

Can Inspection Produce Meaningful Change in Immigration Detention?

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The Global Detention Project (GDP) is a non-profit research centre based in Geneva, Switzerland, that investigates the use of detention in response to global migration. The GDP's aims include: (1) providing researchers, advocates, and journalists with a measurable and regularly updated baseline for analysing the growth and evolution of detention practices and policies; (2) facilitating accountability and transparency in the treatment of detainees; and (3) encouraging scholarship in this field of immigration and refugee studies.

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Can Inspection Produce Meaningful Change in Immigration Detention?

By Hindpal Singh Bhui¹

Abstract: Although prison inspection in the United Kingdom has a long history, inspection of immigration detention was properly established only in 2004.² Her Majesty's Inspectorate of Prisons (HMIP), a government-appointed independent human rights-based monitoring institution, holds this responsibility. This GDP Working Paper discusses the nature and impact of the HMIP's work, examining both the theory and practice of inspection. It places the discussion in the broader context of prison reform and debates on migration and border controls. The author argues that in liberal-democratic societies there are two broad approaches to promoting human rights reforms and challenging abuses: working from the inside to achieve progress with the risk that principles may be compromised and good intentions confounded; or promoting change from the outside, which is more uncompromising but less influential, at least in the short-term. This is a dilemma that confronts human rights based inspection of immigration detention in the UK. The main focus of HMIP is on improving the treatment of detainees and conditions in detention, not challenging the system of detention, even if immigration detention policy arguably lacks legitimacy in a way that criminal imprisonment does not. The author explores the "effectiveness" of detention inspection and whether inspection can be said to have promoted meaningful change.

Introduction

Prison monitoring in England and Wales has a far longer history than in most countries, dating back at least 180 years. Her Majesty's Inspectorate of Prisons (HMIP), a human rights-based monitoring institution, has the main responsibility for this service. The inspectorate's work is currently taking place in the context of a steep rise in the use of immigration detention in the United Kingdom, in line with the substantial growth in the detention of foreign nationals that has been observed across the western world as well as in many lesser-developed countries (Flynn 2014; Aas and Bosworth 2013; Wilsher 2012).

On any given day, there are some 4,000 immigration detainees in the UK. In the year ending September 2015, 32,741 people entered the immigration detention system, an increase on the previous year of 11 percent and a 24 percent increase over the previous five years.³ Immigration detainees are held in one of nine large immigration detention centres, the largest of which holds more than 600 people; a handful of small residential immigration detention holding facilities, usually near ports of entry into the UK; or in prisons, which currently hold around 400 immigration detainees.

¹ The author would like to thank Nick Hardwick, Martin Kettle, the editors and the three reviewers, who provided helpful comments and suggestions on earlier drafts of this paper.

² The terms "inspection" and "monitoring" are used in this paper interchangeably. "Inspection" is used in the UK to describe the work of HMIP, which is part of a "layered" approach to preventive monitoring implemented by the UK's multi-body National Preventive Mechanism (<http://www.nationalpreventivemechanism.org.uk/monitoring/>). HMIP's approach is in line with the general criteria for preventive monitoring laid out by the Association for the Prevention of Torture (see <http://www.ap.torture.ch/en/preventive-visits/>).

³ Home Office immigration statistics provide figures for immigration removal centres but do not include those held under immigration powers in non-residential, short-term holding facilities, police stations or prisons.

This paper discusses the history of HMIP's work and the nature and impact of its scrutiny of immigration detention, a role that was properly established only in 2004. Given the relatively weak legal and procedural controls around the use of administrative detention, immigration detention arguably lacks legitimacy in a way that criminal imprisonment does not (Bosworth 2014; Bhui 2014). What does it mean to talk about inspection effectiveness in this context? Can inspection efforts that are focused narrowly on improving the treatment of detainees promote positive change?

The history of inspection and emergence of HMIP

Prison monitoring in the UK can be traced back as far as the 1770s when the prison reformer John Howard, shocked at the inhumane conditions in his local county prison, began to visit prisons across England and Wales and later in Europe, publicising what he found (Howard 1777).⁴ Howard's work to improve prisons was formalised by the 1835 Gaol Act. This Act allowed for the appointment of the first official prison inspectors, who were tasked with reporting prison conditions to the responsible Secretary of State.

