

statewatchjournal

reflections on the state and civil liberties in Europe



vol 23 no 3/4 | February 2014

Borders, deaths and resistance

The cradle or the grave? EU migration policy and human rights

Frances Webber, page 3

“We want to welcome the living, not the dead” Matt Carr, page 7

Eurosur: saving lives or reinforcing deadly borders?

Charles Heller and Chris Jones, page 9

Frontex and fundamental rights: a love story? Leila Giannetto, page 12

EU joint police operations target irregular migrants Chris Jones, page 16

A very British death: inquest returns unlawful killing verdict on outsourced deportation death of Jimmy Mubenga Trevor Hemmings, page 22

Refugee protests in Europe: fighting for the right to stay

Katrin McGuaran and Kees Hudig, page 28

Reviews and new material page 34

Exclusion and denial

Ben Hayes

Criminologists, of all people, appreciate that there is no necessary “fit” between morality and “crime”, or between justice and law. But even criminologists might raise an eyebrow at the sight of someone being imprisoned on suspicion of not being British – imprisoned for over six months, in Pentonville prison, interrogated until he “confessed” that he was not British but Nigerian, a confession which turned out to be false, part of a psychotic episode induced by his detention.

So began Frances Webber’s *Crimes of Arrival*, published by Statewatch in 1995. By this time, the “whole panoply of modern policing” and its associated rhetoric was already being employed against people trying to come to “the new Europe”, to seek asylum, to be with their families, or to work. Routine fingerprinting, arbitrary detention, restraint by body belts and leg shackles, people forcibly injected with sedatives to keep them quiet as they were bundled onto aircraft – all of this was meticulously documented in *Crimes of Arrival*.

Twenty years later and the inhumane and degrading treatment meted out to migrants and refugees is scrupulously airbrushed from Europe’s political landscape. According to the European Commission’s website, the EU has established a border free zone in which we can travel “freely and safely”, a “balanced migration policy”, a “Common European Asylum System” and a “humane and effective return policy”. It is also dealing “firmly and effectively with irregular immigration”, while doing its utmost to save lives at sea.

So detached has the official rhetoric about migrants’ rights and saving lives become from the realities of the detention centres, the razor wire, the intensive surveillance, the military patrols, the forced expulsions and the 20,000 documented deaths, that people bearing the brunt of the economic crisis and austerity measures may be forgiven for thinking that over-generous migration policies are indeed the source of all their woe – a message that is rammed home by opportunist politicians and xenophobic media at every opportunity.

This new edition of the Statewatch Journal examines the latest European policy and practice vis-a-vis border control, immigration and asylum. The first essay, by Frances Webber, takes us on a fresh tour of a “quasi-criminal” and highly-repressive EU policy framework anchored in “the imperative of exclusion of all but the most highly skilled and qualified”. Speaking

the language of human rights and protection while presiding over these exclusory and repressive measures, she maintains, ends up degrading both policymakers and victims, emptying of meaning the ideals on which the EU claims to be founded.

Matt Carr, author of *Fortress Europe: Dispatches from a Gated Continent*, discusses the response to events in Lampedusa where, in October 2013, a boat carrying more than 500 people-sank just four kilometres from the island’s port, killing at least 359 of those on board. If Europe wants to welcome the living and not the dead, he argues, it “needs to abandon an essentially repressive and exclusionary approach to border enforcement” which in effect “accepts migrant deaths as collateral damage”.

Charles Heller and Chris Jones examine ‘EUROSUR’, the EU Border Surveillance System which started life as a high-tech means of preventing illegal migration by sea but, in the aftermath of the Lampedusa tragedy, was cynically transformed for the watching media into a dedicated tool for saving lives. They argue that EURSOUR’s humanitarian varnish cannot hide the fact that militarisation and surveillance have thus far been a cause of migrants’ deaths, not a means to prevent them.

The same questions can be levelled at FRONTEX, the EU agency in charge of the management of the EU’s external borders, which – after years of sustained criticism from civil society organisations – now has a human rights policy. Leila Giannetto asks what it really amounts to.

Meanwhile, inside the EU the hunt for “illegals” and “overstayers” continues remorselessly. Chris Jones examines the EU’s growing number of joint police operations targeting irregular migrants and the consolidation of this policy under the thinly accountable Standing Committee on Operational Cooperation on Internal Security (COSI), established by the Lisbon Treaty.

Trevor Hemmings chronicles yet another “death foretold” at the hands of an increasingly privatised detention and deportation system. Jimmy Mubenga died from cardiorespiratory collapse while being retrained during deportation by Detention Custody Officers working for the private security firm G4S on a British Airways flight to Angola in 2010. In addition to the unlawful killing verdict, the coroner identified a culture of racism among companies to which immigration functions are outsourced.

It is the same picture across the EU. Outsourced detention has worsened the situation for irregular migrants, leading to a litany of complaints and prompting a wave of well-organised, sustained protests by refugees and undocumented migrants and support groups. Katrin McGuaran and Kees Hudig document some of the recent actions, and call on European civil society organisations to show greater solidarity and less charity. This means defending people’s rights to come and be here, not just blithely calling for fewer deaths at Europe’s borders.

Statewatch is a non-profit-making voluntary group founded in 1991. It is comprised of lawyers, academics, journalists, researchers and community activists. Its European network of contributors is drawn from 18 countries. Statewatch encourages the publication of investigative journalism and critical research in Europe in the fields of the state, justice and home affairs, civil liberties, accountability and openness.

One of Statewatch’s primary purposes is to provide a service for civil society to encourage informed discussion and debate - through the provision of news, features and analyses backed up by full-text documentation so that people can access for themselves primary sources and come to their own conclusions. www.statewatch.org/about.htm



The cradle or the grave? EU migration policy and human rights

Frances Webber

EU migration policy is ever more firmly anchored in the imperative of exclusion, causing the deaths of thousands at its borders and subjecting migrants to “institutionalised detention”. This quasi-criminal framework for migration empties of meaning the ideals on which the EU claims to be founded.

The images conjured up when we think of migration to Europe are of boats – drifting, leaky and overcrowded; bodies – drowned, washed up on beaches and caught in fishermen’s nets; fences topped with razor wire; camps – squalid places of misery and desperation. They are images of exclusion and death.

EU migration policy comes under the rubric of ‘freedom, security and justice’ [1] - as fine an example of Orwellian doublespeak as you could wish for, and a standing affront to its victims. The objectives of the policy – to keep out the world’s poor, while ensuring that a flexible, compliant workforce remains available as and when required – have always sat uneasily with Europe’s self-image as the cradle of human rights and democracy. This self-image compels at least lip-service to the universalist ideals of refugee and human rights protection, which gives some room for activist campaigns. But there is no doubt that EU migration policy is ever more firmly anchored in the imperative of exclusion of all but the most highly skilled and qualified. EU policies on economic migration are a mockery of commitments to the development of poor countries. The protection obligations towards those seeking asylum from persecution or war are undermined by border protection policies which deny the possibility of safe arrival, cause the deaths of thousands at the borders, and are destroying freedom of movement for migrants in Africa and central Asia. For those who make it into Europe, minimum reception standards are daily mocked, and the routinisation of detention goes unchecked. And the racism underlying EU priorities is turning inwards to undermine the core right of free movement for EU citizens.

Enforcing global inequality

As neoliberal capitalism destroyed traditional farming and manufacture in the countries of the south and turned peasants and farmers into city slum-dwellers and migrant labourers, an EU-wide shrinking population and ageing demographic spurred

discussion, for a few years around the millennium, of developing EU economic migration policies to facilitate the admission of migrants for work. But the glacial slowness of the EU’s bureaucracy meant that no policies easing economic migration or setting out minimum standards for Europe’s migrant workforce had been developed by the time of the economic crisis. The jargon of development changed, and the fashion became ‘circular migration’, trumpeted as offering exciting work possibilities for migrants without the social costs of providing for their families. The proposed Seasonal Workers Directive now nearing finalisation will regulate without facilitating the admission of workers for periods of up to nine months, mainly in the agricultural, horticultural and tourism sectors. [2] The Directive contains a number of welcome guarantees fought for by migrant rights groups, including provisions on equal pay and conditions with nationals in the workplace, and decent accommodation, which should benefit those coming for work in the fields and greenhouses of Spain and Italy. [3] But with the number of workers to be admitted left up to the member states, no clear enforcement mechanism for complaints, no family reunification permitted, exclusion from unemployment benefits, no accrual of residence rights, and no indication that the EU will demand ratification of the Migrant Workers Convention by member states, the Directive still condemns seasonal workers to second-class status in Europe.

Other EU initiatives on labour migration are positioned at the high end of the market, facilitating the movement of the global elite. A Directive on the admission of intra-company transferees, currently being drafted, will enable corporate executives from all over the world to move to and between member states, while the Blue Card Directive creates a harmonised fast-track procedure and common criteria (a work contract, professional qualifications and a minimum salary level) for the issue of a residence and work permit for highly qualified migrants, allowing family reunification and movement around the EU. [4]

Otherwise, the emphasis is on stopping unauthorised work and movement. A proposed entry-exit system will track the movement of (lawfully resident) migrants through Europe, automatically generating lists of overstayers. The Employer Sanctions Directive [5] requires member states to impose duties on employers to check that all non-EU recruits are legally entitled to do the job on pain of penalties, to notify authorities of all such recruits, and to comply with workplace inspections. (The UK opted out of the Directive [6], as it has on all measures under Title V of the Lisbon Treaty, despite its own similar employer sanctions regime, partly because of the requirement to reimburse employees whose employer has paid them less than the minimum wage, thereby ‘rewarding illegal immigration’.)

The expanding fortress

The heart of the EU’s migration policy is protection of its external borders from the incursions of ‘irregular migrants’ – refugees and migrants from the Middle East, Africa and Asia seeking safety and livelihood in Europe. The thicket of ‘compensatory measures’ introduced in the 1980s and 1990s to allow internal borders

between member states to be opened – visa controls, carrier sanctions, funding for national border security and detection technology – have grown into a forest of military hardware, surveillance equipment, a multi-billion euro business, and a set of neo-colonial relationships with ‘developing’ states where favourable trading terms and visa privileges are conditional on stopping entry to Europe from their shores.

Death by Frontex

Frontex (the EU Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union), set up by EC regulation in 2004, [7] seconds border guards from all member states to shut off informal migration routes by joint detection, interception and return operations at and beyond Europe’s external borders. Having reduced boat arrivals in the Canary Islands to a trickle through coastal patrols off Senegal, Mauritania and Cape Verde, it closed in on still ‘vulnerable’ routes such as the Strait of Sicily and Evros on the Greek-Turkish border. It has entered working agreements with fourteen states of origin, with eight more in progress [8] – agreements which are not publicly available, or subject to the approval of parliament or the control of the European Court of Justice. [9] Interception operations co-ordinated by Frontex, and those undertaken under bilateral agreements such as Italy’s push-backs to Libya, have resulted in the return of thousands of boat people to the countries they fled, with no consideration of Refugee Convention or human rights obligations, attracting condemnation from the European Court of Human Rights in the *Hirsi Jamaa v Italy* case in 2012. [10]

The activities of the agency and member-state participants brought widespread condemnation, [11] and in October 2011 Frontex became subject to new requirements to ensure compliance with non-refoulement and human rights obligations. Frontex was to train the European Border Guard in human rights obligations; a code of conduct promulgated for Frontex operations; another code required monitoring of joint returns. A Fundamental Rights Strategy was to be implemented, and a ‘Consultative Forum’ set up, with input from civil society groups as well as EU rights bodies and UN High Commissioner for Refugees (UNHCR). A Fundamental Rights Officer was to be designated. These provisions have made little difference, and in 2013 the EU Ombudsman called on the agency to investigate complaints of violations, [12] and allegations surfaced that Frontex has participated in ‘systematic’ push-back operations from Greece to Turkey, which resulted in the deaths of twelve Afghan migrants in January 2014. [13]

The purpose of surveillance

The razor wire topping the six-metre fence separating the Spanish enclave of Melilla from Morocco was removed in 2007 because of the horrible injuries it caused to those trying to cross it, but the Spanish government announced its reinsertion in November 2013, along with metallic mesh to prevent migrants inserting their fingers into the fence to climb it, a second helicopter for

the Spanish civil guard, thermal imaging cameras and two rapid response units. The razor wire is not EU-funded, but it is likely that some of the other policing paraphernalia is. The 23 thermal vision cameras [14] mounted along the length of the 12.5 kilometre barbed-wire-topped wall keeping migrants from Turkey out of Greece are funded by and form part of Eurosur, an intensive surveillance network along the EU’s eastern and southern borders, coordinated by Frontex. Eurosur, the European Border Surveillance System developed since 2008 and (since December 2013) fully operational in the 19 southern and eastern Schengen states, [15] is a “multi-purpose system to prevent cross-border crime and irregular immigration and to contribute to protecting migrants’ lives at the external borders”. Its website boasts that near-real time information exchange between Frontex land, air and sea patrols and national coordination centres for border surveillance enables more rapid national and joint operations against border threats.

The emphasis in the Eurosur publicity on saving lives (or at least ‘contributing’ to this) reflects the recent sensitivity of the EU to accusations that deterrence of irregular migration precludes rescue. Intensive surveillance of the Mediterranean did not prevent the deaths of an estimated 1,500 boat people between March and June 2011. [16] Most notorious were the deaths from hunger and thirst of 63 of 72 migrants, [17] whose boat drifted between Libya and Italy, sending distress signals every four hours for ten days, ignored by an airplane, military helicopters, two fishing vessels and a large military vessel. French, British, Italian, Belgian and Spanish military were all in the area and are all believed to share some responsibility for the deaths.

It isn’t just Frontex which causes deaths at sea. The perennial arguments amongst member states over responsibility for rescue, their refusal to assist boats in distress or to allow disembarkation, coastguards’ deliberate scuppering of the small boats, and the criminalisation of rescue under the Facilitation Directive, all combine to create a climate which discourages compliance with maritime rescue obligations. [18] But anger and concern at the increasing death toll, culminating in the deaths of 359 migrants [19] as their boat caught fire off Lampedusa in October 2013, has lent impetus to the proposed recasting into Regulations [20] of a Council Decision on maritime surveillance, to strengthen non-refoulement, human rights and rescue provisions – although some Mediterranean member states oppose binding EU rules on rescue and disembarkation of migrants, claiming it is outside EU competence. [21] Activists say the proposal provides only marginally better protection for refugees.

Bullying the neighbours

More controversially, ‘Task force Mediterranean’, [22] set up following the Lampedusa tragedy to ‘prevent further loss of life’, focusses on action by states of origin and transit to stop migrants embarking, within the framework of the Global Approach to Migration and Mobility and European Neighbourhood Policy. Egypt should combat traffickers in Sinai, Sudan should fight criminal organisations smuggling refugees from the Horn of

Africa; Nigeria should protect nationals from trafficking, while Tunisia should stop boats being provided to smugglers in Libya. On the pretext of responding to humanitarian tragedy, the EU bullies its poor, embattled neighbours into accepting more immigration control burdens, echoing its response to the 'Arab Spring' in early 2011 when it rebuked Tunisia for not doing enough to halt the exodus from its shores in exchange for the €140 million extra aid it was considering giving. [23]

Aid is one weapon to compel neighbours to police the EU's external borders; mobility partnerships (which promise limited labour opportunities and visa liberalisation) are another. The Council of Europe Human Rights Commissioner has complained [24] that Western Balkans states are under pressure to restrict the departure of citizens who might apply for asylum, the vast majority Roma, on pain of visa requirements for all their citizens. As a result, 7,000 Macedonian citizens were prevented from leaving between 2009-12, and returnees had their passports confiscated. A new offence introduced into the Serbian criminal code in December 2012 inhibits seeking asylum abroad. The UN Special Rapporteur on the Rights of Migrants complained that the Network of European Immigration Liaison Officers, and institutionalised cooperation with third countries to support their coastguards' interception capacity, stops migrants entering EU territory, thereby denying them recourse to the EU's human rights mechanisms without incurring responsibility for violations. [25]

The EU has readmission agreements with 13 countries and readmission provisions binding 79 African, Caribbean and Pacific states signatory to the Cotonou agreement, despite the lack of human rights or asylum infrastructure in many of these countries. These provisions rarely contain human rights commitments, but often commit states to 'cascading' readmissions systems with neighbours. [26] EU policies have resulted in detention camps in Turkey, Belarus, Ukraine, Tunisia, Egypt and Georgia, no-go zones for migrants in southern and eastern Morocco, [27] and disruption of migratory movements between the countries of the Sahel and West Africa. [28]

Degradation and death inside the borders

Only a couple of months after the October 2013 Lampedusa deaths, the Italian island was in the news again. A fuzzy video clip showed naked camp inmates being hosed down by guards. [29] The degrading treatment, with its echoes of Nazi concentration camps, focussed attention on migrants' treatment in detention and reception camps, accommodation centres, retention centres, waiting zones, transit zones and 'international zones' which are a feature of the new Europe. [30]

How has detention become so institutionalised in Europe (and in the transit countries around its southern and eastern borders)? The UN Special Rapporteur says detention of irregular migrants is 'systematic', and that the Return Directive [31] has "institutionalised detention as a viable tool in migration management". [32] The setting of the maximum period of detention for return at 18 months in the Directive has encouraged much

longer detention periods than before in many member states for whom the previous maximum was measured in days or weeks (although 18 months was still too short a period for the UK, which opted out). Hungary, Malta, Cyprus and Greece have introduced mandatory detention of 'irregular migrants'. Greece is creating 10,000 detention places, with EU funding.

Detention of anyone is supposed to be a last resort, and asylum seekers must not, according to the recast Reception Directive, [33] be detained simply because they have claimed asylum. Of course, they never are; they are detained for irregular entry – EU policy on visas and carrier sanctions provides no possibility of legal entry; [34] or they are detained to 'check identity', assess the viability of their claim, or with a view to return. All these reasons for detention of asylum seekers are perfectly lawful under the Reception Directive, which is predicated on the equation of asylum seekers with irregular migrants. Children are not excluded; even unaccompanied children may be detained 'exceptionally' under the Directive.

Many are detained for return to another EU member state under the Dublin II Regulation, condemned for putting a disproportionate burden of reception on the member states at the southern and eastern border, for tearing families apart and for prioritising removal over humanitarian concerns. In 2011, the European Court of Human Rights banned Dublin II returns to Greece [35] because of the inhuman conditions of detention and the lack of a functioning asylum system, and the European Court of Justice ruled [36] that member states could not transfer asylum seekers to a known risk of inhuman or degrading treatment in another member state. Europe's highest court acknowledged that member states' reception of asylum seekers sometimes violated fundamental rights. Migrant groups demanded that the new Dublin III Regulation contain a provision suspending returns in the face of systemic deficiencies. But the recast Regulation, in force from November 2013, provides only for an 'early warning system' and case-by-case individual 'suspension' where the risk of inhuman or degrading treatment in the first state makes it 'impossible' to transfer an asylum seeker to the designated country. The EU continues to deny refugees the choice of asylum country through the artificial designation of a landing point as the 'country of first asylum', while failing to enforce human rights standards in reception throughout Europe.

Ongoing research conducted by the Institute of Race Relations [37] has identified over 150 migrant deaths in reception or detention over the past three years, many caused by medical neglect or lack of decent medical care. Conditions in Bulgaria and Hungary are such that UNHCR has warned northern member states against returning asylum seekers there. Security companies squeeze profits from centres in France, Germany, Austria and Italy as well as the UK; in Italy's centres for women, where many detainees are victims of trafficking for prostitution, Doctors for Human Rights found unheated rooms, broken windows, unusable showers, missing toilet doors, sinks ripped from the wall, and a lack of bedding, toothpaste and sanitary pads. [38] A culture of brutality and impunity thrives in these places, [39] and self-harm, suicide, hunger strikes and protests abound. [40]

For those not detained, the Directive authorises cashless support, compulsory residence, restrictions on freedom of movement, reduction or withdrawal of support for various infractions – all features of support as control, and institutionalised inhumanity, which asylum seekers across Europe have been campaigning against in protests and marches and tent cities for the past decade.

Freedom of movement: closing the borders

Italy's grant of temporary humanitarian visas to Tunisians in April 2011 led France to stop trains coming in from Italy, and illegally close its borders, claiming a 'serious threat to public order'. [41] New Schengen rules (in force from October 2013) permit member states to close their (internal) borders temporarily in the face of 'serious deficiencies' in the external border controls of a neighbouring state. [42] It is not just against 'irregular' non-EU migrants that European states seek to close their borders. Ironically, owing

to the activism of the far and Eurosceptic Right across Europe, the freedom of movement of EU citizens is now under attack. The Commission's failure to act against the illegal deportation of Roma EU citizens from France [43] encouraged further erosion of free movement rights. Roma in Britain have been served with removal notices under new regulations [44] allowing for the withdrawal of residence rights from EU citizens who 'abuse' free movement provisions. But since free movement rights are deemed to render the grant of asylum unnecessary, EU citizens cannot claim asylum in any member state. The Roma, still Europe's most persecuted and discriminated-against minority, have nowhere to go.

Refugee and migrant activists, human rights and civil society groups agree that while EU migration policy prioritises a quasi-criminal framework for migration, while speaking the language of human rights and protection, it ends up degrading the actors as well as the victims, and empties of meaning the ideals on which the EU claims to be founded.

Endnotes

- [1] Treaty on the Functioning of the European Union (Lisbon Treaty), Article 67.
- [2] Seasonal Workers Directive: <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&mode=XML&reference=A7-2013-0428&language=EN>
- [3] Platform for International Cooperation on Undocumented Migrants, 14 November 2013: <http://picum.org/en/news/picum-news/42304/>
- [4] See: European Commission website: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/immigration/work/index_en.htm.
- [5] Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals: <http://www.refworld.org/docid/4a55ea4e2.html>
- [6] Written ministerial statement to Parliament, 24 May 2011: <https://www.gov.uk/government/speeches/eu-directive-on-sanctions-against-employers-of-illegally-staying-third-country-nationals>
- [7] Council Regulation 2007/2004/EC of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union [2004] OJ L349/1, as amended by Regulation (EU) 1168/2011 of 25 October 2011, [2011] OJ L304/1. Since Frontex operates as part of Schengen, the UK is not part of it, although it cooperates with it.
- [8] Sara Colombeau, 'Frontex: at the margins of Europe and the law', in *Atlas of Migration in Europe: a critical geography of migration policies*, Migreurop/ New Internationalist, November 2013.
- [9] See Melanie Fink, 'Frontex working arrangements: legitimacy and human rights concerns regarding 'technical relationships'', *Merkourios Utrecht Journal of International and European Law* 28/75 (2012), pp 20-35.
- [10] *Hirsi Jamaa v Italy*, Application no. 27765/09, February 2012: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109231>
- [11] See, for example, Parliamentary Assembly of the Council of Europe, 'The interception and rescue at sea of asylum seekers, refugees and irregular migrants', PACE Resolution 1821 (2011), at 5.4 <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=18006&lang=EN>; ECRE and BRC joint response to House of Lords inquiry on Frontex, October 2007; Amnesty International, *SOS Europe: human rights and migration control*, March 2012; Human Rights Watch, 'The EU's dirty hands: Frontex involvement in ill-treatment of migrant detainees in Greece', September 2011. <http://www.ecre.org/component/content/article/57-policy-papers/96-ecre-a-brc-joint-response-to-house-of-lords-inquiry-on-frontex.html>
- [12] 'Ombudsman calls on Frontex to deal with complaints about fundamental human rights infringements', EU Ombudsman, 14 November 2013: http://europa.eu/rapid/press-release_EO-13-17_en.htm
- [13] Migration News Sheet December 2013; ProAsyl and ECRE, 22 January 2014, http://www.ecre.org/index.php?option=com_downloads&id=843
- [14] Fortress Europe: a Greek wall close up, euobserver, 21 December 2012: <http://euobserver.com/fortress-eu/118565>
- [15] Regulation of the EP and the Council establishing European Border Surveillance System, 11.10.13. It will bind the other 11 Schengen states from December 2014.
- [16] Claire Rodier, 'Libya: an outpost of externalised migration controls', in *Atlas of Migration* above.
- [17] FIDH, '63 migrants left to die in the Mediterranean: survivors continue their quest for justice', 28 November 2013: <http://www.fidh.org/en/migrants-rights/13484-63-migrants-left-to-die-in-the-mediterranean-survivors-continue-their>
- [18] The EU's Fundamental Rights Agency acknowledges this problem in its report *Fundamental rights at Europe's southern sea borders*, 2013.
- [19] David Bacon, 'Europe's deadly border', *Boston Review* 25 November 2013: <http://www.bostonreview.net/world/europes-deadly-border-immigration-mediterranean-european-union>
- [20] Proposal for a Regulation of the European Parliament and of the Council establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, 5397/14, 17 January 2014: <http://www.statewatch.org/news/2014/jan/eu-council-sea-surveillance-multicolumn-5397-14.pdf>
- [21] See Steve Peers, 'EU rules on maritime rescue: member states quibble while migrants drown', *Statewatch Analysis*, October 2013: <http://www.statewatch.org/analyses/no-243-eu-search-and-rescue.pdf>
- [22] Council discusses Communication from the Commission, 'Task force Mediterranean', 17409/13, 5 December 2013 EU Neighbourhood Info Centre, 9 December 2013: <http://www.enpi-info.eu/medportal/news/latest/35487/Task-Force-Mediterranean-discussed-by-Council>
- [23] EU demands Tunisia do more to stop illegal migration, BBC News, 12 April 2011: <http://www.bbc.co.uk/news/world-europe-13055153>
- [24] OCHR, 'EU border control policies negatively affect human rights', 6 November 2013: <https://wcd.coe.int/ViewDoc.jsp?id=2123865>
- [25] The management of the external borders of the European Union and its impact on the human rights of migrants', François Crépeau, UNSR on the human rights of migrants, April 2013, para 56: <http://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/AnnualReports.aspx> See also: <http://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/RegionalThematicStudy.aspx>
- [26] Pascaline Chappart et al, 'EU readmission policy: cooperation to increase removals' in *Atlas of Migration* above.
- [27] See Hicham Rachidi, 'Buffer zones around Morocco' in *Atlas of Migration* above.
- [28] Nicholas Pernet, 'In Africa, the EU disrupts migration that does not concern it', in *Atlas of Migration* above.

