

# Statewatch Supplement

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## Civil liberties

### Spain

#### Guantánamo Bay stopovers in Spain confirmed

The Spanish Ministry of Defence has confirmed that one of the flights suspected of carrying prisoners detained in Afghanistan in 2002 to Guantánamo Bay stopped at the US airbase at Rota (Cádiz) en route to the prison, as *El País* newspaper reported on 6 September 2008. The Permanent Hispanic-North American Committee provided documentation to judge Ismael Moreno of the *Audiencia Nacional*, who is conducting an investigation (see *Statewatch* Vol. 18 no 1), confirming that a C-17 aircraft (RCH 319Y) landed in Rota and stopped for several hours before taking off again towards the US base in Cuba. *Reprieve*, the UK-based organisation working on renditions whose lawyers represent several Guantánamo detainees, claims that around 20 people unlawfully detained in Afghanistan and Pakistan were on board the aircraft.

Stopovers by other flights at the US airbase in Morón de la Frontera (Seville) and the Spanish base in Torrejón de Ardoz (Madrid) were also confirmed. Another stopover (on 11 January 2002) in Morón, inferred from data provided by the Portuguese air traffic control authorities, was denied, as it was claimed that it only passed through Spanish airspace over the Strait of Gibraltar. This flight (RCH7502) was identified by *Reprieve* as the one that carried the first 23 prisoners to the Guantánamo detention camp. While AENA (*Aeropuertos Españoles y Navegación Aérea*, the Spanish airport and air traffic authority) previously denied any knowledge of this stopover, it now reportedly argues that it has no record of it, but this may have been because its databases gather information on general air traffic, and this is not the case for operational military air traffic. On the other hand, its records do contain data concerning 49 other flights by US aircraft heading for Guantánamo.

Subsequent documentation submitted to Moreno by the Defence Ministry explained that the majority of flights between Guantánamo and the airbases on Spanish territory in Rota, Morón de la Frontera and Torrejón de Ardoz were alleged to fall under the category of "providing logistical support". Moreover, it acknowledges that permission was granted for 13 stopovers in Spanish territory (of which 12 are recognised as having occurred), and a further 13 flights passed through Spanish airspace, over the Strait of Gibraltar. However, this data only refers to flights by the US Air Force which operate under the terms of a bilateral agreement, unlike CIA flights which are civil flights under the guise of commercial entities acting as front companies to cover their real purpose. The authorised flights were described as "providing logical support", "transporting US personnel", "transporting

US defence department personnel”, “transporting US military forces and material”, and “providing operational support”. The two flights that carried prisoners did not travel to Guantánamo, but proceeded from there, carrying Moroccan national Lahcen Ikassrien to Madrid (in a C-17 on 18 July 2005) to be questioned by judge Baltasar Garzón in connection with the 11 March 2004 terrorist attack, and a C-20 that stopped over in Palma de Mallorca on 30 September 2005 and carried a detainee extradited from the US naval base in Cuba to Cairo.

Miguel González, in an article in *El País* (6 October 2008), notes that it is unusual for logistical support flights to travel from Spain to Guantánamo, when the latter is only 800 km away from US bases in Florida. Changes to the 1989 bilateral defence agreement between the US and Spain adopted in 2002 made controls on US aircraft using Rota and Morón airbases less stringent, replacing prior notification for a “general quarterly authorisation”, while ruling out the transport of goods or passengers that “may be controversial for Spain” (see *Statewatch* Vol. 18 no 1). The Pentagon wrote to the Spanish defence ministry in 2007 to guarantee that its flights that stopped over in Spain had complied with this requirement, and a similar assurance (in writing) was required by the Spanish defence ministry before it authorised two further flights to stop in Rota en route to Guantánamo in 2007. Nonetheless, Reprieve claims that the second flight on the list submitted by the defence ministry, a C-17 that stopped in Rota on 28 October 2002, carried at least two minors, the Afghan Shams Ullah and the Canadian Omar Khard, who were taken to Guantánamo after being detained in Afghanistan. *El País*, 6.9, 6.10.08.

## UK

### UN report criticises government’s treatment of children

In October 2008, the UN Committee on the Rights of the Child reported that the UK government is failing to meet legal and social international standards for the treatment of its 13.1 million children. The body, which is comprised of 18 human rights experts, exists to monitor how well UN countries implement the Convention on the Rights of the Child. It publishes its findings for each country every five years. Its latest UK report addresses a wide range of issues and makes over 150 recommendations. These include:

- The raising of the age of criminal responsibility and the removal of the “discriminatory” variation between Scotland (where the minimum age is eight) and the rest of the UK (where it is ten).
- Further increases in government expenditure on children to sufficiently tackle issues of child poverty and inequality.
- The review and abolition of anti-social

behaviour orders. The report notes that most ASBO recipients are from disadvantaged backgrounds and suggests that far from being in a child’s best interests, they “contribute to their entry into contact with the criminal justice system” (See *Statewatch’s Asbowatch website*)

- Fewer restrictions on child rights of assembly that are currently being impeded by “dispersal zones” and the use of “mosquito” devices - which emit high pitched ultra-sonic tones at a frequency only those under the age of 25 can fully hear (see *Statewatch* Vol. 17 no 4)

- The banning of all forms of corporal punishment including those “in the family” such as smacking. Further, the government should “explicitly prohibit” its use in schools.

- Tighter controls over children’s privacy in the media - specifically through greater regulation of their appearance in reality television shows which, the Committee says, are increasingly portraying children in a negative light.

The report also expressed concern that a child’s DNA record is held in the national database regardless of whether or not they are charged with a crime, let alone found guilty.

A copy of the report can be found at:

<http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

## UK

### Charges to be reinstated against “betrayed” Guantanamo prisoner?

On 16 October the US Justice Department dropped the key charge against the last British resident held at Guantanamo Bay, Binyam Mohamed (30), which alleged that he was involved with US citizen, Jose Padilla, in a plot to explode a “dirty bomb” in the USA (Padilla never faced charges in relation to the bomb plot because his status as a US citizen merited him the right to appear at a court under civilian jurisdiction where he was convicted of separate offences). Binyam has denied any connection with terrorism, including the so-called “dirty bomb” plot, and says that any confessions he made were extracted under torture. Five days later Reprieve, the charity which has supported the human and legal rights of prisoners detained unlawfully at Guantánamo Bay, announced that:

*the US military has dropped all charges against Mr. Mohamed in his proposed trial by Military Commission at Guantanamo. Last night the so-called Convening Authority, Susan Crawford, dismissed all charges without prejudice.*

However, this glimmer of hope was short-lived as the military has now informed Reprieve that they will place further charges after the US presidential election.

In early October Binyam, in statements released through *The Independent* newspaper as he awaited

trial in front of a Military Commission, spoke of his “betrayal” by the British government over its refusal to release evidence that would have demonstrated his innocence, (see *Statewatch supplement* August 2008). He told the newspaper that MI5 agents were lying about their knowledge of his capture in Pakistan in May 2002 and the CIA’s rendition flight to Morocco in July 2002, where he was horrifically tortured for 18 months before being taken to Afghanistan and detained and abused for a further nine months in the notorious “Dark Prison”, near Kabul.

UK government lawyers have refused repeated requests from Binyam’s representatives to co-operate, arguing that they have no legal responsibility to do so. This led Binyam’s lawyers to sue the government, arguing that information was needed to mount an effective defence, which resulted in a judicial review in July. The review concluded that the Foreign Secretary, David Milliband, was “under a duty” to disclose information to Binyam’s lawyers; this was “not only necessary but essential for his defence” because the Foreign Secretary had accepted that Binyam had “established an arguable case” and that, until his transfer to Guantanamo:

*he was subject to cruel, inhuman and degrading treatment by or on behalf of the United States” [and was also] subject to torture during such detention by or on behalf of the United States.*

In response to the judicial review, Binyam made the following statement on 11 August:

*I have learned that the UK has refused to give my lawyers information to help me prove my innocence - and that the UK has taken the position in court that I will get all the information I could possibly need through the rigged military courts, or through the “habeas” process.*

*How can they possibly be taking this position? Lord Steyn himself called these commissions “kangaroo courts” years ago, and he was exactly right. And I understand the official UK position to be that the commissions were unfair, and illegal, and that Britons should never be forced to go through them.*

*So how, then, can they say that the very people who tortured me, rendered me, and now want to try me in a kangaroo court will just hand over the evidence of their own criminal acts? For the UK to say this is naïve, at the best, and a betrayal, at worst.*

*And as for habeas - I have been here for over six years, and I have yet to see a single scrap of proof come out of habeas. Why should I, or the UK, think it will be different now?*

*The UK has spoken to me. The UK knows, I believe, what I go through every day. The UK should understand that no person could withstand this kind of treatment for much longer. To leave me in these conditions and, to add insult to injury, to defend the rigged process I am facing here is a disgrace. I hope the UK government will reconsider its position before it is too late.”*

Two weeks after the US dropped the charges against Binyam Mohamed in October, the British government

eventually plucked up the courage to refer the case to the Attorney General to investigate potential prosecution of those who rendered him for torture. Meanwhile the US military has informed Reprieve that they plan to charge Binyam again “after the [US presidential] election.” While president-elect Obama has described Guantanamo as a “sad chapter in American history” and stated that the military tribunal system has not worked, his advisors are said to be working on a plans for more “special courts” which will remove those cases deemed sensitive from the protections of civilian law.

Currently, there are around 250 detainees still incarcerated without trial in the infamous gulag. At least 50 of these people have been cleared by the US for release, but because of their branding as terrorists and subsequent removal from the protection of the law, they now face further persecution as terrorists in their countries of origin. The US refuses to allow these victims of their justice system into the United States but has been unable to find anyone else to take them. In October US district judge Ricardo Urbina said that 17 Uighur prisoners, cleared for release from Guantanamo by the military in 2004, should be released and sent to the USA as there was no evidence that they were combatants or a security risk - they are still in limbo at Guantanamo Bay.

To date two men have been pronounced guilty by the US military court system. Salim Ahmed Hamdan, a 40-year-old Yemeni national, was deemed “guilty” of material support for terrorism but innocent of conspiracy charges and sentenced to five and a half years: it is a measure of the US concept of justice that, even if he had been acquitted on all counts, the US government had reserved the right to hold Hamdan indefinitely. In early November Al Hamza al-Bahlul (39) from Yemen was convicted by nine military officers on 35 charges and sentenced to life in prison; the so-called “evidence” against him went unchallenged as Bahlul refused to call witnesses or to stage a defence after being refused permission to defend himself.

