

statewatch

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EU FUTURE GROUP

Euro-Atlantic area of cooperation on justice and home affairs to be created

plus spying drones, European Gendarmerie, principle of “convergence” and the “digital tsunami”

The Council of the European Union's "Future Group" presented its final reports to the Justice and Home Affairs Council's July 2008 meeting. The Group was charged with drawing up a new JHA programme for 2010-2014, following the "Tampere" programme (1999-2004) and the "Hague" programme (2005-2009).

Euro-Atlantic area of cooperation on JHA affairs

The Group proposes that:

By 2014 the European Union should make up its mind with regard to the political objective to realise a Euro-Atlantic area of cooperation in the field of freedom, security and justice with the United States.

The proposed agreement/pact would cover the *whole* of justice and home affairs – policing, immigration and the legal framework. Existing EU-US agreements on Europol, extradition, mutual assistance, passenger name records (PNR) and SWIFT raise fundamental issues of privacy and data protection which US law cannot protect and meet EU standards.

It would be a unique, permanent, pact between the EU and USA the like of which we have not seen before. When the rights and liberties of the people of Europe are being discussed the USA will be sitting at the table with an equal voice.

European Gendarmerie (EGF)

EU “third world missions” require a greater integration of military-police-civil “assistance” including:

the integration of the "European Gendarmerie Force" and civilian police units from Member States into the legal framework of the European Union.

The EGF is comprised of para-military police units and was created in 2005 by Italy, Spain, France, Holland and Portugal.

“Principle of convergence” and the “digital tsunami”

Following on from the “principle of availability” (all information held by one agency in the EU should be available to all the others) and the “principle of interoperability” (all EU databases should be

compatible) comes the next stage, the “principle of convergence”. This “principle” is concerned with standardising best practice, training, equipment, integrated police management systems, legal systems (ie: “simplification” of the law to allow “non-coercive acts” to be carried out) and security technologies across all EU police forces.

The unfortunately (some might say insensitively) termed “digital tsunami” of data about peoples’ everyday activities is to be hoovered up by EU “public security organisations. See page 2.

Security technologies

The report refers to using all the benefits offered by “security technology” and creating a “European Security Tool-Pool” of equipment which could be used by different states, but is short on detail. However, a paper presented to the Futures Group by France spells out what the thinking is to tackle “terrorism or to manage protest demonstrations”. Proposals include standardising digital video surveillance systems, tackling internet telephony like Skype, and the use of unpiloted “drones” or “dirigibles” (lighter-than-air craft).

Creating “Codices”

Fifteen years after the introduction of the Maastricht Treaty the Group proposes that all the measures adopted, over 800 to date, should be codified in a “user and reader-friendly way” as citizens need to understand who made the decisions and why. The assumption is that if they [the citizens] do “understand”:

they will better make their own the actions of the European Union

Tony Bunyan, Statewatch editor, comments:

“As is typical of political elites the authors of this report fail to understand that there are many – including Statewatch since 1991 – who do understand exactly what the EU has done and is planning and who fundamentally disagree with the direction it is taking. A prime instance is the outrageous proposal that the EU should tie itself in with the USA across the justice and home affairs field – it is hard to think of a greater danger to privacy and civil liberties.”

The “digital tsunami” and the EU surveillance state see page 2

Italy: Institutionalising discrimination see page 16

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The "digital tsunami" and the EU surveillance state

by Tony Bunyan

"Every object the individual uses, every transaction they make and almost everywhere they go will create a detailed digital record. This will generate a wealth of information for public security organisations, and create huge opportunities for more effective and productive public security efforts."

This feature looks at the Future Group proposals to harness the "digital tsunami" by European (and national) agencies predicating state surveillance over a very wide range of human activity.

Two of the Future group's documents are considered here: 1) sections from the final report: "Freedom, Security and Privacy" - the area of European Home Affairs" (referred to as the "final report") and 2) a "Concept" paper from the Portuguese Council Presidency entitled: "Public security, privacy and technology in Europe: Moving Forward: Concept paper on the European Strategy to transform Public security organisations in a Connected World" (referred to as the "paper"). As we shall see the obscure language used in the former is firmly embedded in the latter.

Using new technologies and information networks

The final report argues that in the "digital tsunami environment" citizens' expectations of "proactive protection" become "ever more acute", especially as traditional measures to protect privacy "will become less and less effective", thus:

"privacy-enhancing technologies" are absolutely essential to guarantee civil and political rights in the age of cyberspace.

The document is silent on how this should be done.

The main emphasis is almost exclusively on the opportunities the "digital tsunami" gives "public security organisations" to:

have access to almost limitless amounts of potentially useful information

For "public security organisations" to "master this data tsunami" will require "automated data analysis" to get this through to a "multitude of stakeholders" in the agencies across the EU. "Interoperability" is assumed (being able to access databases across the EU) but what is needed is a:

platform approach to delivering public security

A "service oriented" approach means that:

outputs from different parts of the system can be shared (within and across organisations) and to build converged platforms... move to converged networks (or where necessary solutions that ensure all their networks can "talk" to each other) and.. ensure all data streams are digital and capable of being meshed together (emphasis added)

For example, the "principle of availability" means that on a "case-by-case" basis, through "interoperable" systems, data and intelligence can be gathered by an agency in one state from a number of other EU states. However, the report argues that:

this is an opportune moment to go beyond the limited perspective of a case-by-case approach and aim for a holistic objective in law enforcement information management.

In contrast to an "uncoordinated and incoherent palette of information systems" there would be a:

European Union Law Enforcement Information Management Strategy (EU IMS).. aiming at a professional, business-oriented and cost-effective use of information technology and information networks.

The EU "surveillance state"

At its meeting in October 2007 the Future Group was presented with a "Concept" paper from the Portuguese Council Presidency.

It spells out in detail the thinking and intent underneath the obscure language in the full report's section on: "Using new technologies and information networks." The "Concept paper" opens with the statement that:

Technology is not neutral: it must be put at the service of security with respect for the way of life of the citizen in democratic countries and can have a decisive contribution towards making a global world more secure.

This statement begs the question of exactly how, if technology is "put at the service of security" it can at the same time "respect" for the way of life of citizens. Surely technology should "serve" the people and "serve" security only in so far as it does not undermine individual and fundamental rights. This paper however assumes the former to reflect the consensus of governments in the EU, "public security" comes first. It can be argued that it is not "public security" that the public want but rather "public safety". Indeed, if a concept of "public safety", based on people's needs, were used instead of "public security", based on the state's needs, a whole different set of policies and practices might emerge.

The paper draws attention to the:

development and integration of satellite and airborne monitoring capabilities, the use of GMES technologies, including multilayer mapping with modelling tools and the development of shared, interactive and secure information, communication and analysis tools.

GMES, Global Monitoring for Environment and Security, is an EU initiative for the implementation of information services dealing with the environment and security. It uses "observation data" from "Earth Observation satellites and ground based information which integrates and makes accessible data from multiple sources. This allows public and private actors to: "anticipate, intervene and control".

The next section in the Portuguese Council Presidency paper is: "The digital tsunami and its consequences for public security organisations". As more and more "people, machines and environments are connected" this vastly increases the amount of:

potential information for use in the day-to-day operations of public security organisations.

One obvious illustration is the ability to track the location of any active mobile phone (and to know where it was last switched off and last switched on). This is just the beginning. In the next few years billions of items in the physical world will be connected, using technologies such as radio-frequency identification (RFID), broadband wireless (WiFi, WiMAX), satellite and wireless (Bluetooth, wireless USB, ZigBee). This means it will be possible to trace more and more objects in real-time and to analyse their movement and activity retrospectively.... In the near future most objects will generate streams of digital data about their location and use - revealing patterns and social behaviours which public security professionals can use to prevent or investigate incidents.

The "objects" referred to also include people who could be tracked through their car, mobile phone or the clothes they are wearing.[1]

The paper goes on to look at digital transactions, use of biometrics and online behaviour:

All credit or debit-related purchases already generate monitorable and searchable real-time information; but more and more transactions will be of this kind as we move towards a cashless society...

These trends will be reinforced as biometric measurements are used to enhance security at more and more locations - whether public places such as town halls or train stations; private locations such as amusement venues; or places of work.

This assumes the widespread use of peoples' biometrics (fingerprints, facial scans or iris scans) in everyday life once they have been collected by national EU states for passports and ID cards.

Most large cities have already seen a significant increase in the use of closed circuit television (CCTV), and usage (by public and private sector organisations) is likely to increase further and to shift from the current analogue technologies to more easily storable and searchable digital technologies.

Further accelerating the tsunami of data is online behaviour. Social networks such as My Space, Face Book and Second Life - and indeed all forms of online activity - generate huge amounts of information that can be of use to public security organisations.

Next generation "searchable digital" videos of public and private places suggests life-time databanks with the ability to conduct historical searches based on a person's image.[2]

The paper suggests that the capacity now exists, or will very soon, where the state will be able to combine data from different sources on every individual - financial transactions, train journeys, visits to a town hall, a fairground, images from "searchable digital technologies", internet usage and social habits together with state records, citizen registration, National Insurance details, schools, universities, criminal records, tax record, health record, driving licence and motoring offences, insurance details and more which could be used to monitor and control social, economic and political life. If this seems an extreme view just read what the Portuguese Council Presidency goes on to say:

These trends have huge implications for public security. Citizens already leave many digital traces as they move around. What is clear, however, is that the number of those traces (and the detailed information they contain) is likely to increase by several orders of magnitude in the next ten years.

Every object the individual uses, every transaction they make and almost everywhere they go will create a detailed digital record. This will generate a wealth of information for public security organisations, and create huge opportunities for more effective and productive public security efforts.

Is "privacy enhancing technology" a non-starter?

The final report mentioned that "Privacy enhancing technologies" were essential if people were to be convinced of the need for this development. Here in this background paper, however, this is recognised but is also fatally undermined. The paper says that fundamental privacy issues are raised on "how much information about the behaviour of citizens should be shared" There is no reference to terrorism or even crime but simply "information about the behaviour of citizens" being hoovered up. It then goes on to say:

Paradoxically, those same tools can also be used by terrorists and other criminals. Thus, if data are automatically anonymised, after a certain lapse of time, that procedure may erase evidence of crimes; encryption tools prevent hacking when information is transmitted over the Internet and protect personal data against unlawful processing but may also help conceal criminal plans; cookie-cutters enhance compliance with the principle that data must be processed fairly and that the data subject must be informed about the processing going on, but may also make ineffective police efforts to gather

information on illegal activities.

Indeed, when it comes to "balancing" the first need against the second it is "security" that has always won since 11 September 2001. Just look at the draft Framework Decision on data protection on police and judicial cooperation - covering the exchange of data/intelligence between member states and outside the EU about to be adopted by the Council. The Commission proposal was thrown out and rewritten by law enforcement officers and officials. [3]

Three "Challenges"

The Portuguese paper says that there are three "Challenges", the first of which is presented under the heading: "Automate and master data analysis" is that with the "digital tsunami":

data monitoring and analysis will become much more automated

Drawing on the practice of financial traders, brokers and credit card companies who use sophisticated programmes to analyse changes and trends the paper says that:

machines are able not just to analyse records of transactions, but also to analyse visual information as well. Current systems can already identify individuals by their gait or flag up particular types of image, eg: unattended luggage or a person lying on the ground, apparently injured. Next generation systems are likely to be able to watch for, find and follow even more tightly defined objects, behaviour patterns or events.

These developments mean routine data monitoring and analysis will increasingly be handled by machines; the system will then flag up exceptions (unusual behaviour and anomalies) for human investigation. Some law enforcement agencies are already familiar with this approach in their suspicious transaction monitoring activities carried out by specialised agencies tasked with anti-money laundering activity. But this approach will need to be much more widely understood. (emphasis added)

When put together "automated monitoring and analysis" with "machines" determining unusual or unacceptable behaviour the next step is easy, you get "machine" driven responses. Thus "networked systems" will not just monitor live situations but the "machine":

will start to respond to it intelligently

So now we have "intelligent" machines. Moreover, the systems or "machines" will:

work across multiple data streams and multiple types of data stream. For example, if someone in an airport starts making a series of unusual mobile phone calls, the system might monitor the video streams of the areas where that person is more sensitively than it would normally. Or it might check passenger travel information to see if that person or someone related to them is due to arrive or depart in the next couple of hours.

Who or rather what (if it is a machine) will determine if a mobile phone call is "unusual"? What if you are doing your neighbour a favour by picking up their grandparents from the airport - you are not related to them and are a bit anxious that you will not recognise them?

The second "Challenge" is "Making decision-making more distributed" which is making sure that everyone in the chain of public security organisations can get instant and real-time information.

The third "Challenge" is to "Transform Decision support". Employing "Mashups" ("Web applications that combine data from two or more sources into a "single tool") means that:

in the near future public security organisations will be building portals that aggregate a huge range of data sources into personalized cockpits for different decision-makers.

which in turn means that:

IT systems will increasingly have automated policies that perform

actions on decisions and/or destinations

It is not hard to imagine a scenario where a person is picked up by CCTV running in a tube station: is this person running because they have attacked someone, running away from their attacker, or just running for the train?

Echoing the final report the Council Presidency paper says that EU member states "individually and collectively" should take a "platform" approach to "delivering public security". They need, it says to move beyond interoperability to a "services-oriented approach" and "converged platforms" so that all the networks "can talk" to each other". After all, in an increasingly connected world:

public security organisations will have access to almost limitless amounts of potentially useful information.

Conclusion

This paper and the final report were drawn up by high-level officials and agreed by EU Ministers. They, frighteningly, really do believe they have, and are, "balancing" the demands of security and civil liberties; they embrace the new technology, if it is technologically possible why should it not be used; they assume that the "digital tsunami" should be harvested by public security organisations, simply because it is there; and assume too

that everyone accepts that the "threats" they proclaim require such a gargantuan, and undiscussed, leap. There is no recognition that people not only want to live and travel in safety also want protection from an all-mighty state.

The creation of an surveillance state, for that is what is being proposed, will take the EU further down the road to authoritarianism, a path which looks less and less likely to be reversible.

In the aftermath of 11 September 2001, and for the next three or four years, the rationale for new powers, databases and agencies in and across the EU were presented as if they were "exceptional", initiatives needed to meet the terrorist threat. We know now what was termed "exceptional" is the norm, that unthinkable (and politically unacceptable) uses of technology just seven years ago are almost upon us.

Footnotes

1) During the Portuguese Council Presidency a Conference was held on "RFID - The next step to The Internet of Things" (15-16 November 2007), EU doc no: 14681/07.

2) Under its Communications Data Bill the UK government is proposing to create one, massive, database of all communications including phones, mobiles and internet usage in perpetuity.

3) See: Observatory on Data Protection in the EU:
<http://www.statewatch.org/eu-dp.htm>

Spain: The obstruction, discrediting and criminalisation of groups that report torture

by Yasha Maccanico

On 25 April 2008, the *Coordinadora para la Prevención de la Tortura (CPT)*, a coalition of 44 civil society groups working on the issue of torture in Spain (one group is from Portugal), produced a report entitled *Discrediting, obstructing and criminalising the activities of social and professional bodies that denounce torture in the Spanish State*. It argues that people reporting human rights complaints face hostility from authorities as a result of their claims.

The purpose of the report is two-fold: firstly, to stress the importance of the role of human rights defenders, something acknowledged in both national and international law and secondly, to look at events on the ground and instances of obstruction, and the discrediting and criminalisation of human rights defenders over the last ten years. These activities have been experienced by people or groups that are members of the coalition and by others.

The importance of the work of human rights defenders is recognised by the United Nations, and EU guidelines include informing the public of violations, seeking compensation and support for victims and confronting the impunity that conceals systematic and continuous violations against human rights and fundamental freedoms. A UN Secretary-General's report from August 2000 says:

defenders are often the first victims of human rights violations perpetrated by State officials or non-State entities. Violence against them ranges from outright attacks on their life, physical integrity and personal security and dignity, to more subtle and often diffuse forms of violence such as social disqualification through the association of human rights work with criminal activities, for example, terrorism or treason.

Having associated their work with criminal activity, terrorism or treason it is possible to impose restrictions on their rights of association, reunion, information and movement which can lead to physical and judicial repression or harassment, threats and intimidation.