The intended role for these inspectors gradually drifted away from Howard's humanistic zeal, and their main task became promoting consistency in an otherwise chaotically managed prison system that lacked central oversight (Shute 2013). The inspectorate went through a number of subsequent incarnations but remained essentially a tool of prison management until 1981. At that time, serious concerns about poor conditions, overcrowding and violence in prisons spurred a major inquiry led by Justice May (HMSO 1979). The inquiry suggested that an inspectorate that was more independent from the prison system could provide better assurance about its adequacy to politicians and the public. The Criminal Justice Act 1982 subsequently created the role of "Chief Inspector of Prisons" and Her Majesty's Inspectorate of Prisons (HMIP) came into being.

The independence of HMIP has been much debated. While there has been no suggestion of government interference with its findings and reporting⁵, HMIP's reliance on the Ministry of Justice for much of its funding remains problematic (see House of Commons Committee of Public Accounts 2015). However, successive chief inspectors have used their public profile to assert independence, occasionally coming into open conflict with senior government officials and ministers (Hardwick 2016).⁶ The result is that, although its independent voice and role remain vulnerable, few people doubt the current willingness of HMIP to challenge officials or their policies, and report on outcomes for those in detention. Moreover, HMIP is given adequate resources to carry out its duties. In the year to April 2015, HMIP had a budget of £3.62 million, mainly from the Ministry of Justice and Home Office. HMIP has a team of approximately 75 full time and sessional staff. Between April 2014 and April 2015, it published 94 inspection reports, 17 of which were on immigration detention facilities or escorted overseas removals (HMIP 2015c).

HMIP's identity as a human rights-based institution was firmly established after the UK ratified the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in December

⁴ See the Howard League website: www.howardleague.org/johnhoward.

⁵ Notably, the British Minister of Justice recently wrote: "They [independent scrutiny bodies] are not afraid of taking a critical view, as clearly illustrated in recent inspectorate reports. As the responsible Secretary of State, critical reports can make difficult and painful reading but I would wish it no other way." See: <http://www.publications.parliament.uk/pa/cm201516/cmselect/cmjust/1000/100003.htm>.

⁶ See also House of Commons Justice Committee hearing, "HM Inspectorate of Prisons' relationship with the Ministry of Justice," <http://www.parliamentlive.tv/Event/Index/54c0f348-9b96-4ddc-9510-fe1d5ab70482>.

2003. This was an important moment for independent inspection. OPCAT recognises the particular vulnerability of detainees and the role that regular independent visits can play in preventing abuse, and obliges governments to create an independent custody monitoring body, or “National Preventive Mechanism” (NPM). HMIP became the coordinator of the UK’s National Preventive Mechanism (NPM) and thereby acquired a specific role in upholding human rights obligations.⁷ This has bolstered the efforts of successive chief inspectors to prevent HMIP from reverting to being a part of the prison system’s management accountability structure, which would dilute its credibility as an independent organisation.

HMIP has never sought the power to force compliance with its recommendations, something that could start an inexorable creep towards being part of prison managerial structures. Inspection does not assess the performance of managers but outcomes for detainees, using independent inspection standards derived from international human rights instruments. This has not precluded commentary on management effectiveness or the impact of factors such as staffing levels, training and morale. In fact, the chief inspector can elect to discuss any factors that he considers relevant to outcomes for detainees.

There is remarkably little legislation directly relating to the work of the inspectorate. HMIP’s legal duties are laid out in the Criminal Justice Act 1982 and include reporting on the treatment of prisoners and conditions in prisons, and submitting an annual report to Parliament. These duties were extended to immigration detention centres by the Immigration and Asylum Act 1999, and to short-term immigration holding facilities and escort arrangements by the Immigration, Asylum and Nationality Act 2006. The first inspections of immigration detention took place in 2002, although routine inspections began only in 2004.

While immigration inspection is much less established than prison inspection, it has arguably strengthened the case for an inspectorate separated from the bodies that it inspects. This is partly because of the greater potential for abuses made possible by administrative detention, which is not subject to routine judicial oversight and lacks the legal and procedural safeguards that have developed over a much longer period in criminal detention (Zedner 2013; Shaw 2016; APPG 2015; Bhui 2013a).

Inspection methodology

HMIP has full control over when and where it inspects and in recent years has moved towards flexible risk-informed scheduling of inspections, which are nearly always unannounced.⁸ This means that while every facility is inspected regularly, establishments of concern are inspected more often. Larger immigration centres are normally inspected every 2-3 years, and could be inspected much more frequently if judged necessary. Inspections take place over a two-week period. The methods of inspection include group and individual meetings with detainees, a written survey of the population, observation

⁷ NPMs are required to be functionally independent, have diverse, expert personnel and provided sufficient resources to fulfil their mandate. They must have the powers to go where they want, speak with whomever they choose and observe whatever they choose. They must be allowed to use the information they gather to influence policy and practice at national and local levels. See UK NPM website at <http://www.nationalpreventivemechanism.org.uk/>.

