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European governments step up repression of anti-austerity activists

by Kees Hudig

A total ban on protest was imposed in Frankfurt, demonstrations in Greece were met with police violence, and planned legal reforms in Spain will significantly diminish the right to protest

When organisations decided to take action against the European Central Bank's (ECB) crisis policies in Frankfurt last May, local authorities banned all demonstrations and actions that people had tried to register with them. These included monthly vigils held by religious groups in front of the ECB as well as lectures and concerts. The reasoning behind the total ban according to the local authorities was that they had a duty to ensure the ECB was able to carry out its business unhindered, especially in times of crisis. The handling of the Frankfurt protests and the legal reforms planned in Spain show that European governments are stepping up repressive measures against popular resistance to growing austerity measures. Simultaneously, traditional democratic methods of influencing economic policy are increasingly being undermined through opaque and unaccountable decision-making processes.

"We are demonstrating against the prohibition of a demonstration to denounce the prohibition of demonstrations."

The total ban on protests in Frankfurt led to surreal scenes, exemplified by the policing of a demonstration organised by the Komitee für Grundrechte und Demokratie (German Committee for Basic Rights) on 17 May, which the civil liberties organisation had called to protest against the blanket ban on protests. A few hundred people were surrounded by a large police force, backed by water cannons, police film crews and vans with loudspeakers announcing at regular intervals that the gathering was illegal and people should disperse or "measures would be taken." Intermittently, a riot squad would attempt to penetrate the gathering to confiscate a megaphone or tent (a symbol of the Occupy movement) and demonstrators would link arms to shield it from the menacing squad. Others held copies of the German constitution in the air (which explicitly mentions the freedom of expression). The Paulskirche church square, where the heavily policed protest was held, had a symbolic value as it was where the first German constitution was launched in 1849. One banner at the protest, whose owner had climbed a tree to stop police from confiscating it, read: "We are demonstrating against the prohibition of a demonstration to denounce the prohibition of demonstrations."

A day later, on 18 May, more than 400 people were arrested when they ignored the ban and tried to march on the ECB. In total, the demonstration's legal team claim more than 1,400 people have been arrested [1]. The only activity not banned was a demonstration on Saturday 19 May, however this was only after the organisers had gone to court. This demonstration was organised by a network of larger organisations such as Attac and the GEW trade union (for education personnel.) At two appeals, judges ruled in favour of most of the bans (there were a total 14 registered gatherings or actions.) One local judge permitted a street rave (demonstration with music) near the ECB on 16 May which had been banned by the local authority, but he was overruled on appeal by a Kassel provincial court judge who also ruled in favour of the eviction of a protest camp that had been set up near the ECB on 15 October 2011. The judge also ruled that the demonstration on Saturday would only be allowed by local authorities if there were no disturbances on the days prior to it. This led to the bizarre scenario of police officers supressing all actions that preceded it with the argument that they had to be heavy-handed in order to protect the right to protest.

On one important issue the local authorities lost the legal battle, that of issuing individual banning orders against more than 400 people who had received a letter ordering them not to enter large parts of Frankfurt during the days of action. These people had had all been "kettled" during an earlier demonstration against the ECB in March 2012, and were only released after providing the police with identification. Some of these activists launched a legal action appealing against the banning order, which for some Frankfurt residents would have meant that they had to stay at home for days, unable to go to school or to work. The judge was not convinced by the police's argument that they planned violence on the days of action. The judge was reluctant to take the police evidence seriously (i.e. vague video images of the

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Statewatch, PO Box 1516, London N16 0EW, UK

Tel: (00 44) 020 8802 1882 Fax: (00 44) 020 8880 1727 E-mail: office@statewatch.org Website: http://www.statewatch.org

March demonstration which purported to show people throwing cobblestones at the police) and the police withdrew all of the banning orders. The message, however, was clear: whoever dared to demonstrate in Frankfurt could expect extreme police measures. The police still stopped buses arriving in Frankfurt to search them, as they did with trains, and turned at least three buses of demonstrators back. In light of this, the fact that 25,000 people turned out to demonstrate on Saturday 19 May was unexpected. The demonstration was accompanied by a massive police presence, which often completely surrounded parts of the demonstration, impeding people from joining - or even seeing - the demonstration. The led to angry denunciations at the rally concluding the demonstration, and a representative of the DGB trade union umbrella organisation told the crowd: "For the last four days we have been staring into the cold face of a police state." The front page headline of the leftist newspaper *Junge Welt* commented that it was "Almost like civil war."

Prior to the banned protests in Frankfurt a debate was held at the regional parliament. There it became clear that the ruling parties sought to guarantee the unfettered functioning of the European Central Bank as it "had the duty to service the European economy continuously, but especially in times of crisis." Politicians also stated that the bans were necessary because demonstrators planned violence "such as interfering with financial activities." [2] This political stance resulted in protests aimed at disrupting the everyday functioning of businesses, such as peaceful blockades or bank occupations, being branded 'violent actions.'

Demonstration organisers are still in the process of appealing against the bans; it is thus unclear how many of the bans will be legally approved in final instance. In comparison: three years after the G8 protests in Germany of 2007, it was decided that a wave of raids on private homes prior to the protests had been unlawful and disproportionate. But local authorities and police said they were "satisfied with the proceedings" and announced they would repeat this approach in the future. [3]

Eroding democracy by financial policy

Many commentators analysing European political and economic developments related to the financial crisis have pointed out that European citizens are increasingly confronted with political decisions over which they have no influence. Increasingly it is financial markets that decide if a government remains in power or not and what policies they should follow. In Greece and Italy, elected political leaders were replaced by unelected technocrats. Their governments hastily decided to add billions of euros worth of cuts to their already gigantic austerity package in an attempt to lower interest rates for government bonds.

In particular, the EU's Fiscal Pact, which was agreed upon by the Eurozone countries in March 2012, drastically curbs the

GREECE

In an article in the Amnesty International magazine *Wire*, entitled "Keeping the Peace, Beating the Peaceful", [8] Giorgos KosmoPoulos reports on police violence against protesters in Greece and against journalists trying to report on the protests. For example, the photographer Manolis Kypreos lost most of his hearing after being hit by a stun grenade deliberately thrown at him by a police officer as he photographed them during a protest in Athens on 15 June 2011:

"Violations of international standards during the policing of demonstrations are not limited to Greece. In the past months, many protests have taken place in European union (EU) cities against government austerity measures. EU and International Monetary Fund (IMF) bailouts have come with conditions attached: new property taxes, public sector pay cuts, welfare benefits reductions, and tax hikes. As a result, public anger has grown and angry citizens are holding more and more demonstrations throughout the region. This calls for increased vigilance over policing practices.

In Spain, Amnesty International has documented that people were hit by police officers with batons in Barcelona and in Madrid, in May and August 2011 respectively. Video footage showed police officers hitting seemingly peaceful protesters on both occasions.

Amnesty International also wrote to the Romanian authorities in January 2012 to express concerns after media reports and video footage showed police apparently using excessive force against demonstrators.

The UK, Denmark and Italy have also allegedly violated international standards during the policing of demonstrations.

Police dealing with demonstrations that have turned violent are required by international law to exercise restraint. They should only use "necessary" and "proportionate" force to apprehend people committing criminal acts or to defend themselves or others from violence. Crucially, they should minimize the risk of harm to those who are not involved in the violence, and facilitate – or at least not curtail – people's legitimate right to gather and protest.

Police must be held accountable for their actions and pursued through the criminal courts if they have acted in an arbitrary or abusive way. Unfortunately, the prevailing culture of impunity in Greece gives the police no reason to curb their behaviour. They therefore often use force in a general way against all protesters.

Across Europe, the authorities must ensure thorough, prompt, independent and impartial investigations into all allegations of such abuses in their countries' policing, if they are to stop them.

The role of arms in police abuses

Weaponry and munitions such as tear gas and stun grenades, like the one that injured Manolis, are widely used by police forces in a way that does not comply with international standards.

Multiple shipments for a range of policing equipment, including CS hand grenades, stun grenades, tear gas and other riot control agents, are continually supplied to Greece. They are supplied by Brazilian, UK, German and US companies without any legally binding human rights criteria concerning their use. In countries where abuses by the state are commonplace, a similar flow of arms continues, unencumbered by the protection of human rights.

For more than a decade, Amnesty International has been at the forefront of the campaign for an effective Arms Trade Treaty with strong human rights safeguards. It is crucial that the Treaty contains the highest possible international standards to ensure that situations like the one Manolis experienced do not continue in future.

In July, UN member states will meet to negotiate the content of the first ever treaty to control the global arms trade. This is a once-in-a-lifetime opportunity to save lives, protect careers – such as Manolis' – and protect human rights"[8]

ability of member states to decide essential economic policies. Many social movements and trade unions have concluded that the democratic path to influencing political decision making, which severely impacts on peoples' lives, is increasingly obsolete. "It is starting to look like a permanent *coup d'état*" said literature professor, Joseph Vogel, in an article in the *Berliner Zeitung*, entitled "The population as a disturbing factor." Decisions are increasingly taken in informal meetings between bankers, politicians and the directors of Central Banks: "Financial soviets take decisions that cannot be retracted and that serve the interests of certain people." [4]

Spanish reforms will criminalise protest

As traditional political paths become increasingly untenable, alternative ways to influence political decision-making are met with repression. An example of this is the planned restriction on the right to demonstrate in Spain. The Spanish government's announced reform of the law on public security (*ley de seguridad ciudadana*) includes the following measures:

- Anyone caught "hiding or protecting their face at a public demonstration" can be fined between 3,000 and 30,000 Euro. Minister of interior, Jorge Fernández Díaz, has confirmed that this proposal will be included in the reforms, planned to take effect by 2013. [5]

- A minimum prison sentence of two years will be introduced for those "using internet media to call for violent activities." If an action announced via social media turns violent those who publicised the action will be treated as a "member of a criminal organisation", against whom this minimum sentence can be applied.

- Peaceful protests, such as the occupation of parks and squares, can be labelled as an "attack against public order," punishable with a prison term of between four and ten years.

The minister of justice, Alberto Gallardón, further stated that he would like to change the procedural law to facilitate detaining suspects awaiting trial.

In announcements, interior minister Díaz has referred to 'anti-systemic protests' in Barcelona during the general strike against the austerity measures on 29 March 2012. He was supported by the local Catalan minister of interior, Felip Puig, who said that "more people [have to] become more afraid of the system." Previously, Puig had defended the infiltration of demonstrations by plain clothed police officers who acted as *agents provocateurs* by using violence with the intent of provoking the police to react against peaceful protesters. [6]

The planned legal reforms are often compared by authorities to the crackdown against the *kale borroka* in the Basque region. These street uprisings were supressed with comparable extreme measures.

A grim prediction of what demonstrators can expect in future can be glimpsed in a court case against four environmental activists in Navarra, who threw pies at the leader of the local government to protest against his project for a high velocity train that would damage the natural environment of the region. The four are threatened with a prison sentence of between four and ten years, because their actions have been labelled "an attack against public order."

Italy, also increasingly hit by austerity measures and protests against them, is contemplating using the military against its own civilians in order to to curb regular protests in front of the Equitalia tax collection agency. Sometimes the demonstrations have ended with the throwing of eggs and the government has announced it would deploy the military to defend the buildings. "Whoever attacks Equitalia, attacks the Italian State", the interior minister Anna Maria Cancillieri declared. [7]

Endnotes

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Growing racism in the EU not just a Member State issue

by Marie Martin

Ethnic profiling on the basis of security concerns is not new. However, as the European Commission struggles to get the Anti-Discrimination directive adopted and the European Union attempts to upgrade equality standards in all Member States, less attention has been paid to the growing role ethnic profiling plays in European policy-making. Still, whether at national or EU level, the logic of targeting certain communities to better protect "ourselves" seems to be gaining ground.

Monitoring racism and discrimination in the EU: a bleak picture

The EU has taken initiatives to address discrimination, racism and xenophobia in Europe over the past few years. Several pieces of legislation have been adopted since the early 2000s: the 2000 Racial Equality Directive [1], the 2000 Employment Equality Directive, the 2004 Gender Equality Directive and the 2004 Gender Equality Directives on Goods and Services. In addition, a monitoring and reporting body was created in 1997: the European Monitoring Centre on Racism and Xenophobia. This was replaced by the EU Fundamental Rights Agency (FRA) in 2007.

The Racial Equality Directive is particularly interesting in terms of its focus on institutional racism. In 2012 the FRA published an evaluation report on the state of play of the directive in the different Member States, *The Racial Equality Directive: application and challenges*. [2] The Directive prohibits direct and indirect discrimination on grounds of racial and ethnic origin that is applicable in the fields of employment; vocational training; social services, including social security and health care; education and access to public goods and services. While the FRA's study mainly concentrated on preparations for the full implementation of the directive in the specific fields it covers, the report also revealed a picture of racism in society. In some new Member States:

> *[T]here was a tendency [among employers and employees] to question the necessity of the directive because it was considered that discrimination was not actually a significant problem. (p.12)*

Many of the causes identified for the incomplete implementation of the Directive were symptomatic of the denial of racism as an issue, and were described by the FRA as a "Failure to recognise and reluctance to report discrimination." (p.22) The following quotation from a trade-union respondent is typical: "We don't

see a lot of discrimination here in Lithuania at all… As regards Gypsies, our employers do not like to have workers who are Gypsies." (p.22) Whether this reflects a lack of awareness of racism or its general acceptance was not established by the study. However, its results reflect a widespread prejudice towards minorities.

In this context, the FRA emphasised the responsibility of law enforcement authorities, and in particular the police, to combat racism and discrimination.

The 2010 FRA report on *Police Stops and Minorities* [3] was based on interviews with over 23,500 immigrant and ethnic minority respondents from across Europe, and it was the first European-wide study "providing evidence about minorities' experience of policing." The survey found very high levels of police stops among many minority groups in the 12 months preceding the interviews. About 30% of the Roma, North-African and Sub-Saharan African respondents had been stopped and an equal number of Roma and North African respondents considered they had been treated disrespectfully or very disrespectfully by the police.(p17)

In Belgium, Germany and France, the percentage of stops of members of minority groups was almost double that of the majority population. Searches were far more extensive when involving minorities, in particular in Belgium, Germany, Spain, France, Italy, Greece and Romania.(p248)

When public order and "security" legitimises institutional racism

Institutional racism and widespread ethnic profiling have often been criticised but are still becoming deeply embedded in police practice. In the UK, the 1999 Macpherson inquiry into the police handling of the racist killing of Stephen Lawrence unveiled disturbing evidence of institutional racism in the police investigation of the murder. [4] Macpherson defined institutional racism as:

> *"The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people."*

Examples of continuing discriminatory practices can be found, for instance, in Britain, France and Germany

The recent survey carried out by the London School of Economics and *The Guardian* in the wake of the summer 2011 riots in the UK revealed the gap between the police and some communities, with some rioters explaining they were taking part in "anti-police riots." [5] In particular, racial profiling underpinning "stop and search" operations targeting minority groups have been identified as a major cause for people's frustration and mistrust of British police forces. [6] The use of pre-emptive arrest and the disproportionate use of force against minority groups are not new in Britain, and have resulted in many deaths in custody, with a disproportionately high percentage of fatalities from black communities over the past decades. [7] A 2010 analysis of Ministry of Justice crime statistics by Professor Alex Stevens from the University of Kent revealed that black people were six times more likely than white people to be stopped by the police. [8]

Similar cases in France have been documented over several years. A 2012 Human Rights Watch report, *The Root of Humiliation: Abusive Identity Checks in France*, highlighted "abusive identity checks on minority youth" and the disproportionate use of force by the police based on interviews conducted with young people in three major cities, Paris, Lille and Lyon. [9] In 2011 Amnesty's report, *Families of victims of deaths in police custody wait for justice to be done*, documents the cases of five individuals of foreign descent each of whom had been arrested, in some cases arbitrarily, and later died in custody. [10] In January 2012 three policemen were found guilty in one of these cases, but appealed their suspended sentence. Four other officers have been under investigation since 26 March 2012 for manslaughter. [11] According to the website "À toutes les victimes des Etats policiers" ("To the victims of police States") [12], 125 people died at the hands of the French police between 1991 and 2012. Judging from the names on this list, the majority of the victims were of foreign descent and belonged to "ethnic minority groups."

