

# statewatch

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## Netherlands: Central databases challenged

by Kees Hudig

**The creation of a database containing the fingerprints of all Dutch citizens is being legally challenged by a group of people supported by the Privacy First organisation.**

On 6 May 2010 a civil challenge was lodged with the Dutch High Court in The Hague. A spokesperson for *Privacy First* said that the action was taken after a complaint by the privacy protection organisation, *Stichting Vrijbit*, at the European Court of Human Rights was rejected on the grounds that it should initially be heard at the national level.

### The National fingerprint database

On 9 June 2009, the Upper House of the Dutch parliament (*Eerste Kamer*) passed a law introducing biometric passports containing an RFID-microchip holding digital information on its owner (see *Statewatch* Vol. 19 no 3). European regulation stipulates that a digital facial image and the fingerprints of the passport owner should be stored on the microchip for identification purposes and in order to prevent the passport's fraudulent misuse. The Netherlands, however, has gone much further and will store the biometric data in a central database for criminal investigation purposes (including counter-terrorism), accessible 24-hours a day. The Dutch secret service (*Algemene Inlichtingen-en Veiligheidsdienst*, AIVD) will have unlimited access to this database in situations they deem to represent a "threat to national security". Under specified conditions biometric data and/or other personal details will be supplied to the public prosecutor for identification purposes.

Since 21 September 2009, anyone who applies for a passport or an ID card is obliged to have their fingerprints taken and stored by the local administration. Compliance is a precondition for issuing new identity documents. Those who refuse to provide their biometric data have their application rejected. Alongside a variety of privacy concerns, this obligation is contentious because, since the European elections of June 2009, Dutch voters are obliged to identify themselves with a passport or ID card at the polling station to be able to vote. The privacy protection organisation *Vrijbit* announced on 18 April 2010 that during the municipal elections of 3 March 2010, voters showed up without (valid) identification papers at 85% of polling stations. This works out at an average of six voters at every polling station, or some 59,000 voters. One in every ten polling stations filed an

official complaint involving one or more voters and 62% of municipalities had official complaints filed. *Vrijbit* estimates that around 650,000 voters were unable to vote because of a lack of valid identification papers [1].

Aaron Boudewijn, a 24-year old student from Utrecht, was refused a passport because he would not be fingerprinted. He took his case to the local court and launched a campaign, urging others to join him. [2] Boudewijn said that he was not opposed to the registering of his fingerprints on the passport's RFID chip but he refused to accept their storage in a central database, arguing that it was unnecessary and that the data was poorly protected against leaks, identity theft and access by third parties. Tragically, Boudewijn died on 24 March 2010 after having an epileptic attack.

Supported by 22 individuals, *Privacy First* deposited its legal challenge against the interior ministry with the High Court in The Hague on 6 May 2010. The organisation is demanding the annulment of the new passport law on the grounds that it violates rights enshrined in other European legislation (such as the right to privacy under the European Convention on Human Rights) [3].

The claimants state that the passport law is incomplete because practical details about storage and access to data still have to be formulated. They also argue that the new practice goes beyond what was agreed at the EU level. European Council Regulation No 2252/2004 states that national law should clearly stipulate under what circumstances data stored on the passport's RFID chip can be accessed. It does not mention the need to store this data in a central database.

The claimants' lawyers also compare the Dutch transposition of EU law with that in other European countries. In Germany for instance, a law was adopted with the clear statement that the stored data can only be used for identification purposes (i.e. to confirm the identity of the person who tries to identify him/herself). The lawyers also pointed out that the United Kingdom was condemned by the European Court of Human Rights for storing the fingerprints of citizens who had been arrested but not charged or found guilty by a court of law.

**France: Convictions over Vincennes detention centre fire** see page 9

**The "Open Source" intelligence industry** see page 16

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### Storing patients' personal data (EPD)

Another controversial database is the Electronic Patients' Dossier or EPD. The legislation to create a centralised database for medical information on each person in the Netherlands, accessible by many different health care institutions and even private health insurance firms, was passed by a majority of the Lower House (*Tweede Kamer*) in February 2009. The Upper House (*Eerste Kamer*) has to vote on 1 June 2010, but does not seem to be eager to approve the section of the law that would allow the linking of the pre-existing databases. The daily newspaper *De Pers* [5] conducted a poll of Upper House members and found there to be much criticism and no majority for approving the law. The centralised database system would cost almost 50 million euro. Medical professionals have declared their opposition to the project, including the National Association of Family Doctors (*Landelijke Huisartsenvereniging*, LHV). Their main criticism concerns the (costly) installation of a centralised national hub between local databases to which all care providers will be forced to provide data.

### Storing children's data (EKD)

Then there is the looming Electronic Child Dossier project (*Elektronisch Kind Dossier*, EKD). This is based on the same concept as the patients' database, but is designed to centralise information on children and their parents. Again the criticisms by privacy organisations, parents and professionals is that too much information is collected and stored; that the security of that information is badly organised and that it is unclear who will have access to the data. A parents' organisation [6] points to the fact that the Dossier will collect needless information on parents, such as their behaviour during pregnancy, religious persuasion, hobbies etc.

These developments in the Netherlands have been met with surprise in other countries. The Belgian news website *apache.be* [7], writes that: "The Netherlands is not a police state, but, according to experts, it has been developing methods that form part of such a state". The website says that the fact that police are being allowed to conduct stop and search operations without reasonable suspicion of any criminal offence being committed ("preventief fouilleren") is an example of this trend. This was initially allowed temporarily in specific zones, but has been expanded both in duration and location. In the national elections on 9 June, the liberal-conservative *Volkspartij voor Vrijheid en Democratie* has stated that it is in favour of allowing this practice "always and everywhere" [8].

### "Smart meter"

The avalanche of privacy erosion is leading to a government that

is allowed to permanently look "behind peoples' front doors". One contested technical development that exacerbates this situation is the so-called "smart meter" (*slimme meter*) which will register gas and electricity use by households via the internet. Minister of Economic Affairs, Maria van der Hoeve, tried to introduce this device as a compulsory measure, but had to back down after the Upper House declared it contrary to privacy rights because the it would be able to permanently monitor the behaviour of people in their homes. In May 2010 she announced that she would try to introduce the device a second time, with an opt-out provision for those who objected to being monitored [9]. The opt-out clause has also been used to deflect criticism from other contested measures. Privacy organisations condemn this tactic because it places the emphasis on the individual to reject unwanted and permanent state intrusions. It is argued that it is more appropriate to only allow such measures when they have peoples' support. Another negative effect of the opt-out method is the demand that those who choose to should pay higher costs. This happened, for instance, with the introduction of the Dutch version of the Oyster Card (OV Chipcard) - those who wanted an anonymous card had to pay 7.50 Euro extra.

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## UK: New coalition government pledges to "reverse the substantial erosion of civil liberties and roll-back state intrusion"

by Max Rowlands

### Analyses civil liberty commitments made by the Conservative-Lib Dem coalition government on ID cards, the DNA database, CCTV, anti-terrorism measures and the retention of communications data

The Conservative-Lib Dem coalition government has made a number of specific commitments to address the considerable damage done by New Labour's 13-year assault on civil liberties. The full-text of the coalition agreement, titled *The Coalition: our programme for government*, pledges, among other things, to scrap identity cards and the National Identity Register (NIR), modify the operational practices of the DNA database, regulate CCTV usage, and review the use of anti-terrorism legislation and

data retention.[1]

The wording of these commitments is vague and it is uncertain what form they will eventually take. A number of the outgoing government's most unsavoury enactments have also not been adequately addressed. But crucially the new coalition has acknowledged that a problem exists. For this reason civil libertarians have reason to be cautiously optimistic, and the full list of substantive measures makes pleasant reading:

- *We will implement a full programme of measures to reverse the substantial erosion of civil liberties and roll back state intrusion*
- *We will introduce a Freedom Bill.*
- *We will scrap the ID card scheme, the National Identity register and the ContactPoint database, and halt the next generation of biometric passports.*
- *We will outlaw the finger-printing of children at school without parental permission.*
- *We will extend the scope of the Freedom of Information Act to provide greater transparency.*
- *We will adopt the protections of the Scottish model for the DNA database.*
- *We will protect historic freedoms through the defence of trial by jury.*
- *We will restore rights to non-violent protest.*
- *We will review libel laws to protect freedom of speech.*
- *We will introduce safeguards against the misuse of anti-terrorism legislation.*
- *We will further regulate CCTV.*
- *We will end the storage of internet and email records without good reason.*
- *We will introduce a new mechanism to prevent the proliferation of unnecessary new criminal offences.*
- *We will establish a Commission to investigate the creation of a British Bill of Rights that incorporates and builds on all our obligations under the European Convention on Human Rights, ensures that these rights continue to be enshrined in British law, and protects and extends British liberties. We will seek to promote a better understanding of the true scope of these obligations and liberties.[2]*

Encouragingly, the Conservatives appear to have made concessions by adopting the majority of the proposals the Lib Dems set out in their manifesto and February 2009 draft Freedom Bill. Writing in *The Observer*, Henry Porter suggests that “it is a rare stroke of luck for the interests of liberty that the coalition allows the prime minister, David Cameron, to embrace this Lib Dem policy with open arms and ignore the reservations of the law-and-order nuts on his right.”[3]

This article addresses the most objectionable Labour policies in urgent need of reform. A detailed analysis of all of the measures listed above can be found on the *Statewatch* website.[4]

### **We will scrap the ID card scheme, the National Identity register and the ContactPoint database, and halt the next generation of biometric passports**

It comes as no surprise that identity cards and the National Identity Register (NIR) will be scrapped. Their abolition was a primary manifesto commitment for both the Conservatives and Lib Dems, both of whom had vehemently opposed the *Identity Cards Act 2006*. What is heartening, however, is that the new coalition government has pledged to cancel the introduction of second generation biometric passports even though only the Lib Dems were committed to doing so. Fingerprint records were due to be added to these “e-passports” from 2012.

Passports come under the “Royal Prerogative” and must be

amended by an “Order in Council” agreed by the Privy Council (of which cabinet ministers automatically become members) in the name of the head of state, the Monarch. Under this arcane process, the Queen calls a meeting of the Privy Council, usually four or five cabinet ministers, at which they agree the matters before it without discussion. A decision to agree a new law then becomes an “Order in Council” and is subsequently laid before parliament in the form of a listing in the daily order paper. If MPs do not force a negative vote on the floor of the house - a move that is virtually unheard of - it automatically becomes law. Whether an “Order of Council” on second generation biometric passports has been agreed is unknown, and as such there is currently no discernable timescale for the scheme’s termination.

The abolition of identity cards and the NIR is more straightforward. They will be scrapped by the *Identity Documents Bill*, which was presented to parliament on 26 May 2010.[5] On 27 May 2010, Theresa May said that identity cards would be abolished within 100 days. The NIR, which has drawn stinging criticism from civil liberty campaigners from its inception, would then be physically destroyed. In many ways publicity surrounding the introduction of identity cards served to mask the creation of the NIR: a massive and unprecedentedly comprehensive database. Labour intended it to hold at least fifty pieces of information on every adult in the UK, including biometric data such as fingerprints, facial images and retina scans. These identifiers would be permanently stored on the database, even after a person’s death, and a wide range of government departments and agencies would have access to it.

Essentially, identity cards would simply be an extension of this database that you carry on your person. As would the new biometric passports because, as well as sharing an application process with identity cards, the government intended for passport data to also be stored on the NIR because “it will be far more cost effective and secure.”[6] Identity cards, passports and the NIR formed Labour’s “National Identity Scheme”, the creation of which was readily justified by the need to keep up with other European countries who were adding to the number of biometric identifiers held in their citizens’ passports. But while some EU member states are compelled to introduce additional biometrics by the Schengen Acquis, the UK opted-out of this requirement and thus has no legal obligation to follow suit.[7] Perhaps more importantly, no country is obliged to create centralised databases in which to store this data as the UK has done. Germany, for example, has categorically rejected the creation of a national register of fingerprints.

It remains to be seen how quickly and easily ID cards and passports can be disentangled from one another. The UK Identity and Passport Service may not only need a new name, but new legislation to dictate how it functions. At the very least it is likely to need significant restructuring. The new government’s comprehensive overhaul of Labour policies in this field will fundamentally alter the way the agency functions and Phil Booth of NO2ID has been quick to warn that this will not be straightforward:

*Don't imagine for a moment that Whitehall will give up its pet projects, empires or agendas without a fight - battles for which we know it has been preparing for years. Nor should we expect the political, commercial and media proponents of database state initiatives to stand quietly by. The official obsession with identity and information-sharing, the very idea that "personal information is the lifeblood of government" still remains.[8]*

By contrast, the Department for Education has confirmed that the abolition of the ContactPoint (CP) database, another manifesto commitment of both parties, will not require primary legislation.[9] We have been told that the appropriate changes will be made in “due course,” but no timetable for this has been established and no indication has yet been given as to what will replace it.

Created under the *Children Act 2004*, and launched in 2009, CP holds personal information on everyone under 18-years of age in England, and is fully operational despite being heavily criticised for routinely invading personal privacy and having insufficient security checks.[10] The database is currently accessible by roughly 390,000 teachers, police officers and social workers and is intended to improve child protection by making it easier for them to work as a team. But there is no way to ensure that the vast number of people with access to CP will utilise sensitive information held on the database appropriately, nor are effective mechanisms in place for identifying misuse. Critics have branded the database “a population-surveillance tool” which does nothing to protect children and argued that it is incompatible with both Article 8 of the European Convention on Human Rights, which guarantees the right to respect for private life, and the UN Convention on the Rights of the Child.[11]

Together, the National Identity Scheme and the CP database would impose cradle to grave surveillance. Manifesto commitments have given the new government not only a clear political mandate to abolish these policies but a moral obligation to do so. If one were needed, an additional motivating factor is to save money: an estimated £86 million was to be spent on identity cards over the next four years, and £134 million on biometric passports.[12]

Significantly, a separate scheme run by the UK Border Agency which requires foreign nationals to apply for a biometric residence permit will continue to issue compulsory identity cards to some successful applicants. The system’s legal base is the *UK Borders Act 2007* and it does not use the NIR so will be unaffected by the demise of the National Identity Scheme. The Home Office said it intends to hold the biometric details of 90% of foreign nationals by 2015.[13] *Liberty* has warned of the potentially divisive effect forcing identity cards on specific social groups could have, but the new government has given no indication that it will alter this policy.[14]

### **We will adopt the protections of the Scottish model for the DNA database**

The UK Police National DNA Database is the largest in the world because, since 2004, anyone arrested in England and Wales for any “recordable offence” automatically has a DNA sample taken, regardless of whether charges are ever brought against them – a very low threshold. Any sample taken is then permanently stored in the database. In December 2008, the European Court of Human Rights (ECtHR) ruled that this practice breaches Article 8 of the European Convention on Human Rights which covers the right of respect for private and family life. The UK government responded by introducing a complicated range of clauses in its *Crime and Security Bill* that reduced the length of time the records of innocent people would be held to six years. These changes, which did not adequately comply with the ECtHR’s ruling, will not now be introduced.

In opposition, both the Lib Dems and Conservatives had been critical of the operational practices of the database. But while the Lib Dem manifesto is categorical in its assertions that the practice of adding innocent people to the database should be discontinued, and that those without a criminal record should be removed, the wording of the Conservative manifesto is less encouraging. It states: “...we will change the guidance to give people on the database who have been wrongly accused of a *minor crime* an *automatic right* to have their DNA withdrawn”[15] (emphasis added). The implication is that people will still have to request to be removed from the database, and there is leeway for the retention of DNA profiles of those accused - but not charged or convicted - of some crimes.

