



association for the prevention of torture

- 

# Monitoring Police custody

A practical guide

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the prevention  
of torture

## Monitoring Police Custody - A practical guide

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*For copies of this publication and further information, please contact:*

APT

P.O. Box 137 · CH - 1211 Geneva 19

Tel: +41 22 919 2170

Fax: +41 22 919 21 80

apt@apt.ch · www.apt.ch

The **Association for the Prevention of Torture (APT)** is an independent non-governmental organisation based in Geneva, working globally to prevent torture and other ill-treatment.

The APT was founded in 1977 by the Swiss banker and lawyer Jean-Jacques Gautier. Since then the APT has become a leading organisation in its field. Its expertise and advice is sought by international organisations, governments, human rights institutions and other actors. The APT has played a key role in establishing international and regional standards and mechanisms to prevent torture, among them the Optional Protocol to the UN Convention against Torture.

The APT's vision is a world without torture or any other cruel, inhuman or degrading treatment.

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- Anna Lawson, expert on disability rights, and
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**Mark Thomson**

APT Secretary General

## Foreword

A person arrested by the police is in a situation of particular vulnerability. As the police have special powers, such as the lawful use of force, the detainee is completely in the hands of the law enforcement agents. This imbalance of power creates a situation of risk where abuse and torture may take place.

Torture is one of the most serious violations of a person's fundamental rights. It can destroy a person's dignity, body and mind, and has far-reaching effects on society. Despite its absolute prohibition under international law, torture and other ill-treatment remain widespread. These horrendous acts usually take place behind closed doors, away from any outside view. This is why independent monitoring of places of deprivation of liberty is crucial in preventing all sorts of violations.

As the United Nations Special Rapporteur on Torture, I have advocated for States to open up places of deprivation of liberty to outside scrutiny as a way of strengthening global efforts to eradicate torture. I have lobbied for a broader ratification of the Optional Protocol to the Convention against Torture and other cruel, inhuman or degrading treatment or punishment, which guarantees transparency in all places of detention thanks to a unique system comprising both international and national visiting bodies.

In 2004, the APT published a practical guide on monitoring places of detention aimed at strengthening the capacities of those engaged in visits, particularly to prisons. This guide has since been translated into 17 languages and is used all over the world. However, practitioners have expressed a need for more specific guidance on preventive monitoring of the police, especially as regards police conduct and places under police authority. The APT's new manual is therefore a welcome contribution to the field, providing a clear framework for understanding the specificities of police detention. It provides a detailed methodology for carrying out visits to police stations, as well as guidance on analysing the state of implementation of relevant international standards. This manual will be of great use for monitoring bodies in charge of visiting places of detention under the authority of the police.

There is still a long way to go before police services the world over treat all persons humanely and with respect for their dignity. I sincerely hope that this publication will contribute to changes in practice and also mentalities and attitudes that will bring us closer to that goal.

**Professor Juan E. Méndez**

Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment

## Key Abbreviations

ACHPR	African Charter on Human and Peoples’ Rights (also known as the ‘Banjul Charter’)
ACHR	American Convention on Human Rights (also known as the ‘Pact of San Jose’)
APT	Association for the Prevention of Torture
BPP	(United Nations) Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
BBTD	United Nations Basic Principles for the Treatment of Detainees
BPUFF	(United Nations) Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
BR	Bangkok Rules (United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders)
CAT	(United Nations) Committee against Torture
CCLEO	UN Code of Conduct for Law Enforcement Officials
CRPD	UN Convention on the Right of Persons with Disabilities
CPT	European Committee for the Prevention of Torture and inhuman or degrading treatment or punishment
CRC	(United Nations) Convention on the Rights of the Child
ECHR	European Convention on Human Rights (formerly the Convention for the Protection of Human Rights and Fundamental Freedoms)
ECPE	European Code of Police Ethics
ECPT	European Convention for the Prevention of Torture and inhuman or degrading treatment or punishment (formerly the Convention for the Protection of Human Rights and Fundamental Freedoms)

EPR	European Prison Rules
HRC	Human Rights Council
IACPPT	Inter-American Convention to Prevent and Punish Torture
ICCPR	(United Nations) International Covenant on Civil and Political Rights
ICPAPEP	(United Nations) International Convention for the Protection of All Persons from Enforced Disappearance
NGO	Non-governmental organisation
OPCAT	(United Nations) Optional Protocol to the United Nations Convention against Torture and other cruel, inhuman or degrading treatment or punishment
PBPA	Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas
RIG	‘Robben Island Guidelines’ (Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa)
RPJDL	(United Nations) Rules for the Protection of Juveniles Deprived of their Liberty
SARPPCO	Southern African Regional Police Chiefs Cooperation Organisation
SMR	(United Nations) Standard Minimum Rules for the Treatment of Prisoners
SPT	(United Nations) Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
SRT	(United Nations) Special Rapporteur on Torture
UN	United Nations
UNCAT	United Nations Convention against Torture and other cruel, inhuman or degrading treatment or punishment
UNGA	United Nations General Assembly
WGAD	Working Group on Arbitrary Detention

# Introduction

## Why a guide on the police?

One of the most effective means to prevent torture and other ill-treatment involves unannounced and regular visits to places of detention to monitor the treatment and conditions of persons deprived of their liberty. The Association for the Prevention of Torture (APT) develops tools with the aim of strengthening the capacities of monitoring bodies. The APT's practical guide to *Monitoring Places of Detention*<sup>1</sup> has already been translated into 17 languages; however, because torture most frequently occurs in the early stages of detention, many professionals have identified the need for a specific guide on monitoring police stations and police conduct. While the visiting methodology discussed in this manual has many similarities with approaches to monitoring other places of detention, including prisons, it is intended as a focused, specific tool that complements *Monitoring Places of Detention*. The manual aims to offer practical guidance and information on best practice that can be adapted to the needs and objectives of individual contexts, rather than a series of rules to follow in every situation.

## Target audience

This manual will be useful for any person carrying out

- monitoring visits to police stations and/or other installations, and
- preventive activities concerning the police.

Its primary users will be members of national preventive mechanisms (NPMs) operating under the requirements of the United Nations (UN) Optional Protocol to the Convention against Torture and other cruel, inhuman or degrading or punishment (OPCAT) as NPM mandates cover any type of facility where persons are, or could be, deprived of liberty, including police stations.

It is also aimed at other organisations and individuals with a mandate or power to visit such places, including universal and regional visiting mechanisms,

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<sup>1</sup> *Monitoring Places of Detention: A practical guide*, APT, Geneva, April 2004. Available at [http://www.apr.ch/index.php?option=com\\_docman&task=cat\\_view&gid=58&Itemid=259&lang=en](http://www.apr.ch/index.php?option=com_docman&task=cat_view&gid=58&Itemid=259&lang=en). The terms 'police' and 'law enforcement agencies' are often used interchangeably. However, 'police' is employed in this manual on the basis that 'law enforcement agencies' is often considered a narrower term as the range of police functions is broader than the enforcement of the law.

national human rights institutions, civil society organisations, lay visitor schemes and parliamentarians.

The information in the manual will also be useful to

- authorities responsible for police stations,
- personnel working in police stations,
- medical personnel,
- lawyers, and
- other professionals who have occasion to visit police stations.

The manual is directed at bodies and individuals who already have access to police stations through their mandate or through specific agreement. Therefore, the issue of obtaining access to police stations is not covered.

Readers should bear in mind that the APT promotes and recommends a holistic, integrated approach to the monitoring of places of deprivation of liberty. Monitoring police stations should always be considered in light of monitoring other places of detention; when a monitoring body is exclusively in charge of visiting police stations, its members should consider liaising with mechanisms in charge of visiting other types of places of detention, especially prisons.

## **Structure of the guide**

The manual is made up of three main chapters. Chapter I puts police monitoring in context, highlighting the powers of the police and the relationships between these powers and human rights issues. The chapter also introduces the key considerations in monitoring police facilities, providing an analytical framework for understanding the issues at stake in detention monitoring from a holistic perspective.

Chapter II discusses the methodology of conducting monitoring visits. Part A explores how to prepare for visits. Part B focuses on conducting visits. Part C details key follow-up activities.

Chapter III outlines and discusses the most relevant national and international standards concerning police detention. Organised on a thematic basis, the chapter can be used as a stand-alone guide. For each issue concerned (e.g. the use of restraints), the chapter includes references to relevant legal documents, a comment clarifying what the standards entail for visiting teams, and practical tips for monitors.

# Chapter I

## Monitoring the Police in Context





# 1. Police powers and human rights

## 1.1. Police and human rights

Police organisations usually present themselves as a service, force or a combination of the two. The distinction between a service and force can be described as follows:

[The] ‘force perspective’, or vertical perspective, is clearly seen in authoritarian policing styles employed by many police agencies. The other perspective is that of police as a service provider to communities in their own areas. This ‘service’, or horizontal, perspective is seen in ‘community policing’ and its derivatives: problem oriented and intelligence led policing.<sup>1</sup>

Despite this conceptual difference, it is generally recognised<sup>2</sup> that the main functions of the police revolve around efforts

- to maintain public tranquillity, and law and order, in a given society,
- to protect and respect individuals’ fundamental rights and freedoms,
- to prevent, detect and combat crime, and
- to provide assistance and services to the public.

The police – whether perceived by the public as a service or as a force – should play an essential role in protecting human rights. The police are responsible for ensuring the security and safety of individuals through enforcing the law; under international law, police officers are obliged to fully respect human rights, but they are also obligated to protect human rights against violations by other individuals. In essence, their key functions call on them to be active agents for the enjoyment of human rights: a positive understanding of the police’s role in this regard is important for fostering the type of constructive dialogue between monitoring bodies and the police that the preventive monitoring approach is premised on.

1 Anneke Osse, *Understanding Policing: a resource for human rights activists*, Amnesty International Netherlands, 2006, p.26. Available at [http://www.amnesty.org.uk/uploads/documents/doc\\_22360.pdf](http://www.amnesty.org.uk/uploads/documents/doc_22360.pdf)

2 See, inter alia, ECPE, p.7. Available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1277578&SecMode=1&DocId=212766&Usage=2>.

While police officers have a duty to protect and respect individuals' fundamental rights, their own rights should be respected and fulfilled on an equal basis. Thus, while police officers may be responsible for human rights violations, including ill-treatment, monitors should keep in mind that they may be victims of abuses themselves. When this is the case, it often has a major impact on the treatment of detainees. For instance, very poor material and working conditions are not only an infringement of police officers' economic and social rights, but may increase corruption or contribute to other behaviour detrimental to those in their custody. Monitors, in their efforts to understand the root-causes of ill-treatment, including systemic problems within police stations, should adopt a holistic strategy that takes into consideration the needs and difficulties of the police. Dialogue between monitors and the police about the problems that the police face may well generate greater openness to criticism; thus, it often proves an important diplomatic tool.

## 1.2. Police powers and risks for detainees

Independent scrutiny is particularly important as regards the police's

- mandate to maintain order, and
- activities aimed at preventing, detecting and combating crime.

In order to comply with the police's mandate, law enforcement officers are provided with a series of powers, including the powers

- to stop people and request proof of identity,
- to arrest people,
- to conduct searches,
- to monitor demonstrations,
- to detain persons,
- to interrogate persons,
- to investigate, and
- to use minimum force under certain conditions.

In carrying out these functions, there are risks of abuse of both persons and police powers. Thus, proper and impartial monitoring of police conduct is essential.

The lawful use of force is a legitimate function of the police because police officers sometimes operate in a dangerous environment and are entitled to

protect both the general public and themselves. However, wherever force is used there is the potential for abuse, especially as the state – and, hence, the police – is traditionally considered to have a monopoly over the legitimate use of physical force.

Abuses by the police can occur for many reasons, not least because using force in accordance with the principle of proportionality is not an easy task; human rights violations may result from a flawed assessment of a given situation. Abuses can also occur when individual police officers take advantage of their powers by exercising excessive force to intimidate, extort information or for other reasons. It can also be – and this is the most challenging situation for monitors seeking to address torture or other ill-treatment – because there is a culture of impunity in a given context: in such cases, police officers who perpetrate human rights violations know that they will not be prosecuted or disciplined.

In addition to the use of force, key risk areas include the way means of restraint are used, how searches are conducted, and whether discriminatory ethnic profiling is part of police culture.

The risks of abuse in police custody are particularly high during the first few hours of detention: this is the time when detainees are most vulnerable and when officials are under most pressure to secure information from them. Safeguards, especially at the very early stages of detention, are crucial to prevent abuses. Key safeguards include

- giving detainees information on their rights,
- providing access to a lawyer,
- notifying family members and/or a third party of the person's detention, and
- affording examination by a doctor (i) to confirm or exclude possible allegations of ill-treatment and (ii) to provide medical assistance if necessary.

Thus, in addition to helping to prevent abuses, built-in safeguards reduce the risks of false allegations being made against the police.

In legal systems that rely heavily on confessions, individuals arrested by the police are at even greater risk of torture and other ill-treatment. Confession-based approaches pose a greater threat to detainees than does evidence-based policing, which relies on the painstaking gathering of evidence. This is because confession-based approaches often indirectly encourage unlawful

practices and contribute to a culture of abuse within the police.

Moreover, the literature demonstrates that securing information through ill-treatment often results in false confessions and, thus, delays effective crime detection and prevention. Gathering evidence is rarely an easy task as it often involves the step-by-step reconstruction of a sequence of events. However, as a rule, the public have much greater confidence in the police, and consequently view the institution's work as having greater legitimacy, in evidence-based judicial systems. For monitors willing to engage in a holistic analysis of the root-causes of torture and other ill-treatment, the overall framework of the legal system cannot be ignored (see Chapter II, Part A, Section 1.1).

In a state of emergency, the powers of the police may be extended and individual liberties limited, but this should only occur within the constitutional framework and in full compliance with the principles of legality, necessity and proportionality. No exceptional circumstances, including public emergency, may be invoked as a justification for torture. It is essential that key safeguards, such as the right to *habeas corpus* and the prohibition on holding persons in unofficial places of detention, are not suspended during times of emergency as this is often when they are most necessary.

### 1.3. Persons in situations of vulnerability

The police have a key role to play in protecting and respecting individuals' rights, especially as regards persons considered to be in situations of vulnerability<sup>3</sup> because of the interplay between their status in a particular society and the social context in which they find themselves (e.g. children, women, sexual minorities, disabled people and migrants). When members of vulnerable groups are arrested and detained by the police, particular care is required; steps may need to be taken to address their particular requirements and needs. For example, the police may need to make allowances for physically disabled persons to keep their crutches at all times in order to maintain their mobility, even when officers are concerned that this may pose a risk to security.

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3 The APT understands vulnerability as being linked, in most cases, to a minority status that increases the risks of stigmatisation and ill-treatment: thus, individuals may be vulnerable in a given context and not in another. For example, women may be vulnerable both because they represent a much lower percentage of the detained population around the world and because the detaining authorities are most likely to be predominantly male; for these reasons, female detainees face greater risks of discrimination and ill-treatment while in detention.

In some countries it is common that, instead of protecting people in situations of vulnerability, the police participate in the prevailing stigmatisation processes. For example, migrants and foreigners in xenophobic societies, LGBTI<sup>4</sup> populations in homophobic societies, and those with mental illness or intellectual impairment in confession-led legal systems may be more at risk of ill-treatment by the police; such persons should be given particular attention by monitoring bodies.

The additional needs and protection required by socially marginalised groups in no way implies that detainees representative of the 'majority' should be discriminated against; instead, reasonable adjustments should be made to standard practices and/or structures in order to respect the rights of detainees who would otherwise be disadvantaged or placed at risk.

Persons in police custody may be at risk of abuse from other detainees. If detainees are brought to cells without previous risk assessment by the police, it may result in fights, rapes, other types of violence or even death. Racial and ethnic issues, as well as sexual orientation, are among the key factors that contribute to violence in police cells. Police acquiescence in detainees' detrimental conduct to each other is unacceptable. Therefore, monitors should pay particularly attention to situations in which the police have, or might, 'turn a blind eye' to inter-detainee violence. It is the police's duty to ensure that there is no violence among detainees.

As far as persons with disabilities are concerned, the police must adapt to their needs through instituting "reasonable accommodation". According to the UN Convention on the Rights of Persons with Disabilities, reasonable accommodation

**means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.<sup>5</sup>**

Detention authorities are subject to the reasonable accommodation duty whenever detainees with disabilities would, without accommodation, be subjected to a disadvantage in relation to the standard facilities, structures, regime or treatment within the relevant police stations or other places under the police's authority. In all cases in which this duty is not carried out,

4 Lesbian, gay, bisexual, transgender/transsexual and intersex persons.

5 CRPD, Art. 2. Available at <http://www.un.org/disabilities/convention/conventionfull.shtml>

unlawful discrimination will have occurred. In some, though not all, such cases, the level of suffering endured by the disabled person may even reach the minimum level of severity to constitute a breach of the substantive right to be free from ill-treatment. Where the police purposely discriminate against disabled persons, such treatment may amount to torture or other ill-treatment.

## 1.4. Police detention

In most jurisdictions, detention<sup>6</sup> by the police is generally authorised for two main purposes:

- to question individuals against whom there is reasonable suspicion about offences they may have committed and/or to hold them while other evidence is gathered that may substantiate a charge against them. This is called pre-charge detention.
- to safeguard the due process of justice by ensuring that persons against whom charges have been laid appear before a court. This is called post-charge detention.<sup>7</sup>

Persons may also be detained in police custody

- for their own safety. (For instance, children reported missing from home and awaiting their parents or guardians, and persons with mental health disorders awaiting examination by a doctor or transfer to hospital. This is sometimes called protective detention. People under the influence of alcohol, narcotics or other drugs may also fall under this category.)<sup>8</sup>
- pending an administrative decision. (For instance, irregular

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6 The terms 'detention', 'arrest' and 'taken into custody' will be used interchangeably. However, unless otherwise indicated, the terms are intended to describe the period of time from initial contact between the police and the person deprived of his or her liberty until the detained person is released or transferred from police custody to the purview of another body. Similarly, 'apprehension' and 'arrest' will be used interchangeably, although 'arrest' may be understood in some of the legal documents referenced as limited to criminal arrest.

7 This may also include people who have been (i) remanded in custody in a pre-trial detention facility to await trial or (ii) sentenced and detained in a prison but then temporarily returned to police custody for further investigation into the crime with which they have been charged or other crimes.

8 It is not always the intention of the police to charge such individuals with an offence against public order. In some cases, the police wait for the person to recover from their intoxication and then let them go with a warning instead of charging them.

migrants awaiting deportation. In some countries this is known as administrative detention.)<sup>9</sup>

Other categories of detainees who may be found in police detention, though they would usually be found in prison, include

- prisoners who have made court appearances and are awaiting trial. This is called pre-trial detention.
- convicted prisoners awaiting sentence. This is called pre-sentence detention.
- sentenced prisoners.<sup>10</sup> This is known as punitive detention.

With the exception of establishments intended to hold pre-trial and pre-sentence detainees, and those serving an administrative penalty, most police stations are designed to hold detainees for short periods only for the purposes of preliminary investigations. However, this 'short period' can vary from a few hours to about a week; generally, the period is expected to allow sufficient time for initial investigations as provided for by the laws of the country concerned.<sup>11</sup>

However, in some countries detainees spend longer periods than is provided for by law in police custody; generally, this is due to a lack space in the prison system. As police stations are rarely designed to hold detainees for long periods of time, and police staff usually lack appropriate training, these situations create high risks of ill-treatment and poor conditions of detention; monitors should take care to address these issues fully. Inspecting material conditions, their compliance with respect to international standards, and the length of custody in settings designed for a short duration are an essential component of preventive visits.

This guide is intended to deal primarily with detainees who are being held pre- or post-charge and those in protective or administrative detention. Nonetheless, most of the content will also be relevant to the other types of police detention.<sup>12</sup>

9 This term should not be confused with the same term, used in other jurisdictions, especially States of the former Soviet Union, where people found guilty of minor offences, such as traffic violations, can be sentenced to short periods of detention in police custody. It should be noted that in some jurisdictions the term can also be used to describe other forms of police detention.

10 In a very small minority of countries, the police also administer prisons.

11 This document does not address illegal forms or places of detention. If monitors do find such places, they must make clear that international standards apply to them too.

12 Those engaged in monitoring prisons should bear in mind the generally acknowledged

## 1.5. Police corruption

When interviewing detainees or staff at places of detention, monitors may receive allegations of corruption on the part of the police. It is important to note that, to a greater or lesser extent, corruption exists in some form or another in every police force/service in the world. Often, corruption is linked to torture, other ill-treatment, and other human rights violations. Corruption may take the form of illegal fees for services that should be free of charge (e.g. receiving visits or seeing a doctor), or it may give rise to privileges for certain detainees (e.g. the allocation of a better cell in return for a bribe), to mention only two examples. Persons deprived of their liberty are particularly vulnerable to corrupt practices as they are not, in most cases, in a position to report these or to defend themselves. Monitors should also take into account that corrupt practices may be discriminatory (e.g. they may be prejudiced against detainees with fewer economic means).

Depending on the nature and recurrence of allegations of corruption, it may be proper and appropriate for monitors to explore these issues further and to mention them in both their reports and dialogue with the authorities. Moreover, the issue of corruption should be addressed in thematic reports analysing the functioning of the police at the national level.

## 2. The specificities of monitoring police facilities

### 2.1. Monitoring the police: a broad understanding

For the purposes of this guide, the term ‘police station’ refers to a building or a group of buildings from which police officers operate. It includes any area (not just a cell or cells in the traditional sense) where persons are deprived of their liberty for any period of time. It may also include administrative offices and other quarters from which investigators or other units operate. Thus, the term should be understood broadly; it should be taken to include establishments operated by other law enforcement agencies performing a

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principle that, except in cases of emergency, the police should not take on the role of prison officers. See, for instance, ECPE, §11. Available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=127758&SecMode=1&DocId=212766&Usage=2>.



police function, such as border police premises, financial police units, and intelligence agencies with law enforcement functions. These may differ significantly from the types of facilities described in this manual. However, similarities will be found with establishments operated by customs and immigration departments and other comparable law enforcement bodies with the authority to deprive people of their liberty.

It is not the purpose of this manual to describe the various types of institutions that perform police functions, such as *gendarmeries*, *militsia*, *carabineros* or *guardia civil*; instead, the focus is on the monitoring of the police, whatever the terminology used to refer to them in any given country is.

It is crucial, however, not to consider 'police stations' to comprise mere physical spaces, but to keep in mind, at all times, that from the moment of arrest to that of release or transfer there is a risk of mistreatment. Therefore, although for the sake of clarity and simplicity Chapter II of this manual is dedicated to monitoring visits to police stations, monitors should not limit themselves to physical spaces but should also include police conduct and procedures in their analysis. Identity checks, apprehensions, police conduct during demonstrations (such as containment of protesters, sometimes known as 'kettling'), personal searches, property searches, interrogations, and other police activities will, in most cases, not be directly monitored by visiting bodies as they fall outside the scope of visits to police facilities. Nevertheless, these activities do present risks and monitors should collect information about them. This information may be gathered during private interviews with detainees in police stations, although it is often easier to gather more detail about police conduct during retrospective interviews with persons deprived of their liberty in prisons and those who have already been released from custody.

The schematic below is not a precise representation of the detention process; rather, it presents a generic vision of key stages, risks and safeguards.

## POLICE DETENTION

Main steps in police detention, risk areas and existing safeguards



### RISK AREAS

Use of force and firearms  
Means of restraints  
Interrogation  
Searches  
Incommunicado/secret/  
unacknowledge detention  
Length of custody  
Poor material conditions



### SAFEGUARDS

Information on rights  
Access to a lawyer  
Access to a doctor  
Right to be brought before a judge  
Notification to a third party  
Custody records  
Right to complain  
Audio video recording


## 2.2. Interviews in private

Interviewing persons in police custody presents a range of challenges. Detainees may be reluctant to talk openly to monitors for a variety of reasons:

- They may be under intense stress due to the uncertainty of their case and the recentness of their arrest.
- They may fear that they will suffer physical or mental reprisals, or be otherwise sanctioned by the police, once monitors have left.
- They may fear that collaborating with monitors may negatively impact on decisions regarding their release or the progress of their case.
- They may fear being identified as the source of information, particularly if there are other persons present at the time of the interview.

For these reasons, monitors should consider whether they are more likely to obtain information about the general way in which people are treated in police stations from individuals who have already been transferred to prisons or who have already been released from custody.

Monitors should also be aware, when interviewing persons in police custody, that interviewees are vulnerable to sanctions and reprisals from police personnel:<sup>13</sup> as only a few people are usually held in a police station at any one time, it may be easy to identify the source of monitors' information. The same issue arises when few interviews are conducted in more crowded police stations. Therefore, while the visible presence of independent external observers may be reassuring for very isolated detainees, private interviews should always be treated with great care. Monitors should use an 'all or nothing' selection process: they should generally interview all of the detainees held at the police station at the time of the visit or none at all. When the risk of sanctions is deemed to be particularly high, monitors should consider whether they should refrain from doing any interviews at all.<sup>14</sup>

 **It is more difficult to collect information during interviews with persons held in police custody than with persons held in prisons, due to detainees' high levels of stress, fear, and uncertainty, and also the heightened risk of sanctions and reprisals. Interviews should be carried out with caution. The safety of detainees should take priority during visits to police stations and must not be subordinated to the need/desire to collect information. Monitors should weigh all decisions with respect to the central principle of human rights monitoring: 'do no harm'.**

### **2.3. Key features of monitoring visits to police stations**

As a general principle, all visits to places under the authority of the police should be unannounced. Whether this is achievable will depend on the context as well as the mandate of the monitoring body concerned. The value of unannounced visits is particularly clear for places like police stations, where risks of ill-treatment and removal of detainees are greater than in other custodial settings. Police stations are usually relatively small places with few detainees compared with prisons and a high turnover. Therefore, the 'surprise effect' is particularly potent, especially in relation to the risk that detainees will be removed prior to the visit if it is announced.

13 See *Mitigating the Risks of Sanctions Related to Detention Monitoring* (Detention Monitoring Briefing N°4), APT, Geneva, January 2012. Available at [http://www.apr.ch/index.php?option=com\\_k2&view=item&id=1169:sanctions&Itemid=229&lang=en](http://www.apr.ch/index.php?option=com_k2&view=item&id=1169:sanctions&Itemid=229&lang=en)

14 See *The Selection of Persons to Interview in the Context of Preventive Detention Monitoring* (Detention Monitoring Briefing N°2), APT, Geneva, April 2009. Available at [http://www.apr.ch/index.php?option=com\\_docman&task=cat\\_view&gid=269&Itemid=259&lang=en](http://www.apr.ch/index.php?option=com_docman&task=cat_view&gid=269&Itemid=259&lang=en)

Monitoring bodies that visit police stations on a regular basis should endeavor, as far as possible, to make their visits at different times of the day, week and month. A visit to a police station on a Tuesday at 11am will be different to one carried out at midnight on a weekend or during public holidays. At the weekend and during public holidays, the overall situation at the police station may be more tense, judges may not be available, and there may be both more arrests taking place and a different number of officers on duty. Visits held outside working hours are often more challenging for monitors for reasons of convenience and security. It is also possible that the police officers the team is particularly keen to speak with will not be on duty at the time of the visit.

However, it is important to vary the timing of visits so that the routine of the police station can be monitored and any unusual changes in routine can be identified. For example, visits made at different times are often the best way to identify problems such as

- there being no female officers on night shifts,
- the medical room being kept locked with the keys not readily accessible, or
- the fact that the staff working night shifts have different attitudes to detainees.

Finally, although police stations are generally relatively small, it is important for monitors to dedicate sufficient time for visits. Confidence-building discussions with commanding officers and staff, interviews with detainees, and/or unforeseen developments can all offer opportunities that may be lost if the monitoring schedule is too inflexible.

### **3. Preventive monitoring: an analytical framework**

Effective preventive monitoring of police detention centres on regular and unannounced visits to police facilities to gather firsthand information; this information can then be used to identify and analyse factors that give rise to, or fail to prevent, torture, ill-treatment and other affronts to human dignity in detention.

Although persons deprived of liberty are at the centre of the preventive monitoring process, the aim is to understand the functioning of police facilities as systems rather than focusing purely on the situation of individuals who happen to be detained during visits. Needless to say, if the situation of an individual or

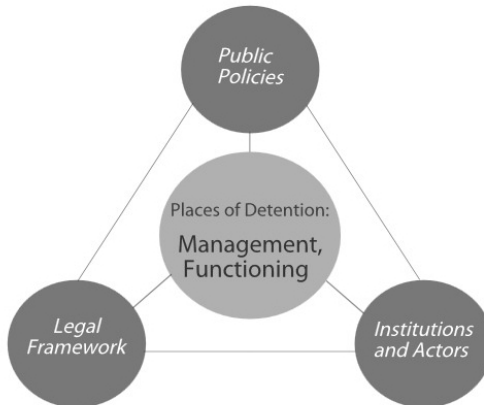
group causes particular concern, immediate action may be required; however, the primary aim of visits should be to affect systemic change.

A key objective of preventive monitoring is to provide concrete recommendations, through constructive dialogue with the authorities,

- to mitigate or eliminate risk factors, and
- to propose preventive measures.

Such an approach is forward-looking and, over the long-term, will help to create an environment in which the likelihood of torture is reduced.

When a preventive approach is taken, monitoring is not an end in itself. While visits enable monitoring mechanisms to gather firsthand information, they only constitute one of the many links in the chain of any holistic preventive strategy. The bodies carrying out visits to police stations should go beyond the facts found in specific establishments and try to identify possible root causes of both problems and risks of torture and other ill-treatment. Often problems encountered during a specific visit are the result of broader external factors; for instance, overcrowding in police detention may be a symptom of a slow and overloaded judicial system. Therefore, it is essential to look beyond the findings of individual visits: monitors should also analyse the prevailing legal framework, public policies, and the institutions and actors involved.



### ***Legal framework***

A clear understanding of the relevant legal framework is critical to monitors' ability to conduct comprehensive analyses during and after specific

visits. Monitors should look particularly at domestic legislation, such as the national criminal code, code of criminal procedure and law on police, as well as any operational procedures governing police detention. The relevant legal texts should be analysed to determine if they adequately integrate international standards such as the CCLEO<sup>15</sup> and the BPUFF.<sup>16</sup> Issues such as police powers to arrest, rights to legal aid and due process should also be well understood. This is a particularly important requirement for bodies operating under the OPCAT,<sup>17</sup> which are mandated to make recommendations on draft and existing legislation.