*Robert Verkaik “Briton held in Guantanamo hits out at ‘disgraceful’ UK Government” The Independent 10.9.08;*

*Reprieve News release “In a plea from Guantanamo, Binyam Mohammed talks of “betrayal” by the UK” 12.9.08;*

*Reprieve “US Justice Department drops “dirty bomb plot” allegation against Binyam Mohamed”;*

*Reprieve press release “US Military Drops Guantanamo Charges Against British Resident Binyam Mohamed” 23.10.08.*

### **Civil liberties – in brief**

**UK: Shackles supplier to Guantanamo will close:** Hiatt and Company, the UK based firm that manufactures shackles for use on the victims of the USA’s war on terror, is to close. The Birmingham based company makes handcuffs for most of Britain’s police forces as well as its sideline in support of the policy of “extraordinary rendition” (the abduction,

incarceration and outsourced torture of suspected political opponents). Hiatt has been marketing its wares for more than 200 years and is infamous for selling what it called “nigger collars” during the Slave Trade. The company had maintained its business to the present day leading to it being picketed by groups such as Reprieve and Amnesty International, most notably on the fifth anniversary of the opening of the Guantanamo Bay gulag. One person subject to US “justice”, Moazzam Begg, has described how the firm’s shackles were used to bind him during his unlawful incarceration: “When I was in Guantanamo Bay, one of the things I pointed out to my lawyer was how it was ironic that these shackles were made in England, just like me and him. It was very bizarre.” Clive Stafford Smith, the legal representative of many of Guantanamo’s prisoners, said that he had seen dozens of detainees being restrained by Hiatt cuffs. BAE Systems, Hiatt’s parent company, has confirmed that the British business is to close and that it will move to a new factory in the USA, where it will manufacture a range of cuffs in different colours, pink, purple, blue, yellow and orange, for the discerning law-enforcement agent. *Reprieve*, PO Box 52742, London EC4P 4WS; email: [info@reprieve.org.uk](mailto:info@reprieve.org.uk); Times 30.6.08

## Law

### Italy

#### A proliferation of forbidden conducts

New powers given to local councils in the “security package” approved on 23 May 2008, under article 5 of law decree no. 92 (which came into force on 5 August and was converted into a law on 9 August 2008), allow them to issue orders in the fields of public order and security, to carry out security and judicial police functions and to monitor anything that is relevant for public order and security. The summer months have seen a number of councils adopting sanctions against all manner of conducts, (see *Statewatch* Vol. 18 no 2).

The following is a translated extract from an article entitled “*L’estate dei divieti. Spiagge, parchi e strade come caserme*” (“The summer of prohibitions. Beaches, parks and streets like barracks”), published in the weekly anarchist bulletin *Umanità Nova* no. 27 of 7 September 2008.

*In the past, the first citizen [the mayor] could issue ‘acts that are attributed to him/her by laws and regulations in the field of public order and security’. Now the mayor is responsible for the surveillance ‘of anything that may concern public order and security, informing the prefetto [the police chief in a given town] in advance’. In this way, the mayors have the power to issue ordinances on anything that may concern “security and urban decorum”, imposing administrative sanctions, that is, fines and judicial seizures, on offenders. The Maroni [the interior minister] decree became law on 9 August and was immediately followed by a plethora of ordinances by mayors in cities*

*and towns throughout the peninsula. The first victims of the ordinances were migrants and vagrants. In many cities (including Rimini, Alassio and Venice), street-selling by foreigners, including those with a license, was forbidden. In several places, such as Rome, Venice or Florence, it was prohibited to carry merchandise in a big sports bag, plastic bag or similar items.*

*In some cases, local traffic police officers (as happened several times in Rimini) unleashed veritable manhunts on the beach to ensure that prohibitions were respected. In Ostia, one of the most frequented beaches on the Tyrrhenian, a hunt targeting hawkers was “strengthened” with the help of surveillance by helicopters flying over the coast at low altitude to detect “sellers of counterfeit labels”.*

*After Chinese masseuses were banned from the coasts in Tuscany and Romagna (with regional laws approved for this purpose by the ‘red’ Emilia-Romagna and Tuscany) through a circular order by Francesca Martini, the under-secretary for Welfare, throughout the national territory, massages given by migrants were forbidden due to the risk that the “aesthetic or therapeutic services” are offered by people who “may not possess adequate experience”.*

*However, the hunting of vagrants and beggars (something not seen since the first half of the 1800s) was the main dish served up in the summer of “ordinances”. First off the mark was the mayor of Assisi, who immediately forbade begging and “nomadism”, drawing praise from the monks as beggars are perceived as driving tourists away from the basilica and the tomb of Saint Francis. Meanwhile, on 10 August, following the Maroni decree, 2,412 homeless people were identified in a single day in Milan.*

*In Pescara, Bologna, Florence, Padua, Verona, Turin, Trieste and Cortina, the council authorities decided to impose very heavy fines on those begging to raise enough money to get through the day. In Verona, the proceeds of begging are confiscated as well, as is any other money found on beggars. Then, there is a series of other ordinances that concern so-called “urban decorum”. The frontrunner in this specialty is Florence, which has always been riven by the feuding of the PCI/PDS/DS/DP [the leading Communist and then centre-left parties].*

*On 11 August, the urban police’s regulation, euphemistically entitled “Norms for civil coexistence in the city”, came into force. Among other things, it stipulates that it is forbidden to lie down in the street, wash one’s armpits in public fountains, tie a bicycle to a bench, feed pigeons, play with a ball or frisbee in the street and public parks, beating towels on balconies, cleaning windscreens or asking to have one’s windscreen cleaned at traffic lights, “indecorously” eating a meal in public, throwing cigarette butts on the ground (although there aren’t any ashtrays in the street yet, etc.).*

*Such imagination has had its imitators in several other parts of the peninsula. In Viareggio, Capri, Amalfi,*

Riccione, Forte dei Marmi, Venezia, Alassio and Taormina, it is forbidden to wander with one's top off, other than on the beach. Drinks in glass containers are prohibited in the evening in Pisa, Ravenna, Genova, Monza, and Brescia. [There is] zero tolerance for smokers in Is Aruttas, in the province of Oristano, and whoever smokes on the beach risks a 360 Euro fine. Beaches in general have become places that are not easy to visit. Across Tuscany it is forbidden to lay down one's towel less than 5 metres away from the shore and sand castles are also forbidden because "they obstruct the passageway" and this is also the case for playing with a ball or bats and a tennis ball.

In Ravenna, meanwhile, whoever bathes in the sea after eight pm is to be punished with a 1,000 Euro fine. All public spaces are regulated. In Novara, access to parks and gardens is forbidden "to groups comprising more than two people between 23:30 and 6 in the morning", and those transgressing are to be punished with a fine of up to 500 Euros. In Voghera, the ordinance proposed by the local police council officer, Vincenzo Giugliano (of Alleanza Nazionale), limits itself to prohibiting the use of benches to groups of more than three people. But there is no limit to this frenzy of limits. In Eboli, the mayor has introduced a fine of 500 Euros for effusive behaviour in a car. Cortina will clear its city centre streets of "false social promoters". To counter paedophiles, the Trento town council has prohibited the filming of children in swimming pools. Finally, close to Milan, Trezzano sul Naviglio has established a Sex Tax (500 Euros), applying it to those drivers who stop for a moment or carry out sudden manoeuvres in areas where prostitution is practised."

Umanità Nova, no.27 of 7 September 2008, year 88. Available : <http://isole.ecn.org/uenne/archivio/archivio2008/un27/art5400.html>

## Greece/Italy

### EAW for petty drugs offence

Luca Zanotti, an Italian student who was caught with 21.95g of hashish in his car by the Greek traffic police in Kalamata while on holiday with his friend, Davide D'Orsi, in September 2005, was arrested on 16 September and extradited to Greece. A *Corte di Cassazione* (Italy's highest appeal court) ruling on 21 August that rejected his appeal and instructed Italy to execute the European arrest warrant issued against him by Greek judicial authorities. For their holiday stash, Zanotti and D'Orsi face possible charges of: international drug trafficking for the purpose of dealing; transporting drugs for the purpose of dealing; possession of drugs for the purpose of dealing; and consumption of drugs. In April 2008, the Kalamata public prosecutor issued the European arrest warrants, which stated that in Greece, the offence of international trafficking in drugs for the purpose of dealing entails a minimum custodial sentence of ten years.

In fact, Greek law does not establish a clear distinction between possession for personal use and for drug dealing. Previous appeals filed before the Bologna court of appeal surprisingly resulted in different outcomes for the two defendants: Zanotti's resulted in a

ruling ordering compliance with the arrest warrant, but a fortnight later, Davide D'Orsi appeal ended with the court rejecting the arrest warrant against him, on the grounds that the charges were not justified.

After they were caught on the fourth day of their holiday, Zanotti and D'Orsi spent four days in prison before they were released on bail (euro 2,500) and returned to Italy. They missed hearings in January and November 2007, mistakenly believing that their lawyer could represent them without their being present. The warrant envisages Zanotti being held in custody in Greece (he is currently in Napflios prison, not far from Athens) until his trial, and the *Corte di Cassazione* ruling stated that he would be handed to Greek authorities on condition that "he would serve the sentence that may be passed against him in an Italian prison".

Considering that under both Italian and Greek law the facts may be construed as an offence carrying at least 12 months in prison (although this would not generally be the case in Italy, particularly in the case of a first offence), that under the European Union's institutional framework member's states' legal orders can no longer be treated as "foreign", the court of appeal's decision that Italy must comply with the arrest warrant is deemed to be correct.

Zanotti received bi-partisan support from his local council and politicians from the region, with Sergio Pizzolante of the centre-right *Partito della Libertà* arguing that:

*I find it absurd that a 25-year-old lad can be arrested for a crime that would not be [treated as] such in Italy.*

However, as stated by the *Corte di Cassazione*:

*the listing of the criminal conducts...details the crimes committed in Greece. Crimes which do not pose the issue of verifying double indictability" and which fall under the category of conducts for which a "handover is obligatory".*

The latest news from Greece is that Zanotti is well, the trial has been scheduled for 21 October 2008, and Zanotti's Greek lawyer, Georgios Assimakis, believes that "the Greek authorities do not believe that Luca is a trafficker", which could lead to a shorter sentence.

Davide D'Orsi's successful appeal against the execution of the European arrest warrant "cannot have any effect on Zanotti's position". Nonetheless, it seems that the two cases, which are almost identical, are influencing each other, as the *Corte di Cassazione* followed its ruling against Zanotti on 21 August by accepting an appeal against the court of appeal's decision filed by the Bologna prosecutor's office, quashing the court of appeal's ruling that D'Orsi should not be extradited and ordering that the appeal be heard again in Bologna.