With the adoption of the Scottish model the Conservatives appear to have held sway on this issue. In Scotland police are not entitled to permanently store the DNA of everyone they arrest,

but in specific circumstances, when an individual is accused of a violent or sexual crime, they can retain a sample for three years. Once this period has elapsed the police can then apply to a Sheriff to keep the individual on the database for a further two years. Although certainly less objectionable than the system of data retention currently in place in England and Wales, the Scottish model does not satisfy the Lib Dem commitment to not retain the DNA of innocent people. Campaigning organisations, such as *Genewatch*, have also highlighted the fact that under the Scottish model individuals convicted of minor offences still find themselves on the database for life.[16]

The current database has been criticised for its “function creep”, lack of cost-effectiveness and over-representation of ethnic minorities and children. It is unclear if and how the new government will address these issues. They must also contend with a police culture that has become increasingly predicated on arrest-making as a means to acquire peoples’ DNA samples.[17] Writing in *The Guardian*, Carole McCartney warned that the reform of legislation governing the DNA database will not be “quick and straightforward” and urged the government to demonstrate that “restoring trust in the governance of forensic bioinformation is high on its agenda, taking seriously the numerous reports by respected academics on the subject, and engaging properly in open-minded and comprehensive consultation.”[18] For now we have been afforded scant detail. Will innocent people currently on the database have to apply to be removed or will this be done automatically? And what of the status of individuals arrested but not convicted of a “serious crime” within the last five years? The importance of these questions is magnified by the Prüm Treaty, incorporated into EU law in June 2007, which gives member states reciprocal access to each other’s national databases of DNA profiles, fingerprints and vehicle registrations.

In her first BBC interview as Home Secretary, the only specific commitment Theresa May made regarding the DNA database was to increase its size: “one of the first things we will do is to ensure that all the people who have actually been convicted of a crime and are not present on it are actually on the DNA database.”[19] It is to be hoped that this is not where the new government’s priorities lie on this issue.

### **We will further regulate CCTV**

This is a Lib Dem manifesto commitment to address the growth of surveillance in public places. Britain is estimated to operate a fifth of the world’s CCTV cameras, most of which are owned by private companies whose operational practices and compliance with the *Data Protection Act* are not adequately regulated. Vast sums of public money have also been spent on their introduction. In December 2009, freedom of information requests made by *Big Brother Watch* showed that the number of cameras owned by local councils had almost trebled in less than ten years, from 21,000 to 60,000.[20] But crucially there is no evidence that the use of CCTV cameras helps to prevent or solve crime. In 2008 it was revealed that only 3% of street robberies were solved using CCTV images and the UK has the highest recorded rate of violent crime in Europe.[21]

Technological developments have also meant that the practice is becoming more intrusive. Some cameras are fitted with facial recognition technology to identify suspects, and in the last few years there has been a vast rise in the number of cameras incorporating automatic car number plate recognition software (ANPR). A system to surveil and record the movements of every vehicle on British roads was originally developed by police in March 2006, but has since expanded unchecked. In February 2010, the Association of Police Chief Officers revealed that 10,502 ANPR enabled cameras were passing information to the National ANPR Data Centre. Between 10 and 14 million photographs are being processed every day, many of which

contain images of the vehicle's driver and front-seat passengers.[22] These images will be retained for at least two years. Law enforcement agencies in other EU member states can use the database under the Prüm Treaty, and in April 2008 it emerged that the government has also granted access to the USA.[23]

There is also worrying evidence that the ANPR scheme is being dubiously employed. In January 2010, an *Independent on Sunday* report revealed that police are using the technology to meet government performance targets and raise revenue. The report also said that records stored on the ANPR database are "at least 30 per cent inaccurate" leading to wrongful arrests and car seizures.[24] On 4 June 2010, an investigation by *The Guardian* revealed that 150 ANPR cameras, 40 of them "covert", have been installed in predominantly Muslim areas of Birmingham's suburbs to monitor individuals suspected by security agencies of being "extremist." [25] Local councillors and members of the Muslim community were misled over the true nature of the £3 million scheme - they were told it was to tackle vehicle crime, drug-dealing and anti-social behaviour - which was funded by the Terrorism and Allied Matters fund. On 17 June 2010, use of the cameras was temporarily suspended pending a "full and in-depth consultation."

Civil liberty organisations have been consistently critical of the growth of ANPR technology. In April 2010, *Liberty* announced that it intended to launch the first legal challenge to the surveillance system. The organisation's director, Shami Chakrabarti, said:

*It's bad enough that images and movements of millions of innocent motorists are being stored for years on end... That the police are doing this with no legislative basis shows a contempt for parliament, personal privacy and the law. Yet another bloated database is crying out for legal challenge and we will happily oblige.* [26]

In their Freedom Bill the Lib Dems advocate the establishment of a Royal Commission to make recommendations on the use and regulation of CCTV.[27] For now the new government has simply made an unspecified commitment to introduce new legislation.

### **We will introduce safeguards against the misuse of anti-terrorism legislation**

In their manifestos, the Lib Dems said they would "stop councils from spying on people" and the Conservatives committed to "curtailing the surveillance powers that allow some councils to use anti-terrorism laws to spy on people making trivial mistakes or minor breaches of the rules." Although neither mentions it by name, both parties are referring to the application of the *Regulation of Investigatory Powers Act 2000* (RIPA). The Act regulates the circumstances and methods by which public bodies can conduct surveillance and investigations, which includes giving them the power to intercept emails and access private communications data. In 2000 only nine organisations could use RIPA powers, but they have subsequently been afforded to nearly 800 public bodies including local councils, the Charity Commission, Ofcom and the Post Office Investigation Branch.

The creation of these powers was justified as a means to combat terrorism and organised crime in exceptional circumstances, but in reality they have been routinely used against members of the public for minor offences. Only the interception of communications data requires a warrant from the Secretary of State; all other powers are currently "self-authorising" which means that a council official can access communications data or authorise a surveillance operation without needing to obtain the approval of an outside authority such as a magistrate or the police.[28]

On 23 May, a *Big Brother Watch* report showed that councils

in Great Britain had conducted 8,575 RIPA operations in the past two years at an average of 11 a day.[29] Behaviour that councils have deemed worthy of surveilling includes littering, breaches of planning regulations, letting a dog foul a public footpath, and breaking the smoking ban. In Croydon a council tree officer used RIPA to access the mobile phone records of a builder he believed to have illegally pruned a tree.[30] Astonishingly, councils can authorise weeks of surveillance against individuals suspected of committing these sorts of offences with no obligation to ever inform them that they are being monitored. Statistics published in March 2009 indicated that only 9% of over 10,000 RIPA authorisations led to a successful prosecution, caution or fixed-penalty notice.[31]

The "communities and local government" section of the coalition agreement says:

*We will ban the use of powers in the Regulation of Investigatory Powers Act (RIPA) by councils, unless they are signed off by a magistrate and required for stopping serious crime.* [32]

While this is certainly an improvement on the existing system the new government should go further and outlaw the practice completely. As Alex Deane, the Director of *Big Brother Watch*, says:

*Now that the absurd and excessive use of RIPA surveillance has been revealed, these powers have to be taken away from Councils. The Coalition Government plan to force councils to get warrants before snooping on us is good, but doesn't go far enough. If the offence is serious enough to merit covert surveillance, then it should be in the hands of the police.*

The other major piece of anti-terrorism legislation that is being seriously misused is section 44 of the *Terrorism Act 2000*. The act gives police the right to indiscriminately stop and search people without reasonable suspicion in areas that have been designated to be sensitive to national security: this includes the whole of greater London. Police invoked these powers on 256,026 occasions in England and Wales between April 2008 and March 2009. The Metropolitan Police and Transport Police were responsible for 95% of this total. Of this colossal figure only 1,452 stops resulted in arrest, less than 0.6% of the total number, and the vast majority of these were for offences unrelated to terrorism.[33] In June 2010, the Home Office revealed that, since 2001, procedural errors in 40 separate section 44 police operations have led to thousands of people being unlawfully stopped and searched.[34] Most of these operations were illegal because they had lasted beyond the 28 day statutory limit, and some had not been authorised by the Home Secretary as is required by law.

Section 44 powers have been used to intimidate protestors and impede photography in public places. A climate of suspicion has been cultivated in which anyone taking a photograph of a prominent building or landmark is potentially seen to be conducting reconnaissance ahead of a terrorist attack. Worse still, some police officers believe photography in section 44 areas to be illegal and there is a mountain of anecdotal evidence of photographers, both professional and amateur, being obstructed in public spaces.[35]

In January 2010, the ECtHR found section 44 to breach Article 8 of the European Convention on Human Rights which provides the right to respect for private life. [36] The judgment objected not only to the manner in which anti-terrorism powers are being used, but the whole process by which they are authorised. Parliament and the courts are not providing sufficient checks and balances against misuse and police officers are afforded too much individual autonomy when deciding whether to stop and search someone. The Labour government appealed against this decision with little chance of success, and on 30 June 2010 the ECtHR ruled that its judgment in the case was final. On

8 July 2010, Theresa May announced that the police would no longer be able to use section 44 powers against individuals, only vehicles. Instead they will now need to use section 43 of the *Terrorism Act* which can be invoked anywhere in the country but crucially requires the police to demonstrate reasonable suspicion that a person is involved in terrorist activity before stopping and searching them. [37]

This is a welcome development, but amending police practice and ensuring that section 43 powers do not come to be routinely misused in much the same way section 44 powers have been will be no easy task. In the last two years the National Policing Improvement Agency, the Home Office and even the Prime Minister had all published guidance to the police on the use of section 44 powers reaffirming the rights of photographers with negligible result. [38]

### **We will end the storage of internet and email records without good reason**

Announced in October 2008, the Interception Modernisation Programme (IMP) is a Labour initiative to intercept and record every phone call, text message, email, chat-room discussion and website visit made in the UK. The content of what was said or written would not be retained, but email and website addresses, phone numbers and contact information from social networking services including instant messengers, Facebook and Skype would be held. The government initially planned to store this data in a massive central database, but by April 2009 had decided it would be more practical to outsource this responsibility to Communications Service Providers (CSPs): primarily internet service providers and telecommunications companies.

Since 2003, these organisations have already retained subscriber and traffic data as part of a “voluntary code” under the *Anti-Terrorism, Crime and Security Act 2001*. The Labour government believed that the practice should be made mandatory and, facing heavy opposition in the UK from the House of Lords, sought an agreement at EU level which would carry the force of European law. It used its rotating presidency of the EU Council to “railroad” the *EC Data Retention Directive 2006* through the legislative process using a mix of political pressure and moral imperative following the 7 July 2005 terrorist attacks on London. The Directive compels member states to store citizens’ telecommunications data for a period of six to 24 months but, significantly, does not provide safeguards over who can access this data and on what grounds. In 2007, the “voluntary code” for CSPs was made mandatory by statutory order (meaning no debate) with the justification that the UK was merely fulfilling its obligations under EU law.[39]

The IMP would oblige CSPs to increase drastically the volume of information they hold on their customers for access by police and security services. Under the *Regulation of Investigatory Powers Act 2000*, these bodies can currently access retained data simply on the basis of an “authorisation” by a senior officer, with no form of judicial scrutiny. This led UK law enforcement agencies to access personal communications records a staggering 1.7 million times (1,164 times per day) between 2005 and 2009, in what surely included speculative ‘fishing’, data-mining and subject-based profiling exercises.[40] All data stored under the IMP could be accessed in exactly the same way.

Responding to an April 2009 government consultation document, *Protecting the Public in a Changing Communications Environment*, many CSPs expressed grave concern over the cost and technical feasibility of intercepting data on such a grand scale.[41] As a result of these misgivings, and fearful of negative publicity in the run-up to the May 2010 election, the government dropped a bill to establish the scheme from the November 2009 Queen’s speech. However, in the same month, information provided in a written parliamentary answer by a Home Office minister revealed that this would not delay the creation of the

IMP which the government expected to be fully operational by 2016.[42]

The Lib Dems have been consistently critical of the IMP and promised in their manifesto to “end plans to store your email and internet records without good cause.” In October 2008, Chris Huhne argued that “the government’s Orwellian plans for a vast database of our private communications are deeply worrying” and that “these proposals are incompatible with a free country and a free people.”[43] The Conservatives have also been critical of the IMP, but promised only to review the scheme and made no mention of it in their manifesto. In January 2010, then shadow security minister, Baroness Pauline Neville-Jones, said that the Labour government had not provided “any evidence to suggest that the universal collection, retention and processing of communications data would actually provide more value to intelligence and law enforcement investigations than the targeted collection of communications data in relation to specific individuals or groups.”[44]

Whatever policy it eventually adopts, the problem facing the new government is that the UK is legally bound to implement the EU Data Retention Directive: it cannot opt out. This means that while access to retained data can be better restricted, for example by requiring judicial authorisation before data can be accessed, and the length of time records are held can be reduced to six months, fundamentally the new government is currently unable to abandon Labour’s data retention regime, whether it desires to or not.

### **Footnotes**

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## Spain: Migrant minors at risk by Peio Aierbe

**The Spanish government's promotion of a multicultural society is being undermined by their treatment of unaccompanied migrant children. Far from meeting their legal obligation to care for these children it frequently sets them up to fail and abandons them.**

In recent years, Spain has faced the challenge of transforming its view of itself from that of a white, Catholic society with specific western cultural features, to an ethnically mixed one with multiple cultural, religious and even linguistic components. This transition, which is difficult in any society, predictably gives rise to opposition from reactionary forces, but also to legitimate complaints about the way in which bureaucrats are managing the process.

This can be observed in the treatment of minors who arrive in Spain unaccompanied by a responsible adult, for whom government departments have a legal duty of care. Their presence tests the official discourse on "interculturality" and the consensus concerning the treatment of minors. The results are not flattering for Spanish government or society.

The government's notorious lack of foresight in tackling new social demands can be seen in how it has reacted to the arrival of the - mainly Moroccan - minors and the means established for their protection. It has created procedures which sanctioned institutional mistreatment and plans for repatriation and/or expulsion. It has also painted a portrait of this group that is weighted against their normalised insertion into the community.

### A respectful but threatened legal framework

The United Nations Convention on the Rights of the Child, adopted in 1989 and ratified by Spain in 1990, is the frame of reference that lays out the basic rights that must be protected. It confirms that the child's best interest is the priority. At a national

level, the following laws should be highlighted: the *Ley Orgánica 1/1996 de Protección Jurídica del Menor* (LOPJM, Organic Law for the Legal Protection of Minors), the *Ley Orgánica 5/2000 reguladora de la Responsabilidad Penal del Menor* (LORPM, Organic Law that regulates the Penal Responsibility of Minors) and, within the context of the Basque Autonomous Community, the *Ley 3/2005 de Atención y Protección a la Infancia y la Adolescencia* (LVAPIA, Law for the Care and Protection of Childhood and Adolescence). The LVAPIA was the basis for the development of Decree 131/2008 that regulates housing reception facilities for children and adolescents in situations in which they lack social protection.

