Socialist Lawyer

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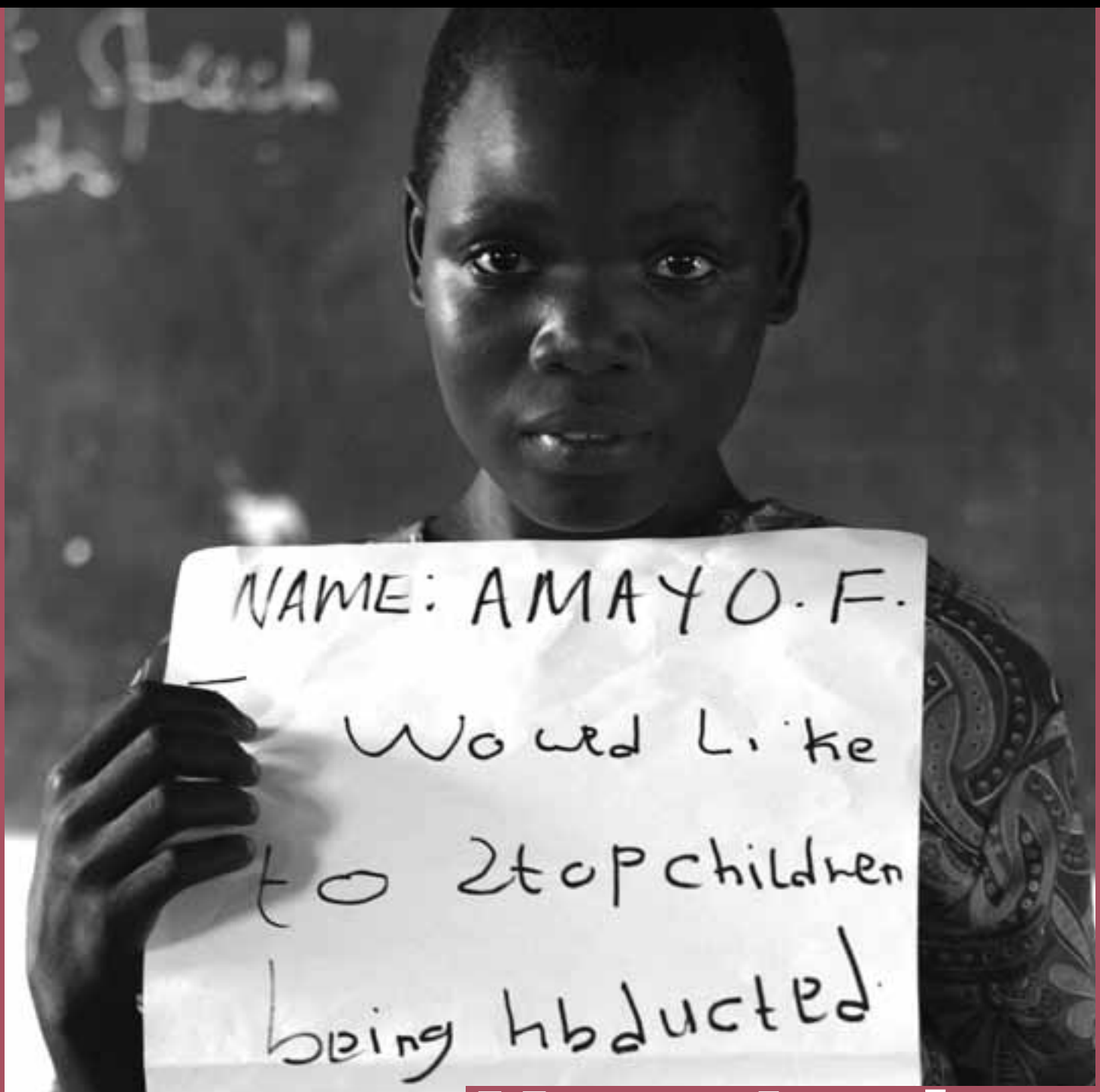

Uganda: time for justice

Plus: **EXCLUSIVE INTERVIEW WITH LIBERTY'S SHAMI CHAKRABARTI**

Michael Mansfield QC, Liz Davies, Louise Christian & Helen Shaw on the **ANTI-TERROR LAWS**

John Hendy QC on the **TRADE UNION BILL** and much more

Haldane Society of *Socialist* **Lawyers**

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The Haldane Society was founded in 1930. It provides a forum for the discussion and analysis of law and the legal system, both nationally and internationally, from a socialist perspective. It holds frequent public meetings and conducts educational programmes.

The Haldane Society is independent of any political party. Membership comprises lawyers, academics, students and legal workers as well as trade union and labour movement affiliates.

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Picture: Jess Hurd / reportdigital.co.uk

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Cover picture by: **Jess Hurd** Many thanks to all our contributors

GLORIE BE TO GUY FAWKES...

...YE ONLY MAN IN HISTORIE TO ENTER PARLIAMENT WITH HONOURABLE INTENT.

Excerpt from the transcript of Regina vs. Mansfield, Harvey, Wilson & Divers other Officers of Ye Haldayne Societie, November 5th 2005, Blunkett Reports Inc.©:

"My Lords Justices of ye recently restored Starre Chambre (our most excellent governement having put an end to that troublesome and most unreliable Instrument heretofore known as Trial by Jurie), Ye shall have no difficultie in reaching true Verdicts against all of ye Accused, theyre Guilt being most manifest in that they did conspire together to glorifie the Traitor Guy Fawkes in Terms set forth above and to utter grosse Calumnies against ye most worthie Ministers of ye Crowne by publishing that Journal most subversive, to wit, Ye Socialist Lawyer.

By their manifold unjust Criticisms of our most eminent Prime Minister, did they knowingly and maliciously give Aide and Comfort to ye Enemies of Civilisation, wherefore our officers of ye Lawe did rightly seize and imprison sundry of their executive Committee. Notwithstanding the Grant by this Court of a 90 Day Order committing ye Accused to Belmarshe Bridewell & denying them, such fees as ye Lord Chancellor hath not already deprived them of, they have so far refused to confess theyre Wickednesse, continuing to glorifie such terroristick Villeynes as Nelson Mandela, Fidel Castro, Ho Chi Minh, Harriet Tubman, James Connolly, Malcolm X and yea even those most notorious monsters Marx and Engels.

For this Reason, I direct, or rather should I saye, entreat this Honourable Court to grant an Outsourcing Order, that these Accused shall be forthwith transmitted to Algerie, Jordaine or Egypte, there to suffer the Peine Forte et Dure until they shall confess theyre vile Misdeedes and repent them of theyre socialistick Wayes.

That yr Lordshippes shall find guilty all these Accused we doubt not sith that Mr. Secretary Clarke hath alreadie proclaimed theyre treasonous disloyaltie to our State and no judge who wishes to retain his high Office would seeke to approve theyre heinous Felonies ..."

Time for the chop?

How should we "Remember, remember the 5th of November," four hundred years on? Catesby, Percy, Wright, Digby, the brothers Winter, Fawkes, Rookwood, Tresham, Grant, Keyes and Bates were all scions of well to do families. Yet they put 36 barrels of gunpowder in the cellars of the Palace of Westminster and came amazingly close to killing the entire royal family, every member of government, the senior judiciary and all Lords and Commons assembled for the state opening of Parliament, razing to the ground all buildings within a hundred yards radius and causing death and dismemberment on a scale never before dreamed of.

What they all had in common was their religious faith. To practise Catholicism in 1605 made you liable to considerable fines at the very least. To aid a priest by concealing him from the authorities could mean hanging, drawing and quartering as a traitor. Anyone suspected of such disloyalty risked torture (peine forte et dure).

That ultimate terrorist conspiracy at the dawn of the 17th Century had its roots in struggles for freedom of political and religious conscience. Before that century was halfway through, the King himself would be tried for treason, sentenced to death for betraying his people and beheaded a hundred yards from Downing Street. Before the century was over, another king would be deposed and a Bill of Rights enacted in 1689, establishing the supremacy of Parliament and proclaiming inter alia that the monarch has no right to suspend or dispense with any law.

Those were indeed times to try people's souls. For the avoidance of all doubt, it is not the policy of the Haldane Society to incite anyone to emulate Guy Fawkes's experiment. But it is our policy to oppose by all lawful means necessary all forms of repression that will lead to greater polarisation and repression within our society.

When Commissioner Blair thinks he has the right to suspend the law and to exclude the statutory right and duty of the Independent Police Complaints Commission to investigate the shocking killing of Jean-Charles de Menezes, we question his fitness for office …

When Prime Minister Blair thinks he can tell judges how to interpret the European Convention so as to permit the product of torture to be used as 'evidence' or to send people back to countries where they will face torture, inhuman or degrading treatment; and when he proposes to suspend or dispense with the Human Rights Act's prohibitions on arbitrary detention and denial of fair trial, we likewise question his fitness for office …

And when a Prime Minister ignores the strictest warning from his Attorney-General that: "you will need to consider extremely carefully whether the evidence of non-cooperation and non-compliance by Iraq is sufficiently compelling to justify the conclusion that Iraq has failed to take this final opportunity [to comply with Security Council Resolution 1441]" and instead plunges our country into an illegal war …

Then it is time to go, not just for our troops to leave Iraq, but for Tony Blair to leave Downing Street.

● **Richard Harvey, chair, Haldane Society**
(richardharvey@juno.com)

Picture: Jess Hurd / reportdigital.co.uk

Anti-war Bill blocked: how can we curb the executive?

Sir Edward Coke (1552 – 1634) was an influential judge who famously attacked the Royal Prerogative and defended the supremacy of Parliament. It recently fell to Clare Short to undertake this role, albeit in a very different context, with a rare example of parliamentary self-determination. She introduced an important Private Members Bill (PMB) requiring parliamentary approval for military action in the aftermath of the Iraq war. This was unfortunately 'talked out' by Geoff Hoon on Friday 21st October 2005 and will not now progress to the Committee stage. In recognition of the value of this PMB, an *ad hoc* pressure group called 'Taming the Prerogative' was formed, including The Institute of Law and Peace, One World Trust, CND, Charter 88 and the Haldane Society.

The Bill explicitly sought to remove war-making from the prerogative powers exercised by the Executive on behalf of the Crown. The key attraction to the PMB was that it required the Government to state a political and legal justification for armed action. Furthermore, if Parliament did not approve any purported armed action, British troops would not be sent. One caveat related to allowing the Government to send troops in emergencies but even this is circumscribed with retrospective powers for Parliament. The Iraq war will spring to mind as the catalyst for such a PMB.

Picture: Jess Hurd / reportdigital.co.uk

Clare Short MP with the late Robin Cook, who sadly died on 6th August

'Taming the Prerogative' hopes to remain in existence to plan a meeting in one of the Houses of Parliament on the Prerogative despite the events at the House of Commons on 21st October. It hopes that, as a result of this meeting, civic organisations will be further encouraged to find ways of working with MPs, other decision makers and opinion formers on this issue. The stimulus for the meeting is the recommendations of the House of Commons Public Administration Select Committee report 'Taming the Prerogative (Parliament Fourth Report of Session 200304)' which urged greater parliamentary control over all the executive powers enjoyed by Ministers under the royal prerogative.

However, the nature of the meeting in Parliament will depend on the Lords Constitution Committee Report on the Prerogative and the Taming the Prerogative Coalition is currently reviewing its strategy in the light of recent developments. Haldane members should write to their own MPs on this issue and anyone who is available is invited to attend the next meeting at 4.30pm on Tuesday 10th January 2006 at Portcullis House, London SW1.

● **Declan Owens**

Child deaths in prison: critical judicial review looms

On Wednesday 30th November and Thursday 1st December 2005 a critically important judicial review takes place, into the government's decision to refuse a public inquiry into the death of 16-year-old Joseph Scholes in HMYOI Stoke Heath.

Yvonne Scholes, Joseph's mother, said: "I hope with all my heart that the Court examining the case will see sense and identify the urgent need for a public inquiry into my son's death and indeed the death of all children in penal custody. The fact that there has never been an inquiry disgusts me. If this was a death in social services there would be an outcry, the fact that my son died at the hands of a different State body, should pose no difference."

On 24th March 2002 Joseph Scholes, a deeply vulnerable and disturbed boy with a history of self harm and suicide attempts hanged himself from the bars of his cell in Stoke Heath Young Offenders Institution. The inquest into his death heard very disturbing evidence about the treatment and care of Joseph while in Stoke Heath. At its conclusion the coroner recommended that a public inquiry be held into issues that were outside the remit of the inquest.

May

12: The European Court of Human Rights rules that the Kurdish rebel leader Abdullah Ocalan did not receive a fair trial in Turkey. It ruled that the Turkish authorities had breached international treaties by denying Ocalan the right to a fair and independent trial, and barring his legal representative from contacting him after he was detained. Ocalan, who was arrested in Kenya in an undercover operation six years ago, was the head of the Kurdistan Workers Party, or PKK.

27: Liberty brings an application for judicial review of curfew and dispersal orders on behalf of a 15-year-old boy from Richmond because the creation of two "dispersal areas" in his neighbourhood infringed his human rights, preventing him from going to band practice, walking the dog and running errands for his mother. More than 400 dispersal areas set up in England and Wales under the 2003 Antisocial Behaviour Act, give police sweeping powers to disperse 'troublemakers' and forcibly take under-16s home.

31: The widow of a smoker lost a landmark legal battle to hold Imperial Tobacco responsible for her 48-year-old husband's death from lung cancer. Margaret McTear had been seeking damages, claiming that Imperial Tobacco failed to warn her husband, Alfred, about the dangers of smoking – the first such case to come before the British courts.

In November 2003 INQUEST together with Nacro (National Association for the Care and Resettlement of Offenders) launched a campaign for a public inquiry into the death of Joseph Scholes. This call is now supported by over one hundred MPs, members of the House of Lords, the parliamentary Joint Committee on Human Rights and a broad range of penal reform, child welfare and human rights organisations.

The call for a public inquiry forms part of INQUEST's wider campaign for:

- the abolition of prison custody for children;
- a comprehensive review of child deaths in penal custody;
- the creation of an independent 'Standing Commission on Custodial Deaths'.

Since Joseph's death in 2002, five more children have died in penal custody. Despite the 29 deaths of children since 1990 there has never been a public inquiry. A public inquiry would enable the many issues of concern regarding Joseph's treatment and care to be dealt with in a holistic joined up way which could have a significant impact on the future safeguarding of children's lives.

This judicial review is a crucial moment in the campaign. Individual support is vital so please sign up to the call for a public inquiry and contact INQUEST on 0207 263 1111 or email inquest@inquest.org.uk. For further information on Joseph's case and the public inquiry call please visit www.inquest.org.uk

● **Deborah Coles, co-director, INQUEST**

Rape victims: victims of the crime *and* the Criminal Justice system?

A comprehensive Home Office Research Study into attrition in reported rape cases provides shocking reading in 2005*. Woman reporting rape and subsequently effectively finding themselves on trial by the criminal justice system is not a new complaint. Woman failing to secure justice against their perpetrator is not a new complaint. Stereotypical attitudes of police, Judges and barristers, seeking to see if in some way the woman had 'asked for it', are not new complaints.

What is new is that the conviction rate for reported rape cases is now at an all time low, (5.6 per cent in 2002). The problems faced by those reporting rape have got worse: the justice gap wider. Rape is a unique crime, both a physical and psychological violation. Victims of rape are the most likely to find reporting the crime as a form of re-victimisation. A number of complex reasons operate to make the rate of attrition so high but a number of key concerns were identified.

Many women are failing to report rape, they fear what will happen if they do. Society has its own ideas of what a rapist looks like, but it's usually the person you know. It was only in 1994 that the marital rape exemption was abolished. If they do report it many then wish to withdraw their complaint, the police approach and negative advice about likelihood of conviction, the culture of disbelief of the victim all dissuade rape victims from continuing.

Worryingly the study found that whilst only between 3 to 9% of reported allegations were false both the police and CPS massively over estimate the scale of false allegations. This overestimation can be no surprise, there are media field days when a woman has made a false allegation of rape but less popular are the stories of the victims let down by the justice system. This kind of attitude can only fuel the lack of trust between the victim and the criminal justice system. Instead of a culture of belief there is a culture of disbelief- it is the victim, psychologically and physically damaged from the crime who faces the trials of the criminal justice system.

To say you have been raped invites judgement with social and material costs. There are too many stories of the shocking treatment of woman by those who should be supporting the victim. Victims report challenges to their own credibility from the outset, the focus not on the alleged criminal but on the victim; what was she wearing, was she drinking; easily leading to "she deserved it". No wonder then that the study found so many victims choosing not to pursue their case after reporting it to the police.

Recently the DPP Ken MacDonald announced steps to try and improve the experience of rape victims within the criminal justice system. Those steps included providing female prosecutors and a culture of support and belief. This is a welcome announcement.

During the general election our government published proposals to provide victims of rape with legal representation. Denmark, faced with similarly low conviction rates in rape cases in the 1980s, enacted legislation that provided victims with a right to a lawyer. This proved effective. Unfortunately, perhaps not unsurprisingly in the face of the government's cuts to funding for legal services, this proposal has been dropped. Yet the government should realise that cutbacks to access to justice will inevitably cost more in the long run.

The worry is that when the interest in this most recent study has died down it is this type of crime, one that affects woman most, will no longer be a priority. The conviction rate can hardly get lower but with that in mind less women will want to report the crime of rape. The long term impact of that is immeasurable. Everyone working in the justice system and government must ensure that properly funded steps are taken to prevent that.

● **Rebekah Wilson** (Barrister at Tooks Chambers and Vice Chair of Rights of Women)

(*Home Office Research Study 293. A gap or a chasm? Attrition in reported rape cases, Liz Kelly, Jo Lovett and Linda Regan, Child and Woman Abuse Studies Unit, London Metropolitan University.)

June

8: The Government is criticised in a report by the European commissioner for human rights for its policies on anti-terror legislation, frequent use of anti-social behaviour orders, high number of children held in detention and its treatment of asylum seekers.

23: Edgar Ray Killen, an 80-year-old Ku Klux Klansman is sentenced to 60 years in prison for orchestrating the killling of three young civil rights workers in Mississippi in1964. The deaths were the basis of the 1988 film Mississippi Burning.

27: An Israeli soldier is convicted of the manslaughter of British pro-Palestinian activist, Tom Hurndall, in the Gaza strip after a two-year battle for justice by his parents. Sergeant Idier Wahid Taysir shot Mr Hurndall as he shepherded children to safety from gunfire in Rafah refugee camp in April 2003.

