COMMUNITY INVOLVEMENT IN DENTENTION OVERSIGHT:
AN INTERNATIONAL PERSPECTIVE

YVONNE AFIA KRAMO
APRIL 2014
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Note of thanks

First and foremost, I wish to thank the Winston Churchill Memorial Trust and its partner, the Prison Reform Trust, for the generous funding which made this research project possible. I wish to thank the following people/organisations who gave their time and offered insight to assist my research:

The USA:

Correctional Association of New York. Special thanks to the following individuals: Scott Paltrowitz (Prison Visiting Project), Edward-Yemil Rosario (Prison Visiting Project), Jack Beck (Prison Visiting Project), Nurideen Khalil Islam (Prison Visiting Project), Tyrrell Muhammad (Prison Visiting Project), Mujahid Farid (Court Pens Monitoring Project/Soros Justice Fellow), Jaya Vasandani (Women in Prison), Angelo Pinto (Juvenile Justice Project).

John Maki (John Howard Association of Illinois); John Hargreaves (Pennsylvania Prison Society); Stephen Hart (National Religious Campaign Against Torture); Caitlin Gokey (Vera Institute of Justice).

South Africa:

Kristen Peterson (Judicial Inspectorate for Correctional Services); Lukas Muntingh (Civil Society Prison Reform Initiative); Hanif Loonats (Chairperson of the Western Cape Community Policing Forum); Gideon Morris (Civilian Oversight, Western Cape Department of Community Safety); Emily Keehn (Sonke Gender Justice Network); Nooshin Erfani-Ghadimi (Wits Justice Project); Robyn Leslie (Wits Justice Project).

Malawi:

Paralegal Advisory Service Institute – Clifford Msiska, Chimwemwe Ndalahoma, Alfred Munika, Paralegals: Margaret, Peter, Monica and Stephen.

Noel Kayira (Malawi Police Service); Eithne Lynch (Irish Rule of Law International).

Others:

Amanda Dissel; Paul McNally (Wits Justice Project); Pepsy A. Bahlekazi (ICCV); Paul English, Nikhil Roy (Penal Reform International); Becky Randel (Penal Reform International); Sasha Gear (Just Detention International), Sean Tait (APCOF), Mateenah Hunter (Open Society Foundation for South Africa), Angela Clay (AMIMB), Helen Boothman (AMIMB).
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'Torture is absolutely prohibited and it does not recognize any excuse because of states of emergency or any other excuse, not even any excuse based on some form of exceptionalism of the situation or of the nation that indulges in the practice of torture. The prohibition also extends to cruel, inhuman and degrading treatment or punishment.' Juan Méndez, United Nations Special Rapporteur on Torture. ¹

Introduction

This report chronicles the research conducted during my visit to three countries over a period of seven weeks researching how detention is independently monitored in countries that have not ratified the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT). For the past two years, I have volunteered as an Independent Custody Visitor in London. Independent Custody Visitors (ICVs) are volunteer members of the local community appointed to make sure the welfare of people detained in police stations is maintained. They call at police stations unannounced and write short reports about their visits. Their recommendations can require the police to make improvements for the welfare of those in custody.

Alongside other external oversight bodies such as HM Inspectorate of Prisons, HM Inspectorate of Constabulary and Independent Monitoring Boards (IMBs), ICVs form part of the UK’s National Preventive Mechanism (NPM) which was established to ensure that the UK met its obligations under the Optional Protocol to the Prevention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). OPCAT is an international human rights treaty designed to strengthen protection for people deprived of their liberty. The UK ratified OPCAT in December 2003 and designated its NPM in March 2009. The UK’s NPM is currently made up of eighteen visiting or inspecting bodies who visit places of detention such as prisons, police custody, immigration detention centres, children’s secure accommodation and mental health institutions. The NPM is coordinated by HM Inspectorate of Prisons (HMIP).

My experience as an ICV, as well as my academic and professional background in law, criminology and criminal justice, developed my interest in effective detention oversight. In recent years, the lack of robust detention oversight, particularly in countries which have not ratified OPCAT, has become a focal point on the issue of torture prevention. While the progress of OPCAT state parties is recorded by organisations such as the Association for the Prevention of Torture (APT) and the Subcommittee on Prevention of Torture (SPT), rather less attention is given to oversight mechanisms which exist in non-State parties. Civilian oversight is increasingly acknowledged as an effective system of preventing torture and abuse and ensuring that the rights of detainees are respected. It also has the dual benefit of bringing lay people into criminal justice institutions, thus opening the doors of what have previously been closed or hidden spaces.

With this in mind, I devised a project to explore the kind of oversight that exists in countries where the government is under no obligation to be OPCAT-compliant. The main objective was to study how civilian monitors work alongside the formal structures of the criminal justice system and government to provide effective prisons and police oversight.

My preliminary research had identified some potentially interesting projects in the United States, South Africa² and Malawi where elements of civilian oversight of detention were present in varying forms. Given the lack of up to date information on detention oversight in these countries, I was keen to observe these projects first-hand with a secondary objective of learning about particular detention oversight practices


² South Africa is yet to ratify OPCAT, though it did become a signatory on 20th September 2006.
which could be held up as examples of good practice.

Detention oversight in the United States of America

If we want prisoners to change, public attitudes toward prisoners and ex-prisoners must change.....A visit to most prisons will make you a zealot for prison reform.
Chief Justice Warren Burger

In 2012, approximately 6.94 million people were supervised by the U.S. adult correctional systems, which was the equivalent to about 1 in 35 U.S. adults (or 2.9 percent of the adult resident population), the lowest rate observed since 1997. Although the correctional population declined by 0.7% during 2012, this was the slowest rate of decline observed since 2009, when the population first decreased. According to data published by the International Centre for Prison Studies, the US has the world's highest incarceration rate at 707 per 100,000 of the national population. Mass incarceration has led to severe overcrowding, which has resulted in concerns that correctional bodies are failing to ensure safe and humane conditions of confinement. As noted by one former prison oversight advocate, imprisoning increasing numbers of people with fewer resources creates conditions that are ideal for misconduct on the part of prison officials and negotiating access to prisons remains the biggest challenge to effective prison oversight.

In 2013, the US government presented its Periodic Report to the United Nations Committee Against Torture concerning the implementation of its obligations under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In response to the specific question on steps taken to becoming a party to OPCAT, the US response was as follows:

'The United States continues to address and deal with any violations of the Convention primarily pursuant to operation of its own domestic legal system. As the United States explained in its previous treaty reports (including the CCD) and in response to questions in this submission, the U.S. legal system affords numerous opportunities for individuals to complain of abuse and to seek remedies for alleged violations. Additionally, numerous mechanisms are available to DOJ to ensure that the civil rights of persons in detention in the United States are protected, and various remedies and protections are available that individuals may seek in federal, state and administrative proceedings. These tools are utilized effectively throughout the U.S. justice system. For these reasons, the United States has not taken steps to become a party to the Optional Protocol.'

As the Association for the Prevention of Torture (APT) observed, this response shows a fundamental misunderstanding of torture prevention. OPCAT broke ground with human rights instruments because it emphasises prevention, rather than reaction to abuses. As explained by the APT:

'When a State ratifies the OPCAT, its main obligation is to set up a National Preventive Mechanism (NPM) to undertake regular visits to places of detention. For the first time, an international treaty focuses on national implementation and provides a national body with specific powers to prevent torture and ill-treatment.'

There have been advocacy efforts to get the US government to sign OPCAT, mainly by religious organisations and faith groups supported by the National Religious Campaign Against Torture but there is nothing to suggest there will be a change to the status quo any time soon.

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4 ICPS, United States of America: Overview, http://www.prisonstudies.org/country/united-states-america
6 http://www.apt.ch/en/what-is-the-opcat/
7 http://www.nrcat.org/about-us
At present, there are three independent prison oversight agencies in the United States: the Correctional Association of New York, the Pennsylvania Prison Society, and the John Howard Association of Illinois.

The Correctional Association of New York
http://www.correctionalassociation.org/

The Correctional Association of New York is an independent non-profit organization based in Harlem that advocates a more humane and effective criminal justice system and a more just and equitable society.

a) History

The Correctional Association of New York (henceforth “the CA”) was founded in 1840 and it is one of only two independent organizations in the US with legislative authority to visit prisons and report on conditions of confinement. The original manifestation of the CA, the Prison Association of New York, was spearheaded by prominent members of the New York elite. On 6th December 1844, a New York State Supreme Court justice, John W. Edmonds, led a call on the public to form a voluntary prison reform society. The motivations of the founding members are clear when one considers the dismal state of penology and prisoners’ rights at this time. It was not uncommon for a prison to house together debtors, persons awaiting trial, convicts with sentences of less than six months and witnesses waiting to give evidence at trial. The first meeting of the Association was held at the Apollo Rooms, 410 Broadway, in New York City and at the time of its formation its constitution embraced three fundamental purposes:

i. The amelioration of the condition of prisoners whether detained for trial, or finally convicted, or as witnesses;

ii. The improvement of prison discipline and the government of prisons; and

iii. The support and encouragement of reformed convicts after their discharge, by affording them the means of obtaining an honest livelihood, and sustaining them in their efforts at reform.

In 1845, the Association realised that it needed unfettered access to the major New York State prisons in order to execute its self-appointed mandate effectively. John Edmonds emphasised the importance of independent citizens visiting prisons and conducting direct interviews with prisoners with the following remarks:

'One of the most valuable features attending the inspections by the Association, and it is one which never attends the inspection of the public officers, is the personal examination of each prisoner...I have myself

stood, day after day for hours at a time, at the doors of the cells of the prisoners listening to the details of human depravity and human suffering, until the sickness of the heart was even more intolerable than the weariness of the body...’9

In the same year the Association applied to the legislature for an act of incorporation to examine and thoroughly inspect state and county prisons. After an initial stumbling block, the Association successfully lobbied for the act on 6th May 1846. Of significance was the ‘duty’ of the Association to visit, inspect, and examine all the prisons in the state and report annually to the legislature on their condition.

b) The CA today

Since acquiring its legislative mandate, the CA has been continuously monitoring conditions of detention in New York State prisons with a view to informing policymakers and the public on conditions of confinement that affect both inmates and corrections staff.10 It remains the only private organisation in New York with unrestricted access to prisons. In 2011, the CA was rated as one of twenty-one high-impact non-profits working in criminal justice in the US on a local/state level.11 It came third nationally in the field of local criminal justice. One of the CA’s central goals is to be an instrument for systemic change within the prisons by:

- Monitoring correctional policies and practices;
- Developing proposals to make conditions more humane;
- Educating the public;
- Pressing the prison administration, the state executive, legislative officials, and the public to take action.

To facilitate its mission, the CA has three main projects:

1) Prison Visiting Project (PVP);
2) Women in Prisons Project (WIPP); and
3) Juvenile Justice Project (JJP)

The CA also has a number of issues which form the basis of its advocacy work, including the following campaigns:

i. ‘Raise the Age’ – This campaign advocates a change to the law in New York State that requires 16 and 17-year olds charged with a crime to be prosecuted in the adult criminal justice system, regardless of their alleged crime (the only other state where these children are automatically charged as adults is North Carolina). These youths are detained in adult prisons and jails. In addition, New York State treats 13, 14 and 15-year olds accused of committing certain serious crimes as ‘juvenile offenders’ (J.O.s). J.O.s are prosecuted as adults unless their cases are transferred to the family court.

ii. Domestic Violence Survivors’ Justice Act – This campaign focuses on female survivors of domestic violence who end up in incarceration. In New York State, sentencing guidelines are very strict and judges’ hands are tied which has led to a call for a change in the legislation to give judges discretion to consider certain (mitigating) factors when sentencing in these cases.

iii. The release of ageing people in prisons – In New York State, the implementation of minimum/maximum sentences creates a presumption against release. Parole is effectively denied to

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individuals based on the initial crime committed, irrespective of their conduct in prison.

iv. Alternatives to isolated confinement – There is approximately 4,500 men, women and children in solitary confinement in New York State (the term ‘isolated’ is often used instead of ‘solitary’ because inmates can be ‘double-bunked’ – i.e. putting two prisoners in a cell that was designed for one). The campaign is calling for a fundamental change to responses to rule violations in prisons. Rather than adopting a punitive approach which amounts to isolation and torture, programmes should be developed to address the underlying causes of problematic behaviour.

Broadly speaking, the monitoring function of the CA (the responsibility of which falls to WIPP and PVP) includes:

i. Visiting State correctional facilities on a regular basis and issuing detailed reports of findings and recommendations to State corrections officials, legislators and the public;
ii. Preparing and distributing in-depth studies on critical corrections topics;
iii. Advocating reform at public hearings, local and national conferences, and in media discussions;
iv. Raising the profile of corrections-related issues by publishing research reports and fact sheets online, dissemination through the media, and participating in community forums and academic/professional conferences.

c) Prison Visiting Project

PVP is responsible for monitoring men’s prisons in New York State (NYS). There are approximately fifty-five facilities in total which hold men who are sentenced to terms of imprisonment for one year or more. Local and county jails (which usually hold pre-trial detainees) do not fall under the Project’s remit.

ci.) Prison visits

PVP visits approximately 6-10 prisons per year and writes up a monitoring report for each. The New York State Department of Corrections and Community Supervision (henceforth “DOCCS”) is responsible for the confinement of individuals under custody held at the state facilities. After a decision is made as to which prison to visit, PVP gives notice to DOCCS ahead of time, generally a month prior to the visit. The Project staff will also inform the facility and may have dialogue about when it will take place for scheduling purposes.

The criteria for selection includes a variety of factors; for example: the length of time since the previous visit; the different security levels (prisons are categorised as maximum, medium and minimum); mental health and medical levels; geographic parity; the programmes available at facilities (e.g. academic and vocational programmes). The decision may also be influenced by a systemic issue PVP is focusing on at the relevant time – such as substance abuse treatments – though attempts are made to combine such enquiries with general monitoring. For example, one of PVP’s main issues in 2013 was the use of solitary confinement in Special Housing Units (SHU)12. Specifically it looked at the Five Points Correctional Facility Residential Mental Health Unit (RHMTU) where people under the 'SHU Exclusion Law'13 are diverted from SHU to one of these units.