In 2009, a report on *Police and visible minorities: identity checks in Paris*, by the New York Open Society Institute [13] concluded that in France, the "permissive legal framework regulating identity checks facilitates appearance based controls," despite such controls "breaching French law...and European law." People from the Arab and black communities were six times more likely than French nationals to be stopped.

On 11 April 2012, 15 individuals challenged police racism before a French court, with the support of the Open Society Justice Initiative.[14] Each of the applicants had been stopped by the police for no reason, sometimes in an aggressive manner. All believe they were identified by police officers as "foreigners", and therefore potential troublemakers. They have lodged a complaint against the then Minister of Interior, Claude Guéant, accusing him of supporting discriminatory practices against minority groups.

Perhaps the most blatant example of this was the former minister's assertion that the propensity of foreigners to commit crimes was two to three times higher than amongst nationals, (he also omitted to mention that his statistics included irregular stays on the territory.) [15] This is not to mention the French authorities' actions against the Roma community, which were widely reported in the media in summer 2010. The government's actions were officially justified as a reaction to a casino robbery involving a member of the Roma community, Karim Boudouda, and the ensuing shoot-out in which he was shot dead by the police. A statement issued by the then Immigration Minister Eric Besson and Interior Minister Brice Hortefeux after the tragic event demonised a whole community as constituting a threat to public security. It stated that the "lawlessness that characterises Roma populations that have come from Eastern Europe" was "unacceptable."[16]

In Germany, police officers have received support for conducting racially motivated identity checks. A shocking administrative court ruling in March 2012 authorised federal policemen to check the identity of foreign-looking passengers on train routes thought to carry irregular migrants. [17] This judgment was strongly criticised by human rights organisations, including the German Institute for Human Rights which considers this decision violates fundamental rights. [18] Should the case be dealt with at a federal level, as it may well be given the uproar it has caused, the issue of racial profiling may arise in the wider debate on the reintroduction of internal border controls in the Schengen area which the German government has been in favour of in recent months. [19]

It is worth noting that in all of these cases ethnic-orientated policing measures were justified by the authorities on "security" grounds.

The EU dimension to ethnic profiling

In 2007, the European Commission on Racism and Intolerance (ECRI) published a set of recommendations on combatting racism and racial discrimination in policing. [20] Ethic profiling was defined as:

"The use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin in control, surveillance or investigation activities."

In 2010, the FRA defined ethnic profiling as:

"A situation where a decision to exercise police powers is based only or mainly on that person's race, ethnicity or religion." [21]

We can see here that police racism is condemned by official EU bodies. However, the identification of at risk groups as potential threats to public order seems free from any criticism. The use of security concerns to avoid moral condemnation of what amounts, in reality, to ethnic profiling, is not new. What is new is a growing propensity among EU institutions and agencies to follow this trend.

The recent discussions at a meeting of the EU Law Enforcement Working Party in February 2012 were an opportunity for Europol to *target* Roma and Gypsy communities and to counter the potential threat which itinerant crime represents. [22] The latest Europol *Organised Crime Threat Assessment* report identified the nationality of individuals involved in trafficking activities; while some may argue whether disaggregated data by nationality can be qualified as racial profiling per se, further statements left no doubt about the discriminatory and racist nature of the logic behind such data: "Bulgarian and Romanian (mostly of Roma ethnicity), Nigerian and Chinese groups are probably the most threatening to society as a whole."

In the same vein, the EU's counter-terrorism coordinator expressed interest in collecting information on the North Caucasus diaspora established in EU Member States to investigate its links to terrorist cells based in the North Caucasus. [23] In 2007 Frontex's operation HYDRA officially targeted Chinese irregular migrants. [24]

Racial profiling is encouraged by European authorities, which seem to view its underlying assumptions as tangible and objective facts, despite important methodological and ethical shortcomings. Frontex's latest *Annual Risk Analysis on the Western Balkans* reveals further examples of its use. The Agency presents two waves of asylum applications lodged by Roma people in 2010 and 2011, and concludes that "claiming asylum in the EU is part of Roma overall seasonal strategy for their livelihood." [25] Leaving aside the absence of any similarity between the 2010 and 2011 data that could allow for this assumption, it is worth mentioning that no attention is paid in the report to the situation of the Roma community in the Balkans, on the connection between peaks in asylum applications and forced evictions or persecution in some ex-Yugoslavian countries.

The Polish Internal Security Agency Counter-Terrorist Centre's power point presentation to the EU Working Party on Terrorism in November 2011 on the level of radicalisation of the Caucasian community in Poland is a further example. In a peremptory six-slide presentation illustrated with photographs of young Muslims posing with guns, the argument is made: this community is "not eager to work – relying on social support," is characterised by a "low level of integration and a clan structure" and is "prone to radicalisation." The presentation concludes: "extremely complex picture – terrorist + criminal + intelligence threat." [26]

Racial profiling is being legitimised on the basis that it is meant to identify and counter groups threatening Europe's security. Following the same rhetoric as Member States' labelling specific groups as potentially "at risk" or outcasts and policing them as undesirables, the European Union's agencies have identified specific categories to monitor and - as the EU's counterterrorism coordinator Gilles de Kerchove told a Polish journalist – "collect data" on. [27]

A 2011 report from the Open Society Justice Initiative on *Ethnic Profiling* confirmed this trend:

The use of information about religion (or ethnicity, race, or national origin) in assembling a profile is legitimate when linked to solid, timely, and specific intelligence concerning individuals' participation in terrorist activities. But evidence from Europe indicates that police and intelligence agencies are using generalized assumptions about certain religious or ethnic groups' involvement in terrorism, thus crossing the line from legitimate counterterrorism profiling into discriminatory ethnic profiling. [emphasis added][28]

The limits of the Anti-Discrimination Directive

In its 2010 report on police stops and minorities mentioned above, the FRA concluded that the practice provided "evidence for critiquing the apparent limitations of past and ongoing interventions to address discrimination and victimisation against minorities, and provide the context against which EC and national legislation, such as the EC 'Race Directive', can be judged with respect to the realities of discrimination and victimisation on the ground." (p.19)

The so-called Anti-Discrimination Directive was initiated in 2008 to address these shortcomings by creating a "horizontal" anti-discrimination instrument, in particular by including discrimination on grounds of beliefs, religion, age, disability and sexual orientation, which the Racial Equality Directive was not covering.

However, discussions on the forthcoming Anti-Discrimination Directive have been blocked at Council level since 2009. This is mainly because Member States questioned the necessity of further EU legislation, which is perceived as a challenge to their sovereignty. Meanwhile, discrimination continues.

The 2010 European-wide FRA report on Equality confirmed the trend which previous studies had already highlighted in some specific member states. Respondents from visibly different minority groups felt more likely to be stopped by the police than white people, a phenomenon confirmed by the European Network Against Racism's (ENAR) latest *Shadow Report*. [29]

The complete denial of ethnic profiling practices and - even more worrying - policies is reflected in the latest outcome of the Council of the EU's discussion on the Anti-Discrimination Directive in November 2011:

*While emphasising the importance of the fight against discrimination, certain delegations have maintained general reservations, **questioning the need for the Commission's proposal**, which they see as infringing on national competence for certain issues and as conflicting with the principles of subsidiarity and proportionality. [emphasis added] [30]*

Why is a new anti-discrimination piece of legislation needed when existing frameworks should be sufficient and national policies are able to address the issue?

An interesting finding in the FRA's study on the Racial Equality Directive [italic] confirms this:

Where there is a lack of awareness or recognition that discrimination is a problem, a society may be less likely to generate a demand for regulation in this area.[31]

However, despite numerous reports by civil society organisations and academics, no mention of institutional racism is made in official EU publications or from the Racial Equality Directive and the Anti-Discrimination Directive.

In 2005 however, ECRI stated its concern "that the use of racist, anti-Semitic and xenophobic political discourse is no longer confined to extremist political parties, but is increasingly infecting mainstream political parties, at the risk of legitimising and trivialising this type of discourse". [32]

Despite ECRI's repeated concern at the rise of far-right

movements in Europe, European authorities remain tight-lipped when it comes to racial profiling measures advocated in several policy documents. The Anti-Discrimination Directive, which will be discussed by the Council in June 2012, will not help address the issue, especially given the "blanket exceptions" which were exposed by ENAR as being unjustified. [33]

Article 3(5) of the proposed Directive after a first vote at the European Parliament stated:

> *This Directive does not cover differences of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons in the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.[34]*

It can be questioned whether in light of Article 3(5) police stops on trains as suggested by a German court, or border checks directed at specific groups following the recommendation of a Frontex report (e.g. Roma coming from the Balkans), would be considered a legal offence. In some cases such reservations may be interpreted as a green light to police third country nationals in a disproportionate manner.

As ENAR argues:

> *Derogations and exemptions allowed under existing anti-discrimination legislation have been misused by Member States to evade their obligation to ensure that asylum and immigration laws are neither discriminatory nor have discriminatory effects. It has also been used to evade political commitment to ensure fair treatment of third country nationals, for example regarding access to jobs, social housing criteria, welfare limitations, discretionary controls and detention centres.(p.9)*

Article 2(8) is of particular concern as it authorises discriminatory measures "laid down in national law which, in a democratic society, are necessary and proportionate for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and the protection of the rights and freedoms of others."

Bearing in mind that the notion of "proportionality" was added by the European Parliament and may be rejected by the Council in June 2012 (the expected date for the second reading of the draft), the article as a whole assumes a particular significance in the light of the above-mentioned examples of institutional racism based on security grounds.

Concluding remarks

James A. Goldston, of the Open Society Justice Initiative, described ethnic profiling as comprising three issues: discrimination, policing and data. In a 2005 essay entitled *Toward A Europe Without Ethnic Profiling*, he warned that:

> *One major challenge in addressing ethnic profiling in Europe is the absence of a Europe-wide norm which specifically identifies and outlaws the practice [of ethnic profiling].[35]*

It can be questioned, however, if additional legislation will change what, in reality, has more to do with a political agenda very much influenced by security concerns and the increasing categorisation of populations for the sake of ideologies no better than Huntington's *Clash of Civilizations*. Indeed, the absence of any political moves against ethnic profiling within Europe's institutions contrasts with the willingness to oppose racism and discrimination in specific sectors which mostly fall under national policy making. Law making may not necessarily be the answer.

Beyond overt racism, the current situation in Europe is symptomatic of a mounting acceptance of discriminatory policies amongst EU and national decision makers. There is a real danger that Europe may embrace the 'legal use of racial profiling' (Harcourt, 2011) as some states in the USA already have. [36]

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Counter-terrorism, "policy-laundering" and the FATF: legalising surveillance, regulating civil society

Ben Hayes (Transnational Institute/Statewatch)

A joint report by the Transnational Institute and Statewatch concludes that the Financial Action Task Force is subject to insufficient democratic control, oversight and accountability and that its evaluation system serves to restrict the political space in which NGOs and civil society actors operate. The report calls for urgent reforms limiting the scope of the FATF and the clarification of its purpose and intent.

Executive Summary

This new report published by the Transnational Institute and Statewatch examines the global framework for countering-terrorist financing developed by the Financial Action Task Force (FATF) and other international law enforcement bodies. The report includes a thorough examination of the impact of FATF's 'Special Recommendation VIII' on countering the threat of terrorist financing said to be posed by non-profit organisations (NPOs).

Developed out of a G7 initiative in 1990, the FATF's '40+9' Recommendations on combating money laundering (CML) and countering the financing of terrorism (CFT) are now an integral part of the global 'good governance' agenda. More than 180 states have now signed up to what is in practice, if not in law, a global convention. The FATF is headquartered at the Organisation for Economic Cooperation and Development in Paris; a further eight regional FATF formations replicate its work around the world.

Counter-terrorism, 'policy laundering' and the FATF: legalising surveillance, regulating civil society

The report argues that a lack of democratic control, oversight and accountability of the FATF has allowed for regulations that circumvent concerns about human rights, proportionality and effectiveness.

Countries subject to the FATF's Anti Money Laundering (AML)/Counter Terrorism Financing (CFT) requirements must introduce specific criminal laws, law enforcement powers, surveillance and data retention systems, financial services industry regulations and international police co-operation arrangements in accordance with FATF guidance. Participating countries must also undergo a rigorous evaluation of their national police and judicial systems in a peer-review-style assessment of their compliance with the Recommendations. Developed out of World Bank and IMF financial sector assessment programmes, this process significantly extends the scope of the Recommendations by imposing extraordinarily

detailed guidance – over 250 criteria – on the measures states must take to comply with the 40+9 Recommendations. The reward for FATF compliance is to be seen as a safe country in which to do business; the sanctions for non-cooperation are designation as a 'non-cooperating territory' and international finance capital steering clear.

Special Recommendation VIII

FATF 'Special Recommendation VIII' (SR VIII) requires states to "review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism", stating that "Non-profit organisations are particularly vulnerable...countries should ensure that they cannot be misused" for terrorist financing purposes. The Recommendation is then significantly extended in scope by the FATF's interpretation, guidance, best practice and the evaluation process, which strongly encourage states to introduce government licensing or registration procedures for non-profit organisations, ensure transparency and accountability of NPOs, introduce financial reporting systems, exchange this data with law enforcement agencies, and impose sanctions for non-compliance.

This kind of regulation is not without its problems in countries where non-profit organisations form a free and integral part of the fabric of what has come to be known as 'civil society', but in countries where community organisations, NGOs, charities and human rights groups and others already face suspicion, coercion and outright hostility from the state, the SR VIII regime can have profound – if unintended – consequences. The hypothesis is simple: if international bodies encourage states to adopt regulatory regimes that could be used in practice to 'clampdown' or unduly restrict the legitimate activities of non-profit organisations, then there is a very real risk that this is precisely how repressive or coercive states will enact and apply the rules in practice.