28: Equal Opportunities Commission report suggests that every year almost half of the 440,000 pregnant women in the UK experience some form of disadvantage at work, because they are pregnant or on maternity leave. Up to 30,000 are forced out of their jobs.

30: Proposals to amend the abortion law to stop women having late terminations are overwhelmingly rejected by doctors at the British Medical Association conference, who voted by three to one to maintain present limits, restricting abortions to the first 24 weeks, except in extreme circumstances.

Letter from India: lawyers fight for justice for people on the streets

Over fifty years since Independence it is surprising the number of Indians who have expressed their gratitude for the British colonial period – usually citing the railways, the law courts and the legal system. True, Indian law has some basis in the English common law, but Indians are not doing themselves justice if they credit the British with their legal system.

The more exciting and progressive aspects of Indian law emerged post Independence and are a major departure from the English system. These, combined with the willingness of the Supreme Court to interpret legislation to protect human rights, give Indians radical protection (on paper at least).

The fundamental rights enshrined in the Consitution include equality (including the abolition of titles), freedom of speech, the right to life and personal liberty, religious freedom, and the protection of minorities. These have been interpreted by the Supreme Court to include the right to live with human dignity, the rights to livelihood, education, healthy environment, medical care, shelter, and travel. A further innovation by the Supreme Court towards the latter part of the twentieth century was the concept of Public Interest Litigation. Designed to protect the rights of those unable to access the courts to protect themselves, this enables social organisations or public spirited individuals to approach the Supreme Court directly on issues which affect the public generally, with little expense. For a test case there is no need, as in England, to wait for a suitable aggrieved client, eligible for legal aid, who is prepared to go through the lengthy litigation required to reach the Lords.

The tragedy is that the law seems to have little impact for the tiny street girl overlooked by the vast numbers of commuters who pass her by every day, or the baby being paraded all day in the midst of traffic fumes to gain sympathy and a few rupees. It appears to have little effect for the many people in Mumbai who live in slums, the estimated 200,000 people, including many minors, who are trafficked in the country for purposes such as the commercial sex trade or the number of bonded labourers in India. The reasons are many and include disinterest and corruption, lack of resources and a legal system which is slow, laborious and to be avoided.

A family living on the street in Mumbai, India

Picture: Jess Hurd / reportdigital.co.uk

However there are those who are trying. I have the privilege of working for an NGO (non-governmental organisation) with a number of committed Indian professionals who are prepared to go the extra mile to ensure justice for those they serve. My colleagues rescue trafficked women and children from the sex trade and ensure emancipation for bonded labourers. Those who are rescued are assisted to rebuild their lives and to work with the authorities to ensure their perpetrators are brought to justice. It is not easy work

July

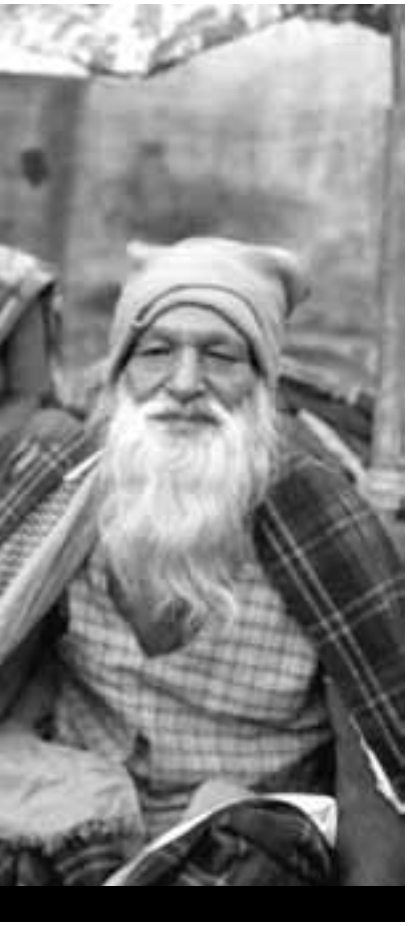
7: The Law Lords rule that the parole board can use the "special advocates" system, contoversially used in terrorism cases, to keep evidence secret from Harry Roberts. The system was damned by two dissenting judges.

14: The charges against five rail executives and the engineering group Balfour Beatty over the Hatfield rail disaster are dismissed. A judge ordered the Old Bailey jury to return not guilty verdicts, five months into the trial, after reviewing the evidence and listening to submissions.

19: An Afghan warlord who escaped the Taliban is convicted of carrying out a campaign of torture and hostage-taking. In the first trial of its kind under the UN torture convention Faryadi Sarwar Zardad was prosecuted here even though he is not British and the offences he committed were carried out in Afghanistan.

19: The Attorney General, Lord Goldsmith, decides that three British soldiers are, for the first time, to stand trial for war crimes against Iraqi detainees under the jurisdiction of the International Criminal Court. They will face prosecution for the war crime of inhuman treatment of detainees.

20: A High Court judge rules that it is illegal for children to be forcibly removed from curfew zones. Under the 2003 Anti Social Behaviour Act, any unaccompanied under 16s going into a curfew zone between 9pm and 6am, faced a police escort.



and there are many obstacles, but my colleagues will risk their lives or stay at a police station all night to ensure justice. Wonderfully, for those prepared to try, the law is on their side.

● **Anna Corrigan.**

Anna worked as an employed barrister at Islington Law Centre for over six years before leaving London to work with International Justice Mission project in South Asia (see www.ijm.org).

'Flawed' Bill lacks patient awareness

On Tuesday 18th October 2005 ITV aired a documentary programme charting the perceived decline of a well known figure in the hearts and minds of the British public. Frank Bruno relayed the impact of being sectioned under the Mental Health Act 1983 after being diagnosed with bipolar disorder, a mental illness. The stigma surrounding mental illness can perhaps be encapsulated by a brief survey of the negative press coverage that accompanied Mr Bruno's period of illness in 2003 or indeed any tabloid account of a crime committed by someone with mental health difficulties.

This Government is currently forcing through legislation to assuage public fears regarding the 'dangerousness' of the mentally ill. The Haldane Society is deeply concerned about the proposed Mental Health Bill as it is presently constituted in anticipation of its proposed introduction in Parliament in the 2005 autumn session. We recognise the vulnerable position of people with mental health problems within the United Kingdom legal system and society as a whole, and the marginalisation and stigmatisation that they receive, especially in light of distorted and sensational press coverage. In particular, it calls upon the Government to abide by its international obligations under Articles 3, 5, 8 and 14 of the European Convention of Human Rights.

The draft Mental Health Bill, published in September 2004, has since been considered by a Joint Scrutiny Committee. It contained many proposals which would, if enacted, erode civil liberties and force many more people with mental health problems into compulsory treatment than is necessary.

The Scrutiny Committee made 107 recommendations based on evidence from mental health service users, leading mental health charities, health professionals and legal and professional bodies. These recommendations would vastly improve the draft Bill by placing the emphasis on the rights, care and treatment of vulnerable people without the need for compulsion. Lord Carlile, the Chair of the Committee stated, "the Bill is fundamentally flawed ... too focused on addressing public misconception about violence and mental illness, and does not do enough to protect patients' rights."

"Bonkers Bruno Locked Away" *The Sun* front page headline in early edition of paper, 23rd September 2003

"Sad Bruno In Mental Home" *The Sun* headline in later edition

Unfortunately, the Government has not accepted many of the Committee's recommendations and although the Bill will have been re-drafted by the time it is introduced to Parliament in the autumn, the Haldane Society fears that it will still represent an attack on the rights of people with mental health problems. At the very least the Bill should contain a set of principles that enshrine these rights.

The Haldane Society is also concerned that the Government can so easily ignore the recommendations of a parliamentary committee, which has taken evidence from experts in the field as well as ordinary members of the electorate, before making its recommendations. Additionally, the Haldane Society understands that much of the detail about the practical safeguards for people with mental health problems who will be treated under the new law, will not be in the law itself, but in a code of practice which is much more difficult to enforce.

Therefore, the Haldane Society is pleased to join the Mental Health Alliance as an Associate Member and offer its solidarity in the campaign to provide legislation which reflects the concerns of those who are best placed to safeguard the interests of those with mental health problems. The Haldane membership are urged to lobby their MPs on this matter. If one positive impact of Mr Bruno's illness is an increased understanding in the hearts and minds of the British public of the mentally ill then ITV will have served the public well in its documentary.

● **Declan Owens**

August

7: Six protesters are arrested outside Parliament under new laws banning spontaneous demonstrations within half a mile of parliament. Under the Serious Organised Crime and Police Act 2005 anyone gathering to demonstrate within a designated area is committing a criminal offence unless they have been granted authorisation from the police.

17: Families of 17 soldiers killed in Iraq begin a legal bid to secure an independent inquiry into the lawfulness of the 2003 war. A lawyer representing the families lodged papers at the High Court, seeking a judicial review of the Government's decision this May not to order an investigation into the legality of the war in Iraq.

21: High Court judge imposes restrictions on picketing outside Gate Gourmet premises at Heathrow after complaint by the catering company that its workers were being harassed and intimidated. Gate Gourmet sacked 670 staff.

30: A teenager ordered not to wear a hooded top as part of an antisocial behaviour order can wear hoodies again after a Court ruled that the ban breached his human rights.

30: A survey of leading law firms shows the top 100 solicitors earned a collective profit of £2.9bn, a figure that is more than double the 1997 figure. Tom Freeman, editor of *Legal Business*, said the pay gap between high fliers and others was widening.

Government fails to silence Brian

Brian Haw, a protester against the Iraq war who has maintained a 24-hour-a-day vigil in Parliament Square since June 2001, can continue his protest because of a drafting error in a new law seemingly specifically designed to stop him demonstrating there.

On 29th July 2005 the Divisional Court ruled that section 132 of the Serious Organised Crime and Police Act 2005 (the Act), brought in to control demonstrations around the Houses of Parliament did not apply to Brian Haw's protest. This was a significant victory for Mr Haw, and symbolic for those who believe that the right to peaceful protest goes to the heart of the British tradition of liberty. It also made a mockery of the Government's lengthy, clumsy and heavy handed attempt to remove Brian and his conscience-jarring protest from the prominent position he occupies. However in spite of this ruling, Part IV the Act still remains in force, and still has serious implications for those wishing to protest peacefully – both near to Parliament and also at other locations across the UK.

Brian Haw's protest is situated in parliament square, an area in close proximity to the Houses of Parliament. Under section 132 of the Act, as of 1 August, 2005 this area became a designated area in which it was a criminal offence for a person to demonstrate if, when the demonstration started, authorisation had not been given by the police. It was clear from a straightforward reading of the section that the Act only applied to protests that started without prior authorisation, and thus protests that started after the Act had been passed. Mr Haw's protest had begun in June 2001, so at the point that it started there was no such requirement to obtain authorisation. The protests had continued since 2001 without a break, so there was no way that it could be said to have 'started' after the Act came into force.

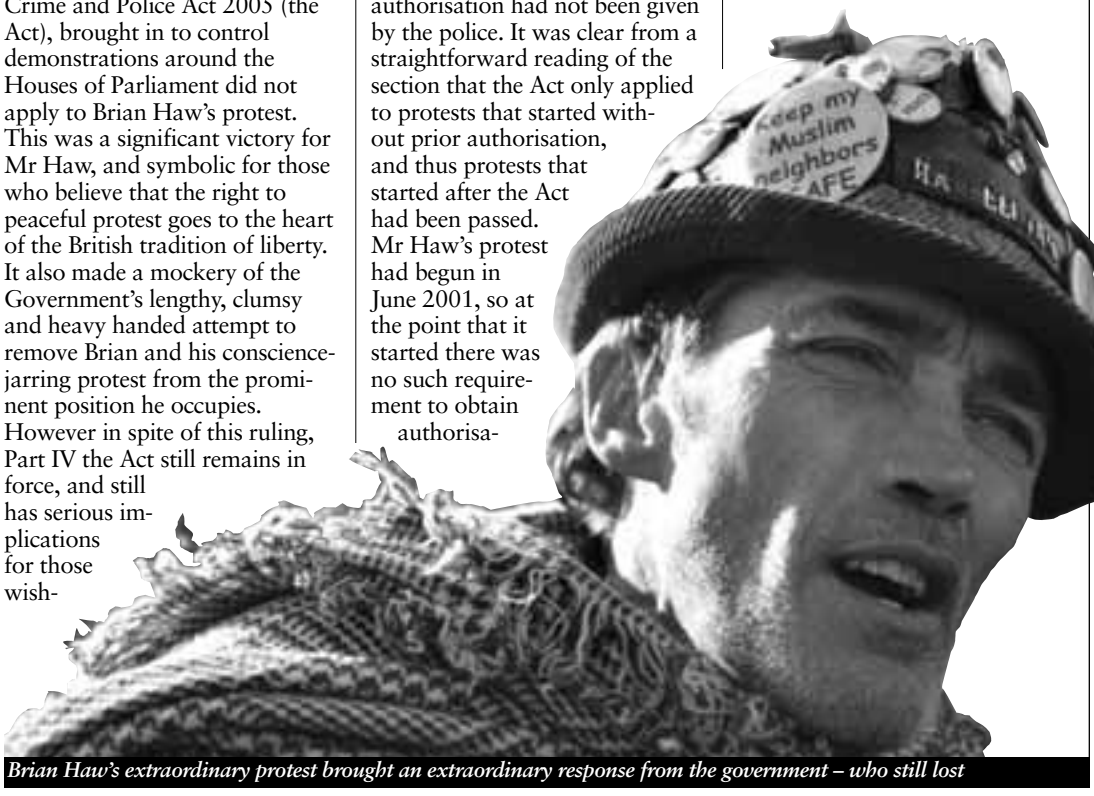
As a result of this drafting error, the Government took the extraordinary step of passing an order on 10th June 2001 to ensure that protests that began before the Act came into force and were still continuing also required notice to and authorisation from the police. This piece of legislation was focused entirely on one man: Brian Haw.

Mr Haw contended that those parts of the order that required authorisation for a continuing demonstration that had started before the Act came into force were unlawful, as they amounted to an amendment for which there was no power under the Act. Despite the best efforts of the legislature to stop him, it was held by the court that the Act did not apply to continuing demonstrations that had commenced before the Act had come into force, and that it was never Parliament's intention that this was to be the case. Mr Haw could continue his protest lawfully.

What are the implications of the decision for other peaceful protests? Mr Haw's case was undoubtedly a significant victory. However, it is of great concern that the massive effort that the Government has expended on trying to remove Brian may have no effect on him, but it does affect all of the rest of us. Authorisation to demonstrate is now required for any protest taking place anywhere within a one kilometre radius of Parliament – an area that includes Parliament, Whitehall, Downing Street, the Foreign Office and New Scotland Yard. There have already been more than a dozen arrests made for unauthorised protest, and many more are sure to come. In addition, the Act also contains power for the Home Secretary to designate other sites around the country where trespass will be an offence, an extension of the offence/tort of harassment to cover more protest activities and new offences applicable specifically to animal rights protesters.

While Mr Haw's case is a battle won, the war against the right to protest rages on.

● Alex Gask & Anna McLeod, Liberty



Brian Haw's extraordinary protest brought an extraordinary response from the government – who still lost

Picture: Jess Hurd / reportdigital.co.uk

September

6: Five rail executives charged over the Hatfield crash in which four people died and more than 100 injured in October 2000 are cleared of breaking safety rules.

12: The Israeli government declares an end to 38 years of military occupation of thhe Gaza Strip and hands over demolished Jewish settlements to the Palestinians.

12: Make Poverty History is banned from advertising on television and radio. The media regulator ofcom rules that the "click" ads (including celebrities Kate Moss and Brad Pitt) constitute a political message and therefore fall foul of the 2003 Communications Act.

12: Revelations that the CIA has used British airorts when abducting terrorism supects and flying them to prisons around the world where they can be tortured leads to an investigation by the UN.

13: The European Court of Human Rights rules that Britons' human rights were being violated because of the legal bar on marrying their in-laws.

26: The head of the international decommissioning body, General de Chastelain announces that the IRA's entire arsenal of weapons has been put beyond use.

FROM THE STATEMENT CONDEMNING THE ASSASSINATION OF THE PUERTO RICAN INDEPENDENCE LEADER FILIBERTO OJEDA RIOS BY THE FBI

Ojeda died as a result of a fusillade of shots, indicative of a military operation. Federal agents and sharpshooters had been brought in from the United States; a media blackout was imposed; the Puerto Rican authorities apparently excluded from the operation. The timing was overtly political; Friday 23rd September 2005, when the people of Puerto Rico were commemorating the anniversary of the Grito de Lares, the national patriotic uprising of 23rd September 1868 against the Spanish colonisation of Puerto Rico. The Haldane Society of Socialist Lawyers proclaims its utter condemnation of this brutal crime. We appeal to the Special Rapporteur on Extrajudicial, Arbitrary and Summary Executions of the United Nations Commission of Human Rights and to the Committee on Human Rights of the International Covenant on Civil and Political Rights, to investigate and condemn the violations of human rights perpetrated by the police agencies of the United States in Puerto Rico.

Israel denies Vanunu rights

On 25th July, in another of a long line of questionable decisions, the Israeli supreme court once again showed its prejudice against Mordechai Vanunu, the 'nuclear whistleblower' released from prison 18 months ago.

It turned down Vanunu's appeal to have all his prison papers, correspondence, diaries and notes (confiscated when he was released from Ashkelon prison in April 2004) returned to him. No criminal charges have arisen from the contents of the papers, and there has been no evidence presented that these papers could be considered a threat to the security of Israel. However, to confiscate everything is to deprive Mordechai of his prison experience and life story.

"It is like stealing his recent history" declared Ernest Rodker, a friend and supporter. "This is an outrageous decision, without precedent, and surely is just another indication that the Israeli legal system is vindictive and blind to international human rights legislations when it comes to dealing with Mordechai Vanunu." said Ernest. "He poses no threat to the security of Israel; he just wants to leave the country and begin to rebuild his life in America."

Audit help required

The debts of the world's low-income countries are a mechanism for transferring wealth from the poor to the rich, and lie at the root of world poverty and inequality. The events of 2005 – including the G8 Summit, the Make Poverty History campaign, and other campaigns – have led to a reduction in these debts, but the political problem of policy control exerted by the International Monetary Fund and World Bank remains.