Within this legal framework, there has been a key change in how children are viewed: from the objects of protection to the subjects of rights. The LVAPIA sets this out in article 4, when it states that:

*the best interest of the boys, girls and adolescents, and the protection of their rights in order to guarantee their development, must be the principle that inspires the decisions and the actions undertaken... To determine this interest, in the first place, the needs and rights of under-age people will be attended to, their opinions and wishes expressed with adequate judgement will be taken into account, and their individuality in a family and social framework will be considered... The superior interest of the boys, girls and adolescents and the protection of their rights in order to guarantee their*

*development must take precedence over any other concurrent lawful interest.*

What has been detailed so far suggests that the normative resources are sufficiently wide-ranging. However, there is a restriction that crucially affects the application of this framework to migrant minors: the requirement to take into account their foreignness above their condition as minors.

### **Treatment under the *Ley de extranjería* (Foreigners' Law)**

The *Ley de Extranjería* and its Regulation are aimed at guaranteeing that sanction mechanisms for foreigners who do not reside legally in Spain are not applied to minors. This means that it becomes obligatory for them to be placed in the care of the services for the protection of minors and for the public prosecutors' authority to be informed of this. In addition to this, the authorities activate a procedure for their repatriation to their country of origin, or one in which their family is residing, or for them to be entrusted to the child protection services of their country of origin. However, art. 92.4 of the Regulation for Foreigners says:

*The minor's repatriation to their country of origin or to the one in which their family members are, will only be decided if the conditions exist for the minor's effective family reunion or for adequate protection by the country of origin's protection services for minors, and only if it is verified that this reflects the minor's best interest.*

Moreover, art. 92.5 states:

*once repatriation with their family or to the country of origin has been attempted, if it were found not to have been possible, they will proceed to issue them a residence permit.*

For several years the Spanish government has been working to rid itself of these minors. This is not an easy task because the current laws, and especially the *Ley del Menor* (Minors' Law), do not allow it. Moreover, social workers, institutions and professionals involved in this field prevent flagrant or large-scale violations of the law.

The Spanish government has responded in two ways: bilateral agreements with the countries from which minors originated and modifications to the law. The bilateral agreements seek to portray the expulsion of minors as similar to family reunion as envisaged in the law, or to entry into a reception system in their place of origin. This, the government argues, is compatible with the "minors' best interest" enshrined in the law.

The government has been making the greatest effort in this area with Morocco (although an agreement has also been reached with Senegal). The agreement between the two governments is wide-ranging in scope and received backing from the Spanish parliament in September 2007 [1]. But Morocco has not rounded off its involvement in an operation to return 1,000 children in Andalusia despite committing to do so at a meeting in Toledo in July 2007.

The reception system in Morocco makes it impossible to claim that minors transferred there will be received in a system that meets even the lowest standards of care. The Spanish government is attempting to resolve this by creating centres in Morocco, but this is proving extremely slow and costly, and has been widely criticised by NGOs that work in this field.

In the legislative field, the government has taken advantage of the "social alarm" it artificially created to introduce amendments in the recently approved *Ley de Extranjería*. Its new text recognises the minor's repatriation as a general criterion, rather than the guarantee of the minor's best interest as is required by international norms for the protection of minors. As drafted, it envisages international agreements whose sole purpose is to return the minors to their families without overseeing and

verifying what is in their best interest.

### **Control**

In law, the public prosecutors' authority is responsible for monitoring the government's compliance with its duties. Over the last few years, its failure to do so has been noteworthy. The regional [autonomous community] *Defensorías del Pueblo* (ombudsmen's authorities) have paid the most attention to violations of minors' rights in the work reports, complaints, visits to reception centres and recommendations it has published. Although they only have the power to issue recommendations, the accuracy of their work has turned their reports into the main guarantor of minors' rights. The unlawful repatriation of minors have been a theme for complaints by the Ombudsman. In February 2009, the Ombudsman published a *Report on Centres for the Protection of Minors with behaviour problems and in situations of social difficulty* in which he was highly critical of the available facilities in this field.

### **On the quality of reception and the rights of minors**

It is unquestionable that over the last ten years, and particularly since 2004, the increase in minors who are liable to be placed in administrative care has led to the establishment of a significant number of reception facilities at a substantial economic cost. This fulfils the requirement of Spanish law, but cannot be used as an argument to avoid analysing the quality of these facilities, whether they comply with existing legislation and whether they respect the rights of their users.

The report, *Minors at risk. Exceptional practices by the Administrations* [2], published in February 2010 by *SOS Racismo Gipuzkoa*, looks at Gipuzkoa. This is significant because Gipuzkoa has a full range of reception facilities in which, it can be argued, a normal form of care is provided. There are other examples of good practice like the existence of a significant number of consolidated educational teams. But alongside these facilities is an emergency reception service that, despite complaints by institutions and social bodies, continues to violate the rights of the minors held there.

In Gipuzkoa at the end of 2008, 54% of the youths were in emergency reception and 46% were in flats or halls of residence. In 26% of cases, no action was taken or they left the centre.

In his *Report to the Basque Parliament* for 2008, the *Ararteko* (ombudsman in the Basque Country), details the findings of the visit carried out on 5.11.08 to the Tolosa *Centro de Acogida de Urgencia* (Centre for Emergency Reception). He says:

*On the day of the visit, the number of minors lodged, in spite of information from the district council that only 15 places were available, was 49... Overall, 26 of the minors currently sleep in bunk beds, whereas the rest sleep on mattresses on the floor... Only 14 of them are recorded in the residents' register (the city council does not allow a higher number to be recorded)... Of the minors interviewed some were recent arrivals but others had spent a long time in reception (six months, although the official maximum length of stay is only two months)... None of those interviewed (except for one) had personal documents or was recorded in the municipal register, in spite of the time spent in reception... During day shifts, the educational staff comprised four or five people... Overall, the professional team lacked stability. There were only two educators from the previous year left... the team deemed that it was not possible to carry out any educational work whatsoever.*

The *Ararteko* reached the following conclusion:

*From everything it has seen and observed, this institution deems that, considering the number of minors, the conditions in the centre and of the work team, did not make it possible to respond adequately to the minors' needs, to fulfil the centre's educational purpose, nor to guarantee the task of protecting the minors, thus ensuring the exercise of their rights. All of this*

*caused, as it has in the past year, a situation that was hardly sustainable and entailed evident risk.*

The severity of the report speaks volumes about the quality of the facilities for emergency reception that take in the majority (67%) of minors.

### **An image of conflict and delinquency**

It is the failure of the policies pursued by the very institution that is responsible for caring for minors that is the cause of their reputation for delinquency. It has become clear over the last few years that the facilities set up to look after them were not only inadequate but had a negative impact (i.e. overcrowding in emergency reception, the routine use of lodging houses, the absence of substance abuse treatment, the use of security firms to undertake educational functions, among other issues). In addition, legal requirements were not met (i.e. providing the minors with timely documentation, respecting their right to be heard and taking their views into account).

Failing to intervene in a reasonable time, and in the correct manner, has contributed to these problems becoming entrenched, making many of the minors more vulnerable. These failures strengthen the dynamics of antisocial behaviour in some because they feel abandoned to their fate. This helps to generate a negative public image of this group, but it is important not to lose sight of the root cause of these problems.

I will now consider the situation in which minors in care who have been involved in conflict and sometimes crime, find themselves. Published figures indicate that this group makes up 10% of all minors, while the other 90% are reported to be making satisfactory progress in standard facilities. If these figures are accurate, the majority can be said to hold strong values and are resourceful, enabling individuals to make progress in spite of highly unstable family and environmental conditions in their countries of origin. They have overcome the difficulties of the migratory experience, the extreme conditions of perhaps travelling under a lorry or in a dinghy. Why are these positive characteristics not extolled and why are the images presented to society the exact opposite of this?

What should we do with the 10%? The local authority has a clear idea - apply exceptional treatment aimed at getting rid of them. Public opinion is primed to strengthen pre-existing trends to set up legislative and executive mechanisms to enable Spain to "return" of a sizeable number of these youths to their countries of origin: those who commit offences (because they are a "lost cause") and the remainder because they are an excessive economic burden.

This exceptional treatment includes the establishment of

facilities to tackle these kinds of behaviour. It is an approach that might be positive if the facilities actually tried to address the problem, because it would prevent disruption and enable specific work to address the needs of these minors, allowing them to progress. Published reports show that these facilities do not even begin to address these issues.

In some facilities minors are stripped of basic rights and no educational work is undertaken. Centres are placed in isolated locations that lack communications that would enable prompt access to training and other facilities in urban centres. There is also a failure to provide teams with the specialised training or technical equipment that is required by law. It is also made clear to those sent to the centres that they have no prospects, as they will not be able to continue participating in training programmes, nor will they receive documentation. They are then invited to leave for other territories, with their bus or train ticket paid for.

The aforementioned report [2] documents a series of rights violations: the right to education; to documentation; to dignified treatment (and not suffering physical ill-treatment); to be heard and express their views; to health (in view of the lack of therapeutic interventions for those who have substance abuse problems); to leisure activities and free time; to specific requirements for girls in mixed centres, placing them in vulnerable situations. This list of human rights violations explains the systematic escape attempts from centres by a sizeable portion of the minors who are diverted there, boys and girls alike. The erection of a security fence to enclose the "open" centre reveals fully the government's desire to criminalise these boys and girls. This measure does not improve citizens' security in any way.

As a result, a considerable number of these minors see their situation deteriorate. Their use of addictive substances worsens and they become involved in crime, collecting police and judicial records, which lead to their serving time in reformatories. Others, following the advice of the people to whom their care is entrusted, will leave seeking a new escape route. Moreover, this will lead the public to criticise the youths and even carry out discriminatory acts against them.

In short, it is a government policy which neglects its legal obligations towards vulnerable minors by abandoning them.

Peio M. Aierbe, *Mugak/SOS Racismo*

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2. Consult the full-text document at: [www.mugak.eu](http://www.mugak.eu)

## **France: Ten convictions over Vincennes detention centre fire**

**by Yasha Maccanico**

### **Isolating detainees' offences while concealing context, detention regime and institutional failures.**

*In the introduction to the 2007 report on the Vincennes administrative detention centre (CRA), at a time when Site 2 (140 places) had reopened and had been operating at full capacity for just a month, we wrote that December's violence and tension were intrinsic to the size of the centre and the police prefecture's "policy of figures" [1]. The balance for 2008 was clear and the claims that we made at the end of 2007 proved to be an unfortunate prophecy. After seven months of tension and violence on an almost daily basis, and the tragic death of a detainee on 21 June, the centre burned on 22 June 2008.*

*Cimade, "Centres et locaux de rétention administrative. Rapport 2008"*

On 17 March 2010, the 16th chamber of the Paris correctional Court convicted ten former detainees of the Vincennes detention centre (CRA, *centre de rétention administrative*). They were given prison terms of between eight months and three years for their role in a fire and violent incidents that broke out at the CRA on 22 June 2008. These events occurred the day after the death of Salem Souli, a Tunisian detainee. As part of the *Migreurop* campaign for access to migrant detention centres, representatives of the network of European and African organisations (of which

*Statewatch* is a member) monitored the proceedings and produced reports on the hearings, which began on 25 January 2010.

The trial had been widely criticised as a foregone conclusion. Defence lawyers and their clients walked out of the proceedings after the fourth hearing and called a press conference to explain their decision to do so. Their complaints included: the failure to grant their requests for the death of Salem Souli, and the overall conditions in the centre, to be addressed at the trial; the use of inconclusive video recordings that were selected by the police; the use of evidence based almost exclusively on police statements and the speed with which the trial was scheduled to be completed. All of these factors “demeaned” the trial, said monitors from *Migreurop*.

The defendants were three Malians, two Moroccans, two Palestinians, a Tunisian, a Turk and an Egyptian. The sentences, which defence counsel Ms. Terrel said would be appealed, were a three year prison sentence for one of them, two and a half years for two others, two years for three defendants, one year for a further two and eight months for the last two. One of the trial’s key features was the isolation of the offences from detention conditions, such as the tense atmosphere, Mr. Souli’s death and the suppression of detainees’ protests before the fire. Witnesses claimed that police officers had struck detainees and used teargas and irritant spray. However, the lawyer for the injured officers insisted in her summing up: “It is not [conditions at] the CRAs that are on trial”.

### The context

Vincennes is the largest detention centre in France. It has the capacity for twice the number of detainees allowed by the law, which sets a limit of 140 people. This was achieved by dividing the site into two centres (Site 1 and Site 2) based on the presence of two buildings. Many of the authorities, officers and services involved in running them are identical, resulting in the centres being under-staffed. In its 2007 report, *Cimade* (which operates to assist detainees in Vincennes) reported that conditions at the centre were “explosive”. It cited examples of violence between detainees, hunger strikes, refusals by detainees to return to their rooms, violence by police officers against detainees and by detainees against the centre’s private security officers. It stressed the negative impact of the centre’s size and its role in dehumanising detainees.

In February 2008, *Cimade* reported violence by police officers against detainees. There were protests in the centre in April, which involved detainees ripping up their identity documents while a demonstration by supporters was being held outside. There was a hunger strike after news that a *sans-papier* had committed suicide by jumping off a bridge to avoid an identity check. Tension was high in the period leading up to Souli’s death and a letter sent by *Cimade* to the prefecture on 16 June 2008 expressed fears that a tragedy would occur. Moreover, several fires in Vincennes had been reported during 2007 and 2008.

The death of Salem Souli on 21 June 2008 followed his request to be taken to hospital the previous day. Police officers had a nurse visit him who certified that he was well. This was the spark that set off a day of protest on 22 June 2008. Souli’s family had not been promptly informed of the death, and his son’s mother filed a complaint for “withholding information, manslaughter due to a failure to comply with security duties, and failure to provide assistance”. The cause of Souli’s death remains unclear despite an autopsy, the result of which was only partly released. His body has now been repatriated. Despite being a certified asthma sufferer, he was kept in a cell with a temperature described as “smothering” by the police report into his death. *Cimade*, and the Franco-Tunisian organisation *Fédération des Tunisiens pour une Citoyenneté des deux Rives* (FTCR), will be

civil plaintiffs in the Souli case.

Instead of blaming migrant support organisations outside the centre for the fire as the Paris police prefecture and a UMP (*Union pour un Mouvement Populaire*, a right-wing party that currently holds power) spokesman had done, the defence stressed that the cause of the fire was the “electric situation in the centre” which “resulted from the deep atmosphere of tension that could be perceived for some months”. A report handed to the government a fortnight before the fire by the *Commission nationale de contrôle des centres et locaux de rétention administrative et des zones d’attente* (CRAZA), an oversight body that checks on conditions in places of detention, had warned about the “climate of tension and violence that reigns permanently in all the CRAs and especially in Vincennes, where anything would suffice to set the gunpowder alight”. The CRAZA report added that the centre’s capacity should return to a maximum of 140.

After Souli’s death, detainees demanded an explanation. Failing to receive one, they organised a silent march in the early afternoon of the following day. In Site 2, witnesses claim that the police ordered detainees to return to their rooms, spraying some of them with irritant gas. The police headed to Site 1 where the most vociferous protests and their suppression occurred. Witnesses from Site 2 claimed that they could hear shouting and smell teargas coming from Site 1. Witnesses from Site 1 said that several detainees were beaten and tear-gassed in their rooms, further increasing the tension.

A fire broke out, but witness statements disagree as to whether it started in Site 1 or Site 2. Detainees were moved to a gym in the police academy adjacent to the centre, and some described an “apocalyptic and traumatising” experience. Eighteen detainees were taken to hospital after inhaling smoke and the remainder were transferred to detention centres in Nîmes (100), Lille (54), Paris (40), Rouen (22), Palaiseau (18) and Mesnil (10). Many were released, others were heard as witnesses by magistrates and ten were charged with the offences of “destruction of goods by starting a fire” and “wilful violence against officers of a public force”. The Vincennes CRA reopened in November 2008 with a capacity of 120 places, later raised to 180.

