

Socialist Lawyer

Magazine of the Haldane Society of Socialist Lawyers ■ Number 48 ● December 2007

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Modern Day Slavery

**The Horror
of Human
Trafficking**
by Judith Farbey



**PLUS:
IMRAN KHAN
INTERVIEW**
by Sultana Tafada

**MIAMI
FIVE TRIAL**
by Steve
Cottingham

**VALENTINA
TELYCHENKO**
interview by
Simon Pirani

Plus all
the latest
news &
comment

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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.

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Contents

Number 48 *December 2007* ISBN 09 54 3635

News & comment 4
From Musharraf to Russia, from Stop the War to defending Aamer Anwar...

Vulnerable people 11
Laura Janes writes the regular Young Legal Aid Lawyers column

Human trafficking 12
Judith Farbey looks at this modern day form of slavery

Prison – no place for minors 17
Laura Janes on the children facing prison after being trafficked into the UK

Imran Khan interview 18
Sultana Tafadar speaks to the prominent lawyer about 28 days and much more

The Miami Five 24
Steve Cottingham on the extraordinary trial of five men in Florida



Picture: Jess Hurd / reportdigital.co.uk

Terrorism 'lists' disgrace 28
by Desmond Fernandes from Campaign Against Criminalising Communities (CAMPACC)

Fingerprinting our children 30
Fingerprint systems in schools today is unacceptable argues Mikhail Karnik

Ukraine: state murder 33
Simon Pirani interviews Ukrainian human rights lawyer Valentina Telychenko

Haldane AGM 2007 37
Excerpts from Shami Chakrabarti's address to our October Annual General Meeting

Book reviews 38
The latest publications from INQUEST and Rights of Women

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It doesn't add up

Any advance on 28 days? The Government's proposals to increase the length of detention without charge comes close to resembling an auction: in two years, we've had 90 days, 56 and now 42, at the time of writing. By the time you read this, the Government will probably have plucked yet another figure out of thin air.

An increase on 28 days is opposed by all institutions representing the legal community and by all civil liberties groups. As Shami Chakrabarti (in her speech to the Haldane Society's AGM) and Imran Khan (interviewed for *Socialist Lawyer*) both make clear: 28 days is already the longest period of pre-charge detention in any democratic country. There is no evidence that an increase in the limit would lead to detection and prevention of more terrorist atrocities. There is plenty of evidence that young Muslim men (and some women) are regularly stopped, searched, arrested and detained because they are suspected of committing terrorist offences, and those arbitrary actions by the police very rarely lead to charges. Detention without charge is oppressive. It wears people down. As Khan vividly describes, after seven days, detainees become so exhausted that they're prepared to say, and sign, anything. 28 days detention, whilst a welcome blow against Tony Blair's proposal of 90 days, is already far too long. Any longer period is seriously punitive.

For most of us British lawyers, detention without trial may be something that happens to our clients, but not to us. For lawyers in Pakistan, that is not the case. General Musharraf imposed a state of emergency, suspending the rule of law, on 3rd November and promptly arrested over 3,500 lawyers, human rights activists and political activists. Many of those remain in prison, there are fears that some have been tortured and kept in solitary confinement. Musharraf's targets were the judiciary and the lawyers' movement that built up over the summer, following the suspension of Chief Justice Iftikhar Mohammad Chaudhry. The Haldane Society stands shoulder to shoulder with our brothers and sisters in Pakistan's legal and human rights community.

In Britain however, at least one of our community is being punished for doing his job. Glasgow solicitor Aamer Anwar faces charges of contempt of court for reading a statement, following a heavy sentence imposed on his client, which the presiding judge interpreted as contempt. Had he done so in England or Wales, there would be no question but that he was acting properly as a solicitor. It seems that Scottish law is different, but the charge is unprecedented even in Scotland. Anwar is a high-profile human rights solicitor who, like his counterparts in England and Wales, is prepared to represent unpopular clients, charged with unpopular terrorist offences.

Better news came when an Old Bailey jury unanimously found the Metropolitan Police guilty of 19 counts of health and safety violations, leading to the murder of Jean Charles de Menezes. Understandably the family remain disappointed that no individuals have been held to account for the murder.

The jury's verdict is a real vindication for the jury system. The Met's lawyers, senior police officers and politicians were happy to smear de Menezes, alleging that he had failed to comply with police instructions (despite evidence that there had been no such instructions) and suggesting that he was concealing drugs or an illegal passport.

Even if that had been the case, our system doesn't allow for summary executions by police officers. The spectre of London being torn apart by suicide bombers was vociferously raised. But the jury saw through that. It took the good sense of 12 people, selected at random, to send a message that the killing of an innocent man was unlawful and couldn't be justified even against the backdrop of the atrocity of 7th July. We understand the disappointment of the family and support them in their continued calls for an independent public inquiry. But the jury's verdict, and the widespread calls from the public for Sir Ian Blair's resignation following the verdict, showed that the public aren't prepared to give up our civil liberties in the face of terrorist threats.