In September, representatives of debt campaigns met in Cuba to propose a strategy for the global debt campaign, a central part of which will be to carry out national "debt audits". In countries of the Global North, these audits will concern commercial and public loans offered to the South. The UK arm of this project is still at an early stage, but the aim will be to gather information on the circumstances of loans and of who benefitted from them. The audit information will be shared globally, and – it is hoped – will play a crucial role in building the focus and the strength of the debt campaign.

Jubilee Scotland is one of the organisations involved and they welcome expressions of interest from people to whom it could turn for occasional advice on the development of this project.

If you would like further information please contact Ben Young, National Co-ordinator, Jubilee Scotland, 41 George IV Bridge, Edinburgh EH1 1EL; tel 0131 225 4321; or go to www.jubileescotland.org.uk

CHRISTMAS PARTY TICKETS

Don't miss the Haldane Christmas Party on Friday 9th December at the Apple Tree, 45 Mount Pleasant, London WC1. For more information and to order your tickets please contact Christina at: **Christina.Gordon@tooks.co.uk**

WE NEED YOUR EMAIL ADDRESS!

We are planning a great Haldane's 75th Anniversary programme including an excellent CPD lecture series and a major anniversary celebration. We need to be able to bring you information the quickest and most efficient way possible, which means e-mail. So please send your e-mail address and DX details (to help us save on postage costs with *Socialist Lawyer*) to our membership secretary immediately at **marcusjoyce1@gmail.com**

October

5: Chief Inspector of Prisons, Anne Owens, reveals that prison officers at two of UK's biggest immigration centres routinely carry wooden staves to "enforce discipline", despite the fact their use is banned in low-security prisons.

13: The jail population in the UK reaches 77,622 – just 527 places short of "house full" limit.

14: Immigration judges order an end to deportations of failed asylum seekers to Zimbabwe, saying those sent back were handed straight over to security police. The Asylum and Immigration Tribunal ruled an asylum seeker would be at risk if sent back to Harare. The three judges were alarmed at the Home Office's lack of interest in what happened to those sent back.

17: Crown Prosecution Service announces that rail chiefs will not face manslaughter charges over Potters Bar rail crash, in which seven people died and 76 were injured, saying there was no "realistic" prospect of criminal convictions against any person or company for manslaughter or gross negligence.

Pictures by Jess Hurd

Socialist **Lawyer** *interview*

'LEGISLATION SHOULD BE THE LAST RESORT'

Since Shami Chakrabarti became Director of Liberty in 2003 she has been campaigning for human rights and civil liberties at a time when national security, not human security, is seen as paramount. She discusses with **Cate Briddick** the Government's response to the July bombings, human rights and national security, New Labour spin and what she believes the Home Secretary's role in Government should be

On Wednesday 12th October the Government published its Terrorism Bill amid much controversy; what is Liberty's position on the proposed legislation?

Overall it is a desperate shame that the some knee-jerk sound-bites from the Prime Minister and his spin doctors will overshadow some of the more proportionate and sensible details in the Bill. Ultimately, however, the very important job of legislating in this country has been denigrated to the lowest form of spin. There was a degree of dignity shown by the Home Secretary Charles Clarke's immediate response to the London bombings. When asked on Radio 4's *Today* Programme whether ID cards would have made a difference he answered "probably not". When asked whether certain cleric's should now be "rounded up" he said that it was very important to make distinctions between those who said things that he disagreed with and those who were responsible for the bombings. Those comments were to his credit and gave us real hope that there could be some restraint and some consensus at a time of genuine threat. This went well until the Prime Minister gave the notorious "rules of the game" press conference on 5th August, just before he went on holiday, and outlined his "12-point" package of measures which purport to deal with the threat of terrorism. Some of the measures he announced, like the extension of pre-trial detention to 90 days, came straight from an ACPO press release. This has become symptomatic of the Prime Minister's personal approach to the politics, legislation and the British constitution. There are aspects of this Bill that will make us less safe.

Shami Chakrabarti trained as a barrister and worked as a legal advisor in the Home Office for 6 years, under both Conservative and Labour governments. She was involved in the implementation of the Human Rights Act 1998. Shami became Director of Liberty in September 2003 and spent the following two years campaigning against the increasingly repressive anti-terrorist measures which followed the 9/11 attacks in the USA. As well as responding to Government proposals and legislation Shami has spent a considerable amount of time as Director of Liberty writing and speaking on the need to create a positive "culture of respect for human rights" in the UK.

Do you think that the proposed extension of pre-charge detention in terrorism investigations to 90 days is an attempt to bring in detention without trial by the back door?

Absolutely. When you really peel away at the supposed justifications for this drastic extension you end up with the same idea: that preventative detention is justified and something that we should accept. If it is about the complexity of evidence gathering in terrorist investigations then there are more proportionate ways of dealing with this problem. The police should be given more resources, suspects could be charged with lesser offences (such as with-

holding evidence) with more serious charges being added as the evidence emerges. A judge could order that a de-encryption key be handed over (where evidence is encrypted on a suspect's computer).

All of these proposals have been suggested to deal with the purported problem of complexity, but ultimately what we are talking about is internment. If it is acceptable to detain a suspect for 90 days without trial why not six months or three and a half years as we had in the Belmarsh case? Holding someone for 90 days without charge is the equivalent of giving them a six-month custodial sentence. It is over twenty times the pre-charge detention time limit for murder. All of this comes back to the same "anti-philosophy" of the Prime Minister where he asks the police what powers they want and then gives them to them. The argument that is always raised is "the police want these powers, do you know better that the police?" The answer is that democratically elected politicians cannot and should not give blank cheques to the police. That is, however, what the Prime Minister is prepared to do to court popularity and that is deeply irresponsible.

The Government initially published proposals to create an offence called "indirectly encouraging terrorism". Then, after what the media termed "a massive U-turn" the Government published the offence "encouraging terrorism" in the Terrorist Bill 2005. What problems do you think there are with this "speech" offence?

Inciting murder has rightly been an offence in the country for at least 200 years. In 2000 the Government extended the law so that specifically inciting terrorism became a criminal offence. The proposed offence of "encouraging terrorism" goes further still and has two major problems.

Firstly, you don't have to have intended to encourage anybody to do anything to have committed an offence. If you say or do something that you ought to have reasonably believed was likely to encourage someone to commit terrorism you may have committed an offence.

What that means is that comments like those made by Cherie Blair that she understood why some Palestinians might be driven to consider acts of terrorism, or that express sympathy for their mothers, comments that were never intended to encourage anyone to become a suicide bomber, that at worst might be considered silly or negligent things to say, might be an offence under this legislation. Negligent speech is now to be a criminal offence punishable by seven years imprisonment.

The second problem with this offence is that the definition of "terrorism" is so incredibly broad. It will cover politically or ideologically motivated threats or crimes not just against people, but against property, anywhere in the world. That means if I were to say that Robert Mugabe is a terrible leader and that the only thing left for his people to do is to bring him down by force, that could be taken as an encouragement to terrorism and I could face up to seven years in prison. Indeed, if before the war in Iraq journalists or politicians had said similar things about Saddam Hussein the same would apply.

"Democratically elected politicians cannot and should not give blank cheques to the police"

Charles Clarke, who has to defend all this nonsense, had to admit to the Home Affairs Select Committee that we might have come to a point where it was no longer legitimate to advocate taking up arms against the Government of a state, however brutal. He had to say this when being asked questions about North Korea. This shows how shockingly broad this speech offence is and the constitutional poverty of the Government and the Prime Minister himself, that they are prepared to countenance the creation this offence. It is desperately dangerous, not only in terms of criminalising things that are said that you might never have intended anyone to act on, but in terms of affecting out ability to talk about dictatorships around the world.

Even where people are saying things that I don't agree with, whether here or in different places around the world, this is speech. If the Government thinks that it is going to engage with disaffection and win an ideological war with people who think that we are a decadent, western society who believe in nothing, this is the way not to do it. Look at Middle Eastern regimes that repress free speech and see how terrorist groups prosper in those countries. It is not just that I object to this offence in the usual way the director of Liberty ought to object; but

I object as a mother of a small child who does not want to see more lives lost.

The Home Secretary has said he will be working with the CPS and intelligence agencies to see whether a change in the law would be possible which would allow for more sensitive evidence – perhaps including intercept evidence – to be used in criminal trials while safeguarding intelligence methods and the rights of defendants. Why does the Government appear to be shifting its position on the admissibility of wiretap evidence?

The Prime Minister takes these absolute positions because he wants to be seen to be "talking tough" because of the machismo that surrounds home affairs. Decisions are taken in absolutist terms and then when they are shown to be ridiculous or illogical (as is now happening with wire-tap evidence and occurred with the proposed "glorification" of terrorism offence which then became "encouraging terrorism") because of a range of criticisms, then there has to be something that is seized on as a "U-turn". When politicians back themselves into corners in this way it makes it harder for them to listen to good advice.

We at Liberty have advocated for the absolute bar on the admission of intercept evidence in criminal trials to be removed for some time. People think that this position is surprising. If it is right, and I think it is, that sometimes we interfere with people's liberty in a necessary and proportionate way and tap their telephones because we have reason to believe that they are involved in a serious crime, then why not use that evidence in a criminal trial? Sometimes it will incriminate someone, sometimes it will exculpate someone. We at Liberty say that judges should issue the warrants for telephone tapping, not politicians, but of course the evidence should be used.

I have heard two arguments against the admission of wire-tap evidence. Firstly, that its admission would let the terrorists know that there is a capacity to listen. But in broad terms everybody knows that there is a capacity to listen. Secondly, it is thought that the terrorists might stop using telephones or the internet to communicate. But all that we are saying is that the absolute bar should be lifted; not that wire-tap evidence has to be used in every case. If there is material that can be used in the fair trial of someone then that has to be better than the insecurity and injustice caused by internment.

It seems that a tension has been created between human rights and national security with national security being used to undermine rights. What can be done to shift the debate away from this damaging dichotomy?

As the Government becomes more and more extreme we must resist the temptation to get involved in a "clash of civilisations" with them. We, as passionate believers in rights, are becoming more and more reasonable as they look more and more extreme.

We need to remind people that there is no contradiction between human rights and national security because the human rights framework contains the imperatives of protection as well as freedom. In the international context we think of "protection" as a classic humanitarian principle, we don't think of it as being at odds with "human rights". This is a framework that was left to us by people who lived through the Holocaust and the Second World War. We don't say it enough, because perhaps some of us come from a tradition that does not like to cite Winston Churchill, but he was one of the greatest proponents of the *European Convention on Human Rights*. That fact should be thrown in the face of Tory leadership contenders who say that they want to repeal the *Human Rights Act*. So rights and protection are brought together in the human rights framework. However, this framework requires a disciplined approach to policy which in turn makes better legislation.

There are times when freedom and security, not human rights and security, are in tension. There are times when it is necessary and proportionate to interfere with a bit of my freedom to achieve security. The moment where my telephone is tapped or where I am subjected to a proper stop and search based on reasonable suspicion or on stopping and searching everyone who enters a particular area. There are many other moments though when freedom and security march hand in hand. One of the things that is interesting about the speech offence and the hideous 90 days pre-charge detention is that that these measures are as bad for our safety as they are for our freedom. I am absolutely confident that both of these discriminatory, arbitrary measures will give ammunition to terrorist recruiters. We have direct experience of this in relation to Irish paramilitary activity. If this legislation is passed we will see young predominantly Asian, Muslim, men arrested on suspicion and detained for the equivalent of a six-month prison sentence. The concern is less for those who are eventually charged, because they will be detained for long periods anyway. The real concern is for those who are released on the 89th or 90th day, who return home never having been charged with any offence. In the meantime life has moved on and people who are extreme have been visiting their family, looking after their mum, talking to their younger brothers. They will say "that was British justice. When you needed help did British justice protect you or did we protect you?" That is the surest recipe for making things worse and aiding the recruitment of more and more people to a cause that believes that this is a decadent country that has no real beliefs.

> "We, as passionate believers in rights, are becoming more and more reasonable as they look more and more extreme"

It is worse than that, its not just the proposed legislation, but every time the Prime Minister makes a speech battering the criminal justice system and denigrating liberal values he gives support to the idea that western liberal democracies are not based on any firm belief or principle, that all we have is weakness and an absence of values. Every time he does this he is reinforcing the views of people who support a new brand of totalitarianism. Ultimately, as with previous threats to this country, the terrorist threat will be defeated by standing firm to our principles and liberal democratic values.

The European Court of Human Rights ruled in *Chalal v UK* that deporting someone to a country where they may face torture is in breach of Article 3 of the *European Convention of Human Rights*, the right to be free from torture, inhuman or degrading treatment. One of the Prime Minister's proposals outlined on 5th August is the deportation of individuals to countries like Algeria and Jordan following the conclusion of "memoranda of understanding" that deported people will not be subjected to torture or ill-treatment. Veiled threats have also been made against the judiciary that if these deportations are blocked the *Human Rights Act* may be amended or other legislation passed directing judges to consider national security when making the decision of whether or not to deport someone. What do you think about these proposals and this attack on the independence of the judiciary?

They call it "respect". That is the shocking shame of it. They threaten the independence of the judiciary and call it respect. How can you tell young people that they should obey the law, that respect of the law is part of the wider respect we give others in our society when the Government treats the law with such contempt? This is a fundamental problem that goes even deeper than problems with the plans ▶

to deport people to states that use torture, this contempt, this arrogance of the Government, this belief that they are above the law. I once had a debate with a New Labour MP, I won't name him. I will protect the guilty on this occasion because what he said was so terrible. He was asked by the chairperson, "Don't you believe in the rule of law?" The MP replied "of course I believe in the rule of law, I'm a legislator. I make the law and other people obey it." There was not a hint of irony in that answer. That is what we are heading for.

In terms of these proposed deportations and diplomatic assurances, if the Government thinks that notwithstanding Algeria's appalling human rights record, it could persuade Algeria to renounce torture, that would be a very good thing. If the Prime Minister was to use his considerable personal charm and diplomatic skill to achieve this as part of an ethical foreign policy then that would be a considerable achievement. I am, however, extremely sceptical about whether these diplomatic assurances are going to achieve this. Ultimately, it is for the courts to look at the evidence and decide whether it is safe to return someone.

There is a certain honour in putting your beliefs on the table and the diplomatic assurance before the court. What I really object to is that the Government is saying that we will put these assurances before the courts, because we believe in them, but there is a gun under the table. The gun is the threat that if judges are not persuaded by the assurances and arguments the Government will amend or repeal the *Human Rights Act*, or legislate to tell the judiciary what to think. That is despicable. This is not changing the rules of the game; it is making them up as you go along. It is tawdry and unacceptable.

The Prime Minister has recently proposed giving the police summary powers such as the power to issue an Anti-Social Behaviour Order or disqualify someone from driving. This seems to be another situation where a police or ACPO "wish list" is picked up by the Government and proposed as a new law.

Everything revolves around the news cycle. I hate to be predictable but there is a lot of evidence, in the memoirs of ex-special advisors and in my own experience, that serious policy is made up in a press release. It is all about the latest gimmick or what is going to be in the Sunday papers. That is how serious home affairs and constitutional policy is now being formulated. Half the time the Prime Minister does not know the detail of his own proposals. If he were really taken to task about some of the proposals he makes at press conferences it would be revealed that there is no thought or detail behind them. I think that after one of these press releases poor civil servants have to search around and come up with legislation that in some way matches the sound-bites. It is absolutely disgraceful and results in incredibly bad legislation that makes nobody safer. It leads to the drafting of sweeping powers that are then used against those who voice dissent, such as Walter Wolfgang.

I think that there is a very serious point to be made about the events surrounding Mr Wolfgang's expulsion from the Labour Party conference and his brief detention under anti-terrorist legislation. The Prime Minister's response to this seemed to be that he was not in the convention centre at the time and was not therefore responsible. I think that he is responsible, both in the constitutional sense that he is that architect of these sweeping new powers, which are ripe for use and abuse whether intentionally or not. He is also, however, responsible for a culture that says that someone who is dissenting, or irritating, or different or whose behaviour causes "harassment, alarm or distress" (the public order and ASBO legislation) are to be stopped. I was at the conference a couple of days before that incident sitting in the same balcony listening to the Home Secretary's speech when another elderly gentleman shouted "rubbish" at his assertion that the Iraq war was in no way linked the terrorist bombings in London. Sure enough a goon in a yellow waistcoat started looking for the source of the dissent. What chilled me the most is that half a dozen Labour Party members sitting in the balcony started pointing at the man. That finger-pointing, that denunciation, chilled me. I went home and thought that they had done this to their party and that the Prime Minister wanted to do it to the country as a whole.

> "If Tony Blair was really taken to task about some of the proposals he makes at press conferences it would be revealed that there is no thought or detail behind them"

Finally, if you were the Home Secretary what legislation would you pass or do differently?

I had the privilege of working at the Home Office for six years under Conservative and Labour Home Secretaries and it is an incredibly important Department of State. The role of the Home Secretary is a very important one in our constitution as he sits on the line between freedom and security. It ought to be a place where you do your best, but ultimately, you go to bed at night and say a little prayer that there is not going to be a terrorist attack or prison escape. My fear is that Home Secretaries over the last ten years have seen the Home Office as a potential vote winner, as a place to go from to be party leader or Prime Minister, rather than a great office of state that quite possibly should be your last job in high office.

I would not dream of saying that I could be a better Home Secretary than someone else, but I would pass less legislation. I would try and move away from the idea that every societal ill can be cured by more legislation. In some ways the Home Office becomes a dustbin for policy that is difficult, or that has not worked elsewhere. When Mr Blunkett was Education Secretary he thought that too many young people were playing truant from school so the Home Office gave him a criminal offence to punish parents who could not get their children to school, which attracts a sentence of imprisonment. So a poor, single mother, having problems getting her son to school, can be sent to prison. How does that help her or her children? Too often police powers or criminal justice legislation are used as the first option for changing people's behaviour. Not education, integration or incentives, but criminalisation. The Government tries to use more and more draconian sanctions to achieve its aims. It uses legislation as the first resort rather than the last. The criminal justice system and prison need to be the last resort. We are addicted to home affairs legislation, as a political class and as a country. That addiction has to be stopped. The Home Office is not a place to deliver solutions for our society. Look at how many of the Prime Minister's initiatives or speeches centre on home affairs, on tough new powers – it is cheap. Legislation, like talk, is cheap. But it can be very expensive to our rights and freedoms and to the kind of society that we want to live in.