### ***Public policies***

Public policies are important tools for addressing specific challenges in a given society; they can increase or decrease risk factors for persons detained by the police. The SPT, the international preventive mechanism established by the OPCAT, describes its preventive approach as revolving around the need

- to “engage with the broader regulatory and policy frameworks relevant to the treatment of persons deprived of their liberty and with those responsible for them”, and
- to explore “how these are translated into practice.”<sup>18</sup>

The same can be said for national bodies in charge of monitoring the police. Policies on crime, security, policing, juvenile justice, health, drug users, migrants, homelessness and many other issues can impact on the risk of torture and conditions of detention. Monitors should have a clear grasp of which policies may have an impact, whether positively or negatively, in the contexts in which they work. For instance, policies on crime, such as the use of arrest quotas or ‘zero tolerance’ policies can result in a rise in arrests and, consequently, overcrowding in pre-trial detention. Similarly, public policies on rehabilitation for drug users can divert people out of the criminal justice system and into public health institutions and processes.

It is important to note that some countries may have a policy to combat torture and other ill-treatment, though this may not be enshrined in law. A

15 Available at <http://www2.ohchr.org/english/law/codeofconduct.htm>

16 Available at <http://www2.ohchr.org/english/law/firearms.htm>

17 Available at <http://www2.ohchr.org/english/law/cat-one.htm>

18 ‘The approach of the SPT to the concept of prevention of torture and other cruel, inhuman or degrading treatment or punishment under the OPCAT’, UN Doc. CAT/OP/12/6, 20 December 2010, Guiding principle 5(2). Available at <http://www2.ohchr.org/english/bodies/cat/opcat/ConceptPrevention.htm>

good understanding of public policies is therefore key to identifying possible risk factors and root causes of torture and other forms of ill-treatment, and also practices that tend to mitigate such risks.

### ***Key institutions and actors***

Analysing key institutions and actors is paramount to the success of monitors' work as it enhances their understanding not only of the police, but also of the courts, legal aid institutions, civil society organisations working on police detention issues, and other bodies that have oversight responsibilities. Police stations form part of larger administrative entities attached to ministries that define the orientation of government policies. Police leadership and the prevailing institutional culture (e.g. do the police think of themselves as part of a force or a service? Is there an authoritarian or community policing approach?) have a major impact on risk factors regarding torture and other ill-treatment.

Issues of internal structure and functioning, recruitment, training, promotion systems, capacity, oversight and complaints mechanisms, operational plans, financial and other resources, and other dimensions should also be analysed so that monitors can assess risk factors. For instance, an insufficient supply of police vehicles may mean that persons held in police custody do not arrive at their judicial hearings; this may result in prolonged pre-trial detention, increasing the risk of overcrowding and, thus, detainees' exposure to ill-treatment and poor conditions. In other contexts, private companies are contracted to transfer detainees from police to prison custody; if no institutional checks are in place, detainees risk spending hours non-stop in transfer vehicles as a result of cost-cutting by the contracting firm.

Monitoring bodies should pay special attention to the functioning of police internal control mechanisms. Ideally, these should be at the vanguard in responding to the first signs of a problem, working to ameliorate the situation before it escalates. Analysing how internal control mechanisms respond to problems can be very illuminating with regard to both obstacles and advances in whether a culture of human rights is adopted by the institution as a whole.

The relationships between the police and other actors may impact on the conditions and treatment of detainees. Exploring these can also help identify potential allies in working to achieve positive changes. The key question monitors should ask while carrying out analyses at this level is "What is this institution doing to prevent torture?" It is vital to map any 'structures of impunity': networks within and between institutions that enable torture to be practised and go unpunished.

As police facilities may differ significantly, there are two key aspects to consider:

- the management/administration of establishments, and
- their actual functioning.

### ***Administration and management***

Although good administration is fundamental to protecting the rights of detainees, the administration and management of police stations are often overlooked by monitors. However, they have a direct influence on the attitudes and practices of staff and, thus, on the protection of detainees. Knowing how a police station is administered, and what systems and processes are in place, is critical to developing a proper understanding of the broader picture. For instance, in addition to nation-wide protocols and procedures for running police stations, registers or mechanisms may be created by the commander of a particular police station, or by staff, to deal with the everyday challenges they face. For instance, the police may legitimately have to limit the contact of suspects with outsiders for the purpose of an investigation, but how this decision is taken and reviewed often varies from one police station to another. Differences are often only discovered through careful questioning: this may reveal examples of best practice or provide information relevant to torture prevention. Before a monitoring visit, as much as possible should be found out about the facility's administrative responsibilities, mechanisms, protocols and guidelines. During the visit, their functioning, implementation and effectiveness should be analysed and other *ad hoc*, station-specific measures assessed.

### ***Functioning***

Analysing the functioning of police installations is principally carried out during monitoring visits. Conducting an effective analysis is the main focus of this manual (see especially Chapter II). Analyses should address what actually happens to detainees, how they are treated and under what conditions they are detained, held, processed and released. It is common that regulations, registers and processes vary from one place to another. As such, it is important to explore both how the police officers involved do their work in practice and what challenges they face. Much of the data used in analyses is gathered through interviewing

- currently and previously detained persons,
- police officers working at operational and managerial levels, and
- other relevant actors.



Specific cases of alleged abuse, problems of material conditions, and other factors should be assessed and compared with relevant laws, public policies, and institutional and administrative arrangements. However, visits represent the most effective way to obtain hard evidence of

- how detention works in individual facilities,
- where risks manifest, and
- where human rights standards are not implemented effectively and/or fully.

### **3.1. Basic principles for monitoring places of detention**

Monitoring places of detention through visits is a delicate and sensitive task. For reasons concerning both ethics and efficiency, it is important that those conducting visits keep in mind and respect the following basic principles:<sup>19</sup>

- Do no harm!
- Exercise good judgement.
- Respect the authorities and the staff in charge.
- Respect the persons deprived of liberty.
- Be credible.
- Respect confidentiality.
- Respect security.
- Be consistent, persistent and patient.
- Be accurate and precise.
- Be sensitive.
- Be objective.
- Behave with integrity.
- Be visible.

<sup>19</sup> These principles were inspired by the eighteen basic principles of monitoring identified in Chapter V of the UN Training Manual on Human Rights Monitoring (Professional Training Series N°7), Office of the High Commissioner for Human Rights, Geneva, 2001. Available at <http://www.ohchr.org/Documents/Publications/training7Introen.pdf>. The principles are discussed in more detail on pages 27-31 of *Monitoring Places of Detention: A practical guide*, APT, Geneva, April 2004. Available at [http://www.apt.ch/index.php?option=com\\_docman&task=cat\\_view&gid=58&Itemid=259&lang=en](http://www.apt.ch/index.php?option=com_docman&task=cat_view&gid=58&Itemid=259&lang=en)

# Chapter II

## Visits to Police Stations



This chapter takes a closer look at how a typical monitoring visit to a police station might be conducted. As discussed in Chapter I, monitoring visits are only one component of a holistic preventive approach; nonetheless, they represent the core element, allowing monitors to obtain firsthand information on the reality of the situation in individual police stations.

Chapter II introduces the three main stages, each equally important, of the monitoring process: preparing for a visit, conducting a visit and following up on a visit. Part B, which focuses on conducting visits, encompasses most contexts, but monitors should strive to be flexible, adapting to the specificities of the places they visit.

## ***Part A. Preparing for a visit***

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The monitoring process begins before the visiting team arrives at the entrance to the police station. The team will not carry out an effective visit unless it has prepared properly. Preparation may be lengthy or short, depending on the specific objectives of the visit and on the level of experience of the team; in either case, preparation should be thorough. There are four key phases in preparing for a visit:

1. research and information gathering,
2. operational preparation,
3. material preparation, and
4. mental preparation.

### **1. Research and information gathering**

Before embarking on any monitoring visit, the team should ensure that every member possesses the same information and all are fully briefed.

#### **1.1. Laws and regulations**

As outlined in Chapter I, the first stage of preparation involves research to develop an understanding of the laws and regulations relating to detention by the police in the facility to be visited. To be fully effective, the team should understand the basic facts of

- the national police code of conduct (if any) and other rules of police procedure,

- the rights of detained persons,
- the organisation and structures of the police and other law enforcement bodies that the team is monitoring,
- the powers the police have to detain people,
- the length of time the police are empowered to detain people,
- the procedures for when someone is first detained and arrives at a police station, and
- the procedures in use, and regulations relating to, questioning by the police.

It is also essential that the team is well-versed in all relevant universal and regional standards (see Chapter III). By the same token, monitors should have sufficient knowledge of specific protections accorded to particular categories of persons, including women, migrants awaiting asylum decisions, minors, persons with disabilities, religious or ethnic minorities, and other groups in situations of vulnerability.

## 1.2. Registers

The visiting team should be familiar with the types of registers and other documents used to record the personal details, and other related information, of persons detained by the police (see Chapter II, Part B, Section 4 below). Monitors should keep in mind that a variety of registers may be found in police stations and that there may be significant differences between police stations or even within a specific installation. Therefore, the team should know which registers and documents the police are obliged by law or internal regulation to keep. They should also be aware of those that have been observed on previous visits but are not required by legislation or regulation

 See Chapter III, Section 2.9

## 1.3. Relevant information

Preparatory research should encompass all available internal and external information on the establishment to be visited, including details of any specific problems or allegations that have come to notice either since the last visit or in the previous weeks and months if this is the first visit carried out by the monitoring body. Useful sources of information include reports and recommendations from the media, NGOs, universal or regional bodies

(in particular recommendations made to the authorities), and the official reports the visiting team has access to. Careful notes should be made of patterns of abuse, particular locations within the establishment where ill-treatment is alleged to have taken place, the methods of ill-treatment allegedly used and, if the alleged ill-treatment is physical, the types of instruments or implements utilised. This is especially important when the instruments are apparently innocuous or the ways in which they are used are not immediately obvious; for example, gas masks or high pressure water hoses may be utilised to ill-treat detainees. Being aware of existing or prior issues in advance will help the team to be alert to their presence when visiting the police station. If psychological methods of ill-treatment are employed, the team should also be prepared to look for areas where solitary confinement may be used, for instance, or where deprivation of light/other sensory deprivation may be imposed.

The analysis should not be limited to the specific place visited but should also include general information on possible patterns of police abuses. Monitors will then be able to verify whether such fault lines are also present in the particular place they are visiting and/or whether there are factors in play that mitigate against them.

If monitors can access to them, complaints, whether directly received by the monitoring body or by an ombudsman or similar structure, will also constitute an important source of pre-visit information.

#### **1.4. Contacts with external sources**

Preparatory research should ideally not be restricted to a passive reading of reports. It can be very useful to meet with other actors, such as NGOs, lawyers who represent detainees, relatives, members of internal affairs and professional standards units, hospital staff, judges, community police forums and medical practitioners who may have had dealings with detainees. Anyone who has regular dealings with the police may have useful information.

#### **1.5. Management structures**

It will also be useful to be aware, to the extent possible, of the identities of the commander and senior officers of the police station the team intends to visit, and of other senior officers in the region, in order to be in a position to develop constructive relationships with them. Policing is normally fairly hierarchical, and lower level officers will want reassurance that the visiting

team has established its credentials with superior officers.

This knowledge also will help in resolving any difficulties that may be encountered, such as a lack of co-operation or a failure to implement recommendations. Keeping up to date with the turnover of personnel at a senior level can also be helpful, as these changes may result in shifts in outlook among the police who deal with detainees in a particular facility. For example, a new commander's 'robust' attitude towards crime and criminals, transmitted to his or her staff, may manifest in an increase in allegations of ill-treatment.

## **2. Operational preparation**

There is no such thing as a routine visit. Each and every visit should be planned carefully. The presence of the monitoring team will not be routine for those detained in the police station or for the police officers who work there, no matter how often and regularly the team visits. If the current visit is regarded as routine by monitors, there is a very good chance that they will miss something important.

### **2.1. Purpose of the visit**

The visiting team should decide in advance on the purpose of the visit. Will the team carry out an in-depth visit of the detention facilities and engage in a general information gathering exercise? Will they focus on a specific theme to be explored across a series of police stations? A thematic visit, for example, might examine the extent to which detainees are notified of their rights or how children's rights are respected. Equally, the team might be carrying out a follow-up visit to ascertain if recommendations made on a previous occasion have been implemented. The objective of the visit might even be to verify information gathered during visits to other places of detention, such as prisons. The purpose of the visit will govern how the team proceeds and should be specifically defined beforehand.

### **2.2. Composition of the visiting team**

The objectives, the size of the police station and the human resources available within each visiting mechanism will, to a large extent, determine the number of monitors involved in each visit, though members' availability will also need to be considered. Teams should generally consist of no fewer than two people: teams should be large enough to achieve the visits' key

objectives within the allotted time. However, there should not be too many monitors in the team either. Police stations and the parts of them to which monitors will probably require access are, in general, relatively small. A large group of strangers walking around can be overwhelming and intimidating, as well as unnecessarily disruptive, for police officers and detainees alike. Furthermore, unless roles are clearly defined and adhered to, monitors can make their own work more difficult.

At the same time, teams should represent a range of expertise in order to secure the cooperation of both detainees and policing staff. This requires that the composition of the team be as diverse and multidisciplinary as possible. The visit objectives also will influence the composition of the team; for example, if one of the objectives is to analyse the provision of medical treatment, the presence of a doctor will be essential.<sup>1</sup> Similarly, if there is a reasonable likelihood of encountering detainees (or police officers) of a particular ethnicity, or who speak a minority language, someone from the same ethnicity or who speaks the same language should be part of the team. It is also always advisable to include both male and female monitors; this is essential if detainees of both sexes are likely to be encountered.

Roles and responsibilities within the team should be defined in advance. In particular, a team leader should be appointed to take responsibility for the organisation of the visit. The leader should act as a spokesperson, making the introductions to the station commander and leading the discussions with him or her at the beginning and end of the visit.

### 2.3. Logistical matters

Due consideration should be given to logistical matters; if the team leader is not in charge of coordinating them, another team member should be

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1 The presence of a doctor is always beneficial; it allows (i) for the immediate examination of anyone found to be suffering from physical or mental trauma and (ii) for the team to develop a detailed understanding of any healthcare systems in place. When monitoring bodies do not have doctors among their members, one option is to organise training about how they might examine medical and health issues without professional expertise. However, this would in no way fully compensate for the lack of a doctor on the team. See *Visiting Places of Detention: What role for physicians and other health professionals?*, APT, Geneva, 2008. Available at [http://www.apr.ch/index.php?option=com\\_docman&task=cat\\_view&gid=121&Itemid=259&lang=en](http://www.apr.ch/index.php?option=com_docman&task=cat_view&gid=121&Itemid=259&lang=en). NB: Police stations are generally not expected to hold medical files/registers since these should be confidential and not seen by police officers. However, in some systems, there are medical files in police stations: in such cases, the files should be held by police employees with some medical training.

explicitly appointed to this role. This will include arranging transport, food and accommodation, if necessary. A particular visit might be part of a broader mission including a series of visits to several places of detention in the same region, which would increase the length of the mission and the logistical burden.

In case prior notice of the visit is given, a team member (the team leader or another specifically designated monitor) should ensure that the information is properly delivered to the appropriate person(s).

## **2.4. Points of contact**

Wherever possible, it is useful for monitors to have a point of contact in a senior position within the relevant institution or ministry; this contact can be referred to, ideally with the contact's prior agreement, should there be any problems. For instance, if the team encounters difficulties in gaining access to the police station, the monitors can telephone the point of contact to ask him or her to authorise entry directly. This may well make the difference between a visit proceeding as planned or the opportunity being lost.

## **3. Material preparation**

### **3.1. Dress code**

Managing perceptions is hugely important in detention monitoring; monitors should pay special attention to avoiding the possibility that others will develop erroneous or unhelpful perceptions of them as these perceptions might undermine monitors' effectiveness.

The question of 'correct' dress code has cultural implications and entails many potential pitfalls. There is no golden rule that applies in every country or in every situation. It is important to project an image of authority, professionalism and independence: dress code is often particularly important to monitors' key interlocutors, for whom it will have significant implications. Thus, monitors will be taken more seriously if they take the trouble to dress appropriately and in accordance with the context of the police station visited.

Understandably, given the poor conditions found in places of detention in many countries, monitors may favour a more casual style of dress, especially if the visit is to take place in the summer or in hot and humid conditions.



However, image and perception are important; these factors are especially important for the police, who stress their image and status through their uniforms and badges of rank. Even for officers who wear 'plain clothes', rank is often indicated and ascertained by manner of dress; the higher the rank, the more formal the style of dress.

Several issues may arise regarding the wearing or display of jewellery. For obvious reasons, it is not appropriate for detention visitors to be ostentatiously dressed or bejewelled. Moreover, it gives the police a reason to object to a visit on grounds of the risk posed to both the visitor wearing the jewellery and his or her belongings. Finally, there are often cultural issues to be considered. The wearing of jewellery, whether by men or women, should be given careful consideration.

Monitoring bodies whose members wear a special uniform (e.g. some NPMs wear special shirts, badges or any other symbols of identification) should ensure that their uniform and symbols do not appear too militaristic and that they cannot be easily confused with other state institutions; in other words, monitoring bodies must take care to signify their independence and, thus, legitimacy.

### **3.2. Documentation and equipment**

It is also important to ensure that the visiting team brings the proper equipment, personal IDs, and copies of all the necessary credentials, permissions and identification documents to carry out the visit; these may include letters of authority from the relevant ministry or the Chief of Police, a copy of the law granting access to the visiting body, and any relevant recent correspondence with staff in the establishment being visited. All appropriate documentation should be brought to every visit, even if the police station in question is visited on a regular basis.<sup>2</sup>

## **4. Mental Preparation**

All aspects of a visit must be given careful thought prior to arrival at the police station to be visited. This includes even the simplest of tasks that in other areas of daily life are done automatically, without any conscious

- <sup>2</sup> The equipment that will be useful during a specific visit will very much depend on the particular context, objectives and terms of the visit, but might include the following items: a copy of the team's credentials, a checklist of issues to be examined, a questionnaire to be used when interviewing detainees, a pen and notebook, a tape measure, a thermometer, and a torch.

decision-making process. It is necessary for monitors to take time to think about their attitudes and the attitudes of the police who will receive them. It is important to project an image that facilitates the work to be done by always keeping in mind the following factors:

- Monitors' activities, by their very nature, are highly intrusive; they intrude into areas and places that are rarely, if ever, subject to any other form of independent scrutiny. This is especially so in the domain of the police where secrecy, sometimes of necessity, and a suspicion of outsiders is often part of the culture. As a result, the arrival of the visiting team is likely to be treated warily. Even if the establishment to be visited is properly administered, with not a hint of ill-treatment, and the rights of detainees are scrupulously maintained, the welcome is unlikely to be enthusiastic. That said, monitors should not assume that the police will be adversarial or suspicious as this might, in itself, give rise to an unhealthy dynamic.
- Monitoring visits will not be considered routine by the police. The unexpected arrival of monitors who can speak with detainees, examine records, inspect material conditions, and spend considerable time doing so may, at the least, be seen as an inconvenience. Officers, including senior officers, will be required to interrupt their activities to attend to the monitors – or at least they will feel that they have to do so.
- If a new establishment is being visited, or a new team of visitors is involved, it may be worthwhile for the team to hold a detailed discussion, in advance of the visit, about possible problems and how they might be resolved. There is even an argument for using role-playing activities to facilitate discussions about how the team should respond to incivility, outright obstruction, or attempts to 'co-opt' the delegation's visit with excessive helpfulness. The delegation should agree a policy, in advance, about how to truncate a visit if any member of the team feels that this is necessary; such sensitive discussions cannot easily occur in the presence of either detainees or supervising authorities, so decisions about how to handle such eventualities should be made in advance.
- Monitors must learn to project a sense of authority and confidence in their relationships with the police. The police are accustomed to being in charge and exercising power. Police staff belong to an inherently hierarchical institution and routinely defer to senior



officers. With the public, they are used to taking the initiative and being deferred to. During visits monitors must be in charge and take the initiative, without being led by the police; they must assert themselves and their mandate, despite being in 'police territory'. During preparations, the team might wish to share ideas about how to establish their autonomy and assert their independence without being seen as aggressive or hostile.

- Finally, it is important that monitors keep an open mind and that they are permanently alert.

## ***Part B. Conducting a visit***

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Usually, regular visits to places of detention, including police stations, are carried out in a logical order. This order includes the following steps, some of which are sequentially interchangeable depending on the objectives of the visit:

- Arrival and initial talk with the head of the police station.
- Tour of the premises.
- Interviews with detainees and staff.
- Checking the custody registers, other registers and other documents.
- Final talk with the head of the facility.

Below, each stage is described in detail. However, monitors should not take this sequence as a rigid model and should always be prepared to be flexible; it is important to react to whatever situation is found during a visit, changing plans and the usual order of activities if necessary.

### **1. Arriving at the police station**

#### **1.1. Arriving together**

A visit should not start, other than in exceptional circumstances, until all the monitors have arrived. On the day of the monitoring visit, monitors should arrive at the police station together. Arriving separately, at intervals, gives advance warning of the visit, which is not desirable. It also undermines the team's credibility, efficiency and authority.

## 1.2. First contact

The first contact between the visiting team and the police is extremely important. During the first few minutes, monitors will influence what the police think of them and, more importantly, how the police will behave towards them.

Having arrived with the entire team at the entrance to the police station, the nominated leader or spokesperson should be ready to produce the team's credentials and explain to the officer(s) guarding the entrance (or front desk) which monitoring body the team represents, the purpose of the visit and the fact that they wish to speak immediately with the person in charge. All other members of the group should have their credentials at hand and be able to produce them on request.

## 1.3. Delays and obstruction

Having presented their credentials, the visiting team will, in the vast majority of instances, be allowed past the guards and directed or escorted to the reception desk. Once there, or if the team has accessed the desk directly because there are no guards, the monitors will probably be asked to wait until a senior officer is called to receive them. In many cases, the delay will be minimal and acceptable; however, the team should be prepared to experience some initial delay when waiting for a particularly busy guard or reception officer to attend them.

Occasionally, monitors may be faced with lengthy and unacceptable delays. They may meet with clear obstruction or an outright refusal to grant access. In such cases, monitors should be aware that the officer concerned may not be acting on his or her own initiative. It may well be that he or she is merely following orders, or what he or she thinks are the relevant orders.

Monitors must remember that the police in every country comprise a disciplined organisation with a clear rank structure. Even the most modern police services still retain, of necessity, uniforms and badges of rank. Discipline and obedience to authority are the norm. The use of individual discretion is often actively discouraged. As a result, if a junior officer is given an order not to allow monitors to enter the police station until the head of the place has been informed of their presence and has arrived to meet them, then the officer will refuse the visiting team entry. Manifesting anger in these circumstances will achieve little, except perhaps a loss of face; moreover, it will inevitably sour the atmosphere when access is finally granted.

It is, however, proper and even important in such circumstances that the team leader is firm in declaring that the team will not accept the situation.

- The team leader should ask for the name of the officer he or she is dealing with. However, this should not be done with any hint of menace or threat. Instead, this step should be treated as a way of establishing at least a basic rapport with the individual in question. If he or she refuses to give his or her name, it is unwise to press the matter. If successful, it is worth trying to start a conversation in order to use the time to establish a rapport. The officer may develop a favourable impression of the team and be willing to assist during the next visit.
- An attempt should be made to ascertain whether the officer is refusing access because of a specific order to that effect or if, in the absence of a contrary order, he or she assumes that entry must be denied.
- In the former case, the team leader should ask for the identity of the officer responsible and ask to speak with him or her immediately, either in person or on the telephone.
- In either instance, the team leader should ask to speak with a more senior officer immediately. Avoiding loss of face is often important (though the best methods for achieving this often vary across cultural settings) so delegations should insist on their rights to visit while, simultaneously, trying not to embarrass those officers initially unaware of the monitoring team's authority.
- The team leader should point out, politely and calmly, that the refusal to grant access is a very serious matter and that it will be taken up with the appropriate senior officer at the police headquarters or the relevant ministry.

If this approach is not successful, and there are no signs that the team will shortly be granted access, then the monitors may wish to telephone a senior officer themselves. As discussed above (see Part A, Sections 1.5 and Section 2.4), knowing the management structure and the identities of the senior officers, or having pre-established a senior point of contact, can be useful in seeking to resolve such difficulties.

When the monitors do meet the station commander or the officer who issued the instruction to refuse entry, the team leader should make a firm but polite protest. If appropriate (i.e. if the monitoring body is an NPM or if it has a Memorandum of Understanding granting access to police stations), the team leader should also point out that refusing access represents a breach of the visiting body's mandate. In due course, the monitors should

also take the matter up with the appropriate authorities as identified in the instrument governing the monitors' work. In order to pursue the issue later, it is helpful, though not always possible, to identify the officers involved (by name, ID number, or duty rota). When gathering such information, monitors should be as clear as possible about how the information will be used, including if it will be used in a complaint to higher authorities. Although this may hamper the development of a rapport between the monitoring team and the police staff involved, it is important for the monitoring body to demonstrate a commitment to transparency.

### 1.4. Preventing the removal of detainees

If monitors suspect that their arrival may result in an attempt to remove detainees, either before the team is allowed access or while the team is with the commander, it is worth considering (assuming that the team is big enough) whether one or two members of the team should stay outside, at the side and/or rear entrances of the police station, to prevent removals or at least document them. Once the rest of the team have successfully negotiated entry and are satisfied that the situation inside has been contained, the 'observers' can join them by means previously agreed (usually, a telephone call to arrange to meet at the front entrance).

Such manoeuvres must be undertaken discretely. Moreover, as these procedures may seriously undermine constructive dialogue with the detaining authorities, they should be used only if there are strong grounds for suspecting that detainees will be removed from the police station to ensure they are not seen by the monitors. Another option is for monitors to carry out the visit as planned, imply that they have finished, and then return an hour or two later to see if the 'missing' detainees have been returned.

In any case, monitors should keep in mind that an unreasonably lengthy delay in granting access might result from attempts to conceal the removal of detainees or to hide police misconduct. If there is a pattern of such concealment, it is often possible to discover some basic details during interviews with detainees, whether conducted

- in the police station with current detainees,
- at a later stage in a prison with persons formerly detained at the relevant police station, or
- at a later stage with persons who were detained at the facility but have been released.<sup>3</sup>

3 The 'do no harm' principle should serve as an ethical compass during the entire visit.

However, in many countries such conduct on the part of the police will be unknown or rare. In all cases where it is suspected, while monitors must not fear to act, they should do so only on the grounds of reasonable suspicion. Moreover, they should strive to deal with the issue tactfully and discretely. This is an area where the potential for relationships between police and monitors to break down is high.

### 1.5. Triangulating information

Preventive monitoring requires the triangulation of all relevant, available information in order to arrive at a clear understanding of the prevailing situation, and especially the main risks of torture and other ill-treatment, in a specific place of detention. No information should be taken at face value. Moreover, a variety of activities should be carried out during visits in order to get as clear a picture as possible. The information received from police officers, registers and interviews with detainees should all be compared to identify areas of agreement and/or disparity.



For example, if police officers cite a particular regulation, monitors should ask to see a copy. They should then check with detainees to see if the established procedures are followed. Similarly, if monitors are informed that certain cells are not in use, they should seek evidence to the contrary by looking for food leftovers, clothes or other signs of recent occupancy. Monitors can also ask other detainees about the cell or ask various police officers the same questions to see if their answers are consistent. Monitors must be creative and

persistent, cross-checking information about what happens and how things function in the installation. This also means that if the monitoring team divides up during the visit they should meet periodically to exchange and cross-check information.

Monitors' own observations are crucial; observing what happens in a place of detention is an essential aspect of collecting reliable information to triangulate and cross-check with other types of data. Observation must entail more than a passive examination of material conditions: it should involve a proactive approach to gathering empirical evidence centred on illuminating the details of key processes (e.g. as family visits or the distribution of food).

Monitors should make good use of all their senses throughout visits: what they hear, see, smell, taste and touch should form a significant component of their overall analysis. They should be alert throughout visits, including to information and/or signs that can be seen but are often not noted, such as body language, silences during interviews, persons trying to avoid contact with monitors, people being eager to talk, group dynamics, the way detainees interact with police staff, how noisy different areas are, and the attitudes of staff.

Monitors should also be sensitive to how material conditions change at different times; for instance, visiting in the daytime does not necessarily reveal issues concerning lighting and/or heating that may only be obvious at night-time.

## **2. Initial talk with the head of the police station**

The initial meeting with the station commander is an important part of the visit. It gives monitors an opportunity both to explain their work and methodology and to establish the basis for constructive, on-going dialogue that will facilitate long-term prevention. Therefore, this should not be regarded as a routine task to be rushed through so that monitors can get on with the 'real' business of inspecting detention facilities and speaking with detainees. This meeting is as important as all the other components of the visit and can have significant long-term benefits. However, monitors should note that the station commander might try to use the initial talk as a promotional exercise (e.g. by giving a long presentation, including a slideshow, or offering an invitation to lunch) to the detriment of the visit.



There are different ways of handling the first encounter. If monitors are pressed for time they may, after the preliminary introductions are over, split up, leaving the team leader to carry on discussions while the remainder of the team start the operational tasks. Alternatively, instead of splitting up, the visiting team could suggest that all the monitors carry on with the visit and then meet with the station commander again later for further discussions. When the visit is part of a regular series by an NPM or other monitoring body, this is more likely to be considered normal practice and often proves an efficient use of time. In general, it is good practice that the leader of monitoring team holds the initial talk with the head of the police station and that other members of the monitoring team do not even sit down in order to make clear that they are going to start the visit directly.

## **2.1. Objectives of the initial talk**

### **2.1.1. Introducing the monitoring body's mandate and the methodology of the visit**

The station commander may not be familiar with what is expected from him or her during a monitoring visit. Monitors should explain carefully what they intend to do and their requirements for doing it. If this is the first visit to a particular police station, or if the commander has not had dealings with the monitoring organisation before, a brief explanation of the body's mandate and powers is essential. It is also useful to repeat this basic information in subsequent encounters. Particular emphasis should be placed on the right of the visiting team to interview detainees (and others) in private (see Chapter II, Part B, Section 5) since this is often a key cause of disagreement on the part of station commanders. Thus, this right should be clarified at the very beginning of the visit.

The team leader should also introduce all the members of the visiting team by name, identifying their area(s) of relevant specialist expertise and/or experience. Interpreters should be introduced as such. If necessary, credentials should be shown again.

Finally, monitors should request another meeting with the commander at the end of the visit to discuss preliminary findings and/or to formally end the visit. Ideally, monitors should indicate how long they expect the visit to last.

### **2.1.2. Relationship building**

Monitors should project confidence, authority and professional expertise to

gain the compliance of the station commander. However, they must also try to build a positive relationship that will facilitate constructive dialogue. This requires excellent interpersonal and diplomatic skills, patience and humility, no matter what the commander's attitude.

During visits it is important to enquire about the living and working conditions of the police themselves and the difficulties they face in their work. Sometimes police officers' working conditions have an immediate (often negative) impact on the treatment of detainees; therefore, understanding these conditions is directly relevant to monitoring bodies' mandates. Indirectly, this concern may also help to gain the confidence of the commander:<sup>4</sup> indeed, these aspects of monitors' reports can be useful sources of support for commanders' efforts to improve police conditions.