In Resolution 2000/61, the UN's Human Rights Commission suggested the appointment of a Special Representative on human rights defenders, a post held by Ms. Hina Jilani since August

2000. In December 2005, a report of hers noted that she regretted not having communicated with the Spanish government or established contact with human rights defenders in Spain. It went on to express her desire to receive information from government and civil society concerning the situation of human rights defenders and the measures adopted at a national level to implement UN General Assembly Declaration 53/144 of 9 December 1998, on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognised human rights and fundamental freedoms. The authors consider this report a step towards fulfilling this request, albeit in a limited way, as it predominantly concerns people working on the issues of torture and ill-treatment.

The CPT report classifies the problems faced by human rights defenders in Spain into four categories and provides examples of each: a) insults, threats and discrediting; b) obstruction of the work of social and professional bodies through attacks, prohibitions and economic penalties; c) lawsuits that result in associations or affiliated individuals becoming defendants, and d) charges of terrorist activities entailing the criminalisation of those striving to guarantee compliance with human rights.

Insults, threats and discrediting

The five cases reported in the first category include:

* Threats against the *Asociación Contra la Tortura (ACT)* in March 2000 on a web newsgroup *es.soc.org.policia*, followed by threatening calls that ceased once the incidents were reported to judicial authorities;

* The linking of the *Asociación Pro Derechos Humanos de*

Andalucía (APDHA) to terrorist groups, and of maintaining relations with them, following publication of a report on torture in Alcolea prison (Córdoba). This resulted in a loss of credibility among the public in March 2002;

* The hostile media campaign and insults experienced by film director Julio Medem when he shot a documentary concerning the Basque conflict in 2004;

* In the second half of 2007, the *Observatorio del Sistema Penal y los Derechos Humanos* (OSPDH, Observatory on the Penal System and Human Rights) at Barcelona university began receiving insults from the Catalan prison service trade union branch *UGT-Presons*;

* There were also attempts to discredit the *Asociación Memoria Contra la Tortura* (AMCT) and *Acció dels Cristians per l'abolició de la Tortura* (ACAT) organisations for participating in a trial involving torture by presenting private prosecutions (acusación popular).

Obstruction of professional bodies

In the second category, that of obstructing people or organisations in the course of their social or professional activities, the cases cited include:

* Enma Valiente, a lawyer in Seville who was treated violently after being detained by police officers on the morning of 5 February 2007 when she approached them to find out about a person they had detained and were beating; the fining of two people who organised a demonstration in memory of Diego Viñas on 12 October 2006 in A Coruña outside a Guardia Civil station in Arteixo;

* A fine and the closure of the ACT website in March 2000 on orders from the *Agencia de Protección de Datos* (APD, Data Protection Agency) for including details on officers accused of torture in their annual reports. This followed a complaint filed by the police General Directorate the day after new data protection laws came into force;

* A lawsuit filed in June 2001 concerning ill-treatment at a centre for minors run by the Madrid regional council that resulted in the councillor in charge of social services linking the association *Coordinadora de Barrios* to the ETA infrastructure. The alleged manipulation of the minor, who had been struck in the eye, resulted in the association and the minor's parents eventually being ordered to pay 10,000 Euros;

* OSPDH was denied authorisation to visit prisons for research purposes in 2003 because its members were deemed to be "people who have a very critical view of the penitentiary system". This was followed by a proposal to allow it access presented before the Catalan parliament, where it was dismissed by a single vote. In 2007, it was again forbidden access that had previously been granted after it reported complaints of ill-treatment from Brians prison to the press, after noting the "inactivity" that had followed the submission of information to the Catalan authorities;

* Lawyer, Valentín Aguilar, was refused access to prisoners who had asked him to visit them after a disturbance in which they claimed they were beaten at Alcolea prison in November 2007. He filed *habeas corpus* requests for them in court which the judge rejected in a ruling that also criticised the lawyer's endeavours;

* Julen Arzuaga, co-ordinator of *Behatokia*/Basque Observatory of Human Rights, was forbidden entry to the UN's Geneva headquarters for three months at the behest of the Spanish government, which described him as a "dangerous terrorist". The prohibition was lifted as a result of the government's failure to produce any evidence for its claims;

* The searching and closure by police of the offices of TAT (Group against Torture) and *Etixerat* (families of political prisoners) on 27 August 2002, in the framework of investigations by judge Baltasar Garzón that led to the criminalisation of *Batasuna* (see below).

Judicial proceedings and lawsuits against human rights defenders

The third category looks at lawsuits filed against human rights defenders by the public prosecutor's office, those accused of torture (generally police or prison officers) or third parties, accusing them of making false claims or of slander.

* The publication of a report on torture by the *Coordinadora de Solidaridad con las Personas Presas* (CSPP) in October 1999, presented by a member of APDHA in Huelva (Andalusia), the seat of one of the prisons singled out as the country's worst offenders in terms of complaints for torture and ill-treatment. This resulted in the prison officers' trade union CSI-CSIF suing APDHA for slander, initiating proceedings that ended with an acquittal in July 2001.

* A similar case occurred years earlier following the presentation of a report by the *Asociación de Seguimiento y Apoyo a Presas de Aragón* (ASAPA) about Daroca prison in Zaragoza (Aragón). ASAPA had compiled complaints of torture and ill-treatment by prisoners, resulting in a lawsuit for slander against its members. They were acquitted in 1996 but, on appeal, the decision was overturned and ASAPA was fined 60,000 Ptas, before the constitutional court reverted to the original acquittal in 2001. Nonetheless, the association was heavily affected and, in the prison, detainees experienced punishments and the dispersal of those who had reported violence against them, one of whom committed suicide.

* At the margins of the case against ACT mentioned above concerning its report on torture for 1996-1997, a member of the Valencian municipal police force filed a lawsuit against his inclusion in the report, arguing that he had never had problems with justice nor been found guilty of torture, in spite of a firm sentence against him having been reached. The case dragged on until 2002, when it was shelved.

* In July 2005, Manuel Morales, a councillor in Granada from *Izquierda Unida* (IU, United Left) was sued by the *Sindicato Independiente de la Policía Local de Granada* (SIPLG, Granada local police independent trade union). He had responded to a series of violent incidents involving municipal police officers by saying that "around ten officers act with xenophobic nuances and instigate others to use force". Accused of prevaricating and manipulating as a result of his "hatred" for this body, he was fined 1,445 Euros for insulting local police. The sentence was confirmed on appeal, but has now been submitted to the constitutional court.

* Fran del Buey, president of the Galician prisoner support organisation *PreSOS Galiza*, witnessed a disproportionate intervention by the local police in Santiago de Compostela on the night of 30 December 2004. When he intervened to ask the police to refrain from such conduct he was threatened with arrest. Del Buey and the organisation filed complaints, resulting in proceedings being opened against the officers involved, who were acquitted in a trial described as "full of irregularities" and in which Del Buey was accused of wandering in the area to steal from parked cars. The incident also resulted in the youth who was attacked being sued for causing damage. In a subsequent lawsuit *PreSOS* and its president were accused of filing a false accusation and fined with 16 monthly 12 Euro instalments. They were also accused of providing false testimony, to be punished with a years' prison sentence and a 1,440 Euro fine.

* In April 2006, Aiert Larrate (TAT) and Julen Larriñaga (*Askatasuna*), reported that Ibon Meñika was tortured in incommunicado detention and that another, Sandra Barrenetxea, may have been suffering the same treatment. The allegations were followed by the two filing complaints. One day later, the *association Plataforma España y Libertad* sued them for slander and false accusations and for involvement with ETA.

* In April 2005, the prisoners support group *Salhaketa* (see *Statewatch* Vol. 16 no 2) reported that at least two women in

Nanclares de la Oca prison (Euskadi, Basque Country) had been sexually coerced by a prison officer who offered them benefits in exchange or the possibility of losing such privileges if they refused. *Salhaketa's* co-ordinator in Bizkaia (Bilbao region) stated that he thought this was the "tip of the iceberg" and that the situation "may have been quite widespread for quite a long time". This resulted in the *Dirección General de Instituciones Penitenciarias* (General Directorate of Penitentiary Institutions) submitting the statements to a court in Araba (Vitoria region) to assess whether they constituted offences of slander or insult because the officers are accused of "criminal conduct in a generic and indiscriminate manner".

* On 8 January 2008, a documentary entitled *Melilla Rap* was broadcast on the national television broadcasting company (TVE) in which a representative of *Prodein* (an association working on minors' rights) alleged the ill-treatment of minors interned in La Purísima centre in the Spanish north African enclave-city. Slander and insult proceedings were initiated days later at the behest of the local government's Council for health and social well-being against *Prodein*, its president Jose Palazón, its member Linda Evers, and the TVE crew that produced the documentary.

Finally, in April 2005, a trial against three prison officials (one medical chief and two service chiefs) in Monterroso prison in Lugo (Galicia) in a case involving torture and bodily harm. It involved the testimony against them of a doctor, Julia Vallés, who claimed that the prisoner had been tortured and that it was common knowledge in the prison. She was threatened by telephone, rumours were spread against her in the prison and, following acquittal, the prison officers trade union announced that she would be sued for "false testimony", although this did not happen.

Terrorist charges

The last category concerns accusations of terrorist activity levelled at human rights defenders, focusing on two trials in the *Audiencia Nacional* (the Madrid-based court with exclusive competencies for hearing cases on serious crimes including terrorism) against what is referred to as ETA's "milieu". Cases 18/98 and 33/01 against *Gestoras pro Amnistía* and *Askatasuna* (the trial for which began in April 2008), are viewed by the authors as something that "bodes badly for the future".

In the first case, the report looks at the way in which defence lawyers Jose Goirizelaia and Jose María Elosua were made to defend themselves before the *Audiencia Nacional's* police court on suspicion of unspecified offences, after raising the matter of the use of torture to secure evidence for the prosecution's case, as was testified by alleged torture victims; another reason was for suggesting that some experts' testimonies may have been mendacious. The report notes that, in view of the *Audiencia Nacional's* special jurisdiction, being made to testify before its police court may entail the application of special categories of offences to lawyers and private individuals appearing there, such as "false terrorist allegation", "false terrorist testimony" or "terrorist insults", etc.

The second case is treated in more detail, as the organisations were criminalised and pre-emptively suspended pending prosecution. Twelve members of *Gestoras pro Amnistía* (*Askatasuna's* successor) were arrested and charged with membership of a terrorist organisation (ETA) in October 2001, with national co-ordinator Juan Mari Olano extradited from France after his arrest in Bayonne. After lengthy pre-trial detention, they were released on bail in May and June of 2004, and are awaiting trial for forming part of ETA's "prison front", and a media and political campaign against defence lawyers in "political" cases, and accused of membership of ETA's infrastructure. This culminated in searches in the Gipuzkoa and Pamplona lawyers' offices, and the subsequent inclusion of Julen

Arzuaga (see above) in the proceedings. Arrests continued through to late 2007, and 27 people were charged with "membership of a terrorist organisation", 17 of whom also experienced imprisonment.

The report criticises judge Baltasar Garzón for inverting the normal procedure of a prosecution. Rather than collecting evidence and reaching a conclusion, he is accused of reaching a conclusion (that Gestoras belongs to ETA's infrastructure) through conjecture before finding the evidence to support it.

Stressing that the organisation's activities were public and legal, the report notes that the charge sheet considered that membership of other social, youth or student organisations, personal links to Basque prisoners or refugees, participation in tributes to prisoners, campaigns, meetings, the organisation of demonstrations and development of the organisation's projects, were considered evidence of ETA membership.

The report argues that these activities were the organisation's *raison d'être* and cannot be deemed criminal, as shown by the fact that they were no charges for other minor offences such as *apología* (justification) or glorification of terrorism. Other, more serious charges that would constitute offences are deemed to be flawed due to a lack of evidence to prove the allegations. The trial began on 21 April 2008 and prosecutors have called for ten-year sentences to be passed against defendants. The precedents for this wide application of anti-terrorist charges is identified in the Haika-Segi trial that ended on 19 January 2007, and the 18/98 case in which a decision was reached on 19 December 2007.

A "typology" of situations that threaten to lead to impunity

The report concludes by noting that it has established a "typology" of situations in which human rights defenders' work is obstructed in Spain, with a range of incidents to document them. It argues that this falls within a wider framework whereby there is no will to recognise "the existence of torture and ill-treatment" mentioned by international bodies such as Amnesty International, and that there is a risk, mooted in a UN special rapporteur's report on torture, "that complaints for torture are answered with lawsuits for defamation".

The attitude of the Spanish authorities to victims of ill-treatment in police custody or prison is viewed as fostering impunity. This is due to a number of circumstances including the victims' isolation in custody when they are attacked, the resulting impossibility to call on eyewitnesses to testify, the immediate shelving of complaints due to lack of evidence when they are filed, the fear of prisoners to issue formal complaints against their guards, the repeated cases in which it has proved impossible to identify those responsible for ill-treatment at trial, the obstruction of the implementation of judicial rulings, the pardons granted to some officers found guilty of offences, and the discrediting and criminalisation of those who report torture.

Moreover, the Spanish state is accused of failing to comply with its obligations arising from international instruments to which it is a signatory, by failing to adequately investigate complaints of torture that are filed, to prevent such acts, to co-operate with organisations working in this field, and to punish the guilty parties and compensate victims.

"Descalificación, obstrucción y criminalización de las actividades de organismos sociales y profesionales que denuncian torturas en el estado español", *Coordinadora para la prevención de la tortura*, April 2008, available at: http://esculca.net/documentos/outros_doc/descal.pdf

Background: "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms", *General Assembly resolution 53/144*:

[http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.RES.53.144.En](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/A.RES.53.144.En)
SalHaketa dossier on Nanclares de la Oca prison:
<http://www.nodo50.org/tortura/varios/Nanclares-Mujer-2005.pdf>

Global outcry at EU “Returns” Directive - business as usual for “Fortress Europe”

by Ben Hayes

The European Parliament and the EU Council have agreed a Directive on the expulsion of “illegal” migrants. The Directive will impose a maximum detention period of up to 18 months for people being deported and a five year EU re-entry ban for all those expelled. The agreement was greeted with widespread condemnation from the human rights community and beyond. “Europe no longer the cradle of human rights”, rallied a typical press release; the EU has “legalised barbarism” in its “darkest days”, said critics.

While such criticism is wholly justified, the “Returns” Directive did not exactly fall out of the sky. On the contrary, the draft Directive has been on the table since September 2005 and represents a crucial component of the EU’s common immigration and asylum policy, under development since 1999. In this sense, the Directive is merely the latest tool – and there are many – geared toward the systematic registration, surveillance and control of all migrants and refugees in the European Union. And in this sense, Europe stopped being the cradle of human rights a long time ago.

Legislating expulsion

The European Commission justified the original proposal of 2005 with the claim that “minimum standards” on expulsion were necessary to improve practices in those member states where people being deported were denied procedural rights or kept in poor conditions. However, in proposing an upper time limit of six months detention, the Commission was already threatening to lower standards in those countries that had shorter maximums – for example France (32 days), Spain (40 days) and Italy (60 days). There is no maximum in the UK and Ireland, which have opted out of the Directive along with Denmark (leaving the UK free to continue to detain people pending deportation on security grounds *indefinitely*). Moreover, the Commission’s proposal made expulsion orders mandatory for *all* illegal residents, albeit by prioritising “voluntary” over forced return (“voluntary” is of course a fluid concept that is often offered by states as the *only* alternative to detention and forced return). But at least the Commission had included some important guarantees for third-country nationals subject to expulsion proceedings that would, in certain cases, have prevented their deportation on human rights grounds. A number of member states, however, thought these far too generous and by the time the EU Working Party on Expulsion had finished with the text in 2006, these safeguards had been substantially diluted, while states’ discretion had increased markedly. Things got a lot worse when Germany took over the presidency of the EU in 2007 and substantially re-drafted the text, lowering the “minimum standards” the Directive was supposed to introduce even further still.

In an attempt to reach agreement with the European Parliament, which had by now set out a host of concerns, the subsequent Portuguese and Slovenian presidencies adopted a more conciliatory approach. Whereas the final agreement among the member states represented an improvement on the German text, the EU Council had by now agreed (under qualified majority vote) on an administrative detention period of up to 18 months, the possibility to detain and expel unaccompanied minors, the expulsion of people to transit countries (rather than their countries of origin), and the re-entry ban of 5 years. Many of the principles protecting human rights and ensuring procedural guarantees proposed by the Commission had now disappeared altogether.