- The full text of the Terrorism Bill can be found at http://www.publications.parliament.uk/pa/cm200506/cmbills/055/2006055.htm
- For more information about Liberty visit their website: www.liberty-human-rights.org.uk/. Support Liberty's vital work by joining lawyers for liberty: http://www.liberty-human-rights.org.uk/join/join-lawyers-for-liberty.shtml

Cate Briddick

Picture: Jess Hurd / reportdigital.co.uk

ILLUSION OF PROTECTION

As we go to print, Parliament is once again considering a massive extension of 'anti-terror' legislation. By the time you read this, most of it may already be law. However, as Haldane President **Michael Mansfield QC** argues, there is a powerful case for repealing all such powers as they are more likely to lead to miscarriages of justice than to increased protection for the public

It is time the Prime Minister recognised that the new legislative clothes of the current Terror Bill are no more convincing or effective than the Emperor's. They are an illusion and the majority of onlookers realised some time ago that they afford no protection.

For the last 35 years, I have participated in numerous trials involving allegations of terrorism. I have argued a great many appeals. I even had my car blown-up outside the Old Bailey in 1973. I have a close interest in what works and what doesn't.

The pattern is horribly familiar. A bomb outrage occurs, innocent civilians are slaughtered and the Government of the day feels compelled to posture a tough stance. Within days there is a raft of new measures creating new offences and powers under the heading of Anti-Terror. In the hurried debates that follow, the question that never gets an adequate answer is whether such legislation is even necessary, let alone effective. Or rather, can such legislation be counter-productive?

The short answer is that none of it did, nor could it have, prevented what happened on ▶

the 7th and 21st July. In the four years since September 11 2001, a total of 895 people have been arrested under the Terrorism Act 2000, but only 23 have been convicted of terrorist offences. This pattern has been repeated throughout the history of this type of legislation since the mid-1970s.

The term "terrorism" is unnecessary and undefinable. Acts of terrorism are invariably covered by ordinary criminal offences: possessing explosives, chemical or biological weapons, causing explosions; attempt, incitement and, most commonly, conspiracy. The ludicrous contortions in the new Bill (encouragement and glorification; dissemination; and preparation) are unworkable, do not improve the ordinary legal framework and risk alienating the very people who most need protection.

What is 'terrorism'? Different meanings crowd in upon each other. Under s.1 of the Terrorism Act 2000, terrorism is defined as "the use or threat of action for the purpose of advancing a political, religious or ideological cause." That surely is the case when States go to war, illegally, to advance a cause like "regime change" and thereby commit acts of "state terrorism". The UN and the recently-established ICC are still not unable to agree on defining either the war crime of Aggression or terrorism.

As for 'glorification', Milton's eulogising of the Old Testament 'terrorist' Samson; Ben Jonson's Sejanus, presently being performed by the RSC; the Guy Fawkes celebratory exhibition in the House of Commons itself might all fall foul of the glorification clause. No one will be reassured by the claim that such examples would never be at risk; tell that to the 600-odd detained during the Labour Party Conference under Terrorism provisions; tell it to Walter Wolfgang.

And there is always 'detention without charge,' the ultimate weapon that demonstrates the government really means business. Barely a year ago, this government staunchly defended its right to lock-up foreign nationals indefinitely, without charge or trial, and without sight of evidence against them. The Attorney General berated the Law Lords for daring to question what he deemed a matter of political judgement. Only some strident and forceful observations by their Lordships finally curbed the Star Chamber excesses of Blunkett, Clarke and Blair.

The Government now comes back demanding 90 days' detention without charge. Only regimes like apartheid South Africa have employed similar provisions. Assertions of the kind made in a briefing document by the Assistant Commissioner, Andy Hayman, are seriously misleading. He cites a case study 'Operation Springbourne,' another name for the Ricin Case. MS, a defendant in the trial, was originally charged with terrorist offences in September 2002. He was detained in Belmarsh. In early 2003 he was charged with conspiracy involving Ricin. The trial did not start until September 2004 so, in all, the police had over two years to sift the material. As often happens in complex cases, holding charges were brought whilst further investigation took place. This enabled the prosecution to add or amend charges, as they did in Ricin, to serve additional evidence, as they did in Ricin, and to get repeated extensions of time from the court to serve their summary of evidence. MS was acquitted of all charges, as were all co-defendants save one.

It is therefore erroneous to state that the police face impossible time frames in which to prepare their case. In light of the verdict, we are entitled to ask whether there ever was such a conspiracy, let alone any of that Ricin, to which both Blair and Colin Powell made such frequent reference in the run-up to war.

The Government has ploughed on regardless of the jury's verdict and regardless of the rule of law. It has detained MS once again on precisely the same material upon which the jury adjudicated his innocence. The object is to return him to Algeria, a state with a shocking record of human rights violations, including torture.

Some of the Ricin jury have exceptionally, and courageously, spoken out about the way their verdict has been nullified and about the proposals in the Terror Bill. As one observed: "before the trial, I had a lot of faith in the authorities to be making the right decisions on my behalf… I never really gave it much thought. Whereas having been through this trial I'm very sceptical now as to the real reason why this new legislation is being pushed through." As the words are spoken you can hear another nail being hammered into the coffin of jury trial by minions in the Home Office.

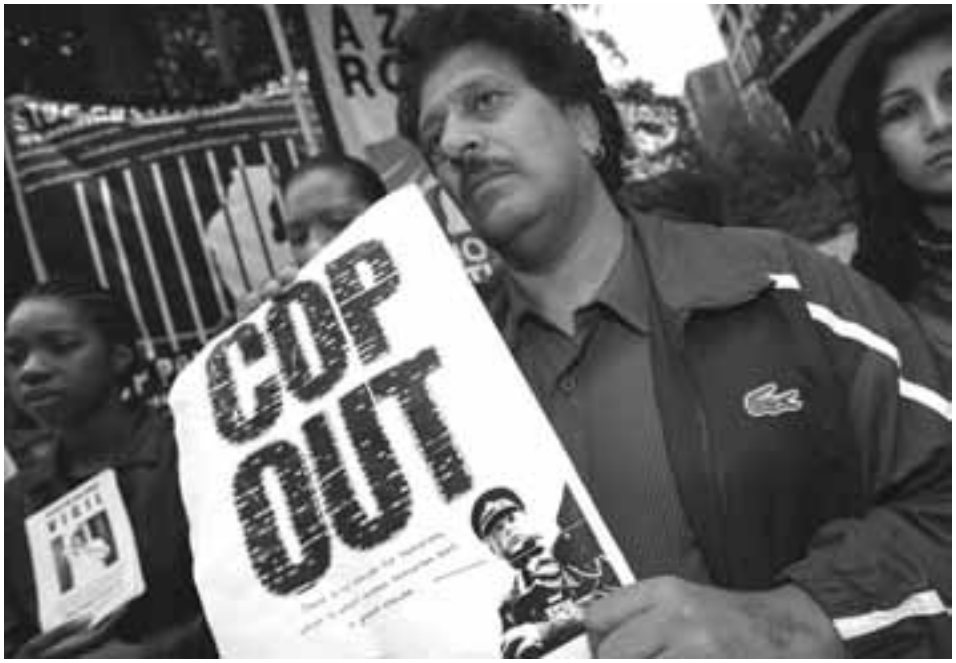
One of the real reasons for 90 days is intimidation. Hayman constructs a theoretical case study that highlights how 14 days does not afford enough time to crack the silence of interviewees. This has echoes of the days before PACE which produced unreliable confessions, wrongful convictions and miscarriages of justice.

The police and the security services already have a vast array of powers, not dependent upon the need for an arrest. At the end of the day, besides obvious changes in British foreign policy, the only way of combating terrorism is through reliable, responsible and specific intelligence. The authorities are allowed to engage in phone-tapping, electronic intercepts, decryption of electronic data, eavesdropping, covert surveillance, accessing bank accounts, etc.

Assistant Commissioner Hayman claims that there was an intelligence vacuum in relation to both London attacks in July 2005. This seems to be contradicted by BBC's *File on 4* (25th October 2005), suggesting there was intelligence on one or more of the perpetrators, indicating associations with people and places known to the authorities and referring to covert surveillance and filming of one of the 7th July perpetrators. There needs to be, at the very least, a thorough-going independent inquiry before Blair lets the police have it all their own way. We cannot depend on the Tories to perform a challenging or inquisitive role.

Anti-Terrorism legislation is not only largely irrelevant and illusory; it is often counter-productive. First it was the Irish, now it is the Muslim community, made to feel criminalized, isolated and alienated. Their homes are raided, their places of worship placed under surveillance, their bookshops closed. Some feel it unsafe to walk the streets. Islamophobia is whipped up by sections of the media, particularly tabloids. This should be the moment for serious reappraisal of how terrorism should be dealt with in a democratic society. This is not achieved by according it special status and claiming that only special legislation can do the job. ■

"There needs to be a thorough-going independent inquiry before Tony Blair lets the police have it all their own way"



Picture: Jess Hurd / reportdigital.co.uk

Picture: Jess Hurd / reportdigital.co.uk

'IT MUST NEVER HAPPEN AGAIN'

This 'war on terror' has become a by-word for failures of intelligence, argues **Liz Davies**, which led to the death of Jean Charles de Menezes

On Friday 22nd July 2005 in London, the police acted as judge, jury and executioner. Jean Charles de Menezes is a victim of the war on terror in London, just as those who died on 7th July are victims. He was killed for three simple reasons: he wasn't white, he was wearing a bulky coat and he ran away from the police. Who knows why he ran, but for no reason that could justify summary execution.

We Londoners, afraid of suicide bombers and police violence, are getting a small taste of what life is like in Baghdad.

The rush by leading London and national politicians, and by most sections of the media, to support the police action was breath taking. In a democratic society, the first response when a member of the public is killed by the police should be to suspend the officers involved and to announce an independent inquiry. There are circumstances, obviously, when an inquiry might conclude that the only thing that the police could have done, to protect the public or themselves, was to kill. But the gravity of that conclusion is such that it should only be reached after independent scrutiny of all the circumstances, not as a knee-jerk reaction on the day. Instead, politician after politician queued up to explain that shoot-to-kill is now necessary.

Now that we know that Menezes had nothing to do with terrorism, and there is to be an inquiry, Sir Ian Blair expresses his regret at the tragedy but adds, almost casually, that it might happen again. The inquiry must examine not only the actions of the police at the scene, but the instructions from the top and the whole "shoot-to-kill" policy. It must examine why Blair persisted in describing de Menezes as a suspected terrorist after he had been told that he was innocent. It must examine why senior politicians were so quickly to leap to the defence of the police. It must never happen again.

Where have we seen the state operate "shoot-to-kill" before? Apartheid South Africa, present-day Palestine, Los Angeles, and, of course, Northern Ireland.

New Labour's assault on civil liberties, ratcheted up several notches post-9/11, reproduces the infamous policing techniques used in Northern Ireland. Extraordinarily, New Labour chooses those methods from Northern Ireland which were not only abuses of civil liberties but were also profoundly ineffective. Internment in 1970s Northern Ireland, described as the IRA's best recruiting tool, has been followed by 21st-century detention in Belmarsh. Muslim communities are treated by the police and racists as suspect communities, with thousands of young non-white men subject to stop and search, and racist attacks escalating, just as the Irish community was in the 1970s and 1980s. Now we see the police operating shoot-to-kill and doing so under pressure, after 21st July, to get results. The pressure to get results produced the Guildford Four, Birmingham Six, Annie Maguire and her family, and Judith Ward – all appalling miscarriages of justice, but at least not executions.

This war on terror has become a by-word for failures of intelligence. A failure of intelligence led to Jean Charles de Menezes' death. A failure of intelligence, and our politicians doctoring the intelligence that was available, led to the announcement that Iraq had weapons of mass destruction, to an illegal invasion and continuing illegal occupation, and to the deaths of thousands of innocents – civilians and sol-▶

diers. Those failures of intelligence have created the climate for terrorism to escalate.

We must end the view that civil liberties are negotiable. America and Britain have encouraged, and practised, torture, despite the absolute prohibition on torture in international law that both have signed up to. Both countries will use evidence extracted by torture elsewhere. Both have practised torture on detainees in Iraq, in Bagram, and in Guantanamo Bay, alternatively denied and justified as preventing further acts of terrorism. But, of course, what someone says under torture is not reliable, it's aimed at what the victim believes the torturer wants to hear. Mass murders have not been prevented. Torture didn't identify the bombers in Madrid, Istanbul, London, Egypt. Now summary execution is acceptable if, apparently, it is used to forestall mass murder. But, just like torture, the chances of summary execution actually preventing mass murder are remote. The chances, however, of the police getting it wrong and killing innocent people are high. A democratic state has a duty to maintain non-negotiable standards; otherwise we slip further and further into arbitrary state power.

De Menezes' shooting will make it harder for the police to find and prosecute those involved in 7th and 21st July, or anyone planning similar criminal acts. Just as the Irish community was suspicious of the police, so anyone who might be mistaken for a Muslim (logically any of us given that it is a religion, but in practice those who are not white) will think twice before giving information to the police. Suppose they detain me as a terrorist suspect? Suppose they shoot me if they raid my next-door neighbour's house?

In response to 7th July, the government proposes yet more restrictions on civil liberties. Those suspected of terrorist involvement may be detained – without charge let alone trial – for up to three months. There is still to be the thought-crime offence of "glorifying terrorism". These are fundamental assaults on our basic freedoms and won't help the police detect or prevent terrorism. There are plenty of criminal offences available to deal with potential terrorists – murder, conspiracy to commit murder, the carrying of explosives. The police don't lack offences with which to charge potential suicide bombers; their problem lies in detecting them. The reality of more anti-terrorism offences is that the police will have more tools, and more opportunity, to harass anyone they choose and grievances will escalate.

Above all, political solutions are required to end the war on terror. Blair's denial that the London bombs had any connection with the occupation of Iraq is as unrealistic, and self-justifying, as an alcoholic denying that he has a problem. Ending the occupation of Iraq and achieving justice for the Palestinians are necessary to bring about a better world, and would have the useful by-product of eliminating some of the sense of grievance that causes a very few to resort to violence. Until those happen, we will all remain less safe – from terrorism and from the state. ■

Liz Davies is Vice-Chair of the Haldane Society and a barrister at Garden Court Chambers. This is an updated version of an article that first appeared in the *Morning Star*.

Picture: Jess Hurd / reportdigital.co.uk

Repressive, unfair laws are more likely to increase the likelihood of terrorism rather than combatting to, argues **Louise Christian**

STAY CALM, THEY SAID

Politicians tell the public who travel on public transport to remain calm and carry on normal life. Yet the response from politicians and police to terrorist attacks in London is one of panic and hysteria. Already one innocent man has been shot dead. Armed police roam the streets, and innocent people are being arrested and searched at gunpoint. Worse still, police have produced a "shopping list" of new legislation to be rushed in, and the leaders of all three main political parties have already agreed to much of it in a cosy chat in Downing Street without any parliamentary involvement.

We have been warned that attacks would happen for a considerable period of time; as the main ally of the US in its "war on terror", the only surprising thing is that it did not happen sooner. Of course it is frightening, but there is little acknowledgement that the knee-jerk response of more laws, more police shows of strength and more attacks on civil liberties may be counterproductive. The recent announcement by the IRA that it has abandoned its arms is a timely reminder that we have our own recent history of political panic causing miscarriages of justice resulting in an increase, not a decrease, in violence.

While in opposition, the Labour Party voted against the yearly renewal of the Prevention of Terrorism Act. But in 2000, the Labour government enacted for the first time a new permanent Terrorism Act which produced a new much wider definition of terrorism. The definition included the threat of damage to property as well as a threat to life if it is designed to influence the government or intimidate the public for the purpose of advancing an ideological cause.

Significantly, the act specifically provided that the definition extended to "action outside the UK". Subsequently in 2001, in an immediate response to September 11, another act was

rushed in – the Anti Terrorism Crime and Security Act (ATCSA) – allowing foreign nationals to be detained indefinitely without trial. After the House of Lords declared this contrary to the Human Rights Act, a new Prevention of Terrorism Act 2005 was rushed through parliament in March substituting control orders for indefinite detention under which both foreign and British nationals can be severely restricted in their movements, subjected to a form of house arrest and forced to wear electronic tags. These powers expire in March 2006 unless renewed before then.

What is proposed in the fourth Terrorism Act is the creation of new offences of acts preparatory to terrorism, incitement to terrorism, glorification of terrorism and giving or receiving terror training. Other measures include an increase in the amount of time that terrorism suspects can be held without charge to three months or ninety days and new powers to ban organisations which glorify terrorism and to shut down places of worship.

The proposed new offence of acts preparatory to terrorism has been strongly pushed by the police following the acquittal of defendants in the "ricin trial". The Metropolitan Police commissioner Sir Ian Blair went so far as to suggest that there would have been convictions if the new offence had been available. This is disturbing. The defendants in that trial were acquitted because of the lack of any evidence linking them to the plot – there was no ricin. It seems as if the intention behind the new offence may be an attempt to convict people on the basis of association with others without evidence of knowledge or intention. This is likely to result in innocent people in the Muslim community fearing to report their suspicions.

It is proposed to create a new offence of incitement to terrorism. The wording was apparently changed after parliamentary drafters objected that a proposed new offence of condoning terrorism would be impossible to define. Threats to kill and incitement to murder are already offences. What more will be outlawed? Are all those who feel a huge sense of injustice about the same causes as the terrorists (Iraq, Afghanistan, the war on terrorism, Guantánamo Bay, Abu Ghraib) to be stopped from speaking forthrightly about their anger? Because terrorism is now defined in our law as actions abroad, will those who support liberation movements in, for example, Kashmir or Chechnya be denied freedom of expression? Since, in truth, the definition of terrorism should encompass the actions of terrorist states engaged in unlawful wars, how can one justify this when our government supports the war in Iraq? People must be free to debate ideas some find obnoxious such as creating an Islamic caliphate or imposing sharia law – suppression will only add to the attraction of such ideas.

The proposed new offence of glorifying terrorism is even more worrying. The Home Secretary Charles Clarke has said that the use of arms wherever it occurs in the world can no longer be justified and must always be classified as terrorism which it will be an offence to support. Therefore those resisting state terror in places like North Korea, Zimbabwe, Uzbekistan and Chechenya cannot be given support without falling foul of the law. Further only the Home Secretary will have the power to decide on exemptions in historical events within the last twenty years. (Ironically enough the House of Commons currently has an exhibition celebrating the anniversary of the Gunpowder Plot and seeking to sell related merchandise!)

