

Supporting human-rights based prison monitoring in Bahrain

Public lecture delivered at the University of Oxford Centre for Criminology, 29 June 2017

Hindpal Singh Bhui

Inspection Team Leader¹, HM Inspectorate of Prisons

Thank you for the opportunity to speak to you today about this important issue. I will start by explaining a little about the work of HM Inspectorate of Prisons (HMIP) and why our assistance was first requested by the Foreign and Commonwealth Office. I will then describe some of the events in Bahrain that led to serious concerns about the treatment of people in custody, before discussing how and why HMIP became involved.

1. Some background on independent inspection

Prison monitoring in England and Wales

I will spend a little time talking about the work of HMI Prisons to make clear the principles and working methods that we aimed to share with our counterparts in Bahrain.

Although the modern prison inspectorate did not emerge until the 1980s, there has been some form of prison monitoring in England and Wales for over 200 years. In the 1770s the prison reformer John Howard, shocked at the inhumane conditions in his local prison, began to visit prisons across England and Wales and later in Europe, publicising what he found in the hope that this would encourage improvements². Howard's work was formalized by the 1835 Gaol Act, which allowed for the appointment of the first official prison inspectors. Their job was to report on prison conditions to the responsible Secretary of State.

Over time, this early manifestation of the inspectorate became absorbed into prison management. That was until serious concerns about poor conditions, overcrowding and violence in prisons led to a major inquiry³. 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 the modern, independent inspectorate came into being.

HMIP's identity as an independent and human rights-based institution was more fully embedded when the UK ratified the OPCAT⁴ in December 2003. OPCAT recognises the particular vulnerability of detainees and the role that regular independent visits can play in preventing abuse. It obliges governments to create an independent custody monitoring body, or 'National Preventive Mechanism' (NPM). HMIP's prominent role in the UK NPM has bolstered the efforts of successive chief inspectors to prevent HMIP from reverting to being part of the prison system's management

¹ Also University of Oxford Research Associate and Visiting Knowledge Exchange Fellow.

² Howard, J. (1777) *The State of Prisons in England and Wales*. Warrington: William Eyres.

³ HMSO (1979) *Committee of Inquiry into the United Kingdom Prison Services*. London: HMSO.

⁴ The Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

accountability structure, which would seriously undermine its credibility as an independent organisation.

HM Inspectorate of Prisons

HMIP has around 70 staff in total, including general and specialist inspectors and a large research and development team. Each inspection team has a mix of experience and expertise and may include inspectors with backgrounds in the legal profession, prison management, the voluntary sector, academia, social work, probation and health professionals. With an annual budget of around £4m, HMIP conducts 80-90 usually unannounced inspections every year.

The key principles of detention monitoring include robust independence and impartiality, underpinned by human rights-based inspection criteria, which are not necessarily aligned with government standards and often set higher expectations. They focus on current detainee outcomes, not on plans or even on management performance unless it can be directly linked to tangible outcomes.

Listening to prisoners is central to HMIP methodology. Evidence is gathered through prisoner surveys conducted with a statistically significant proportion of the population and response rates are consistently high, at around 70%-90%. Inspectors also hold prisoner groups and spend much of their time speaking with prisoners as they walk around the establishment. Unfettered access means that inspectors can arrive unannounced at any time, go anywhere in the establishment and talk to anyone without interference and in private. Unlike most other NPMs, all HMIP inspectors and research officers carry the keys to the detention facilities they visit.

The evidence base for HMIP judgements includes discussions with staff, voluntary and community sector groups involved in the prison, prisoners' families and friends. An intelligence file is kept on each place of custody, including letters, press reports and any prison management information. This helps inspectors to prepare for inspections and is taken into account when deciding the timing of inspections. Inspectors also examine prison documents and records and spend time simply observing what is happening around the prison. The evidence is debated in daily team meetings and emerging findings are given to prison managers each day to allow them to challenge, accept or elaborate on what inspectors are finding.