This report examined the FATF mutual evaluation reports on 159 countries with regard to their compliance with Special Recommendation VIII. The vast majority of reports (85% of those examined) rated countries as 'non-compliant' (42%) or only 'partially compliant' (43%) with SR VIII. Only five out of 159 countries (3%) were designated as SR VIII 'compliant' (Belgium, Egypt, Italy, Tunisia and USA).

Where countries fall short of full compliance, the FATF evaluation reports contain specific recommendations on the national reforms necessary to comply with each Recommendation. The state concerned must then report back to their regional FATF assessment body on the reforms they have introduced within two years. The country will then be assessed again in the next round of mutual evaluations, with each round taking around five years. This continued cycle of assessment and review emerges as a powerful force for imposing new standards of 'global governance.'

Legitimising coercion and repression

While this was obviously not the intention of the seven governments that established the FATF, its evaluation system has endorsed some of the most restrictive NPO regulatory regimes in the world, and strongly encouraged some already repressive governments to introduce new rules likely to restrict the political space in which NGOs and civil society actors operate.

Egypt and Tunisia – two of the five out of 159 countries rated 'compliant' with FATF SR VIII – have long enforced extremely prohibitive NPO regulatory frameworks. In both countries, the rules and regulations on NPOs were part of a feared security apparatus that made it very difficult for organisations working on issues like human rights and democratic reform to operate, let alone play a meaningful role in society. Following the 'Arab Spring' revolutions, decades of repression and restrictions on civil society have been cited as an inhibiting factor for new social movements to challenge established power structures and achieve representation in subsequent legal and political processes.

The report also includes case studies on Burma/Myanmar, Cambodia, Colombia, India, Indonesia, Paraguay, Russia, Saudi Arabia, Sierra Leone and Uzbekistan – all of which have seen the imposition or proposal of rules that restrict or threaten the freedom of association and expression of NPOs and are endorsed or encouraged by FATF evaluators.

The global clampdown on civil society

Worldwide civil society organisations, human rights defenders and political opponents continue to face overt and covert restrictions by repressive governments including some that are supposedly 'democratic.' According to a 2008 global study on the legal restrictions imposed on NPOs:

> *[M]any regimes still employ standard forms of repression, from activists' imprisonment and organizational harassment to disappearances and executions. But in other states – principally, but not exclusively authoritarian or hybrid regimes – these standard techniques are often complemented or pre-empted by more sophisticated measures, including legal or quasi-legal obstacles...subtle governmental efforts to restrict the space in which civil society organizations ("CSOs") – especially democracy assistance groups – operate.[1]*

As a result, civil society "groups around the world face unprecedented assaults from authoritarian policies and governments on their autonomy, ability to operate, and right to receive international assistance." [2]

In elaborating an international law enforcement framework that contains no meaningful safeguards for freedom of association and expression, this report argues that the current FATF regime is facilitating and legitimising these more nuanced forms of NPO/CSO repression.

The report also strongly questions whether a top-down, 'one size fits all' approach to NPO regulation is an appropriate or proportionate response to the possible vulnerability and actual exploitation of NPOs for terrorist financing purposes. It calls for urgent reforms limiting the scope of FATF Special Recommendation VIII and the clarification of its purpose and intent.

Wide-ranging reforms required

The report also links the FATF regime to the UN's over-broad terrorist 'blacklisting' and asset-freezing regime, global surveillance of the financial system, the prosecution of charities and NPOs for 'material support' for terrorism, and the outsourcing to private companies of 'AML/CFT' compliance systems.

Taken together, what emerges is a dense, global web of international law and policy transposed into national rules and regulations and endless bureaucracy. As the web has been expanded, the powers of state officials, prosecutors and investigators have been harmonised at a particularly high (as in highly coercive) level. At the same time, guarantees for suspects, defendants and 'suspect communities' have been largely disregarded. Caught in this global web are charities, development organisations, NGOs, human rights defenders, community organisers, conflict mediators and others who find their work hampered or paralysed by onerous regulations or politically-motivated legal manoeuvres.

The egregious violations of law and principle embodied in Guantanamo Bay, the CIA's 'rendition' programme and the widespread use of torture rightly preoccupied the international human rights community as it marked a decade of 'war on

terror.' At the same time, these apparently more mundane and technical aspects of the global counter-terrorism framework have quietly become embedded in international law and practice.

The workings of the intergovernmental bodies that developed and implemented these rules are largely shielded from public scrutiny; the 'international community' has accepted the rules uncritically while failing to subject the bodies that created them to meaningful scrutiny or democratic control. In turn, the exceptional measures they introduced after 9/11 have become the norm. Without urgent reform, the often obtuse nature of a large tranche of international 'counter-terrorism' legislation will continue to serve as a pretext for every day restrictions on the political space in which people exercise their democratic freedom to organise, debate, campaign, protest and attempt to influence those who govern them.

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"Securitising maritime transport: shipping merchandise and dealing with stowaways"

by Yasha Maccanico

Pressure from international, EU and national measures implemented to counter "illegal" migration has led to changes in maritime transport practices. Shipping companies and ports are motivated to get rid of stowaways who are becoming pawns in a game managed on the basis of practical considerations rather than the law.

Migreurop's annual report for 2010/2011, entitled *At the Margins of Europe; the externalisation of migration controls*, analyses the security infrastructure that has developed in response to attempts to securitise the maritime freight sector against the risk of carrying stowaways. Carrier sanctions and strict regulation including the International Ship and Port Facility Security (ISPS) code, alongside procedures that can force ships to remain moored in port until a decision is made about any stowaways or asylum seekers found on board, causing considerable losses, have led to the widespread implementation of informal practices. These include a growing role for private sector actors in holding, processing and repatriating migrants, despite the fact that they have a shared interest with immigration authorities in ensuring that they do not apply for asylum.

Maritime freight and "illegal" migration

The report describes how pressure arising from international, EU and national measures adopted to counter "illegal" migration - particularly the problem of stowaways - and to protect key infrastructure in an anti-terrorist vein, has resulted in a number of changes to maritime transport. These include the transformation of ports and port facilities, procedures to prevent unlawful boarding and operational practices developed by shipping companies and their mutual civil insurance agents (Protection and Indemnity Insurance clubs, hereafter P&I clubs) that seek to cut economic and time losses to a minimum, with far-reaching implications for migrants who are caught on board.

The low number of recorded stowaways, mainly on so-called RO-ROs (Roll on/Roll off bulk carriers), has decreased further following the introduction of measures including tighter security in and around port facilities to limit access to people who are involved in loading and unloading operations, the physical separation of ports from urban centres, surveillance of a ship's entry points and checks on containers prior to departure, most of which are now sealed. Stowaways are viewed as "grains of sand" that undermine the smooth running of maritime freight operations, but their numbers, for which there are scant and often unreliable statistics, are low in comparison to the scale of the procedures implemented to counter them. The report features field research conducted in ports around Europe, including statements from migrants and members of migrant support associations, port officials and border police officers, sailors, shipmasters and ship owners, as well as directors and employees of companies whose services to ship owners in the maritime sector are expanding.

Using a sledgehammer to crack a nut?

After noting that figures provided by the International Maritime Organization (IMO) regarding stowaways worldwide are unreliable, the report uses them in a chart to indicate general trends which show that the figure has never risen to the level of 1999, when there were 545 cases in which one or more people arrived unlawfully, totalling 2,253 recorded stowaways. There was a decrease in the number of stowaways arriving in ports worldwide in the early 2000s which reached its lowest point in 2004-2005 (when there were 98 and 96 cases involving 210 and 209 people respectively), before rising again to 2,052 and 1,070 in 2008 and 2009. Limited information for recent years obtained through field research in ports is different from that provided by the IMO. The latest official figures for Spain date back to 2003 and 2004, when 502 and 387 stowaways arrived. In Barcelona, 72 stowaways arrived in 2007, whereas they were 197 between 2005 and 2007. A border police officer in Bilbao claimed that at least three or four stowaways used to arrive every week in 2005 and 2006, whereas only two or three of them now arrive every year. Data is also limited for Italy, although figures for Genoa indicated that there were 93 arrivals in 2009, a 30% increase compared with the previous year. Testimonies in the French ports of La Rochelle and Saint-Nazaire note a decrease, from "between 20 and 30 in the 1990s" to "between 15 and 10 in the 2000s", according to a former border police officer in La Rochelle, and less than ten people per year in Saint-Nazaire. In northern Europe's three largest ports, Antwerp, Rotterdam and Hamburg, the decrease is evident. In Antwerp, from 199 in 1989, 218 in 1995, 164 in 1996, 102 in 2005 and 37 in 2009. In Rotterdam hundreds arrived in the late 1990s and early 2000s dropping to a few dozen per year during the last few years. In Hamburg it has gone from between 60 and 80 in the early 2000s to around 10 as of 2005. Noting that the figure was around 170 during the 1990s, a Hamburg maritime police officer noted that:

This is nothing, if you consider the number of people arriving across the green [land] borders at the time...The figure is ridiculous, isn't it? Obviously, they gave us some work to do, but you cannot really talk about migratory pressure.

The authors of the report note a decrease in the arrival of stowaways following the introduction of the ISPS code and that more stowaways are caught in southern than northern European ports. Interviewees were convinced that the ISPS code's impact has been due to its implementation in ports from which stowaways depart (particularly in Africa). As for the difference between northern and southern European ports, the report suggests that it may be because stowaways are made to disembark at the first port ships dock in.

Heightened difficulties, vulnerability and denial of migrants' rights

The report highlights how journeys to reach EU countries often develop into endless odysseys for migrants. They travel with no guarantee of success in conditions that seriously endanger their wellbeing. It has become more difficult and expensive to board ships because of an increase in surveillance, pre-departure controls and the sealing of containers. Migrants who hide on a ship often travel in conditions that endanger their lives due to dehydration, hunger, cold in unheated hiding places and asphyxia in cases where they are close to dangerous cargo such as certain chemical products. Even after they are found, stowaways may spend a long time waiting to disembark because few countries will allow them to enter their territory. Recalling cases where stowaways were unable to disembark and instances of large numbers of deaths during migration journeys (citing several examples, in particular the 58 Chinese who died during a crossing from Zeebrugge to Dover in June 2000), the report describes the vulnerability of stowaways and notes that there have been occasions when they died after jumping into the sea, hoping to swim to the shore, or were thrown overboard by crews. Professionals from the maritime transport sector did not level precise charges, but claimed that such incidents may happen. As a French port official observed: "on certain ships, the working conditions are so mediocre that, if the situation arises, the matter of nourishment is raised, and of the difficulty of feeding additional mouths". A Romanian captain confirmed that "this can happen." A famous case dates back to November 1992, when eight migrants (seven Ghanaians and one from Cameroon) were thrown overboard by a Ukrainian crew on the ship MacRuby. The captain and his deputy received life sentences and three other crew members were convicted and handed 20-year sentences after one stowaway who was not caught testified against them. The report highlights the growing competitiveness in this sector and the losses that stowaways may cause, adding that the MacRuby's two previous captains were dismissed for failing "to manage the presence of stowaways" and that the companies that owned the ship did not face charges. The captain of the Wysteria, where a similar incident occurred in 2004 that resulted in four people dying before it reached Spain, was not tried in Spain because the events happened in international waters.

The report also looks at the frequent denial of the right to request asylum, noting that there is a "pact of silence" on this issue based on the assumption that stowaways are "economic migrants." Although rules vary in different countries, if an asylum seeker files an application ship owners must commit to paying for their return if the application fails or face a fine of thousands of euros. Moreover, vessels are at risk of being immobilised until a decision is made about whether to initiate procedures that may lead to stowaways being recognised as refugees, which would cause financial losses due to delays in their scheduled deliveries. Thus, various actors have an interest in ensuring that stowaways do not apply for asylum, preferring to repatriate them quickly by aeroplane or to keep them on board until a solution is found or until the ship returns to the port from which it set off. Decreasing numbers of asylum applications at ports would appear to support this claim: in Spain, an ombudsman's report published in 2005 noted that around 100 (4%) of the 2,303 *polizones* (stowaways) who arrived in Spanish ports filed a claim for asylum; between 2004 and 2010, the number of asylum applications lodged fell three-fold to 29. The report notes that out of 197 stowaways who arrived in Barcelona between 2005 and 2007, the lawyer's association that deals with asylum law was only contacted three times to provide legal assistance to applicants.

This appears to indicate that stowaways who arrive in Spain do not wish to enter its territory or seek international protection. Valencia-based lawyer Paco Solans disputes this interpretation: "it does not seem very likely that a person who has risked their life to flee from their country declares not to want to at least enter the territory when they arrive in a Spanish port." A member of a lawyer's working group set up in Barcelona to examine the issue of stowaways argued that the police monopoly over access to asylum may provide a plausible explanation: "In ports, only the police is present to assess whether a person expresses their wish to enter Spain or not. How can we know if what the *polizones* say is interpreted correctly? There is nobody there to observe the police controls." In the view of Javier Galparsoro of refugee support organisation CEAR Euskadi, there is a "pact of silence" until the departure of the boat, which takes any problem away with it. In Germany, private companies acting on behalf of ship owners or their insurance companies are directly involved in dealing with the "problem" of stowaways. The director of one such company, Unicon, argued that most stowaways are economic migrants, noting that they conduct interviews on board with an interpreter present. He claimed that his employees can discern whether "they have reasons to seek asylum for religious or political reasons," in which case they contact UNHCR, excluding those who claim they seek to improve their lives. The report questions whether employees of a private company (whose clients' interest is contrary to the lodging of asylum applications) should be able to make this decision. Moreover, as a director of the seafarers' mission in Hamburg notes, apparent compliance with procedures limits access to asylum procedures on the basis of the spontaneous utterance of the word asylum by stowaways: "people are not overzealous when it comes to information about the right to asylum. However, if they say the word asylum, then the procedure is transmitted to the authorities." Private company employees interviewed in Atlantic ports said police officers told them "to say as little as they could about asylum." Observing that hardly any applications are lodged in French ports and very few in the Netherlands, and that the procedure is very lengthy even in cases where asylum applications are well founded in Bulgaria, the report goes on to examine the presence of unaccompanied minors among the stowaways. In spite of the low number of minors concerned, it appears that formal rules are not followed if they are caught on board (for instance, that they should be separated from adults who are held). The report cites cases in Spain in which minors have not been granted legal assistance. Two Ghanaians who claimed they were 13 and 15 years old had x-ray scans taken of their wrists that were used against them to claim they were adults, without any additional tests due to the margin of error of this practice. Not having interpreters who speak the same language as stowaways can also be a problem, as can the fact that describing the circumstances that led them to leave and may qualify them for asylum are not considered if the word "asylum" is not spoken.