### The trial

The trial comprised eight hearings, held in Paris correctional court between 25-27 January, 1-3 and 8-9 February 2010. In addition to the fire, *Migreurop* observers had expected the case to focus on Souli’s death and the conditions in the months leading up to the fire at a centre that manifestly did not comply with regulations. However, the hearings focussed entirely on the detainees’ liability. Defence counsel and the accused walked out of court at the fourth hearing. Requests for important witness evidence to be heard had been rejected and they felt that the conditions required for a fair trial had not been met.

The first three hearings, from 25 to 27 January 2010, had seen the defendants’ lawyers question the court’s impartiality and ask for the committal to trial to be annulled. Between 100 and 200 people were locked out of the courtroom, which had been set up in a manner reminiscent of terrorist trials, with a barrier at the entrance, a glass cage for the only defendant who was still in remand custody and a strong police presence. The first hearing was delayed after one defendant was arrested on his way to court because he did not have valid documents on him. Another defendant recognised the presiding judge, who had ordered that he be remanded in custody five years earlier, and questioned her impartiality.

The charge sheet was then read. Four defendants were accused of wilful violence causing injuries that resulted in no more than eight days of inability to work, with the aggravating circumstances that the offences were committed in association

and against people to whom public authority was entrusted. Four others were charged with wilfully destroying the Vincennes CRA building by using explosive substances, starting a fire or by any other means. The last two defendants were charged in relation to the violence and the fire. One of them was accused of ripping out a phone booth and the other of smashing detention centre windows, with the aggravating circumstances that these were public goods used for public furnishing or utility, and that the offences were committed in association.

The lawyer for MD (the defendant who recognised the judge) explained that the judge had placed MD in remand custody in 2005 and placed his pregnant wife and children under judicial supervision. She had also placed their two children (the couple now have seven) in social care for two years, until they were returned by children's judicial authorities. His client had been traumatised by these events, which he identified as the start of the administrative problems that resulted in his detention in the CRA. He should not have been detained as the father of seven French children. This damaged his trust in the court's impartiality.

The prosecutor argued that the two matters were unrelated, claiming that European Court of Human Rights jurisprudence, in a similar case, had "resolved the matter". A defence lawyer argued that "appearances" were also important, calling for the judge to withdraw from the case. After this request was rejected, MD's lawyer applied to the *tribunal de grande instance* (TGI) to have the judge withdrawn. There was a demonstration outside the courthouse. On 27 February the judge announced that the challenge was rejected by the TGI's president and the defendant was fined 750 euros (the maximum applicable fine when a request to withdraw a judge is refused).

### **A trial loaded against the defence**

Defence lawyers demanded that the committal for trial be annulled for all the defendants because it was tainted by flaws and irregularities caused by the investigating magistrate's failure to undertake enquiries to establish or to exclude the defendants' guilt. "Where is the fair trial in a file that has only sought to charge, which only includes statements from the police?" asked Ms. Terrel.

Some of the issues raised by the defence were the examination of the crime scene, the forensic examination of materials and their not having access to all of the video recordings from the centre but only to hand-picked extracts. Several contextual aspects had been overlooked. The case file included interception excerpts from telephone communications by a detainee in an attempt to link the revolt with the presence of NGOs and migrant support groups protesting outside the detention centre. The way in which the case was dealt with was described as "belittling" and loaded against the defendants, concealing the detention regime and the experience of those subjected to it. They were remanded in custody for long periods without appropriate reason, such as the risk of their absconding. The case was set to be heard in three half-days, whereas other matters involving similar numbers of defendants often lasted several weeks.

The defence lawyers highlighted a combination of factors that were liable to lead to a tragedy. Weeks before the fire, Tasers were used on some detainees by the police. This drew criticism from the *Commission nationale de déontologie de la sécurité* (CNDS, National Commission for the Professional Ethics of Security Forces) in a document dated 14 December 2009, which found that the use of Tasers could not be construed as legitimate self-defence. *Cimade* had repeatedly warned public bodies about the worsening situation in its annual reports and through letters to the police prefect, but no action was taken. They argued that Souli's death should not be omitted from the proceedings, as he had asked to go to hospital on 20 June and was not given

appropriate care. There was also a sense that there had been an attempt to conceal the death, as Souli was removed from the centre wearing an oxygen mask over his face although he had already died.

The handling of the videos, which were sealed after a limited *in camera* viewing of selected extracts which some lawyers were unable to attend, was criticised for contravening the notion that both sides should have an "equality of means" in a fair trial. The police had access to the entire recordings. A few moments of footage were used to demonstrate criminal conduct, while the period leading up to and following it, which might have had a bearing on the defendants' conduct, were not available. Other video footage was also unavailable, such as that shot by the fire services.

There was no forensic analysis of the materials and facilities in Vincennes CRA (mattresses, construction materials, etc). One report mentioned that the roof was made of wood, but whether it complied with safety regulations for these kinds of sites is unknown. It is also unknown whether mattresses were fire-proof. This information would have helped to clarify why the fire spread so quickly and whether the administration had any liability. Also, there was no assessment of the extent of the damage, no mention of the personal histories of the defendants or the reasons they were in detention. One of the accused had been in France since the early 1990s, had seven French children and should not have been in the CRA; another was identified as an adult on the basis of X-ray scans of his wrist, despite this means of establishing age being widely recognised as unreliable.

### **Defence walks out as CCTV tapes shown**

The prosecutor dismissed these complaints, stating that the only matters that the court was competent to resolve were how the fire had started and how it had spread. The former was the key issue, whereas the latter would be necessary to establish the damage caused once the defendants' liability was established. Technical analyses were unnecessary at this point because there were no deaths or serious injuries as a result of the fire, meaning they could be carried out later. The fire and Mr. Souli's death were two separate matters. Visiting the crime scene was unnecessary because photographs showed what it was like before it had been demolished and re-built. Out of respect to the defence, supplementary video footage could be shown, although large parts of it were of no use. While the police had "technically" carried out the selection of video footage, this was done under the investigating magistrate's supervision, unlike video footage from other services which did not add any useful information. The hearing ended with the judge ordering that the seals be removed from the CRA CCTV footage, which would only be shown in the court. Requests for additional information and for the committal to be annulled would be united at the end of the proceedings, and a timetable for hearings was issued.

Hence, many complaints by defence lawyers about how the trial was framed were rejected, but the schedule for hearings was lengthened and 35 hours of CRA CCTV footage would be viewed in court. For the defence, Ms. Dutartre complained about the condensed schedule that was imposed (three half-days per week for two consecutive weeks) and the relegation of the defence counsels' issues to the end of proceedings. The session ended with the release of the last defendant who remained in custody.

The hearing on 1 February 2010 began with defence lawyers' complaints that the schedule was "unacceptable", an argument that was supported by a representative from the Paris Bar. They noted the lack of dialogue about the extremely charged schedule, saying that it was a matter pertaining to the "good administration of justice". The defence then announced its withdrawal. The 35 hours of CCTV videos footage from the CRA's internal and external surveillance cameras were shown in the courtroom in

subsequent hearings.

At the defence lawyers' press conference, at which they explained their decision, they emphasised that they did not want a viewing of the video material in the courtroom, but rather CD-ROMs that they could work with. The footage from the two sites, and other sections of the CRA, started shortly before the fire began. It showed a relaxed environment, followed by detainees fleeing - hands covering their mouths and faces - as smoke appeared. The footage that involved the alleged commission of offences included objects being thrown and doors being taken off their hinges in site 1. In site 2, detainees are seen leaving their sections or running in the corridors with their mattresses and sheets. They gathered in a recreation area before returning to the building when the fire started and placed mattresses and sheets in a hall where they subsequently caught fire.

The *Migreurop* observers noted that it is unclear from the video footage who started fires and what instances of physical violence against officers occurred. They questioned whether this was also the case for the judges, who were nearer to the screen. Apart from mentions of a few defendants who were purportedly identified in the footage, the videos ran continuously without the possibility to rewind and clarify specific issues. And, of course, there were no defence lawyers to challenge the prosecutor's claims.

### Final remarks

Following the viewing of the videos, the judge read statements by two defence witnesses in their absence. The first, by Senator Jean Desessard, who visited the CRA a fortnight before the fire, said that any personal responsibility should be judged in relation to the general conditions. The incident was similar to a prison revolt, involving aggressiveness among detainees in a situation of "hardly bearable" overcrowding. The second statement was by MP Jean-Pierre Brard, who visited the CRA the day after the fire. He told the investigating magistrate that he had often visited CRAs, that fires were not an uncommon event and that the fire fighting services were often called to put out fires in their early stages.

Lawyers for the plaintiffs then spoke. One lawyer, representing six injured officers, argued that she could reply to the defence's claims. These claims included reference to "a chronicle of a death foretold", the detention regime, searches, slogans that mirrored street demonstrations and "unacceptable" references to the Nazi concentration camps. She insisted that conditions in the centre were very different from imprisonment, and painted an idyllic picture of PlayStations, table tennis, visits from friends and family and the use of mobile phones, with a minimal police presence and the freedom to come and go. The lawyer noted that the violence was not self-inflicted, or between prisoners, but targeted officers on 21 and 22 June, with one officer having her hair pulled, being thrown to the ground and punched and kicked. The officers who came to her rescue were spat at and had objects thrown at them. They were also obstructed from putting out the fire. The fire service had to wait for intervention teams before entering. The detainees' march was not silent, according to officers, and some detainees started leaving their rooms with their mattresses and sheets, with demonstrators outside "stoking the fire". She added "It is not about the CRA it is about six people", in reference to the injured officers she represented. She added "the court must establish if the defendants are guilty of the blows they have been charged with".

She proceeded to list the positions of the defendants, some of whom, she argued, could clearly be seen in the video footage. She said that others were either identified by officers or admitted throwing objects or wanted to stop officers from entering the centre. She argued that while there was a lot of talk about the detainees' distress, there has been little mention of that of the

officers who "play a humanitarian role". She noted that only about 15 out of 280 detainees were agitated.

The lawyer representing the treasury's judicial office then intervened, stating that: "I am not ashamed to represent the State". Her point was that excesses could not be accepted and that the State had to defend its representatives, whose role is not repressive but supportive. The State demanded damages for the care and support provided to the injured officers, and reparations for repair work to the damaged buildings. The request was symbolic and it was realised that the State would not receive payment.

Finally, the prosecutor described references to concentration camps as "shameful" and a "manipulation". He accused the defence of "deserting" the trial and of acting against the interests of justice and the defendants that they represented. He emphasised that the fire was "premeditated" and that officers had heard that some detainees wished to set the CRA on fire after Souli's death. He said that the first window was broken in Site 1 and that some people left their rooms in Site 2 holding mattresses as officers went into Site 1. The fire started in a room in Site 2 and within a few minutes other mattresses were burning, with a fire also starting in site 1. The fire service arrived about ten minutes later. He said that detainees acted in concert in the two sites and spoke of "coordinated" acts.

The prosecutor described Souli's death as "natural", resulting from "asphyxia". He said that the detainees immediately spoke of "murder" rather than a "death". He also claimed that those intent on causing a violent situation to arise "exploited" the death, and that the simultaneous setting of several fires demonstrated premeditation. The fact that mattresses were not fire-proofed helped the fire to spread. He argued that CCTV footage showed that some detainees had been more active than others and identified the acts for which each of the defendants was charged. These ranged from punching and kicking, to setting a fire, throwing missiles or pieces of concrete at officers or preventing them from closing a door, and carrying mattresses to feed the fire. Lastly, he recognised the fact that it was a "problem that the defendants won't be represented" and that part of the blame for the centre's destruction and the toxic nature of the smoke lay in the fact that the mattresses were not fire-proofed.

### Conclusion

The defence lawyers argued that the aim of the trial was to establish the guilt of detainees for the events that occurred at Vincennes CRA. The guilty were picked somewhat arbitrarily, using edited video footage and officers' statements. Souli's death and other concerns such as overcrowding were not considered in the proceedings. In fact, during the trial plans were unveiled for capacity at Mesnil-Amelot CRA to be increased from 140 to 240 places using the same expedient measures as at Vincennes: the creation of a second site to provide the impression of two separate detention centres. *Cimade* and other French NGOs have launched a campaign against this initiative.

Most significantly, the decontextualisation of the detainees' actions can be seen in the use of video evidence. Footage of the revolt and fire were shown but not the protest or its suppression which played a part in subsequent events. The minor concessions ceded to the defence did not assist lawyers' in defending their clients because the extended schedule was largely used to show video footage in a context that made it difficult to interpret or analyse the images. The substance of the lawyers' complaints was dismissed.

### Footnote

1. The "policy of figures" is an expression used to refer to the practice of arresting foreigners in order to demonstrate police forces' "productiveness" by improving statistics through "easy" arrests.

## Sources

Migreurop campaign for a right of access to the places of detention for migrants: <http://www.migreurop.org/rubrique268.html>

Migreurop observation of the Vincennes CRA trial: <http://www.migreurop.org/article1610.html>

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## Statewatch News Online

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

# UK: Broadening the definition of terrorism: criminalising the Mandelas as well as the bin-Ladens

by Nick Moss

**The terrorism Acts of 2000 and 2006 have drastically broadened the definition of what constitutes a terrorist offence. This has led to the criminalisation of resistance movements and those who express support or solidarity.**

According to *Guardian* columnist, Simon Jenkins: "A central tenet of liberalism is a distinction between disagreement and banishment, between distaste for another's point of view and its statutory elimination." [1] Indeed, the right to freedom of expression is proclaimed as one of the cultural touchstones of liberal democracy: Article 19 of the UN Universal Declaration of Human Rights and Article 10 of the European Convention on Human Rights includes the right to hold opinions and to receive and impart information and ideas. John Milton, in his *Areopagitica* of 1644 declared:

*And though all the winds of doctrine were let loose to play on the earth, so Truth be in the field, we do injuriously by licensing and prohibiting misdoubt her strength. Let her and Falsehood grapple; who ever knew Truth put to the worse in a free and open encounter?*

This commitment to the battle of ideas in the public sphere has always been a shibboleth of all who have proclaimed the virtues of liberal democracy as the best possible state of affairs available to us. If, then, the state abandons its commitment to such "free and open encounter" does it cease to be a liberal democracy in any meaningful sense, or is liberal democracy a paper which will take anything that is written upon it?

## The Terrorism Act 2000

The question arises most obviously in relation to the battery of "anti-terrorism" legislation produced since 2000 on the pretext of countering the rise of "Islamic extremism." The Labour Party upon entering government immediately produced a new anti-terrorist law which was not only permanent but also broader in its scope and application than previous "emergency" and "temporary" legislation. The Terrorism Act 2000 received royal assent on 20 July 2000. The Labour government seized upon the opportunity presented by the *Inquiry into Legislation Against Terrorism*, chaired by Lord Lloyd of Berwick, set up by the outgoing Conservative administration and tasked to consider the need for counter-terrorist powers in the wake of the emerging Irish peace process and the likely decline in activity by the armed groups. The previous Labour government's intention was to modernise counter-terrorist powers, to make them permanent and to "maximise the appropriateness and effectiveness of the UK's response to all forms of terrorism" including "new forms of terrorism which may develop in the future". Section 1 of the Act elaborates the meaning of "terrorism" over five subsections. "Terrorism" can mean the threat of, as well as the use of, an action. Section 1(4) makes it clear that this "action" can occur

anywhere within or outside the UK. Similarly, the persons, property or government affected by the threat or action itself can be anywhere in the world. The purpose of the action or threat is important for the definition of terrorism. The purpose must be to influence government "or to intimidate the public or a section of the public" for any "political, religious or ideological cause" (S1(1)b and c). The types of action are defined in Section 1 (2) and include "serious violence against a person", "serious damage to property", endangering a person's life, creating a "serious risk to the health and safety of the public", and "seriously" interfering or disrupting an electronic system. "Terrorism" is also defined by the weaponry involved, whether or not it is designed to be used to influence government or the public. Firearms and explosives deployed in any of the actions in S1(2) means that "terrorism" is involved. All of this is a considerable leap from the old definition of terrorism in the Prevention of Terrorism Act (PTA): "the use of violence for political ends" and "any use of violence for the purpose of putting the public, or any section of the public in fear".