HMIP has no power to force acceptance of recommendations but over 80% of recommendations are accepted, and about 60% are fully or partially implemented⁵. Most completed reports are press-released and the chief inspector has direct access to the media. The role of the HMIP has traditionally had broad cross-party political support and there is little doubt that HMIP's findings are taken seriously by inspected bodies; poor inspections may lead to managers being removed, prison wings closed and policies changed.

2. Some context on Bahrain

What happens in Bahrain matters a great deal to the US and UK. Bahrain is in an important strategic location between Saudi Arabia on one side, which has traditionally provided economic and security guarantees to Bahrain, and Iran on the other, which is seen by many countries in the west and the Middle East as an ongoing threat to stability in the region. Bahrain's wider geo-political importance

⁵ HMIP (2017) Annual Report 2016-17. London: HMIP.

is reflected by the US Navy's large presence in the country and the recent construction of a British naval base there. Bahrain has a long association with Britain and was a British Protectorate until independence in 1971. It has retained close diplomatic ties with the UK ever since.

Internal instability is not uncommon in Bahrain. Disputes over the sharing of power and wealth have occurred from at least the 1920s onwards, leading to cycles of instability and reform in Bahrain. Disputes have often coalesced along sectarian lines, with Shia Bahrainis feeling deprived and disenfranchised. Protests occur and sometimes turn violent, usually around Shia villages. The security services increase their activities, both containing the unrest and being criticised for their behaviour. While reforms have led to increased Shia participation in some areas of the government, they do not meet popular expectations and demands, and the cycle continues. It is notable that many members of the police and military in Bahrain are Sunni Muslims recruited from abroad, for example from Pakistan and Jordan.

As the Arab spring spread through parts of the Middle East in 2010-11, in the words of the Bahrain Independent Commission of Inquiry (BICI), it 'stimulated pent up popular reactions and grievances in many Arab States, including Bahrain'⁶. As in other countries, the protestors used modern technology, including social media networks, to call for demonstrations and to publicise their demands. Bahrain is a Shia-majority country with a ruling Sunni elite, but these demands were initially non-sectarian and not confined to any ethnic group. The objective was political and constitutional reform, and there was little violence.

Things changed after demonstrators were killed in mid-February 2011; the deaths included those of four people who died after the first of two operations to move protestors away from the 'Pearl Roundabout', a central landmark in the capital city, Manama. The criticism of those in power, including the King and the government, became more prominent after this point, but despite a series of measures intended to placate public anger⁷, progress was limited. From early March 2011, the security forces started to take a more hard-line approach following a number of violent attacks and confrontations between Shia and Sunnis. There was a belief that the protests had become more radical and dangerous, and a growing 'the sense of breakdown of law and order ... among some Bahrainis and many Sunnis'⁸. From the middle of March, force was used routinely to end demonstrations in villages and around the Pearl Roundabout, leaders of the protest movement and those participating in or sympathising with the demonstrators were arrested. Considerable support was provided by the Saudis in particular to help restore the Bahrain government's authority.

Many of those arrested were mistreated when in custody. The BICI found that the police used excessive force and torture in a number of cases, and that five people died as a result of torture, three of whom were in the custody of the Dry Dock Detention Centre at the time (BICI 2011: 225).

3. Bahrain Independent Commission of Inquiry

In response to both internal and international criticism of the abuses that were taking place against the protestors, the King established the Bahrain Independent Commission of Inquiry in June 2011. BICI was comprised of highly reputable international jurists and human rights specialists and chaired by Professor Cherif Bassiouni, an authority on international criminal, human rights and humanitarian

⁶ BICI 2011: 162.

⁷ BICI 2011: 166-7.

⁸ BICI 2011: 165.

law. The Commission was given the freedom to investigate and make recommendations as it saw fit, and a commitment was made to publish its findings in full. BICI was tasked with determining whether human rights violations had taken place, and central to this endeavour was the detailed examination of the allegations of torture and the circumstances of the arrests and detentions.