Security and financial stakes, ships and the transformation of ports and port cities

In the context of maritime trade, in which economic performance

is the primary concern, the possibility of incurring penal and financial sanctions means that mutual civil insurance companies (P&I clubs) have "established the figure of the 'stowaway' as a risk against which carriers must be guaranteed" through a stowaway clause in their contracts. While fines for third-country nationals who travel as stowaways on boats are rarely enforced, carriers must follow several procedures to minimise the risk of fines. Firstly, they must inform port authorities in advance about the presence of any stowaways on board. The fines imposed for failing to do so vary, from 1,500 euros in Bulgaria to 5,000 euros in Rotterdam, where the port police (Rijmond Politie, ZHP) insists on being informed the moment a ship enters Dutch territorial waters, or 3,750 euros in France if the presence or disembarking of a stowaway is concealed or assisted. Fines may be imposed if stowaways are allowed to disembark, and may be reduced if cooperation by the ship's crew is deemed satisfactory. Nonetheless, carriers consider the entire matter a nuisance, because "migrations across the world are none of their business and...they should not be the first responsible parties designated during migration controls." A FAL convention (Convention on the Facilitation of International Maritime Traffic) circular issued by the IMO in 1996 "to promote the satisfactory regulation of cases of unlawful boarding" highlights the importance of "cooperation between all those involved", from ship owners, crews and maritime agents to the authorities of the different countries that are concerned. Cooperation with the authorities and the existence of adequate mechanisms to prevent stowaways from boarding are two key elements available to avoid incurring fines. However, the repatriation of migrants must be paid for by ship owners, whose insurance premiums may also rise once they take charge of stowaways. Further risks include delays in deliveries resulting from procedures to make a stowaway disembark and additional calls in ports that may be necessary to comply with control or disembarking procedures. An article in *Transport International Magazine* noted that "seafarers' humanitarian instincts are placed under serious economic pressures" by the emphasis on swift deliveries and turnaround.

While security has gained importance in maritime trade since the 1980s, there has been a great effort aimed at "securitising" strategic facilities, including ports, after the September 2001 attacks in the USA. The International Ship and Port Facilities Security (ISPS) code was adopted in 2004 and ratified by 164 countries. Its purpose is to establish "an international framework that calls for the cooperation of contracting governments, public and private bodies, as well as actors of the maritime and port sectors to prevent and detect threats [such as piracy, terrorism and unlawful trafficking (smuggling of arms or drugs), so-called illegal immigration, sabotage and hostage-taking], and to enact customised measures to tackle security incidents." A key feature of the ISPS code is to control access to ships and port facilities, requiring a "security plan that guarantees the implementation of the necessary measures to protect people, cargo, maintenance equipment, the ship or port facility against the risks of a security incident." Once plans are approved, an ISPS certificate is issued to ships and ports alike. Since 2004, ISPS certification has become "an unavoidable door opener for the totality of operators." Each time a ship attempts to dock there is communication between security officers on board and in ports, and disagreement may result in permission to dock being refused, or a ship refusing to dock, again, with important financial consequences for both sides.

The ISPS code has caused a transformation and an ideological shift in the management of port facilities, with "irregular" migration treated as a threat akin to terrorism and "an extension of the scope for the implementation of prevention techniques." Authority in this field has passed from being an exclusive reserve of police, law enforcement agencies and private security firms in ports, to a competency of crews and maritime companies. P&I club representatives and border police officers claim that the ISPS code has been important in decreasing the number of stowaways. The geography of many ports has been transformed by the setting up of perimeters and controls at entry points and isolating them from urban centres, which also means that if a stowaway disembarks they are likely to be caught before they leave the port. Closing off a port often entails building work worth millions of euros (for example, in La Rochelle in northern France). Some ports have a wall surrounding them with two entry points that are under surveillance (San Sebastián, in the Basque Country) or are fenced off (Barcelona). The 18 million euro security plan provided by the European Aeronautic Defence and Space Company (EADS) for the Tangiers Med port in Morocco "includes high-security fencing topped by inclined panels equipped with an anti-intruder video-surveillance system and 'small target' sensors in the stretches of water." Tangiers Med, opened in 2007 40 kilometres away from the city, is a key example of how ports are physically separated from cities and from local industries that used to serve them. Some of these businesses have shut down, and may end up moving near the new port facility that is tailored for international trade as a hub port. Securitising ports in cities where they are too large to seal off, like in Rotterdam or Genoa, involves the creation of closed areas within the ports and surveillance systems. The head of the seamen's mission in Hamburg is quoted as saying that the ISPS code "has made life more difficult for seamen and has largely blocked irregular migration...Here, even the terminal where coal and timber are transported has become a high-security zone. And the seamen themselves don't have the right to walk across this part of the terminal".

Controls are increased on the basis of prior "risk" assessments concerning boats, commercial lines or the ports of departure. The involvement of insurance companies in taking charge of the management of stowaways includes the production of maps that indicate "hot spots" and ports where stowaways are likely to embark, and organising prevention and control activities accordingly. Ports in Maghreb countries are deemed a source of "migration risk" and the arrival of stowaways on a ship is likely to result in heightened controls on other ships arriving from the same port. Measures adopted by companies include a threat by Comptoir Général Maritime (Cogemar) not to pay the wages of guards in Moroccan ports if stowaways embarked. Other P&I clubs have noted the improved means provided to guards (pointeurs) in charge of checking merchandise in ports, including laser guns that can detect people hiding in containers and sniffer dogs. Ports of departure have intensified controls to the extent that Tangiers Med port is now deemed the "most securitised port in the Mediterranean," according to a P&I club correspondent. Its authorities argue that the security system that has been implemented has made it more attractive:

> *At the port's entrance, lorries are checked by customs officers, particularly the seals on containers. Then the lorries enter what we call the lock where, at first, the cargo's radioactivity is verified. Afterwards, we auscultate each lorry with the help of heartbeat detectors. Finally, we examine the lorries using two scanners. We conduct between two hundred and one thousand controls every day and, in this way, we catch between six and eight stowaways every month.*

A 2009 Frontex report argued that increased cooperation by Morocco resulted in a decrease in stowaways arriving at Spanish ports.

Three security levels have been defined on board ships, the second of which calls for additional measures against stowaways for limited periods, in view of "an increased risk of a safety incident." P&I clubs have advised maritime companies to adopt "stowaway search check lists" for rigorous ship searches to be conducted prior to every departure, with strict rules for boarding the boat and the registration of all those who board and

disembark. Locking doors, lighting around the ship at night, the presence of crew members at the accommodation ladder, a vigilant attitude by the crew and the use of hired guards are further recommendations. While these developments have definitely made it harder for stowaways to board ships, they have not stopped the practice entirely, particularly if there is complicity by guards in ports of departure. Captains have been quoted expressing their discomfort at having to carry out a "policing role" on board their ships, which includes conducting interviews and ensuring that stowaways are held in a secure cabin which crew members must monitor, to ensure their arrival in good health. Previously, stowaways would often stay with the crew, but now insurance companies impose fines if they are found on board. Captains stress that they have nothing against stowaways but have been led to deem them a threat because "Having a migrant on board is synonymous with reprisals, additional responsibilities and workloads."

Detention on board, from an exception to the norm

Once a migrant is found on board the crew takes charge of them. The liberalisation of maritime trade has worsened working conditions for crews, and this does not ease relations between seamen and stowaways. Ships are turned into sites where the border resurfaces, with crews held responsible for interviewing stowaways, detaining them in a secure cabin and monitoring their wellbeing. Shipmasters are entrusted with a similar role to judicial police officers if they are in international waters when a stowaway is discovered, and they have a questionnaire that is used to record relevant information that they are obliged to acquire, ranging from personal details to the port where they embarked and how they were able to do so. This information is then passed to a P&I club and in France to the administrator for maritime affairs, as well as the ship owner, the port of departure and the next port of call. The interview is also meant to enable P&I club correspondents in the following port of call to organise stowaways' repatriation upon arrival, for instance, by applying to their consulate for any travel documents that may be required. If key details (identity or nationality) are not disclosed during the interview, the maritime company remains responsible for the unwanted passenger and may have to keep them on board until this data is available. Thus, stowaways may be held on a ship for months and carted from port to port while locked in a cabin. The captain is the public authority on the vessel and cabins are fitted out for this purpose by removing any dangerous objects. In some cases bars were soldered onto portholes and the cabins were locked using padlocks.

Captains and border police officers are quoted referring to detention conditions as "disgraceful" and "really dirty." Upon arrival, stowaways sometimes only have dirty clothes, a toothbrush and a bible. A doctor in Antwerp port is quoted as saying that stowaways suffer "various illnesses connected to inadequate nourishment or the lack of warm clothing [in addition to] numerous cases of tuberculosis, pneumonia and scabies." If a relationship of trust between a stowaway and a ship's crew is built up, conditions may be relaxed and migrants may be allowed out of their cabins for a few hours, or they may eat with the crew, but shipmaster Jean-Paul Declerq noted that this may lead authorities to treat them as "accomplices." In the past, they were sometimes made to work on minor chores on board in order to earn their subsistence, but this no longer happens because they are isolated in cells. Roland Duriol, a seaman who served on merchant navy ships that rescued boat people in south-east Asia in the 1980s, spoke of his experience that contrasts greatly with current practices:

> *At that time, migrants from Vietnam who fled persecution in their home country were rescued by French crews and were also issued the necessary administrative documents required for their reception and residence in France ...fugitives of all ages and social conditions (fishermen, farmers, students, soldiers) were received by the crew. Exhausted men, women and children were treated, washed, clothed and fed...Ten years later, entirely different concerns framed the discovery of boat people in the Mediterranean Sea. The same applies to 'stowaways' discovered on ships. Both groups are perceived as a threat for the smooth completion of the crossing, and the priority is for them to disembark as soon as possible.*

Detention on board during crossings may be followed by detention in ports, although spaces at border points conceived for this purpose (such as so-called "waiting zones" in France) are not used as often. Rules enabling detention on ships are more or less stringent depending on the country in question. Although linked to notions of "only for the time that is strictly necessary", it has become commonplace to accept this practice on the basis of a series of justifications. The report notes that:

> *In certain German, French or Italian ports, the authorities treat not allowing people who do not have valid documents to enter the territory as a matter of principle. Refusal to disembark the foreigner may have the search for information for the purpose of returning them more easily as its goal.*

A Unicon company official in Hamburg stressed the importance of making stowaways aware of the fact that they will not be able to disembark unless they cooperate. In the Netherlands, it is standard practice to keep stowaways on board until their return can be organised. Crews also fear interventions by migrant support organisations, as stated by a P&I club agent in Marseille, who argued that they "systematically advise stowaways to apply for asylum." Thus, a crew's responsibility for monitoring stowaways increases and public authorities further relinquish responsibility through the use of private security firms on the quayside. Nonetheless, there are cases in which stowaways are disembarked and taken to detention facilities, waiting areas, prisons (in Hamburg) or even hotel rooms that are commandeered for this purpose (Cherbourg or Sète in France), while they await expulsion.

Privatisation of "stowaway" management and returns

The interaction between policing, which is charged with applying the law, and the maritime trade sector, in which economic losses are the driving force, have resulted in stowaways becoming pawns in a game managed on the basis of practical considerations rather than the law. Maritime insurance company representatives stress that practices are informal and good relations with all the parties involved are vital. Ship owners, insurance companies and public authorities in the port of arrival are the key actors involved, and close cooperation between them is deemed necessary by a 1997 IMO resolution to resolve stowaway cases. P&I clubs and insurance companies have developed a wide range of services as part of their policies covering the risk of "stowaways", sometimes using local companies. The director of one such company, Bremen-based Unicon, explained this growing role at the behest of P&I clubs:

> *Insurance companies have correspondents in all the port cities. They call upon us as expert specialists in the field of identification and repatriation. We offer to provide them the "emergency documents" needed for repatriation, but also "airline security", and we have a large specialised team that accompanies the repatriation. We take care of all of that.*

Maritime insurers and their representatives thus become intermediaries between ship owners and public authorities, trying to minimise any inconvenience. These agents are interested in finding "pragmatic" solutions and cooperating for political and economic reasons. This gives rise to a "triangle" of operations in managing stowaways between the ship owner's P&I club, their maritime agent and the authorities. Arrangements

between these agents are often detrimental for stowaways, resulting in an undue limitation of their right to seek asylum and in their rights being disregarded in order to enact swift repatriations without troubling ship owners or public authorities. Maritime agents have become experts in building up networks of contacts to ensure that necessary procedural steps are adopted and the relevant documents and aeroplane tickets are available in time for a swift resolution of cases involving one or more stowaways, and in the preparation of so-called "repatriation plans." The goal is to get rid of the stowaways by any means possible without incurring any punishment. Their involvement is such that maritime agents sometimes even give stowaways 'pocket money' or buy them new clothes to convince them to return without causing problems.

At the Margins of Europe: the externalisation of migration controls Migreurop, 2010-2011 report, available at

http://www.migreurop.org/IMG/pdf/Rapport_Migreurop_2011_Version_anglaise_27012012_pour_derniere_relecture_et_validation_FASTI-SM.pdf

UK: Nationwide vigils commemorate deaths in custody

by Trevor Hemmings

Despite evidence of institutional and systematic failure and 11 verdicts of unlawful killing since 1990, no state official has been successfully prosecuted for a death in custody. On Father's Day, 17 June 2012, peaceful vigils were held across the UK in remembrance of those who have died in police detention.

In October 2011 the Independent Advisory Panel on Deaths in Custody published a report, *Statistical Analysis of all recorded deaths of individuals detained in state custody between 1 January 2000 and 31 December 2010*, which recorded the number of deaths in custody over a ten year period:

> *In total, there were 5,998 deaths recorded for the 11 years from 2000 to 2010. This is an average of 545 deaths per year.(p6) [1]*

Despite inquests returning 11 unlawful killing verdicts on these deaths since 1990 there has never been a successful prosecution of a state official, as INQUEST has pointed out in a press release in relation to the police contact death of bystander, Ian Tomlinson, at G20 protests in London in April 2009.

> *Despite a pattern of cases where inquest juries have rejected the official version of events and found overwhelming evidence of unlawful and excessive use of force or gross neglect, no police or prison officer or nurse has been held responsible, either at an individual or senior management level, for institutional and systemic failures to improve training and other policies.[2]*

In the face of these daunting statistics, particularly in relation to black deaths in custody, on Father's Day, 17 June 2012, peaceful vigils were held across the UK in remembrance of those who have died in various forms of state custody. The vigils were initiated by the family of Wayne Hamilton (24) who was found dead in a Sheffield canal on 16 June 2010. He had been reported missing by his family for five days before a friend contacted them to say that he had last seen Wayne running with police officers chasing him.

A number of campaigns and families of those who have died in custody also called events on the same day in a show of national solidarity. They were supported by the United Families & Friends Campaign (UFFC), the national coalition of families affected by deaths in police, prison, psychiatric and immigration custody or detention [3]. Peaceful vigils took place in: Manchester; Birmingham; High Wycombe, Buckinghamshire; Slough, Berkshire; Scotland Yard, central London and Brixton in south London. The participants demand justice for all of those who have died in police and other custody.