Monitors should also stress that they are in no way hostile towards the police and, in fact, their work is a useful and effective way of preventing malicious and unfounded allegations against police officers. Co-operation is the best way forwards for both sides and this should be underscored.

### **2.1.3. Obtaining the necessary information**

If the visit is the first one to be conducted at a particular police station, it will be important to discuss most, if not all, of the following basic issues:<sup>5</sup>

- the station's capacity and resources,
- the number of staff (disaggregated by gender, rank, ethnicity and other factors relevant to the context),
- the ranks, responsibilities and possibly names of principal police personnel,
- the number of female staff on duty not just at the time of the visit but at all times of the day and night, including during weekends and public holidays,
- the length and timing of shifts (this is important as staff who work long hours may become exhausted and stressed, which can lead to things going wrong),

4 Questions about working conditions should also be put to other police officers encountered during the visit, especially those working in the detention area; the answers given may differ from those given by the station commander.

5 At this stage, monitors should also enquire who else might provide them with useful information or assistance during the visit.

- the number and types of persons currently and recently held in custody,
- the specific challenges encountered in relation to current or recent detainees,
- the number of cells and details of what types of detainee are held in each (special attention should be paid to whether men, women and minors are separated, and how special cases (such as persons with disabilities or special needs) are accommodated),
- what happens when all the cells are full,
- what facilities exist for interrogating detainees,
- what oversight mechanisms exist to monitor interrogations as they happen,
- the procedures for when a detainee requires medical attention and the details of a recent case in which this happened,
- the main types of register used to record detainees' information and who is responsible for them,
- the way complaints are recorded,
- who is in charge of the cells (there may be a separate custody officer and separate custody register),
- the nature of any incidents encountered with current or recent detainees,
- the main challenges faced in running the installation and any successes and difficulties in overcoming them, and
- recent challenges faced by the staff.

On follow-up visits, monitors should enquire about

- the progress made since the last visit,
- whether and how challenges have been dealt with, and
- what new challenges have emerged.

### 3. Overview of the premises

When monitors are ready to begin the operational part of the visit and start the overview of the facility, they should ask to be taken to the detention area and/or other parts of the police station they wish to visit. Depending on the size of the establishment, and the size of the team, monitors may choose to split into groups. It is often useful, circumstances permitting, to see as much of the police station as possible (including such seemingly irrelevant parts as toilets and storage rooms) at the beginning of the visit and then identify which areas will be the subject of further scrutiny. There may be occasions when monitors choose not to give advance notice that they wish to visit rooms located outside the detention area. For example, if they have information that weapons or other implements reportedly used to torture or otherwise ill-treat detainees are kept in a particular office, monitors may choose to go there immediately; alternatively, they may only express a desire to go there at the very last moment in the hope that this will reduce the likelihood of implements being removed or hidden.

At this stage, monitors may also indicate any category of staff that they wish to speak with in addition to those responsible for the detention area. For example, they might decide to speak to criminal investigators, custody officers, officers in charge of juveniles, or drug squad officers, depending on the objectives of the visit. It is important for monitors to try to disrupt the day-to-day work of the police as little as possible.

Depending on the number of detainees in custody, and the size of the group visiting the cell area, the monitoring team may wish to split up further; for example, one or two members could examine the custody register, while others could inspect the cells and speak with detainees. It is often sensible to examine the register thoroughly (and any record of complaints) before proceeding to the cells as information gathered during these preparatory activities may help monitors to target or prioritise where they go and who they speak with. The size of the team, and the amount of time available, will inevitably influence how monitors proceed.

### ***Accompaniment by the police***

Ideally, monitors should conduct visits without being accompanied by the police in order to show detainees their independence from the authorities. In practice, however, monitors are often accompanied by the police, both for practical and safety reasons. Following the initial talk, the head of the police station may seek to accompany the monitors; the team leader or spokesperson should attempt to dissuade him or her from doing so. In many contexts, being accompanied by the head of the police station may undermine the monitoring body's ability to establish a rapport with detainees. Nevertheless, if the station commander insists on being present monitors have no authority to prevent this, other than when interviewing detainees. If monitors are surrounded by the police throughout the entire visit, it is crucial that they identify strategies and good practice measures to distance themselves from the police institution: in such situations, special care must be taken to promote detainees' perception of the team as credible, legitimate and independent.

The physical layout of police stations differs significantly both within and between countries, but some basic characteristics and areas (detailed below) are common to most facilities.

### ***Reception area***

The way visitors are received when arriving at the police station, and the setting of the reception area itself, are very useful indicators of the overall atmosphere and functioning of the facility. There may be a reception desk at which the officer in charge will receive detained persons who arrive at the police station; he or she will usually obtain personal details and an account of the circumstances leading to arrest. Detained persons will usually be searched here; if so, their personal effects will be laid out on a desk so that a list can be made and signed for in a register. It is possible that monitors will find persons detained in the reception area itself. There might also be a separate room nearby for conducting searches, photographing detainees, taking fingerprints, and checking identification documents.

### ***Holding area***

This may be a 'cage' or a large cell where persons waiting to be processed, and those awaiting transfer to court or to interrogation rooms, are held

for short periods. Usually the holding area is within sight of the officer in charge. If the police station is adjacent to a court building, there may be cells dedicated to holding people waiting to appear in court; in some countries, these cells may be in the court building and linked to the police station by a tunnel. Furthermore, the guards attending these cells may not be police officers but prison staff or even private security personnel.


### ***Medical room***

There may be a room where detainees can be examined by a doctor or medical assistant. There may also be a space where apparatus for administering blood alcohol tests to drivers suspected of being under the influence of alcohol are kept and operated, though this is not usually a separate room.

### ***Interview rooms***

These are rooms where detainees are questioned by investigators. They may be located within the detention area or in other parts of the building. Some police stations have designated interviews rooms, equipped with recording devices; in others, ordinary offices (such as those used by investigators) may be used for interviews. Monitors should keep in mind that interviews may also be held in rooms not officially designated for that purpose; this is often the case when abusive interview methods are employed. Visiting teams should be alert to this possibility.

A careful examination should be made of interview rooms: particular attention should be paid to the number of seats and their condition and position, especially the condition and position of the seat intended for the interviewee. Monitors should also note other features, such as holding cages, two-way mirrors, restraint equipment and the general appearance of the room (e.g. whether attempts may have been made to render it especially intimidating).

 See Chapter III, Section 2.6

### ***Detention area***

Often a substantial part of visits is spent in the detention area containing the cells. This area will frequently be located on the ground floor or in basement; it may have a separate entrance, away from the public entrance(s) to the building as a whole. The officer in charge will normally be a sergeant, inspector or officer of equivalent rank. However, in some countries more senior officers hold this responsibility, especially in the case of large facilities.

It is often helpful for monitors to sketch a simple map in order to have a better understanding of the place they are visiting. However, monitors should be sensitive to police concerns about safety and security; it is always worth emphasising the confidentiality of such materials.

The key priorities are:

- to inspect the material conditions in the detention area and cells, and
- to ascertain how detainees are treated.

Most police stations will not have more than half a dozen cells, although some of the larger facilities in big cities have thirty or more. In large facilities, it may be useful to determine where the custody officer sits in relation to the cells themselves; if the custody officer sits some distance away, he or she may be unable to hear detainees if they call for help.

It is also important that monitors assess, throughout the police station, how access is facilitated for people who use wheelchairs or have severe mobility impairments and what, if any, accommodations are made for other disabilities (e.g. visual or auditory impairments).

### *Cells*


The number of cells<sup>6</sup> will depend on the size of the police station, and the size and nature of the community it serves. Cells often vary in size; some may be designed for single occupancy, others for two or more people. There may be separate areas with cells for women and/or juveniles. The way cells are furnished varies from country to country; furnishings may include a bed or bench and perhaps a toilet. In some places there may be cells in which the beds are close to the floor in order to prevent intoxicated detainees from injuring themselves if they fall. In other contexts, the cells may be seemingly temporary structures built of corrugated iron sheets or similar materials; these often have no toilet and little or no furniture.

The first contact between the visiting team and detainees is likely to be in cells while the monitors are conducting their overview of the facility. The cell door will, in most cases, be opened by a guard who, depending on local regulations, may first search the occupant(s) before monitors are allowed inside. This is not usually the ideal start but monitors should be aware that the

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6 Those engaged in monitoring visits should note that cells may be found in more than one location within a police station. In some countries, each department in a large police station may have its own detention area.

police are expected to follow strict security procedures; trying to circumvent these procedures may strain the relationship between the visiting team and police staff. The first encounter is a good occasion for monitors to briefly introduce themselves, their mandate and the reasons for their visit. They may ask detainees whether they are willing to be interviewed in private and agree when and where any interview will take place (see Chapter II, Part B, Section 5.4 below). Monitors may also outline the interview procedure.

 **It is very important for monitors and police alike to bear in mind that it is monitors who should choose which cells to enter and which detainees to see, not the police.**

### ***Bathrooms and access to drinking water***

The visiting team should also inspect the toilets, bathrooms, and other such facilities to determine how they function, how they are accessed, and how often and under what conditions *in practice* detainees are allowed to use them. Detainees' access to drinking water should also be checked by monitoring bodies.

### ***Kitchen and food storage***

Monitors should visit any kitchen area where food is prepared or stored. They should analyse the availability, accessibility and adequacy<sup>7</sup> of the food. They should also check whether a register containing details of the food provided to detainees exists. In some countries food is brought by detainees' families or detainees have to provide money to the police to purchase their meals. The effects of such situations should be carefully considered.

### ***Offices, living/sleeping quarters and storage spaces***

Offices in a police station may include:

- criminal investigation, investigators' and/or inspectors' offices,
- senior officers' offices, and
- administrative offices.

Whenever possible, monitors should strive to enter investigators' offices and have interviews with a few investigators, especially when their offices are used to interview detainees.


<sup>7</sup> Committee on Economic, Social and Cultural Rights, General Comment N°12, UN Doc. E/C.12/1999/5, Geneva, 12 May 1999. Available at <http://www.unhcr.ch/tbs/doc.nsf/0/3d02758c707031d58025677f003b73b9>



Depending on the terms of their mandate, monitors may also require cupboards, equipment stores and other such places to be opened. The question of whether monitors should exercise this power as a matter of routine is difficult to answer; judgement is necessary in deciding when and how often to exercise these powers. Doing so may not produce information of sufficient value to merit the possible negative effects on relationships and co-operation with the police.

Similar principles apply to dormitories and private quarters in police stations where staff live on the premises or are provided with sleeping accommodation. These should not be entered without good cause. However, if invited to do so by the police, monitors should accept. Demonstrating an interest in the working and/or living conditions of the police themselves is almost always appropriate and beneficial.

If, during the course of a visit, monitors find evidence of torture or other ill-treatment, or see weapons or other implements that they believe have been used to torture or ill-treat detainees, they should pursue the matter to the extent necessary within the bounds of their mandate. Thus, if monitors find a baseball bat, rubber cosh or similar implement in an investigator's office and its presence is consistent with allegations received of ill-treatment at that police station, the monitors would be acting perfectly properly in asking for desk drawers, filing cabinets and other personal spaces in the office to be opened for inspection. Whether or not such a search should be extended to other offices in the same department, or elsewhere in the police station, will depend on the monitors' judgement based on the information in their possession and the precise terms of their mandate and strategy.

 **If, on the basis of strong suspicions that evidence of torture is being hidden, monitors ask for personal spaces to be opened, they should always ensure that a senior officer is present. This will help to avoid allegations that the visiting team has caused damage, unlawfully removed anything or planted evidence. In some cases, other national authorities should immediately be called to deal with the situation. During preparation for visits, monitoring bodies should consider how they will act if they encounter this type of scenario, giving particular attention to the possible judicial implications of their findings.**

Monitoring places of detention is normally geared towards encouraging positive systemic change to make torture and other ill-treatment less likely in future; however, if an immediate opportunity arises to prevent torture it should be seized.

### ***Other areas of interest***

Police stations, depending on their size and location, may also contain the following areas:<sup>8</sup>

- locker areas where police officers can store uniforms and personal equipment,
- communications, control and/or radio rooms,
- armouries,
- canteens, dining rooms and/or kitchens,
- recreation areas where police can take breaks,
- offices for crime scene investigators and/or technical police staff,
- a briefing room for personnel coming on duty to be briefed and brought up to date on recent incidents and intelligence,
- report writing rooms where police officers can do their paperwork,
- stores for court exhibits or lost property (which should be properly labelled),
- a garage where police vehicles are parked and maintained, and
- police vehicles, including those adapted for transporting detainees.

It will depend entirely on the monitors' mandate and diplomatic skills whether or not they can enter and inspect these areas, and whether or not they decide to do so.

 See Chapter III, Section 3

#### ***The visiting team's use of offices in police stations***

It is likely that, during the course of a visit, monitors will wish to sit down at some point

- to carry out a detailed examination of registers or files, and
- to cross-check the information gathered so far, especially if the police station being visited is a large one.

The detention area may not be convenient for this due to its size or if it is busy. Monitors should therefore ask for an office to be provided.


<sup>8</sup> This list is not intended to be exhaustive.

It is practical and desirable for monitors to work in private so that they can discuss issues and information freely. However, the officer escorting the team may remain present. In order to encourage the officer to leave while avoiding offence, monitors could point out to the officer that they are likely to be some time and that they have no wish to keep him or her unduly from his or her duties. If the officer does not take the hint, monitors should accept the officer's presence. If confidential issues need to be discussed, one of the monitors could try to distract the police officer. Alternatively, if prior to starting a visit monitors believe that they are likely to need to spend some time alone inspecting documents or discussing their findings, they could discuss this with the station commander during the initial meeting and ask if a private office can be put at the team's disposal.

## 4. Reviewing custody registers and other documents

Although not comprehensive, this section explores a wide range of registers and documents. Only some of the registers and documents discussed need to be checked on every visit. Moreover, monitors should bear in mind that the extent of their mandate may restrict the types of documents that they may examine.

As monitors become familiar with custody records, the types of information they contain and the ways in which they are completed, they will become more sensitive to cases when something important is missing or unusual. As a general rule, registers that are not completed accurately, or contain a large number of errors and/or gaps, are cause for suspicion. A lack of attention to detail is an undesirable trait in police officers and may be indicative of other, more serious problems.

 **Monitors should not simply draw up a list of all existing records in a particular place of detention and then check whether entries have been filled in or not. They should also analyse the information in registers in light of relevant standards. While well-kept registers are no guarantee that detainees are treated fairly, and ill-kept registers are not a sure sign of abusive practices, they are significant indicators that should be included in triangulation processes.**

 **See Chapter III, Section 2.9**

## 4.1. Local orders and instructions

It is useful to request to see copies of local orders and instructions about the administration of cell areas. Monitors will have familiarised themselves with legislation and/or national regulations governing these issues during their preparations for the visit, but local commanders may have issued supplementary instructions. Key issues include the maximum number of people to be detained in a cell at any one time, the frequency of searches, and matters to do with cleanliness. Often instructions on these issues are fixed to a wall or notice-board, so monitors should take the time to look at these.

## 4.2. Custody records

Registers vary in complexity and comprehensiveness from country to country and even from station to station. Some are very basic, including little more than the name, address, date of birth and time of arrival of each detainee; others contain details of every aspect of a detainee's time in custody (e.g. when food was supplied and exercise allowed). Officers at a particular police station may decide that it is useful to keep a record in a separate, dedicated register of the number of times detained persons have been taken from the police station to the hospital; however, it may be that no such register exists in a neighbouring police station. Therefore, visiting teams must know about both the types of registers and documentation that the police are obliged by law and/or internal regulation to keep and those that have been seen on previous visits but are not required by legislation or regulation. Much useful information can often be found in these 'unofficial' registers. Moreover, these may represent examples of good practice that can be highlighted and shared. However, monitors should keep in mind that the protection of personal data should be respected at all times and that the existence of such registers might breach legislation on the protection of personal data.

Making a thorough examination of custody records is one of the most important aspects of monitoring visits to police stations. The information collected should be carefully cross-checked with data gathered during interviews with detainees, staff and the station commander. This is an essential component of the triangulation process (see Chapter II, Part B, Section 1.4 above).


Monitors will usually find a general custody record, with chronological entries about arrivals and releases, as well as individual records for each detainee. Comparing the information contained in these two types of documents is often very useful. Custody records should give precise information on the movements of all detainees in and out of the police station. Thus, they are

one of the most important safeguards against enforced disappearances and arbitrary detention.

These records also provide an overview of police officers' movements in and around the cell area. For instance, the police may be required to conduct hourly visits to the cells and to record these in a register. However, monitors should be alert to the fact that the police sometimes complete these registers after the fact; thus, they do not always constitute an accurate record.

The standard of custody records – how accurate, detailed and up-to-date they are – reveal a lot about the attitude of the station's staff to detainees. Inadequacies in custody records may reveal a range of policy-level problems or systemic issues relevant to monitors' work. However, monitors should keep in mind that accurate and well-kept records are not guarantees against abuses or ill-treatment. The priority, from a preventive perspective, is the type of information kept and the analysis monitors can perform by cross-checking data from different registers and by triangulating their findings with other sources of information.

During the initial talk with the station commander, it is useful to identify who is responsible for the various registers and who is in charge of keeping the key(s) to the place(s) where these are kept if they are locked away when not in use. It is not uncommon for the key to be untraceable when the relevant person is off duty, especially at night or at the weekend. However, the police have international duties to complete appropriate and up-to-date registers;<sup>9</sup> this implies that registers should be accessible at all hours of the day and night. This is also one of the reasons why monitoring bodies should visit police stations at different times and on different days.

 **The analysis of custody records, including the identification of groups who might be in situations of vulnerability, can be extremely useful for selecting detainees to interview.**

Regardless of domestic standards, regulations and practices, monitors can use the principles enshrined in the UN ICPAPED<sup>10</sup> as a compass for assessing the information included in registers, though it is only binding on States that have ratified it. According to the ICPAPED, the following types of data should be included in registers for each person deprived liberty:

9 As mandated, for instance, by the Declaration on the Protection of all Persons from Enforced Disappearance, UN Doc. A/RES/47/133, 18 December 1992, Art. 10.3. Available at <http://www2.ohchr.org/english/law/disappearance.htm>

10 See Art. 17.3. Available at <http://www2.ohchr.org/english/law/disappearance-convention.htm>

- the identity of the person,
- the date, time and place where he or she was deprived of liberty and the identity of the authority that deprived the person of liberty,
- the authority that ordered the deprivation of liberty and the grounds for the deprivation of liberty,
- the authority responsible for supervising the deprivation of liberty,
- the place of deprivation of liberty, the date and time of admission to the place of deprivation of liberty, and the authority responsible for the place of deprivation of liberty,
- details relating to the state of health of the person deprived of liberty,
- in the event of death during deprivation of liberty, the circumstances of the death, the details of the investigation into the cause and manner of death, and the destination of the remains, and
- the date and time of release or transfer to another place of detention, the destination, and the authority responsible for the transfer (if the person was not released).

As such essential information contributes to safeguarding the rights of the detainees against possible human rights violations, incomplete or inaccurate entries in custody registers should be addressed by monitors in their dialogue with the authorities.

### *Computerised registers*

Monitors should also be aware that in some countries there are few or no paper records may be kept: registers may be entirely computerised. Therefore, it is useful for at least one member of the monitoring team to have expertise in the field of information technology. It is also helpful for all the team's members to be familiar with the types of computing system used by the police.

## **4.3. Information to look for when examining custody registers**

### *Name*

Monitors should verify that a separate entry has been made in relation to each detained person. Best practice is that a record is opened as soon as a detainee arrives at a police station. Delays, omissions or inconsistencies should give rise to concern for two reasons:

- Detainees whose presence in a police station is not recorded are often at greater risk of torture, other ill-treatment or enforced disappearance; and
- The inaccurate registering of detention times may result in a suspect being detained for longer than the legally permitted period.

Monitors should view with deep concern any examples of detainees for whom no records exist. They should bring any such instances to the attention of the officer in charge of the detention area, the station commander and/or other senior officers; this should be done at the earliest opportunity. The team should also detail such situations in their report(s), along with any explanation given by staff.

### ***Dates and times***

Monitors should check that all dates and times are recorded accurately. During visits, it is good practice to check the accuracy of the station's official timekeeping system: any tendency to record dates and times approximately should be noted as this risks legal time limits being breached. Records in which times appear to have been consistently rounded up or down to the nearest five or ten minute period (for example, if entries follow the pattern 11.25am, 11.40am, 12.15pm) may indicate that the times given are inaccurate.

Monitors should also be suspicious if persons are consistently shown as being released at the very end of the legally permitted period. If police have the authority to detain persons initially for a 24 hour period in a given country, and the majority of detainees are shown as having been released after exactly 24 hours, monitors should make further investigation of the issue a priority.

It is also important to consider whether the timescales recorded are realistic. For instance, if a person is recorded as having been arrested at a location a considerable distance away from the police station and yet is recorded as having arrived five minutes after arrest, suspicions should be aroused.

Monitors should also check that entries are in chronological order: a person arrested at 4pm should not appear in the register before a person arrested at 3.50pm. If monitors find inconsistencies in chronological order, they should raise these with the officer in charge of the detention area and the station commander. Monitors may also find it useful to cross-check the time of arrest given in the general custody register with the time entered in the detainee's file, with information in other registries, and/or with the detaining officer, if appropriate.

Monitors should check that entries actually provide the information required. For example, if a space in a register requires that the date and time of a suspect's transfer is recorded along with the method of transfer (e.g. to court or to another police station), monitors should check that all the information is included. If it is not, they should ask to be provided with it and ask why it is not recorded.

### ***Information provided to detainees***

Monitors should also check what types of information are provided to detainees; they should also check when the information was provided. Moreover, monitors should confirm that both detainees and police have signed entries to this effect in the records required. Detainees should be given

- information about their rights,
- the option to have a family member or other third party notified of their detention,
- access to a lawyer, and
- access to a medical doctor.<sup>11</sup>

### ***Dubious modifications***

Monitors should check that any apparent mistakes in entries have not been obliterated. They may find that such errors have been covered in 'white ink' or typewriter correction fluid, making them completely illegible. While this may have been done for entirely innocent reasons, it is an undesirable practice; it can lead to suspicion that 'inconvenient' but factually correct information is being intentionally hidden. Best practice is that errors should be crossed out using a single line so that the original information remains visible and legible. The correct information should then be added above or immediately after the correction. The person making the correction should then initial or sign the entry.

### ***Patterns***

Monitors should not restrict their examination of custody records to those relating to persons detained at the time of the visit but should also examine previous records. These provide a broader perspective on a police station's general standard of record keeping than is usually the case with records relating solely to current detainees. Furthermore, previous records may

11 See CPT Standards, CPT, CoE Doc. CPT/Inf/E (2002) 1, 2002 (revised 2011), p.8. Available at <http://www.cpt.coe.int/En/documents/eng-standards.pdf>



reveal important patterns; for instance, it is useful to know how the facility copes when there are more detainees than the station officially has room to accommodate. Officers may tell monitors that their station's cells are never overcrowded, but an examination of registers over several months may reveal this to be untrue.

When visiting police stations at weekends or outside normal office hours, it is often a good idea to ask about access to archived records at an early stage of the visit. It may be that they are locked away in a store and that there is only one person with a key. As this person may not be on duty at the time of the visit, it may be necessary for the police to arrange for the key to be brought to the station.

### ***Health status of detainees***

The custody register should indicate the health status of each detainee at the time when he or she arrived at the police station. The initial health status should be determined

- by the answers the detainee gives in response to a standard series of questions asked by the custody officer, and
- by the custody officer's direct observations

The detainee's initial health status should be recorded along with the date and time of the assessment.

This protects both detainees and police officers, not least by identifying potential risks to detainees' health and safety while in custody. For example, the custody officer should ask if the detainee has an illness or injury and then record the answer given. If the answer is affirmative, then the officer should ask for further information about whether the detainee is currently under medical supervision and/or taking any medication regularly. It is important that illnesses (e.g. asthma, diabetes, epilepsy and heart disease) that are treated through regular medication be recorded. The officer should also record whether detainees who need to take medication regularly have it with them or not, and whether they have enough both for the period of their detention in the police station and also, if relevant, for the duration of their transfer to another place of detention. The need to take regular medication is a reason for the custody officer to refer the detainee for a medical consultation so that the doctor or nurse can verify this and, if necessary, prescribe the medication.

Custody officers may also note if they think that a detainee is intoxicated, either due to drugs or alcohol. This should trigger a referral to a healthcare

professional. The use of alcohol and/or drugs may be risk factors for self-harm, violent behaviour or even suicide; therefore, medical intervention may be necessary for preventive purposes.

Custody officers may also observe that a detainee might have a physical disability, mental illness, or some form of intellectual impairment that may be affected by being detained; if so, the detainee should be referred for assessment by a healthcare professional.

In some jurisdictions, the local healthcare system may provide specific healthcare services for detainees (e.g. for intoxicated persons or persons with a mental disorder) once they are notified by the custody officer or the detainee is referred by a nurse or doctor. There are often systems in place to divert people with mental health issues away from police custody to local assessment and treatment facilities. Interim measures to safeguard such detainees may be noted in the individual's custody record(s) (e.g. the person might be placed under close observation to reduce the risk of suicide or self-harm). Monitors should cross-check this information and analyse whether procedures are observed (e.g. is close and regular monitoring done by a nurse or a doctor?).

## 4.4. Other information

The following types of information are also likely<sup>12</sup> to be recorded in the custody register and/or other registers.

### 4.4.1. Contact with the outside world

#### *Telephone calls and visits*

A record of calls made by or on behalf of detainees may be kept. If so, it should detail calls made by or on behalf of each detainee to

- lawyers, especially if provided at public expense,
- doctors or nurses,
- social workers, mental health institutions, drug treatment programmes, and similar bodies,
- consulates and/or interpreters in respect of foreign nationals who have been detained, and
- chaplains or other religious personnel.

<sup>12</sup> Monitors should record cases when this information is not recorded, especially if relevant to their visit. Moreover, including a recommendation on the issue in the visit report, and/or in dialogue with the authorities, will encourage better practice in future.

A record of visits to detainees should be kept; this should detail which, if any, of the categories outlined above each visitor represents.

### ***Oversight***

Monitors should analyse records of the times and dates of inspection visits to the detention area by senior officers, internal control mechanisms, judges and prosecutors. These records may contain comments about the conditions encountered at the time of the visit, the number of persons in detention and perhaps the detainees' names.

If there is a national inspection body, such as an NPM or NGO that is guaranteed, or has been granted, access to police stations, their visits should be recorded. Inspections by universal or regional institutions should also be recorded.

### ***Courts and prosecutors***

The visiting team should also ask to see the record of files sent to prosecutors and courts, together with the names of the persons to whom the files relate. Records should state when detainees are taken to court or when they are brought before a judge.

## **4.4.2. Record of incidents**

### ***Incidents and injuries***

Monitors should analyse records of any incidents that occurred in the detention area. These should include, for example, suicide attempts, self-harm by detainees, and disorder of any kind. Where bruises or other physical harm is alleged to have occurred prior to a detainees' arrival in the detention area, this should be recorded; the record should clearly indicate if the harm is alleged to be related to earlier police ill-treatment (e.g. during transport to the police station) or quite unrelated events. Complaints about violence from other detainees should also be recorded.

### ***Use of force***

Records on the use of force and the use of means of coercion (e.g. pepper spray or CS/tear gas) should be checked and analysed in conjunction with records of incidents and injuries.

## **4.4.3. Record of police procedures and operations**

### ***Searches***

The visiting team should also ask to see the record of personal searches.

This should give the identity of the authorising officer and the searching officers in each case. When examining this type of record, or discussing the issue of searching with police and detainees, the nature of searches, and the number and gender of police staff present during the search, should always be ascertained. The same types of information should also be sought in relation to searches carried out on visitors to the police station.

### ***Recorded interviews***

In countries where interviews are electronically recorded, a register of all video tapes, audio tapes, CDs or other data storage media issued to interviewing officers should be kept. Monitors should check whether this record provides details of the detainee interviewed on each recording. Records may also include the time each storage medium was issued and the time unused media were returned. Where an external officer monitors all interviews, the records he or she keeps should be checked for accuracy, level of detail, and to assess whether (and in what circumstances) he or she choose to intervene (or failed to intervene) in interviews; as the person best placed to immediately stop or prevent torture, this officer's willingness to challenge, rather than simply record, the actions of colleagues should be carefully assessed.

### ***Fingerprints and photographs***

Monitors should also review records of all persons fingerprinted and photographed. Often, copies of photographs of detained persons are also kept and these may be worth examining if monitors suspect that someone may have been assaulted and received facial injuries. However, these injuries may not have been caused by the police, or not by the police at the station; it is good practice to cross-check photographic evidence of injury and written records explaining when and where the incident that caused the injury is alleged to have occurred (see above Chapter II, Part B, Section 4.4.2 above).

### ***Items confiscated by the police***

Records should be kept of drugs, prohibited weapons, stolen property and other items confiscated by the police. These records should show the time and date of seizure and the name of the detainee from whom the property was taken, together with information on the final disposal of the item(s).

### ***Record of personal belongings***

Visiting teams should also check records of personal belongings seized by the police. The time and date of seizure and the name of the detainee

concerned should always be noted. Records should be signed by both the police and the detainee who owns the items.

### ***Witnesses and other visitors***

Similarly, monitors should check records of persons visiting the police station who are not formally detained. This record may include all visitors or only those who have been interviewed in connection with criminal matters or matters related to police business.

### ***Special needs***

A record of any reasonable accommodation required by detainees with physical or mental disabilities may be used by staff to help them communicate in writing about particular detainees with special needs (e.g. about someone who has a severe hearing impairment or about the fact that a person affected by Tourette's Syndrome or a similar disorder might have outbursts). In most countries, domestic legislation will make provision for additional assistance for detainees with special needs; if so, records should indicate how these provisions have been complied with (e.g. through organising support by an appropriate adult or other carer, sign language speaker or interpreter).

### ***Complaints lodged against the police***

Records of complaints against the police should also be analysed. These may point to trends in ill-treatment and/or other violations, or to the fact that higher numbers of complaints have been made about one officer. It is important to check what actions have been taken with regard to complaints and how senior staff use complaints to take preventive action.

## **5. Private interviews with persons deprived of their liberty**

Interviewing persons detained in police stations is one of the most basic tasks visiting teams perform; it is also one of the most complicated. It requires careful thought and handling. If carried out incorrectly, there is a risk of obtaining incomplete information, being deliberately misled or even putting detainees at risk.

Interviews in private are the cornerstone of almost any visit to a place of detention. They fulfil two key functions:

- they give detainees the opportunity to express themselves freely to someone from the outside and,
- they allow monitors to gather firsthand information regarding detainees' treatment and conditions of detention.

