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UK: Government's "secret justice" Bill widely condemned

by Max Rowlands

The Justice and Security Bill will allow ministers to force civil courts to hear evidence in secret if they believe it to be in the interest of national security. Verdicts will be reached on the basis of evidence that litigants and their lawyers have neither heard nor been given the opportunity to rebut.

Liberal Democrat delegates voted heavily against the government's Justice and Security Bill at their party conference in September 2012. By doing so they became the latest source of criticism of legislation that has been widely condemned across the political spectrum. The Bill plans to extend the use of closed material proceedings (CMP) – which allow the government to present evidence to a court in secret in the interest of national security – to all civil trials. CMP are currently allowed in only a very small number of cases and have been much criticised for undermining the rule of law and the right to a fair trial. The government claims that their extension would allow civil courts to hear evidence that is currently excluded, increasing procedural fairness and causing fewer cases to be struck out on the grounds of national security. Critics argue that the new system is considerably less fair and a clear breach of the government's coalition agreement which made firm commitments to open justice. The Bill would marginalise the role of judges and effectively give the government free reign to decide how sensitive evidence should be handled. This would shroud the workings of the intelligence and security agencies in secrecy and decrease accountability at a time when revelations of their collusion in rendition and torture have highlighted the need for effective scrutiny.

Closed Material Proceedings and Public Interest Immunity

The government currently has two ways of stopping sensitive intelligence data being heard in open court.

Closed material procedures have been used since 1997 in a small number of cases heard before employment tribunals, the investigatory powers tribunal, and special immigration appeals commission (SIAC) hearings. If the government believes that disclosing certain evidence in open court would undermine national security it can apply to the court for CMP and, if successful, present evidence to a judge in secret as part of the trial. A security vetted lawyer known as a 'special advocate' acts on behalf of the defendant/claimant but can disclose no more than a vague summary of the evidence that has been presented against them. The judge will therefore reach a decision based on evidence that the defendant/claimant has not heard nor been afforded the opportunity to rebut.

Public Interest Immunity (PII) certificates are the more common method of shielding the security services from public scrutiny. Under PII rules the government can apply to a judge for a court order to allow for the withholding of evidence that would be harmful to the public interest. In deciding whether to grant the request the court must balance the public interest of excluding the evidence against the interests of open justice and due legal process. Common uses of PII include protecting the identities of police informants and preventing the operational practices and information gathering techniques of the intelligence and security agencies from becoming known. Crucially, any evidence excluded under PII cannot be considered by the court. This means that verdicts are reached on the basis of evidence seen and examined by all litigants (unlike in CMP).

The origins of the Justice and Security Green Paper

The government signalled its intent to extend the use of CMP to all civil trials and coronial inquests in a Green Paper published in October 2011. This was motivated chiefly by the case of former Guantánamo detainee Binyam Mohamed. In February 2010 the Court of Appeal had ruled in his favour and forced the government to disclose a seven paragraph summary of classified CIA intelligence which confirmed that British intelligence services had been complicit in his rendition and torture. Later the same year, the government reluctantly settled out of court in civil cases brought by Mohamed and other former Guantánamo detainees, at a cost of around £15 million, in order to prevent other sensitive intelligence being disclosed in court.

Aghast at having details of their activities revealed, the intelligence and security agencies pushed for legal reform that would afford greater anonymity. They emphasised to the government that without greater protection they might lose the confidence and cooperation of foreign security services,

The democratic accountability of the EU's legislative approach see page 16

EU: Secretive Frontex Working Party: surveillance of travellers see page 23

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potentially endangering British lives. [1] In fact, the seven paragraph summary of events disclosed in the case of Binyam Mohamed was relatively bland and, crucially, was already in the public domain having been released previously by a US court. A US district court had ruled that Binyam Mohamed's mistreatment amounted to torture and the US government had accepted this verdict. In refusing the government's application for PII, the Court of Appeal made it clear that its reason for so doing was that the information had been publically acknowledged in the US and therefore did not pose a threat to national security. Nonetheless, government ministers have argued on numerous occasions that the Binyam Mohamed case has caused US intelligence agencies to become more cautious in their dealings with their UK counterparts for fear of what British courts might compel the government to disclose. Reprieve argues "it is most likely that the claim is false" and that "no evidence has been supplied to support it." [2]

Whether or not the government's reasoning is sound, legal reform on the basis of what best suits secretive intelligence services – domestic or foreign – is inherently objectionable. Former Justice Secretary Ken Clarke – who has retained responsibility for the Bill despite being moved in the recent cabinet reshuffle – has therefore been keen to emphasise the positive benefits of extending CMP. In his foreword to the Green Paper he bemoaned the plight of British courts which are "unable to pass judgment on these vital matters: cases either collapse, or are settled without a judge reaching any conclusion on the facts before them." [3] Civil courts, he asserted, would now be better equipped to handle sensitive information because more evidence could be put before a judge. This would lead to fairer trials and fewer cases being struck out or having to be settled out of court. He denied that the government's plans had come about as a result of "immense American pressure" but acknowledged that "sometimes national security requires that you'll have to give a guarantee of complete confidentially to third party countries" and, tellingly, that:

> *I can't force Americans to give our intelligence people full cooperation. If they fear our courts they won't give us the material. [4]*

Criticism of the Justice and Security Bill

Fierce criticism of the Green Paper led to several concessions in the subsequent Justice and Security Bill, published on 29 May 2012. Plans to extend CMP to inquests were scrapped, due in part to a vociferous campaign by NGOs such as Inquest and Justice. The Green Paper stipulated that ministers should be in charge of deciding when the use of CMP was appropriate, but the Bill returns responsibility for authorising requests to a judge. The government said these changes formed part of a "refined and improved" Bill and hoped it would appease critics of the new system. In reality the majority of the Green Paper's objectionable characteristics remain intact within the Bill. Writing in *The Guardian*, Richard Norton-Taylor derided the changes as a "smokecreen" insofar as the proposals being dropped never had a chance of being agreed in parliament: "an easy ploy, if it was not a deliberate one from the beginning." [5]

Since their inception CMP have been criticised for undermining the rule of law and long-standing principles of open justice. Allowing one litigant to rely on evidence kept secret from another is incongruous with an adversarial legal system and leads to cursory, lopsided decision making. Evidence presented in secret is not really evidence at all. Lord Kerr stated in the Supreme Court's July 2011 judgment in the case of Al Rawi that "there is a constitutional, common law right to be informed of the case made against you in civil litigation" and that:

> *Evidence which has been insulated from challenge may positively mislead. It is precisely because of this that the right to know the case that one's opponent makes and to have the opportunity to challenge it occupies such a central place in the concept of a fair trial. However astute and assiduous the judge, the proposed procedure hands over to one party considerable control over the production of relevant material and the manner in which it is to be presented. The peril that such a procedure presents to the fair trial of contentious litigation is both obvious and undeniable. [6]*

The extension of CMP to all civil trials would shroud the workings of the intelligence and security agencies in secrecy and lessen accountability at a time when civil cases brought by former Guantánamo detainees have highlighted the necessity of effective scrutiny. The Director of Liberty, Shami Chakrabarti, notes:

> *The worst practices of the war on terror were exposed through a mixture of investigative journalism and exactly this type of litigation. It is bitterly ironic that the executive's answer to this is legislation that would have prevented such abuses from ever being exposed. [7]*

Similarly, the former Director of Public Prosecutions, Lord Ken Macdonald, warned that the Green Paper's proposals:

> *"threaten to put the Government above the law… after a decade in which we have seen our politicians and officials caught up in the woeful abuses of the War on Terror, the last thing the Government should be seeking is to sweep all of this under the carpet." [8]*

The Bill would allow members of the intelligence and security services to operate in the knowledge that there would be no public scrutiny of their actions, potentially causing a culture of impunity to develop. In September 2012 *the* UN special rapporteur on torture, Professor Juan Méndez, added his name to the list of dissenting voices: "if a country is in possession of information about human rights abuses, but isn't in a position to mention them, it hampers the ability to deal effectively with torture." [9]

The Justice and Security Bill is particularly troubling because it would lead to a clear diminution in the judiciary's role of deciding if and how evidence should be heard. Judges will be responsible for authorising CMP but the wording of the Bill reduces their input to that of rubber stamping. Clause 6 stipulates that a court "**must**" approve a minister's application for CMP if a disclosure "would be damaging to the interests of national security" [10] (emphasis added). Judges will no longer be obligated to weigh the merits of the application against the public interest of open justice nor will they have any discretion to consider whether the trial could be heard fairly under the existing system of PII. Giving evidence to the Joint Committee on Human Rights, the independent reviewer of terrorism legislation, David Anderson QC, said:

> *The judge's hands are effectively tied. If there is disclosable material that impacts on national security - as there obviously will be in any case in which an application is made - the judge is required to agree… It seems that the Government have given formal effect to the requirement that the judge should have the last word, but in substance the Secretary of State continues to pull the strings. [11]*

The Bill does not define what comes under the umbrella of "national security" meaning that the basis for applications could be very broad. Moreover, the government will be obliged to consider but not exhaust the possibility of using the current PII system before applying for CMP. Liberty concludes:

> *In our view, it is most likely that CMP will become the default in cases involving national security claims. This will rule out the many existing practical measures which may be taken to strike a more effective balance between open justice and security. [12]*

The new system is also inherently one-sided because only the government will be able to apply for CMP. Non-state litigants will not be afforded this right nor will a judge have any power to instigate CMP themselves or make their own recommendations as to how evidence could best be heard. The upshot of this is that the government will enjoy total control over how sensitive evidence is handled in civil cases. They will be able to choose between hearing evidence in closed court before a judge under CMP, asking the judge to exclude evidence under PII, or applying for neither and calling for the case to be struck out on national security grounds. The House of Lords Constitution Committee expressed concern that:

> *The Government acts as the sole gatekeeper to the use of CMP in civil cases… It is 'constitutionally inappropriate' for the government to have a dual role in civil proceedings of acting as a party to the litigation and being the gatekeeper deciding on how that litigation is conducted. [13]*

The new system promotes a distinctly arbitrary form of justice. Damningly, special advocates appointed by the government to work within the existing system of closed proceedings - who the government might have hoped would support the Bill - have stated in no uncertain terms that its provisions are unnecessary and unfounded. In a memorandum submitted to the Joint Committee on Human Rights they argue that "the case has not been made for the introduction of closed material procedures in other types of civil litigation" and that "the Government would have to show the most compelling reasons to justify their introduction; that no such reasons have been advanced; and that, in our view, none exists." [14]

The wider context

Upon forming a coalition government in May 2010, the Lib Dems and Conservatives emphasised the depth of ground between the two parties on civil liberties issues. They vowed to be "strong in defence of freedom" and chastised Labour for having "abused and eroded fundamental human freedoms and historic civil liberties." Their coalition agreement pledged specifically to "protect historic freedoms through the defence of trial by jury." [15] Just under two and a half years later the government has introduced a Bill that will do away with centuries' old principles of open justice.

This is merely the latest in an increasingly long list of substantive civil liberties commitments the coalition has failed to deliver on. Promises to restore rights to non-violent protest and further regulate CCTV and the DNA database have fallen by the wayside. Having pledged to "end the storage of internet and email records without good reason" the government's Communications Data Bill will instead introduce a system of total digital surveillance.

The coalition's legislative agenda has become increasingly draconian. The Justice and Security Bill in particular displays a casual disregard for the rule of law characteristic of the previous Labour government. Ken Clarke's recent branding of critics of the Bill as the "more reactionary parts of the human rights lobby" is reminiscent of the stubborn refusals of Labour ministers to engage with civil liberties campaigners or admit they had a case to answer. [16] Things could soon get worse given the newly appointed Justice Secretary, Chris Grayling, once resolved to "tear up" the Human Rights Act. [17] Increasingly the coalition government is mirroring its predecessor.

The Justice and Security Bill also highlights the deference paid to the intelligence services by politicians fearful of being seen to be weak on issues of national security. The coalition was widely expected to replace Labour's notoriously illiberal system of control orders - another form of secret justice - but under heavy pressure from MI5 retained the scheme under a new title: Terrorism Prevention and Investigation Measures. In the weeks following its formation the coalition also signalled its intention to find a way to allow intercept evidence to be heard in criminal courts - Britain is the only common law country to outlaw its use entirely - but in the face of opposition from the intelligence services this came to nothing. [18] The Justice and Security Bill is simply the latest example of the intelligence and security agencies getting their way.

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Netherlands: Increased use of firearms by Dutch police

by Kees Hudig

Police in the Netherlands are increasingly drawing, and using, their firearms. This practice is being actively encouraged by police chiefs and the development has not been substantially criticised in the media. Other forms of police abuse are also on the rise. Since many police monitoring groups have ceased to function, there has been little public outcry at the situation.

Police officers are being encouraged to use their weapons more often, the national newspaper *De Volkskrant* reports [1]. Raad van Korpschefs, a spokesperson for the council of Police Chiefs, is quoted by the newspaper as saying: "in the past we were reluctant with violence. Nowadays we say: be quicker in drawing your gun and show it as a menace, fire a warning shot if necessary...If that does not produce the necessary effect, you [may] shoot at the legs if needs be." According to *De Volkskrant* this is part of a developing trend in which police are being instructed "to act more decisively."

It is not only firearms incidents that are on the rise in the Netherlands. Recent examples of serious abuse against arrestees and non-violent activists indicate that the police, and the politicians responsible for them, are increasingly losing respect for basic civil and human rights.

One telling incident that received much publicity involved the violent arrest of a drunken Latvian man in Rotterdam in June 2012. [2] The man, who was lying prostrate on the ground, was first pepper-sprayed and then repeatedly kicked, even though he did not show any aggression towards the police officers. The beating happened to be filmed by a bystander who posted the footage on a social media website, causing a considerable scandal and a debate in the Rotterdam city council. An investigation by the Public Prosecutor's Office (Openbaar Ministerie, OM) found that the police officers had done nothing wrong and therefore would not be prosecuted. According to the OM, their "conduct accorded to their instructions on the proper use of force", as the man had been resisting arrest, insulting and hitting the officers, but this had occurred before the filming had started [3]. In the city council an overwhelming majority (with only the Green-Left GroenLinks opposing) subsequently decided that the police officers had been unjustly portrayed by a negative media and that they should be sent a bouquet of flowers.

This incident is one of many, and the stock response to disquiet caused by allegations of police violence is almost always the same (see box below). 'Security' is a major theme in Dutch society, but for political rather than empirical reasons. Official statistics have repeatedly shown that crime has been falling since 2000, but they also show that many members of the public feel vulnerable and demand law and order measures (although this trend is also decreasing). [4]

At elections (a general election was held in the Netherlands on 12 September) all of the major political parties made 'security' one of their top priorities and committed to increase spending on policing and 'combating crime.' As one police chief explained in straightforward language a few years ago in answer to complaints that the police were too violent: "If people keep asking for more police on the streets ['Meer Blauw op Straat' - "More Blue (uniforms) on the Street" is a common expression for increasing police numbers] they should not be surprised that the police are going to act."

Deaths in custody

Another worrying trend is the continuing occurrence of deaths in custody or after contact with police officers. The lack of public outcry over these deaths has been significantly influenced by the fact that police monitoring organisations have almost ceased to function in the Netherlands. This is also the case with civil rights, progressive lawyers and criminological organisations, which had a tradition of calling for alternatives to penal punishment.

This year alone, seven people have died in police custody. Others were killed in police car pursuits, for instance an 18-year old boy in Nieuw Buinen (Drente) who crashed into a tree while being pursued for driving a stolen car in August 2012. In the 1980s following the death of a squatter in police custody in Amsterdam's main police station, a monitoring group was set up which managed to attain some formal improvements in the treatment of arrestees. Not many of those improvements remain. The lack of accurate statistics makes it difficult to determine whether there has been an increase in deaths in custody. [6]

One recent case was the death of a Turkish man, Ihsan Gürz, at Beverwijk police station in July 2011. He was arrested for causing a nuisance in a snack bar. Police claimed the man was extremely violent during his arrest, but his family and friends denied this. What happened to him is unclear, but he died at the police station and his body had many injuries. As in too many of these incidents, it was left to his family and friends to publicise the death through the Turkish media. A response from NGOs and the authorities was lacking. The Turkish media [7] alleged that Gürz was tortured in police custody prompting the Turkish government to demand an official investigation. [8]

Police shootings

Unlike deaths in police custody, statistics are available for police shootings. [9] By law, every police shooting incident has to be registered and investigated by the internal police investigation department, the Rijksrecherche. Their figures show a clear increase in the use of firearms by the police:

- 2007: 16 cases registered (4 dead and 12 wounded)
- 2010: 25 cases registered (3 dead and 24 wounded)
- 2011: 5 people died and 29 wounded

In the first six months of 2012 four people were killed after being shot by police; this compares with three deaths over the same period in 2011.

One of the fatalities in 2011 was 31-year old Michael Koomen from Amstelveen. He was shot dead on 14 May 2011 by a policeman who intended to arrest him for damaging a bicycle. Koomen had gone to Amsterdam with his football team to

Erasing evidence

Police officers are reluctant to have their conduct photographed for fear of negative publicity and increasingly seek to intimidate members of the public to prevent them from doing so. In some cases individuals have been arrested for taking pictures. A typical case occurred shortly after the Rotterdam incident when a musician was arrested heavy-handedly at a festival in Eindhoven for 'not following police orders quickly enough.' The incident was filmed by a 46-year-old woman who had her phone confiscated and the content erased. [5]

celebrate winning their league. The group was rowdy as some of the members had drunk too much alcohol, but they were not aggressive. The police officer who fired the fatal shot, Fred Buffing, was driving a police-dog handler's van when he decided to stop and make the arrest on his own. As he was handcuffing two of the men, and trying to detain them in his van, their friends approached him. He said that he panicked and shot Martin Koomen in the head. He also shot two others in the stomach and legs, one of whom was Koomen's brother. Although Buffing had a history of aggressive behaviour towards those he arrested, and according to the media had clearly not told the truth about the circumstances of the shooting [10], the public prosecutor decided not to prosecute him.

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When dissent becomes subversion

by Liz Fekete

Europe's anti-terror regimen is reshaping European society and has led to a distorted and discriminatory approach to criminal justice. Those who speak out against the erosion of democratic standards and the unfair treatment of Muslims are increasingly being targeted and penalised by the state.

In December 2001, the EU broadened its definition of terrorism to include not just extreme violence committed for political ends but any action, either 'active' or 'passive' which was designed to 'seriously damage a country or international organisation.' Following the introduction of this vague definition, various European governments introduced new anti-terrorist laws, or amended existing public order, criminal or aliens legislation, with the UK government even going so far as to introduce a 'state of emergency' arguing that the UK faced a public emergency so extreme that the life of the nation was threatened. (That state of emergency is ongoing to this day). The freezing of assets of individuals, entities and charities whose names appear on Proscribed Organisations Lists; preventive forms of detention without trial, as well as house arrest and restrictive orders that limit freedom of movement; the increasing use in courts of secret evidence - and even the creation of Special Courts with state-vetted special advocates – all these elements, despite the intervention of lawyers and judges, are now present within Europe's justice systems

Few Europeans, beyond lawyers, civil libertarians and those who directly feel the full force of national security measures, seem to realise just how far European society is being radically reshaped by national security laws. But some voices are challenging the passivity of civil society, calling on us all to open our eyes to laws and administrative measures that undermine democracy. These voices also ask us to address racism. The shadowy world of Europe's anti-terror regimen has led to a distorted and discriminatory approach to criminal justice. Could our failure to acknowledge this trend be due the fact that it is, by and large, Muslims that are caught up within this parallel justice system? But as opposition to anti-terrorist laws begins to coalesce around these themes, the danger is that the State responds through clumsy attempts to censor its critics in ways that suggest that we are moving from open societies to closed ones.

One case that exemplified the clampdown on dissent was taken up by the Comité pour la liberté d'expression et d'association in Belgium. It involved the arbitrary dismissal of Luk Vervaet from his position as a language teacher at Saint Gilles prison in Brussels, without the right to be heard, or even to hear the accusations against him.. The closing down of dissent on the grounds of national security is something that is normally associated with totalitarianism. In totalitarian systems those who attempt to question parallel and punitive systems, or the political culture which condones torture or cruel or degrading treatment as a necessary evil in a greater war, find themselves caught up in the shadowy Kafkaesque world that they sought to expose. From exposing cases of injustice, they become another case. And in precisely this way Luk Vervaet found himself another case, caught up with the Kafkaesque world he was doing battle with.

