Detention Monitoring Tool Factsheet

Video recording in police custody

Addressing risk factors to prevent torture and ill-treatment

'The findings during the 2006 visit suggest that audio-video recording in the interrogation rooms of Garda stations may have been a significant contributing factor to reducing the amount of ill-treatment alleged by persons detained.' Report of the visit of the European Committee for the Prevention of Torture to Ireland, 2006

1. Definition and context

In the past decade there has been an unprecedented growth in the use of closed-circuit television (CCTV) monitoring systems. Most CCTV is used in public areas with the intended objective of deterring crime and providing security to the public, but CCTV is also increasingly used in places of deprivation of liberty. This Factsheet focuses on the use of CCTV in places under the authority of the police – whether police stations or police vehicles – where the deployment of CCTV has been observed in a significant number of countries. It also addresses the issue of video-recording of police interrogations, which differs from CCTV monitoring both in its purpose and in the manner in which it is commonly used.

Despite the limitations in scope, it should be stressed that the majority of issues raised in this paper are also relevant for other custodial settings, notably prisons.

Video-recording (and possibly audio-recording) can be used with different objectives which revolve around deterrence, protection, security and accountability. Given their different objectives, it is useful to distinguish between the recording of police interrogations and the use of CCTV as a general monitoring system.

The main purposes of recording police interrogations are:

- to prevent torture and other ill-treatment during questioning, as well as to provide protection to police officials against false allegations (*deterrence and protection*);
- to secure evidence for legal proceedings (*accountability*).

The main purposes of using CCTV in a police station or police vehicle are:

- to ensure the overall monitoring of what takes place on the premises (*security and protection*);
- to prevent suicides, self-harm and incidents of violence (*deterrence and protection*);
- to prevent torture and other ill-treatment, as well as to provide protection to police officials against false allegations (*deterrence and protection*).

In some contexts, CCTV may be used to compensate for a shortage of staff, even though this may not be acknowledged. Overreliance on CCTV may also increase the risk of dehumanising places of detention.

There are pros and cons to the use of CCTV monitoring in places under the authority of law enforcement agencies, but the recording of police interrogations is widely recognised to be an important safeguard against torture and other ill-treatment. Various cases of ill-treatment by the police have been revealed by video-recording and resulted in the investigation and prosecution of the perpetrators.[1]

CCTV never provides a full record of police conduct from the moment of arrest to the release or transfer to another facility. As stated by the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), '[m]ost of the alleged acts of police brutality reported to the delegation during its visit to the State party appear to have occurred in the street or in police vans during transportation of detainees to police facilities'.[2] As the transfer of detainees is a moment of particular

1 See, for example, 'Moment a policeman lost his temper… and his career: CCTV catches officer using 'pain restraint' to calm 15-year-old who refused to do as he was told', *Daily Mail* (UK), 10 October 2012. Available at: http://www.dailymail.co.uk/news/article-2215608/PC-Stephen-Hudson-spared-jail-CCTV-captures-using-pain-restraint-boy-15.html#ixzz2iYBDaylq <accessed 23 October 2013>

2 Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) to Mexico, CAT/OP/MEX/1, 31 May 2010, para. 141.

risk, video-recording of police vans is an important safeguard against ill-treatment. However, the SPT statement also underlines that video-recording is only effective at preventing torture if applied together with other preventive measures, including independent complaint mechanisms and adequate training for law enforcement officials.

A large variety of CCTV devices can be used for monitoring purposes, including fixed cameras, rotating cameras, zoom lenses etc. Some cameras record the images while others merely transmit them to a monitor. The type of system in place, the quality of devices and of images, the number and location of cameras, whether or not the images are recorded, and the management of the data collected are all crucial aspects in determining the usefulness and legitimacy of CCTV monitoring in a given place. In this Factsheet, CCTV monitoring is understood to include both fixed cameras filming targeted spots and video-recording of police interrogations, including cameras that are not permanently installed but brought to the room for the occasion.

2. What are the main standards?

Specific standards on the use of CCTV in places of detention are scarce, but in view of the growing and widespread use of video recording devices, they are likely to be developed in the future. Interestingly, existing standards only relate to video-recording of police interrogations – a practice that was already in place in various contexts long before the installation of CCTV monitoring systems – and are silent about its use for any other purposes.