12 SHU units are segregated cellblocks in most maximum- and some medium-security prisons, where individuals must spend 23 hours per day in their cell, are offered one hour per day of recreation, and have meals delivered to their cells.
13 Maximum security facilities in New York State must have a Special Housing Unit; most mediums have SHUs too, though minimums do not. If a prisoner ‘misbehaves’ in a prison which does not have an SHU, then he will be transferred to a prison with a higher facility classification. The SHU Exclusion Law was passed in January 2008, requiring full implementation by July 2011. It provides for the diversion of disciplinary prisoners with serious mental illnesses to residential treatment programmes.
In addition, the Project may receive hundreds of letters from inmates each month requesting assistance or assistance. This is an additional source of information for PVP as it highlights some of the prison-specific and/or system-wide issues that may be relevant when the decision is being taken as to which facility to visit.

The visits are conducted by members of the CA’s Visiting Committee, led by team leaders, which consists of CA staff, interns and members of the CA board. It may also include anybody who has undergone training by PVP. Currently, the Committee also consists of some community members and PVP is starting to develop regional auxiliary committees to do visits. Any visitor must undergo a training process that covers general prison framework, prison visit process and responsibilities. New committee members usually receive a day's training, which may also be provided during conference calls. More extensive training is provided to interns who often stay with PVP for a fixed number of weeks and are often involved in post-visit data analysis.

Although it recognises the importance of community input, the current process of visiting is rigorous and requires training. Typically there are 7-12 people on the Visiting Committee on each visit. There will be a team leader (usually PVP staff) and everybody who goes on a visit must be part of the Visiting Committee, approved by the board. It is possible to have up to 12 visitors, but there can only be divided into two teams. The exception to this is when the visit will cover SHU or 'S-Block'14, because in those areas we’re only allowed to have 2 people so can break up into 3 groups.

Before each visit, PVP gathers information through a pre-visit questionnaire sent to the facility. The questionnaire is essentially a ten-page document which aims to obtain most of the factual information beforehand to avoid using visit time for this purpose. The information provided on the questionnaire may also be useful as it can inform the Committee on what it needs to look for on the visit. (e.g. in respect of unfilled vacancies, enquiring why they have not been filled). Upon receipt of the questionnaire, the Project staff looks through and identifies areas of concern/interest, or things in need of clarification. At this stage, an agenda is drawn up and sent to the facility. Notice is also sent to the union representatives of various unions whose members work in the facility, e.g. security staff union, programme staff, custodial union and time is scheduled to meet with and hear from staff about the concerns they may have. Notice is also sent to Inmate Liaison Committee, the elected representative body of prisoners from the different housing areas. Pre-visit information will also be obtained from DOCCS website and PVP will review material from previous visits as well as correspondence received from prisoners. This allows the Project to create a 'visit package', containing a series of guidelines and questions to ask which is a uniform resource for each visitor. The package will also contain sign up sheets (for prisoners willing to complete the post-visit survey), pre visit answers to pre-visit questionnaire, paper for notes, interview forms for individual visits.

Typically visits last two days, but they may be shorter (one day) or slightly longer (three days). The day starts at 8.30 and ends at 17.30. The Visiting Committee tries to go to every housing area and programme area. It will interview staff, talk to prisoners, explain their role and ask prisoners whether they would be willing to complete a survey. The Visiting Committee will visit every housing and program area at the facility (including academic, vocational, substance abuse treatment, and transitional services programs). Throughout the facility, the CA will gather as much information from staff and incarcerated persons, and will ask incarcerated persons if they would like to sign up to receive by mail a voluntary and confidential survey about conditions at the prison.

The process is the same for vocational programmes. The visitors will have an initial conversation with the programme supervisor, speak to the instructors and then try to sign up prisoners who express an interest in completing the survey. There may be a meeting with the Inmate Liaison Committee15 and the Inmate Grievance Resolution Committee16, the latter being a five member body consisting of two voting prisoners.

14 S-Blocks are segregated freestanding high-tech lockdown units where individuals are double celled
15 The ILC discusses and advises institutional officials on matters concerning the general welfare of the prison population. ILC representatives are selected by secret ballot by the prison population. Each housing unit is supposed to be represented, though SHU is not considered a housing unit and prisoners in SHU cannot serve on the ILC. The Superintendent can exclude prisoners with 'disciplinary problems' from serving on the ILC.
16 A grievance is a complaint about the substance or application of any written or unwritten policy, regulation,
two voting members of staff, and a non-voting chairperson (who can be a prisoner, staff or a volunteer).

Awareness of the work of the CA varies among the prisons. Many prisoners have never heard of PVP, whereas others are aware of the Project's work because they've written letters, or have been in a facility where a previous visit had taken place. The level of engagement also depends on the culture of facility. For example, at one facility the inmates (young people) would not even look at visitors because of the high levels of intimidation. On the other side of the spectrum, some people who may not have long to serve may refuse to participate because they have concerns about 'rocking the boat' so close to release.

The visitors introduce themselves during visits, though the way in which this is done depends on the particular area of the prison. In a housing area, dorm or classroom (rather than cell) – one visitor will go in and make an announcement while the others will start speaking to the teacher.

In most maximum and in some mediums, the majority of prisoners are in cells which requires visitors to go cell by cell to introduce themselves when they are in the housing areas. The situation is similar in SHU where visits are difficult because the vast majority of units have sealed doors, rather than bars, so communication is sometimes more difficult.

Throughout the visit, note-taking is essential. The Visiting Committee cannot take any electronic devices inside the prison, so if the information is not written down, it is lost. Visitors take copies of the post-visit survey in case inmates want to see what it looks like, but they do not go through it during the visit. There are also particular forms for specific units, but these usually consist of one page. Less experienced visitors may rely heavily on the surveys to guide discussions, but more experienced visitors will seek out more information. However, individual survey forms can be useful in order to get a better sense of a particular area, a flavour which can be lost from the general surveys. In the medical areas, it is usually the staff who are interviewed; more extensive interviews may be done by senior PVP staff. The Committee tends to spend a lot of time observing Alcohol and Substance Abuse Treatment (ASAT) programmes and there are forms to assist visitors with indicators to looks out for.

At the end of the visit, the Committee will take about 15 minutes to talk among itself. It will then have a short de-brief with the superintendent and executive committee. It is only possible to make preliminary points at this stage since most of the information usually comes from the surveys that are returned by the prisoners. However, if during the visit serious matters have been consistently observed, then the Committee will report these. The Committee ensures that it reports back on positive and negative observations, though it will not usually discuss too much until it has received and analysed more extensive data. In turn the Committee will listen to anything the facility says in response, before the visit is brought to an end.

\textit{cii.) Post-visit survey}

PVP only sends surveys to prisoners who agree as giving individuals the choice shows respect for their autonomy and also recognises the risks that they face in providing such assistance. The survey is a fifteen page document which asks prisoners to comment on and rate various services available at their facility. It also asks for comments, \textit{inter alia}, on inmate-staff relations; disciplinary system; grievances and complaints system; gangs and drug use; inmate-inmate relations; and parole. In PVP's experience, participation levels between prisoners vary between facilities; however, this personal interaction makes a difference to response rates, both in terms of people agreeing to receive and actually completing and returning. The surveys are sent out within a week for distribution in individual envelopes, accompanied by a personalised letter with pre-paid postage.

Before writing its report, PVP has to wait for surveys to come back, the response rate can be immediate or it can take a year. Typically the first wave of surveys is received shortly after the visit, the second wave a month, or a few weeks after. Once received, the data is entered and analysed. Another post-visit function is to procedure or rule of [DOCCS] or any of its programme units, or the lack of a policy, regulation, procedure, or rule. It cannot be used to submit a grievance on behalf of a 'class' of prisoners; such cases should be referred to the ILC.
follow up on issues that came to light during the visit, which may require a freedom of information request for additional information.

ciii.) **Prison visits reports**

The reports are used as a tool to inform their advocacy; a lot of PVP’s time is spent doing public education and outreach. Traditionally the reports were intended for prison authorities, correctional departments and law-makers, but in recent times there has been a communication shift towards making the reports accessible to a wider audience through external audience.

As indicated above, the report includes information from a variety of sources: pre-visit questionnaire and post-visit materials request; system-wide data from DOCCS’ annual report that has basic figures about prison numbers, ethnic monitoring etc.; freedom of information request to DOCCS for system wide data; freedom of info requests to OMH; surveys. Each section of the report will look at the different sources of information and try to paint an accurate picture of what happens at the facility. The length of time it takes to write a report varies, but takes on average a year. PVP also uses the information gathered during visits for system-wide reports, testimony, and advocacy on a variety of issues. For example, in Autumn 2012, PVP learnt that there was going to be testimony on educational and vocational programmes in prison. PVP had the data and could combine that information with some of the experiences of formerly incarcerated people who work with PVP. This underscores the Project's belief that it is can have a more beneficial impact when it is able to provide decision makers with timely information.

After PVP has concluded a visit and written up the report, it is then submitted to DOCCS for consideration, as well as the legislature and the public. There is nothing specific in legislation which requires DOCCS to respond to PVP's recommendations. Nonetheless, PVP's primary goal is to effect change through advocacy, which includes trying to influence the agency to change its practices - having a dialogue with the agency and the facilities (prisons) is important in achieving this.

PVP seeks to ensure that its monitoring reports are as unbiased and accurate as possible. It looks for information from a variety of sources: the facility itself, DOCCS, the staff, prisoners. It takes all of these viewpoints to try to paint an accurate picture of the prison in question.

civ.) **Effectiveness of the monitoring function**

In respect of its monitoring function, one way in which PVP monitors its success is the way in which its work assists people who are directly affected by the prison system – current prisoners, former prisoners, their family members and loved ones. It is hoped that the work of PVP, and the CA as a whole, is improving lives. It is, however, difficult to measure tangible success in all circumstances. Legislative successes which result in policy change seem to resonate with prisoners who wonder what impact the work of PVP can have on their lives. Furthermore, the benchmarks that are put in place following donations from foundations and individuals are another way in which PVP can monitor its own work and assess its performance.

PVP continually updates and modifies the different monitoring instruments it uses, based on its own experience and external factors. Integral to PVP's work is comparing the different facilities within the State so, in one sense, individual facilities become standards among the populace. If certain facilities are doing things well, other facilities should learn from them.

As with many non-profit organizations, PVP faces many challenges. Funding is a critical issue and additional resources would be extremely beneficial to the Project’s work. At present there is effectively three permanent staff and two part-time staff who oversee the monitoring of the conditions of detention of more than 50,000 men imprisoned across the facilities. In terms of negotiating access to prisons, there are also clear limitations. Unlike the detention monitoring systems of many OPCAT State Parties, PVP cannot make unannounced
visits, something which has serious implications for its work. Visitors cannot give or take anything (e.g. business cards) from prisoners. It would be much easier (and more cost effective) if the Visiting Committee could hand out surveys and collect them during visits, rather than posting them out to prisoners. Confidential communications during visits are not guaranteed, as there is no obligation on the prison staff to leave visitors alone with prisoners, nor is there a ‘within sight, out of hearing’ policy. This underscores the importance of the surveys as they are confidential.

**cv.) Other functions**

Monitoring is just one of PVP's functions – it also builds coalitions, conducts public outreach and education and drives community mobilisation, all aimed at challenging current prison policies and practices within the State. It seeks to give a voice to, and amplify the concerns of, prisoners by providing them with an opportunity to share their observations. In this respect, the CA's work with the New York Campaign for Alternatives to Isolated Confinement (CAIC) is one example. The goal of CAIC is sweeping reform of New York’s use of solitary confinement and other forms of extreme isolation in state prisons and local jails. Each day in New York State, about 4,500 people—hundreds of whom are children under the age of 21—are held in SHUs (not including keeplock, administrative segregation, or protective custody.) This is nearly 8% of all people in prison. More than 13,000 SHU sentences are imposed every year. This over-reliance on the SHU is at a rate 46% higher than in 2003-2005, and 37% higher than the national average. As a member of CAIC, the CA through PVP helps to bring together advocates, formerly incarcerated persons, family members of currently incarcerated people, concerned community members, lawyers, and individuals in the human rights, health, and faith communities throughout New York State.

Likely to its work with CAIC, the public education that PVP does tends to be on system-wide issues, such as access to quality medical and mental health services, release on parole, violence and abuse, and substance abuse treatment. This can take a variety of forms, such as press releases, participation on panel discussions, and workshops. PVP staff have been invited to attend public speaking forums and have also appeared on radio discussions. Other activities include holding vigils and attending rallies. PVP works with the media and has developed its own communication strategy to publicise the work that it does. Once a report is finalised, it is published on the website and sometimes sent to different legislators

**d) Court Pens Monitoring**

Related to the work of PVP is the CA’s role in monitoring conditions in New York City’s court pen holding areas which hold individuals detained after arrest and prior to arraignment (pre-arraignment pens), or those brought from jail to attend a court proceeding (precinct pens). This issue came to light in 1989 when a CA board member noted that conditions in court pens were not being adequately addressed. Subsequently, a review of court pens was advocated, which led to an agreement with the New York City Police Department which allowed the CA to monitor the facilities.

In 1989, the CA began to pay regular visits to court pens, noting that many of the conditions that the detainees were forced to undergo were in violation of basic standards of human rights. In 1993, the CA produced a report entitled *Crisis in the Court Pens*, which depicted these problems in detail and offered specific recommendations for reforms.

Court pens have no amenities, nor do they have any sleeping arrangements for detainees - no mattresses or bedding (though female detainees may get mats to sleep on). Sanitation is poor and the threat of violence is often high. Although the relevant period of detention is 24 hours, in practice this limit is often exceeded by

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17 More information about CAIC can be found via [http://nycaic.org/](http://nycaic.org/)

18 Detainees in precinct pens and detainees in pre-arraignment pens are kept separate by law
days. In 2011, nearly half of prisoners awaiting arraignment at the start of each of six days within a week period had been held longer than 24 hours without seeing a judge.\(^1\)

Although there are juvenile pens (which the CA does not monitor), 16 year old detainees are treated as adults. The CA monitors both female and male pre-arraignment pens; initially it also monitored precinct pens, but a lack of resources imposed restrictions.

Court pens monitors undergo a week's training session before a visit, focussing on the things to look for as well as the common pitfalls. A monitoring form is developed for audit purposes, though no post-visit surveys are sent out. Monitors comprise of community volunteers and local residents who are connected to the CA in some way, though lay visitors as monitors is not precluded. Arrangements are made with the staff of the relevant police department or with DOCCS months beforehand. Typically, there are 7 or 8 people on a visit which allows for a more comprehensive audit. The duration of a visit is, on average, two hours. Unlike PVP, there is no legislative mandate to monitor court pens. In the period 2011 to January 2012, one visit was made to each of the pre-arraignment pens in each of the city's five boroughs.