⁸ Inspections became predominantly unannounced following the discovery in 2009 that prisoners considered difficult had been moved from a prison before an announced inspection, apparently to prevent them from speaking to inspectors (see HMIP 2009a: 5).

of life in detention, discussions with staff, and examination of official documentation. In most respects inspection of immigration detention mirrors that of prisons. The main additional area is a consideration of immigration casework; inspectors have access to the Home Office's database and examine a sample of cases, looking in particular at the reasons for lengthy detentions.

Before the inspection starts, inspectors read HMIP's intelligence file, which includes correspondence from detainees and their families, media reports and any other information relevant to an assessment of how detainees are being treated. During inspection, inspectors follow the principle of "triangulation," which means that they try to base every key judgement on at least three sources of evidence. The detainee survey is a particularly critical source of evidence. It is translated into 14 languages and asks some 80 questions about the detainee's experience in custody. The survey is conducted by HMIP's professional researchers and typically achieves a 65-70 percent response rate.

For each large centre, the survey and an immediate tour of the centre are completed during the first week of the inspection. High-risk areas are prioritised during this tour, including separation units, where detainees are held in conditions of isolation. Detention Rules allow for detainees to be taken there if they are considered to pose a risk of harm to the safety or security in the centre.⁹

During the second week of the inspection, the detainee survey results and information requested from detention centre managers are available to a larger inspection team; the team is comprised of inspectors with diverse experience and may include ex-prison managers, academics, lawyers, community sector professionals, healthcare and education specialists, ex-police officers, and ex-social workers and probation officers. The specialist immigration detention team at HMIP, which also routinely inspects prisons, comprises four permanent and four associate staff, who have worked in prisons, probation, immigration law, academia and the voluntary sector. Unlike most other NPMs, all HMIP inspectors carry the keys to each place of custody they visit, possibly a legacy of HMIP's former status as part of the prison service's internal inspection processes.¹⁰ This is extremely useful as it allows inspectors to go anywhere without interference from facility staff and spend time walking around the centre talking to detainees privately.

Findings are discussed each day by the team and then taken to the centre's senior managers, who have the opportunity to challenge any findings. At the end of the second inspection week, HMIP provides final judgements on outcomes for detainees against four tests of "healthy" detention: safety, respect, purposeful activity and preparation for release and removal.¹¹ This feedback is given to detention managers and Home Office officials and provided verbally during a formal final debrief meeting. Managers are also given a written copy of key findings so that no one is in any doubt about the inspectorate's conclusions. A full report is normally published within four months and accompanied by a press release and media interviews. The chief inspector has direct access to the media and external stakeholders, a critical power given that HMIP has no means of enforcing compliance with its recommendations and has no power to intervene in individual cases. The inspectorate's influence relies to a large extent on its reputation with the public and media.

⁹ The Detention Centre Rules 2001, <http://www.legislation.gov.uk/ukxi/2001/238/contents/made>.

¹⁰ All inspectors receive training on the secure use of prison keys.

¹¹ The concept of a "healthy prison" was first set out by the World Health Organisation and was developed by HMIP.

The legitimacy of inspection

Before discussing what it means to talk about the effectiveness of inspection on a micro level, it is useful to consider some more fundamental questions. In his assessment of HMIP's work, Bennett (2014: 451) points out that prison inspection could be seen as "a deeply embedded part of the carceral network." This is because it endorses the perpetuation of the societal inequalities that dictate the nature of the prison population. This argument arguably applies even more acutely to immigration detention: individual vulnerabilities of detainees are well documented and global inequality and disadvantage are reflected in the make-up of detained populations, which include for example large numbers of Iraqis, Syrians, Ethiopians and Somalis (Shaw 2016; HMIP 2015a).

HMIP does not have a remit to challenge the state's decisions to incarcerate people, either for criminal or immigration matters. It does not therefore deal directly with a key concern of immigration detainees and campaigning organisations, namely the fact of their detention in the first place, which indisputably occurs in a context of far weaker legal safeguards than for criminally convicted prisoners (Zedner 2013).