Monitor should keep the following issues in mind throughout their visit, but especially during interviews:

- Persons in police custody are often suffering from great stress. They may be shocked, frightened, confused, traumatised, mentally disturbed, violent, depressed, under the influence of drugs/alcohol, or otherwise vulnerable due to age or membership of a marginalised or stigmatised social group. Detainees may lie to monitors and/or make false allegations about their treatment.
- For the purposes of preventive detention monitoring, the innocence or guilt of persons deprived of their liberty should not be of concern to monitors unless relevant to a flagrant and obvious breach of due process.
- Persons deprived of liberty may perceive monitors as a source of help. Therefore, they may say what they think monitors want to hear in order to get their help. A key part of the job is (i) to carry out interviews in a manner that tests what detainees are saying and (ii) to cross-check information whenever possible. Conversely, detainees may see monitors as part of an official system that cannot be trusted. It is crucial to explain the visiting body's mandate clearly, both to avoid raising false expectations and to create a relationship of trust.
- Once the visiting body's mandate has been explained, interviewers should ensure that they have the informed consent of the detainee to talk in private. If the detainee refuses, for any reason, this refusal should be respected.
- It is important for monitors to be sensitive to the needs of the police and the legal system, remembering that the time available to the police to complete investigations is limited and that they are under pressure. For example, if the police need time to interview a particular detainee, monitors should try to interview another detainee or undertake another monitoring task, such as analysing registers. However, they should usually make another attempt to interview the detainee later in the visit. Monitors should be prepared to be flexible and amend their plan of action, if the need

arises, in order to avoid interfering with investigations. At the same time, monitors must ensure that they are able to carry out their duties.

- Using informants is a common police tactic; in police stations, informants may be placed in cells with suspects to report what is said and done. Thus, an interviewee who alleges ill-treatment or other improper conduct on the part of the police may be placed in danger if the interview with monitors occurs in the presence and hearing of other detainees.
- For many reasons, accounts given in the presence of other detainees may not be accurate, even if an informant is not purposefully 'planted' among the detainees. Interviews can only be considered private when monitors are talking to one detainee only and when no other persons are in a position to overhear or observe the interview. If more than one detainee participates in an interview, it should be considered a group interview.

## 5.1. Confidentiality of interviews

Confidentiality is one of the key principles of preventive monitoring. Ensuring that confidentiality is respected, and explaining to detainees how the information they provide will be used, is of paramount importance in protecting detainees and creating trust. Monitors should take sufficient time to explain what confidentiality implies. Before continuing with an interview, they should also ensure that they have the detainee's consent. Monitors should then make sure that the interview is, in fact, conducted out of hearing and preferably out of sight of all other parties.

Monitors may find police staff listening at the door to the room they have co-opted for interviews. In such cases, monitors should politely but firmly reassert their mandate; if two monitors are interviewing a detainee, one should leave the cell and talk to the police officer concerned, ensuring the privacy of the interview and, at the same time, taking the opportunity to get information from the officer.

If confidentiality cannot be guaranteed for any reason during a private interview, monitors should consider not conducting it at all. In such cases, the views of the detainee should be considered prior to monitors making a final decision on whether to proceed; if a detainee appears to be fully aware of any risks he or she is running, and still prefers to persist with the

interview, monitors should rarely deny a detainee the opportunity to speak and be listened to.

## 5.2. Interviewing individually or in pairs

In most monitoring bodies, monitors conduct interviews individually or in teams of two. There should never be more than three interviewers involved in a particular interview, including any interpreter, as this is likely to overwhelm and intimidate the detainee; it will also make it difficult to manage the interview. Interviews in pairs are particularly useful when complaints are expected as independent judgement can then be exercised by two people working together. It can also be useful when a visiting body is mentoring a new monitor. When regular visits are made to a particular police station, this issue may be less salient.

When working in pairs, the following division of tasks is advisable:

- One member should act as lead interviewer and ask most of the questions.
- The second member should take notes, but only after receiving consent for this from the interviewee. The fact that notes will be taken should be explained to the detainee beforehand and the confidentiality of these notes should be stressed.
- The note-taker should not interrupt the lead interviewer with questions unless invited to do so as this may be disruptive for the lead interviewee and intimidating for the interviewee.
- When the lead interviewer has finished putting all the questions he or she has, the note-taker should be invited (i) to pick up on specific points in order to explore what the detainee has said in more detail and (ii) to raise any further issues. The note-taker often benefits from being able to concentrate on the information given without having to think about the line of questioning; as a result, he or she often notices details missed by the lead interviewer that can then (if appropriate) be explored.
- It can be useful to alternate roles in subsequent interviews, though the team may agree not to do so for a variety of reasons.


## 5.3. Selecting interviewees

Since police stations are usually small facilities with a limited number of detainees, monitors should generally apply the principle of 'all or nothing



selection<sup>13</sup> monitors should choose either to interview all persons deprived of liberty or none. This reduces the risk of sanctions or reprisals against individuals.<sup>14</sup>

In most police stations, there will not be a sufficient number of detainees to refine the selection criteria. However, in police facilities that hold a large number of detainees, it will not be feasible to interview everyone; therefore, monitors must decide which detainee(s) they wish to interview. The selection is usually made either randomly or based on prior examination of the custody register. It can also be based on other criteria defined in advance by the visiting team; for instance, a visit may focus on detained children or members of generally marginalised or stigmatised groups (e.g. ethnic minorities, sex offenders, sex workers or those suspected of terrorism-related crimes). However, it is important to ensure that the selection process is perceived to be objective, so as not to put any detainees at risk after the monitors have completed their visit and left.

 **Monitors, rather than the police, should always choose which detainees the visiting team interviews.**

Whatever way monitors proceed, they should keep in mind that not every detainee may be available: some may be undergoing a police interview; some may be undergoing an examination by a doctor or nurse; some may be at court or speaking to their lawyers; and others may be asleep.<sup>15</sup> Moreover, not every detainee may wish to be interviewed and consent is necessary to proceed. A detainee's decision to grant or withhold consent must be respected; monitors undermine the effectiveness and legitimacy of their work if they are perceived as seeking to obtain information at any cost, and/or willing to compel individuals to participate in interviews. Respecting the principle of informed consent helps to distinguish monitors from the police.

- 13 See *The Selection of Persons to Interview in the Context of Preventive Detention Monitoring* (Detention Monitoring Briefing N°2), APT, Geneva, April 2009, p.5. Available at [http://www.apt.ch/index.php?option=com\\_docman&task=cat\\_view&gid=269&Itemid=259&lang=en](http://www.apt.ch/index.php?option=com_docman&task=cat_view&gid=269&Itemid=259&lang=en)
- 14 See *Mitigating the Risks of Sanctions Related to Detention Monitoring* (Detention Monitoring Briefing N°4), APT, Geneva, January 2012. Available at [http://www.apt.ch/index.php?option=com\\_k2&view=item&id=1169:sanctions&Itemid=229&lang=en](http://www.apt.ch/index.php?option=com_k2&view=item&id=1169:sanctions&Itemid=229&lang=en)
- 15 Detainees must be allowed to rest; in some countries, the nature and length of rest is laid down in law so that detainees are protected from coercive questioning and similar procedures. Interruption of periods of rest may be harmful for detainees and create legal problems for the police; therefore, monitors should avoid waking sleeping detainees unless this is considered absolutely necessary in a particular case and the action can be objectively justified later.

There may be occasions when monitors visit a police station and there are no detainees held there at the time. The visit should still proceed in these circumstances to assess the material conditions and the custody register. In addition, discussions can still be held with the police officers present. Moreover, monitors may discover that there *are* detainees in the police station after all.

#### **5.4. 'Dangerous' detainees**

Occasionally monitors may be informed that a particular detainee is dangerous and, therefore, they are not permitted to be alone with him or her and/or the cell door cannot even be opened. This may be due to the potential for violence or escape, or because the detainee is suffering from a communicable disease. Monitors should always ask for evidence justifying such advice. This should be cross-checked as far as possible during interviews with other detained persons and/or documentation held at the police station.

Having heard the evidence, monitors will have to make a judgement on how to proceed; visiting teams should take into account the fact that experience suggests monitors are rarely in danger in this kind of situation. Monitors may decide to reject the police's advice or try to reach a compromise; for example, they may ask to speak to the detainee in the sight of, but out of the hearing of, the police. Monitors should keep in mind that, when negotiating any compromise, diplomacy is more effective than confrontation. The police may not always be justified when they issue such warnings but they may well be acting in good faith. Monitors should make the final decision about speaking to 'dangerous' detainees and, if something goes wrong, the responsibility should also be theirs: a fact they should stress during negotiations.

#### **5.5. Where to interview**

The location of an interview should be considered carefully, especially as regards ensuring confidentiality. Some monitors may favour remaining in the cell with the detainee; others may prefer to go elsewhere. Usually the options in police stations are limited. All parties to an interview should be comfortable and that is best achieved if they can all sit down in a well-lit room in which the subject of the interview does not feel intimidated. There will probably be an interview room available in, or close to, the cell area; monitors may decide to

ask to use this provided that the detainees to be interviewed are comfortable with the idea. If there is an exercise yard, this may also be suitable, provided that the weather is not inclement. Monitors should be aware that some rooms, including offices of senior officers, may hold memories of traumatic experiences for some detainees or simply be associated with abusive authority. Disregarding this may undermine the visiting team's image of independence. The possible presence of cameras and/or microphones should also be considered, especially if a police interview room is used.

 **As a general rule, interviews should take place in a location where the detainee feels as comfortable as possible.**

## 5.6. Starting interviews

In order to hold interviews, it is essential that monitors gain the informed consent of potential interviewees. When monitors enter a detainee's cell, and the police officer has left, monitors should introduce themselves, giving their names, functions and describing their mandate. They should then ascertain if the detainee is willing to speak to them, if this has not been done previously. If monitors are being assisted by an interpreter, they should make clear that

- the interpreter is bound by the same duty of confidentiality as the monitoring team, and that
- the interpreter is working for the visiting team and is not an employee of the police or linked to the police in any other way.

The vast majority of detainees agree to talk to monitors, even if reluctantly or with some initial fear. However, if a detainee indicates that he or she does not wish to speak to the team, then no pressure should be put on the detainee to change his or her mind. If monitors have explained who they are, stressed their independence and the confidentiality of any conversation they may have, they have done all they can. Monitors should thank detainees who refuse to be interviewed for their time and then move on.

During interviews, monitors aim to gather firsthand information about the way detainees perceive their detention and treatment by the police. Monitors will often have specific objectives for their visit (e.g. to assess the use of force during apprehension by the police or whether the access to a lawyer is granted in practice) and will tailor interviews accordingly. On some occasions, monitors may reconsider their initial objectives as a result of what they learn. The information gathered during interviews should then

be triangulated with information collected from other sources in order to ascertain its accuracy and credibility.

During an interview with a detainee (or detainees) in a police station, monitors must

- introduce themselves,
- reassure the detainee that the information gathered during the interview will be treated confidentially, unless agreed otherwise,
- gain the detainee's confidence,
- find out some basic facts about the detainee,
- obtain detailed information about what might be a very complicated situation or set of facts,
- put questions designed to test and clarify the information given, and
- manage any false expectations the detainee might have as regards the monitors' visit.

All this must be accomplished in a relatively short period of time.

### ***Giving the necessary information***

Monitors must give each interviewee the information he or she needs to make an informed choice about whether, and in what way, to participate in the interview. In the opening phase, the monitors should introduce themselves individually as well as their monitoring body and its mandate. They should explain the monitoring and interviewing processes, as well as the objectives of the visit and the particular importance of holding interviews in private with detainees.

Rather than setting a time limit or saying exactly how long interviews will last (which is hard to determine in advance), monitors may want to explain that they will have to bear the issue of time in mind as they must interview as many people as possible. Monitors should also explain that interviewing as many people as possible is a good protection against possible sanctions.

Monitors should explain the extent to which they can respect the confidentiality of any information given and be transparent about the risks the interviewee may face as a result of participating in the interview.

### ***Creating trust***

The opening part of an interview should not be a one-way delivery of information. Monitors should seek to engage potential interviewees in

conversation and may even begin by discussing issues unrelated to the detention context in order to put detainees at ease. Discussing non-threatening issues is a good way to do this, but what it entails will depend on the specific situation. For example, if monitors see a book that the detainee is reading, they may comment on it. Others prefer to ask non-intrusive questions to establish a rapport. The context will dictate which themes are likely to be appropriate and effective for breaking the ice. Talking about the cell itself is usually unthreatening to most detainees. The way trust is created will obviously vary dramatically according to the detainee's (as well as the monitors') gender, age, social background, ethnicity, mother tongue, mental capacity and so forth. Monitors should reflect on these issues prior to, and during, visits and adapt their approaches accordingly.

Establishing trust is important because detainees may fear the consequences of talking to monitors. However, establishing trust involves more than merely providing an assurance that anything said during the interview will remain confidential. It demands a personal style that is friendly and helpful, both in terms of what monitors say and their non-verbal communication. For example, it is important to avoid standing around a detainee in his or her cell while he or she sits on a bench. Being patient and empathic, even when a detainee is not getting to the point, is important too. Monitors should keep in mind that people who have been tortured or otherwise ill-treated will be traumatised; they may be unwilling to talk about what has happened to them, especially if sexual abuse is involved. Facial expressions, the way monitors are seated and their actions with pens and notebooks can all give negative impressions to detainees; it is vital that monitors try to 'observe' themselves (and their words and actions) from the detainee's point of view at all times.

During interviews, monitors should convey the fact that they are genuinely interested in detainees' comments. Listening is not a passive activity: body language is especially important in this regard. Monitors should also learn about the appropriateness of eye contact in the relevant country, noting that norms about eye contact vary across different cultural and ethnic groups. Monitors should think carefully about every aspect of their own non-verbal communication (e.g. if and when they nod). It is essential, if monitors are being assisted by an interpreter, to speak facing the detainee and not the interpreter.

### ***Assessing the situation***

As they speak with a detainee, monitors should be assessing various issues: the behaviour of the interviewee, the information given, whether the

detainee may be in danger as a result of participation in the interview, and/or whether the detainee is afraid of sanctions or reprisals. The detainee may have been threatened not to participate or, equally, coerced to participate. When detainees have been coerced, it is possible that they have been told to reassure the monitors that all is well, even if this is not the case. Each of these situations will require a different response. When coercion is suspected and/or when there is a suspicion that the confidentiality of an interview will be breached, monitors may want to encourage detainees to communicate sensitive information via writing or drawing.

Monitors should also check that interviewees understand what is being discussed. If they do not, monitors should seek to determine whether this is a matter of language, the result of psychological difficulties, a conceptual problem, an issue of distraction or the result of a hearing impairment. Monitors can then adapt their tone and style of speaking accordingly.

Monitors should also be alert to the psychological condition of detainees and when continuing an interview may be detrimental. For example, if the interviewee begins to manifest serious signs of trauma, monitors will have to make a decision on the way the interview is conducted and if it should even be conducted at all.

### **5.7. Working with an interpreter<sup>16</sup>**

If the visiting team is working with an interpreter, it is extremely important that his or her role is clear, both during talks with the authorities in charge of the facility and during private interviews with detained persons. The monitoring body should also be aware that security issues might be different for interpreters because they may be perceived as not having the same protections conferred on other members of the visiting team by the visiting body's mandate.

It is important that the interpreter does not lead any conversation. This is the case even when several visits are carried out with the same interpreter's assistance. First, it is not the interpreter's job.

16 The issue of how monitors and interpreters should work together is analysed in Detention Monitoring Briefing, N°3: *Using Interpreters in Detention Monitoring*, APT, Geneva, May 2009. Available at [http://www.apr.ch/index.php?option=com\\_docman&task=cat\\_view&gid=270&Itemid=259&lang=en](http://www.apr.ch/index.php?option=com_docman&task=cat_view&gid=270&Itemid=259&lang=en)

Second, if the interpreter does all the talking, he or she will be established in the minds of the police as the person in charge of the group; while this is an impression that can be corrected in due course, in some countries it may cause difficulties for the interpreter in the future, especially if he or she is from the same locality or region as the police station. The police may regard the interpreter's relationship with the monitoring body as more than just the professional and neutral provision of language assistance; if so, the police may take retaliatory measures. Third, the interpreter may not say exactly what is desired if monitors hand over responsibility for dialogue with the police and/or detainees.

In addition, if the visiting team works with the same interpreter for lengthy periods, or during a number of visits, he or she may will get used to the line of questioning generally taken in interviews; in some cases, interpreters will then anticipate what the next question is going to be and put it without being asked to do so. If this happens, a quiet word with the interpreter after the interview is over, or at some other convenient time, is advisable.

Although the interpreter is clearly a member of the team, his or her role should be explained to all of the people the team meets at each stage of the visit. It is good practice for monitors to brief interpreters in advance (particularly if they are new to working on preventive monitoring issues) on the key terms or phrases that will be used repeatedly during the visit.

Consideration should also be given to the fact that the police may be particularly suspicious of interpreters if, for instance, both the interpreter and the detainee are from the same marginalised minority. Detainees may also be suspicious of interpreters: a common language or ethnicity does not denote other common ground. The selection of interpreters is therefore vital for carrying out effective monitoring visits, bearing in mind the principle to 'do no harm'. The presence of an interpreter should not expose detainees to greater risks of ill-treatment. At the same time, interpreters should not suffer any type of reprisal for working with the monitoring body.

## 5.8. Asking questions

It is not a good idea to launch into a series of questions immediately after introductions have been made. Generally, the best procedure is to ask some

loosely phrased question such as 'How do you come to be here?' and let the detainee give an account in his or her own words.<sup>17</sup> This is especially important with young and/or vulnerable people. If a detainee's account dries up, a question such as 'What happened next?' will probably get it started again. Only once the detainee has completed his or her account should further questions be put.

It is important that questions are asked in a logical order and that the team asks all the questions they intended to put to the detainee, even if some of these have already been answered in the detainee's initial account. Detainees are sometimes confused about dates and times and a logical sequence of questions may reveal inconsistencies and/or prompt them to remember things that they had forgotten or about which they were mistaken in their original account.

The best way to frame questions depends on the characteristics of the interviewee. However, the content of questions will depend on the objectives of the visit in terms of the issues that the monitors are aiming to analyse.

Monitors should be very careful in the way they phrase their questions. Even if monitors know the answer (e.g. about whether a detainee was medically examined because they have seen the medical register) they should avoid giving the impression that they have a specific answer in mind. An open-ended question about access to a doctor may result in an answer that contradicts information already in monitors' possession (e.g. information garnered from examining registers or talking with the police). Open-ended questions enable monitors to delve further into such issues and, if necessary, challenge the information given by detainees or the police.


Open-ended questions encourage detainees to search their memory to provide an accurate and reliable account. Therefore, this approach minimises the possibility of suggestion (i.e. it reduces the likelihood of detainees giving answers that they think monitors want to hear rather than the truth).

As a general rule, both closed-ended and leading questions should be avoided. Closed-ended questions are those that merely require simple

<sup>17</sup> However, simple, closed-ended questions, such as 'How long have you been here?', are fairly innocuous; they also represent a good way to start interviews. As there is no golden rule for interviewing detainees, monitors' experience will determine the way they conduct interviews.



answers drawn from a short list of possibilities; indeed, many closed-ended questions require yes or no answers. Closed-ended questions can be useful for checking facts but should be used with care and skill. Leading questions, on the other hand, usually contain or strongly suggest the answer that is expected; for instance, 'Were you told anything when you arrived at the police station?' is better than 'Were you told that you could have a lawyer when you arrived at the police station?' as the latter is a closed question, while 'Did the police fail to tell you that you could have a lawyer?' is an inappropriate leading question.

 **Monitors should never ask leading questions that openly suggest that a detainee has been tortured or otherwise ill-treated.**

As a general rule, it is better to ask questions beginning with the words 'who', 'what', 'where', 'when', 'how' or 'why'.

If a detainee displays obvious signs of injury, it is mandatory, and perfectly proper, to ask how the injuries occurred. Similarly, if medical information in monitors' possession suggests that the detainee has injuries that are not visible, they should ask about these. However, no questions inviting an allegation that a detainee has been tortured or ill-treated should be asked unless there is evidence of this having occurred or the detainee indicates, however obliquely, that this is the case.

Asking multiple questions at the same time should be avoided (e.g. 'What happened when you got to the police station; were you told you could have a lawyer and someone informed that you had been arrested or were you just searched and put into the cell?') Questions like this will confuse detainees and create the need for additional questioning as interviewees usually only answer part of multiple questions.

There are many reasons why a detainee may give seemingly inconsistent accounts: inconsistencies do not necessarily mean that a detainee is not telling the truth (or, at least, that he or she is not trying to tell the truth). Shock, trauma and disorientation can result in confusion. Moreover, detainees may be trying to give 'compliant' answers: the answers that they think monitors want to hear. If there are inconsistencies in a detainee's account, these should be probed. This can be done

- by asking the same question in different ways,
- by asking questions that seek to elicit more details,

- by comparing answers to different questions on the same issue, and/ or
- by drawing attention to apparent contradictions in a neutral manner.

Some information can also be cross-checked – with due regard to confidentiality – in other interviews or other sources of information. However, monitors should on no account accuse a detainee of lying. Information that is not considered credible should simply be recorded as such.

It is essential to be methodical when gathering information. This can be accomplished through

- planning and preparing carefully,
- following the plan (unless there is a strong reason to deviate from it),
- ensuring that questions are asked in a logical sequence,
- allowing time for questions to be answered, and
- linking and probing answers.

## 5.9. Closing interviews

An interview should be brought to a close when monitors feel that they have obtained all the relevant information they can or if, at any stage, there are indications that the detainee wishes to stop the interview. At the end of the interview, the detainee should be asked if there is anything else he or she wants to say. The detainee should then be thanked for his or her time. Monitors may wish to repeat the assurances given previously about the confidential nature of interviews.

As much care and time should be taken in closing an interview as was taken in opening it. This is especially important if the content has been traumatic and distressing for the detainee; for example, if it has dealt with allegations of torture or other ill-treatment. Reopening old wounds can affect a detainee's psychological state so monitors should be alert to this possibility.

Sometimes detainees may ask monitors specific questions about their case. On rare occasions, monitors may even be asked to deliver a message (often an apparently innocuous one) to a friend or relative, or to carry out some other seemingly simple or innocent task. Under no circumstances should monitors agree to do so and they should be clear that this is prohibited. Delivering messages on behalf of detainees may leave monitors open to allegations of attempting to interfere with an investigation and/or the

course of justice. Thus, it may damage the credibility of the visiting body as a whole. As outside experts, monitors may also be asked by detainees to comment or proffer advice about their case. It is crucial to realise that giving any such advice would go beyond the monitors' mandate; this must also be made clear to detainees if the issue arises.

If detainees indicate that they wish to make a formal complaint about their treatment by the police or about their conditions of detention, depending on their mandate monitors should either

- advise detainees to contact the appropriate ombudsman's office or similar independent complaints mechanism, or
- refer detainees directly to one or more of these bodies.

With detainees' consent, it may be appropriate for monitors to notify the officer in charge of the facility that one or more detainees wish to make complaints.<sup>18</sup>

On closing the interview, it is important that monitors ensure that detainees are not left with any false expectations; they should not be left with the impression that their individual situation is going to improve as a direct result of the monitors' visit. However, they should be left with the impression that they have made a useful contribution to the work of the visiting team. In some contexts, especially where the monitoring body has a permanent presence in the country, it may prove useful to give detainees the contact numbers of the monitoring team or the monitoring body's main office.

## 6. Interviews with police staff and others

Police officers are an important source of information for monitors. The information they provide is a key element in the triangulation process as it helps to provide a comprehensive understanding of the place visited. It is crucial that the visiting team takes every opportunity to talk to the police, especially junior officers, showing empathy at all times. Whenever possible, interviews should be conducted in private, on the same basis as those conducted with detainees; however, it is often better to conduct interviews with police staff in a spontaneous and casual manner, rather than a formal one.

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<sup>18</sup> It is good practice for monitoring bodies, particularly NPMs, to distinguish between preventive monitoring and complaints-based functions. Preventive monitoring is about identifying systemic flaws rather than addressing individual cases (although these cases will inform monitors' work).

It is also important to explore police officers' opinions about the functioning of the facilities. These may well differ from what monitors were told during the initial talk with the person in charge. The way officers perceive their work, and the everyday challenges they face, may reveal both positive and negative systemic patterns.

Monitors will often find that officers initially display a degree of wariness; on occasion, they may even be hostile. It is essential that monitors exercise the same skills with the police as they do with detainees to gain their confidence and establish trust. Monitors are almost always given a list of complaints ranging from low pay to overwork, or from a lack of resources to difficulties with pressure being exerted by senior officers to 'get results'. Such systemic factors increase stress levels and bad working conditions, which may increase the risk that detainees will be ill-treated.

As well as putting questions to the police, monitors should welcome and encourage the police to put questions to the visiting team. The police may ask slightly cynical questions such as 'What about our human rights?' The visiting team should explain that they are just as concerned about these as they are about the human rights of detainees; it is important that police officers are convinced that monitors are not 'the enemy'. The police should be encouraged to see that human rights are not designed to make their jobs more difficult but, rather, are a central and essential element of their daily professional activities.

Finally, monitors must remember that most police officers choose this career path for honourable reasons and that they want to do a good and professional job; part of the role of monitoring bodies is to help them do so.

 **Monitors should keep in mind that police staff may also incur the risk of sanctions or reprisals from superior officers for having been in communication with independent monitors. The team should therefore take all appropriate measures to protect police staff from any form of retaliation resulting from their involvement in a visit.**

**Key questions to ask staff**

- How many staff are working in the police station (i) at the time of the visit and (ii) in total? What is the usual ratio of staff to detainees?
- What ranks are involved in the different parts of the detention process?
- How many female members of staff are there (i) at the time of the visit and (ii) in total? What is the usual ratio of female staff to detainees? What levels of authority do female staff hold?
- What happens if a female detainee is brought to the police station when there is no female member of staff in the police station (e.g. during the weekend)?
- What are the procedures for shift changes? How is information exchanged between shifts?<sup>19</sup>
- What procedures are employed when a detainee is first brought into custody?
- What are the procedures for dealing with high numbers of detainees coming into custody at peak times?
- What are the procedures regarding medical examinations?
- What are the latest ministerial circulars/memorandums from headquarters and/or the most recent regulations?
- What are the standard rules on the use of force?
- What methods of de-escalation are used before force is used?
- How do police staff describe their contact with detainees?
- Are detainees informed about complaints procedures? If so, how?
- What arrangements are in place for persons with mental/learning disabilities or other forms of physical/sensory disability?
- How often do police staff check on the detainees in the detention area? Are these checks recorded?
- Can custody officers hear what is happening in the cells?? If an officer hears a call from a detainee, how should the officer respond according to procedure? Is this procedure followed in practice?

- What are the most challenging problems facing staff?
- How would staff describe a typical working day?
- What is the average salary? When do staff members receive their salary? Does it arrive on time?
- Is in-service training provided?

Finally, many types of staff may be employed in police stations: not all will be in charge of custody. Some may not have any direct dealings with custody. There may be investigators, medical doctors, nurses, psychologists and other types of staff in a specific police station. Although in most cases medical staff do not work permanently at a specific police station, those that do have dealings with police stations generally hold important information about the stations they do work at. These people are worth interviewing if present during a visit. Similarly, other individuals present during the visit who do not work for the police (e.g. detainees' family members, chaplains, members of other visiting organisations, and suppliers) can also prove to be useful sources of information.

## 7. Specific issues to be taken into consideration

### 7.1. Healthcare

It is unusual for full time healthcare staff, such as doctors or nurses, to be stationed at a police station unless the installation is particularly large or is located within a large police headquarters complex, in which case healthcare staff may be present primarily to attend to police officers. As healthcare staff are unlikely to be present at the time of an unannounced visit, monitors may decide to ask the police officer in charge if any regular healthcare staff can be called to meet the visiting team at the police station. Another option is to visit healthcare staff elsewhere, where they may feel able to speak more freely. Inevitably, the best interlocutor with regard to healthcare personnel will be the medical member of the visiting team, if there is one.

#### 7.1.1. Medical examinations

In a custody setting, a doctor may be asked to see a detainee for two main reasons. First, doctors may be asked

- to attend an emergency, or

19 For example, is a briefing given about any detainee who might require additional protection or different treatment, such as a detainee with disabilities for whom reasonable accommodations might be required, or detainees who have special dietary needs?

- to assess an existing or suspected illness to determine whether there is any immediate need for medication, other treatment or transfer to a health facility.

It may be that the police generally initiate such requests. However, monitors should determine whether, if detainees have requested to see a doctor, these requests were promptly acted upon and also whether detainees had a say in their choice of doctor (e.g. often female detainees prefer to see a female doctor).

Second, in some jurisdictions doctors may be asked to act in a forensic capacity to assess detainees in relation to the reasons for arrest; for example, doctors may be asked to assess the presence (and type) of injuries allegedly sustained in an assault, signs of intoxication, or whether there is evidence of sexual assault.

Monitors should ask to see the room in which medical examinations take place. They should also note what equipment is available. Medical examinations should take place in private and without the use of any form of restraint. If there are exceptional and pressing security concerns in a particular case, then the police might remain within call, or even within sight, but out of hearing of the examination. All this information should be cross-checked during interviews in private and through the analysis of files and registers.

### **7.1.2. Healthcare staff**

Usually, healthcare for detainees held in police stations is provided

- by local general practitioners,
- by medical officers who are called to visit the police station on a case by case basis, or
- by medical officers from local health clinics or hospitals to which detainees may be transported in case of a need for further assessment or treatment.

In some jurisdictions, nurses may be the first point of contact between detainees and the healthcare system; however, detainees should be allowed to request assistance from, and/or to refer to, the doctors who act as the nurses' supervisors.

In some countries, the police have their own healthcare service; if so, police healthcare staff may also be responsible for attending to detainees. Monitors should determine to whom the healthcare staff report and whether they are independent from the police. Healthcare staff working under the Ministry of Health are more likely to be independent than those working under the same ministry as the police.

In any case, it is important to check whether healthcare staff have training for dealing with the particular issues that arise in police custody; for instance, healthcare staff should have training about

- how to deal with mentally disturbed individuals and drug users, and
- the medical documentation of torture and other ill-treatment.<sup>20</sup>

### **7.1.3. Referrals to healthcare professionals**

The custody register should include the date and time that the custody officer, or the detainee him or herself, requested a consultation with a doctor. Similarly, the date and time that the custody officer requested a consultation with other health professionals, such as mental health services or drug treatment programmes, should be noted. The date and time of the healthcare consultation itself should be noted by the custody officer, as should the details of any transfer to, and return from, a local healthcare centre, hospital or other facility. Monitors should seek to cross-check these details (and whether consultations and/or transfers actually took place), including with detainees still present in the police station.

The team should enquire about the procedures in place in the event of a medical emergency, such as if a detainee's health requires an urgent transfer to the nearest hospital. The team should also ask about when the last such case occurred and how it was handled. Similarly, monitors should ask if there have been any deaths in custody in the last year or since the last monitoring visit. It is important to establish what the established procedures are for investigating any deaths in custody are and what the findings of any such investigations were.