- [29] 'Outrage over video of "degrading treatment" of Lampedusa migrants', Euronews, 18 December 2013: <http://www.euronews.com/2013/12/18/outrage-over-video-of-degrading-treatment-of-lampedusa-migrants>
- [30] See the section 'Detention at the heart of asylum and immigration policies' in Atlas of Migration (see [8]).
- [31] Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third country nationals.
- [32] Crépeau, above, paras 47ff.
- [33] 2013/33/EU, June 2013. The Directive forms part of the Common European Asylum System (CEAS) designed to ensure similar criteria for the grant of international protection, similar reception conditions, procedures and outcomes throughout the EU, to end 'asylum shopping'. Directives on these issues were promulgated in 2003-4, and recast in 2013. The UK has opted out of the recast directives, but remains subject to the original ones.
- [34] A proposed joint EU refugee resettlement programme will be voluntary for member states.
- [35] *MSS v Greece and Belgium*, Application 30696/09, 21 January 2011: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-103050>
- [36] *NS v UK*, C-411/10, 21 December 2011: <http://curia.europa.eu/juris/celex.jsf?celex=62010CJ0411&lang1=en&type=NOT&ancre=>
- [37] Forthcoming, on irr.org.uk.
- [38] Doctors for Human Rights, the CIE Archipelago, May 2013.
- [39] See eg *Migranti Torino*, 8 July 2013: <http://www.migrantitorino.it/?p=29909>; *Pueblos Unidos Detention Report 2012*; *Migreurop 2011* (on Spain).
- [40] See Liz Fekete, 'Permanent protest in the camps', Atlas of Migration (see [8]).
- [41] A (genuine) serious threat to public order or internal security justified temporary border closure under the old Schengen rules. France blocks Italian trains carrying migrants, BBC News, 17 April 2011: <http://www.bbc.co.uk/news/world-europe-13109631>
- [42] Steve Peers, 'The future of the Schengen system', Statewatch news December 2013. It is unclear whether they need Council or Commission permission to do so.
- [43] 'A defiant France steps up deportation of Roma', Time World, 1 September 2010: <http://content.time.com/time/world/article/0,8599,2015389,00.html>
- [44] The Immigration (European Economic Area) (Amendment) (No 2) Regulations 2013, Sch 1: <http://www.legislation.gov.uk/uk/si/2013/3032/regulation/1/made>



“We want to welcome the living, not the dead”

Matt Carr

In the aftermath of tragedies involving migrant deaths at sea, the moral outrage directed at ‘people smugglers’ by politicians is steeped in bad faith, if not outright hypocrisy. Europe needs to abandon an essentially repressive and exclusionary approach to border enforcement which aims to make migrant journeys as harsh and as difficult as possible.

The full death toll from the capsized boat carrying an estimated 500 migrants to Lampedusa will probably never be known, but it is almost certainly more than the confirmed figure of 359, making it one of the most shocking tragedies in the history of Europe’s lethal anti-migrant maritime borders.

While bodies and coffins accumulate in Lampedusa’s tiny harbours, coastguards and fishermen have described trying to rescue fuel covered men and women who slid from their arms and drowned. The dozens of children who also drowned did not even get that close.

This awful event has provoked an outpouring of grief, horror and sympathy in Italy and beyond, as it should. Italy has declared a day of national mourning. The residents of Lampedusa have held a special mass and a candlelit procession to commemorate the victims, one of whose participants held up a wooden cross made from a wrecked boat on which was written: “We want to welcome the living, not the dead.”

Not all Lampedusans feel like this, but many do. Two years ago more than 17,000 Tunisians arrived on the island, more than doubling the population at certain points. While the Italian government played politics and did nothing to provide them with food or shelter, many Lampedusans took up the slack and fed them themselves.

There was a time when Lampedusa was a tranquil holiday island whose population made their living from tourism and fishing. All that changed more than two decades ago when Italy joined the Schengen Area and Lampedusa became the southern periphery of the European Union and a major destination for migrants taking what the European Border Agency Frontex calls the ‘Central Mediterranean route.’

Since then, Lampedusa has seen more than its fair share of migrant tragedies, but nothing like this. Now a black flag with the single word ‘shame’ has been erected over the graveyard of decommissioned migrant boats piled up in front of its tourist harbour – echoing the Pope’s denunciation of the tragedy as a ‘disgrace’.

Such accusations are well-deserved. It is utterly shameful and disgraceful that men, women and children should be dying in the Mediterranean or anywhere else, and the shame is shared by many different institutions and groups of people. This includes the government of Isaias Afewerki in Eritrea, which has turned what was once one of the most inspiring and promising products of decolonisation into a country that thousands of its citizens are desperate to leave – and they are often shot for trying. Also to blame are the hard-faced ‘people smugglers’ who stuffed nearly 500 people without lifejackets, most of whom couldn’t swim, into a 20 metre boat that was clearly a potential death trap before it ever left Libya, so that they could make as much money as possible from their journey.

The sign in Lampedusa might also be directed at the racist Northern League, for whom the deaths of more than 300 people has done nothing more than prompt yet another outpouring of

poisonous and disgusting bile directed at Italy's first black MP, the DRC-born Minister for Integration, Cecile Kyenge.

Having disgraced the Italian parliament by comparing Kyenge to an orangutan, the League has now had the temerity to call for her resignation because, it argues, the deaths in Lampedusa are a result of her calls for the integration of Italy's immigrants and clear citizenship pathways.

So let us by all means condemn the dictators and criminals who helped make this tragedy happen, and the racists who seek to use it for their own malignant purposes. But others also bear responsibility. Events like this tend to produce a depressingly familiar and predictable response from European governments and EU representatives.

On the one hand, there is genuine horror, disgust and sympathy. Few politicians actually want women and children to be drowning on the continent's borders or suffocating in the back of trucks in Dover. At the same time such tragedies inevitably become another occasion for venting moral outrage at the "criminal networks exploiting human despair", as EU Commissioner for Home Affairs Cecilia Malmström put it in a statement on 3 October.

Many 'people smugglers' are indeed worthy of condemnation, but the moral outrage directed towards them is steeped in bad faith, if not outright hypocrisy. The simple, unavoidable fact is that such networks – whatever their motivations or *modus operandi* – exist in order to help migrants overcome the physical and bureaucratic obstacles that have been placed in their path by European governments.

In her statement, Cecilia Malmström argued that "Europe has to step up its effort to prevent these tragedies and show solidarity both with migrants and with countries that are experiencing increasing migratory flows."

Laudable sentiments no doubt, but there is little expression of 'solidarity' with migrants in Europe's border regimes. At present, Europe is negotiating an agreement with the Moroccan government which will effectively outsource border enforcement and allow Spain to send migrants who enter its territory back to Morocco, rather than process their claims for asylum.

This already happens on a *de facto* basis. In the last year, Morocco has stepped up its deportations of migrants across the Oujda border with Algeria, many of whom are simply shunted into the desert at night.

The EU knows this perfectly well but has kept its mouth firmly shut. Nor has it done anything about the horrendous detention centres in Libya where migrants were routinely detained under Gaddafi and still are by the 'democrats' who NATO helped to overthrow him.

In August 2013, Italy ordered two commercial ships which had rescued migrants in distress off the Libyan coast to take them back to Libya - a *de facto* continuation of the 'push-back' agreement signed between the Berlusconi government and Gaddafi in 2009.

So much for solidarity. The problem is that it is very difficult to show meaningful empathy with people you are determined to prevent from reaching your territory, and who you lock up when

they succeed in reaching it – better to deport as many of them as possible when the law allows and sometimes when it doesn't.

Malmström called, as governments usually do in such circumstances, for more comprehensive maritime rescue, and hailed the forthcoming roll out of the Eurosur satellite observation system as an important tool in this effort. But the main purpose of Eurosur is preventing 'illegal immigration' by more intensive surveillance of the Mediterranean. Saving lives is at best a corollary of that essential objective and at worst a humanitarian figleaf.

If Europe really wanted to show solidarity with the migrants who are coming to its shores there are a lot of things it could do to make their journeys safer. Humanitarian corridors are one option – not only at sea, but along the equally dangerous land routes that migrants are forced to take. More generous reciprocal agreements with migrant-producing countries in order to allow more documented travel are another.

Europe could also sign conventions to strengthen the international protection of migrants, and ensure that their basic rights are upheld in the countries they pass through. It could abandon a system of border enforcement which too often transforms EU neighbouring countries into Europe's border guards, regardless of whether they are able or willing to do this, and stop turning a blind eye to the often brutal and corrupt practices that have so often unfolded as a result.

It could rescind the disastrous Dublin Convention which forces asylum seekers to make their asylum applications in a single country. In practice, this usually means the first EU country they reach – a situation that has transformed the EU's outlying 'border countries' into migrant traps and dumping grounds, where refugees are stranded in countries they don't want to be in, and which often don't want them to be there.

It is also true, as Italy, Greece and Malta have all argued, that more countries could accept greater numbers of asylum seekers instead of obliging EU 'border countries' to take on exclusive responsibility for screening, absorbing and - too often - excluding them.

Ultimately, Europe needs to abandon an essentially repressive and exclusionary approach to border enforcement, which aims to make migrant journeys as harsh and as difficult as possible as an unwritten policy of deterrence, and which in effect accepts migrant deaths as the 'collateral damage' of border policies that are too often driven by fear, paranoia, selfishness and racism.

And as long as Europe continues to make it as difficult as possible for migrants to reach Europe through legal and safer means, there will always be those who are desperate and determined enough to risk everything to make the journey in some other way, and there will always be those who will seek to profit from these attempts.

Until this changes, people will continue to take their chances and some of them will die, and many of the governments that lament their deaths must bear a share of the responsibility for the transformation of the ocean that the Romans called *Mare Nostrum* – Our Sea – into a migrant graveyard.



Eurosur: saving lives or reinforcing deadly borders?

Charles Heller and Chris Jones

The European Commission claims Eurosur’s surveillance tools will help save lives at sea, but it is unclear whether the system can accurately detect the small boats migrants use and there is no mechanism to force Member States or Frontex to initiate search and rescue operations should a vessel in distress be located.

On 3 October 2013, a boat carrying more than 500 people, mostly from Somalia and Eritrea, sank less than 1 kilometre off the coast of Lampedusa near the “Conigli” beach, 4 kilometres from the island’s port. In the hours and days that followed, 155 people were rescued and 359 bodies were recovered, making this the most deadly known wreck of a migrants’ boat in recent years. The large number of deaths sparked public outrage and the Commission quickly presented Eurosur as a means of preventing future tragedies. In a statement following his visit to Lampedusa on 9 October, Jose Manuel Barroso, the President of the European Commission, said:

“We need also to strengthen our capacity for search and rescue, and our surveillance system to track boats, so that we can launch a rescue operation and bring people to safe grounds before they perish. I think the kind of tragedy we have witnessed here so close to the coast should never happen again. Our initiative ‘Eurosur’ is meant to do that.” [1]

Eurosur – the European Border Surveillance System – is an information collection and exchange system intended to provide precise “situational awareness” so that border guards can “detect, identify, track and intercept” irregular migrants. The system is intended to make it impossible for irregular migrants to enter EU territory undetected and, in theory, save their lives should they get in trouble whilst at sea. Proponents of Eurosur claim that while current surveillance technologies have difficulty detecting small boats used by migrants, Eurosur will be able to do so by assembling data gathered through cutting-edge remote sensing technologies – such as drones, radars, and satellites – and combining the information generated by national authorities located on both sides of the Mediterranean.

The argument that more surveillance through Eurosur could have averted the 3 October tragedy is flawed for several reasons. First, it must be remembered that it is not through choice that people wishing to migrate to Europe embark on unseaworthy vessels (amongst other precarious means) and resort to using criminal networks. They do so because no legal avenues for migration are offered to

them. Faced with the surveillance and militarisation of the maritime space that has been built up over the last 20 years to police the borders of the EU, illegalised migrants are in turn forced to take ever longer and more dangerous routes to avoid being detected. [2] Surveillance is thus a key component of the conditions that have led to over 14,000 documented deaths at the EU’s maritime borders over the last 20 years. [3]

Second, Eurosur was already in partial operation, and had been for almost two years, when the 3 October tragedy occurred. In its 2012 report, Frontex, the EU border agency that acts as the main coordinator of Eurosur, explained that:

“The Eurosur Network has been in use since December 2011. Since March 2012, the Network has been used to exchange operational information. During 2012, the Network was expanded from the original six countries (Spain, France, Italy, Slovakia, Poland and Finland) to 18 (Portugal, Spain, France, Italy, Malta, Slovenia, Greece, Cyprus, Bulgaria, Romania, Hungary, Slovakia, Poland, Lithuania, Latvia, Estonia, Finland and Norway).” [4]

While countries of departure, such as Libya, may not yet be formally integrated into this network, Eurosur was up and running at the time of the Lampedusa tragedy. [5]

Third, even when Eurosur is fully operational, the level of surveillance deployed on the island of Lampedusa will remain far greater than that proposed for the Mediterranean space. Lampedusa has several coastal radars, between 10 and 20 Coast Guard and Customs Police patrol boats, and a number of maritime surveillance aircraft deployed on and around the island. These surveillance tools are partly financed and coordinated by Frontex, but they were not sufficient to avert the tragedy.

The emergence of Eurosur

Formally launched in February 2008 by the EU Commission, the Eurosur initiative has a complex genealogy. One of its possible origins can be found in 2003, in the *Feasibility study on the control of the European Union’s maritime borders* submitted to the EU Commission by CIVIPOL, a semi-public consulting company to the French Ministry of the Interior. The report argued that:

“There is a growing need for surveillance of all kinds of vessels in European coastal waters [...] It would now be technically feasible to combine all the available data (all types of information picked up by every kind of fixed and mobile sensor) in a given area, in order to establish a centralised overview of the area.”

It was proposed that such an assemblage be operated by linking up data provided by national centres in a “European Intelligence Centre.” The ensuing maritime picture would make it possible to carry out “classic tracking and interception operations” – no mention of “rescue” is present. [6]

This initial idea of linking up sensors and national centres to produce an overall maritime picture was further developed and consolidated after 2005, following the creation of Frontex. In 2006, the agency led the BORTEC feasibility study to establish a “surveillance

system covering the whole southern maritime border of the EU.” From report to feasibility study, from proposal to Regulation, the Eurosur initiative progressively took shape. The Eurosur Regulation was adopted on 22 October 2013 and operations formally began on 2 December 2013.

Operating Eurosur

Eurosur links the national surveillance systems of EU Member States and neighbouring countries and provides additional high-tech sensors in order to increase the “situational awareness and improve the reaction capability of national authorities controlling the external borders of the EU Member States.” The stated aim is to prevent cross-border crime, reduce the number of irregular migrants entering the Schengen area undetected and reduce the deaths of migrants at sea. [7] To this effect, Member States are obliged to designate a National Coordination Centre – there will be 24 in total – which will compile information on their external borders and transmit regular situational reports, known as “National Situational Pictures,” to other Member States and to Frontex. Frontex will then use this information to construct a “European Situational Picture” and a “Common Pre-Frontier Intelligence Picture.” “Pre-Frontier” designates an area that begins at the external borders of the EU but which has no external limits.

Border surveillance capacities in third countries will be reinforced in order to help provide this picture. Additional surveillance means will be deployed such as drones and satellites, with imagery and analysis provided by other EU agencies including the Joint Research Centre (JRC), the European Union Satellite Centre (EUSC) and the European Maritime Safety Agency (EMSA). [8]

To achieve these ambitious goals, Eurosur has been awarded significant financial and technical support. [9] The Commission’s estimated costs for implementing and operating Eurosur between 2011 and 2020 amount to €340 million. An alternative estimate produced for a critical report, *Borderline*, in June 2012, suggests a cost over the same time period of €837.7 million. [10] With this massive financial investment and increases to both information sharing and sensing capacity, one might assume that more small boats will be detected and more lives will be saved. In reality, this outcome is far from certain.

Detecting small boats?

The argument that more surveillance – in particular through drones and satellites – will improve detection of migrants’ small boats is contradicted by several studies, including one led by Frontex itself. Zodiac style rubber boats and small wooden fishing boats, which are both used in many crossings, are notoriously difficult to detect, which is precisely why they are chosen not only for clandestine border crossings but in military operations. In 2009, Frontex led a pilot study with the EU’s Joint Research Centre (JRC) to evaluate the extent to which these boats could be detected using synthetic aperture radar (SAR) imagery - essentially a satellite image produced by beaming a radar signal from space. While SAR images could detect boats placed in a known location for the experiment, the report published in 2011 underlined the difficulties related to the “conflict

between resolution and image swath.” Essentially, small boats can only be captured by high-resolution images which cover a small area, while the maritime area to be monitored - the Mediterranean - is huge. As such, the report concludes that “maritime surveillance with high resolution images would require a large number of images to cover wide maritime areas, which is very expensive and for the time being technically not feasible.” [11]

There is no indication that any of the experiments undertaken since the pilot study have resolved this fundamental dilemma which applies to all remote sensing technologies. Despite often being presented as a panacea, remote sensing technologies will thus be limited in their capacity to detect the small boats migrants use, although Frontex’s 2013 work programme indicates that the agency has been further investigating the possibilities of super high resolution imagery. [12] In the meantime, the majority of rescue operations will continue to be initiated after distress calls are made by migrants themselves. [13]

Saving lives?

Even if the surveillance means and information exchange deployed by Eurosur will consistently enable the detection of migrants’ small boats in the open sea, who is to guarantee that they will be saved? It should be noted that while “saving lives” is now publicly displayed as Eurosur’s main objective, this role was reluctantly inserted into the legislation at a late stage. The vast majority of provisions that relate to saving lives were added by the European Parliament during negotiations with the Council, against the wishes of many Member States. [14] The Commission’s initial legislative proposal, published in February 2012, made just one mention of Eurosur’s contribution to “protecting and saving lives of migrants at the external borders of the Member States of the Union,” and this only in the preamble. This indicates that saving lives is not a political priority and it remains to be seen whether the insertion of new clauses into the legislation will prove to be any more than a semantic victory.

To date, there is no obligation under the Eurosur legislation to ensure that Member States or Frontex initiate search and rescue operations should their plethora of surveillance tools locate a vessel in distress. Nor does the legislation contain provisions that address the right to claim asylum. As a justification of this absence, Oliver Seiffarth, of the Unit on Border management and Schengen governance at the Commission’s Directorate-General for Home Affairs, recently said at a Frontex conference that, “international frameworks for search and rescue already exist and it is important not to set up a ‘competing system’”. [15] However, the current framework has been repeatedly instrumentalised by states to evade their responsibility to launch rescue missions, with tragic consequences.

Dying after pre-frontier detection

Several cases demonstrate that detection, or any other form of knowledge of distress at sea, is no guarantee that migrants will be saved. In 2011, journalists, NGOs, an MEP, and the Watch the Med project documented what is now referred to as the “left-to-die boat case”. [16] A boat carrying 72 people left the Libyan coast in the early hours of 27 March 2001, sailing through waters that at

the time were being monitored by over 40 naval assets charged with enforcing the arms embargo imposed during the international military intervention in Libya. In the early afternoon of the same day, the boat was identified by a French aircraft, which informed the Italian authorities. A few hours later, the passengers sent out a distress call to the Italian rescue agency, which, because the boat was still located in the Libyan Search and Rescue (SAR) zone, simply passed on the information to Malta and NATO command. The boat was flown over twice by a military helicopter of unknown nationality which assisted only by providing biscuits and water, probably hoping that the boat would be able to continue far enough to enter the Maltese and Italian SAR zone. It never did. Soon after, the boat ran out of fuel and began a deadly drift that lasted 14 days, leaving only nine survivors. No actor provided them with assistance that could have averted their tragic fate.

As this case demonstrates, there is a general reluctance to intervene on the part of all actors at sea. EU coastal states are reluctant to rescue migrants because they would be responsible for disembarking them, processing their asylum claims and potentially deporting them. Whenever possible, they use overlapping and conflicting maritime jurisdictions as well as the margin of interpretation contained in international law to evade these responsibilities. Seafarers would often rather not take migrants on board for fear of losing precious time in standoffs over their disembarkation. If they do rescue migrants and allow them on board they can be accused of “aiding and abetting illegal migration”.

While the “left-to-die” case was widely publicised and led to criticism of several states for not assisting people in distress, a recent tragedy proves that no lessons have been learned. On 11 October 2013, a boat carrying over 400 people sank after it was shot by a Libyan vessel. A distress call was sent to the Italian rescue agency, but although close to Lampedusa the boat was in the Maltese SAR zone and responsibility for the operation was passed on to Malta. Several vessels - including those of the Italian navy and coast guard - were in the vicinity but were not deployed until the boat sank, over five hours after the initial distress call. 212 people were eventually saved, but more than 200 lives were lost because of this delay. [17]

An emerging practice by the Italian rescue agency consists of demanding that commercial vessels rescue migrants located in the (undeclared) Libyan SAR zone and return them to Libya, a country which is not a signatory to the Convention on the rights of refugees and has a history of systematic human rights violations. [18] The

further migrants are detected from EU territory, the greater chance EU Member States have of evading their obligation to rescue them. If Eurosur does enhance “pre-frontier” detection, it is probable that this trend will intensify rather than result in more lives being saved. The current attitude towards illegalised migrants will likely prevail - trying at all cost to prevent them from arriving on EU territory with Eurosur simply a new sophisticated tool to allow states to control their borders, despite the structural violations and deaths that this generates. [19] Eurosur’s humanitarian varnish cannot hide the fact that militarisation and surveillance are the cause of migrants’ deaths, not the solutions to prevent them.

WatchTheMed: a civil society counter-surveillance network

The EU and neighbouring states are linking up their surveillance systems under the framework of Eurosur to police the movement of people. They aim to shed light on acts of clandestine movement but leave in the shadows the violations of migrants’ rights they repeatedly commit. EU Member States and Frontex maintain a high degree of opacity as to their operations and the Eurosur regulation provides no mechanism for oversight by civil society. To exercise a critical right to look at the EU’s maritime borders, migrants’ rights organisations, activists and researchers are developing an online mapping platform called “WatchTheMed” (WTM, watchthemed.net). This tool allows these actors to monitor the activities of border controllers in this area and map with precision the violations of migrants’ rights at sea in an attempt to determine which authorities have responsibility for them. By interviewing survivors as well as using some of the same technologies as Eurosur - vessel tracking technologies, satellite imagery, georeferenced positions from satellite phones - and spatialising the data that emerges from these sources, WTM is able to ask some of the following questions:

- *In which SAR zone was a vessel in distress and which state was responsible for its rescue?*
- *Which vessels were in the vicinity?*
- *If the vessel was rescued, were passengers taken to a territory in which they could apply for international protection or were they pushed back?*

WTM operates as an online and participative maritime control room, albeit with opposite aims to those of border controllers: it seeks to enable critical actors to pressure authorities to respect migrants’ rights and denounce their (in)action when they violate them.