In fact the work of the Comité pour la liberté d'expression et d'association, which has also taken up the cases of Ali Aarrass and Nizar Trabelsi, is not unique. Throughout Europe, there is growing opposition to the erosion of democratic standards that have arisen out of the anti-terror laws. Some of this opposition comes from people in high places, and such eminent persons cannot be silenced through citing national security concerns. So that when the Council of Europe's Commissioner for Human

Rights, Thomas Hammarberg, expressed concern that European governments are avoiding the judicial oversight of the courts through using administrative law and sanctions to circumvent the fundamental safeguards offered by criminal law, nobody considers barring him from his office and taking away his livelihood. And although members of the Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights may be sidelined, they have nothing to fear when they warn governments of the corrosive effect of open-ended departures from ordinary procedures and of the dangers of special measures, introduced to deal with a temporary crisis, becoming permanent.

The voices of other less privileged critics of the anti-terrorist laws - ordinary citizens like you and me - can be more easily dismissed. Dissent can be reclassified as subversion and civil society actors derided as *Islamo-gauchistes* or terrorist sympathisers. Nevertheless, opposition to anti-terrorist laws is growing as can be seen by a number of campaigns, most notably in the UK, Belgium and Sweden. In the UK the Special Immigration Appeals Court (SIAC) with its special advocates (lawyers prohibited from communicating with those they represent) has become the model for other States, such as Denmark and Norway, to follow. Here, the Coalition Against Secret Evidence (CASE) has been formed to campaign for an end to the use of secret evidence and special advocates in UK courts. Alongside groups like CagePrisoners, which has challenged the UK government's complicity in the torture of UK citizens and residents held at Guantanamo Bay, and subsequently in Pakistan, CASE is concerned that the growing use of secret evidence is linked to the UK government's increasing willingness to place people in administrative detention (on the basis of torture evidence), and eventually deport them (on the basis of worthless diplomatic assurances) to countries where they risk torture and/or the death penalty. And CASE, as well as the civil liberties organisation JUSTICE, has documented the expanding use of secret evidence to show that it is now used in a wide range of cases including deportation hearings, control order proceedings, parole board cases, asset-freezing applications and even at inquests and employment tribunals.

Civil society groups in the UK are not the only ones concerned at the increased use of secret evidence, or the special prison regimes that are growing up where terrorist suspects are not afforded the same rights as other prisoners. The European Centre for Constitutional and Human Rights (ECCHR) is concerned that through administrative measures hundreds of individuals, and some charities (particularly those fighting for Palestinian causes) are blacklisted (which includes having all your assets frozen) as supporters of terrorism. The decisions are impossible to challenge other than through a lengthy journey to the European Court of Human Rights. In Sweden, the Somali community have campaigned since 2001 to lift the UN Security Council banning order against Barakat Enterprise (part of the 'Hawala' banking system used by the Somali diaspora to transfer remittances back internationally) and the freezing of assets of the so-called 'Somali Three', Abdulaziz Ali, Abdirisak Aden and Garad Jama. And in September 2008, the European Court of Justice, in a landmark ruling, annulled European Council regulations freezing the assets of the Al Barakaat banking network. The court ruled that the freezing of funds of suspected terrorists could only be justified if affected parties are able to challenge the validity of the freezing order and the reasons for it. In relation to the Somali Three, the European Court of Justice concluded that 'the rights of the defence, in particular the right to be heard, and the right to effective judicial review of those rights' had not been respected.

All these strands, then, are woven into a patchwork of opposition to anti-terrorist laws that erode due process. But opposition in the UK also involves the simple act of establishing human contact with Muslim men and their families who have never been formally accused of terrorism but find themselves subject to a control order (a form of house arrest that restricts a suspect's freedom of movement, freedom of association and ability to access financial services). Muslim men subjected to a control order, as well as their wives and their children, literally find themselves overnight friendless in a hostile world, as few individuals want to be associated with the family of a man suspected, though never formally accused, of terrorism. But increasingly, women from the charity Helping Households Under Great Distress (HHUGS) are refusing to accept the State's attempts to impose a cordone-sanitaire around such men and their families. And documentary film-makers Fred Grace and Gemma Atkinson, also attempted to break the cordon sanitaire. Their company, Fat Rat Films, was threatened with contempt of court proceedings after it made a film, broadcast on the flagship BBC TV news programme *Newsnight,* about the Jordanian, Hussain Saleh Hussain Alsamamara who is subject to control order style bail conditions. The civil rights organisation Liberty took up the case, stating that the 'war on terror has been synonymous with sweeping up the innocent with the guilty and undermining the values that democrats hold dear' adding that filmmakers should not be penalised simply for doing their job in a free society. The threat of legal proceedings against the film-makers was eventually withdrawn.

I suspect that Luk Vervaet, and others, are being penalised in much the same way as the British State sought (unsuccessfully in this case) to penalise Fred and Gemma. What cannot be tolerated by the authorities - and what is increasingly demonised as an act of subversion - is a spirit of inquiry, or a sense of human solidarity, that leads members of civil society to break the cordon sanitaire that surrounds Muslims and reject the war on terror classifications of 'us and them', 'civilised and barbarian'. We know that some individuals have been placed under intense surveillance, and had their private lives invaded, because they have spoken up for the dehumanised and excluded. This includes Anni Lanz, a migrants' rights activist in Switzerland who in September 2008 asked to be allowed to see the personal dossier that had been compiled on her activities by the Intelligence and Prevention Service (SAP). (Switzerland, like Belgium, creates a personal file on all those who work in public service.) When the dossier was finally released in June 2009, Anni Lanz found that several pages had been deleted. The State justified this on the grounds that as certain facts were no longer deemed relevant they had been erased. From the information she received in June 2009 she was able to ascertain that the Swiss foreigners police had requested SAP to monitor her activities on the grounds that her support for Algerian refugees may have brought her into contact with 'persons possibly involved in extremist radical Islamist groups'. Another individual who found himself subject to intensive State scrutiny was Dr. Rolf Gössner, the vice president of the International Human Rights League in Germany and a deputy member of the Bremen state court of justice. Dr. Gössner, a lawyer, lecturer and parliamentary advisor, has taken the German State to court for unconstitutional activities after he discovered that he had been placed under intensive surveillance by the Federal Office for the Protection of the Constitution (OPC). The state justifies its monitoring of Dr. Gössner, which dates back at least till 1970, on the grounds of his contact, as a 'prominent jurist' with 'extremist left-wing organisations'. Following legal action, Dr. Gössner has now won access to some information in the personal dossier the ODC compiled against him which reveals that a large number of government agencies, other offices and individuals had provided information on Dr. Gössner's activities, including lectures, to the OPC. As Dr. Gössner concludes 'In personal files and in written documents, the OPC, from its selective and ideologically motivated perspective, created a picture of my life that was torn from its contemporary context... It wasn't what I wrote or said that was decisive for the OPC, but the political milieu in which it took

place, imputing to me a sort of 'guilt by association'.

Luk Vervaet's case demonstrates yet another way in which the parallel world of national security is fortifying the State's sense of its privilege and power. In this day and age, where fair treatment at work has been established as a right of all workers, the Belgian state's decision to deprive Luk Vervaet of his livelihood makes a mockery of employment protection law. But in a landmark judgment issued on 27 January 2010, the Brussels Appeal Court ruled that Vervaet's right to fair treatment could not be overridden by 'reasons of State'. Reversing the decision of the lower court, the judges said that rights which were 'indispensable for the exercise of his livelihood' included the right to be told the reasons for the decision to bar him, and the right to a hearing to answer the allegations. The court affirmed that Vervaet's conduct in performing his teaching duties had been irreproachable, and that the decision of the Ministry of Justice to deny him access to prisons was arbitrary and unreasoned. 'The rule of law does not stop at the prison gates', it said. But despite such strong words, the legal battle drags on – taking unexpected twists and turns – and still with no end in sight.

When we first reported on Luk Vervaet's case, the IRR's European research team argued that it seemed as though those who campaign against anti-terror laws and racism could find themselves hounded out of public service, in much the same way as Communists were dismissed in the US in the McCarthyite period, as well as in Germany under the *Berufsverbot* decree which banned Communists from employment in government service. With the Islam Scare replacing the Red Scare nothing has happened since that has led us to change our minds.

Coda

At the end of June 2011, and after a two year battle through the courts, the Belgian Constitutional Court revoked the work ban against Luk Vervaet, evoking a 1965 royal decree which required authorities to give 'serious reasons' justifying the imposition of any administrative measure. The judgment emphasised that dissident opinions were not enough to justify denying a citizen his right to exercise his livelihood in a prison.

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A version of this article first appeared in French in *L'Affaire Luk Vervaet: ecits sur un interdit professionnel*, a special edition of the journal Contradictions. In addition to providing background material on prison conditions and key anti-terrorist cases in Belgium, it has has contributions from, amongst others, lawyers Dounia Alamat and Christophe Marchand, Green Party deputy, Zoë Genot, Dr Sabine Schiffer, Eric Hulsens and Raymond Dombrecht. To order a copy (outside Belgium 16 Euros, including p&p) contact: f.thirionet@wolbe citing your name and address. Bank Transfer Details. 063-0984045-15 in the name of Thirionet. IBAN: BE83 0630 9840 4515 // BIC: GKCCBEBB.

UK: Police force "more than minimally" contributed to Sean Rigg's death

by Trevor Hemmings

The jury condemned a catalogue of police failings and refuted the findings of the Independent Police Complaints Authority. The circumstances of Rigg's death highlight the disproportionate treatment of black people by police and the difficulty of holding officers accountable for their actions.

At the beginning of August 2012 a jury at Southwark Coroners Court delivered a highly critical narrative verdict at the inquest into the death of Sean Rigg, a black musician who died following contact with the police on 21 August 2008. After listening to seven weeks of evidence the jury unequivocally rejected the account given by police officers and in so doing refuted the findings of an investigation by the Independent Police Complaints Authority (IPCC). The jury found that the 40-year died at Brixton police station as the result of a cardiac arrest (and acute arrhythmia, ischemia and partial positional asphyxia) following a series of errors by the South London and Maudsley (SLAM) NHS Trust and the Metropolitan police. Coroner Dr Andrew Harris had ruled out verdicts of unlawful killing and neglect, but the jury said that the inaction of the NHS Trust and the actions of Brixton police had "more than minimally contributed to Sean Rigg's death." [1]

The jury's findings were greeted with spontaneous applause from the public gallery and praised by the Coroner who told its members: "You have demonstrated perspicacity and attention to detail in exercising your duty." On the Inquisition form, the jurors had crossed out King's College Hospital as the place of death and replaced it with Brixton police station – confirming the argument made by Sean's family over the last four years that he had died on the floor of the police station [2]. This finding also negated those of an extensive IPCC investigation [3], which began the morning after Sean's death and took 18 months to complete before reaching the conclusion that police officers had "adhered to good policy and good practice." In a highly unusual move, the IPCC has been forced to announce a review of its investigation and two police officers are to be investigated over the accuracy of their evidence to the inquest and the IPCC. [5]

On 21 August 2012, around 250 people attended a memorial commemorating the fourth anniversary of Sean's death at Lambeth Town Hall in Brixton, a short distance from the police station where he died. Family members recalled their long struggle to uncover the facts behind Sean's death and their realisation that he was only one among hundreds of people who have died while in the hands of the police over the past 30 years. During this period there has been only one conviction of a police officer, demonstrating the inability of the various police complaints bodies to carry out independent investigations of an institutionally racist police force, (as was copiously documented by Macpherson in the *The Stephen Lawrence Inquiry*.) Those attending the memorial also viewed Ken Fero's new documentary film, *Who Polices the Police?* which examines the failures of the police and IPCC investigation into Sean's death. [6]

The NHS Trust's failure of care

Sean Rigg had suffered from schizophrenia for 20 years. He was living in a high-support community mental hostel and his family were intensely involved in his life. However, Sean had a history of stopping his medication and relapsing and he had previously been detained by police under section 136 of the Mental Health Act (1983) [7] and taken to a place of safety.

On the evening of Sean's arrest on 21 August 2008, hostel

staff had repeatedly phoned the emergency services requesting that police attend because Sean began acting erratically after not taking his medication. The police refused to respond, saying that they did not regard the situation to be a priority. The inquest jury was highly critical of the inactivity of the South London and Maudsley NHS Trust in the period leading up to Sean's death, criticising its failure to communicate with hostel staff. It said that the Trust had failed to ensure that Sean had taken his medication for a period of two months before his death and that its crisis plan to deal with Sean was "inadequate." The jury found that staff:

> *had failed to ensure their patient Sean Rigg took his medication. Furthermore, SLAM's failure to undertake a Mental Health Act assessment at or from the 11 August more than minimally contributed to Sean's death.[8]*

In a statement made after the jury's verdict Sean's sister, Samantha Rigg, observed that: "If the South London and Maudsley NHS Trust had done their job properly, and provided the help and support that Sean urgently needed, he would have been alive today." [9]

An "unsuitable" and "unnecessary" restraint and arrest

Sean left the hostel without staff permission and soon a member of the public phoned the police to express concern at his behaviour (he was naked from the waist up and making karate moves), reporting that he believed that he was witnessing some sort of mental breakdown. On this occasion police did arrive and Sean was restrained and arrested by four officers (PCs Mark Harratt, Richard Glasson, Andrew Birks and Matthew Forward, who have now been removed from operational duties), accused of the theft of his own passport. Despite his vulnerability, Sean was restrained face down in the prone position for eight minutes, a level of force described as "unsuitable" by the inquest jury which also maintained that it was "questionable whether relevant police guidelines regarding restraint and positional asphyxia were sufficient or followed correctly." Positional asphyxia from the restraint was recorded as one of the causes of death at the inquest. The jury said that this method of restraint "more than minimally" contributed to Sean's death and stated that police had "failed to identify that Sean Rigg was a vulnerable person at point of arrest." He was therefore taken to the police station instead of an Accident and Emergency department or Section 136 suite "despite information about him being readily available and accessible." Coroner, Dr Andrew Harris, pointed out that:

> *The level of force used on Sean Rigg whilst he was restrained in the prone position at the Weir estate [in Balham, south London] was unsuitable...The length of restraint in the prone position was therefore unnecessary. The majority view of the jury is that at some point of the restraint unnecessary body weight was placed on Sean Rigg.[10]*

The jury's finding that positional asphyxia due to restraint using "unnecessary body weight" was one cause of death, contradicted the outcome of the earlier 18-month investigation by the Independent Police Complaints Commission (IPCC), the much criticised policing "watchdog," that had found that none of the officers involved had a case to answer and that they had all followed procedure. [11] Some police officers even claimed that Sean was behaving normally and walking independently following his restraint, but the jurors found that "that both Sean's physical and mental health deteriorated during the period of restraint" when his brain was deprived of oxygen.

The journey to Brixton police station

Following his restraint, Sean's condition worsened when he was put in the back of a police van and driven not to a hospital for emergency medical care, but to Brixton police station. The jury stated that by this time he was "extremely unwell and not fully conscious" and stressed that: "Up to the point of being apprehended by the police the condition and behaviour of Sean Rigg was that he was physically well but mentally unwell" (ibid). By the time he was walked to the police van he "was physically unwell due to oxygen deprivation which occurred during his restraint in the prone position." Once in the van Sean was in "a V shape position in the foot well of the cage in the police van" throughout the 13 minute journey to Brixton police station. Sean's physical and mental health continued to decline during the journey and the Inquisition document says that the majority jury opinion was "there was a lack of care by the police." It should be emphasised that there was no assessment of Sean's condition at any time before he became unconscious and the "absence of actions by the police...was inadequate."

When the police van arrived at Brixton police station Sean was left in the back of the vehicle for 11 minutes without receiving medical treatment. He was the moved to the caged area at the rear of the station in a collapsed state. There, surrounded by police officers, he was left handcuffed on the concrete floor, "extremely unwell and not fully conscious," slipping into unconsciousness a short time later while police officers debated whether he was "faking it." This is reminiscent of the slow death of another black man, Christopher Alder, in Hull's Queen's Gardens police station in 1998. [11]

The Inquisition document says of Sean Rigg's treatment at the police station:

> *Whilst in the cage at the police station from 20.03 to 20.13 there was an absence of appropriate care and urgency of response by the police which more than minimally contributed to Sean Rigg's death. Both the action and decision of the police to stand Sean Rigg up was unacceptable and inappropriate. Leaving Sean Rigg in handcuffs was unnecessary and inappropriate. Views expressed by police officers that Sean was violent and possibly not unwell deprived Sean of the appropriate care needed and there was a failing to secure an ambulance as quickly as possible. Whilst Sean Rigg was in custody the police failed to uphold his basic rights and omitted to deliver the appropriate care.[12]*

Back to the future

The charity INQUEST, which provides free legal advice to the relatives of those who have died contentiously in police custody, has logged in excess of 3,600 deaths in prison and in police custody in England and Wales between 1990 and 2010. Many of these deaths were found to result from negligence, systemic failures to care for the vulnerable, institutional racism, inhumane treatment and the abuse of human rights. Despite the overwhelming weight of this evidence, "there has not been a successful homicide prosecution for a death in custody for over 30 years." [13]

The disproportionate number of black people who have died as a result of excessive force, restraint or serious medical neglect is also indicative of institutional racism in the criminal justice system. INQUEST's monitoring and casework has found "serious shortcomings in the existing mechanisms of legal and democratic accountability following a death in custody."

> *There are no mechanisms for monitoring, auditing or publishing investigations and inquest findings and no statutory requirement to act on the findings of these investigations. There is also a pattern of institutionalised reluctance to approach deaths in custody as potential homicides even where there have been systemic failings and gross negligence has occurred. [ibid)*

Even when an inquest jury finds that a police officer unlawfully killed an individual, there are invariably no significant legal

repercussions. This is highlighted by the investigation into the death of 47-year old newspaper-seller Ian Tomlinson as he attempted to make his way home through the serried police ranks at the G20 protests in London in April 2009, (See *Statewatch Bulletin* Volume 19 no. 2 and Volume 19 no. 3) The inquest into his death found that he had been unlawfully killed, leading to PC Simon Harwood facing a criminal trial at which, in spite of unequivocal mobile phone footage showing Harwood's gratuitous violence towards his vulnerable victim, the police officer was cleared of manslaughter and walked free from court.

In September 2012, Harwood faced an internal disciplinary panel which resulted in him being sacked from the Metropolitan police force (not for the first time) and told that he will never work for the force again. Panel chairman, Julian Bennett said:

> *"PC Harwood's use of force in this case cannot be justified. His actions have discredited the police service and undermined public confidence in it." The Guardian (18.9.12)*

However, the disciplinary panel also decided that it was unable to rule on whether Harwood's use of force led to Ian Tomlinson's death. This left the circumstances of the death unexplained and his family in limbo. As Paul King, Tomlinson's stepson, explained:

> *It's like they have just let PC Harwood resign. The conflicting verdicts of the inquest and the criminal court still need to be resolved...We still haven't got any answer from this. After three and a half years, I think it's diabolical. It's like we're back at day one.*

As Paul King and the Rigg family and so many other relatives of people who die following police contact discover: years of struggle to expose the facts of a death in custody will not result in legal proceedings that see police perpetrators brought to justice. Mourning families and grieving friends will need to overcome police deception, insults, spin and prevarication in order to achieve the "justice" of a disciplinary procedure resulting in a reprimand, or, when needs must, an officer's dismissal.

Reference

[1] Rigg family statement "Jury condemns actions of the police and the mental health trust in verdict over death of Sean Rigg" 1.8.12. The full statement is available on the INQUEST website:

http://inquest.gn.apc.org/website/press-releases/press-releases-2012/jury-condemns-actions-of-the-police-and-the-mental-health-trust-in-verdict-over-death-of-sean-rigg

See also the Sean Rigg Justice and Change campaign website: http://www.seanriggjusticeandchange.com/Press-Releases.html

[2] Harmit Athwal "Jury applauded for critical inquest verdict" IRR website: http://www.irr.org.uk/news/jury-applauded-for-critical-inquest-verdict/

[3] IPCC "IPCC Independent Investigation into the death of Sean Rigg whilst in the custody of Brixton police and complaints made by Mr Wayne Rigg and Ms Angela Wood". Available as a download at: http://www.ipcc.gov.uk/news/Pages/pr_150812_rigg.aspx

5] Nina Lakhani "Sean Rigg investigation: IPCC announces independent review of its own investigation into the death of a mentally ill man in police custody" The Independent 15.8.12.