With growing and vociferous opposition from human rights organisations and the Parliament’s civil liberties committee, the

Council now resorted to a familiar tactic: coercion. It told the Parliament’s “rapporteur” and the leaders of the various political groups that if the Council’s “compromise” text was not adopted there would either be no agreement whatsoever, or a strong likelihood that the incoming French presidency, which had already proposed a further draconian clampdown on “illegal” immigration, would push for even lower standards. To its shame, the Parliament not only accepted this premise, but adopted the measure at what is called “first reading”, following secret discussions with the Council presidency. The first reading procedure was introduced for uncontroversial or highly technical legislative measures subject to “co-decision” (between the Parliament and the Council), but two-thirds of all EU legislation is now adopted in this way (since immigration and asylum moved to co-decision in 2004, 13 out of 13 measures have been adopted at first reading). The effect of this procedure is to completely remove the final stages of the EU’s legislative process (the second and third readings) from public scrutiny – the equivalent of a bill being sent to a parliamentary committee and the differences ironed out in secret between a few chosen MPs and ministers, and then put to a single vote in parliament with no further substantive public debate or amendments to the text. On 18 June, 367 members of the European Parliament (including British, Irish and Danish MEPs, whose governments had opted out) voted in favor of the “first reading” deal on the “returns” Directive. There were 206 MEPs opposed and 109 abstentions; 103 of the Parliament’s 785 MEPs did not bother to make the trip to Strasbourg for the June plenary, so the Directive did not even have the support of an outright majority.

A subsequent “Declaration” by the member states, which has no legal force whatsoever, stated that the Directive would not provide grounds for those states with more favourable rules to lower their standards in accordance with the EU’s new “level playing field”. Within days, Italy had trebled the period that people being expelled could be detained from 60 to 180 days.

Europe’s deportation machine

While the prospect of giving people who have not have been convicted of any criminal offence the equivalent of a three year prison sentence galvanised principled opposition to the Directive, there has been far less concern that EU policy as a whole now provides for the wholesale criminalisation of all irregular migrants (including the vast majority of refugees). Within this process, expulsion is merely the final sanction in a regime geared ever more toward detection and detention. In the late 1990s all member states began fingerprinting asylum-applicants and “illegal” migrants; all the records are housed in the EU’s Eurodac database, which went online in 2000. Fingerprinting is now being extended to all visa applicants, whose data will be housed in a new EU Visa Information System (even where visas are refused), and all EU passport holders. The “biometric” identity documents and fingerprint scanners now being rolled out across Europe will be complemented by a new EU “entry-exit” system designed to detect “illegals” and visa overstayers, and the new “second generation” Schengen

Information System, which will be used to enforce both deportation orders against those who have absconded and entry bans against those successfully deported. "Carrier sanctions", fines for employers of "illegals" and widespread raids on migrant communities complement these efforts on the ground. The result is that migrants lacking the legal authority to remain – despite the absence of any credible statistics, the EU claims there are some eight million "illegals" present in its territory – are driven further and further "underground", and susceptible to ever greater coercion and exploitation. The new French presidency of the EU, which was highly critical of the recent "amnesties" granted by Spain and Italy to regularise people in this position, is seeking to outlaw any future concessions of this magnitude.

It is also important to point out that the "returns" Directive is merely the latest measure in a long line of EU expulsion policies dating back to the early 1990s. Recast as "returns" policy under the Amsterdam treaty, the EU member states agreed in 2001 on the "mutual recognition" of expulsion orders (whereby all member states should enforce deportations on behalf of the issuing state); extensive Action Plans on "returns" in 2002 (which included a target of 1,500 Afghan refugees per month to this "failed state"); a Directive on forced expulsion by air in 2003; and a Decision on joint expulsion flights in 2004. "Collective expulsions" are actually *prohibited* under a Protocol to the European Convention on Human Rights and were theoretically banned again in the EU Charter of Fundamental Rights of 2000, but the EU simply ignored these rules (Commissioner Vittorino instead called upon member states to "educate their citizens that joint [expulsion] flights have nothing to do with collective expulsion").

Expulsion airways

The first flight to be organised under the auspices of the EU took place in July 2005 when, following an announcement by the "G5" ministers (of France, Germany, Italy, Spain and the UK), a charter flight collected 60 Afghans from the UK and France and deported them to Kabul. Two months later Spain, France and

Italy organised a joint charter flight to expel 125 Romanian citizens from the EU (people who would 15 months later become EU citizens when Romania acceded to the Union), sowing the seeds for the current attack on Roma in Italy. Back in 2004, the European Parliament called collective expulsions a "deplorable practice", arguing that "institutionalising them at Community level would inevitably render them more numerous and frequent". Four years on, this is precisely what the Parliament achieved.

FRONTEX, the fledgling EU Border Police, also has a growing mandate to detect people residing unlawfully in the member states and enforce expulsions on their behalf, including collective expulsions. This is a mandate it takes very seriously, having recently requested its own fleet of aircraft for this purpose. Finally, having long used money from the European Refugee Fund (designed for the "integration" of refugees) to fund their expulsion policies, the member states can now draw directly from a new "European Return Fund", a €629 million programme that will run to 2013 (of which €47 million is earmarked for FRONTEX operations). All of this comes at a time when the EU professes to be "dependent" on migrant labour to maintain current European standards of living, and amid proposals for a new "bluecard" scheme to streamline entry procedures for people needed to fulfil specific labour shortages. If trafficking in human beings is a crime, the EU is starting to look like the biggest trafficker of them all.

Further reading:

"The Deportation Machine: Europe, asylum and human rights", Liz Fekete (Institute of Race Relations)

Border Wars and Asylum Crimes, Frances Webber (Statewatch)

See Statewatch News Online for reactions of African, Latin and Central American states to the Directive: www.statewatch.org/news

This article first appeared in an abridged form in "Red Pepper"

Netherlands: Immigration detention - systematic and inhumane

by Katrin McGauran

The Netherlands has the highest rate of immigrant detention per capita in the whole of Europe [1]. This is sometimes debated in the national media, when scandals about maltreatment by prison guards, lack of health care, suicides and deaths through negligence in detention come to light. Despite serious human rights concerns, the government has decided to build even more detention facilities, with the help, and to the profit, of private businesses. One of the last ones to open was in Alphen aan de Rijn, with a capacity to hold 1,300 detainees. It has its own court and hosts offices of the International Organization for Migration (IOM) and the Dutch Office for Return and Departure (*Dienst Terugkeer en Vertrek*). More than 3,000 migrants are currently imprisoned in the Netherlands in various detention facilities, for the sole reason of not being in possession of the right documents. Indeed the latest report [2] on the Netherlands by the (Council of Europe) Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment finds:

It is noteworthy that, since 1990, the incarceration rate for adults in the Netherlands has risen from one of the lowest to one of the highest levels in Western Europe. At the same time, the overall capacity in prisons and alien detention facilities has increased from 7,195 in 1990 to 17,630 in 2006. The opening of new detention facilities is planned and in particular, the increase in the number of facilities for the administrative detention of immigration detainees is set to continue

with, inter alia, the opening of a new detention facility in Zaandam and the further enlargement of an existing facility in Alphen aan den Rijn.

Flourishing business

Apart from the human rights concerns surrounding immigration detention for depriving liberty on administrative and not substantive criminal grounds, immigration detention is a dangerous place for migrants in Europe. Lack of adequate health care, inadequate safety regulations - which led to the dramatic death of 11 migrants imprisoned in Schiphol detention centre in October 2005 - mistreatment by private security guards, and the psychologically devastating effect of imprisonment without having committed a crime or knowing a release date, have led to many migrant and refugee deaths and injuries as well as depression and post-traumatic stress syndrome.

They are also the reason why immigration detention, according to many legal scholars and human rights activists, should be abolished. Detention however has become a profitable business, lowering the incentive for governments to abolish it. The Dutch "DC16" consortium, including companies Ballast Nedam, EGM Architects, ISS Facility Services and Smits van Burgst, for example, has just won a 25-year contract worth 100 million EUR to design, build and run a Rotterdam detention

facility holding 576 detainees, to be completed in 2010. Again, the CPT also notes that:

as the budget of the prison service has not increased proportionately with the growth in cell capacity, the Dutch [authorities were] forced to make significant economies, primarily by reducing activities and work for inmates and by cutting staff costs.

In other words, whilst the care for detainees is plummeting, the prison-industrial complex is flourishing into a multi-million euro business.

Two floating detention boats in Rotterdam, the Reno and the Bibby Stockholm, have been troubled by sub-standard health care and maltreatment by prison guards as was revealed by ex-detainees. A journalist also reported the abysmal treatment of detainees after working as an "undercover" security guard. The Reno came into operation in September 2004, the Bibby Stockholm opened in January 2005. Due to the building of the above-mentioned detention facility in Rotterdam and the huge prison complex in Alphen aan de Rijn, as well as detention vessels that opened in 2007 and early 2008 in Zaanstad (two boats holding 576 persons) and Dordrecht (the Bibby Kalmar, 496 persons), the Reno and Bibby Stockholm will close in July. They are expected to be sold to Germany or the United Kingdom. More detention centres are located at Rotterdam (198 persons) and Schiphol airport (after the fire which killed 11 migrants, the centre was rebuilt not only with adequate fire provisions but also an increased capacity, to be completed by 2012), in Zeist/Soesterberg near Utrecht (Camp Zeist, 1100 persons) and Amsterdam (location and capacity unknown).

Migrants are not criminals

Criticism of Dutch immigration detention has been regularly voiced by Anton van Kalmthout, professor of criminal and immigration law at Tilburg university, and member of the (Council of Europe) Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). He has written numerous articles and appeared on several television shows pointing out that compared to other European countries, the Netherlands has an extremely restrictive system in place against undocumented migrants and failed asylum seekers. Besides the judicial and law enforcement regime, the Dutch media regularly reports "illegals" as if they were criminals, exemplified by the first news report that was aired after the fire at Schiphol detention centre: a helicopter, the television and radio stations reported, was searching for eight escaped "illegals". They had escaped not only immigration detention on that October night, but also the deadly fire that killed 11 migrants because the fire and safety provisions of the detention containers were inadequate. These details were left unmentioned.

According to international human rights law, such as Article 5 of the European Convention of Human Rights, which was further interpreted by Council of Europe resolution [3], and also EU law [4] and the Dutch constitution and Alien's Act of 2000, immigration detention should only be applied as a "last resort", when other measures are not able to achieve the aim of the measure, (i.e. to enforce return or deportation). There should be an administrative system entirely separate from the current prison complex because illegal residence is not punishable by law and the only purpose of immigration detention is to make people without papers available to the Dutch judicial system to investigate whether their deportation can be carried out. However, undocumented migrants are not only treated as if they had committed serious crimes, but their detention conditions are considerably lower than regular prison conditions. There is not even an absolute time limit for detention pending deportation for certain categories of detained aliens. When asked why the Netherlands was pursuing such a restrictive system which does not appear to deter people from migrating, remaining in the country without papers, or increase deportation numbers, van

Kalmthout proposed that migrants were used as scapegoats for politicians and political parties wanting to appear strict on immigration, particularly after the recent short-lived general amnesty for long-term stayers.

Van Kalmthout not only criticised the Dutch authorities, but also urged lawyers to become more active in taking legal cases (on the grounds of the inhumane and degrading treatment of migrants in detention) to the European Court of Justice and Council of Europe Committee for the Prevention of Torture (NOVA, 27 May 2008). Certainly after two recent deaths in immigration detention this year, which occurred after a failure to provide adequate medical health care according to fellow detainees, cases could be taken to court on the grounds of CPT rules that state that a doctor should be called without delay if a person requests a medical examination.

CPT report, detainees and activists demand change

During its visit to the Netherlands, the CPT visited the Bibby Stockholm floating detention centre in Rotterdam, the Kalmar detention boat in Dordrecht and the Rotterdam Airport Expulsion Centre. Their report was passed to the Dutch government in January 2008, and it should provide a response within six months and a full account of actions taken to implement the CPT's recommendations on grounds of Article 10 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Among other recommendations, the CPT says that the Dutch authorities should:

- * introduce an absolute time limit for the detention of all foreign nationals under aliens legislation;*
- * stop using boats as facilities for immigration detainees and clarify the reason(s) for the government's decision to classify immigration detention centres as remand prisons;*
- * consider that irregular migrants be accommodated in specifically designed centres, offering material conditions and a regime appropriate to their legal status and that the Dutch authorities should reconsider their approach towards the detention of immigration detainees;*
- * immediately cease applying physical means of restraint to detained persons who tamper repeatedly with the sprinkler system on the Kalmar and Stockholm detention boats;*
- * comment on the arrangements for psychiatric care for immigration detainees, and*
- * explore the possibility of increasing visit entitlements.*

Unfortunately, the CPT's report appears not to have gathered enough information from non-state sources about repeated maltreatment of detainees by prison guards, which has long been attested to by detainees going on hunger strike and activist groups supporting them. A recent documentary by the investigative programme NOVA (27.5.08) interviews a whistleblower, a prison guard on one of detention boats and two ex-detainees, who tell of systematic abuse of detainees by prison guards. The whistleblower claims that guards show sadistic tendencies and are eagerly anticipating outbursts in the often tense detention environments so that they can "get some action" and lock detainees up in isolation cells.

There has also been a small but determined group of activists over the past years who have protested against the detention centres through demonstrations, civic inspections, and direct actions, cutting down barbed wire fences and chaining themselves to the gates to prevent deportations and the functioning of the centres. On 25 April, seven activists were cleared by a Haarlem court of "committing a violent act in a group". The charges concern a direct action of 9 April last year when a group of 90 activists, under the name 'Migrants Welcome', cut down fences around the then soon to be opened

detention boats in Zaandam. The judge thought the public prosecution's dossier was "messy" and cleared the accused of all charges for lack of evidence. Around 50 activists celebrated the judgement with a solidarity action in front of the Zaandam boats. Soon afterwards in May, five asylum seekers escaped from one of boats; two were re-arrested, but the remaining three remain free.

Sources

[1] "Het regiem van de vreemdelingenbewaring. De balans na 25 jaar" ["The immigration detention regime. Taking stock after 25 years"] in *Justitiële verkenningen*, jrg. 33, nr. 4 2007, pp 89-102, accessed on 13.6.08 via <http://www.schipholwakes.nl>.

[2] "Report to the authorities of the Kingdom of the Netherlands on the visits carried out to the Kingdom in Europe, Aruba, and the Netherlands Antilles

by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in June 2007", 5.2.08, CPT/Inf (2008)

[3] Council of Europe, "Twenty Guidelines of the Committee of Ministers on Forced Return", September 2005, Art 6.

[4] "Proposal for a directive of the European Parliament and the Council on common standards and procedures in Member-States for returning illegally staying third-country nationals", 1.9.05, COM2005/0391/final, Art 14.

www.vrijheidvanbeweging.nl, www.allincluded.nl, www.schipholwakes.nl

The NOVA documentary on maltreatment of immigrant detainees can be viewed on

http://www.novatv.nl/index.cfm?ln=nl&fuseaction=artikelen.details&achtergrond_id=10451

The CPT report can be downloaded at

<http://www.cpt.coe.int/documents/nld/2008-02-inf-eng.pdf>

Coming for the Kids: Big Brother and the Pied Pipers of Surveillance

by Ben Hayes and Max Rowlands

We were asked to write this article after giving a talk to privacy advocates in Canada in which we noted the widespread deployment of biometric identification systems – fingerprinting – in British schools.(1) This practice, we suggested, is but one feature of a rapidly developing "surveillance society" in the UK in which so-called "kiddyprinting" is among a host of measures aimed at keeping tabs on British children.(2)

"Are we sending our kids to school or prison"?

According to the *Leave Them Kids Alone* campaign, a staggering two million children have now had their fingerprints taken in 3,500 UK schools. It is estimated that twenty more schools introduce the practice every week. (3) The most widely used systems are *Micro Librarian Systems'* "Junior Librarian", which uses fingerprint scanners in place of library cards to check books in and out, and *VeriCool's* biometric class registration and cashless catering systems. *VeriCool's* parent company, *Anteon*, also happens to be a leading supplier of technology and training to the US military with controversial links to detention facilities in Guantanamo Bay and Abu Ghraib, as well as news services in Africa and the Balkans that broadcast American views and propaganda.