BICI was an impressive and demonstrably independent body, and as a concession towards a reformist agenda in Bahrain, it was unprecedented. It reported swiftly and its report was launched on 23 November 2011, with the King himself making a speech supporting the Commission's work and making a commitment to taking its findings seriously⁹. All of its recommendations were accepted. The report was thorough, detailed, uncompromising and highly critical. It found that 'a large number of detainees [were subjected to] a systematic practice of physical and psychological mistreatment, which in many cases amounted to torture'¹⁰. It went on to identify widespread problems in the way that many officials had behaved, and in a very notable passage stated that:

'The Commission is of the view that the lack of accountability of officials within the security system has led to a culture of impunity, whereby security officials have few incentives to avoid mistreatment of prisoners or to take action to prevent mistreatment by other officials.' (299)

Taking a long view, the Commission pointed out that 'many of the forms and techniques of abuse described ... were also reported to have been employed in Bahrain during the 1990s' (p.299), and that:

'... the recent recurrence of many of the violations...may indicate that prison officials are being guided by a similar set of practices, or even policies, as existed in the past. This indicates a *systemic problem, which can only be addressed on a systemic level*' (p.300, emphasis added).

A need for deep-rooted reform and ongoing vigilance is implied by this statement, and independent bodies capable of both motivating and assessing the success of such reforms were required. Recommendations relating to detention included the need for solutions such as security forces trained in the human rights dimensions of detention and interrogation, and the creation of oversight and monitoring bodies. The recommendation that led directly to HMIP's involvement stated that: 'all detention should be subject to effective monitoring by an independent body' (Recommendation 1722d).

4. HMIP involvement

HMIP was not approached by the Bahrainis directly. Instead, the Foreign and Commonwealth Office asked if we would be willing to assist in the implementation of the recommendation for independent monitoring. Bahrain is a signatory to the Convention Against Torture (CAT) but not to the Optional Protocol (OPCAT), and is not therefore required to have a National Preventive Mechanism that can provide independent oversight of detention. If Bahrain had been a signatory to OPCAT, it would also be required to accept the oversight of the UN Sub-Committee on the Prevention of Torture (SPT). The request to HMIP therefore seemed an opportunity to encourage the moves towards ratification of OPCAT by helping to build an effective inspection mechanism, which is the most important practical manifestation of OPCAT.

⁹ See full speech on Bahrain Independent Commission of Inquiry website: <http://www.bici.org.bh/indexcbb2.html?news>

¹⁰ BICI 2011: 298.

The first step was to scope the task, consider the chances of success, and the risks. The main risk was obvious from the beginning and was repeated many times by Bahraini and international NGOs: that the creation of an inspection body lacking independence or capability would simply lead to a more sophisticated system of abuse, providing legitimisation without protection. In other words, the existence of a monitoring body could be used simply to dispel and discredit criticism.

This concern has persisted throughout HMIP's involvement and is one that we have taken very seriously. It was relatively muted after the creation of the Prisoner and Detainee Rights Commission (PDRC), but has gathered considerable strength again more recently. In order to address our own concerns about being used as 'cover', we have continuously assessed the value of our work there – I'll say a little more about that in a minute. But for now, it should be noted that HMIP has never inspected Bahraini detention facilities and we have not therefore been in a position to provide any assurances about conditions and treatment. The involvement of HMIP has been entirely around building capability.

The PDRC was formed in 2013. It has 12 members who are from the National Institution of Human Rights¹¹, NGOs, the Ombudsman's office, Judges and Prosecutors. The PDRC currently has three women commissioners. The Ombudsman¹² himself chairs the PDRC. He has a complaints investigation function in his main role. He is also known as the Ministry of the Interior Ombudsman and a frequent criticism is that he is not independent enough.

Over the three years from 2013-2015 in particular, HMIP advised on the structure, legislation, and working methods of the PDRC. There was no obligation to take our advice, and it was not always followed. The training and mentoring that was delivered to the PDRC included input on:

- Human rights standards and their application in detention. The Ombudsman's office and PDRC have developed their own inspection criteria that have drawn largely on HMIP's own standards.
- Various aspects of methodology, including how to best include the detainee voice in reports, something that we considered critical to a credible organisation.
- Detailed feedback and debate with the PDRC about their published reports.
- Practical inspection exercises in Bahraini prisons and observation visits to English prisons and detention centres to help the PDRC practice and refine its approach.