### **7.1.4. Medical records**

Doctors and nurses who are asked to see detainees must maintain their own accurate, contemporaneous medical records. These records should be kept confidential since they may well be irrelevant to the individual's custody. The police should not be able to access these medical records. Therefore, monitors may need to contact the relevant healthcare staff in order to review these records. However, in some jurisdictions there may be a computerised system of police records in which medical records can be held in a secure, password-protected area that can only be accessed by healthcare professionals.

<sup>20</sup> See *The Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Professional Training Series N°8), Office of the High Commissioner for Human Rights, Geneva, 1999 (revised 2004). Available at <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>



When acting in their more traditional doctor-patient roles, doctors should explain to detainees that only the limited health information that is necessary to safeguard their well-being during detention will be divulged to the police; for example, doctors should tell the police if a detainee is a diabetic and must eat regularly and/or have daily insulin injections. The police may keep a separate register or make notes on individuals' custody files when detainees need medication or other specific treatment prescribed by a doctor. This is not the same as a medical record; rather, it should represent a practical tool to be used by the police to ensure that detainees receive their medication or special diet.

When acting in a forensic capacity, doctors are essentially gathering medical evidence that may be used in judicial proceedings; doctors should explain to detainees that this information will be treated differently from other personal health information. Depending on the laws of the country, this information will be given to the police and/or the judicial authorities; therefore, it may become public in any future court proceedings.

#### **7.1.5. Medicine stock and first aid supplies**

As healthcare staff are not usually based in police stations, any medication held for specific detainees should be clearly labelled with the detainee's name, and the amount and frequency of the prescribed dosage. All medications should be kept in a locked cabinet. The key must be available within the police station at all times of the day and night, including during weekends and public holidays.


A first aid kit should also be kept in the police station; this must be easily accessible. In those countries with the resources, heart defibrillators may also be kept. If so, police officers should be trained in their use: moreover, a trained officer should be on duty at all times of the day and night, including at weekends and during public holidays.

#### **7.1.6. Allegations of torture and other ill-treatment**

Doctors and nurses responsible for examining detainees may examine persons who have been subjected to torture or other ill-treatment, including sexual violence, as well as those subjected to violence from other detainees. Healthcare professionals are under professional and ethical obligations to document any physical or psychological signs or symptoms of ill-treatment and/or torture, not only when a patient complains directly of ill-treatment but also when a doctor or nurse suspects that ill-treatment has occurred. Critically, doctors and nurses are also under obligations to

report their findings and suspicions. Their internal reporting mechanisms should protect the identity of the victim and all those involved in exposing cases of ill-treatment. However, all parties should be aware that any medical documentation of torture or other ill-treatment may be used in future criminal proceedings.

Monitors should assess the extent to which medical personnel are aware of their responsibilities in this regard and what, if any, relevant reporting mechanisms have been established by law and/or the regulations governing the place of detention. In this regard, monitors should specifically examine how any relevant medical reports and other evidence (e.g. medical tests) are handled and stored with regard to confidentiality and the protection of the victim. Monitors should also enquire when reporting mechanisms were last used and what the outcomes of the relevant cases were.

 See Chapter III, Section 2.3

## **7.2. Other issues**

### **7.2.1. Safety and Security**


Monitors have a duty to be conscious of safety and security issues throughout visits to police stations, especially when in contact with detainees. They should be alert to dangers to their own and colleagues' safety and security, as well as that of detainees, police officers and members of the public.

These simple rules are designed to minimise the risk of incidents:

- Monitors should always make sure that they know where the other members of the team are or intend to go.
- When interviewing a detainee, monitors should ensure, as far as possible, that they are nearer to the door than the detainee is.
- If monitors have to leave the room during an interview but before it is finished, they should take all their personal belongings with them, even if they only leave for a few moments. Monitors should never leave briefcases or small items (such as pens) in cells or interview rooms.
- When walking to or from an interview room with a detainee, as a general rule monitors should walk slightly behind the detainee and allow him or her to go through doors first.
- At the end of an interview, monitors should never let a detainee leave the room alone. Instead, monitors should go out and

immediately notify the police that they have completed the interview so the detainee can be returned to his or her cell.

- Monitors should not give any items to detainees, particularly matches, cigarette lighters or pens.
- Monitors should avoid interviewing detainees who are under the influence of alcohol, drugs or any other intoxicant. If there is a medical person in the team, monitors should refer to him or her in order to ascertain the detainee's state if this is in question.
- If monitors plan to interview several detainees at the same time in a cell or other location, such as an exercise yard, they should generally do so with a colleague.

 **The golden rule is to use common sense. Incidents are highly unlikely to occur, so there is no need to be anxious or afraid. Any nervousness that monitors display will communicate itself to detainees and to the police, impairing the effectiveness of monitors' work.**


### 7.2.2. Possible torture implements

While monitors are in police stations, they should be alert to what is going on around them, especially in detention areas. If the police had any prior notice of the visiting team's arrival, it is likely that anything obviously incriminating will have been removed. However, this is not always the case and articles such as blindfolds, baseball bats and electric cables used to beat detainees may be found by monitors.

The obvious things to look for are weapons and possible torture implements. Monitors should ask for the presence of any such objects to be explained, especially if seen in

- detention areas,
- rooms detainees are likely to visit at any time during their detention, or
- investigators' offices.

If an item has been seized for evidence it will normally bear a label or some other identifying mark. If it does not, monitors should ask when it was seized and in what circumstances. Monitors should regard with scepticism any excuse that officers have 'forgotten' or 'not yet got around' to completing the necessary paperwork to label objects as evidence.

 **There is no exhaustive list of implements that may be used to inflict physical or other ill-treatment. Monitors should be constantly on the lookout, staying alert throughout the visit to any unexpected information, observations or insights, especially when interviewing detainees in private.**

### **7.2.3. Witnessing police interviews**

There may be occasions when monitors are invited, usually by a senior officer, to witness an investigator interviewing a suspect. The visiting team should always decline to do so. If the interview has already started, monitors will interrupt the flow. If it has not started, it is highly unlikely that the investigator will welcome the presence of monitors. Monitors will not only be a distraction for the investigator but also for the suspect and his or her lawyer, if present. It is not monitors' role to interfere with the investigative process. Furthermore, monitors should keep in mind that they may become witnesses, and thus eligible to be called to give evidence in criminal proceedings, if they attend an interview.


If monitors feel that it is necessary to observe an interview for any reason, in those countries where interviews with suspects are recorded by video or audio means recordings will usually be kept at the police station and may be available to the visiting body. As a rule, viewing or listening to recordings offers a much better way forwards for the purposes of preventive monitoring.

## **8. Final talk with the head of the police station**

The monitoring team should always have a final meeting with the station commander. Often, the team will give some indication of their impressions regarding their findings. However, these meetings may simply be used to formally end visits when monitors do not want to raise any issues at this stage. It is understandable and perfectly proper that monitors will not wish to commit themselves to a firm view until they have had time to reflect and discuss their findings with colleagues. However, it will be frustrating for the police – and even impolite – if monitors arrive, carry out their visit, and then simply depart without giving any feedback at all.

If the monitors are going to be critical of senior officers as a result of what they have observed, it is essential not to express criticisms in front of junior officers. Police institutions are disciplined, quasi-military organisations: admonishing senior officers in front of their subordinates will not be well-received.

If the main findings and recommendations are to be addressed to the detaining authorities in a formal report, the final talk is an opportunity to raise the most pressing issues and/or to explain the monitoring body's reporting procedures again. However, monitors should endeavour to use this talk to strengthen relations with the police by emphasising the cooperative approach inherent in preventive monitoring.


 **At all times during final talks, monitors must keep in mind the principle to 'do no harm'. They should be cautious when discussing any information that could be used to work out the identity of the person who provided the information, especially when this is a particular detainee. Possible sanctions or reprisals against detainees are to be avoided at all costs.**

## ***Part C. After a visit***

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Visits do not represent an end in themselves, but rather the first step in the long-term process of improving both the treatment of detainees and the conditions of detention through cooperative interaction with the authorities.

There are two very important post-visit activities that monitors should undertake. The first is to reflect on the team's performance during the visit. This is as important as reflecting on the findings of the visit. Each team and each group of monitors should debrief after every visit. Future performance will be improved if monitors have individually thought about, and discussed as a team, the good and bad aspects of their last visit. The second key task is to draw up a visit report and to make recommendations. This task should be completed shortly after the visit. The report should then be submitted to the person in charge of the place of detention as well as to higher authorities, if this is deemed appropriate. Reports will have more credibility with the police and other interested parties if they are submitted promptly. Another common strategy is to draft an internal report that will not be transmitted to the police authorities but, instead, will inform a general report, based on a series of visits, that will be published or at least shared with the relevant authorities and individual facilities.


 **If monitors have suspicions that detainees are at risk of reprisals or sanctions following contact with the visiting body, careful consideration should be given to carrying out a follow-up visit to the same police station shortly after the**

**first visit. If this unlikely to be effective because the relevant detainees have been released or transferred to another custodial setting, monitors may try to visit them in their new location in order to ascertain the situation.**

### **Reports**

Visits should be followed by credible reports addressed to the relevant authorities. Reports should include practical recommendations for change. The implementation of these recommendations should be closely monitored.

The degree of confidentiality of reports will vary, depending on visiting bodies' strategies and their binding obligations towards the State concerned. Reports may be confidential, public, or public with confidential annexes. It may also be possible to submit a report for comments by the relevant State before making it public.

 **Visiting mechanisms should always make absolutely certain that detainees' personal details are mentioned only with their express consent. They should also ensure that general communications and the content of reports (including visit, thematic and annual reports) do not jeopardise the safety of any individual.**

## **1. Internal reporting**

As with visits to other kinds of places of detention, the information gathered during visits to police stations should be analysed, organised and filed in such a way that it can be used as efficiently as possible. Coherent and systematic filing of information will enable visiting teams to identify reference points and indicators regarding the evolution, over time, of the conditions of detention in police stations that are regularly visited. Eventually, it will also provide monitoring mechanisms with a comprehensive overview of thematic issues or patterns that concern different police stations.

Visiting teams should usually write an individual visit report, in a standard format. These, and any notes taken during visits that are written up with reports, contribute to the institutional memory of the visiting body; they constitute a useful starting point for organising and preparing for future visits.

Internal reports should include, at the very least:

- general information about the police station,
- general information about the nature of the visit,
- the key information obtained during the visit (e.g. the main problems identified, follow up actions that need to be undertaken, and points to verify during the next visit), and
- confidential information that is not intended to be shared externally but needs to be recorded for use in relation to possible follow-up visits.

## 2. Visit reports

Reports are probably the most important tool that a visiting body has at its disposal for protecting detained persons and improving their situation. Visit reports that cover one visit to one police station should present the principal facts and issues arising from the visit, as well as any important points arising from the final talk with the head of the establishment. These types of visit reports can be relatively brief and should be sent shortly after the visit. This will reinforce the dialogue with the authorities by providing formal, written feedback. These visit reports should also be sent in a timely manner to the authorities in charge of the facility visited in order for

- the recommendations to be disseminated so that they may be implemented, and
- the monitoring body to be taken seriously and seen as professional by the police.

Monitoring bodies should discuss the confidentiality of visit reports thoroughly and regularly; systematic publication may undermine monitoring bodies' constructive dialogue with the authorities. For this reason, some monitoring bodies initially transmit their reports confidentially to the authorities; these reports are made public only later on, with the authorities' reply or position added.

Visit reports should contain a chapter with general information, including (at a minimum):

- details about the composition of the visiting team,
- the date and time of the visit,
- the specific objectives of the visit, and
- a discussion of how information was gathered and checked before, during and after the visit.

The substantive part of the report should be divided thematically, rather than chronologically. It should clearly present, at a minimum, the principal concerns about:

- the treatment of detainees,
- the protective measures employed,
- the material conditions encountered, and
- issues concerning police personnel.

For each theme, the report should:

- describe the objective situation observed,
- offer an analysis of the risks, and
- provide recommendations.

Reports should always offer an analysis of the findings in the light of the relevant international human rights standards or other relevant documents. Reports should also highlight examples of good practice and mention aspects of the conditions of detention that are adequate. This helps to consolidate a cooperative approach, demonstrates impartiality, and smoothes the way for negative points to be more readily accepted.

When reporting on allegations of torture, ill-treatment or any situation the visiting team has not witnessed, great caution should be taken. The terminology adopted should clearly differentiate between what 'is' and what is alleged or reported (i.e. between the facts and claims or reports). In this regard, the core objective should be to encourage the authorities to take effective measures to investigate claims, apply sanctions if appropriate, and take all steps necessary to prevent repetition.

### **3. Thematic reports**

Post-visit reporting practices also include thematic reports. These usually relate to several police stations, but focus on a single issue or set of issues (e.g. access to a lawyer or abuses related to searches). In many cases, the issues identified as a result of visits will not relate to a single police station but will concern systemic deficiencies. Thus, a particular problem observed in one police station might reveal fault-lines originating from

- the institutional culture of the police (e.g. from pervasive issues with corruption, ethnic profiling, disregard for gender sensitivity, or established patterns of ill-treatment and torture) or
- particular branches of the police (e.g. drug squads).



Thematic reports should look beyond visits themselves to holistically embrace systemic problems. Reports that do not 'point a finger' at particular police stations tend to encourage systemic reform rather than the mere application of sanctions against the particular station(s) identified.

#### 4. Annual reports

Many mechanisms that visit police installations are also in charge of visiting other facilities. This is the case for NPMs established under the OPCAT. For them, and for other bodies, key findings regarding conditions of detention in police stations will most likely be included in a broader, annual report.<sup>21</sup>

When visit reports are published regularly, the substantive part of the annual report may synthesise key issues in relation to different types of places of detention (e.g. police stations) or it may analyse cross-cutting thematic issues. Usually, a separate section of an analytical rather than factual nature will be dedicated to the conditions of detention and treatment of detainees in police stations.

#### 5. Drafting recommendations<sup>22</sup>

The quality and usefulness of the recommendations developed following visits to places of detention can be assessed against the ten interrelated and mutually reinforcing criteria of the double SMART model.

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21 Under Art. 23 of the OPCAT, States Parties are obligated "to publish and disseminate the annual reports of the NPM". Available at <http://www2.ohchr.org/english/law/cat-one.htm>

22 The issue of how to draft recommendations is discussed in depth in *Making Effective Recommendations* (Detention Monitoring Briefing N°1), APT, Geneva, November 2008. Available at [http://www.apr.ch/index.php?option=com\\_docman&task=cat\\_view&gid=268&Itemid=259&lang=en](http://www.apr.ch/index.php?option=com_docman&task=cat_view&gid=268&Itemid=259&lang=en)

**Specific:** Each recommendation should address only one specific issue

**Measurable:** Evaluating the implementation of each recommendation should be as easy as possible.

**Achievable:**<sup>23</sup> Each recommendation should be realistic and feasible.

**Results-oriented:** The actions suggested should lead to concrete results.

**Time-bound:** Each recommendation should mention a realistic timeframe for implementation.

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**Solution-suggestive:** Wherever possible, recommendations should propose credible solutions.

**Mindful of prioritisation, sequencing and risks:** When there are many recommendations, urgent ones should be dealt with first. Less urgent ones may be reserved for subsequent reports.

**Argued:** Recommendations should be based on high-quality, objective evidence and analysis. They should refer to relevant standards.

**Real-cause responsive:** Recommendations should address the causes of problems, rather than the symptoms.

**Targeted:** Recommendations should be directed to specific institutions and/or actors rather than to 'the authorities' so that responsibility for implementing them is clear.

23 On occasion, it can also be useful to include recommendations that are not necessarily achievable in the short term but might inspire a long-term strategy. Nevertheless, the general rule is that recommendations should be realistic and achievable.

***Example of a poorly drafted recommendation on strip searches***

Strip searches should be used proportionately, especially in regard to women.

**SMART version**

Body searching should only be resorted to when strictly necessary and in accordance with the principles of necessity, reasonableness and proportionality. Strip searches should be conducted in a two-step procedure in order to avoid the person being entirely naked at any time.

As stated in Rule 19 of the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (i.e. the 'Bangkok Rules'), searches conducted on women "shall only be carried out by women staff who have been properly trained".

Searches that do not conform to these principles should cease immediately.

The Chief of the Police should adopt and disseminate within six months an internal regulation clearly describing the modality, responsibility and monitoring requirements for body searches.

The Interior Ministry and the Police National Training Institute should ensure the police academy training curriculum includes the proper way to conduct strip searches. This should also be included in continuing education modules. These additions/ changes to the curricula should be accomplished before the start of the next training year (i.e. within ten months).

In practice, it can be difficult to draft recommendations that comply with all ten double SMART criteria. However, visiting bodies should take the time to consider all the criteria carefully. Drafting good recommendations is essential: good recommendations provide a solid basis for ongoing dialogue with the authorities. Moreover, visiting bodies can follow-up more effectively with regard to the implementation of well-drafted recommendations, especially when these include information that can later serve as indicators of progress.

## 6. Following up on recommendations, including through dialogue with other actors

Once visit reports have been submitted to the concerned authorities, it is paramount to enter into dialogue regarding the implementation of the reports' recommendations. It is also essential that monitoring bodies target the appropriate level within the hierarchy (i.e. police station, local or regional authority, or ministry) or other relevant authority (e.g. the Ministry of Justice or the Ministry of Health). Visiting bodies should also identify other actors who can disseminate recommendations and/or assist with their implementation.

The specific answers and general reactions that the authorities offer about visit reports will help monitoring bodies to adapt their visiting programmes. During subsequent visits, monitoring mechanisms should check whether official replies to visit reports correspond to the situation on the ground. They should also examine whether any measures or actions have been taken as a result of the recommendations put forward in previous reports.

Monitoring bodies must find ways of establishing and maintaining a dialogue with the authorities and other key actors. Reports are a good way to sustain ongoing dialogue, but they are not sufficient. Additional strategies may include


- Regular meetings and roundtables with relevant authorities to discuss monitoring bodies' recommendations and other issues related to police conduct and custody.
- Reminding authorities that they have a duty to respond to the reports and recommendations of some monitoring bodies; moreover, they have a responsibility to respond within a reasonable period of time. Ideally, this obligation to provide a feedback should apply to all monitoring mechanisms working within the relevant jurisdiction; moreover, it should be enshrined in national legislation or other relevant documents (e.g. the national police code). It is good practice to agree a time-frame for the implementation of recommendations with the authorities; this often helps to ensure a degree of commitment to bilateral dialogue.
- Constructive and sustained dialogue with other key actors (e.g. parliamentarians, civil society, regional or universal organisations, or the media) who might play an important role in promoting the implementation of recommendations. Other actors may turn out

to have major leverage in cases where the authorities demonstrate unwillingness to consider reports and the recommendations they put forward.

- Discussions with other targeted actors (e.g. police trade unions and staff associations).

Such practices help to establish and sustain constructive dialogue that goes beyond particular visits and, instead, aims to influence decisions at policy level. For example, if the monitoring body is well-known and trusted by the authorities, it may eventually be consulted before laws are enacted to ensure that new legislation is compliant with human rights standards. Equally, monitoring bodies may become involved in important discussions regarding, for example, the construction of new police installations to ensure that these are built in line with international human rights law.

Monitoring bodies' dialogue with relevant actors, and particularly with the media, should form part of a broad communication strategy that looks beyond the publication of reports. In other words, dialogue and communication should not merely be reactive; in the long run, visiting bodies will gain visibility and credibility through employing proactive, multifaceted communication initiatives. Eventually, this may have a major impact on the speed and effectiveness with which recommendations are implemented.

 **Being trusted by the relevant authorities leads to monitoring bodies being consulted before policy decisions are implemented. This is vital to the long-term success of any preventive approach. The ideal is to act to promote the overarching human rights involved, rather than to simply react to specific incidents and issues relating to the police.**

## **Chapter III**

### International Standards Relating to Police Powers and Police Custody



Chapter III can be used by readers as a stand-alone section. It provides a practical framework stemming from the main universal and regional standards relating to the police. The Chapter proposes practical considerations and general guidance on specific aspects of monitors' work, before visits to police stations (i.e. when preparing for visits), during visits, and after visits in order to follow-up effectively. The standards discussed relate either to police custody or to detention generally insofar as they are applicable to police custody.

***Police Detention: summary of main risk areas and safeguards<sup>1</sup>***

**POLICE DETENTION**

Main steps in police detention, risk areas and existing safeguards



**RISK AREAS**

- Use of force and firearms
- Means of restraints
- Interrogation
- Searches
- Incommunicado/secret/unacknowledge detention
- Length of custody
- Poor material conditions



**SAFEGUARDS**

- Information on rights
- Access to a lawyer
- Access to a doctor
- Right to be brought before a judge
- Notification to a third party
- Custody records
- Right to complain
- Audio video recording

The standards are divided into six categories representing the six key overarching issues that visiting bodies should examine. Each is dealt with in a different section of this chapter as follows:

<sup>1</sup> This schematic is not a precise representation of the detention process; rather, it presents a generic vision of key stages, risks and safeguards.

**Treatment**

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Torture and other ill-treatment  
Incommunicado detention  
Use of force and firearms  
Means of restraint  
Arrest  
Searches  
Interrogations  
Transfers  
Police participation in forced expulsions

**Fundamental safeguards**

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Right to information  
Notification of deprivation of liberty to relatives or a third party  
Access to a doctor  
Access to a lawyer

**Legal procedures**

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Length of police custody  
Access to a judge  
Release in a verifiable manner

**Procedural safeguards**

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Audio-video recording  
Custody records  
Complaints  
Inspection and monitoring

**Material conditions**

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**Police personnel**

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Code of conduct  
Recruitment  
Training  
Uniform and identification





In each section, there is a table where the most relevant standards are quoted verbatim. Additional relevant standards are identified at the bottom of the table. The table is followed by a comment that explores the practical implications of the standards for monitoring bodies. Each section concludes with a box of practical tips for monitors that can be used as a checklist during interviews with detainees or the police.

***Notes on the standards described below***

This chapter does not contain an exhaustive list of all standards on detention by the police; instead, it represents a selection of the most relevant ones. The standards in the chapter include those set out in universal and regional human rights treaties,<sup>2</sup> universal and regional soft-law instruments<sup>3</sup> (such as declarations, resolutions, and principles), and guidelines and other statements by universal and regional human rights bodies.

Within each table, universal standards are given priority over regional standards, binding standards over non-binding standards, and specific standards over general standards. Where relevant, standards concerning specific groups (e.g. women, juveniles or persons with disabilities) are included at the end of the table.

Readers should note that international standards regarding the police are still scarce. Therefore, there may be gaps in existing police standards. Similarly, prison standards may be only partially applicable to police detention. Monitors should keep this in mind when reading this chapter.

Prison standards are not entirely analogous to police detention (especially initial apprehension) for various reasons:

- 2 Treaties are only binding on states that have agreed to be bound by them through ratification or accession. Nevertheless, even when a state has not agreed to be bound by a particular treaty, the treaty can be cited as the international standard.
- 3 "Soft-law is a term used to refer to documents which are not binding at international law (i.e. whose status is less than that of a treaty concluded under the 1969 Vienna Convention on the Law of Treaties). Examples include resolutions of bodies such as the General Assembly and Human Rights Council, as well as action plans, codes of practice, guidelines, rules or statements of principles produced by international or regional expert meetings. Treaty bodies' jurisprudence and concluding observations can also be considered soft law. Such instruments and recommendations have an undeniable moral force and provide practical guidance to States in their conduct. Their value rests on their recognition and acceptance by a large number of States and, even without binding effect, they may be seen as declaratory of broadly accepted goals and principles within the international community." Preventing Torture: An operational guide for national human rights institutions, APT, Asia Pacific Forum and UN Office of the High Commissioner for Human Rights, UN Doc. HR/PUB/10/1, Geneva, May 2010, p.5 (fn. 12). Available at [http://www.apr.ch/index.php?option=com\\_docman&task=cat\\_view&gid=237&Itemid=250&lang=en](http://www.apr.ch/index.php?option=com_docman&task=cat_view&gid=237&Itemid=250&lang=en)



- The police have to deal with unknown counterparts, whereas even newly admitted prisoners come with documentation; the lack of information and the consequent unpredictability of the initial police encounter increase the tension of the situation and the risk on both sides.
- At the outset of deprivation of liberty, the police are usually dealing with a person (or persons) in a state of high tension. The volatility of the initial police situation makes exercising control a more difficult matter for the police than for prison staff.
- The places where the police first deprive people of liberty tend to be neither secure (from escape) nor safe (from harm). Police officers may be on their own at the point of apprehension. Moreover, they may be out in the street where they have to consider the risks to other members of the public.

Monitors should also consult relevant national laws, regulations and standards. Many states have incorporated all or part of universal and/or regional standards into domestic law. Indeed, domestic laws and standards may prove more stringent than international law.

Neither regional nor national jurisprudence is included in this chapter in order to preserve the objective of the manual to serve as a practical tool. However, readers are encouraged to review the relevant jurisprudence when making recommendations to the relevant authorities.

## 1. Treatment

Respect for the dignity of detained persons should be the fundamental ethical value of those working in police stations and, equally, of visiting bodies. This basic overriding principle is clearly stated in Article 10 of the ICCPR: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

Above all, torture and cruel, inhuman or degrading treatment or punishment are absolutely prohibited and cannot be justified under any circumstances.

Some measures that may amount to torture, or to cruel, inhuman or degrading treatment or punishment under certain circumstances, include solitary confinement, the use of restraints, and the use of force and/or firearms. This is why recourse to such measures must be accompanied by a series of safeguards to ensure that they are not applied in a way that amounts to torture or other ill-treatment. Visiting mechanisms should pay particular attention to these issues.

## 1.1. Torture and other ill-treatment

### Relevant standards

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

ICCPR, Art. 7

“No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. An order from a superior officer or a public authority may not be invoked as a justification of torture.”

UNCAT, Art. 2

“Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”

UNCAT, Art. 12

“[All persons] shall be protected from any kind of threats and acts of torture, execution, forced disappearance, cruel, inhuman, or degrading treatment or punishment, sexual violence, corporal punishment, collective punishment, forced intervention or coercive treatment, from any method intended to obliterate their personality or to diminish their physical or mental capacities.”

PBPA, Principle I

⇒ *See also*

- ICCPR, Art. 4, 10
- UNCAT, Art. 1, 4, 13
- BPP, Principle 6
- CCLEO, Art. 2, 5
- ECHR, Art. 3
- Inter-American Convention to Prevent and Punish Torture, Art. 1, 2
- ACHPR, Art. 4, 5

- Arab Charter on Human Rights, Art. 8
- ECPE, §36
- SARPPCO Code of Conduct for Police Officials, Art. 4
- Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Art. 1, 2
- UNGA resolution, A/RES/64/153, §6.

### ***Disabled persons***

“States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.”

CRPD, Art. 15(2)

### ***Juveniles***

“No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.”

CRC, Art. 37

### ⇒ ***See also***

- RPJDL, Annex, §87(a)

### ***Comment***

The UNCAT defines torture as the intentional infliction of severe pain or suffering, whether mental or physical; the pain or suffering must be inflicted for a specific purpose, such as obtaining information or a confession from the victim or a third party, or to punish, intimidate or coerce the victim or a third party, or for discrimination of any kind. Furthermore, it must be inflicted by, or with the consent or acquiescence of, State authorities or other persons acting in an official capacity.

Torture can take very different forms, including electric shocks, beatings, beating an individual on the soles of the feet, suspension in painful poses, rape, suffocation, burning the victim with cigarettes, intimidation, mock execution, or deprivation of food, sleep or communication.

The earliest stages of detention, and especially those involving arrest, interrogation and investigation, are when the risks of torture and other ill-treatment are highest. This is particularly the case in jurisdictions where torture is practised as a means of securing confessions.

Torture is one of the most difficult areas for monitors to handle, requiring careful protocols, preparation and training. It is an extremely sensitive task to interview people who have been subjected to torture; monitors visiting police stations may encounter individuals who have been subjected to such acts very recently.

### *Dealing with allegations of torture*

During interviews in private, monitors may receive allegations that refer to treatment experienced during detainees' arrest, transfer in a police vehicle, or in police installations (e.g. during interrogations). However, some detainees may not be willing to make allegations immediately, either as a result of the trauma they have suffered or for fear of sanctions or reprisals. Instead, monitors will often receive allegations relating to torture or other ill-treatment that occurred in police custody once the detainee has been released or transferred to another facility.

Persons who have been subjected to torture or other ill-treatment often find it very difficult to talk about these extremely traumatic experiences. The collection of information about these experiences requires great sensitivity on the part of visitors. They should receive special training in

- handling allegations,
- developing a fine sense of how far to go with their questions, and
- understanding when specialist intervention is necessary.

It is often difficult to strike the right balance between obtaining information and avoiding the possibility of re-traumatising interviewees.

It is important for medical personnel on the visiting team to document allegations of torture or other ill-treatment as soon as possible. This should be done through a medical examination that encompasses both physical and psychological evidence. However, it is not the role of monitors to decide whether the treatment that a detainee alleges he or she has experienced constitutes torture.

For the protection of victims, it is crucial that monitors ask if and how they can use allegations and/or other information. Provided that the monitoring body has the mandate to pursue complaints, allegations of ill-treatment should be transmitted (barring any serious doubts as to their veracity) to

the administrative or penal authorities responsible for investigating them. Precautions regarding representations made in the name of individuals should be taken to ensure that detainees and former detainees alike do not suffer sanctions or reprisals. Monitors should establish procedures for transmitting allegations that do not endanger either victims or alleged perpetrators.

Preventive monitoring bodies should generally refer such cases to other structures (such as the relevant ombudsman's office) that have a specific mandate to deal with individual allegations.

***Prohibition on the use of statements acquired through torture<sup>4</sup>***

Statements made as a result of torture must not be admitted or used as evidence in any legal proceeding, except for those against persons accused of torture. This prohibition includes statements made by defendants and other witnesses.

The presence of a lawyer from the first moment of detention, and especially throughout interrogations, is a crucial safeguard against forced confessions. In 2003, the UN Special Rapporteur on Torture (SRT) recommended that confessions made outside the presence of a lawyer or judge should have no "probative value in court, except as evidence against those who are accused of having obtained the confession by unlawful means."<sup>5</sup>

***Inter-detainee violence***

Monitors should remember that the police duty of care includes the responsibility to protect detainees from each other. Acts of violence (e.g. beatings and sexual violence) by fellow detainees should not be ignored. Inter-detainee violence is often not reported by victims for fear of reprisals. Persons from ethnic, racial and other minority groups are often at particular risk of inter-detainee violence. In some jurisdictions and facilities, staff may tolerate inter-detainee violence, considering that it is the detainees' 'business' to deal with as they may. However, monitors should note that acquiescence by the police may amount to torture or other ill-treatment. In small police installations, the police may also put forward the argument that

4 See, inter alia, Art. 15 of the UNCAT, Article 14(3g) of the ICCPR, and § 41 of the UN Human Rights Commissions' General Comment N°32 (UN Doc. CCPR/C/GC/32, 23 August 2007. Available at <http://www.unhcr.org/refworld/type,GENERAL,HRC,,478b2b2f2,0.html>).