[6] Ken Fero "Who policies the police" Migrant Media http://vimeo.com/46132509

[7] Section 136 of the Mental Health Act (1983) allows a police officer to take a person whom they consider to be mentally disordered to a "place of safety."

[8] Rigg family statement, See note 2

[9] Statement by Samantha Rigg following the inquest verdict, available on INQUEST website at: http://inquest.gn.apc.org/website/press-releases/press-releases-2012/sean-rigg-family-statement-in-full

Also available on Youtube

http://www.youtube.com/watch?v=yZBm4LT0wSU

[10] Inquisition document, p. 2-3. The document has been published in full on the IRR website. See: http://www.irr.org.uk/news/jury-applauded-for-critical-inquest-verdict/

[11] Harmit Athwal "Jury applauded for critical inquest verdict" IRR website: http://www.irr.org.uk/news/jury-applauded-for-critical-inquest-verdict/

[12] For more information about the death in custody of Christopher Alder see Statewatch Bulletin Volume 11 no. 2 2001; Volume 12 no. 5 2002; Volume 13 no 1 and no 5 2003; Volume 14 no. 2 2004; Volume 16 nos. 5/6 2006.

[13] INQUEST website, http://inquest.gn.apc.org/website/policy/deaths-in-custody

UK: The real "immigration debate"

Frances Webber

This article provides an overview of the plight of refugees and migrants in Britain. This includes the devastating impact of legal aid cuts, the conditions of immigration detention, the growth of Islamophobia and the exploitation of undocumented migrants.

The political campaign against immigration and asylum seekers shows no signs of abating. It is seen by the Home Affairs Committee as a matter of regret that so many asylum seekers stuck in the system without a decision for (in some cases) up to 20 years are allowed to stay.[1] Prime minister David Cameron speaks out against multiculturalism [2] and the Labour Party is involved in a process of breast-beating, saying it was perhaps wrong to have allowed mass migration during its time in power. (This is rewriting history – my recollection is that Labour was doing all it could to stop mass migration, of asylum seekers at least.) Once again, it is time to rehearse the arguments.

Who are the asylum seekers?

The leaders of the 'free world' encourage and treat as heroes those people fighting for democracy and human rights in Burma, in Libya, in Egypt and Syria; those who fight women's oppression and religious persecution in Pakistan, in Iran and Nigeria. But as soon as these heroes seek sanctuary in the same 'free world' – in the rich countries of Europe and north America and Australia – they are transformed into a hostile alien threat to our culture and our values, to be kept out by Frontex patrols and bilateral accords and e-borders and carrier sanctions and all the paraphernalia of modern immigration controls.

Then we discover that our government has been selling arms to repressive regimes including Libya, Bahrain and Saudi Arabia, Algeria, Egypt, Kuwait, Morocco, Oman, Syria and Tunisia, which have been used to suppress pro-democracy activists and minorities, and the Ministry of Defence (MoD) and British universities have trained soldiers from China, Sudan and Uzbekistan, as we have done in Sri Lanka and in Colombia. How many other repressive regimes is our government propping up? How many refugees have been created by British government policies?

But it's not just the asylum seekers, but also the undocumented, the 'irregulars,' those who don't fear persecution but who migrated because there is no land, no work, no possibility of livelihood, or of feeding, clothing and educating a family, no future at home. What does this have to do with us? As Sivanandan memorably said, 'We are here because you are there.' One way or another, most of those who come to these shores without official permission are refugees from globalisation, from a poor world shaped to serve the interests, appetites and whims of the rich world; a world where our astonishing standard of living, our freedoms, the gobsmacking array of consumer novelties, fashions and foods available to us, and thrown away by us, are bought at the cost of the health, freedoms and lives of others. In the terms of trade and intellectual property agreements, in the imposition on poor countries by the global economic police of policies that remove food self-sufficiency and drive small producers off the land, in the substitution by agribusiness of biofuels for food production in the vast tracts of Africa and Asia bought up by corporations for profit, in the soaring food prices in the poor world which sparked riots in Egypt and Tunisia. This is the real immigration debate which the politicians never have: how the entire system of immigration controls, not just in the UK but in Europe, the USA, Japan, South Korea and the Gulf states is built, is predicated on massive global injustice.

Brave new world for whom?

At the heart of globalisation is a ruthless social Darwinism, which is reflected in and reinforced by immigration controls. The points based system for immigration introduced in in the UK in 2008 awards points for youth, salary, qualifications and talent. If you don't have all these attributes you're not wanted. If you're not computer-literate and don't speak English in most countries you cannot even apply for a visa; the visa application service – now, in common with much else, run by commercial operators – requires forms to be filled in online and in English.

This brave new world, a wonderful world for the young, fit, educated, white and middle-class, is not open to the poor, the sick, the disabled, the old. In Cameron's Britain, as in Thatcher's and Blair's, and in the globalised, privatised, marketised world, those who can't work will find their lives squeezed out to mere exisence – just like asylum seekers.

When we - as human rights activists, lawyers, detention visitors, volunteers at day centres – engage in debates and campaigns, our arguments must be informed by this global framework of massive injustice. It reminds us that our demands for asylum and migrant rights are not special pleading, but demands for basic justice.

Areas of concern – legal aid

So what are the areas of particular concern confronting refugees and migrants today? First on the list is proposed legal aid cuts which, despite objections from the overwhelming majority of the 5,000 respondents to the government's consultation process, will deny legal advice and assistance to those unable to pay for it, making justice once again as open to everyone as the Ritz hotel. The Bill will restrict legal aid in areas such as employment, housing, family, welfare benefits, community care, mental health and immigration to cases where people's life or liberty is at stake, or where they are at risk of serious physical harm, or immediate loss of their home. Justice for All, a coalition of charities, legal and advice agencies, politicians, trade unions, community groups and individuals, estimated that 650,000 people, the vast majority poor, will lose eligibility if the proposals, described by peers as "immoral, unconstitutional and crazy", become law. [3] In the immigration field, people facing removal or deportation, for example, will not get representation, or even advice on how to prepare and present their appeal. The Bill proposes removing legal aid for judicial review of immigration decisions where there have been previous court or tribunal proceedings in the past year, even if they were successful. This means that the first, but not the second attempt at an unlawful removal would be publicly funded. The result of the Bill will be the virtual exclusion of all but wealthy migrants from legal redress for bad decision-making – a wholesale denial of justice. It is estimated that not for profit providers, such as law centres and the Citizens' Advice Bureaux (CAB), will lose 77% of their legal aid funding. Many will have to close their doors.

The government says the cuts will not affect asylum seekers and those in detention. But legal aid in these areas has already been cut to shreds in the past few years. Many legal aid immigration firms have been forced out of business by vicious cuts to legal aid in asylum and immigration, culminating in a flat-fee system which penalised conscientious preparation of claims and appeals and a change to retrospective payment which drove Refugee and Migrant Justice (formerly the Refugee Legal Centre), into administration when the Legal Services Commission (LSC) refused to pay the £2m it owed in fees in order to save the organisation. The government reassured thousands of stranded clients about 'alternative provision' and the LSC added insult to injury by refusing contract renewals to many more dedicated immigration and asylum solicitors.[4] In July 2011, the Immigration Advisory Service (IAS), the UK's biggest provider of immigration advice and representation, went into administration.[5]

Detention

Nowhere is legal advice and representation needed more than in detention. Yet for many held by the immigration authorities it is not there. In July 2006, a group of Pakistani women detained in Yarl's Wood wrote to the charity Bail for Immigration Detainees (BID): 'We are feeling like our hands are cut off, and we are terribly in the desperate situation and we can't do anything helpful, supportive in regard to our cases because we have not provided any solicitors and without solicitors we are unable to deal with our cases. We are very helpless here.' [6] An official inspection of Harmondsworth Immigration Removal Centre (IRC) in 2010 revealed that no information about legal rights and no up to date legal materials were available. The only legal help for detainees was a surgery open for just ten hours a week. In that time only 20 clients could be seen so the surgery was booked up a fortnight in advance. But unrepresented detainees in the fast track were not permitted to defer asylum interviews until they could get legal assistance. By the time legal help was available, their claims had been refused and appeals dismissed. [7]

The detained fast track is the biggest blot on the asylum system. A recent report from Detention Action (DA, formerly the London Detainee Support Group), *Fast track to despair*, is the latest to document how the fast track system is structured to operate to the maximum disadvantage of asylum seekers at every stage. [8] Introduced when asylum numbers were four times what they are now, supposedly to hive off and deal quickly with the 'straightforward' cases, (i.e. those which could quickly be refused), the detained fast track was set up to ensure failure. Claimants needing to recover from the odyssey of illegal travel – stuffed in airless lorries, or on the sea in leaky boats, or being bounced from country to country - have no time to compose themselves, no time to prepare a claim or to find and present evidence in support. The 99 per cent refusal rate is then quoted triumphantly by politicians to show how efficient the fast track is in rejecting groundless claims. The reality is that, as the DA report shows, the conditions and timescales make it impossible for many asylum seekers to understand, let alone actively engage with, the determination process.

Looking at immigration detention generally, an area where

vaste private corporations have made millions from the relentless growth in the number of people being detained over the past decade, [9] and where allegations of brutality and neglect, particularly during removal, are commonplace, [10] it is shocking that there is still no time limit on the maximum period of detention – and the period deemed 'reasonable' for holding someone for deportation after refusal of asylum, or at the end of a criminal sentence, has gone up from around five months in 1984, when the leading case of Hardial Singh set out the principles and criteria for lawful detention, [11] to anything between two and four years now. Provided the Border Agency is using 'due diligence' in pursuing removal, periods of this length have been held lawful. Recent Supreme Court decisions have established that it is unlawful to have a secret policy, contradicting published policy, providing for the blanket detention of all foreign national prisoners, and that detention without proper monthly reviews in which the necessity of detention is considered, makes detention unlawful. [12] They are very welcome – but today's unforgiving climate makes it harder than ever to campaign for the rights of foreign national prisoners not to be detained unlawfully, and not to be separated from family members by deportation.

Deportation of young people

Many of those facing deportation are young men who came to the UK as children, often from horrific situations, having seen and experienced things no one, let alone a child, should be exposed to. Many found themselves isolated by language difficulties, mocked at school for their accent, without help or support to deal with the psychological consequences of their experiences. I represented some of these young men. One I recall particularly became a bully, threatening younger children, robbing them, and was sent to a Young Offenders Institution. Fair enough, one might say. But he and his family were from Rwanda; they had lost relatives in the genocide and his mother could not give him the help he needed because of the depression and trauma she was suffering. Yet he was sent back to Rwanda, where he had no one. His mother was beside herself with worry. This is double punishment indeed.

Another child who was enslaved in Somalia after separation from his family was finally reunited with them here. His mother tried to treat him as a child, but after his experiences he could not readapt to it and left home and soon became involved in crime. Young people like this desperately need help, not to be 'sent back' like defective goods. Yet the right-wing press campaigns remorselessly for the deportation of all 'foreign criminals' no matter how long they have been here, how strong their ties and how much deportation would damage them and their families - feeding public hysteria and creating a climate where judges fear to give effect to migrants' human rights because of the inevitable right-wing backlash.

Ten years ago it was unheard of to deport someone who had lived here for 20 or 30 years, or who arrived as a child. As judges in the European Court of Human Rights have said, it must be doubted 'whether modern international law permits a state which has educated children of admitted aliens to expel those children when they become a burden.' [13] British immigration judges deciding whether to deport foreign criminals used to weigh a large number of factors - the length of time spent in the country, the ties they had built up, with both family and others, their character, conduct and employment record, the nature of the offence(s), compassionate circumstances such as the effect of their deportation on others - to decide if the public interest required their deportation. But the media frenzy in 2006 surrounding the release of foreign prisoners without considering deportation, which forced Charles Clarke's resignation as Home Secretary, succeeded in getting the law changed to do away with the judicial balancing of factors for and against deportation. From 2007, deportation became mandatory for anyone sentenced to a year or more in prison, unless the Refugee Convention or the Human Rights Convention made their deportation unlawful. The Tory Right and its press, having achieved this dramatic narrowing of the grounds for avoiding the double punishment of deportation, now seek to remove the last remaining obstacle to getting rid of all foreign offenders - international human rights law. [14]

Islamophobia

Islamophobia informs policy in a number of ways. The debate about Britishness instituted by the Labour Party and carried forward by Cameron in his critique of multiculturalism, suggests that you cannot be properly British and properly Muslim at the same time. Issues such as the rights of women and homophobia are taken up dishonestly and opportunistically by politicians – frequently at the invitation of the tabloids. Many of the attitudes and practices they condemn are equally prevalent in other faith communities, but we do not see anyone speaking out against these groups or suggesting they can not be properly British.

Muslims have become a 'suspect community' like the Irish in the 1970s. Risk-profiling computer programmes, written to select who gets body-scanned, searched and subjected to intensive questioning at ports, identifies specifically Muslim behaviour (e.g. regarding the use of ATMs and credit cards) so that 'high risk' equates with 'practising Muslim.' The security services build mosaics from disconnected fragments of information and end up targeting innocent people as terrorist suspects, imposing extraordinary restrictions on them for years on the basis of pure suspicion and secret evidence. Yes, control orders are being replaced by terrorism prevention and investigation orders (TPIMs) but bail in the context of proposed national security deportations which subject people to even tighter restrictions, e.g 16 and 18 hour curfews, a ban on all non-vetted visitors (including health visitors, doctors etc, who all need advance permission from the Home Office to visit patients at home), a ban on computers (seriously affecting children's ability to do schoolwork) and on mobile phones – for years, while appeals crawl through the system. I started representing one man, a Jordanian, in 2006. He was arrested for deportation in July that year, three days after his wife gave birth to their first child by caesarian section. He was held in Long Lartin maximum security prison for two years, then released, forced to move first to an all-white area where his hijab-wearing wife was cursed, spat at and assaulted when she left the house, and then to a racially mixed area to a basement so damp that it 'breathes' out over four litres of water a day (a benefactor bought him a dehumidifier). There he tries to bring up his three children and look after his wife, who had a nervous breakdown after the racist attacks, while being allowed out of the house for only six hours a day. All of this on the basis of the most tenuous fragments of so-called intelligence (that is the information he and we were allowed to see). He and his family have faced and continue to face the most extraordinary pressures. This has been extensively written about. [15]

Undocumented migrants

Finally, let us consider the case of irregular or undocumented migrants. We are all familiar with the enforced destitution policies towards refused asylum seekers brought in by the last government and continued by this one, and the enormous hardship and misery they have caused. We are aware of the mega-exploitation of the undocumented by gangmasters, the massive waste of human talent with multi-lingual graduates working illegally as security guards or in petrol stations.

There were widespread campaigns for regularisation supported by the likes of London mayor Boris Johnson and Lib

Dem leader Nick Clegg. But regularisation is now off the agenda, following the Lib Dems' Faustian pact to attain power and the recantation of high-profile liberal organisations; instead we are faced with an enforcement agenda in which the voluntary sector is called on to take part. [16]

It is a bleak landscape. The only point of light is the burgeoning army of migrant and refugee support groups, human rights groups, faith and community groups and trade unions working together to campaign against injustice – at an individual, national and global level. The coalition formed to fight the legal aid cuts seeks justice for all, refusing to get into a competition about who needs legal aid most. Campaigns such as the Living Wage Campaign, the campaign for the adoption in Europe of the Migrant Workers' Convention which recently achieved the creation of a new ILO Convention for domestic workers, address the anti-immigration arguments that migrants undercut pay and conditions, and benefit all workers, not just migrant workers, encouraging solidarity, not competition. Such campaigns seek justice, not charity or special treatment, for migrants and asylum seekers, and they reject the social Darwinist politics underpinning global migration controls.

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It is an edited and expanded version of a speech given to the Churches Refugee Network AGM on 4 June and published on IRR News.

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The Global Approach to Migration and Mobility: the state of play

by Marie Martin

GAMM has been promoted by the Commission as an "overarching framework of the EU external migration policy" but many member states remain sceptical of the value of dealing with migration issues at EU level. The approach has been much criticised for allowing member states to use migrants as disposable workers and for further restricting access to the EU.

In November 2011 the Global Approach to Migration and Mobility (GAMM) [1] was submitted by the European Commission to the European Parliament, the European Council, and the Committee of the Regions. It was formally adopted by the Council's Committee of Permanent Representatives (COREPER) in May 2012. However, the foundation of the revised European strategy on migration management seems to be problematic and the text has already been greatly criticised, even before its biennial implementation reports are published starting in June 2013. The GAMM has been widely denounced as a means for the EU to restrict access to its territory and for allowing Member States to use migrants as disposable workers.

The Global Approach to Migration and Mobility

In December 2005, the Commission published its Global Approach to Migration (GAM). [2] It aimed to present a comprehensive strategy to address irregular migration and human trafficking on the one hand, and to manage migration and asylum through cooperation with third countries (origin and transit) on the other. The Global Approach is based on existing regional fora for cooperation on migration such as the Barcelona process, the ACP-EU Migration Dialogue, the Budapest Process, the Rabat Process, the Prague Process or the Eastern Partnership. Cooperation with relevant EU agencies was also planned: Europol with respect to anti-trafficking strategy and FRONTEX regarding border management.

Activities were initially focused on Africa and the Mediterranean, which were identified as the main regions of origin of migrants in Europe. By linking up migration management and development policies, the Global Approach to Migration attempted to address "push factors" and alleviate migration pressure from these regions. The promotion of circular migration was recognised as a mutually beneficial strategy: not only did it serve the EU's economic interests (labour force), but it was also a means to avoid 'brain drain' and support development back in the country of origin.

The proposal developed the concept of "mobility packages"

(a new form of circular migration for high skilled migrants) and further anchored the notion of a "more for more" approach: the more third countries cooperate, the more advanced visa facilitation will be for their nationals. Mobility is thus officially conditioned upon cooperation on border control (FRONTEX) and the conclusion of a readmission agreement with the EU.

In the wake of this new migration strategy, mobility partnerships were signed with Moldova, Cape Verde, Armenia and Georgia. Readmission agreements were also signed and apply to third country nationals and stateless people who have transited through or originate from these countries. As expressed in early 2012 by the first secretary at the Permanent Representation of the Netherlands in the EU, Sander Luijsterburg: "We believe readmission and returns policy are key parts of migration policy. They help to win public support for other parts of migration policy." [3]

Five years after the implementation of the Global Approach to Migration, the Commission submitted a revised strategy with an added component: mobility. The Commission explained that mobility "is a broader concept than migration" and signalled its intent to better manage circulation for foreign nationals who may want to visit the EU for short periods (students, visitors, businesspersons or family members).

Like the GAM, the GAMM emphasised migration and development so that, as stated in the May 2011 Communication on Migration, "migration to Europe is a choice rather than a necessity." [4] Nevertheless, refugee protection and the external dimension of asylum were given more importance than in the previous Global Approach. The European Asylum Support Office is expected to play a significant role in this development, for example in the development of international protection mechanisms in third countries such as regional protection programmes and for the coordination of resettlement from third countries to Europe.

Scepticism from Member States and third countries

The implementation of the Global Approach greatly depends on Member States and their willingness to become involved in EU-based cooperation with specific third countries (Mobility Partnerships). The added value of EU-based cooperation on labour migration instead of bilaterally agreed schemes remains unclear to some Member States. Similar doubts exist regarding the question of resettlement. Some Member States wish to retain total sovereignty in deciding how many refugees should be resettled in their country, and where they come from.

In Written Evidence to the UK House of Lords, Lord Avebury (*) noted that the "EU has no competence over visa awards." [5] Facilitation of mobility, even for short-term visitors, entirely depends on Member States. Moreover, Lord Avebury believes that the GAMM's focus on labour migration may overshadow crucial components of mobility such as family reunion.

Interviews conducted in the framework of research by PhD candidate Natasja Reslow in 2010 and 2011 suggest that many EU countries were reluctant to deal with legal migration issues at EU level because they believe it to be an area of national sovereignty. Moreover, bilateral agreements already exist between EU states and third countries, limiting the use of mobility partnerships to a mechanism reinforcing border control and return procedures with third countries of interest. [6]

The new EU strategy conditions cooperation and visa facilitation for EU-friendly border controls and leaves little room for manoeuvre to countries which need to establish commercial relations with the EU (e.g. Georgia, Cape Verde). On the contrary, countries with which relations have existed for a long time and where labour migration bilateral agreements and readmission clauses have been signed do not have any interest in being Mobility Partnership candidates. Reslow believes this may explain why negotiations failed with Senegal (which had signed many agreements with France).