The funding for this work has come from the Foreign and Commonwealth Office, not the Government of Bahrain. HMIP is reimbursed the cost of releasing inspectors to carry out training and makes no financial gains from the work.

One thing that quickly became clear was that the work of the PDRC as a whole would take place in a difficult context. Bahrain is small and patronage and relationships are important. PDRC members had to tread a careful line without compromising their role of reporting on the conditions of prisoners. I will now say more about how successful we considered their work to be.

¹¹ This organisation is intended to parallel what is known in other countries as the National Human Rights Institute.

¹² See the Ombudsman's website at: <http://www.ombudsman.bh/en/>

5. Inspections carried out by the Prisoner and Detainee Rights Commission

There are only five main custodial establishments in Bahrain: Jau Prison (also known as Jau Rehabilitation and Reform Centre), is Bahrain's largest prison and there have been ongoing allegations about poor conditions and abuses of detainees there. Dry Dock remand centre also has a poor reputation, with some documented instances of torture. The other main facilities are Isa Town women's prison and immigration detention centre, the men's immigration detention centre and a juvenile prison. There are also several police station custody suites. The PDRC has now inspected all of these facilities and published reports, but return visits have yet to be conducted. A small secure psychiatric hospital was identified as an additional place in need of oversight but the PDRC has yet to conduct a formal inspection there.

The first few published inspection reports were superficial and basic, but showed some positive signs. They demonstrated a clear methodology, made use of the PDRC's independent standards and PDRC members reported good cooperation from the authorities. They said they were able to go wherever they wanted in the inspected establishments. The reports covered most areas of prison life and made reasonably clear and direct recommendations.

But there were obvious areas for improvement. The reports tended to be vague and were very brief. There was little sense of the conditions in detention and descriptions lacked detail. There was often a lack of considered judgement to follow the descriptions. The reports also did not focus sufficiently on key issues that were already in the public domain and of concern, such as some allegations of abuse and hunger strikes. There was little attention to reporting prisoners' views. The currency and impact of the reports was also substantially reduced by the very long delays (up to a year) between the inspections and publication of the reports.

The reception given to the first reports by international bodies and domestic NGOs was cautious and generally neutral, and criticism was muted. There seemed to be a genuine desire to allow the PDRC to prove its worth. Our view was that the inspection and report on Jau prison were critical to establishing the PDRC's value in the eyes of its stakeholders.

HMIP maintained a robust and honest dialogue with the PDRC and to some extent with government officials who needed to encourage and support them. We also kept in good contact with some NGOs, whose critiques were relayed to the PDRC during training sessions. Our message was that any accurate information about what was happening in custody, critical or not, should appear first in the PDRC's reports¹³. The fact that HMIP had worked along PDRC members and developed relationships of trust and openness meant that constructive feedback was listened to and attempts were made to respond.

HMIP formulated three key priorities for good PDRC reports, which we regularly repeated. They were:

- Acknowledging every allegation of torture or other forms of mistreatment and providing assurance that appropriate investigations are taking place. It is not the PDRC's role to investigate the allegations.
- Including the detainee voice in reports. This was to be achieved mainly through interviews with detainees and the development of a prisoner survey. The questions in the survey were

¹³ E.g. the critical report 'Inside Jau' by the Bahrain Institute for Rights and Democracy, was used in the training.

used by PDRC members to conduct group interviews, but so far it has not been used as intended.

- Producing well structured reports with clear judgements.

The much awaited Jau prison inspection took place in 2015, and went some distance towards addressing these key areas¹⁴.

There was reasonably good attention to the prisoner voice. Although the survey was not used, PDRC members spoke to a large number of prisoners in groups and individually. They regularly mentioned what prisoners said in the report, cited what the authorities had said and what the PDRC had concluded. The report still reflected a tendency to accept the views of the authorities too readily. But in some areas, new ground had been broken, e.g. mentioning, albeit briefly, prisoner allegations about religious discrimination, which remains a sensitive subject.