The groups joined forces to launch a petition last January which called for an independent judicial inquiry into all suspicious deaths in custody and for major changes in the criminal justice system. The petition demanded the abolition of the misleadingly named Independent Police Complaints Commission (IPCC) and its replacement by a body genuinely independent of the police. It also called for the suspension of officers involved in deaths in custody for the duration of an investigation. Other demands include the automatic prosecution of officers following unlawful killing verdicts and the right to non-means tested legal aid for the bereaved families. [4].

The vigils held on 17 June all relate to families who have had a relative die in suspicious circumstances after contact with police, prison or medical agents, and have found their efforts to uncover the circumstances confounded by indifference, obfuscation and deception. A brief outline of the circumstances surrounding a number of these deaths in custody discloses similar acts of disrespect towards the victim's families, similar patterns of police stereotyping/profiling, inadequate training in restraint techniques, inaccurate or partial investigations and most recently attempts to hide the circumstances of a death through "secret" inquests.

High Wycombe, Buckinghamshire

The Justice for Habib 'Paps' Ullah campaign held a vigil outside High Wycombe police station in Buckinghamshire. [5]

Habib "Paps" Ullah (37) died in July 2008 after he was stopped for a routine drugs search by Thames Valley police officers in High Wycombe. His family are angry that they were not informed about the death until the day after it happened and are concerned that the police account of events may not be accurate. They allege that six police offices struggled with Habib for up to half an hour before he died and contest the police allegation that a substance was found in the car: the police retracted this "fact" after fellow passengers were released without charges. The family are also critical of an inaccurate and misleading police statement made to the local mosque. Four years on, the family continue to fight to get answers and remain hopeful of a criminal investigation against five officers at the scene.

Saqib Deshmukh, spokesman for the Justice for Habib 'Paps' Ullah campaign explained the impact on the family:

> *We have joined other campaigns…so people can understand what impact a death in custody can have on families and in particular children. Habib's own children and in particular his oldest daughter have been active in the campaign and we have worked hard to make sure that they are involved and they get the answers to why he died and see justice being done.*

Slough, Berkshire

The Justice for Philmore Mills campaign held a vigil outside Slough police station. [6].

57-year old Philmore Mills was admitted to the intensive care

unit at Wexham Park Hospital in December 2011, and was moved on Christmas Eve to a respiratory ward. In the early hours of 27 December, an incident occurred to which hospital security and then police were called. Mr Mills was handcuffed and restrained. He then became unresponsive and was pronounced dead shortly afterwards after failed resuscitation attempts. The family have instructed solicitors to act for them during investigations and at the inquest and a second post mortem examination has been commissioned at their request. The family are looking to the Independent Police Complaints Commission (IPCC), the Health and Safety Executive (HSE) and Wexham Park Hospital to explain to them why and how their father died. Inquiries by the IPCC and HSE have begun, although Wexham Park Hospital has not told the family whether it will investigate, and if so on what terms.

The father-of-four's eldest daughter, Rachel Gumbs, told the *Slough Observer* (16.6.12.):

We decided to hold this vigil on Father's Day because there are so many families who have lost dads in custody or under restraint and we are still fighting for answers so we decided to get together and hold vigils on the same day. The main aim…is to fight for answers and to be able to have our own independent investigation. We need to fight for a change in law.

Manchester

The Justice4Grainger campaign held a vigil at Manchester Piccadilly Gardens, Greater Manchester that was joined by over 200 people. [7] Among those addressing the event was Janet Alder, whose brother Christopher suffocated on the floor of Hull police station while police officers directed monkey noises and other racist comments at him.

Anthony Grainger (36) died from a single gunshot to the chest after being shot by a police officer as he sat in a car in Warrington. The IPCC confirmed that Grainger was not armed at the time of the shooting in March 2012 and that no firearms were recovered from him or in the vehicle in which he was fatally shot. More than 16 armed police officers, as well as unarmed policemen were involved in the incident but no police surveillance footage is available, despite the hi-tech police vehicles and equipment at the scene. Gail Hadfield Grainger, Anthony's partner, has expressed concerns that there will be a cover up, The IPCC will pursue a criminal investigation into the Greater Manchester police officer who fired the fatal shot.

Ms Grainger said:

Father's day is for all the families to stand together and be counted as one, also to bring all the people who are fighting for their loved ones in the media to keep the momentum going in the public eye, and to help prevent things like this happening over and over again. We want to push to be the change in society that we all need. Justice for one, justice for all.

Birmingham

The Birmingham Strong Justice 4 All campaign held a joint vigil, remembering Kingsley Burrell, Mickey Powell, Alton Manning and Dimitri Fraser outside Birmingham West Midlands Police HQ, Lloyd House, Birmingham [8]. On behalf of the campaigns, Charlie Williams, said;

We will be supporting this event while we continue to support all families' campaigns across the UK by building the public awareness of deaths in custody.

Kingsley Burrell: Kingsley Burrell died at Queen Elizabeth hospital, Birmingham, shortly after being sectioned under the Mental Health Act. Burrell is reported to have called police to ask for help after he and his five-year-old son were intimidated by a group of youths. As a result he was arrested and then sectioned and taken to the Oleaster mental health unit. He was later transferred to the Seacole unit. On 30 March, police were again called. Burrell was taken to Queen Elizabeth hospital for treatment to a cut to his eye and was discharged back to the Oleaster centre. He was transferred back to hospital after suffering from a 'serious medical condition' and died. His family allege that he had been beaten by police officers.

Mickey Powell: Mikey Powell, who suffered from mental health problems, was knocked down by a police car, and then restrained with batons and CS spray. He was taken to Thornhill Road police station where he died in September 2003. In 2009, an inquest jury found that Mikey died as a result of positional asphyxia after police officers had placed him in the van that transported him to the police station. In June 2011, the West Midlands Police Authority was directed by the IPCC to record a complaint by Mikey Powell's mother, Clarice, that its report into the death was "misleading."

Alton Manning: Alton Manning died of asphyxia in 1995 after eight prison officers restrained him at HMP Blakenhurst, using a dangerous neck-lock and kneeling on his back in contravention of restraint guidelines. An inquest jury returned a verdict of unlawful killing, but no prison officers were prosecuted. The family also claimed a gross neglect of duty by West Mercia police in its investigation into the death, which led to the appointment of Staffordshire police to investigate the family's complaint against the police, which found serious systemic failures in the case.

Dimetri Fraser: 21-year-old Demetre Fraser fell to his death from the eleventh floor of a Birmingham tower block during a visit by two police officers who were investigating an alleged breach of his bail curfew in May 2011. Fraser had been bailed to the address following an argument with his girlfriend which had resulted in an assault charge. The complaint had been withdrawn and he was awaiting confirmation from the CPS/police that he could return home to London.

New Scotland Yard, central London

The Azelle Rodney Campaign held a vigil outside Scotland Yard to remember Azelle Rodney [9].

Azelle Rodney (24) was shot six times by CO19 police officers as he sat in the back of a car with two friends in Edgware in April 2005, in circumstances that have been compared to the police shooting of Mark Duggan in Tottenham (in August 2011.) There was no evidence that Azelle was armed at the time of the shooting, but this did not prevent 14 police officers from surrounding the car and shooting out its tyres while another officer fired eight bullets into the vehicle. In 2006, the Crown Prosecution Service ruled that there was there was insufficient evidence to prosecute any of the officers involved and in 2007 the coroner announced that he could not proceed with a full inquest into Azelle's death due to redactions to police officers' statements. In March 2010, the government announced its intention to investigate the death under the Inquiries Act 2005. In October 2010, five years after his death, the inquiry opened. The family are still waiting to hear the circumstances behind his death, but they will not be able to see or hear all of the evidence because it is deemed too "sensitive." The police officers involved have been granted immunity from prosecution.

Susan Alexander**,** the mother of Azelle Rodney said:

It is now approaching eight years since my son Azelle Rodney was killed by the Met Police in April 2005, shot seven times in the face, neck and back. Over the years we have cried, campaigned, walked alongside hundreds of other bereaved families and often alone seeking answers, the truth and justice…The Father's Day Vigil is another opportunity to show a united front... we've got to keep moving on.

Brixton, south London

The vigil at Brixton police station was organised by the Ricky Bishop Campaign, which was joined by the Sean Rigg Justice and Change campaign [10]. Pictures of Ricky were hung on a memorial tree along with lanterns containing candles, and members of his family and campaign held a banner through the three hour vigil.

Ricky Bishop: In November 2001 police stopped the car in which 25-year old Ricky Bishop was a passenger during Operation Clean Sweep and, claiming that he had a small amount of cocaine, detained him at Brixton police station. He offered no resistance to his arrest but a few hours later he was dead. The family have complained at their treatment by the police, who failed to provide them with information, and at the inquest into his death the coroner denied the jury the option of a manslaughter verdict, ruling that his death was misadventure. The Bishop family continue to campaign for justice, demanding the arrest and trial for murder of a number of police officers they have named.

Sean Rigg: Sean was a musician who was determination not to be stigmatised by bouts of schizophrenia. His death in August 2008 came after he was arrested and restrained by police officers who took him to Brixton police station where he was held in a metal cage in the yard. What happened next is unknown as CCTV cameras were not working according to the police, but Sean was pronounced dead at hospital that evening. His family are seeking answers about his death in police custody and demanding justice. An inquest into Sean's death began in June at Southwark Coroner's Court.

Endnotes

1. The Independent Advisory Panel on Deaths in Custody: http://iapdeathsincustody.independent.gov.uk/

Independent Advisory Panel on Deaths in Custody "Statistical Analysis of all recorded deaths of individuals detained in state custody between 1 January 2000 and 31 December 2010":

http://iapdeathsincustody.independent.gov.uk/wp-content/uploads/2011/10/IAP-Statistical-Analysis-of-All-Recorded-Deaths-in-State-Custody-Between-2000-and-2010.pdf

2. INQUEST "Jury's verdict of unlawful killing at inquest into death of Ian Tomlinson vindicates family and public concern" Press release 3.5.11.

3. United Friends and Family campaign: http://uffc-campaigncentral.net/

The United Families and Friends Campaign can be contacted on 0843 289 4994 or email: info@uffc-campaigncentral.net.

See also Harmit Athwal's "Black Deaths in Custody": http://www.irr.org.uk/news/black-deaths-in-custody/

4. UFFC e-petition: http://epetitions.direct.gov.uk/petitions/26276

5. Justice for Habib 'Paps' Ullah: http://justice4paps.wordpress.com/ http://www.facebook.com/events/363634190351546/

6. Justice for Philmore Mills:

http://www.facebook.com/events/332553416818174/

7. Justice4Grainger: https://www.facebook.com/events/151386544984352/

8. BirminghamStrong Justice 4 All campaign:

http://www.facebook.com/events/372705006109955/

See also: Harmit Athwal "The spotlight is back on black deaths at the hands of police": http://www.irr.org.uk/news/the-spotlight-is-back-on-black-deaths-at-the-hands-of-police/

Mikey Powell campaign: http://mikeypowell-campaign.org.uk/

9. Azelle Rodney campaign: https://www.facebook.com/susiea81

http://azellerodney-campaigfojustice.moonfruit.com/

10. The Ricky Bishop Campaign:

https://www.facebook.com/events/250201918405339/

Sean Rigg Justice and Change campaign:

http://seanriggjusticeandchange.com/

"Complex, technologically fraught and expensive" - the problematic implementation of the Prum Decision

by Chris Jones

The implementation of the Prum Treaty has been beset with technical and administrative problems with most Member States still unable to share data. Centralised EU bodies and working groups on information exchange have been created to speed up the implementation process and provide coordination and oversight.

The Prüm Decisions mandate the exchange of DNA, fingerprint and vehicle registration data (VRD) amongst Member States of the European Union. The Decisions also permit the exchange of personal data for the prevention of terrorist offences and joint operations by police forces of different Member States. 26 August 2011 marked the date by which every EU Member State should have finished making the legal and technical changes required by the Decisions. [1] It is clear that the majority have failed to do so, for a variety of reasons.

As noted in a previous *Statewatch* Analysis:

> *The ultimate goal [of Prüm] is to overcome lengthy mutual legal assistance bureaucratic procedures by establishing a single national contact point as an electronic interface for automated information exchange. Traditional channels of legal assistance would only be activated when search data matches a stored entry. Such a "hit" would lead to a request for further information.[2]*

The process of simplifying procedures has turned out to be extraordinarily long-winded and difficult. A December 2012 evaluation by the Polish Presidency concluded that the process has been "complex, technically fraught and expensive." [3]

Six months after the implementation deadline, the majority of Member States are not yet able to exchange any of the three types of data deemed necessary for dealing with "threats caused by criminals operating within a European Union without internal borders." [4]

Uneven implementation

As of March this year, only 13 Member States were engaging in the "operational exchange" of DNA data. [5] This is an increase of just four since October 2010, when a report by the Belgian EU Presidency found that "several Member States have not yet complied in full with the provisions on automated data searching." [6] Ten Member States are now able to exchange information on fingerprints (an increase of five since the Belgian report); and ten can now exchange vehicle registration data – an

increase of three. [7]

The formal process of complying with the provisions on DNA, fingerprints and VRD is lengthy and convoluted. Requirements include: notification of contact points for the three types of data; details of data protection authorities; a list of national DNA analysis files and conditions for automated searching; maximum search capacities for fingerprint data; and what have been referred to as "lowest common denominator" data protection guarantees. [8] Member States also have to undergo and pass visits from external evaluators. A unanimous decision must then be made by the Council on the readiness of each Member State to undertake information exchange for each type of data.

However, although a Member State may be ready to exchange information on, say, fingerprints, it may not be able to do so with every other Member State. The Prüm system creates a decentralised network of national databases. In order for one Member State to be able to undertake exchanges with every other Member State directly, 26 bilateral interfaces are required. This currently equates to 702 interfaces in total across the EU.

Member States will require one more interface each when Croatia accedes to the EU and becomes the 28th Member State. Norway and Iceland have also agreed to join the Prüm system, which would require two more interfaces per Member State. Austria – which has one of the most developed systems – is currently only able to undertake exchanges of DNA data with 11 other states; and fingerprint and vehicle registration data with nine others.

Lying a long way behind Austria are states such as Estonia, who planned to have installed their Automated Fingerprint Identification System (AFIS) software and hardware by the beginning of January 2012. It is unknown whether this was achieved.

The most recent update from Italy indicates that contracts with the suppliers of their fingerprint system have yet to be finalised. Romania's most recent submission to the Council states that:

> *To date, the interface ANSI/NIST-ITL 1-200 version 4.22b is not yet acquired. However, the interface is a precondition of making AFIS [Automated Fingerprint Identification System] operational. This is supposed to take place 6 months after the acquisition of the interface which is dependent on funding not yet approved.[9]*

In other words, Romania has made almost no progress.

Similar problems exist across Member States for the implementation of the legal and technical aspects of the systems for DNA data exchange. Ireland "does not yet have a fully operational DNA database," although "legislation underpinning the establishment of the DNA database has been drafted and is awaiting parliamentary review."

The situation in Ireland exemplifies the effect of EU law to implement significant changes to Member State domestic policy, in this case the establishment of a national DNA database.