Perhaps the most contentious aspects of "kiddyprinting" (and there are many) is the way in which many schools have implemented these systems without notifying parents. Although the UK government has issued non-statutory guidance on the use of biometrics in schools, it stopped short of introducing a legal requirement for parental consent. (4) More non-binding guidance from the UK Information Commissioner's Office (equivalent to the Canadian Privacy Commissioner) recommends that "the sensitivity of the issue [demands] schools follow best practice and ask permission of parent and pupil before they take fingerprints". (5) However, this is frequently not the case, with some schools going as far as to threaten those who refuse to enrol with expulsion. Last year the Department for Education and Skills criticised several schools that refused to provide food to children who would not participate in their biometric catering system.

In a 2007 debate in the House of Lords, Baroness Walmsley argued that "the practice of fingerprinting in schools has been banned in China as being too intrusive and an infringement of children's rights. Yet here it is widespread". The *NO2ID* campaign is no less outraged, asking: "are we sending our kids to school or to prison? We wouldn't accept fingerprinting for adults without informed consent so it is utterly outrageous that children as young as five are being targeted". (6)

Spurious debate

The technology suppliers, together with the schools that use their systems, are quick to dismiss fears about privacy and children's

rights, arguing that these are far outweighed by the benefits to school and child. Their claims range from the banal to the ridiculous. *Micro Librarian Systems* asserts that "Identikit biometric solutions encourage school library lending", but provides no evidence to corroborate the suggestion that there is a link between fingerprinting and the desire to learn. Similarly: "Absenteeism. Could it be a thing of the past?", asks the *VeriCool* website, as if high-tech registration systems in place of traditional class registers could somehow tempt truant children back to school.

Another major concern is that such routine breaches of children's privacy are occurring at an age where they can scarcely be expected to understand the implications. *VeriCool* say that children like the system because "they feel like they are in *Doctor Who*" (a popular British sci-fi television series). Our fear is that taking personal data from children in wholly unnecessary situations is conditioning them into accepting the wider development of a "surveillance society".

In any case, the debate about whether it is acceptable to fingerprint children may be all but over. In 2005 the European Union agreed on the mandatory fingerprinting of *all* EU passport-holders. (7) It is now discussing the practical implementation of this Regulation. As far as children are concerned, the only question now is whether this practice will begin at six-years-old, the current position of the EU member states, or twelve-years-old, the current position of the European Parliament.

From "kiddyprinting" to "kiddychipping"

Perhaps absenteeism could be a thing of the past. Among its contracts with the US government, *VeriCool's* parent company *Anteon* provides "alien" ID cards to Mexican citizens on the US border. The company also holds a patent over the "VeriChip", a human implant RFID (radio-frequency identification) chip that can be used for identity verification and location tracking. Several years ago it proposed the chip become mandatory for all immigrant workers entering the US.

Despite the common technological base, *VeriCool* insists that its defence and educational activities are entirely separate. It is certainly difficult to make any ethical distinction. Following the murder in August 2005 of Rory Blackhall, an eleven-year-old Scottish schoolboy, *Anteon UK Ltd.* e-mailed some 340 local

authorities. "Dear Sir or Madam", read its communication, "like everyone else, we were shocked and saddened by the apparent murder of the young schoolboy in West Lothian. We believe that we can help reduce the possibility of such future tragedies and so wish to bring to your attention our new anti-truancy and first day contact system that is already in use by some schools in the UK". The UK Advertising Standards Authority banned the advert on the basis that it was "offensive and distressing" to capitalise on "a recent probable murder as means of promoting the product."

Although it does tread such dubious moral ground, it may be unfair to single out *VeriCool*. Countless IT companies are now engaged in competition to gain a foothold in the rapidly developing and highly lucrative educational-surveillance market. In October 2007, a school in Doncaster began trials of a system that uses RFID chips in school uniforms to track the attendance, location and movement of its pupils. *Danbro*, the local company which supplied the technology, cites fears about child safety as well as the usual administrative benefits. *Trutex*, "Britain's favourite schoolwear supplier", has also announced plans to chip schoolchildren via their uniforms. (8)

Caring is sharing: childhood on file

It is not just the private sector that uses tragedy to sell surveillance policies. The government's "Every Child Matters" strategy of 2003 followed a public inquiry into the catastrophic failures of social services in the case of Victoria Climbié, an eight-year-old who suffered prolonged and horrific abuse before being killed by her foster parents. At the heart of the resulting strategy is the creation of a central database that will track the progress of every child in England and Wales from birth.

The Children's Act 2004 provided the government with the sweeping new powers it required to implement the strategy and a trilogy of interconnected databases are now being constructed. First is "ContactPoint", an index of the name, address and date of birth, along with contact details for parents, doctors and schools, of every single child. This system will be launched towards the end of 2008; every child will have a unique number from birth. Later, it will be joined by the "Electronic Common Assessment Framework" (eCAF), an in-depth profiling mechanism designed to monitor children's progress and well-being. Information about parents, relatives and carers will also be included in the belief that this will help identify and protect vulnerable or at risk children. The third system is the "Integrated Children's System" (ICS), which will hold the records of social services and child protection officers.

Together, ContactPoint, eCAF and ICS will provide schools, social workers, police, doctors and local authorities with a previously unimaginably detailed picture of our children's lives. Not surprisingly then, calls to scrap the system have come from far and wide. The case against can be summarised as follows: 1) it will stigmatise children, particularly those from poorer backgrounds, potentially well into their adult life; 2) the vast sums of money being thrown at the technology (ContactPoint alone has already cost close to £250 million) would be far better spent addressing a chronic shortage of social workers, particularly in deprived areas; 3) it is quite probably illegal, far exceeding the permissible limits of UK law regulating the collection of personal data and European law protecting personal privacy; 4) it will be all but impossible to ensure the integrity and security of the data due of the breadth of access envisaged (a point conceded by government appointed auditors (9)).

For all the apocryphal claims that the *MySpace* and *Facebook* generation no longer cares about privacy, qualitative research by the UK Children's Commissioner suggests that older children in particular are in fact deeply concerned and sceptical of the government's motives. We should in no way confuse the desire to be seen by other people with a desire to be watched by the state.

From nanny state to police state

Given the current government mania for risk management along with technological advances in risk profiling, it seems inevitable that once implemented these databases will not just be used to identify potentially vulnerable children, but potentially "dangerous" ones as well. In contrast to all the government's talk about protecting children, it has also introduced the most authoritarian "youth justice" policies in Europe. The "Anti-Social Behaviour Order" (ASBO) has been the cornerstone of Labour's deeply conservative campaign to restore a "culture of respect" in British society for the past five years.

For those unfamiliar with the legislation, it allows police or local authorities to apply to a magistrate or county court for an ASBO banning an individual from committing *any* specified act or entering specific geographical locations (or both) for a minimum of two years (no maximum period was mandated, and in extreme cases people have received life ASBOs). Because they are civil (rather than criminal) orders the procedure is accelerated, there is no jury and "hearsay" evidence is admissible.

By the end of 2006, some 12,675 people had received an ASBO. Prior government assurances that they would be used against children only in "exceptional circumstances" proved wholly false; more than fifty per cent of ASBO applications concern children under 16 years old. Individuals as young as ten (the minimum age limit) have received ASBOs banning them from – and effectively criminalising them for – playing football in the street, riding a bike, wearing a hood or using certain words. As preposterous as this seems, breaching an ASBO is a criminal offence punishable by up to five years in prison for adults, and a two-year detention and training order for children.

Indeed, the greatest achievement of anti-social behaviour legislation may actually have been to speed entry into the criminal justice system. The fact that half of all ASBOs are breached demonstrates just how spectacularly an ineffective deterrent they are. On the contrary, children frequently embrace their ASBO as a "badge of honour" (11)

Taking DNA samples from children

Since April 2004, anyone over the age of ten years who is arrested in England or Wales, for any recordable offence (i.e. however minor), can have their DNA and fingerprints taken without their consent, or that of their parents in the case of minors. Both records are kept forever in police databases, *regardless of whether the arrest is followed by a criminal charge*, let alone conviction. Of 4.3 million profiles added to the UK DNA database since 1995, as many as 1.1 million belong to people who were under 18 years old at the time the sample was taken. (11)

Criminologists have long warned that police officers might target children they see as potential troublemakers and arrest them for minor offences so as to secure their inclusion in the database, believing that this will make their job easier in the future. This was confirmed as police policy by Gary Pugh, DNA spokesman for the Association of Chief Police Officers, who suggested that children as young as five should be considered eligible for the database if they exhibit behaviour consistent with criminality in later life.(12)

Sources

1. "Privacy Rights in a World Under Surveillance", *Civil Society Workshop, 29th International Conference of Data Protection and Privacy Commissioners, Montreal, 25 September 2007.*
2. "Surveillance society", Ben Hayes, *Red Pepper, January-February 2008:* <http://www.redpepper.org.uk/Surveillance-Society>.
3. <http://www.leavethemkidsalone.com/>
4. <http://www.statewatch.org/news/2007/jul/uk-biometrics-in-schools.pdf>.

5. <http://www.statewatch.org/news/2007/jul/uk-biometrics-in-schools-ico.pdf>.
6. See <http://www.no2id.net/>.
7. Regulation 2252/2004/EC. On its implementation see <http://www.statewatch.org/news/2006/aug/02eu-fingerprinting-children.htm>.
8. http://www.theregister.co.uk/2007/10/22/kid_chipping_doncaster_go/.
9. On children's databases see the extensive report by Foundation for Information Policy Research (FIPR), available at: http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/ico_issues_paper_protecting_childrens_personal_information.pdf. See also *Action on Rights for Children*, <http://www.arch-ed.org>.

10. On a host of ASBO-related issues see <http://www.statewatch.org/asbo/ASBOwatch.html>.
11. Source: *Telegraph*, 21 March 2008, available at: <http://www.telegraph.co.uk/news/uknews/1582362/One-million-children-on-DNA-database.html>.
12. Source: *Guardian*, 16 March 2008, available at: <http://www.guardian.co.uk/society/2008/mar/16/youthjustice.children>

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Switzerland: Private spy on mission for Nestlé

by Dinu Gautier

Nestlégate: The food multinational Nestlé infiltrated a group of globalisation critics writing a book on the company. The assignment was carried out by the private security firm Securitas

On one side there was a small group from Lausanne from the alter-globalisation network *Attac*. In the autumn of 2003 the group set itself the target of researching the global (mis)conduct of the food corporation *Nestlé*. One year later, the book *Nestlé - Anatomy of a global company* was published. On the other side there was the company in question, the biggest food corporation in the world. *Nestlé* contracted *Securitas*, the biggest security company in Switzerland, to spy on the book's authors. A young woman, under the assumed name Sara Meylan, worked on the book project whilst passing on information to *Nestlé*. On at least occasion she reported back to the *Nestlé* headquarters before she disappeared in 2004.

This was uncovered by the journalist Jean-Philippe Ceppi in the programme *Temps présent* the West Swiss television station. The regional Waadtland police knew of the infiltration. Formal questions were asked by the Social Democrats in the regional Canton's parliament to clarify what exactly the police knew and if they obtained the files compiled on *Attac*. Sara Meylan's official employer was *Securitas Schweiz AG*, (which should not be confused with the global security firm *Securitas AB*). The Swiss variant is a family business offering a security package, from bodyguards to the installation of alarm systems.

The spying operation was carried out by the *Securitas* department "Investigation Services IS", which cooperates with the *Securitas* subsidiary *Crime Investigation Services AG* (CIS). In the Chamber of Commerce register, CIS is straightforward about its purpose: they offer "surveillance and research of any kind" the company's file informs us. CIS's head of the trustees board is Reto Casutt, who is also the general secretary of *Securitas*. "We are usually active in the fields of insurance fraud and hooliganism", he said. "Local authorities contract the IS to uncover abuses of handicap-insurances, for example". The company then might watch the claimant completing a workout in the gym, for instance or intercept football fans before games around stadia.

Casutt emphasizes that "observations within the framework of the G8 summit at Lake Geneva" were a rare occurrence, because this involved an unusual threat situation. "Before and after there was no infiltration of groups", Casutt claimed. The woman operating under the pseudonym of Sara Meylan was sent into the anti-G8 protest camp in the summer of 2003 merely to find out the demonstration routes that were being planned by the protesters. However, the *Nestlé* book project only began after the G8 summit. Casutt cannot or does not want to explain what this has to do with demonstration routes.

The methods by which IS recruited their spy can be worked out by comparison with the case of a student based in Lausanne. In autumn 2003, he sent an open application to *Securitas*. Instead

of being offered a job as a night porter, he was invited to a total of four meetings in cafés. Bit by bit he learned that he could earn 30 Swiss Francs an hour for participating in *Attac* meetings and writing reports on them. "The recruitment method reminded me of spy novels", the student said. He finally turned down the job offer, despite threats against him by an IS employee.

Whilst *Securitas* made at least partial admissions to the media about the *Nestlé* scandal, the *Nestlé* press office was silent on the matter. The sole statement on the case exists only in writing. The company maintains that it conforms to the law and that it does not want to disclose any information on security matters, "for obvious reasons". Hints as to the nature of *Nestlé's* security culture are provided by John Hedley, who was head of security at the time of the *Attac*-infiltration and, according to a press report, is a former MI6 agent. On a website for managers in the security sector he writes: "We [in security] are judged by our overall contribution to the profitability to the group". He uses the case of prevention to exemplify his point: "Having the ability to reduce the number of events that are unforeseen is a very valuable metric". The achievement of this goal, according to Hedley, would get the attention of management. "If you can tell a story that says, We were able to preempt a problem that was going to affect us, and, Oh by the way, had we not done this, this would have been the cost that is a very good story to tell." He points out himself which kind of problems could be expensive: "There's a very strong argument that brand and reputation are worth more than physical assets."

At *Nestlé's* headquarters in Vevey, one might now question what exactly was more damaging for *Nestlé's* image: the book, of which roughly 1,000 copies were sold before the scandal, or "Nestlégate", which has received international media attention. However, as mentioned above, no one wants to talk about the matter in Vevey. *Attac's* book, on the other hand, reportedly enjoys increasing sales figures.

Dinu Gautier is Editor Internal Affairs at WOZ – die Wochenzeitung (The Weekly Newspaper)

An interview with a surveillance victim : "And suddenly the spy was gone"

One of the authors who was spied on by Sara Meylan was Janick Schaufelbuehl. The 34-year-old historian now holds a research position at the University of Lausanne and is no longer active in *Attac*.

WOZ: How did the spy Sara Meylan manage to join the circle of authors?

Janick Schaufelbuehl: That was easy. She introduced herself to us as an employee of an insurance company who was

interested in the issue and that she would like to join the project. *Attac* is open to people who want to become active, so we never became suspicious.

WOZ: What did she contribute?

Janick Schaufelbuehl: She was quiet, seemed to be shy and did not say very much. She wanted to write a chapter on the issue of "Nestlé and coffee". However, the text that we received from her was so catastrophically bad that we had to completely rewrite it. Today I wonder who really wrote it, maybe it was a cooperative venture between *Nestlé* and *Securitas*.

WOZ: You only learned about the spying from journalist Jean-Philippe Ceppi?

Janick Schaufelbuehl: Yes, it was a real shock. We met privately, sometimes at people's homes, including dinners and discussions. She had access to all of our e-mail communications and therefore also to our communication with contacts in other countries, such as a French organisation that was preparing a court case against *Nestlé* at the time. Then in the summer of 2004 she suddenly disappeared, and her e-mail and telephone number stopped working. Until today she has not re-appeared.

WOZ: The police knew of this case?

Janick Schaufelbuehl: Apparently the Waadtland canton police also received the files and notes she compiled on us and our meetings. This, at least, is what the journalist Mr Ceppi says.

WOZ: Have you seen these reports?

Janick Schaufelbuehl: Ceppi has the files, but does not want to disclose them to us, to protect his source. But he showed me a protocol that was very detailed. We assume that Sara Meylan recorded our meetings, because she never took notes.

WOZ: And what are you going to do now?