The UN Committee against Torture (CAT), in its General Comment No.2 on Article 2 of the Convention, stated that '[a]s new methods of prevention (eg. videotaping all interrogations […]) are discovered, tested and found effective, article 2 provides authority to build upon the remaining articles and to expand the scope of measures required to prevent torture'.[3]

In his 2003 Annual Report to the General Assembly, the UN Special Rapporteur on Torture also stressed that 'all interrogation sessions should be recorded and preferably video-recorded, and the identify of all persons present should be included in the records. Evidence from non-recorded interrogations should be excluded from court proceedings'.[4]

> *'The electronic (i.e. audio and/or video) recording of police interviews represents an important additional safeguard against the ill-treatment of detainees. The CPT [European Committee for the Prevention of Torture] is pleased to note that the introduction of such systems is under consideration in an increasing number of countries. Such a facility can provide a complete and authentic record of the interview process, thereby greatly facilitating the investigation of any allegations of ill-treatment. This is in the interest both of persons who have been ill-treated by the police and of police officers confronted with unfounded allegations that they have engaged in physical ill-treatment or psychological pressure. Electronic recording of police interviews also reduces the opportunity for defendants to later falsely deny that they have made certain admissions.'*[5]

The CPT has also recommended the use of video-recording devices in the context of the use of Electrical Discharge Weapons (EDW), 'enabling the circumstances surrounding their use to be recorded'.[6]

3. Risk situations and aspects to be considered by monitoring bodies

3.1 Location and type of equipment

The location and type of equipment are important aspects of any CCTV monitoring system. Even though a place of detention may appear to be well monitored by CCTV, it may in fact have poor equipment which does not properly fulfil its function or video-cameras that are poorly placed. Cleaning and maintaining the equipment is also essential, as dirty or damaged cameras may only provide the illusion of scrutiny and security. In practical terms, it is also essential that when footage is needed to ascertain facts, it is properly filed, labeled and

3 Article 2 of the Convention against Torture: "1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. 2. No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture. 3. An order from a superior officer or a public authority may not be invoked as a justification of torture."

4 Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 17 December 2002, E/CN.4/2003/68, para. 26(g). See also A/56/156, 3 July 2001, para. 34.

5 European Committee for the Prevention of Torture (CPT) Standards, [CPT/Inf/E (2002) 1 – Rev. 2011], para. 36, p9.

6 CPT Standards, para. 77 and para. 82.

easy to locate. It is also essential that it is of good quality. If monitoring bodies are told that footage is not available because equipment was broken or the footage poor, they should immediately raise this issue with the authorities, as such situations jeopardise the preventive effect of the use of cameras.

There are no standards that specify where there should and should not be CCTV in a police station. Most monitoring and standard-setting bodies agree that the right to privacy needs to be safeguarded when detainees use the toilets, showers and wash basins. Detainees should be clearly informed about what is recorded by CCTV in the cell (eg. the toilet area may in fact appear blurred on the screen but detainees may not be informed of this by the police). Some monitoring bodies have argued for the removal of 'blind spots' in CCTV coverage, such as the toilet area, in order to prevent suicides. At the same time, prevention of such risks has to be constantly weighed against the protection of detainees' dignity. Authorities sometimes argue that CCTV in toilet areas is needed to stop detainees from flushing drugs away.

To ensure confidential and privileged communications, places where meetings with lawyers as well as medical examinations take place should not be video-recorded.

The legitimacy of video recording other specific locations on police premises is also subject to debate. For example, CCTV may appear to safeguard against abuse in rooms where strip searches take place, but at the same time, due consideration should be given to the protection of a person's privacy and dignity.[7] CCTV recording of cells to purposely prevent suicide attempts should not replace staff physically checking the situation of the persons concerned on a regular basis.

Where police stations have so-called 'sobering-up cells', video-recording may also be two-edged. On the one hand, it can help prevent incidents or even deaths; on the other, the use of CCTV in such situations can infringe the right to privacy of a person who is not only in a position of vulnerability, but in most cases not being held in the police station for having committed an offence. In any case, a regular round by police officers will be more effective at preventing incidents than CCTV monitoring alone, as images never fully reflect what is happening in the place being recorded.