A bill published in March 2010 by the then-government, the *Criminal Justice (Forensic Evidence and DNA Database System) Bill 2010* referred specifically to Prüm:

> *The main purposes of the Bill are to: ... implement the DNA-related elements of the Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (the Prüm Council Decisions).[10}*

However, the election of a new government requires the tabling of new legislation. This will have the same title as the 2010 bill and is scheduled for publication in late 2012, although further delays are possible. It is almost certain that one of its purposes will be the implementation of the Prüm Decisions. The EU may therefore be waiting for quite some time for the Irish state to take up its obligations with regard to DNA data exchange.

In Italy, "technical groups" have begun "working on workflow" but are still waiting for the installation of the Combined DNA Index System (CODIS), a system produced and sold by the USA's Federal Bureau of Investigation that "blends forensic science and computer technology into an effective tool for solving crime." [11]

Similar problems exist with the sharing of vehicle registration data. Internal discussions are ongoing in the Czech Republic; Estonia is technically ready but dealing with "administrative problems"; Latvia is undertaking preparatory work, as is Malta; and in Portugal a new car registration information system needs to be implemented before the country can take part in the European Car and Driving Licence Information System (EUCARIS), permitting the exchange of vehicle registration data. This is scheduled to happen in 2012.

The Prüm Decisions also contain provisions on other issues with which some Member States have yet to comply. Contact points for major events have yet to be declared by Ireland, Greece, and Finland. The same three countries are also lacking contact points for the exchange of information related to counter-terrorism. Greece and Malta have yet to notify the General Secretariat of the details of national data protection authorities.

The problem of the Principle of Availability

Key to police, judicial and administrative cooperation in the EU is the creation of continent-wide computer networks and large-scale IT systems. Yet the construction of these systems is – unsurprisingly, for such ambitious projects – frequently beset by technical, legal, linguistic, administrative and political problems.

Access to these systems is meant to be driven by the "Principle of Availability", according to which there should be as few obstacles as possible standing in the way of an official from one Member State accessing information held by another Member State. Combined with the principle of mutual recognition, which holds that information collected or produced by one Member State is as valid as that collected or produced by another, disparate Member States become part of a single entity – the "Area of Freedom, Security and Justice." The underlying reality is far more complex than the rhetoric might suggest.

A study prepared for the European Commission noted of the Principle of Availability that although "in reality it is certainly a vision worth pursuing", it only "partly works in practice" and:

> *It is almost impossible to realise its full potential… while there still exist different national, legal and administrative systems, data protection legislations, and also significant interoperability problems.[12]*

These differing legal and administrative systems, along with political problems and significant technical hurdles, have resulted in so few Member States implementing the necessary provisions by the required date. The Presidency report on Prüm implementation states that the ability of Member States to meet the 26 August 2011 deadline was "hampered by domestic issues such as pending legislation, technical concerns or concerns with regard to human or financial resources."

Coordination and management

However, from crisis comes opportunity. Establishing the systems required by the Prüm Decisions seems to have spurred the growth of more centralised, EU-level systems for coordination and oversight. The Presidency's evaluation notes that "the need [for] a coordinated implementation management both on national and on EU level proved to be essential." [13] At the EU level, this took the form of the establishment of the Ad hoc Group on Information Exchange, now formalised as the Working Group on Data Protection and Information Exchange (working under the acronym DAPIX and in which "data protection [is] discussed as the need arises"). [14]

From its establishment as an Ad hoc Group through to its current formal status, DAPIX has been one of the key forums in the Council for the discussion of new EU-wide information exchange projects based on computer networks or central databases such as the European Police Records Information System (EPRIS) and the Information Exchange Platform for Law Enforcement Agencies (IXP).

Further assistance was provided to Member States by the establishment of the "Mobile Competence Team (MCT)," a group of experts given the task of supporting Member States in the implementation procedure. This has led to the formation of a "helpdesk" at Europol. A job advertisement (with a closing date of 30 December 2011) for the post of "Product Management Officer Prüm Helpdesk" states that the contract will last initially for two years, but may be renewed. Clearly EU-wide implementation is not expected any time soon. [15]

The Presidency has also suggested that future work at a national level should be subject to greater scrutiny by the Council:

> *In view of the general monitoring of the implementation by Council bodies, a smooth communication between authorities concerned and a coherent approach at national level would lead to more reliable information on the state of play.*

Furthermore, "legal issues should be assessed as well since long legislative procedures could have a significant impact on the implementation procedure and should be taken into account when setting deadlines." One of the three conclusions of the "lessons learned" paper is that there needs to be "a dedicated overarching management and assistance structure." This has been phrased elsewhere as "a common project management with detailed reporting and monitoring." [16]

The implementation of a decentralised network seems hard to achieve without some form of centralised decision-making and oversight. Quite what form this may take in the future remains to be seen. The recently-established Agency for the Management of Large-Scale IT Systems only has a remit to manage the Schengen Information System II (SIS II), the Visa Information System (VIS), and Eurodac (the EU database of asylum-seekers' fingerprints). However, the option is open, subject to the adoption of new legislative instruments, for the Agency to take on the management of other large-scale IT systems. [17]

Whether a decentralised network such as that mandated by Prüm can be considered a "large-scale IT system" may be a matter for debate further down the line. The pooling of resources and technical knowledge in the new IT Agency may give rise to demands that it become responsible for assisting with implementation of Prüm and any similar networks established in the future.

The other two conclusions made by the Presidency relate to the need for "EU funding to be [easily] accessible" (many Member States complained about the red tape surrounding access to funding for Prüm implementation), and for "a proper identification of resources to be deployed." A thorough impact assessment was not carried out prior to the drafting of the Prüm legislation. Considering the scale and scope of the project, this could be considered somewhat short-sighted at the very least.

Conclusion

For the time being, the ability of Member States to exchange fingerprint, DNA and vehicle registration data remains severely curtailed due to both EU and national-level problems that could – and perhaps should – have been foreseen in the preparation and drafting process. Instead, solutions were prepared on-the-fly as problems arose.

There are of course other serious problems with the Prüm system of data exchange. The issue of the "rising risk of false positives" has been analysed by *Statewatch*: the crux of the argument is that due to the way in which DNA profiles are considered to be a positive match – or "hit" – when a search is undertaken, the risk of the detection of false positives increases as a greater number of Member States join the network. Similar issues may exist with the automated searching of fingerprint databases: one author makes the argument that the risk of false positives arising from the use of AFIS "has not been sufficiently investigated or explored." [18] And as with so many of the EU's other databases and IT systems, the Prüm system raises questions about necessity, proportionality, accountability, and even the desirability of a single European judicial area when the professional and legal standards to which different institutions and authorities are held accountable differ widely.

For the time being, attempts at national level to undertake the complex implementation procedure will continue, with the Council breathing down the neck of those Member States lagging behind. Deadlines have disappeared. Instead, Member States are now left with exhortations calling for "finalisation", "intensification", and greater "cooperation." [19]

Endnotes

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12. International Centre for Migration Policy Development, 'Study on the status of information exchange amongst law enforcement authorities in the context of existing EU instruments', p.8, http://ec.europa.eu/home-affairs/doc_centre/police/docs/ICMPD%20Study%20LEA%20InfoEx.pdf

13. Presidency, 'Implementation of the Prüm Decisions – lessons learned', 20 December 2011 (EU doc. no. 18676/11), p.2,

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15. Europol, 'Job description', 18 November 2011,

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16. CATS, 'Outcome of proceedings', 13 December 2011 (EU doc. no. 18579/11), p.3,

http://register.consilium.europa.eu/pdf/en/11/st18/st18579.en11.pdf

17. Recitals (4) and (12), Preamble, Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011, establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice

18. Jennifer L. Mnookin, 'The use of technology in human expert domains: challenges and risks arising from the use of automated fingerprints identification systems in forensic science', Law, Probability and Risk (Vol 91(1)), pp.47-67

19. Draft Council Conclusions on intensifying the implementation of the "Prüm Decisions" after the deadline of 26 August 2011, 5th December 2011 (EU doc. no. 17762/11), p.4

Review article and book review

Detention centres in France – Annual report 2010. ASSFAM, La Cimade, Forum Réfugiés, France Terre d'Asile, Ordre de Malte Reviewed by Marie Martin

La Cimade: defending the rights of migrants in detention centres for 25 years

The Cimade organisation has been well known for its work in French immigration detention centres since the mid-1980s. Its involvement has not been limited to support for migrants deprived of their liberty; it also publishes an annual report documenting detention conditions together with an analysis of legal and political developments. Their reports also throw light on the growing number of detainees who are released following a judicial review of detention orders, along with other judicial rulings that have questioned the legality and proportionality of the migration policy adopted by successive governments. The organisation's reports have also asserted its opposition in principle to the detention of migrants for the purpose of deportation and criticised the use of migration issues as a "political tool" used by the authorities. La Cimade has worked closely with other organisations to relay information gathered in the centres, to ensure proper follow-up of detainees (in the medical, legal and social aspects) and to argue for an end to the detention of migrants.

2009: Government attempts to counter the judiciary's rulings

In 2009, the French government criticised La Cimade's "monopoly" on detention centres, arguing that it was unacceptable and calling for the centre's to be open to "the market". It launched a "call for tender" open to other organisations, especially those that would be less critical of French detention policy. The government also made an attempt to modify the nature of the mission of the organisations involved in detention centres: they should not be concerned with defending detainees' rights, only for providing detainees with information about their rights. The modification was challenged at the Council of State (Conseil d'Etat) which dismissed the government's plans. However, the allocation of contracts to different organisations constituted a clear attempt to blur criticism of the situation in detention centres and hamper any embarrassing actions from migrants' rights organisations. Since 2010, support to migrants in detention has been provided by the ASSFAM (Association, Service Social Familial Migrants), La Cimade, Forum Réfugiés, France Terre d'Asile, and the Order of Malta. There is no possibility for the organisations to be involved collectively in the same centres.

"An uncompromising review": the first year of inter-organisation action in detention centres

Much was expected from the organisations and their capacity to bridge the divide tacitly promoted by the government. This first inter-organisational report is a response to the undermining of work undertaken over a period of 25 years to defend migrants and detained migrants' rights. All of the organisations, which regularly exchange information via a steering committee established to facilitate communications, applied common analytical parameters to the centres in which they were involved. The resulting report is a victory over the French government's attempt to silence criticism, as exemplified by the title of the press release issued jointly with the report: "An uncompromising review" (Un bilan sans concession).

2010: An increase in the number of detainees

There have never been more migrants held in detention in France than in 2010: more than 60,000 were held at 27 detention centres, more than twice the number held 11 years ago. Among them, were a record number of children (356) detained together with family members. It is worth noting that children are not included in the official statistics of the number of detainees; children are not "subject to the law" (sujets de droit) or rights-holders in France and their situation is attached to that of their legal representatives. In the case of detention they are double victims, subject to a distressing experience themselves and witnessing the trauma imposed on their parent(s). Their basic needs are not taken into account. Isolated minors are also detained, often on the basis of unreliable bone age assessment which frequently contradict their under-age status even when they have documentation proving that they are under 18. This results in a Kafkaesque situation where the office in charge of examining asylum claims, which makes its judgement on the basis of identity documents, refuses to consider the asylum claim until they are 18. However, the detention authorities detain them until they are removed, or released and left without support based on the assumption that they are adults.

Detention conditions

The report also denounces conditions which amount to imprisonment. Surveillance systems are in place at all centres; there are 67 cameras at the Vincennes detention centre, which only has a capacity of 57 persons. Although detention should be a last resort, the organisations confirm that it remains the rule rather than the exception, although, in about 55% of cases, detained migrants have been released and not removed. One criticism concerns the lack of homogeneity in detention condition standards which "does not guarantee the respect of detainees' fundamental rights", despite a bylaw dated June 2010 calling for greater harmonisation. The degrading practices resorted to in certain detention centres are also a cause for concern. A striking example of this is the frequent use of isolation, implemented at the discretion of the centre's administration, which generally lasts for a few hours, if a person represents a risk to him/herself or to others. Detainees are often handcuffed when being transferred from the centre, which, in addition to being disproportionate, reinforces the impression of them as criminals. Another example is the practice of "medical isolation" in the Marseille detention centre (south of France) where people *suspected* of suffering from a contagious disease are held in isolated cells.

Access to healthcare

The issue of access to health care is given an entire chapter in the report, and reveals a huge discrepancy in standards and practices

across the country. Only one centre provides access to a psychologist and the detention of handicapped people barely takes into consideration the need for properly equipped facilities and medical support. The lack of access to health care is all the more concerning given that the law was changed in 2010 enabling the removal of people to countries where health care would be "available." Before the amendment, the law foresaw that no person with specific medical needs should be removed unless effective access to health care was guaranteed in the country of origin.

Access to asylum

Access to asylum for detainees remains an issue of great concern due to the "state of exception" which characterises detention centres. Sometimes foreigners were arrested and detained before they could lodge an asylum claim. An asylum claim lodged by a detained person is considered with suspicion and is unlikely to be successful. A crucial aspect is the non-suspensive effect of an appeal of the rejection of the asylum claim in the first instance procedure: contrary to asylum seekers who lodge an appeal against the first rejection of their asylum claim by the French Office for Asylum and Stateless persons (OFPRA) and are allowed to remain in France pending the appeal procedure, the rejection of the asylum claim lodged by a migrant held in detention leads to the issuing of a deportation order as the appeal lodged in detention will have no suspensive effect on the removal.

French Overseas Territories: the shadow reality of detention

The report unveils the reality of detention in the French overseas territories (départements et territoires d'outre-mer), where the majority of detained migrants were held (32,881). In these islands and small enclaves in the Caribbean, South America, and the Indian Ocean, the situation is even worse than that in metropolitan France. Organisations are not always financially supported in providing services to the detention centres, as is the case in Mayotte, a French department near the Comoros islands. The Mayotte detention centre has been described by the National Commission of Security Deontology as "unworthy of the Republic" and as being a "wart on the Republic" by a police trade-union. Access to the Juge des libertés (Judge of Freedoms), who is in charge of assessing the legality of a detention order after 48 hours, was not ensured, in many cases because removals were carried out before this time. In Mayotte, no detainee had access to the Juge des libertés, and only 11.8% saw their detention order assessed by the judge in French Guyana. The report denounces illegal practices such as the removal of foreigners to a neighbouring country, without the latter originating from it or having a right to enter (i.e. many foreigners are removed to Surinam from French Guyana).

Legal reforms impacting on detention practice in France

2010 was marked by a new immigration law, adopted in the framework of the transposition of the European Returns directive to French law in December 2010 which raised the legal time limit for detention from 32 to 45 days. The average length of detention was 10 days, which throws into question the need to extend the legal length of detention to 45 days:

Statistically, the longer detention lasts, the smaller the proportion of people being removed. In other words, the extension of the length of detention to 45 days...is hardly enabling more removals but leading to a sharp increase in the number of days people are held in detention.