The UK remains one of the few countries in Europe that apply no limit to the length of detention for adults. Guidance to British immigration judges suggests that three months is a "substantial" period of detention and that "Imperative considerations of public safety may be necessary to justify detention in excess of six months."¹² Despite this, at every detention centre, inspectors find a minority of people held for far longer periods; in one recent inspection, 39 detainees had been held for over a year and one man for over five years (HMIP 2015b). The detrimental impact of this policy on detainees' mental state and family life cannot be adequately quantified (HMIP and ICIBI 2012; APPG 2015; Shaw 2016).

It is also important to note that only 47 percent of those leaving detention in the year ending September 2015 were removed¹³, which leads to obvious questions about why they were detained in the first place; the objective of detention—namely removal of those who have no legal right to remain in the UK—is patently not being achieved in many cases. Nor is there significant evidence that detention effectively deters irregular migration or asylum seeking (Edwards 2011; Sampson 2015). The push factors of migration—economic inequality, war, famine and natural disasters, among others—outweigh the risk of being detained and encourage people to take the chance of travelling to other countries illicitly. Moreover, there is some evidence that more focus on voluntary return and alternatives might be at least as effective as detention in achieving the objectives of immigration control, but at a far lower cost (see APPG 2015, especially pp.31-32).

In one key respect, the comparison between criminal and immigration detention breaks down almost totally: unlike administrative immigration detainees, prisoners are given legitimate reasons for their punishment during an exhaustive legal process with well developed checks and balances that guard against arbitrary impositions of power. This

¹² This judgement is set out in "Bail guidance for judges presiding over immigration and asylum hearings," implemented on Monday 11 June 2012, <http://www.justice.gov.uk/downloads/tribunals/immigration-and-asylum/lower/bail-guidance-immigration-judges.pdf>.

¹³ As noted previously, Home Office immigration statistics do not include those held under immigration powers in non-residential, short-term holding facilities, police stations or prisons. Prisons can accommodate up to 400 additional detainees.

process makes it easier for prisoners to accept that their incarceration relates to a recognisable system of justice and supports legitimacy and order.

In contrast, immigration detainees can be held on the authority of relatively junior immigration officials without routine judicial oversight of their detention (HMIP and ICIBI 2012; APPG 2015).¹⁴ Given that in prisons the act of containment is in itself the punishment, it is also not hard to see why detainees see their detention as a punishment, despite this not being an officially stated purpose of administrative immigration detention (Bhui 2013a).

In detention, large numbers of detainees find it hard to obtain good quality legal advice to help them apply for bail or contest deportation (HMIP 2015c). Changes in UK legislation have further restricted avenues of appeal and the availability of legal aid. Most detainees are held in immigration centres resembling secure prisons (HMIP 2015c, 2013a), and around 400 immigration detainees are held in actual prisons without the assistance they would receive in immigration detention centres, such as access to welfare officers and mobile phones (HMIP 2015d). Systems in place to provide safeguards against detention for those who have been tortured or who otherwise are very vulnerable are at best variable and often inadequate (HMIP and ICIBI 2012; Shaw 2016).

Notably, there have been six recent cases where the Home Office has been found to be in breach of Article 3 of the European Convention on Human Rights by domestic courts as a result of the way that it has treated immigration detainees with mental illnesses.¹⁵ A detailed review of these cases found evidence of systemic failings in the operation of immigration detention, such as weaknesses in systems for reviewing detention, a lack of psychiatric provision, poor communication, and “bureaucratic inertia” (Johnson 2016: 297). The extremely high threshold that applies to Article 3 breaches brings into sharp relief the gravity of such failures, the vulnerability of those in immigration detention and the importance of external scrutiny. In these cases, it was not HMIP, but immigration lawyers, support and advocacy groups, and determined individuals whose role was most critical in exposing human rights violations.

So what is HMIP’s human rights role in this context? Does it encourage greater use of detention by helping to improve conditions without forcing fundamental changes (such as stopping the detention of people who are mentally ill)?¹⁶ A brief consideration of “legitimacy,” a concept that is more layered than it first seems, may help inform this discussion (see also Bhui 2014).

Legitimacy emerged in prison studies in the early 1990s in an attempt to understand the problems of order in an English and Welsh prison system that had recently experienced a wave of serious disturbances. A subsequent inquiry (Woolf 1991) identified deep-rooted problems in the way that prisons were run, most fundamentally an imbalance between security and control on the one hand, and decent treatment of prisoners and justice on the other (para. 10.44). Woolf concluded that the riots were in large part the result of the prison service failing to demonstrate fair treatment towards prisoners, and that more

¹⁴ It is notable that the British government has accepted an amendment to the Immigration Bill currently going through the British parliament, which will enforce automatic bail hearings for detainees held for six months.