> *'[A]lthough the CCTV surveillance of the rooms at the stations improves the safety of persons staying therein and helps prevent extraordinary incidents, it also limits the constitutionally protected right to privacy, which may be limited only by means of an act of law.'*[8] *(Polish National Preventive Mechanism)*

To protect detainees' right to privacy it is also important that any video screen transmitting images is not visible to members of the general public entering the police station or to persons being processed (ie. if monitoring screens are located at reception, they should be hidden from public view).

In order to protect those in custody as well as police officers from false allegations of ill-treatment, it is crucial that video cameras are placed in rooms where interrogations take place and that there should be no 'blind spots' where abuse can take place unrecorded. If there is only one camera in the room, it should be possible to rotate it or to increase the viewing field so that the camera provides an image of the entire room, and of all persons present at the time of the interrogation. There is a risk that threatening gestures towards the person being interrogated go unnoticed if the camera is fixed and its field does not cover the entire room.[9] It is also crucial that the quality of the image is good enough to ensure that persons filmed can be identified.

Lastly, when forced deportations of rejected asylum seekers are carried out by law enforcement agencies, video-recording can contribute to preventing abuse, as recommended by the CPT:[10]

> *'Deportation operations must be carefully documented. […] Other means, for instance audiovisual, may also be envisaged, and are used in some of the countries visited, in particular for deportations expected to be problematic. In addition, surveillance cameras could be installed*

7 This is the view of the French Inspector of places of deprivation of liberty. See visit report to Niort police station, 22-23 March 2011. Available at: http://www.cglpl.fr/wp-content/uploads/2013/07/Rapport-de-visite-du-commissariat-de-police-de-Niort.pdf <accessed 23 October 2013>. The institution in charge of preventing torture in Catalonia (Spain) is of a different view and has recommended installing video-cameras in all rooms where strip searches take place. See *Informe de la autoridad catalana de prevención de la tortura 2012,* p85. Available at: http://www.sindic.cat/site/unitFiles/3392/Informe%20ACPT%202012%20castellano.pdf <accessed 23 October 2013>.

8 See *Report of the Human Rights Defender (OMBUDSMAN) on the activities of the National Preventive Mechanism in Poland* in 2012. Available at: http://www.rpo.gov.pl/en/content/reports-national-preventive-mechanism <accessed 23 October 2013>.

9 See, for example, the European Committee for the Prevention of Torture (CPT) report on its visit to Turkey in 2009, CPT/Inf (2011) 13, para. 33, p22.

10 See the CPT's*13th General Report*, [CPT / Inf (2003) 35], p18, para. 44. See also CPT's visit to Finland in 2008, [CPT/Inf (2009) 5], para. 57, p29.

in various areas (corridors providing access to cells, route taken by the escort and the deportee to the vehicle used for transfer to the aircraft, etc.).'

What could monitoring bodies check?

- Which areas are monitored by CCTV? Is any area outside the police station also monitored by CCTV (such as police vehicles or police operations)?
- Are cells for 'sobering-up' monitored by CCTV?
- Is the CCTV equipment well-functioning?
- Are interrogations video-recorded? If so, is this done systematically?
- When interrogations are video-recorded, is the recording done for the entire interrogation (without interruption)?
- Are there any blind spots in places under video surveillance (especially in rooms used for interrogations)?
- Are cameras fixed/rotating/able to have a full view of the rooms under observation?
- Are there cameras which are turned off? If so, when and for what reasons?
- Are some screens visible to persons not authorised to view them (including members of the general public entering the police station)?
- Is the CCTV monitoring system used as a substitute for the physical and regular presence of staff?

3.2 Recording, storage and accountability

CCTV monitoring systems can either be limited to the transmission of images or record them at the same time. From a preventive perspective, CCTV in places of deprivation of liberty should have a recording function. The possibility of viewing footage in order to ascertain the veracity of allegations of ill-treatment grants protection both to detainees and police officers. However, the presence of a CCTV monitoring system should not replace call bells. The mere presence of a camera does not mean that police officers watch the screens constantly, whereas call-bells allow for police officers to be alerted immediately. Especially when detainees are at risk of suicide or when they are in 'sobering-up cells', police officers should regularly visit the cells to check on their condition, whether or not a CCTV monitoring system is in place.