ANSA, 29.8.08; *Notiziario ADUC*, 29.8.08; *Il Resto del Carlino*, 18, 19.9.08; *La Stampa*, 23.8.08; *La Voce*, 29.6.08; *Newsrimini.it*, 22.8.08; *Repubblica*, 17.9.08; for news and updates, see the "Aiutiamo Luca e Davide" blog at: <http://aiutiamolucaedavide.blogspot.com> ; and

[www.fuoriluogo.it](http://www.fuoriluogo.it) . *The Corte di Cassazione ruling (full-text) is available at:*  
[http://legale.antiproibizionisti.it/documenti/cassazione\\_34295-20080821.pdf](http://legale.antiproibizionisti.it/documenti/cassazione_34295-20080821.pdf)

## UK/Diego Garcia

### “The law gives and the law may take away”

In October families sent into exile to Mauritius from their homes on the Chagos Islands in the Indian Ocean - to make way for a US military base - lost by a narrow 3-2 ruling their final appeal to the Law Lords to be allowed to return home. In 1968 up to 2,000 men, women and children were summarily evicted (“sanitised” as the Americans described it) from the islands to make way for the Diego Garcia airbase and banned from returning. The Law Lords maintained that prerogative orders made by the UK’s Queen preventing the islanders’ return were not unlawful, as had been argued at the High Court when the Chagossians won an earlier legal battle for the right to return to the sixty-five islands.

The royal prerogative order process used to evict the islanders has been described by John Pilger:

*The cover-up went to the very top. On November 5 and 8 1965, the Colonial Secretary, Anthony Greenwood, wrote two secret minutes to Prime Minister Harold Wilson, in which he described the problem of a “population of 1,000 inhabitants” living in the Chagos. He urged that the Queen quickly approve the “order-in-council detaching the islands” so that the new colony could be declared and “we should be able to present the UN with a fait accompli.*

*So when Wilson gave the green light to the order-in-council, he was aware he was overriding the legal and human rights of British citizens. He was stealing their country and ignoring the risks of “dumping unemployables in heavily over-populated Mauritius...*

Last July the Foreign Affairs Committee concluded that “there is a strong moral case for the UK permitting and supporting a return to the British Indian Ocean Territory for the Chagossians”, (See *Statewatch Supplement* August 2008). Olivier Bancoult, who led the campaign for return, has pledged to continue the fight and said that he hoped the European Court would rule that the Chagos Islanders were protected by human rights legislation.

The Law Lords’ ruling accepts the British and United States governments’ argument that the return of the indigenous inhabitants, and their welfare, has no substance when balanced against the *potential* for interference with the security of the Diego Garcia military base. The US had asserted that the islands *might* be useful to terrorists and Lord Hoffman said that the UK government was entitled to legislate in its security interests. Lawyers had argued that the UK government did not have the power to remove the islanders’ right of abode, citing Magna Carta:

*no freeman shall be taken, or imprisoned...or exiled, or otherwise destroyed... but by the lawful judgement of his peers, or by the law of the land.*

The outcome means that the Chagos islanders will continue to require immigration consent to visit their

birthplace and the graves of their ancestors.

Moreover, the Law Lords ruling seems to accept the right of the United States to abduct civilians, remove them from the protection of the law and torture them with impunity. Earlier this year, the Foreign Affairs Committee condemned as “deplorable” that fact that “previous US assurances about rendition flights [to Diego Garcia] have turned out to be false”.

One’s birthright can be given or removed at the whim of powerful people or, as Lord Hoffman succinctly put it:

*The law gives it and the law may take it away.*

John Pilger “Out of Eden”:

<http://www.johnpilger.com/page.asp?partid=351>

“John Pilger cheers the islanders fighting dirty tricks” *New Statesman* 18.10.04:

<http://www.newstatesman.com/200410180014>

Foreign Affairs Committee “Overseas Territories” 6.7.08

<http://www.publications.uk/pa/cm/cmffaff.htm>

“Order banning Chagos Islanders not unlawful” *Times Law Report* 23.10.08

### Law - in brief

**UK: Goldsmith’s “fatuous” Iraq advice violated “international law”:** Lord Bingham, the former senior law lord who retired earlier this year, has told the British Institute of International and Comparative Law that the advice given in 2003 by then Attorney General, Lord Goldsmith, to former-prime minister, Tony Blair, on the validity of the Iraq war was “flawed”. Bingham, who failed to express a view while a sitting judge, said that the unilateral action by the USA and the UK had undermined the foundation of the post-1945 consensus that held that force (except in self-defence or an impending humanitarian catastrophe) needed to be formally authorised by the United Nations’ Security Council. Bingham argued that Goldsmith did not address the lack of evidence about Iraq’s failure to meet UN resolutions and did not make clear that only the Security Council could authorise further action the Iraq. He further observed that Goldsmith’s argument in favour of the invasion had been as “unconvincing”, a “bad argument” and “fatuous” by three other leading QC’s. He said: “The moment that a state treats the rules of international law as binding on others but not on itself, the compact on which the law rests was broken” and added that if military action was unauthorised, “there was, of course, a serious violation of international law and of the rule of law”. Goldsmith told the *Telegraph*: “I stand by my advice of March 2003 that it was legal for Britain to take military action in Iraq. I would not have given that advice if it were not genuinely my view.” *Daily Telegraph* 17.11.08

# Military

## UK

### British army suicides and bullying allegations continue

A BBC television documentary, *Undercover Soldier*, which was aired in September to investigate if the army had stamped out bullying in the aftermath of the Deepcut scandal, has resulted in five army instructors at the Caterick training base in North Yorkshire, being suspended while military authorities carry out an investigation. In the programme reporter, Russell Sharp, went undercover for six months, and discovered “shocking” racism and bullying. Sharp alleges that he also was manhandled by one of the trainers. In the programme recruits complained of being punched, battered and kicked and one claimed that he was urinated on by a corporal who laughed at him when he complained.

Within days of the programme a 29-year old army recruit was found hanged at the Alexander Barracks at the Pirbright Training Centre, in Surrey. Anthony Manuel Jose Hernandez had joined the army five days earlier. The Pirbright centre, which opened this year, is less than a mile from the Deepcut Barracks where four young recruits, Sean Benton (20), James Collinson (17), Geoff Grey (17) and Cheryl James (19) died of bullet wounds in separate incidents between 1995 and 2002. Parents of the victims say that they are still trying to get answers to their questions despite the Ministry of Defence (MoD) commissioning a review of the deaths that recommended new training and complaints procedures to tackle the bullying of recruits. The MoD announced the closure of Deepcut in January 2008. Surrey police have launched an inquiry into the Pirbright death.

In July three soldiers were cleared of the manslaughter of Private Gavin Williams (22) who collapsed and died at Lucknow Barracks, Tidworth, after being forced to carry out an informal punishment known as “beasting” (rough treatment, in this case an intense session of physical exercise) for drunkenness in 2006. Following the acquittal of the three soldiers the trial judge, Mr Justice Royce, criticised the army for allowing the punishment to take place. He was also highly critical of the fact that only the three non-commissioned officers were placed in the dock, while their commanding officer, Captain Mark Davies, who ordered the punishment, was not prosecuted.

*“The Undercover Soldier”, BBC 1, 19 September 2007;*  
*Surrey Police “The Deepcut Investigation: Final Report” 2003*  
[http://www.surrey.police.uk/Deepcut\\_final.pdf](http://www.surrey.police.uk/Deepcut_final.pdf)

*Commons Defence Committee “Duty of Care: Third Report of Session 2004-05” Volume I (The Stationery Office Limited, HC 63-1) 2005*

[http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/14\\_03\\_05\\_deepcut\\_mps.pdf](http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/14_03_05_deepcut_mps.pdf)

*Ministry of Defence “The Government’s Response to the Deepcut Review” (Crown Copyright, Cm 6851) 2006*

[http://www.official-](http://www.official-documents.gov.uk/document/cm68/6851/6851.pdf)

[documents.gov.uk/document/cm68/6851/6851.pdf](http://www.official-documents.gov.uk/document/cm68/6851/6851.pdf)

*Nicholas Blake QC “The Deepcut Review: a review of the circumstances surrounding the deaths of four soldiers at Princess Royal Barracks, Deepcut between 1995 and 2002” (The Stationery Office) 2006*

[http://www.official-](http://www.official-documents.gov.uk/document/hc0506/hc07/0795/0795.asp)

[documents.gov.uk/document/hc0506/hc07/0795/0795.asp](http://www.official-documents.gov.uk/document/hc0506/hc07/0795/0795.asp)

*BBC News 31.7.08; The Times 19.9.08.*

## Military - in brief

**UK: World’s biggest arms exporter criticised for failure to tackle bribery.** The UK was the world’s biggest arms dealer in 2007 with £10 billion of new business and a third of global arms exports, according to figures announced by UK Trade and Investment’s Defence and Security Organisation (UKTI DSO) in June. The figures were described as “outstanding” by Lord Digby Jones, Minister for Trade. A spokesperson for UKTI said: “The Middle East and North America remained the UK’s most profitable regional markets, with Saudi Arabia and the USA respectively the top customers. Orders for Typhoons in Saudi Arabia and Offshore Patrol vessels for Oman and Trinidad and Tobago played an important part in this year’s success.” In addition, “operations in Iraq and Afghanistan; greater spending on Homeland Security; the increase in unit cost of equipment and services; the improvement in Russia’s export performance; and a return to higher spending in the Middle East” contributed to the figures. In August the Organisation for Economic Co-operation and Development (OECD) criticised the British government for its failure to prosecute British companies which engage in corporate bribery overseas. The rebuke came before the government’s “scandalous” decision to drop an investigation into bribery by BAE Systems in its dealings in Saudi Arabia, allegedly involving the payment of millions of pounds into bank accounts of specific members of the country’s royal family. *UK Trade & Investment press release “2007 Market Review - UK Top Global Defence Exporter” 17.6.08*

## Policing

### UK

#### Police Taser extension “at any cost”

With the conclusion of the year long trial of the Taser “stun gun” carried out by ten police forces in the UK, police officers have begun a campaign to equip every officer with the so-called “less-lethal” weapon, (See *Statewatch* Vol. 17 no 3/4). According to the *Sunday Times* (14.9.08) the government is likely to acquiesce to their demands “under plans to be announced by ministers later this year”. It is estimated by *Police Review* magazine that equipping all officers with the 50,000 volt weapon will cost more than £161 million

(based on the figure of £940 that the Metropolitan Police Authority paid for each weapon used in London). To put this in context, the magazine calculates that: "The total bill is more than the 2006/7 £158.1 million budget of Humberside Police, for example, and does not include training costs or extras such as Taser cartridges, laptops and barcode scanners, used to download, store and record how the weapon is used."