As noted above, the most recent CA report on court pens monitoring was published in 2003. Instead of writing a major report after a period of monitoring, the CA now sends a 2-3 page letter to correction officials with its conclusions.

e) Women in Prison Project (WIPP)

\(\text{ei.) Overview}\)

WIPP was created in 1991, amid a real recognition that the female population in prisons was growing rapidly at a disproportionate rate. There are approximately 2,300 women in State prisons and 3,600 women in jails (though WIPP does not monitor conditions in jails). There are five all-women prisons in New York State. There are two co-ed prisons, which have separate living conditions and specialised programmes and shock incarceration\(^2\). There is only one maximum security facility for women, Bedford Hills.

Two prisons closed in May 2013; one was a Bayview, a medium security facility located in New York City and the other was a Beacon, a minimum security prison in Hudson Valley. As a result of Beacon's closure, there are now no longer any minimum facilities for women. WIPP has expressed concerns over this state of affairs because Beacon had less rigid conditions which made for a more humane environment, facilitating a smooth re-entry to the community. It also had a community work group programme and prisoners had the ability to earn merit. Also, it was approximately 90 minutes from NYC, something which was beneficial for those who wished to visit prisoners.

Similarly, WIPP also had concerns over Bayview's closure, particularly as it was the only women's prison located in the city (specifically in the Chelsea area) and it had a work release programme. As a result of WIPP's advocacy, a separate unit with work release beds was created in July 2013 in Edgecombe prison, a men's minimum in Manhattan. Although the preference was for beds to have been made available in the community, it is hoped that this will go some way to fill the gap.

There is no requirement for the Executive to consult with civil society when the Governor makes a proposal, though the legislature has a duty to respond. This has worked well for WIPP in the past as legislators have reached out to the CA.


\(^2\) Since 1987, New York State's Shock Incarceration programme - often known as correctional boot camp – was designed to recondition prisoners physically and mentally through a mixture of military-style training, group counselling, alcohol and substance-abuse treatment, education and vocational-skills workshops. Upon release, a period of intense supervision should follow which includes frequent check-ins with parole officers and some assistance in job hunting and continued substance-abuse counselling.
As WIPP has fewer prisons to monitor than PVP, it is able to dedicate more time to individual facilities. The Project also tends to do more one-on-one interview (although it does send out surveys) as, in its experience, women tend to respond more positively to this method of communication. It is worth noting that 90% of women in the State's prisons are survivors of trauma and/or abuse.

WIPP tries to visit each prison in the State at least once a year and visits typically last for 2-3 days. On some occasions WIPP does prison-specific reports, other times it writes wider systemic reports where the monitoring of a particular issue has been incorporated into a general visit. An example of a report of a wider systemic issue in women's prisons is one that WIPP completed in 2008 on reproductive health. Written with the intention of proposing draft legislation on this issue, the report was based on multiple visits to prisons. The data was obtained from interviews with prisoners, conversations with staff, a general condition survey, a reproductive health survey, a pregnancy experience survey and a specific survey on HIV and Hepatitis C. WIPP brought doctors, nurses, social workers and gynaecologists to assist on the visit. If a woman with needs was identified, then a meeting (or 'release') would be arranged and a focussed interview with the woman would take place the following day.

The primary issue for the female prisoners WIPP visits is the lack of adequate healthcare. It is worth noting that apart from Planned Parentcare, DOCCS is the largest provider of reproductive healthcare in New York State. Female prisoners also have concerns that a specific gender lens is not being implemented in female prisons. For example, another common complaint that WIPP hears is the lack of sanitary towels and tissues available in prisons. These issues around the quality of care attest to the need for a stronger emphasis on preserving the human dignity of female prisoners.

In line with its objectives, WIPP set up the Coalition for Women Prisoners in 1994. Membership of the Coalition includes advocates, academics, lawyers, formerly imprisoned men and women, and anyone else concerned with mass incarceration and conditions. There are currently 1,700 members and over 100 organisations based in New York State. The Coalition comprises three committees:

1) **Violence Against Women Committee** – work focuses on advocacy around the Domestic Violence Survivors Justice Act, a Bill which allows judges to sentence domestic violence (DV) survivors convicted of crimes directly related to the abuse they suffered to shorter prison terms and, in some cases, to community-based alternative-to-incarceration programs instead of prison. It also provides DV survivors currently in prison the opportunity to apply to the courts for re-sentencing, thereby granting much-deserved relief for incarcerated survivors who pose no threat to public safety.

2) **Incarcerated Mothers Committee** – work looks at the implementation of the 2009 Bill that bans the shackling of women prisoners giving birth. The law covers labour (outright ban), delivery and recovery (outright ban). At other periods, for example during transportation, women are not meant to be shackled but can be shackled to an immovable object if posing a threat. However, in some cases women are still being shackled even when they are not invoking this exception. During prison visits WIPP has found that women are still being shackled in the aftermath of giving birth. As such, the Coalition hopes to draft a new law on shackling calling for a total ban on shackling as it is still legal to shackle a pregnant prisoner even when she is going to the hospital. For example, a woman who was four-and-a-half months pregnant was shackled for ten hours to another woman during transportation. The bus she was on refused to stop to allow her to relieve herself, so she had to use the coach toilet with the assistance of the other woman to whom she was shackled.

3) **Re-entry Committee** – has the role of making sure that the voices of women are not lost in the re-entry debate. Housing is a big issue and the Coalition works with other organisations to eliminate

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21 DOH has oversight in respect of HIV and Hep C so WIPP's focus on these issues provides a good entry point for advocacy.
barriers that women face when they return home. It has produced 'My Sister's Keeper'\(^{22}\), a resource guide and motivational book of personal stories from women in New York State who have returned home after being incarcerated which has been sent to every woman in prison since 2007.

Pennsylvania Prison Society
http://www.prisonssociety.org/

\[\text{The Pennsylvania Prison Society} \quad \text{since 1787}\]

\(a\) \text{ Overview}\)

The Pennsylvania Prison Society (“the Society”) was founded in 1787 and has since its inception advocated a humane, just and restorative correctional system, and promoted a rational approach to criminal justice issues\(^{23}\). Members of the Society, known as Official Visitors, monitor prison conditions and visit prisoners to assist them with a variety of issues. By virtue of an Act of the Pennsylvania General Assembly\(^{24}\), Official Visitors are guaranteed access to all Pennsylvania correctional facilities on any and every day between the hours of 9 a.m. and 5 p.m. This legislative mandate, unique in the United States, ensures citizen involvement in the oversight of the prison system and for inmate advocacy. The Society has several thousand members; although not every member has to be a Visitor, every Visitor must be a member.

\(b\) \text{ Official Visitors}\)

There are twenty-six State prisons\(^{25}\) and the Society supervises around three hundred Visitors who complete approximately three thousand visits each year. Visits are initiated by contact from the family of prisoners and direct contact from inmates themselves. Approximately 10% of visits are made following contact from families; 40% after receiving letters from inmates; and 10% following information received from correctional personnel. Family members can contact the Society on a freephone number, while prisoners can write\(^{26}\). The law permits the Visitors access to the individual inmate – not to the prison itself.

The Society uses a number of methods to generate public interest in becoming a Visitor. It advertises on volunteering websites, takes recommendations from the families of inmates, and makes 10-15 public speeches on the programme each year. Each visitor is subjected to a background check and is then given an opportunity to shadow a current Visitor. There is no set training programme and skills are learnt ‘on the job’. New Visitors are encouraged to attend the Society’s monthly public board meetings.

The Visitors are organised in forty chapters. Each chapter has a ‘convenor’ who receives all requests for a visit and appoints Visitors. In general, visits are usually done within two weeks of the Visitor being appointed. Some Visitors request to make more frequent visits, whereas others form a bond with a particular

\(^{22}\) Available for download at http://www.correctionalassociation.org/wp-content/uploads/2012/05/MySistersKeeper_Re-EntryGuide.pdf

\(^{23}\) For more on the Society’s history, see further: http://media.wix.com/ugd/4c2da0_41bed342ea390827839e1f6a4b3dca97.pdf

\(^{24}\) Title 61 Pa.C.S.A. Prisons and Parole, Subchapter B. § 3513

\(^{25}\) State Correctional Institution, Greenburg was closed in 2013

\(^{26}\) Prisoners in Pennsylvania can receive email but cannot send.
inmate so may seek to visit tailor their visits to that individual.

In relation to the composition of the Visitors, 75% are retired persons. The Society does have a student chapter, the members of which also perform visits. In respect of gender, Visitors are fairly balanced; however, 50% of inmates in Pennsylvania are Black, whereas 25%-30% of Visitors are Black. As such, the Society does try to reach out to recruit Visitors from ethnic minority backgrounds. Former prisoners are eligible to become Visitors if at least seven years have passed since they left State prison.

The Society tries to encourage visiting when visit rooms are open (allowing a five hour visit) so as to keep costs down for the prison. Visitors are asked to track the information they obtain during a visit, though this is kept to a brief note. If the Visitor is in need of advice or support, they are able to contact the programme Director. If any advocacy is to be done on behalf of a prisoner, the Visitor would need to obtain their consent beforehand. If an inmate does not want a particular concern raised, the Visitor must respect confidentiality.

c) Advocacy/Support

The Society meets quarterly with the State hierarchy to report back on its findings and considers it has a good relationship with the correctional facilities. The Society has a part-time lobbyist who examines potential areas of legislative reform. Advocacy efforts have in recent times included: banning the shackling of female prisoners; the ‘Ban the Box’ campaign which seeks to remove unfair barriers to the employment of people with criminal convictions; encouraging legislative changes in the areas of early parole for good behaviour; repealing mandatory minimum sentences; establishing a torture/isolation task force.

The Society is involved in a wide range of program areas, which provide services for prisoners, ex-prisoners, and their families. For example, its 'Family Transportation Services Program' offers affordable bus services from Philadelphia to all Pennsylvania state correctional institutions (except SCIs Camp Hill, Chester, and Graterford). Mindful that round trips can often take around 24 hours to complete (including the time needed for the visit itself), the Society lobbies against the practice of sending prisoners to facilities which are far away from their families.

It also publishes two magazines; one for prisoners (published bi-monthly) and one for the public (published quarterly). The magazine for prisoners is approximately 90 pages in length and covers: pending legislation; prisoners sharing experiences of legal issues (the lengthiest section at 84 pages); prisoners’ experiences more generally; post-release transition advice; a message from the Society’s Executive Director. The magazine for the public is not as lengthy (20 pages) and contains a 'Correctional Forum' which discusses volunteer activities, state activities and staff programmes.

d) Challenges

Similar to other non-profit organisations advocating prison reform, one of the main challenges the Society faces is limited resources, both human and financial. More Visitors are needed, particularly for prisons located in rural areas. The Society does not receive state funding, but has a contract with the Department of Corrections which funds the family transportation programme. It receives United Way funding, but the majority of its income derives from its membership. The Society also applies for grants to support its other projects.

The Official Visitors programme does not have a large staff; just an administrative assistant, who is sometimes supported by two or three interns. The interns write letters to prisoners, but do not go on visits (though many interns actually become Visitors after completing their internship).

27 For a round fare of $40
28 United Way is a non-profit organization that works with its local offices throughout the country in a coalition of charitable organizations to pool efforts in fundraising and support. http://www.unitedway.org/
Although the law is comprehensive in respect of access to inmates, the Society considers it would be beneficial to have wider access to prisons. Although some superintendents may allow this, the line staff in facilities may not be as welcoming.

Given that the programme facilitates direct citizen participation in the oversight process, there are also concerns that particular interest organisations or religious groups may use the Society as a way of furthering their own interests.

The John Howard Association of Illinois
http://www.thejha.org/

a) Overview

Along with the CA and the Pennsylvania Prison Society, the John Howard Association of Illinois (JHA) is one of the oldest prison reform groups in the US. Founded in 1901, it was initially known as the 'Central Howard Association'. It began with it was a re-entry organisation in that it provided services to people coming out of jails and prison (before the government had control of these functions). It also advocated better prison conditions and reforms, such as paying inmates for labour. JHA advocated government take over probation and parole – gradually this happened. By the 1920s, the Central Howard Association transitioned into a prison watchdog. From the 1940s/50s, it changed its name to JHA. Consulted across the country but had a base of operations in Illinois – focusing on monitoring and conditions in confinement in the Illinois prison system. Many Illinois prisons that the JHA has campaigned to close since its inception are still open today; two from the 19th century (Menard and Pontiac) and several from the 20th century.

b) Role/Activities

The JHA’s Prison Monitoring Project conducts regular monitoring visits to the Department of Corrections' (DOCS) adult and juvenile facilities. The JHA is unique in the following ways: first, it is the only project which uses ordinary citizen volunteers to monitor prisons; secondly its arrangement with the DOCS is relationship-based in that it has no mandate to go into facilities. In respect of the latter feature, the monitoring function of the JHA is almost similar to a convention within the UK constitutional framework – it is now ‘part of the architecture’ in respect of prison oversight in Illinois. Although the JHA has a lot of access, it has to perform 'a delicate dance' in order to maintain a good relationship with correctional authorities. While in theory the JHA could be denied access to correctional facilities, given its history and status, any such action could create problems for the correctional authorities and it the JHA's view that it would be able to obtain a mandate to preserve its position should the need arise. JHA writes a report after each visit. Once completed, it is sent back to prison to fact check, but the prison's response will not cause JHA to change their tone.

As part of its mission, the JHA is not just a prison watchdog – it is also a civic group. It is of the firm belief that the public have the right to know what is happening in prisons. The value of bringing in people who do
not work in corrections is important because prisons become familiar really quickly. For people who don't see prisons every day, the human reaction to incarceration is very important.

The JHA has always had a small staff as it is the volunteers who have been at the core of its work. However, the organisation has been in a growth phase over the past few years. It now has a prison monitoring project (there is one dedicated staff member who guides the visits and writes the report); a juvenile justice person; and a research and policy person (looks at adult transfer cases where juveniles are being tried as adults because of the severity of the offence). It also has a prison response organiser who responds to letters and calls from prisoners and families (the position is currently held by a formerly incarcerated person who brings a lot of ‘know how’ to the role). For the most part the response organiser explains the prison process or refers prisoners or their families to certain resources. The project is also a good source of information for the prison monitoring project. Finally, there is the recidivism reduction project, which is essentially a parole monitoring project. It monitors parole and advocates more effective policies for supervision. The project also works with parolees to help build capacity to supervise; gathers information on the parole system and; looks at improving the ways in which the relevant agencies can communicate. The JHA hopes that its work in this area may potentially create a resource guide for the Prison Review Board (the only state organisation that looks at this issue).