Morocco is another example. The country has refused for years to sign a readmission agreement with the EU and presents itself as a heroic champion in the battle against the EU's externalisation of its border controls. In reality, Morocco is already cooperating with Italy, Germany, France, the Netherlands, Belgium and Spain on readmission [7], and has signed several labour migration agreements which serve its interests. In the case of both Senegal and Morocco, being part of a Mobility Partnership would lead to the conclusion of a readmission agreement with the EU and thus with all of its Member States, rather than just a few Member States on a bilateral basis.

While cooperation on border control and readmission are a prerequisite for visa facilitation to start, it is worth noting that Mobility Partnerships are not legally binding and are based on the voluntary participation of interested Member States. Although a Mobility Partnership was signed between Georgia and the EU in 2009, negotiations on visa liberalisation only started in June 2012 and it will probably take several years before the final agreement is signed. [8]

Cooperation does not seem to be in the interest of all third countries as incentives offered by the EU seem to be used as instruments to legitimise a strategy which remains EU-centred, as clearly stated by the EU in the 2011 Communication on Migration:

> *[The] External dimension could play a more important role in reaching out to third countries that should be seen as partners when it comes to addressing labour needs in the EU.*

The lack of a rights-based approach

Mobility Partnerships and Common Approaches to Migration and Mobility have been the flagship measures of the Global Approach to Migration and the following GAMM. Although quite attractive on paper, this supposed "migrant-centred approach" was criticised by the European Council for Refugees in Exile (ECRE) as being too weak and for promoting the EU's interests (cooperation with third countries to stop irregular migration; mobility limited to high-skilled migration to meet labour shortages in Europe) without offering tangible integration prospects to third country nationals.

Integration was part of the 2005 Global Approach on Migration which covered "all areas of importance including labour and socio-economic, public health, cultural and political dimensions", "education of children from immigrant backgrounds" and "intercultural dialogue". Five years later, migrants tend to be perceived as temporary workers rather than full residents. The 2011 GAMM states the "urgent need to improve the effectiveness of policies aiming at integration of migrants into the labour market" where "[p]ortability of social and pension rights could also be a facilitator for mobility and circular migration."

Reduced to the labour market sphere, integration is nevertheless used as another justification for stricter border controls:

> *Without well-functioning border controls, lower levels of irregular migration and an effective return policy, it will not be possible for the EU to offer more opportunities for legal migration and mobility. The legitimacy of any policy framework relies on this. The well-being of migrants and successful integration largely depend on it.*

Migrant and refugee rights organisations expressed concern at this assertion. In ECRE's view "the new approach is based on a migration control logic as much as the previous version of the Global Approach" where migrants simply "gain access to controlled mobility." The Migrant Rights Network (MRN)

denounced it as a "law and order" strategy where cooperation with third countries served the purpose of creating stricter border controls and visa policies rather than the integration of migrants. Frequent reference to the ill-defined concept of "illegal migration", combined with compulsory cooperation on readmission by third countries in exchange for the mobility of some of their nationals, shows how EU-centred the whole strategy was and highlights "the flawed perspectives on which the EU states were basing their positions." [9] The exploitative logic at play in the low-skilled labour market is not addressed in the GAMM so that low-skilled migrants, and even high-skilled migrants in some cases, may still be at risk when they come to an EU country. They would be less likely to integrate effectively into the labour market and to claim their rights in the host EU state.

The MRN argues that stricter border controls do not help address irregular migration or human trafficking but instead reinforce the development of alternative strategies to circumvent the difficulty of entering the EU legally. Nor do regional protection programmes ensure protection for refugees and asylum-seekers in third countries. In contrast to the 2005 Global Approach to Migration, the GAMM aimed to present the EU as being "among the forerunners in promoting global responsibility-sharing based on the Geneva Convention and in close cooperation with UNHCR."

However, the reception of refugees and asylum-seekers depends to a large extent on a country's capacity to integrate vulnerable populations which, in the case of existing (e.g. Cape Verde, Moldova) and prospective partners (e.g. Tunisia, Ghana, Jordan, Egypt and Morocco) seems unrealistic. The development of regional protection programmes is likely to lead European authorities to deem these countries safe enough for refugees to stay there. However, development issues and the institutional instability many are facing suggest otherwise. Some "safe countries" are notorious for breaching their citizens' human rights and showing little regard for the rights of migrants and refugees.

Although better protection mechanisms in non-EU countries will always be welcome, the development of a ring of safe third countries should not block access to asylum in the European Union. Protection in the region of origin is promoted as the "preferred protection modality"; it is hoped that development in third countries will "enhance the chances for a sustainable durable solution, be it return, local integration or resettlement." Clearly, local integration is presented as a better solution despite the controversial literature on how durable such a solution may be in reality (the UNCHR 2012 annual report argues that many authorities in developing countries are quite reluctant to host refugee communities). [10]

As ECRE puts it: "the possibility to seek asylum in the region does not replace Member States' obligations to process applications and to grant refugee protection." NGOs are particularly concerned that the signing of readmission agreements results in some countries being incorrectly deemed "safe" and that refugees could face human rights violations upon return.

Despite the inclusion of a suspension clause in future readmission agreements (to be activated in the case of human rights violations in the country of return), concerns deepened following the 2011 evaluation of readmission agreements by the Commission which suggested that human rights safeguards were not totally in place in the readmission procedure. [11] For example, the evaluation reports that:

> *Joint Readmission Committees have been formally established under each of the [then] 11 EURAs [EU readmission agreements],* ***with the exception of Sri Lanka where the political situation and technical issues have so far prevented the organisation of a meeting.****" [emphasis added]*

This means that there were no Joint Readmission Committee meetings between 2005 (when the agreement with Sri Lanka was signed) and 2011.

Although the evaluation recommended that post-return monitoring mechanisms are in place, the EU Danish Presidency noted, in a January 2012 document entitled EU strategy on readmission that:

> *Currently there is no assessment of whether provisions on the monitoring of the human rights situation of readmitted persons can be implemented in practice and have sufficiently added value to be included in future readmission agreements [12]*

In March 2012 a Commission officer (DG Home Affairs) recognised that there were certain "deficiencies" regarding human rights, adding that "we're not hiding anything there." (see [3])

Reaction from the Committee of the Regions

While the GAMM has been lauded as "as a contribution towards a more consistent, systematic and strategic policy framework for relations with third countries in the area of migration and mobility" [Council March 2012], the Committee of the Regions, to which the Commission's communication was also addressed, adopted a more nuanced approach.

The Committee stands as "a political assembly of holders of a regional or local electoral mandate serving the cause of European integration" which aims to influence policy making by "promoting European democracy and citizenship and their values, and contribut[ing] towards the anchoring of fundamental rights and the protection of minorities." [13]

Further to NGOs' criticism, the Committee highlighted that:

> *Providing regular entry channels is a key instrument for combating irregular immigration and reducing the number of "overstayers", as well as ensuring a degree of solidarity in relations with countries of origin of migratory flows.[14]*

Stressing the importance of respect for human rights and of the principle of non-refoulement in border controls, the Committee emphasised a crucial aspect which the GAMM does not really take into account: addressing irregular migration cannot be limited to border controls, but should also be based "on effective legal entry opportunities which are also open to less-skilled workers."

Although supportive of the inclusion of readmission agreements as part of the strategy, the Committee advocated their regular evaluation, especially as returnees who are not nationals of the country "could find themselves left in no-man's-land, exacerbating the situation in transit countries and putting them at serious risk of human rights violations."

The conclusions reached by the Committee echo the recommendations of the UN Rapporteur on the Human Rights of Migrants, François Crépeau, who, following his visit to Tunisia in June 2012, stated that:

> *A large majority of regional migration initiatives coming from the EU continue to be focused on issues of border control, and do not consider important issues such as the facilitation of regular migration channels.*

Calling for a more "nuanced policy of migration cooperation", he called for new strategies "which place at their core the respect, protection and promotion of the human rights of migrants." [15]

(*) *Please note that neither Members nor witnesses at the July 2012 inquiry at the House of Lords have had the opportunity to correct the record.*

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EU: The democratic accountability of the EU's legislative procedures

by Steve Peers

The EU legislative process lacks the basic rudiments of openness and transparency and gives civil society and national parliaments little time to react to agreements made by the Council and European Parliament. This article suggests a revised Inter-Institutional Agreement to address these concerns.

Following the entry into force of the Treaty of Lisbon, the EU has an 'ordinary legislative procedure' – consisting of qualified majority voting (QMV) of Member States' governments in the Council, and joint decision-making power of the European Parliament (EP). This procedure replaced the previous procedure known in practice as 'co-decision', without amending its substance; but the Treaty of Lisbon extended this procedure to apply to many more areas of EU decision-making.

The EU also has around 30 'special legislative procedures', comprising cases where the Council or the EP has the main role in adopting the legislation concerned, and the other institution has a secondary role. Most of these cases provide for unanimous voting in the Council and mere consultation of the EP, but some provide for the EP's consent or QMV in the Council. (On the two types of legislative procedure, see Article 288 of the Treaty on the Functioning of the European Union, or 'TFEU').

The ordinary legislative procedure can be compared to the legislative process in any State with a bicameral legislature; its closest comparators are perhaps the legislative procedures in Germany (within the EU) and the United States (outside it). However, the legislative process in any democratic State compares favourably to that of the EU as far as openness and transparency is concerned.

The EU's ordinary legislative procedure provides for either one, two or three readings before legislation is adopted (for the legal details, see Article 294 TFEU). In the large majority of cases, legislation is agreed after only one reading. In such cases, the relevant EP committee and the relevant Council working group begin their analysis of the proposed legislation separately. Sometimes, the Council working group completes its examination of the proposal first, in which case the Council (at the level of ministers) often adopts a 'general approach' on the legislation. However, sometimes an agreement is reached only at the level of the Member States' representatives to the EU (known as 'Coreper'), without being endorsed by ministers. Negotiations then get underway at some point afterwards with delegates from the EP, on an essentially informal basis (these are known as 'trilogues').

On the Council side, the chief negotiators are officials from the Member State holding the rotating Council Presidency, and the overall control of the negotiations is managed by Coreper. Occasionally issues arising from the negotiations are discussed by ministers. On the EP side, the chief negotiator is the MEP in charge of the EP's report on the particular proposal (known as the 'rapporteur'), assisted by interested MEPs from other political parties (the 'shadow rapporteurs'). If an agreement is then reached between the two sides, it is submitted for approval by the full Council and the plenary EP. Either side can reject the deal, but this is very rare.

Sometimes agreement is not reached at first reading, often because the first-reading trilogues fail, or because there is no perceived point to holding one (because the institutions' positions are so far apart), or because one of the institutions has adopted its first reading position without waiting to hear the other institution's point of view. The large majority of such cases result in a deal at second reading. In about half of such cases, there is an 'early second reading deal': after the EP has adopted its first reading opinion, the EP and the Council hold a trialogue before the Council's first reading vote, with a view to agreeing a text. If a text is agreed, the Council adopts it at first

reading, with the expectation that the EP will simply endorse that text. It should be noted that once the Council formally adopts its first reading position, there are binding deadlines which must be observed; an early second reading agreement means that the negotiations can take place without the pressure of such deadlines.

Second reading

In other cases, there is an ordinary second reading negotiation: the Council and EP essentially start negotiations after the adoption of the Council's first reading position, and are subject to the deadlines in the Treaty as they try to reach a deal. Usually this is facilitated because the Council often takes considerable account of the EP's first reading position when it adopts its own first-reading position. So the points of difference between the two institutions have been narrowed down already. In either case, the trilogue process plays a part in second reading negotiations as well.

It is possible that the EP can simply vote to reject the Council's first reading position, in which case the legislative process is terminated without the adoption of any measure. This is quite rare, however. In some cases, the EP votes to reject a legislative proposal at first reading. Formally speaking, this does not end the legislative procedure, but it means there is little point in the Council continuing with its discussions, on the assumption that the EP would simply repeat its rejection of the proposal at second reading, thereby killing the proposed legislation officially. This is also rare. It is rather more common for the Council to fail to reach sufficient agreement on a proposal due to a 'blocking minority' of Member States opposed to it, in which case the Council does not adopt a first-reading position, and the legislative procedure is stalled. In practice, it then stays stalled until the Commission revises its proposal with a view to getting more support in Council, or enough Member States change their view to ensure its adoption, or a subsequent Council Presidency relaunches discussions based upon a revised text or until the Commission gives up and withdraws the legislative proposal – sometimes replacing it eventually with a fresh proposal on the same issue.

If the second reading negotiations fail, the EP and Council then enter into a formal 'conciliation' process, with a view to reaching a 'third-reading' deal. Only about 5% of legislative proposals are agreed at third reading. If the 'conciliation committee' fails to reach a deal (which sometimes happens), the process fails. If the conciliation committee reaches a deal, it must then be approved by the plenary EP and the Council at ministerial level. The Council has always approved deals made at this stage, while the plenary EP has approved most (but not all) of them.

The European Parliament and openness

There are some additional provisions relating to these processes in the institutions' rules of procedure, and in a joint agreement between them. On the EP side, Rule 70 of its Rules of Procedure states that negotiations on legislation must take account of a Code of Conduct attached to the Rules of Procedure. This Rule also states that before negotiations start:

> *the committee responsible should, in principle, take a decision by a majority of its members and adopt a mandate, orientations or priorities.*

The committee should also be reconsulted once a final deal has been reached. The Code of Conduct (Annex XXI of the Rules of Procedure) states that 'as a general rule', the EP negotiators should negotiate on the basis of the committee or plenary position. In the 'exceptional case' of negotiations before a committee vote, the committee 'shall provide guidance' to the negotiators. To 'enhance transparency', trialogues shall be announced. There are rules concerning the relations between the negotiators and the committee.

The EP's 'Conference of Presidents' decided in 2011 to amend the Rules of Procedure on this issue, and a draft set of amendments is under discussion. The draft states that a committee 'shall' adopt a mandate before negotiations get underway (although 'exploratory discussions' can start beforehand); the mandate 'may' include proposed amendments. The decision to start talks will have to be announced at the EP's plenary session, and can be challenged there - but only at the behest of the EP's Conference of Presidents. The role of the committee during the negotiations and after their conclusion would be strengthened.

The EP rules on transparency state that debates shall be public, and that committees normally meet in public, but say nothing about legislative negotiations (Article 103 of the rules of procedure). Neither do the EP rules on access to documents (Article 104).

The Council and openness

As for the Council, its Rules of Procedure provide for public meetings as regards legislative discussion, and access to the documents related to those discussions (Article 7). However, this does not apply to Coreper, working groups or negotiations with the EP. In practice, some additional legislative documents are released either on the Council's own initiative or following a request for access to documents (see also Art. 11(5) of Annex II to the Rules of Procedure), but there is no uniform rule.

The joint declaration on the co-decision procedure (Annex XX of the EP's Rules of Procedure) regulates the relationship between the institutions, rather than public access to documents.

From the perspective of openness and transparency, the second and third reading process is more open in practice, because the Council's and EP first and second reading positions are published. In comparison, as pointed out in a previous Statewatch analysis on '*Proposals for greater openness, transparency and democracy in the EU',* first-reading negotiations:

> *are totally lacking in the basic rudiments of openness and transparency. It is practically impossible for outsiders, including national parliaments, to work out whether first-reading negotiations are underway, what stage negotiations are at, and what drafts are under discussion. Once an agreement has been reached between the EP and Council, there is often little time for civil society or national parliaments to react before the adoption of the text.*

For example, at time of writing (20 December 2011), an EP press release had announced on 1 December 2011 that the EP and the Council had reached an agreement on legislation concerning a unitary patent for the EU. But the agreed text of that legislation was not available on the EP website; nor was it released to the public via the Council register of documents. A document concerning the final state of the negotiations which was listed on the Council website had fortunately been leaked to the 'ipkitten' blog, but it was not absolutely clear whether or not this constituted the agreed text of the legislation. Some interested groups were anxious to suggest changes to the legislation, but this task was made more difficult because of the absence of official public access to the agreed text. The relevant EP committee voted in favour of the agreed text on 20 December 2011, but there was no way for the public to find out in advance exactly what text the committee was voting on. This is clearly unacceptable in a democratic system – but it is common practice for the EU's legislators.

What should be done?

Since it seems unlikely that the institutions would change their

practice of agreeing most legislation at first reading, the best way to ensure adequate transparency and openness is to adopt general rules which will improve the conduct of the EU's legislative procedures across the board. In the previously-mentioned Statewatch analysis, back in 2008, the text of a proposed 'Inter-institutional Agreement' to this effect was suggested. Since then, while practices have improved within the EP, which now often takes votes before negotiations begin and sometimes makes the text of its negotiating mandates as approved by committee available to the public. However, this still falls short of the minimum degree of transparency which a democratic system should ensure.

The Annex to this essay therefore suggests a revised text of this proposed Inter-Institutional Agreement, to address these fundamental concerns. It provides for the prior adoption of a negotiating position by the EP and the Council – which must be publicly available – before first-reading negotiations start (points 1 to 3). This would confirm the developments in the EP, to the extent that committee mandates are becoming the norm, and would add a requirement of making the relevant documents available.

Detailed information on all aspects of the negotiations must be available to the public (point 4). The final provisional text of any deal must in particular be public (point 5), and be widely publicised (in practice by means of press releases and updates on the dedicated website), in particular to national parliaments. There must then be at least eight weeks for national parliaments and civil society to scrutinise the final deal before any vote (based on the national parliaments' scrutiny period at the start of the legislative process) – although national parliaments could ask for an extension of this period (point 6).

For all this information to be accessible, there would be a single specialised website (point 7). At the moment, the separate 'co-decision' sites of the Commission, EP and Council are hard to find, contain much less information, and are infrequently updated. This site should be a broader forum for discussion of the proposals – including comments by civil society and interventions by national parliaments. There should be provision for interactivity, if, for instance, national ministers or MEPs want to respond to comments or to explain the latest developments.

Finally, since proposals to codify EU legislation do not make any substantive amendments to that legislation, there is no need to apply the rules to those proposals (point 9).

Proposed Annex: Inter-Institutional Agreement: On enhancing public access to documents and citizens' participation in decision-making as regards the co-decision procedure

1) The negotiating position of the European Parliament as regards a first-reading agreement shall be set out in a report adopted by the relevant committee of the European Parliament in accordance with the Parliament's Rules of Procedure; this committee report shall be publicly available;
2) The negotiating position of the Council as regards a first-reading agreement shall be set out in a document adopted by the Council, or agreed within Coreper or the relevant Council working group(s) or committee(s) on behalf of the Council; this document shall be publicly available;
3) The European Parliament and the Council shall not begin negotiations for a first reading agreement unless a negotiating position of the two institutions, in accordance with points 1 and 2, has been adopted;
4) When Members of the European Parliament and representatives of the Council hold any meetings to discuss a possible first-reading agreement, full information shall be publicly available as regards the meeting dates, the names and roles of participants at the meetings, the meeting agendas, all documents submitted to or considered at such meetings and the minutes of such meetings;
5) The text of any provisional first-reading agreement reached between the negotiators shall be made publicly available and shall be widely publicised by the Council and the European Parliament; in particular, the Council and the European Parliament will draw national parliaments' attention to these agreements;
6) Except for duly justified cases of urgency, a period of at least eight weeks shall elapse between the public availability of a first-reading agreement and any vote on that agreement by the Council or European Parliament; the relevant provisions of the Protocols on national parliaments and on subsidiarity and proportionality shall apply during this period; a national parliament may request an extension of this time period;
7) The documents referred to in this Agreement shall be made available to the public in a dedicated single website to be set up by the institutions, which shall be designed to ensure ease of use by the public; this website shall also include the original proposal and any related impact assessments or communications, any relevant documents forwarded by national parliaments (or regional parliaments), the Economic and Social Committee, the Committee of the Regions, and civil society, and full information about and documentation concerning any public hearing held by EU institutions or lobbying of EU institutions related to the proposal;
8) The EU institutions shall amend their rules of procedure and any prior agreements or declarations as necessary to ensure compatibility with this Agreement;
9) This Agreement shall not apply to measures to codify Union legislation.