Endnotes

[1] Statement by President Barroso following his visit to Lampedusa, European Commission - SPEECH/13/792 09/10/2013. http://europa.eu/rapid/press-release_SPEECH-13-792_en.htm

[2] This effect is explicitly recognised in the CIVIPOL report referred to below, which notes that while the majority of clandestine migrations by sea use “focal routes” in which “geography dictates the locations - straits or narrow passages where Schengen countries lie close to countries of transit or migration,” they observe that “when a standard destination is shut off by surveillance and interception measures, attempts to enter tend to shift to another, generally more difficult, destination on a broader and therefore riskier stretch of water”. CIVIPOL, Feasibility study on the control of the European Union’s maritime borders, p.9. transmitted 4 July 2003 to the European Commission (JHA), document 11490/1/03 (2003), http://www.ifmer.org/assets/documents/files/documents_ifm/st11490-re01en03.pdf

[ifmer.org/assets/documents/files/documents_ifm/st11490-re01en03.pdf](http://www.ifmer.org/assets/documents/files/documents_ifm/st11490-re01en03.pdf)

The splintering of routes towards more dangerous trajectories is also widely observed in academic literature - see for example Hein De Haas, “The Myth of Invasion: The inconvenient realities of migration from Africa to the European Union,” *Third World Quarterly*, vol. 29, no. 17: 1305–22, 2008

[3] See <http://fortresseurope.blogspot.com/p/la-fortezza.html> and <http://www.unitedagainstracism.org/pdfs/listofdeaths.pdf>

[4] Frontex General Report 2012, p. 20, http://www.statewatch.org/observatories_files/frontex_observatory/2013-09-frontex-annual-report-2012.pdf

[5] As a measure of this, Frontex provides the following: “The fact that the number of nodes in the Network tripled, and the number of

irregular-migration and related border-crime events and documents exchanged doubled between the first and second half of 2012, can be seen as two good measures of the success of the Eurosur Network.” Frontex, *ibid*.

[6] CIVIPOL report, p. 65-67

[7] Frontex General Report 2012, p.20

[8] <http://www.frontex.europa.eu/partners/eu-partners/eu-agencies>

[9] Member States will be able to upgrade their national border surveillance capacities with support from the EU’s External Borders Fund (EBF, worth a total €1,820 million between 2007 and 2013) and Internal Security Fund (€4,648 million over the same period), while funds from the EBF and the 7th EU Framework Programme for research and development (FP7) are available to conduct studies. FP7 funds have been instrumental in the conduct of research and development projects to improve surveillance tools, with over €68 million awarded to projects related to Eurosur from 2007-2013. From 2014-2020, the EU’s Horizon 2020 will provide €3.4 billion for security research projects, for which one theme is “border security and external security”. Measures in third countries will be supported by the Thematic Programme for Asylum and Migration, which is part of the Development Cooperation Instrument.

[10] Ben Hayes, Matthias Vermeulen, ‘Borderline: The EU’s New Border Surveillance Initiatives’, Heinrich Böll Foundation, June 2012, <http://www.statewatch.org/news/2012/jun/borderline.pdf>, p.49

[11] JRC-Frontex, Spaceborne SAR Small Boat Detection Campaign – Italy & Spain, 2011: <http://publications.jrc.ec.europa.eu/repository/bitstream/111111111/24183/1/lbna25065enn.pdf>

[12] Frontex, Programme of Work 2013, p.109-110, http://www.statewatch.org/observatories_files/frontex_observatory/Frontex%20Work%20Programme%202013.pdf

[13] In an article titled “To the Rescue...” on Frontex’s website dedicated to operations in Lampedusa, it notes that: “Despite the name, most search-and-rescue (SAR) cases in Lampedusa do not start with search. Around 90% of cases are initiated by distress calls, either via the international distress frequency, (‘May Day’ Channel 16) or to a pre-arranged civilian on the mainland to raise the alarm; often a priest or member of a migrant-friendly organisation who then contacts the coast guard”: <http://www.frontex.europa.eu/feature-stories/to-the-rescue--ILWGXf>

[14] <http://www.statewatch.org/news/2012/feb/eu-com-Eurosur-regulation-sec-1536-11.pdf> Negotiations between the Council and the European Parliament - which took place behind closed doors in secret “trilogues”

- were completed in June 2013 when the two institutions finally agreed on a text. MEPs insisted on inserting a number of other provisions dealing with saving lives. A new paragraph in the preamble states that “the practice of travelling in small and unseaworthy vessels has dramatically increased the number of migrants drowning at the southern maritime external borders,” and that: “Eurosur should considerably improve the operational and technical ability of the Agency and MS to detect these small vessels and to improve the reaction capability of the Member States thereby contributing to reduce the loss of lives of migrants.” Further provisions were added in Article 1 (subject matter), Article 2 (scope), Article 3 (definitions) and Article 9 (National Situational Picture), which obliges the creation of a “sub-layer” within that picture on “unauthorised border-crossings including information, available to the national coordination centre, on incidents relating to a risk for the lives of migrants.”

[15] European Day for Border Guards, 23 May 2013, Poland. Panel Discussion III, Eurosur and the Future of Border Management. www.ed4bg.eu/files/files/EUROSUR.pdf

[16] See: <http://watchthemed.net/index.php/reports/view/16>

[17] See: <http://watchthemed.net/reports/view/32>

[18] See: <http://www.migreurop.org/article2279.html?lang=en>

[19] It should be noted that in an important report on the external borders of the EU, the United Nations Special Rapporteur on Migrants Rights came to similar conclusions: “The Special Rapporteur acknowledges that the draft legislation to create EUROSUR requires Member States and Frontex to “give priority” to the special needs of persons in distress at sea, as well as children, asylum seekers, victims of trafficking, and those in need of medical attention, and the Commission has repeatedly stressed EUROSUR’s future role in “protecting and saving lives of migrants”. Yet the Special Rapporteur regrets that the proposal does not, however, lay down any procedures, guidelines, or systems for ensuring that rescue at sea is implemented effectively as a paramount objective. Moreover, the proposed Regulation fails to define how exactly this will be done, nor are there any procedures laid down for what should be done with those “rescued”. In this context, the Special Rapporteur fears that EUROSUR is destined to become just another tool that will be at the disposal of member States in order to secure borders and prevent arrivals, rather than a genuine life-saving tool.” François Crépeau, Special Rapporteur on Migrants Rights “Regional study: management of the external borders of the European Union and its impact on the human rights of migrants”, 24 April 2013, p. 11.



Frontex and fundamental rights: a love story?

Leila Giannetto

The European agency in charge of the management of the EU’s external borders, Frontex, is facing harsh criticism for its lack of accountability in the field of migrants’ rights protection.

One after another, men struggle to climb three walls topped by barbed wire. This is one image of African migrants trying to reach the European Union (EU) at the border between Morocco and Spain (Melilla), captured by a high-tech camera on the night of 18 September 2013. [1] Every day, irregular migrants leave their countries on a deadly mission to reach the EU using every

possible means of transport. They may be threatened, robbed and beaten along the way and are often left with nothing but their lives. [2] A high percentage of them – a number impossible to accurately estimate – are stripped of even that. [3] Every means is tried to reach a new shore and a new life.

Awaiting them at the EU’s borders are police forces, reception or detention centres and journalists eager to take the perfect picture of an invasion of boat people. Reductions in the flow of migrants, and in particular of irregular entries, are welcomed by the media as success stories. Frontex was established in 2004 in order to maintain these ‘successes’. The draconian border control policies of the EU and its Member States’ have been translated into law that stands in contrast to the principles declared in the European Charter of Fundamental Rights.

The impact of such policies can be seen in the Lampedusa tragedy. This small Italian island is where most of the migrants coming to Europe via the so called “Central Mediterranean Route” disembark. [4] On 3 October 2013, a boat from Libya carrying in excess of 500 passengers sank off the coast of Lampedusa. More than 359 people died. [5] 155 survivors were rescued from the Mediterranean Sea, first and foremost thanks to Lampedusa’s sailors who detected the shipwreck and alerted the authorities.

The inhabitants of Lampedusa have become used to the continuous landings of people from Africa (both the living and the dead), and have become renowned for their welcoming attitude towards distressed migrants. [6] The same can be said for the thousands of organisations that fight for the better treatment of migrants, both within the EU's borders and at its frontiers. [7]

Tragedies are repeatedly taking place at the EU's borders, not only at sea but also on land. The Greek-Turkish land border is the most troubled example. Informal (and illegal) push-backs of migrants to Turkey have been reported by a number of civil society organisations including Human Rights Watch (2011), Amnesty International (2013), and more recently in a ProAsyl Report, released on 7 November 2013. [8] Moreover, the Greek asylum system has systemic problems; the constant threat of human rights violations for asylum seekers detained in Greece led to judgements by the ECHR and ECJ in 2011 suspending the removal of the claimants to Greece – a practice that is regulated by the controversial Dublin II Regulation.

In view of these tragedies and considering the significant role that Frontex acquired in 2011 [9] in the management of these borders, “including its fundamental rights dimension,” [10] it is crucial that civil society is aware of Frontex's responsibilities and activities. This article first describes the agency and then questions how it is held to account by the EU's democratic institutions, the judicial system, and civil society organisations defending migrants' rights.

Frontex: facts and figures

Frontex is the EU's agency in charge of “the management of the operational cooperation of the external borders of the Member States of the European Union”. Since its inception in 2004, [11] it has been a tool for the EU to reshape its external border management system. [12] Frontex Regulation 2007/2004 was set up to “facilitate the application of existing and future Community measures relating to the management of external borders,” leaving to Member States “the responsibility for the control and surveillance” of their own borders. This means that Frontex was not established to replace Member States' national border management systems but to complement and reinforce them, by using intelligence tools. [13] Intelligence tools utilised by the agency include software designed to retrieve, analyse and report data and new technology that can detect irregular crossings at EU external borders, and which thus provides Member States with the most up-to-date knowledge in this field. As a matter of fact, Frontex is the core of the EU's Integrated Border Management system, envisaged by the European Council during the Laeken process – better known as the process of constitutionalisation of the Union – in 2001.

Since 2004, Frontex has “experienced the most extensive upgrading in terms of financial and human resources.” [14] In particular, reform of the agency in 2011 enlarged its financial and human resources and recognised the new administrative and operative competences that it had already informally acquired. [15] Member States were given new duties to cooperate

in the field of border management and two new bodies were created within the 2011 Frontex framework: the Human Rights Officer and the Consultative Forum. They were introduced in response to appeals by civil society organisations for greater accountability from the agency, particularly concerning the protection of migrants' rights.

Frontex's tasks and powers can be summarised as follows:

- Joint Operations at land, sea or airports [16] in which Frontex coordinates Member States' border guards and, from 2011, provides equipment and personnel in the form of European Border Guard Teams (EBGT).
- Training for Member States' border guards in order to promote common standards during operations.
- Risk analysis and research into the ongoing situation at the EU's external borders in order to plan future operations to tackle irregular migration and cross-border crime and provide border guards and Member States with the most advanced knowledge and technologies.
- Assisting Member States in joint return operations, thereby organising flights to expel irregular migrants who entered the EU.
- Developing and operating information systems enabling the exchange of data collected at the EU's entry-exit points and keeping up to speed with the newest technologies in the field.
- Activities carried out outside the EU (e.g. in international waters surrounding the Canary Islands), working “closely with border-control authorities of non-EU/Schengen countries - mainly those countries identified as a source or transit route of irregular migration - in line with general EU external relations policy” and signing working agreements with these countries.

Protection of human rights: what kind of accountability?

Frontex has relations with the European Parliament in terms of democratic accountability and the Court of Justice of the EU, the European Court of Human Rights (ECHR) and the European Ombudsman in terms of (quasi-) judicial accountability. The European Parliament has very limited control over Frontex, because it has difficulty establishing whether Frontex's annual work programme has been correctly implemented. MEPs often do not have the expertise to understand Frontex's operational management nor do they necessarily have the interest to do so. Only Home Affairs Ministries or the heads of national border guards have a direct competence and interest in this field, and they sit on Frontex's Management Board. This leaves the agency with a minimal level of control from the EU's democratic institution.

The Court of Justice of the EU also has a difficult task in evaluating Frontex's work. Notwithstanding amendments to the first Frontex Regulation (2007/2004), the agency's competences are still not clearly defined and are further blurred by the competences of Member States' border guards. The 2011 Regulation makes clear that some military operations might be co-led by Frontex, which now has European Border Guard Teams. However, even the European Ombudsman, Nikiforos Diamandouros, [17] found

it very difficult to understand how Frontex would implement the provisions of the Charter of Fundamental Rights because there is virtually no way in which Frontex staff or participating officers can be held responsible and prosecuted for any alleged violations of human rights. Operations at the Greek-Turkish border are a sad example of this unaccountable system. [18]

Greater accountability could possibly be achieved through increased scrutiny by civil society organisations. They could monitor Frontex's activities, question its conduct and even lobby the European Commission (which is in charge of proposing amendments to the Frontex Regulation). Monitoring by the media could also have an effect on the agency's reputation; the media, besides reporting sensational events such as the breaching of barbed-wired walls in Melilla, could play a positive role as an accountability enhancer, providing much more information regarding the agency, its activities and its misconduct. This could mobilise public opinion and draw greater attention to Frontex's activities.

Proposed solutions for a long term relationship between Frontex and fundamental rights

Civil society monitoring contributed to the appointment of a Human Rights Officer and a Consultative Forum on Fundamental Rights operating within the agency. [19] The UNHCR, Amnesty International, ECRE, Migreurop and Statewatch all published reports proposing amendments to the 2007 Frontex Regulation and demonstrated the absence of a body charged with monitoring fundamental rights protection. However, neither body is endowed with powers to halt operations in the case of a grave breach of fundamental rights – this competence lies with the Executive Director – or to deal “with complaints on infringements of fundamental rights in all Frontex activities submitted by persons individually affected by the infringements and also in the public interest.” [20]

Another limited success is to be found in the critique by civil society organisations concerning the “lack of legal certainty in some Frontex capacities”. For example, Frontex's involvement in and co-financing of return operations - which are highly sensitive and concern migrants' individual liberties - were not clearly defined in Regulation 2007/2004. This resulted in difficult, if not impossible, judicial control. The Frontex Regulation of 2011 introduced amendments in this field in order to reduce the uncertainty. Under Article 33, for example, the agency's activities are evaluated on the basis of the principles of the European Charter of Fundamental Rights, which might help to establish the jurisdiction of the ECHR. Frontex also responded positively to requests for clarification made by the European Ombudsman on the issue.

Debate was also sparked on the Agency's other fundamental rights-related activities:

- the processing of personal data.
- the signing of working arrangements with third countries (also involving activities outside the EU territory).
- the contribution to joint operations and in particular operations set up at the Greek-Turkish border (RABIT and Poseidon).

These issues are particularly opaque and require a higher degree of transparency in order to be monitored and evaluated. In particular, the competence of Frontex to sign working arrangements with third countries' administrative bodies – to deploy liaison officers on their territory and even to organise operations with them conducted outside EU territory – is highly questionable. For instance, Operations Hera I and II off the Canary Islands, in Senegalese territorial waters, were deemed by Amnesty International and Sergio Carrera to be in breach of the non-refoulement principle. [21] A similar story can be told regarding the treatment of migrants at the land border between Greece and Turkey. In order to change these practices it is essential that Frontex be held directly accountable by civil society organisations working in the field of fundamental rights.

Conclusion

Frontex is in the spotlight once again due to the Lampedusa disaster. This time the criticism comes formally from a Member State, Italy, which has called for greater Frontex involvement in Mediterranean Sea operations. Members of the Italian government have gone so far as to accuse Frontex of spending large amounts of public money without providing the necessary services. But what kinds of services are being requested by Italian institutions? Not safer routes for migrants, or a legal channel for asylum seekers to access the EU, as proposed by civil society organisations. Member States are once again stressing the need for greater control of EU borders and calling for: increased sea patrols in order to detect boats carrying migrants at an earlier stage; a higher degree of collaboration with countries of origin and transit – such as Libya and Tunisia – through working arrangements; and greater efficiency in taking care of landed migrants through return operations or transfer towards reception/detention centres. All of these demands reinforce the same idea: the EU has to remain a fortress, no matter how many people die knocking on its doors. The main concern has shifted from a cry for the humane treatment of migrants to a demand to push them back as far as possible from EU shores.

When tragedies such as that at Lampedusa occur it is easy to look at the emergency but miss the bigger picture. But one question does need to be answered: who is responsible for the lost lives? This is the reason why it is fundamental to hold the agency in charge of the management of the external borders of the EU to account and to promote discourse over fundamental rights through effective control of Frontex by organisations concerned with fundamental rights issues.

UN High Commissioner for Refugees, António Guterres, commented on 4 October 2013, the day after the Lampedusa tragedy: “There is something fundamentally wrong in a world where people in need of protection have to resort to these perilous journeys. This tragedy should serve as a wake-up call. More effective international cooperation is required including a crack-down on traffickers and smugglers while protecting their victims. It shows how important it is for refugees to have legal channels to access territories where they can find protection.” [22]

Endnotes

- [1] Euractiv, 18 September 2013: <http://www.euractiv.com/justice/african-immigrants-assault-spani-news-530529>
- [2] A documentary on the sea travels of migrants, *Closed Sea*, can be found at: <http://www.zalab.org/project-en/14/#.UIEablZ7KSo> (retrieved June 2013).
- [3] For a detailed count of the acknowledged deaths at the borders of Europe see Gabriele Del Grande's blog *Fortress Europe*: http://fortresseurope.blogspot.it/2006/02/immigrants-dead-at-frontiers-of-europe_16.html
- [4] In 2012, 10,380 irregular border crossings were detected on the coasts of Sicily, Pantelleria and the Pelagic Islands (Lampedusa, Linosa, Lampione) by Italian border guards and Frontex. By the end of September 2013, crossings in the area had doubled (see <http://www.frontex.europa.eu/news/update-on-central-mediterranean-route-5wQPw>, retrieved 2 October 2013). The Central Mediterranean Route is the second in importance for the number of crossings after the Eastern Mediterranean Route (for further reference see: <http://www.frontex.europa.eu/trends-and-routes/migratory-routes-map>, retrieved 2 October 2013).
- [5] Last update: 7/10/2013. In an attempt to escape the fire (lit as a distress signal) on one side of the boat, passengers gathered on the other side, causing the vessel to sink (for a complete description of the accident see in Italian, http://www.corriere.it/cronache/13_ottobre_04/intrappolati-dentro-relitto-mare-diventa-cimitero-7d972ee4-2cb2-11e3-bdb2-af0e27e54db3.shtml and in English, UNHCR <http://www.unhcr.org/524e9b9f9.html>, retrieved 5 October 2013). The BBC reported the death toll as 366 on 8 November 2013. See <http://www.bbc.co.uk/news/world-europe-24865115>
- [6] A petition to award next year's Nobel Peace Prize to Lampedusa was launched on the day of the disaster (see: <http://www.change.org/it/petizioni/nobel-prize-awarding-institutions-and-nobel-peace-prize-winners-assegnare-il-premio-nobel-per-la-pace-a-tutti-i-cittadini-di-lampedusa-award-the-nobel-peace-prize-to-all-citizens-of-lampedusa>).
- [7] A new petition to secure a humanitarian corridor for asylum seekers who want to reach the EU was launched on the day of the last shipwreck; see: <http://www.meltingpot.org/Appeal-for-the-opening-of-a-humanitarian-corridor-for-the.html#.UICLHoZ7KSo>
- [8] Human Rights Watch (2011) *The EU's Dirty Hands. Frontex Involvement in III-Treatment of Migrant Detainees in Greece*, retrievable at: http://www.hrw.org/sites/default/files/reports/greece0911webwcover_0.pdf
Amnesty International (9 July 2013) *Frontier Europe: Human Rights Abuses on Greece's border*, retrievable at: <http://www.amnesty.org/en/library/info/EUR25/008/2013/en>;
ProAsyl (7 October 2013) *Pushed Back*, retrievable at: http://www.proasyl.de/fileadmin/fm-dam/l_EU_Fluechtlingspolitik/pushed_back_web_01.pdf
More reports on the Greek situation can be found at: http://www.noas.no/wp-content/uploads/2013/08/Hellas_Rapport_out_the_backdoor.pdf and <http://www.unhcr.org/4c98a0ac9.html>
- [9] Regulation (EU) No 1168/2011 of the European Parliament and the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ 2011 L 304, p. 1.
- [10] European Ombudsman (2013), *Draft recommendation of the European Ombudsman in his own-initiative inquiry O115/2012/BEH-MHZ concerning the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex)*, retrieved from: <http://www.ombudsman.europa.eu/en/cases/draftrecommendation.faces/en/49794/html.bookmark>, June 2013.
- It refers to the provisions in Frontex's 2011 Regulation stating that the European agency "shall fulfil its tasks in full compliance with the Charter of Fundamental Rights", along with the respect of the non-refoulement principle and law of the sea's search and rescue rules (introductory Paragraphs No. 17, 18, 19).
- [11] Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. OJ 2004 L 349, p. 1–11.
- [12] The so called Integrated Border Management (IBM) system.
- [13] Frontex. (2012). *Programme of Work*. Warsaw.
- [14] Pollak, J., & Slominski, P. (2009). *Experimentalist but not Accountable Governance? The Role of Frontex in Managing the EU's External Borders*. *West European Politics*, 32 (5), pp. 904-924.
- [15] Statewatch. (2003). *Cover-up! Proposed Regulation on European Border Guards hides unaccountable, operational bodies*. London: Statewatch.
- [16] The Joint Operation in Lampedusa, which started in 2012 and will conclude by the end of October 2013, is called *Hermes 2012*, while a European Patrols Network coordinated by Frontex is always active in the Mediterranean Sea. The notorious Frontex operations at the Greek-Turkish border are the various RABIT (Rapid Border Intervention Team) and Poseidon operations, "Frontex's biggest land border operation" (see: <http://www.frontex.europa.eu/operations/types-of-operations/land>).
- [17] It is interesting to note that the European Ombudsman who launched an initiative inquiry on Frontex compliance with the European Charter of Fundamental Rights is a Greek national.
- [18] Human Rights Watch. (2011). *EU's dirty hands*. London.
- [19] The Consultative Forum is currently made up of the representatives of six European agencies and governmental organisations and nine civil society organisations, for a total of 15 bodies, each with a different perspective and expertise on fundamental rights matters. They are: Amnesty International European Institutions Office; Caritas Europa; Churches' Commission for Migrants in Europe; Council of Europe; European Asylum Support Office; European Council for Refugees and Exiles; European Union Agency for Fundamental Rights; International Catholic Migration Commission; International Commission of Jurists; International Organization for Migration; Jesuit Refugee Service; Office for Democratic Institutions and Human Rights; Platform for International Cooperation on Undocumented Migrants; Red Cross EU Office; United Nations High Commissioner for Refugees.
- [20] European Ombudsman (2013), *Draft recommendation of the European Ombudsman in his own-initiative inquiry O115/2012/BEH-MHZ concerning the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex)*,
- [21] Carrera, S. (2007). *The EU Border Management Strategy. Frontex and the Challenges of Irregular Immigration in the Canary Islands*. CEPS, p. 18.
Frontex, during the Hera operations, expressed its satisfaction that 100% of all intercepted migrants had been sent back to Senegal. At no point was the notion of asylum or international protection mentioned and it is surprising that none of the intercepted irregular migrants was in need of international protection.
- [22] See: <http://www.unhcr.org/524e9b9f9.html> (retrieved 4 October 2013)



EU joint police operations target irregular migrants

Chris Jones

The EU is aiming to increase and formalise operational cooperation amongst law enforcement authorities, with significant effort going into organising and carrying out joint police operations targeting irregular migrants.