Following the definition of "terrorism" the Act goes on to describe the procedures for proscription, which now include appeals and applying for de-proscription. Sections 11 to 23 describe a range of offences including membership of and support for a proscribed organisation. Under 12 (2), it is an offence to arrange a meeting at which a member of a proscribed group speaks, or which supports a proscribed organisation or furthers its activities. The wearing of uniforms or an item of clothing which indicates support for a proscribed organisation is covered by Section 13. Other offences include fund-raising, the use of property for terrorist purposes, money laundering and failure to disclose information about a terrorist offence. Sections 24 to 31 cover the "seizure of terrorist cash" where an officer has a reasonable suspicion that the cash is being used for terrorist purposes. Among the more controversial sections are those concerned with "directing terrorism", collecting information and the possession or any article, such as a coffee jar, which might be of use to terrorism, specifically, section 57 wherein:

*A person commits an offence if he possesses an article in circumstances which give rise to a reasonable suspicion that his possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism"*

and S58 wherein "A person commits an offence if: (a) he collects or makes a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism, or (b) he possesses a document or record containing information of that kind." The onus is on the suspect to prove that items are for

another purpose. [2] Thus, the 2000 Act, on the back of the diminished threat from armed groups brought about by the peace process, expanded the definition of “terrorism”, and made permanent the previously temporary legislative armoury. All of this, it is often forgotten, preceded the 11 September events we are now routinely told “changed everything.”

### **The Terrorism Act 2006**

The 2006 Terrorism Act takes all this much further. If the 2000 Act began the process of criminalisation of dissenting ideas by widening the definition of terrorism and extending the process of criminalisation to possession of information, then the 2006 Act makes the outlawing of particular forms of thought explicit. Section 1 states:

#### *1 Encouragement of terrorism*

*(1) A person commits an offence if—*

*(a) he publishes a statement or causes another to publish a statement on his behalf; and*

*(b) at the time he does so—*

*(i) he knows or believes, or*

*(ii) he has reasonable grounds for believing,*

*that members of the public to whom the statement is or is to be published are likely to understand it as a direct or indirect encouragement or other inducement to the commission, preparation or instigation of acts of terrorism or Convention offences.*

Thus, what is criminalised is not the deed but, expressly, the word. There need not be a deed as such:

*4) It is irrelevant for the purposes of subsections (1) and (2)—*

*(a) whether the statement relates to the commission, preparation or*

*instigation of one or more particular acts of terrorism or Convention*

*offences, of acts of terrorism or Convention offences of a particular*

*description or of acts of terrorism or Convention offences generally; and*

*(b) whether any person is in fact encouraged or induced by the statement to commit, prepare or instigate any such act or offence.*

It is the discussion of the legitimacy of resistance, in effect, which is criminalised - not simply the act of resistance but the affirmation of such through argument.

Section 2 takes things yet further:

#### *2 Dissemination of terrorist publications*

*(1) A person commits an offence if he—*

*(a) distributes or circulates a terrorist publication;*

*(b) gives, sells or lends such a publication;*

*(c) offers such a publication for sale or loan;*

*(d) provides a service to others that enables them to obtain, read, listen to or look at such a publication, or to acquire it by means of a gift, sale or loan;*

*(e) transmits the contents of such a publication electronically; or*

*(f) has such a publication in his possession with a view to its becoming the subject of conduct falling within any of paragraphs (a) to (e).*

*(2) For the purposes of this section a publication is a terrorist publication, in relation to conduct falling within subsection (1)(a) to (f) if matter contained in it constitutes, in the context of that conduct—*

*(a) a direct or indirect encouragement or other inducement to the*

*commission, preparation or instigation of acts of terrorism; or*

*(b) information of assistance in the commission or preparation of such acts.*

### **The criminalisation of solidarity**

Thus, the act of facilitating, “read(ing), listen(ing) to or look(ing) at...a publication” itself becomes an act of terror. What flows from this is not only criminalisation through prosecution under the Act, but a wider delegitimisation of dissenting opinion. In the course of the “21/7” trial at Woolwich Crown Court of Muktar Ibrahim, Yassin Omar, Ramzi Mohammed, Hussain Osman, Manfo Kwaku Asiedu, and Adel Yahya, counsel for Asiedu, Stephen Kamlish QC, launched an extraordinary attack on the lawyer acting for several other defendants, the renowned Muslim lawyer, Muddassar Arani Kamlish raised the issue of Eid cards sent by Arani and Co to Asiedu. The cards bear the greeting “May Allah make all the difficult and hard times easy for you and may you all succeed in the trail which awaits you. Lots of love, Muddassar Arani.” A second card bears a quotation “Oh Allah, there is nothing easy except what you make easy and you make the difficult easy if it be your will.” According to Kamlish, this was “rather sinister...I am going to ask you to interpret the circumstances of why she was sending it as meaning “you can either do this the easy or the hard way.” Kamlish also asserted that the quote comes from a “terror manual” written by Dhiren Barot, another of Muddassar Arani’s clients. None of this is borne out by Asiedu’s evidence. Asiedu states that he takes the expression “lots of love” as not improper, but simply an expression of “motherly love.” He states that the quotation Kamlish believes to be “sinister” in fact comes from the *Fortress of the Muslim* a “small book that’s been issued by the prison...and you can find this outside too, like when you are in difficulty they are some of the things that normally Muslims send to you just to tell you to bear patience and have hope.” (*The Fortress of the Muslim* is a widely-available book of invocations from the *Qu’ran* and the *Sunnah*).

So far from being sinister, Arani and co., as far as Asiedu is concerned, have simply been demonstrating solidarity with a Muslim in jail. Yet Kamlish’s allegations were allowed to stand and were used to trigger a Law Society investigation into Arani and co’s conduct. In the context created by the 2006 Terrorism Act, no words are innocent per se - words from one Muslim to another attract immediate suspicion, and invocations of solidarity can have a “sinister” purpose.

Not only words - the same context of criminalisation and proscription intimates that some should not be allowed to speak, regardless of what they say. *The Times* launched an attack on Reza Pankhurst [3], who spent four years in Egyptian prisons for membership of Hizb ut-Tahrir (HT). Pankhurst was detained with two other Britons in Cairo in 2002, and the three were adopted as prisoners of conscience by Amnesty International. Pankhurst was tortured with electric shocks. He is now a postgraduate student in the LSE’s government department and teaches classes for the course “States, Nations and Empires”. According to *The Times* “The presence of one of (HTs) prominent members as a university teacher raises new concerns

about Islamist radicalisation on campus”, (HT is not a proscribed organisation). Reza Pankhurst responded that: “Such slurs are a form of McCarthyism directed against Muslims who speak out” against UK foreign policy.

*Do they want Muslims to be engaged in professional fields or would they prefer us to be on benefits? The innuendo, blacklisting and McCarthyite witch-hunts are very counter-productive. I have not said anything which is illegal, or anything that incites violence.*

In truth, though, he doesn't need to. In the context of a deliberate delegitimisation of any and all forms of effective resistance, who is/is not allowed to enter the public sphere is as important as what is said. In his statement Reza Pankhurst notes:

*As a teacher, my role is to run the undergraduate seminar in a manner that encourages the students to think about the subjects at hand in a critical and academic manner, in order to develop their thinking. Anyone who suggests that I have done otherwise, or am incapable of doing so for holding certain religious and political opinions, should verify with the Government department and the School to confirm with them how I am viewed both by the students and staff. To suggest I am unable to talk about any issue academically, whether Islamic or otherwise, is an attempt to discredit both myself and my academia without any justification. The fact is that I have had work on Middle Eastern and Islamic politics accepted for academic publication, and that whatever research I have done so far has been appreciated by scholars both in and outside of the LSE. I would like to point out that no other religious or political grouping is treated in such a manner, whereby because someone is a Muslim who believes in Islamic values and the revival of an Islamic State in Muslim countries means that their professionalism is automatically questioned. This is actually a form of discrimination.*

In this, Reza is entirely correct - save that the discrimination is legitimated by the attack on dissenting ideas which is at the heart of the Terrorism Act 2006, and the Home Office/security services strategies which flow from it. The intended result is a sanitised, banalised public sphere where some of us are indeed “unable to talk about any issue.”

Somewhat unfortunately for New Labour, the wheels have begun to come off its use of the 2000 Terrorism Act, just as its pursuit of a climate of proscription through the 2006 Act comes to be accepted as the norm. At trial in October 2007 - soon after the Glasgow Airport attack - Mohammed Atif Siddique was convicted of offences under the 2000 Act. The court was told that the 24-year-old sympathised with al-Qaeda and wanted to be a suicide bomber. He also shocked classmates at the city's Metropolitan College with pictures of terrorist beheadings.

Siddique, from Alva, Clackmannanshire, was found guilty of three breaches of the Terrorism Act and a breach of the peace. The offences were said to have been committed between March 2003 and the day that police raided his home in April 2006. He was sentenced to eight years in prison. The most serious charge, which accounted for six years of that sentence, alleged that he possessed computer equipment and other material: in circumstances which give rise to a reasonable suspicion that your possession was for a purpose connected with the commission, preparation or instigation of an act or terrorism. The crime is an offence under the Terrorism Act 2000, but the law also recognises a defence of possession without intention to commit an act of terrorism.

Throughout, Siddique protested his innocence, claiming that when he downloaded material from the internet he was motivated only by curiosity. He denied that he was planning any terrorist attack. His legal team appealed his conviction on that charge and on 29 January 2010 the Appeal Court returned its judgement. The ruling by Lord Osborne, sitting with Lords Reed

and Clarke, criticises the way in which trial judge Lord Carloway explained the main Terrorist Act charge to the jury.

During the appeal hearing last July, Donald Findlay, QC, for the defence, said that supposedly damning material produced at the trial was “mere propaganda” and did not mean that Siddique was about to commit a terrorist act. The shopkeeper's son was arrested at Glasgow Airport as he waited to board a plane to Lahore with his uncle. He was planning to spend some time on his uncle's farm in Pakistan. Material found on his laptop computer and in a later search of his home was later shown to the jury. It included religious texts from the Koran, messages from al-Qaeda and praise for “martyrs” in Iraq. Mr Findlay told the appeal court:

*It is a hotchpotch, a melange of a whole variety of matters which is, in my submission, of no practical purpose whatsoever to any terrorist.*

The lawyer admitted that Siddique “had an intention, an aspiration, to be a suicide bomber”. But, he claimed, the Terrorism Act demanded the commission, preparation or instigation of a definite, particular act before a conviction was possible.

He also argued that Lord Carloway did not fairly explain to the jury that the Terrorism Act 2000 gives an accused a chance to put forward a “reasonable excuse” for possessing material allegedly linked to terrorism. Giving the Appeal Court's decision, Lord Osborne said:

*We have concluded that the direction given to the jury in this case in relation to the offence created by Section 57(1) and the operation of the statutory defence available under Section 57(2) of the Terrorism Act 2000, amounted to material misdirection. In these circumstances the appellant's conviction on charge one, which was brought under Section 57(1), in our judgement, amounts to a miscarriage of justice. We are therefore minded to quash that conviction.*

Recent appeals have at least brought into focus the draconian extent of the 2000 Act. In R-v-F [2007] EWCA Crim 243 the appellant, a Libyan national, brought an appeal against two counts under the 2000 Act. The first count related to part of one of 21 files contained on a CD downloaded from a Jihadist website, entitled *A special training course on the manufacture of explosives for the righteous fighting group until God's will is established*. The Crown suggested that this document provides detailed instructions on how explosive devices may be made, and that s58(1)(b) applies to the information contained in it. The second count referred to a handwritten document which, according to the Crown's case, described in detail how a terrorist cell may be set up. It was said to be a “blueprint” for such a cell and pointed a route to Jihad, the removal of Colonel Gaddafi from power in Libya and establishing the rule of Allah. It recommended the acquisition of firearms suitable for action within cities and the need “to try to learn to use explosives and mining”. Accordingly this material, too, fell within s58(1)(b).

In the course of the appeal “Much thought was given to the right to rebel against a tyrannous or unrepresentative regime.” We were shown that John Locke observed in his *Second Treatise of Government* that the “people” were entitled to resume “their original liberty” when the legislators sought to “reduce them to slavery under arbitrary power”. The United States Declaration of Independence (1776) having identified the famous “self evident” truths, added that “whenever any Form of Government becomes destructive of these ends, it is the Right of People to alter or to abolish it, and institute new Government”. The preamble to the Universal Declaration of Human Rights 1948 acknowledges the possibility of citizens having recourse “as a last resort to rebellion against tyranny and oppression”. Article 1 of the International Covenant on Civil and Political Rights (1966) underlines that “all peoples have the right to self determination”.

All of this was rehearsed and rejected by the Court, which concluded:

*What is striking about the language of s1, read as a whole, is its breadth. It does not specify that the ambit of its protection is limited to countries abroad with governments of any particular type or possessed of what we, with our fortunate traditions, would regard as the desirable characteristics of representative government. There is no list or schedule or statutory instrument which identifies the countries whose governments are included within s1(4)(d) or excluded from the application of the Act. Finally, the legislation does not exempt, nor make an exception, nor create a defence for, nor exculpate what some would describe as terrorism in a just cause. Such a concept is foreign to the Act. Terrorism is terrorism, whatever the motives of the perpetrators...In our judgment...the terrorist legislation applies to countries which are governed by tyrants and dictators. There is no exemption from criminal liability for terrorist activities which are motivated or said to be morally justified by the alleged nobility of the terrorist cause."*

The legislation is designed to criminalise the Mandelas as well as the bin-Ladens. It is resistance which is criminalised under the 2000 Act, and effective discussion of the means and ends of such resistance, which is prohibited by the 2006 Act.