That officials who analyse the images are sensitised to do so and are well aware of the relevant regulations is also an important safeguard against torture and ill-treatment. However, monitoring a screen should not be the responsibility of only one police officer or other staff member for a whole day/shift. Police officers should have a variety of tasks so as not to fall into a routine that could make them less alert.

The storage of all images recorded by CCTV should be closely regulated and supervised. Authorities should develop policies and regulations at the earliest stage, when the decision is taken to install CCTV in police stations, to ensure that recordings meet their objective and are being used professionally. For example, cases have been documented where the limited memory of the software used resulted in law enforcement officials storing the information on private memory sticks.[11]

In some contexts, laws stipulate how long data recorded by CCTV should be stored before being destroyed. However, these provisions are commonly limited in scope to images recorded in public areas and do not include similar images recorded in police stations. This can lead to arbitrariness in the conservation of data and practices that differ hugely from one police station to another. Law enforcement officials may not know how long to store this information and how and when to destroy it.

Taking into consideration the sensitivity of images and the right to privacy, it is essential that the information is used and managed in a proper way, and that footage can be traced from its recording to its destruction. Police officers should be instructed in the professional use of CCTV cameras and the management, storage and destruction of data, and trained on safeguards relating to privacy.

When audio-recording is used during interrogations, it should not be possible to stop recording randomly during questioning, and the whole interrogation should be taped. If it is possible for investigating officers to interrupt recording, there is an increased risk of a confession or statement being coerced and abuse going unrecorded. The practice of only

11 See French Inspector of places of deprivation of liberty, *Rapport d'activité 2012*, p42. Available at: http://www.cglpl.fr/wp-content/uploads/2013/02/CGLPL_Rapport-2012_version-WEB.pdf <accessed 23 October 2013>.

recording the final statement of the accused is equally problematic. Such practices shatter the deterrent function of video-recording, as questioning is one of the moments when a person is most at risk of being subjected to abuse.[12]

It should be noted that footage of interrogations may also be used for training police officers, including training on human rights. The educational use of such footage should not undermine detainees' right to privacy and whenever used the officers in charge should ensure that the faces of detainees are blurred.

What could monitoring bodies check?

- Does the CCTV monitoring system record images or does it merely transmit them without recording?
- Does the system record both images and sound?
- Is the system recording all the time or only at certain times? If so, why and when?
- Who is authorised to view screens and recordings? Are the authorised officers identified?
- How is monitoring organised within the police station? Do police officers in charge of monitoring screens have other tasks?
- What is the storage medium and how is it maintained?
- Where and how long is footage kept before being destroyed? Who has access to this material, and under what conditions?
- Is there a regulation stipulating how long footage can be stored? If so, how is this done in practice? If not, how long are recordings kept in practice?
- Is there a call-bell in the cells equipped with CCTV?
- Are law enforcement officials instructed in the use, storage and destruction of data? If so, are they well informed about these issues?
- Can detainees and their counsel access footage? If so, are they entitled to view, listen and copy it if they wish?

3.3 Type of institutions equipped with CCTV and regulations in place

Given the relative novelty of CCTV monitoring systems, in many countries their use has not yet been regulated, or only partially. Laws or decrees regulating the use of CCTV in public areas usually include the right to information for persons recorded, including the possibility to access images and to ask for their destruction. However, in many countries the legal framework does not apply to the use of this technology in places of deprivation of liberty, including police stations. A lack of regulatory framework is detrimental to the rights of persons in police custody in various ways. Risks involve violations of the right to privacy, both through intrusive video-recording and the lack of confidentiality which can result from the absence of management and supervision of recorded footage. The lack of regulation can also lead to arbitrariness in the use of CCTV.

In Slovenia, audio/video recording was found not to be systematically used by police officers because there was 'no special requirement in the law to do so'.[13]

Even within one country, use of CCTV may be arbitrary, with some police stations fully equipped with a sophisticated CCTV monitoring system and others not monitored at all.