¹⁵ One case was overturned on appeal.

¹⁶ In the context of prisons more so than immigration detention, reasonable questions might be asked about the effectiveness of inspection at times of deteriorating custodial conditions (see HMIP 2015c). Work is underway at HMIP to develop a more sophisticated ways of measuring impact. Measuring how far places might have deteriorated without inspection scrutiny and how much more quickly they recover with it are considerable challenges for all NPMs.

decent and just management would help to address this problem. Much subsequent academic thinking about legitimacy has been based on Tyler's efforts to explain "Why people obey the law" (2006/1990; see also Tyler 2010). His work suggests that the fairness with which authority is exercised (procedural justice) is the most crucial element in determining whether it has legitimacy. In the context of detention, the notion of legitimacy assumes that order relies on the cooperation of detainees themselves and that this cooperation will not be given in response to mere compulsion; it depends to a large extent on a perception of fair treatment.

The assertion of power is a critical element of thinking on legitimacy (Sparks 1994). Legitimacy theory asserts that power is to some degree negotiated and failure to accept this fact jeopardises the equilibrium of the prison community. It draws attention to the distinction between the "simple power of a social actor and his or her authority" (Sparks 2007: 169). By the same token, the need for legitimation tends to constrain the actions of the powerful (Sparks, Bottoms and Hay 1996; Sparks and Bottoms 1995), assisting the maintenance of the critical balance underpinning well-ordered institutional environments.

Liebling (2004) talks not of legitimacy as such, but "moral performance," a concept that goes beyond the focus on power relations and encompasses the importance of psychological wellbeing. Liebling's (2004) analysis stresses intrinsic human worth and dignity, and paves the way to a discussion of fundamental human rights (see also Liebling 2011). The breadth of Liebling's discussion has a particular resonance in immigration detention, where, notwithstanding a number of disturbances in the 2000s (Whalley 2007), there has been much less disorder than would be expected by the legitimacy deficit that immigration detention centres would seem to experience in comparison to prisons. This suggests that the exercise of procedural justice by custodial staff may mitigate to some degree the deficit created by the lack of procedural justice in the wider system of immigration enforcement that leads to detention.

Sparks (1994) stresses the importance of the exterior environment in the bestowal of legitimacy. This connection to the outside helps to expose to scrutiny not only the authority that places people in detention, but also the wider geo-political environment, bringing it into the ambit of discussions of what goes on within immigration detention centres. The connection of outer and inner worlds in legitimacy thinking highlights the relevance of the internal management of institutions to wider society. The way people are treated in detention reflects the values that our polity wishes to impart, and the way that the justice system is perceived reflects considerably on perceptions of the fairness of society. The legitimacy of the rule of law can therefore be undermined by a discriminatory or disproportionately punitive legal system, and engaging in discussions of legitimacy can spur momentum for change (see case study 2 below). Sparks also highlights the generative capacity of the concept; that is, reforms aiming to enhance legitimacy open up other questions and issues, leading to the possibility of wider change (see case study 3 below).

An awareness of legitimacy positively encourages those who exercise power to do so in a thoughtful and more analytical way and challenges them to consider changes, both radical and incremental. Many of those working in immigration detention and control feel demoralised and unsupported by the public, often for not being tough or efficient enough, and by campaigners and many academics for lacking compassion and humanity (Lampard and Marsden 2016). There is consequently reason to believe that they would

also welcome the development of this debate, as it would help to address the intellectual dissonance that characterises the use of immigration detention.

Immigration detention staff apply legitimacy concepts when they talk of things such as “dynamic security” (which requires good detainee-staff relationships and communication) and detainee consultation meetings (designed to inform and empower detainees), as well as when they engage the outside community to provide voluntary support for those in detention (see case study 3 below). Legitimacy requires those in power to justify immigration detention to the point that it is understood by detainees, and this requires action not just by detention staff but also the Home Office, which is responsible for decisions to detain. Once this understanding is reflected in policy, detention itself may then be based on clear ethical principles that are comprehensible to detainees, staff and the wider community. It may on the other hand simply be exposed as a poor policy. Only by striving for such understanding can such conclusions be convincingly drawn, and only through exposure to the outside world, partly through in-depth inspection, can this thinking be properly grounded.

How does HMIP’s work fit into this way of thinking?

