police Cells in Hungary 1996*, Budapest 1998

CUMARASWAMY, M. (1998): *Report on the Mission of the Special Rapporteur to the United Kingdom of Great Britain and Northern Ireland*, E/CN.4/1998/Add.4.

DE JONGE, G. (1997): *Monitoring the Treatment of People in Police Cells in the* Netherlands, paper presented at conference organised by the Association for the Prevention of Torture and the British Institute of Human Rights on "Issues and Mechanisms for Preventing Torture and Ill-treatment in Northern Europe", Kings College, London, 5-6 September 1997.

DE VARGAS, F. (1979[1980]): "History of a Campaign" in International Commission of Jurists & The Swiss Committee Against Torture (eds.) *Torture: How to Make the International Convention Effective, A Draft Optional Protocol,* Geneva

DICKSON, B. (1988): "The Police Authority for Northern Ireland", *Northern Ireland Legal Quarterly*, 39 at 277.

DICKSON, B. & O'LOAN, N. (1994): "Visiting Police Stations in Northern Ireland", *Northern Ireland Legal Quarterly,* 45: 2 at 215.

DIXON, D., BOTTOMLEY, K., COLEMAN, C., GILL M. & WALL, D. (1990): "Safeguarding the Rights of Suspects in Police Custody", *Policing and Society.*

FOSTER, D. et al. (1987): *Detention & Torture in South Africa: psychological, legal and historical studies*, Cape Town: David Philip.

HALL, C. & MORGAN, R. (1993): *Lay Visitors to Police Stations: An Update*, Centre for Criminal Justice, University of Bristol.

HAYES, M. Dr (1997): *A Police Ombudsman for Northern Ireland – a review of the police complaints system in Northern Ireland,* Northern Ireland Office, January 1997.

INDEPENDENT COMMISSIONER FOR THE HOLDING CENTRES (1994): *First Annual Report (1994).*

INDEPENDENT COMMISSIONER FOR THE HOLDING CENTRES (1997): *Fifth Annual (1997) Report of the Independent Commissioner for the Holding Centres (Police Offices)*, submitted to the Secretary of State for Northern Ireland, 23 March 1998.

KEMP, C. & MORGAN, R. (1990): *Lay Visitors to Police Stations – Report to the Home Office,* United Kingdom: Bristol and Bath Centre for Criminal Justice.

KOSZEG, F. (1997a): "The Police Officer and the Citizen", *Belugyi Szemle*, 1997/2, pp. 3-16.

KOSZEG, F. (1997b): *Are Police Officers Punishable?*, paper presented at "Symposium on Public Interest Law in Eastern Europe and Russia", Oxford, 15-20 July .

KOVER, A. Dr (1998): *CPT Standards in Action – A Critical Review of the CPT's Visit to Hungary*, paper presented at the seminar organised by the Association for the Prevention of Torture and the Constitutional and Legislative Policy Institute "Central European Seminar on Prevention of Torture", 18-19 June 1998.

MORGAN, R. (1995): *Making Consultation Work – a handbook for those involved in police community consultation arrangements,* London: The Police Foundation.

MORGAN, R. (1996): "Custody in the Police Station: How do England and Wales Measure up in Europe?", *Policy Studies*, 17:1 at 55.

NATIONAL ASSOCIATION FOR LAY VISITING (1995): *Lay Visiting – a working guide for Lay Visitors*, National Association for Lay Visiting and The Police Foundation.

NATIONAL ASSOCIATION FOR LAY VISITING (1997): *Visiting Times*, 4: 4.

NATIONAL ASSOCIATION FOR LAY VISITING (1995): *Visiting Times,* 2: 4.

Nationale Ombudsman (1987): *Openbaar rapport van 30 maart 1987 (No. 87/R276),* The Netherlands.

NEFF, S.C. & AVEBURY, E. (1998): *Human Rights Mechanisms in the United Kingdom*, paper delivered at the "International Conference on International Experiences in Institutions of Human Rights Protection and Ombudsman Organisations: What Lessons for Ethiopia?", Addis Ababa, 18-22 May 1998.