Janick Schaufelbuehl: We are initiating legal proceedings against Sara Meylan, *Securitas* and *Nestlé* for violating our privacy and we are also lodging a complaint against them for violation of the Data Protection Act. However, we are aware of the fact that this is an international problem. In the US there was a case where Greenpeace was infiltrated - also by a private security firm - on request of a multi-national corporation. And in France there is currently a pending case of a politician who was also spied on by a private security firm. It is extremely important to research the role of these huge security companies, especially when considering that private firms are also taking part in armed conflicts, in Iraq, for instance.

FOI in the EU: When is a "document" not a "document"?

by Tony Bunyan

The European Commission has put forward a number of changes to the Regulation on access to EU documents adopted in 2001. Controversially it proposes to change the definition of a "document" which in turn affect which would or would not be listed on its public register of documents. Does this have anything to do with the fact that the European Ombudsman has just ruled that the Commission must abide by the existing definition of a "document" in the Regulation and that it must list all the documents it hold on its public register?

When the Council and European Parliament discussed the Regulation on access (1049/2001) under co-decision in 1999 and 2000 there were many issues where civil society was critical but the definition of a document was not one of them. The definition was fine.

This was quite simply because it was the same as that which had been in force since 20 December 1993 under the Code of access to EU documents adopted by the Council of the European union (the governments) and the European Commission. The 1993 Code said:

"Document" means any written text, whatever its medium, which contains existing data and is held by the Commission and the Council.

The 2001 Regulation says:

"document" shall mean any content whatever its medium (written on paper or stored in electronic format or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility. (Article 3.a).

The 1993 definition and that of 2001 are in practice the same - the 2001 definition was "modernised" to take into account new forms of recording and transmitting documents such as e-mails and electronic documents.

So this definition of a "document" has been in place since 1993, some 15 years.

When the Commission launched its public consultation on the Regulation in April 2007 it might have been thought that one of the questions would have concerned the definition in Article 3.a. but it did not. A question was asked about extending the definition of a "document" to include those held on databases - a move widely backed in the consultation and included in the Commission proposal.

The Commission's report on the consultation process, published in January 2008 did note that:

The concept of "document": As regards the concept of "document",

the general feeling is that the current wide definition should be maintained.

The proposal circulated to the full Commissioners meeting on 30 April 2008 contained the following definition of a "document":

*"document" shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) drafted or received by an institution **and transmitted to one or more recipients or circulated within the institution or otherwise recorded** (emphasis in bold added)*

So it was proposed that a "document" was not a "document" unless it was transmitted to one or more recipients or circulated or "otherwise recorded."

However, a further change was made at the Commissioners' meeting so that its proposal now reads:

*"document" shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility drawn-up by an institution **and formally transmitted** to one or more recipients or otherwise registered, or received by an institution; (emphasis added)*

Unless a document is "formally" transmitted it is not a document. This strongly suggests to everyone with any experience of applying for documents that only the final, transmitted, version will be listed on the public register of documents and *not* all the documents (sometimes referred to as "preparatory documents") that lead to the final version will made be public.

Indeed the proposed definition of a "document" in Article 3.a. would appear to be in contradiction to Article 2.2 (unchanged and renumbered from Article 2.3 in the Regulation) on "Beneficiaries and Scope" which says:

*This Regulation shall apply to **all documents** held by an institution, that is to say namely, documents drawn up or received by it and in its possession concerning a matter relating to the policies, activities and*

decisions falling within its sphere of responsibility ., in all areas of activity of the European Union. (emphasis added).

Does this mean to “all” documents” or just to “all documents” defined as “documents” in the new Article 3.2?

Commissioner Wallstrom’s intervention

On 2 June 2008 there was a hearing in the European Parliament on the Commission's proposals which were presented by Commissioner Wallstrom (from Sweden). Wallstrom sought to defend the proposed definition of a "document". This brought stinging criticisms from Steve Peers and Ann Singleton who represented *Statewatch* at the hearing (see below), other NGOs and the European Ombudsman (see box).

The website "wobbing" in a report by Staffan Dallborg reported that at a seminar in Stockholm on 10 June 2008 Commissioner Wallstrom said of critics:

They can't have read the text.

Extraordinarily Wallstrom also said, in defence of the proposal:

All the documents available today will be available with our new proposal

The idea that we will get “all the documents available today” is a joke as so few are available and access to the full-text of these is highly limited.

As the Commission does not agree with the definition of a "document" in the Regulation it does not list most documents on its public register - as required under Article 11. We estimate that no more than 10% of the documents that the Commission produces or hold are listed on the public register - a statement the European Ombudsman highlighted in our complaint (see below) who noted that the Commission did not refute in the voluminous correspondence. As so few documents are currently listed on the public register Wallstrom by saying that "all the documents available today will be available" is simply confirming our worst fears.

Redefining a "document" as the Commission proposes has a knock-on effect on how many documents are listed in the Commission's public register of documents under Article 11 of the Regulation. If most are not defined as "documents" they do not have to be listed.

But why is the Commission suggesting that the definition of a document be changed? It has been in place for 15 years and it was not raised in its own public consultation document, could it be that the Commission wants to circumvent the European Ombudsman's Recommendation on the content of its public register following the *Statewatch* complaint?

Statewatch's complaint to the European Ombudsman

In October 2006 *Statewatch* registered a complaint with the European Ombudsman against the European Commission in that it had failed to list all the documents it produced or received on its public register of documents as required under Article 11 of the Regulation (1049/2001):

Article 11 Registers:

1. To make citizens' rights under this Regulation effective, each institution shall provide public access to a register of documents. Access to the register should be provided in electronic form. References to documents shall be recorded in the register without delay.

Four years had passed since the deadline set for instituting a public register based on Article 11, yet the Commission still maintained in its annual reports that it would “gradually” increase the number of documents listed.

Statewatch maintained that only a fraction of the documents produced and received by the Commission were listed on its public register. In response to the complaint the Commission said:

Article 11 did not stipulate that the register should include references to all documents. On the other hand, Article 3(a) gave a very wide definition of the term "document."

Statewatch responded with the following observations to the Ombudsman:

"Regulation 1049/2001 did not refer to "registers" in the plural, that is, that the documents could be listed in a series of "registers".

Article 11 was unambiguous in its reference to "a" register of documents.

Article 11 was unambiguous and clearly referred to all documents.

Since Regulation 1049/2001 contained a number of express exceptions to its rules, it followed that if the drafters had wanted Article 11 to apply to some documents only, they would have specified this expressly.

Quite extraordinarily, the Commission seeks to question the definition of "document". However, Article 3(a) of Regulation 1049/2001 set out the definition of the term "document". Article 11 combined with Article 3(a) was perfectly clear: the register had to contain a reference to all documents as defined in Article 3(a)."

In addition *Statewatch* said that the Commission could not “blatantly” ignore the provisions of the Regulation. Moreover:

Its response was even more worrying as the Commission had an obligation, as guardian of the Treaty, to ensure the proper implementation of regulations.

On 5 July 2007 the Ombudsman wrote a detailed letter to the Commission with a number of issues and questions. The Commission replied and only hardened its position.

Article 11 did not oblige the institutions to list all their documents. Furthermore, it was impossible to set up a fully comprehensive register, given the wide definition of the term "document" in Article 3(a) of Regulation 1049/2001.

And that it intended “gradually”, in its own time extend the scope of its registers. It had a public register (Article 11), a Comitology register, a register of the President of the Commission's correspondence and each of the 25-plus DGs had their own “internal administrative” registers and:

The data contained in the internal registers would have to be screened, selected and reformatted through interfaces before they could be fed into a public register.

The Ombudsman's Decision made the following points:

"Article 11 can hardly be interpreted otherwise than as meaning that all documents within the meaning of Article 3(a) are meant to be covered by this provision."

"it is abundantly clear that the registers currently maintained by the Commission do not provide reference to many documents that concern the Commission's activities and are in the Commission's possession. It should be noted in this context that the Commission has not disputed the complainant's statement that only a "fraction" of the Commission's documents is listed on its registers."

The Ombudsman notes that the Commission also argued that it was impossible to set up a fully comprehensive register, given the wide definition of the term "document" in Article 3(a) of Regulation 1049/2001. The Ombudsman is not convinced that it would be impossible to set up a fully comprehensive register of the documents drawn up or received by the Commission. As the Commission has acknowledged, each of its Directorates-General or administrative units has its own internal register of documents. The Ombudsman therefore finds it difficult to see why it should be impossible for the Commission to draw up a comprehensive register of documents on the basis of the existing internal registers.

In view of the above, the Ombudsman arrives at the conclusion that the Commission has indeed failed to comply with Article 11 of Regulation by omitting to include all relevant documents in its register of documents. A draft recommendation will therefore be

made.

The Ombudsman also noted that the Commission had had more than six years to comply with the Regulation.

On 7 April 2008 the European Ombudsman made the following draft recommendation to the Commission:

The Commission should, as soon as possible, include references to all the documents within the meaning of Article 3(a) that are in its possession in the register foreseen by Article 11 of this regulation, to the extent that this has not yet been done.

The Commission and the complainant will be informed of this draft recommendation. In accordance with Article 3(6) of the Statute of the Ombudsman, the Commission shall send a detailed opinion by 15 July 2008. The detailed opinion could consist of the acceptance of the

Contribution of the European Ombudsman, P. Nikiforos Diamandouros, to the public hearing on the Revision of Regulation 1049/2001 on public access to Documents: European Parliament - Committee on Civil Liberties, Justice and Home Affairs, Brussels, 2 June 2008

"The most far-reaching of these proposals is to change the definition of "document". The proposed change would mean that no application for access to a document drawn up by an institution could be made unless that document had been "formally transmitted to one or more recipients or otherwise registered"

The Commission does not propose any change to Article 11 of the Regulation which requires, among other things, that documents be registered "without delay". However, the Commission's proposal

Ombudsman's decision and a description of the measures taken to implement the draft recommendation."

The Ombudsman, in effect, told the Commission that it has to put on its public register all documents "in its possession" - not just new documents but all those produced and received since December 2001.

Just 21 days later, on 30 April 2008, the Commission put forward proposals to change the definition of a "document" and therefore highly restrict the number of documents that have to be put on the register.

Any there any connection between its statutory obligation to implement the Ombudsman's recommendation and its proposals to subvert it?

would mean that a document that has not been formally transmitted outside the Institution would not even be a "document" for purposes of the Regulation unless it had been registered. The Commission's proposal would therefore give it, in practice, wide discretion to decide which documents would be covered by the Regulation.

In response to the Commission's Green paper, I wrote that:

"the broad definition of "document" should be retained, since to narrow it would represent a step backwards for transparency. The worst option of all would be to tell citizens "you cannot even apply for access unless the document appears on a register".

Unfortunately, the Commission seems to have chosen precisely that option."

Proposal to amend the Regulation on access to EU documents

speech by Steve Peers to the European Parliament on behalf of *Statewatch*, 2 June 2008

In this presentation I want to make four general points, followed by four specific criticisms of the legislation.

General points

The first general point is to welcome the appointment of Michael Cashman as the rapporteur on the proposal to amend the access to documents regulation, in particular because of his work as the rapporteur on the 2006 EP resolution which included recommendations to the Commission for suggested amendments to the access to documents regulation. I will be referring back to a number of the details of these recommendations.

The second general point is to urge the Parliament and the Council not to rush negotiations on this proposal, but to wait for the entry into force of the Lisbon Treaty. There are four reasons for this. First of all, the new Treaty would provide for a wider scope of application of the access to documents rules, making them applicable to all EU institutions, bodies and agencies, including for the first time the European Council (the meeting of EU leaders). Secondly, the new Treaty would provide for an obligation for legislation to be adopted following public discussions in the Council and the Parliament, and the access to documents rules should take account of this. Thirdly, the new Treaty would provide for a clarification of the distinction between legislative and non-legislative activity of the EU. This was an issue raised in the 2006 Cashman report and is already anticipated by the Commission's proposal to amend the rules on access to documents. Fourth, Article 298 of the consolidated Treaty, already referred to by Mr. Cashman, would be a new legal base for the adoption of rules on EU administrative law, including explicitly the rules on 'open' administration. This new legal base would create an opportunity to address issues within

the scope of the European Transparency Initiative, such as the regulation of lobbyists and the dissemination of information on the beneficiaries of EU funds, as well as more general issues regarding openness and freedom of information, as distinct from access to documents as such. There would be an opportunity to adopt legislation concerning both access to documents and these broader issues by combining the two future legal bases.

My third general point about the issue is that the EU is disconnected with the public. It should be remembered that the EU has often changes its rules to allow for greater openness and transparency in the past at the times when it has faced particular challenges gaining or retaining public support. So there is a clear link between the public perception of the EU and the rules on openness and transparency.

This links to my final general point. There is nothing at all in the Commission's proposal to amend the access to documents rules which would actually enhance openness and transparency. Some of the new provisions would just confirm the status quo, which is fine. But some of them – I count at least seven – would lower standards as compared to the current rules, as they have been applied in practice and interpreted by the Courts.

Specific points

There is already a general *Statewatch* analysis of the new proposal on the *Statewatch* website, and there will soon also be a point-by-point analysis of the new proposal. I want to make four specific points outlining particular concerns about the new proposal.

My first specific point is the revised definition of 'document'. I would agree with what other speakers have said already: the revised definition would restrict the scope of the

rules. My *Statewatch* colleague Ann Singleton compared this definition to a philosopher's debate over whether a chair exists if we cannot see it. I would compare the definition of 'documents' in the proposal to Bill Clinton's definition of "sex". Like that definition, the definition of "documents" simply invites ridicule because it is different from the common understanding of the term. For example, my speaking notes today are obviously a "document" in the ordinary sense of the word, even though I have not "received" them, "formally transmitted" them, or "otherwise registered" them – just as Bill Clinton's activities with Monica Lewinsky fell within the commonly understood definition of 'sex'. Not using the common meaning of the term invites ridicule – and it is obvious that this also constitutes a significant restriction of the scope of the Regulation.

This revised definition will encourage abuse, since officials might decide not to transmit documents formally or otherwise register them, in order to restrict their circulation to a small group. I have myself received documents from Commission staff that I was told were for the purposes of discussion and consultation and not considered to be documents that might be available to the public, and I have seen similar 'documents' from the other institutions. This practice should not be legalised.

My second specific point is that the proposal's redefinition of the status of Member States' documents would also lower standards as compared to the current rules, as interpreted by the Court of Justice. I agree with earlier speakers' points on this issue. The standards would be lower as regards some documents, because Member States would have the power to apply their national law to refuse access, whereas they cannot do this at present. For other documents, related to legislation or delegated acts, the proposal would only replicate the status quo, but not improve upon it. The Commission's proposal is in contradiction with recommendation no. 4 in the 2006 Cashman resolution of the Parliament.

My third specific point is the lack of any change to the decision-making exception in the current rules. This exception needs amendment at the very least to remove legislative decisions and comitology decisions from the scope of the decisionmaking exception completely. The proposal on this point is in contradiction with recommendation no. 2 in the 2006 Cashman resolution of the Parliament.

As part of this change, the Parliament and the Council should take steps in particular to improve the transparency of the co-

decision procedure. For example, there is a recent agreement between the Parliament and the Council on a controversial proposal – the returns directive. This agreement was reached on 23 April, about six weeks ago, but the agreed text has still not been officially released. The document has been leaked to *Statewatch* and is available on the website, and it has been leaked to other NGOs. But it is not officially available to the public. Also, the Council should be required to publish an official transcript of its public debates, for the benefit of those citizens who do not have the time or facilities to watch a web streaming.

My fourth specific point concerns the changes to the rules requiring the public register of documents. The current rules require all documents to be listed and publicly accessible on the public register, 'as far as possible'. I should point out that *Statewatch* currently has a complaint pending with the Ombudsman about this issue. The Ombudsman has agreed with the complaint. So it seems that the Commission has proposed changes to the rules in order to avoid complying with a pending ruling of the Ombudsman against them. There would no longer be an obligation to list all documents in the register. This is coupled with the change in the definition of document, which would now become circular – a "document" would not need to be on the register in the first place unless it had been placed on the register, simply because registration would be part of the definition of "document". Together these changes would be a significant restriction in the application of the rules.

As regards legislative and comitology documents, the Regulation would be more precise but would not actually change the current practice as regards these documents, considering also that the restrictions on public accessibility and access set out in the rest of the Regulation would still apply. Again, the proposal on this point is contradiction with recommendation no. 2 in the 2006 Cashman resolution of the Parliament.