The JHA does not monitor police lock ups. Cook County jail is largest single facility in the country – it's in Chicago. For many years, JHA was a court-appointed monitor of Cook County jail in Chicago, the largest single facility in the country; however, it no longer has this function. There are no private prisons in Illinois, though a lot of operations in the facilities (e.g. healthcare) are privatised. There are some federal jails in the state, but the JHA does not monitor these. There is no other agency in Illinois that does any monitoring work; the state does not have an Inspector General or an Ombudsman.

The JHA does not currently receive any state funding. It is in receipt of a small endowment of $10,000 a year, but is otherwise reliant on grant money from foundations or other organisations.

JHA enjoys a good relationship with the media, which is quite good in Chicago. Reporters love prison stories (even if though their editors might not) because they think prisons are fascinating and are often surprised about the things they can write about. The challenge for JHA is getting them to write about prisons in ways which do not drive bad policy. Social media is a benefit as it allows JHA to drive its own coverage.

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c) Visits

There are six juvenile facilities and approximately twenty-six adult facilities. The juvenile and adult visiting programmes run parallel to each other, though there are some differences which are described below.

Juvenile facilities:

Visits to the juvenile facilities take place each year, at least on two occasions. JHA tends to write a report on each facility each year, though this practice may change in the future over fears that the reports may become too repetitive. Reflective of the relatively recent ‘juvenile justice revolution’ in across the US, the Illinois Department of Juvenile Justice (DJJ) was separated from DOCS in 2006 because it was thought that DOCS was treating juveniles as adults. Much was also done to reduce the size of the juvenile system. In 2006, Illinois had a juvenile prison population of 1600; today the figure stands at about 900. This has been the result of a lot of diversion work and prevention; Illinois has been one of the leaders in the country in this respect. However, not all correctional staff were on board with the separation and there is a tension between administration and correctional staff that has never healed. As such, the policies of a progressive administration (which generally collaborates well with JHA) may not be supported by the staff on the ground. DJJ is a much smaller than DOCS and in JHA's experience it is an easier agency to work with.

Before each visit, the facility is sent a very comprehensive questionnaire which asks questions about population levels, programming, education, medical etc. Visitors will also refer to any communications
received from inmates. However, as juvenile populations are more transient, they are more unlikely to make the same level of complaints as adults. In JHA's experience, adult inmates are much more litigious while juveniles are quiet. This often proves to be a challenge in assisting juveniles, particularly as their families may not be in a position to advocate on their behalf (e.g. for economic reasons). JHA has observed that there is still a lot of stigma and shame surrounding imprisonment which creates further obstacles in respect of advocacy.

The visits themselves typically last for a full day. It commences with a briefing from the superintendent, after which the visitors can go where they want in the facility though they are escorted by staff. They may observe programmes, talk and eat lunch with the inmates; essentially do their best to get a tangible feel of the organisation. The visitors observe conditions and take notes. As the facility has had advance warning, there is a definite impression that there has been a 'clean up' ahead of the visit. Nevertheless, visitors still consider they have good access. Some facilities are really transparent, while others not so much; it depends on the leadership. Securing confidential interviews with juveniles has been a challenge for JHA because the administration has resisted this for 'confidentiality' reasons. The post-visit reports are supposed to be a snapshot of the facilities and generally include findings and recommendations. JHA also writes a systemic report on the whole juvenile system.

Adult facilities:

The visits JHA makes to the adult facilities are much more informed by the communications they receive. JHA can receive privileged mail from DJJ and DOCS and the adults inmates make better use of this system than juveniles as they have a better idea of what JHA does. After a brief introduction and explanation of JHA’s role (if necessary), the volunteers will ask open-ended questions or engage in conversation with the inmates. Although JHA developed a questionnaire which be passed out prior to the visit, staffing issues have meant that this has not been implemented. If JHA had a volunteer co-ordinator, this would be easier to facilitate. One of the goals for this year is to develop a worksheet for volunteers. Although some volunteers bring particular expertise to the role, this is not always the case so it is hoped a guide would assist less experienced volunteers.

The facilities are typically given advance notice of 2-3 months prior to the visits. The same type of pre-visit questionnaire used for visits to juvenile facilities is sent out, but may also contain other information requests based on what JHA has received from inmate communication). The visits also follow a similar process; the warden gives a briefing at the start and then the visitors go around the facility. The challenge with an adult facility is that it is a very big operation and, as such, is a more complicated operation. A visit to the smaller prisons can reveal quite a bit of information, but a day at the larger facilities is not really sufficient, thought the volunteers do their best to get what information they can. From JHA's perspective, it would be ideal to do a 2,3,4,5 day visit, but again staffing issues prevent this. Even from DOCS side, such longer visits would be difficult to arrange logistically. Amount of advance notice depends – typically 2/3 months in JHA can do confidential interviews with adult inmates (usually somebody they have receive communication from) without informing DOCS beforehand. During the visit, the volunteers will also speak to staff and sometimes receive calls from them after a visit.

Although interaction with staff can vary, visitors do meet some staff who see JHA as an ally – on the understanding that JHA can say things that the staff can't. As observed by JHA's executive director:

‘One of the things I really love about this work...these places are horribly screwed up, but you always find – in terms of staff – in every facility, there are always people there who are great, who get the job. They want to do it right. They realise the limitations and they want help. So they see John Howard as an ally’.

Corrections staff understand how JHA can be useful and from the organisation’s perspective it is nice to be used in this way. Agencies are often caught up in the politics of Illinois Governor's office where the message is everything is working, but the staff see something different.

29 JHA tries to bring in people with a relevant background to do visits, such as psychology, law or medicine.
\textbf{d) Visitors}

The same volunteers go to adult and juvenile facilities, though a smaller proportion are prepared to go to juvenile facilities. Roughly 7/8 volunteers (plus a member of the JHA team) per visit – no set number, but rarely exceed this. In terms of scheduling visits, JHA sends out the visiting schedule to volunteers who in turn indicate which visits they would like to attend. JHA has a lot of discretion when it comes to arranging visits and it makes the volunteers aware of this. Although the staff try to give people a chance to go on visits, it makes it clear that there are limited opportunities.

Volunteers can either meet at the facility or travel together. Many prisons are down state in Illinois so volunteers may have to car pool or stay in a hotel. Volunteers do not receive any stipend.

In recent years JHA has not done a recruitment drive and it is usually prospective volunteers who make the initial contact. However, JHA is looking at recruitment in order to attract certain types of volunteers - e.g. recruitment at medical schools etc. JHA's executive director gives talks at a lot of places and mentions visits, so people follow up after this. At the moment the problem is that they have too many volunteers - about 200 volunteers for approximately 20 visits a year. Obviously not all volunteers can go on visits so JHA is also trying to find other opportunities for its volunteer base.

Often the prison visits are a two day commitment, mid-week, can be exhausting – asking a lot from people. Although JHA has an orientation process for new volunteers it acknowledges that more training would be helpful; it's very much 'learning by doing'. Volunteers tend to be older, retired people. The strongest volunteers are those who have the following characteristics: unflappable, good listeners, not easily intimidated, able to elicit relevant information, not too familiar but know what to look for, follow directions well, have different experiences that they can bring to bear (e.g. education and medicine - doctor useful when visiting the infirmary, clinicians are useful for visits to juvenile facilities). Ideally JHA would like volunteers with this kind of professional background, would like to have set spaces on visits for particular expertise – psychology, law, medicine. The Prison Monitoring Project receives a lot of interest from students (though not many law students which is surprising given that JHA is housed within Northwestern law school) and social workers (who are very good) with a policy focus. In terms of students, the best tend to be the ones who are studying social work – someone with a social work/policy background is really suited to this role because they are able to speak with people and understand systems.

JHA gets the sense that the Prison Monitoring Project attracts interest because it offers volunteers an opportunity to become involved in the democratic experience of seeing prisons and the knowledge that comes with that, namely helping people and assisting with oversight. There have been times when JHA has sensed that people want to volunteer for 'touristy' reasons, but will try not to invite them to do visits. Volunteers get excited when their observation has been mentioned in the report as it indicates that they are involved in driving reform both inside prisons and externally. The advantage of using volunteers (as opposed to professional visitors) is that they view prisons with fresh eyes and bring different life experiences. It also helps to carry the message of prison reform. The Project has a strong base, so people can speak to friends/colleagues about what they see.

One of JHA's main challenge is the recruitment of, and sustaining, volunteers. Although JHA has roughly 200 volunteers, only around 50 are really engage with the visiting process. Other challenges include using volunteers correctly (getting the most out of them, by having worksheets), scheduling, (making phone calls and dealing with people is very time consuming). The JHA programme staff job have hard jobs – on the one hand they are responsible for organising visits, but they also have to do policy work, something which requires a different skill set.
Introduction

Now in its eighth year, the Altus Police Station Visitors Week is designed to build local community-based organizations’ capacity to influence policing programming. Police Station Visitors Week works to engage grassroots advocacy groups focused on empowering and improving opportunities among those who are poor and marginalized, including women, youth, ethnic and religious minorities, older citizens, and people with disabilities by strategically engaging government entities on the quality of services provided by the police institutions. More than 20 countries currently participate in the project. Local community groups learn methods for data collection, analysis, and dissemination online to the public and decision makers through regional, national, and global reports. The organizations then work to influence policy change based on their findings.

Police Station Visitors Week in the US

Overview:

Since 2009, the Vera Institute of Justice has been working with its partners in the Altus Global Alliance to implement Police Station Visitors Week, a unique yearly event which seeks to improve civilian oversight of the police. In 2012, there were six participating police departments from three states, resulting in visits to 20 different police stations and departments. The chief of police of each department will usually select the best precinct for the visit. However, in New Orleans, the worst-performing station was selected as the police authorities wanted to emphasise the challenges it was facing. The LAPD has a lot of resources but is still trying to repair its reputation following some high profile police scandals. In 2012, the South Los Angeles Sheriff's Station was the best performing station in North America. The success in the region continued in 2013 with East Los Angeles Sheriff's Station taking the top prize. Another large police force, the NYPD, has not participated in the initiative mainly due to the post-9/11 challenges it continues to face.

The initiative's original funding expired in 2012 and so funding is arranged year to year. The UK Department For International Development’s Conflict, Humanitarian and Security Department (CHASE) supports the Police Station Visitors Week.

Visits:

In 2012, of nearly ten organisations invited to participate in the Visitors Week, 24 local community groups conducted tours and assessments of 20 police stations. In total, 92 visitors participated in the project across the US. Ahead of visits, Vera sends out invites to those who have participated in the project in the past. The choice of stations aims for a good urban/rural spread, though it can be difficult getting visitors for certain stations. Vera has observed that compared to levels of participation in other countries, the US's contribution to the Visitors Week is relatively modest. Vera has observed that visitors in the US are not as excited about visiting, particularly when compared to visitors in other countries. This may be due to the perception by visitors in the US that there are already good community ties between the police and the public, e.g.

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30 At the time of writing, the data from the Visitors Week 2012 is the most recent available.
Neighbourhood Watch schemes.

Preparation for visits typically begin in September each year, with the event itself taking place in November or early December. The timing of the programme can be problematic for many stations because early December is a busy period and, as such, it can often affect the number of stations willing to participate. Vera recruits visitors by asking stations to provide them with details of community organisations that it works with. Although anybody in the community can be a visitor, Vera tries to reach out to under-represented groups by making contact with community leaders. In addition, Vera has a lot of domestic programmes in other related areas so it is able to tap into its contacts base to recruit visitors.

Visitors are provided with special kits to guide their visits. These kits provide guidelines for how to conduct visits and questions that were used to evaluate each station, based on their observations. These findings are calculated into scores via Altus’ global website and overall stations scores are determined using five basic categories: community orientation, physical conditions, equal treatment of the public, transparency and accountability, and detention conditions. Typically, there are 3-10 visitors per visit to US stations. There is only one visit, but visitors are allowed to stay as long as they want to, typically two hours. The station will assign a police liaison with whom the visitors can schedule the visit. The liaison office will escort them around the precinct and visitors are not allowed to interact with detainees.

Before the visit, visitors are advised to review the kit as a group and discuss the necessary elements to decide on the scores and ask questions of the team leader if something requires explanation. The questionnaire is not taken to the police stations; visitors are advised to concentrate on observation. After the visit, the 20 items of the questionnaire are completed by each visitor independently. At the end of the questionnaire is a section for a narrative report which allows visitors to give further details about their observations.

Each team leader arranges for the team to meet up to discuss their experience. There is also a discussion of the 20 questionnaire items and the five basic categories. Visitors may compare their similarities and differences with their fellow team members, but are asked not to change their answers to the 20 questions on the Visitors’ questionnaire as initial impressions are important. The team leader then uploads the visitors’ scores, station commander and group information (including photographs), along with the narrative report to the Altus website.

Vera receives positive feedback from visitors once the visits have been completed. Some visitors express surprise at the difficulties of policing, particularly the challenge of working with limited resources. For others, the visits provide an insight into the range of services the police offer to the community, e.g. support for victims of domestic violence.

Although preventive monitoring may be a by-product of the visit, it is not the main focus of the Project. Going forward, Vera would like to double the number of participating stations (to 40) and would particularly like to go to Chicago and Detroit.
Reflections on the US experience

In respect of prison oversight in the US, each organisation mentioned above operates in its own distinct way, though they share a common objective; to gain access to prisons and give a voice to detainees. The CA is more policy-focused and seeks to effect change through its research, which in turn informs its advocacy efforts. This approach has many distinct advantages over the Prison Society and the JHA, which is reliant on its team of lay volunteers. Firstly, it is a smoother operation which benefits from the expertise of its policy officers who have experience in criminal justice issues and/or are formerly incarcerated persons. The visits are structured and the Visiting Committee is assisted with monitoring tools such as the visit questionnaire, which is used for effective data capture. In certain respects, the monitoring done by the Prison Society and the JHA is akin to that done by Independent Monitoring Boards in the UK, in that it follows a 'lay' system as opposed to 'professional' monitoring.