### Conclusion

It is unlikely that the would-be jihadist will not be deterred by the prohibitions of the 2006 Act. The material proscribed is easily located both online and legitimately elsewhere. For instance, Hurst and Co publish *Architect of Global Jihad - The Life of Al-Qaeda Strategist Abu Mus'ab Al-Suri* by Brynjar Lia. This includes two chapters of *The Global Islamic Resistance Call*. In any event, to presume that prohibition would discourage jihadist activism assumes that the material - rather than events on the ground - triggers the thought, and the state isn't that naive. The purpose of prohibition is wider - to restrict the scope of what is legitimately discussed within the public sphere - to restrict what might be brought to thought, such that the context of imperialist wars and resistance is no longer that "possibility" of citizens having recourse "as a last resort to rebellion against tyranny and oppression" rejected by the courts in R-v-F. It is that "possibility" which the 2006 Act is intended to exclude from public debate, to deny such ideas the "deference that their importance deserves". [4]

Such being the case, it is significant that the prohibition is

now being challenged courageously in the realm of the arts. Xenofon Kavvadias, a UK based Greek artist intends to mount an exhibition featuring texts such as *The Islamic Ruling on the Permissibility of Martyrdom Operations*, a justification for suicide bombings used by Chechen extremists. Kavvadias wants to install a bookshelf in an art gallery stocked with texts presented in court to secure terrorism convictions. They include *Defence of Muslim Lands* by Sheikh Abdullah Azzam, a jihadist who influenced Osama bin Laden, *The Mujahideen Poisons Handbook*, which details how to kill using homemade ricin and how to make poisons from tobacco and potatoes, and the *Manual of Afghan Jihad* (also known as the *al-Qaida Manual*), which explains how to plan, finance and execute terror attacks. He intends to create a tranquil space where such texts can be perused without fear and be seen for what they are, alongside others including texts by Meir Kahane, the CIA *Psychological operations in guerrilla warfare manual*, the Ministry of Defence's *Operation Banner* (an analysis of military operation in Northern Ireland) and *Evolution of a revolt* by T E Lawrence, and thereby "to use art to reclaim something that is lost right now: freedom of publishing and freedom of expression". Xenofon will be seeking to stage his exhibition in the UK and will be looking to activists, lawyers and civil rights groups to support him and demonstrate solidarity with him. His "grand project is to design a library [of banned books] for each country to create a portrait of a country's demons and fears." [5]

The political philosopher Jacques Ranciere, has commented "The images of art do not supply weapons for battles. They help sketch new configurations of what can be seen, what can be said and what can be thought, and, consequently, a new landscape of the possible." (Jacques Ranciere "The Intolerable Image", in *The Emancipated Spectator* (Verso, 2009.)) Interventions such as those proposed by Kavvadias create a space where "what can be thought" is the possibility of that "last resort to rebellion against tyranny and oppression" which the 2006 Act is designed to render "unthinkable."

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## Spying in a see through world: the "Open Source" intelligence industry

by Ben Hayes

**The Open Source Intelligence industry has grown rapidly over the past decade. Private companies free from the privacy statutes that constrain state agencies are collecting data on a vast scale and the practice has been widely embraced by EU institutions and Member States**

*"In the past few years, Open Source Intelligence has become the target of what could almost be described as infatuation in both the EU institutions and many of its member states" - Compagnie Européenne d'Intelligence Stratégique (2008).*

### Introduction: what is OSINT?

The US military defines 'Open Source Intelligence' (OSINT) as "relevant information derived from the systematic collection, processing and analysis of publicly available information in response to intelligence requirements".[1] "Open source" is "any person or group that provides the information without the

expectation of privacy", while "publicly available information" includes that which is "available on request to a member of the general public; lawfully seen or heard by any observer; or made available at a meeting open to the general public". 'Open source' intelligence is thus defined by virtue of what it is not: "confidential", "private" or otherwise "intended for or restricted to a particular person, group or organization". But this distinction is undermined in practice by the categorisation of 'weblogs', internet 'chat-rooms' and social-networking sites as "public speaking forums".

Prior to the IT revolution, OSINT gatherers were primarily

concerned with the left wing press and the situation in foreign countries. Intelligence was obtained by reading the papers, debriefing businessmen and tourists, and collaborating with academics and scholars. Indeed, OSINT specialists have bemoaned the substantial decline in the number of foreign correspondents working for major newspapers (a consequence of declining print media revenues). This loss has been off-set, however, by the wealth of information now available on the world-wide-web, which has seen OSINT transformed into a desk-based activity requiring nothing more than an internet connection, a web browser and a telephone. As the RAND Corporation has observed: “the proliferation of [online] media and research outlets mean that much of a state’s intelligence requirements can today be satisfied by comprehensive monitoring of open sources”.[2] The CIA has even been quoted as saying that “80% of its intelligence comes from Google”.[3]

From a security perspective there is nothing inherently problematic about the use of OSINT. On the contrary, the security services would be negligent if they didn’t utilise information in the public domain to inform their work; everyone else engaged in public policy matters does the same thing. However, from a civil liberties perspective, the process of appropriating personal information for the purpose of security classification *is* inherently problematic, since it is often based on wholly flawed assumptions about who or what poses a ‘threat’. The mere act of recording that someone spoke out publicly against the War, attended a demonstration, or is friends with a known ‘security risk’, brings with it a significant possibility that this information will be used prejudicially against them at some point in the future. This in turn calls into question the democratic legitimacy of surveillance and intelligence gathering, a legitimacy that rests on questions of who is doing the watching, how, and why?

### OSINT and the police

In an address to the *Eurointel '99* conference, a spokesman for New Scotland Yard’s (NSY) OSINT described open sources as “any form or source of information available to us either as a paying customer or for free”.[4] Such information may be used for tactical or strategic purposes. “Tactical” information is that which is needed urgently, whereas “strategic” information “can be collected through long-term research as part of an ongoing project”, around topics such as organised crime, money laundering, terrorism and drugs. Tactical requests to NSY’s OSINT unit are said to include enquiries like “where does this person live and who are his associates?”, “I have a woman’s first name and I know she lives in Manchester”, or “when is the next anarchist march on parliament”? According to NSY:

*Much of this is surprisingly easily using some very simple tools and officers are astonished when they come to us with nothing more than a name and we return address lists, family names and addresses, companies and directorships, financial details and associates.*

The police OSINT specialists also use ‘people finder’ sites that “can employ directories, public records, telephone records, lists, email finders, homepage finders etc”.

*In reality we use on-line sources as the first string to our bow, but we frequently dip into our list of real people – experts in their particular field whenever we reach a dead-end or want that little bit more.*

Tellingly, all of Scotland Yard’s “online transactions are done covertly” using “undercover companies, pseudonyms and covert companies in the same way [as] with any other covert operation”. “This helps to prevent anyone seeing that the police have been looking”, they explain. It also raises fundamental questions of accountability [unlike the intelligence services, the police are supposed to be accountable for their investigative techniques], regulation [to what extent do police intelligence gatherers respect

the laws and principles of privacy and data protection] and democratic control [what oversight mechanisms exist?]. The Yard’s spokesman was candid about viewing data protection as an unreasonable ‘barrier’ to his work:

*Other challenges came, and continue to come, from the Data Protection Registrar. Above all we must comply with the law but it seems that time after time we face an uphill struggle in the use of legitimate data collection which is so valuable in the fight against sophisticated and well organised criminals and those of a generally evil disposition. Even as we speak there is contention and confusion amongst a number of on-line service providers, Equifax and Experian [credit rating and financial intelligence companies], to name but two, over exactly how DP legislation is to be interpreted.*

### Privatising OSINT

In 2002, Dr. Andrew Rathmell of *RAND Europe* called for the “privatisation of intelligence”, arguing that there was “little reason to think that [OSINT collection] can better be done by in-house experts than by established private sector research institutes and companies”.[5] As in other areas of security and defence, it was argued that outsourcing could “relieve budgetary pressures”. “In order to benefit from the ongoing information and intelligence revolutions”, suggested *RAND*, “all European states could benefit from closer European collaboration, both between governments and with the private sector”. Dr. Rathmell also observed that:

*Not only are open sources now more widely available, but the information revolution is now blurring the boundaries between open and covert sources in regard to the formerly sacrosanct technical collection means.*

The OSINT industry has grown rapidly over the past decade as a trend that began in the USA has quickly taken hold in Europe. *Equifax* and *Experian* (referred to above), are ‘data aggregators’, organisations that are able to create an increasingly high-resolution picture of an individuals’ activities by drawing together data from a variety of sources. As the *American Civil Liberties Union* (ACLU) has explained: “These companies, which include *Acxiom*, *Choicepoint*, *Lexis-Nexis* and many others, are largely invisible to the average person, but make up an enormous, multi-billion-dollar industry”.[6] Whereas privacy statutes constrain governments’ ability to collect information on citizens who are not the targets of actual police investigations, “law enforcement agencies are increasingly circumventing that requirement by simply purchasing information that has been collected by data aggregators”, say ACLU.

European data aggregators include *World-Check*, a commercial organisation that offers “risk intelligence” to reduce “customer exposure to potential threats posed by the organisations and people they do business with”.[7] *World-Check* is the sort of place you go to check if an individual or entity appears on any of the ‘terrorism lists’ drawn-up by the UK, EU, USA or UN (among many others). The organisation claims to have a client base of “over 4,500 organisations”, with a “renewal rate in excess of 97%”. According to *World-Check*’s website, its research department “methodically profiles individuals and entities deemed worthy of enhanced scrutiny”; its “highly structured database” is “derived from thousands of reliable public sources”. Another service offered by *World-Check* is an online “Passport-Check” that “verifies the authenticity of ‘machine readable’ (MRZ) passports from more than 180 countries” as proof of due diligence”. An annual subscription allows for “unlimited access, look-ups, printouts and suspicious name reporting”.

In Britain in the 1980s, the *Economic League* drew up its own ‘blacklists’ and acted as a rightwing employment vetting agency. The League, which was acknowledged to have close links with the security services, had accumulated files on at least

30,000 people, files it shared with more than 2,000 company subscribers, in return for annual revenues of over £1 million. The files it held contained details of political and trade union activists, Labour Party MPs and individuals who, for instance, had written to their local papers protesting at government policy. The League always maintained that ‘innocent’ people had nothing to fear as they only kept files on “known members of extreme organisations”. Critical investigative reporting coupled with a campaign against the organisation saw it disband in 1993 (though its Directors reportedly set-up a new company offering the same service on the basis of the same files the following year).[8] An enterprise considered illegitimate in the early 1990s has now been supplanted by an entire industry.

*Infosphere AB*, based in Sweden, is a “Commercial Intelligence and Knowledge Strategy consultancy”. [9] “No other company or organization in the world has our experience in the use and development of [OSINT] methods and Business Knowledge strategy”, it claims, “many nations and corporations both follow our recommendations and use our continuous support”. *Infosphere’s* “Profiling services” offer “fact based background checks, media analysis and relationship mapping of people, companies and organizations” in “any corner of the world”:

*With a range of proven methodologies, direct investments and ownership of state-of-the-art intelligence services, combined with an access to electronic and human sources throughout the world, we have the proven experience and knowledge to address even your most difficult product and development challenges.*

*Sandstone AB* (“Because You Need To Know”), based in Luxembourg, offers a similar range of services using “Actionable intelligence on demand”. [10] *Infosphere* and *Sandstone* have teamed up to create *Naked Intelligence* (“Gathering Knowledge in a See Through World”), an OSINT conference “where knowers and doers from fields such as competitive intelligence, business intelligence, signals intelligence and HUMINT gathers openly together under one roof”. [11] *Naked Intelligence 2009* was held in Luxembourg, the 2010 event will take place in Washington in October. [12]

### OSINT theory and practice

With information and communications technology offering up so much potential ‘open source intelligence’, scientists and computer programmers have teamed up to automate the process of collecting and analysing this data. The University of Southern Denmark, for example, has established an institute for applied mathematics in counter terrorism, the “Counterterrorism Research Lab” (CTR Lab), which conducts research and development around:

*advanced mathematical models, novel techniques and algorithms, and useful software tools to assist analysts in harvesting, filtering, storing, managing, analyzing, structuring, mining, interpreting, and visualizing terrorist information.* [13]

Its products include the *iMiner* (“terrorism knowledge base and analysis tools”), *CrimeFighter* (a “toolbox for counterterrorism”) and *EWaS*, (an “early warning system” and “terrorism investigation portal”). The CTR Lab has also organised international conferences on themes like “Counterterrorism and OSINT”, “Advances in Social Networks Analysis and Mining” and “OSINT and Web Mining”. As the EU’s Joint Research Centre observes:

*The phenomenal growth in Blog publishing has given rise to a new research area called opinion mining. Blogs are particularly easy to monitor as most are available as RSS feeds. Blog aggregators like Technorati and Blogger allow users to search across multiple Blogs for postings. Active*

*monitoring of Blogs applies information extraction techniques to tag postings by people mentioned, sentiment or tonality or similar...[14]*

Ostensibly, governments use this technology to help them understand public opinion, in much the same way as they use ‘focus groups’. Of course, the very same technology can also be used to identify groups and individuals expressing ‘radical’ or ‘extremist’ views.

In the USA, the Mercyhurst College offers degrees in “Intelligence Analysis”, promising its graduates jobs with the CIA and the US Army, amongst others. [15] In July 2010, Mercyhurst organised a “Global Intelligence Forum” in Dungarvan, Ireland, with panels on medicine, law, finance, technology, journalism, national security, law enforcement, and business intelligence. [16] Kings’ College in London now offers an OSINT diploma, covering “both theoretical and practical aspects of OSINT, including OSINT collection and analysis methodologies”. [17] It advises that “Students taking this module should consider applying for the traineeship scheme with the EU Institute for the Protection and Security of the Citizen” (IPSC, part of the EU Joint Research Centre).

From the private sector, *Jane’s Strategic Advisory Services* (the consultancy division of defence specialist *Jane’s*), also offers an OSINT collection and analysis training service. [18] The course covers “overarching methods, best practices, considerations, challenges and tools available to open source intelligence analysts”. Tutors include Nico Prucha, whose expertise includes “on-line jihadist movements and ideologies”, “using blogs and social networking tools for intelligence collection”, “navigating and assessing forums and the ‘Deep Web’”, “key word analysis”, “sentiment analysis” and “on-line recruitment and radicalization patterns”.

### Crossing the boundaries

As noted above, the information revolution is, in the words of the RAND Corporation, “blurring the boundaries between open and covert sources in regard to the formerly sacrosanct technical collection means”. On the one hand, OSINT tools can be used to ‘mine’ publicly available (and privately held) datasets to conduct *de facto* surveillance on named groups and individuals. On the other, the very same ‘community’ of scientists, programmers and hackers, has developed a whole range of so-called ‘spy-ware’ applications that enable to users to conduct covert and intrusive surveillance. Products include ‘phishing’ applications, used to acquire sensitive information such as usernames and passwords, and a variety of ‘keystroke loggers’, used to surreptitiously record computer users activities. Meanwhile, the illegal interception of GSM (mobile) telecommunications is “cheap, easy, and getting easier” and, as Google demonstrated recently, the hacking of unsecured wireless networks is straightforward. [19] Although the EU has criminalised the unauthorised use of spy-ware, hacking and interception techniques, this has done nothing to stem their development. Moreover, some EU law enforcement are in clearly using them, having repeatedly demanded so-called ‘lawful access’ powers, allowing them to legally access suspects’ computer hard drives through the internet, and without the knowledge of those affected. The crux of the matter is that both the police and the private investigator are steadily accumulating *the capacity* (if not the lawful powers) to conduct the kind of covert and intrusive surveillance that was once the preserve of GCHQ and the secret intelligence services.

### OSINT and the European Union

The EUROSINT Forum is a Belgian not-for-profit association “dedicated to European cooperation and use of [OSINT] that prevent risks and threats to peace and security”. [20] It was launched in 2006 with the support of the European Commission’s “Justice, Liberty and Security” (JLS) Directorate.