In late October and early November 2012, 25 EU Member States along with Liechtenstein, Norway, Switzerland and EU border agency Frontex, participated in a “massive” joint police operation codenamed Aphrodite aimed at:

“[C]ombating illegal immigration, with the focus being on illegal border-crossing, the secondary movements of migrants who enter EU Member States illegally, the routes used and other information regarding smuggling of migrants”. [1]

The aim was to gather information on “interceptions” of irregular migrants and pass this information back to the Cyprus Police who, with the assistance of Frontex, produced an evaluation of the operation.

This evaluation considered “the aim and objectives of the operations... very largely achieved” and called for further repressive measures in a number of “recommendations for possible future improvements or best practices and/or further action.” For example:

“Law enforcement operational activities of the EU Member States and SAC [Schengen Associated Countries] should be stepped up as regards the detention of illegal migrants moving within the EU area. In this way, illegal immigrants could be detected either at the first Member State they enter illegally or in a neighbouring Member State, and could be prevented from reaching the final destination.”

Alongside the increased use of detention was the possibility of “covering the whole Eastern Mediterranean route” with police officers and border guards in a manner akin to “the increased activities of the Greek police at the Greek-Turkish land border.” Also recommended was an increase in cooperation between “law enforcement agencies of the Member States and border guard authorities,” and “enhancing police operations in Member States where migrants achieve illegal entry, or in neighbouring Member States”. [2] The evaluation report and its recommendations were approved by the Law Enforcement Working Party of the Council of the EU in June 2013. [3]

5,298 individuals were “intercepted” during the Aphrodite operation. Germany topped the table with 1,510 people, the UK was second with 728, and Spain (468), Austria (387) and Poland (365) followed. The majority of the 5,298 “intercepted” people were presumably detained with the intention to deport them – the final report does not concern itself with such details. It does note that “481 people applied for international protection upon being intercepted, and 201 applied after being intercepted,” but it is also unknown what happened to these individuals.

Information on “interceptions” was sent back to the Cyprus police and Frontex, but not simply so that Member States could congratulate themselves on the number of irregular migrants they had tracked down. A variety of information was required in order to generate intelligence on “the secondary movements of migrants who enter EU Member States illegally, the routes used and other information regarding smuggling of migrants”:

- Interception details: a unique case reference number; date and time of detection; location of interception; nearest city or town; means of transportation used during interception; means of transportation used to enter the EU.
- Intercepted migrants: nationality; gender; age, first point of entry into the EU; and first date of entry into the EU.
- Routes: main routes taken from third countries to enter the EU and SAC or EU/SAC countries used as transit countries; final intended destination.
- Modus operandi: false/falsified travel documents used (including nationality of passport); asylum application after or during detection; indications of smuggling of illegal migrants; facilitator’s nationality.

The aim of this data collection exercise was to inform the planning of subsequent large-scale police operations. The German government stated in response to parliamentary questions on the issue of European joint police operations that such exercises provide “a holistic view of illegal immigration flows for the entire internal Schengen space” [4] – therefore allowing for more efficient planning at European level.

Policing Europe

Joint European police operations are nothing new, although European governments and EU institutions and agencies have taken steps in recent years to improve their coordination. Many joint operations such as Aphrodite are organised within Council bodies such as the Customs Cooperation Working Party and the Law Enforcement Working Party. In such cases, a formal “coordination mechanism” [5] has been established “to avoid overlaps or incompatibilities as regard subject or timing”. [6] The mechanism is reviewed on a regular basis by the Council’s Committee for operational cooperation on internal security (COSI).

Aphrodite was also part of a new attempt to create a more formal mechanism for policing Europe – the “policy cycle for organised and serious international crime”. The aim of this is to ensure “optimum cooperation” between Member States, EU institutions and agencies, non-EU countries and international

organisations in order to tackle “the most important criminal threats” facing the EU – one of which, officials have decided, is “illegal immigration”.

Based on provisions in the 2009 Stockholm Programme that call for the adoption of “an organised crime strategy, within the framework of the Internal Security Strategy,” EU Member States’ justice and home affairs ministers adopted in November 2010 a set of conclusions “on the creation and implementation of a EU policy cycle for organised and serious international crime.” These set out the purpose of the policy cycle:

“To tackle the most important criminal threats in a coherent and methodological manner through optimum cooperation between the relevant services of the Member States, EU Institutions and EU Agencies as well as relevant third countries and organisations.” [7]

According to the European Commission, the policy cycle “is a valuable first attempt to base cooperation on cross-border crime phenomena at EU level on the concept of intelligence-led policing.” [8] An initial, shorter cycle began in 2011 and will conclude at the end of 2013. It will be followed by a “full”, four year cycle, running from 2014 until 2017. This will be divided into four parts, described in a Europol document:

1. SOCTA – the Serious and Organised Crime Threat Assessment, delivered by Europol, will deliver a set of recommendations based on an in-depth analysis of the major crime threats facing the EU. The Council of Justice and Home Affairs Ministers will use these recommendations to define its priorities for the next four years (2014–2017).
2. MASP – Multi-Annual Strategic Action Plans will be developed from the priorities in order to define the strategic goals for combating each priority threat.
3. EMPACT (European Multidisciplinary Platform against Criminal Threats) – these projects will set out operational action plans (OAPs) to combat the priority threats.
4. Review and assessment – the effectiveness of the OAPs and their impact on the priority threat will be reviewed by COSI (the Standing committee on operational cooperation on internal security). [9]

The priorities decided upon by the JHA Council for the 2011–13 cycle were West Africa; Western Balkans, illegal immigration, synthetic drugs, container shipments, trafficking in human beings, mobile (itinerant) organised crime groups and cybercrime. [10] The overall aim of the illegal immigration priority from 2011–13 was to:

“Weaken the capacity of organised crime groups to facilitate illegal immigration to the EU, particularly via southern, south-eastern and eastern Europe and notably at the Greek-Turkish border and in crisis areas of the Mediterranean close to North Africa.” [11]

Following political agreement on the priorities, “expert groups” made up of police, border control, customs, judicial and administrative officials from member states, EU agencies, the Commission, the Council and, on occasion, “representatives

from third countries and organisations such as Interpol”, [12] decided upon a set of “strategic goals”:

- Maintaining “a comprehensive intelligence picture, at national and EU level... on organised crime groups and the routes/modus operandi used by them for facilitating illegal immigration.”
- Using this “intelligence picture for more effective and cost-efficient border control, investigation and prosecution.”
- Enhancing efforts to address the smuggling of minors.
- Improving “the effectiveness of inter-agency cooperation at EU, bilateral and national level including by enhancing vertical and horizontal information exchange.”
- Using “innovative and efficient administrative procedures to disrupt organised crime groups/facilitators.”
- Enhancing “cooperation at bilateral and European level with third countries in particular with relevant illegal immigration source and transit countries.”
- Contributing to and making full use of “existing and future EU tools in the fields of external border management, immigration and law enforcement such as EU databases, networks, information exchange systems and funding programmes.” [13]

The next bureaucratic step was for OAPs to be drawn up for each year of the policy cycle. The OAP for 2012 included projects on establishing “the levels of cash being repatriated to source countries for illegal immigration,” workshops on “Common Risk Analysis at the EU level,” restarting “the SAHaraMED project aimed at improving the capacity of Libya in controlling and managing land and sea borders,” and “gathering intelligence on illegal migration OC [organised crime] groups from the EUROSUR big pilot project.” [14]

A progress report from May 2013 on the policy cycle’s illegal immigration project indicates that 12 of 16 projects undertaken in 2012 were considered completed with “key performance indicators” achieved. A further 10 projects to be carried out during 2013 were at various stages of preparation. One of the projects considered completed was the production of a:

“Tailored risk assessment (TRA) on illegal migration secondary movements emerging from southern, south-eastern and eastern Europe through the EU, and the involvement of organised immigration crime groups.” [15]

It seems that some of the information gathered during Aphrodite – for example on routes used by irregular migrants after entering the EU – was used to generate a “tailored risk assessment” that played a part in the planning of a “High Impact Operation” in Adriatic Sea ports and at the Italian-Slovenian border. [16] This was “eventually implemented in March 2013.” [17]

The new bureaucracy

Ultimate responsibility for and oversight of the policy cycle rests with the Standing committee on operational cooperation on internal security (COSI), which was established as a Council working

party by Article 71 of the Lisbon Treaty to “ensure that operational cooperation on internal security is promoted and strengthened within the Union.” The committee, made up of “high-level officials from EU States’ ministries of the interior and of Commission representatives” (with representatives of Eurojust, Europol, Frontex “and other relevant bodies” sometimes invited to meetings as observers) is responsible for monitoring “actual delivery of the planned activities or action” every six months. [18] Beneath COSI are a series of new bureaucratic layers: National EMPACT Coordinators, Project Drivers and Co-Drivers, Project participants, and Europol which now plays hosts to the EMPACT Support Unit that oversees and assists with projects, plans and reports.

EMPACT is “a structured multidisciplinary co-operation platform of the relevant Member States, EU institutions and agencies, as well as third countries and organisations (public and private)” [19] that will be used to organise and evaluate policy cycle operations. It follows on from the COSPOL (Comprehensive Operational Strategic Planning for the Police) project, established by the now-defunct European Police Chiefs Task Force with the aim of “providing support in strategic planning of law enforcement activities in the fight against organised and serious crime.” [20] A number of COSPOL projects – code-named WBOC, Syndru, Cocaine and CIRCAMP – were “integrated into the EMPACT framework” following the introduction of the policy cycle framework. [21]

Each policy cycle priority is managed by an EMPACT project group. These have four “key features”:

- An “intelligence-led” approach based on the European Criminal Intelligence Model; a “future-oriented and targeted approach to crime control, focusing upon the identification, analysis and ‘management’ of persisting and developing ‘problems’ or ‘risks’ of crime.”
- An “integrated character”, involving actors from a number of different countries, agencies, institutions and organisations.
- A “holistic” approach intended to address “all levers by which the phenomenon can be influenced by using measures and actions both of a preventive and a repressive nature.”
- “The project approach: a temporary management environment to develop activities in order to achieve pre-set goals.” [22]

The national officials responsible for ensuring the implementation of EMPACT projects are referred to as “National EMPACT Coordinators”. A Coordinator should be “a senior officer “with strategic command who has the authority to ensure the implementation of EMPACT in his country.” Their appointment “is a national competence and depends on the structure of the [law enforcement authority] in the [Member State].” [23] The Commission has suggested that the Coordinators be replaced “by the COSI representatives, who actually take the decisions about policy cycle priorities, strategic goals and EMPACT projects.” [24] Beneath the National Coordinators sit the “Drivers” and “Co-Drivers”. These are Member State officials who chair EMPACT groups and are considered to be essential to the success of

individual projects. [25] The Drivers draw up and implement OAPs along with the EMPACT project group; are able “to execute or delegate the management/leadership of a specific action”; should organise and chair group meetings; stay in touch with Member States and EU Agencies on “integration of the actions developed in the OAPs into their national planning and the Agencies’ yearly work programme”; submit progress reports to the EMPACT Support Unit; and “take into account the relevant cooperation with third countries and organisations.” A Co-Driver does not have to be appointed, although if one is put in place they can be a Member State or EU Agency representative. [26] An Italian official is the Driver of the illegal immigration project. [27]

Institutional support

Support from EU institutions for projects comes in the form of administration, intelligence provision, and training. An EMPACT project group is obliged to turn to EU agencies such as Europol and Frontex in order to obtain “a focused EU Intelligence Requirement” that will allow “intelligence gaps” to be filled. All members of the group should also attend “the relevant CEPOL [European Police College] training once the group has been established and before it starts its activities.” To help spread the word about EMPACT and the policy cycle, “the training may also be offered to other law enforcement officers.” [28] In 2013, CEPOL spent over €300,000 on providing 19 separate policy cycle-related courses, seminars and workshops. [29]

Europol has responsibility for much of the administration and coordination required to manage an EMPACT project. The agency hosts the EMPACT Support Unit, made up of permanent Europol staff and a member of staff seconded from the “Trio” EU Presidency (in which groups of three successive presidencies work together “to ensure consistency in the work of the Council over an 18-month period”). [30] The Support Unit is supposed to:

“Coordinate the activities of the eight EMPACT projects. This includes facilitating access to Europol funding, organising meetings, providing administrative support to meetings, distributing documents etc.” [31]

When an EMPACT group is established to implement and oversee a particular project a “designated Europol official” will act as an “EMPACT Project Support Manager, especially regarding the operational co-operation issues such as the effectiveness of the information and intelligence flow.” Support Managers are responsible for, amongst other things, presenting to project groups “the overall crime picture according to intelligence-led findings at Europol.” They should also “contribute with concrete cases to the EMPACT project” and “be proactive and help to steer and facilitate the process.” [32]

A shaky start?

The first eight OAPs were approved by COSI in December 2011, with work supposed to begin in January 2012. Six months into the plans, a report by Europol found a number of problems with the implementation of the policy cycle. [33] For example, “the content and quality of the OAPs vary to a great extent” and “there has been

a problem translating the strategic goals into concrete and tangible operational actions.” In November, Europol went further:

“The implementation of the 2012 EMPACT projects is so far not on track to meet the agreed strategic goals, the one exception is Priority F, THB [trafficking in human beings]. The other EMPACT Priorities include those making good progress, some making slow progress, and one that requires a review to consider whether it should be continued.” [34]

The Commission published another evaluation in January 2013 which essentially reiterated the finding of previous reports and recommendations. Member States need to follow up “their political decisions taken at COSI and Council... with operational commitment, including of resources, and the appointment of competent drivers and other experts.” More operational goals should be identified and there should be more flexibility in the organisation and execution of EMPACT projects, and there should be “recognition of the potential of Europol’s capabilities and of the importance of feeding information into Europol,” which “plays a key role in the medium and longer term.” [35]

By May 2013, things were looking up: a progress report by Europol stated that “progress has been made in all eight priorities of the 2012-13 policy cycle, although levels of support and activity by Member States are higher in some priority areas than others.” Europol’s major negative findings included a lack of operational activities for some OAPs, a concern that “intelligence flows to Europol need to be further improved”, obtaining EU funding for projects appeared to be difficult, and “difficulties in finding action leaders,” with “the majority of actions... led by Driver/co-Driver or Europol”. [36]

Europol has, perhaps unsurprisingly, praised the commitment of EU agencies to the policy cycle. In the agency’s December 2012 report, Frontex was noted for having “played an important role” in Priority C on illegal immigration, and the border agency “is also active as a participant” in Priority F on human trafficking. There is clear enthusiasm for the policy cycle project within Europol. At a meeting of EMPACT National Coordinators in May 2012, Europol’s Director, Rob Wainwright, was reported to have:

“[U]nderlined Europol’s commitment to the success of the policy cycle and explained that the upcoming re-organisation of Europol would contribute to ensuring that the policy cycle was the new way of doing Europol’s business and not treated as an additional task.” [37]

He noted that the agency was “undergoing an internal reorganisation which should be effective as of January 2013,” which means that “the support for the EU Policy Cycle by the Operations Department should be enhanced.” The question is whether the EU’s agencies, institutions and working parties can generate as much enthusiasm within the Member States for the policy cycle as they have themselves.

“A core group of committed participants”

Europol reported in May 2013 that the “illegal immigration priority” had “developed significantly” and that “it is now better

focussed and has a core group of committed participants”. The report recounts the two operational activities that took place in 2012. One was the “High Impact Operation” noted above.

The other is “considered the most successful activity undertaken”. Project FIMATHU (Facilitated Illegal Immigration Affecting Austria and Hungary) was highlighted in a December 2012 press release from Europol, which highlighted support given by the agency to “successful cooperation between Austria and Hungary against illegal immigration”. The press release noted that 16 operations against “facilitated illegal immigration networks have been carried out by Austrian and Hungary [sic] authorities in the last 14 months, and 439 facilitators have been arrested.” [38]

Europol’s role in this hunt for migrants involved processing and analysing information collected by national authorities in order “to find interesting links between Austria, Hungary and the source and transit countries, to identify the criminal networks organising the illegal immigration.” This included “data extracted from over 500 mobile phones that had been seized.”

By the end of 2012, “7,249 illegal migrants were apprehended”. Questioned by Statewatch on what happened to these people, a spokesperson for Europol said the agency did not hold the information, but it was likely that many of those arrested claimed asylum, resulting in them being sent to “reception camps”, while “some would be sent back to Hungary.” Neither Hungary nor Serbia, the country through which many of the migrants made their way into the EU and to which many would therefore have faced return, have distinguished records when it comes to the fair treatment of migrants and asylum-seekers. The UNHCR said last year that Serbia should not be considered a safe third country to which to return asylum-seekers. [39]

The “successful results” of December’s operations led to 10 other countries joining the project: Bulgaria, Croatia, Czech Republic, Germany, Poland, Romania, Serbia, Slovakia, Slovenia and Switzerland. According to Europol’s press release, “the common aim is to dismantle the illegal immigration networks operating via the Western Balkans as well as in other European countries.”

Work towards this “common aim” continued in late January 2013, with “one of the largest coordinated actions against people smugglers made at a European level, involving more than 1200 police officers.” 103 people were arrested across 10 countries under suspicion of “clandestine smuggling of a large number of irregular migrants into and within the EU.” By the end of the month, over “7,500 irregular migrants [had been] apprehended and 981 smuggling incidents identified in total in the two countries” [40] due to operations undertaken in the framework of FIMATHU.

Europol declared in its May 2013 progress report that FIMATHU had “delivered concrete operational results” and was “a model activity”. Further operations are being planned. The report notes that while the illegal immigration priority had only half the number of actions in 2013 (8 as opposed to 16 in 2012), “6 out of the 8 are much more operationally focused”. [41]

Continuing the crackdown

The ongoing development of joint police operations, and the attempt to introduce a structured cooperation framework through the policy cycle, gives rise to a number of concerns. Firstly, there are the issues of transparency and accountability. While a number of public documents are available on the policy cycle, none make clear to the average person how it functions and who exactly is responsible for it (the amount of bureaucratic jargon that had to be decoded in order to write this article is testament to this).

Furthermore, it appears that the policy cycle and the new frameworks and policies it introduces have not been subjected to democratic scrutiny by the vast majority of the parliaments of the Member States whose authorities are participating in policy cycle operations. While the Stockholm Programme provides a mandate for establishing the policy cycle, the Commission's 2011 annual report on the EU's Internal Security Strategy (which makes clear the purpose of the policy cycle and the political commitment made towards it) has apparently only been scrutinised by the parliaments of Malta and the UK. [42] Three years after the EU governments' interior ministers agreed to set up the policy cycle and two years after they set out the first round of priorities, the majority of national parliaments do not appear to have so much as noted its existence.

Secondly, the aim of the policy cycle to introduce intelligence-led policing operations across the EU, by plumping up the databases of EU agencies – in particular Europol and Frontex – raises a number of issues. A recent study by Joanna Parkin suggests that the agencies' receipt of vast amounts of information and the provision of "intelligence products" is shrouded in secrecy, which prevents "scrutiny and accountability of decisions and actions taken". The methodology used by Europol in drawing up its reports has come in for particular criticism:

"[I]t is almost impossible to evaluate the quality of the intelligence reports and threat assessments produced by EU Home Affairs agencies and, by extension, the validity of the 'evidence-based' claims which underpin the [Internal Security Strategy]." [43]

This raises particular concerns about operations targeting "illegal immigration" because both Europol and Frontex have in the past made spurious claims regarding the number of irregular migrants that enter the EU each year. [44]

The same report notes how EU agencies, whose powers are legally circumscribed due to Member State concerns over

sovereignty, have nevertheless tried to "expand their powers and activities by engaging in 'soft' law and policy," for example by "funding research, gathering data and analysing information, developing training and exchanging and pooling best practice." This has been justified through:

"[T]heir unique positioning at the supranational level: only EU agencies, with their EU-wide overview of data, information and trends, are able to piece together the supranational picture of the EU landscape of organised or serious crime."

The policy cycle is, in part, intended to enhance the capabilities of these increasingly powerful but barely accountable agencies.

Thirdly, and most importantly, law enforcement operations aimed at targeting "irregular migrants" - whether directly or as a side-effect of targeting "facilitators" - can lead to discrimination and fuel suspicion and hostility within and amongst communities. In the UK, the Home Office last year significantly increased the number of immigration checks in public places such as train stations and bus stops as part of a government campaign to create a "hostile environment" for irregular migrants. [45] This raised "widespread concern of discriminatory practice and allegations of racial profiling by immigration officers" [46] after it appeared that the majority of those stopped for questioning and identification checks were black or Asian. The Home Office agreed to pay damages to one woman who claimed an identification check and questioning amounted to discrimination as she did not have a British accent, [47] although maintained that its operations are "intelligence-led" and do not target particular ethnic groups. [48] Grassroots campaigns stepped up their own work in response to the stops. [49]

As demonstrated by the thousands of deaths in the Mediterranean over the last two decades, the EU's migration policies have failed to protect human rights and dignity. Further increasing repressive measures by police and border control agencies within the EU seems unlikely to lead to a different result. Nevertheless, the first "full" four year policy cycle will maintain a focus on "illegal immigration". This time round, Europe's law enforcement authorities will aim:

"To disrupt OCGs involved in facilitation of illegal immigration operating in the source countries, at the main entry points to the EU on the main routes and, where evidence based, on alternative channels. To reduce Organised Crime Groups' (OCGs) abuse of legal channels for migration including the use of fraudulent documents as a means of facilitating illegal immigration." [50]

Endnotes

[1] Cyprus delegation, 'Final report on Joint Police Operation Aphrodite', 6224/13, 13 April 2013, <http://www.statewatch.org/news/2013/oct/eu-council-cyprus-2013-04-22-6224-13-jpo-aphrodite-final-report.pdf>

[2] Ibid.