At the launch of the police trials in September 2007 Amnesty International (AI) expressed its "grave concern" at the ever-widening deployment of the Taser which was described as a "dangerous weapon" by Labour cabinet minister, Hazel Blears in 2005. AI was worried that any extension would lead to a dropping in standards for police use of the stun gun, a situation similar to that seen in the USA "where Taser's have been widely misused and people have died". According to *Police Review*, "320 people have died in North America after being shot by the Taser."

Shortly before the close of the UK trials the Canadian parliamentary Standing Committee on Public Safety and National Security published its report on the safety of the Taser, following the harrowing death of Robert Dziekanski who died at Vancouver International Airport several minutes after receiving two electrical shocks from a Taser gun administered by Royal Canadian Mounted Police (RCMP) officers. In the report it calls on the RCMP to "implement preventive methods designed to diminish the use of laser guns during police interventions" (p2) and threatened to call for a moratorium on its use if the force does not begin to restrict its use of the weapons by the end of 2008. The Standing Committee's report followed hard on the heels of a recommendation by Paul Kennedy, head of the Commission for Public Complaints Against the RCMP, who called for Mounties with less than five years experience in the field to be banned from using the Taser.

The weapon manufacturer, the Arizona based Taser International, boasts that more than "12,800 law enforcement law, correctional and military organizations in 44 countries use its devices. Of these agencies, more than 4,500 of them equip all of their patrol officers with Tasers".

*"Study of the Conductive Energy Weapon - Taser: Report of the Standing Committee on Public Safety and National Security"*  
Garry Breitkreuz (House of Commons, Canada) June 2008:  
[http://cmte.parl.gc.ca/Content/HOC/committee/392/secu/reports/rp3582906/392\\_SECU\\_Rpt04\\_PDF/392\\_SECU\\_Rpt04\\_e.pdf](http://cmte.parl.gc.ca/Content/HOC/committee/392/secu/reports/rp3582906/392_SECU_Rpt04_PDF/392_SECU_Rpt04_e.pdf): *Police Review* 29.8.08, 5.9.08.

## Germany Unlawful "anti-terrorist" investigation into G8 activists

For political activists in Germany, the G8 summit entailed a great deal of work in organising blockades and accommodation for the thousands people who came to protest in Heiligendamm in June 2007 (80,000 people

demonstrated on 2 June in Rostock, 20,000 people remained for a week in camps around Heiligendamm and 10,000 people took part in peaceful blockades). It also triggered a large scale secret service and police investigation into political activist scenes across the country. Anti-terrorist powers were applied to demonstrators, subjecting them to undercover surveillance, interception of telecommunications, police raids of homes and work places and the confiscation of computers and personal data. Around 2,000 people are said to have been affected by the surveillance. A series of court rulings have since declared the investigations unlawful and almost all of the charges have been dropped due to lack of evidence. However, their purpose, to collect data on political activists, disrupt their activities and map their social networks and activities, has been achieved.

The latest investigation to be dropped due to lack of evidence concerns 11 anti-fascist activists from Bad Oldesloe who were subjected to an anti-terrorism investigation under Article 129 and 129a of the Criminal Code (StGB) in the run-up to the G8 summit, and more specifically a house raid on 17 June 2007.

The Federal Court of Justice (*Bundesgerichtshof* - BGH) decided in January this year that a series of investigations launched by the Federal Public Prosecution (*Bundesanwaltschaft* - BAW) against individuals in multiple German cities on grounds of formation of a terrorist organisation (Article 129a StGB) had no basis. The BGH passed the cases back to the responsible regional public prosecution offices to test whether they had merit on grounds of formation of a criminal organisation (Article 129 StGB).

In June this year, the Flensburg regional court declared the raids unlawful and found the accusations under Article 129 to be without merit, before any charges had been brought. The decision by the BAW's investigating judge to allow the house raids was therefore also unlawful. Apart from their houses being raided, the 11 anti-fascists were subjected to internet and telephone interception, including the interception of their conversations with journalists and their lawyers, as well as being tailed and the surveillance of private homes.

Noteworthy is the complacency surrounding these privacy violations and the - by now standard - practice of using anti-terrorist laws to curtail, control and intimidate left-wing political activists without any evidence of their engaging in criminal activity.

Parliamentary questions have not prompted the government into justifying these civil liberties infringements as the government's answer to a question by the Left Party (*Die Linke*) in parliament reveals. Several MPs sought clarification as to how, and against which activists, the anti-terrorist legislation was being used; how many procedures were initiated on grounds of the "support and promotion" of a terrorist organisation and whether

investigations had led to any charges and convictions. It appears that the authorities do not distinguish between the uses of anti-terrorist measures against Islamic or left-wing activists in their statistics. Nor do they distinguish between the "support" or "promotion" of a terrorist organisation and the formation of, or active involvement in, one. They only collect data separately on its use against the right-wing scene.

According to the government, 62 procedures were initiated against Islamic and left-wing groups, specifically against 103 individuals, and 845 persons were subjected to interception of telecommunications. In contrast, three procedures were initiated against the right, with only one person charged; no one on the right had their telecommunications intercepted.

A closer look at the annual statistics on the use of Germany's anti-terrorist legislation shows that less than five per cent of the criminal investigations initiated on grounds of Article 129a StGB led to proceedings, and only one per cent led to charges brought in court. Alexander Hoffmann, one of the lawyers of the eleven accused from Bad Oldesloe, argues that:

*Article 129a is a political legal instrument - and is used accordingly by the Federal Public Prosecution. In this case also, the Article (as the Flensburg regional court ruling has now confirmed) served primarily to initiate the surveillance and criminalisation of unwanted opposition groups and their surroundings.*

It was appropriate then that Monika Harms, the Federal Public Prosecutor (*Generalbundesanwältin*) who authorised the anti-terrorist measures to be applied against left-wing activists in the run-up to G8 summit, won Germany's 2007 Big Brother award in the category "Government Authorities and Administration". The Big Brother jury gave her the award for the measures taken against opponents of the G8 summit and found two aspects particularly dubious and therefore prize worthy:

First, Ms Harms sought approval from judges at the Federal Court of Justice (*Bundesgerichtshof*, Germany's appeals court in cases of civil and criminal law) to carry out systematic postal surveillance in Hamburg, in search of letters from militant G8 opponents claiming responsibility for an arson attack. As a consequence, all letters in the affected districts of Hamburg were inspected for suspicious external features.

Second, Ms Harms gave instructions for body scent samples to be collected and preserved from G8 opponents suspected of militancy. This caused investigators to seriously intrude into the private sphere and individual rights of the people affected.

The application for postal surveillance as well as the order to gather scent samples were connected to the searches of 40 private homes, offices, cultural centres and internet servers, under § 129a of the German Criminal Code (StGB), which penalises joining terrorist groups. This placed leftist groups and globalisation critics under suspicion of terrorism before the G8 summit even began. These methods have not led to the uncovering of any terrorist plots, but rather to widespread state

snooping, data registration and processing. This illicitly gathered information will likely be used to chart social relations between potential G8 protesters and their opponents.

*Solidarity websites with background information on various anti-terrorist investigations against left-wing activists:* <http://soligruppenord.blogspot.de/>, <http://einstellung.so36.net/>

*"Soll ich dir meine Datensammlung zeigen?", Thorsten Mense, Jungle World no. 33, 14.8.08;*

*Press release by the defence team (Britta Eder & Alexander Hoffmann) of the eleven accused of Bad Oldesloe, 13.6.08,* <http://gipfelsoli.org/Repression/129a/5173.html>

*Question to the German Government on investigations initiated on grounds of Article 129 StGB and related Articles in the year 2007, Drucksache 16/9941, 7.7.2008*

*Answer to the Question to the German Government on investigations initiated on grounds of Article 129 StGB and related Articles in the year 2007, Drucksache 16/10045, 24.7.08*

*Germany's Big Brother Awards 2007:*

<http://www.bigbrotherawards.de/2007/.gov>

*See also Statewatch Bulletin vol 17 no 2 July 2007, and Gewaltbereite Politik und der G8-Gipfel. Demonstrationsbeobachtungen vom 2-8 Juni 2007 rund um Heiligendamm [The G8 summit and violent-prone politics. Demonstration observations from 2-8 June 2007 around Heiligendamm]. Komitee für Grundrechte und Demokratie, 2007.*

## Italy

### Drug addict dies in custody after beating

Stefano Brunetti, a drug addict who was allegedly beaten after an incident in Anzio (Lazio) in which he was caught during an attempted theft and arrested for resisting public officers and taken to Anzio police station, died in hospital the next day, on 8 September 2008. His condition had worsened while he was in prison in Velletri, where his case was due to be heard the next day. The man, who suffered from cirrhosis, is alleged to have acted violently and damaged the security cell where he was held in Anzio, leading to him being sedated before being taken to Velletri prison. However, shortly before dying, and after being asked by a doctor how he had ended up in the state he was in (with bruising on his face and thorax, and a swollen thorax, possibly a result of internal injuries), he replied that "the guards" had been responsible.

Angiolo Marroni, the regional ombudsman for the rights of detainees, said:

*It is unacceptable to die in this way, even after committing crimes...In Italy, the death sentence has not yet been introduced. It is now up to the magistrates to shed light [on the matter] to identify responsibilities and punish those who have given in to behaviour that discredits all law enforcement agencies.*

Luigi Nieri, the regional council official responsible for the budget, spoke of the incident as "incredibly serious... if true", particularly as:

*the victim does not seem to be a dangerous criminal,*

*but rather, a person towards whom social support was the priority.*

Patrizio Gonnella, the president of *Associazione Antigone*, an organisation that monitors the implementation of rights in prisons, called for authorities to intervene to establish what had happened, and claimed that they would inform international bodies dealing with torture about the case.

On 6 October 2008, ombudsman Marroni expressed his concern after *Ristretti Orizzonti* had reported that there had been 13 deaths (including a prison officer who committed suicide) in prisons in the Lazio region in the first nine months of 2008 - six suicides, four as a result of diseases and three for which the causes had not been ascertained, eight of them in Rome's *Regina Coeli* (5) and *Rebibbia* (3) prisons. He noted that this indicated an increase in fatalities in the region, as 11 people had died in the whole of 2007, and 10 in 2006, adding that the presence of psychiatrists working in prisons was decreasing as a result of funding cuts and that overcrowding was also a relevant factor.