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TESAT report shows decrease in terrorist activity in 2011 but national police forces see a continuing threat

by Yasha Maccanico

Europol's 2011 report shows a significant decrease in terrorist incidents between 2009 and 2011 and the attempt to justify anti-terrorism initiatives. The lack of recent activity from established threats such as Al Qaeda and ETA has led anti-terrorist policing to increasingly focus on left-wing, anarchist and single issue groups.

Europol's 2012 EU Terrorism Situation and Trend (TESAT) report, covering the year 2011, was published on 25 April 2012. It noted a decrease in terrorist activity which it described as "a welcome development" that does not translate into a "diminished threat." The report is based on information submitted by national law enforcement agencies detailing "arrests and terrorist or extremist incidents that took place in the EU." Europol Director, Rob Wainwright, noted in his foreword that following an

assessment by Europol's First Response Network after the killing spree by Anders Breivik in Norway in July 2011, the EU Radicalisation Awareness Network was established "in which Europol is playing a key role". Eurojust, the EU Intelligence Analysis Centre (INTCEN) and the Office of the EU Counter-Terrorism Coordinator also provided material to help produce the report. As stated in the report's introduction, TESAT was established in the aftermath of the 11 September 2001 attacks in the USA "to provide an overview of the terrorism phenomenon in the EU, from a law enforcement perspective" and "to record basic facts and assemble figures" while presenting "trends and new developments from the information available to Europol."

The first chapter sums up key findings, highlighting the "highly diverse terrorism picture" that emerges from the analysis of events in 2011. This is likely to be "mirrored" in 2012 with a "possible increase in lone or solo actor plots" in response to the killing of Osama bin Laden and because the core of Al Qaeda is under pressure, making it harder for them to organise large-scale attacks. The organisation has called for "individual violent jihad through the execution of small-scale attacks," although the threat of attacks by solo actors is not "limited to al-Qaeda inspired terrorism."

"Radicalisation towards violence" is deemed a "critical component of the terrorist threat" and "radical thinking" *per se* is linked to violence in the claim "Radical thinking becomes a threat when individuals or groups engage in violence to achieve political, ideological or religious goals." Media exposure and propaganda on the Internet may contribute to radicalisation and inspire the planning and commission of terrorist attacks by "like-minded individuals." The "substantial presence" of propaganda by terrorist and extremist groups on the Internet, is identified as their main communication medium, and is deemed a cause for concern. Social media is viewed as facilitating "radicalisation and recruitment for terrorist and violent extremist purposes."

A sustained decrease in terrorist incidents, attacks and arrests between 2009 and 2011 (there were 174 attacks, 484 arrests and 316 individuals charged for terrorist-related offences) is noted, "but overall activity relating to terrorism and violent extremism still represents a significant threat." Groups inspired by Al Qaeda aim to cause mass casualties by striking targets of symbolic value. Further, the threat from violent right-wing extremists, either by lone actors or organised underground groups that "have the capability and intention to carry out attacks, "has reached new levels in Europe and should not be underestimated." "Cross-border cooperation between violent extremist groups" is deemed to be on the rise, both in terms of providing support for violent activities and in communications, to inform like-minded individuals about future actions and to inspire others. Finally, a "convergence of social and technical factors" may "prove fertile ground for ideologically-motivated electronic attacks."

General overview: an increased threat from lone actors

The report notes a decline in both terrorist attacks and arrests in the EU between 2007 and 2011. Lone actors were responsible for 79 deaths (two in Germany and 77 in Norway). The majority of terrorist attacks were in France (85), Spain (47) and the UK (26). The report notes that no religiously-inspired terrorist attacks were recorded, although the "religiously-inspired" lone actor who killed two US servicemen in an attack at Frankfurt airport in March 2011 is not deemed a terrorist attack under German legislation, [1] despite the fact that "the incident clearly carried some such characteristics." The highest arrest figures were in France (172), Ireland (69) and Spain (64). Most of the total figure (247) concern "ethno-nationalist and separatist terrorism." This is just one of the categories used in the report alongside "religiously-inspired"; "left-wing and anarchist"; "right-wing" and "single-issue" terrorism. There was an increase in arrests for "membership of a terrorist organisation, disseminating propaganda, possession of arms and explosives, and the dispatch of fighters to a conflict" and a decrease in those for "preparation of attacks, attempted attacks and completed attacks."

The terrorist threat posed by small groups and lone actors "whose radicalisation takes place largely undetected" is deemed to be on the increase. This is as a result of the call for "individual jihad" issued by Al Qaeda in the Arab Peninsula (AQAP) through its online magazine *Inspire*, Anders Breivik's attack in Norway in which he killed eight people with a "vehicle-borne improvised explosive device (VBIED)" in Oslo and shot a further 69 people at random on the island of Utøya, and the discovery of a group of German right-wing terrorists who committed "politically-motivated" murders between 2001 and 2007.

Activities, tactics and counter-measures

The report highlights the wide-ranging fundraising activities of terrorist organisations whose pragmatism allows them to ignore "religious or political boundaries... if they stand in the way of the acquisition of funds." Hostage taking with ransom demands is on the rise in Maghreb countries and Africa as a "tried and tested method" of raising funds. The PKK is singled out for narcotics trafficking and Tamils are suspected by intelligence services of engaging in "extortion, human trafficking, [cash] skimming schemes and other crimes" to "raise money to fight for their cause." The report also makes questionable claims about the "abuse of social benefits" to fund terrorism and the growing prevalence of "fundraising by self-radicalised terrorist supporters."

TESAT notes that "improvised explosive devices" (IEDs) are a "growing concern" as their components are legally available (the Breivik case is cited as evidence of this) and the necessary expertise for their manufacture is easily available from open sources. There was a decrease in "the use of commercial explosives" due to "increased monitoring and control by law enforcement agencies." IEDs are described as "the weapon of choice of ethno-nationalist terrorists in Spain, France and the UK", with this type of bomb used in 2011 in France and Northern Ireland. "Left-wing terrorist groups" used letter-bombs to target "public and private institutions and companies in France, Greece, Germany, Italy and Switzerland." In October 2011, such "Improvised Incendiary Devices" (IIDs) were used against railway infrastructure in Germany. Both IEDs and IIDs are used by "animal rights violent extremists and related single-issue organisations."

The report stresses the importance of the internet for communications between "terrorist and violent extremist actors." It is described as being "firmly established" as a "facilitating factor" for such groups due to the "high numbers" who use "social media sites." This includes the use of internet forums "to address targeted audiences, including supporters" with whom they have no other links. The activities for which the internet is used are listed as: "instruction", "recruitment of supporters", "dispatch of members to conflict areas", "fundraising", "facilitating cooperation" with other groups and the "planning and coordination of attacks." The internet increases their "audience" and "magnifies" their "propaganda efforts." Internet forums are used to distribute "a substantial proportion of terrorist propaganda" and "individuals posing as media outlets edit, translate and publish terrorist content." This blurs the "boundaries between virtual support networks, media outlets and terrorist organisations." The Internet is also said to enable "individuals to undergo a process of radicalisation without necessarily being formally recruited"… "controlled or guided" by terrorist groups. This claim is worrying in that it could easily be applied to reading books, education or any activity that may lead to individuals developing a critical view of society. A

further threat assessed as "moderate or even high" by the report, is the possibility of "electronic attacks on the operating systems of critical infrastructure" in EU Member States.

The term "cyber-terrorism" may be applied to "electronic attacks on critical infrastructure", "intellectual property theft", and the use of the internet to disseminate propaganda or for communication purposes, although the report bemoans a "lack of international consensus" on its definition. It notes that "developments.. point to a convergence of social and technological factors which may well prove fertile ground for an increase in ideologically-motivated attacks." Cybercrime is deemed to have developed "from a niche activity into a mature service industry" with "criminal tools," crimeware toolkits and encoding available in the "digital underground economy," with little concern over how they may be used. "Hacktivism" is deemed to be the source of a "new online model for distributed disorder," including the use of "Distributed Denial of Service" (DDoS) attacks by cells or lone actors in response to "perceived wrongdoing." The developments of similar tools and methods have blurred the distinction "between organised crime and terrorism" and require a "continuing holistic response to electronic attacks" and "greater collaboration" in developing counter-measures between law enforcement and critical infrastructure protection agents.

Trials and verdicts

There were 153 completed court proceedings involving 316 individuals (40 of them women, most of whom were tried for "separatist terrorism") involving terrorist charges reported in 12 member states in 2011. 346 verdicts were handed down, resulting in 239 convictions and 107 acquittals (31% of the total). 208 of the verdicts were final, whereas 138 await further judicial scrutiny. The lion's share were in Spain where 235 verdicts were reached in trials, 210 of them for separatist terrorism. Spain was also the country in which the most proceedings were completed concerning religiously-inspired (14) and left-wing (11) terrorism. France was a distant second with 46 verdicts reached, 33 of which were for separatist terrorism. There was an increase in Denmark (4), Germany (17) and France compared to 2010, a decrease in Belgium (8) and the Netherlands (5) and a decrease for the second consecutive year in the UK (12) and Italy (4). Lithuania reported its first "terrorism-related court decision". Overall, the distribution based on the affiliation of suspects tried for terrorist offences was as follows: 259 classified as "separatist"; 59 as "religiously-inspired"; 14 as "not specified"; 11 as "left-wing" (all of them from Spain) 3 as "right-wing"(all of them from Belgium) and none for the "single issue" category.

The highest acquittal rate was in Sweden where only two verdicts were reached, both of them acquittals, followed by Spain, where 42% of verdicts (98) were acquittals. The UK (4 out of 12) and Greece (1 out of 3) both had a 33% acquittal rate, and one acquittal was recorded in both France (2%) and Ireland (11%). The 39 completed court proceedings in six other countries (Belgium, Denmark, Germany, Italy, Lithuania, and The Netherlands) had a full conviction rate. The highest acquittal rate was for separatist terrorism (34%), followed by left-wing (27%) and religiously-inspired terrorism (24%). The report notes that both the number of verdicts and the acquittal rate in Spain are high, with the latter rising to 42% in 2011 for the third consecutive year (from 21% in 2009 and 38% in 2010.) It explains this by noting that the Spanish judicial system focuses on prevention and protection, criminalising and prosecuting preparatory acts, recruitment, training, conspiracy to commit terrorist activities or support for these, often on the basis of circumstantial evidence. It falls short of noting that this approach leads to the criminalisation of a broad sector of Basque society belonging to the so-called *izquierda abertzale* or "nationalist left" which is sometimes treated as an appendage of ETA with far-reaching implications in terms of "guilt by association", political and media freedom and a wide interpretation of complicity with "terrorism."

The average penalty imposed for terrorist-related convictions in 2011 is estimated at eight years; 12 for "separatist and left wing terrorism", seven for "religiously-inspired terrorism" and less than one year for "right wing" terrorism. The "not specified" category has the highest average penalty due to life sentences imposed in France.

The TESAT report continues by analysing the different typologies of terrorism that it addresses.

Religiously-inspired terrorism

The section on "religiously-inspired terrorism" highlights that, in spite of "an increase in sophistication," "violent jihadist terrorist groups...continue to exhibit poor skills and professional tradecraft" that prevents them from "committing effective attacks in the EU." "European home-grown groups are becoming less homogeneous in terms of their ethnicity." The report also argues that "political changes in Arab countries in 2011" and the death of Osama bin Laden have not had a great impact in terms of the "terrorist threat" or "increased activities." There were no Al Qaeda attacks in Europe in spite of the aforementioned "religiously-inspired attack in Germany," and the number of arrests in this category "dropped from 179 in 2010 to 122 in 2011." The report notes that despite the absence of attacks, plots were developed by "Al Qaeda directed groups, home-grown cells inspired by Al Qaeda and self-radicalised, self-directed lone actors." There was a rising threat towards Scandinavia and Germany, while France, Spain and the UK "remained constant targets and centres for radical activities" and countries with a military presence in Afghanistan faced a "persistent threat." A majority of the 122 arrests for "religiously-inspired terrorism" were for "suspicion of membership of a terrorist organisation", 17 for "preparation of a terrorist attack" (down from 89 in 2010), 13 for financing terrorist activities, 12 for "propaganda", 10 for facilitation and seven for recruitment and four for possession of arms and explosives. Arrests connected to attacks and financing have decreased, but the percentage of arrests for recruitment and sending volunteers to be trained in the Afghanistan/Pakistan border area and Somalia has increased.

EU member states' main concern in this field is home-grown groups, which were involved in the "most significant plots" for attacks in 2011, in Germany and the UK. In Germany, there were four arrests in April and December 2011 of people who "had established connections to the Al Qaeda core and other Al Qaeda affiliates," and were believed to be planning at least one attack. In the UK, 12 people from Birmingham were arrested in September and November 2011 and charged with offences including "preparation for an act of terrorism in the UK, providing money for the purposes of terrorism and failing to disclose information about potential acts of terrorism." The report argues that this shows "the unfaltering determination of home-grown violent jihadists to strike" in spite of a lack of links to established groups among those arrested.

The report argues that home-grown religiously-inspired terrorist groups "have engaged the services of organised crime groups (OCGs) to assist their activities", although "OCGs have at times been unaware of the terrorist intentions of those they support." They are also deemed to have "attempted to establish connections with Eastern European OCGs involved in the trafficking of human beings and the production of forged documents." Moreover, "a small number of known terrorists were also able to capitalise on the refugee surge from North African states to the Italian island of Lampedusa" as a result of the Arab Spring. The conflation of the categories of religiously-inspired terrorism, organised crime, counterfeit documents, "illegal" immigration, and the influx of migrants and refugees as

"infiltration" is laid out explicitly.

The report goes on to describe home-grown religiously inspired groups' internet propaganda and the terrorist situation outside the EU, expressing concern over the availability of "uncontrolled Libyan arms" following the Arab Spring and the increasing use of kidnapping as a "tried and tested method" to raise funds through ransom demands. The involvement of OCGs in such activities, particularly in the Horn of Africa, "have blurred the distinction between pure criminality and terrorism."

"Ethno nationalist and separatist terrorism"

Focussing mainly on the separatist struggles in the Basque Country (Euskadi), Corsica and Northern Ireland, the report notes a "significant decrease" in attacks in Spain, a total of 110 attacks in EU member states (85 of which were in France), 247 arrests for "separatist terrorism-related offences" (126 in France, 68 in the Republic of Ireland and 41 in Spain). The report also notes the role of EU states' as "important logistical support bases for groups based outside the EU."

The key developments in this category were two announcements by ETA in January and October 2011, first declaring a cease-fire and then a cessation of its armed actions. The report refers to an attack in France in which a *gendarmerie* officer was injured when two ETA suspects opened fire to escape from a checkpoint and "only" 13 instances of "street violence" in the Basque Country and Navarre. The extortion of businessmen was deemed to have "almost disappeared." ETA is considered to be in a "weak" position due to the dismantling of cells and seizures of explosives in Spain, France and Portugal. The report adopts the Spanish authorities' argument that the ceasefire is a result of weakness and does not offer any guarantees: "ETA has not announced the surrender of its weaponry or the dissolution of the terrorist organisation", thus "Experience...may lead to the conclusion that ETA could resume its activities at any moment, if they fail to achieve their political goals", namely "a peace talk process with the Spanish and French governments to create an independent state." 55 people were arrested for "membership, support or criminal/terrorist links to ETA."

Twelve attacks by the Galician "pro-independence movement" are reported, four of which can be attributed to the *Resistencia Galega*, leading to six arrests in November and December 2011. Dissident Republican groups, who carried out the "first fatal attack... since 2009" when they killed a Catholic police constable in April 2011, are deemed a threat in Northern Ireland. The Real IRA is said to have improved its engineering and technical capabilities, marked by "continued success in terms of deployment of Improvised Explosive Devices (IEDs) across a wide range of targets in Northern Ireland." The Continuity IRA is deemed to be in "internal turmoil" and does not have the same capabilities. 75 completed or attempted attacks in France mainly targeting the tourism sector were reportedly carried out by Corsican terrorist groups.

Regarding "terrorist" groups in non-European member states, the report mentions the Kurdish Workers' Party (PKK) and Tamil Tigers (LTTE). The number of arrests due to links to the PKK is decreasing, but the report maintains that "Europe remains a logistical base for funding, recruitment, training and propaganda" for the organisation. Suspected PKK members were arrested in France, Germany and Romania. The PKK is reported to have committed "several terrorist attacks on Turkish territory in 2011" although there is no mention of counter-insurgency operations in the region by the Turkish state's security forces. The Tamil Tigers (LTTE) did not commit any attacks and did not suffer any arrests, yet it was "re-listed as a terrorist entity by the EU in July 2011." The LTTE is said to have split into a "peaceful" and an "active militant" faction. Both groups are deemed to be involved in a range of illegal activities: "extortion, money laundering, facilitating illegal migration, drugs and human trafficking" (PKK), and "extortion, running illegal lotteries, human trafficking...spreading propaganda on radio and TV stations and via numerous websites" (the "militant factions" of the LTTE).

"Left-wing and anarchist", "right-wing" and "single-issue terrorism"

37 attacks attributed to "left-wing and anarchist terrorism" were reported by Denmark, Germany, Greece, Italy and Spain in 2011 (down from 45 in 2010). These were largely arson attacks targeting the government and businesses. Bomb attacks decreased from 25 in 2010 to 11 in 2011, and the deaths resulting from these attacks fell from six in 2010 to one in 2011 (a person who was building an IED in Greece). 42 people were arrested (up from 34 in 2010) mainly in Greece, Italy and Spain, most of them "suspected of membership of a terrorist organisation." The Italian group *Federazione Anarchica Informale* [the Italian police, and hence the report, acritically uses the acronym FAI, in spite of its longstanding use by the *Federazione Anarchica Italiana* (Italian Anarchist Federation) since 1945] claimed responsibility for attacks in Italy, Greece, Germany and Switzerland [in 2011] during two campaigns in March and December 2011. Parcel bombs, some of which were intercepted before they exploded, were sent to a military barracks and a tax collection company in Italy, a prison in Greece, a bank's headquarters in Germany, the Greek Embassy in France and the offices of the Nuclear Industry Federation in Switzerland. In Greece, there were arrests and the confiscation of weapons by the police, while attacks by "left-wing and anarchist groups" fell "from 20 in 2010 to six in 2011." Five people were arrested in Denmark for arson attacks against police buildings, a bank and the Greek embassy in Copenhagen. There were 20 attacks in Spain, where two "violent extremist anarchists" were arrested and three other people were arrested "in the framework of international cooperation to fight terrorism."

As for "terrorist and violent extremist activities", the report notes that "the use of incendiary devices...is not new" but the targeting of weak spots in the railway infrastructure is noteworthy, pointing to attacks in Germany, Italy and Finland. These included the discovery of 18 improvised incendiary devices (IIDs) in nine railway locations in Germany between 10 and 13 October 2011. An unknown group claimed responsibility for planting the devices as a "direct response to German military involvement in Afghanistan" and the logistical support offered to the army by the German railway system. Attempts to set up an international anarchist network called for by the Greek "terrorist organisation" *Synomosia Pyrinon Fotias* is deemed a likely explanation for the *Federazione Anarchica Informale*'s "renewed activism," as indicated by documents found in parcel bombs. The motivation for anarchist related attacks is often an "expression of solidarity with imprisoned anarchists" and the report notes "signs of increased coordination between groups."

The inclusion of the Dutch No Border campaign in this category, due to incidents in France "motivated by the expulsion of asylum seekers" and actions against construction companies building detention centres (including a home visit that damaged the house of a construction company's CEO), is highly contentious. These are in addition to "traditional meetings and protest demonstrations, a number of violent incidents, such as arson attacks, clashes with police and criminal damage."

Clashes between anti-fascists and right-wingers are reported to have "hardened and become increasingly violent in recent years." In Germany, these predominantly occur during right-wing meetings and parades, whereas activists in the Czech Republic increasingly target individuals. In Sweden, representatives of the Democrats party are a preferred target. A shift by anarchists towards environmental struggles is noted, singling out the participation of anarchists in demonstrations

"against the construction of the future airport of Notre Dame des Landes (Nantes) and the high-speed railway line linking France and Italy in Val Susa," a popular protest that the Italian government and mainstream media have tried to criminalise as violent, verging on terrorist, for several years. Thus, largely demonstrative acts of violence, political struggles and resistance are included alongside Al Qaeda in a report in which they have no place.