The effectiveness of inspection: Three case studies

The inspectorate’s main objectives are to improve treatment of and conditions for those in custody, and to prevent inhuman or degrading treatment. If success is measured on the basis of achievement of recommendations, 80-90 percent are accepted and implementation—as checked by HMIP itself during follow up inspections—varies from 50-60 percent (HMIP 2014a, 2015c). The Home Office completes a service improvement plan following each inspection in response to recommendations and publishes it, reinforcing acceptance of accountability. HMIP tends to have broad support from detention centre managers for its role; even if they do not always agree with overall conclusions, managers tend to comment positively on their ability to discuss findings with inspectors, challenge evidence and get reasoned responses from inspectors.¹⁷ This cooperation, based largely on confidence in HMIP’s evidence-based conclusions, is essential to having an impact.¹⁸

A former chief inspector of prisons, Nick Hardwick, sets out five areas where independent scrutiny has an important influence (Hardwick 2015):

1. The power imbalance between the detainee and jailors. This refers to the dependency that detainees have on staff, not only to refrain from committing obvious acts of abuse but also to avoid victimising them in more subtle ways, such as restricted access to showers, clean underwear and toilet paper. Such behaviour may seem minor but demonstrates the total control that custodial staff exercises and the potential for abuse of power.

¹⁷ This is established through exit surveys that HMIP sends to all centre managers to help establish their acceptance and understanding of the inspection findings and experience of the process of inspection.

¹⁸ HMIP conducts an annual stakeholder survey, with largely positive results about its influence and professionalism. See “HMIP 2014 Stakeholder Survey,” <https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2015/02/Stakeholder-Survey-2015-FINAL-Summary-report.pdf>.

An exit survey is also conducted after each inspection asking managers to provide a view on their experience of inspection and the clarity of the findings they were given.

2. The closed nature of detention. This means that without HMIP the public, media, and most authorities can only find out what happens inside the walls of detention with the permission of managers.
3. Detainee credibility. The supposed lack of credibility of detainees, whose criticisms may otherwise be dismissed, is countered by the centrality given to the detainees' voices in the inspectorate's methodology.
4. The normative effects of custody. The nature of custody may lead staff to become accustomed to things that they should not. An important wider role of inspection is to combat institutional drift where what is unacceptable becomes the norm; it exposes any such tendency to managers who have ceased to notice what is happening, and to media and public scrutiny.
5. "Virtual prison." First coined by former chief inspector Anne Owers (2007), this concept refers to the possibility that managers may think they are running a prison, even if this is far from the case.

All of these points apply to both prisons and immigration detention centres. The following case studies help illustrate how effective inspection can effect change in these areas:

Case study 1: Inhumane treatment of elderly man. During an inspection of Harmondsworth immigration detention centre in 2013 (HMIP 2014c), an HMIP inspector examined reports that detention staff are required to complete after every incident involving the use of force and during escorts. The inspector noticed that handcuffs had been used during a detainee's visit to the hospital and wanted to know the reasons for this. A combination of healthcare, security, safer detention, and immigration casework inspectors subsequently pieced together the fact that the detainee in question was a frail and ill 84 year-old man, and by any standards the use of handcuffs in this case was disproportionate. Inspectors subsequently discovered that he eventually died during a hospital visit and was still in handcuffs at the time, dying in a most undignified and unacceptable way (see also PPO 2015).

The man in question was Alois Dvorzak, who was originally from Slovenia and had settled in Canada. As an elderly widower who was showing signs of dementia, he decided to visit his daughter in Slovenia. He arrived at London's Heathrow airport with irregular paperwork and was eventually detained in one of the more secure and troubled immigration detention centres in the UK despite the fact that what he clearly needed was medical and social care. The publicity from HMIP's report led to an investigation by a television company, which went to Slovenia to find Mr. Dvorzak's family and put some important human detail around the case. This illustrates the importance of connecting detention to the outside world (Sparks 2004).

The British Home Office fully accepted that what happened was unacceptable and revised its guidance to detention centres on use of handcuffs, resulting in a very substantial reduction in the use of such restraints. The case was also cited in a recent inquiry into vulnerability in detention commissioned by the government, which proposes that a number of groups not be detained at all, including those with mental illnesses, pregnant women and victims of sexual assault (Shaw 2016).

This case illustrates how the role of inspection is not simply to promote improved custodial procedures at a local level, but also to influence debate and promote policy change through painstaking inspection practice. The NPM designation also places a

responsibility on HMIP to comment on policy, and in this case HMIP provided comments on a revised detention service order on handcuffing.