The figures published by *Ristretti Orizzonti*, a prisoners' organisation that publishes information about the prison system, details the death of 90 inmates (33 of whom committed suicide) between 1 January and 17 September 2008. From the data it has gathered, it has also published a chart that includes the names, ages, cause of death and the prisons where they died, in an effort to "give back a human dimension, a story and a name, to the inmates who die, often in the midst of indifference from the media and society". Their statistics on deaths in custody between 2000 and 2008 indicates an overall decrease, albeit not progressive, from 160 in 2000 to 123 in 2007, with peaks of 177 and 172 reached in 2001 and 2005 respectively.

*Garante per i diritti dei detenuti della Regione Lazio*, 12.9.08, [http://www.garantedetenutilazio.it/notizie/news/index.html\\_elem\\_0075.html](http://www.garantedetenutilazio.it/notizie/news/index.html_elem_0075.html) and 6.10.08, [http://www.garantedetenutilazio.it/notizie/news/index.html\\_elem\\_0086.html](http://www.garantedetenutilazio.it/notizie/news/index.html_elem_0086.html); *Ristretti Orizzonti*, "Morire di carcere: dossier 2008" and "Morire di carcere: dossier 2000-2008", available at: <http://www.ristretti.it/> *Corriere della Sera*, 13.9.08; *Il Messaggero*, 12.9.08; *L'Unità*, 12-13.9.08.

## Prisons

### Italy

#### Campaign for abolition of life sentences

On Monday 1 December 2008, Italian prison lifers will start a hunger strike which will last a week for every prison across Italy. This is to demand the abolition of sentences lasting a whole lifetime. The prisoners' state:

*Our lives have been stolen away. They have been taken from us for ever.*

*Why should we not struggle to get them back?*

*'And this is what is asked of a man: that he should do well to other men. If possible to many. If not that, then to a*

*few. If not that, then at least unto himself' (Seneca).*

*He who refuses to struggle is a useless man indeed as well as being someone who places his future in the hands of those that are worse than himself.*

*Every prisoner must first of all search for freedom inside himself and start struggling for his fundamental rights to be respected. These are;*

- *The right to legality being present within prisons;*
- *The right to freedom and hope;*
- *The right to give and receive love and affection.*
- *Respect of Article 5 of the International Declaration of Human Rights of 1948: That states that no man, woman or child must become subject to torture, or any cruel treatment or penalty, inhuman and degrading.*
- *Respect of the ONU Declaration of 30/08/1955, concerning the basic formal rules which should be respected in dealing with prisoners;*
- *Of the international pact concerning civil and political rights of prisoners;*
- *Of the Convention against torture and other cruel, inhuman or degrading treatments, which was signed in New York on the 10/12/1984;*
- *Of the Convention for the safeguard of Human Rights within European jails and prisons.*

*Even the European Court of Human Rights has expressed a negative opinion on this country - which has the cheekiness to comment on it's attitude towards human rights - where some prisoners are submitted to total isolation. They are not allowed even to see, from their windows the sun, the stars or the moon. Many of them have spent decades without giving or receiving a kiss or simply human touching by their wives, mothers or children.*

*In this country there are prisoners who are not allowed to talk, let alone sing!*

*A right given even to the slaves who picked cotton in the past centuries!*

*Also, in this country there is a sentence - and it is the only country in the world where it is so- that really lasts a lifetime because it has been rendered opposite to any sort of benefit.*

*A life prisoner in this country is a living dead man. A live corpse, who cannot be resuscitated because there is a law which stops this person from coming back to life. "*

*A new organisation, which will be called Liberarsi (to become free) will soon come into being. Its goal will be involvement in fighting life detention as well as contrasting penitentiary differentiation both on a local, national and international scale.*

[http://www.informacarcere.it/campagna\\_ergastolo.php?language=uk](http://www.informacarcere.it/campagna_ergastolo.php?language=uk)  
Genea" <Genea@wildcat.co.uk>

## UK

### Four children born in jail every week

The number of children born behind bars has almost doubled since the Labour Party came to power, with new figures showing women prisoners currently giving birth at nearly four a week. Figures from the Ministry of Justice show that 283 children were born in prisons in England and Wales between April 2005 and July this year, an average of 1.7 a week. But 49 babies were born between April and the beginning of July this year alone, almost four a week, meaning the 2008 total could reach nearly 200 if births continue at the same rate, more than double the 64 prison births recorded in 1995-96 before Labour came to power.

The number of women in jail has nearly doubled in the past decade and stands at more than 4,500. Most women are in for non-violent offences, with about a third jailed for theft or handling stolen goods; in 2006, nearly two-thirds served less than six months.

Frances Crook, director of the Howard League for Penal Reform, said: "No pregnant woman should be held in prison. It is an outdated and inhumane practice, penalising a baby for something that is no fault of its own. Fewer than one in four women is in prison for serious violent offences. Most women who come into contact with the criminal justice system could be sentenced to community programmes with no danger to the public and with a hugely positive impact on the health and well-being of the child."

The latest sentencing guidelines stress that in cases where jail is not regarded as essential courts may regard pregnancy as a mitigating factor. There are seven specialised mother and baby units in prisons across England. New babies can stay with their mothers for between nine and 18 months, and often leave when their mothers finish their sentences. Older children of women serving longer sentences are taken either to live with relatives outside prison or are put into care.

*Howard League; The Independent, 27.10.08*

## UK

### Votes for "unlawfully disenfranchised" before general election?

The government must give prisoners the right to vote or the next general election will be illegal under European law, ministers have been warned by parliament's influential Joint Committee on Human Rights. The committee's conclusion threatens a constitutional crisis for Labour, which has tried to bury the issue ever since the European Court of Human Rights ruled in 2005 that inmates should have the vote. The committee, comprising six MPs and six peers, has written to the Ministry of Justice saying the government must urgently change the law so that the majority of Britain's 84,000 prisoners are given the right before the country next goes to the polls.

A legislative solution can and should be introduced during the next parliamentary session, it states:

*If the government fails to meet this timetable, there is a significant risk that the next general election will take place in a way that fails to comply with the convention and at least part of the prison population will be unlawfully disenfranchised.*

The government originally said it would consider the issue of prisoners' voting rights in a two-stage consultation that was supposed to have been completed in January 2008. Ministers said a new law would follow after May 2008. But a joint committee member attacked the Justice Ministry for dithering on the issue:

*The government cannot pick and choose which human rights treaty obligations it fulfils for party political reasons or just because it feels an issue is not populist enough.*

said Evan Harris, a Liberal Democrat MP and went on to say:

*Gordon Brown is going soft on human rights. There is every chance that this country may be in breach of international law if the government doesn't have the courage to act before the next general election.*

The Prison Reform Trust, which campaigns on behalf of prisoners, has written to the Justice Secretary, Jack Straw, asking why the government was delaying the legislation. "This mean-minded, foot-dragging approach... calls into question the government's commitment to social inclusion, citizenship and human rights," said Juliet Lyon, the trust's director.

*The Observer, 9.11.08, Prison Reform Trust*

## UK

### Unannounced short follow-up inspection of HMP Gartree

Gartree is the largest of only three dedicated prisons for life-sentenced and other indeterminate-sentenced prisoners. Its role is to help these prisoners come to terms with their sentence and begin work to reduce their risks. The last inspection found that the prison was not discharging these functions effectively and had lost its sense of direction. This unannounced short follow-up inspection found some improvements, but also noted new problems: particularly an influx of prisoners sentenced to indeterminate sentences for public protection (IPP) who were now competing with ordinary lifers for scarce rehabilitative resources, leaving both populations frustrated.

Inspectors continued to have concerns about safety at Gartree. The reception building remained inadequate, although was soon to be replaced, violence reduction systems were weak, too many prisoners sought refuge in the segregation unit and monitoring of discipline issues was still deficient. However, suicide prevention arrangements were sound, security was now better managed and the use

of illicit drugs remained low.

Staff-prisoner relationships were generally satisfactory and personal officer work had improved. The management of race issues was better and a start had been made on rectifying the shortfalls previously identified in the treatment of foreign nationals. Health services had also improved. While the environment was generally clean, older cells remained cramped and unhygienic. There were few opportunities for prisoners to cook or launder for themselves, activities that could help long-term prisoners avoid institutionalisation.

Time out of cell for those in work was reasonable, although inspectors found that Gartree, like many other prisons, was reporting inaccurate and inflated figures. Despite a small expansion, there were still too few work and training opportunities, leaving those without activity locked up for too long. Education had improved and physical education remained satisfactory. The therapeutic community remained a beacon of good practice.

Anne Owers, HM Chief Inspector of Prisons commented:

*Since the last inspection, Gartree had made some improvements in aspects of safety and respect. However, there was still too little purposeful activity and backlogs remained in key assessments, reviews and reports, without which indeterminate prisoners cannot progress. Matters had been worsened by the introduction of IPPs who competed with lifers for limited rehabilitative resources. The net result was a log-jam of prisoners not able to move on in their sentence and a palpable increase in anger and frustration. These tensions need to be addressed urgently and the Prison Service needs to support Gartree to improve systems, increase programme provision and ease the transfer of suitable prisoners to more appropriate locations.*

*“Report on an unannounced short follow-up inspection of HMP Gartree by HM Chief Inspector of Prisons, 28 - 30 April 2008, report compiled August 2008, published 30 October 2008”*

## UK

### Report on an Announced inspection of HMP Erlestoke

Erlestoke is an adult male training prison in Wiltshire. Inspectors have previously commended the quality of its purposeful activity and resettlement, and this full announced inspection found some further improvements in these areas. Unfortunately, other aspects of the prison had deteriorated, particularly Wren unit, which held an unsafe mix of new arrivals and misbehaving prisoners. Erlestoke was also struggling with a serious drug problem and was even failing to provide basics, such as clean sheets and clothing.

Provision for prisoners' first days in custody was poor. Reception was cramped and poorly located and new arrivals were placed on Wren unit which was not only shabby, but also held prisoners who had been "regressed"

from elsewhere in the prison for poor behaviour, particularly for failing drug tests. This exposed the potentially vulnerable to the predatory, and many prisoners reported feeling unsafe in their first days. Concerns about deteriorating levels of safety were compounded by evidence of high levels of illegal drug use across the prison, with around a quarter of prisoners testing positive or refusing to be tested. Violence reduction and anti-bullying arrangements were weak and needed to be reinforced to meet the new challenges facing the prison. Similarly, paperwork needed to be improved when recording use of force and when locating prisoners to the new segregation unit. Fortunately, suicide prevention procedures were generally good and, once off Wren, most prisoners reported feeling safe.