This is in stark contrast to the treatment of "right-wing terrorism." The report found that there was one right-wing terrorist attack (an arson attack in Spain) and five arrests in Germany and that the threat comes from "undetected lone actors or small groups rather than established extreme right groups." The five people arrested in Germany were suspected members of the "right wing extremist/terrorist group '*Nationalsozialistischer Untergrund* - NSU' (National Socialist Underground)" which was accused of nine murders of people with Greek and Turkish origins, the shooting of a German policewoman and the attempted murder of a male German police officer between 2001 and 2007. The arrests resulted from evidence seized after the suicide of two NSU members in November 2011 who were pursued following a bank robbery. NSU was also accused of involvement in two bomb attacks in Cologne that injured over 30 people, mostly foreigners, in 2001 and 2004. The *Guardian* reported on 2 July 2012 that the head of the German internal intelligence service resigned following criticism about the failure "to detect the group and for poor co-ordination between various state, local and national authorities involved in the case." The move followed an admission by the service that "files relevant to the investigation into the neo-Nazi group had been destroyed after the group was discovered" amid criticism that both the "intelligence agency and police forces were too focused on Islamic and leftist extremism, allowing the neo-Nazis to operate unchecked."

The report moves on to "violent right-wing extremism", of which several member states reported "xenophobic (violent) offences and right-wing parades." This includes attacks and mobilisations against Roma people in Bulgaria and the Czech Republic in 2011, reportedly following crimes committed by members of the Roma community. The report concludes that economic crisis and immigration-related concerns "may lead to an increase in right-wing activities."

Concerns expressed in the report include the existence of international links and the recruitment and distribution of "violent extreme right-wing propaganda." The report mentions the White Power Music (WPM) movement in Sweden and refers to attempts by the Portuguese right-wing music scene to reorganise after the imprisonment of "important representatives of the 'Portuguese Hammerskins'." Members of the right-wing scene in several member states reportedly have or seek access to weapons, and "legal possession of (fire)arms is relatively common among violent right-wing extremists." Although the seizure of illegal weapons and ammunition, IEDs and materials to produce IEDs "may be an indication of a certain level of militancy for at least some parts of the scene, police authorities say that this phenomenon often relates more to the aspect of their subculture, than to an intention to use these weapons for terrorist ends." The authors nonetheless note that "these illegal weapons might be used in sporadic incidents to cause significant harm."

Compared to the rest of the report, the section on right-wing extremism is understated and the evidence (possession of weapons or exchanges between Internet websites) is not strung together in the same way to criminalise communities or movements as "terrorist" or "violent extremist." It stresses that several right-wing extremists who were arrested "were acting alone" and "might share an ideological identification with a violent extremist group, but do not necessarily communicate with the organisation." Likewise, suggestions that Breivik's attacks in Norway "were acts of right-wing terrorism, or had links with right-wing extremist groups in the EU, have not been substantiated." It should be noted (the report fails to do so) that attacks by right-wingers in 2011 include stabbings, attacks and ambushes in which left-wingers or migrants were seriously injured and social and cultural centres damaged. Police forces and the mainstream media in some countries (particularly Italy) downplayed such cases: "Violent attacks appear to be, in most cases, the result of an accidental encounter or a reciprocal provocation."

Protests cited in the report under the heading "terrorist and violent extremist activities" include longstanding popular mobilisations that have involved resistance and a degree of criminal damage or sabotage (for instance No Border or the movement in Val di Susa). This is in stark contrast to the scant information provided about right-wing attacks. The fact that only one arson attack in Spain is reported exemplifies this.

Moreover, in Florence on 13 December 2011, Gianluca Casseri shot three Senegalese street sellers in Piazza Dalmazia, killing two of them and seriously injuring a third, before going to San Lorenzo market to continue shooting at Africans. He committed suicide once caught by the police. Casseri had links to the far-right organisation *Casa Pound* (which is growing and has been linked to numerous cases of street violence). Three days earlier, on the outskirts of Turin, a false allegation by a 16-year-old girl that she was raped by two Roma men resulted in a neighbourhood march against a Roma camp in *cascina Continassa* that caused its inhabitants to flee while camper vans were set alight and make-shift shacks were burnt down. It seems that attacks against minorities, NGOs and non-institutional or economic actors or infrastructures are not within the report's scope.

As for "single-issue terrorism", there were neither attacks nor arrests in 2011, although a "number of incidents were reported by France, Italy, the Netherlands, the UK and the Republic of Ireland" and "additional monitoring of open sources shows" that many incidents are not reported. The key findings are: "increased activity by violent animal rights extremist groups have a significant impact on the businesses involved"; this category of extremist groups "focus on a broad range of targets, including directly related institutions and businesses"; and an increase in "cross-border cooperation" between them is a "cause for concern." Activities attributed to animal rights extremists (ARE) and violent environmentalist groups "range from fairly low-level vandalism...to significant acts of destruction and the use of incendiary or improvised explosive devices." Their activities are a "cause for concern" despite few recorded incidents, because they cause millions of euro worth of damage to companies and institutions and individuals linked to companies, "and sometimes even random people," are targeted. They are broadly described as "relatively young" and "found in the group of idealistic, often relatively deprived, youngsters who do not agree with some movements in society and therefore seek to achieve their goals through violent action." Their similarity with left-wing groups could explain growing cooperation "between violent left-wing and violent environmentalist extremist groups." The threat they pose is heightened by "professionalism and the often high competencies and capabilities of group members," including "effective" use of the internet for recruitment and propaganda, and they "will continue to attract radical individuals who are ready to use violent tactics." As for their activities, "the pharmaceutical industry reported 262 incidents worldwide in 2011," most of which were demonstrations involving small numbers that "have a serious impact on these industries."

Intensification of violent extremist activities has featured "incendiary or improvised explosive devices, assaults on persons and hoax bomb telephone calls." Groups cited in the report for their involvement in assaults on pharmaceutical company personnel and for targeting businesses linked to animal testing

with IEDs include Stop Huntingdon Animal Cruelty, Militant Forces Against Huntingdon Life Sciences and the National Anti-Vivisection Alliance. Specific incidents include the destruction of a golf green sponsored by an airline that transports animals to laboratories across the world, an arson attack on Bologna University Food Science Department, the Animal Liberation Front setting fire to a fast food restaurant and actions against the fur and leather industry through threats to shop owners and paint sprayed on fur coats. Hunting shops, circuses and kennels were also targeted.

Internet propaganda is deemed "one of the main tools of ARE groups." Their websites are managed professionally giving "the impression that some ARE groups are supported by a large group" and they seek support through "disinformation campaigns." The report cites the illegal entry of "multiple pig and rabbit farms" where footage was filmed and published online "to show the alleged malpractices taking place in these farms" - an example of activism rather than terrorism, and of "information" rather than "disinformation", unless the footage was false. Changes to animal rights legislation "may trigger new and increased actions."

The targets of "violent environmentalist extremist groups" are broadly identified as "construction companies, the energy and transport sectors, nuclear power and nano-technology," with a limited number of incidents. Demonstrations against the construction of two airports in France and protests against the high-speed rail connection between Italy and France are mentioned alongside "traditional actions against radioactive waste transport." Joint transnational protests and actions may indicate "stronger ties and cooperation" between "violent left-wing extremist and violent environmental extremist groups."

Conclusion

Throughout the report, there is a self-serving intention to justify initiatives that are underway, some of them controversial and with far-reaching implications. This applies to "radicalisation", the emphasis on the internet as a setting for "radicalisation" and other terrorist activities (recruitment, fundraising, etc.), and the potential that it offers for cyberterrorism. Europol is "playing a key role" in the EU Radicalisation Awareness Network (which builds on recommendations for member states to "take steps to share information on radicalisation and put in place mechanisms to systematically analyse and assess the extent of radicalisation on the basis of a multidisciplinary approach", see April 2010 Draft Council Conclusions document in the sources) and the establishment of a new European Cybercrime Centre that is set to open in 2013 in Europol's offices in The Hague. The report collapses different categories into a single cauldron to allow very different phenomena (forged documents, illegal immigration, organised crime, political activism) to be treated using the form of policing - that is, anti-terrorist policing - that enables the lowest level of judicial and legal guarantees to be applied. As the report admits, it reflects the views of EU member state police forces, but this makes matters worse, heightening the importance of its shortcomings or biases. The report is largely unquestioning of law enforcement activities, and it goes further by uncritically adopting their frames of reference, and underplaying the significance of right-wing, racist or fascist violence in comparison with other categories. The inclusion of No Borders, or the struggle in Val Susa against the high-speed railway tunnel in the Alpine valley, protests in France against the construction of a new airport and the activities of animal rights activists are clearly out of tune with the subject at hand and often reflect the alarmist internal discourse of governments.

It also signals the effect of the adoption of a wide definition of terrorism agreed by EU governments after the 9/11 attacks in the United States on policing. The net was cast very wide to include acts committed with the aim of "unduly compelling a Government or international organisation to perform or abstain from performing any act" (art. 1 of the text), which could apply to any protest movement, and "causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss" (art. 1.d). To counteract the threat that it may limit legitimate rights, a declaration was included in the Framework Decision on combating terrorism (recital 10) that read:

> *Nothing in this Framework Decision may be interpreted as being intended to reduce or restrict fundamental rights or freedoms such as the right to strike, freedom of assembly, of association or of expression, including the right of everyone to form and to join trade unions with others for the protection of his or her interests and the related right to demonstrate.*

But, statements do not carry the same weight as actions.

Nonetheless, the TESAT report's key finding for 2011 is a significant decrease in attacks by groups that are deemed established terrorist threats – none by Al Qaeda or "religiously-inspired terrorism" (unless the case in Germany is counted as such), while ETA in Spain has declared a ceasefire and a cessation of its armed activities. Police forces remain understandably wary about such developments but, if it were maintained in the long term, this could lead to the scaling back of antiterrorist policing activity. However, the report appears to indicate that other targets will be found to justify the use of this form of policing. This has serious implications for the movements that are targeted and on society at large by limiting rights and political freedoms, as well as granting exceptional surveillance and operational powers to police forces and undermining due legal protection for defendants. In particular, the attention paid to "radicalisation" has important implications on freedom of thought and expression. By focussing such efforts on so-called left-wing, anarchist or single-issue struggles classified as "terrorism" or "violent extremism," particularly in the context of an economic crisis and mobilisations and campaigns against measures tending towards "austerity," it could turn "antiterrorist policing" into "political policing."

Endnotes

1. A 22-year-old Kosovar, Arid Uka, was convicted on 10 February 2012 on two counts of murder and three of attempted murder, receiving a life sentence. Uka claimed that he did not belong to any terrorist group but was radicalised in the weeks before the attack after viewing footage of US soldiers raping a Muslim woman from the 2007 Brian De Palma anti-war film "Redacted." BBC online, 2.3.11, 10.2.12; Huffington Post, 11.2.12.

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EU: Secretive Frontex Working Group seeks to increase surveillance of travellers

by Chris Jones

Frontex has been negotiating in secret to grant state agencies greater access to the personal data of travellers entering the EU. No hard evidence has been presented by EU institutions to support Frontex's claim that this will lead to more effective border management and critics have warned that the mandatory collection of passenger information is entirely unnecessary and a disproportionate infringement of individual privacy.

The EU's border agency Frontex has for the last 18 months been coordinating meetings of a Working Group on Advance Information Challenges for the purpose of "fully exploiting the benefits of using Advance Information (Advance Passenger Information and/or Passenger Name Record) data for improved border management." [1] This boils down to encouraging the greater collection and analysis of personal information from people travelling into the European Union. However, despite significant interest from the law enforcement authorities of EU Member States and other countries, as well as multinational corporations, there is little evidence to suggest that schemes designed to exploit Advance Passenger Information (API) and Passenger Name Record (PNR) information are effective in achieving their stated purposes of separating 'bona fide' from 'illegitimate' travellers. This raises questions over the necessity of further extending systems already in place, particularly because the Working Group's meetings have been sheltered from public scrutiny.

API, PNR and proof

API and PNR data are gathered initially by airline or other travel companies (i.e. rail, maritime) when individuals purchase a ticket or embark on a journey. Originally collected solely for commercial purposes, API and PNR have come to be seen as legitimate targets for state capture and analysis. Governments and corporations have demonstrated an increasing interest in this type of data as part of ongoing efforts to address terrorism, transnational crime, irregular migration, and the illicit trafficking of humans and goods.

Advance Passenger Information [API] consists of the number and type of travel document used, nationality, full names, date of birth, border crossing point of entry into the territory of the Member States, code of transport, departure and arrival time of the transportation, total number of passengers carried on that transport, and the initial point of embarkation. *Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data* mandates the transfer of API from passengers entering EU territory to Member State law enforcement authorities. The Directive was enacted for rather vague counter-terrorism purposes and "in order to combat illegal immigration effectively and to improve border control." [2] EU countries are also obliged to hand API data to Canada [3] although this can sometimes be contained within PNR records and may also be transferred to those countries with which the EU has agreements on PNR data.

There are problems with the EU-wide implementation of the API Directive. It "has not led to a uniform approach between the Member States regarding the information requested from carriers." [4] A Commission study is currently looking into this, with the results expected in autumn this year. Following this, a report to the European Parliament and Council will be drafted "on the operation of the Directive and [will] evaluate the overall impacts and results in each Member State," according to a Commission spokesperson. So far: "no decision on whether to review/adjust the current legislation has been made." Staff at Frontex, however, have clear opinions on legislative adjustments. The agency's 2011 Work Programme notes that:

> *In view of the upcoming… review by the [Commission] of the Directive and in consultation with the [Commission], the need for harmonisation of the requirements used by the Member States that actively use API has been identified.[5]*

This has presented an opportunity to Frontex, which in the same document announces "a series of workshops" focusing on "identifying the future needs for advanced information, while at the same time facilitating the flow of persons crossing the border."

Passenger Name Record (PNR) data is more extensive than API and includes, amongst other things: date of reservation/issue of ticket; date(s) of intended travel; names; frequent flyer information; all available contact information (address, phone number, email); baggage information; travel itinerary; travel status of passenger (including confirmation and check-in status); any collected APIS (Advance Passenger Information System) information; and general remarks, which permits the provision of less standardised information. [6]

The EU currently has agreements requiring flights originating in the EU to transmit this information to the authorities of Australia, Canada, and the USA. The EU is currently discussing its own proposal for a EU-PNR system which will monitor everyone entering or exiting the EU – a majority of Member States are pushing for this to be extended even further to cover travel inside the EU too and, in time, to land, sea and air travel.[7] This would enforce the mandatory surveillance of all forms of transit travelling into and within the EU. Current agreements vary slightly but are all ostensibly geared towards addressing terrorism and serious crime, although

the substance of the EU-US agreement in fact goes far beyond this. [8]

There have been heated debates over legislation intended to allow the mandatory collection and analysis of API and PNR data by state agencies, with many considering such practices entirely unnecessary and a disproportionate infringement of individual privacy. Following the parliamentary vote endorsing the EU-US PNR Agreement, Jan Phillip Albrect (a Green MEP) stated that:

> *A majority of MEPs has today voted to reverse the European Parliament's long-standing role in defence of EU citizens' civil liberties and to endorse intrusive big brother style surveillance. Instead of rejecting this senseless and excessive collection and retention of private data, those MEPs who voted in favour of the deal have engaged in gross hypocrisy and sought to wash their hands of the PNR controversy.[9]*

The European Data Protection Supervisor, discussing PNR systems more generally, has noted that:

> *The fact that recent technological developments currently render wide access and analysis possible… is not in itself a justification for the development of a system aimed at the screening of all travellers. In other words: the availability of means should not justify the end.[10]*

No hard evidence has been presented by EU institutions to demonstrate the need for PNR collection and analysis, an omission that certainly raises questions over what is driving border control policy in Europe. The Commission's impact assessment on its proposal for an EU PNR scheme did not contain any statistical evidence, instead it relied on two anecdotes to make its case for the necessity of the system. [11] The Article 29 Working Party, made up of representatives of EU Member States' data protection authorities, has stated that:

> *There are no objective statistics of evidence which clearly show the value of PNR data in the international fight against terrorism and serious transnational crime.[12]*

In light of this, it would appear difficult to explain quite why so many states and institutions are so keen on the further collection and analysis of API and PNR data. Perhaps the most likely reason is that multinational IT and defence firms with an interest in the security industry – a number of which were invited to the most recent meeting of Frontex's Working Group – are seeking new markets, and there is no shortage of politicians anxious to demonstrate to the press and the public that they are "doing something" to protect the populace from all manner of real or imagined threats. One author argues that the growth of the security industry can, at least in part, be explained by the confluence of corporate, political and bureaucratic interests:

> *If marketing is about finding potential customers and then creating demand for your product, the security industry is rapidly becoming a textbook example of how to get rich quick without ever having to test your assumptions… These vested interests are not only a commercial force. Civil servants are more than ever using the fear of terrorism and the need to 'secure' our borders/children/property/energy to further their own interests.[13]*

Frontex and friends

The idea to convene a Working Group on Advance Information Challenges came from Frontex, and the group first met on 17 May 2011 at the agency's headquarters in Warsaw, with representatives from 18 EU Member States' present. The second meeting took place seven months later, on 17 January 2012. The third was held in Brussels over two days, 27 and 28 June. At this meeting representatives from various authorities of 20 EU Member States were present, along with two representatives from the Russian Mission to the EU, staff from two sub-directorates of the European Commission Directorate-General for Home Affairs (border management and return policy and security), and at least one representative of the US Department of Homeland Security. Representatives of data protection authorities have not attended any of the meetings, despite the issues raised by the collection and analysis of API and PNR data by state authorities.

Interested corporations were invited to attend the most recent meeting. The German airline Lufthansa gave a presentation on "Simplifying the Business" on the first day, while the second day was specifically set aside for industry presentations. These came from ARINC, IBM, SITA, Raytheon, Cap Gemini, Morpho and Indra, who were invited for their technological expertise and services in the following fields:

- API/PNR traveller data collection and processing;
- Using traveller data for law enforcement at the border;
- Supporting border management processes/Interoperability of border management systems

Literature produced by some of these corporations elucidates the vision that Frontex and the authorities of many EU Member States have for future systems of border control. ARINC, a US-based subsidiary of the Carlyle Group [14] produces an Advance Passenger Information System currently used by authorities in the Netherlands, Mexico, Costa Rica, El Salvador and numerous other states. The firm recently announced a pilot project with Cyprus "to support evaluation of the use of API as part of enhanced border control in Cyprus." A press release from the company announcing the pilot project quotes Ray Batt, director of ARINC's Government & Security operations: "We strongly believe that the future will demand a continuous increase in the integration of intelligence-led border control systems with advance border control information systems, using Advance Passenger Information (API). The use of API will help increase border security and make the process faster and simpler for the travelling public." [15] Meanwhile, those members of the travelling public who fall foul of "risk profiles" employed by law enforcement authorities are likely to find their journeys far more arduous.