A Home Office consultation document proposes giving new powers to close down places of worship. This is an area into which government should not stray and is likely to seriously breach freedom of religious expression. Similarly many will not like the ideas of Hizb Ut Tahir but it should not be banned by government. This is likely to give it a status that will enhance its appeal.

A new offence of giving or receiving terror training or attending a training camp is proposed. There are no known terror training camps here so this new offence will be used to justify vastly increased surveillance of Muslims going abroad, particularly to Pakistan. Already section 7 of the ATCSA gives police the power to pull people off flights without compensation and compel them to answer questions about their destination. This has created hardship when young Muslim men who have saved up for the hajj have missed their flights. Is this really the right way to deal with the existence of the camps which, incidentally, were set up with US finance to encourage foreign fighters to fight the Russians in Afghanistan? Under the new proposals attending a camp will be an offence even if you do not know where you are or are there for journalistic purposes.

A particularly worrying recent proposal by the police is to increase the time terrorism suspects can be held without charge to three months. The current limit of 14 days is already very long. A recent parliamentary answer disclosed that of 357 arrests under the Terrorism Act between 20/1/04 and 4/9/05 only 36 people were held for more than seven days and clients of ours have been held quite unnecessarily for nine days but not for as long as fourteen days. The police say they need longer to examine computers seized but this should only be the case if arrests are fishing expeditions and not intelligence led. Their real motivation appears to be the improper one of hoping that people will ignore legal advice and start talking freely if held for longer. Solicitors acting for people detained under the Terrorism Act complain that the police deliberately drip feed disclosure in a manner designed to mislead and put pressure on detained people. If police are allowed to hold people for as long as three months this will be internment by the back door – the equivalent of a six months prison sentence.

"Parliament should scrutinize properly proposals that may make things worse and which the government is attempting to rush through"

Civil libertarians do not oppose all new laws or indeed added resources for the police. Forensic investigations by the police take too long because they are under-resourced. Liberty has long supported the admission into evidence of phone-tap material. But parliament should scrutinize properly proposals that may make things worse and which the government is attempting to rush through without proper consideration. In her speech in Malaysia (a country where human rights have been in considerable jeopardy and the Opposition leader has been unjustly imprisoned), Cherie Booth eulogised the role of the judges in preventing governments from acting outside the rule of law. Yet the truth is that beyond a certain point the judges will be powerless. The Human Rights Act does not give them the power to strike down legislation.

History shows that a UK-style judicial system with independent judges did not stop the outrages of apartheid South Africa nor does it now stop human-rights abuses in places such as Israel. Repressive, unfair laws are likely to increase the risk of terrorism as the recent bombing in Egypt, with its long history of repression of the Muslim Brotherhood, demonstrates all too clearly. We need independent-minded members of parliament who will break free of any misconceived political consensus and stop laws going through that will create injustice and risk recruiting terrorists. ■

Louise Christian, of Christian Khan solicitors, acts for Guantánamo Bay detainees. This is an updated version of an article originally published in *The Guardian*.

Jean Charles' death at the hands of the police's 'shoot to kill' policy must be the last, argues **Helen Shaw**, after the CPS ruled that police would not face charges over Harry Stanley

MORE QUESTIONS THAN ANSWERS

The mother of Jean Charles de Menezes speaks at a family campaign meeting at the LSE, London

Pictures: Jess Hurd / reportdigital.co.uk

Widespread and wide ranging outrage followed the shooting dead of Jean Charles de Menezes by the police on a London underground train at Stockwell tube station on 22nd July. Concern and questions were raised in the immediate aftermath about the circumstances of his death and the new and secret 'shoot-to-kill' policy. This was followed by controversy about the investigation and the misleading information that was allowed to remain in the public domain about Mr de Menezes and has gathered pace following leaks from the Independent Police Complaints Commission (IPCC) investigation leading to calls for Ian Blair, Metropolitan Police Commissioner, to resign.

Questions were asked about how can there be a 'shoot to kill' policy on the streets of London? Why police policy had changed without parliamentary scrutiny? Why did the Metropolitan Police Commissioner attempt to stop the Independent Police Complaints Commission conducting the investigation? Why did misleading information about Jean Charles remain uncorrected by the police and the IPCC when it sought to imply he was somehow to blame for his own death and to justify the decision to shoot? These questions echo those of the family and many other families whose relatives have died after police shootings or deaths involving other weapons or force.

Everyone who has supported family campaigns for the truth after deaths involving the police should ensure that this death is the one that makes a difference and stops a drift towards an ever more unaccountable and routinely armed police force operating within a policy framework that has not been subject to any external scrutiny. Following the intense media, parliamentary and public concern on 27th October the Metropolitan Police Authority discussed a paper entitled 'Suicide Terrorism' which outlined the framework of Operation Kratos. At the meeting the Metropolitan Police claimed that the new policy did not amount to a policy of "shoot to kill" but rather to one of "shoot to incapacitate", a claim that is not justifiable given that Kratos allows officers to shoot suspects in the head.

> "How will the involvement of the military in such cases be the subject of proper scrutiny?"

As information has leaked into the public domain a major concern has emerged about the role played by army officers in the intelligence operation that led to the shooting. INQUEST is concerned that their activities will not be scrutinised by the IPCC, responsible as it is for the investigation into the actions of police officers only. The question needs to be asked about how the involvement of the military in such cases will be the subject of proper scrutiny.

The comment from the Metropolitan Police Commissioner that this may happen again im-

Harry Stanley family devastated by CPS decision

The family of Harry Stanley, who was shot dead by Metropolitan Police in 1999, expressed shock and outrage when the Crown Prosecution Service announced on 20th October that they would not recommend that the officers should face any criminal charges arising out of his fatal shooting.

Harry Stanley's portrait in the family home

The fact that police can shoot dead an unarmed man and not be held accountable is abhorrent. The officers' accounts of the events surrounding the shooting of Harry Stanley were not accepted by two inquest juries, inquests at which these officers were legally represented. Public confidence in the criminal justice system as it relates to the police has been severely undermined by this decision which apparently puts police officers above the law.

At a time when there is a massive increase of the number of armed police on our streets, it is imperative that the public have confidence in their ability to act professionally and safely and that they are properly held to account for their actions. INQUEST questions whether or not the political context had a direct bearing on the decision not to prosecute. The rule of law must apply equally to all citizens including those in police uniform. This decision follows a pattern of cases where police officers have escaped prosecution following controversial deaths.

Despite more evidence being discovered by Surrey Police, the police officers who killed Harry Stanley walked away from these events without ever being brought to account in a criminal trial. The family consider that the evidence justified criminal charges. A jury of the officers' peers should have reached decisions in public according to the evidence and the law. The IPCC and the MPS will now have to consider whether the officers should face disciplinary action.

● Deborah Coles, co-director, INQUEST

Ian Blair: bothered about justice?

plies that we have to accept such deaths as part of the risks of policing London. This appears to pre-judge the outcome of the investigation into the death and also to argue that this 'shoot-to-kill' policy is already necessary and justified.

In February 2005 Ian Blair, Metropolitan Police Commissioner suggested police officers who shoot someone in the line of duty should be granted immunity from prosecution for murder in some cases and appeared determined to undermine rather than uphold the rule of law when it applies to police officers. It is exceedingly rare for police officers to be prosecuted in any case. Since 1990 there have been 30 deaths as a result of police shootings and in only one case, James Ashley who was shot by Sussex police in 1998, was there a prosecution which failed. Ian Blair's statements that seem to seek to explain away the death of Mr de Menezes only add to the view that he is not interested in championing the needs of justice but rather has chosen to do the opposite. The whole approach sends out a message that the rule of law should not apply to those in police uniform and that this should be enshrined in the new policy.

Voices of concern and criticism must not be silenced by the legitimate concerns regarding public safety. The two are interrelated and are not mutually exclusive. The stark fact remains that an innocent man was shot dead by the police as a result of a dramatic extension of police powers, of which Parliament or the public were not even aware, let alone had an opportunity to question or debate. The role of politicians and their constituents is to scrutinise and ultimately make informed decisions regarding the policy framework in which police make such vital operational decisions. It is undemocratic and sets a very worrying precedent for the police to be allowed to perform those functions unchecked. INQUEST will continue to raise critical concerns, insist on rigorous scrutiny of police conduct and support the family of Jean Charles de Menezes in their quest for justice.

Helen Shaw is co-director of INQUEST

Pictures: Jess Hurd / reportdigital.co.uk

Can the International Criminal Court provide justice for the victims of war crimes and crimes against humanity? **Melissa Canavan** reports

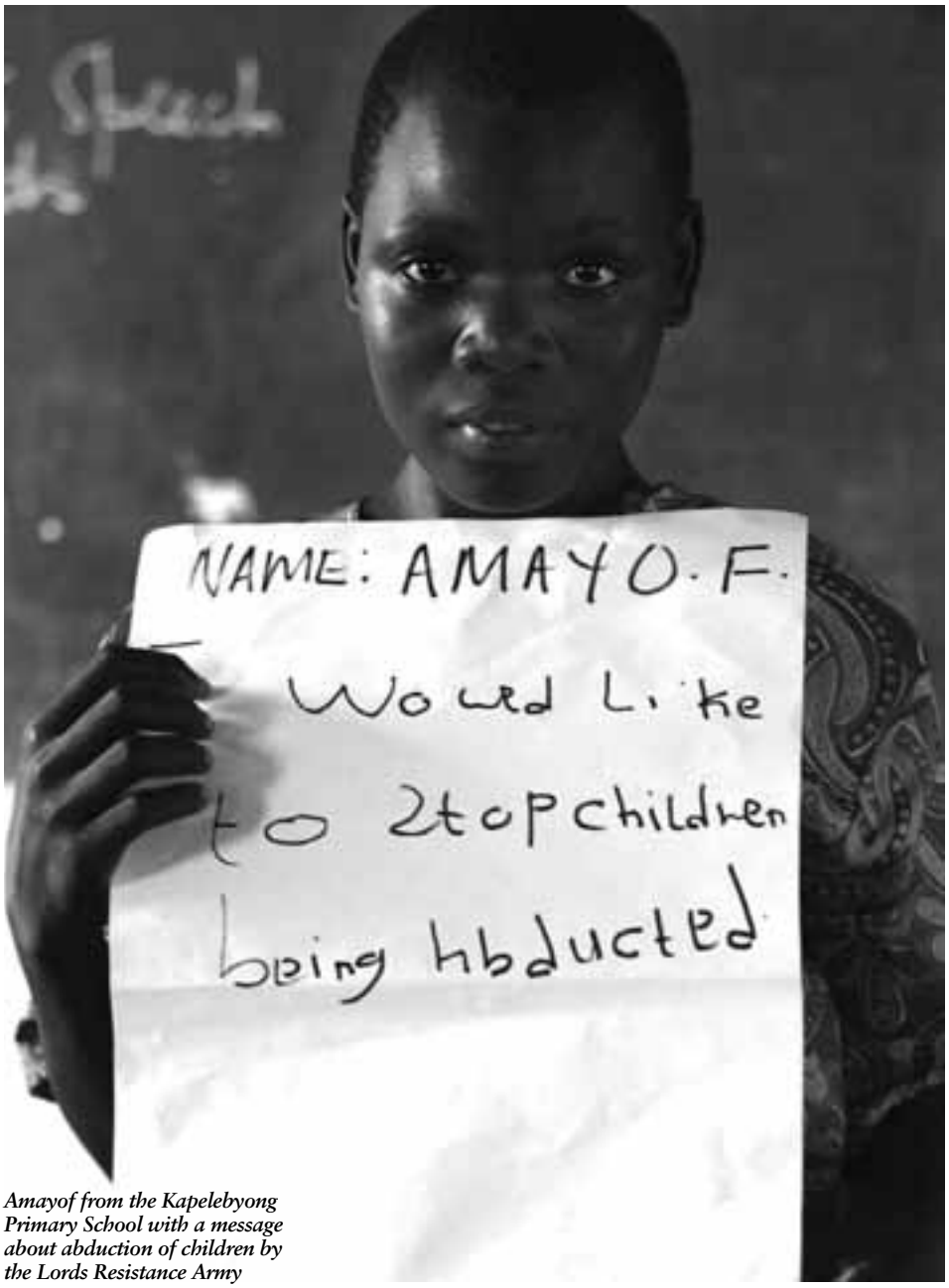
UGANDA: THE FIRST ARREST WARRANTS UNSEALED

Wanted suspects (left to right) Joseph Kony; Okot Odhiambo; and Vincent Otti

During Uganda's conflict, war crimes and crimes against humanity have been committed. The conflict, now in its 19th year, has been characterised by extensive human rights abuses including the widespread abduction of children, forced recruitment, the killing of civilians, torture, mutilation and sexual slavery. An estimated 1.4 million civilians have been displaced into camps within the affected areas.

The current conflict began in 1986 when the National Resistance Movement (NRM) of Yoweri Museveni overthrew the military regime of the Ugandan National Liberation Army (UNLA). Fearing reprisals former

Sign at the Kapelebyong Primary School, Camp Kapelebyong – displaced peoples camp Katekwi, Uganda



Amayof from the Kapelebyong Primary School with a message about abduction of children by the Lords Resistance Army

UNLA members retreated to the north and reorganised to fight the NRM. The Lords Resistance Army (LRA) emerged out of the armed resistance but has developed into an organisation with no clear or identifiable political objectives, targeting its own people, and rarely entering into direct conflict with the Ugandan army. The conflict has been perpetuated with the protection and support provided to the LRA by the Sudanese government which allowed the rebel group to establish bases in southern Sudan in a tit for tat response to support given to the southern Sudan People's Liberation Army (SPLA) by the Ugandan government.

In early October 2005 the International Criminal Court (ICC) unsealed its first arrest warrants for five LRA commanders, including its leader, Joseph Kony. Whilst international human rights groups have lauded the ICC as an international body that will help to end impunity for the most serious human rights abuses, the involvement of the ICC in Uganda has not been universally welcomed. Many civil society groups have been critical of the timing of the investigation, which they claim has jeopardised the fragile peace process and could prolong the war and the suffering of the Acholi people.

Following widespread consultation, an amnesty law was introduced in Uganda in 2000, which discharged from prosecution those who gave up armed struggle. The purpose of the law was to encourage reintegration and reconciliation. Overseen by the Amnesty Commission, this measure was instrumental in ending conflict in other areas of Uganda but had been slow to take root in the north. By mid 2004 there had been slow but tangible moves towards building peace in northern Uganda. Acholi religious leaders and peace groups were busy building trust through informal negotiations with the rebels and the community. Their aim was to encourage fighters to take advantage of the amnesty and come out of the bush without fear of retribution. The local Acholi community whose children had become both the victims and perpetrators of human rights abuses largely supported the amnesty process.

> "Civil society groups have been critical of the timing, which they claim has jeopardised the fragile peace process"

The role of the Ugandan government in this process has been contradictory. On the one hand the government was encouraging rebels to report for amnesty, whilst on the other it has continued to pursue a military solution. In 2002 the Ugandan army launched a major military offensive against the LRA in southern Sudan named "Operation Iron Fist" which resulted in retaliation by the LRA against civilians and the spread of the conflict into formerly unaffected regions of northern

Uganda. Frustrated with its inability to pursue the rebels further into Sudan the government made a referral to the ICC under Article 14 of the Rome Statute in December 2003.

At a stage when many working on the peace process felt that real progress was being made, the Chief Prosecutor, Luis Moreno Ocampo, announced in July 2004 that he was opening an investigation into the situation in northern Uganda. The ICC was criticised for the timing of the announcement, which many local groups felt would undermine the process by sending out contradictory messages as to whether rebels would be prosecuted or given amnesty. Even though the prosecutor was interested only in those who held the greatest responsibility for crimes committed in northern Uganda, it seemed clear to many working on the peace process that the threat of prosecution was also likely to inhibit senior LRA commanders from negotiating a peaceful end to the conflict.

There was further vacillation in November 2004 when President Museveni was reported to have stated that the referral would be 'withdrawn' if LRA fighters came out of the bush and engaged in traditional Acholi reconciliation ceremonies such as matu oput. These comments provoked a response from international human rights organisations such as Amnesty International who criticised the Ugandan government and urged the court to continue with the investigation in order to punish those responsible for serious crimes. More importantly statements such as these revealed that the Ugandan government either didn't fully understand the process of referral to the ICC or had been using it as a means to further its own political objectives in the conflict.