Inspectors were dismayed to find that managers had failed to remedy persistent problems with the provision of clean sheets and clothing. Matters were so bad that, during the inspection, there were no clean sheets at all in the prison which meant that prisoners were re-issued with their own dirty bedding.

While the management of race issues was reasonable, wider diversity provision was underdeveloped. Foreign national prisoners were particularly vociferous in their complaints about life at Erlestoke. The new Marlborough unit had opened as a dedicated foreign national unit, but it contained shared cells and many existing foreign national prisoners had refused to move. The role of the unit, and provision for foreign nationals generally, needed to be reviewed.

The quantity and quality of purposeful activity at Erlestoke had continued to improve and was now among the best found in the training estate. Time out of cell was good, although inspectors found that the officially reported hours were inaccurate. Prisoners had plenty of work, training and education, and allocation and attendance arrangements were well managed. The library was about to move into new accommodation and physical education was adequate.

Anne Owers HM Chief Inspector of Prisons commented:

*Erlestoke benefits from some of the best purposeful activity provision in the training estate and a generally sound approach to resettlement. However, other aspects of the prison have deteriorated. Drugs are now a significant problem and violence reduction and anti-bullying arrangements need improvement. We were particularly concerned by Wren unit, which holds an unsafe mix of new arrivals and prisoners who had misbehaved elsewhere in the prison. The unit was in very poor condition and should be closed. We were also disappointed by the prison's inability to deliver some of the basics. For example, there was not a single clean sheet available during the inspection. There is a lot to commend at Erlestoke, but the new governor needs urgently to address the frailties we have identified if it is to become a first class training prison.*

*"Report on an Announced inspection of HMP Erlestoke, 28 April - 2 May 2008 by HM Chief Inspector of Prisons", (report compiled August 2008, published Friday 31 October 2008)*

## UK

### Report on an announced inspection of HMP Brixton

Brixton prison in many ways exemplifies all the problems of our overcrowded prison system. It has old, cramped and vermin-infested buildings, no workshops to provide skills training, and two prisoners eating and living in a cell with an unscreened toilet no more than an arm's length away. A visit to the top landings of Brixton's old wings would quickly dispel any notion that our prisons are 'cushy'.

At the time of this inspection those problems were exacerbated by the evident availability of drugs within the prison, undermining effective drug treatment and feeding violence and gang cultures. Over half the prisoners at Brixton told inspectors that they had felt unsafe there, and nearly one in three were feeling unsafe at the time of the inspection. Procedures to identify and deal with violence and gang-related activity, and to support vulnerable prisoners, were under-developed. Measures to prevent the supply of drugs into the prison were inadequate: there were no drug dogs; there had been limited police and security engagement; positive mandatory drug tests were high; and there was insufficient suspicion, random or voluntary testing.

Despite this, there were some signs of hope and improvement. A new and energetic management team had begun to put in place the systems that the prison needed, and had lacked. The positive approach of staff provided a strong foundation to develop their role - in the same way that diversity, race and the support of foreign national prisoners had been actively and positively promoted.

Similarly, the education department had improved considerably since the last inspection, and was providing a high quality service for the 30% of prisoners who could access it. However, for the rest, Brixton offered very little indeed. In the absence of any workshops, there was no vocational skills training, and the work that was available - for about half the population at any one time - was low-skilled and menial. Prisoners' time out of cell was very limited, though commendably regular and consistent. There was no evening association, and an unemployed prisoner could be locked up for 22 hours a day.

Brixton's main advantage is its location: within the community to which most prisoners will return. Inspectors were disappointed to find that relationships with agencies outside the prison, to assist with prisoners' resettlement, were limited. There were excellent links with some statutory and voluntary drug support schemes, but many of the other resettlement pathways were underdeveloped. Prisoners' initial needs were not effectively recorded to support custody planning, and

pre-release work took place too late to be really effective.

Anne Owers, HM Chief Inspector of Prisons commented:

*This will be a disappointing report for the committed management team and the many hard-working staff at Brixton. There are things that can and must be managed better - in particular, the supply of drugs, which requires effective internal management and support from both police and prison security services. However, it is hard to see how Brixton, given its physical limitations, can be transformed into an effective local prison, offering both decency and rehabilitation to its 800 prisoners. Those responsible for offender management in the London area need to decide what role Brixton can and should play in their strategy - perhaps as a resettlement prison for south London - and then ensure that it is resourced for that role. Without that, Brixton will simply continue to recycle its prisoners and risk demoralising its managers and staff.*

*Report on an announced inspection of HMP Brixton, 28 April - 2 May 2008, report compiled July 2008, published 21 October 2008*

## UK

### Unannounced full follow-up inspection of HMP Whitemoor

HMP Whitemoor is a high security dispersal prison, holding men convicted of very serious offences. Like the other dispersals, it was facing increased risks: more gang activity, more young men serving very long sentences and a small number of men convicted of terrorist offences. There were also other challenges.

Whitemoor's black and minority ethnic population had recently expanded significantly - rising to 150, of whom 120 were Muslims - in an area, and with a staff group, which was almost exclusively white. Finally, there was evidence of a significant drug problem, particularly heroin use. There had been some progress - use of force and segregation had reduced and was being more effectively monitored; and there were well-developed plans to move out the prison's vulnerable prisoner population, who were not properly being supported. However, more than half of the prisoners surveyed said that they had felt unsafe at Whitemoor: significantly more than at other high security prisons, or at Whitemoor itself at the previous inspection. There was evidence that the segregation unit and the inpatient unit were being used as places of safety. In addition, there had been a number of self-inflicted deaths since the previous inspection - many of them prisoners with a diagnosis of severe personality disorder. There had been some improvements in support for suicidal prisoners, but there was over-use of gated cells and under-use of safer custody officers.

A fundamental problem was that relationships between staff and prisoners in general, except on the

specialist units, were distant and distrustful. Though a personal officer scheme had begun, it had little impact on relationships, and significantly fewer prisoners than in other high security prisons said that staff treated them with respect, or that they had staff they could turn to. It was not evident that staff were either challenging or motivating prisoners. This problem was particularly acute with black and minority ethnic prisoners: 42% of the population. While the structures for managing race had improved, black and minority prisoners' perceptions had deteriorated since the previous inspection and were significantly worse than those of other prisoners. Worst of all were the relationships between staff and the 120 Muslim prisoners. Staff appeared to have little idea of, and to have been given no support in, how to relate to this group, except as suspected national security risks or extremists - even though only eight of the 120 Muslims had been convicted of terrorist offences.

Anne Owers, HM Chief Inspector of Prisons commented:

*There had undoubtedly been some improvements at Whitemoor since the previous inspection. However, at the same time, the population had become more challenging, and it was not evident that the prison had yet been able to rise to those challenges. The imminent departure of vulnerable prisoners should allow staff and managers to focus on managing the considerable and growing risks. This, however, will require active management and much greater staff engagement with all prisoners. In particular, as we have said in relation to other prisons, especially high security prisons, the Prison Service as a whole needs to equip staff better to deal with the growing number of Muslim prisoners. This inspection and others have charted a growing disaffection and distance between those prisoners and the prison system: a gap which urgently needs to be bridged.*

*Report on an unannounced full follow-up inspection of HMP Whitemoor 7-11 April 2008 by HM Chief Inspector of Prisons, report compiled June 2008, Published Friday 10th October 2008*

## Prisons - in brief

**Scotland: William Johnston wins fight for medical treatment:** After nearly two months on hunger strike, William Johnston finally won his battle for proper medical treatment at Glenochil prison in Stirlingshire. This represents a decisive victory for all prisoners at Glenochil who have long suffered serious medical neglect and an attitude on the part of medical personnel at the jail that was openly contemptuous of the health care needs of prisoners. On the 28 October William met with the prison doctor and a proper and appropriate treatment plan for his condition was agreed on. As a result William agreed to end his hunger strike. After almost two months on hunger strike and a sustained campaign on his behalf by Brighton Anarchist Black Cross, John McGranaghan and Dr George Coombs, William finally received the treatment his condition required. William's case highlights two irrefutable truths: the callous disregard of medical staff at Glenochil prison for the health care of prisoners, and

the effectiveness of genuine and committed prisoner support. John Bowden: 6729, HM Prison Glenochil, King O'Muir Road, Tullibody, FK10 3AD  
Genea@wildcat.co.uk

**UK: Campaign to stop Titan prisons:** On 1 November 2008 a meeting was held with the purpose of organising a campaign to oppose the building of Titan prisons in the UK. Forty-five people attended from a wide variety of backgrounds, affinities and geographic locations. The campaign intends to be "goal-orientated/action focused. We are primarily a campaign, rather than an academic or theoretical group. Discussion, debate and research are vital to the campaign but we should always be thinking about how they help further our goal of stopping Titan prisons. Campaign to Stop Titan Prisons: Genea@wildcat.co.uk

## Racism and Fascism

### Austria

#### Haider dies as far-right emerges as electoral political force

The neo-fascist right emerged from Austria's general election in September with 29% of the vote placing the Freedom Party (*Freiheitliche Partei Österreichs, FPÖ*) and the Alliance for Austria's Future (*Bündnis Zukunft Österreich, BZÖ*) in contention to be the largest political force in the country. The two extremist parties had run an anti-immigrant campaign with the Freedom Party also accused of anti-Muslim racism. The snap elections were called after the People's Party (*ÖVP*) pulled out of the governing coalition in July, arguing that it could no longer work with the Social Democrats (*SPÖ*). Observers feared that one of the establishment parties would be prepared to make a deal with the far-right if they are unable to reach a new agreement amongst themselves, although the death of the BZÖ's leader, Jorge Haider, in a drunken car crash shortly after the election has limited their options. The Social Democrats got 29.7% of the vote (58 seats), the People's Party 25.6% (50 seats), the Freedom Party 18% (35 seats), the Alliance for Austria's Future 11% (21 seats) and the Greens 9.8% (19 seats).

The combined far-right vote (29%) doubled the tally it obtained in the 2006 election. The Freedom Party's leader, the Nazi sympathiser, Heinz-Christian Strache, claimed that he was the real winner of the election and talked-up his chances of becoming chancellor in a coalition government. Before his death Haider, the ex-leader of the Freedom Party, who now runs the Alliance for Austria's Future faction, told the BBC that he predicted that new coalition talks between the Social Democrats and the People's Party would fail and that he "would have the opportunity to negotiate the government." Haider was previously in

government in 1999 when the Freedom Party gained 27% of the vote. The Social Democrats said that they will not join forces with the extreme right, but the People's Party has been much less concerned in the past.