In my view, the Police Station Visitors' Week organised by the Vera Institute was an interesting initiative in respect of police oversight. While it is unfortunate that this monitoring function is limited to a relatively small number of police stations (on a voluntary basis) for one week each year, it was encouraging to learn that such a programme was in existence given the lack of statutory mechanisms of a kind found in the UK's ICV scheme. I say this in light of the well-reported tensions between the police and local communities that have been present in particular areas, for example Los Angeles. The emphasis on engaging with community leaders from unrepresented groups was a definite positive, given that in the UK and the US context complaints are often made about the lack of diversity within those groups that monitor detention facilities.
Detention oversight in the South Africa

The correctional services in South Africa face serious challenges, which give rise to calls for effective detention oversight. Although South Africa signed OPCAT in 2006, it has not yet ratified. Existing mechanisms of oversight of prisons include the South African Human Rights Commission (SAHRC) and the Judicial Inspectorate for Correctional Services (JICS). Oversight mechanisms over South African police include national and provincial ministers, Parliamentary Committee on Police, Civilian Secretariat on Police, Provincial Secretariat on Police, Independent Police Investigative Directorate, and Community Police Forums.

Apart from these statutory bodies, there are a number of civil society groups that perform critical oversight over detention practices in South Africa. In addition, these groups also monitor the effectiveness of the statutory regimes that are in place to oversee prisons and the police.

Prisons:

The following have been identified as key issues areas of concern in respect of prisons in South Africa:

i. **Overcrowding** – as of March 2011, 18 correctional centres were critically overcrowded by more than 200%.

ii. **Prison deaths** – the highest cause of which is recorded as 'suicide'; the next highest cause is homicide (more than 50% involved at least one Department of Correctional Services official). A significant number of deaths are classified as 'unknown'.

iii. **Other environmental factors** – e.g. poor ventilation and a lack of access to outside areas which makes prisoners prone to illnesses.

iv. **Physical violence against inmates** – this remains high; criminal investigations are slow and violent crimes committed against inmates result in impunity.

v. **Other human rights abuses** – improper use of penalties such as segregations; the use of mechanical restraints; the unlawful use of report which remains unreported.

vi. **Gangs** – responsible for much of the violence, corruption, drug use and sexual violence.

Police:

There are approximately 1,125 police cells nationally and in 2011/2012, over 1.6 million people were arrested (48% for serious crimes). The South African Police Service does not report on details of custody management nor does it hold information on detention or conditions of police detention. In 2011/2012, 1079 people escaped from police custody; 74% were re-arrested in the same year though this marked a 68% increase from the previous year. In the same year, the Independent Police Investigative Directorate received 232 notifications of deaths in police custody.

Pre-trial detention is also a serious problem, with some detainees being held for between three to four months.

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31 The terms 'prison' and 'correctional centre' are used interchangeably.
Judicial Inspectorate for Correctional Services

The Judicial Inspectorate for Correctional Services (JICS) is a watchdog body that seeks to ensure that prisoners' rights are respected. It focuses on inspecting and reporting rather than investigation and its public reports shed light on the largely opaque prison conditions. However, its independence and effectiveness remains a serious challenge in the context of adequate prison oversight in South Africa

a) Independent Correctional Centre Visitors (ICCVs) – Overview

Independent Correctional Centre Visitors (ICCVs) work under the auspices of JICS and form part of the Visiting Committee (VC) that is established for prisons within a certain area. A VC typically meets every month and its functions include considering unresolved complaints with a view to their resolution and organising a schedule of visits to prisons. ICCVs act as intermediaries between inmates and prison officials and must attempt to resolve matters internally before escalating them to the VC level. ICCVs are supervised by Visitors’ Committee Co-ordinators (VCCO) who are also responsible for lobbying community liaison.

The CEO is responsible for all administrative, financial and clerical functions of JICS and also appoints ICCVs. Appointments are made following a public call for nominations and consultation with community organisations. JICS tries to build up a database of organisations to assist with recruitment. Depending on the community liaison officer, the recruitment process takes different forms. The number of applicants per region varies. If there is only one post in a relatively small area, the salary is likely to be modest. This affects applications as vacancies at larger prisons tend to receive more applications. ICCVs are paid 80.61 Rand per hour and are allocated a certain number of hours per month (67 hours for larger correctional centres and 15 for smaller centres). In practice, ICCVs often exceed their hours but they are not paid overtime. There have also been cases where prisons have attempted to restrict ICCVs’ hours. JICS has a Memorandum of Understanding with certain civil society organisations which allow ICCVs to receive a further stipend or additional income.

The minimum age of an ICCV is 18 and each appointee must be nominated by a civil society organisation and possess a valid form of identification. In addition, applicants must fill out an application with the following information: personal contact details; language proficiency; qualifications; computer literacy; work experience, especially previous work in a correctional centre; past criminal offences (noting that this does not bar one from becoming an ICCV); motivation for becoming an ICCV. The above criteria are assigned numeral rankings in a computer database designed by a psychometrist and the four highest scoring candidates are shortlisted then interviewed. ICCVs are typically appointed for three years. Ideally ICCVs are selected from the region in which they will serve, though this cannot always be met given the remote locations of some rural prisons. The focus is on recruiting ‘community-spirited’ individuals. As such, ICCVs are quite a diverse group. As of September 2013, there were 298 working ICCVs (94% of all positions filled) and some prisons had more than one ICCV due to their size. It is possible for ICCVs to re-apply at the end of their contract. However, if their application is successful they are not typically appointed to the same centre as before.

b) Training/Accountability

ICCVs undergo two types of training. The first is the initial/introductory stage. The regional VCCO trainers are responsible for this five-day training session which includes introducing appointees to JICS, outlining ICCV functions and what is expected of them, and the record filing process. The second stage is the induction which is run by JICS staff and was introduced in 2012. This focuses on legislation that is relevant to correctional services; ensuring that ICCVs are equipped to deal with legal issues that may arise. JICS has sought to implement civil society recommendations that ICCVs undergo paralegal training. The chairs and secretaries of the VC are provided with a three-day training session. Once ICCVs commence work, there is no programme for ongoing training though VCCOs will identify and address particular needs as and when they arise.

ICCVs sign a contract with the CEO upon appointment which contains a number of minimum standards they
must comply with:

- visit centres and record information;
- interview detainees;
- have private consultations with detainees;
- interview the Head of the Correctional Centre (HCC);
- attend VC meetings on a monthly basis.

One of the main difficulties of having an oversight mechanism with independent contractors is ensuring they are accountable for the work that they do. JICS has created a Performance Audit System by which ICCVs are audited quarterly by the VCCO to ensure accountability. The ICCV must submit an invoice on a monthly basis and the VCCO will compare the invoice to the work submitted and evidence recorded at the prison in question. The VCCO will also check the ICCV has complied with the minimum standards. Claims are submitted electronically but ICCVs must evidence their work with hard copies of forms. The electronic claim is checked against the hard copy and the VCCO will bring the invoice/claim to the VC meeting and verify work.

c) Visiting function

The ICCV is responsible for its centre and it must monitor the prison register of complaints. Each centre has a visitors' register which the ICCV must sign upon entry and exit ('clocking in and out') stating the purpose of the visit. It is important to record the date, the purpose and the time of the visit. The ICCV will take the register of inmates and compile a record of interview. When a complaint has been made the Department of Correctional Services (DCS) will be notified that an ICCV has engaged with the inmate in question. Upon receiving complaints, ICCVs can ask the section head to resolve the issue. The ICCV will return in a few days to check a complaint has been dealt with. If the matters had not been dealt with, or if the inmate is not satisfied, the ICCV will complete a 'record of consultation' (a private interview) with the complainant to obtain more details. The complaint will then be referred to the HCC. If complaints are not resolved internally, the matter can be raised at the monthly VC meeting. DCS officials and HCCs are invited to attend VC meetings, as well as civil society organisations and SAPS. A matter may also be raised if it has a statutory implication, even if a specific complaint has not been made. If the VC cannot settle the matter it is then referred to the Directorate of Legal Services.

d) JICS strengths/weaknesses

JICS's reporting can provide more insight into the correctional system and can be useful for the purposes of advocacy. However, to be effective JICS must receive support and co-operation from a range of stakeholders, including DCS, SAPS, the National Prosecuting Authority, and the courts. JICS acknowledges that there is a lack of awareness of the work of ICCVs, within the community and among prisoners themselves. JICS feels that the quality of ICCVs has improved; better candidates are being put forward and appointees are keen to better themselves.

The resources JICS has to perform its functions are stretched. Half of JICS staff are working on contracts rather than being employed on a permanent basis. It would like to engage with the public more, but is unable to do so due to lack of time and money.

Achieving functional independence is still an issue. JICS feels restricted by the DCS which affects its effectiveness as an oversight body. However, JICS enjoys a good relationship with civil society groups, something which assists with its capacity building and helps to drive reform.

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Community Policing Forums

The Community Policing Forums (CPF) were set up in 1994 after former President Nelson Mandela came into office. During the apartheid era, the police were viewed as the enemy by large sections of the public. President Mandela wanted to improve relations between these communities and the police. The CPF is mandated by Articles 205 and 206 of the Constitution of South Africa Act No. 108 of 1996, together with sections 18 to 23 of the South African Police Service Act No. 68 of 1995. The rationale for the establishment of CPFs is that combating crime can be done more sustainably if the community is engaged in the process. Its role as an oversight body is a secondary function.  

The key functions of the CPF:

1. Ensure suspects are treated humanely and that conditions of detention are humane;
2. Ensure there are enough resources for the police to effectively carry out their role;
3. Liaise with communities unhappy with SAPS. CPFs can receive complaints from community members and raise them at a meeting;
4. Proactively come up with crime awareness projects and assist the police with safety patrols.

The CPF is typically comprised of people with a background in the NGO sector. It is not possible to be appointed directly; members must be nominated by an organisation. In the Western Cape, there have been concerns that criminal elements would attempt to infiltrate the CPF and though there is a screening process, these concerns remain. The CPF can raise concerns about service delivery and/or police conduct at the CPF meetings. Members of the local community can also approach the CPF with their concerns. CPF meetings are attended by SAPS, local councillors, civil society groups and the general public. If a problem is not resolved at the meeting, it is referred to the CPF Cluster Board, then on to the Provincial Board.

Unlike ICCVs, there is no legislation which provides for independent visits to police cells. Indeed the CPF’s mandate as articulated in s.18 of the Police Services Act does not make specific reference to an oversight function. However, members of the Western Cape CPF do attend police stations and inspect cells. Although they must give notice of their visits, the CPF tries to visit all the police stations in the area on a regular basis. Visits include an inspection of toilet facilities and the custody record is examined to see what the detainee has been given in respect of food and drink. They do not have access to the detainee. The CPF is manned by volunteers and they are not obliged to submit reports of their findings, conduct follow up, or perform data analysis.

From the perspective of the Western Cape Chair, CPFs are effective, a view which he believes is shared by SAPS. The Rondebosch police station commander supported this claim by stating that SAPS realised it could not work without CPFs and will continue to support them. It is acknowledged that SAPS in some provinces do not want to work with CPFs, but they are in the minority. The system is viewed as a two-way democratic process: SAPS can report CPF to the Secretariat in Pretoria if it considers it has acted outside of its remit.

In an interesting development in 2013, the Western Cape Department of Community Safety drafted an Act which aims to provide for policing oversight of the Province with Article 206 of the Constitution in mind. Section 4(1)(iv) provides for monitoring the treatment and conditions of persons held in police custody in

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34 As described by Hanif Loonats, Chair of the Western Cape CPF. The majority of the information about the operation of CPFs was obtained during an interview with Mr Loonats and during a visit to Rondebosch Police Station in Cape Town.
35 Victim support and Neighbourhood Watch schemes fall within the remit of CPFs.
36 “Cluster Board” means the Community Police Board established in respect of the group of police stations wherein the South African Police Service has included the particular station for management purposes.
37 As of September 2013, the Act was still awaiting enactment as it was facing a constitutional challenge. Indeed, there was some scepticism from the CPF Chair about the advantages of the Act amid suspicions that it was mainly being used by the DCS as a ‘smokescreen to push political agendas’.
order to determine recognition of their rights. The Act may authorise any person to carry out this function for remuneration; a possible role for CPFs. According to the Department of Community Safety\(^{38}\), the purpose of the Act is not to add more oversight, but to provide more detail to the mandate of provinces in this respect as articulated by Article 206.

**Wits Justice Project**


The Wits Justice Project (WJP) was started in 2008 to investigate the plight of those locked up in South Africa’s prisons. The project is part of the Journalism Department of the University of Witwatersrand, Johannesburg and it aims to have a significant impact on the lives of people through changes in the criminal justice system. WJP was founded on a similar footing as The Innocence Project\(^{39}\) and its objectives are premised on the notion that journalists and lawyers can work together to solve criminal justice crises. Indeed WJP was instrumental in helping to prove the innocence of Tshokolo Mokoena and Fusi Mofokeng who were imprisoned for 19 years after being wrongfully convicted for murder and armed robbery.

The Project is a member of the Detention Justice Forum (DJF), a civil-society membership organisation which works towards ensuring that the rights and well-being of detainees are respected and upheld, as enshrined under the South African Constitution and international human rights norms and standards. The ratification of OPCAT is one of DJF’s key objectives and the WJP looks specifically at addressing how the lack of knowledge on how torture (namely physical abuse and force) can occur in prisons and police cells.

WJP receives information from detainees, often via mobile phones\(^{40}\) as there is no other way of communication given the prohibitive costs of public payphones. Detainees also send complaints in the post. In the past WJP received many complaints from detainees that their mail had been interfered with, though this number has gone down in recent years.

In WJP's experience, describing civilian access to places of detention as problematic is 'an understatement'. Civilian visiting hours are restricted to the afternoon. Direct contact with remand detainees is forbidden which means that visitors are separated from them by a Perspex glass screen and have to speak with them through a telephone resulting in a lack of privacy.

WJP has noted that ICCVs are often co-opted to JICS because they are looking for future jobs and have no facilities of their own to fulfil their duties. That is not to say that there are no good ICCVs. WJP has met many effective ICCVs who advocate well on behalf of the inmates. They play a crucial role in giving a voice to the inmates and their 'bridging' function is underrated. It was acknowledged that the scheme is effective where ICCVs are well-trained and independent, though the drift of ICCVs into the Department of Correctional Services (DCS) is problematic and WJP has anecdotal evidence that the scheme is 'uneven' across the country. A key characteristic of a good ICCV is a passion for human rights protection, which suggests that good training is only part of the equation. Nevertheless, good structures allow an individual to flourish in their role and this should be a primary objective in respect of the development of the ICCV scheme. In 2012, WJP completed an in-depth project named ‘Justice’ which featured a profile of ICCV Martha Kekana, named ‘The Mother of Inmates’ who has served at Johannesburg Correctional Centre (nicknamed ‘Sun City’) for over ten years.\(^{41}\)

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\(^{38}\) Interview with Gideon Morris, Western Cape DCS on 9\(^{th}\) September 2013

\(^{39}\) The Innocence Project is a United States' litigation and public policy organization dedicated to exonerating wrongfully convicted people through DNA testing and reforming the criminal justice system to prevent future injustice. Founded at Benjamin N. Cardozo School of Law at Yeshiva University in 1992, it became an independent non-profit organization in 2004. [http://www.innocenceproject.org/Content/What_is_the_Innocence_Project_How_did_it_get_started.php](http://www.innocenceproject.org/Content/What_is_the_Innocence_Project_How_did_it_get_started.php)

\(^{40}\) The use of mobile phones in prisons is illegal.