The report addressed issues of torture and abuse. It mentioned some allegations, investigations and outcomes. It was significant that the PDRC wrote clearly about torture taking place, made a judgement and reported the outcome that a guard had been prosecuted and imprisoned. However, very little was reported about less serious ill treatment and violence. It had apparently been difficult to obtain accurate data from the prison on the use of force and other incidents. Nevertheless, the reporting was still in advance of what we had previously seen.

The report was well structured with many clear judgements. Recommendations were to the point and reflected the major criticisms. The report also included many facts and figures that were subsequently used by the media, e.g. on levels of overcrowding.

The report's shortcomings included too little comment about important issues such as staff-prisoner interactions and prison culture. There was not enough rigour in the exploration of the use of force to assure readers of necessity and proportionality. There was a lack of judgement around some areas of high concern, such as the impact on prisoners of conditions in solitary confinement and the psychological welfare of prisoners. But it was of defensible quality and demonstrated that the PDRC had learned from experience and was able to be clear and reasonably forthright in its commentary and recommendations.

Media and NGO reporting on the Jau report and the PDRC made fairly extensive use of the information provided by the report. Criticism was generally accompanied by an acknowledgement that it was a marked improvement on what had gone before. Much of the critical commentary was around the report's lack of comment on political prisoners. The PDRC's position was that they were not in a position to question the decisions of sentencers, but the report nevertheless provided hitherto unknown figures on political prisoners.

The report gave prison authorities a clear basis for making improvements. The Ministry of the Interior produced an action plan and the PDRC published it in an appendix to the report.

We visited the PDRC after the report was published to provide them with our assessment. We provided some encouragement, while urging them to sustain and improve on the standards in the Jau report to keep momentum going. A routine timetable of future inspections was an important element in this.

¹⁴ The PDRC's full report is available at: http://www.pdrc.bh/mcms-store/pdf/2a23f018-109f-45cd-b5ae-4240de3d6e2b_Jau%20English%20Final.pdf

However, since then, only the male and female immigration detention centres have been inspected, in May 2016, with the reports published a year later. Before the Jau prison report was published in May 2016, the previous reports had been issued in May 2015, on the women's and children's facilities.

6. Conclusions

The Jau report had enough of the marks of a sound NPM report to encourage the PDRC's continued development. There has been general progress from the superficial first reports to better recent reports. However, critiques of the PDRC continue to make some valid points. In particular, the belief that the PDRC lacks serious intent is strengthened by its current inactivity. The PDRC's work is in danger of being seen as increasingly irrelevant. The lack of follow up of recommendations means that it has not been able to show if its work has made a difference to the treatment and conditions of detainees. In practical terms, learning about inspection practice is not being reinforced and will eventually be lost.

However, it is also important that we do not underestimate the importance of the first explicitly human rights custodial inspection body in the Gulf region. The PDRC may not formally be an NPM, with the valuable SPT oversight that would entail, but it is a functioning inspection mechanism. It has shown that it can produce reasonable reports, and has publicised things that would otherwise have remained largely hidden. There is a foundation here that can be built upon.

HMIP's position is therefore that we will support the PDRC's development while the opportunity exists, although we can only usefully continue to do this when the PDRC embarks on a routine timetable of inspections. We can provide ongoing mentoring, support and critical challenge, but believe that there is currently little more we can contribute in terms of basic training or principles.

The PDRC has the potential to develop into an important body that can point the way for other countries in the region. Its progress has faltered and it has faced some difficult challenges. There are also some risks to HMIP's own reputation as a result. But for us, none of these facts justifies a withdrawal of support for the organisation now responsible for preventing abuses in custody and which has the legal power to report what it finds. Such support is particularly important in countries where repression and torture have taken place, and in Bahrain there is indisputable long-term evidence of such abuses. We believe that supporting human rights-based inspection is in the spirit of our duties under OPCAT, and the fundamental principle that we have applied to HMIP's involvement is this: it is only possible for us to confront human rights abuses by engagement with the places where they have been carried out, and supporting those who can help to prevent a recurrence.

End