EUROSINT's mission is to "create a European 'intelligence ecology' that is dedicated to provoking thought on [OSINT] and its use in the intelligence and security spheres by public and private sector organisations". Other goals include giving "voice" to "private sector actors dealing with security and intelligence issues" and "building a positive image for OSINT in the EU", and "the creation of partnerships between private companies and/or public organisms, to create European consortiums that can bring forward new projects". Members of the EUROSINT Forum include EU institutions, national defence, security and intelligence agencies, private sector providers of intelligence, technology developers, universities, think-tanks and research institutes. Among the companies paying the €5,000 EUROSINT annual membership fee are Jane's, Lexis Nexis, Factiva (UK), Oxford Analytica (UK), CEIS-Europe (Compagnie Européenne d'Intelligence Stratégique, France's largest Strategic Intelligence Company) and Columba Global Systems (Ireland).

EUROSINT believes that "OSINT provides EU institutions with the perfect platform to, quite legitimately, initiate intelligence cooperation".[21] These convictions are shared by SITCEN (the EU's "Joint Situation Centre" and forerunner to any future EU intelligence service), which also saw OSINT as the logical starting point for its activities.[22] SITCEN, FRONTEX and the EU JRC are all EUROSINT members, along with three Commission DGs. In 2008, Axel Dyèvre, Director of the European Company for Strategic Intelligence (CEIS, a founder member of EUROSINT), went as far as to claim: "In the past few years, [OSINT] has become the target of what could almost be described as infatuation in both the EU institutions and many of its member states".[23]

EUROSINT and its member organisations have received backing for their activities from the EU. In 2008, DG JLS funded a *EUROSINT* project on "Open Source Intelligence in the fight against Organised Crime" under its multiannual ISEC (organised crime) programme. *EUROSINT* is also part of the 18 member VIRTUOSO consortium, which has just been awarded €8 million from the EU Security Research Programme (ESRP). The consortium promises a "pan-European platform for the collection, analysis and dissemination of OSINT" providing EU actors "with real-time OSINT aggregation as well as text-mining, early warning and decision support tools". Members of the VIRTUOSO consortium include *CIES* and *Colomba*, European Defence giants *EADS* and *Thales*, and the Dutch military research agency *TNO*. The European Defence Agency (EDA) has also funded EUROSINT to produce studies on "OSINT search engines" and the development of "Universal Intelligence Analyst's Tools", and to provide OSINT training in conjunction with the EDA, including a 30 week course in 2009.[24] The EU *Joint Research Centre* (JRC) has even developed its own OSINT suite featuring a "web mining and information extraction tool, which is now in trial usage at several national law enforcement agencies".[25] The software "extracts and downloads all the textual content from monitored sites and applies information extraction techniques. These tools help analysts process large amounts of documents to derive structured data".

Many OSINT providers have homed in on the potential of this kind of software to identify *potentially* dangerous people by analysing information on the web, techniques that are coming to be known as 'counter-radicalisation'. SAFIRE is another ESRP-funded project, to which the EC is contributing €3 million. It promises a "Scientific Approach to Fighting Radical Extremism" and has the goal of "improv[ing] fundamental understanding of radicalization processes and us[ing] this knowledge to develop principles to improve (the implementation) of interventions designed to prevent, halt and reverse radicalization". The SAFIRE consortium is led by the Dutch military research institute *TNO* and includes the *RAND Corporation*, Israel's *International Counter-Terrorism Academy* and *CEIS*.

"Radicalization on the Internet" and "observable indicators of the radicalization process" are among the topics that SAFIRE will address.[26] The European Union has already adopted a far-reaching 'radicalisation and recruitment' Action Plan as part of its counter-terrorism programme and, according to documents just revealed by *Statewatch*, the EU has now tacitly extended this programme to include political activists from across the political spectrum, which it labels as "Extreme right/left, Islamist, nationalist or anti-globalisation".[27]

## Conclusion

Writing recently in the *Guardian*, Professor John Naughton observed:

*[T]he internet is the nearest thing to a perfect surveillance machine the world has ever seen. Everything you do on the net is logged – every email you send, every website you visit, every file you download, every search you conduct is recorded and filed somewhere, either on the servers of your internet service provider or of the cloud services that you access. As a tool for a totalitarian government interested in the behaviour, social activities and thought-process of its subjects, the internet is just about perfect.*[28]

The present threat to civil liberties, however, comes neither from the internet nor totalitarian governments, but from a neo-McCarthyite witch-hunt for "terrorists" and "radicals", and a private security industry bent on developing the "perfect surveillance" tools to find them. For all the concern about *Facebook's* privacy policy,[29] that company is no more responsible for its users' wishes to 'broadcast themselves' than travel agents are for tourism. Of course *Facebook* should offer maximum privacy protection for its users, but those of us concerned with freedom and democracy need to see the bigger picture in terms of who is doing the watching, how, and why. We must then develop the tools and communities needed to bring them under democratic control.

## Footnotes

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## Statewatch European Monitoring and Documentation Centre (SEMDOC):

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

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### Statewatch database

<http://database.statewatch.org/search.asp>

## New material - reviews and sources

### Civil liberties

**Joint Study on global practices in relation to secret detention in the context of countering terrorism of the special rapporteur on the promotion and protection of human rights and fundamental freedoms**, Martin Scheinin, Manfred Nowak and Jeremy Sarkin. *United Nations (A/HRC/13/42)* 19.2.10. This report places the CIA's "secret detention" policy within its historical context, from the Nazis "night and fog" decree through the Soviet Union's gulags to the "disappearances" favoured by US-backed Latin American dictatorships of the 1970s and 1980s. Importantly, it also examines the UK's complicity in the CIA's extraordinary rendition programme, considering the example of Mustafa Setmariam Nassar who may have been tortured on the protectorate of Diego Garcia. The report says that the UK knowingly took "advantage of the situation of secret detention by sending questions to the State detaining the person or by soliciting or receiving information from persons who are being kept in secret detention", citing the cases of Binyam Mohamed, Salahuddin Amin, Zeeshan Siddiqui, Rangzieb Ahmed and Rashid Rauf. Available as a free download at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-42.pdf>

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### Immigration and asylum

**Derechos humanos en la Frontera Sur 2009**. *Asociación Pro Derechos Humanos de Andalucía*, March 2010, pp. 64. This year's issue of the annual report on the human rights situation at the southern border, while providing in-depth analysis on Spanish immigration policies and practices, a wealth of statistical data and its customary chart detailing all the incidents relating to immigration into Spain that have resulted in people dying, has the added input of examining this phenomenon from the southern shore of the Mediterranean. Analysis on the issue of migration into the EU, the policies to counter it and EU countries' policies in countries of origin is featured, from Cameroon, the Democratic Republic of Congo, Mali and Morocco. 2009 was marked by 206 documented deaths, an improvement on 2008, when 581 people died, but which is nonetheless deemed an "intolerable" situation by the authors. There was an intensification in maritime controls and in cooperation with African countries to stop "illegal" immigration, Spain

will receive 90m euros to fight this phenomenon between 2009 and 2010 from the EU, it will expand its border surveillance system (SIVE), Frontex's involvement is increasing, and the immigration law was modified, while figures are provided as to the number of expulsions and returns, and decreasing numbers of arrivals. Available at: [www.apdha.org](http://www.apdha.org)

**Stop Forced Evictions of Roma in Europe**. *Amnesty International* April 2010 (EUR 01/005/2010). This paper discusses the forced eviction of Roma from their homes in Bulgaria, Greece, Italy, Romania and Serbia. "Across the region, Romani communities are often denied equal access to adequate housing, education, health, water and sanitation. This widespread discrimination makes them an easy target for forced evictions. Discrimination in the labour market makes it difficult for them to rent homes. Being effectively excluded from access to social housing schemes leaves them no choice but to find accommodation wherever they can – often in informal settlements. Without security of tenure, they are vulnerable to forced evictions and other human rights violations." Available as a free download: <http://www.amnesty.org/en/library/info/EUR01/005/2010/en>

**Voces desde y contra los centros de internamiento de extranjeros (CIE)**. *Para quien quiera oír, Ferrocarril Clandestino, Médicos del Mundo, SOS Racismo*, October 2009, pp. 192. Three organisations with different backgrounds (anti-racist, medical and migrant support activity from social movements) that have been visiting detainees in Aluche detention centre in southern Madrid over the last few years, have put together this detailed report to document the conditions that exist there. It is divided into sections on judicial safeguards and guarantees during proceedings; detention conditions; the right to family intimacy, and regimes for visits and communication; cruel, inhuman and degrading treatment; the right to health; social care and the experiences of foreign families; the access of NGOs to detention centres, and expulsions, transfers and returns. The report seeks to explain the conditions in the centre through the testimony of 40 people detained there, because: "The situation we discovered behind the centre's walls made us consider the need to criticise its existence in public and make people aware of the daily life of the people enclosed there through this document": <http://transfronterizo.at.rezo.net/IMG/pdf/CIESmaqueta.web.bajareso.pdf>

**'One Day we will be Reunited': experiences of refugee family reunion in the UK**, Judith Connell, Gareth Mulvey, Joe Brady and

Gary Christie. *Scottish Refugee Council* (April) 2010, pp 60. This report marks the winding down of the Scottish refugee Council's Family Reunion Service through lack of funding in May 2009, and is designed to "capture the family reunion needs and experience of refugees and the views of professionals working in this area." Sections 4 and 5 set out the international and European context of family reunion and how family reunion currently operates in the UK. A short review of the literature is presented in Section 6, while Section 7 presents the findings from questionnaires sent to professional respondents. Section 8 sets out findings from interviews with refugee respondents who have engaged to different extents with the family reunion process. Available: [http://www.scottishrefugeecouncil.org.uk/pub/Family\\_Reunion\\_Apr10](http://www.scottishrefugeecouncil.org.uk/pub/Family_Reunion_Apr10)

**Failing the Grade: Home Office initial decisions on lesbian and gay claims for asylum.** *UK Lesbian & Gay Immigration Group* (April) 2010, pp 16. The UK Lesbian & Gay Immigration Group (UKLGIG) conducted a review of 50 Home Office Reason for Refusal letters issued from 2005 to 2009 to claimants from 19 different countries who sought asylum on the basis of their sexual identity, of which "a staggering 98-99% were rejected at th[e] initial stage." The report notes that: "The poor quality of initial decision making has been a long-standing concern of groups monitoring refugee claims in the UK. The number of lesbian and gay claims being rejected suggests that this lack of quality is even more pronounced in decisions on cases relating to sexual identity." The report concludes with a number of recommendations to improve the process. Available as a free download at:

<http://www.uklgig.org.uk/docs/Failing%20the%20Grade%20UKLGIG%20April%202010.pdf>

**Rapport de la ligue grecque des droits de l'homme sur les structures de détention des immigrants sans documents de voyage et de séjour, dans les départements frontalières de Rodopi et d'Evros en Grèce.** *Hellenic League of Human Rights*, Thessalonica, 11.12.09, pp. 20. This report stems from a visit by a Hellenic League of Human rights delegation to Evros and Rodopi on 25-29 November 2009 which visited a number of detention facilities. Conditions in all of them are described as "below the standards envisaged by law", with border police detention facilities in Venna (Rodopi) and the border police station of Tyhero (Evros) singled out for their "shameful" conditions for a country that claims to respect basic human rights. The shortcomings highlighted include a lack of light and ventilation, little possibility of walking in the open air due to overcrowding and lack of personnel, the detention of men, women, children and unaccompanied minors in the same cells, inadequate nourishment, a lack of knowledge by detainees of their rights, of translators and of information about asylum procedures, incomplete application of legislation concerning unaccompanied minors, a disrespectful attitude by officers towards detainees, and a lack of coordination between FRONTEX and Greek authorities. It includes detailed reports on their visits to centres, the conditions found therein and the people they interviewed. The filthy conditions, skin disease among many detainees and the presence of rats and cockroaches in the Venna centre are mentioned, with detention conditions deemed reminiscent of "cages from the Middle Ages". The worst conditions were found in the Tyhero detention facilities, the presence of children in cells in the different centres appeared to be commonplace, and in the Fylakio-Kyprinos detention centre (Evros), detainees reportedly complained about their treatment by the police and the lack of medical care. Full report in Greek:

<http://www.hlhr.gr/papers/adetentioncenter-rapport2009.pdf>

English Summary:

<http://www.hlhr.gr/papers/report-hlhr2009-detention.pdf>

**Controles de identidad y detención de inmigrantes. Prácticas ilegales.** *INMIGRAPENAL, Grupo Inmigración y Justicia Penal*, 10 March 2010, pp. 13. This report by a group of university professors and researchers highlights that: "One of the main goals of the current immigration policy is the expulsion of all those foreigners whose stay in Spanish territory is illegal". This leads many *sans-papiers* to be subjected to a cycle of deprivation of freedom that contravenes constitutional guarantees for personal freedom (art. 17). Its different stages include the systematic identification checks by the police in the streets for the sole purpose of finding "irregular" immigrants. The

second stage is being taken to a police station, which is followed by detention in a *Centro de Internamiento de Extranjeros* (CIE). The report analyses the legal and constitutional problems that this "cycle" entails, drawing upon recent legislative amendments and orders for its implementation, particularly law 2/2009 and circular 1/2010, which are deemed to encourage racial profiling by the police and an excessive use of preventative custody (in application of norms allowing "precautionary detention") by defining illegal residence a "serious offence". The report also mentions concern expressed by four police trade unions about the "police practice of large-scale indiscriminate identification checks in public spaces", and analyses its legal implications in relation to the principle of non-discrimination that is enshrined in Spanish law. Available at:

<http://www.inmigrapenal.com/Areas/Detenciones/Documentos/INFORMEREDADASDETENCIONES01032010.pdf>

## Law

Counter-Terrorism Policy and Human Rights (Seventeenth Report): Bringing Human Rights Back In. Joint Committee on Human Rights, (HL Paper 86, HC 111) 25.3.10. This parliamentary report says that the government is overstating the threat of terrorism to the UK: "Since September 11th 2001 the Government has continuously justified many of its counterterrorism measures on the basis that there is a public emergency threatening the life of the nation. We question whether the country has been in such a state for more than eight years." It also argues that this "permanent state of emergency inevitably has a deleterious effect on public debate about the justification for counterterrorism measures." It is critical of the Director General of the Security Service for giving public lectures while refusing "to give public evidence to us." The report expresses concern about "the Government's narrow definition of what amounts to complicity in torture" urging a "comprehensive review of the use of secret evidence and special advocates, in all contexts in which they are used." The committee repeats its call for amendments to the Terrorism Act 2000. See: <http://www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/86/86.pdf>

**Seven paragraphs which tell a sorry tale.** Frances Webber. *IRR website*, February 2010. This article considers the Court of Appeal's overruling of "the Foreign Secretary's attempt to keep secret seven paragraphs summarising the British authorities' awareness of a UK-resident Muslim's subjection to cruel and degrading treatment while being held incommunicado in US custody, at a time when British intelligence officers were involved in his questioning." As Webber observes: "What the sage reveals is the depth of complicity of the US and UK authorities in using 'public interest immunity' to cover up anything likely to embarrass either government." Available at: <http://www.irr.org.uk/2010/february/ha000025.html>

**Garzón contra el franquismo. Los autos íntegros del juez sobre los crímenes de la dictadura.** *Público*, 2010, pp. 261, Depósito Legal: B-21370-2010. *Público* newspaper published a booklet comprising two trial documents by judge Baltasar Garzón containing the preliminary findings and the case for indictment concerning crimes committed under the dictatorship of Gen. Francisco Franco, who held power in Spain from 1939 until his death in 1975, that was followed by a transition to democracy and the Constitution of 1978. The events that are under investigation are divided into three periods: from 17 July 1936 to February 1937 (large-scale repression under the War Edicts); from March 1937 to early 1945 (emergency summary war court-martials); and from 1945 to 1952 (killing guerrilla fighters and those who supported them). The introduction to this booklet notes the importance of these proceedings, because "For the first time in our history, an investigating magistrate...has opened a criminal case against those responsible for that military coup, treating them as what they were, delinquents and criminals to whom, therefore, the penal code must be applied." It is also the first time in which allegations by associations for the recovery of historical memory and relatives of victims of the regime have had a positive response from a judicial body regarding "facts...that have never been the object of a criminal prosecution by the Spanish justice system", and for which "impunity has been the norm to date". The alleged crimes detailed in the

documents include “illegal detentions...basically due to the existence of a systematic and preconceived plan to eliminate political opponents through multiple killings, torture, exile and forced disappearances (illegal detentions) of people as of 1936, during the years of the Civil War and subsequent post-war years, that occurred in different geographical points of the Spanish territory”, with the number of verified disappearances reaching the figure of 114,266, many of whom were extra-judicially executed. A key element of the trial, is the clash between the Amnesty Law 46/1977 that extinguished criminal responsibility for “all acts that had political purposes” and the “permanent” nature of crimes against humanity enshrined in international instruments of which Spain is a signatory. As a result of this case, judge Garzón is currently facing charges for “perverting the course of justice”.