If South Africa was to ratify OPCAT, it was hoped that this would allow prison oversight to be looked at more comprehensively, perhaps with a view to a scheme which would provide a mix of lay monitoring and NGO monitoring.

In WJP's view, civilian oversight of police holding cells may be easier to facilitate than prison monitoring given that only lawyers are typically able to negotiate access to prisons and the officials routinely check Bar registration numbers. Anecdotal evidence suggests that access to holding cells is discretionary. At the time of the meeting, a WJP intern was working on a project investigating the treatment of female detainees found negotiating access difficult. The current oversight mechanisms require a better structure (perhaps additional oversight) particularly as Community Policing Forums can, in themselves, be problematic as there appears to be a lack of awareness of what is and what is not acceptable police conduct. A better understanding of the mentality of the police is needed, given the militarisation of correctional services that has developed over the years.42

Civil society organisations are sometimes invited to attend DCS meetings, but the correctional environment is still very 'cloak and dagger'. The authorities are reluctant towards increased transparency and are distrustful towards civil society groups and the media. WJP would like civil society organisations to have the power to visit and check conditions of detention if they receive correspondence from inmates, something which would also have the additional benefit of assisting those who work within the correctional system.

WJP fully acknowledged that bad journalism erodes trust and to this end it works hard to ensure that corroborate the information that it receives and obtain commentary from all the people involved. This not only assists with its credibility but also ensures that its journalists are accountable. In spite of this, WJP has found it difficult to get detention issues covered in the national press. It offers stories but big newspapers are often unwilling to take them up for fears that to do so would in some way 'glamorise crime'. This is unfortunate as WJP's reports are of a very high quality and have won journalistic awards; nevertheless, the big news outlets are reluctant to publish them.

Reflections on the South Africa experience:

It is clear that the lay visitors' schemes are based on those that fall under the UK's NPM. As such, further collaboration should be encouraged particularly in view of the difficulties that continue to face the Southern African oversight systems. It was disappointing to learn that although on paper, the system of prison oversight in South Africa appears effective, in reality it lacks 'bite'. As noted by one commentator, even if OPCAT is not ratified more could be done to support the existing oversight structures, i.e. the Judicial Inspectorate of Correctional Services. Similarly, ICCVs need to receive better training and have functional independence, something which would help to improve the scheme as a whole.

42 For example, preventing escape from detention is prioritised in the DCS Annual Budget even though the number of actual escapes each year is miniscule.
Detention oversight in Malawi

In April 2012, the UN Commission on Crime Prevention and Criminal Justice adopted new UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems—a set of principles designed to ensure that access to legal information, advice and assistance is available to all through the provision of legal aid. The agreement highlights the important role in ensuring access to justice that can be played by paralegals—community members who have basic legal training, but who are not qualified lawyers. It has been acknowledged that the groundwork for these principles started eight years ago in Malawi where an innovative partnership aimed at expanding the use of paralegals in the justice system was being tested by the Paralegal Advisory Service (now the Paralegal Advisory Service Institute). These paralegals have been granted access to prisons, police stations and courts to monitor conditions and help detainees access their rights. A Lay Visitors Scheme has also been piloted in police stations, with a view to developing community policing. An international NGO, Irish Rule of Law, is active in Malawi, working in prisons and police stations to support the development of Malawi's judicial structures.

Paralegal Advisory Service Institute (PASI)
http://pasimalawi.org/

The Paralegal Advisory Service (PASI) started in Malawi in May 2000 as an initiative of Penal Reform International (PRI), which sought to create a private-public partnership linking local NGOs with the Ministry of Justice and Malawi's Prison Service. It began with eight paralegals working in the four main prisons in the country.

PASI operates in all of Malawi's four judicial regions and has a presence in nine districts in the central region. It monitors the three main criminal justice institutions: prisons, police, and magistrates courts. In Lilongwe, the paralegals visit police stations, Magistrates’ courts and the prisons on a daily basis. If any problems are reported, the paralegals will seek to do follow up on the same day. PASI staff based at the central office can also call paralegals who attend police stations, prisons or the courts to obtain feedback.

Overview:

Paralegals duties include preparing for legal empowerment sessions (e.g. bail, first appearance, plea) and dealing with individual complaints from prisoners. They also obtain feedback from prisoners and check their files and arrest warrants. Paralegals use a data capture tool for their different activities. When they interview prisoners they must fill in forms and outline the information sought. The prisoner's file is kept in the regional office and then regularly updated. When paralegals submit their monthly reports they use the data captured in the interview forms.

Paralegals are allowed to access all areas in the prisons and can walk around unaccompanied. PASI considers that it has built trust with the prison authorities since its inception in 2000 as the paralegals have adhered to a strict code of conduct and have been very professional. At first, the authorities were sceptical of PASI; they were unsure of the paralegals’ intentions and were concerned that they would be critical in the media.

In 2003/2004, PASI extended its monitoring function to the police service. This proved to be quite difficult, even though it had a good record in respect of its work in prisons. The paralegals are allowed to attend police interviews and to observe proceedings between 8am and 4pm. Outside normal working hours, the paralegals may be invited to attend the station if a situation arises, such as a late night arrest of a juvenile or a woman. Paralegals are available 24/7 and PASI has a toll-free emergency contact number.

PASI also began to work in the 'holding shelters' at courts, though the difficulties it encountered with the

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43 See further: 'How Malawi Put Access to Justice on the UN’s Agenda'. Open Society Justice Initiative, 23 May 2012
http://www.opensocietyfoundations.org/voices/how-malawi-put-access-justice-un-s-agenda
police service were not present as courts are public institutions.

**Recruitment of paralegals:**

The only requirements asked of prospective paralegals are:

- 'O' Level certificate
- Paralegal certificate/Legal training (preferred, but not essential)

In addition, PASI also looks for a passion for helping vulnerable people; experience working or visiting prisons; relevant legal training. The majority of paralegals are male, but it still does have a good number of female recruits.⁴⁴ In respect of age, PASI describes most of its paralegals as 'middle-aged'.

Advertisements are placed in the two daily newspapers; The Daily Times and The Nation. The paralegals undergo a three-month probation period as well as intensive training for eighteen months. Paralegals are recruited from the districts where they are placed in order to cut down on administrative and transport costs. There are other paralegals (outside of the PASI community) who assist PASI's work, specifically trained on a particular area such as gender-based violence. The training they receive is less comprehensive so one particular dilemma PASI faces is whether such paralegals can effectively assist its work. Nevertheless, the Malawian government is beginning to recognise the work that the paralegals do.

PASI is wholly dependent on donor support, with funding secured until 2016. Initially conceived by Penal Reform International, the UK's Department for International Development is now PASI's main partner. It also receives support from the Open Society Institute and the Government of Finland.

At the time of the visit, there were 45 paralegal in total⁴⁵, all appointed to serve for one year (though the contract is renewable). PASI has never had to dismiss a paralegal, nor has it received any complaints from the police, prisons, or the courts. The paralegals are paid for their services; the starting salary is $200 per month, though experienced paralegals are paid $300 per month. The community paralegals are not paid, though they may receive a stipend to cover meals and transport.

The skills that paralegals acquire are highly marketable and, as such, a lot of money is invested in their work. Thousands of applications are received per vacancy and the scheme is well-known. Although the retention rate is quite good, it is sometimes used by some as a 'stepping-stone' to a career in law or the NGO sector.

PASI acknowledges that many abuses are not committed by design but are caused by logistical difficulties the institution faces. In the event the paralegals witness gross violations, the matter is referred to the constitutional human rights bodies. However, in PASI's view paralegals have a preventive monitoring function and the positive effect the presence of paralegals has had on the behaviour of individual officers/officials has been noted.

Of late, PASI has begun to focus its efforts on the experience of women and juveniles in detention. Juveniles are no longer detained in adult prisons, but are kept in separate facilities. Its relationship with the police has developed with the creation of the Lay Visitors scheme, with which PASI is affiliated. The police authorities are increasingly acknowledging that if paralegals or lay visitors give good reports after their visits, the public is more likely to have confidence in the police. PASI is involved in training officers to reflect on how they conduct their duties and ensure that they know that they are accountable for their actions.

**Advocacy efforts:**

As well as their monitoring function, paralegals also engage in advocacy with relevant stakeholders.

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⁴⁴ There is approximately a 60:40 split.
⁴⁵ Teams are based in Lilongwe, Zombo, Blantyre, Mzuzu, and Mzimba. Different regional NGOs host PASI.
• Court users committee – the paralegals facilitate a meeting with representatives from the police, prisons and courts. This multi-stakeholder group, which aims to meet every month, allows for the discussion of system-wide problems.

• Care co-ordination meeting – to allow for early intervention in cases where care issues have been identified.

• Camp courts – this is a nationwide intervention which is, in effect, a screening process. Paralegals identify cases pending before the courts and share information with the police to determine whether there is agreement that the detention limit has been exceeded. The police can agree that a magistrate should attend to review detention.

• Village mediation – trained community members help to resolve disputes with the aim of diverting minor cases at the community level.

**Challenges:**

The biggest challenge PASI faces is its lack of resources. An example of how this affects its work is the difficulties paralegals face when trying to find sureties for detainees. It is often the case that family members or friends do not have access to a telephone or may be located far away from the station. As such, paralegals need airtime or fuel to make contact with them, something which is to arrange when resources are limited. PASI only has one car and paralegals typically travel in groups and are dropped off at their stations. There are some motorcycles for the paralegals to use, but these often break down and are expensive to repair. PASI also wishes to increase in size, with a view to recruiting at least six paralegals per year.

As of September 2013, there were only five legal aid lawyers in Lilongwe. Although there are some legal aid clinics that assist with empowering detainees, there are very few legal aid lawyers who are able to enter into an agreement with PASI whereby paralegals conduct research (meet with detainees etc.) and refer matters to the lawyer if further action or representation is required.

PASI has concerns about the lack of understanding of the law among prison officials, magistrates and the police. For example, PASI noted a lack of awareness of a new law passed on varying the custody limits for different categories of offences. Accordingly, it tries to engage with the Ministry of Justice to ensure that advocates receive adequate training.

**PASI Monitoring in action**

*Maula Prison, Lilongwe:* 47

• Morning visit with paralegals Peter and Margaret. Peter has over ten years of experience; Margaret began at PASI in January 2013.

• The first duty of the paralegals is to check in with the senior prison superintendent. They then proceed to the remand unit of the homicide unit where the detainees come together as a group in front of us. Peter goes through the names on the list of the remand detainees to see who is present and check who has been granted bail.

• After making introductions, Peter asks the prisoners how things are and makes a note of their concerns. He then asks whether they are familiar with PASI and gives an introduction of their role for the benefit of new prisoners.

• In response to the prisoners’ complaints that they are not being taken to court, Peter explains that PASI try to empower prisoners to enable them (and the whole inmate population) 48 to plea properly.

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46 At the time of the visit, there were 10 paralegals who had to cover the five police stations in Lilongwe.
47 Visit on 16th September 2013
48 The remand prisoners and the general population mingle during the day but are separated at night.
and apply for bail if they cannot afford a lawyer. Peter explains that PASI knows that ‘remandees’ do not know when they will be released or face trial so it is the paralegals’ role to reassure them that PASI will help to speed up the process. He acknowledges that some cases are already on judgment in that a decision on bail has been made, but not effected. In other instances, prisoners are granted bail but are either unable to pay the bond or find relatives to stand as sureties.

- Peter responds to further questions about bail then asks the group whether they know the difference between different categories of offences (e.g. murder and manslaughter). A discussion ensues as the prisoners debate the difference between the offences and what the penalties for each should be.
- After speaking with the large group, Margaret and Peter split up. The remainder of the visit is spent taken petitions from individual prisoners. In many cases, the prisoner had been detained for several months and had not been produced in court.
- At the end of the morning session, Margaret and Peter wait for the PASI vehicle to collect them from Maula and take them back to the central office to allow them to follow up on the cases.

Area 25 police station:

- Accompanied Steven on a visit to the police station to observe paralegals’ work at the police station and to learn more about magistrates’ court that sits at the station. Peter has been a paralegal since 2004. He became involved in PASI after visiting friends in Maula prison and being affected by the conditions that the detainees were held in. When he saw the advertisement for paralegals in the newspaper he applied because he wanted to be involved in PASI’s work.
- Upon arrival, there were sixty people in custody, all having been arrested the day before. Of these, thirty had been arrested under the ‘vagabond’ laws.
- The station itself has very basic facilities. Sanitation is poor and the detainees are kept in crowded conditions.
- PASI arrives and takes a list of the arrestees and makes a recommendation as to who should be released. A screening process commences during which the decision about each individual’s fate is taken.
- The station has a prosecuting officer who has the power to prosecute cases or refer matters to the Director of Public Prosecutions (DPP). Cases are not just referred because of their severity, it depends on the nature of the case. The DPP will either give consent for the police to proceed with the prosecution or will take the case on (the exception to this rule is murder, which is always prosecuted by the DPP).
- The station’s prosecuting officer states that most cases the police prosecute are defended cases – the defendant either represented by a legal aid lawyer or a prosecuting lawyer. This is indeed surprising given the small number of legal aid lawyers, though the officer confirms that some cases are prosecuted where the defendant is unrepresented. The court will only appoint a lawyer in homicide cases.
- The language of the court is English, but there is always an official translator (not just Chichewa, but other languages).
- Police officers prosecute in court. From the station officer's perspective, this does not cause a conflict between the respective duties as the prosecutors are trained and can act as legal advisers at the station. Although they are police officers, they are supposed to be independent in their role as a prosecutor. If there is insufficient evidence, the officer will not proceed with the prosecution.
- By law, an individual is supposed to be brought before a court within 48 hours of the screening process. As the courts are far from the station, magistrates will come to the station and sit in the designated victim support hall to ensure that everybody in custody can appear before a magistrate.