This reform was coupled with the delayed intervention of the Juge des libertés: the judge will assess the legality of a detention order after five days, instead of two as under previous legislation. The average length of detention varies between the Overseas Territories (10 days) and metropolitan France (2.5 days). Considering that an important number of removals from the Overseas Territories are still carried out within two days, and that detention lasts on average a little more than 48 hours in metropolitan France, this reform is likely to result in an increased number of detention orders not being legally assessed.

The broader context of racial profiling and criminalisation

The report highlights that the majority of foreigners expelled from France are not detained but instead are removed in a hasty manner. While about 40% of deported people are sent to a detention centre first, about 60% were either arrested during border controls which are systematically targeting foreign-looking persons, or following a visit to a public service office where she/he was denounced as irregular. This constant fear of arrest results in foreigners being discouraged from claiming entitlements and living in fear of enjoying their rights. Moreover, regarding border controls, France has been criticised by the European Union for carrying out checks which breached the "spirit" of Schengen, if not the Schengen Code itself.

Finally, the report returns extensively to the political agenda underpinning the government's "target-driven policy" (with the objective of 28,000 removals in 2010) and to the discriminatory and securitarian narrative surrounding migration policy. The organisations' lay the emphasis on two major aspects, particularly noticeable in recent years. First the targeting of Roma people, for which France has been strongly criticised by the European Union and human rights organisations, regarding a bylaw clearly mentioning Roma-targeted removal objectives. Second the growing criminalisation of irregular migrants, sometimes in breach of the legal principles applicable to their detention, as exemplified by the significant number of migrants released following a judicial review of their detention (55.5%). "Support removal cells" (cellules d'appui à l'éloignement) have been set up, thereby extending the custody period prior to the beginning of detention: another state of exception is here at play as this implies no access to a lawyer, or an interpreter, in a clear attempt to pressure the person to agree on returning "voluntarily". The organisations stress that "detention is increasingly used as a penal sanction against irregular immigration".

The report is available (in French) at:
http://infos.lacimade.org/RAPPORT_R_tention_2010_OK.versionlegere.pdf

Book review

Identifying the English: A History of Personal Identification 1500 to the Present, Edward Higgs, *Continuum Books*, London 2011, pp.275. Reviewed by Chris Jones

Edward Higgs sets out to challenge two common assumptions in history and historical sociology with regards to personal identification in England. One theory argues that the Industrial Revolution led to significant changes in methods of identification as mobility and anonymity increased; the other argues that methods of identification, in terms of core substance, were little altered by the Industrial Revolution. He draws the conclusion that "neither the existing models of 'rupture' or 'continuity' across the Industrial Revolution adequately capture the history of identification techniques, at least in the English context."

The book begins with three case studies, including that of the Tichborne Claimant, who until the McLibel trial of the 1990s was the subject of the longest-running criminal trial in English history after he falsely claimed the inheritance of Sir Roger Tichborne, baronet of the Tichborne estates in Hampshire. Higgs uses his case studies to argue that methods of identification are never a one-way process, but instead are "performative",

requiring both a performer to make claims about who they are, and an audience to either accept or refute those claims. He also seeks to distinguish between how forms of identification have differed for the citizen, the consumer and "juridical person," and the deviant.

By the time the book has passed through the Middle Ages and the Industrial Revolution to the contemporary era, this "performative" aspect remains – albeit that now individuals are frequently forced to make their performance in front of a digital database which will then verify, cast doubt on, or deny their claims depending upon whether they can provide the correct information: the audience has been "automated." It is also often the case that individuals can "no longer assert an identity; they have to claim it from institutions, which can increasingly impute an identity to them. In the past this tended to be the fate of the deviant, not of the citizen, or juridical person."

This does not demonstrate a simple case for some great 'rupture' with past forms of identification, however. While there have been significant changes, Higgs makes a strong case for continuity as well: "the identification of the citizen, including that of the welfare claimant and of the elector, has always been based on community recognition and documentation since the early modern period. This may have been bureaucratised in the 'recommender system', or converted into data profiling…but is still recognisable today."

A case is also made for the positive aspects of identification, for example in the identification of corpses or in registration systems that allow people to claim certain benefits or access social services. Focus is frequently placed on the more authoritarian aspects of personal identification, seeing the modern state as "inherently driven towards increasing the regulation of individuals," and there is certainly some argument to be made for this. However, forms of identification are necessary in any society and this has both positive and negative aspects.

There is thus no simple model that can explain the changes in methods and modes of identification, and Higgs' book is a meticulously-referenced testament to this. By the time his analysis has moved into the twentieth century and the present day, he also argues that, like so much else, new forms of identification are now frequently the product of multi- or supranational forces, beyond the control of one nation-state. The example of biometrics in passports is given, pressure for which "may come from foreign governments and international regulatory bodies," and indeed the vast network of corporate salesmen seeking to promote new identification methods.

It is made clear that the book is not intended to be an exhaustive account of the changes in the methods, modes and purposes of identification over a 500-year period. One significant drawback is also that a focus solely on England provides no room to draw comparisons with other societies that underwent similar changes during the Industrial Revolution. Nevertheless, it is for the most part written accessibly enough for the general reader, and the breadth of time and forms of identification covered, provide an excellent starting point for further research and investigation.

New material and sources

Civil Liberties

The War on Democracy, John Pilger. *New Statesman* 23.1.12, pp. 34-37. Investigative journalist, John Pilger, revisits what he says are some of the civilian political pawns sacrificed to the economic and military expansion of the USA with the complicity of compliant political assets such as the UK. He revisits the Chagos Islands, where in the 1960s 2,500 islanders were intimidated from their land and unceremoniously dumped 1,000 km away in Mauritius to live in abject poverty. This "sanitisation" was to enable the construction of a US military base at Diego Garcia where, it is widely reported, victims of the current US war on terror were tortured en route to Guantanamo Bay, with British complicity. Citing the US historian William Blum, Pilger recalls 50 US attempts to overthrow governments, 20 attempts to suppress populist or national movements, 30 attempts to interfere in domestic elections, 30 countries that have been bombed by the US and 50 foreign leaders the US has attempted to assassinate. These acts have been carried out, Pulger says, in 69 countries and in most cases the UK has colluded with the leaders of the "free" world. John Pilger's website: http://www.johnpilger.com/

Lifting the Lid on Menwith Hill: t**he strategic roles and economic impact of the US spy base in Yorkshire**, Dr Steve Schofield. *Yorkshire CND*, 2012, pp. 72. This report considers the role of the National Security Agency's spy base at Menwith Hill, the first such investigation since the European Parliament ruled that its electronic surveillance breached the European Convention of Human Rights in 2001. The US base operates under an "informal", and secretive lease agreement with the UK. The report covers: the site's "strategic role as a regional intelligence base illegally collecting and analysing information from satellites, phone tapping and the interception of internet traffic"; its role in "information-led warfare for US military actions such as drone attacks"; US claims of the "economic benefit of the base to the local community" and its hidden economic costs "and the degree to which these are subsidised by the UK taxpayer": http://www.natowatch.org/sites/default/files/liftingthelid.pdf

Race to the Bottom: Olympic sportswear companies' exploitation of Bangladeshi workers, Murray Worthy. *War on Want*, March 2012, pp. 20. This report examines the conditions faced by workers in Bangladesh, mostly women, who produce sportswear sold by leading brands Adidas, Nike and Puma, which have all invested heavily in the London 2012 Olympic Games. "As well as gaining access to worldwide audiences to promote their products they also aim to associate themselves with the Olympic values of fair play and respect." The report finds that for workers making goods for Adidas, Nike and Puma in Bangladesh, there is little very sign of fair play and no respect whatsoever. "Five of the six factories covered by our research do not even pay their workers the legal minimum wage in Bangladesh, let alone a living wage that would allow them to meet their basic needs. Two thirds of the workers we spoke to work over 60 hours a week producing goods for the sportswear brands, again breaching Bangladeshi labour law. Many suffer abuse in the workplace, including sexual harassment and beatings." Available as a free download at: http://www.waronwant.org/attachments/Race%20to%20the%20Bottom.pdf

Making Markets Work for Jobs: world of work report 2011. Raymond Torres (editor). *International Institute for Labour Studies* (International Labour Organization) 2011 (978-92-9014-975-0 web pdf), pp. 140. This report makes predictably uncomfortable reading with the International Labour Organization warning that world is heading for a deeper jobs recession and warning of more social unrest. It argues that the stalled global economic recovery has begun to dramatically affect labour markets and incorporates a new "social unrest index" that demonstrates that levels of discontent over the lack of jobs and anger over perceptions that the burden of the crisis is not being shared evenly. It reports that in more than 45 of the 119 countries considered, the risk of social unrest is rising against the backdrop of deteriorating labour market conditions. This is especially the case in advanced economies, notably the EU, the Arab region and to a lesser extent Asia: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_166021.pdf

Immigration and asylum

Europe's Own Human Rights Crisis, Benjamin Ward. *Human Rights*

Watch January 2012, pp. 8. This essay discusses European leaders' enthusiasm for selected parts of the Arab Spring and compares this with the unedifying reality of human rights in its own back yard. It considers documents discovered by HRW in Libya in September 2011 demonstrating the UK's collaboration in the US rendition and torture programme and Italy's decision to sign a migration cooperation agreement with Libya's transnational government. The essay also covers EU governments' reluctance to help migrants and others trying to flee war-torn countries, noting that the arrival of thousands of Tunisian migrants led "governments to question free movement within the EU." As Ward remarks: "Move beyond the fine words and human rights in Europe are in trouble. A new (or rather a resurgent old) idea is on the march: the rights of "problematic" minorities must be set aside for the greater good and elected politicians who pursue such policies are acting with democratic legitimacy.": http://www.hrw.org/world-report-2012/europe-s-own-human-rights-crisis

Migrant Voice Issue 1, 2012, pp. 36. The first issue of this new magazine on migration came out earlier in 2012. Offering an "alternative position on migration", *Migrant Voice* gives a fresh impetus to the migration debate by covering important migratory realities often left unaddressed by the mainstream media: the British diaspora, migrants' contribution to the British economy, sport and culture, or even the international family tree of Queen Victoria's offspring. This new magazine is published by the Migrant Voice organisation which aims to celebrate migrants' contribution to society and give a more positive understanding of migrant communities. The project is supported by the Barrow Cadbury Trust, the Joseph Rowntree Charitable Trust and the Open Society Institute. Migrant Voice website: www.migrantvoice.org

The "Second Torture": the immigration detention of torture survivors, Natasha Tsangarides. *Medical Justice*, May 2012, pp. 132 (ISBN 978-0-9566784-2-3). In detaining asylum seeking victims of torture the UK Border Agency (UKBA) is complicit in "a `second torture` bringing back memories of their [asylum seekers'] incarceration in their home countries and provoking re-traumatisation" according to Medical Justice, whose latest report provides further evidence of the physical and mental health consequences of immigration detention on vulnerable migrants. Despite the 2001 Immigration Detention Rules prohibiting, under Article 35, the detention of victims of torture, Medical Justice has collected first-hand evidence of detained torture survivors who spent on average 266 days in detention each. Based on interviews with 50 migrants who were tortured before they arrived in the UK and detained in immigration detention, the report exposes serious "systemic failures" in identifying victims of torture, a "culture of disbelief" regarding allegations of torture, and the serious consequences on physical and mental health which detention had on detainees. "Torture survivors were failed so badly that two of them were removed and tortured again in their home country before they made it back to the UK to claim asylum again. Apart from these two, no others were removed which begs the question why they were detained for the purpose of removing them in the first place." Medical Justice says that the government's "blatant disregard for the law" means "ultimately it values immigration targets more than it does the people who it:detains ".

http://www.medicaljustice.org.uk/images/stories/reports/secondtorturereport.pdf

Law

Freedom from Suspicion: surveillance reform for a digital age, Eric Metcalfe. JUSTICE, October 2011, (ISBN 978-0-907247-53-1) pp. 162. The report says that there have been close to three million decisions taken by public bodies under the Regulation of Investigatory Powers Act (RIPA) 2000 in the last decade, excluding warrants and authorisations on behalf of MI5, MI6 and GCHQ, which have never been made public. Since 2010 there have been at least 2.7 million requests for communications data (including phone bills and location data); more than 20,000 warrants for the interception of phone calls, emails, and Internet use; at least 30,000 authorisations for directed surveillance (e.g. following someone's movements in public, or watching their house) and more than 4,000 authorisations for intrusive surveillance (e.g. planting bugs in someone's house or car.) Fewer than 5,000 decisions (approximately 0.16%) are known to have been approved by a judge. The Investigatory Powers Tribunal has dealt with 1,100 complaints over the same period and it has upheld only ten. The report concludes that "RIPA has not only failed to check a great deal of plainly excessive surveillance by public bodies over the last decade but, in many cases, inadvertently encouraged it. The legislation's poor drafting has allowed councils to snoop, phone hacking to flourish, privileged conversations to be illegally recorded, and CCTV to spread. It is also badly out of date." The report provides a series of recommendations for a draft Surveillance Reform Bill: http://www.statewatch.org/news/2011/nov/uk-ripa-justice-freedom-from-suspicion.pdf

Wrongly accused: who is responsible for investigating miscarriages of justice? Jon Robins (ed.) *Solicitors Journal* (Justice Gap series) 2012. This collection of essays was commissioned after the twentieth anniversary of the release from prison of the Birmingham Six in March 1991, following the IRA bombings in Birmingham. The release of the six, as a result of mistakes in scientific evidence, followed on from a series of other gross miscarriages of justice, which led to the creation of the Criminal Cases Review Commission, which has succeeded in staunching the flow of cases since 1997. The essays contained in this volume address the question of "why the wrongfully accused are being failed by the criminal justice system." It also asks "what role should the various groups play in promoting the interests of the wrongly accused." Available as a free download:
http://thejusticegap.com/SJ_Miscarriages_of_Justice_LOW_RES.pdf

Potential Wrongful Convictions: failed by the Criminal Cases Review Commission. *Innocence UK website* 28.3.12. The Innocence Network (INUK) has launched a dossier of 45 cases of alleged innocent victims of wrongful conviction who have been "refused a referral back to the Court of Appeal at least once by the Criminal Cases Review Commission [CCRC] despite continuing doubts about the evidence that led to their convictions." The CCRC, which assesses whether convictions or sentences should be referred to a court of appeal, was established in 1997 following a plethora of widely publicised miscarriages of justice (c.f. Winston Silcott, Birmingham 6, Guildford 4) that led to the payment substantial compensation and a Royal Commission on Criminal Justice. The CCRC is widely credited with staunching the overturning of miscarriages of justice and the cases reviewed in this dossier underline "the urgent need for reforms to the Criminal Cases Review Commission to ensure that such cases can be more adequately dealt with." Gabe Tan, executive Director of INUK, said: "Many of the prisoners in the dossier have served two or even three decades in prison. They would have been released on parole much earlier had they admitted guilt to the crimes that they were convicted of. The Criminal Cases Review Commission is unable to help them despite strengths in their claims of innocence. Unless the existing arrangements are reformed, these cases are never going away." Innocence Network website: http://www.innocencenetwork.org.uk/ccrcreform

Military

A War Gone Badly Wrong – the war on terror ten years on, Paul Rogers. *Oxford research Group International Security Monthly Briefing* (August-September) 2011, pp. 5. This briefing paper compares the Bush administration's original aims for the war on terror with their outcomes in the Obama era. The "brief" war against Afghanistan is in its second decade and facing an endgame that resembles the Russian retreat in 1989, while Pakistan remains "deeply unstable." The war on Iraq is very far from bringing peace, stability and democracy while al-Qaida affiliated groups make progress in Yemen, Nigeria, Algeria and the Horn of Africa. Despite its failure in the war on terror, the USA and its supporters remain rooted in a "control paradigm", but rather than committing "boots on the ground" the sustained use of air-power is the new paradigm. Rogers observes a "blurring of the roles between the military and agencies such as the CIA; an assumption of paramilitary roles by intelligence agencies; and a deployment of the military's special forces in "taking out" threats whenever and wherever they arise." Rogers concludes that: "these measures are seriously misconceived in terms of finding solutions to the problems western states are facing." Available to download at: http://sustainablesecurity.org/article/war-gone-badly-wrong-war-terror-

ten-years

Detention abuses staining the new Libya. *Amnesty International* (MDE 19/036/2011) October 2011, pp. 24. This report covers the treatment of detainees by armed militia opposing Colonel Mu'ammar al-Gaddafi in 2011s uprising. The militias had captured and detained about 2,500 people in Tripoli and surrounding areas when the National Transitional Council (NTC) took control of them in late August 2011. "Those detained include al-Gaddafi soldiers and alleged loyalists...Among them are members of the Internal Security Agency, Revolutionary Committees and Revolutionary Guards – bodies associated with the worst repression of Colonel al-Gaddafi's 42-year-old rule – as well as "volunteers", including children (under 18 years), who responded to calls by Colonel al-Gaddafi to join his forces. Sub-Saharan Africans suspected of being mercenaries comprise between a third and a half of those detained in Tripoli, its suburbs of Janzur and Tajura, and al-Zawiya, a city about 100 km west of Tripoli." The report calls on the NTC "to act swiftly and take concrete measures to translate these pledges into reality. Among other things, it must investigate abuses by its supporters as well as by al-Gaddafi forces, and bring to justice those responsible for human rights abuses."