O'RAWE, M. & MOORE, L. Dr (1997): *Human Rights on Duty, Principles for Better Policing – International Lessons for Northern Ireland*, Belfast: Committee on the Administration of Justice.

POLICE AUTHORITY OF NORTHERN IRELAND (1998): *Ensuring Detainees' Rights: the Lay Visitors Annual Report 1998*.

POLICY GUIDELINES: COMMUNITY VISITOR SYSTEM (1994): The Police Board, South Africa.

SCARMAN, Lord (1981): *The Brixton Disorder April 10-12 1981*, London: HMSO.

SMITH, G. (1996): "Playing Politics with the Law", *Legal Action*, London, November 1996.

VAN DER SPUY, E. (1995a): *Civilian Scrutiny of Once Forbidden Territory: Reflections on Lay Visiting Schemes to Detainees in Police Custody, South Africa*, paper delivered at IDASA conference "Civic Involvement in Correctional Services, Johannesburg, 17-18 March 1995 .

VAN DER SPUY, E. (1995b): *From Little Ad Hoc Assault to Systematic Patterns of Torture: Does Lay Visiting to Police Detainees Make a Difference?*, paper delivered at VII International Symposium "Caring for Survivors of Torture: Challenges for the Medical and Health Professions", Cape Town, 15-17 November 1995.

VAN DER SPUY, E. (1995c): *Civilian Scrutiny of Once Forbidden Territory: Reflection on Lay Visiting Schemes to Detainees in the Custody of the South African Police*, paper prepared for inclusion in the training curriculum of police officials at Technicon level.

VIEIRA, C. & WEATHERITT, M. (1998): *Lay Visiting to Police Stations*, Home Office Research Study, forthcoming.

VITEZ, M. Dr (1995-6): "Experiences Concerning the Judgement of Complaints Against Police Officers for the Offence of Interrogation under Duress" (translation of the original Hungarian title), *Belugyi Szemle* (name of journal) at 19-28.

WALKER, C. (1990): "Police and Community in Northern Ireland", *Northern Ireland Legal Quarterly,* 41: 1.

WALKER, C. & FITZPATRICK, B. (1998): "The Independent Commissioner for the Holding Centres: a Review", *Public Law* at 106.

Comparative chart

COMPARATIVE CHART

1. BASICS

	England & Wales Lay Visiting Schemes	Netherlands Committees for the Monitoring of Police Cells
		1.Amsterdam; 2.The Hague 3.Brabrant-Noord 4.Flevoland
Date of Creation	1986	1. Amsterdam: 1988 2. The Hague: 1991 3. Brabant-Noord: 1994 4. Flevoland: 1996
Regulatory Framework	Non-statutory. Home Office Circulars	Non-statutory. Regulations drafted locally by *Corps Manager* of the respective regions
Organisation	Organised in panels. The Local Police Authorities institutional base of lay visiting panels in the provinces, the Home Secretary is institutional base in the MPD	Committees are independent, standing advisory committees to the regional police board

Hungary: Police Cell Monitoring Programme	**South Africa: Community Visiting Schemes**	**Northern Ireland Lay Visiting Schemes**
Two Phases in 1996 Third Phase in 1997	1993 – app. 1995	1991
Non-statutory. Regulatory basis one sentence in *Decree of the Minister of Interior on Regulation of Police Jails.* Co-operation agreement between the National Police and the Hungarian Helsinki Committee. Circular issued by the Deputy of the National Chief of Police for Public Security	Non-statutory. National Guidelines drafted by the Police Board	Lay visiting in Northern Ireland **functions as in England and Wales,** except visitors are not allowed into the holding centres, where persons arrested under the emergency laws are detained
Hungarian Helsinki Committee (HHC) in co-operation with the Constitutional and Legislative Policy Institute (COLPI)		Organised in panels, UK model. Institutional base was first the Local Community Consultative Committees, later the Community Police Forums