[3] Law Enforcement Working Party, 'Summary of discussions', 10324/13, 10 June 2013, <http://www.statewatch.org/news/2013/dec/eu-council-lewp-2013-06-10-10324-13-op.pdf>

[4] Antwort der Bundesregierung, 'Erkenntnisse zur Weiterreise von irregulär

in die EU eingereisten Migrantinnen und Migranten innerhalb des Schengenraums', Drucksache 17/10623, 10 September 2012, <http://dip21.bundestag.de/dip21/btd/17/106/1710623.pdf>

[5] Presidency, 'Guide for Joint Police Operations', 16825/10, 23 November 2010, <http://register.consilium.europa.eu/pdf/en/10/st16/st16825.en10.pdf>

[6] Presidency, 'Draft report to the European Parliament and national Parliaments on the proceedings of the Standing Committee on operational

- cooperation on internal security for the period January 2010 – June 2011', 12980/11, 18 July 2011, <http://register.consilium.europa.eu/pdf/en/11/st12/st12980.en11.pdf>
- [7] Presidency, 'Council Conclusions on the creation and implementation of a EU policy cycle for organised and serious international crime', 9 November 2010, https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/117583.pdf
- [8] European Commission, 'Evaluation of the EU policy cycle on serious and organised crime 2011-2013', SWD(2013) 17 final, 24 January 2013, <http://www.statewatch.org/news/2013/oct/eu-com-2013-01-24-policy-cycle-evaluation.pdf>
- [9] Europol, 'EU Policy Cycle SOCTA EMPACT', 4 October 2012, https://www.europol.europa.eu/sites/default/files/publications/eu_policy_cycle__socta__empact_1.pdf
- [10] Further details of these can be found in the 'Council conclusions on setting the EU's priorities for the fight against organised crime between 2011 and 2013', 10 June 2011, https://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/jha/122514.pdf
- [11] Presidency, 'Operational Action Plan related to the EU crime priority C: "illegal immigration"', 17793/2/11 REV 2, 15 December 2011, <http://indymedia.ie/attachments/oct2013/17793211.pdf>
- [12] Presidency, 'Amending the COSPOL framework into [EMPACT]', 15386/1/11 REV 1, 3 November 2011, <http://www.statewatch.org/news/2012/sep/eu-council-15386-rev111-cospol-to-empact.pdf>
- [13] Presidency, 'Operational Action Plan related to the EU crime priority C: "illegal immigration"', 17793/2/11 REV 2, 15 December 2011, <http://indymedia.ie/attachments/oct2013/17793211.pdf>
- [14] Ibid.
- [15] Presidency, 'EU Policy Cycle: Implementation Monitoring – Reports 2012 and 2013 – Priority "Illegal immigration"', 9996/13 ADD 3, 28 May 2013, <http://indymedia.ie/attachments/oct2013/999613.pdf>
- [16] Ibid. at [12]
- [17] Europol, 'EU Policy Cycle Implementation: Europol's findings', 9996/13, 24 May 2013 p.12, <http://www.statewatch.org/news/2013/may/eu-council-cosi-policy-cycle-monitoring-9996-13.pdf>
- [18] Claudia Hillebrand, 'COSI and the EU's internal security strategy', Ideas on Europe, 10 August 2010, <http://europeonthestrand.ideasoneurope.eu/2010/08/10/cosi-the-eu%E2%80%99s-internal-security-strategy>; European Commission, 'Standing Committee on Operational Cooperation on Internal Security (COSI)', http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/internal-security/cosi/index_en.htm
- [19] Ibid. at [11], p.4-5
- [20] Slovenian Presidency of the EU 2008, 'European Police Chiefs (EPCTF) for better operational cooperation between police forces', 22 May 2008, http://www.eu2008.si/en/News_and_Documents/Press_Releases/May/0522EPCTF.html
- [21] Presidency, 'Draft Report to the European Parliament and national Parliaments on the proceedings of the Standing Committee on operational cooperation on internal security for the period July 2011 – December 2012', 5839/13, 4 February 2013, p.7, <http://www.statewatch.org/news/2013/feb/eu-council-cosi-report-july-2011-dec-2012-5839-13.pdf>
- [22] Ibid. at [11]
- [23] Presidency, 'EMPACT Terms of reference', 13347/12, 5 September 2012, 13347/12, p.6, <http://statewatch.org/news/2013/oct/eu-council-2012-09-05-13347-empact-terms-of-reference.pdf>
- [24] Ibid. at [7]
- [25] Ibid. at [22]
- [26] Ibid. at [22], p.9
- [27] Ibid. at [14], p.4
- [28] Ibid. at [22]
- [29] Presidency, 'EU Policy Cycle: Monitoring of the Operational Action Plans 2013', 16801/13, 28 November 2013, p.7, <http://www.statewatch.org/news/2013/feb/eu-council-2013-11-16801-13-policy-cycle-oap-monitoring.pdf>
- [30] Danish Presidency of the Council of the European Union 2012, 'The Trio Presidency', <http://eu2012.dk/en/EU-and-the-Presidency/About-the-Presidency/Trioformandskab>
- [31] Presidency, 'EU Policy Cycle: Implementation Monitoring', 11246/1/12 REV 1, 19 June 2012, p.5, <http://register.consilium.europa.eu/pdf/en/12/st11/st11246-re01.en12.pdf>
- [32] Ibid. at [22]
- [33] Ibid. at [29]
- [34] Europol, 'EU policy cycle for organised and serious international crime implementation: Europol's findings, approaching the end of year 1', 16014/12, 20 November 2012, <http://www.statewatch.org/news/2013/feb/eu-council-europol-review-empact-16014-12.pdf>
- [35] European Commission, 'Evaluation of the EU policy cycle on serious and organised crime 2011-2013', 5820/13, 30 January 2013, <http://register.consilium.europa.eu/pdf/en/13/st05/st05820.en13.pdf>
- [36] Ibid. at [16]
- [37] Presidency, 'Summary report of the National EMPACT Coordinators meeting held at Europol on 29-30 May 2012', 11089/12, 8 June 2012, <http://www.statewatch.org/news/2013/oct/eu-council-2012-06-08-11089-empact-coordination.pdf>
- [38] Europol press release, 'Europol supports successful cooperation between Austria and Hungary against illegal immigration', 13 December 2012, <https://www.europol.europa.eu/node/1893>
- [39] 'EU: Serbia is "no longer a safe third country" but Commission says that readmission "functions smoothly"', Statewatch News Online, 25 September 2012, <http://database.statewatch.org/article.asp?aid=31848>; Nikolaj Nielsen, 'Handcuffs and leashes await asylum seekers in Hungary', EUobserver, 24 April 2012, <http://euobserver.com/justice/116017>
- [40] 'Major people smuggling criminal network dismantled across Europe – 103 suspects arrested', 30 January 2013, <https://www.europol.europa.eu/content/major-people-smuggling-criminal-network-dismantled-across-europe-103-suspects-arrested-0>
- [41] Ibid. at [16]
- [42] IPEX, 'First Annual Report on the implementation of the EU Internal Security Strategy', <http://www.ipex.eu/PEXL-WEB/dossier/document/COM20110790.do>
- [43] Joanna Parkin, 'EU Home Affairs Agencies and the Construction of EU Internal Security', Centre for European Policy Studies, December 2012, <http://www.ceps.be/book/eu-home-affairs-agencies-and-construction-eu-internal-security>
- [44] 'EU: Council of the European Union: Report to Standing Committee on operational cooperation on internal security', Statewatch News Online, August 2010, <http://database.statewatch.org/article.asp?aid=29928>
- [45] Decca Aitkenhead and Patrick Wintour, 'Lib Dem MP attacks coalition's plans for immigration reform', The Guardian, 13 July 2013, <http://www.theguardian.com/global/2013/jul/12/sarah-teather-lib-dem-mp-immigration-reform>
- [46] Sophie Naftalin, 'Immigration 'spot-checks' – a legal introduction', 6 August 2013, http://www.bhattmurphy.co.uk/media/files/Immigration_spot_checks_a_legal_introduction.pdf
- [47] Bhatt Murphy Solicitors, 'Home Office settle discrimination claim arising out of unlawful stop', 11 July 2013, http://www.bhattmurphy.co.uk/media/files/Press_release_SRN_130711.pdf
- [48] Ibid. at [44]
- [49] 'Anger erupts at UKBA operations', Network for Police Monitoring, 2 August 2013, <http://netpol.org/2013/08/02/anger-erupts-at-ukba-operations>; 'Activist backlash against immigration enforcement tactics', Channel 4 News, 2 August 2013, <http://www.channel4.com/news/immigration-enforcement-home-office-activist-backlash>
- [50] General Secretariat of the Council, 'Implementation EU Policy cycle for organised and serious international crime: Multi-Annual Strategic Plan (MASP) related to the EU crime priority "illegal immigration"', 11292/4/13 REV 4, 20 September 2013, <http://statewatch.org/news/2013/oct/eu-council-cosi-masp-2014-2017-illegal-immigration-11292-rev4-13.pdf>



A very British death: inquest returns unlawful killing verdict on outsourced deportation death of Jimmy Mubenga

Trevor Hemmings

Jimmy Mubenga died while being restrained by Detention Custody Officers working for the private security firm, G4S. The coroner heavily criticised the company's operational practices and identified a culture of racism endemic at G4S and other companies to which immigration functions are outsourced.

On 9 July 2013, a majority inquest jury found that Jimmy Kelenda Mubenga (46), who died from cardiorespiratory collapse during his deportation to Angola on a British Airways commercial flight from Heathrow to Luanda in October 2010, had been unlawfully killed while being restrained. Passengers on the flight had claimed that "excessive force" was used against him by three civilian Detainee Custody Officers (DCOs) employed by the Anglo-Danish private security company G4S. The company, as well as the Home Office, originally claimed that Mubenga had been "taken ill" while on the plane after complaining of breathing problems. In July 2012, a Crown Prosecution Service (CPS) review of evidence gathered by the police found that there was insufficient evidence to charge any G4S staff or the company itself. [1]

The inquest jury's verdict statement said:

"...Mr Mubenga was pushed or held down by one or more of the guards, causing breathing to be impeded. We find that they were using unreasonable force and acting in an unlawful manner. The fact that Mr Mubenga was pushed or held down, or a combination of the two, was a significant - that is more than minimal - cause of death. The guards, we believe, would have known that they would have caused Mr Mubenga harm in their actions, if not serious harm."

Mr Mubenga's family have now launched civil proceedings at the High Court against the multinational security company, with the family's solicitor confident that: "The evidence has clearly come out that the guards used unreasonable and dangerous force..." The Stop G4S campaign, which has supported Jimmy's wife, Makenda Adrienne Kambana, throughout her ordeal, has called on the CPS to press charges against the three DCOs responsible for the death and to weigh up the possibility of bringing charges of corporate manslaughter against G4S. [2] The Corporate Manslaughter and Homicide Act 2007 was

extended in September 2011 to include police forces, prisons and immigration detention centres. This means prosecutions against public or private bodies following a death in police or private security custody, which includes forced deportations, are now possible if it can be proved that the way these facilities were managed amounted to a breach of the duty of care and caused the death.

The campaign described the result as "a damning verdict not only of the three security guards responsible for Jimmy's death, but of G4S and the UK's privatised immigration system that allowed this tragedy to happen." Stop G4S went on to question the appropriateness of using profit-making multinational companies for the deportations of vulnerable people:

"The death of Jimmy Mubenga and the plight of his family are yet another example of how companies like G4S would always prioritise profit over the life and well-being of vulnerable people put in their care. The guards callously ignored Jimmy's pleas for help and that he could not breathe. Their only concern was to keep him quiet by suffocating him to death so that they wouldn't lose their bonuses. People like these and companies that employ them are simply not fit for the purpose of being in charge of deportation." [3]

No significant changes to the approved methods of the use of force while carrying out detention and deportations have been introduced in the three years since Jimmy Mubenga's tragic death.

A death foretold

The charity INQUEST, which provides free advice to the relatives of individuals who have died contentiously in custody, has identified a "culture of secrecy that pervades the use of force on detainees." The charity's co-director, Deborah Coles, has pointed out that "The risks of positional asphyxia have been well-known since the April 2004 restraint death of 15-year old Gareth Myatt in the secure training centre at Rainsbrook." [4] In April 2011, INQUEST published a detailed investigation into the death of Jimmy Mubenga which called for a parliamentary committee inquiry into the use of restraint and force in deportations. [5]

In 2008, a report jointly published by solicitors Birnberg, Peirce & Partners, Medical Justice and the National Coalition of Anti-Deportation Campaigns, titled *Outsourcing Abuse*, detailed approximately 300 instances of mistreatment involving "an alarming number of injuries sustained by asylum deportees at the hand of private 'escorts' contracted by the Home Office." It cited well documented evidence for the "widespread and seemingly systemic abuse of vulnerable people who have fled their own countries seeking safety and refuge." The report alleged that claims of assault against employees of private security companies had been "brushed off" by their employers at the Home Office. [6]

The extreme vulnerability of asylum seekers and undocumented migrants was further investigated in a project by Harmit Athwal for the Institute of Race Relations, titled *Driven to Desperate Measures: 2002-2010*, which catalogued 77 asylum seekers

and migrants who died either in the UK or attempting to reach the UK. [7]

Further evidence of the abuse of undocumented migrants and asylum seekers was submitted to the Home Affairs Select Committee, and published by the *Guardian* newspaper in 2011. The newspaper cited statements from four G4S whistleblowers who revealed that they had warned their managers repeatedly that illegal restraint techniques were being used by DCOs. Their evidence also alleged that security guards were not properly trained, were criticised by management for showing compassion and ostracised if they voiced concern. The whistleblowers asserted that the use of excessive force by DCOs was so commonplace that uncooperative asylum seekers were subjected to what guards nicknamed “Carpet Karaoke” – in which the handcuffed victim is forcibly bent over in their seat with their head forced between their legs. The practice is prohibited because it can lead to positional asphyxia, a form of suffocation. Because of the frequency of its use the practice has also become known colloquially as “privatised manslaughter.” [8]

In November 2010, INQUEST and Medical Justice organised a joint public parliamentary meeting, chaired by Lord Ramsbotham, the former Chief Inspector of Prisons from 1995 to 2001. The meeting concluded that there needed to be an urgent parliamentary inquiry into the use of force during deportations. In a House of Lords debate on 19 July 2012, Ramsbotham was highly critical of the Crown Prosecution Service’s decision not to prosecute G4S over the death of Jimmy Mubenga, saying: “I find the CPS decision, at kindest, perverse.” A 2012 study by the National Independent Commission on Enforced Removals [9], chaired by Ramsbotham, made four recommendations concerning deportation for profit:

- The setting up of a panel for complex returns.
- More robust licensing of security staff.
- Independent oversight of the enforced removal process.
- A review of restraint techniques appropriate for use during enforced removals.

“Carpet Karaoke”

Jimmy Mubenga and his wife Makenda Adrienne Kambana, both Angolan nationals, entered the UK in 1994 and made a claim for asylum. Mubenga had been a student activist in Angola and was forced to flee government persecution. Their asylum applications were refused but they were granted exceptional permission to stay in the UK and set up home in east London where they had five children. In early 2006, Mubenga was convicted of assault after a fight broke out at a bar and was later sentenced to a two-year term of imprisonment. He had no previous convictions and his wife explained in court that he was not a violent man but had been arrested because “he was in the wrong place at the wrong time.”

As a result of his conviction, in March 2007 Mubenga was notified that a decision had been taken to deport him back to Angola. On 9 September 2010, authorisation was given to separate him

from his family and to detain him pending removal. He was moved to various detention centres, the final one being Brook House which was outsourced to be run by G4S under contract with the UK Border Agency (UKBA). Mr Mubenga was detained by the UKBA on 27 September 2010 pending his planned removal on 12 October 2010. Four G4S DCOs were given the task of escorting him. They were Colin Kaler, Terence Hughes and Stuart Tribelnig, and the driver, Ian Duckers. Mubenga was driven to Heathrow Airport and on arrival was escorted to a British Airways flight to Luanda. Three of the DCOs boarded with Mubenga before the other passengers were allowed to embark.

The inquest heard that a struggle ensued between Jimmy Mubenga and the DCOs, during which he was restrained, rear-handcuffed and placed in a seat. The restraint continued for more than half an hour and Mubenga was heard by passengers to repeatedly shout that he couldn’t breathe and that he feared for his life. He then fell silent and became unresponsive. The guards informed the cabin crew that something was wrong and arrangements were made to get the plane back to its stand so paramedics could board and administer any care that was required. Mubenga received no first aid from either the custody officers or the cabin crew, all of whom were trained to deal with such emergencies. An ambulance was called and emergency treatment, including cardiopulmonary resuscitation, was belatedly administered on the plane by paramedics. By this time it was much too late and Mubenga died from cardiovascular collapse, in which the heart stops beating and the individual stops breathing.

“Securing your world” with G4S

The multinational security company, G4S, was born out of the merger between the Danish Group 4 Falk and British Securicor in 2004. The biggest security company in the world, G4S employs nearly 650,000 staff and has operations in 125 countries. Over 50% of the company’s revenue derives from ‘manned security services’ (guarding the property of private companies and wealthy individuals), with approximately 25% coming from public contracts (running prisons, immigration detention centres, policing, welfare to work programmes etc.) and nearly 20% from transporting cash. Nearly 50% of its business is in Europe and around a quarter in the USA. Among its international operations, G4S supplies ‘security’ equipment and services for use in Israeli prisons (where Palestinian political prisoners are held and tortured in breach of the Geneva Conventions) and the controversial checkpoints and settlements in the West Bank. [10] In the USA, the G4S subsidiary, Wackenhut, has faced repeated claims of security lapses at military bases where it is contracted to provide services. [11] In October 2013, the South African authorities announced that they would be taking over the management of Manguang correctional centre after G4S “lost effective control of the facility.” [12] The multinational was voted the third worst company in the world at the Public Eye awards for 2013 after Goldman Sachs and Shell. [13]

G4S does not seem to be any more competent in the UK, where outsourced contracts have led to a plethora of complaints alleging

a lack of accountability, incompetence and even fraudulent practice, although this has not made the slightest dent in the company's capacity to win essential government contracts. To cite just two recent examples, G4S informed the government that it was unable to fulfil its brief of providing 10,400 trained security guards for the London 2012 Olympic Games, necessitating members of the armed forces to be called in to replace them. [14] Labour MP Keith Vaz said that this showed "a lack of management accountability" within the firm. [15] In its most recent controversy, in July 2013, British Justice Secretary, Chris Grayling, asked the Serious Fraud Office to investigate G4S for overcharging for the tagging of criminals in England and Wales, claiming that it, and rival company Serco, charged the government for tagging people who were not being monitored, including some who were in prison or out of the country and even some who had died. The firm has admitted overcharging on its contract, but its offer to issue a £24 million 'credit note' to set the matter straight has been rejected by government ministers. [16]

Although G4S lost its detainee escort contract to Reliance Secure Task Management Ltd in May 2011 after Jimmy Mubenga died, G4S still operates other 'businesses' within the immigration and asylum 'market.' For example, the company runs two immigration detention centres, Tinsley House and Brook House, as well as Cedars Pre-Departure Accommodation, the family detention centre. In October 2012, the Chief Inspector of Prisons, Nick Hardwick, published an inspection report into Cedars in which G4S was criticised for using "non-approved techniques" and unacceptable levels of force (in an incident in which a pregnant woman's wheelchair was tipped up whilst her feet were held, causing significant risk to her baby). [17]

G4S is one of three multinational security companies, alongside Serco and Tascor, which took over provision of asylum accommodation in the UK in 2012 under UKBA's COMPASS asylum housing contract. The G4S contract covers 11,000 asylum seekers in the Midlands and north of England and is worth £30 million a year to the company. According to the Joseph Rowntree Foundation in its evidence to the House of Commons Home Affairs Committee on Asylum in April 2013, [18] the "new [COMPASS] contracts were to be less detailed 'strategic partnerships' compared with the previous contracts, monitored against performance indicators. The contract terms made little reference to cohesion and no reference to longer term settlement and integration goals, only to requirements to liaise with the local authority and the strategic migration partnerships on issues of 'social tension' and with the voluntary sector to provide support services." The JRF evidence indicated that tendering took place:

"...through a crude form of reverse auction, with bidders reducing their bids until only one was left. This enabled private bidders to drive down prices, below levels acceptable to the previous consortia, with little or no account taken of their experience or of the wider social value offered by bidders. Contracts were awarded exclusively to large private companies, with SERCO, G4S and Clearel each gaining two contracts." [19]

The JRF's evidence continued:

"In practice, the imperative for contractors was to secure accommodation quickly at the lowest possible cost. This often resulted in people being concentrated in the same low-cost areas already housing other vulnerable people... Knock-down prices inevitably produced a low-grade service. Little consideration was now given to asylum seekers' wider needs beyond accommodation. And in both the transition period and when the contracts were fully underway, serious problems emerged with the accommodation itself.... With the contracts now fully underway, problems still occur...."

The Inquest and Coroner's Rule 43 report

The inquest into the death of Jimmy Mubenga was conducted by assistant deputy coroner, Karon Monaghan QC, at Isleworth Crown Court between 13 May and 9 July 2013. The inquest jury returned a majority verdict (nine to one) concluding that Mubenga had been unlawfully killed (unlawful act killing). Following the verdict, Monaghan issued a Rule 43 report under the Coroner's (Amendment) Rules 2008 which is relevant when the evidence "gives rise to concern that circumstances creating a risk of other deaths will occur, or will continue to exist, in the future" and when "action should be taken to prevent the occurrence or continuation of such circumstances, or to eliminate or reduce the risk of death created by such circumstances." [20]

The Coroner's Rule 43 report summarises five key factors that emerged from the month-long inquest. [21] These points cover the following areas:

- Detention and Custody Officers: powers and accreditation
- The Provision of Overseas Escorting Services: the contractual agreements
- Racism: culture and personnel
- Use of Force
- First Aid

Detention and Custody Officers: powers and accreditation

Under the Immigration and Asylum Act 1999, DCOs must be accredited by the Secretary of State in the form of a certificate of authorisation stating that they can perform escort and/or escort and custodial functions. Monaghan describes the officers' powers to detain and remove by force as ranking "amongst the most coercive powers afforded by statute" and sees "no doubt why those upon whom such powers are conferred are closely circumscribed by the requirement to be certified in accordance with the statutory scheme" (Point 26). However, one of the DCOs involved in the deportation of Jimmy Mubenga was not accredited, his certification having expired four months earlier. This meant that the officer:

"...had no power to escort Mr Mubenga for the purposes of removal from the UK, or to take any steps to keep him in custody pending removal or to use or threaten the use of force to secure the removal of Mr Mubenga." (Point 28)

Moreover, the evidence presented to Monaghan at the inquest indicated that this practice was part of an agreement between G4S and the Home Office:

“... this state of affairs did not result from individual oversight or administrative error, but formed part of a practice agreed between G4S and the UK Border Agency. This practice has as its purpose and effect the informal authorisation of unaccredited G4S staff to carry out custodial functions and the removal of detainees from the UK (with threatened or actual force where necessary).” (Point 28)

The need to dispense with accreditation was intended to:

“... address delays within the UK Border Agency in processing applications for accreditation. The evidence presented to me following enquiries that I made about this practice indicates that in 2005 approximately 50% of DCOs (although not properly described since they had no extant accreditation) working in the Overseas operation for G4S were ‘awaiting their accreditation letters to come through from UKBA.’” [emphasis in original] (Point 28)

Indeed, by mid-2006, the UKBA had provided a “dispensation” allowing employees to work as DCOs provided a letter of accreditation had been applied for. According to Monaghan, this informal agreement for dispensation for first-time employees was “never withdrawn or amended.”

Monaghan rejected the Home Office’s assertion that an informal agreement between G4S and UKBA permitted officers to exercise the functions of DCOs without the statutory accreditation necessary as “impermissible” under the law. However, the coroner had no information on how frequently “unaccredited DCOs used or threatened force to effect removals” and pointed out that a detainee’s legal advisors would not have been aware of the absence of accreditation “and the impact that might have on the legality of any detention or escorted removal.” (Point 30)

The coroner insisted that:

“It is the responsibility of the Home Office to ensure that DCOs exercising the coercive powers afforded by the [Immigration and Asylum] Act are indeed accredited in accordance with the requirements of Section 156.” (Point 31)

She continued:

“It cannot be known now whether the “dispensation” did create a risk to the health and safety of detainees and deportees, not least because there appears to have been no enquiry (yet) into it... The minimum guarantees in the Act are intended to ensure the safe exercise of detention and removal functions and they were not respected for a significant period of time.” [emphasis in original] (Point 32)

Monaghan concluded by recommending:

- An inquiry into the circumstances in which the dispensation was granted to G4S to ensure that no such arrangements are currently in place and that they will not be reinstated.
- A review to audit compliance and to ensure that only accredited DCOs perform escorting and removal functions.

Contractual arrangements for the provision of Overseas Escorting Services

The coroner was highly critical of the Home Office/UKBA contract with G4S under which “payment was largely by results” and the fees payable were in large part based “on the number and duration of the escorted movements (including removals), comprising an hourly rate in respect of escorts.” These arrangements meant that:

“... if a job was aborted, payment would be made for the hours actually worked ending with the return of the escorts to the mustering location, not the anticipated hours that would have been worked on, for example, a lengthy overseas return journey.” (Point 35)

Performance measures were designed to “incentivise successful removals” through a points system that was given a monetary value that could be deducted from invoices submitted by G4S. One of these measures required that “detainee[s]... leave UK on scheduled transportation on the first attempt.”

“A failure to ensure the removal of a detainee on the first attempt, therefore, would result in an adverse financial consequence (the witness who dealt with this for the Home Office preferred not to use the word “penalty”).” [emphasis in original] (Point 36)

The allocation of performance points “had the potential to encourage removals where they might not otherwise go ahead (especially when not set off by other risk-reducing incentives, such as rewards for a reduction in the use of force.)” (Point 36)

Monaghan was also critical of the use of zero-hours contracts with DCOs, under which they are not guaranteed any work or pay but are allocated work as needed and then only paid for the hours actually worked. The coroner noted her concern that such inappropriate methods lead to the rise of dangerous practices:

“... the completion of removals by monetary award necessarily carries with it the risk that removals will go ahead in circumstances where otherwise they might be aborted. Having a financial interest in getting the job done does give rise to real concerns that inappropriate methods might be used to that end. Some dangerous practices have developed... with the specific purpose of ensuring that disruption by a deportee prior to take-off does not prevent removal. This may be symptomatic of the chosen arrangements for paying contractor and in turn employee. This is obviously very concerning indeed.” (Point 38)

The following recommendations are made regarding contractual arrangements:

- Performance measures should be aimed at promoting safe removals.
- Outsourced contractors should adopt pay schemes that do not incentivise removal at the expense of safety.

Racism: culture and personnel

Racist material (comprising around 86 text messages) was found on the private mobile phones of two DCOs involved in

the attempted removal that led to the death of Jimmy Mubenga. Some texts made extreme derogatory references to ‘immigrants’, advocating their deportation and worse. The texts had not been deleted despite their offensive content and some had been forwarded to other DCOs. Monaghan described the texts as evidence of “pervasive racism within G4S”. Testimony from one of the DCOs suggested that such texts were commonly shared among work colleagues.