Case study 2: Unacceptable conditions in detention. Following the substantial increase in arrivals to Europe in mid-2015, a large number of people managed to enter Britain from France through the Channel Tunnel. Inspectors visited a short-term holding facility at the port of Dover (HMIP 2016). During the course of the inspection, it became apparent that people, including a large number of children, were also being detained at a nearby, previously unknown, site known as Longport, usually for a few hours but in one case for over 20 hours. Many of these people had previously been living in insanitary conditions in makeshift camps in France and had undertaken hazardous journeys.

The Longport facility, which had been created as an emergency response, was simply a freight shed that lacked even basic features. Inspectors found that the detainees, including children, were held in some of the worst conditions that they had seen (see pictures in appendix one, HMIP 2016). Detainees were not given adequate food, a very rare finding in UK immigration detention, and conditions were unhygienic. Even though people were unable to leave the facility and were in possession of legal paperwork stating they were detained, the Home Office initially told inspectors that they did not consider the situation to constitute detention.

Clearly, under the pressure of circumstance, the normal mechanisms of internal oversight and accountability that should apply to any form of detention had evaporated and a sense of perspective was lost. After HMIP reported on the facility, the Home Office improved basic conditions, reduced the use of the facility, and told HMIP of plans to stop using it altogether.

This case illustrates both a failure of preventive inspection and the success of routine inspection. This form of detention clearly should not have been in use at all, but the inspectorate was able to expose its operation and highlight an important debate about acceptable treatment of migrants at times of extreme pressure. It is at such times that mechanisms of accountability and human rights-based monitoring can be so important.

Case study 3: Detention of children. Before 2011, large numbers of children were held in prison-like conditions, often in a controversial centre known as Yarl's Wood. Successive inspection reports (see HMIP 2009b) highlighted the negative impact of detention on the children and their families; the reports provided the human stories behind detention, with evidence of the fear and distress of children garnered through interviews using experienced inspectors qualified to work with children. They also demonstrated poor assessment before the decision to detain and a lack of focus on safeguarding. Such findings provided evidence and data that would not otherwise have been available. A number of community sector groups had also campaigned strongly against child detention and their reports were also informed by inspection findings (e.g. BID 2011). In 2010, even the newly appointed deputy prime minister described the detention of 1,000 children during the previous year as a "moral outrage."¹⁹

As a consequence, the government announced a fundamentally changed approach to the detention of children and families, which is genuinely different from any other form of UK immigration detention. Children are now held in much better open accommodation for a maximum of seven days, the only group to which a time limit on

¹⁹ Announcement by Nick Clegg, Hansard 21 July 2010, col 349, <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm100721/debtext/100721-0001.htm>.

detention applies. A children's charity works with the children and families and provides valued support (HMIP 2012, 2014b; Bhui 2013b).

The generative capacity of legitimacy discussed above (Sparks 2004) can be observed in this case. Aiming to enhance legitimacy, this new approach to children opens up other questions and issues, leading to the possibility of wider change. It appears to show that it is possible to put a strict time limit on detention and still have an acceptable system for ensuring implementation of immigration requirements. It is reasonable to ask, therefore, why no other detention centres are based on a similar model, with finite detention and welfare-orientated, non-governmental organisations working alongside the Home Office and detention contractors. The new approach creates pressure for an official articulation of the moral difference between administrative detention of vulnerable children and adults who, as Shaw (2016) has conclusively shown, are also often highly vulnerable. It has generated an opportunity to build a progressive critique using the concept of legitimacy that can force an engagement between government and its critics on such fundamental issues (Bhui 2013b).

Concrete results

Improvements against HMIP's tests have been evident since the start of routine inspection of immigration detention and, while fundamental concerns about prolonged detention and vulnerability remain, the treatment of detainees in detention is markedly better than it was even a few years ago. For example, centres have appointed welfare officers, provided access to the internet, email and mobile phones, given them the chance to work and earn small amounts of money in detention, and opened up regimes that previously too closely paralleled prison regimes. All were advocated by HMIP before implementation. It is notable that in HMIP's confidential survey, detainees are often very positive about the level of respect they are given by detention staff, and in recent years the number of serious disturbances in detention has decreased significantly. This is not what one would expect from institutions that are abusive and shows how complex the judgement of appropriate treatment can be.