5 General Recommendations of the SRT, UN Doc. E/CN.4/2003/68, 17 December 2002, §26(e). Available at [http://www.unhcr.ch/Huridocda/Huridocda.nsf/\(Symbol\)/E.CN.4.2003.68.En?Opendocument](http://www.unhcr.ch/Huridocda/Huridocda.nsf/(Symbol)/E.CN.4.2003.68.En?Opendocument)

the limited number of cells means that it is impossible to avoid any type of inter-detainee violence. This is not a valid excuse as it would be a breach of the police's duty of care. Similarly, financial and logistical arguments do not justify any type of violence towards persons deprived of their liberty.

### *Tips for monitors*

When torture or other ill-treatment is alleged, monitors should generally gather the following types of information:

- the full identity of the person making the allegation and the identity of the victim (if different).
- details of the detaining authority.
- the date, time and location of the ill-treatment.
- details about the authority or authorities responsible for the ill-treatment.
- the circumstances of the ill-treatment.
- details of any witness(es) to the ill-treatment.
- a detailed description of the ill-treatment (including what was done, how it was done, how long the ill-treatment lasted, how often it occurred, and by whom it was inflicted) and the physical and/or mental effect(s) on the victim.

If the visiting team includes medical personnel, they should also try to document:

- physical evidence,
- psychological evidence, and
- any need for medical treatment.
- If follow-up action taken or is ensuing, who has been informed of the allegations and with what results?
- Is it possible for detainees to lodge administrative, disciplinary and/or criminal complaints?
- Where a complaint was lodged, what has occurred? What were the consequences for the perpetrator(s) and for the victim(s)?
- Has the detainee who made the allegation authorised its transmission? Did he or she place any restrictions on its transmission?

- Has there been any official response to the alleged incident?
- Is the allegation an isolated case or can monitors identify a pattern of ill-treatment?
- If patterns are identified, do these relate to specific risk moments (such as apprehensions, transfers or interrogations), or to a specific police unit or police station?

<b>1.2. Incommunicado detention<sup>6</sup></b>
<b>Relevant standards</b>
<p>“(1) No one shall be held in secret detention.                      (2) Without prejudice to other international obligations of the State Party with regard to the deprivation of liberty, each State Party shall, in its legislation: [...]                      (c) Guarantee that any person deprived of liberty shall be held solely in officially recognized and supervised places of deprivation of liberty.”</p> <p style="text-align: right;"><b>ICPAPED, Art. 17(1-2)</b></p> <p>[States should] “Prohibit the use of unauthorised places of detention and ensure that it is a punishable offence for any official to hold a person in a secret and/or unofficial place of detention.”</p> <p style="text-align: right;"><b>RIG, Part II, §23</b></p> <p>“A detained or imprisoned person [...] shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.”</p> <p style="text-align: right;"><b>BPP, Principle 19</b></p>

6 For the sake of simplicity, this section refers only to incommunicado detention. However, monitors should be aware that ‘unofficial places of detention’, ‘incommunicado detention’ and ‘secret detention’ are different, though closely, related Concepts. ‘Incommunicado detention’ is understood in this manual as comprising situations when “the detainee cannot communicate with anyone other than his or her captors and perhaps his co-detainees.” In some cases ‘incommunicado detention’ includes cases where the detainee “has some direct contact with truly independent judicial authorities.” *Incommunicado, Unacknowledged and Secret Detention Under International Law*, APT, Geneva, March 2006, pp.1-2. Available at [http://www.apr.ch/index.php?option=com\\_docman&task=doc\\_download&gid=280&Itemid=260&lang=en](http://www.apr.ch/index.php?option=com_docman&task=doc_download&gid=280&Itemid=260&lang=en). ‘Secret detention’ is when detention is both incommunicado and unacknowledged. It need not occur in a secret or unofficial place of detention in order to be defined as ‘secret detention’. *Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism*, UN Doc. A/HRC/13/42, 19 February 2010, §8-10.



“The law shall prohibit, in all circumstances, incommunicado detention of persons and secret deprivation of liberty since they constitute cruel and inhuman treatment. Persons shall only be deprived of liberty in officially recognized places of deprivation of liberty.”

**PBPA, Principle III(1)**

⇒ ***See also***

- ICPAPED, Art. 18, 19, 2, 22
- UN Declaration on the Protection of all Persons from Enforced Disappearance, Art. 10(1)
- UNGA Resolution, UN Doc. A/RES/66/150, §22
- Human Rights Committee General Comment N°20 on Art. 7 ICCPR, §11
- Human Rights Committee General Comment N°29 on Art. 4 ICCPR, §13(b)
- Report of the SRT, UN Doc. A/59/324, §22
- Report of the Special Rapporteur on the Independence of Judges and Lawyers, UN Doc. A/63/271, §24-25
- Inter-American Convention on Forced Disappearance of Persons, Art. XI(1)
- Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism, UN Doc. A/HRC/13/42

⇒ ***See also standards related to solitary confinement***

- BR, rule 22 (women)
- RPJDL, Annex (juveniles), §67
- Human Rights Committee General Comment N°20 on Art. 7 ICCPR, §6
- Report of the SRT, UN Doc. A/66/268, III(A), III(C), IV(86)
- CPT 21st General Report, CoE Doc. CPT/Inf (2011) 28, pp. 37-50
- PBPA, Principle XXII

***Comment***

While police stations are usually officially recognised places of detention, monitors may learn of secret or unofficial places within a police station where people are also detained (e.g. a basement or secret room). Holding


persons in unofficial places of detention is prohibited and cannot be justified under any circumstances, including during an armed conflict or state of emergency.<sup>7</sup> In practice, however, where there is an armed conflict, deprivation of liberty may initially occur in the field, then in temporary field detention facilities and only subsequently in official places of detention.

Monitors may also encounter persons who, although detained in an official part of the station, are being held *incommunicado*. *Incommunicado* detention entails an increased risk of torture and other serious human rights abuses. Indeed, it can, in and of itself, constitute torture or cruel, inhuman or degrading treatment, not only for the detainee, but also for his or her family and friends.<sup>8</sup>

*Incommunicado* detention may be permitted under extremely limited and specific circumstances. At a minimum, such detention must be

- specifically authorised by national legislation,
- of very short duration,
- demonstrably necessary and proportionate to specific, limited purposes, and
- supervised by a judge.

Detainees held *incommunicado* should be provided access to legal counsel and to independent medical treatment.<sup>9</sup> As the circumstances when *incommunicado* detention are permitted are so narrow, monitors may want to consult with legal counsel if they encounter persons whom they suspect are being held *incommunicado* or whose detention is unacknowledged.

 **The issue of solitary confinement may not be as relevant for police stations as it is for prisons or other longer-term custodial settings. In most countries persons held in police custody will be released or transferred to another official detention facility**

7 *Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism*, UN Doc. A/HRC/13/42, 19 February 2010. Available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-42.pdf>. See also Art. 17(1-2), International Convention for the Protection of All Persons from Enforced Disappearance, adopted 20 December 2006, entered into force 23 December 2010. Available at <http://www2.ohchr.org/english/law/disappearance-convention.htm>

8 *Joint Study on Global Practices in Relation to Secret Detention*, §34-35. See also Human Rights Committee General Comment N°20 on article 7 ICCPR, 10 March 1992, §11. Available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/6924291970754969c12563ed004c8ae5?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/6924291970754969c12563ed004c8ae5?OpenDocument)

9 *Incommunicado, Unacknowledged and Secret Detention Under International Law*, APT, Geneva, 2 March 2006. Available at [http://www.apr.ch/index.php?option=com\\_docman&task=doc\\_download&gid=280&Itemid=260&lang=en](http://www.apr.ch/index.php?option=com_docman&task=doc_download&gid=280&Itemid=260&lang=en)

within a period of a few days, depending on the national legislation. Nevertheless, in some contexts, persons are held in police custody for much longer than provided for by law. Furthermore, in some countries, due to overcrowding in official detention facilities, police detention facilities are used as prisons. Relevant standards concerning solitary confinement fully apply to police custody in these circumstances.

**Tips for monitors**

- Has the person been detained incommunicado? If so, for how long and on what grounds?
- Was the person brought promptly before a judge?
- Has the person been able to communicate in private with a lawyer?
- Has the person been given the opportunity to communicate with the outside world?
- Is the person entitled to receive family visits?
- If the person detained is a foreign national, has he or she been given the opportunity to communicate with representatives of his or her government?

**1.3. Use of force and firearms**

**Relevant standards**

“Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

**CCLEO, Art. 3**

**Commentary:**

(a) This provision emphasizes that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.

(b) National law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.

(c) The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.”

“Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. **They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.**”

BPUFF, §4

“Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

- (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
- (b) Minimize damage and injury, and respect and preserve human life;
- (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
- (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.”

BPUFF, §5

“Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

- (a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;
- (b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;
- (c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;
- (d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;
- (e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;

(f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.”

**BPUFF, §11**

“Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.”

**BPUFF, §15**

“Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.”

**BPUFF, §16**

### ***Electrical discharge weapons (EDW)***

“The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.”

**BPUFF, Art. 3**

“The CPT considers that the use of electric discharge weapons should be subject to the principles of necessity, subsidiarity, proportionality, advance warning (where feasible) and precaution. These principles entail, inter alia, that public officials to whom such weapons are issued must receive adequate training in their use. As regards more specifically EDW capable of discharging projectiles, the criteria governing their use should be directly inspired by those applicable to firearms.”

**CPT standards, p.101, §69**

#### ⇒ ***See also***

- SMR, §54
- BPUFF, §1
- Report by the SRT, UN Doc. E/CN.4/2006/6, §38
- Report by the SRT, UN Doc. E/CN.4/2004/56, §44
- ECPE, §37
- PBPA, Principle XXIII
- SARPPCO, Code of Conduct for Police Officials, Art. 3

**Comment**

The use of force and firearms is one of the coercive powers of the police. As the use of force and/or firearms entails risks of abuse, such measures can only be applied legitimately when the principles of legality, necessity, and proportionality are strictly observed.

Whenever force is used, whether at the time of arrest or during police custody, monitors will face the challenge of assessing whether it was excessive.

From a holistic perspective, the visiting team should examine whether the use of force and the use of firearms represent exceptional responses or the norm in relation to particular scenarios. During private interviews, monitors should seek to establish the extent of the use of force and firearms during public demonstrations or gatherings (if applicable to the context).<sup>10</sup>

Monitors should look at whether instructions and restrictions on the use of force and firearms are included in police regulations. They should also investigate what training staff members receive in control and restraint techniques that would permit them to maintain control while avoiding both injury to themselves or detainees and the use of force or firearms.

Any incidents involving the use of force or firearms should be reported in writing, noted in a register, and investigated.

***Tips for monitors***

- Are there regulations specifying when, to which members of the police, and in which circumstances firearms are issued?
- Are there regulations defining the types of firearms and ammunition permitted/prohibited?
- How is the control of storage and issuance of firearms and ammunition regulated and managed in practice?
- How frequent are incidents involving the use of force, according to
  - detainees,
  - registers,
  - staff, and

10 Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, UN Doc. A/HRC/17/28, 23 May 2011, pp.11-12. Available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A-HRC-17-28.pdf>

- other sources?
- How is the use of firearms reported?
- Are there any procedures for ensuring that the police are held accountable for the use of force and firearms?
- Is there any evidence that excessive force has been used in relation to any group in a situation of vulnerability?
- If electrical discharge weapons are used, what safeguards are in place? Are staff given specific training in their use?

### 1.4. Means of restraint

#### Relevant standards

“Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:

(a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;

(b) On medical grounds by direction of the medical officer;

(c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.”

SMR, §33

“The patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary.”

SMR, §34

“The use of restraint techniques and/or instruments in order to control a detainee may amount to torture or another form of ill-treatment when they are applied in a degrading and painful manner. [...] The use of restraint techniques or devices shall never be made as a punishment.”

Report by the SRT, UN Doc. E/CN.4/ 2004/56, §45

⇒ *See also*

- BR, Rule 24
- RPJDL, Annex, §63-65

**Comment**

The use of restraints, like the use of force, is part of the coercive powers that the police might have to resort to in the exercise of their duties. There is a margin of discretion in the use of restraint in the initial period of deprivation of liberty. This leeway is related to the current gap in international standards regarding the use of restraints by the police specifically. However, once a detainee reaches a safe setting, restraint must cease to be used as long as the person is non-violent and is not posing a risk to others or to him or herself.

Some means such as shackles and irons are absolutely forbidden. Permitted means of restraints should be resorted to only on an exceptional basis. They should never be used as a punishment.

In single occupancy custody cells there can be no justification for restraint. If a person is considered to be at risk of self-injury, he or she should be medically assessed and removed to a more appropriate setting if necessary. In multiple occupancy cells, if a person poses a risk, he or she should be removed to a single occupancy cell where restraint will not be necessary.

Immediately following arrest and/or during transfers in police vehicles, the police may use means of restraint in a way that may deliberately hurt detainees (e.g. purposefully making handcuffs too tight on the wrists). Although it may be difficult to verify this, it is clearly an example of a grey area that should be examined by monitors.

The role of medical doctors in the use of coercive means is particularly sensitive. The SMR and other rules mention that doctors can give advice on certain measures on medical grounds. As made explicit by the CPT, in case of the use of restraints detainees have a right to be examined immediately by a doctor. Under no circumstances should this be interpreted as requiring a medical doctor to attest that a detainee "is fit to undergo punishment".<sup>11</sup>

Conducting interviews while prisoners are restrained will normally be incompatible with the role of the visiting team in ensuring respect for human dignity in places of detention.

<sup>11</sup> CPT Standards, CPT, CoE Doc. CPT/Inf/E (2002) 1, 2002 (revised 2011), p. 47, §73. Available at <http://www.cpt.coe.int/En/documents/eng-standards.pdf>



**Tips for monitors**

- In what situations are means of restraint authorised?
- Were means of restraint used during arrest? If so, was their use authorised and registered?
- For how long are means of restraint imposed?
- Is there any evidence that means of restraint are being disproportionately used in the case of particular groups of persons?
- Under what circumstances are handcuffs used? Is there any evidence that handcuffs are purposely used in a way to injure and/or pain detainees?
- Were means of restraint removed as soon as the person was placed in a custodial setting (such as a police station cell)?
- Are means of restraint used for punishment?

**1.5. Arrest<sup>12</sup>**

**Relevant standards**

“Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”

ICCPR, Art. 9(1)

“Without prejudice to other international obligations of the State Party with regard to the deprivation of liberty, each State Party shall, in its legislation:

- (a) Establish the conditions under which orders of deprivation of liberty may be given;
- (b) Indicate those authorities authorized to order the deprivation of liberty”.

ICPAPED, Art. 17(2)

<sup>12</sup> In this manual, ‘arrest’ refers to the moment when, and process by which, a person is deprived of liberty, whether on criminal or administrative grounds.

“Every person shall have the right to personal liberty and to be protected against any illegal or arbitrary deprivation of liberty”.

**PBPA, Principle III**

“(1) Each State shall establish rules under its national law indicating those officials authorized to order deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention.

(2) Each State shall likewise ensure strict supervision, including a clear chain of command, of all law enforcement officials responsible for apprehensions, arrests, detentions, custody, transfers and imprisonment, and of other officials authorized by law to use force and firearms.”

**UN Declaration on the Protection of all Persons from Enforced Disappearance, Art. 12**

⇒ *See also*

- BBP, Principle 2
- ECHR, Art. 5
- ACHR, Art. 7
- African Charter on Human and Peoples’ Rights, Art. 6
- Arab Charter on Human Rights, Art. 14
- Cairo Declaration on Human Rights in Islam, Art. 20
- PBPA, Principles III, IV, IX

***Juveniles***

“No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”

**CRC, Art. 37(b)**

***Comment***

All instances of deprivation of liberty must (i) comply with the principle of legality and (ii) not be arbitrary. The police should only arrest people on grounds that are specified in national law. Moreover, they should follow all procedures concerning arrests that are set out in the law. In most systems, this means the police may only arrest persons after obtaining a warrant,

in the moment they are committing a crime, or immediately thereafter. In addition, persons must not be targeted for arrest, traffic stops or searches for discriminatory reasons, such as racial or ethnic profiling.<sup>13</sup>

Monitors should review the laws, regulations and procedures concerning arrests and deprivation of liberty. They should then confirm that these have been complied with in the case of all persons taken into custody over a specified period of time; this period of time should be decided by the team during preparations for the visit.

Although it is unlikely that monitors will be present when persons are being arrested, they should note that the risk of abuse is especially high at this moment. In particular, there is a risk that the use of force may be excessive (see Chapter III, Section 1.3 above) or that means of restraint may be used in prohibited ways (see Chapter III, Section 1.4 above). The conditions and modalities of arrests, including the number of police participating in each operation (e.g. two officers or an entire squad), the equipment used (e.g. whether light or militaristic), and the timing of arrests (e.g. the middle of the night or in the afternoon) are useful indicators of both the circumstances of arrests and the police's attitudes to them. Monitors should also endeavour to collect information about the ways in which arrests were conducted during private interviews.

#### ***Tips for monitors***

- What procedures govern arrests?
- Which authorities are authorised to order and/or conduct arrests?
- Were the procedures followed with regard to the arrest of detainees encountered during the visit?
- Was there a warrant for the arrest? (NB: This is not always necessary.)
- Were detainees informed about the reasons for their arrest?

13 Discriminatory ethnic profiling is defined as "treating an individual less favourably than others who are in a similar situation (in other words 'discriminating'), for example, by exercising police powers such as stop and search; where a decision to exercise police powers is based only or mainly on that person's race, ethnicity or religion". *Towards More Effective Policing Understanding and Preventing Discriminatory Ethnic Profiling: A guide*, European Union Agency for Fundamental Rights, Publications Office of the European Union, Luxembourg, 2010, p.15. Available at [http://fra.europa.eu/fraWebsite/attachments/Guide\\_ethnic\\_profiling.pdf](http://fra.europa.eu/fraWebsite/attachments/Guide_ethnic_profiling.pdf)

- Were detainees informed about their rights at the moment of the arrest?
- Was force used during arrests? If so, was the use of force recorded?
- Were measures of restraint used during arrests? If so, have these been registered?
- Was there any suspicion of racial or ethnic profiling in connection with arrests?

<b>1.6. Searches</b>
<b>Relevant standards</b>
<p>“Whenever bodily searches [...] are permitted by law, they shall comply with criteria of necessity, reasonableness and proportionality.</p> <p>Bodily searches of persons deprived of liberty and visitors to places of deprivation of liberty shall be carried out under adequate sanitary conditions by qualified personnel of the same sex, and shall be compatible with human dignity and respect for fundamental rights. In line with the foregoing, Member States shall employ alternative means through technological equipment and procedures, or other appropriate methods. Intrusive vaginal or anal searches shall be forbidden by law.</p> <p>The inspections or searches in units or installations of places of deprivation of liberty shall be carried out by the competent authorities, in accordance with a properly established procedure.”</p> <p style="text-align: right;"><b>PBPA, Principle XXI</b></p> <p>“[P]ersons deprived of their liberty should only be searched by staff of the same gender and [...] any search which requires an inmate to undress should be conducted out of the sight of custodial staff of the opposite gender; these principles apply a fortiori in respect of <b>juveniles</b>.”</p> <p style="text-align: right;"><b>CPT Standards, p. 85, §26<sup>14</sup></b></p> <p><b>Women</b></p> <p>“Effective measures shall be taken to ensure that women prisoners’ dignity and respect are protected during personal searches, which shall only be carried out by women staff who have been properly trained.”</p> <p style="text-align: right;"><b>BR, Rule 19</b></p>

14 This is echoed with respect to women on p. 91, §23.

“Alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches.”

BR, Rule 20

⇒ *See also*

- ICCPR, Art. 17
- Human Rights Committee General Comment N°16 on Art. 17 ICCPR, §3-4, 8
- ECPE, §41

### ***Comment***

The decision to pursue a body search should always be guided by the principles of necessity, reasonableness and proportionality. There are risks of abuse both in terms of ordering unnecessary searches and also in relation to how searches are conducted. Monitoring teams should ask persons held in police custody about how and why any searches were conducted.

Staff members in charge of conducting body searches should be trained to do so. Furthermore, they should follow a strict procedure for all searches. Detainees should never be asked to undress entirely; strip searches should be carried out in two steps. First, the police should ask the detainee to remove all clothes above the waist. Then, once these have all been put them back on, the police should ask the detainee to remove all clothes below the waist.

Whenever feasible, alternatives to strip searches should be used: the authorities should be encouraged to consider options such as using X-ray machines.

Monitors should pay particular attention to searches involving groups who may be discriminated against (e.g. women, juveniles, ethnic or racial minorities, persons with disabilities, and LGBTI<sup>15</sup> persons).

### ***Tips for monitors***

- Are there procedures that specify how body searches should be conducted?
- Are police staff trained in conducting body searches?
- Are strip searches conducted in two steps?

15 Lesbian, gay, bisexual, transgender/transsexual and intersex persons.

- Do alternative screening methods exist to replace strip searches?
- Are women searched by female staff only?
- Are searches conducted out of the sight of custodial staff of the opposite gender?
- Is there any evidence that members of particular groups face discrimination or abuse relating to body searches?

## 1.7. Interrogations

### Relevant standards

“Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.”

**UNCAT, Art. 11**

“(1) It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.

(2) No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgment.”

**BPP, Principle 21**

“(1) The duration of any interrogation of a detained or imprisoned person and of the intervals between interrogations as well as the identity of the officials who conducted the interrogations and other persons present shall be recorded and certified in such form as may be prescribed by law.

(2) A detained or imprisoned person, or his counsel when provided by law, shall have access to the information described in paragraph 1 of the present principle.”

**BPP, Principle 23**

“As new methods of prevention (e.g. videotaping all interrogations [...]) are discovered, tested and found effective, article 2 provides authority to build upon the remaining articles and to expand the scope of measures required to prevent torture.”

**CAT General Comment N°2 on Art. 2 UNCAT, §14**

“Access to a lawyer for persons in police custody should include [...] the right for the person concerned to have the lawyer present during interrogation.”

**CPT Standards, p.6, §38**

States should “Ensure that comprehensive written records of all interrogations are kept, including the identity of all persons present during the interrogation and consider the feasibility of the use of video and/or audio taped recordings of interrogations.”

**RIG, Part II, §28**

“[T]he time and place of all interrogations should be recorded, together with the names of all those present and this information should also be available for purposes of judicial or administrative proceedings.”

**Human Rights Committee General Comment N°20 on Art. 7 ICCPR, §11**

⇒ **See also**

- Report of the SRT, UN Doc. E/CN.4/2003/68, §26(g)
- ECPE, §50

### **Comment**

Interrogation is, together with arrest, one of the times where detainees may be at high risk of ill-treatment or abuse. In places where the police's criminal investigation capacity is weak, the risk that police officers will resort to ill-treatment is much higher. Clear procedures on how to conduct interrogations are an important safeguard.

Due to the risk of abuse, all interrogations should start with the identification of all persons present. Interrogations should ideally be recorded and preferably video-recorded (see Chapter III, Section 2.7 below). Written records of an interrogation should include the identity of all persons present, the time and place of the interrogation, and the length of both the interrogation and any breaks. The detainee's lawyer should be authorised to attend the interrogation. The practice of blindfolding persons during interrogation should be expressly prohibited.<sup>16</sup>

According to the CPT General Recommendations, guidelines on interrogations should address the following matters: “the informing of the detainee of

<sup>16</sup> CPT Standards, CPT, CoE Doc. CPT/Inf/E (2002) 1, 2002 (revised 2011), p.10, §38. Available at <http://www.cpt.coe.int/En/documents/eng-standards.pdf>. See also Report by the SRT, UN Doc. E/CN.4/2003/68, 17 December 2002, §26(g). Available at [http://www.unhchr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.2003.68.En?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.2003.68.En?Opendocument)

the identity (name and/or number) of those present at the interview; the permissible length of an interview; rest periods between interviews and breaks during an interview; places in which interviews may take place; whether the detainee may be required to stand while being questioned; the interviewing of persons who are under the influence of drugs, alcohol, etc.<sup>17</sup>

In addition, police officers should be adequately trained on how to question witnesses and criminal suspects. In no way should the objective of an interrogation be to obtain a confession: it should be to obtain reliable information in order to discover the truth about the matters under investigated.<sup>18</sup>

Although monitors will almost never be present during an interrogation (see Chapter II, Section 7.2.3), during private interviews they may try to find out how interrogations are conducted and whether any detainees have been forced to confess; monitors can collect crucial information after interrogations have taken place, both in the police station and once detainees have been released or transferred to detention centres. If appropriate, monitors can then recommend better supervision of interrogations.

When a person in police custody wishes to make allegations of physical or mental abuse during an interrogation, monitors should not forget to also gather 'neutral' information on the interrogation that may be of help in substantiating (or disproving) allegations; for instance, monitors may gather useful information about the time, length and location of the interrogation, and the names of those present.

#### *Tips for monitors*

- Are there any guidelines, rules and/or codes of conduct for police interrogations?
- Is there a register of interrogations? If so, does the register give the name of the person(s) conducting the interrogation, and the length of the interrogation and any breaks?
- Are all interrogations recorded or video-recorded? If so, what are the policies with regard to retention and storage of recordings? Who is in charge of recordings?
- Is the police authority in charge of the investigation the same as the one in charge of custody?

17 CPT Standards, CPT, p.7, §39.

18 CPT Standards 2011, p.9, §34.



- What were the circumstances of the interrogation?
- What was the length of the interrogation?
- What is the interrogation room like (e.g. is it intimidating or neutral)?
- Was the person's lawyer (if any) present during the interrogation?
- Was the person blindfolded or hooded during the interrogation?
- Has the person alleged physical violence during the interrogation?
- Has the person suffered, or is the person currently suffering, psychological violence (such as threats)?

## 1.8. Transfers

### Relevant standards

"(1) When the prisoners are being removed to or from an institution, they shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect them from insult, curiosity and publicity in any form.

(2) The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited.

(3) The transport of prisoners shall be carried out at the expense of the administration and equal conditions shall obtain for all of them."

**SMR, §45**

"Surveillance cameras could be installed in various areas (corridors providing access to cells, route taken by the escort and the deportee to the vehicle used for transfer".

**CPT Standards, p.82, §44**

⇒ **See also**

- CPT Standards, p.7, §40 and p.20, §57
- Report by the SRT (visit to Pakistan), UN Doc. E/CN.4/1997/7/Add.2, §106

### Comment

Transfers include those from the place of the arrest to the police station, and from the police station to any other location, including a court or a pre-trial

detention facility. Monitors should keep in mind that transfers can be made in special vehicles or police cars.

Although transfers can be easily overlooked during visits by monitoring bodies, these critical processes should be considered carefully during interviews in private with detainees. During transfers detainees are in the hands of the police with no supervision; therefore, the risk of abuse is particularly high. The number of reports of persons who have suffered ill-treatment during transfers indicates the importance of safeguarding these processes. There are examples of detainees being injured because police officers purposely drove the transfer vehicle in a very brusque manner or left it in the sun for hours with the windows closed and detainees inside. During transfers, the police may also use unlawful means of restraint.

State authorities should ensure that detainees and their escorts are supervised throughout transport. They should also ensure that means of transport are safe and suitable for the purpose of transfers. Procedures should be put in place to record all transfers in detail.

Monitoring bodies may come across instances in which detainees have been subjected to repeated transfers, or to transfers to facilities a great distance from their homes, possibly as a punishment or as a means of exerting pressure on them to confess or to provide information. These issues should also be addressed.

#### ***Tips for monitors***

- Are transfer vehicles equipped so that detainees are not exposed to public view while being transferred?
- Are vehicles equipped to minimise injury to detainees in the event of an accident? Is there a means to release the detainee quickly from the vehicle in the event of an emergency?
- Is there adequate light, heating, ventilation, air conditioning, and space for the detainee's person in the vehicle? Does the equipment work?
- In case of long journeys, are comfort breaks planned and provided?
- Does the transfer record reflect the reason for the transfer and details of the receiving facility?

- Is the detainee’s medical record attached to the transfer documents?
- Is there a process for informing the detainee and his/her legal representative in advance of the transfer?
- What were the general conditions of transfer?
- What was the duration of the transfer?
- How was the detainee confined/restrained during the transfer?
- Was the detainee comfortable during the transfer?
- Did the detainee’s personal items accompany the transfer process?
- Was the detainee provided with food and drink during the transfer? (NB: This will not usually be necessary.)
- Were transfer staff physically able to observe the detainee during transit? Was mutual communication possible?

### 1.9. Police participation in forced expulsions

#### Relevant standards

“No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

**Convention Relating to the Status of Refugees, Art. 33**

“(1) The authorities of the host state are responsible for the actions of escorts acting on their instruction, whether these people are state employees or employed by a private contractor.

(2) Escort staff should be carefully selected and receive adequate training, including in the proper use of restraint techniques. The escort should be given adequate information about the returnee to enable the removal to be conducted safely, and should be able to communicate with the returnee. Member states are encouraged to ensure that at least one escort should be of the same sex as that of the returnee.

(3) Contact should be established between the members of the escort and the returnee before the removal.

(4) The members of the escort should be identifiable; the wearing of hoods or masks should be prohibited. Upon request, they should identify themselves in one way or another to the returnee.”

**Guidelines of the Committee of Ministers of the Council of Europe  
on Forced Return, Guideline 18**

“(1) The only forms of restraint which are acceptable are those constituting responses that are strictly proportionate responses to the actual or reasonably anticipated resistance of the returnee with a view to controlling him/her.

(2) Restraint techniques and coercive measures likely to obstruct the airways partially or wholly, or forcing the returnee into positions where he/she risks asphyxia, shall not be used.

(3) Members of the escort team should have training which defines the means of restraint which may be used, and in which circumstances; the members of the escort should be informed of the risks linked to the use of each technique, as part of their specialized training. If training is not offered, as a minimum regulations or guidelines should define the means of restraint, the circumstances under which they may be used, and the risks linked to their use.

(4) Medication shall only be administered to persons during their removal on the basis of a medical decision taken in respect of each particular case.”

**Guidelines of the Committee of Ministers of the Council of Europe on Forced  
Return, Guideline 19**

⇒ *See also*

- CAT General Comment 1 on Art. 3 UNCAT in the context of Art. 22
- Guidelines of the Committee of Ministers of the Council of Europe on Forced Return, Guideline 17
- CPT standards, pp.67-68, §32-36

***Comment***

In some contexts, the police carry out forced expulsions of migrants, including by deportation flights. Forced expulsions are increasingly common in industrialised countries. In some countries, NPMs and/or NGOs monitor the way such expulsions are conducted. The existing standards are mainly European, from the CPT and the Council of Europe’s Committee of Ministers; therefore, they are only binding on the Council of Europe’s Member States.

Nevertheless, they can serve as guidance for other regions dealing with the issue of forced expulsions.