Conclusion

I would urge the European Parliament to take the opportunity to improve the Commission's proposal significantly, as there are major problems with it.

Full background and documentation is available on:

Statewatch's Observatory on access to EU documents: 2008-2009:

<http://www.statewatch.org/foi/observatory-access-reg-2008-2009.htm>

Italy: Institutionalising discrimination

by Yasha Maccanico

The racist scape-goating of Roma and Sinti has paved the way for an ominous crackdown by the Berlusconi government with echoes of a terrible past and could lead to a shift to authoritarianism that will be difficult to reverse.

Introduction

After its clear victory in the April 2008 elections, Italy's new government has indicated its intent to bring about a radical shift in the treatment of people identified as threats to peaceful co-existence and who are deemed to cause a "sense of insecurity" among citizens. Berlusconi himself announced "zero tolerance for Roma, illegals and criminals" as a priority if he was to win the election in February. In the midst of continuing anti-immigrant rhetoric that has ominously included the new interior minister Roberto Maroni explaining away racist attacks by blaming criminals among the immigrant population for reactions against them, the so-called "security package" was approved on 23 May 2008. It comprised one law decree containing urgent measures that immediately came into force, one legislative decree to be converted into law, and three decrees to introduce

changes to provisions governing family reunification for foreigners, recognition of refugee status and the free movement of EU country nationals, and a draft law on the national DNA database. Draft versions of the measures on family reunification, refugee status and the DNA database are set to be unveiled in late July.

The package also entails a proliferation of measures aimed at re-establishing the authority of the state, through tighter control of the territory by the police, and even soldiers on the beat in some cities, the punishment of petty criminal activity (with special emphasis on begging and the sale of counterfeit goods on the streets) and driving after consuming alcohol or illegal drugs, and through the criminalisation and repression of opponents of the governments' plans (measures adopted in relation to the rubbish crisis in Campania are liable to have repercussions for

political activists and protesters in the future).

Whilst, in several of its EU partners, the main talk is about the economy slowing down, with some of them belatedly admitting the existence of a “crisis”, in Italy the focus is firmly on “illegal” foreigners and Roma and Sinti people, in spite of a downturn in the economy and statistics showing that increasing numbers of families have trouble to keep going until the end of the month on their incomes. Once the cause for Italy’s problems has been identified as illegal immigration, the way to counter it is being studied, so as to make the lives of immigrant collectives in Italy difficult, by identifying what they do and finding ways to punish them or people who are deemed to help them through illegal actions, to further isolate them.

Securing a large number of immediate expulsions on vastly expanded grounds appears to be the criteria behind a number of the provisions. Moreover, the provisions signal a shift towards the equating of removed citizens of EU member states to that of expelled third-country nationals. Critics of the measures have questioned its applicability, in view of the sheer number of people who would be criminalised and those who would fall under conditions entailing arrest, detention and expulsion, in terms of manpower (in the police and law courts), facilities and expenditure.

Turning the screw on “illegal” immigrants

Key measures proposed to make life difficult for so-called *clandestini* (“illegals”) include their wholesale criminalisation by turning their status into a criminal and custodial offence, rather than an administrative one, thus criminalising hundreds of thousands of people at a stroke, although concessions are expected for specific categories such as cleaning ladies and carers, tens of thousands of whom sought regularisation by applying for recognition under the quota system, which remains woefully inadequate. In fact, the places allocated for foreigners to enter Italy to work by setting annual quotas have consistently been underestimated, leaving employers with a need for labour, and offices responsible for dealing with applications being overwhelmed by hundreds of thousands of requests (740,000 applications for the 170,000 places made available in 2007), often from people who are already regularly working in Italy (albeit illegally) and seek to regularise their position.

Asked about the measure, interior minister Roberto Maroni told parliament that the reason for this new criminal offence was “to be able to proceed to immediate expulsions”, particularly in view of the Returns Directive that he describes as “excessively lax” because it imposes a requirement to give immigrants seven days to leave the country of their own accord in compliance with an expulsion order, although it does include the exception whereby an “immediate expulsion” may be carried out “if the expulsion measure is a direct or indirect result of a guilty verdict under criminal law”. Moreover, once the Directive has been transposed, Maroni complains that it will only be possible to expel “those who have been found guilty and Community nationals for serious and imperative public order reasons”, a measure already introduced by the Prodi government at the end of 2007.

Notwithstanding the Council statement indicating that the Directive should not be used as an excuse for lowering standards in Member States, it has been used to justify a substantial increase in the maximum length during which migrants may be held in detention centres (re-named identification and expulsion centres) nine-fold from two to eighteen months. The ordinary detention period is doubled from 30 to 60 days, after which a judge may repeatedly extend it on request from the *questore* (administrative police chief in a given town) by a further 60 days until the new 18-month limit “if the detained subject has not made an identification document available” that is valid for travelling abroad.

On the other hand, measures are introduced to nullify the

Directive’s impact where safeguards or guarantees for “illegals” are concerned by transforming the nature of the legal system, penalising people for who they are rather than what they do. This is the direction in which the aggravating circumstance that is envisaged for migrants in an irregular situation who commit criminal offences moves, through a one-third increase in their sentences as a result of their status that belies principles of equality before the law, as well as ensuring that most offences will result in long enough sentences being passed for them to be expelled immediately. In order to ensure that this is the case, the minimum sentence that automatically entails expulsion has been lowered from ten to two years. Failure to comply with a removal or expulsion order will result in imprisonment for between one and four years, whereas it was previously an administrative offence. Moreover, the increased sentences for migrants residing illegally in Italy may also result in their exclusion from any alternative sentencing or tariff discounts that would shorten their term of imprisonment.

Nowhere is the contradictory approach of the governing coalition more apparent than in its efforts to limit the right to family reunion. While in the general political debate in Italy, they have been staunch defenders of the “Family”, conceived in a traditional and religious manner, in opposition to legal rights being granted to unmarried or same-sex couples, in the case of migrants, they are attempting to make the rules for families to re-unite (legally) as stringent as possible, as if to indicate that the problem of “illegal” entrants is accompanied by a problem of “legal” entries, which must also be reduced. Thus, measures are envisaged to reduce the possibilities of legal entry for family reunion, excluding sons and daughters who are adults, parents who are over 65 if they have other children who can support them in their countries of origin, unless they are medically certified to be unable to do so for serious health reasons. The delay in obtaining citizenship following marriage is raised from six months to two years, and if someone’s status as a relative cannot be conclusively certified on the basis of documents produced by competent foreign authorities, it may be certified by diplomatic or consular offices following DNA tests that applicants must pay for. This appears to run against the goals that are cited as the reason for these developments, as the presence of families, stability and integration may be conducive to more responsible behaviour than if migrants are lone individuals.

Housing is another field in which strict controls are envisaged, as migrants necessarily need a place in which to live unless they are to sleep in the streets, and any accommodation they rent directly will be illegally let if they do not possess the required residence permit. Landlords letting homes to foreigners residing illegally in Italy will be guilty of a criminal offence entailing prison sentences of between six months and three years, followed by confiscation of the home once a final verdict against them has been issued, extending the scope of measures to counter conducts that are deemed to aid illegal residence and furthering the social isolation of “illegals”.

Money transfers are another area in which heightened controls are envisaged, requiring money transfer service providers to check and photocopy the identity card of people using the service. If the person is foreign, their residence permit will also be required, and in cases in which it is not available, information about the service provided must be given to local authorities responsible for public security and a copy of the person’s identity card must be sent to them, within 12 hours. The copies of customers’ documents thus acquired, must be filed away and made available on any occasion in which public authorities in charge of security request them by the money transfer service providers, or their license will be withdrawn. The practice of prior identification for a variety of services is thus growing after it was introduced for the use of terminals in Internet cafés by law decree 144/2005 to counter international terrorism, and to purchase tickets for football matches through a

decree to counter violence in stadiums of February 2007.

Moreover, the measure on money transfers runs against recent developments such as proposals in Spain to facilitate and reduce taxes on money transfers to countries of origin and declarations highlighting the importance of remittances from abroad to improve conditions in migrants' countries of origin. Thus, with regards to policies for the promotion of development and highlighting the positive value of remittances, the Action Plan that emerged from the EU-African ministerial conference in Rabat on 10-11 July 2006 stated in its point 1.g:

Reducing – by working with banking and mutuality institutions as well as transfer operators – the costs of savings transfers of migrants to their countries of origin while respecting the private nature of remittances, reinforcing their potential for development and ensuring they are as productive as possible.

Another significant aspect of the provisions is the way in which the right of free movement of community citizens is curtailed. The last “security decrees” approved by Romano Prodi’s centre-left government in November 2007 and January 2008 in response to social alarm about crimes committed by foreigners and Romanians in particular, stipulated that EU nationals could be expelled on the basis of a wide interpretation of what a “threat to public security” consists of, and identifying foreigners from other EU countries as subjects liable to present such a threat (see *Statewatch Vol 18 no 1*).

The renewal of the decree also introduced the possibility of expelling citizens from other EU countries on the basis of a suspicion of involvement in terrorist activity. The grounds to be considered a “threat to public security” have been expanded to include anyone who fails to register in the *anagrafe* (register of residents) “in any case”, something that will almost inevitably be applicable to any “illegal”, all the more so as new obstacles are being introduced with regards to registration in the aforementioned register. These include an inspection to ensure that a foreigner lives in suitable accommodation and has a sufficient certifiable income to support him or herself, conditions that even some Italians may be unable to fulfil.

With regards to asylum, only three months after the legislative decree to modify Italian asylum procedure came into force, it is proposed to reform it so as to guarantee the expulsion of asylum applicants when their application is first refused, something that would be equivalent to the ruling out of appeals, as they would have to be filed from the country from which they seek protection. The *Consiglio Italiano per i Rifugiati* criticised the proposed measures, noting that European statistics indicate that 30% of successful asylum claims are granted on appeal. It also expressed its wish that the reform be shelved, as it would also entail the denial of freedom of movement in the national territory for asylum seekers and the detention of many potential refugees in detention centres, as would happen in cases where they have received an expulsion order before having claimed asylum, a circumstance that is reportedly not uncommon, for example in the southern island of Lampedusa.

More powers to local councils and mayors

On the surface, the attribution of increased powers to guarantee public order and public security in their territory to local authorities and mayors would appear uncontroversial, but events during the last year have shown how they are liable to be a means for councils to place further obstacles beyond those adopted nationally in the way of migrants. Article 5 of the decree allows them to issue orders in the field of public order and security, to carry out public security and judicial police functions and to monitor anything that is relevant for public order and security, informing the *prefetto* (police chief in a city). They must also ensure the co-operation of local police forces with the state police force and supervise the handling of records concerning civil status and residence (such as the *anagrafe*, see

above), as well as having the discretion to adopt urgent measures “for the purpose of preventing and eliminating serious dangers that threaten public safety and urban security” – a possible reference to expulsions, explaining the reasons for doing so and informing the *prefetto* in timely fashion, so as to establish the instruments required for their implementation. When orders concern specific people who fail to comply with a given order, the mayor may act to enforce the order, through operations that the individuals concerned will have to pay for. The interior minister may issue guidelines for the exercise of these functions by mayors.

One approach to the “problem” adopted in northern Italian regions by centre-right and Lega Nord local councils who felt that the national legislation and government’s efforts were inadequate, was that of placing a bureaucratic and administrative cobweb in the way of migrants, for example by making it difficult for them to register in the local *anagrafe* (see above). Registration is compulsory for people staying for longer than three months, and a key step towards obtaining access to social and health services, rights and other services including schooling for children. The effects of these obstacles often spill beyond their supposed scope, namely that of “illegals”; thus, measures have been envisaged that target children, who cannot be construed as “illegal” by law, as well as EU nationals, who supposedly enjoy a right of free movement. An order (circular no. 20) issued by Milan city council’s infant services section on 17 December 2007 impeded the registration of children in kindergartens if their parents did not possess a valid residence permit. The order was eventually ruled illegal on 11 February 2008 by a Milan court (see *Statewatch news online*, February 2008) for violating a child’s fundamental right to education when it was challenged by a Moroccan mother in a Milan court.

The local council of Cittadella (Padua) required certification of employment, adequate income or financial assets not to become a burden for the social services to allow registration in the *anagrafe*, and was granted powers to order the residence whose details were provided to be inspected to ensure that the details given were true and the dwelling place was neither unfit for habitation nor overcrowded. A minimum of 28 square metres was required for one person, 38 for two, lowered to 14 metres per person if there were three or more people. The fact that prices in the flat rental market may make these requirements difficult to comply with was not contemplated – many Italians are unable to leave their parents’ until several years after they reach adulthood, even when they work. Other requirements, depending on the circumstances of residence, would involve presenting an employment contract, authorisation from the immigration desk, certification of the attribution of a tax identification number or registration in one’s professional association, in the case of self-employed or free-lance workers. To register, EU nationals looking to reside in Cittadella without working or undergoing professional training, had to demonstrate the availability of sufficient resources to maintain themselves and any family members present, quantified at €5,061.68 for two persons, and twice as much for groups of three and four, and so on. Medical insurance was a further requirement introduced in these cases.

The new right-wing Rome mayor Gianni Alemanno of *Alleanza Nazionale* (AN) has announced a so-called *Patto per Roma Sicura* (Pact for Safe Rome) to tackle the capital’s security problems. It is set to include the “regulation” of wholesale businesses, a priority because there has been a proliferation of Chinese shops carrying out this activity, many of them in the *Esquilino* neighbourhood. It is also expected to envisage the presence of military personnel (preferably *carabinieri* involved in military tasks or specially trained volunteer soldiers) patrolling the streets with powers to identify and to seize people or vehicles on grounds including to prevent or impede behaviour that may endanger people or sites subjected to surveillance,

taking them to *carabinieri* stations for verifications and any judicial police tasks that may need to be carried out. The guidelines for their deployment, detailed in the conversion with amendments of the decree of 23 May 2008 into law, indicates that they may be no more than 3,000 nationwide, subject to authorisation for "specific and exceptional crime prevention requirements when greater control of the territory may be desirable". One wonders whether the current situation in the capital would fit the bill, considering that street-sellers are deemed to be a serious nuisance undermining passers-by's sense of security.

Roma camps equated to a natural calamity

The Berlusconi government's first Council of Ministers on 21 May 2008 also declared a "state of emergency" lasting over a year (until 31 May 2009) in the regions of Lazio, Lombardy and Campania in relation to the settlements of "communities of nomads" due to the "presence of numerous irregular third-country nationals and nomads who have settled permanently" in these areas (emphasis added). Their precarious, makeshift, nature is deemed to have caused "great social alarm, with the possibility of serious repercussions in terms of public order and security for the local populations". To be overcome, the situation is deemed to require the adoption of extraordinary measures that are usually reserved for cases involving severe natural disasters, and the derogation of a number of laws to enable the newly appointed special commissioners (the *prefetti* of Rome, Naples and Milan, granted wide-ranging powers, each of whom is allotted 1 million Euros in funding) to resolve the crisis. As detailed in a memorandum sent by a number of Italian and European organisations including the *Associazione di Studi Giuridici sull'Immigrazione* (ASGI) and the *European Roma Rights Centre* (ERRC) to the Committee on the Elimination of Racial Discrimination (CERD) concerning breaches of the International Convention on the Elimination of Racial Discrimination, the derogations include:

the powers of the state authority to compel a person to identify themselves to the public authority, as well as to allow data-basing of photometric and other personal information; the powers of mayors in matters that are within the state's competence; the rights of citizens to respond to a measure taken by the public administration; expropriation for public utility; specific procedures that must be followed in public building work interventions (including demolitions); the entire Consolidated Act concerning health laws; norms on the exercising of traffic police services; and, as a final norm with general value, all the other laws and other regional provisions closely related to the interventions envisaged by this ordinance

In particular, derogations from ordinary administrative procedure are a cause for concern, as they exclude the duty to notify a subject affected by a measure taken by the public administration in advance, to issue a communication explaining the measure's scope, to make the acts concerning the measure available, and to argue one's case or submit documentation concerning the measure. Effectively, this legitimises practices that have been already been taking place nationwide for some years, well before the change of government, whereby forced evictions have been carried out without complying with requirements contained in international instruments of which Italy is a signatory, such as advanced notification, contingency plans for alternative accommodation and for such operations not to be conducted at night or in adverse weather conditions.