Following the death of Jimmy Mubenga, one of the DCOs accompanying him posted a racially offensive picture on his Facebook page. According to the Rule 43 report, “The Facebook postings were illustrative of what appears to be a casual widespread racism” and demonstrated a lack of awareness or disregard to the significance of race in the events surrounding Mr Mubenga’s death. Responses to the post from other DCOs indicated that the comments “were not isolated” and some of the DCOs who responded worked for another company, Reliance, demonstrating that simply changing contractor will not “eliminate these cultural problems.”

Witnesses at the inquest provided evidence of an “unhealthy culture” at both G4S and Reliance, which created environments “where women, ethnic minorities and those of diverse religions” would not feel comfortable.

“It seems unlikely that endemic racism would not impact on all service provision. It was not possible to explore at the inquest the true extent of racist opinion or tolerance amongst DCOs or more widely. However, there was enough evidence to cause real concern, particularly at the possibility that such racism might find reflection in race-based antipathy towards detainees and deportees and that in turn might manifest itself in inappropriate treatment of them. As it was put by one witness, the potential impact on detainees of a racist culture is that detainees and deportees are not “personalized.” This may, self-evidently, result in a lack of empathy and respect for their dignity and humanity potentially putting their safety at risk, especially if force is used against them.” (Point 46)

Monaghan continued:

“If the experience of being subject to immigration law is not to be felt as a mere experience in racism, considerable care needs to be taken to ensure that those subject to its adverse consequences do not feel the sting of racism in its application.” (Point 48)

The coroner also drew attention to the lack of “racial balance” in the workplace. In 2010, G4S recorded 8.27% of its DCOs as Black or Asian against a non-white population of 40.2% in London “which can properly be assumed to form part of the pool from which workers employed to service Heathrow and Gatwick are drawn.” One of the reasons non-white workers are not applying for jobs at G4S is that recruitment is aimed at the police and military, organisations in which ethnic minorities are also underrepresented. There was a near absence of performance indicators or contractual requirements directed at promoting equality or compliance with anti-discrimination law.

The coroner makes the following recommendation:

- The Home Office should introduce measures to provide “non-discriminatory” escorting and custodial services and address staffing issues.

The Use of Force

The Rule 43 report found that:

“Between 2009 and 2012 approximately 10% and 12% of escorted removals involved the use of force and 20% of these took [place] on board the aeroplane. All DCOs were trained in ‘Control and Restraint’ (C&R) techniques and at least 10% were trained in ‘Physical Control in Care’, which is approved for use on children. C&R techniques can be found in the Use of Force training manual which is used by G4S instructors to train DCOs in various holds, locks and pain compliance [techniques].”

Monaghan identified five areas of concern in relation to C&R:

1. *Scenario-based training:* There was a lack of clarity about whether the Use of Force manual allowed for any departure from its contents to permit the provision of training in specific environments, such as on board a plane. This was “undesirable” and constituted a “significant training gap”, despite having been recommended in the 2008 review by the National Tactical Response Group for UKBA.
2. *Use of C&R on an aircraft:* G4S trainers had raised concerns about the suitability of C&R in the confines of an aircraft. C&R and the Use of Force training manual were developed in the context of prisons and prison vehicles, not for use on an aircraft: “restraint on a scheduled flight with passengers and crew in very close proximity and in particularly narrow spaces may represent very specific challenges.” A review of C&R, including considering its use on an aircraft, will not be finished until 2014 and will then require an implementation plan. Three years after the death of Jimmy Mubenga “no changes have yet been introduced.” Monaghan also emphasised the “need to show due respect for the dignity of those to whom these methods may be applied.”
3. *Bad practice:* Evidence to the inquest covered the practice known as carpet karaoke, a means of controlling “disruptive” deportees in an aircraft seat by pushing their head downwards (“singing to the carpet”) to prevent any sounds from disturbing or upsetting passengers or causing the captain to abort the removal. In 2008, G4S issued a notice to staff warning against the use of this position because it could increase the risk of positional asphyxia. The findings of the Jimmy Mubenga inquest jury gave rise to the question of whether carpet karaoke is still in use.
4. *Handcuffing to the rear:* The dangers of rear-handcuffing, as opposed to handcuffing at the front, particularly on an aircraft, have been widely documented. In particular, it can restrict breathing under certain circumstances, which led G4S to instruct DCOs not to leave a detainee handcuffed to the rear for an extended period of time and to move the

handcuffs to the front as soon as possible. Unlike aircraft cabin crew, who are prohibited from restraining by rear-cuffing because it would impede a passenger's ability to save themselves in the event of an emergency, there was no such restriction for DCOs.

5. *Restraint / positional asphyxia*: DCOs had been warned about the risks of positional or restraint asphyxia and this will need to inform the formulation of any new restraint techniques and training packages.

The coroner recommended:

- A rigorous review of approved restraint methods specifically for overseas removals with appropriate techniques for an aircraft should be introduced expeditiously.
- That any new use of approved techniques should take into account rear-handcuffing on an aircraft.
- That there was a need for clear guidance on any new force policy.

First Aid

When Jimmy Mubenga became unresponsive no one administered first aid to him, despite the three DCOs and all of the BA cabin crew having first aid training: "Mr Mubenga died in front of a number of people without anyone stepping in to see if he could be helped." BA cabin crew deferred to the DCOs and BA has not conducted an inquiry into whether their staff should have intervened and, according to the Rule 43 report, still does not consider such an inquiry to be necessary. Monaghan argues that: "Cabin crew need to fully understand their responsibilities, even in cases where escorts are failing to intervene to assist a deportee in medical danger."

According to an expert witness, Dr Deakin, there are weaknesses in the first aid training delivered by G4S to DCOs, and this training needs to be reviewed.

Monaghan made the following recommendations:

- Home Office should review instruction and guidance given to DCOs about the need to administer first aid in a medical emergency.
- Home Office should review first aid training (re. Dr Deakin)
- Home Office should review arrangements with scheduled airlines so that cabin crew / DCO responsibilities are clear.
- BA should conduct a review into the actions of cabin crew at the time of Mr Mubenga's death (and their failure to administer first aid).

Conclusion: 'Incentivising' deportations

Twenty years ago, 40-year old Jamaican housewife, Joy Gardner, died after an early morning raid by police and Detention Custody Officers who were attempting to serve her with a deportation order. Accompanied by her 5-year old British-born son and unwilling to leave, she was handcuffed, restrained using a body belt and gagged with 5 metres of tape. She subsequently fell

into a coma and died in hospital. The officers involved in her death were cleared of manslaughter charges. Joy Gardner's death led to mobilisations by black communities and the launch of a campaign against brutal and excessive state force that demanded justice for her and her family. Joy Gardner's death was commemorated in a poem by Benjamin Zephaniah in 1988, *The Death of Joy Gardner*, the opening lines of which are:

*"They put a leather belt around her
13 feet of tape and bound her
Handcuffs to secure her
And only God knows what else,
She's illegal, so deport her
Said the Empire that brought her
She died,
Nobody killed her
And she never killed herself..." [22]*

The equally callous death of Jimmy Mubenga shows that little has changed over the intervening two decades in relation to the practices of outsourced coercive state agencies responsible for deportations. This is despite repeated warnings of the consequences of a programme of escalating privatisation of critical infrastructure that began under Thatcher's Conservative government, was renewed under New Labour and continues unabated under the Conservative / Lib Dem coalition.

In 2005, the UN Committee Against Torture expressed concerns over "allegations and complaints against immigration staff, including complaints of excessive use of force in the removal of denied asylum seekers." [23] For a decade, practitioners and organisations involved in migration issues have repeatedly highlighted the dangers faced by vulnerable people in detention. Reports by such organisations have warned of the "culture of secrecy" that pervades the use of force on immigration detainees and the risks of death through the use of dangerous restraint techniques. Expert testimony from medical and legal practitioners, such as solicitors Birnberg, Peirce and Partners, INQUEST, Medical Justice and the Institute of Race Relations, has been bolstered by nearly 400 case studies to authenticate these concerns.

Further evidence has been presented by whistleblowers employed by private security firms on the realities of the introduction of competitive practices to the deportation 'business.' Their evidence to the parliamentary Home Affairs Committee alleged that managers repeatedly ignored warnings about the use of illegal restraint techniques by DCOs and the inadequate training they receive. Their allegations that the management of these outsourced immigration 'businesses' criticised and ostracised members of staff who expressed concern bolsters the claims made by medical and legal experts, and the detainees themselves, and demonstrates the dangers of profit making companies running such activities. 'Carpet Karaoke' is an entirely logical outcome of such competitive practices.

The privatisation of the UK's immigration and deportation system - which is impacted by the outsourcing of other state apparatus, such as prisons, policing (in part), housing and the criminal justice system - demonstrates that commercially driven private

companies can be relied upon to maximise profit, whatever the cost. According to the Joseph Rowntree Foundation in its evidence to the House of Commons Home Affairs Committee on Asylum regarding the provision of asylum accommodation, outsourcing has resulted in “knock-down prices [that] inevitably produced a low-grade service.” In fact, the treatment of Jimmy

Mubenga is much worse than this, and demonstrates that G4S has a callous disregard for human life. But it is also a measure of the institutional racism of a company whose zero-hours contract staff carry racist jokes about deportation on their mobile phones and had 773 complaints (including 48 claims of assault) filed against it by detainees in 2010. [24]

Endnotes

- [1] See: “The Death of Jimmy Mubenga: “Securing your world” through “privatised manslaughter”, Statewatch Volume 21 no. 1
- [2] “Campaigners call for corporate manslaughter charges against G4S following ‘unlawful killing’ verdict in Jimmy Mubenga inquest”, Stop G4S website. The website can be accessed at: <http://stopg4s.net/jimmy-mubenga-inquest-unlawful-killing>
- [3] Ibid.
- [4] Letter to the Guardian newspaper, 10.2.11. INQUEST website: <http://www.inquest.org.uk>
- [5] INQUEST “Briefing on the death of Jimmy Mubenga: The restraint-related death of Jimmy Mubenga during deportation by a private security firm: the call for a parliamentary inquiry and scrutiny by human rights mechanisms” Available at: <http://iapdeathsincustody.independent.gov.uk/wp-content/uploads/2011/05/INQUEST-Press-Briefing-on-Jimmy-Mubenga.pdf>
- [6] Birnberg Peirce & Partners, Medical Justice and the National Coalition of Anti-Deportation Campaigns “Outsourcing Abuse: The use and misuse of state-sanctioned force during the detention and removal of asylum seekers”: <http://medicaljustice.org.uk/images/stories/reports/outsourcing%20abuse.pdf>
- [7] Harmit Athwal “Driven to Desperate Measures: 2002—2010” (Institute of Race Relations) 2010: http://www.irr.org.uk/pdf2/DtDM_2006_2010.pdf
- [8] The Guardian “Security firm was warned of lethal risk to deportees”, 9.2.11
- [9] Lord Ramsbotham “National Independent Commission on Enforced Removals: Additional findings and recommendations (Citizens UK) 2012: <http://www.citizensuk.org/wp-content/uploads/2013/04/NICER-Final-Report.pdf>
- [10] See: Corporate Watch “G4S: A company profile” (2012) <http://www.corporatewatch.org/?lid=337>
- [11] <http://www.commondreams.org/news2006/0307-12.htm>
- [12] Ruth Hopkins “South Africa government ‘sacks’ G4S from prison.” The Guardian 10.10.13.
- [13] <http://www.publiceye.ch/en/vote>
- [14] Simon Neville “G4S Olympic security contract losses increase to £88m” The Guardian 12.2.13: <http://www.theguardian.com/business/2013/feb/12/g4s-olympic-security-contract-losses>
- [15] “G4S ‘are incompetent, amateurish and irresponsible” Daily Telegraph 17.1.12: <http://www.telegraph.co.uk/sport/olympics/olympicsvideo/9406237/G4S-are-incompetent-amateurish-and-irresponsible-.html>
- [16] Alan Travis “G4S faces fraud investigation over tagging contracts” The Guardian 12.7.13: <http://www.theguardian.com/business/2013/jul/11/g4s-investigated-overcharging-millions-pounds>
Alan Travis “Ministers reject G4S offer to repay £24 m after it admits tagging fiasco” The Guardian 20.11.13.
- [17] HM Chief Inspector of Prisons “Report on an announced inspection of Cedars Pre-Departure Accommodation 30 April - 25 May 2012” (Crown copyright 2012): <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/immigration-removal-centre-inspections/cedars/cedars-2012.pdf>
- [18] Joseph Rowntree Foundation “Evidence from the Joseph Rowntree Foundation and the Housing and Migration Network” (Home Affairs Committee Inquiry into Asylum) April 2013: <http://www.jrf.org.uk/sites/files/jrf/consultation-home-affairs-cmttee-asyluml.pdf>
- [19] Ibid
- [20] Karon Monghan QC “Report by the Assistant Deputy Coroner Under the Coroner’s Rules 1984, Rule 43”
- [21] Ibid
- [22] “Death of Joy Gardner” Benjamin Zephaniah: <http://multimedia.blogspot.co.uk/2009/12/poems-by-benjamin-zephaniah.html>
- [23] United Nations Report of the Committee Against Torture, 3 October 2005, para 39 (i).
- [24] Stop G4S website.



Refugee protests in Europe: fighting for the right to stay

Katrin McGuaran and Kees Hudig

Over the past eighteen months, well-organised, sustained protests have generated widespread publicity of human rights violations suffered by refugees and undocumented migrants living in the EU.

Across Europe and northern Africa, refugees and migrants have initiated mass mobilisations to protest against detention

and other inhumane treatment. In 2013, protests took place in Austria, Belgium, France, Germany, Hungary, Italy, the Netherlands, Greece and Tunisia, among other countries. Refugee and migrant protests are by no means new, but the scale and nature of the recent actions are unprecedented. The protesters are mainly asylum seekers and undocumented migrants rather than migrant residents or citizens, and the protests are sustained and linked transnationally. The protesters’ demands go beyond individualistic claims and target not only national but EU policy, for instance in calling for the dismantling of the Dublin system and Eurodac. Solidarity among the migrant and refugee support groups is strong and well organised, and the mainstream media is becoming increasingly sympathetic to their plight.

Recent migrant protests in the Netherlands

The Netherlands is renowned for having one of Europe’s most rigorous regimes on migrant issues. It has become extremely difficult for non-EU migrants to enter the Netherlands legally or to receive a temporary residency permit. Undocumented migrants

(and their children) who succeed in entering are deprived of basic human and civil rights. In particular, the frequent and often long imprisonment of undocumented migrants has been fiercely criticised by human rights organisations such as Amnesty International and the Dutch National Ombudsman. [1]

As in most European countries, a vast array of organisations dealing with migrant issues are active in the Netherlands. Many are preoccupied with humanitarian assistance or lobbying. In the 1980s and early 1990s, when there was still a popular progressive sentiment in the country, there was a mass movement that condemned racism and the mistreatment of migrants. [2] This sentiment changed when 'migration' became a mainstream political issue and anti-migrant views became popular. This development was accompanied by a growth in support for right wing xenophobic politicians and their newly formed parties. For progressive forces on migrant rights issues in the Netherlands this meant that their work became increasingly difficult and marginalised. The regime against migrants became increasingly harsh, while opposition to it dwindled.

Camping for solidarity

In May 2012, migrants, mainly from Somalia and Iraq, set up a camp with tents and makeshift shelters in front of the centre for refugees in Ter Apel in the north of the Netherlands. Many had been denied asylum but could not be deported, often because the return country did not want to receive them. This forced them into destitution, because on the one hand they cannot receive support from the state and on the other are prohibited from working. The Ter Apel camp grew to host several hundred migrants and also mobilised supporters, before it was evicted on 23 May 2012 when 117 people were arrested. Despite the eviction, the camp helped the migrants gain organisational experience, establish contacts with support groups and make their presence felt. After this first camp others followed, for instance in Den Bosch, Zwolle and Sellingeren.

One large group in Amsterdam set up tents at different sites before finding longer term refuge in September 2012 in a field in Notweg in Osdorp (west Amsterdam). The camp was actively supported by many local residents who brought food and other sustenance. Together with supporters, the migrants held several demonstrations in the centre of Amsterdam. The Osdorp camp continued until November 2012 when it was evicted by a large police force which first had to remove hundreds of sympathisers who were defending it.

By this time, the refugees and migrants had been able to mobilise enough support to occupy empty buildings for several months. This first happened in November 2012, at a church nicknamed *De Vluchtkerk* (the Refuge Church). Later, a high rise office block was occupied. Amsterdam city council took a formal decision to allow the migrants to stay for a longer period (through the cold winter), but demanded that they register and not allow any newcomers to join them. In the spring of 2013, the migrants left the church, as agreed with the owners of the building, and organised a demonstration with more than 2,000 participants. With

the help of squatter-activists, they found a new dwelling in an empty office building they baptised the *Refuge Flat (Vluchtflat)*. Again, the owner agreed to let them stay for several months, but in September 2013 they had to leave the building and roamed Amsterdam's streets. On 2 October, they found a new building, spectacularly located in the centre of town opposite the famous *Rijksmuseum*. The building was opened with the help of squatters and other supporters, just as the city council was debating their situation. The council adopted by a large majority a motion instructing the mayor to support the refugees.

The Hague

Another group of approximately 100 migrants and refugees set up a camp in The Hague in September 2012. This camp, next to the town's central station, was evicted on 17 December. The police decision to remove journalists from the area whilst they carried out the eviction guaranteed that the events received widespread publicity. [3] Tellingly, the decision to evict the camps was defended by the authorities with the argument that it was to protect the people living in them. Low winter temperatures and primitive cooking and sleeping conditions were put forward as justifications.

The protesters found a large empty building to pass the winter in, and an empty church called the *Vluchthuis* (House of Refuge) was occupied with the help of the local squatters' movement. They managed to maintain the building and use it as a platform for many actions targeted at the Dutch national government and parliament, which are situated in The Hague. The group and their supporters played a vital role in applying pressure on national policies regarding migrants.

Hunger strike

While different groups were setting up camps and occupying buildings, some of those detained in two special jails for undocumented migrants in Amsterdam and Rotterdam went on hunger strike on 30 April 2013 to protest against their inhumane treatment and to demand freedom. Prisoners in Scheveningen jail near The Hague joined the action in May. Hunger strikers in Rotterdam fasted for weeks - some for months - while others stopped taking fluids. They also had an active support group outside the prison which organised weekly demonstrations. The hunger strikers did not have their demands met by the government. The deputy Minister for Justice, Fred Teeven, argued that "[the government] would not surrender to blackmail." The hunger strikers were treated harshly and often placed in isolation. Two hunger strikers were even deported despite doctors warning that they were in a vulnerable physical condition. [4] During the hunger strike, the *Immigratie-en Naturalisatiedienst* (IND) decided that the time was right to deport groups of migrants on a special charter flight. Four flights landed at Lagos, Nigeria, to deport 54 undocumented migrants who were guarded by 108 members of the military police (*marechaussee*). [5]

In the meantime, the government coalition (*Rutte 2*), consisting of the Labour Party (*PvdA, Partij van de Arbeid*) and the neoliberal Peoples' Party for Freedom and Democracy (*VVD, Volkspartij*

voor *Vrijheid en Democratie*), proposed making 'illegal presence' in the Netherlands a punishable crime. [6] Legislation was submitted to parliament but was opposed by many, including the government's Advisory Committee on Human Rights (*College voor de Rechten van de Mens*). [7] The controversial plans also caused turmoil at the Labour Party's convention in May 2013, after which the leadership chose to soften the law and demote 'illegal presence' from a 'crime' to an offence punishable by a fine.

Visibility

Although the protests did not result in a fundamental change in government policy, there were many impressive achievements. For instance, the migrants succeeded in highlighting their cause. The Amsterdam group used a large banner with a picture of its members and the slogan "We are here!" which was carried at every demonstration and hung on the different buildings that were occupied. Secondly, the protests also addressed the migrants' pressing need for shelter and food. Furthermore, it was important that those primarily affected by government policies stood up to oppose them and, by so doing, were able to mobilise widespread public support. These activities also strengthened the political make-up of the groups. The government had tried to divide them by offering temporary shelter to those who would collaborate by being deported 'voluntarily', but this proposal was unanimously rejected. The group argued that they should remain united and demand a political solution for all undocumented people.

One example of a prominent cultural activity organised by the Amsterdam group was the formation of a band (the We Are Here Band) that performed at several well-known cultural institutions. They performed at the Paradiso Music Hall in March 2013 as the support act for reggae band Alpha Blondy. Solidarity was expressed at another Paradiso event, when the *Vluchtwerk* migrants were offered free transport by Amsterdam's largest taxi company, TCA.

Germany: Iranian asylum seeker's death in Würzburg leads to wave of protests

Recent events in Germany have shown that the country's refugee and undocumented migrant population has grown over the past decade to become a political movement capable of mobilising large numbers of people, network with and gain solidarity from other social movements, and develop its own analyses and set of demands. A wave of protests began in February 2012 after 26-old Iranian Mohammad R. committed suicide at an asylum seekers' accommodation centre in the Bavarian city of Würzburg. A doctor at the centre claimed that the authorities were aware of the suicide risk because Mohammad had stated his intention to harm himself in December 2011 and a psychological check-up by the Würzburg University hospital had recommended "a change in the type of accommodation." The doctor confirmed that Mohammad's situation was not an isolated case and that mass accommodation "makes [people] sick." [8] Suicides of migrants and asylum seekers might previously have gone unnoticed by the German mainstream media and politicians, but on this occasion Mohammad's death led to 80 fellow residents

organising a spontaneous demonstration in front of the Würzburg City Hall, the biggest refugee protest in Germany so far. One demonstrator said: "We are treated like animals". [9]

Protest camps and the march on Berlin

In the months following Mohammad's death, refugees and migrants set up protest camps in various cities. In September 2013, refugee activists, supported by The Voice Refugee Forum, the Break Isolation network and the Caravan for the Rights of Refugees, began a 600 km march to Berlin, making more than 30 stops on route. [10] The protesters' anger was directed at Germany's refugee policies in general, but specifically opposed the so-called 'residence law'. It bans asylum seekers from traveling within Germany; forcing them to remain within the administrative district they have been allocated. In many cases, this is a secluded asylum seekers' centre without access to bigger cities and amenities. Asylum seekers who violate the restriction, which can only be lifted after an application has been made and permission granted by the authorities, face administrative fines that are deducted from the meagre living allowance they receive. The march was therefore not simply a protest but an act of civil disobedience.

Demonstration and year-long protest camp on the Oranienplatz in Berlin

On 13 October 2012, the march culminated in a demonstration of 6,000 to 7,000 people in Berlin, where a protest camp was set up on the Oranienplatz. One year on, the camp survives - the city council having failed to achieve a political majority to evict it - and has generated a great deal of media interest. The approximately 150 refugees living on the square have sent messages to the UNHCR in Berlin. [11] In mid-October, they were offered accommodation in the city until their residency status was determined. [12] Since late 2012, protest camps and actions at asylum seeker accommodation centres have become more common across Germany and have been paralleled by similar actions in the Netherlands and Austria. Although these protests do not yet form a European-wide organisation, links and information channels exist between the protesters.

Nationwide protests continue in 2013

Throughout 2013, the protests not only continued but spread across Germany. [13] On 30 July 2013, residents of the Eisenberg asylum seekers' accommodation centre began a hunger strike against inhumane living conditions. The same month, refugees from the Main-Tauber area protested in Stuttgart for more humane living conditions and fundamental rights. In August, a protest camp was set up in Bitterfeld and refugees began a 16-day hunger strike against the situation in the camps, the isolation they face and the 'residence law'. At the time of writing, refugee protests are taking place in Nuremberg, Regensburg, Passau, Düsseldorf, Heiligenhaus, Witzenhausen, Bitterfeld and Jena. [14] In addition to opposing isolation in asylum seekers' accommodation centres and travel restrictions within Germany, these protests are demanding freedom of movement within the EU.