In 2000 the EU imposed sanctions on Austria when the FPÖ, then led by Haider, became part of the government coalition. Haider toned down his anti-Semitic statements and sympathy for National Socialism in public, when it resulted in a split in the FPÖ in 2005, and Strache took over the leadership as Haider marched off to form the BZÖ. Under Strache, as with other European far-right organisations, the FPÖ's overt racism and sympathy for the policies of Adolf Hitler have been played down and replaced with a crude, populist anti-Muslim racism. Nonetheless, he has pledged to revive banned Nazi symbols and he lost a recent court case against a magazine that described him as having neo-Nazi contacts. His election campaign was characterised by the slogan: "No minarets in Austria". In reality, he has divided foreigners into righteous Christians and those of Muslim backgrounds, calling for a "European brotherhood" to crusade against the perceived Islamisation of Europe. Both of the far-right organisations have called for a ban the building of mosques.

The balance of power between the two extremist parties took a decisive turn in October when Haider died in a car crash on 11 October - after he stormed out of a gay bar following an argument with his protégé, Stefan Petzner; Haider had been planning that the former cosmetics reporter would become a future BZO leader. But Patzner was sacked from the party after making an emotional confession of his "special relationship" with "the man of my life" on Austrian television. Rumours about Haider's sexuality had been widespread for nearly a decade, but he chose to ignore them, fearing that some of his far-right followers might be alienated. Haider's death leaves the back door open for Strache to enter into an agreement with the ÖVP if is unable to form a coalition with the SPÖ.

As a possible sign of things to come, police in Traun (near Linz) blamed far-right extremists for the desecration of a Muslim cemetery in the town in the same weekend as the far right made its electoral gains. More than 90 graves were damaged in the attack.

*BBC News 29.9.08; Independent 23.10.08*

## UK

### Police investigate racially motivated murders

Police are investigating the murders of two young men in August that appear to have been racially motivated. A 17-year old boy, Nilanthan Murddi, from the Tamil community, was stabbed to death in south London, on 16 August and a week later a 16-year old Qatari, Mohammed al-Majed, was beaten to death outside a kebab shop in Hastings, East Sussex.

Nilanthan Murddi died after his throat was cut in an attack in Sumner Road, Croydon that was preceded by a volley of drunken racist abuse. The teenager had been

chatting with friends when a mini-cab drew up at traffic lights and its white passenger shouted racist abuse at them. Nilanthan and his friends told the man to "go away, because you are being racist." Initially, the man did walk away, but returned and threw a punch at Nilanthan but, as one of his friends explained: "he must have had a blade in his hand because [Nilanthan] ended up with a slashed throat." His friends fought desperately to save his life before an ambulance crew arrived; a post mortem established that he died from a stab wound to the neck. A 30-year old white man, Stephen Braithwaite, of no fixed abode, appeared at Sutton magistrates' court in August in connection with the murder; he was remanded in police custody.

Sixteen-year old Mohammed al-Majed, a Qatari student who was studying English at a foreign language summer school in Hastings, Sussex, died after being attacked by a white gang outside the USA Fried Chicken takeaway restaurant in the town on 24 August. The owner of the takeaway said that he had alerted the police to the presence of the gang an hour before the murder, asking them to keep an eye on the group. Mohammed was five weeks into a six week course, when he was attacked and beaten, kicked and pelted with bottles by gang members, who then stamped on his head. A friend also suffered severe bruising and a head injury in the onslaught, which required six stitches. Sussex police said that they were treating the death as a murder inquiry and investigating it as racially motivated. Despite denials by Hastings council, there is a high incidence of racist attacks in the area on foreign language students and anecdotal evidence suggests that many foreign students are concerned at walking in the town centre after dark.

Two East Sussex men, Alexander Quinn (18) and Paul Rockett (20), were charged in connection with the Mohammed al-Majed's killing at the end of September. Rockett was charged with racially aggravated common assault while Quinn faces charges of wounding with intent to cause grievous bodily harm relating to an assault on Mr al-Majed's friend.

*Harmit Atwhal "Two murders investigated as racist" IRR: <http://www.irr.org.uk/2008/august/ha000008.html>*

## Racism and fascism - in brief

**Lithuania: Prosecution of Jewish resistance fighters for "war crimes".** The state prosecution service in Vilnius has initiated proceedings against Jewish resistance fighters (Partisans) who fought the Nazi occupation during World War II, alleging that they were responsible for the deaths of Lithuanians. The legal action against the ex-Partisans, many of whom are over 80-years old, is widely seen as an attempt by Lithuanian nationalists to rewrite history and in particular Lithuania's responsibility in the persecution of its Jewish citizens during the Nazi regime; it is also seen as a sign of reviving anti-Semitism in Europe. The

events might also be informed by a general anti-Communist trend in ex-Soviet Union countries; earlier this year, the Lithuanian parliament criminalised the display of the hammer and sickle. An anti-Communist ban only exists in Hungary so far in Europe. Furthermore, the far-right is represented in the Lithuanian parliament and is pushing a right-wing agenda. Questions by right-wing MPs from the *Fatherland Party* have led to police interrogating the former Partisan, Fania Brantsovsky, for example. Many of the Jewish Partisans had been imprisoned in Lithuanian ghettos run by German Nazis and their Lithuanian collaborators. Around 220,000 Jews were murdered in Lithuania between 1941 and 1944, and in the country's 18 years of independence not a single Lithuanian has been prosecuted for collaboration in this anti-Semitic genocide. A group of social scientists and educators, researching and educating the history and effects of the Holocaust, has initiated a campaign for an immediate end to the prosecutions. An open letter to that effect was signed by more than 770 individuals and presented to the Lithuanian ambassador in Berlin on 28 September, as well as to the European Parliament.

Open letter: [http://www.arbeitskreis-konfrontationen.de/OffenerBrief\\_anglais](http://www.arbeitskreis-konfrontationen.de/OffenerBrief_anglais)

Guardian:

<http://www.guardian.co.uk/commentisfree/2008/jun/20/secondworldwar>

<http://rotehilfegreifswald.blogspot.de/2008/06/21/litauen-hammer-und-sichel-verboten/>

## Security and intelligence

### Netherlands

#### Big Brother land?

"Netherlands: Big Brother Land?" - this was the question posed by the Dutch national newspaper *NRC Handelsblad* in May when it was revealed that the Netherlands taps more telephone conversations in one day than the United States does in a year. This revelation was preceded by news that CCTV cameras are to be installed on all national railway trains.

Since July 2007, all telephone interceptions in the Netherlands have been coordinated by the *Korps Landelijke Politiediensten* (KLPD - National Police Services Agency), a national police force responsible for centralised missions and subordinate to the Dutch Interior Ministry. This centralisation has allowed the authorities to publish statistics on the exact number of interceptions a year for the first time. A letter by justice minister Hirsch Ballin (*Christen Democratisch Appèl*, CDA) to parliament on 27 May 2008 shows that in the last six months of 2007, around 1,681 phone conversations were intercepted in the Netherlands every day, whereas in the USA, 2,208 phone calls were intercepted during the whole of 2007. Between July and December 2007, the Dutch public prosecution service ordered the interception of 12,491 telephone numbers, 84% of which were mobile phones and 16% mainline phones. Interceptions have to be approved by a judge with special powers to make decisions in criminal investigations (*rechter-commissaris*). From now on, the minister will

provide an annual overview on phone tapping.

A day before the phone tapping statistics were published, the Dutch National Railway (NS) announced that cameras were to be installed on all trains, beginning with 99 new trains at the end of the year. The NS is currently developing an OV-chipcard that will book an individual's travel on any form of public transport on one electronic card, an action that was severely criticised by civil liberties activists and hackers who have managed to access such cards. Only a month before this news, police in Zwolle announced that they would photograph, and keep for three days, the number plates of cars using a nearby motorway. Also in May, parliament passed a motion permitting the retention of people's telephone and internet traffic data for at least one year; around the same time, the state prosecution service confiscated a political cartoonist's computer on the grounds that he was using it to produce "discriminating" cartoons.

Last but not least, the Advisory Council of Police Chiefs (*raad van hoofdcommissarissen*) confirmed in May that the Dutch police regularly carried out online raids on suspect's computers to search for incriminating material with the use of Trojan horses. This is illegal in Germany although Interior minister, Wolfgang Schäuble, is attempting to change the law reform to legitimise it in the future. The Dutch have not yet tested the method in court, and a precise legal basis allowing the authorities to hack people's computers without their knowledge does not exist. Whilst data protection officers in Germany are opposed to this police investigation method, their Dutch counterpart, the *College Bescherming Persoonsgegevens*, has not given an opinion on the matter.

'Politie hackt pc van criminelen', *Parool.nl*, 17.5.08

*NRC Handelsblad online*, 28-29.5.08, 31.7.08

'Nein zur Online-Durchsuchung' [No online raids], press release by the German Data Protection Officers conference, 26.10.07, <http://www.bfdi.bund.de/>

## Feature

### UK

#### ARMAND ATLAN

A miscarriage of justice allegedly involving lies and deception by corrupt police officers and Customs staff on a European-wide scale is to be re-examined by the Criminal Cases Review Commission.

On 5 July 1991, at the Crown Court at Isleworth, Middlesex, Armand and Thierry Atlan and another man, Jean-Pierre Terrasson, were convicted of illegally importing 18 kilograms of cocaine (with a street value of £2-3 million) into Heathrow Airport, London, on 3 November 1990. At the trial, which started in May 1991, the prosecution case was that Armand had organised the importation, using Mr Smolny as the courier from Brazil to Copenhagen and

London, and that he had instructed Mr Terrasson, with Thierry as “minder”, to collect Mr Smolny’s suitcase at Heathrow as if in mistake for his own. There was no forensic, photographic or video evidence to substantiate the prosecution case, which relied to a large extent on the accounts given by customs officers of what they had observed.

All four defendants pleaded not guilty and gave evidence. The applicants maintained that Armand worked principally as a jewel trader, but that he did not keep written records because he systematically avoided paying taxes and duties in Brazil. The applicants’ defence centred around a dispute between Armand and a rival jewel trader based in Brazil called Rudi Steiner. They stated that Armand had paid Mr Steiner US\$ 200,000 in advance for diamonds, which Mr Steiner had failed to deliver to the applicants as agreed in Copenhagen on three occasions: 28 August, 29 September and 3 November 1990. On this last occasion, since, as before, Mr Steiner did not appear, Thierry and Mr Terrasson, who had gone together to collect the diamonds, returned immediately to Heathrow, where Thierry removed Mr Terrasson’s, not Mr Smolny’s, suitcase from the carousel. The applicants contended that Mr Steiner was an informer for Customs and Excise. They claimed that, in order to avoid repaying his debt and for fear that the applicants would discredit him amongst other Brazilian traders following the non-delivery of the diamonds, he had arranged falsely to implicate them in the importation of cocaine.