Elsewhere in *Socialist Lawyer*, Steve Cottingham explains the case of the Miami Five, whom the US Government and US justice system have made fall-guys in an attempt to cover up the US Government's illegal attempts to overthrow the Cuban Government. The Five have been in prison, and frequently solitary confinement, for eight years now, despite appellate rulings that they were denied a fair trial. Their legal battle goes on and on.

Judith Farbey tells us about the human tragedies behind people trafficking. The Haldane Society is always prepared to praise the Government where praise is due, and the Government's decision to sign the Council of Europe Trafficking Convention is welcome. Words need to be followed up with action.

Don't forget to look at the back page! The Haldane Society is pleased to announce its Human Rights Lectures for 2008. We start on 30th January 2008 with our President, Mike Mansfield QC, and Imran Khan speaking on whether we need terrorism laws, followed on 27th February 2008 by 'the right to protest'. CPD points are available to practitioners. We hope to see you there.

● **Liz Davies, chair, Haldane Society** lizdavies@riseup.net



Picture: Jess Hurd / reportdigital.co.uk

Victory for Bil'in villagers

On Tuesday 4th September, the Israeli Supreme Court decided in favour of a petition brought by the Palestinian villagers of Bil'in and ordered the re-routing of the barrier. The intended route had separated the village from some 60 per cent of its agricultural lands and introduced a permanent presence of soldiers on their land, guarding the temporary fence that had been put up to separate the village from the building work and the expanding settlement of Modiin Ilit.

The Court found that the route of the Wall was: 'highly prejudicial' to the villagers; not justifiable on 'security grounds'; and ordered the Wall to be moved by some 500 metres. The change, when implemented, will restore 1,100 dunums of land to the villagers.

This was a victory for the villagers of Bil'in and for all those who had supported them in their weekly non-violent protests. But there is concern that court decisions are not always translated into action by the Israeli authorities and the villagers have pledged to fight on. Many other Palestinian villages in the West Bank are having orchards destroyed and land expropriated to make way for the Barrier and it is crucial that their campaigns learn from Bil'in where success was a result of Palestinian resistance, Israeli cooperation and international solidarity.

● **Hannah Rought-Brooks**



"Oh no, I forgot we're supposed to be a democracy"

Stop the War demo

On 8th October 2007 Stop the War Coalition conducted a well planned protest to coincide with Prime Minister Gordon Brown's announcement on troop withdrawal from Iraq in Parliament.

It was a protest that nearly did not go ahead after it was initially banned using the archaic anti-Chartist Sessional Order of the House of Commons of the Metropolitan Police Act of 1839, on the premise that it may impede the progress of any MP or peer who wanted to attend Parliament

that day. Perhaps we have now seen the end of the use of the Serious Organised Crime and Police Act 2005 in these situations, which prevents demonstrations within a kilometre of Parliament Square without police permission.

Organisers estimated around 4,000 protestors were present to hear speakers including Tony Benn, Mark Thomas and George Galloway. One of the organisers, Lindsey German, said the authorities and MPs had underestimated the determination of the anti-war movement. She said her message to the Government was that it



Mark Thomas: "It's a joke"

July

12: It's announced that judges in civil courts in England and Wales are to throw away their wigs – though it won't happen until October 2008 at the earliest! And judges sitting in the criminal courts will keep them. They argued that the headgear helps to maintain the dignity of proceedings and protects them from being recognised by defendants in the pub or supermarket!

18: The Government announces a review of the status of cannabis, whether to return cannabis from class C to class B, a classification it held until three years ago. Such a move would effectively make possession of the drug an arrestable offence once again.

August

5: Cohabiting couples who split up will get new rights to claim money from former partners if proposals by the Law Commission are adopted. Unmarried couples who have broken up after living together be able to claim similar financial remedies as married couples would in a divorce.

5: Bisher al-Rawi, the British-based Iraqi and former MI5 source detained by America for more than four years, is suing the US private airline that transported him to Afghanistan on an illegal CIA 'extraordinary rendition' torture flight.

7: The airports operator BAA wins its High Court bid for an injunction to prevent environmental activists from protesting at Heathrow.



not stopped



Tony Benn: determined to march

would: 'never draw a line under this war until you bring all our troops home. And we don't want the troops brought home just so they can be sent to Afghanistan or the Iranian border. We want a permanent break with George Bush's murderous, imperialistic policies.' Andrew Murray, chair of the Stop the War Coalition, told the crowd: 'This is a tribute to this movement and to everyone who has campaigned to assert our right to hold this Government to account for the criminal policies it is following around the world.' ● Declan Owens

Why does UK sell arms to Israel?

On 10th October 2007, for two days in the High Court, in the case of *R (Saleh Hasan) v Secretary of State for Trade and Industry*, Mr Saleh Hasan, a 60 year old resident of Bethlehem accompanied by Wesam Ahmed from Palestinian NGO, Al Haq and represented by Phil Shiner, Public Interest Lawyers, demanded an answer to why the British Government continues to issue export licences for the export of arms-related equipment when there is clear evidence that Israel might use that equipment to confiscate Palestinian lands.