Identifying the inhabitants of the camps "including minors", and of "family units", is one of the priorities set out in the orders, a measure presented as a way to guarantee respect for fundamental rights and people's dignity, to implement humanitarian and immigration provisions and apply instruments to guarantee access to essential social care and health services, while taking into account the protection of minors from

individuals or criminal organisations that supposedly take advantage of the uncertainty in terms of identity to carry out illegal trafficking activities and serious forms of exploitation. The terminology used would be worthy of a study in itself, due to the way in which discriminatory, punitive and intrusive measures and practices are portrayed as benevolent, as also happened following the European Parliament's approval of a resolution condemning the census and fingerprinting of Roma and Sinti. Other tasks entrusted to the commissioners include the monitoring of authorised camps and the localisation of illegal ones, the adoption of administrative or judicial removal or expulsion orders where applicable against the people identified therein, identifying possible sites for new authorised camps and the adoption of measures to enable the clearing and subsequent recovery of sites occupied by illegal camps. Interventions for social integration and to assist schooling for children are also envisaged, as are others for countering illegal commerce, begging and prostitution.

International criticism

The Resolution approved by the European Parliament on 12 June 2008 includes the following points:

- 1. Urges the Italian authorities to refrain from proceeding to the collection of fingerprints of Roma, including minors, as this would clearly constitute an act of discrimination based on race and ethnic origin forbidden by the art. 14 of the European Convention of human rights...;*
- 2. shares the concerns of UNICEF underlining that it is inadmissible, with the aim of protecting children, to violate their fundamental rights and to criminalize them... the best way to protect the rights of Roma children is to guarantee access to education, housing, health care, in the framework of inclusion and integration policies, and to protect them from exploitation;*
- 3. shares the views of the Commission that such acts would constitute a violation of the prohibition of direct and indirect discrimination, particularly as foreseen in the EU directive on race and ethnicity and enshrined in articles 13, 12 and 17 to 22 of the EC Treaty.*

Moreover, and most significant in relation to the approach adopted by the government towards Roma and Sinti [but also migrant] communities, it notes that "policies enhancing exclusion will never be effective in combating crime and will not contribute to prevention and security".

The international outcry resulted in a slight shift in the rhetoric from the government surrounding these measures, from a clearly aggressive stance to a new emphasis on guaranteeing the human rights of children from nomad camps. On May 19, interior minister Maroni had stated that "All Roma camps will have to be dismantled right away, and the inhabitants will either be expelled or incarcerated", while Milan's deputy mayor Riccardo de Corato suggested that a quota was required to limit the number of Roma in Milan, and Davide Boni, an official in the Lombardy region, argued that "All gypsies must go". The emphasis shifted to justifying the measures on the basis of the protection of children, with Maroni and former EU JHA Commissioner Frattini (now the foreign affairs minister) at the forefront. Frattini was particularly forceful in presenting the humanitarian case (see *Statewatch news online*, July 2008), expressing his belief in the benefits of identification, "the first way to protect a minor is to give him an identity and a document", without which a "Roma child has no right to health or schooling". In an emotional aside, he added that without these "it is impossible to rescue these little innocent souls from the hands of paedophiles and child traffickers", before upping the stakes by suggesting that "a European database with the names, fingerprints, DNA indicators of all these [Roma and Sinti] children" is necessary "to make their lives safer".

However, it is difficult to support this view when one of the

many evictions that have taken place, in *Campo Boario* in *Testaccio* in Rome on 6 June 2008, resulted in the eviction of 120 people (80 adults and 40 children), when some of the children were part of a project to promote their education and attended a nearby school, an experience that was curtailed by the eviction, without the provision of alternative housing arrangements, a circumstance that is not unusual (similar incidents happened in Turin and Florence). The residents of *Campo Boario* were later also reportedly evicted from the banks of the Tiber river.

Months earlier, in Milan in March 2008, the Italian police had evicted a camp in Bovisa with the declared intent of forcing the Roma to return to Romania. The anti-Roma rhetoric voiced by political and media elements, which has been relentless since a murder committed by a Romanian Roma in Rome in late October 2007 (see *Statewatch news online*, November 2007), has also led to criminal incidents such as the burning of a Roma camp in Ponticelli in Naples on 13 May after it was alleged that a Roma girl had tried to kidnap a baby in a house in the area that she had broken into. Around 800 people had to flee for their lives, baited by a cheering crowd. Molotov cocktails had been thrown into camps in Milan and Novara two days earlier. Two weeks later on 28 May 2008, the camp in Naples was burned again. On 9 June, the burning to the ground of a camp inhabited by around 100 Romanian Roma in Catania (Sicily) was reported. On 25 May, a Sinti girl in Brescia was stopped from attending school by other children calling her a “dirty gypsy, dirty kidnapper”.

The complaint submitted to CERD (see above) also highlights the lack of activity by the public authorities and police to protect the camps from possible attacks and to investigate the incidents or bring the perpetrators to justice. Perhaps most significant, is the protest organised by members of Maroni's party in Mestre (Venice) on 3 June 2008, against the construction of a housing site for Sinti funded by the Venice local council, an initiative that moves in the direction of improving housing conditions and reducing marginalisation for Roma and Sinti people that Italian authorities have been called upon to introduce for several years. LN councillor portrayed the measure as “having costs that will prevent other priority works”, and as an indication that for Massimo Cacciari (the mayor of Venice) “nomads come before destitute Venetians”. Cacciari responded by highlighting that the Sinti community in question were Venetians (second or third-generation) just like the demonstrators, whose adults work and children go to school.

The initiatives of the government and the violent events that they are experiencing have resulted in an unprecedented mobilisation by Roma and Sinti people in Italy. There was a demonstration in Rome on 8 June reportedly attended by around 20,000 people (organisers claimed that they felt 5,000 would have already been a success), “against exclusion, racial discrimination, persecution and the institutional abuses that strike the Roma in Italy”. It enjoyed significant support from civil society groups including Jewish Holocaust survivors and former *partigiani*. Activists from the Everyone Group claimed that:

We have checked the Viminale's [interior ministry] data... the number of crimes committed by people from the Roma ethnic group compared to the total is insignificant...

A month later, on 10 July, a public assembly entitled “Dosta” (Enough) was held in Rome by the *Federazione Rom e Sinti Insieme* (a federation comprising representatives of Roma and Sinti communities in Italy), a recently born organisation for the self-representation of these communities. There were appearances by a number of prominent Roma and Sinti figures, representatives from different cities and camps, as well as speakers from abroad. The policy of camps and segregation came under attack from its president Nazzareno Guarnieri, and

the active participation of members of the communities was called for to change this situation.

Stressing that fingerprinting an ethnic group and children is a “racist and cowardly practice”, that censuses must either affect the whole population or none at all, and that they cannot merely affect a single ethnic group, there were references to the identification and census of Roma people (Manouches) in France in 1912. Supposedly conducted to know how many they were, they resulted in the creation of lists that were later used by the Nazis to pick up the Manouche and take them to the gypsy block in Birkenhau concentration camp. An interesting intervention saw a Macedonian Roma telling the audience that the left-wing D'Alema government of the time first supported the bombing of his house in Macedonia, where he had a house and the children went to school and then forced him into a camp when he was granted asylum. As a Roma, he was deemed to be supposed to live in a camp according to Italian authorities, even though he and his fellow Macedonian Roma did not have a tradition of living in camps. It was also stressed that in spite of the emphasis placed on the need to expel them, a large proportion of the Roma and Sinti in Italy are Italian nationals (some of them for many generations, whose presence in Italy goes back centuries), and that many are already included in the residents' registers of Italian cities and possess documents.

Most telling, were reports from representatives of camps in Turin and Pisa: the first said that in his camp, predominantly populated by eastern Europeans, those who had documents were expelled and the others were scared to travel, whereas in the second, they had been too scared to travel to the assembly in Rome.

A warning to Europe

The developments explored above indicate a clear attempt to translate an attitude whereby “illegal” migrants and Roma/Sinti are treated as scapegoats for Italy's problems that has been a key item in the political debate and election campaign, into legislation, codifying it while attempting to rule out any charges of racism, unconstitutionality or of contravening human rights instruments. Thus, in spite of the ethnic nature of the identification of residents in Roma and Sinti camps, the government's response to criticism from Brussels and Strasbourg has been to indicate that it is an attempt to promote schooling for children, to protect them from exploitation and improve health conditions and the implementation of human rights. This belies the nature of the exercise as an attempt to intimidate these communities, expelling the foreigners among them whose documents are not in order, and evicting them wholesale when conditions in camps are not deemed to be acceptable.

As a worldwide economic slowdown beckons that will affect many EU member states, and if these countries have a genuine intent to avoid sliding into the process of successively finding groups within society to be identified as “problems” and to be subjected to exclusion by denying them basic human rights (which, we must remember, are meant as minimum thresholds rather than exceptional privileges), they would do well to analyse the Italian case. Otherwise, they risk relentlessly giving away rights to public authorities whose increasing powers of surveillance, identification, control and punishment may lead to a shift towards authoritarianism that will be difficult to reverse.

To end this article, it seems fitting to ask a question:

Is it a matter of a scared and victimised society defending itself, or of a society that is seeking to reassure itself by using the might of its institutions to victimise and harass its visible minorities in order to reassure itself, trying to attain a sense of security through the latter's insecurity?

Sources and consulted documents

1. Decreto legge, 23 maggio 2008, n.92, "misure urgenti in materia di pubblica sicurezza":
<http://www.asgi.it/content/documents/dl08052700.2008.d526.n92.dl.sicurezza.pdf>
2. Gazzetta Ufficiale 31.5.2008, no. 127, Ordinanza del presidente del consiglio, (nos. 3676, 3677, 3678) _Disposizioni urgenti di protezione civile per fronteggiare lo stato di emergenza in relazione agli insediamenti di comunità nomadi nel territorio della regione Lazio (Lombardia e Campania).
3. Appeal by Progetto Diritti against the declaration of the state of emergency and ordinanze (orders) nos. 3676, 3677 and 3678. 10 July 2008
<http://www.progettodiritti.it/upload/ricorsorom.pdf>
4. Decreto legge, Osservazioni sulle norme in materia di stranieri contenute nei provvedimenti del "pacchetto sicurezza" approvati dal Consiglio dei Ministri nella riunione del 21 maggio 2008
<http://www.asgi.it/content/documents/dl08061200.asgi.pacchetto.sicurezza.2008.pdf>
5. Dll Senato 692 - Conversione in legge, con modificazioni, del decreto-legge 23 maggio 2008, n. 92, recante misure urgenti in materia di sicurezza pubblica:
http://www.cittadinolex.kataweb.it/article_view.jsp?idArt=85127&idCat=120
6. La sicurezza apparente, Magistratura Democratica and ASGI, 17 June 2008
<http://www.asgi.it/content/documents/dl08061700.asgi.md.documento.17.6.08.4.pdf>
7. Memorandum: Request for expedited engagement of follow-up procedure and/or urgent action/early warning procedure concerning Italy ICERD compliance, COHRE, Osservazione onlus, ERRC, ASGI, European Roma Grassroots Organisation (ERGO), National Roma Centrum (NRC), O Del Amenca Cultural Centre, Policy Center for Roma and Minorities, Roma Center for Social Intervention and Studies, Roma Women Association in Romania, 11 July 2008:
<http://www.asgi.it/content/documents/dl08071100.italy.2008.cerd.follow.up.request.final.final.pdf>
8. Speciale "pacchetto sicurezza" – Le nuove norme tra applicabilità ed efficacia, <http://www.meltingpot.org/articolo12725.html>
9. Action Plan from the Rabat Euro African Ministerial Conference on Migration and Development of 10-11 July 2006
<http://www.statewatch.org/news/2006/aug/action-plan-rabat.pdf>
10. Sucar Drom, 10.2.2008
<http://sucardrom.blogspot.com/2008/02/berlusconi-tolleranza-zero-con-iron.html>
11. Everyone Group, 9.6.2008
http://www.everyonegroup.com/it/EveryOne/MainPage/Entries/2008/6/9_Roma_A_Roma_in_20_mila_sfilano_in_corteo_contro_la_persecuzione_razziale.html
12. Migrationonline border blogs,
24.12.2007, <http://www.migrationonline.cz/blogs/article/?x=2064879>
25.2.2008, <http://www.migrationonline.cz/blogs/article/?x=2077022>
31.1.2008 <http://www.migrationonline.cz/blogs/article/?x=2071701>

New material - reviews and sources

Civil liberties

Living under a Control Order, Cerie Bullivant. 26.6.08. *IRR website*.

This is the text of a talk given by Bullivant, a Muslim convert, on his experience of living under a Control Order. It was given at the launch of the exhibition *Captivated: art of the interned*. The author was placed under a Control Order in 2006 and in 2007 absconded "in a moment of madness". After four weeks on the run he handed herself in to the police and was detained at Belmarsh maximum security prison. He was tried for breaching his Control Order at the Old Bailey and cleared. Another, stricter Control Order followed until, in January 2008, a High Court judge quashed it, ruling that the Home Secretary no longer had reasonable grounds for suspicion. Available online:
<http://www.irr.org.uk/2008/june/ha00025.html>

Was it like this for the Irish? Gareth Peirce. *London Review of Books* 10.4.08. The civil liberties lawyer, Gareth Peirce, compares the architecture of British justice during the thirty years of conflict in Northern Ireland with that deployed against its new "suspect community", Muslims.

A Surveillance Society? *House of Commons Home Affairs Committee* (Fifth Report of Session 2007-08) 20.5.08, pp. 117. This is another report that warns that Britain is in danger of becoming a "surveillance society" and it proposes new safeguards to protect peoples' privacy. The MPs express concern at the compulsory multi-million pound identity card scheme, which could be used to carry out surveillance on millions of people, and raises concerns that a new children's database could be used to identify "potential" criminals. It also expresses "alarm" that local councils are misusing surveillance powers under the Regulation of Investigatory Powers Act to gather information on minor offences such as putting out domestic waste incorrectly. While the number of CCTV cameras is unknown, the committee estimates that there are up to 4.2 million in the UK. It also reports that at end of 2007 more than 650,000 of the 4.2 million samples on the DNA database were duplicates:
<http://www.publications.parliament.uk/pa/cm200708/cmselect/cmhaff/58/58i.pdf>

In a democracy accountability is everything. So, let's see some, Henry Porter. *Observer* 9.12.07. Porter compares the leniency with which chief constables and government ministers are treated when they break the law (in relation to speeding or anonymous political donations) and the enthusiasm that the same individuals have for detention without trial on the basis of a minister's "word". Porter sees it is an issue of

accountability which "among ministers and police does not warrant...trust".

Lead us not into temp nation. *Labour Research* Vol. 97 no 2 (February) 2008, pp.14-16. This article examines how the UK economy is becoming reliant on temporary workers, "yet the government continues to deny them the same employment rights as permanent employees." It also examines trade union efforts to secure equal treatment for agency staff and initiatives to recruit and organise them. Available from *LRD*, 78 Blackfriars Road, London SE1 8YX, email: info@lrd.org.uk

In whose best interests? Omar Khadr, child 'enemy combatant' facing military commission. *Amnesty International* April 2008, pp 50. 21-year old Omar Khadr, a Canadian national, has been in US military detention for approaching six years, a quarter of his life. He was taken into custody in July 2002 in the context of a firefight with US forces in Afghanistan when he was 15 years old. The teenager was held and interrogated in the US air base in Bagram for several months before being transferred shortly after he turned 16 to the US Naval Base in Guantanamo Bay, Cuba, where he remains. Available at:
<http://www.amnesty.org/en/library/info/AMR51/028/2008/en>

Immigration

Human Rights at the Southern Border. *Asociación Pro Derechos Humanos de Andalucía* March 2008. This APDHA annual report monitors violations of human rights that occur in border areas, particularly with regards to the migration routes that lead to Spain from the southern borders. The report was compiled through a collection of data from the media, statistics released by the government, information provided by partner organisations in Morocco, Africa and the Canary islands, and in-house research conducted through APDHA missions on the ground. Available: <http://www.apdha.org/>

Agenda de la Diversidad [Guide for Diversity]. Mugak June 2008. This is a directory of sources related to immigration and media professionals. It seeks to make the diversity existing in society visible, promoting the leading role of minorities with their own voices to enable them to feel represented as part of the media and of society itself. This is done by promoting the involvement in society and the media of diverse people and collectives. The guide is a tool that seeks to enable

journalists to have rapid access to people connected with migratory processes and to become aware of the possibility of promoting their visibility as subjects and sources of valid information to talk about countries of origin or of their situation as immigrants, while accepting their possible involvement as expert and professional sources in each of their fields of social or professional specialisation. At the same time, this tool enables access by these minorities to those professionals who are participating in this initiative.