The French firm Capgemini was also present at the meeting. The firm's UK website has an entire section that deals with "border management". Here the company promotes its contracts with the UK Home Office, noting its work to implement iris recognition-based biometric border control, a pilot of the UK's "e-Borders" system. Most crucially for its presence at the Working Group meeting, it also promotes involvement in:

> *[D]e-risking the work involved in data collection from airlines, name matching, watch listing and creating alerts. More recently, we have worked with the UK Border Agency to design its UK Border Force Intelligence Model, helped UKBA and BAA [British Airports Authority] to design an automated clearance system for frequent passengers.[16]*

Frontex agrees that future border control systems will "put additional emphasis on risk-analysis-driven border checks," in particular due to the growth in Registered Traveller Programmes. According to the agency's 2012 Work Programme: "pre-boarding activities, like the analysis of PNR or API, will gain in significance for border controls." [17] The proposed Registered Traveller Programme is, along with proposals for a massive border surveillance system (EUROSUR) and "smart borders", part of a significant attempt to technologically fortify the EU's borders and allow for the sifting of passengers on the basis of automated analysis of information. As one recent study notes, current proposals "would not only infringe fundamental rights, it would also, in spite of its questionable benefits, cost billions." [18]

This has not deterred attempts to introduce these sort of

schemes. The UK has undertaken several ambitious technological border control initiatives in the last decade, the most notable being an "e-Borders" system intended to "electronically record every person in the country." The company initially awarded the contract was Raytheon, an invitee at the most recent meeting of Frontex's Working Group. However, following "missed deadlines" and "substandard results" the Home Office terminated its contract with the company. Raytheon launched a lawsuit in response. [19] This is merely one example of many state projects based on advanced technology that have cost more than estimated and taken far longer to develop than intended. As recently as May 2012, the e-Borders project came in for heavy criticism, with a parliamentary committee noting that the system was "highly problematic" and that it "remains concerned about the progress of the e-Borders programme, which has now been undertaken by successive governments." [20] Another notable example is the EU's own second-generation Schengen Information System: "considerably over-budget and with no guarantee of completion." [21]

The UK, it should be noted, is one of a handful of EU Member States whose representatives have been present at every meeting of the Working Group. Staff from the UK Border Agency have also been joined on two occasions by representatives of the Home Office, and once by staff from British Airways. Estonia, Ireland, Germany, Latvia, Sweden, Spain and Poland are the only other states to have been present at all three of the Working Group's meetings. Lists of attendees at all of the Working Group's meetings are contained in the Annex: *http://www.statewatch.org/news/2012/oct/sw-cj-annex.pdf*

A closed debate

As noted above, the overall aim of the Working Group is to "bridge the gaps that prevent Member States from fully exploiting the benefits of using Advance Information for improved border management." Improving border management through the use of Advance Information will require significant work, judging by the "key gaps concerning the rollout and operation of Advance Information systems in the EU" identified "according to the input facilitated by the Member States":

- Lack of technical knowledge and of information on market options for decision-makers
- Lack of integration of API with first line border control (both manual and Automated Border Controls)
- Lack of integration between API and other information management systems, such as the Visa Information System (VIS)
- Unsatisfactory quality of the data transmitted by the airlines and lack of sufficient quality standards and requirements in this respect
- Limits to information sharing and absence of risk profiles which are common to the Schengen area
- Lack of resources to set up Advance Information Systems
- Inaccurate/uncertain perceptions of the costs and benefits of establishing Advance Information Systems

In order to deal with these problems, it was decided at the Working Group's most recent meeting to set up five sub-groups. Two of these were established by mid-July and a spokesperson for Frontex stated that: "three others will be established during August-September." The sub-groups will deal with the following:

- Architecture for Advance Information (AAI): the goal of this Task Group is to develop a reference architecture for a simple but highly effective API system;
- Risk Management (RM): it aims to develop best practice guidelines on the setting and operation of a targeting centre; develop best practice guidelines in the analysis of Advance Information; and share risk profiles;
- Data Quality (DQ): the objectives are to understand the sources and consequences of insufficient data quality; develop practical criteria for assessing data quality; and identify internal and external best practice guidelines for improving data quality;
- Funding (FUN): the goal is to develop best practice guidelines for gaining access to External Border Funds in order to finance the setting up of Advance Information systems;
- Costs and Benefits (CBA): this Task Group aims to identify costs/benefits mechanisms and key drivers; and to develop a cost-benefit analysis model

It is unknown which states and institutions are participating in each sub-group. However, the clear theme that emerges from the "key gaps" identified by and the stated aims of the sub-groups is the need to work more closely with industry in order to produce interoperable systems and the more effective collection and analysis of information. This in turn will permit the subsequent creation of Schengen-wide "risk profiles" in order to establish the criteria upon which it is possible "to verify if the 'profile' of a particular passenger may require a further control by the security services at the borders (or even before take-off)." [22] Such schemes raise questions over privacy, data protection, and the legitimate exercise of state power and should be subject to public scrutiny and debate. Up until now, this has not been the case.

Pushing the boundaries

The first public mention of the Advance Working Group on Information Challenges appeared on Frontex's website at the end of May, in an announcement geared towards the border control industry. A number of documents in the last two years have also hinted at the work being undertaken in the field of Advance Information. The Frontex 2011 Work Programme stated the following:

> *In the successful approach from the previous year for the development of best practices and guidelines will be further developed [sic], now regarding Advance Passenger Information (API). In 2011 the European Commission will undertake a review of the API Directive for which an input on best practices and guidelines would be of great importance. At the same time new ideas regarding API could be introduced. [23]*

It was in this Work Programme that the intention to host "a series of workshops", noted earlier, was announced. In the General Report for 2011, in reviewing the work undertaken by Frontex in that year the agency briefly summarised the project:

> *A project aimed at improving knowledge about the possible contribution of advance information (AI) to border control, specifically towards passenger facilitation and more cost effective risk management. The project covered three distinct specific objectives: current use of AI, challenges and areas for improvement, and best practice guidelines.[24]*

What this demonstrates is that Frontex has pushed its mandate to the limit, if not overstepped its bounds. The legislation applying to the agency until November 2011 permitted it only to "follow up on the developments in research relevant for the control and surveillance of external borders." When amendments to the legislation were finally passed in November 2011, the agency was then able to "proactively monitor and contribute to the developments in research relevant for the control and surveillance of external borders." This raises questions over whether prior to the enactment of the most recent amendments to legislation, the agency was going beyond the bounds of simply "following up on developments in research." The boundary between this and influencing policy-making seems rather blurred, a problem identified in a 2009 study into the role of the

EU's decentralised agencies which stated that:

> *Many agencies take a proactive part in shaping new policy issues and raising awareness of these issues among policy-makers, interest groups, and the wider public. In doing so, they play a political role, but this role is always left implicit by [those interviewed for the study] who seem to comply with the institutional division of responsibilities… The evaluation team considers it regrettable that these risks are not acknowledged in an explicit way and addressed as a governance issue.[25]*

The "US perspective"

While Frontex may have convened the Working Group there is no doubt that pressure to increase the use of advance information comes from a number of sources. The United States is a notable example. The Department of Homeland Security (DHS) sent at least one representative to the Working Group's most recent meeting, with a presentation made to the group on the first day covering "the US perspective." Despite repeated requests by *Statewatch* to the DHS for clarification on their role in the Working Group, they have refused to respond. Clues as to the interest of the US in encouraging border control systems based on advance information systems can however be found elsewhere.

Cables sent by US embassies across the EU in 2009 and 2010, released by Wikileaks, show that there has been significant questioning of European officials and diplomats over their states' role in establishing and advocating advance information-based border control systems. A cable from the US embassy in Bucharest, for example, states that officials from the Romanian Ministry of Foreign Affairs "commented explicitly that the United States could count on Romanian political support at the EU level for ratification of...the [EU-US] PNR agreement." [26] The US embassy in Lisbon noted with regard to both the Terrorist Finance Tracking Program and the EU-US PNR system that "we expect Portugal to make good on its pledge to work with other EU Member States to prevent and combat terrorism at the international level," [27] wording which would seem to indicate that the pledge was perhaps not made just to the EU and its Member States.

US interest in the proposal for an EU PNR, which would permit the collection and analysis of data on passengers flying (and possibly travelling by rail or sea) into the EU, is stark. A cable outlining a meeting between DHS Secretary Janet Napolitano and the EU's Justice and Home Affairs ministers in February 2009 notes that:

> *Ministers of many of the 33 European countries also addressed the plenary, most in support of increased cooperation with the United States, as the Secretary outlined. A primary subject of conversation, however, became the consensus toward establishment of an EU PNR collection and analysis capability. UK officials later confirmed that they, Spain, France, and others had cooperated before the plenary to achieve consensus on the idea. Denmark, Estonia, France, Germany, Spain, the Netherlands, Portugal, Slovenia, and the UK all spoke in favour. None opposed outright, although Belgium (and Slovenia, to a lesser degree) sounded notes of caution.[28]*

Whether there is consensus amongst the populations of those countries on the idea of an EU PNR scheme remains unknown because no citizens have yet been asked whether they approve of the idea.

Not all EU Member States agree entirely with the aims of US-EU cooperation. Following an October 2009 meeting with Germany's Federal Justice Minister, Sabine Leutheusser-Schnarrenberger, the Berlin embassy noted that they "expect Leutheusser-Schnarrenberger's emphasis on data protection to complicate US government security cooperation both bilaterally and with the European Union." [29] Despite these problems, the US has significant influence over EU security policy and its invitation to the most recent Working Group meeting will have provided aother opportunity to make its views known.

Future of the Working Group

With sub-groups either already in existence or in the process of being established, the Working Group seems set to undertake a significant amount of work and potentially find itself in a strong position to influence future developments in border control policy with relation to the use of advance information. Frontex's 2012 Work Programme notes that despite every EU Member State implementing the API Directive:

> *The roll out of API systems is very limited and heterogenous. Around 50% of MSs do not have an API system in place, and even if it exists, it is seldom used for vessel or railway traffic. This leaves a worrisome open back door for persons trying to enter the Schengen area without fulfilling all the entry requirements. [30]*

These comments, and discussions leading up to the proposal for an EU PNR system, would indicate a significant interest in establishing systems that would enable the systematic surveillance and assessment – based on "risk profiles" drawn up in secret – of all passengers entering, and possibly travelling within, the EU. Considering the intrusive nature of such schemes, the fact that their usefulness is highly questionable, and the involvement of numerous unaccountable individuals, institutions, and third states, the need for greater discussion over and scrutiny of both the Working Group and the subject matter with which it is concerned is urgent. In 2005, in a report on a proposed API and PNR agreement between the EU and Canada, the European Parliament noted that the collection and analysis of such data by law enforcement authorities could

> *open the way for a mass surveillance system and that there was a serious risk of violating the data protection principles enshrined in Article 286 of the Treaty Establishing the European Community, in the Directive 95/46/EC and in the Article 8 of the European Convention on Human Rights and Article 7 and 8 of the Charter of Fundamental Rights of the European Union. [31]*

Endnotes

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Reviews

Fuel on the Fire: Oil and Politics in Occupied Iraq, Greg Muttitt. *The Bodley Head, London*, 2011, pp. 433.
Reviewed by Chris Jones.

This is an extensive and exhaustive account of the politics of oil in Iraq following the 2003 invasion, demonstrating that while the narrative of "war for oil" employed by many of those opposed to the war was simplistic, it retained an essential truth. While both the US and UK governments certainly held an interest in letting 'their' companies obtain a share of Iraqi oil, their primary concern was to ensure a privatised supply to the world market. Muttitt takes the reader through the run-up to the war, the differing stages of the occupation, the intense struggle over the passing of an oil law, and the subsequent establishment of contracts with multinationals, despite agreement on the oil law still not having been reached.

Such machinations did not go unchallenged, and the book does a marvellous job of telling the story of the sections of Iraqi civil society that sought to oppose the plans of occupying governments and their corporate partners, in the face of massive power imbalances and often brutal violence. Trade unions in the oil sector are, unsurprisingly, given particular focus. Despite continual attempts to disregard and destroy workplace organisation – for example, with the Iraqi government using Saddam Hussein's anti-union laws – union leaders, and the workers behind them, refused to give up their fight to keep oil in public ownership.

The book reveals a side of Iraqi society that was almost entirely neglected by western media during the conflict and occupation. Muttitt refers frequently to news reports, official speeches and documentation that cite Iraqis only by reference to their religious or national identities – Sunni, Shia or Kurd. The insistence of occupation forces and their governments on dealing with the Iraqi population in this way did not, however, represent the sectarian nature of Iraqi society – rather, it helped to create it, leading the way to inter-communal hatred and violence and the building of walls and checkpoints amongst different neighbourhoods that are now a feature of Baghdad's landscape. One counterbalance to increasing sectarianism was the trade union movement, which to a remarkable degree succeeded in working together despite any differing social bases they may have had.

'I came here for peace: the systematic ill-treatment of migrants and refugees by state agents in Patras. *Pro Asyl*, 2012, pp. 28. Reviewed by Marie Martin

Since 2007 Greek organisations, international NGOs and institutional bodies (the UNHCR, Council of Europe's Committee Against Torture) have documented and denounced racist violence against migrants and refugees in Greece. In 2011, in two cases where migrants were supposed to be removed back to Greece in application of the Dublin II Regulation, the European Court of Human Rights and the European Court of Justice found that there was no guarantee of dignified living conditions or fair access to asylum there. There are daily reports of racist attacks against migrant communities, some resulting in fatalities. The German refugee and migrant rights NGO Pro Asyl has released an instructive report on the systematic violence by police officers and border guards against the migrant community in Greece, based on 31 interviews with migrants in the city of Patras (11 of them being minors).

- Racist violence in Greece: For the past few years, Greece has been described as the main entry point for irregular migrants in the EU. Not only do migrants enter through Greece, they also get stuck there. According to the EU Dublin Regulation, EU member states should fingerprint irregular migrants from the age of 14 and examine, except in rare cases, the asylum application of those seeking international protection. As a consequence, most irregular migrants in Greece, whether asylum-seekers or not, cannot go anywhere until they are granted legal residence. Those who are unregistered often live in deprivation and are unable to travel to another EU country irregularly, especially in the context of increased border control and growing hostility from the local population and the police.

The fact that migrants have no choice but to remain in Greece and live in deprivation does not win them much sympathy from some sectors of the population. Racist violence by far right groups has spread across the country and the perpetrators of these crimes do not seem to be only limited to far right activists. Violence became so systematic that the UNHCR and the Greek National Commission for Human Rights set up the Racist Violence Recording Network in Patras and Athens in 2011, an unprecedented monitoring initiative in an EU country by the UNHCR.

Economic hardship, scarce resources and growing support for the far-right have fuelled mistrust and anger against a scapegoat community: some politicians do not hesitate to refer to migrants (no matter their administrative status) as a "hygiene bomb" or a "financial burden." Violence and racism have openly reached the political and official sphere: the far-right Golden Dawn party won parliamentary seats in the last elections, and the Racist Violence Recording Network highlights "overlaps between racist and police violence." The government, which is still looking for funds to build a wall along the Evros River between Greece and Turkey, has announced it will build 30 immigration detention centres, a project which will be partly funded by the European Borders Fund.

- Surviving in Patras: Despite the obstacles to their mobility within the European Union, and probably because life in Greece

is made impossible for them, many still endeavour to pursue their journey to another EU country to lodge an asylum claim or in the hope of a better life. They temporarily establish themselves in cities, often living in abandoned barracks or factories, and try to stow away. Patras is one of these "exit points." In the past few years, the transit city has turned into "a highly militarized border area" and a "fortified port city."

Constantly harassed by the police, interviewees reported being arrested, abused (through the use of iron bars and electric shocks), issued with deportation orders and detained for undefined periods, although most cannot be sent to their country of origin (because it is considered unsafe.) Systematic violence is used even when migrants show no resistance, so much so that some interviewees referred to border guards and police officers as "commandos."

Despite allegations that the arrests are intended to protect migrants from unsafe living conditions and to remove those who have no right to stay in Greece, the report shows that law enforcement authorities contribute to their deprivation and insecurity: migrants who have a "pink card" (i.e. a permanent resident permit) are denied access to healthcare and any form of benefits or legal employment; police officers often tear up the pink card, thereby leaving the person in limbo with no proof of his/her legitimate right to stay in Greece; asylum-seekers cannot access legal aid.

Pushed into deprivation, forced to live in insecure conditions in abandoned buildings located in isolated areas and unable to fend for themselves, migrants and refugees rely on the support of a few NGOs for legal and social advice, and on charity organisations for survival. In the absence of any independent and effective police complaints mechanism in Greece – the law establishing a complaints commission has yet to be implemented – the police force is acting with complete impunity.

- The importance of reporting: Judging from testimonies from interviewees, migration policies and racist violence, the inhumane treatment and the limbo in which migrants and refugees are left is not unique to Greece: the situation echoes similar cases in Calais, France, Italy, (where even recognised refugees from Africa have to leave because of racism), Bulgaria and in Spain to quote but a few examples.

However, the difficulty to deal with migration at the EU level does not detach Greek authorities and law enforcement agents from their responsibility to treat every person under their jurisdiction in a dignified manner, as stated in the European Convention on Human Rights.In allowing the voice of migrants to be heard through the publication of abstracts of the interviews, ProAsyl's report is an important document which further substantiates Europes' poor human rights record when dealing with migrants, and Greece in particular. The report calls for the "physical and psychological violence to which migrants have been subjected by the Greek authorities both inside and outside the detention centres in Patras" to be investigated.

New material and sources

Civil liberties

Human rights and the peace settlement: Mapping the Rollback? *Just News* (Committee on the Administration of Justice) April 2012. The CAJ marks 14 years since the signing of the Good Friday Agreement in 1998 by outlining the ways in which the UK government and Northern Irish assembly have engaged in "persistent attempts at a 'rollback'" of human rights commitments. This includes failing to bring in a Bill of Rights for Northern Ireland as mandated by two documents; to implement commitments to provide safeguards against Northern Ireland's devolved institutions "acting incompatibly with international obligations"; to implement equal rights for women, more general equality rights and a number of other socio-economic commitments; and also to implement reforms in policing and security matters. For example, "covert policing and the running of national security agents has been substantively transferred to MI5 which falls outside the accountability arrangements." Commitments to end emergency legislation have been reversed, with Northern Ireland-specific legislation repealed but later reintroduced by a number of bills passed in the UK parliament.

Children in Military Custody. Sir Stephen Sedley, Baroness Patricia Scotland QC, Frances Oldham QC, Marianna Hildyard QC, Judy Khan QC, Jayne Harrill, Jude Lanchin, Greg Davies & Marc Mason. *Children in Military Custody* June 2012, pp. 45. This report was written by a delegation of British lawyers, sponsored by the UK's Foreign & Commonwealth Office, who investigated the treatment of Palestinian children held under Israeli military law. The delegation visited Israel and the West Bank in September 2011 and its terms of reference "were to undertake an evaluative analysis of Israeli military law and practice as they affect Palestinian children in the West Bank by reference to the standards of international law and international children's rights." The report makes three core recommendations: 1. International law should apply to the Occupied Palestinian Territories and should be fully and effectively implemented; 2. The international legal principle of the best interests of the child should be the primary consideration in all actions concerning children, whether undertaken by the military, police, public or private welfare institutions, courts of law, administrative authorities or legislative bodies and 3. Israel should not discriminate between those children over whom it exercises penal jurisdiction. Military law and public administration should deal with Palestinian children on an equal footing with Israeli children. There are further critical recommendations on the subjects of arrest, interrogation, bail hearings, plea bargains and trial, sentencing and detention, and complaints and monitoring: http://www.childreninmilitarycustody.org/

Immigration and asylum

"I don't feel human" - Experiences of destitution among young refugees and migrants, Ilona Pinter. *The Children's Society*, 2012, pp. 26. This report was published in reaction to the sharp increase of the number of destitute children amongst the 2,000 people the Children's Society supports every year (a third of the children supported in London between May and September 2011 were destitute). The organisation drew on individual cases as well as its expertise in the field of refugee and migrant children. The report gives an overview of the - in many respects inadequate - legal framework applicable to migrant and refugee children in accessing support; the financial pressure on local authorities which furthers the exclusion of many from the support they should be able to access; administrative obstacles for asylum-seekers (no access to the labour market for asylum-seeking parents; disputed age of child asylum-seekers); the absence of consideration for refugee and migrant children in the 2010 Child Poverty Strategy; the consequences of destitution on children's physical and mental health. Further to the Royal College of Psychiatrists which asserted in 2010 that "the psychological health of refugees and asylum seekers currently worsens on contact with the UK asylum system," the Children's Society emphasises that "children's rights continue to be breached for purposes of immigration control." The report recalls that estimates do not reveal the scale of destitution amongst refugee and migrant children as too many cases go unreported. The organisation calls for urgent action to be taken, for the Home Office to be accountable in the implementation of the Child Poverty Strategy, and for genuine support mechanisms to be established for all migrant and refugee children irrespective of their administrative status. Available as a free download: http://www.childrenssociety.org.uk/sites/default/files/tcs/research_docs/thechildrenssociety_idontfeelhuman_final.pdf

State Responses and Migrant Experiences with Human Smuggling: A Reality Check. Ilse van Liempt and Stephanie Sersli, *Antipode*, 2012, 18p. In the past few years, governments have been keen to denounce the smuggling of migrants as a dangerous, expensive and deceitful act that conflates smugglers with human traffickers. Ilse Van Liempt and Stephanie Sersli argue that this portrayal is flawed and follows the logic of criminalisation developed legally and politically by states. This strategy results from governments' unease with the irregular crossing of borders by a significant number of individuals, which challenge their notions of sovereignty. Over the years, "human smuggling has increasingly been framed as associated with terrorism" and organised crime, although "[i]n reality there are few smuggling cases where organized crime is proven to be involved." Misconceptions (e.g. migrants who can afford to pay a smuggler are too rich to be genuine asylum-seekers) and criminalisation have very serious consequences on migrants who enter a territory illegally and on those who support them. Detention is increasingly used as a sanction in a systematic way, while those who seek asylum are increasingly considered as data sources rather than people in need of protection (the asylum interview may often focus on how migrants reached the country rather than why they left their country of origin). By tracing the routes of irregular migration, governments aim to identify the first "safe country" where migrants have transited so that those who seek international protection can be "safely" removed there for their application to be examined. In Canada, a recognised refugee who has entered the country of asylum irregularly is now subject to a travel ban for five years, under recent legislation which is in breach of the Geneva Convention relating to the status of Refugees. The criminal character of the smuggler may even be applied to any person who supports migrants, for example in the Netherlands where support, even if not-profit based, is deemed criminal. Although the authors accept that there are some situations where smugglers abuse migrants, the interviews they conducted with smuggled migrants in the Netherlands and Canada show that smuggling is perceived as a legitimate means of crossing borders, and that migrants are aware of the risks they are taking. Some interviews even show a certain degree of sympathy for the smuggler. With this article, Van Liempt and Sersli reveal another aspect of the reality of smuggling which is missing in the wider picture of irregular migration: that of migrants who have no other choice but to cross the border irregularly and to pay for reaching their destination as legal mobility is made increasingly difficult, if not inaccessible.