At a packed meeting at Garden Court Chambers on the eve of the landmark case, Mr Hasan told his story. He was at home one morning in 2005 when he heard a cry, calling him to run down to his farm lands. There he saw men sawing down his olive trees and bulldozers clearing them, protected by 20-30 soldiers. His land was being confiscated by the occupying power, Israel, to make way for the wall.

In 2004 the International Court of Justice issued its advisory opinion on the legality of the Israeli annexation wall. The Court declared the illegality of the continuation of the wall and its associated regime in the West Bank under both international human rights and humanitarian law. The court found that all

states have a legal obligation to neither recognise the illegal situation resulting from the construction of the wall nor render any aid or assistance in maintaining the situation.

In 2005 the UK's arms-related exports to Israel saw a twofold increase. The same equipment was used to bulldoze agricultural assets and permanently confiscate Saleh Hasan's land.

Mr Hasan came to the UK to argue the sale of arms-related equipment to Israel is a breach of the UK's obligations under international law as well as UK statutory law, specifically, the UK Export Control Act 2002, which incorporates the 'consolidated criteria' governing the export of military equipment. The UK Government may not issue an export licence to countries where there is a clear risk that the export might be used for 'in violation of human rights and fundamental freedoms'.

If the UK cannot provide information publicly that it has established that there is no risk of any arms-related equipment from the UK being used repressive purposes, PIL and Saleh Hasan call for a suspension of all arms related exports to Israel until it can.

For more information visit: www.alhaq.org, an independent Palestinian non-governmental human rights organisation based in Ramallah, West Bank.

● Smita Shah

September

7: The Government calls on the United States to return five UK residents held without charge at Guantánamo Bay in a sudden reversal of policy. Whitehall officials admitted the decision had come after relentless pressure from the men's families and lawyers, and had been made on the eve of a court decision which ministers feared could see them ordered to allow one detainee back into Britain.

17: The Sentencing Advisory Panel, in its proposals for new guidelines to the courts for dealing with Asbo breaches, says that in most cases involving young offenders the appropriate sentence should be a community order.

18: ICL Plastics Ltd and ICL Tech Ltd, the operators of a plastics factor destroyed in a gas explosion which killed nine workers and injured 40 others plead guilty to breaching health and safety legislation.

29: Prison officers across the country strike for 12 hours, the first national walkout in its 68-year history. The Prison Service was granted an injunction to force the officers back to work but many defied it. The union lost the right to strike under the Tory government in 1994.

3: A report from Lancashire County Council into the death of Adam Rickwood condemns the youth justice system for treating him more as a tearaway deserving to be locked up rather than a vulnerable child in need of care.

FCO official prosecuted over rendition flights leak

On 11th October 2007 a Foreign Office official, Derek Pasquill, 48, appeared at City of Westminster Magistrates Court charged on six counts under the Official Secrets Act. This was his first court appearance since his arrest 18 months previously. He is alleged to have leaked documents about the Government's attitude to secret rendition flights and contacts with Muslim groups. The alleged disclosure of information is said by the prosecution to have led to a series of newspaper articles in *The Observer* and the *New Statesman* which were damaging and related

to international relations. The information is also said to include the Government's private view of the US practice of 'extraordinary rendition', which UK officials describe as 'almost certainly illegal'. One of the letters disclosed is entitled 'Detainees', in reference to terrorist suspects rendered to interrogation centres by the US. A recent *New Statesman* editorial suggests: 'The tactics appear designed to intimidate anyone in the civil service who has reservations about dangerous policy and who might be minded to expose it in the public interest.' He was remanded on unconditional bail until 25th October. ●

European lawyers concern grows for Basque people

On 12th October 2007, the European Association of Democratic Lawyers released a statement expressing their concerns about the current legal situation in the Basque Country. In particular they question the use of the law being used against Basque citizens for their involvement in civil society.

The EDL 'denounces the lack of juridical justification for the detention of 23 persons connected with the political party Batasuna, while they were participating in a meeting on 4th October 2007'. These are arrests that have taken

place as part of a sequence of events following the ending of the ceasefire with Eta after the detonation of a car bomb at Madrid's airport on 30th December 2006. Also criticised by the EDL are the 'exceptional procedural measures in these cases, like incommunicado detention, the secrecy of the procedures or the pre-trial detention without limit'. The chief aim of the EDL statement is a 'request that all efforts be made to create a new scenario in respect of all democratic guarantees that may drive the Basque Country to a political normalisation'. For more info see: www.aed-edl.net ●



Janet Alder speaks. her brother Christopher died in police custody

Deaths in custody –

Since 1999, the United Families and Friends Campaign (UFFC), a London-based coalition of the relatives and friends of those who have died in police custody, in prison or in psychiatric care, has organised an annual remembrance procession from Trafalgar Square to Downing Street, to protest against the government's refusal to act on the growing number of custody deaths. This year's procession on 27th October was the first to take this message to the new Prime Minister – and the first opportunity for a number of families to meet up and partici-

pate in a demonstration at the heart of government.