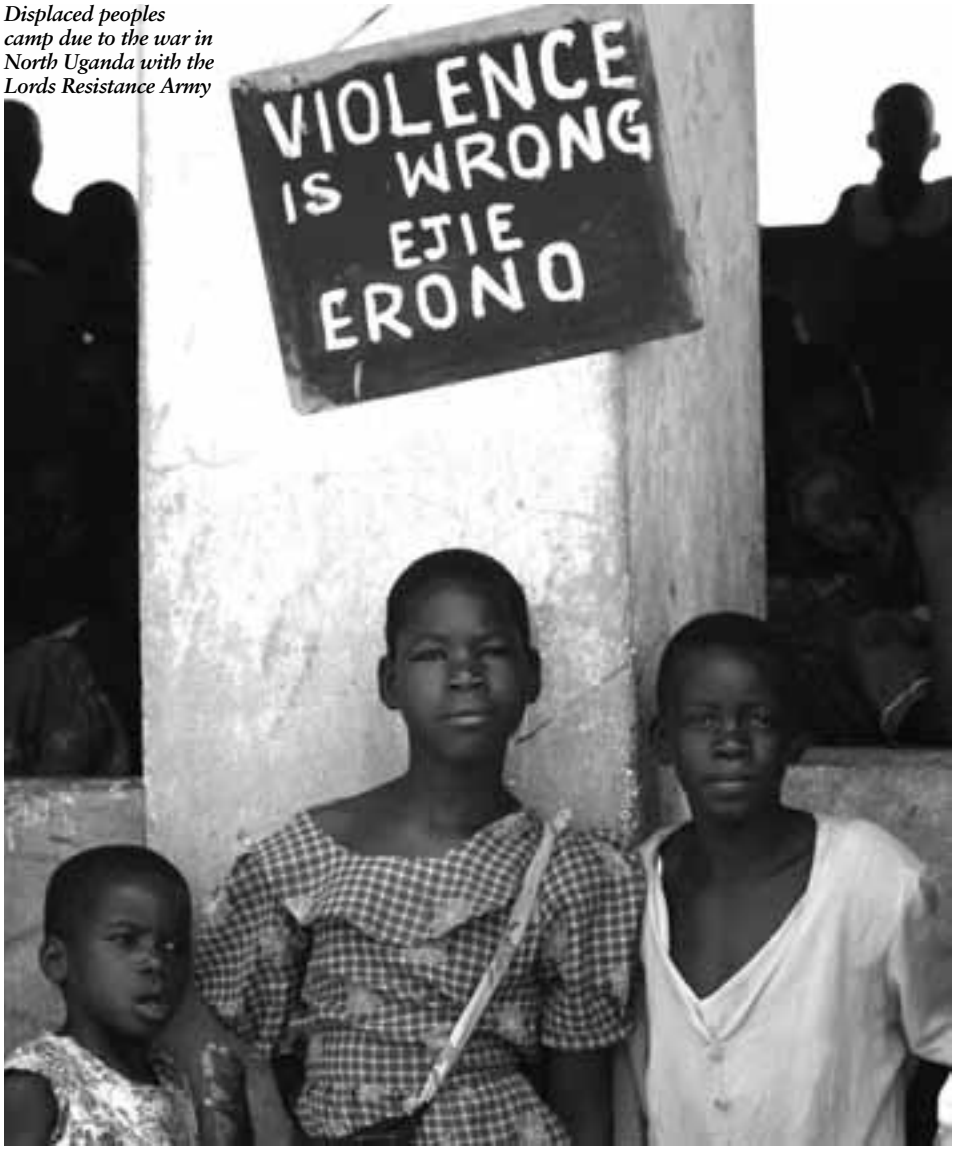
> "The Ugandan government either didn't fully understand the process of referral to the ICC or had been using it to further its own political objectives"

Despite concerns about the effect of the investigation on the peace process, former government minister, Betty Bigombe, continued her efforts to negotiate a peaceful settlement to the conflict with the LRA. In February 2005 a cease-fire zone was announced for a limited period but deadlines came and went and the peace process lost momentum without any agreement being reached. Since then little progress of any note seems to have been made.

However, during the year there have been further developments which may have persuaded the ICC that it was now possible to issue arrest warrants. Some high profile LRA commanders have surrendered and have been granted amnesty, indicating that the cohesion of the LRA may be weakened. The negotiated end to the war in southern Sudan has also made it more likely that the Sudanese might co-operate in arresting the LRA leadership. Reports in late September that the LRA deputy, Vincent Otti, had crossed into eastern Congo may also have prompted the ICC into action. With Ugandan forces mobilising on the border with Congo, the government was warned by the UN not to cross the border for fears of reigniting the conflict there. UN and Congolese troops were deployed to the area but no arrest has yet been made.

Concerns have again been expressed about the effect that the issue of warrants will have on the peace process. Peace negotiators and activists are unsure whether or not to con-

Displaced peoples camp due to the war in North Uganda with the Lords Resistance Army



Pictures: Jess Hurd / reportdigital.co.uk

tinue to attempt dialogue. Betty Bigombe is reported to have said that there would now be no hope of getting the leaders to surrender, whilst the Chairman of the Amnesty Commission is reported to oppose the issue of warrants because it would jeopardise the ability of the Commission to persuade other combatants to report under the amnesty.

The success of the ICC operation would appear to hang on the timing of arrests. The longer the delay in capturing those named in the warrants the greater will be the damage to the already fragile peace process as well as the reputation of the ICC. The LRA has shown that it has the ability to retaliate when put under pressure in the past and delay will only further jeopardise the safety of civilians in northern Uganda.

The situation in northern Uganda has raised a number of other serious issues about the ability of the International Criminal Court to end impunity and provide justice to the victims of war crimes and crimes against humanity.

Firstly, the ICC investigation in northern Uganda has ignited a debate about the tension between the need for peace and justice. The priority for most people in northern Uganda is to achieve peace and security first. However, a recent survey carried out by the International Center for Transitional Justice indicated that, whilst most people in northern Uganda agreed that there should be accountability for the abuses that have occurred, there was mixed opinion as to how this should be achieved. Whilst there is support for punitive forms of justice there is also a considerable desire for reconciliation processes to be developed which will also address accountability. This is consistent with the cultural norms of the area which recognise restorative forms of justice. In the long term, some form of truth and reconciliation process may provide more meaningful 'justice' than a distant trial process in The Hague.

> "Some form of truth and reconciliation process may provide more meaningful 'justice' than a distant trial process in The Hague"

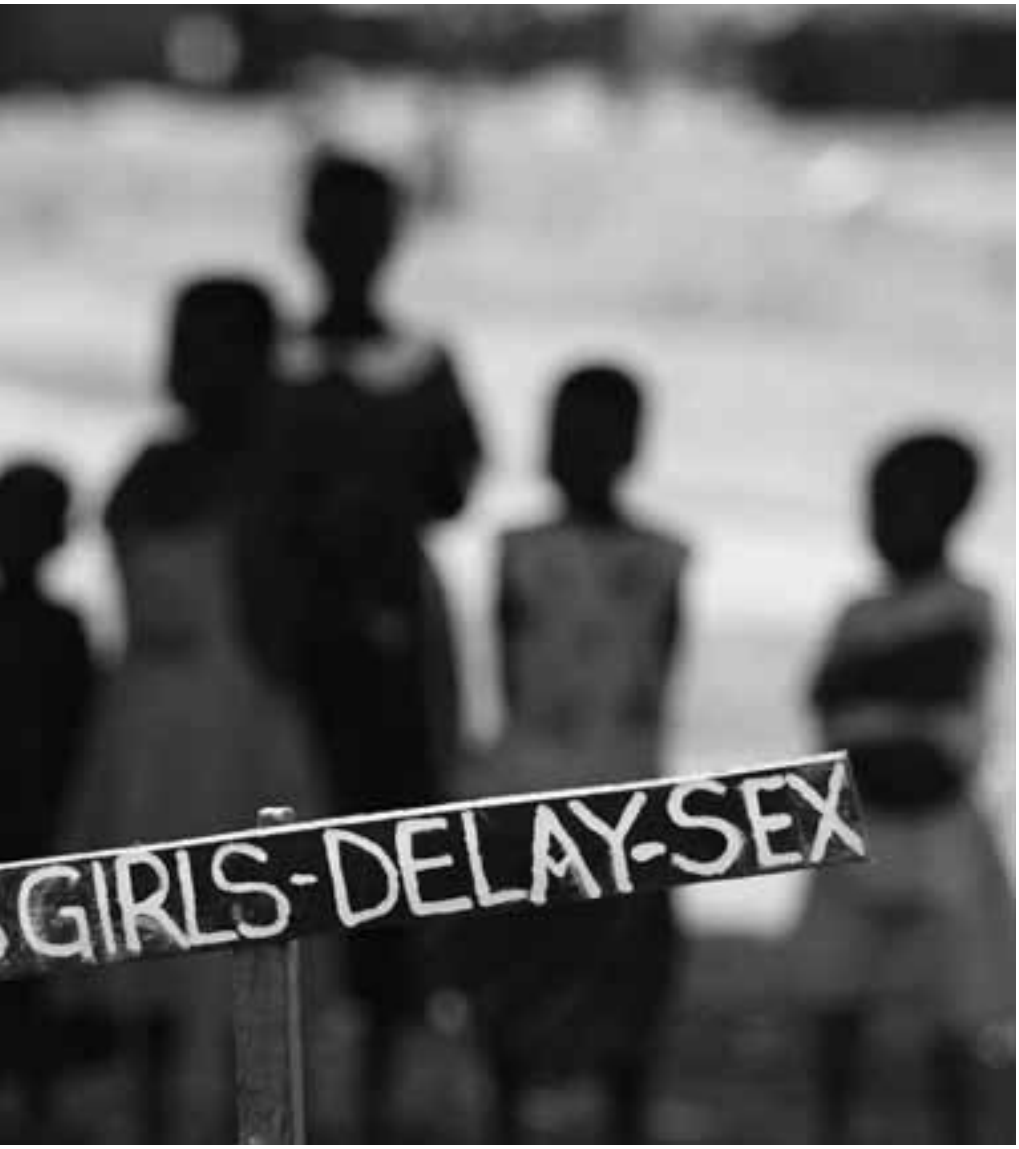
Secondly, for the ICC to be credible it must be seen to investigate and bring to account all those who are most responsible for serious violations in the conflict. At least two very senior LRA commanders, Kenneth Banya and Sam Kolo, have been granted amnesty and have now been integrated into the Ugandan army. Yet neither of these men are on the list of those sought to be indicted by the ICC. Failure to properly respond to concerns about abuses committed by the Ugandan army during the course of the conflict also risks the court being perceived as partisan, especially when it is so reliant on the co-operation of the Ugandan government to arrest suspects. This would appear to give rise to some concern as to whether those selected for prosecution really are those who bear the greatest responsibility.

Thirdly, the situation in Uganda has raised issues about the timing of investigations by the Office of the Prosecutor. Article 53 of the Rome Statute requires the prosecutor to have substantial reasons to believe that an investigation would not serve the interest of justice, taking into account the gravity of the crime and the interests of victims, before determining that there is no reasonable basis on which to proceed. The presumption appears to be that a prosecution is always likely to be in the interests of victims. In situations such as Uganda, where the investigation takes place during an ongoing conflict, serious questions are raised about the ability of the ICC to protect victims and witnesses during the investigation. In appropriate circumstances it might be argued that delaying prosecution to allow time for peace efforts is more likely to be in the interests of safety and security of those affected by the conflict.

Fourthly, the nature of the referral by the Ugandan government potentially raises issues about admissibility. The principle of complimentarity underpins the basic jurisdiction of the court and State Parties are under a duty to exercise criminal jurisdiction over those responsible for international crimes. Unlike the situation in Congo, the Ugandan government does have a functioning judicial system which is perfectly capable of prosecuting those who have committed serious crimes in northern Uganda. The contradictory approach taken by the Ugandan government will complicate the issue of admissibility if and when the matter comes before the court.

The success of the International Criminal Court's tentative first steps in northern Uganda will depend on the speed by which those named on the warrants can be arrested. During nearly twenty years of conflict the Ugandan government has failed to capture or bring to justice those most responsible for crimes committed in northern Uganda. A question mark hangs over the commitment or ability of the government to arrest those named, and even if they were, whether they would be handed over to the court. Yet recent political changes in the region have led the ICC to believe that it might be possible to obtain the first arrests and historic prosecutions at this time. If the gamble doesn't pay off, the risk is that the ICC may have contributed to prolonging the conflict and the suffering of the people of northern Uganda.

Melissa Canavan



Why was Rights of Women founded?
In 1975 a group of women lawyers got together, unhappy in particular about the treatment of women within the justice system. They established Rights Of Women(ROW) primarily to encourage and support women lawyers and encourage women to enter the legal profession. Our work and service has changed now and includes policy, campaigning, free legal advice line for women and training. But our commitment to feminist principles and the provision of a voice for women within the justice system remains at our core.

Why 1975?
In 1975 one of the main demands of the womens liberation movement was for free legal advice for women and access to justice for them.

When and why did you decide to become director of Rights of Women?
I've been director of ROW since 2000. I always had a keen interest in the organisation. I'd always been compelled by my commitment to feminism and women's rights and had worked as women's officer for UNISON in the South East Region. I've always been a feminist, interested in the law. To be Director of ROW was an opportunity for me, I hope, to make a difference for women.

What is your average day at ROW?
Like most of us working in the charity/NGO sector and concerned about access to justice for all, every day is very busy! But these are some examples,

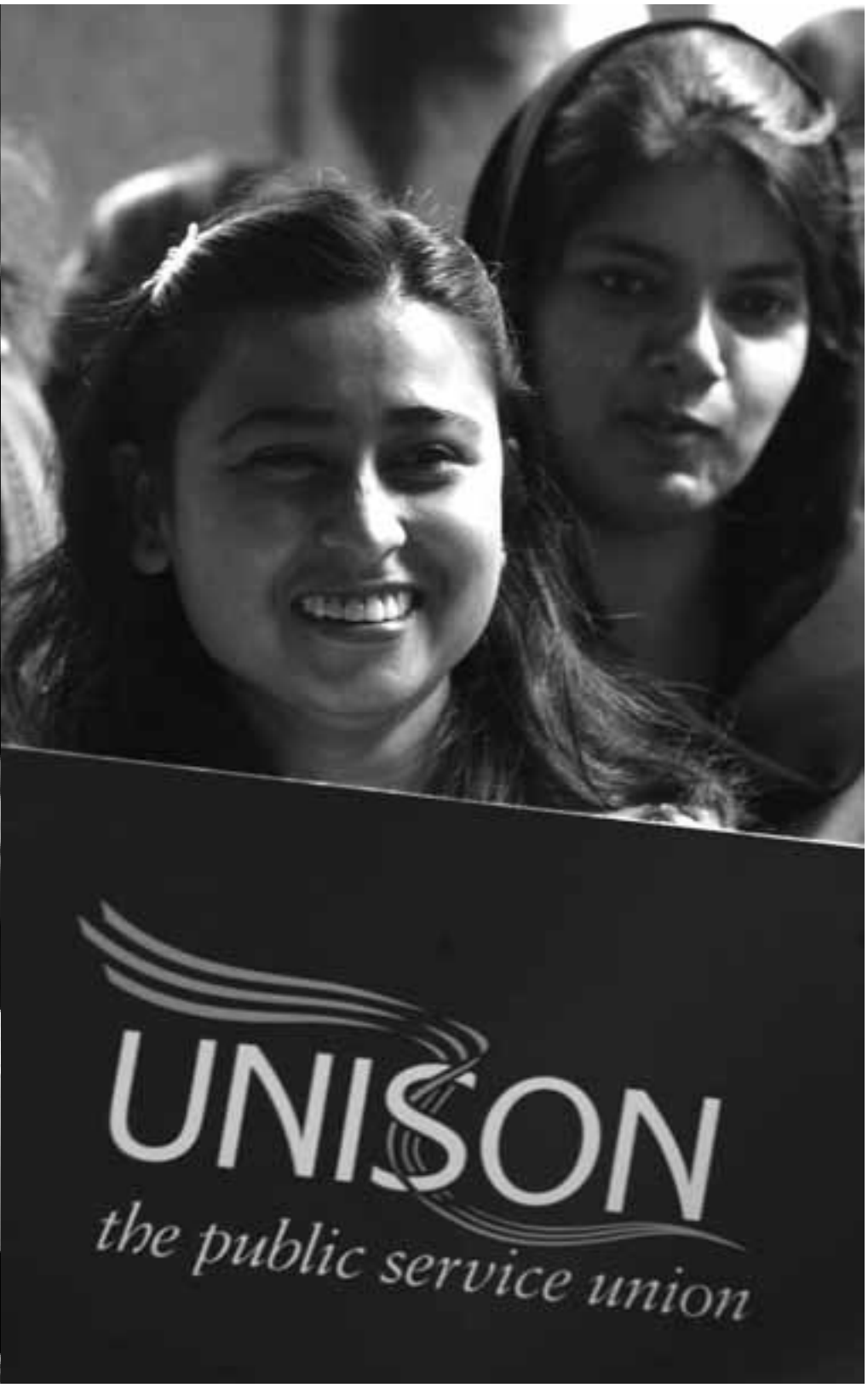
Conference organising – at the moment we are organising an anniversary conference, 'Women and Violence: Whats Law Got To Do With It?' Violence against women remains a matter of great concern to our organisation and in particular the failure of the criminal and civil justice system to deal with it effectively. We are particularly worried that the criminalisation of breaches of non-molestation orders will drive women away from reporting domestic violence. Many of the callers to our free advice line express legitimate reasons for not wanting to use the criminal justice system. We were also one of the few women's organisations to point out that we don't believe heavier custodial sentences is the panacea to much greater failings in the justice system as a whole.

We have recently published a handbook for women adult survivors of sexual abuse, conviction rates in rape have gone from one in four twenty years ago to about one in twenty now. Rape complainants are still being let down by the criminal justice system. Our pub-

Pictures: Jess Hurd / reportdigital.co.uk

A VOICE WITHIN THE

Ranjit Kaur is the director of Rights of Women, an NGO established in
Discrimination Act became law. ROW works to attain justice and equality
empowering women on their legal rights. **Rebekah Wilson** went to spe



SYSTEM

1975, the same year as the Sex
by informing, educating and
eak to her for *Socialist Lawyer*

lication aims to assist women in that situation and at the moment we are getting it translated into 4 other languages.

Our other main activity of any day is of course the free legal advice line we provide. We receive around 60,000 calls a year, but less than 2,000 get through. Our website, www.rightsofwomen.org.uk, includes a number of our publications aimed at womens rights and information for those unable to get through.

Why is the line so overwhelmed?

There is a gap for women in legal service providers. There is something unique about offering all women lawyers to advise women, I think it might be the way callers are treated and the understanding and approach offered. ROW is heavily involved in seeking better access to justice for women. It is one of our key concerns at the moment. We know this is a real concern for the large number of women who access our service.

Do you see the justice system changing?

Judicial appointments are a good way to see any change on the make up of our justice system. We understand the benefit of women being given the same opportunities that men have had in the past. We are very concerned to ensure that judicial appointments are transparent and take place in a way which ensures women can, for the first time, compete on a level playing field. It should be about merit not the old boys network.

We have diverse groups of women involved in this organisation. We want to make sure that within the legal system we are not replacing the blue eyed boys with the blue eyed girls. This is really important to me as a black women. Opportunities should be looked at in terms of sexuality, socio-economic background and race. We are hopeful about the new judicial appointments system and will be watching. But more importantly a more diverse judiciary benefits not just the women we provide a service for but society as a whole.

It is 30 years since the Sex Discrimination Act 1975, is ROW still necessary?

Yes! Sadly I wish women were no longer discriminated against in the basis of their gender, but change has been very slow. The Sex Discrimination Act was an important piece of legislation but there is concern that things might even be shifting back, just look at the issue of equal pay and the disparities there. Look at how many women are sitting on boards of companies, in Parliament, are ministers and of course are judges: change has been slow and there is a long way to go to redress the imbalances.

What is the future of ROW?