While HMIP does not make pronouncements on who the state should incarcerate, it has not shied away from criticising practices that seem perverse and damaging (e.g. in the case of child detention HMIP 2008a). HMIP routinely provides evidence of the impact of policies that may render detention in some cases ethically and sometimes legally questionable. Apart from children, this has applied to groups such as victims of torture (HMIP 2015e) and pregnant women (HMIP 2012; 2015a). HMIP's evidence has been extensively used in each of the recent major inquiries into immigration detention (e.g. Lampard and Marsden 2016; Shaw 2016; APPG 2015); academic research (e.g. Bosworth 2014); and in community sector and campaigning group reports (e.g. Medical Justice 2015; Women for Refugee Women 2014). Such evidence is often provided through detailed examination of immigration cases by inspectors who have access to the Home Office's computer records and provides the evidence that is needed for an informed dialogue between both those who defend and oppose the use of detention.²⁰

The three cases discussed above demonstrate both how the legitimacy of immigration detention practices can be questioned and how legitimacy of detention can be reinforced through inspection oversight. It should be remembered, however, that most

²⁰ That the Home Office accepts this scrutiny should not be under-estimated given the criticism that it potentially invites by doing so.

detainees are likely to be concerned about short-term access to things such as phones, internet, legal advice, decent living conditions, and healthcare rather than abstract debates about power and legitimacy. Inspection could be said to be a democratic system's response to imbalances of power as it can help to ensure that the relationship between state and detainee, a fundamentally imbalanced power relationship, does not become a relationship of brutality and abuse. But the argument that it might delay deeper reform is somewhat weak. For example, in the cases of Article 3 breaches discussed above in relation to detainees with mental illnesses, HMIP's reports formed part of the evidence that helped the lawyers to win these cases, and inspectors continue to monitor that such cases are not recurring without them being exposed to public scrutiny.

By providing detailed evidence, inspection opens space to consider the legitimacy of detention as well as expose injustices affecting the detained population. There has so far been much less debate about immigration detention than imprisonment and immigration per se. There is therefore a far greater possibility of informing legitimate challenges to immigration detention, which is based on shakier conceptual and evidential grounds than imprisonment. That is why there remains a strong debate about time limits on detention and the legitimacy and value of detention at all—it is quite proper that the state should be subjected to this form of fundamental challenge given the enormity of administratively removing someone's liberty.

Conclusion

Inspection is concerned with outcomes for detainees, a disempowered group who would not otherwise have its voice heard so authoritatively; it redresses to an extent the power imbalance between detainees and authorities, particularly by ensuring that the voice of detainees is given weight, a critical point that can support reform efforts. Preventive inspection is about exposing to the public what is done in their name and is one way to confront the objectification and dehumanization of detainees that can occur at each stage of the system (Bhui 2013a). The Chief Inspector of Prisons has the power of independence and publicity, and importantly can tell the human stories that are often lost in the hostile wider migration debate. This creates often small and incremental change but it has improved the everyday experience of many detainees and helps to highlight the limitations of security-based state responses to migration and globalization.

An important aspect of independence is that positive findings and good practice are highlighted as much as bad practice. The legitimacy of HMIP's work within the detention sector is partly as a result of its willingness to state what is good and recognise the individuality and decency of many staff, who are themselves critical of the way that individual detainees are treated in the immigration process. Whatever the systemic problems facing detention practices, widespread delinquency among immigration detention staff has not proven to be one of them, as was most recently established through intensive HMIP work at what is probably Britain's most controversial detention centre, Yarl's Wood (HMIP 2015a). As well as legitimacy with inspected bodies, inspection appears currently to have support among detainees who complete HMIP surveys in large numbers and engage with inspectors during visits. HMIP also has reasonably good relationships with community sector advocacy groups, which play a strong and important role in supporting detainees in the UK; they regularly provide evidence of concerns to HMIP to help assess risks that might lead to early re-inspections.

Returning to the question posed in the introduction about whether inspection can promote meaningful change, there would appear to be two broad approaches to promoting human rights reforms in a liberal-democratic society: working from inside to achieve progress with the risk that principles may be compromised and good intentions confounded; or delivering a critical analysis from the outside, which is more uncompromising and might achieve fundamental long-term change, but is potentially less influential and impactful. These roles should be seen as complementary and equally vital to progress.

As an organisation that has evolved from the “system” and is still in some respects both a part of it as well as a critical commentator on it, HMIP uses both approaches to encourage reform. It makes recommendations for local level change, and informs and stimulates debate among practitioners and policy-makers, while giving a greater voice to detainees. Openness to such external voices is a sign of political maturity. Improving immigration detention does not necessarily mean endorsing it. Inspection can contribute strongly to judgements of legitimacy and thereby challenge the exercise of power and promote change.

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