Over the years, the annual protest has been the centrepiece for numerous and varied campaigning activities that has seen off the Police Complaints Authority, held meetings with its successor the Independent Police Complaints Commission and lobbied the Attorney General. Every year, there are new faces, a sad reflection on the continuing deaths in British prisons and in police. This year provided a chance to call upon Gordon Brown to break with the pattern set by his predecessor of ignoring relatives and friends and to take

September

5: Lord Justice Sedley calls for everyone living or visiting the UK to have a DNA profile registered on the national database. He said the current system where DNA profiles are taken only from those who come into contact with the criminal justice system was "indefensible".

12: A British man, Tarek Dergoul who was held in Guantánamo Bay begins a civil action against M15 and M16 over the tactics that they use to gather intelligence. He claims he was repeatedly tortured while he was held by the US, and that British agents were aware of the mistreatment.

17: A woman and two younger siblings win a total of £100,000 in an out-of-court settlement with Hackney Council because it failed to remove them as children from their abusive home.

18: The Nuffield Council of Bioethics says that the Government must prevent police from storing the profiles of innocent people on the national DNA database. The Council also recommends that ministers drop plans to extend police powers to take DNA samples from people suspected of minor offences such as littering or speeding

18: A report by the Independent Police Complaints Commission states that police officers involved in high-speed chases are taking "unnecessary risks". About 40 deaths related to police pursuits and responses to emergencies occur every year.



Pictures: Jess Hurd / reportdigital.co.uk

the families demand justice

seriously the issues they are raising. UFFC, which is closely linked to the charity INQUEST and to the community anti-racist campaigners Newham Monitoring Project, is particularly supporting INQUEST's call for a standing commission on deaths in custody. This could allow for real change to result from coroner's inquests and investigations by the Prison's Ombudsman, rather than the oft-repeated promises that "lessons will be learnt", which have become almost meaningless. The campaign has a longstanding opposition to a one-off public inquiry into custody deaths, because of



Government ignores relatives

the concern that an inquiry's remit would be couched in such a way as to avoid many of the key issues that families have raised and because the government has found ways to avoid the more contentious recommendation of previous public inquiries, including the 'groundbreaking' Stephen Lawrence Inquiry.

Next year's procession – the tenth anniversary of the first march to Downing Street – is likely to be the last. UFFC has decided that after so many years, the time has come to review its tactics and to look at new ways to bring bereaved families together. Every year, it has been

families and friends who have carried the call for greater accountability and transparency following deaths in custody, and UFFC will be looking for ways to also involve new allies. As long as grieving relatives are left to protest with only the support of organisations like INQUEST, there was the danger of still marching to Downing Street – and still being ignored – in another ten years.

UFFC is therefore calling for the widest possible support on the Tenth Anniversary Remembrance Procession. Join us on Saturday 25th October 2008.

● **Kevin Blowe**

22: Employers are paying out nearly £2bn a year for discriminating against their staff, in settlements and legal fees. Sex discrimination claims more than doubled last year and actions over age discrimination reached more than 1,000 within months of legislation outlawing the practice being enacted.

22: The first annual report from the Forum for Preventing Deaths in Custody shows the annual figure of deaths in custody across the criminal justice system, including prisons, secure hospitals, child jails and police custody suites to be nearly 600.

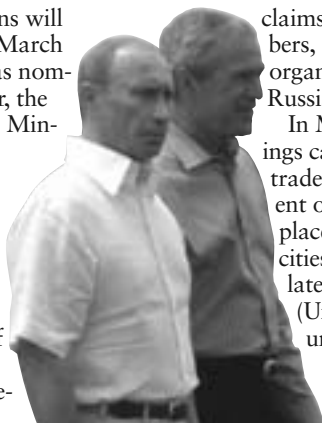
26: Lord Goldsmith, the ex-Attorney General on whose legal advice Britain went to war with Iraq and who announced the end of the corruption investigation into BAE, has found a new job with US firm Debevoise & Plimpton LLP. Salary approx £1 million a year.

27: The Government's programme to manage convicted criminals, cost £2.6bn, is to be scrapped. An internal shakeup at the newly created Ministry of Justice will lead to the demise of the National Offender Management Service (Noms) three years after it was set up. More than £5m has been spent in consultants' fees alone in the past two years trying to fix the problems facing the troubled service.

Organised working class makes itself felt in Russia

Elections for Russia's State Duma (lower house of Parliament) took place on 2nd December. The Council of Europe condemned the results in no uncertain terms. The merging of the state and a political party was an abuse of power and a clear violation of international standards; the media were strongly biased in favour of President Putin and the ruling United Russia party; the new election code made it extremely difficult for new and smaller parties to develop and compete effectively; and there were widespread reports of harassment of opposition parties. Leading opposition politicians were arrested, and one, Gary Kasparov, sentenced to a week's imprisonment. The leading human rights activist Oleg Orlov was, with TV journalists, abducted, beaten, and threatened. Presidential elections will take place on 2nd March 2008, and Putin has nominated his successor, the First Deputy Prime Minister, Dmitry Medvedev. Medvedev promptly announced that Putin should be Prime Minister.

The attention of Western media is focused on these developments.