Drone Wars Briefing, Chris Cole. *Drone Wars UK,* January 2012 pp. 36. This briefing examines issues arising from the growing use of armed unmanned aerial vehicles in military operations, as well as looking at future developments and legal issues. It covers UK drone operations and developments and US drone operations, before considering the legal implications of using drones for "targeted killing" (assassinating political opponents) and the "collateral damage" (civilian deaths) that often accompanies this. The briefing concludes with a short essay arguing that "there should be proper public accountability for the use of armed drones and an informed public debate on their future development and use." As the introduction to the briefing notes: "2012 will be a significant year for the development of drones in the UK. A go-ahead for the new UK-French drone is expected early in the New Year, the British Watchkeeper drone will finally be deployed sometime in the Spring, RAF pilots will begin piloting armed Reaper drones over Afghanistan from the UK for the first time during the summer, and it is likely that drones will fly over London during the Olympics." Available at: http://dronewarsuk.wordpress.com/2012/01/01/the-2012-drone-wars-briefing/

Trident: Nowhere to Go, John Ainslie. *Campaign for Nuclear Disarmament and Scottish Campaign for Nuclear Disarmament* 2012, pp. 24. This report looks at the consequences of a vote for Scottish independence and its implications for the Trident programme, questioning if the nuclear fleet could be moved, and if so where? It examines the feasibility of using various alternative English and Welsh sites (Portland, Devonport, Falmouth, Barrow in Furness and Milford Haven) originally proposed in the 1950s and 60s, concluding that "there are major obstacles to each one of them." The report also considers "US basing" of the British Trident fleet (including nuclear warheads), a proposition which is "fraught with problems.":
http://www.cnduk.org/about/item/1324 CND website: www.cnduk.org; Scottish CND website: www.banthebomb.org

Policing

A review of national police units which provide intelligence on criminality associated with protest. *Her Majesty's Inspectorate of Constabulary* 2012, pp. 48, (ISBN: 978-1-84987-686-5). This report follows the 2010 revelations about the activities of police undercover officer, Mark Kennedy, who worked for the National Public Order Intelligence Unit (NPOIU) spending seven years posing as an environmental activist. Kennedy's actions as an *agent provocateur* eventually led to the collapse of the trial of protestors at the Ratcliffe-on-Soar power station in Nottinghamshire and to his exposure. The media has continued to unmask more undercover officers along with a catalogue of their abuses, including allegations that some had lied in court while others had sexual relationships with their targets, in some cases fathering children whom they deserted. HMIC finds that "Kennedy operated outside the Code of Conduct for Undercover Officers," suggesting that "NPOIU operational supervision, review and oversight were insufficient to identify that his behaviour had led to disproportionate intrusion." Available as a free download at: http://www.hmic.gov.uk/media/review-of-national-police-units-which-provide-intelligence-on-criminality-associated-with-protest-20120202.pdf

Reading the Riots: investigating England's summer of disorder. *The Guardian and The London School of Economics and Political Science*, December 2011, pp. 40. This report is the first phase of a longer study that uses confidential interviews with 270 people involved in last August's riots in London, Birmingham, Manchester, Salford, Liverpool and Nottingham. Of those interviewed, 85% said policing was an important or very important factor in why the riots happened, while another factor was "a pervasive sense of injustice" (whether economic or social.) The report also finds that the role of gangs in the riots had been "significantly overstated" by the government; that contrary to speculation, social media such as Facebook and Twitter "were not used in any significant way" and that those involved in the riots came from a cross-section of local communities. Available at:
http://www.guardian.co.uk/uk/interactive/2011/dec/14/reading-the-riots-investigating-england-s-summer-of-disorder-full-report

Behind the Riots: findings of a survey into children's and adults' views of the 2011 English riots. *The Children's Society*, December 2011, pp. 9. The Children's Society questioned over 1,000 adults and more than 1,000 children aged 13 to 17, finding that both groups believe the main reason that children and young people became involved in England's August 2011 riots was to obtain items that they could not afford to buy. There was also a broad consensus amongst those surveyed that there was not a single explanation for the events but a number of factors were at play, with poverty and material disadvantage at their heart, contradicting the views of Home Secretary, Teresa May, who claimed that the riots were down to fecklessness and lawlessness. The report concludes: "Clearly, tackling poverty and material disadvantage is crucial to avoid further unrest among children and young people." Available as a free download at:
http://www.childrenssociety.org.uk/sites/default/files/tcs/the_childrens_society_riots_report.pdf

The August Riots in England: understanding the involvement of young people, Gareth Morrell, Sara Scott, Di McNeish and Stephen Webster. *National Centre for Social Research*, November 2011, pp. 68. This study, which interviewed 206 people (including about 50 involved in the rioting), was carried out for the Cabinet Office. It found many rioters were initially motivated by excitement, "free stuff" and getting back at the police; other factors, such as friends and social media, persuaded others to take part. The researchers found that in places where riots did not take place, there appeared to be less obvious social inequality and greater resistance to rioting from local communities. Available as a free download at:
http://www.natcen.ac.uk/media/769712/the%20august%20riots%20in%20england%20web.pdf

5 Days in August: an interim report on the 2011 English riots. Riots, *Communities and Victims Panel*, November 2011, pp. 112. The panel (comprised of Darra Singh (Chair), Heather Rabbatts, Simon Marcus and Maeve Sherlock) was set up by the office of deputy Prime Minister, Nick Clegg, and it found that there was "no single cause of the riots and no single group was responsible." The report acknowledges that the fatal shooting of a 29-year old black man, Mark Duggan, by Metropolitan police officers precipitated the initial Tottenham riot, but fails to locate this within the historical context of the killing of Cynthia Jarrett during a police search of her home on Broadwater Farm Estate in 1986, which also led to an uprising. The report argues that the "trigger" for violent disturbances elsewhere was down to the perception that police "could not contain" the scale of rioting in London and that "the streets were there for the taking." The report expresses shock at the "collective pessimism" among the young people it spoke to. Available as a free download http://www.5daysinaugust.co.uk/

Getting away with Murder, Marcia Rigg. *The Chartist (*March/April) 2012, p. 19. Marcia Rigg is the sister of Sean, who died in police custody in August 2008, and here she discusses her family's grief in the context of the campaign to highlight more than 5,000 deaths in custody. She writes: "The circumstances leading up to [Sean's] death and the

events after are very concerning to my family and we have been vigorously campaigning ever since and await an inquest, after almost four years, scheduled for June 2012. Lies and cover-up seem to be the system's game. We must continue to have faith, hope and unity in our pursuit of justice and put an end to deaths in custody and police brutality." For more information on the campaign see: http://seanriggjusticeandchange.com/

Prisons

HM Chief Inspector of Prisons for England and Wales Annual Report 2010–11, Nick Hardwick. *The Stationery Office* 2011 pp. 106 (ISBN: 9780102974768). Hardwick took up the role of Chief Inspector of Prisons in July 2010, replacing Anne Owers, and this is his first annual report, covering a year in which inspection reports of 97 custodial establishments were published. Aside from the section on prisons (including the detention of women and young children), the report covers immigration detention (where "uneven progress and much inconsistency" is reported along with "serious concerns over the lack of safety and stability" at the recently opened Brook House IRC), police custody (where improvements are noted) and Military Detention. Hardwick says that his next report will "be about inspecting new areas, refining our processes so that they are fit for the changed environment in which we are working and placing a new emphasis on insisting prisoners have purposeful activity and are given help to reduce the risk that they will reoffend when released. And in doing that, ensuring that the human rights underpinning of our work is solid, consistent and visible." The report is available as a free download: http://www.justice.gov.uk/downloads/publications/corporate-reports/hmi-prisons/hmip-annual-report-2010-11.pdf

Racism and fascism

The New Geographies of Racism: Stoke-on-Trent, Jon Burnett. *Institute of Race Relations 2011*, pp. 14. The IRR is conducting detailed investigations into areas of the UK which are experiencing particularly high levels of racist attacks. The first of these focused on Plymouth and this second volume examines Stoke-on-Trent: "a city where racist violence has intensified over the last decade" and where there has been a campaign of vicious harassment of the Muslim community, asylum seekers and long-standing residents from black and minority ethnic communities. The report documents the steady decline of the city's industrial heritage (under the Conservative Thatcher government in the 1980s) and the eruption of racial violence and the resurgence of far-right movements as by-products of the last Labour government's policies. It examines the present coalition government's policies, and its "commitment to dismantling multiculturalism, the sustained condemnation of human rights legislation, the concerted attempts to drive down the number of migrants from outside the EU (and consequent damning of their presence in the country) and the ruthless austerity measures [that] signal an exacerbation of the corrosive conditions under which racist violence and support for the far right thrive." The report also documents the fight-back against these developments and the role of the police and local authorities in undermining it. Despite these obstacles, "what is beginning to emerge in Stoke is piecemeal and impromptu responses to racial violence by those experiencing its brutal impacts. These actions, at the moment, are as much the product of fear as they are of anger. They are neither structured nor organised. But they signal the stirrings of voices which demand to be heard, for despite the constant and successful efforts to undermine the far right in Stoke, the conditions for intensifying racial violence remain." Available as a download: http://www.irr.org.uk/pdf2/New_geographies_racism_Stoke.pdf

Stop racism, not people: Racial profiling and immigration control in Spain. *Amnesty International* (EUR 41/011/2011) December 2011, pp. 44. Despite a wide range of legal instruments prohibiting discrimination on grounds of race and ethnicity, this report finds that racial profiling by law enforcement officials in Spain is "widespread." Those stopped for identity checks are primarily people belonging to ethnic minorities while people who "look" Spanish are rarely stopped. The report presents evidence that "individual police officers are encouraged by the use of statistical targets for the detention of irregular migrants to approach people belonging to ethnic minorities for identity checks." Spanish NGOs have documented these stops occurring in the streets, the metro, bus stops and parks in Madrid, Catalonia, and Andalucía. It also notes "a marked absence" of official data on the motives and frequency of the identity checks and the ethnicity of the individuals subjected to them. The report not only exposes the discriminatory and unlawful practice of racial profiling for the purpose of identifying irregular migrants, but also shows the adverse consequences that it has for migrants living in Spain.

Antisemitic Incidents Report 2011 *Community Security Trust* (February 2012) pp.36. The CST recorded 586 anti-Semetic incidents in 2011, down from the 929 incidents in 2009. It is still the fourth highest figure since records began 28 years ago. More anti-Semitic crimes were committed in Manchester (244) than in London (201) but this may have been due to improved reporting of incidents. A breakdown of the figures includes 92 assaults, 63 incidents of vandalism, 394 incidents of abuse and 29 direct threats. Available as a free download at: http://www.thecst.org.uk/docs/Incidents%20Report%202011.pdf

Racism in Europe: ENAR Shadow Report 2010-2011. *European Network against Racism* (Brussels, 2012), pp. 44. This report "provides a civil society perspective" on racism and related discrimination in Europe, from March 2010 to March 2011. It contains chapters on the following areas: employment, housing, education, health, services, media, anti-discrimination and migration. Its conclusions indicate that racially discriminatory practices are "widespread, institutional in nature and practiced at all levels of society across Europe." This edition of the report also gives special attention to the way in which racism and racial discrimination impact the lives of people of African descent: www.enareu.org

Security and intelligence

Welcome to Fortress London, Stephen Graham. *The Guardian II* 13.3.12, pp.6-9. This article discusses the lock-down planned for the London 2012 Olympic Games during which "an aircraft carrier will dock on the Thames. Surface-to-air missile systems will scan the skies. Unmanned drones, thankfully without lethal missiles, will loiter above the gleaming stadiums and opening and closing ceremonies. RAF Typhoon Eurofighters will fly from RAF Northolt. A thousand armed US diplomatic and FBI agents and 55 dog teams will patrol an Olympic zone partitioned off from the wider city by an 11-mile, £80m, 5,000 volt electric fence." The "eye-watering" cost of the Games - estimated at £2.37 bn seven years ago but which "may be as high as £24 bn" when major infrastructure projects are costed in - to post-austerity Britain is considered in the context of four connected points: 1. The profits accrued by the "homeland security" businesses; 2. The export of security architecture into the heart of the city; 3. The quest for "total security" and 4. The Long term security legacy.

Guantanamo Begins at Home: systematic discrimination faced by Muslim "War on Terror" suspects in the US, Aviva Stahl. *Cage Prisoners* 2012, pp. 60. This report provides an overview on the treatment terrorism suspects can expect in US federal courts. It documents "the systemic human rights abuses and Islamaphobia that pervade the criminal justice system at every step: prior to indictment; from indictment through conviction; in sentencing; and inside US prisons." Available at: http://www.cageprisoners.com/our-work/reports/item/3914-guantanamo-begins-at-home

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Contributors

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Statewatch, PO Box 1516,
London N16 0EW,UK.
Tel: (00 44) 020 8802 1882
Fax: (00 44) 020 8880 1727
e-mail: office@statewatch.org