There are a lot of demands on us at the moment. Many womens organisations have lost their funding altogether, this places even greater demands on our resources. We would like to be able to develop our services to places such as Scotland and Northern Ireland where there is no service provider for women like ourselves. And ideally we would like to one day all be redundant but I fear that is a long way off. ■

After eight and a half years of Labour in office, Thatcher's 1980s anti-union laws are still in place. **John Hendy QC** says it's time to change them

WHY WE NEED A BILL FOR TRADE UNION FREEDOM

The TUC last month unanimously endorsed Composite 1 which, amongst other things, calls for a Trade Union Freedom Bill. Later that month, by a majority of 70/30, the Labour Party Conference backed a resolution calling for freedom to take solidarity action. These are momentous decisions the significance of which was highlighted over the summer by the Gate Gourmet dispute which starkly showed the effect of the current law in rendering unions virtually impotent to support their members against particular employer tactics.

On 10th August, 667 low paid workers (mostly middle-aged Asian women) gathered in the canteen of Gate Gourmet to discuss the implications of the introduction by the company that day of 130 agency workers at yet lower pay. Whilst their representatives were talking to management, the workers in the canteen were told to return to work within 3 minutes and, on failing to do so, were sacked. According to the *Daily Mirror*, this was a pre-planned stratagem to reduce the size of the workforce and reduce the pay and conditions of those who remained. Those who turned up next day were given the choice of signing new contracts on worse terms or being unemployed.

Gate Gourmet is the hived-off arm of British Airways that makes the in-flight food. It had recently been bought by an American entrepreneur (the man who spent notoriously was reported to have spent $10 million on his birthday party). The anger and shock of the Gate Gourmet workers quickly reverberated round their communities, home to many airport workers including the BA baggage handlers. The latter spontaneously stopped work for a day. BA ground to a halt and lost millions. Gate Gourmet was brought to the negotiating table under pressure from BA. The TGWU has secured some severance pay but the battle for the reinstatement of some hundreds of workers goes on.

The action by the baggage handlers was unballoted and secondary (i.e. the workers were not employed by the employer in the dispute). On both counts the union would have been liable in tort for that action had it not repudiated it under s.21 Trade Union and Labour Relations (Consolidation) Act 1992. The stoppage in the canteen prior to the dismissal was likewise unballoted so that it could not be made official with the effect that the very limited protection against unfair dismissal for those dismissed for taking official lawful industrial action may not be available to the Gate Gourmet workers.

The dispute showed (as many other disputes have over the last quarter century) the degree to which the anti-union laws of the Thatcher era remain in place to deny workers and their unions effective countervailing power against management prerogative. The obvious and probably the only way to stop mass dismissals of this kind was to call for solidarity action by fellow trade unionists who were employed in situations were real leverage could be exerted. If the TGWU could legitimately have called on the baggage handlers and perhaps drivers too, it could have resolved the dispute without the massive loss of jobs, terms and conditions which have taken place.

The demand for a Trade Union Freedom Bill by the TUC gained real resonance because of the wide public and political support for the Gate Gourmet workers. The Bill is not intended to reverse all the anti-union laws passed by the Conservative governments of 1989-97. But it will address those fundamental incursions into trade union freedom which are incapacitating unions from effectively protecting their members.

The timing for the Bill could not be more appropriate, for 2006 is the centenary of the passing of the Trades Disputes Act 1906 which secured for unions greater legal freedom to take action than they enjoy today.

The 1906 Act in turn led to led to the progressive extension of collective bargaining to benefit 85% of the UK workforce by 1975 and hence paved the way for the huge improvements in the conditions of work and of life for working people in the 20th century. The Trade Disputes Act 1906 was achieved by trade union pressure both in and outside parliament and the securing of such an Act was the key demand which had led the unions to establish the Labour Party a few years earlier.

The 1906 Act was drafted in such a way as to give legal protections against judge-made

Picture: Jess Hurd / reportdigital.co.uk

anti-union law rather than establishing fundamental trade union rights. This drafting anomaly has allowed the freedom to organise industrial action to be characterised in the UK as a privilege rather than a right. Nonetheless, despite a series of judicial and legislative attacks and modifications, the formula established by the 1906 Act substantially secured trade union freedom to take action to protect workers for three quarters of a century. In the last 25 years however, that freedom has been dramatically curtailed. Indeed in 1906, British trade unions had far greater freedom to organise industrial action than they do today, one hundred years later. For example they were free to organise solidarity action and were subject to none of the technicalities of ballots and notices which nowadays provide the usual peg for anti-strike injunctions.

It is ironic that unions have less freedom 100 years later because during those 100 years, the UK has ratified international treaties requiring (amongst other union rights) the guarantee of the right to strike: International Labour Organisation Convention 87 of 1949, the Council of Europe's European Social Charter of 1961, the International Covenant on Economic, Social and Cultural Rights 1966 and the Charter of Fundamental Rights of the European Union of 2000. The supervisory bodies of those treaties have held that the UK's restrictions on the right to strike are incompatible with the UK's treaty obligations.

The massive restrictions on trade union freedom achieved by the Conservative governments of the 1980s and 90s were brought about by a succession of legislation so that their impact was gradual. However, the collective effect has been profound.

In 1979 about 78%, some 17.5 million workers had minimum terms and conditions of work negotiated by a trade union on their behalf. By the autumn of 2004 only 35%, some 8.2 million workers have that protection and the remainder are left to the diktat of management. Collective bargaining coverage has thus been slashed by over one half, i.e. by in excess of 10m workers, in those 25 years.

The dramatic fall in collective bargaining coverage was briefly reversed at the time of and almost certainly because of the introduction of the statutory recognition machinery which came into effect in 2000. Coverage fell from 1975 to 1998, reaching a low in that year of 35.3%. In anticipation and then in consequence of the introduction of the statutory recognition procedures, collective bargaining coverage then rose to a new high of 36.3% in 2000 (8.6m workers). Thereafter the trend reversed: 35.7% in both 2001 and 2002; 35.9% in 2003; before sinking to the new low of 35% workers covered in 2004, as noted above. It will be observed that this is less than the coverage of workers in 1998 (35.3%) prior to the introduction of the recognition machinery.

> "In 1906, British trade unions had far greater freedom to organise industrial action than they do today, one hundred years later"

The number of workers benefiting from the statutory recognition machinery is hard to calculate since the numbers obtaining recognition through the CAC are tiny and many will gain recognition coverage by threat or fear of the statutory machinery. The TUC estimated that in 2002 147,000 workers benefited from recognition deals, both statutory and voluntary. For 2003 it estimated that some 78,000 workers benefited. For 2004 the estimate was down to 18,000 workers.

But the fact of the matter is that collective bargaining coverage has continued decline over the years prior to and covered by the statutory recognition machinery from 8.24million workers in 1998 to 7.22million in 2004. The best that can be said of the effect of the recognition machinery is that it appears to have slowed the haemorrhage of derecognition; it has certainly not reversed the trend.

The scale of the loss of collective bargaining coverage is, of course, not to be explained solely by the restrictions on the legal freedom on the part of unions to take action on behalf of their members: that is but one factor and there are many others. On the other hand, if ▶

collective bargaining levels in the UK are to be restored to anything approaching western European levels, collective agreements have to be made and industrial action or the threat of it is an essential means of redressing the inherent imbalance of power and bringing the employer to the negotiating table. The statutory recognition procedure will not do the job.

UK collective bargaining coverage is now the lowest in Western Europe and the dramatic loss of coverage over such a short time scale appears unparalleled anywhere in the world. Comparable figures for collective bargaining coverage in 2004 in other western European countries are: Austria: 98%; Belgium, Finland, France, Italy, and Sweden: around 90%; Netherlands and Spain: 80%; Denmark: 77%; Norway: 75%; Germany 70%; Greece 65%. Coverage in many of these countries has declined over recent years but only by a few percentage points.

The Trade Union Freedom Bill will constitute a first significant step to restoring the UK to compliance with its ratified international obligations.

No trade union lawyer doubts how accurate Tony Blair was in his 1997 commitment that the legal changes Labour intended to bring about, "would leave British law the most restrictive on trade unions in the western world" *The Times*, 31st March 1997). Even if the Trade Union Freedom Bill becomes law, British law will remain amongst the most restrictive on trade unions in the western world – but the most repressive aspects will be ameliorated.

The Bill must restore to trade unions the freedom to carry out their fundamental purpose, defined by statute as "the regulation of relations between workers and employers," a purpose protected by the European Convention on Human Rights which requires that trade unions are free to protect the interests of their members. In Wilson v UK [2002] IRLR 128, 35 EHRR 523, the European Court of Human Rights held that:

It is of the essence of the right to join a trade union for the protection of their interests [guaranteed by Art.11 of the European Convention on Human Rights and Fundamental Freedoms] that employees should be free to instruct or permit the union to make representations to their employer or to take action in support of their interests on their behalf. If workers are prevented from so doing, their freedom to belong to a trade union, for the protection of their interest, becomes illusory.

The right to strike is an essential element of trade union freedom and the UK has ratified that right in the international treaties. Thus the ILO has always held that the right to strike is fundamental (as an incident of Convention 87), the European Social Charter, Art.6(4), and the International Covenant on Economic, Social and Cultural Rights 1966, Art.8(i)(d), expressly guarantee the right to strike, as does the Charter of Fundamental Rights of the EU 2000.

"Even if the Bill becomes law, British law will remain amongst the most restrictive on trade unions in the west"

Principal provisions

This Bill will be a modest measure aimed at redressing only the gravest limitations on trade union freedom. The trade unions will determine its contents. But it must at least:

- Permit trade union members to take, and trade unions to organise, solidarity action;
- Simplify industrial action law on the grant of injunctions and the requirements of ballots and notices;
- Protect workers taking lawful industrial action from being in breach of contract and being dismissed.

Solidarity action

In successive Acts the Conservatives restricted and then extinguished all trade union freedom to call on a worker employed by one employer to take industrial action in support of workers employed by any other employer. This bar has been repeatedly held by the ILO and the Council of Europe to be in breach of the UK's obligations under ILO Convention 87 and European Social Charter Article 6(4). But those obligations have been and continue to be disregarded. The ILO has made clear that a worker should be permitted to take industrial action in support of a worker employed by and in dispute with another employer so long as the primary dispute is lawful.

The Bill may not go so far (as the Conservatives showed, such legislation may be best achieved on a step by step basis). Instead it could seek the more modest freedom for one worker to support another worker employed by another employer which was a supplier or customer of the primary employer. This would at least address the Gate Gourmet dispute by permitting the TGWU to call on the BA baggage handlers and other BA staff to take action to support the sacked Gate Gourmet workers (the spontaneous action of the handlers could not be supported by the union under current law. Such freedom under the law would also resolve disputes such as Friction Dynamics by allowing the union to call on lorry drivers members not to cross the picket line and by allowing a call to members in car assembly plants not to handle parts from the factory in dispute.

The restoration of the right to take solidarity action is probably the most important of all the trade union freedoms since it will allow unions to support their members effectively, extend collective bargaining in a way that the red tape of the recognition machinery never will, and deals with the modern phenomenon of out-sourcing and privatisation which has so markedly split up workforces which, though they work together, are in law employed by different employers.

Industrial action injunctions

Interim injunctions to restrain industrial action are often sought urgently in circumstances that do not allow time for a full trial. By the time that a trial can be held the opportunity to strike, and often the dispute, is lost. The ease with which injunctions against industrial action are granted has been held to be incompatible

Picture: Jess Hurd / reportdigital.co.uk

with the UK's obligations under ILO Convention 87 and Art.6(4) of the European Social Charter. The court's decision to grant an interim injunction is weighted against the union because the law says that all the employer has to show is that there is a serious issue to be tried rather than having to show that the case against the union is likely to succeed. This imbalance can be partly addressed by requiring that an interim injunction should not be granted unless the employer can show that it is more likely to succeed than the union at trial. A similar requirement in relation to interim injunctions to restrain media publication is found in s12(3) of the Human Rights Act 1998.

Industrial action ballots

There is general acceptance of the need for ballots before industrial action – save in cases of real urgency where the ballot might be taken after the action has commenced. But these are matters of internal trade union democracy and there is no logical justification for the employer having the right to sue by reason of a balloting irregularity: it is for the members to complain if the rules are broken. ILO Convention 87 bars interference by employers in the establishment, functioning and administration of unions. The current balloting rules are so complex and onerous that they are almost impossible to follow. Both the ILO and European Social Charter supervisory bodies have held that the complexity of the law on industrial action is not consistent with the right to strike guaranteed by ILO Convention 87 and Art.6(4) of the European Social Charter.

The Bill could remove the balloting and notice provisions from the legislation. There would be little support for a proposal that imposed no obligation to ballot so instead the law could require union rulebooks to make provision for balloting rules. They would then be, as they should be, matters of union democracy into which the employer would have no standing to complain of alleged breach. The problem is how to ensure that unions are seen to be obliged to have rules which comply with minimum democratic requirements. One suggestion is that instead of the present many pages of complicated legislation on industrial action ballots, the Certification Officer who has already oversight of union certification should have the duty to refuse or withdraw certification from a union which does not include in its rules provisions which satisfy him that the union cannot organise or support industrial action without a fair and proper ballot of the relevant members before (or in cases of real urgency, as soon as reasonably practicably possible after the commencement of the action), with proper provision for effective complaint by any member of any perceived balloting irregularity. Currently, the Certification Officer (as well as the courts) can investigate and make orders to remedy breaches of union rule (s.108A, B, and C) and he could be given specific power to do so in relation to alleged industrial action balloting irregularities. Alternatively, the legislation could set out the minimum standards and make it clear that only members have the legal standing to take cases to court alleging breach.

Industrial action notices

The requirement to give ballot notices to employers, their timing and content have caused a huge amount of litigation and the requirement on unions to keep such meticulous records of their members' addresses, jobs, and workplaces that it has become virtually impossible for the obligation to be fulfilled. In practical terms such notices are of little value to an employer save as a potential ground for seeking an injunction. All the onerous formalities should be repealed leaving only a general obligation for a union to give at least 7 days notice of a call for industrial action where reasonably practicable. Where action is already taking place and the union becomes involved by supporting it, such notice would be otiose.

Breach of contract

One of the features of UK law on industrial action is that almost every form of industrial action constitutes a fundamental breach of contract by the worker, so entitling the employer to dismiss, discipline or sue the worker. The provision which allows a worker dismissed within 12 weeks of lawful industrial action to take a case for unfair dismissal has proved practically useless since according to the 2005 statistics reinstatement orders are made in only 0.2% of the few unfair dismissal claims which win at tribunal, and because even where made the employer can refuse to comply with the order though extra compensation will be ordered. The international legal bodies (including the International Committee on Economic, Social and Cultural Rights) have made clear to the UK government what must be done to protect those lawfully taking industrial action: such action should be deemed not to break the contract of employment. This would also mean that unions would no longer be liable, when calling for industrial action, for the tort of inducing breach of contract.

The provisions on dismissal on union grounds also need to be strengthened to protect also workers taking industrial action lawful under the Bill.

Conclusion

The measures in the proposed Trade Union Freedom Bill would not restore the UK to compliance with its international obligations. It will not address key violations of trade union freedoms which are present in the current legislation – such as the prohibition on unions expelling fascists from membership – but it would mark a significant stride in the right direction. These measures will disappoint many in the union movement as being insufficient to reverse the incursions of the Conservative legislation. These measures do, however, clear away the primary obstacles to create the minimum legal space for unions to act to protect the interests of their members and restore some balance of power in industrial relations.

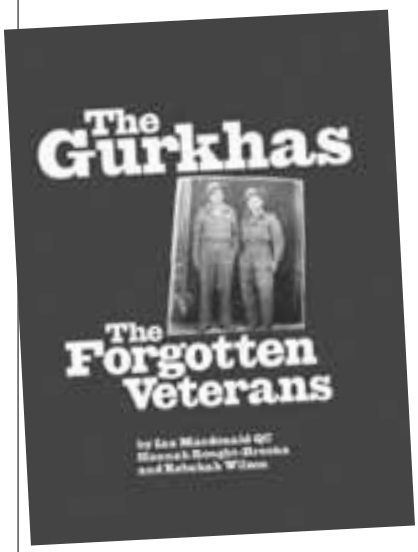
John Hendy QC, along-standing member of the Haldane Society, is Standing Counsel to ASLEF, AMICUS, CWU, NATFHE, NUJ, NUM, POA, RMT, and TGWU. He is Chair of the Institute of Employment Rights, National Secretary of the United Campaign to Repeal the Anti-Union Laws, and a Visiting Professor in the School of Law, King's College, London

THE 'FORGOTT

An International Commission of Inquiry was set up at the request of the Gurkha Army Ex-Servicemen's Organisation (GAESO), Nepal to independently investigate the reality of the economic and social conditions of Nepali citizens who have and are serving in the Brigade of Gurkhas under the Ministry of Defence, United Kingdom, and their families. The Commission was provided able secretariat and logistical support by the Public Interest Law Firm and Campaign for Human Rights and Humanitarian Law, Nepal.

Eight members of the Inquiry Commission, led by barrister Ian Macdonald QC of UK, visited Nepal from 23rd to 30th May 2005 and undertook a wide range of activities under its overall mandate. The other members of the Commission were; Hannah Rought-Brooks and Rebekah Wilson, barristers from the UK; Edith Ballantyne, human rights and peace activist from Switzerland; Dr Roy Laifungbam, indigenous peoples' rights activist from India; Shirin, rights defender from the USA; Dr Sharon Taylor, an academic from Canada; and Shoko Oshiro, indigenous peoples' rights activist from Japan.

A book from the Inquiry, *The Gurkhas: The Forgotten Veterans*, will be published in the new year. We print here extracts from the Inquiry's recommendations and encourage readers to go to the website: www.gaeso.org.uk



Contact Rebekah Wilson by email at rebekah.wilson@tooks.co.uk **for details of the launch of the book at the House of Commons in January.**

The recommendation of the delegation is that the government should include all former Gurkhas in their review. At the time of reporting the Government have not announced any intention of including in the review Gurkhas who were retired prior to the 1st July 1997. This review, if it is to be the final one, must consider those who are now increasingly the most desperate and vulnerable. Gurkha veteran soldiers who fought and served from the Second World War until 1997 are just as much the victims of discriminatory terms and conditions of service as those who were discharged after the magic cut off date of 1st July 1997. We recommend that the government take steps within the current review to remedy the grievances of these loyal and long suffering veterans before it is too late.