Vladimir Putin, and friend

However, the Russian population is not composed only of politicians. There is still a substantial organised working class, not only in industries that have survived the collapse of the Soviet Union, but also in the factories established by such multinationals as Ford. In 2002 Ford opened a factory at Vsevolozhsk, near St Petersburg; it produces 300 Ford Focus cars a day.

The Ford workers are not represented by the "official" trade unions. The Federation of Independent Trade Unions of Russia (FNPR), founded in 1990, is in fact one of the few Soviet era institutions to have survived practically unscathed into the new era, with most of its infrastructure and property – offices, colleges, holiday homes and sanatoria – intact. It has 41 member unions and six unions

associated by agreement. It claims 28 million members, over 95% of all organised labour in Russia.

In March 2007 meetings calling for action by trade unions independent of FNPR took place in ten Russian cities. A few months later, the "Yedinstvo" (Unity) free trade union acted. Large

numbers of police attended when 400 workers downed tools in August. The FNPR union at the plant refused to give support.

In October meetings of "free" trade unionists took place in the industrial centres Moscow, Togliatti, Yaroslavl, Perm, Surgut, Kurgan and Norilsk. They raised political demands, including an end to repression of independent trade union action. A public meeting in St Petersburg with over 150 workers was held under the slogans "Don't vote, strike!" and "Give us back the right to strike!". They heard that unlike the 1990s, when employers used bandits to intimidate trade unionists, now the whole police apparatus of the state is brought to bear and that there is no political party representing the interests of workers in Russia.

Strike action followed, in several regions of Russia. On 24th October workers at the Tuapse port on the Black Sea voted for an indefinite strike, which started on 4th November, with 230 workers, mostly crane drivers and mechanics, taking part. The port management applied to the Krasnodar Regional Court for a declaration that the strike was illegal, and the Court issued an injunction forbidding strike action, under Article 413(7) of the Labour Code.

St Petersburg was next. On 26th October, post workers held



Ford Russia: everybody out

a one day strike. Eight strikers were dismissed, and on 9th December began court action for reinstatement. The management are suing the strikers for 103,000 roubles. Next, 1,500 workers at the Ford plant held a one-day "warning strike" on 7th November, bringing the factory to a halt. They had already struck on 14th February, and demanded a substantial pay rise. Negotiations since then had led to nothing. On 19th November the Leningrad Regional Court declared this strike to have been unlawful. However, on 13th November dockers of the three of the companies handling the sea port also struck for the day.

On 20 November an indefinite strike began at Ford, supported by 1,500 workers of

October

3: High Court orders Ministry of Defence to disclose key documents about the death of Baha Mousa, an Iraqi who died in British custody in Basra in 2003.

4: A report by Amnesty International states the use of lethal injections in the US has led to at least nine bungled executions, including one in which the prisoner took 69 minutes to die.

9: The Chief Inspector of Prisons Anne Owens warns that prisoners rather than staff are in control in parts of Rye Hill prison. Her report states the jail, run by the private security firm GSL, needs a team of public sector managers to come in and bail it out.

10: A survey by the Howard League for Penal Reform finds that 95% of 10-to-15-year olds in the UK have experienced crime at least once. The survey of more than 3,000 children found that three-quarters had been assaulted and two-thirds had been victims of theft.

22: More than 1,000 prison officers in England and Wales were found guilty of misconduct between 2000 and 2006 for offences including improper sexual relationships and endangering the safety of their jails.

22: A website used by fans of Sheffield Wednesday to vent their anger at the club's officials may be forced to reveal the identity of users after the chairman, chief executive and five directors win a High Court ruling. A judge orders that three fans should be unmasked.



2,200 employed at the factory. Management then prevented workers from coming to the factory, and summoned OMON, the Russian CRS. On the same day taxi drivers in St Petersburg took strike action, promptly declared unlawful by management.

At last, the FNPR was forced to speak. On 20th November its leader Mikhail Shmakov declared that he was ready to support the Ford strikers at Vsevolozhsk. Although their union was not affiliated to FNPR, it would act if called on to do so. On 28th November management tried to re-start the conveyor, but only 350 workers returned to work. French and German trade unions will not allow parts to be sent to Vsevolozhsk. As I write, on 11th

December, the strike continues.

Finally, an all-out strike of train drivers was due to start on 28th November, immediately before the Duma elections. According to the Russia Prosecutor's Office, Article 55 of the Russian Constitution and Article 413 of the Labour Code absolutely prohibit strikes on the railway. On 23rd November the Moscow City Court declared that the proposed strike, and any preparatory activities, would be unlawful.

Whatever happens to this strike, it is now clear that the organised Russian working class may yet become a terrifying spectre, returning from its premature tomb - to haunt Putin's regime.

● **Bill Bowring**

Met Chief Blair refuses to go after de Menezes shooting

On 1st November, an Old Bailey jury found the Metropolitan Police guilty of 19 breaches of health and safety legislation, a catastrophic series of errors that led to Jean Charles de Menezes's murder by armed police officers.