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49 The judiciary has said that it would do what it could to progress such cases, but the problem persists. PASI gave an example of one person who has been detained on remand since 2007 who had just been granted bail. Although it was devastating that it took so long, the paralegals try to give the detainees hope that they will get out of their situation.

50 Visit on 17th September 2013

51 It was explained that if a person is stopped in the street and is unable to account for his/her actions, then they can be arrested and subsequently fined.
• PASI do not represent detainees at court, but will inform them of their right to apply for bail and advises on plea.
• The court proceedings are open to the public and chairs are set up in the victim support hall, a room which is rather modest in size. The chairs on the right-hand side are reserved for members of the public and family members, whereas the chairs on the left are where the detainees are seated when they are brought in.
• The detainees are brought in, typically in small groups, in handcuffs. After the magistrate enters, the charge is read out by the court clerk. The magistrate outlines the reasons why the State opposes bail and the reasons the defence has submitted why bail should be granted. If bail is granted, conditions are attached and sureties are sworn in and questioned.
• In the case of the 'vagabond' detainees, they are brought into the courtroom in small groups and asked to give their particulars. They are told of the charges against them and asked whether they agreed with the charge.
• PASI observes the magistrates until 12pm. In the afternoon the paralegals return to check who was granted bail and to follow up sureties.

**Magistrates' court.**

• The paralegals go into the court's holding areas to run a legal aid clinic, advising detainees on how to make a plea in mitigation or apply for bail. The holding areas are extremely crowded; men held in the same areas as women.
• On this visit, a 12 year old boy accused of murder was being held with the adult population.  
• The paralegals also go into the courts to observe proceedings if they have concerns about a particular individual. Ideally PASI would have a full-time lawyer. Although the paralegals receive support from legal aid lawyers, this is insufficient to meet their objectives and they always feel they should be doing more but can't because they are unable to represent detainees.

**Lay Visitors' Scheme (Community Policing)**

*Overview:*

The Police Act 2010 established a Lay Visitor's Scheme (LVS) which mandates a team of local people to inspect the conditions of detention in police stations. The Scheme has its roots in the community policing movement that has developed since Malawi became a multi-party democracy in 1994. Community policing forums look at issues of safety and security in their local area. These forums have responsibility for the LVS that is implemented by the Malawi Police Service.

Lay visitors have operated in 34 police stations. The scheme developed after an initial awareness campaign transmitted via radio to all police stations. Meetings were set up to brief regional police heads about the proposed system and to inform them that their co-operation was needed in order to establish the scheme.

Although less than 10% of officers were resistant to the idea of the LVS, introducing the scheme was a challenge because even those who accepted it were not entirely happy with the proposal. However, the concerns had been managed and the second phase of piloting was due to commence in late 2013.

The initial phase began at Mzuzu police station and developed to fourteen areas with an average of eight lay visitors per region. The requirements to become a lay visitor are not particularly strict. Generally, an

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52 Visit on 18th September 2013
53 Eithne from Irish Rule of Law was aware of this boy's case and advised that it was likely the boy would be held in custody until the case came before the High Court
54 Based on interview with Assistant Commissioner Noel Kayira, Deputy Head for Community Policing, 12th September 2013.
applicant should have some basic understanding of human rights and should also be somebody who could be reasonably called on to sit as a juror. Applicants must be aged 21-65; have no criminal record; and should not be a criminal justice professional. Appointments also tend to be gender sensitive. Prominent members of human rights bodies applied to become lay visitors, something which was discouraged as the scheme was meant to engage people who could truly be described as 'lay'. There were also concerns that some of these applicants intended to use the role as a stepping-stone to a career in the NGO sector. Nevertheless, the lay visitors that were appointed came from a variety of sectors, including civil society.

Lay Visitors are appointed for two, 2 year consecutive terms, though there is still debate as to whether they can re-apply upon expiry. Prospective lay visitors are vetted by community policing forums (which have a power of veto) and are then recommended for appointment to the Minister for Home Affairs.

Visits:

Visits may be announced or unannounced. Night visits are discouraged because of security concerns. The visitors go in pairs, though they are authorised to attend a station on their own if they have to deal with an urgent situation. Lay visitors do not have access to all areas of the station and are restricted to the main custody area. They are permitted to check (vacant) interview rooms to check whether there had been any earlier incidents. Visitors must ask questions about the welfare of the detainees, though they are not provided with a questionnaire to assist this process. Upon completion of the visit, the visitors must complete a report which is sent to the station commander, the regional commissioner, the headquarters of community policing and then to the Minister for Home Affairs. If an urgent matter arises from a visit, this can be raised with the station commander.

Looking ahead, the scheme administrators aim to create a curriculum for police officers to increase their awareness of the LVS. It is also hoped that a training manual and a code of conduct for lay visitors can also be developed. In the meantime, lay visitors are assisted by guidelines which were developed after consultation with a range of stakeholders including individuals from international civil society organisations.

Challenges:

- Access to sufficient resources is a key concern. The scheme is supposed to be independent of the police, but is very much dependent on it so there have been advocacy in support of an independent secretariat to support lay visitors.
- Lay Visitors work on a wholly voluntary basis, though they often need a lunch allowance or to have their travel expenses covered. There are other ancillary costs such as paying for stationery to write up the reports and send hard copies.
- Many police cells are designed to accommodate 8 people, though in practice they routinely hold up to 28. As such, it can take many hours to complete a visit.
- There also needs to be greater awareness of LVS among the wider community, though funds are needed to support any publicity efforts.
Irish Rule of Law International, Malawi
http://irishruleoflaw.ie/our-projects/malawi/
http://ruleoflawmalawi.blogspot.ie/

In promoting the rule of law in developing countries, Irish Rule of Law International (IRLI) seeks to undertake collaborative projects aimed at enhancing the provision and protection of human rights, democracy and good governance. To date projects have addressed the broad spectrum of rule of law: from capacity development of national judiciary to legal aid and legal information at a grassroots level.

In Malawi, the project has placed three volunteer Programme Lawyers in Lilongwe to work with the Legal Aid Department and the Department of Public Prosecutions and provides 96% of legal aid service in criminal cases. The legal aid lawyers were successful in reducing the sentences imposed on a number of detainees held in Maula prison. IRLI has noted that though there has been a drop in the amount of time served on remand, the number of remand prisoners has not decreased.

IRLI devised a diversion programme within Lilongwe Main Police Station to bring access to justice to minor offenders allowing them to be reprimanded for their behaviour without exposing them to the risk of illegal detention. This has prevented offenders, who can be dealt with in a more effective manner, from overburdening the prisons and courts, allowing them to return to their lives without disproportionate detrimental effect to their livelihood and family. It also addressed one of the main challenges facing prisons, that of overcrowding. Another reason why IRLI has focussed on diversion is because the '48 hour rule' is often not enforced. As of September 2013, IRLI had assisted with 340 diversion cases that year.

In IRLI's experience, the main complaint received from the local stakeholders it worked with was that there was no follow-up after training events. As such, IRLI has made a conscious effort to do follow-up after its training sessions to help build up the skills of its local partners.

Reflections on the Malawi experience:

In respect of detention oversight in Malawi, I was encouraged by the work of PASI and the Irish Rule of Law International. The staff displayed great motivation and provided effective support to detainees under very challenging circumstances. Both organisations were keen to engage with me and were enthusiastic about sharing their experiences and discussing the challenges associated with monitoring detention conditions in Malawi. I believe that engagement between these agencies and the lay visiting associations in the UK should be encouraged.

55 According to IRLI's programme lawyer Eithne Lynche, there are 5 legal aid lawyers for the whole of the Central region, of which only 2 take on criminal cases and on a part-time basis only.
56 When a suspect is arrested, s/he must be brought before a court within 48 hours. However, logistical issues such as a lack of fuel for police departments means that this rule is not always enforced. As such, IRLI has worked with Malawi Police to focus on diversion.
57 Eithne previously worked full-time in Area 3 police station and IRLI's assistance led to a greater co-ordination amongst officers with regards the treatment of minor offences, which in turn freed up the magistrates’ time to deal with crimes of a more serious nature.
Conclusions and Recommendations

This report has sought to shed some light on the detention oversight practices in countries which have not ratified OPCAT. It had been hoped that this research project could potentially uncover monitoring practices which could be held up as examples of good practice.

The United States:

What can the UK learn from the US experience?

The CA's approach does lack that particular lay connection, but it was interesting to observe the ways in which it sought to bring its work to the local community, namely through its work as a member of CAIC and through its rallies and vigils on the streets of New York. Administrators of the lay visiting schemes (both IMBs and ICVs) in the UK should look at this aspect of the CA's advocacy and consider whether something similar could be done in this country to raise the profile of the work of the monitoring schemes. One of the main complaints among lay visitors in the UK is that the schemes they volunteer for under the NPM are not that well known among the general public. In my opinion, both the ICVA or AMIMB could adopt a grassroots approach similar to that of the CA by arranging community meetings and events which would allow members of the public to meet and speak with active lay visitors in order to educate more people about the work that they do, thus raising awareness of criminal justice and penal issues. This type of engagement may also assist with recruitment drives, particularly if targeted towards currently underrepresented groups (e.g. young people, ethnic minorities).

While it is clear that the US government is still resistant to the idea of implementing a national system of detention monitoring as envisioned by OPCAT, it was indeed encouraging to see the ways in which civil society/non-profit organisations step up as monitors in the absence of formal oversight mechanisms. Their approach may be of interest to penal reform organisations in other countries which have not ratified OPCAT, or in countries where civil society organisations are responsible for prison oversight under their NPM. One lesson that emerged from this research project is that an effective system of prison oversight is likely to be different in each country, given its particular legal and social frameworks. Nevertheless, further collaboration (nationally and internationally) should be encouraged to share best practice, particularly in countries where OPCAT is not in force. For example, UK lay associations can reach out to coalitions such as those formed under the National Religious Campaign against Torture to provide insight into the practicalities of the NPM in the UK. Similarly, in respect of police oversight, the Prison Visitors' Week may benefit from learning more about the experience of ICVs in the UK. Agencies such as DFID, which provides funding for the Prison Visitors' Week, could be instrumental in facilitating this relationship.

Southern Africa:

In a similar fashion, multi-agency co-ordination between UK associations and partners in South Africa and Malawi could pave the way to strengthening the detention oversight initiatives that have been established in those countries.

What can the experience of detention monitoring in Malawi teach the UK NPM?

While the Malawi experience may not be able to provide examples of best practice for UK lay visitors, it may nevertheless assist with the UK NPM's wider commitment to promoting effective detention monitoring internationally under OPCAT. For example, the ICVA and the AMIMB regularly host, or visit, foreign monitoring agencies to share best practices on detention monitoring. It is my suggestion that the UK NPM associations would be greatly assisted in this function if they had direct knowledge of how detention monitoring can be effective in developing countries.
Collaboration between Southern African initiatives and lay visiting associations in the UK

In my view, one of the key benefits would be to invigorate the work of lay visitors on an individual level. Although many people volunteer on IMBs and as ICVs in order to give something back to their local community, they may also be encouraged to learn that their work is being used to assist the development of oversight mechanisms abroad. Developing an international dimension to the work that UK lay visitors do could reinforce the importance of their role and could potentially generate more interest in recruiting new volunteers who may be attracted by the prospect of their detention oversight in having an impact beyond their local community.
Appendix A:
Torture Prevention - The International Legal and Regulatory Framework

The prohibition of torture is regarded as a general principle of international law. Indeed, it has acquired the status of *jus cogens*, namely a ‘peremptory norm’ of international law that is binding on all States even if they have not ratified a relevant human rights treaty. As acknowledged by the UN Special Rapporteur on Torture in the above quote, the prohibition has non-derogable status in human rights law and is enshrined in a number of international treaties including:

- the Universal Declaration of Human Rights (1948), Article 5;
- the International Covenant on Civil and Political Rights (1966), Article 7;
- the European Convention on Human Rights (1950), Article 3;
- the American Convention on Human Rights (1978), Article 5;
- the Geneva Conventions (1955); and the Additional Protocols of 1977;
- the African Charter on Human and People’s Rights (1981), Article 5;
- the Inter-American Convention to Prevent and Punish Torture (1985);
- the UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (1984) (UNCAT);
- the Inter-American Convention to Prevent and Punish Torture (1985);
- the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (1987).

a) The Convention Against Torture

The Convention Against Torture, which came into force in 1987, is the most comprehensive international treaty dealing with torture. Its implementation is monitored by the Committee Against Torture which reviews state reports on implementation of the Convention; conducts confidential inquiries; considers individual communications; issues General Comments; and considers inter-state complaints.  

Article 1 of the Convention provides the legal definition of torture:

‘Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions'.

Unlike torture, cruel, inhuman or degrading treatment/ punishment are not defined in the international treaties; however, the terms are used to refer to ill-treatment that does not meet the threshold of torture.

58 For more detail on CAT and the work of the Committee, see the Association for the Prevention of Torture (APT) http://www.apt.ch/en/uncat/ (last accessed 26 October 2013)

59 This lack of definition was deliberate, as made clear by the Human Rights Committee: 'The Covenant does not contain any definition of the concepts covered by article 7, nor does the Committee consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied.' Human Rights Committee, General
Such treatment does not have to be inflicted for a specific purpose, but there does have to be an intent to expose individuals to the conditions which amount to or result in the ill-treatment. Degrading treatment may involve pain or suffering less severe than that inflicted by torture or cruel or inhuman treatment and will usually involve humiliation and debasement of the victim.

Although it is often difficult to identify the exact boundaries between the different forms of ill-treatment, ‘certain forms of ill-treatment or certain aspects of detention which would not constitute torture on their own may do so in combination with each other’. Nevertheless, it is important to emphasise that even in circumstances where ill-treatment is not considered severe enough to amount to torture, it may still be deemed prohibited conduct.

b) UN standards

The UN has developed a number of standards relevant to the prevention of torture and cruel, inhuman and degrading treatment. Among these are:

- Standard Minimum Rules for the Treatment of Prisoners (1955)
- Basic Principles for the Treatment of Prisoners (1990)
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988)
- Rules for the Protection of Juveniles Deprived of their Liberty (1990)

In addition, the Human Rights Council has established fact-finding and investigatory mechanisms known as ‘Special Procedures’. These include Special Rapporteurs and Working Groups aimed at documenting human rights on particular themes or country situations. In 1985, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment was created. It covers all countries, irrespective of whether a State has ratified the Convention against Torture. The Special Rapporteur on Torture engages in three main activities:

i. transmitting urgent appeals to States with regard to individuals reported to be at risk of torture; communications on past alleged cases of torture;

ii. fact-finding country visits; and

iii. submitting annual reports on activities to the Human Rights Council and the General Assembly.