Lampedusa in Hamburg: defying Dublin II and refusing fingerprinting under Eurodac

An important characteristic of the recent wave of protests, not only in Germany and the Netherlands but also in Austria, Hungary and Italy, is a growing awareness of and resistance to the Dublin II regulation and its related fingerprint database Eurodac. Dublin II makes it impossible for refugees to choose their country of destination as it stipulates that a refugee's first point of entry into the EU is the state responsible for processing their asylum application. This policy condemns refugees to a condition of circular deportation and rips families apart. [15] Refugees fleeing recent armed conflicts in Libya and Syria have started resisting the policy by refusing to be fingerprinted. The protest goes beyond individual refusals.

In May 2013, around 300 Sub-Saharan refugees, who were seasonal workers in Libya but fled the country after war broke out, demanded the right to stay in Germany on humanitarian grounds, even though they had arrived in Europe via the Italian island of Lampedusa. They organised under the name 'Lampedusa in Hamburg and Berlin'. [16] Around 80 people currently live in a church in the St Pauli district in Hamburg, while others reside in mosques or on the streets. [17] German authorities are refusing to take responsibility for them and point to Italy as the accountable state under Dublin II. Despite widespread support for their demands, Hamburg authorities instructed police to specifically target Lampedusa group-members for arrest. Refugees and other inhabitants, in Hamburg and other cities, reacted promptly, calling demonstrations and protesting at police actions on an almost daily basis. In Hamburg, on 25 October 2013 more than 10,000 St. Pauli football supporters joined a march demanding rights for refugees immediately after the home game against SV Sandhausen. On 2 November, a further 9,000 demonstrators protested against police harassment of the Lampedusa group.

Growing resistance to Dublin II was also visible at the Austrian-Hungarian border on 19 August 2013 when refugee activists living in Austria staged a protest under the slogan: "Hands off our fingerprints!" They showed solidarity with migrants and refugees detained in abysmal living conditions in the north Hungarian Nyírbátor detention centre, many of whom were arrested while crossing the border to Austria or were deported from Austria to Hungary under Dublin II. Detainees come from Nigeria, Pakistan, Algeria and Kosovo. [18] The protest was also timed to coincide with the twenty-fourth anniversary of the "Pan-European Picnic" of 1989, when 600 East Germans fled to West Germany in a symbolic opening of the Iron Curtain. [19] One refugee said that they chose the date to show "that although the border is no longer visible, for us it's still impossible to cross." Detainees in Nyírbátor also protested at their incarceration and abysmal living conditions. On 9 August, they went on hunger strike to demand their freedom. Many had already received permission to stay but were still detained. In the centre they were served rotten food and had no recreational facilities. Indeed, Germany has stopped deporting refugees to Hungary because of the sub-standard

treatment they receive, although Austria continues to do so. The refugees' main demands - both inside and outside the prison - is the closure of Nyírbátor (and all detention centres) and an immediate stop to Dublin II deportations to Hungary. [20]

Migrants and refugees arriving in Sicily and Lampedusa from northern Africa now often try to avoid being fingerprinted. A survivor of one of the many tragedies reported in the Mediterranean these past months told a Dutch journalist that, contrary to Italian media reports, 13 people who died after jumping from a vessel that beached near the Sicilian town of Scicli on 30 September 2013 did not do so because they had been told to by smugglers, but because they feared being fingerprinted on interception. Laurens Jolles, UNHCR Regional Representative for Southern Europe, said: "The phenomenon is fairly recent; we have been seeing this for about a year." She said that the Italian authorities are not sure how to handle the new situation - whilst they are obliged to register the refugees under Dublin II they do not want to use force. The reality is that force is sometimes used, but other times refugees are simply released from detention. [21]

Refugee Struggle Congress in Munich: protestors theorise and organise

Alongside Berlin and Hamburg, Munich has become a centre for the organisation of protests. Refugees have held meetings with representatives of the Federal Office for Migration and Refugees - which makes decisions about asylum applications including the granting of refugee status - but no political concessions were made. [22] After the violent end of a protest camp and hunger strike in Munich in June, refugees initiated another protest, marching from Würzburg to Munich. The protesters demanded an end to mass accommodation in asylum centres and 'residence laws'. In Bavaria, the march was policed aggressively and violently broken up. [23] Protestors have continued to set up camps at various locations and they intend to continue with their demonstrations.

Political demands

In March 2013, following a year of protests, the '*Aktionskreis unabhängig protestierender Flüchtlinge*' (Action group of independently protesting refugees) organised the Refugee Struggle Congress to evaluate events. 300 people attended to discuss the refugees' protests and to contextualise them within a theoretical framework. The central aim of the conference was to demonstrate that resistance to state refugee policies is possible if the problem of isolation can be overcome. Accordingly, transport was arranged to maintain protests outside asylum seekers' accommodation centres (which refugees call *lagers*). In the tradition of post-colonial theory, members of the Action group emphasised the political nature of their migration and rejected charity: "Forget the concept of pity, of shelter they give us. We, in fact, are non-citizens without permission to become a citizen." [24] The concept of the non-citizen, debated at length during the conference, continues to be used by protesting refugees. The Action group recently dissolved [25] but protests continue to be organised and reported by the "Refugee Struggle for Freedom" platform. [26]

Political demands for the right to stay are also being made by refugees in Austria. Along with the above-mentioned resistance to Dublin II deportations, they are demanding: the right to basic welfare, free choice of residence, access to the labour market, education and social insurance, the creation of an independent asylum authority to assess claims, and that socio-economic factors be recognised as valid grounds for asylum.

Solidarity, transnational organisation and a humanitarian corridor

The events of the past 18 months represent a watershed in Europe's recent social movement history. Migrants and refugees have begun organising themselves on a scale that transcends spontaneous uprising and are launching sustained campaigns with clear political demands. Although the nature of the protests and their demands differ in each country or region, they reveal remarkable similarities and there are signs of developing transnational forms of organisation. In recent years, campaigns, caravans and information exchange networks have been set up with (transit) migrants in Africa [27] by the Afrique-Europe-Interact network, which started practical collaboration in early 2011 with a three-week convoy for 'Freedom of Movement and Fair Development' in early 2011. Around 250 activists – mainly from Mali – joined a bus tour from Mali's capital Bamako to the 11th World Social

Forum in Dakar, Senegal. In November 2011 three delegates of the Mali section of Afrique-Europe-Interact came to Europe and described various social struggles in West Africa during a 14-day tour. Exchange and support from European solidarity groups with migrants is also generated by noborder camps, for instance in Greece in 2009 which supported the Dublin II resistance.

Solidarity actions with migrants both along and within Europe's borders have led to more sustainable networks and transnational initiatives that offer concrete support to transit migrants. For instance, the website Welcome to Europe [28] offers useful addresses and practical help to transit migrants in three languages. In 2012, activists created a "Transborder Map" which provides an overview of transnational initiatives along external borders. [29] The map will be updated to include an interactive platform to make the interconnections between different struggles and campaigns for global freedom of movement more visible. [30]

It is important that civil society groups in Europe show solidarity with refugee and migrant struggles by supporting their demands. These struggles are clearly not limited to the acceptance of individual asylum claims and resistance to deportations. They go beyond charity and demand the right to global freedom of movement. The first step in this direction would be opening a humanitarian corridor, as proposed by human rights and migrant groups, in response to the recent humanitarian tragedies in Lampedusa. [31]

Background: the deadly border regime

Refugees and undocumented migrants living in Europe suffer human rights violations as a result of EU and Member State policies. This has been understood by refugee and migrant support groups ever since restrictive migration policies started at the EU level. From the 1970s onwards, inter-governmental decision-making under Trevi, Schengen, and the Ad Hoc Group on Immigration, provided the ideological and legal backdrop to the current regime by conflating migration with security, thereby laying the ground for EU policies to come. Inhumane and racist migration and asylum policy was well-enshrined at EU and Member State level by the time the European Parliament gained some limited say in 1999 and the successive five-year Justice and Home Affairs plans (Tampere, The Hague, Stockholm) continued the anti-migrant and anti-refugee agenda: visa regimes, carrier sanctions, 'manifestly unfounded, safe third and country of origin' principles, Eurodac, Dublin II, SIS II, the militarisation of external border controls, Frontex, CIREA, CIREFI, detention and deportation have become the pillars of the EU's approach to flight and (low-skilled) labour migration.

'Early warning systems' to detect and push back refugee flows from crisis regions have become standard practice in the EU. But instead of stopping migrant flows towards Europe, the cat and mouse game between border police forces and Frontex on the one hand, and refugees and labour migrants fleeing war, poverty and destitution on the other, [32] is resulting in thousands of deaths at Europe's borders. This war against migration flares up and receives media coverage depending on refugee flows, Frontex activities deployed against them and the level

of migrants' perseverance in trying to enter Europe despite the deadly consequences they are facing. Since the early 2000s, the Italian island of Lampedusa has been in the spotlight as a central transit point for migrants trying to enter Europe. The EU responded with militarisation and mass deportations in 2005 that led to hundreds of deaths in Libya. [33] 2005 was also the year when police shot dead migrants trying to climb the fence into the Spanish enclaves of Ceuta and Melilla and deported hundreds to the desert. Due to the nature of undocumented migration, it is impossible to ascertain the exact number of deaths, but according to research by the migrant rights network migreurop, at least 17 people died in these events. [34] Since 2008, the Greek/Turkish Evros region and Aegan islands have received much media attention as one of the main entry routes for migrants and refugees. In 2012, more people crossed this border irregularly than at any of the EU's other external borders. According to Amnesty International, since August 2012 at least 101 men, women and children have died attempting to cross the sea to reach the Greek islands, many of them from conflict-torn countries like Afghanistan and Syria. [35]

These border regions are permanent crisis zones. [36] Even if the most recent tragedy - more than 359 migrants from Somalia and Eritrea drowned in a boat accident off the coast of Lampedusa in October 2013 [37] - has sparked media criticism of EU and Member State policies, they are unlikely to change unless mass resistance grows against the EU's deadly systematic human rights violations against refugees at the border.

Links

Pictures:

<http://www.flickr.com/photos/100506739@N03/sets/72157635150400554>
<http://www.flickr.com/photos/koernerfresser/sets/72157634283201826>
<http://www.flickr.com/photos/koernerfresser/sets>

Refugee and migrant protests in Germany:

The Voice Refugee Forum: <http://thevoiceforum.org>
Action Committee of the 2012 protests: <http://www.refugeetentaction.net/index.php?lang=de>; this was dissolved in September 2013
Refugee Struggle for Freedom: <http://refugeestruggle.org/en>
Karawane für die Rechte der Flüchtlinge und MigrantInnen: <http://thecaravan.org>
Lampedusa in Hamburg: <http://lampedusa-in-hamburg.tk>

Refugee and migrant protests in the Netherlands:

Amsterdam group: <http://wijzinhier.org>
The Hague Group: <http://rechttopbestaan.nl>
Resistance against deportations: <http://deportatieverzet.nl>
General website: <http://no-border.nl>

Refugee and migrant protests in Austria:

Refugee protesters in Vienna: <http://refugeecampvienna.noblogs.org>
Indymedia covering refugee protests in Vienna: <https://linksunten.indymedia.org.de/node/95310>

Endnotes

- [1] See Committee against Torture. Concluding observations on the combined fifth and sixth periodic reports of the Netherlands, adopted by the Committee at its fiftieth session (6-31 May 2013). http://www.johannes-wier.nl/userfiles/file/CAT_C_NLD_CO_5-6-AUV_en.pdf, National Ombudsman. 'Immigration Detention: penal regime or step towards deportation? About respecting human rights in immigration detention'. August 2012, http://www.nationaleombudsman.nl/sites/default/files/report_2012105_immigration_detention.pdf, Amnesty International.
- The Netherlands: The detention of irregular migrants and asylum-seekers. June 2008. <http://www.amnesty.org/en/library/info/EUR35/002/2008/en> and Ombudsman: snel alternatieven nodig voor vreemdelingenbewaring. August 2012. <http://www.nationaleombudsman-nieuws.nl/nieuws/2012/ombudsman-snel-alternatieven-nodig-voor>
- [2] For instance, the annual Nederland Bekent Kleur (Netherlands Follow Suit) demonstration against racism on March 21 (UN Day against racism) drew up to 80,000 people in 1991 and 1992
- [3] See (video) report here <http://rechttopbestaan.nl/2012/12>
- [4] Statewatch News, 6.8.13, Two rejected asylum-seekers deported by charter flight, <http://www.statewatch.org/news/2013/aug/nl-deportation-flight.htm>, translation of NOS article from 1.8.13.
- [5] Article in newspaper Trouw 23 July 2013 Deportations More Often by Charter: <http://www.trouw.nl/tr/nl/5009/Archief/archief/article/detail/2484849/2001/07/23/Uitzetten-vaker-per-charter.dhtml>
- [6] Statewatch News, 31.5.13, Government moves to criminalise irregular migrants, <http://www.statewatch.org/news/2013/may/12nl-irregular-criminalisation.html>
- [7] <http://www.mensenrechten.nl/berichten/wetsvoorstel-straftbaarstelling-illegaal-verblijf-biedt-onvoldoende-waarborgen-voor>
- [8] Evangelischer Pressedienst, Landesstelle Bayern, Iraner stirbt in Würzburger Asylbewerber-Unterkunft, 30.1.13, <http://www.epd.de/landesdienst/landesdienst-bayern/schwerpunktartikel/iraner-stirbt-w%C3%BCrzburger-asylbewerber-unterkunft>
- [9] The Voice Forum, 13.2.12, Protestaktion in Würzburg: am 13.02.12 um 12:00 Uhr: Tod eines Flüchtlings in Würzburger Asylbewerberheim, <http://thevoiceforum.org/node/2432>
- [10] Flüchtlinge und MigrantInnen im Kampf für globale Bewegungsfreiheit, by Hagen Kopp, 19.7.13, <http://ffm-online.org/2013/07/19/fluchtlinge-und-migrantinnen-im-kampf-fur-globale-bewegungsfreiheit-hagen-kopp/#more-11288>
- [11] Refugee Council Sachsen-Anhalt, 11. Dezember 2012, <http://www.fluechtlingsrat-lsa.de/2012/12/messages-from-the-refugee-protest-camp-oranienplatz-to-the-unhcr-in-berlin>
- [12] Der Tagesspiegel, 11.10.13, Oranienplatz: Die Zelte werden abgebaut, <http://www.tagesspiegel.de/berlin/protestcamp-in-berlin-kreuzberg-oranienplatz-die-zelte-werden-abgebaut/8922264.html>
- [13] Die Flüchtlingsproteste dauern an – nicht nur in Berlin, 21.11.12, <http://www.proasyl.de/en/news/news-english/news/die-fluechtlingsproteste-dauern-an-nicht-nur-in-berlin>
- [14] Pro Asyl, 3.9.13, Übersicht der aktuellen Flüchtlingsproteste in Deutschland, <http://no-racism.net/article/4515>
- [15] Forum Réfugiés-Cosi. The Dublin II Regulation: Lives on Hold. February 2013, <http://www.ecre.org/component/content/article/56-ecre-actions/317-dublin-ii-regulation-lives-on-hold.html>
- [16] Lampedusa in Hamburg, <http://lampedusa-in-hamburg.tk>
- [17] Übersicht der aktuellen Flüchtlingsproteste in Deutschland (Pro Asyl, 3.9.13), <http://no-racism.net/article/4515>
- [18] Hände weg von unseren Fingerabdrücken!, 20.8.13, <http://refugeecampvienna.noblogs.org/post/2013/08/20/hande-weg-von-unseren-fingerabdrucken-protest-zum-tag-des-paneuropaischen-picknicks>
- [19] http://en.wikipedia.org/wiki/Pan-European_Picnic
- [20] Hunger strike of refugees at Nyirbátor detention center!, 10.8.13, <http://no-racism.net/article/4493>
- [21] NRC Handelsblad, De pijn zit bij de vingerafdruk, 12/13.10.13
- [22] Federal Office for Migration and Refugees, <http://www.bamf.de/EN/Startseite/startseite-node.html>
- [23] Taz, 2.9.13, Drei Verletzte nach Polizeieinsatz, <http://www.taz.de/Protestmarsch-der-Fluechtlinge/122978>
- [24] "... and we will rise up!", Hinterland, issue 22.
- [25] The Action Circle of the Independent Non-Citizen Struggle: Break up announcement, 9.9.13, <http://www.refugeetentaction.net>
- [26] See: <http://refugeestruggle.org>
- [27] See: afrique-europe-interact.net
- [28] See: w2eu.info
- [29] See: www.noborder.org
- [30] Flüchtlinge und MigrantInnen im Kampf für globale Bewegungsfreiheit, by Hagen Kopp, 19.7.13, <http://ffm-online.org/2013/07/19/fluchtlinge-und-migrantinnen-im-kampf-fur-globale-bewegungsfreiheit-hagen-kopp/#more-11288>
- [31] Progetto Melting Pot Europa, Appeal for the opening of a humanitarian corridor for the European right of asylum, <http://www.meltingpot.org/Appeal-for-the-opening-of-a-humanitarian-corridor-for-the.html#.UlsFiRDbyb4>
- [32] Los Angeles Times, 4.10.13, War, poverty, repression: Why so many Africans risk their lives to migrate, <http://www.latimes.com/world/worldnow/la-fg-wn-migration-africa-europe-causes-20131003,0,547248.story>
- [33] European Parliament, 14.4.05, European Parliament resolution on Lampedusa, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2005-0138+0+DOC+XML+V0//EN>
- [34] Migreurop, 12.10.05, Ceuta and Melilla : The EU declares war on migrants and refugees, <http://www.migreurop.org/article1252.html?lang=fr>, June 2006, Guerre aux migrants. Le livre noir de Ceuta et Melilla, <http://www.migreurop.org/IMG/pdf/livrenoir-ceuta.pdf>
- [35] Amnesty International, July 2013, Enter at your peril. Lives put at risk at the gate of Europe, http://www.amnesty.eu/content/assets/hdr/Enter_at_your_peril_-_Campaign_briefing.pdf
- [36] Doctors Without Borders, 2013, Overview of migrant-related news, <http://www.doctorswithoutborders.org/news/allcontent.cfm?id=154>
- [37] BBC, 5.10.13, Media review: Italy boat sinking prompts soul-searching, <http://www.bbc.co.uk/news/world-europe-24400147>

reviews

Fundamental Rights at Europe's southern sea border.

Fundamental Rights Agency of the European Union (FRA), March 2013, pp.160 (ISBN: 978-92-9239-085-3).

Reviewed by Marie Martin

This report examines the fundamental rights aspects of EU sea border surveillance and management and analyses the impact of policies and practices on the right to life, the right to non-refoulement, and the right to be treated in a dignified manner.

This report is the first of two – another will soon be published on the situation at the EU's land and air borders – and is based on desk research and field work in Greece, Italy, Malta, Spain, and to a certain extent Cyprus, and observation during two Frontex operations (Operation Indalo – Spain, and Operation Poseidon – Greece). It covers migrants' arrival by sea in Southern Europe and the Canary Islands and draws on interviews with migrants, refugees, officials from national border guard authorities, and the EU border management agency, Frontex.

This volume follows a series of alarming publications by human rights organisations, researchers, and the Council of Europe, on human rights violations during sea border operations, some involving Frontex, and a landmark ruling by the European Court of Human Rights in February 2012 which stated that the push-back of migrants to Libya by Italian border guards was unlawful.

Looking at interception processes, procedures at points of disembarkation, return and readmission, the Fundamental Rights Agency expresses concern at a number of shortcomings which may lead to the violation of the rights of migrants and refugees, such as the lack of regular monitoring of interception and reception practices by independent bodies. The agency highlights the absence of concrete safeguards regarding the right to claim asylum upon interception at sea: vessels used to intercept/rescue migrants are "unsuitable for carrying out asylum or other administrative procedures." The report also warns against the reception of migrants - including unaccompanied children - upon disembarkation in "detention-like" facilities, and the lack of legal advisors or even interpreters during identification interviews.

The EU's cooperation with third countries in Northern and Western Africa to prevent irregular migration is also disturbing, especially with the forthcoming adoption of the European Border Surveillance System (EUROSUR). The Fundamental Rights Agency highlights that unauthorised emigration is still a crime in six of the eight countries with which the EU cooperates, in breach of the right for "everyone to leave any country including one's own" (Universal Declaration of Human Rights). Moreover, although the collection and exchange of personal data with third countries is explicitly prohibited, the agency considers that current safeguards are far from sufficient with, for example, the serious risk of migrants in need of international protection being identified and intercepted before they reach European shores. Finally, the report emphasises that many of the third countries

where migrants are returned "have a record of persistent and serious human rights violations." Readmission in these countries may breach the principle of non-refoulement.

This important report documents and criticises the situation at Europe's sea borders at a time when the human rights impact of the EU's border management has been condemned by NGOs and has been subject to crucial debates within EU institutions. While two international campaigns have been launched since the start of 2013 (FRONTEXIT and SOS Europe), two crucial pieces of legislation will be at the heart of institutional negotiations: the controversial adoption of EUROSUR in October 2013, and the revision of the "guidelines supplementing the Schengen Borders Code as regards the surveillance of the external sea borders in the context of operational cooperation coordinated by [Frontex]."

Link to the report: <http://fra.europa.eu/en/publication/2013/fundamental-rights-europes-southern-sea-borders>

Frontexit campaign website: <http://www.frontexit.org/en>

S.O.S. Europe: What's the deal at Europe's borders? campaign: <http://www.whenyoudontexist>.

<http://www.whenyoudontexist>
eu/s-o-s-europe-what-s-the-deal-at-europe-s-borders-actions

new material

Civil liberties

Down the Tubes: The 2013 hunger strike at Guantánamo Bay.

Reprieve, July 2013, pp. 30.

Guantánamo Bay detainees have been on hunger strike since February 2013 in protest against their illegal detention without charge or trial. At the time of publication of this important report, the US Defense Department's figures indicated that 106 detainees were on hunger strike, with 45 being force-fed. Through collating unclassified evidence from strikers' letters, calls and visits with lawyers the report shows the impact of the hunger-strike – "some detainees have lost as much as a quarter (Shaker Aamer) or even a third (Ahmed Rabbani) of their weight. Others report health problems including chest pain, low blood pressure, and problems with their sight." The report finds evidence of "heavy-handed tactics" used by the prison authorities to break the strike. These include: the frequent use of violent procedures (Forcible Cell Extractions) against those who refuse food; the use of unnecessary force during the force-feeding process; a regime of invasive genital searches for any detainees wishing to take calls from family or legal counsel, or attend meetings and the use of solitary confinement as punishment.

Download from: http://www.reprieve.org.uk/media/downloads/Hunger_Strike_Final_Report.pdf

How to close Gitmo: a roadmap. *Reprieve*, July 2013, pp. 22

This timely report outlines nine key actions that the US administration must implement to end the escalating hunger strike

and close Guantánamo Bay, as had been repeatedly promised by President Obama during his election campaigns. Among the steps proposed by Reprieve are the following: the appointment of a White House official with responsibility for closing Guantánamo; ensuring that this official liaises with those seeking the closure of Guantánamo; the issuing of 'national security waivers' for the 86 detainees who have already been cleared; the establishment of rehabilitation centres overseen by the Red Cross; the appointment of an independent rapporteur charged with resolving detainee complaints, and the repealing of restrictions on prisoner transfer contained in the last several National Defense Authorization Acts (NDAA's).

Download from: http://www.reprieve.org.uk/media/downloads/2013_07_10_PRIV_How_To_Close_GITMO_-_FINAL_w_NS_Edit.pdf

Independent Commission on Mental Health and Policing Report. *Independent Commission on Mental Health and Policing*, May 2013, pp. 80.

The Independent Commission on Mental Health and Policing examines how the Metropolitan police deals with incidents involving people with mental health problems. The Commission examined 55 cases where people had died or sustained serious injury during or following contact with the police, and took evidence from people with relevant experience, noting that people with mental health issues complained they were treated like criminals by the police. The report found problems in the following areas, among others: the disproportionate use of force and restraint; discriminatory behaviour; the failure of the Central Communications Command to deal with calls; lack of mental health awareness among staff and officers; lack of police training in suicide prevention; failure to provide adequate care to vulnerable people in custody; problems in inter-agency working; a "disconnect" between policy and practice; the internal Metropolitan police culture; poor record keeping, and a failure to communicate with families.

Download from: http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/10_05_13_report.pdf

Serco: the company that is running Britain. John Harris, *The Guardian*, 29 July 2013.