Monitoring teams observing forced expulsions should assess the way forms of restraint are used in response to resistance on the basis of the principle of proportionality. The CPT has made clear that “the use of force and/or means of restraint capable of causing positional asphyxia should be avoided whenever possible and that any such use in exceptional circumstances must be the subject of guidelines designed to reduce to a minimum the risks to the health of the person concerned.”<sup>19</sup>

At least one escort should be of the same sex as that of the returnee.

Any person to be deported should be given the opportunity to be medically examined prior to the removal operation. Those who “have been the subject of an abortive deportation operation [should] undergo a medical examination as soon as they are returned to detention.”<sup>20</sup> As soon as they or reach their country of destination, persons forcibly expelled should undergo a medical examination. These measures represent important safeguards for escort staff against possible unfounded allegations of abuse.

***Tips for monitors***

- Have police staff participating in expulsions been carefully selected? Have they received adequate training?
- Is the use of restraint subject to guidelines designed to reduce to a minimum the risks of abuse?
- Is it possible to remove immediately any means restricting the freedom of movement of the deportee in case of an emergency?
- Do expelled persons undergo a medical examination prior to departure? In cases where expulsion does not proceed, do they also undergo a medical examination when they are returned to detention?
- When medication is administered, is a medical doctor in charge of the decision?

19 CPT standards, CPT, CoE Doc. CPT/Inf/E (2002) 1, 2002 (revised 2011), p.78, §34. Available at <http://www.cpt.coe.int/En/documents/eng-standards.pdf>

20 Report to the Government of the Netherlands on the visit to the Netherlands carried out by the CPT from 10 to 21 October 2011, CoE Doc. CPT/Inf (2012) 21, Strasbourg, 9 August 2012, p.63. Available at <http://www.cpt.coe.int/documents/nld/2012-21-inf-eng.htm>

- What were the modalities of deportation, from the moment when the person was taken away by the police from the detention centre to the moment when the person arrived in the country of destination?
- Among the police escorting the expelled person, was there at least one staff member of the same sex?

## 2. Fundamental Safeguards

### 2.1. Right to information

#### Relevant standards

##### *Information on reasons for arrest and charges*

“Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”

ICCPR, Art.9(2)

“[States should]

25. Ensure that all detained persons are informed immediately of the reasons for their detention.

26. Ensure that all persons arrested are promptly informed of any charges against them.”

RIG, Part II, §25-26

##### *Information on Rights*

“(1) Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.

(2) If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.”

SMR, §35

“Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information on and an explanation of his rights and how to avail himself of such rights.”

**BBP, Principle 13**

“A person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands the information referred to in principle 10, principle 11, paragraph 2, principle 12, paragraph 1, and principle 13 [i.e. information about his rights, arrest and detention] and to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest.”

**BBP, Principle 14**

“In order to ensure that [persons taken into police custody are expressly informed without delay of all their rights] the CPT considers that a form setting out those rights in a straightforward manner should be systematically given to persons detained by the police at the very outset of their custody. Further, the persons concerned should be asked to sign a statement attesting that they have been informed of their rights.”

**CPT Standards, p. 8, §16**

⇒ **See also**

- ICCPR, Art. 14(3)
- BBP, Principles 10, 16
- Basic principles on the Role of Lawyers, §5
- ECHR, Art. 5
- ACHR, Art. 7(4)
- Arab Charter, Art. 14(3)
- PBPPA, Principle V
- Report by the Special Rapporteur on the Independence of Judges and Lawyers, UN Doc. A/HRC/8/a, §27

**Comment**

Persons who are deprived of their liberty have the right to receive several types of information. First, at the time of arrest they have the right to be informed of the reason for their arrest and of the nature of any charges against them. Second, they also have the right to receive information on their rights (e.g. their right to challenge the basis of their detention and their rights regarding access to a doctor and a lawyer). Third, if there are no criminal charges at the time of arrest, but charges are made later, then the detainee has the right to be informed of the charges at that time.<sup>21</sup> With respect to information on the nature of criminal charges (if any) against them, detainees need to know, at a minimum, “all the details of the charges and of the case: evidence, time periods and other parties involved. The right to be informed of the nature and cause of the charges made should be realized in a detailed, prompt and comprehensible manner.”<sup>22</sup> This information should be provided as soon as charges are filed.

Persons being brought to a police station will often be confused and scared; their vulnerability should be taken into consideration by police officials as regards the way information is conveyed. Detainees should be given information on their rights in a language they understand.

During interviews, monitors should examine

- the extent to which detainees are aware of their rights and obligations,
- the extent to which they have been informed of the reasons for their arrest, and
- the extent to which they have been informed of the charges, if any, against them.

Monitors should also examine the appropriateness of the methods used to convey this information. For example, monitors should explore

- whether the information was provided in simple, clear language,
- whether the language was understood by the detainee, and
- the extent to which the detainee understood and had subsequent access to relevant information.

21 Report of the Special Rapporteur on the Independence of Judges and Lawyers, UN Doc. A/63/271, 12 August 2008, §24-25. Available at <http://www.ohchr.org/EN/HRBodies/SP/Pages/GA63session.aspx>

22 Report of the Special Rapporteur on the Independence of Judges and Lawyers, §24-25.



***Tips for monitors***

- Are facility-specific regulations available in several languages? If so, what are the criteria for selecting the languages?
- Are posters, booklets and other outreach materials on detainees' rights available at the police station?
- What information was received by the detainee at the time of his or her arrest and/or on arrival at the police station?
- In what form was this information conveyed?
- Was the information given in manner that the detainee found clear and easy to understand?
- Was the information given in a language understood by the detainee?
- Was the detainee informed of the reason for his or her arrest? If there charges were laid at the time of the arrest, was the detainee informed of the nature of the charges?
- If charges were entered after the detainee's arrest, when was he or she informed of the nature of the charges against him or her?
- Does the information on rights provided by the police make clear the additional rights for juveniles (such as to have a family member or a trusted adult informed of their detention immediately and to have them present during any questioning)?
- In the case of foreign nationals, was the information provided in a language they understand? Were they informed of their right to communicate with their consular representatives?
- Are cases of illiteracy and disability taken into consideration?

## 2.2. Notification of deprivation of liberty to relatives or a third party

### Relevant standards

“An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.”

SMR, §92

“(1) Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.

(2) If a detained or imprisoned person is a **foreigner**, he shall also be promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national or which is otherwise entitled to receive such communication in accordance with international law or with the representative of the competent international organization, if he is a refugee or is otherwise under the protection of an intergovernmental organization.

(3) If a detained or imprisoned person is a **juvenile or is incapable of understanding** his entitlement, the competent authority shall on its own initiative undertake the notification referred to in the present principle. Special attention shall be given to notifying parents or guardians.

(4) Any notification referred to in the present principle shall be made or permitted to be made without delay. The competent authority may however delay a notification for a reasonable period where exceptional needs of the investigation so require.”

BPP, Principle 16

“A detained person’s right to have the fact of his/her detention notified to a third party should in principle be guaranteed from the very outset of police custody. Of course, the CPT recognises that the exercise of this right might have to be made subject to certain exceptions, in order to protect the legitimate interests of the police investigation. However, such exceptions should be clearly defined and strictly limited in time, and resort to them should be accompanied by appropriate safeguards (e.g. any delay in notification of custody to be recorded in writing with the reasons therefore, and to require the approval of a senior police officer unconnected with the case or a prosecutor).”

CPT Standards, p.12, §43

### *Women*

“Prior to or on admission, women with caretaking responsibilities for children shall be permitted to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the children.”

BR, Rule 2(2)

#### ⇒ *See also*

- SMR, §38, 44(3)
- BPP, Principle 19
- UN Declaration on the Protection of all Persons from Enforced Disappearance, Art. 10(2)
- CAT General Comment N°2 on Art. 2 UNCAT, §13
- PBPA, Principle 5
- RIG, Part II, §31

### *Comment*

The right to have a family member or third party notified about the fact of arrest, detention, and/or transfer, and about the place of detention, constitutes an essential safeguard against ill-treatment and incommunicado detention. The notification should be made from the outset of the deprivation of liberty. The SRT recommends that a relative should be informed of the arrest and the place of detention within 18 hours, in all circumstances.<sup>23</sup>

<sup>23</sup> General Recommendations of the SRT, UN Doc. E/CN.4/2003/68, 17 December 2002, §g. Available at <http://www2.ohchr.org/english/issues/docs/recommendations.doc>

It is important that police personnel are instructed to inform detainees of their right to notify a third party. They should also allow detainees to implement this right. Monitors should check whether these duties are carried out in practice. However, monitors should note that international law does not require that a detainee be allowed to speak directly with a relative (as it may frustrate an on-going investigation): instead, the police merely have a duty to notify the detainee's family (or a third party) of the fact and location of the person's detention.

It is important for monitors to check whether foreigners are permitted to contact a relative or the consular post of the state of which they are a national.

Monitors should check that particular attention is paid to minors and persons with mental disabilities, who may need the competent authority to notify relatives or a third party on their behalf.

***Tips for monitors***

- Are persons held in police custody given the opportunity to have a relative or other third party informed of their arrest?
- Are all detainees systematically informed by the police about this specific right?
- At what moment are detainees given the opportunity to notify a relative?
- Are police personnel properly instructed to inform detainees about this right?
- Are foreign detainees given the opportunity to contact the diplomatic mission of the country of which they are a national? Is this right explained to detainees in a language they understand?
- If the detainee is a sole carer, what arrangements are in place for ensuring that dependency obligations are taken care of?
- Who is in charge of contacting family members or a third party in the case of children or persons with intellectual or other disabilities?

### 2.3. Access to a doctor

#### Relevant standards

“24. A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

25. A detained or imprisoned person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the right to request or petition a judicial or other authority for a second medical examination or opinion.

26. The fact that a detained or imprisoned person underwent a medical examination, the name of the physician and the results of such an examination shall be duly recorded. Access to such records shall be ensured. Modalities therefore shall be in accordance with relevant rules of domestic law.”

**BPP, Principles 24-25-26**

“Persons in police custody should have a formally recognised right of access to a doctor. In other words, a doctor should always be called without delay if a person requests a medical examination; police officers should not seek to filter such requests. Further, the right of access to a doctor should include the right of a person in custody to be examined, if the person concerned so wishes, by a doctor of his/her own choice (in addition to any medical examination carried out by a doctor called by the police).

All medical examinations of persons in police custody must be conducted out of the hearing of law enforcement officials and, unless the doctor concerned requests otherwise in a particular case, out of the sight of such officials.

It is also important that persons who are released from police custody without being brought before a judge have the right to directly request a medical examination/certificate from a recognised forensic doctor.”

**CPT Standards, p.11-12, §42**

“It is also important that no barriers should be placed between persons who allege ill-treatment (who may well have been released without being brought before a prosecutor or judge) and doctors who can provide forensic reports recognised by the prosecutorial and judicial authorities. For example, access to such a doctor should not be made subject to prior authorisation by an investigating authority.”

CPT Standards, p.96, §30

### *Women*

“If a woman prisoner requests that she be examined or treated by a woman physician or nurse, a woman physician or nurse shall be made available, to the extent possible, except for situations requiring urgent medical intervention. If a male medical practitioner undertakes the examination contrary to the wishes of the woman prisoner, a woman staff member shall be present during the examination.”

BR, Rule 10(2)

“(1) Only medical staff shall be present during medical examinations unless the doctor is of the view that exceptional circumstances exist or the doctor requests a member of the prison staff to be present for security reasons or the woman prisoner specifically requests the presence of a member of staff as indicated in rule 10, paragraph 2, above.

(2) If it is necessary for non-medical prison staff to be present during medical examinations, such staff should be women and examinations shall be carried out in a manner that safeguards privacy, dignity and confidentiality.”

BR, Rule 11

#### ⇒ *See also*

- SMR, §10
- BR, Rules 6-9
- Human Rights Committee General Comment N°20 on Art. 7 ICCPR, §11
- CAT General Comment N°2 on Art. 2 UNCAT, §13
- Report by the SRT, UN Doc. E/CN.4/2003, §26(g)
- RIG, Part II, §31
- RPJDL, §49-55
- PBPA, Principle IX(3)

**Comment**

The right of access to a doctor is not only essential for detainees who need medical care, but is also a key safeguard against ill-treatment for anyone held in police custody. It is fundamental that this right be granted from the start of detention.

When a person asks for a medical examination, “police officers should not seek to filter such requests”. The person should be entitled to be examined by a doctor of his or her own choice, in addition to any examination conducted by a doctor on duty for the police.<sup>24</sup>

Medical examinations should always be conducted in accordance with the principle of medical confidentiality. The SPT recommends that

**non-medical persons, other than the patient, should not be present. In exceptional cases, where a doctor so requests, special security arrangements may be considered relevant, such as having a police officer within call. The doctor should note this assessment in the records, as well as the names of all persons present. However, police officers should always stay out of hearing and preferably out of sight of a medical examination.<sup>25</sup>**

The SPT also recommends that

**every routine medical examinations [be] carried out using a standard form that includes (a) a medical history (b) an account by the person examined of any violence (c) the result of the thorough physical examination, including a description of any injuries and (d) where the doctor’s training so allows, an assessment as to consistency between the three first items. The medical record should, upon request from the detainee, be made available to him/her or to his/her lawyer[.]<sup>26</sup>**

Recording injuries suffered by persons detained by the police is an important safeguard against torture and other ill-treatment. A medical examination should also be performed when allegations of torture or other ill-treatment are made, especially when the allegations concern

24 CPT standards, CPT, CoE Doc. CPT/Inf/E (2002) 1, 2002 (revised 2011), p.11-12, §42. Available at <http://www.cpt.coe.int/En/documents/eng-standards.pdf>

25 Report on the Visit of the SPT to the Maldives, UN Doc. CAT/OP/MDV/1, 26 February 2009, §111. Available at <http://www.unhcr.org/refworld/country,,CAT,,MDV,4562d8cf2,49eed8ae2,0.html>

26 Report on the Visit of the SPT to the Maldives, §112.

psychological ill-treatment, such as the use of solitary confinement, sensory deprivation, or threats. When detainees are released from police custody without being brought before a judge, they should be entitled to request that a medical examination be carried out by a recognised forensic doctor.

### ***Tips for monitors***

#### *Medical examination*

- What is the system for referring detainees to health facilities in case of emergency?
- Does the custody register record (i) the date and time that the doctor or nurse was called, and (ii) the date and time of the eventual examination or of the detainee's transfer to a local health facility?
- Were women given the option to see a female doctor or nurse? Are they aware of their right to request a female doctor or nurse?
- Has the detainee been examined by a medical person upon arrival? If so, at what time and for what reason?
- Was the detainee offered the opportunity to have an (additional) examination by a doctor of his/her own choice?
- Was the examination done by a nurse/doctor at the police station or after transfer to a health facility?
- How long did the detainee have to wait until the medical examination took place?
- Did the examination take place out of hearing and out of sight of law enforcement officials?
- Was the detainee restrained in any way during the medical examination?
- If needed, was an interpreter made available?

#### *Medical treatment*

- How are medicines that must be regularly administered to detainees stored? (e.g. in a locked cupboard, labelled with the relevant detainee's name and the timings and amount of doses?) Who has access to these medicines?
- Is there a separate register for the administration of medications? If not, is a note made on the relevant individual's custody file each time medication is dispensed?



- Did the detainee receive medical care? If yes, was it provided free of charge?

*Medical records*

- Are detainees' medical records of held confidentially? Are they only accessible to doctors and/or nurses?
- What medical information do the police have access to?
- Is there an official procedure for if a detainee wishes to complain about ill-treatment? What is the role of healthcare staff in this procedure?
- Is there an incident log in which the police can record any acts of violence or other occurrences?
- In case of allegations of ill-treatment, does anything in the detainee's medical records corroborate the allegations?

*Healthcare professionals*

- Are healthcare personnel always available? Is there any continuity of healthcare staff?
- Are the healthcare professionals who attend detainees in police custody independent of the police? Are healthcare staff under the responsibility of the Ministry of Health, or under the same ministry as the police? To whom do healthcare professionals report directly?
- Is there a clinical governance policy for the provision of healthcare services in police stations?
- Do healthcare personnel receive ongoing training?

*Specific healthcare issues*

- Is there a procedure to enable detainees with mental illness to be identified and diverted into appropriate mental health services?
- What safeguards are in place to prevent suicide and other forms of self-harm?
- Is there a procedure for seeking treatment and/or support for alcohol or other drug misuse or addiction?

- Do the police seek advice, when appropriate, from healthcare professionals on any measures that should be taken to improve conditions for detainees with disabilities?
- What is the procedure in case of a medical emergency that may require a detainee’s urgent transfer to a health clinic or hospital?

## 2.4. Access to a lawyer

### Relevant standards

“Any person deprived of liberty shall be authorized to communicate with and be visited by [...] counsel”.

ICPAPED, 17(2d)

“If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.”

BPP, Principle 17(2)

“(1) A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.

(2) A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.

(3) The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order. [...]

(5) Communications between a detained or imprisoned person and his legal counsel mentioned in the present principle shall be inadmissible as evidence against the detained or imprisoned person unless they are connected with a continuing or contemplated crime.”

BPP, Principle 18

“For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.”

**SMR, §93**

“All persons deprived of liberty shall have the right to a defence and to legal counsel, named by themselves, their family, or provided by the State; they shall have the right to communicate privately with their counsel, without interference or censorship, without delays or unjustified time limits, from the time of their capture or arrest and necessarily before their first declaration before the competent authority.”

**PBPA, Principle V**

“The right of access to a lawyer should be enjoyed not only by criminal suspects but also by anyone who is under a legal obligation to attend - and stay at - a police establishment, e.g. as a ‘witness’.”

**CPT Standards, p.11, §41**

⇒ **See also**

- CAT General Comment N°2 on Art. 2 UNCAT, §13
- Basic Principles on the Role of Lawyers, §1, 5-8
- Human Rights Committee General Comment N°20 on Art. 7 ICCPR, §11
- Report by the SRT, UN Doc. A/57/173, §18
- Report by the SRT, UN Doc. E/CN.4/2003/68, §26(g)
- Report by the SRT, UN Doc. A/56/156, §34
- RIG, Part II, §31
- CPT Standards, p. 6, §36-38, p. 8, §15

### Comment

Lawyers, by their mere presence in a police station, constitute a safeguard against ill-treatment, particularly during the critical first hours of detention. When abuse has occurred, lawyers can advise detainees about complaint mechanisms and remedies.<sup>27</sup>

The CPT has stated that access to a lawyer is a fundamental safeguard “which should apply as from the very outset of deprivation of liberty, regardless of how it may be described under the legal system concerned (apprehension, arrest, etc.).”<sup>28</sup> In addition, this right should be applied to “anyone who is under a legal obligation to attend – and stay at – a police establishment, e.g. as a ‘witness’”.<sup>29</sup> While some of the standards speak of “prompt access” to a lawyer, in the APT’s view it is better practice to follow stricter standards and to provide access from the first moment of detention.<sup>30</sup>

The CPT acknowledges that,

**in order to protect the interests of justice, it may exceptionally be necessary to delay for a certain period a detained person’s access to a particular lawyer chosen by him. However, this should not result in the right of access to a lawyer being totally denied during the period in question. In such cases, access to another independent lawyer who can be trusted not to jeopardise the legitimate interests of the police investigation should be arranged.**<sup>31</sup>

The right of access to a lawyer should include the presence of the lawyer during any questioning or interrogation.<sup>32</sup> The SPT has stressed that “the presence of a lawyer during police questioning may not only deter the police from resorting to ill-treatment or other abuses, but may also work as a protection for police officers in case they face unfounded allegations of ill-treatment.”<sup>33</sup>

27 CPT standards, CPT, CoE Doc. CPT/Inf/E (2002) 1, 2002 (revised 2011), p.11, §41. Available at <http://www.cpt.coe.int/En/documents/eng-standards.pdf>

28 CPT Standards, p.6, §36.

29 CPT Standards, p.11, §41.

30 *The Right of Access to Lawyers for Persons Deprived of Their Liberty* (Legal Briefing N°2), APT, Geneva, March 2010, pp.5-7. Available at [http://www.apr.ch/index.php?option=com\\_docman&task=cat\\_view&gid=283&Itemid=260&lang=en](http://www.apr.ch/index.php?option=com_docman&task=cat_view&gid=283&Itemid=260&lang=en)

31 CPT Standards, p.8, §15.

32 CPT Standard, p.6, §38; *The Right of Access to Lawyers*, APT, p.8 (citing sources).

33 Report on the Visit of the SPT to the Maldives, UN Doc. CAT/OP/MDV/1, 26 February 2009,

Persons deprived of their liberty should be systematically informed by the police of their right to counsel. They should also be provided with “adequate opportunities, time and facilities” to meet with their counsel. It is crucial that interviews with legal counsel are held out of hearing, and possibly out of sight of, law enforcement officials.<sup>34</sup>

Finally, if a detainee does not have a legal counsel of his or her own choice, legal counsel should be appointed. This should be paid for by the state if the detainee does not have sufficient funds.

If there are not enough lawyers or there is no established legal aid program in a country, it will prove difficult to fulfil this crucial standard. In such situations, monitoring bodies may recommend, as proposed by the SPT in the case of Benin, that the police permit detainees to have a third party (such as trained NGO personnel or paralegals) present during interrogations in police custody.<sup>35</sup>

#### *Tips for monitors*

- What facilities are provided for meetings with legal counsel? Do meetings take place in private?
- How long are detainees entitled to see their legal counsel for?
- Are witnesses who are summoned to the police station entitled to the same rights regarding access to a lawyer?
- Was the detainee informed about his or her right to see a lawyer? If yes, how long after the arrest took place?
- Was a lawyer present during police questioning?
- Did the detainee have access to his or her own lawyer? If not, was legal counsel provided free of charge by the police authorities?
- If access to a lawyer was delayed, what were the grounds for this? Was the delay (and the grounds for it) registered?

§62. Available at <http://www.unhcr.org/refworld/country,,CAT,,MDV,4562d8cf2,49eed8ae2,0.html>

34 UN Basic Principles on the Role of Lawyers, 27 August to 7 September 1990, Principles 5 and 8. Available at <http://www2.ohchr.org/english/law/lawyers.htm>

35 Report on the visit of the SPT to Benin, March 2011, UN Doc. CAT/OP/BEN.1, 15 March 2011, §86. Available at [http://www2.ohchr.org/english/bodies/cat/opcat/docs/CAT.OP.BEN.1\\_en.doc](http://www2.ohchr.org/english/bodies/cat/opcat/docs/CAT.OP.BEN.1_en.doc)

### 3. Legal procedures

<b>3.1. Length of police custody</b>
<b>Relevant standards</b>
<p>“Paragraph 3 of article 9 requires that in criminal cases any person arrested or detained has to be brought ‘promptly’ before a judge or other officer authorized by law to exercise judicial power. More precise time-limits are fixed by law in most States parties and, in the view of the Committee, delays must not exceed a few days.”</p> <p style="text-align: center;"><b>HRC General Comment N°8(16) on Art. 9 ICCPR, §2</b></p> <p>“Those legally arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pre-trial detention which, in any case, should not exceed a period of 48 hours. They should accordingly be transferred to a pre-trial facility under a different authority at once, after which no further unsupervised contact with the interrogators or investigators should be permitted.”</p> <p style="text-align: center;"><b>Report by the SRT, UN Doc. E/CN.4/2003/68, §26</b></p> <p>⇒ <i>See also</i></p> <ul style="list-style-type: none"> <li>• Report by the SRT, UN Doc. A/HRC/13/39/Add.5, §156</li> </ul>

#### **Comment**

A person who is arrested or detained in relation to a criminal charge must be promptly taken in person to a judge or a judicial authority who will take a decision on release or transfer to a pre-trial detention facility. The right to be brought before a judge or judicial authority, as well as the general right of all detainees to challenge the basis of their detention (*habeas corpus*), help to prevent persons from being held in police custody for a longer period than that allowed by domestic law. In some contexts, however, it is quite common for persons to be detained by the police for a longer period than that stipulated by law. Most countries’ laws stipulate that the duration of this period should be between 24 and 72 hours. The SPT has recommended that “the initial police custody period be of the shortest possible duration”; afterwards detainees should be held in pre-trial detention facilities.<sup>36</sup>

<sup>36</sup> Report on the Visit of the SPT to the Maldives, UN Doc. CAT/OP/MDV/1, 26 February 2009, §78. Available at <http://www.unhcr.org/refworld/country,,CAT,,MDV,4562d8cf2,49eed8ae2,0.html>

**Tips for monitors**

- What is the maximum length of police custody according to the law?
- What is the average length of detention in the police station/ across a series of police stations?
- For how long has the person been detained in the police station?
- Was the time of the arrest properly recorded?
- If the detainee is being held on criminal charges, was he or she brought promptly before a judge or other judicial authority?
- If the length of police custody is longer than the period allowed by law, what are the reasons given?
- Was the person provided with an opportunity to challenge this longer (illegal) period of detention in a habeas corpus proceeding?

**3.2. Access to a judge**

**Relevant standards**

***Habeas corpus***

“Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”

ICCPR, Art. 9(4)

“Any person deprived of liberty or, in the case of a suspected enforced disappearance, since the person deprived of liberty is not able to exercise this right, any persons with a legitimate interest, such as relatives of the person deprived of liberty, their representatives or their counsel, shall, in all circumstances, be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of the deprivation of liberty and order the person’s release if such deprivation of liberty is not lawful.”

ICPAPED, Art. 17(2f)

“(1) A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful.

(2) The proceedings referred to in paragraph 1 of the present principle shall be simple and expeditious and at no cost for detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority.”

**BPP, Principle 32**

***Arrest or detention on criminal charges: right to be brought promptly before a judge or judicial authority***

“Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.”

**ICCPR, Art. 9(3)**

“A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of detention. No person may be kept under detention pending investigation or trial except upon the written order of such an authority. A detained person shall, when brought before such an authority, have the right to make a statement on the treatment received by him while in custody.”

**BPP, Principle 37**



“Naturally, the judge must take appropriate steps when there are indications that ill-treatment by the police may have occurred. In this regard, whenever criminal suspects brought before a judge at the end of police custody allege ill-treatment, the judge should record the allegations in writing, order immediately a forensic medical examination and take the necessary steps to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible external injuries. Further, even in the absence of an express allegation of ill-treatment, the judge should request a forensic medical examination whenever there are other grounds to believe that a person brought before him could have been the victim of ill-treatment.”

CPT Standards, p.12, §45

⇒ *See also*

- ICCPR, Art. 9(4)
- Human Rights Committee General Comment N°29 on Art. 4 ICCPR, §15-16
- HRC Resolution 13/19, UN Doc. A/HRC/RES/13/19, §5
- Report by the SRT, UN Doc. E/CN.4/2004/56, §39
- Report by the SRT, UN Doc. A/59/324, §22
- Inter-American Convention on Forced Disappearance of Persons, Art. XI(1)
- PBPA, Principle V
- Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism, UN Doc. A/HRC/13/42, §292(B)

### ***Comment***

While monitors visiting police stations are most likely to encounter individuals who have been arrested or detained in connection with a criminal charge, they may also encounter persons who are detained for other reasons. This section provides information on two distinct, but related forms of judicial supervision of detention.

***Arrest or detention on a criminal charge: right to be brought promptly before a judge or judicial authority***

Every person who is “arrested or detained on a criminal charge” must be

“brought promptly before a judge or any other officer authorized by law to exercise judicial power”.<sup>37</sup>

The meaning of “promptly” has been clarified by courts and treaty bodies to mean no more than a few days.<sup>38</sup> Monitors should consult their local criminal procedure code as most states have laws setting out how long a person may be detained before being brought before a judge or judicial authority: this period may be shorter than that currently allowed under international law.

The requirement to bring individuals arrested on criminal charges in person before a judge promptly is an important safeguard against torture and ill-treatment in police stations. According to the SRT, in addition to ruling on the lawfulness of the person’s detention, the judicial authority can “monitor that the detained individual is entitled to all his/her rights, including the right not to be subjected to torture or other forms of ill-treatment.”<sup>39</sup> The judge or judicial authority should order an investigation and a forensic medical examination if there is an allegation of torture, or if there is any reason to believe that torture or other ill-treatment has occurred (even if no allegations of mistreatment are made).

***All types of detention: habeas corpus***

International human rights law provides that every person who is deprived of his or her liberty for any reason (e.g. through administrative or immigration detention) has the right to challenge his or her detention. Every detainee is

**entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.**<sup>40</sup>

This right is often referred to as the right to *habeas corpus*.

The detainee should be present at the court for this proceeding.<sup>41</sup>

37 ICCPR, Art. 9(3). In States that have adopted the ACHR, this protection applies to all forms of detention, not just detention related to criminal charges (see Art. 7(5)).

38 See, for instance, Louise Doswald-Beck, *Human Rights in Times of Conflict and Terrorism*, Oxford University Press, Oxford, 2011, p.287.

39 Report by the SRT, UN Doc. E/CN.4/2004/56, 23 December 2002, §39. Available at <http://www.unhchr.ch/huridocda/huridoca.nsf/0/fbb99d8c59470878c1256e78002ec4de?OpenDocument>

40 ICCPR, Art. 9(4). Available at <http://www2.ohchr.org/english/law/ccpr.htm>

41 Nigel Rodley and Matt Pollard, *The Treatment of Prisoners under International Law*, Oxford University Press, Oxford, 2009, p.475.

The right to habeas corpus has been determined to be a non-derogable right and must not be suspended during emergencies such as terrorist incidents or armed conflicts.<sup>42</sup>

**Tips for monitors**

- Was the person provided with an opportunity to challenge the basis for his or her detention?
- If detained on a criminal charge, has the detainee been informed about his or her right to be brought before a judge or other competent authority?
- Has the detainee been brought before a judge in person (e.g. as opposed to by video conference)? If not, what reasons were given for not doing so?
- If the detainee has been brought before a judge, how many hours after the person was first taken into custody did this happen?
- Was he or she given the opportunity to report any ill-treatment and/or to lodge a complaint?
- Was the detainee given the opportunity to make a statement?
- If needed, was an interpreter provided for foreign nationals/national minorities?

**3.3. Release in a verifiable manner**

**Relevant standards**

“Each State Party shall take the necessary measures to ensure that persons deprived of liberty are released in a manner permitting reliable verification that they have actually been released. Each State Party shall also take the necessary measures to assure the physical integrity of such persons and their ability to exercise fully their rights at the time of release, without prejudice to any obligations to which such persons may be subject under national law.”

**ICPAPED, Art.21**

42 Judicial Guarantees in States of Emergency, Inter-American Court of Human Rights, Advisory Opinion OC-9/87, 6 October 1987. Available at [http://www1.umn.edu/humanrts/iachr/b\\_11\\_4i.htm](http://www1.umn.edu/humanrts/iachr/b_11_4i.htm); Nigel Rodley and Matt Pollard, *The Treatment of Prisoners under International Law*, Oxford University Press, Oxford, 2009, pp.481-91. In the Arab Charter on Human Rights (Art. 4(2)), the right to *habeas corpus* is specifically listed as a non-derogable right Arab Charter on Human Rights, adopted 15 September 1994 (revised 2004), entered into force 24 January 2008. Available at <http://www.unhcr.org/refworld/docid/3ae6b38540.html>

“All persons deprived of their liberty must be released in a manner permitting reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and ability to fully exercise their rights are assured.”