Law

The UK and the European Court of Human Rights, Alice Donald, Jane Gordon and Philip Leach. *Equality and Human Rights Commission: Research report 83***,** April 2012. The UK's coalition government contains a number of MPs who have expressed opposition to human rights law, with one of their primary targets being the "foreign court" that resides in Strasbourg: the European Court of Human Rights. This report attempts to "debunk the myths about the European system of human rights protection and its impact upon the UK." Some of the key findings include the fact that the UK has "lost" only 215 of some 12,000 applications lodged against it between 1999 and 2010 – equivalent to less than 2% of cases. Furthermore, despite claims by ministers that the court increasingly deals with petty and rather minor issues, judgments against the UK "have frequently been serious and substantive in nature. Around one-third of all judgments against the UK have concerned the right to a fair trial and almost one in 12 has concerned either the right to life or the prohibition of torture – two rights of the most fundamental importance." For practical reasons, the report does not deal with every judgment relating to the UK, and covers instead six "thematic areas": protection of life and investigation into deaths; anti-terrorism and the prohibition of torture and inhuman or degrading treatment or punishment; protection from violence; individual liberties; freedom of expression, particularly of the media; and immigration and deportation. At 240 pages the report is a long but worthy attempt to rebalance the ongoing debate on the ECHR through detailed, factual research.

Section 44: stop and search code of practice consultation, Ayesha Kazmi & Philip Brennan. *Cageprisoners Briefing* March 2012, pp. 10. This report is Cageprisoners submission to the Home office counter-terrorism stop and search consultation. It analyses Section 44 of the Terrorism Act 2000 within its wider context "as one of many stop and search powers available to law enforcement authorities. In March of 2011 Section 44 was repealed after the European Court of Human Rights (ECHR) ruled this power illegal in January of 2010. Section 44 has since been replaced by Section 47A." Available as a free download at: http://www.cageprisoners.com/ourwork/reports/item/download/106

Military

Unacknowledged Deaths: Civilian Casualties in NATO's Air Campaign in Libya. *Human Rights Watch* May 2012, pp. 76 (ISBN: 1-56432-888-0). This HRW report investigates NATO air strikes and civilian casualties at the following Libyan sites: Tripoli (an air strike on the al-Gherari family home which killed five people); Sorman (multiple air strikes on the farm of the el-Hamedi family killed eight family members and five staff); Zliten (an air strike on the home of Mustafa al-Morabit killing his wife and two of their children); Majer (multiple air strikes hit the compounds of the Gafez and al-Jarud families killing 34 people); Bani Walid (air strikes on two houses owned by the Jfara family killing five members, including a nine-year-old girl); Sirte (a series of air strikes hit the seven-story Imarat al-Tameen apartment building and one man and one woman were killed; Al-Gurdabiya (an air strike hit the Gidwar family home killing one man and two girls, wounding at least four other people) and Sirte (an air strike struck the home of the Dyab family killing three women and four children and possibly Brig. Gen. Musbah Dyab). NATO contends that all of its targets were military objectives but HRW found that the "circumstances raise serious questions about whether these areas struck were valid military targets at the time of attack" and adds that NATO "has not provided adequate information to support those claims, despite repeated requests from Human Rights Watch, a United Nations Commission of Inquiry, and others." Available as a free download at: http://www.hrw.org/sites/default/files/reports/libya0512webwcover.pdf

Relatives edge closer to the truth about 'Britain's My Lai massacre', Owen Boycott. *The Guardian* 26.1.12. This legal investigation is the third (the others are in Kenya and Cyprus) examination of British military atrocities to come under the spotlight now that enough time has elapsed for nobody to be held accountable for them. The Foreign Office has deemed that the time is right to release some details of its colonial anti-communist counter-insurgency programme in Malaysia, but evidence directly relating to the Batang Kali massacre of 24 unarmed civilians in December 1948 remains inaccessible. Lawyers for the families say that their clients have called on "the state to take responsibility for the actions. It is necessary to get to the bottom of what happened. Extrajudicial executions by British troops have not ceased. There are recent examples [Iraq]. There are people who have been wronged and had no remedy at all."

Documents reveal British brutality in colonial Cyprus, Richard Norton-Taylor. *The Guardian* 27.7.12. Norton-Taylor reports on new documents that reveal how opponents of British colonial rule in Cyprus were "attacked and killed with impunity" by British soldiers during the 1950s. In one incident in which two people, one of whom was blind, were killed at a demonstration, the coroner said that the corporal who killed them "had no other choice" and commended the "courage and very commendable restraint" shown. In another incident a young soldier recorded seeing 150 soldiers "kicking Cypriots as they lay on the ground and beating them in the head, face and body with rifle butts." In 1957 a government white paper commented on reports of brutality by British forces by saying that we could rely on the forces' "traditions of humanity."

"Militants": media propaganda, Glenn Greenwald. *Salon*, 29.5.12. This piece outlines the way in which the US media has unquestioningly accepted the claims of the US government that those killed by drone strikes are all "militants." Greenwald draws on a *New York Times* article to show exactly what the definition of a "militant" is: "Mr Obama embraced a disputed method for counting civilian causalities that did little to box him in. It in effect counts all military-age males in a strike zone as combatants, according to several administration officials, unless there is explicit intelligence posthumously proving them innocent." Available at:

http://www.salon.com/2012/05/29/militants_media_propaganda/

Policing

Oppression and austerity fed the riots in Tottenham, Linton Kwesi Johnson. *The Guardian* 29.3.12. The reggae poet discusses last year's riots in the context of his 1981 poems, "Di Great Insohreckshan" and "Meken Histri", which takes the perspective of those who took part in the Brixton riots. Johnson accurately observes that "My early poetry sprang from the struggle against a racist police state. Regarding the police and young black people today, nothing has changed." He says in relation to the 2011 riots: "I was not at all surprised that the riots began in Tottenham in the light of the killing of Mark Duggan by a police officer and the history of conflict between police and the black community in that part of London. Given the continuing deaths of black people at the hands of the police or in police custody, the criminalisation of young black people, the disproportionate use of stop and search against black people, the charge of joint enterprise and the marginalisation and demonisation of sections of the working class, black and white, a riot was just waiting to happen."

Four days in August: the UK riots, Lee Bridges. *Race and Class* Volume 54, no. 1 (July-September) 2012, pp1-12. Given the outflowing of moral outrage and paucity of serious analysis following the riots of August 2011, this article comes as a welcome relief. Bridges locates his argument about the disturbances in a space that commentators, and notably politicians, have refused to consider: "how to address the political alienation among young people in general, and black and Asian youth in particular." Starting from the lamentable, but predictable, police disrespecting of the family of Mark Duggan in Tottenham, the author compares the role of the late Tottenham MP, Bernie Grant, who defended his constituents during the 1981 riots by commenting that "the police got a bloody good hiding." By contrast the Labour Party's current Tottenham MP, David Lammy, described the rioters as "mindless, mindless people." Bridges cites Gary Younge's perceptive response to the characterisation of the riots as simple outbreaks of irrational mass criminality: "Insisting on the criminality of those involved, as though that alone explains their motivation and the context is irrelevant, is fatuous. To stress criminality does not deny the political nature of what took place, it simply chooses to only partially describe it. They were looting, not shop-lifting, and challenging the police for control of the streets, not stealing coppers' hubcaps. When a group of people join forces to flout both law and social convention, they are acting politically. (The question, as yet unanswered, is to what purpose.)"

'One rule for them, and another rule for us': *Submission from a community-based perspective by Newham Monitoring Project (NMP). Home Affairs Committee Inquiry into the Independent Police Complaints Commission*, June 2012, pp. 10. This report is the submission to the Home Affairs Committee Inquiry into the Independent Police Complaints Commission (IPCC) by the Newham Monitoring Project (NMP), a "grassroots community-based anti-racist organisation, founded in 1980 by local people to monitor both racist attacks and the response to them by statutory agencies, in order to effectively campaign around the resultant issues for justice and change." The paper presents the following findings, amongst others: the IPCC has failed to impact at a grassroots level; the IPCC has not resolved significant and obvious weaknesses in the process and procedure for making a complaint; the IPCC's oversight of the police complaints system has not eradicated bias towards the police; complaints are often dismissed for being 'out of time' despite mitigation being presented; the IPCC does not acknowledge poor handling of first stage complaints by the Professional Services Department; the IPCC needs to be able to compel officers to be interviewed as witnesses and the IPCC has failed to make any detectable impact on poor or discriminatory practice relating to the use of stop and search powers. The submission can be downloaded at the NMP website: http://www.nmp.org.uk/

Police Violence in Greece: not just 'isolated incidents'. *Amnesty International* (Index: EUR 25/005/2012) July 2012, pp. 64. The Greek authorities classify human rights abuses by law enforcement officials as "isolated incidents" but this Amnesty report presents a different picture, documenting instances that range from fatal shootings, ill-treatment during arrest and/or detention, and the criminalisation of vulnerable groups, such as those detained for immigration purposes, who are particularly at risk. The "failure" of the Greek authorities to address these violations has led to an environment of impunity for these crimes that has made their victims reluctant to report them. Despite a series of recommendations to address these inadequacies made to the Greek authorities by bodies such by AI, the Council of Europe Commissioner for Human Rights, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), they have not been addressed by the establishment of an Office for Incidents of Arbitrary Conduct by Law Enforcement Officials in 2011. This report makes urgent recommendations to the Greek authorities to improve its law and practice. Available as free download at: http://www.amnesty.org/en/library/asset/EUR25/005/2012/en/edbf2deb-ae15-4409-b9ee-ee6c62b3f32b/eur250052012en.pdf

Prisons

Close Supervision Centres – Torture Units in the UK: voices from prisons within prisons, John Bowden. *Bristol Anarchist Black Cross,* 2012, pp. 32. This pamphlet gives first-hand accounts from inside maximum security segregation units by prisoners such as Kevan Thakrar and Kyle Major. It includes "articles, testimonies and denunciations from families, supporters, and other people fighting against these degrading and despicable institutions." It also includes commentary from John Bowden, whose investigations "have exposed the use of the CSCs, (supposedly designed to house dangerous prisoners or those posing a serious 'control problem') to warehouse men with acute mental health problems." Available as a free download: http://www.brightonabc.org.uk/news.html

Second Aggregate Report on Offender Management in Prisons: findings from a series of joint inspections by HM Inspectorate of Probation and HM Inspectorate of Prisons. Criminal Justice Joint Inspection 2012 pp. 36 (ISBN: 978-1-84099-551-0). This report is the second to be published from the joint Prison Offender Management Inspection programme, and it examines "how well work with prisoners is being carried out during their time in custody" in the context of reform. In their foreword, Liz Calderbank (HM Chief Inspector of Probation) and Nick Hardwick (HM Chief Inspector of Prisons) express disappointment at finding that rehabilitation "is not happening to any meaningful extent." They conclude: "A period of incarceration offers an opportunity to tackle a prisoner's entrenched behaviour and attitudes, and moreover to observe and capture on a day-to-day basis whether the necessary changes are taking place prior to release. Failing to capitalise on that opportunity is a waste of an expensive resource.": http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmiprobation/adult-inspection-reports/omi2/omi2-aggregate-report.pdf

Racism and Fascism

Pedlars of hate: the violent impact of the European far Right, Liz Fekete. *Institute of Race Relations* (ISBN 978-0-85001-071-9) pp 46. This report is divided into sections that delineate "the various stages that the far Right go through as its members make their way from racist ranting and the peddling of hate online, to violence and death on the streets, to the stockpiling of weapons in preparation for 'race war'." The 'lone wolves' theory is no longer credible, and while "fascism 1930s style is not just around the corner...new geographies of hate are developing, and certain regions, towns and cities are at risk from the propaganda and violence associated with fascism." In particular, with the growth of Europe's counter-jihadi movement and network of defence leagues, which depict the wars on Afghanistan and Iraq as conflicts between a superior civilisation and a barbaric Muslim enemy, are attempting to recruit returning soldiers and encouraging them to extend the fight to the Muslim enemy within. It is in this context, that the report draw attention to the "dangers posed when anti-democratic tendencies on societal, institutional and state security fronts combine."

Hate on the Streets: xenophobic violence in Greece. Human Rights Watch, July 2012, pp. 100 (ISBN: 1-56432-909-7). This report is based

on interviews carried out by HRW with 59 people who experienced or escaped a racist incident (including 51 violent attacks) between August 2009 and May 2012. The report notes that over the past decade Greece has become an inhospitable country for many foreigners, particularly for migrants and asylum seekers, who face a hostile environment, and may be subject to detention in inhuman and degrading conditions, risk destitution, and xenophobic violence. The report says: "Victims of xenophobic attacks in Athens face many obstacles in reporting crimes and activating a police response to attacks. Prosecutors and the courts have so far failed to aggressively prosecute racist and xenophobic violence for what it is. Preoccupied by the economic crisis and concerned with control of irregular immigration, national authorities — as well as the EU and the international community at large — have largely turned a blind eye." Available as a free download at: http://www.hrw.org/sites/default/files/reports/greece0712ForUpload_0.pdf

Report on the policing of the English Defence League and Counter Protests in Leicester on 4th February 2012. Netpol 2012, pp. 12. This report highlights a number of concerns about the response by police and local council to plans for a protest against a demonstration by the violently Islamaphobic English Defence League in Leicester. The report provides evidence that "Leicester City Council, in association with Leicester Constabulary, undertook a wide ranging programme to dissuade local people from engaging with or taking part in lawful marches and assemblies" countering the racists and questions the use of public money to do this. Netpol argues that the decision also raises serious questions in relation to the right to freedom of assembly and expression. The report also questions the use of the Children Act to intimidate youngsters from joining the protests against the EDL. The authors raise further concerns in relation to the policing strategy that was adopted, which allowed freedom of movement for the EDL while restricting the movement of Black/Asian and Muslim communities. http://www.scribd.com/doc/96993341/Report-on-the-Policing-of-the-EDL-and-Counter-Protests-in-Leicester2012

From voting to violence? Far right extremism in Britain, Matthew Goodwin and Professor Jocelyn Evans. HOPE not hate 2012, pp. 36. The report highlights the dominance of immigration and fear of Islam to supporters of both the British National Party (BNP) and United Kingdom Independence Party (UKIP). The report argues that "While there might be differences in the intensity of this animosity between BNP and UKIP supporters, hostility to immigration and Muslims is linked to a wider discontent with British democracy and distrust towards those who represent it." The report goes on to highlight that: "One of the most worrying aspects of this research is the attitude of BNP, UKIP and English Defence League (EDL) supporters to violence. There is a widespread belief that conflict between ethnic, racial and religious communities is inevitable and a frighteningly large number of respondents appear willing to engage in violence to protect their group from threats. Half of BNP supporters said that preparing for conflict was "always" or "sometimes" justifiable, with 21% saying that it was "always" justifiable." Available as a free download: http://www.channel4.com/media/c4-news/images/voting-to-violence%20%287%29.pdf

After Lawrence: racial violence and policing in the UK, Jon Burnett. *Race & Class 54(1*), 2012, pp. 7**.** 18-year old Stephen Lawrence was murdered in a racist attack in 1993 in Eltham, south London, in circumstances which, as reported in the Macpherson inquiry report, were emblematic of racist violence as well as police racism in Britain. Despite the ceaseless campaigning by Stephen's family and friends, it took almost 20 years before two of the murderers were found guilty by a court. The conviction was lauded by politicians and the Metropolitan (Met) police, who spun it as evidence that the UK was "less racist" than before and that the Met had gained professionalism in its relations with ethnic minorities. However, a few pages are enough for Burnett to illustrate with specific examples "the routine racist attacks, the harassment, abuse and violence experienced by thousands of people from black and minority ethnic communities each year" which "have remained almost entirely absent from the political agenda.".Far from being "less racist" as argued by prime minister David Cameron in January 2012, the author describes new forms of racism since Stephen's death, an evolution in which government rhetoric and policies played a major part. Growing scapegoating of "suspect" communities (e.g. bogus asylum-seekers, the use of counter-terrorism strategy against Muslim communities. the so-called "failure" of multiculturalism) is combined with profound economic hardship for many black and minority community members. Communities were often demonised by some local authorities who "accommodate[d] the messages of the far Right" resulting in attacks against black and minority communities. Burnett argues that racist violence is closely linked with the ghettoisation of communities, the economic deprivation of the working class and the use of the resulting tension for electoral purpose. A year after the riots in summer 2011 across the UK, this article casts an important political, economic and sociological light on the ongoing reality of racist violence in the UK and "institutional racism", a formulation which the police force, supposedly "transformed" after the Macpherson report, still resents (according to a 2005 Home Office study.)

Security and intelligence

CIA Prisons on Polish Soil – a new perspective, Adam Bodnar and Irmina Pacho. *New Eastern Europe* Number 3 (IV), 2012, pp. 78-83. This article discusses the CIA secret torture facility established at the School of Polish Intelligence at Stare-Kiejkuty in north-eastern Poland as part of the USAs "war on terror." The USA is banned by law from carrying out torture on its own soil and therefore decided to exploit its ally Poland, where torture and inhuman and degrading treatment (or enhanced interrogation techniques as the Bush clique preferred) is also prohibited – but not by superior American law. The authors attempt to trace the history of this abuse of the Polish constitution to some extent, but search forlornly for the truth and with absolutely no possibility of justice.

Jailed in Geneva – the colonel who stood up against Mubarak, but refused to spy for the Swiss, Robert Fisk. *The Independent*, 2.3.12. Colonel Mohamed el-Ghanem is a former Egyptian military officer who fled the country over a decade ago, following public denunciation of the Mubarak regime. He sought and obtained asylum in Switzerland, only to become embroiled in a series of events that has resulted in him being detained; sitting in silence in a cell in a Swiss prison. He was first "fingered by the Swiss security service as a dangerous Islamist subversive," then accused "of a Geneva assault which never took place"

Kenya terror suspects allege British intelligence played role in rendition and torture in Uganda, Ian Cobain. *The Guardian* 25.4.12. Habib Suleiman Njoroge and his brother Yahya Suleiman Mbuthia, along with Omar Awadh Omar, face terrorism charges in Uganda in relation to two bomb attacks on crowds of people watching the South Africa World Cup in Kenya in 2010. All of the men were rendered to Uganda, where they were handed over to the infamous Rapid Reaction Unit (RRU), which Human Rights Watch has described as "frequently operat[ing] outside the law, carrying out torture, extortion, and in some cases, extrajudicial killings." The men also allege that the UK and US intelligence offices were involved in their torture and abuse along with the RRU and are seeking disclosure of documents to prove the British government's collusion in unlawful rendition and torture.

Control orders in 2011: Final report of the independent reviewer on the Prevention of Terrorism Act 2005, David Anderson Q.C. *The Stationery Office* March 2012, pp. 130. (ISBN: 9780108511417). First report by the independent reviewer of terrorism legislation who describes control orders (which have now been replaced by the remarkably similar TPIMs) as being "towards the more repressive end of the spectrum of measures operated by comparable western democracies." The annual report sets out the full extent of the last government's control order system, as operated between 2005 and 2011, which saw more than 20 men suspected (but never tried in a court of law for lack of evidence) of involvement in Islamic terrorism who were sent into internal exile across the UK. The restrictions imposed on the men included: 16 hour curfews, geographical confinement, tagging, financial reporting requirements and strictly enforced limits on association and communication:

http://www.official-documents.gov.uk/document/other/9780108511417/9780108511417.pdf

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