Serco is one of the biggest 'public service companies' with annual pre-tax profits of £302m and a workforce of 53,000 people in 2012. This article investigates the cost-cutting private company and the "mind-boggling" range of activities it undertakes in the UK (and abroad), "taking in no end of things that were once done by the state, but are now outsourced." Difficulties in investigating Serco arise from the fact that its contracts with government are subject to commercial confidentiality and as a private firm it's not open to Freedom of Information requests. Some of its better known recent contracts include running Thameside prison where a "report by Her Majesty's Inspectorate found that 60% of its inmates were locked up all day." Another example is the management of out of hours GP services in Cornwall where "data had been falsified, national standards had

not been met, there was a culture of 'lying and cheating', and the service offered to the public was simply 'not good enough'." A third instance involved the tagging of offenders, where the company was one of two contractors (the other was G4S) "that had somehow overcharged the government for its services, possibly by as much as £50m; there were suggestions that one in six of the tags that the state paid for did not actually exist." In 2012, despite its scandalous track record, Serco was awarded the contract to run the National Health Service's (NHS) community-health services in Suffolk (involving among other things, district nursing, physiotherapy, occupational therapy, end-of-life palliative care and wheelchair services) after bidding £16m less than the existing provider. Hundreds of staff had to leave the NHS and become Serco employees and within weeks a huge reorganisation was announced that involved getting rid of one in seven jobs and imposing inferior contracts on the remaining employees. One former NHS worker reported a 50% drop in staffing hours, poor morale, increased administrative tasks and a "farcical" IT regime. She said: "We've still got the same number of patients...so the workload has massively increased."

See: <http://www.theguardian.com/business/2013/jul/29/serco-biggest-company-never-heard-of>

Law

Briefing: Schedule 7 to the Terrorism Act 2000. *Stopwatch*, 17 June 2013, pp. 5.

This briefing outlines the coalition government's proposed changes to the draconian Schedule 7 to the Terrorism Act 2000, the widest ranging and most intrusive stop power in the UK which operates outside of the regulations that cover other police powers of stop and search. Under the current Schedule 7 powers available to officers at ports, although stopped individuals are not under arrest they may be examined for up to nine hours and questioned, searched, strip-searched and have samples of their biometric data, including DNA and fingerprints, taken from them regardless of the outcome of the encounter and in the absence of a lawyer. In 2011-2012, 63,902 stops were carried out under Schedule 7, and while no information is available on the number of people convicted, there was a total of ten terrorism-related convictions from 2009-2012. The majority of those subject to Schedule 7 stops were from Black and ethnic minority groups (56%) even though they account for only approximately 14% of the national population. People from a Muslim background are particularly affected by its use, with the Equality and Human Rights Commission (EHRC) commenting on its "negative impact." The EHRC argues that for "some Muslims, these stops have become a routine part of their travel experience" and warns that "this power is silently eroding Muslim communities' trust and confidence in policing." David Anderson QC, the UK's terrorism watchdog, said that: "I have not been able to identify from the police any case of a Schedule 7 examination leading directly to arrest followed by conviction in which the initial stop was not prompted by intelligence of some kind." Proposed changes to the power under the Anti-Social Behaviour, Crime and Police Bill

are then outlined and while StopWatch welcomes them, it argues that they should "...go much further towards ensuring that this power will be used proportionately, fairly and with greater transparency."

Download from: http://www.stop-watch.org/uploads/documents/Schedule_7_Briefing_-_June_2013_StopWatch_Final.pdf

Military

Submission from Drone Wars UK to the Defence Select Committee Inquiry 'Towards the Next Defence and Security Review' on the use of armed Unmanned Aerial Vehicles (UAVs).

Drone Wars UK (Defence Select Committee), April 2013, pp. 13

This submission notes the alarming increase in the use of armed Unmanned Aerial Vehicles (UAVs) with "over 1,400 UAV air-strikes in Afghanistan over the past five years, with armed UAVs now carrying out a quarter of all air combat air sorties within Afghanistan." It details five "legal and ethical concerns relating to current use of armed UAVs and two specific concerns about future developments." Concerns about current use include: whether armed UAVs are lowering the political costs of military intervention, expanding the use of targeted killing and creating international instability rather than security. With regard to future use the submission details "concerns about moves to develop autonomous unmanned systems as well as arming smaller surveillance UAVs." The submission also makes a plea for greater transparency in relation to the use of armed UAVs by UK armed forces.

Download from: <http://dronewarsuk.files.wordpress.com/2013/04/dwuk-submission-to-dsc-april-2013.pdf>

Policing

PC Blakelock: black people are waiting for justice too. Stafford Scott, *The Guardian*, 25 July 2013.

Following the death of Cynthia Jarrett in a police raid on the Broadwater Farm estate on 5 October 1985, Tottenham exploded with anger, confronting the police in a riot that led to the death of PC Keith Blakelock. More than 200 people were arrested in relation to Blakelock's killing, including the author, "the overwhelming majority without access to families or legal advice." Six people were charged with Blakelock's murder, three juveniles and three adults, Engin Raghıp, Mark Braithwaite and Winston Silcott, leading to the formation of the Broadwater Farm Defence Campaign. The juveniles were acquitted while the adults had their guilty verdicts overturned after it was revealed that the police had fitted them up. At the appeal prosecutor Roy Amlot QC said: "Unequivocally, we would not have gone against Braithwaite, against Raghıp, or against any other defendants having learned of the apparent dishonesty of the officer in charge of the case." This officer (and others) was cleared of charges of perjury and perverting the course of justice in 1994 at a trial in which the main witness, Winston Silcott, was not even called by

the crown to give evidence. Scott notes, by contrast, the persistence and determination of the state's campaign to track down PC Blakelock's killers, which after nearly 30 years resulted in the arrest of a man in July 2013. Scott observes that "While the police and Blakelock's family speak about the need to see justice for the officer, we are left wondering what justice looks like; we have not seen anything resembling it." He concludes: "The police had their opportunity to find Blakelock's killers during the first investigation, but their corrupt methods and ineptitude blew it. While the force may be hoping the country has forgotten, the black community of Tottenham has not. It fuels our community's mistrust of the police and judiciary, and has been passed down a generation. It is one of the reasons that Tottenham burned again in 2011. Ultimately, a community that cannot expect justice will always be prone to outbreaks of outrage."

See: <http://www.theguardian.com/commentisfree/2013/jul/25/blakelock-black-people-justice-tottenham-police>

Unwelcome Guests: Greek police abuses of migrants in Athens. *Human Rights Watch*, June 2013, pp. 58 (ISBN 978-1-62313-0237).

In August 2012 Athens police launched Operation Xenios Zeus, carrying out stops and searches aimed at cracking down on irregular migration. This report is based on 44 interviews with people who have been subjected to at least one stop, highlighting some involving unjustified searches of belongings, racist abuse and insults and, in some cases, physical abuse. Many people were detained for hours in police stations pending verification of their legal status. Between August 2012 and February 2013, the police forcibly took almost 85,000 foreigners to police stations to verify their immigration status, yet no more than 6% were found to be in Greece "unlawfully." Many of those subject to Operation Xenios Zeus were stopped because of their physical characteristics and they "gave disturbing accounts of clear targeting on the basis of race or ethnicity."

Download from: http://www.hrw.org/sites/default/files/reports/greece0613_ForUpload.pdf

Report of the independent external review of the IPCC investigation into the death of Sean Rigg. Dr Silvia Casale, Martin John Corfe and James Lewis QC (Independent Police Complaints Commission), May 2013, pp. 110.

This IPCC review was initiated after an inquest jury in 2012 found that police officers used unsuitable and unnecessary force against Sean Rigg, who died after being restrained and arrested in south London in 2008. Despite the inquest jury finding police officers failed to uphold Rigg's basic rights and that their actions contributed to his death, an investigation by the IPCC had found that the same police officers had acted reasonably and proportionately. This investigation makes clear that the IPCC made a series of errors in clearing the police officers. The INQUEST charity, which supported the Rigg family throughout

their ordeal, commented: “The litany of failings identified in the report not only vindicate Sean Rigg’s family’s concerns over the IPCC investigation and police conduct but also point to the need for significant practice change for the IPCC, police and Police Federation. The test will be in the prompt and robust implementation of its recommendations. Both the interests of bereaved people and public will be better served by an IPCC that can hold the police to account for criminality or misconduct and help develop good practice and safeguard lives in the future.”

Download from: http://www.ipcc.gov.uk/news/Pages/pr_170513_Riggreview.aspx

Report of the Azelle Rodney Inquiry. Sir Christopher Holland, *The Azelle Rodney Inquiry*, July 2013, pp. 151.

24-year old Azelle Rodney was killed in Edgware, north London, on 30 April 2005 after Metropolitan police officers performed a ‘hard stop’ on the car he was travelling in. Rodney was hit by six bullets fired by an officer (identified as E7 at the inquiry) who discharged eight shots in just over a second. This report, by a retired high court judge, disputed E7’s claim that he feared Rodney had picked up a gun, and concludes that E7 had “no lawful justification” for firing the shots that killed his victim. The inquest’s unlawful killing verdict is unique in that a police shooting was found to have violated the right to life: according to solicitor, Daniel Machover, police planning failed to avoid lethal force being used, the force used was not reasonably necessary and was disproportionate. E7 now faces possible prosecution after the official inquiry’s conclusions.

Download from: http://azellerodneyinquiry.independent.gov.uk/docs/The_Azelle_Rodney_Inquiry_Report_%28web%29.pdf

South Wales Police: Destruction of documents leading to the collapse of the R. v Mouncher & others trial at Swansea Crown Court on 1 December 2011. *Independent Police Complaints Commission*, July 2013, pp. 43.

This IPCC report examines the collapse of the trial of eight police officers (and others) accused of perverting the course of justice in their investigation into the brutal death of sex worker, Lynette White, in Cardiff in 1988. South Wales police initially issued a description of a white male suspect for the murder, but proceeded to charge five innocent mixed-race men who became known as the Cardiff 5, in a miscarriage of justice case that stands alongside the Tottenham 3, the Birmingham 6 and the Bridgewater 3. Three of the five men were convicted and received life imprisonment sentences. Their wrongful convictions were not overturned by the Court of Appeal until 1992 when it ruled that the police investigating the murder had acted improperly in extracting confessions. In 2011 eight of the police officers who worked on the original investigation stood trial in the largest police corruption trial in British criminal history. However, the case against the officers quickly collapsed when the defence submitted that copies of key files been destroyed

and the judge ruled that the defendants could not receive a fair trial and acquitted them. It later transpired that the documents had not in fact been destroyed but were merely misplaced, to conveniently resurface after the trial was over. The IPCC investigation concludes that police filing errors were to blame.

Download from: http://www.ipcc.gov.uk/news/Pages/pr_160413_LynetteWhite.aspx

Prisons

Preventing the deaths of women in prison: the need for an alternative approach. *INQUEST*, June 2013, pp. 18.

The INQUEST charity has been monitoring deaths in custody in England and Wales for 30 years and its research findings are used in this report to highlight the shared experiences of 100 women who died in prison between 2002 and 2013. The report considers 38 fatalities that have occurred in the six years since the publication of the Corston report (into the deaths of six women over a 12-month period at Styal prison) in March 2007. A more in-depth understanding of the context in which the deaths of women occurred, and the special vulnerability of women in prison, is examined through the stories of six of the women who died in prison. The report stresses that the government has not implemented Corston’s key recommendation - the dismantling of the women’s prison estate - and points to its failure to ensure fundamental changes to policy and practice as well as the inability of the prison estate to learn from previous investigations and inquests. The INQUEST report concludes with a call for a radical overhaul of the way women in conflict with the law are treated.

Download from: http://www.inquest.org.uk/pdf/briefings/INQUEST_Preventing_deaths_of_women_in_prison.pdf

Dying prisoners routinely chained to hospital beds. Eric Allison and Simon Hattenstone, *The Guardian*, 8 November 2013.

This article reports a Guardian investigation which revealed that “prisoners who are seriously and terminally ill are routinely chained in hospitals despite posing no security risk.” Allison cites a number of cases to illustrate the practice that is described by Labour MP, Glenda Jackson, as “disgusting and horrific” and by Deborah Coles, co-director of INQUEST, as a “shocking abuse of power.” A spokesman for the Prison Service defended the practice arguing that public protection was the top priority.

See: <http://www.theguardian.com/society/2013/nov/08/dying-prisoners-chained-hospital-beds>

Report on an unannounced inspection of HMP Oakwood, 10-21 June 2013. *HM Chief Inspector of Prisons*, October 2013, pp.111.

The UK’s largest prison, HMP Oakwood, which is located near Wolverhampton, opened in April 2012 under the management of G4S. The privately-run “supersized” prison can accommodate

1,600 prisoners, but despite its modern facilities this report finds that it failed to live up to its aspirational website mission statement to “inspire, motivate and guide prisoners to become the best they can be.” This report is the prison’s first inspection and it raises a number of concerns, including prisoner frustration at being unable to obtain basic requirements such as clothing, toiletries and cleaning materials – with some prisoners claiming that it was easier to obtain drugs than a bar of soap. The report also found that too many prisoners felt unsafe with high levels of assaults and self-harm, support services were practically non-existent and processes to support those in crisis were not good enough. There was illicit drug and alcohol use, with one-in-seven inmates reporting that they developed a drug problem while imprisoned. Staff-prisoner relationships were poor and prisoners had little confidence in inexperienced staff members who, for instance, failed to tackle “delinquency and abusive behaviour.” The provision of healthcare was very poor and the care needs of some prisoners with disabilities were not met. Over a third of prisoners were locked up during the working day and education was poor with facilities under used. Resettlement and offender management was uncoordinated. The inspectors made 99 recommendations and concluded that, rather than representing the future direction for prisons, a retrieval plan was urgently needed. A new 2,000 place super-prison in Wrexham is planned for 2017.

Download from: <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmpris/prison-and-yoi-inspections/oakwood/oakwood-2013.pdf>

Racism and fascism

Told to Move On: forced evictions of Roma in France. *Amnesty International*, September 2013, Index: EUR 21/007/2013, pp. 54.

French President François Hollande condemned forced evictions in last year’s presidential election campaign, but since coming to power his government has adopted measures regulating evictions from informal settlements (including an August 2012 Inter-ministerial circular on social assistance for evictions affecting “unauthorised” settlements, with options for dismantling operations). Funds have been made available to finance social assistance projects related to the eviction of settlements and squats and consultations with the local NGOs and authorities are ongoing. This Amnesty report finds that migrant Roma are still being subjected to forced evictions, and are “... repeatedly chased out of their living spaces without being adequately consulted, informed or rehoused, in breach of France’s international commitments.” No safeguards to prevent forced evictions have been put in place and “the measures taken by the government so far are insufficient to remedy this violation of international human rights law.” Surveys carried out by the Ligue des Droits de l’Homme and the European Roma Rights Centre recorded 11,982 migrant Roma being driven out of squats as a result

of eviction by the authorities, fire, accident or attack in 2012. This number increased sharply in the first two quarters of 2013, reaching 10,174, and during July and August 3,746 Roma were evicted in 39 eviction operations; temporary housing solutions were offered in only 19 cases. The report notes that the evictions occur against a background of “discrimination and hostility” exacerbated by “comments made by political leaders and published in scurrilous press articles, as well as from several attacks and assaults by local residents.” The report says: “The inhabitants of informal settlements, most of whom are migrant Roma, live in degrading conditions and experience a worsening of their situation as a result of forced evictions which render them all the more vulnerable. Evictions often leave these families and individuals homeless because they are not offered any alternative accommodation, and sometimes the solutions found are inadequate because they are temporary or unsuitable. As a consequence, they are often forced to go and settle elsewhere on land where they can once again put up makeshift shacks to live in until the next eviction. Such repeated evictions often interrupt schooling and health care and can leave people more vulnerable to other human rights violations.”

Download in English: <http://www.amnesty.org/en/library/asset/EUR21/007/2013/en/8717ca62-2598-46d0-83d1-1b958054e675/eur210072013en.pdf>

Download in French: <http://www.amnesty.org/en/library/asset/EUR21/007/2013/en/3ec1f479-04c7-45f0-8f06-59793aa90ef8/eur210072013fr.pdf>

From Pillar to Post: Pan-European racism and the Roma. Liz Fekete, *European Research Programme Briefing Paper No. 7*, *Institute of Race Relations*, July 2013, pp. 12.

This report fails to find any evidence for systemic change following the introduction of the 2011 EU Framework for National Roma Integration Strategies at a time when Roma are particularly vulnerable due to “severe economic depression, rising nationalism and weak unprincipled governance.” Fekete argues that nativism – “the policy of protecting the interests of native-born or established inhabitants against those of immigrants” – is “the guiding principle in establishing residence rights and restricting welfare at a time of austerity” The briefing paper examines the situation in southern Europe (Greece and Italy), Eastern and Central Europe (Bulgaria, Hungary, Slovakia and the Czech Republic) and western and northern Europe (France and the EU). The paper draws the conclusion that the current onslaught against the Roma leaves them as *de facto* stateless.

Download from: http://www.irr.org.uk/wp-content/uploads/2013/07/ERP_BP7_Pillar_to_post.pdf

Report on Metropolitan Police Service Handling of Complaints Alleging Race Discrimination. *Independent Police Complaints Commission*, July 2013, pp. 42.

This report by the IPCC reaches the conclusion that the Metropolitan police is failing to effectively handle complaints against officers who face allegations of racism and calls for a

“cultural change” in the way the force deals with such complaints. The review monitored more than 60 referrals made by the Met between 1 April and 31 May 2012 and carried out a statistical analysis of all Met complaints during 2011-2012, reviewing a sample of 20 of them. IPCC commissioner, Jennifer Izkor, said: “This report shows that, though there are some examples of good practice, in general there is an unwillingness or inability to deal with these complaints robustly and effectively. Too often they are dismissed without proper investigation or resolution, complainants are not properly engaged with, and lessons are not learnt.”

Download from: http://www.ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/Report_on_Metropolitan_police_Service_key_statistical_info.PDF

The Greek State must send a clear message against racist violence. *Racist Violence Recording Network Press Release*, 25 September 2013, pp. 2

The RVRN, which comprises 33 NGOs and other civil society actors, has been monitoring racist attacks against refugees and migrants in Greece since it was formed by the National Commission for Human Rights and the United Nations High Commissioner for Refugees in October 2011. This press release, which follows the murder of anti-Fascist rapper Pavlos Fyssas (aka Killah P) by Golden Dawn supporters on 18 September, records “more than 300 incidents of racist violence.” Noting that the rapper’s killers have been “training on the bodies of immigrants for three years,” the press release stresses that Golden Dawn’s victims “report the inability or unwillingness of prosecuting authorities to conduct sufficient investigation and arrests” and underlines that such “impunity” triggers the escalation of racist attacks and perpetuates violence. The Network calls on the authorities to take all necessary measures for the arrest and conviction of those involved in acts of violence motivated by hatred or racism and reiterates its calls for the protection of victims (and witnesses) of violent racist acts and for the investigation of a racial motive at the preliminary stages of investigation.

Download from: <http://cms.horus.be/files/99935/MediaArchive/press%20release%20greece.pdf>

Security and intelligence

They know much more than you think. James Bamford, *New York Review of Books*, 15 August 2013, pp. 10.

Bamford, the author of the first major work on the National Security Agency (NSA), *The Puzzle Palace* (1982), takes a look at what the government has been telling the public about the agency’s surveillance activities over the years, and compares it with what we know as a result of the information released by former NSA contract employee and whistleblower, Edward

Snowden, and others. Bamford starts with the “Black Chamber” (the NSA’s earliest predecessor), and goes on to document the “secret illegal agreements with the telecom companies to gain access to communications” until the 1978 introduction of FISA (Foreign Intelligence Surveillance Act) and FISC (Foreign Intelligence Surveillance Court). FISA and FISC required the NSA to get judicial approval for eavesdropping on US citizens (although the courts seldom turned requests for a warrant down). This was dropped by George W. Bush after 11 September 2001, despite the administration telling the public the opposite. When the president’s position was exposed, rather than strengthen the controls governing the NSA, Congress voted to weaken them. The NSA’s powers were expanded under Obama and the agency continued to deceive the population about the extent of its spying: “Snowden’s documents and statements add greatly to an understanding of just how the NSA goes about conducting its eavesdropping and data-mining programs, and just how deceptive the NSA and the Obama administration have been in describing the agency’s activities to the American public.” Bamford then discusses the UPSTREAM cable-tapping operation, which captures 80% of “communications on fiber cables and infrastructure as data flows past” and is considered “far more secret and far more invasive than the PRISM program revealed by Snowden.” Whereas PRISM gives the NSA access to data from individual internet companies, through UPSTREAM the agency gets “direct access to fibre-optic cables and the supporting infrastructure that carries nearly all the Internet and telephone traffic in the country.”

See: www.nybooks.com/articles/archives/2013/aug/15/nsa-they-know-much-more-you-think

Inside GCHQ: how the US pays Britain’s spy agency £100m for a very special relationship. Nick Hopkins and Julian Borger, *The Guardian*, 1 August 2013.

This article examines top secret US government payments to the UK spy agency GCHQ “to secure access to and influence over Britain’s intelligence gathering programmes” as revealed by NSA whistleblower, Edward Snowden. Snowden has commented on the “close” relationship between the NSA and GCHQ (“They are worse than the US”) but British government ministers have denied that GCHQ carries out the NSA’s “dirty work.” Snowden further alleges that the organisations have been “jointly responsible for developing techniques that allow the mass harvesting of internet traffic.” Hopkins and Borger highlight the following points: GCHQ is “pouring money” into gathering personal information from mobiles and apps; GCHQ staff have expressed concerns at the “morality and ethics” of their work; the amount of personal data from internet and mobile traffic has increased by 7000% in the past 5 years; and China and Russia are blamed for most cyber attacks on the UK.

See: <http://www.theguardian.com/uk-news/2013/aug/01/nsa-paid-gchq-spying-edward-snowden>

Friends of Statewatch

Support our work by making a one-off or regular monthly donation:

<http://www.statewatch.org/ordering/donate.html>

Free access to Statewatch European Monitoring and Documentation Centre (SEMDOC): <http://www.statewatch.org/semdoc> and Statewatch database: <http://database.statewatch.org/search.asp>

SECILE

A series of reports cataloguing and analysing EU counter-terrorism measures:

<http://www.statewatch.org/projects/secile>

Eurodrones Inc.

How European citizens unknowingly subsidise the drone industry through their taxes:

<http://statewatch.org/eurodrones>

Statewatch Advisory Group: Peio Airbe (San Sebastian), Walter Baroni (Milan), Heiner Busch (Bern), Emilio de Capitani (Brussels), Deirdre Curtin (Amsterdam), Staffan Dallhoff (Copenhagen), Nadine Finch (London), Stratos Georgoulas (Mytilene), Artur Gruszczak (Kracow), Paddy Hillyard (Belfast), Kees Hudig (Amsterdam), Walter Jayawardene (Dublin), Kees Kalkman (Utrecht), Vassilis Karydis (Athens), Ida Koch (Copenhagen), Marie Martin (Paris), Katrin McGauran (Amsterdam), Francine Mestrum (Brussels), Nick Moss (London), Fiona O'Malley (Oxford), Steve Peak (Hastings), Mads Bruun Pedersen (Copenhagen), Gareth Peirce (London), Gabriela Petti (Genoa), Minas Samatas (Crete), Phil Scraton (Belfast), Ann Singleton (Bristol), Eric Töepfer (Berlin), Dennis Tollborg (Gothenburg), Mike Tomlinson (Belfast), Nicos Trimikliniotis (Nicosia), Frances Webber (Oxford), Catherine Weber (Bern), Aidan White (London)



© **Statewatch 2014:** Statewatch Journal is published quarterly. Statewatch is precluded from expressing a corporate view: the views expressed are those of the contributors. For more information about Statewatch see www.statewatch.org.

ISSN: 0961-7280

editors: Tony Bunyan, Ben Hayes

deputy editors: Trevor Hemmings, Max Rowlands

contributions: if you are interested in contributing to future issues of Statewatch Journal or would like to submit books for review please email office@statewatch.org or write to us at PO Box 1516, London N16 0EW, UK.

hard copy subscriptions available:

<http://www.statewatch.org/ordering/order.html>

printing: Russell Press, Russell House, Bulwell Lane, Basford, Nottingham NG6 0BT

Statewatch Journal archive

24 years of back issues free to access in pdf format:

<http://www.statewatch.org/subscriber>



image: Carrie Mackinnon, www.blackbirdtree.org.uk