Following the verdict, a series of revelations further discredited Metropolitan Police Commissioner, Sir Ian Blair. A passenger in the carriage testified that no warning had been given; Blair had personally intervened to try to delay the investigation of the Independent Police Complaints Commission (IPCC); he had been advised to plead guilty to the health and safety charges, but had disregarded that advice.

Instead, the police's lawyers had tried to smear de Menezes during the trial, alleging that de Menezes had failed to comply with police orders because he

might be carrying drugs or have an illegal passport. During the trial, the jury were shown a photograph, produced by the Met, of one side of de Menezes' face and one side of the failed suicide-bomber, Hussain Osman's, face. It had been digitally manipulated to make de Menezes look like Osman.

Despite the criticism, Blair has refused to resign, and has been backed by the Home Secretary, the Mayor of London and other senior politicians. He faced down a vote of no confidence at the Greater London Assembly, taunting the GLA members who had no power to sack him.

The de Menezes family campaign (www.justice4jean.com) continue to repeat their calls for a full public inquiry into the shooting, and for individual police officers to be held responsible.

● **Liz Davies**

Dissection of accession

The Haldane Society was represented at the Fourth International Conference on the EU, Turkey and the Kurds which was opened on 3rd December by the 1994 Rafto Prize winner Leyla Zana, Bianca Jagger, and Francis Wurtz, MEP. The two-day conference, organised by the EU-Turkey Civic Commission (EUTCC), brought together NGOs, politicians, academics

and activists seeking to address democratisation, conflict resolution, reform and human rights in Turkey and their relevance to the EU-Turkey accession process. The current context of a grave deterioration in the reform and accession process, and the growing risk of internationalisation of the conflict in south-east Turkey, added to the talks' importance.

For more info see the EUTCC website: www.eutcc.org ●

24: Home Secretary Jacqui Smith tells Commons Home Affairs Committee that 36% of 1,228 people held under the anti-terror laws since 9/11 had been charged, compared with the 38% charging rate of those arrested for all other types of crime in 2004-5.

24: The senior police officer inf the cash for honours inquiry calls for changes in the law in the wake of his failure to persuade the Crown Prosecution Service to press charges against close aides of Tony Blair and some donors for buying or selling honours.

26: A review of the legislation permitting smacking, if it does not leave visible bruising, scratches or reddening of the skin, concludes that the law should not be changed despite opposition from charities.

30: Official figures released reveal only one in every 400 stop and searches carried out under sweeping anti-terrorist laws leads to an arrest. Official figures covering 2005/6, show a big increase in the sue of the power, with Asian people bearing the brunt.

31: The House of Lords gives broad legal backing to the Government's control order regime but also sets limits to the curfews imposed on suspects and rules that the system of secret evidence must be changed to give suspects the right to a fair hearing.

31: The American Supreme Court rules it will not allow any more prisoners to be put to death until it reviews the legality of lethal injection.

Lawyers on the streets as martial law grips Pakistan

On 3rd November, General Musharraf, acting as army chief, imposed a state of emergency throughout Pakistan, suspended the Constitution and replaced superior courts. In his proclamation of emergency, the General blamed growing violence by militants and a judiciary which he said was working at "cross purposes" with his government and the legislature for his most drastic action since he seized power in a coup in October, 1999. He accused the judiciary of interfering with government policy, weakening the writ of government, demoralising the police force and releasing hard core militants, extremists, terrorists and suicide bombers.

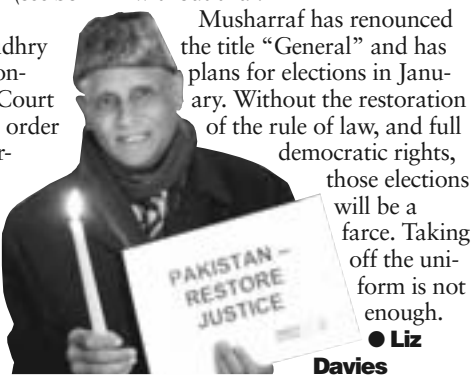
The emergency proclamation's charges against judicial activism aimed at reversing what was hailed as a revival of independence of the judiciary after months of an epic movement led by lawyers since the president suspended Chief Justice Iftikhar Mohammad Chaudhry on 9th March (see *Socialist Lawyer* No 46).

Justice Iftikhar Chaudhry had acted swiftly and convened a seven-member Court which issued an interim order against the state of emergency. In response, Musharraf sacked the bench, elevated his preferred judges to the Supreme Court and to local benches, put Justice Chaudhry under house arrest, and over

the following two days arrested and detained over 3,500 lawyers, human rights and political activists.

The arrest of Imran Khan and the house-arrest of Benazir Bhutto engaged the Western media's attention. They have since been released, but there are fears that some of the lawyers who remain in detention have been tortured and kept in solitary confinement. They include Aitzaz Ahsan (President of the Supreme Court Bench, Vice-President of Human Rights Commission of Pakistan and Chaudhry's legal representative) and Asma Jahangir, President of Pakistan's Human Rights Commission. Despite the presence of the army and police, 2,000 lawyers marched in Lahore on 5th November in protest.