The current Special Rapporteur on Torture, Juan Méndez, has been particularly vocal about the importance of independent monitoring of places of detention. In a speech made in December 2013, he emphasised that the ratification of the Optional Protocol and the creation of independent national bodies to carry out unannounced visits to all places of detention certainly constitute an effective measure to prevent torture in the sense of Article 2(1) of the Convention Against Torture.
The Optional Protocol to the Convention Against Torture

a) History

In October 1976, the weekly journal La Vie Protestante in Geneva published an article by Jean-Jacques Gautier entitled, 'A new weapon against torture'. The article outlined in detail what became known as the 'Gautier proposal', namely the idea of an international convention to establish a system of unannounced visits to places of detention. The rationale was to prevent, rather than react to, violations on the premise of dialogue, rather than confrontation, with States. In 1977, Jean-Jacques Gautier founded the Swiss Committee against Torture (Comité Suisse contre la torture), which would later become the Association for the Prevention of Torture, as a platform to promote the prevention of torture.\(^{63}\)

In March 1980, Costa Rica formally submitted a draft Optional Protocol to the Convention against Torture to the UN. However, the draft was presented with a proposal that its examination be postponed until after the adoption of the UNCAT, to avoid delaying the approval of the other treaty.

In 1983, the Council of Europe’s Parliamentary Assembly adopted a draft text, prepared by the Swiss Committee against Torture and the International Commission of Jurists, to create a visiting system within the framework of the Council of Europe. Following negotiations, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT) was adopted by the Council of Europe on 26 June 1987. This Convention establishes the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which is mandated to visit at any time any place of detention in any Council of Europe member states. An attempt was made to establish a similar system within the Americas. However, whilst an Inter-American Convention to Prevent and Punish Torture was adopted in 1985, a system for regular preventive visits was not included within the treaty.

In 1987, the Convention against Torture entered into force and the idea of establishing an international visiting mechanism within the UN was revived. In 1991, Costa Rica deposited a new project for an Optional Protocol. A drafting Working Group was established in 1992, open to all States as well as relevant NGOs and other experts. The negotiations proved to be difficult. In 2001, the Mexican delegation, with the backing of other Latin American States, submitted a draft that proposed an obligation for States to establish national visiting bodies. This proposal and a compromise text was ultimately submitted. Following a round of strongly contested debates and votes within the UN Human Rights Commission and then the UN Economic and Social Council, the UN General Assembly adopted the OPCAT on 18 December 2002 with a majority vote\(^{64}\). On 22 June 2006, the OPCAT entered into force following the twentieth ratification.

b) OPCAT today

At the time of writing, there are 72 State Parties to OPCAT, with 20 additional state signatories. Looking at the regional spread, the Europe and Central Asia region has 39 State Parties (5 additional signatories); Africa has 11 State Parties (12 additional signatories); Asia-Pacific has 5 State Parties (2 additional signatories); the Americas have 14 State Parties (1 additional signatory); and there are 3 State Parties (0 additional signatories) in the North Africa and Middle East region.

OPCAT is unique among international human rights agreements. Not only does it set up an international body of independent experts, the Subcommittee on Prevention of Torture (SPT), who can visit countries to ascertain conditions of detention unhindered, but it also requires countries to designate a National Preventive Mechanism (NPM), the mandate of which is broadly similar to that of the SPT on a national level. These independent bodies visit detention facilities to verify that the treatment of detainees conforms to

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\(^{63}\) A full account of the history of the APT is available on its website, [http://www.apt.ch/en/history/](http://www.apt.ch/en/history/) (last accessed 26 October 2013)

\(^{64}\) Adopted by the UN General Assembly, Resolution 57/199, UN Doc. A/RES/57/199, 18 December 2002
international standards.

The *raison d'être* of the OPCAT system is prevention. This is reflected in the Preamble to the OPCAT which adopts a broad perspective on prevention, in that ‘*effective prevention requires education and a combination of various legislative, administrative, judicial and other measures*’.

The monitoring bodies do not only examine conditions of detention in places like prisons, police stations and mental health institutions; they also consider the laws, judicial and administrative procedures – or the lack thereof – that apply when individuals are deprived of their liberty.

**OPCAT: The UK context**

The UK ratified OPCAT on 10 December 2003 and designated its NPM on 30 March 2009 through a Written Ministerial Statement which named initially 18 institutions across all jurisdictions, to fulfil its mandate. It was also agreed that HM Inspectorate of Prisons (HMIP) would carry out the coordination and communication function of the NPM. The purpose of coordination is to promote cohesion and a shared understanding of OPCAT among the NPM members, to encourage collaboration and the sharing of information and good practice, and to facilitate joint activities.

On 3 December 2013 there was a further Written Ministerial Statement issued which made some corrections in the composition of the UK NPM and extended the mandate of the UK NPM to another two institutions. Therefore there are now 20 organisations which all together constitute the UK NPM. Included among these are the main organisations which support the work of lay visitors to places of detention: Association Members of Independent Monitoring Board (AMIMB) for Independent Monitoring Boards (IMBs) and Independent Custody Visitors Association (ICVA) for Independent Custody Visitors (ICVs).

**IMBs:**

Under § 6 Prison Act 1952 (c.52) and § 152 Immigration and Asylum Act 1999 (c.33) IMBs can visit prisons and immigration detention centres respectively. Each prison and detention centre has its own IMB which is approved by the Secretary of State. The legislation does not make any mention of IMB's actual status in relation to the executive, though the Secretary of State may terminate the appointment of a member if he is satisfied that there is, or appears to be, or could appear to be, any conflict of interest between the member performing his duties and any interest of that member, whether personal, financial or otherwise. The IMB Secretariat is responsible for providing support to the IMBs. Although IMB members do not receive any remuneration, they receive travel and subsistence expenses which are met from a budget negotiated by the Secretariat with the Ministry of Justice and the Home Office.

IMB members are volunteers. No specific expertise required upon appointment. Applicants to the IMB are interviewed by two members of the local IMB and an independent member from another IMB. All IMB members must be security cleared and undergo criminal record checks. Members are then individually appointed by the Secretary of State taking into account the recommendation of the local IMB. Under Prison Rules 1999 §V 75(2) A member appointed for the first time to the independent monitoring board for a particular prison; or reappointed to the board following a gap of a year or more in his membership of it, shall during the period of 12 months following the date on which he is so appointed or (as the case may be) reappointed, undertake such training as may reasonably be required by the Secretary of State. The composition of the Boards have been set at a minimum of 10 and a maximum of 20, depending upon the size

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65 http://www.amimb.org.uk/
66 http://icva.org.uk/
67 For more information about the UK's NPM, see the database created by the University of Bristol's. Available via: http://www.bristol.ac.uk/law/research/centres-themes/hric/hricnpmukdatabase/
68 As an ICV, my knowledge of the practices of IMBs was limited. As such, I solicited information from AMIMB and received responses from two serving members. These questions and responses are attached to this report as Appendices B and C.
and nature of the establishment. A board shall have a chairman and a vice chairman who shall be members of the board.

IMB members are required to make frequent visits to the prisons. In practice, IMBs arrange a rota schedule which ensure that most, if not all, establishments are visited at least once a week by at least one member of the Board. Visits may be announced or unannounced and, by law, IMB members may at any time enter the prison and shall have free access to every part of it and to every prisoner. Although visits combine a proactive and reactive mandate, in general the visits are proactive. The Board shall:

- satisfy itself as to the state of the prison premises, the administration of the prison and the treatment of the prisoners;
- inquire into and report upon any matter into which the Secretary of State asks them to inquire. (he board shall direct the attention of the governor to any matter which calls for his attention, and shall report to the Secretary of State any matter which they consider it expedient to report;
- inform the Secretary of State immediately of any abuse which comes to their knowledge
- [Before exercising any power under these Rules] consult the governor in relation to any matter which may affect discipline.

IMB members may hear complaints which are made by detainee. Weekly reports of the IMB visits are not public but only submitted to the Governor of the establishment in question who is invited to respond to the recommendations made. All the IMBs prepare annual reports of their activities and almost all choose to make these public.

ICVs:

ICVs are local community members who check on the welfare of people in police custody, by visiting police stations unannounced. The revised Code of Practice on independent custody visiting describes the functions of the ICV. ICVs must be 18 years old and above and must have no direct involvement in the criminal justice system (e.g. serving police officers, special constables or police authority members and staff). Others, such as solicitors or probation officers, may be excluded to prevent possible conflicts of interest for the individual. However, each application is considered on its merits.

In England & Wales there is a requirement for each police and crime commissioner to provide a scheme administrator, responsible for recruiting, selecting and appointing ICVs. Recruitment must be open, non-discriminatory and well publicised and no person shall be appointed as an independent custody visitor without an interview taking place. The selection panel must record the reasons for decisions about appointment or non-appointment. Any appointment is subject to vetting or security clearance for all custody visitors (to an appropriate level as determined by the Home Office). Vetting renewal must be undertaken for all visitors before their appointments are renewed. In some areas across the country the scheme is not widely known. As such, the ICV panels are under-staffed and recruitment drives are not meeting their intended objective.

The police and crime commissioners must seek to ensure that independent custody visitors are representative of the local community and that there is a suitable balance in terms of age, gender and ethnicity, though in practice, many schemes across the country struggle to recruit younger members. The basic responsibility for initial and ongoing training lies with the police and crime commissioners and a structured plan with clear objectives must be developed in consultation with the police service and the local independent custody visiting community. In practice, there are notable gaps in training once an ICV has completed the initial training after appointment. Although brief training modules take place at the quarterly panel meetings, ICVs are often unaware of further training opportunities that may be available.

69 The reports can be accessed via: http://www.justice.gov.uk/publications/corporate-reports/imb
70 Available at http://www.icva.org.uk
ICVs visit police stations within the borough in which they live and/or work (or occasionally outside of their borough) on a weekly basis, in pairs within their local area. Upon arrival at a station, the ICVs identify themselves and are then taken to the custody suite. ICVs visit police stations randomly and unannounced. ICVs may occasionally be denied immediate access to the custody unit for safety reasons and asked to wait, though any delays in being admitted to the custody suite must be recorded on the visit report, and a reason given. ICVs can speak with any detainee in the police station, provided consent has been given. The ICVs are escorted around the station by a member of staff, though the escorting officer must remain within sight but out of earshot when the interview with the detainees is taking place. ICVs practice a system of self-introduction whereby they inform the detainee of their role and the reasons for the visit, highlighting that they are independent of the police. If consent is given, the ICVs go into the cell to interview the detainee. ICVs must have access to all parts of the custody area and to associated facilities such as food preparation areas and medical rooms. However, it is not part of their role to attend police interviews with detainees. Subject to obtaining the detainee’s consent to examine their custody record, ICVs should check its contents against what they have been told by the detainee. ICVs may also have access to other relevant documentation, which relates to a detainee e.g. risk assessment. All such information must be treated confidentially.

ICVs use a triplicate report form to record their findings. Once the visit is completed, one copy of the form is given to the station manager, one sent to the scheme administrator; one is kept for their own records. Any immediate issues of concern are raised with the custody sergeant. Any issues requiring attention from the panel are marked on the report form and are raised with the police representative who attends the quarterly panel meetings.
Appendix B – Oversight - an ICCV’s perspective

Why did you decide to become an ICCV? I love working with people, especially making a positive contribution in their lives.

Did you have any human rights training before you took office? The Inspectorate offers a four days induction training into the work of the ICCV which is later followed by the basic introductory "Paralegal" training (also lasting four days).

How long have you been an ICCV? I've been an ICCV for 18 months now.

How many correctional centres do you visit? Just one during the entire three (3) year contract. We do however have the "luxury" of applying for a transfer to any other centre for the remainder of your contract (based on personal/individual’s reasons).

How often do you visit a centre per week? We work flexi-hours, so it always depends on one's monthly allocated hours which vary from a minimum of hours per month to 69.5 hours per month. These hours are directly related and dependent on your prison-allocated-population as an ICCV.

Could you describe what happens when you visit a centre? I first sign in on an official diary/visitors' book for proof of each day/week/month's visit to the centre.

Who do you see first? This depends on the purpose of each visit to the centre; it is mandatory for me to cover different purposes, e.g. Interview with inmates or HCC, Conduct Site visits, Consult with inmates: one on one, etc.

How many inmates do you usually speak to? Do the inmates know who you are, or do you have to explain your office each time? This is dependent upon the status of the "inmate"; the SENTENCED inmates know who an ICCV is but the REMAND DETAINEE has to be informed regularly since it is almost a new arrival to the centre.

How do you write up your reports? Using a "questionnaire-like" form and also the "journalistic-reporting" format.

What kind of challenges do you face as an ICCV? Lack of job security, absence/lack of employment benefits, lack/absence of danger allowance and cover; absences of psychological services (since we are exposed to both primary and secondary trauma); lack of basic self-defence training; maybe more...

Do you generally have a good relationship with the correctional staff? Yes, definitely on professional level.

If you have any concerns about an inmate, what do you do? Communicate with him/her as well as with both DCS officials and the office of the Inspecting Judge (i.e. Judicial Inspectorate for Correctional Services / JICS).

Do you feel that you get enough support from JICS? (e.g. do you feel that the training that ICCVs receive is enough?) Since the ICCV's mandate is to monitor the inmates' conditions of incarceration and their treatment (and the training is centered on these two), I would say yes it is enough though it can do with some improvement here and there.

What do you enjoy most about being an ICCV? Assisting the inmates with their day to day issues including offering a listening ear for them while they debrief (which is very critical for those who neither have

71 Interview with Pepsy A. Bahlekazi, ICCV at Johannesburg Correctional Centre. October 2013
friends inside nor family support outside prison); learning about the various "layers" of our justice system and the role I play in one or two of those "layers". The opportunity to see humanity for who we really are (in terms of conduct/behaviour and temperament) - true reflection of humanity is all made bare/exposed behind the bars, this appeals to me!

If you could change anything about the work of ICCVs, what would it be? (e.g. more independence, more or less responsibility etc.). Of course INDEPENDENCE, but most of all more time to serve particularly the wrongfully accused behind bars.

Do you feel that the work of ICCVs is well known in your local community? NOT BY ANY STRETCH OF IMAGINATION!!