## Military

**Plans for UK-France defence alliance driven by new strategic realities.** *Deutsch Welle* 17.3.10. High level meetings between senior figures in the British and French defence establishments over the past few months have begun to lay the foundations of what could be a new defence alliance between the EU's two major powers. The move can partly be explained by budgetary pressures. Anthony Seaboyer, an expert on the German Council on Foreign Relations says: “The lack of comparable terrorist attacks to 11 September 2001 over the past nine years shows that either what has been done was effective enough or the threat of international terrorism is simply lower than originally assumed. Both perceptions allow the conclusion to focus spending on other issues. Given these developments, the willingness to save money through cooperation has increased”. Other factors are the repositioning of the US under president Obama (who is more concerned with China) and Europe's perceived weak involvement in Afghanistan. <http://www.dw-world.de/dw/article/0,,5355872,00.html>

**From Words to Deeds: making the EU ban on the trade in ‘tools of torture’ a reality.”** *Amnesty International and The Omega Foundation* (EUR 01/004/2010) 2010, pp. 62. This document discusses the European Union's introduction of the world's first multilateral trade controls to prohibit the international trade in equipment that has no other practical purpose than for capital punishment, torture and other ill-treatment; and to control the trade in a range of policing and security equipment frequently misused for such ill-treatment (Council Regulation 1236/20051). It finds that the Regulation “remains unimplemented or only partly implemented in several Member States”; that “traders in some Member States have continued to offer for sale equipment which is explicitly prohibited for import and export to and from the European Union on the grounds that it has no other practical purpose than for torture or other ill-treatment”; that “other Member States have explicitly authorised the export of security equipment controlled under the Regulation to destinations where such equipment is widely used in torture and other ill-treatment, raising serious concerns about the adequate assessment of human rights standards in Member States' export licensing decisions” and that “several loopholes in the Regulation continue to allow traders in Member States to undertake unregulated trading activities in a range of equipment and services that have been used for torture and other ill-treatment by military, security and law enforcement personnel around the world.” See: <http://www.amnesty.org/en/library/info/EUR01/004/2010/en>

## Policing

**Responding to G20: Draft report. MPA Civil Liberties Panel** 16.3.10, pp 68. This report investigates the Metropolitan police's current public order policing strategies following the G20 protest in central London in April 2009 at which passer-by Ian Tomlinson died after being assaulted by police officers. Available as a free download at: <http://www.mpa.gov.uk/downloads/committees/mpa/100325-06-appendix01.pdf>

**Inquiry call after video evidence clears man accused of violence at protest,** Simon Hattenstone and Matthew Taylor. *The Guardian* 25.3.10. This article covers the prosecution of Jake Smith, accused of violent disorder at a demonstration opposing the Israeli invasion of

Gaza in January 2009. Smith was charged with two counts of violent disorder, but the case against him was dropped at Isleworth crown court when police video evidence against him was undermined when the prosecution eventually released extra footage to the defence. Lawyers have criticised the police for the delay in releasing this material which supported Smith's contention that he acted in self-defence. At least 22 people, many of them young Muslims, have received lengthy prison sentences following protests against the invasion and a defence campaign has been mounted in protest at the lengthy sentences handed See: <http://stopwar.org.uk/content/view/1779/27/>

**Science and Innovation in the Police Service 2010-2013.** *National Policing Improvement Agency*, pp. 30. This report discusses the “accelerating” pace of change in police science, arguing that “in a changing world, science and innovation need to be harnessed more effectively than ever before.” It considers the strengthened role of science by police forces supporting the new strategies by the Home Office and the UK's counter-terrorist programme, CONTEST and the Home Office's Science and Innovation Strategy which sets out key activities over the next three years. These involve “a commitment to build a stronger partnership with the research community and the private sector.” Available: [http://www.npia.police.uk/en/docs/science\\_and\\_innovation.pdf](http://www.npia.police.uk/en/docs/science_and_innovation.pdf)

**Police Drone fails to pass the legality test.** *Police Review* 19.2.10, p. 11. This article discusses Merseyside police's first arrest using its airborne drone which has “been overshadowed by the revelation the force has been operating the equipment illegally.” The force admitted “using the unmanned aerial vehicle (UAV), which is operated by a police officer on the ground, without a permit.”

## Prisons

**The diversion dividend: interim report, Rethink and The Sainsbury Centre for Mental Health,** 2010, pp 14. Following the publication last year of the Bradley report on “diversion” for people with mental health problems in the criminal justice system, there have been growing calls for action to divert more people to the care, treatment and support that they need. This report argues that despite facing a decade of limited public spending growth, the case for an increase in the provision of diversion and liaison services is “compelling.” It considers the spending implications of reinvesting money already in the health and justice systems on diverting many more people with mental health problems to services that will improve their health and reduce their risk of criminal activity. See: [http://www.scmh.org.uk/pdfs/Diversion\\_Dividend.pdf](http://www.scmh.org.uk/pdfs/Diversion_Dividend.pdf)

**Más cárceles, más presos y más mano dura,** *Diagonal*, no. 123, 1.4.10. At a time when the penal code is being reformed to make sentencing harder, this article highlights that in spite of a decrease in serious crime, newspapers and television news programmes focus their work increasingly on these crimes, heightening social alarm and leading to continuing calls for harsher sentencing regimes. Meanwhile, figures show that there are 87 prisons in Spain, official figures on the prison population for March 2010 show that there are 76,570 prisoners, and that it has one of the highest rates of imprisonment at the same time as it has one of the lowest crime rates in Europe. Available at: <http://www.diagonalperiodico.net/Mas-carceles-mas-presos-y-mas-mano.html>

**Inside Job,** Max Blain. *Police Review* 29.1.10, pp 21-23. This article is about a group of 200 or so police officers working inside the prison system as Prison Intelligence Officers (PIOs). Their role is to “brief prison staff on the criminals coming in” and to “gather information on specific prisoners”. The article notes that: “While they do not work undercover and rarely come into direct contact with inmates, they do use a variety of covert techniques to keep tabs on the prison population.”

## Racism and Fascism

**The Swiss Referendum on Minarets: background and aftermath.** *European Race Audit Briefing* No. 1 (February) 2010, pp. 7. This paper discusses the Swiss referendum banning the construction of minarets on

mosques by amending Article 72 of the Federal Constitution. The article has been amended to include the statement “the construction of minarets will be forbidden”, thereby contradicting fundamental principles of international law. Responses by other European countries – France, Belgium, Germany, Austria and the Czech Republic / Slovakia – are included. Available from the Institute of Race Relations: <http://www.irr.org.uk/europebulletin/index.html>

**Io non ci stò [I will not stand for this]**. Anonymous letter by a citizen of Adro, 13.4.10. Following the decision by the Adro public administration (in the province of Brescia, Lombardy) to stop serving school lunches to the children of 40 families that had fallen behind in their payments, a wealthy private citizen paid the school the amount needed to cover costs for the 2009-2010 school year. He also wrote a letter to explain his decision that was highly critical of the rising intolerance that he perceives among his fellow citizens. After explaining that he is not a “communist” and voted for the centre-right candidate at the last regional elections, he expressed his anger at the “gentlemen” who sit in restaurants and curse third-country nationals while “an Albanian has just washed their Mercedes”, “their food was cooked by an Egyptian” and “a Ukrainian lady is taking care of their mother at home”. He criticised the silence of institutional figures, from the church and political parties alike, claiming that he is witnessing “growing intolerance towards those who have less”, noting that many small steps led to the creation of “Nazi concentration camps”. He acknowledges that his act is one-off and “symbolic”, and will not resolve the families’ problems, but he explains that the children will probably grow up in Italy, and hopefully some of them will make a telling contribution, and he does not want them to “remember this day”. He also reminisces about when the town was very poor, noting that his fellow citizens of Adro “have forgotten where they came from. I am ashamed that it is precisely my town which is the champion of the lowering of the bar of intolerance one step at the time, first with rewards [of 500 euros for municipal police officers for every ‘illegal’ migrant they detain], then by refusing regional benefits, then with the children’s school meals, but I could cite many other cases”. Available at: <http://www.corriere.it/Media/Foto/2010/04/13/letteracittadinoadro.pdf>

**Angry Bennett blows lid on "Laurel and Hardy" BNP leadership**, Denise. *Lancaster Unity website* 5.5.10. This piece is on the dispute between the British National Party’s webmaster, Simon Bennett, and the BNP leader, Nick Griffin, when the former pulled the plug on the organisation’s website on the eve of the general election due to “attempts of theft...with regards to design work and content” owned by Bennett. The dispute revolves around the BNP’s unauthorised use of the Marmite logo on the web version of the party’s general election broadcast with Bennett arguing that he was “deliberately put in the frame and left to carry the [legal] responsibility whilst those that were responsible went to ground”: <http://lancasterua.blogspot.com/2010/05/angry-bennett-blows-lid-on-laurel-and.html>

**Pensad que esto ha sucedido. Lecciones del Holocausto**, Mugak/SOS Arrazakeria, *Centro de Estudios y Documentación sobre racismo y xenofobia*, no. 49, December 2009, pp. 75. This issue focuses on the issue of minorities, prejudice and the Holocaust, reminding readers of the importance of not forgetting what happened because: “the educated society of the first half of the 20th century witnessed the most serious crimes that the century experienced in silence, showing that these terrible tragedies were not a result of barbarianism or of the brutality of men and women who lacked education and culture”. Educational approaches for teaching about it are illustrated, as are the experiences of sexual minorities and Holocaust survivors in that period, highlighting that “prejudices” were the starting point for the tragedy. The French debate on national identity, Islamophobia, discrimination against the gypsy community and conditions in CIEs (Spanish detention centres for foreigners) are among the other topics that are covered. Available from: *Mugak, Peña i Goñi, 13-1º - 20002 San Sebastián / Donosti*.

**The BNP and the Online Fascist Network: an investigation into the online activities of British National Party members and online activists**, Edmund Standing. *The Centre for Social Cohesion* 2009, pp 65. This investigation into the online activities of BNP members and

activists reveals that the racial ideology of the party “has not changed from the early days in which the founder John Tyndall was party leader, when open expressions of Nazism were tolerated.” Party members and online grass-roots activists “displayed significant ideological affinity with key tenets of the neo-Nazi ideology, including: support for violence; antisemitism and an admiration of the Third Reich; extreme racist views; and Holocaust denial”. It concludes that Nick Griffin’s rebranding of the party is cosmetic and that the “BNP continues to promote an ideology centred on race and racism. It is a socially divisive organisation that is attempting to rebrand as a conventional political party in order to gain the legitimacy that some European far-right parties have managed to achieve in recent years.” (The Centre for Social Cohesion Email: [mail@socialcohesion.co.uk](mailto:mail@socialcohesion.co.uk). Available at: <http://www.douglasmurray.co.uk/TheBNPandtheOnlineFascistNetwork.pdf>)

## Security and intelligence

**Preventing What? How the Prevent anti-terrorism programme will affect Scottish Society**, Richard Haley. *Scotland Against Criminalising Communities Briefing*, 3.11.09, pp. 13. This report accurately concludes that the government’s “Prevent” anti-terrorist programme is racist as “it almost exclusively targets the Muslim community.” It argues that Muslim opposition to the war in Afghanistan is treated as if it were linked to violent extremism, even though most people in the Britain oppose the war, and says it exposes professionals involved in implementing it “to indoctrination with Islamophobic and pro-war attitudes.” It concludes that prevent “makes it more likely that some Muslims may turn to terrorism, because of the way it manipulates and censors Muslim participation in civil society.” Available as a free download at: <http://www.sacc.org.uk/sacc/docs/preventingwhat.pdf>

**EU mulls unified intelligence service plan**. *Jane’s Defence Weekly* 28.4.10. The new European External Action Service (EEAS) fuses the military, diplomatic, crisis management and humanitarian services into a single structure. There are four EU units engaged: The Council’s Joint Situation Centre, the Commission’s Crisis Room, the Watch Keeping Capability located within the Council and the intelligence unit of the EU Military Staff. An “EU military official” said that the EEAS plan “still has to be defined regarding intelligence. That’s a challenge”.

**Minister hoping to approach surveillance from a different angle**, Lord West. *Police Product Review* April/May 2010, p 11. This article, based on a talk on airport security to the Home Office Scientific Development Branch in March, argues that “the best way to ensure that terrorists are detected was an effective surveillance system that links up CCTV, behavioural science, explosive detection devices and more traditional security measures such as sniffer dogs”. West envisages this as follows: “We need to tackle it as a totality. We have launched an initiative that was focused on behavioural science – the way people act in crowds – so you can conduct surveillance of the airport concourse area on that basis. When a car arrives, we have automatic number plate recognition – you know whether the car belongs to the plate and where it has come from on the journey. If someone gets out of the car and starts behaving differently [to other airport users] that is immediately flagged up by your system. There may be check-points that they need to go through that swab for explosives, and scanners and sniffer dogs. All of these measures have to interlock because you put them together you get towards that 100 per cent security people talk about.”

**Pursue Prevent Protect Prepare: the United Kingdom’s strategy for countering international terrorism. Annual Report. HM Government** (March) 2010 (Cm 7833). This annual report summarises the development of programmes set out in CONTEST, the UK’s counter-terrorist programme. Available as a free download at: <http://merln.ndu.edu/whitepapers/UnitedKingdom2009.pdf>

**MI5 woz ‘ere**, Aisha Manair. *Labour Briefing*, March 2010, p. 6. Manair on the cases of Binyam Mohammed and the High Court’s recent confirmation that the intelligence services were aware that Binyam had been tortured on behalf of the USA and Shaker Aamer, where evidence “shows that MI5 agents were present during and after interrogations in Pakistan in 2001” and calls for a full independent judicial inquiry into the UK’s involvement in torture.

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*"In the introduction to the 2007 report on the Vincennes administrative detention centre (CRA), at a time when Site 2 (140 places) had reopened and had been operating at full capacity for just a month, we wrote that December's violence and tension were intrinsic to the size of the centre and the police prefecture's "policy of figures". The balance for 2008 was clear and the claims that we made at the end of 2007 proved to be an unfortunate prophecy. After seven months of tension and violence on an almost daily basis, and the tragic death of a detainee on 21 June, the centre burned on 22 June 2008." Cimade, "Centres et locaux de rétention administrative. Rapport 2008"*
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