11 Million: the Children's Commissioner's findings and recommendations regarding the care of unaccompanied asylum seeking children in the London Borough of Hillingdon. *The Children's Commissioner*, March 2008, pp. 40. This report examines the situation of approximately 6,035 unaccompanied asylum-seeking children in England, the majority of whom are located in London and the southeast. It concludes that many have fled persecution only to find themselves deprived of support in the UK. Addressing Hillingdon council, the home of Heathrow Airport and about 1,000 asylum seeking children, the Commissioner voices issues raised by the children, which include: "isolation; the lack of an independent visitor; frustration at not being able to access additional educational courses; problems with getting health needs addressed; a lack of clarity about their legal status under the Children Act 1989; the lack of allocated social workers; and a lack of knowledge about care plans, pathway plans, the content of these plans, and the role of independent reviewing officers". See: http://www.childrenscommissioner.org/documents/Hillingdon_FINAL4.pdf

Fit for Purpose Yet? Report of interim findings Chris Hobson, Jonathan Cox & Nicholas Sagovsky. *Independent Asylum Commission*, 2008, pp 110. This report by a committee of experts concludes that while the asylum system is "improved and improving" it is "still unfit for purpose" (using the words of former Home Secretary John Reid in 2006). Its key conclusions are: "The system still denies sanctuary to some who genuinely need it and ought to be entitled to it; is not firm enough in returning those whose claims are refused; and is marred by inhumanity in its treatment of the vulnerable." It is particularly critical of the restrictions leading to a lack of legal representation for asylum seekers and problems with legal aid that had "forced many law firms to withdraw from offering advice on asylum claims as they do not believe they can operate effectively within the new restriction of only being able to claim for five hours work per case", (p37). Available as a free download at: <http://www.independentasylumcommission.org.uk>

Immigration, Faith and Cohesion. Hitanthi Jayaweera and Tufal Choudhury, *Joseph Rowntree Foundation* March 2008. This report is based on research carried out with migrant communities in Bradford, Birmingham and Newham into claims, in official reports following the 2001 urban disorders, that a lack of community cohesion was a key underlying factor. Among the report's conclusions is that the "perceived need to teach 'common values' to migrants may be overstated."

Immigration law update, Alan Caskie. *SCOLAG Legal Journal* no 64 (February) 2008, pp. 41-45. Review of significant court cases from Scotland and England in the fields of asylum and immigration and nationality law.

Law

Information law update, David McArdle. *SCOLAG Legal Journal* no 364 (February) 2008, pp. 41-45. Review of the law relating to data, information and media. This piece covers internet law and privacy and data protection. Available from SCOLAG, PO Box 23800, Edinburgh EH7 6WE, email: editor@scolag.org

Inquests and Part 6 of the Counter-Terrorism Bill, Leslie Thomas, Adam Straw and Kirstan Heaven. *Legal Action* May 2008, pp 10-11. This article reviews Part 6 of yet another piece of anti-terrorism legislation, the Counter Terrorism Bill, which "introduces by the back door far-reaching powers for the secretary of state to remove juries, appoint vetted and removable coroners and counsel, amend coronial law, and prevent the public, press and families from seeing critical evidence at inquests." The authors' argue that: "The proposals fundamentally undermine the independence and legitimacy of the inquest process" and "prevent the inquest from performing its primary

purposes of ensuring the accountability of, and regaining public interest in, the state." They argue that Part 6 should be dropped because its introduction will "undermine the independence and legitimacy of the inquest process."

Human Rights Law Update, Ken Dale-Risk. *SCOLAG Legal Journal* no 368 (June) 2008, pp. 149. Review of human rights law which covers asylum (Article 8 ECHR) and children's Hearing (Article 6 ECHR).

Military

France, NATO and European defence, Tomas Valasek. *Centre for European Reform Policy Brief* (rev.), (London) March 2008 (cer.org.uk).

Permanent Structured Cooperation and the future of ESDP, Sven Biscop. *Egmont Paper* 20, (Gent, Belgium) April 2008 (egmontinstitute.be)

Could France bring NATO and the EU Closer Together? Ronka Kempin. *Stiftung Wissenschaft und Politik*, Berlin May 2008 (swp-berlin.org)

Informed Choice? armed forces recruitment practice in the United Kingdom, David Gee. *Joseph Rowntree Charitable Trust* January 2008. This report concludes that potential new recruits to the army are subjected to "a misleading picture of life in the military." It says that: "Advertisements and recruitment literature glamorise warfare, omit vital information and fail to point out the risks and responsibilities associated with a forces career." It recommends sweeping changes to armed forces recruitment policies including: a new charter setting out the state's responsibilities; a radical review of recruitment literature, phasing out the recruitment of minors and new rights for recruits to leave the service." Available as a free download at: <http://www.informedchoice.org.uk/informedchoiceweb.pdf>

"Eyes Wide Shut? The Impact of Embedded Journalism on Dutch Newspaper Coverage of Afghanistan", Ulrich Mans, Christa Meindersma and Lars Burema, *Hague Centre for Strategic Studies*, April 2008, pp 43. The Dutch Ministry of Defence offers journalists embedded expeditions to Dutch military operations in Uruzgan. They are hosted by the Dutch contingent and articles have to be submitted for operational security review prior to publication. Dutch embedded journalists cooperate closely with the Ministry of Defence before, during and after their embed experience. Many have developed a close relationship with the military as a consequence. Embeddedness raises questions about objectivity, censorship and journalistic independence. Current research by the Hague Centre for Strategic Studies looks at embedded journalism, how it affects Dutch coverage of Afghanistan and whether regulations for future reporting should be changed. As part of this research HCSS conducted a software-based text mining analysis on Dutch press coverage of Afghanistan. This analysis consists of two parts 1) the comparison of a sample of embedded and unembedded articles, and 2) the analysis of a sample of the complete Dutch press coverage of Afghanistan. This shows that embedded journalists write mainly about the Dutch troops and their military operational activities while uncompromised reporters focus more on the socio-political situation in Afghanistan. While more journalists are writing about Afghanistan the focus has narrowed, and the authors suggest that the close interaction between military and journalists may also jeopardise the independence of reporting. The report concludes that the Dutch press in general could benefit from maintaining a professional distance from the military, and finding more ways to complement embedded with unembedded reporting. The report can be downloaded for free at <http://www.hcss.nl/en/download/651/file/HCSS%20Rapport%20Embedded%20Journalism.pdf>

UK Army in Iraq: time to come clean on civilian torture, Kevin Laue & Adam Lang. *Redress Trust* (October 2007), pp. 72. This report was prompted by the murder of Baha Mousa, a civilian who was beaten to death in British custody in Iraq and the alleged perpetrators (with the exception of one soldier who pleaded guilty) cleared at a court martial. It highlights a number of concerns, "focussing on key aspects of the UK army's procedures for dealing with detained civilians, particularly during the period when the fighting against Saddam's forces officially

stopped and the hand-over to the Iraqi authorities took place: 1 May 2003 to 30 June 2004". Available as a free download at: http://www.redress.org/publications/UK_ARMY_IN_IRAQ_-_TIME_TO_COME_CLEAN_ON_CIVILIAN_TORTURE_Oct%2007.pdf

Massive escalation of air war in Iraq, Saleh Mamon. *Labour Briefing* February 2008, p6. Interesting article on the escalation (500% from 2006 to 2007) in US bombing raids in Iraq and the use of the GBU 12, a laser guided bomb with a 500-pound general purpose warhead. As the US is determined to reduce its casualties by withdrawing its troops from the frontline and replacing them with inexperienced Iraqi troops, Iraqi civilians should expect an escalation of indiscriminate high-tech US bombing in the future.

The Facade of Arms Control: how the UK's export licensing system facilitates the arms trade, Anna Stavrianakis. *Goodwin Paper #6 (CAAT)*. This report contrasts the government's claims to have a "rigorous and responsible licensing system to control its arms exports" with its practice of exporting arms to "repressive states [such as Indonesia, Israel and Saudi Arabia], conflict zones and areas of regional instability". Stavrianakis concludes that arms export guidelines are interpreted to facilitate exports and that this should be seen "in the wider context of the integration of arms capital into state structures...The licensing process is thus better understood as a ritualised activity that functions to create the appearance of control and image of benevolence and restraint." Available as a free download on the CAAT website: <http://www.caat.org.uk/publications/government/facade-2008-02.php>

Policing

Terrorist on Tour, Andrew Silke. *Police Review* 4.4.08. In this article Silke attempts to distinguish between innocent tourism and hostile terrorist surveillance. He suggests that: "In assessing whether a video is hostile reconnaissance, investigating officers need to ask whether the footage is looking at the type of features highlighted in the lists from the US Department of Homeland Security".

Prisons

Securing the Future: proposals for the efficient and sustainable use of custody in England and Wales, Lord Carter of Cole. *Crown Copyright* (December) 2007, pp. 55. This is a government commissioned report on the future of Britain's prisons. Its main recommendations are: an additional 10,500 new prison places by 2014 (costing £1.2 bn); the construction of three "supersize" Titan jails (each holding 2,500 prisoners); restricting indeterminate prison sentences and allowing the release of non-violent prisoners after they have served half their sentence; establishing a sentencing commission. Available as a free download at: <http://www.justice.gov.uk/publications/securing-the-future.htm>

Supported Accommodation Services for Offenders, Steve Kirkwood & Time Richley. *SCOLAG Legal Journal* Issue 368, pp. 133-152. This article reviews literature on the links between homelessness, offending and imprisonment and available research on the effectiveness of supported accommodation.

Racism & Fascism

Annual report on racism in the Spanish State. *SOS Racismo* 17.4.08. In April 2008 *SOS Racismo* published its Annual Report on racism in Spain. It contains comprehensive information on the different fields in which racism expresses itself, with regards to measures adopted by public authorities, expressions of racism in society or its portrayal in the media. Available: <http://www.mugak.eu/>

Integration, Islamophobia and Civil Rights in Europe, Liz Fekete. *Institute of Race Relations* 2008, pp. See: <http://www.irr.org.uk/2008/may/ha000011.html>

2007 BNP Overview. *Searchlight* January 2008, pp. 16-23. Useful overview of developments in the British National Party during 2007, covering its "failure to consolidate the limited breakthrough the party

made in May 2006" and the unsuccessful leadership challenge by Chris Jackson.

One Scotland many cultures, Ian Taggart. *SCOLAG Legal Journal* no 365 (March) 2008, pp. 66-67. This article presents new research on the views of the Scottish Gypsy/Traveller community. Taggart concludes: "The degree of social exclusion, discrimination and racism suffered by the Gypsy/Traveller community in Scotland is unacceptable and amongst the worst in the United Kingdom. There is no other community in Scotland subjected to such levels of prejudice and harassment, which appears to be accepted by the wider community as the last acceptable form of discrimination."

Report on an Announced Race Relations Audit of Border and Immigration Agency Detention Estate. *Focus Consultancy* July 2007, pp. 138. This report was commissioned by the Border and Immigration Agency (BIA) following an inquiry by Stephen Shaw, the Prisons and Probation ombudsman, after the television documentary *Detention Undercover* found acts of racism by staff towards detainees at Oakington detention centre. It documents a catalogue of racist incidents taking place inside Britain's immigration detention centres. The report considers race relations at the immigration removal centres at Campsfield, Colnbrook, Dover, Dungavel House, Harmondsworth, Haslar, Lindholme, Oakington, Tinsley House and Yaris Wood. Examples of racist abuse extends from people being described as "black bastards" at (Colnbrook, which is also described as having a "distressing" and "turbulent" atmosphere) and "donkeys" (Lindholme). The accompanying BIA press release says the report "did not support serious allegations of racism or mistreatment of detainees". See: <http://www.bia.homeoffice.gov.uk/sitecontent/documents/aboutus/Reports/racerelationsaudit/racerelationsaudit/detentionestatereport.pdf?view=binary>

Cultural cleansing? *European Race Bulletin* (Institute of Race Relations) no 62 (Winter) 2008, pp 36. This issue of the bulletin explores the repackaged "Orientalism". It begins with a summary of anti-mosque campaigns and other actions against Islamic schools and religious texts. It moves on to document initiatives against religious clothing before looking at other measures and statements that stigmatise Muslims as well as immigrants, asylum seekers, Roma and foreigners. IRR email: info@irr.org.uk

Security & Intelligence

Eyes in the Sky, Gary Mason. *Police Product Review* February/March 2008, pp19-21. At the start of his article Mason notes that EU homeland security ministers are seriously concerned at porous European borders and "the ease with which criminal gangs can traffic people, drugs and other contraband". Now the EU is looking to emulate the United States where Unmanned Aerial Vehicles (UAVs) patrol the border with Mexico and Minutemen beat and abuse those unfortunate enough to be picked up. The EU project - Border Surveillance by Unmanned Aerial Vehicles (BSUAV) - is led by a consortium of companies including Dassault Aviation, Alenia Aeronautica, Rolls Royce, Saab, Eurosense and Sener and the drones could be used over the English Channel, the Mediterranean coasts and the Balkans.

Preparing the Battlefield: the Bush administration steps up its secret moves against Iran, Seymour Hersch. *The New Yorker* 7.7.08. Latest update by Hersch on the US escalation of covert operations against Iran designed to destabilise the country's religious leadership. US clandestine operations against Iran are not new, and Hersch has reported on cross-border operations involving the kidnapping of Revolutionary Guards for interrogation over the past year; the approval by Congress of an additional US \$400m is a disturbing development. According to a highly confidential "Presidential Finding" the money will fund Ahwazi Arab and Baluchi groups and other dissident organisations to undermine the Iranian government through violence, which has already increased dramatically over the past year. It will also fund gathering intelligence on Iran's alleged nuclear-weapons programme. See:

http://www.newyorker.com/reporting/2008/07/07/080707fa_fact_hersch

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- 4 **Spain: The obstruction, discrediting and criminalisation of groups that report torture** by Yasha Maccanico. On 25 April 2008, the *Coordinadora para la Prevención de la Tortura* (CPT), a coalition of 44 civil society groups working on the issue of torture in Spain (one group is from Portugal), produced a report that argues that people reporting human rights complaints face hostility from authorities as a result of their claims
- 7 **Global outcry at EU "Returns" Directive - business as usual for "Fortress Europe"** by Ben Hayes. The European Parliament and the EU Council have agreed a Directive on the expulsion of "illegal" migrants. The Directive will impose a maximum detention period of up to 18 months for people being deported and a five year EU re-entry ban for all those expelled. The agreement was greeted with widespread condemnation from the human rights community and beyond
- 8 **Netherlands: Immigration detention - systematic and inhumane** by Katrin McGauran
- 10 **Coming for the Kids: Big Brother and the Pied Pipers of Surveillance** by Ben Hayes and Max Rowlands. We were asked to write this article after giving a talk to privacy advocates in Canada in which we noted the widespread deployment of biometric identification systems – fingerprinting – in British schools. This practice, we suggested, is but one feature of a rapidly developing "surveillance society" in the UK in which so-called "kiddyprinting" is among a host of measures aimed at keeping tabs on British children
- 12 **Switzerland: Private spy on mission for Nestle** by Dinu Gautier. Nestlégate: The food multinational Nestlé infiltrated a group of globalisation critics writing a book on the company. The assignment was carried out by the private security firm Securitas
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- 21 **New material - reviews and sources**

With this issue, after 18 years of publication, *Statewatch* bulletin is changing into a quarterly journal. It will carry features, analyses and viewpoints plus New material - reviews and sources. *Statewatch News Digest*: News previously carried in the bulletin will be available online via the Statewatch subscribers website as a "pdf" file: see: <http://www.statewatch.org/subscriber/> If you have forgotten your username & password please send an e-mail to: office@statewatch.org

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