In France, where most police functions are assumed either by the police or by the gendarmerie, very few cameras are installed in places under the authority of the gendarmerie. However, the use of CCTV may in fact be more relevant in gendarmeries from the perspective of prevention of ill-treatment, as gendarmes are absent at night,[14] and violent incidents amongst detainees and suicide attempts quite often take place during this time.

In some places police interrogations are video-recorded only when persons are detained under specific laws, such as for offences against the state or drug trafficking.[15] Where this is the case, persons arrested for other offences do not enjoy the protection provided by video-recording.

Whenever there is a regulation for the use of CCTV in places under the authority of the police, it should

12 See the CPT's report on its visit to Slovenia in 2006, [CPT/Inf (2008) 7], para. 24.

13 *Ibid.*

14 See Contrôleur général des lieux de privation de liberté, *Rapport d'activité 2012*, p39. Available at: http://www.cglpl.fr/wp-content/uploads/2013/02/CGLPL_Rapport-2012_version-WEB.pdf <accessed 23 October 2013>.

15 See for example the CPT's visit to Ireland in 2006, [CPT/Inf (2007) 40], para. 19-20, pp14-15.

provide a clear set of provisions, which cover the duty to inform persons that they are in an area where CCTV is being used; the responsibilities and chain of command regarding viewing, storing and destruction of data; as well as the access to data by detainees and their counsels. The benefits of recording should be carefully balanced with the right to privacy, and protection provided by CCTV should be granted without discrimination. Regulations should always stipulate who has access to images. If there is any footage involving nudity, the regulation should stipulate that only a person of the same gender should have access to the footage.

What could monitoring bodies check?

- Is there a regulation governing the use of CCTV? At the national/local/place of detention level?
- If there is a regulation, is there a specific provision or a specific act for audio-video recording in police stations and police vehicles?
- If there is a regulation, what are the provisions relating to the right to privacy and to the management of the information recorded?
- If there is a regulation, are there specific provisions regarding gender issues?
- Are some state institutions better equipped with CCTV than others (eg. police vs. gendarmerie)? If so, for what reasons?
- Is the CCTV monitoring system used as a way to compensate for a shortage of staff?
- Are detainees informed of the existence of a CCTV monitoring system and how is the information managed?
- Are all interrogations video and audio-recorded?
- Are there specific offences for which video-recording is not provided during police interrogation? If so, for what reasons?

3.4 Protection vs. surveillance

The authorities have a responsibility to find an adequate balance between guaranteeing the safety and security of the persons monitored by CCTV on one hand, and respecting their privacy and dignity on the other.

If the main objective of video-recording in police custody is to deter unlawful actions and ensure that police officers are accountable, this should not interfere with the person's right to privacy.

> *'The question of video-surveillance in places of deprivation of liberty is of a different nature than in locations open to the public. Whereas rapidly going through a 'video-recorded area' (which is the fate of any citizen in the public area, in public transportation, in stores, etc.) may be tolerable, the situation is quite different when the camera lens is permanently fixed on oneself, with all activities including private ones being viewed. Video-surveillance in this case leads to the negation of intimacy, which cannot be accepted.'*[16] *(French Inspector of places of deprivation of liberty)*

Even though persons held by the police do not usually spend as much time in custody as in other places of detention such as prisons, monitoring bodies visiting police stations have the difficult task of assessing whether there is an appropriate balance between surveillance and the right to privacy. This is particularly important for sensitive areas within the police station, such as toilets, showers, rooms for meeting with lawyers, or rooms where medical examinations take place. Whenever video-recording is used in a police station, persons under arrest should be informed about their location and purpose.

Overreliance on CCTV may lead to a false illusion of security and safety. CCTV cameras should also not replace personal contact between detainees and staff, and their use should not lead to the dehumanisation of places of deprivation of liberty.

What could monitoring bodies check?

- Is the right to privacy in the context of CCTV monitoring taken into consideration by the authorities? How do the authorities/ detainees/members of the monitoring body themselves perceive the balance between security/protection and privacy?
- Are persons in custody informed about the presence of CCTV and its purpose?