Sarba Dhoj Limbu

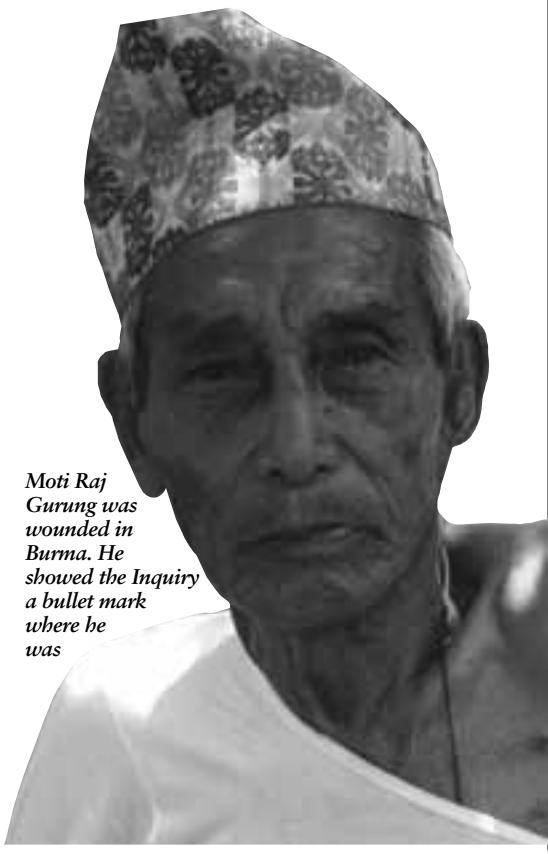
Gurkha welfare trust

There was evidence of the positive work that the trust does, many veterans described the helpfulness of the staff and enjoying visiting the centre. Others described having medical treatment, tablets provided when they visit and their dependence on the welfare pension. But clearly changes could be made to ensure that injustice is not caused to any veteran by the operation of the Trust. The resources of the Trust have to be spread widely, unfortunately inevitable until the government provides for its ex-Gurkha servicemen who suffered from the discriminatory terms and conditions of service. The government should include these veterans in the review to remedy the hardships many continue to suffer from. The GWT is not transparent. The names of its Trustees are not a matter of public record. The veterans have no access to eligibility criteria or the trust's policies. The lack of transparency and secretiveness seems to prevent the trust from providing an effective and comprehensive service for those it was set up to benefit. Ex-Gurkhas appear to play no role in its decision making which results in money being spent on community projects which appear to some veterans to provide no direct benefit to the veterans themselves. It appears to some veterans that there is no accountability for the charities decisions.

It is recommended that the British Government take immediate steps to ensure that no veteran is left destitute.

Pensions

The issue of past and continuing discrimination in pension provision is much more fundamental than mere pension differentials. The Gurkha soldier has the Gurkha Pension Scheme (GPS) and has recently been given access to the War Pension Scheme. On the other hand the British soldier has access to the Armed Forces Pension Scheme (AFPS) and now the Armed Forces Compensation Scheme (AFCS) which will also apply to Gurkhas. The AFPS is a crucial scheme to which the Gurkhas are denied access. It is in effect a complete welfare system for the British soldier dealing not just with retirement but a whole range of other situations, such as invalidity, illness, death in service, the position of widows, and children. There is a huge difference between the AFPS and the GPS. In our view now that the Gurkhas are to be included in the AFCS there seems no reason why all serving Gurkha soldiers should not also be given full access to the AFPS. We recommend that all serving Gurkha


Moti Raj Gurung was wounded in Burma. He showed the Inquiry a bullet mark where he was

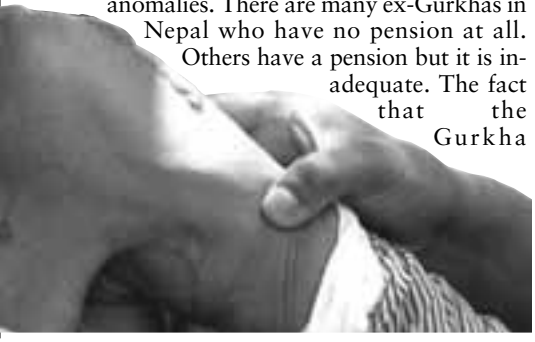
Krishna Kumar Ria served from 1979 to 1993

Indra Bahadur Rai

soldiers should be given full access to the AFPS.

There is no longer any reason why the Tripartite Agreement should be used to justify the continuing differential in pension provision. The historical conditions under which it was created have long since disappeared. It should be scrapped and replaced. We draw attention to the fundamental changes which have been adopted by the UK government since 1997, when the Gurkha Brigade moved its headquarters to the UK. Pay for Gurkha soldiers has been brought into line with the pay of the rest of the British Army, although lip service is still paid to the TPA in carrying out the calculation. A right of settlement in the UK has been given to Gurkhas and other non-British citizens and their families following British Army service. Gurkha sub-units known as the Gurkha Re-enforcement Companies have been created to serve alongside British units to help solve acute manning problems in the wider British Army, thereby making way for fuller integration into the structure of the army. It is now an anachronism to use India and Nepal as the yardsticks for fixing pay and pensions. Our opinion is that the TPA is now an anachronism and our recommendation is that it should be scrapped and replaced.

There is no logical cut-off point for pension anomalies. There are many ex-Gurkhas in Nepal who have no pension at all. Others have a pension but it is inadequate. The fact that the Gurkha Welfare Trust is so active is eloquent testimony to the appalling gap between need and financial provision. This is echoed by the evidence of the witnesses we met in Nepal. There is no moral or political justification for such a situation. Our recommendation is that all ex-Gurkha soldiers should be given the option of having an annual pension of an equivalent amount to that payable to British soldiers or a capital sum equal to the cost of providing such annual pension.



more than ten years would be entitled to a pension. This was almost certainly a recognition of the injustice of the previous rounds of redundancies that had left those Gurkhas who had fought, in particular, during the 1960s with no pension entitlement whatsoever.

It also highlights the absurdity of this difference between the Gurkha pension and the British Soldier pension. Had Gurkha soldiers the same entitlements as British soldiers, there would have been no need to artificially add on years of service, leaving many who were just on the wrong side of ten years service with nothing. It is recommended that the veterans have been affected by redundancy should be included in the governments current review to ensure that their situation is properly remedied. Those who were made redundant before the period of time when they would have become entitled to the pension, sometimes just a few days before, are immediately given that entitlement which should be backdated to the date of their redundancy.

There is no question that today dismissals such as those during the Hawaian incident would be viewed as unfair, procedurally offending any basic notion of natural justice. The Gurkhas in that battalion have clearly suffered as a result of their unfair treatment. The UK government should consider adequate recompense. It is recommended that the Government consider these men's grievances in the current review, not to do so is arbitrary and will be a missed opportunity to remedy the injustice felt by that battalion.

EN VETERANS'

War Injuries

It is recommended that the government take immediate steps to include those suffering as a result of their war injuries in the current review so that appropriate action can be taken to assist these people. It is recommended that the government adequately compensate those who have suffered as a result of their war injuries.

Widows

We recommend that the British Government include widows of Gurkhas in the current review (ensuring that they don't ignore the impact on women of their husbands service in the British Army). The British Government has both national and international, legal and moral obligations to prevent discrimination against women. The British government must ensure that any previous Terms and Conditions Of Service which discriminated against women (treated them less favourably than their British comparator) are remedied. We recommend that the government consider adequate compensation for suffering as a result of previous discriminatory terms and conditions of service of their deceased husbands.

Redundancy and Dismissals

In the 1990s the Ministry of Defence when making the mass redundancies, artificially made up the number of years served to 15 years to ensure that Gurkhas who had served

Immigration

It is recommended that all organisations of serving and retired Gurkha soldiers and their families need to bring to the urgent attention of their members the immigration provisions and the time limits in which applications can be made. The Home Office are aware that the cut off date of 1st July 1997 may be the source of unfairness; otherwise they would not expressly provide for the exercise of discretion in hard cases. We would recommend that the Home Office make it clear that all those made redundant before this date should be granted settlement in the UK, if they apply.

The date, 1st July 1997, for the application of the new immigration provisions is based on the move of Gurkha Headquarters from Hong Kong to the UK. But this does not provide anything other than a superficial justification for such a policy because not all Gurkha soldiers who benefit from the provision will have done their army service in the UK. In our view the real rationale for the new immigration provision is that former Gurkha soldiers were part and parcel of the British Army.

There will be a decreasing number of former Gurkha soldiers who want to come to the UK to work. Our recommendation is that they should be given the same immigration choices in recognition of their services to Britain as those soldiers who left the British Army after the 1st of July 1997. ■

INTERNATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS 16TH CONGRESS, PARIS 7th-11th JUNE 2005

Haldane in Paris

The IADL's 16th Congress took place in Paris, the site of the Association's founding in 1946. It was mid-June, a busy time for practitioners and, whether for this reason or because Eurostar has made us blasé about the proximity of Paris, the Haldane did not field as large a delegation as at Havana (2000) or Cape Town (1995).

A recurrent theme this year was the need for IADL leadership to reflect greater gender, race and age diversity. On these points, the Haldane delegation was not only vociferously active but exemplary in its composition: Richard Harvey; Rebekah Wilson; Liz Woodcraft; Kevin Cobham; Declan Owens; Troy Lavers and Daniel Blackburn.

The Congress was held in the historic Bourse du Travail, a beautiful, if acoustically challenged, 19th century trade union hall. Jitendra Sharma (India) was re-elected for his final term as President and, in a first for an organisation too long dominated by men, Jeannie Mirer (National Lawyers Guild, USA) was elected Secretary-General. I was elected to the IADL's enlarged governing Bureau, Rebekah Wilson having stood down after five years of fruitful activity, periodically frustrated by the unreconstructed chauvinism of some of the IADL's leaders. In future the Haldane Society will make every effort to ensure that women form at least half of all our delegations to IADL meetings.

The Congress took as its theme: "Law and Lawyers in the Service of the People: for Peace, Justice and Development." Two days of the five-day programme were devoted to six commissions with a rather over-ambitious range of vitally important topics. Each merited a conference in itself and there was no way we could attend all of them simultaneously.

The First Commission, on The UN Charter and International Relations, addressed diverse issues from the need to reform the Security Council to the apartheid wall in Palestine. Commission Two was on Terrorism, Human Rights and the Right to Resistance. Commission Three covered the Independence of Lawyers and the Judiciary. Commission Four dealt with Globalisation, Human Rights & Social, Economic and Political Rights. The Right to Information, Transparency and Protection for Journalists were examined in Commission Five, and Commission Six concentrated on Protection of the Environment and the Right to Health.

As with all conferences, contacts made outside the formal sessions were at least as important as the work done inside. We were particularly impressed with Progress Lawyers Network of Belgium, a diverse public interest firm with whom we hope to work more closely in future. We also cemented strong ties with anti-war lawyers from the United States and other progressive lawyers from Cuba, Haiti, Italy and Brazil. The IADL is particularly strong in Japan, India, Pakistan and Bangladesh, with substantial delegations from each country and the Haldane plans to build on these contacts for the future.

We are keen to expand the role of Haldane Society members internationally. To do this we need to be able to draw on more people. Anyone interested in any aspect of the areas mentioned should contact me (richardharvey@juno.com) or Bill Bowring, our international secretary (b.bowring@londonmet.ac.uk) indicating areas of expertise or concern. International work is immensely rewarding in the long term as all who have participated in solidarity work can testify.

● **Richard Harvey**

SECRETARY'S REPORT TO THE AGM, 21st JULY 2005

It's been a positive year

It has been a busy and challenging year for the executive committee and its officers. As always they are thanked for the time that they give so generously.

The chair this year, Richard Harvey, deserves particular thanks. His energy, charisma and commitment have ensured a productive and progressive year for the society. The same is said for our vice-chair Liz Davies. The rest of the EC should also be thanked: Christina Gordon, Hannah Brooks, Rekha Kodikara, Alex Gask, Marcus Joyce, Declan Owens, Adrian Berry and Nick Toms.

The society has continued to provide public meetings attracting speakers of the highest calibre and most political relevance. Clive Stafford Smith addressed the society on Guantanamo Bay detainees at the LSE. Hannah Brooks spoke about the Occupied Territories. Lennox Hinds addressed the society for the Pritt memorial lecture. Tess Gill, Imran Khan and Richard Harvey spoke at a fascinating forum organised by the Society on the role of the left-wing lawyer today.

We were one of the first organisations to help form The Access to Justice Campaign, which Nick Toms was pivotal to. The society has continued to support CAMPACC and it has also met with organisations such as Liberty in an effort to co ordinate resources.

Socialist Lawyer continues to be backbone of our work. The three editions produced this year have all been of the highest quality attracting the highest praise. No other journal matches it for its topicality and calibre of authors. No small thanks are owed to editor Catrin Lewis and her editorial board. The magazine is paid for by membership subscriptions and the cost for each edition is the society's biggest expense.

Tom Henry Bradford ensured, as both membership and treasurer, the smooth running of the Society. After painstaking work from Tom and now Marcus Joyce, the membership data base is up to date. We have been especially successful in attracting law students and pupils as new members, several of whom have played a valuable role on the Society's Executive Committee.

Six delegates attended this year's congress of the International Association of Democratic Lawyers in Paris (see report above). Fostering relations with international sympathetic organisations remains fundamental to the society. The society need to consider which organisations it should affiliate itself with. Bill Bowring, our International Secretary, has recently been elected President of the European Association of Lawyers for Democracy and Human Rights. The Haldane sponsored an excellent conference by Bill and his colleagues at the London Metropolitan University's Human Rights and Social Justice Research Institute on the topic of 'Suspect Communities'.

After four years I have decided to stand down as secretary. Our reliance on volunteers remains the main challenge. That said the Society will continue to provide a forum for debate that is often absent and the strengths of the Society are its large membership base and its ability to assist other more specific campaigns.

The Society would like to invest more in its internet site and it's hoped that can be done this year. This is the 75th Anniversary of the Society, an event that will celebrated later in the year with opportunities to 'capitalise' on the strengths of our members old and new.

● **Rebekah Wilson**

Factual, passionate and non-judgmental

In the State of the State? Child Deaths in Penal Custody in England and Wales
by Barry Goldson and Deborah Coles
Published by INQUEST
ISBN 0 9468 5819 5

During the period from January 1990 to May 2005, 28 children died in Young Offender Institutions, Secure Training Centres or whilst otherwise being held in adult prisons in England and Wales. Furthermore, in the four year period from 1998 to 2002 there were 1,659 recorded incidents of self-harm or attempted suicide in penal custody by children.

In a climate where prison numbers are continuing to rise *In the Care of the State? Child Deaths in Penal Custody in England and Wales* is a publication of interest to all concerned about state accountablility within penal institutions generally and more specifically in what Goldson and Coles refer to as the "Juvenile Secure Estate".

The authors combine analysis of comprehensive academic research and official publications with deep insights borne from several decades of frontline experience and involvement with the plethora of issues raised. Such an approach enables the book to be relevant and accessible to a range of audiences, be they academic, involved in policy-making or drawn towards the issues through direct personal experience.

The authors set out facts, consider recommendations and then move on to make clear demands with regard to a practical and immediate way forward. These include the calls for a public inquiry into the suicide of Joseph Scholes, aged 16, in HMYOI Stoke Heath in March 2002, a comprehensive review of child deaths in penal custody and the establishment of an independent 'Standing Commission on Custodial Deaths'.

Joseph Scholes was a troubled youngster with history of self-harming behaviour who had become involved with the criminal courts and been given a custodial sentence for robbery. Despite the expressed concerns of professionals with whom he was engaged and clear warnings from himself, Joseph took his own life, by hanging, in his prison cell, just nine days into his sentence.

The call for a public inquiry into Joseph's death arose from grassroots campaigning and was bolstered by the exceptional action of the Coroner in writing to the Home Secretary recommending the same. Despite an Early Day Motion in Parliament and further pressure, the Government has so far refused to order such an inquiry.

As with the inquiry into the treatment of young people in care homes in North Wales, the comprehensive review of child deaths called for would also provide the opportunity for rigorous public scrutiny into the decision-making processes, systems of control and day to day realities of vulnerable individuals whose welfare is entrusted to the state.

It may also enable scrutiny of the wider context of incarceration, including the economics and associated priorities of systems established as a consequence of New Labour's involvement of private finance into whole swathes of necessary state provision.

The recommended Standing Commission, '… would serve to look beyond individual cases and/or particular state agencies… and engage with child penal deaths on a more holistic or collective basis' given the recognised common issues linking deaths and which transcend the remits of specific government departments/ agencies. A number of suggestions as to the remit of the Commission are made, including the power to intervene as an interested party in inquests, to identify common issues, to publish and to develop best practice.

The authors' approach is notable for being at every stage factual, passionate and non-judgmental, and this is important in a climate of creeping anxiety around young people, routinely expressed in the press and popular culture, and which draws upon familiar seams of prejudice.

Picture: INQUEST

Although the majority of deaths have been the result of desperate and lonely actions by individuals the authors are careful to recount in detail the restraint death of Gareth Myatt aged 15, an individual whose death reflects, in the child statistics, the long-standing recognition of the over-representation of black people in restraint deaths.

Increasing numbers of young people are of course now being pushed towards custody through the use of Anti-Social Behaviour Orders and the urgency of the issues raised cannot be underestimated.

The publication provides an invaluable source of statistics for those seeking to campaign around the issues raised and the comprehensive bibliography will be useful to those seeking to deepen their understanding of the same.

The review of shifts in youth justice law and policy is also enlightening and conveys clearly how fact and reason so often play a secondary role to the need of politicians to assuage what is perceived to be relevant public opinion.

In the Care of the State is both significant and timely and will further understanding of issues within, and beyond, activist networks and academic conferences.

Every socialist and legal progressive should read it in order to be informed, especially in the coming months as the pressure for the public inquiry into Joseph Scholes' death is renewed and begins to build.

● **John Hobson**

For your copy send £15.00 plus £2.00 p&p (cheques payable to INQUEST Charitable Trust) to INQUEST, Book Order, 89-93 Fonthill Road, London N4 3JH.

Pictured left: At the INQUEST and Nacro launch of the call in 2003 for a public inquiry into the death of Joseph Scholes. Left to right: Hilton Dawson MP, Lord Navnit Dholakia, Joseph's mother Yvonne Scholes, and Mark Scott

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