**Declaration on the Protection of All Persons from Enforced Disappearances,  
Art. 11**

***Comment***

It is important that the police have procedures governing the process of release. In particular, there must be a means to confirm that a person has, in fact, been released. This is an important protection against enforced disappearance. In addition, people must be released under conditions that ensure their physical integrity. For example, people should not be released late at night in a dangerous area or left alone in a remote area with no means to get home.

***Tips for monitors***

- Does the police station maintain records of persons who are transferred or released?
- What procedures are followed when a person is released from police custody?
- Is there a policy for detainees in situations of vulnerability to ensure that they are released safely?

## 4. Procedural safeguards

### 4.1. Audio-video recording

#### Relevant standards

“As new methods of prevention (e.g. videotaping all interrogations [...]) are discovered, tested and found effective, article 2 provides authority to build upon the remaining articles and to expand the scope of measures required to prevent torture.”

CAT General Comment N°2 on Art. 2 UNCAT, §14

“The electronic (i.e. audio and/or video) recording of police interviews represents an important additional safeguard against the ill-treatment of detainees. The CPT is pleased to note that the introduction of such systems is under consideration in an increasing number of countries. Such a facility can provide a complete and authentic record of the interview process, thereby greatly facilitating the investigation of any allegations of ill-treatment. This is in the interest both of persons who have been ill-treated by the police and of police officers confronted with unfounded allegations that they have engaged in physical ill-treatment or psychological pressure. Electronic recording of police interviews also reduces the opportunity for defendants to later falsely deny that they have made certain admissions.”

CPT Standards, p.9, §36

⇒ *See also*

- Report by the SRT, UN Doc. E/CN.4/2003/68, §26(g)
- Report by the SRT, UN Doc. A/56/156, §34

#### *Comment*

Video recording can be a key safeguard for both detainees and the police, if there are clear procedures regarding its use. Monitors should be aware of the fact that there is also a margin for abuse, especially as regards detainees’ privacy and respect for their dignity. Video recording is usually used for two distinct purposes:

- for overall monitoring of what takes place within the police premises, and
- for recording police interviews.

### ***Monitoring of police premises***

As the use of CCTV (closed-circuit television) in places of deprivation of liberty is relatively recent, existing standards are few in number. However, the practice of using such recording systems is on the rise. The way they are used within police stations should be assessed by monitors. In some countries, police stations may have CCTV surveillance systems installed that record everything taking place in the reception area, cells, corridors and other locations.

When dealing with the subject of CCTV, monitors should be conscious of detainees' rights to privacy; monitors should establish if areas such as showers and toilets are covered by cameras. If necessary, they should make recommendations on these issues. Monitors should also be alert to the fact that areas not covered by surveillance equipment may present particular risks.

Monitors should ascertain who is in charge of keeping recordings and whether there is a register with the dates and times that recordings were made; this should also include the identities of the persons present. It is also important to establish the gender of staff able to monitor CCTV in areas where women are detained.

### ***Recording interviews***

If monitors have the legal authority to do so, they may decide to examine recordings, especially if following up on allegations of ill-treatment. Where interviews are recorded, the camera(s) should be able to record images of everyone present in the room, not just the person being interviewed.

#### ***Tips for monitors***

- If CCTV is used in the police station, where exactly are cameras located?
- What areas are not covered by the CCTV system?
- Who is authorised to view the tapes? What is the policy regarding gender and privacy? How is it applied in practice?
- Are interrogations recorded? If so, do monitors have access to the recordings?
- Who is in charge of the tapes?

- Is there a register with the dates and times recording were made? Does it also include the identities of the persons in the recordings?
- Does the duration of recordings match the registered times? Are recordings continuous in real time or are there breaks that are not accounted for?

## 4.2. Custody records

### Relevant standards

“Each State Party shall assure the compilation and maintenance of one or more up-to-date official registers and/or records of persons deprived of liberty, which shall be made promptly available, upon request, to any judicial or other competent authority or institution authorized for that purpose by the law of the State Party concerned or any relevant international legal instrument to which the State concerned is a party. The information contained therein shall include, as a minimum:

- (a) The identity of the person deprived of liberty;
- (b) The date, time and place where the person was deprived of liberty and the identity of the authority that deprived the person of liberty;
- (c) The authority that ordered the deprivation of liberty and the grounds for the deprivation of liberty;
- (d) The authority responsible for supervising the deprivation of liberty;
- (e) The place of deprivation of liberty, the date and time of admission to the place of deprivation of liberty and the authority responsible for the place of deprivation of liberty;
- (f) Elements relating to the state of health of the person deprived of liberty;
- (g) In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains;
- (h) The date and time of release or transfer to another place of detention, the destination and the authority responsible for the transfer.”

ICPAPED, Art. 17(3)

“(1) There shall be duly recorded:

- (a) The reasons for the arrest;
- (b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority;
- (c) The identity of the law enforcement officials concerned;
- (d) Precise information concerning the place of custody.

(2) Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law.”

**BPP, Principle 12**

“The fact that a detained or imprisoned person underwent a medical examination, the name of the physician and the results of such an examination shall be duly recorded. Access to such records shall be ensured. Modalities therefore shall be in accordance with relevant rules of domestic law.”

**BPP, Principle 26**

⇒ *See also*

- SMR, §7
- BPP, Principle 23(1)
- BR, Rule 3
- UN Declaration on the Protection of all Persons from Enforced Disappearance, Art. 10(2-3)
- CAT General Comment N°2 on Art. 2 UNCAT, §13
- Human Rights Committee General comment N°20 on Art. 7 ICCPR, §11
- HRC Resolution 10/10, A/HRC/RES/10/10, §4
- Report by the SRT, UN Doc. E/CN.4/2003/68, §26(g)
- Report of the Working Group on Arbitrary Detention, UN Doc. A/HRC/7/4, §84
- PPBA, Principle IX (2)
- RIG, Part II, §30
- CPT Standards, p. 7, §40



### **Comment**

Monitors should always ask to have access to custody registers as an integral part of any visit. Examination of the registers, along with private interviews with detainees and staff, inspection of the premises, and monitor's own observations are essential to the triangulation of data that will allow monitors to develop a full understanding of the police station visited.

Registers of particular interest to visiting teams will include those on

- the use of force and firearms,
- disciplinary measures,
- incidents,
- interrogations, and
- the movements of persons in and out of the police station.

It is important that visiting mechanisms become familiar with registers and their official names. They should also be capable of identifying if documents have been inadequately completed.

When no registers are available, or when existing ones are badly kept, monitoring bodies should usually make suggestions and recommendations to the authorities on (i) the importance of keeping rigorous custody registers and (ii) the police's national and international obligations with regard to registers. Ideally, each national police service/force should develop a standardised and unified record for comprehensively registering all key information about an individual's deprivation of liberty. Police staff should be trained to use this appropriately and consistently. The unified record should include at least the information listed above.<sup>43</sup>

In some contexts, one of the explicit objectives of a programme of visits might be to protect persons from enforced disappearance. In such cases, following up on the information in registers is crucial. Follow up visits should verify information on releases and/or transfers to other places of detention. This verification might take place during a visit to other places of detention or through contact with the families of detainees or with detainees who have already been released.

<sup>43</sup> CPT standards, CPT, CoE Doc. CPT/Inf/E (2002) 1, 2002 (revised 2011), p.7, §40. Available at <http://www.cpt.coe.int/En/documents/eng-standards.pdf>

***Tips for monitors***

- What registers are maintained at the police station?
- Are there registers on the use of force and firearms? Are there registers on disciplinary measures?
- Are there registers on the occurrence of any incidents? Are all important incidents recorded?
- Are there registers on the movements of persons in and out of the police station? Are entry and exit registers rigorously kept?
- Who is in charge of the registers? Who has access to them?
- How is the information in registers used?
- If requested, are records communicated to the detainee or his or her counsel?

**4.3. Complaints**

**Relevant standards**

“Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.”

**UNCAT, Art. 13**

“(1) A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers. [...]

(3) Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant.

(4) Every request or complaint shall be promptly dealt with and replied to without undue delay. If the request or complaint is rejected or, in case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority. Neither the detained or imprisoned person nor any complainant under paragraph 1 of the present principle shall suffer prejudice for making a request or complaint.”

**BPP, Principle 33**

“Law enforcement officials who have reasons to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.”

**CCLEO, Art. 8**

⇒ *See also*

- BR, Rule 25(1)
- Report by the SRT, UN Doc. A/HRC/13/39/Add.5, §110-112
- Opinion of the Commissioner for Human Rights Concerning Independent and Effective Determination of Complaints against the Police, CoE Doc. CommDH(2009)4
- ‘Combating impunity’ in CoE Doc. CPT/Inf (2004)28, §25-42

**Comment**

Complaints mechanisms are key components of any professional and accountable police institution; therefore, their existence and effectiveness should be examined by monitors. Complaints can cover a wide variety of issues relating to police conduct, ranging from allegations of human rights violations to inadequate work performance.

There are different levels of mechanisms. The first generally comprises an internal complaints mechanism through which complaints addressed to the head of the police station/department are investigated internally by a police unit. However, the work of this mechanism may have shortcomings because of the lack of independence and the strong ‘esprit de corps’ within the police.

Filing an official criminal complaint is another possibility; however, the operational investigation of the complaint might be carried out by the police. It is important that a special unit within the police exists to investigate complaints. Ideally, there should be a totally independent police complaints body.

Complaints systems should be visible and accessible: information about complaints mechanisms should be available and displayed in police premises. Filing a complaint should be made possible not only in person but also by telephone and/or written correspondence.

In addition, cases of deaths and serious injuries in police custody could be referred systematically and automatically to appropriate mechanisms for immediate investigation.

Whatever the system in place, investigations of complaints against the police should meet the following criteria:<sup>44</sup>

- **Independence:** There should be no institutional or hierarchical relations between the mechanisms and the police that they supervise.
- **Thoroughness:** The mechanisms should be able to look at all facts and take all steps to secure evidence.
- **Promptness:** Investigations should be conducted in a prompt and expeditious way.
- **Public scrutiny:** Procedures and decision-making processes should be open and transparent.
- **Victim involvement:** The complainant(s) should be involved in the process.

Monitors should also identify whether the fact of lodging a complaint has resulted in any form of sanctions.

At the end of the investigation – whether criminal or disciplinary – the complainant should be informed in writing of the resolution of the complaint. The opportunity to appeal should be made available.

***Tips for monitors***

- By what avenues can persons deprived of their liberty make complaints?
- Are complaints procedures accessible to detainees (including those who are foreign nationals or illiterate or who have intellectual, psychosocial or sensory disabilities)?
- Is confidentiality respected?
- Is the procedure transparent?

44 These criteria were developed primarily by the European Court of Human Rights, the CPT and the Council of Europe Commissioner for Human Rights.

- Is the procedure transparent?
- Is the system flexible enough to meet the needs of detainees?
- Is it possible for an outsider to complain on behalf of a detainee?
- Do complainants receive a timely response that addresses the substance of the complaint?
- Are statistics on responses to complaints kept, analysed and acted on?
- How many complaints have been lodged over the last three/six/twelve months? How does this number compare with the average number of persons held in the police station?
- What is the nature of the current pattern of complaints?
- What is the most common outcome? What is the most common result of appeals?
- What percentage of complaints have been decided in favour of the complainant?
- Do rules for police officers regarding the handling of complaints exist?
- Have there been any allegations of retaliation or sanctions for pursuing a complaint?

#### 4.4. Inspection and monitoring

##### Relevant standards

“(1) Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.”

OPCAT, Art. 4

“(2) Without prejudice to other international obligations of the State Party with regard to the deprivation of liberty, each State Party shall, in its legislation [...]:

(e) Guarantee access by the competent and legally authorized authorities and institutions to the places where persons are deprived of liberty, if necessary with prior authorization from a judicial authority.”

**ICPAPED, Art.17(2e)**

“(1) 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.

(2) A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with paragraph 1 of the present principle, subject to reasonable conditions to ensure security and good order in such places.”

**BPP, Principle 29**

### ***Women***

“In order to monitor the conditions of detention and treatment of women prisoners, inspectorates, visiting or supervisory bodies shall include women members”.

**BR, Rule 25(3)**

### ***Disabled persons***

“Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.”

**CRPD, Art. 33(3)**

#### ⇒ ***See also***

- SMR, §55
- CRPD, Art. 16(3)
- CAT General Comment N°2 on Art. 2 UNCAT, §13
- Report by the SRT, UN Doc. E/CN.4/2003/68, §26(f)
- Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism, UN Doc. A/HRC/13/42, §292(a)
- CPT Standards, p.14, §50

**Comment**

A variety of complementary internal and external inspection systems is necessary to safeguard the rights of persons deprived of their liberty. Detainees should be given the opportunity to communicate freely and confidentially with inspection mechanisms. Monitors, as members of a visiting mechanism, constitute one of these systems; their inspections are among the most effective ways to prevent torture. To be as effective as possible, visits by monitors should be both regular and unannounced. Furthermore, visiting bodies should be empowered to interview detained persons in private.<sup>45</sup>

Visiting mechanisms should strive to recruit monitors with profiles as diverse as possible, considering the importance of both gender balance and diverse professional expertise and experience.

Mechanisms should monitor the extent to which places of detention react to their observations and recommendations.

***Tips for monitors***

- Are there any internal inspection mechanisms? (NB: In some jurisdictions there may be only one such body or none at all.)
- What is the mandate and composition (e.g. as regards gender balance and the professional background of members) of the mechanism(s)?
- How frequently do inspections take place? Are they unannounced?
- Are detainees granted confidential access to the mechanism(s)?
- Can the mechanism(s) receive and examine complaints?
- Who has access to the reports of the inspection mechanism(s)? Are the reports made public?
- What were the results of the inspections made to date?

45 CPT standards, CPT, CoE Doc. CPT/Inf/E (2002) 1, 2002 (revised 2011), p.14, §50. Available at <http://www.cpt.coe.int/En/documents/eng-standards.pdf>

## 5. Material conditions

### Relevant standards

“84. (1) Persons arrested or imprisoned by reason of a criminal charge against them, who are detained either in police custody or in prison custody (jail) but have not yet been tried and sentenced, will be referred to as “untried prisoners” hereinafter in these rules. [...]

86. Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate. [...]

90. An untried prisoner shall be allowed to procure at his own expense or at the expense of a third party such books, newspapers, writing materials and other means of occupation as are compatible with the interests of the administration of justice and the security and good order of the institution.”

**SMR, §84(1), 86, 90**

“The police shall provide for the safety, health, hygiene and appropriate nourishment of persons in the course of their custody. Police cells shall be of a reasonable size, have adequate lighting and ventilation and be equipped with suitable means of rest”.

**ECPE, §56**

“All police cells should be clean and of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded); preferably cells should enjoy natural light. Further, cells should be equipped with a means of rest (e.g. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and clean blankets. Persons in police custody should have access to a proper toilet facility under decent conditions, and be offered adequate means to wash themselves. They should have ready access to drinking water and be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day. Persons held in police custody for 24 hours or more should, as far as possible, be offered outdoor exercise every day.”

**CPT 12<sup>th</sup> General Report, §47**



**Women**

“The accommodation of women prisoners shall have facilities and materials required to meet women’s specific hygiene needs, including sanitary towels provided free of charge and a regular supply of water to be made available for the personal care of children and women”.

**BR, Rule 5**

“Women and girls deprived of their liberty shall regularly be provided with those articles that are indispensable to the specific sanitary needs of their sex.”

**PBPA, Principle XI**

⇒ **See also**

- SMR, §4, 9-14, 20
- CRPD, Article 9
- PBPA, Principles XI, XII, XVII
- CPT 2<sup>nd</sup> General Report, §42-43

**Comment**

Detention in police custody is supposed to be of short duration; therefore, material conditions are expected to be more basic than in prisons. However, police cells should have natural light and ventilation, and a temperature appropriate to the climate and season. If a person has to spend a night in the cell, it must be equipped with a mattress and blankets. Toilets should be clean and hygienic, and access to toilets should not involve delay. Detainees should have access to drinking water and be provided with food of adequate nutritious value.

The smaller the cell, the less time a detainee should spend there. The following criterion (seen as a desirable level rather than a minimum standard) is used by the CPT when assessing individual police cells for stays in excess of a few hours: cells should be in the order of 7 square metres, with 2 metres or more between walls, and 2.5 metres between the floor and ceiling.<sup>46</sup>

Monitors should be aware that police stations are sometimes used for much longer periods than that those deemed acceptable by law, police facilities

46 2<sup>nd</sup> General Report on the CPT’s activities covering the period 1 January to 31 December 1991, CPT, CoE Doc. CPT/Inf (92) 3, 13 April 1992. Available at <http://www.cpt.coe.int/En/annual/rep-02.htm>

being, in most cases, inadequate for long- or mid-term detention. On such occasions, material conditions should be equivalent to the expected minimum standards guaranteed in longer-term pre-trial detention.

States Parties to the CRPD have a duty, under Article 9, to work towards ensuring the accessibility of public places to disabled persons. Monitors should therefore check whether reasonable accommodations are provided for persons with disabilities; for instance, monitors should check whether any of the accommodation and toilet facilities would be accessible to wheelchair users.

### *Tips for monitors*

#### *Cells*

- What is the size of the cells? What is their official capacity? How many people were in each cell at the time of the visit? Do registers or other records show significant variations in this regard? If so, what was the maximum number of persons held in each cell over a given period?
- What happens if there are more people in custody than there is authorised space for?
- Is the temperature in cells adequate for the season and climate? Is there heating/ventilation? Does it work?
- Do cells have access to natural light and ventilation? Do any electric lights work? If so, are they bright enough to read by? Do detainees have the ability to switch off or dim artificial lights (if any)? Alternatively, can they ask for this to be done so that they can sleep during the night? If so, what is the process for this and how efficient is it?
- Are there beds, mattresses, blankets and pillows? Are they clean? What arrangements are there for cleaning them and the cell?
- Is there a bell or buzzer in each cell that can be used to summon assistance from the guard in the event of (i) a need to use the toilet (if the cell does not have one), (ii) illness, or (iii) an emergency? Does it work?

*Food and water*

- With what frequency is food provided? What type of food is provided at each stage of detention (e.g. are detainees provided with hot meals at least once per day)? Are special dietary requirements (vegetarian, religious, medical) catered for?
- Who pays for detainees' food? Do the police rely on detainees' families to provide and/or pay for food?
- Has the person been given any food? Has he or she received a hot meal?
- Does the person have direct access to drinking water?

*Shower and toilet facilities*

- What are the conditions for access to toilets?
- Are toilets functioning and hygienic? If a bucket system is used, are these emptied regularly?
- What are the conditions for access to a shower? Are showers functioning and hygienic?
- Is the privacy of detainees respected?
- Are detainees supplied with toiletries (including towels and toilet paper) or do they have to provide/pay for their own?

*Exercise*

- Is there an exercise yard? Is it of sufficient size for the purpose and number of detainees using it at any one time?
- What is detainees' entitlement to exercise? Do detainees exercise alone or with others? For how long are detainees allowed to exercise each day?

*Groups in situations of vulnerability*

- Are women and juveniles kept in separate cells from adult males?
- Is there any special provision for women and other groups in situations of vulnerability?
- Are women offered hygiene packs?
- Is attention given to the risks that LGBTI detainees may face when accommodated with other detainees?

- Are detainees assessed on admission to determine whether they pose a risk to other detainees? When necessary, are separate accommodations made to ensure safety?
- Have reasonable adjustments been made to accommodate the needs of persons with disabilities?

*Other*

- Are detainees provided with reading materials?
- Are there reasonable provisions for religious observances?
- Can custody cells be evacuated safely in an emergency?
- If detainees are allowed to write letters, are they supplied with writing materials?
- If it is necessary to take clothing from detainees for the purposes of forensic investigation, are they provided with replacement clothing?
- Are detainees allowed a change of clothing?

## 6. Police personnel

### 6.1. Code of conduct

#### Relevant standards

“(2) Public officials shall ensure that they perform their duties and functions efficiently, effectively and with integrity, in accordance with laws or administrative policies. They shall at all times seek to ensure that public resources for which they are responsible are administered in the most effective and efficient manner.

(3) Public officials shall be attentive, fair and impartial in the performance of their functions and, in particular, in their relations with the public. They shall at no time afford any undue preferential treatment to any group or individual or improperly discriminate against any group or individual, or otherwise abuse the power and authority vested in them.”

(UN) International Code of Conduct for Public Officials, Principle I(2-3)

“8. The public demands that the integrity of police officials be above reproach. Police officials shall, therefore, behave in a trustworthy manner and avoid any conduct that might compromise integrity and thus undercut the public confidence in a police force/service. [...]

10. Police officials shall at all times fulfill the duties imposed upon them by law, in a manner consistent with the high degree of responsibility and integrity required by their profession. [...]

11. Police officials shall ensure that they treat all persons in a courteous manner and that their conduct is exemplary and consistent with the demands of the profession and the public they serve.”

**SARPCCO Code of Conduct for Police Officials, Art. 8, 10, 11**

“16. Police personnel, at all levels, shall be personally responsible and accountable for their own actions or omissions or for orders to subordinates.

17. The police organisation shall provide for a clear chain of command within the police. It should always be possible to determine which superior is ultimately responsible for the acts or omissions of police personnel.

18. The police shall be organised in a way that promotes good police/public relations and, where appropriate, effective co-operation with other agencies, local communities, non-governmental organisations and other representatives of the public, including ethnic minority groups. [...]

20. The police organisation shall contain efficient measures to ensure the integrity and proper performance of police staff, in particular, to guarantee respect for individuals’ fundamental rights and freedoms as enshrined, notably in the European Convention on Human Rights.”

**ECPE, 16-18, 20**

⇒ **See also**

- UN Code of Conduct for Law Enforcement Officials, UN Doc. A/RES/34/169, Art.1
- ECPE, §1, 12

### **Comment**

Ethical standards are the cornerstone of good governance. A national code of conduct or code of ethics helps to inform and guide the conduct of police officers. It also ensures that they share a common ethical basis for their

work. Codes of ethics provide a framework that encourages professional behaviour in all police tasks. They also encourage a sense of individual responsibility on the part of each and every person working for the police. This can be reinforced by an official declaration, made by every new officer upon his or her appointment (e.g. a police oath).

Both UN and regional codes of conduct provide a solid framework for all states willing to put in place a national code of police ethics and/or conduct. Codes of conduct may operate in parallel with national police laws or independently.

Monitoring bodies, regardless of the existence of a national code of ethics, will need to pay particular attention to the behaviour of staff: the way they perform their tasks is central to the general climate of police stations. The behaviour of the staff with regard to detainees will very much depend on the formal and informal instructions they receive. Staff members are influenced by the approach and behaviour of their own hierarchy, by statements made by politicians and the media, and by the general public's attitude towards detainees. The existence of a code of conduct can serve as useful guidance for police staff, especially if they believe that their hierarchy does not act in compliance with human rights standards. The way national codes of conduct are drafted (e.g. whether they are respectful towards human dignity or militaristic) can also serve as useful indicators regarding the institutional culture of the police.

***Tips for monitors***

- Is there a national code of conduct and/or ethics for the police? If so, are police staff aware of its existence? Do they use it as guidance?
- What is the content of the code? What language(s) is it in? How does this relate to the main language(s) spoken by the police in the country?
- If there is no such national code, are police staff aware of the existence of UN and regional codes of conduct?
- How is the chain of command organised within the police force/service?
- How is police performance measured against the code of conduct?

## 6.2. Recruitment

### Relevant standards

“Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions”.

BPUFF, §18

22. Police personnel, at any level of entry, shall be recruited on the basis of their personal qualifications and experience, which shall be appropriate for the objectives of the police.

23. Police personnel shall be able to demonstrate sound judgment, an open attitude, maturity, fairness, communication skills and, where appropriate, leadership and management skills. Moreover, they shall possess a good understanding of social, cultural and community issues.

24. Persons who have been convicted for serious crimes shall be disqualified from police work.

25. Recruitment procedures shall be based on objective and non-discriminatory grounds, following the necessary screening of candidates. In addition, the policy shall aim at recruiting men and women from various sections of society, including ethnic minority groups, with the overall objective of making police personnel reflect the society they serve.”

ECPE, §22-25

### *Comment*

Recruitment procedures represent a pivotal component of any police institution. It may be very instructive for monitors to look at recruitment procedures, as they will probably reflect the police’s internal organisational values. For instance, if a recruitment campaign conveys an image of the police where the use of force is highlighted, this may suggest that the institution sees itself as a force rather than as a service. Criteria for recruitment, such as minimal educational requirements, gender, age, height, and so forth may also reveal useful information about the institutional culture of the police. The composition of the police, including the presence of minorities within the police, should ideally be representative of the overall population.

Some monitoring bodies, such as the NPMs, are entitled to make comments and recommendations on the recruitment process, existing recruitment procedures and possible discrimination in the hiring of new staff.

***Tips for monitors***

- What are the procedures for recruitment and selection of police staff?
- What are the main criteria for recruitment? What are the grounds for disqualifying possible candidates?
- What is the ratio of men to women within the police?
- If relevant, what is the ratio of minority groups within the police?
- Does the police service/force as a whole reflect the country's demographic profile?
- What explicit and implicit messages are conveyed in police recruitment campaigns?

**6.3. Training**

**Relevant standards**

“(1) Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

(2) Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.”

**UNCAT, Art. 10**

“The States Parties shall take measures so that, in the training of police officers and other public officials responsible for the custody of persons temporarily or definitively deprived of their freedom, special emphasis shall be put on the prohibition of the use of torture in interrogation, detention, or arrest.”

**IACPPT, Art. 7(1)**



“The personnel of places of deprivation of liberty shall receive initial instruction and periodic specialized training, with an emphasis on the social nature of their work. Such instruction and training shall include, at least, education on human rights; on the rights, duties, and prohibitions in the exercise of their functions; and on national and international principles and rules regarding the use of force, firearms, and physical restraint. For these purposes, the Member States of the Organization of American States shall promote the creation and operation of specialized education and training programs with the participation and cooperation of social institutions and private enterprises.”

**BPBA, Principle 20(7)**

“28. General initial training should preferably be followed by in-service training at regular intervals, and specialist, management and leadership training, when it is required. [..]

30. Police training shall take full account of the need to challenge and combat racism and xenophobia.”

**ECPE, §28, 30**

### ***Juveniles***

“The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present Rules.”

**RPJDL, §85**

### **⇒ See also**

- BPUFF, §18
- RIG, Part II, §46
- ECPE, §26, 27, 29
- CPT 2<sup>nd</sup> General Report, CoE Doc. CPT/Inf (92) 3, §60-61

### ***Comment***

Qualified and well-trained police staff are the basis of a well-functioning police system; visiting mechanisms should seek information on the training provided and its suitability. Properly training for police officers represents a good guarantee against ill-treatment. A well-designed curriculum for police training should focus on ethical values and respect for human rights

throughout. This is especially important in operational training courses on

- how to conduct interrogations,
- the use of means of restraint, and
- technical skills (e.g. the use of force and firearms).

The curriculum should also include training on

- interpersonal communication,
- the prevention of disorder,
- non-violent conflict management, and
- stress management.

These skills may allow police officers to defuse situations that might otherwise turn violent.

Opportunities for continued training should be provided, without any discrimination, for all staff, regardless of their sex, age and rank. Participation in continued training and/or professional development may lead to promotion. If this is not the case, monitors should consider enquiring about the promotion system and whether it is based on length of service, 'results' or other criteria.

In addition to on-going training opportunities, police staff should have access to psychological support and debriefing, especially after violent incidents.

***Tips for monitors***

- What types of basic training do new recruits receive? How long does training last? What subject areas does it cover?
- What opportunities are there for on-going training? Are they taken up? Who has access to them (i.e. are there any restrictions by rank, gender, or minority ethnic background)?
- Do police staff receive specific training on how to deal with groups in situations of vulnerability, such as juveniles or mentally disabled persons?
- Does training integrate a gendered approach to policing?
- Does training cover complaints, inspection and monitoring (including external monitoring by visiting mechanisms)?

## 6.4. Uniform and identification

### Relevant standards

“14. The police and its personnel in uniform shall normally be easily recognisable. [...]”

45. Police personnel shall during intervention normally be in a position to give evidence of their police status and professional identity.”

ECPE, §14, 45

“The CPT wishes to make clear that it has strong misgivings regarding the practice observed in many countries of law enforcement officials or prison officers wearing masks or balaclavas when performing arrests, carrying out interrogations, or dealing with prison disturbances; this will clearly hamper the identification of potential suspects if and when allegations of ill-treatment arise. This practice should be strictly controlled and only used in exceptional cases which are duly justified; it will rarely, if ever, be justified in a prison context.”

CPT 14<sup>th</sup> General Report, §34

### Comment

Considering the considerable powers, and particularly the coercive powers, held by the police, it is important that police officers are easy to identify through their uniforms. To promote individual accountability towards the public, some police services/forces have introduced the practice displaying ID numbers on the chest.

In some cases, police may be in plain clothes; however, they should be in a position to show their police status through a badge or other official identification document. From a preventive perspective, monitors may wish to check the regulations and the practice regarding the use of plain clothes and the possible ways of identifying individual police officers.

The police should not hide their faces with masks when acting in an official capacity. There is a risk that ill-treatment will be inflicted with complete impunity if victims and other witnesses are not in a position to identify those potentially responsible for violations. The practice of wearing balaclavas should be strictly controlled, as recommended by the CPT (see the standards quoted above).

***Tips for monitors***

- What is the image conveyed through the uniforms used by the police?
- If asked, were police officers able to give evidence of their police status?
- Is there any regulation on masks or balaclavas that clearly describes the exceptional circumstances when their use is authorised?
- Are detainees able to identify those who carried out their arrest and interrogation?
- Were police personnel wearing balaclavas or any other piece of clothing that hid the face while engaged in arresting the detainee? Did they do so during any interrogation(s)?













# Monitoring Police Custody

## A practical guide

*“The police have specific powers, such as the lawful use of force, and the detainee is completely in the hands of the law enforcement agents. This imbalance of power creates a situation of risk, where abuse and torture might take place”.*

Foreword by Prof. Juan Méndez  
UN Special Rapporteur on Torture

Torture and other cruel, inhuman or degrading treatment or punishment most frequently occur in the early stages of the deprivation of liberty – when a person is arrested, detained and interrogated by the police. To prevent abuse, States increasingly allow for regular, unannounced visits to police stations by independent monitors. This manual is a response to a growing demand for practical guidance on methodology and follow-up of such visits. Several well-known experts in the field of policing and torture prevention contributed to this publication, making it an indispensable tool for any organisation or individual carrying out monitoring visits to police stations.



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