The Haldane Society has joined other members of the legal profession in Britain in condemning the imposition of the state of emergency, disregard for the rule of law, and arbitrary detentions without trial.



Musharraf has renounced the title "General" and has plans for elections in January. Without the restoration of the rule of law, and full democratic rights, those elections will be a farce. Taking off the uniform is not enough.

● Liz

Davies

Drop the 'contempt'

Haldane Society President Michael Mansfield QC joined with one of our vice-presidents, Baroness Helena Kennedy QC, and two of our most prominent members, Gareth Peirce and Imran Khan, to voice their opposition to calls by Lord Carlway to charge defence lawyer Aamer Anwar with contempt of court. Their open letter reads:

"Recently, Mohammad Atif Siddique was sentenced to a total of eight years for terrorism offences. Irrespective of the differing views on the outcome of the case, the criticism levelled towards Mr Siddique's solicitor, Aamer Anwar, over a statement that he released on the day of the verdict is extremely disturbing.

Following sentencing on 23rd October, Aamer Anwar was ordered to appear at a court hearing before the Judge. He was accused of showing disrespect to the Judge, the Jury and the Court. Aamer has now been informed that the matter may be remitted to another High Court Judge to consider Contempt of Court proceedings against him. The possibility that Aamer Anwar may have to face contempt charges is deeply worrying and is an unprecedented attack on freedom of speech. Aamer has earned a reputation as one of the most prominent human rights lawyers in Scotland today. He represented the Chokhar family in their long struggle for justice and has diligently defended asylum-seekers. He has repre-

Landmark ruling on

At a hearing on 8th November in the High Court, Lord Justice Moses, sitting with Mr Justice Irwin, granted permission to the Campaign Against Arms Trade (CAAT) and The Corner House to bring a full judicial review hearing against the UK Government's decision to cut short a Serious Fraud Office (SFO) investigation into alleged corruption by BAE Systems in recent arms deals with Saudi Arabia. (See *Socialist Lawyer* 46 for Jamie Beagent's analysis of the case.) Lawyers for the two groups argued that the SFO decision was

unlawful under the OECD's Anti-Bribery Convention, which the UK signed in 1997.

Lord Justice Moses agreed with the groups that the issue 'cries out for a public hearing' because it involves 'matters of concern and public importance'. He stressed that the issue was closely concerned with the legal system in this country that 'judges have to protect'. The full judicial review hearing has now been scheduled for late January / early February and is expected to last two days.

Symon Hill of CAAT said: 'This is brilliant news for everyone who wants to see an end to arms

November

1: Metropolitan Police commissioner Sir Ian Blair vows to stay on in his position despite calls for his resignation. The Met was found guilty of "catastrophic" failings that led to the shooting dead of innocent Brazilian Jean Charles de Menezes.

7: A coroner is critical of the Ministry of Defence and Army when she rules that a logistics failure had led to the unlawful killing of Fusilier Gordon Gentle in a roadside bomb attack in Iraq. She criticised the MoD's policy on disclosure of evidence at inquests into soldier's deaths in Iraq.

12: A survey by Liberty shows Britain's 28-day limit on holding terror suspects without charge is far longer than that for any comparable democracy. The maximum period for pre-charge detention remains at 48 hours in the US, five days in Spain and seven and a half days in Turkey.

14: Research commissioned by Ken Livingstone, the London Mayor, into one week's news coverage shows that 91% of articles in national newspapers about Muslims were negative. Only 4% of the 353 articles studied were positive.

14: Five Law Lords unanimously uphold arguments on behalf of Home Secretary, Jacqui Smith, that the Court of Appeal had wrongly overturned a tribunal ruling allowing three refugees from the Darfur region of Sudan to be sent back to squatter camps near Khartoum.

This regular column is written by members of YLAL. If you are interested in joining or supporting their work, please visit their website www.younglegalaidlawyers.org

charges on Aamer

sented victims of the 'war on terror', who were accused of terrorism, and who were eventually proved innocent of the charges laid against them. In 2005, he helped campaigners negotiate a way to the G8 Summit at Gleneagles and defended demonstrators arrested during the protests.

Following the collapse of the World's End Trial, the Lord Advocate stressed the importance of the independence of the Judiciary and Prosecution. Equally as important is an independent defence, which is often all that stands between the accused and the state. We might not always agree with Aamer Anwar, but he is part of a rich and important tradition of campaigning lawyers that speak without 'fear or favour'.

If the Judiciary is successful in silencing Aamer Anwar, then this will have far-reaching consequences. A lawyer's job is to represent their clients to the best of their ability – no matter what crimes they are accused of. All those who campaign against injustice and for a better world, know that one day they may have to face the state in a courtroom. They need lawyers who are willing to advocate and speak out on their behalf. We should all be very worried if the effect of this case is to make lawyers reluctant to carry out this work for fear of the repercussions. We believe that the current attack on Aamer Anwar is an attack on the fundamental right of all lawyers to represent their clients." ●

BAE-Saudi case

companies' influence over government. We are now one step nearer the point when BAE Systems is no longer calling the shots.'