16 Contrôleur général des lieux de privation de liberté, *Rapport annuel d'activité 2009*, p111. Available at: http://www.cglpl.fr/wp-content/uploads/rapport_2009_Dalloz.pdf <accessed 23 October 2013>.

- Are toilets, showers, washbasins, rooms for medical examination, rooms for meetings with lawyers and rooms where body searches take place monitored by CCTV?
- When and where are detainees not monitored by CCTV?
- Is there a general impression that security and safety mainly depend on the CCTV monitoring system?
- Are physical checks of the cells conducted less often because of the presence of video-recording? What is the perception of detainees/prison officers? Do registers provide information?
- Do detainees feel protected, or harmed, by the use of CCTV?

4. What can monitoring bodies do?

Thanks to their visits to places of deprivation of liberty, monitoring bodies, including National Preventive Mechanisms (NPMs) established under the Optional Protocol to the Convention against Torture (OPCAT), have a role in monitoring the use of CCTV equipment and video-recording in police stations. They can check on the spot whether the location of CCTV cameras, the type of equipment, the recording and storage systems are appropriate. They can also enquire about accountability issues (who is in charge of supervising the use, storage and destruction of footage, who has access to monitors and footage, what procedures there are when abuses take place); regulations (if any); and whether or not there is an overreliance on video-surveillance to the detriment of detainees' right to privacy. The modalities of video recording police interrogations, as an essential safeguard against torture and other ill-treatment, should be a key concern for monitors.

To this end, monitoring bodies should ensure that they cross-check sources of information, including reviewing legislation and regulations, through interviews in private with detainees, interviews with police officers, on-site inspection and viewing of recordings if feasible. The latter is a particularly useful opportunity to cross-check detainee and police testimonies when there is a suspicion of ill-treatment or abuse, alongside the examination of medical records.

> *During its visit to Spain in 2011, the CPT was able to observe on CCTV recording that detainees were hooded and had to walk backwards when they were moved from their cell to the interrogation room, the doctor's room or to the toilet.*[17]

Monitoring bodies using checklists or other types of guidance during their visits can include the issue of CCTV among issues to be addressed and assessed during their inspections.[18] They can also share their opinions and recommendations with the authorities on the use of CCTV in their visit reports. Where the use of CCTV prompts significant concerns, monitoring mechanisms may consider dedicating a thematic report or specific sections of their annual reports to this issue.[19]

17 See, the CPT's report to Spain, [CPT/Inf (2013) 6], para. 24, p22. Available at: http://www.cpt.coe.int/documents/esp/2013-06-inf-eng.pdf <accessed 23 October 2013>.

18 See for example Her Majesty's Inspectorate of Constabulary (HMIC) (UK), *Expectations for police custody*, Version 2, 2012. Section 2 Treatment and conditions, 3 (Custody staff are competent to assess and manage risks presented by detainees): 'Observe whether the CCTV is working, whether it records and how long the recordings are kept' and 5 (Any force used within a custody suite is proportionate and lawful): 'Check CCTV recording' and Section 3: Individual rights 13. All rights relating to PACE [Police and Criminal Evidence Act] are adhered to: 'Check…video and audio recordings, especially if detainees claim to have experienced oppressive conduct'. Available at: http://www.justice.gov.uk/downloads/about/hmipris/police-custody-expectations.pdf <accessed 23 October 2013>.

19 See for example the thematic report published by the Polish NPM on the issue (only available in Polish), 2012. Available at: http://www.rpo.gov.pl/sites/default/files/Raport%20monitoring%20wizytjny.pdf <accessed 23 October 2013>; or the 2009 annual report of the French NPM (only available in French). Available at: http://www.cglpl.fr/2010/rapport-dactivite-2009/ <accessed 23 October 2013>.

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About this Factsheet

This Factsheet is part of PRI/APT's Detention Monitoring Tool, which aims to provide analysis and practical guidance to help monitoring bodies, including National Preventive Mechanisms, to fulfil their preventive mandate as effectively as possible when visiting police facilities or prisons.

All resources in the tool are also available online at www.penalreform.org and www.apt.ch.