2. MANDATE

	England & Wales Lay Visiting Schemes	**Netherlands Committees for the Monitoring of Police Cells**
	• To monitor the welfare and treatment of PACE detainees in police detention; • To examine the conditions of detention in police stations	• To monitor the treatment of people detained in police cells; • To advise and inform, spontaneously or on request, the *Corps Manager* on matters regarding the police cells

3. COMPOSITION

Eligibility	"Lay people". No particular professions required	*Corps Manager* should strive for the inclusion of a wide spectrum of relevant skills. In practice this has meant (in Amsterdam) jurists, doctors, pedagogues, teachers
Recruitment	Either recruited from the general public or from the local police authorities. Appointments are by the local Police Authorities (provinces) or the Home Secretary (the MPD)	Members appointed and discharged by the *Corps Manager*, after consultation with the regional police board. No recruitment directly from the general public

Hungary: Police Cell Monitoring Programme	**South Africa: Community Visiting Schemes**
1996: To gather empirical data about the situation of pre-trial detainees in police cells and to compare them with national and international legal standards (fact-finding phase). Geographic limitations. 1997: To monitor conditions of pre-trial detainees (preserving character) and to monitor any changes. No geographic limitations	To monitor the treatment and conditions of detainees at police stations
Members of the HHC and COLPI. Particular professions like lawyers, doctors, psychologists, teachers, sociologists or social workers required	"Lay people" of "good character", resident in the area served by the police station
HHC designate persons participating as monitors in the program. No recruitment of former employees of any state organ or local government	In most instances, members nominated or seconded by the PCCG

4. MODALITIES OF VISITS

	England & Wales Lay Visiting Schemes	Netherlands Committees for the Monitoring of Police Cells
Access	At any time without prior announcement	At any time without prior announcement
Access within the premises	All parts of custody area, cells, detention rooms, medical room (excluding the drugs cabinet), showers and relevant storage areas. Access to files with consent of detainee. Excluded are operational areas	Unlimited access to all places in police premises where people are deprived of their liberty, with the exception of places where people are being questioned in the course of a police investigation. Access to files with consent of detainee
Interviews with detainees	With the prior consent of the detainee; out of hearing but within sight of escorting officer	With the prior consent of detainee

Hungary: Police Cell Monitoring Program	**South Africa: Community Visiting Schemes**
At any time without prior announcement. In 1996 certain geographic limitations on what counties could be included	Visits unannounced
Holding and booking areas, cell blocks and cells. With consent, the documents related to the custody of a detainee	Areas of the police station where persons are detained. A police officer to accompany visitors on visits to cells
With consent of detainee, converse without restriction and control, but under security guard	With consent of detainee, interview out of hearing, but in sight, of the escorting police officer

5. REPORTING

	England & Wales Lay Visiting Schemes	**Netherlands Committees for the Monitoring of Police Cells**
	Standard triplicate visit reports: copies to police station, the chief constable, the Police Authority. Specific concerns to be raised immediately	Written report sent to the head of the inspected station

6. FEED-BACK

	Different ways. Mostly feed-back directly from the local Police Commander	Once every three months the Committees meet to discuss the reports with the highest police officer, the Deputy Commander

7. PUBLICITY AND ACCOUNTABILITY

	Police Authority meetings; Police/Community Consultative Committees; limited use of media	Publication of annual report submitted for discussion during a public meeting of police councils' committees for police matters

Hungary: Police Cell Monitoring Programme	**South Africa: Community Visiting Schemes**
Report on the opinions of the monitors expressed at the site sent to the head of the National PHQ, Public Order Department by the head of the branch of service involved with the activities of the HHC	Standard triplicate reports, submitted to the police officer in charge of the station, to the district commissioner and one copy remaining in the possession of the visitor panel
The National Commander in Chief to make observations on the report before its publication	Feed-back at police-community forum meetings
Summary report on the first half year of the programme published by the HHC. Later a comprehensive report of the findings published in book form	Reports channelled in verbal or written form to community forum meetings