Under cross-examination the customs officers involved in the case refused either to confirm or deny whether or not they had used an informer. No evidence relating to an informer or to Rudi Steiner was served on the defence or put before the judge.

The trial judge dismissed the defence relating to Steiner in a manner which left the jury little scope to grant it any credence:

*Just consider in your mind what it would be like to try and induce the British Customs Service, even as an English subject, to co-operate with you in such a way. ...[I]t is worth just looking at the costs to Mr Steiner if Mr Atlan’s story is right ... to see what was in it for Mr Steiner.*

*His costs: he provided initially some samples [of diamonds] worth seven or eight thousand ... US dollars. ... He lost the cost of sending [his representative] diagonally across the world and back [with the sample] with a bit of time in a hotel. ...*

*He lost the cost of Mr Smolny’s fare in the Euro-class Sao Paolo/Copenhagen/London return, and he lost the cost of Mr Smolny’s London hotel ... .*

*[T]he case is that he lost all those things and whatever is the cost of 18 kilograms of 90 plus percent pure cocaine in Brazil. No doubt that cost is very, very much less than it would be in London, but ... you may think that 18 kilograms of high quality cocaine like that would cost a substantial sum, albeit nowhere near three million pounds, in the providing country. I put those bits and pieces of information together because it is not altogether*

*obvious when one just runs through the story that that is what the information amounts to, but you may think it does, and it may be relevant to considering the likelihood of somebody behaving in the way Mr Steiner is said to have done.*

On 5 July 1991 the jury, by a majority of ten to one, convicted the applicants and Mr Terrasson of importing the cocaine. Mr Smolny was acquitted. On 12 October 1991, after an inquiry by the judge under the Drug Trafficking Proceedings Act 1986, Armand was sentenced to eighteen years’ imprisonment and a confiscation order of £1,918,489.60 with a further ten years’ imprisonment to be served in default of payment. Thierry and Mr Terrasson both received sentences of thirteen years’ imprisonment and Thierry was also ordered to pay a confiscation order of £6,140.66 or serve a further six months in prison.

In spring 1994 the applicants learned from the French press (*Libération*) that a Swiss undercover police officer, Commissioner Cattaneo, had written a report, called “the Mato Grosso Report”, concerning his 1991 investigation into drug trafficking between Brazil and Europe. In early 1995 the Atlans’ solicitor obtained a copy of the report. It mentioned Rudi Steiner, describing him as one of three regular informers of the Brazilian, Danish and French police. He was said to have an interest in stolen jewels and a long-term involvement in the traffic from Brazil to Europe of large quantities of cocaine, which he was able freely to obtain from the Brazilian police. In a letter dated 4 December 1995, the Swiss Federal Police Office informed the applicants’ solicitors that the report was the property of the Tessin cantonal police and that in 1991 a meeting was held at Federal Police headquarters in Bern concerning the Mato Grosso investigation but that it was not possible to provide any further information in this connection. The applicants provided a copy of the report to the prosecution, which declined to confirm or deny its authenticity or the truth of its contents, and repeated that there was no undisclosed material relevant to the issues at trial.

The applicants pursued leave to appeal. They maintained that the Mato Grosso Report substantiated their suggestion at trial that Mr Steiner had access both to stolen jewels and cocaine and that he had an established relationship with law enforcement agencies in Europe. In their submission, the fact that the jury had not had before it evidence relating to these matters, and the fact that the judge, ignorant of the true facts, had characterised Mr Steiner in his summing up as an unknown Brazilian businessman, rendered their convictions unsafe.

On or about 19 October 1995 the prosecution informed the defence that, contrary to earlier statements, unserved unused material did in fact exist, which the prosecution wished to place before the Court of Appeal in the absence of the applicants or their lawyers. The prosecution then applied *ex parte*

to the Court of Appeal for a ruling whether it was entitled, on grounds of public interest immunity, not to disclose this material. The applicants objected to the holding of an *ex parte* hearing, in writing on 27 November 1995 and orally before the Court of Appeal on 7 December 1995, submitting *inter alia* that the court was a tribunal of both fact and law and could be adversely influenced by material which was wrong or inaccurate.

The Court of Appeal dismissed the objections and heard the prosecution's *ex parte* application. It decided not to rule on the application unless or until such time that, having considered the applicants' application to introduce new evidence, it became necessary to do so. The hearing of the applications for leave to appeal against conviction and to bring new evidence commenced on 18 December 1995. The Court of Appeal indicated its view that the Mato Grosso Report would not be admissible in evidence because, *inter alia*, its author could not be found to vouch for its accuracy and be cross-examined on its contents.

At the applicants' request the hearing was adjourned on 19 December 1995 and legal aid was granted to enable their solicitor to travel to Italy where, it was believed, Rudi Steiner was in custody awaiting trial on a charge of smuggling cocaine. However, the Italian authorities were unwilling to assist the applicants without the backing of a formal letter of request from a competent authority. The applicants therefore applied to the Court of Appeal for a letter requesting the Italian authorities to give their solicitor access to the criminal proceedings there. On 10 June 1996 a different constitution of the Court of Appeal ruled that in principle it had jurisdiction to issue such a letter of request. On 19 July 1996, however, the originally constituted court decided that the applicants' proposed request to the Italian authorities was too wide-ranging and, even if more restrictively drawn, unlikely to elicit information which would be either admissible or of assistance in the appeal. It therefore decided that it was not in the public interest to issue a letter of request, and adjourned the case until after the conclusion of Mr Steiner's trial in Italy in the Autumn of 1996. In the event, however, Mr Steiner was released on bail and his whereabouts were unknown at the time of the applicants' appeal hearing in February 1997. The Atlans' solicitor was able to obtain a number of documents relating to the Italian proceedings, including transcripts of interviews with Mr Steiner, arrest warrants and a list of his previous convictions. He was also able to obtain a statement from Commissioner Cattaneo, the Swiss police officer who had prepared the Mato Grosso Report. In his statement the Commissioner confirmed the authenticity of the report. He stated that he had been introduced to Mr Steiner by a Danish police officer and had become Mr Steiner's "handler", passing information to the British authorities during the investigation into the applicants. According to the Commissioner's statement, his British "contact" had been a customs officer named Martin Crago, whom he had contacted at the British Embassy in Brasilia. He believed that Mr Steiner had spoken to Mr

Crago several times and had sought payment for information he had given him. The Commissioner concluded by indicating that he would be willing to appear as a witness in the Court of Appeal. On 10 January 1997 the applicants added a further ground of appeal, alleging that the prosecution had failed to make full disclosure of the evidence in its possession concerning Mr Steiner, and that the lack of full disclosure rendered their convictions unsafe.

The day before the hearing of the appeal, Commissioner Cattaneo informed the defence lawyers that his superiors in the Swiss Police Force had refused him authorisation to attend. The applicants' counsel suggested to the Court of Appeal that this decision might have resulted from communication between British Customs and Excise and the Swiss authorities. Mr Crago was called by the defence to give evidence. He denied that he had been Commissioner Cattaneo's contact and declined to answer any question about Mr Steiner. On 16 February 1997, after hearing the applicants' application to admit new evidence and holding an *ex parte* hearing in the absence of the defence lawyers, the Court of Appeal ruled that justice did not require disclosure by the Crown of the public interest immunity evidence. The applicants and their lawyers were not permitted to be present when the court delivered its judgment on disclosure.

Arman and Thierry Atlan subsequently made an application to the European Court of Human Rights on the basis that they were deprived of a fair trial, in breach of Article 6 §§ 1 and 3 (d), which state:

1. *In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal; ...*

3. *Everyone charged with a criminal offence has the following minimum rights: ...*

(d) *to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ...*

The European Court concurred, and upheld the application in the strongest terms:—

*The applicants' defence at trial was that they had been falsely implicated in the importation of cocaine by a man known to them as Rudi Steiner, whom they believed to be a Customs and Excise informer. No evidence relating to an informer or to Mr Steiner was served on the defence or put before the judge and under cross-examination the customs officers involved in the case refused either to confirm or deny whether or not they had used an informer or heard of Mr Steiner. Before and during the trial the prosecution had asserted that there was no further unused material evidence in their possession which had not been served on the defence (see paragraphs 14 and 17 above).... However, over four years after the applicants' conviction and prior to the hearing of their appeal following discovery by the defence of new evidence about Mr Steiner's activities, the prosecution informed*

them that, contrary to earlier statements, unserved, unused material did in fact exist. Following an ex parte hearing, the Court of Appeal decided that it was not necessary to disclose this evidence to the applicants (see paragraphs 23-24 and 30-31 above)... It is clear to the Court, and the Government do not seek to dispute, that the repeated denials by the prosecution at first instance of the existence of further undisclosed relevant material, and their failure to inform the trial judge of the true position, were not consistent with the requirements of Article 6 § 1 (see also R. v. Davis, Johnson and Rowe ([1993] vol. 1 Weekly Law Reports p. 613 § 63)... The issue before the Court is whether the ex parte procedure before the Court of Appeal was sufficient to remedy this unfairness at first instance. Although the nature of the undisclosed evidence has never been revealed, the sequence of events raises a strong suspicion that it concerned Mr Steiner, his relationship with British Customs and Excise, and his role in the investigation and arrest of the applicants. It is true that the applicants did not have the Mato Grosso Report at the time of their trial in the Crown Court. However, their allegations concerning Mr Steiner were central to their defence, and they expressly asked the prosecution if they had any undisclosed, unused material relevant to this issue. For the reasons set out in the above-mentioned Rowe and Davis judgment, the Court considers that the trial judge is best placed to decide whether or not the non-disclosure of public interest immunity evidence would be unfairly prejudicial to the defence (ibid., § 65). Moreover, in this case, had the trial judge seen the evidence he might have chosen a very different form of words for his summing up to the jury.... In conclusion, therefore, the prosecution's failure to lay the evidence in question before the trial judge and to permit him to rule on the question of disclosure deprived the applicants of a fair trial. It follows that there has been a violation of Article 6 § 1 of the Convention."

It is on the basis of the European Court ruling that Armand Atlan has asked the CCRC to reconsider his case and has commenced proceedings for misfeasance in public office. Armand lost most of his wealth and many years of his life in English jails. He also lost his son. Thierry died in jail.

European readers who have any further information re Rudi Steiner are asked to forward any such information to Community Law Project at [clp106@hotmail.com](mailto:clp106@hotmail.com)

Source: *CASE OF ATLAN v. THE UNITED KINGDOM* (ECHR Application no. 36533/97)

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