

MONITORING POLICE CUSTODY AS A DEVICE FOR ACCOUNTABILITY

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One small, although symbolically important, initiative in the broader quest for civilian oversight over the police is to be found in the concept of detention-facility monitoring. This concept may be pursued by a variety of agencies, both international and national, formal and informal, with or without legal mandate. Formal variations on the theme include the European Committee for the Prevention of Torture (CPT) established in terms of European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT) as adopted by the Council of Europe in 1987. Since 1990 the Committee has visited places of detention in forty countries in Europe.¹ A more informal and locally based variation on the theme of detention-facility monitoring dates back to a UK initiative of the early 1980's called *lay visiting to detainees in police custody*. Aimed at extending the social, as compared to legal or political accountability, of the police to the communities they serve, lay visiting in its original British form has been operative since 1983. Considered an essential element in attempts to restore local community-police relations after the inner-city riots of 1981, lay visiting was devised so as to promote public confidence in the treatment of persons in police custody. In practice, lay visiting "is 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." (Kemp & Morgan, 1990:13)

The available evidence from Britain at least suggests that lay visiting holds some potential for giving practical content to the values of transparency, accountability and consultation. It can facilitate transparency in the sense that police cells are open to public scrutiny – hence the reference, in Britain, to lay visiting as the "open door policy". Furthermore, it can also provide an opportunity for communication and consultation between representatives of the community and the police on matters relating specifically to the treatment of persons in custody. In contexts where public concern with police abuse of power and ill-treatment of those in custody is rife, lay visiting may yield particular public dividends. Implementation of some of these principles in social contexts with no tradition of social monitoring of law enforcement, the politics of implementation can be messy. In the absence of statutory powers lay visitors have a restrictive scope. In such instances it has no executive or policy-making functions. Lay visitors can identify shortcomings and make recommendations regarding general conditions and facilities for detention in police stations. Furthermore the effectiveness of lay visitor schemes based on the British example depends on a variety of factors: a robust administrative infrastructure; the recruitment, appointment, training and accreditation of lay visitors; clear operational guidelines; effective marketing of the system to both public and

¹ Its mandate and function and modus operandi are discussed in a booklet published under the auspices of the Association for the Prevention of Torture (2001) *The CPT's Standards on Police and Pre-trial Custody*.

police; and, national monitoring of the system so as to attend to problems and improve the system accordingly.

The British model of lay visiting has been exported to at least two Commonwealth countries in Southern Africa, namely South Africa and Lesotho. In late 1993, a pilot lay visitor scheme was introduced at a number of SAP stations and then later extended nationally. In terms of the operational guidelines for community visiting schemes (as it became known as), such schemes functioned as a sub-community of Community Police Forums. Interest in expanding the operation of visitor schemes into regional structures were met with resistance from the police who favoured local schemes operating under the auspices of community police forums.² Evaluative research into the functioning of a small sample of community visiting schemes in the Western Cape conducted at two stages (van der Spuy, 1995; Gopane, 1999) suggested that the initial flurry of enthusiasm and activity was difficult to sustain in the longer term. The petering out of the initiative had as much to do with infrastructural constraints, as change in the political mood concerning detainees in police custody and, perceptions that the need for informal oversight disappears as external oversight agencies (such as the Independent Complaints Directorate) become established. By late 1999, community visiting schemes had become more a concept alive on paper rather than in practice. However, in more volatile contexts such as in parts of Kwazulu Natal, the concept of detention-facility monitoring has been utilised by human rights NGO's concerned about the ill-treatment and torture of detainees in the province. In this instance they negotiated with police to conduct a pilot project in a number of police stations with the view to documenting complaints and report on incidents of abuse to police management. This report documented various instances of abuse of police powers at a number of station levels to which police management responded not very sympathetically.

The introduction of detention-facility monitoring by members of the community has apparently also been introduced into Lesotho as part of the wider efforts of a developmental agency (DFID of the UK) to assist in the reconstruction of the justice and security sector. Further information about the process and outcome of such efforts however are not yet available.

In conclusion, detention-facility monitoring can take many forms. The contribution of informal community-based visiting schemes to the practice of civilian oversight do in the final instance remain dependent on the insertion of such schemes into a wider network of oversight arrangements. The African Charter prohibits torture and Southern African Commonwealth countries have all signed the United Nations Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Ratification of CAT creates a broad framework within which experimentation with informal external mechanisms for monitoring of detention-facilities can be pursued.

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