Nicholas Hildyard of The Corner House said: 'The courts have today shown that no one is above the law – not BAE Systems, not the Government, not Saudi princes. There are key legal principles at stake here. At last this case will get the public hearing it deserves.'

The Government had also faced criticism earlier in November, over the state visit to the UK by King Abdullah, the dictator of Saudi Arabia. Gordon Brown has

also been reminded of his statement last month that 'human rights are universal', in the context of the Saudi regime's frequent use of torture and violent suppression of political and religious dissent. The Saudi dictator King Abdullah, found the Mall lined by arms protesters as he travelled in ceremony to Buckingham Palace. The demonstration, which was entirely peaceful, was organised by CAAT and included activist comedian Mark Thomas and human rights campaigner Peter Tatchell. For more information visit: www.caat.org.uk

● **Hannah Rought-Brooks**

17: Victims of miscarriage of justice will have to spend longer in prison before their cases are reviewed because of Government spending cuts. Staff who leave the Criminal Cases Review Commission are not being replaced.

20: The UK Government are criticised by the Children's Rights Alliance for England who found that handcuffs were used 44 times on youngsters in custody, and two children had their clothes cut off during a search in prison this year. The UK continues to imprison more children than almost any other European country.

23: The former Chief Justice Lord Wolf says that prison numbers had reached a "critical situation" and suggests that judges should start tailoring their sentences to fit resources available.

30: The Proscribed Organisations Appeal Commission rule that the Home Secretary acted illegally in refusing to take the People's Mojahedin Organisation of Iran (PMOI) off the proscribed terrorist list drawn up under the 2000 Terrorist Act. The PMOI is the main Iranian opposition.

4: The Government is to introduce a bill to allow Inquest juries to hear secret phone tap evidence after the family of a 24-year-old unarmed black man who was shot dead by police threatened legal action. A Coroner has ruled that it was impossible to hold an inquest into the death of Azelle Rodney because of the amount of material which could not be seen by the jury.

Vulnerable people

A survey of our young legal aid lawyer members last year found that an overwhelming majority were attracted to a career in legal aid due to a desire to work towards a more just society. New lawyers setting out in a career in legal aid do not do so for financial reward: they do it because they want to use the law to help ordinary and vulnerable people.

On the whole the clients that legal aid lawyers work for tend to come from some of the most excluded groups in society. They are more often than not the victims of multiple forms of abuse with harrowing stories of violence and neglect. The profile of the vast majority of our clients would be familiar to professionals working in social care.

Although legal aid was originally designed as a key pillar of the welfare state to help ordinary people who otherwise could not afford access to justice, it is increasingly becoming the preserve of the most vulnerable. Contrary to the Government line, legal aid is in the process of being scaled back, and effectively cut, so that only the most needy are generally eligible for help. For instance the new means testing in the magistrates' courts means that three quarters of all working households are no longer eligible for legal aid in those courts, according to independent research by the New Policy Institute. The clients that new lawyers can

expect to help are possibly even more traumatised than legal aid clients of previous generations, given the reduced eligibility rates and the raft of new laws that have been introduced since Labour came to power.

As Gareth Peirce said in her speech on receipt of the legal personality of the year award in 2006, however bad our lot is, it is incomparable to the horrors faced by many of our clients. We usually meet our clients at a point of absolute crisis.

My current job working as a solicitor at the Howard League for Penal Reform is a good example: we undertake legal aid work on behalf of children in custody. Almost all of my clients have, before the age of 18, experienced a string of adversities and difficult events in their lives any one of which would probably have reduced me to a nervous wreck. In 2003, giving judgment in the Children Act case brought by the Howard League, Mr Justice Munby summarised the profile of children in custody. He described them as generally 'vulnerable and needy children [...] disproportionately [...] from chaotic backgrounds' with many having 'suffered abuse or neglect', many with a 'history of treatment for mental health problems' and noted that '[d]isturbingly high percentages had considered or even attempted suicide'. Sadly, over four years on, this description still fits far too many of my clients.

● **Laura Janes, Chair YLAL**

December

HUMAN TRAFFICKING:

MODERN DAY SL



by **Judith Farbey**

*Above: Girl selling
bags of water –
Libreville, Gabon.
Picture by Mike
Sheil/Blackstar
with permission
from Anti-Slavery
International.*

Human trafficking is a crime that demeans the value of human life and is a form of modern day slavery.' Thus states the UK Action Plan on Tackling Human Trafficking which the Government published in March 2007 on the same day as signing the Council of Europe Trafficking Convention. Modern day slavery is graphically illustrated by the actions of a child trafficking gang broken up by police in 2006 and triggering arrests as far and wide as Italy, Bulgaria, Germany and Austria. According to police, the gang had trafficked mostly Bulgarian children aged eight to 13, keeping them like slaves in Western Europe and forcing them to steal money which was then plied into drugs. The vulnerability of the young victims does not need spelling out, but the gang appeared to have the consent of the parents who rented out the children on a contract basis as a result of their own poverty. The case illustrates how human trafficking raises issues affecting social, economic, criminal and immigration policies. At national level, anti-trafficking measures provide real opportunities for joined up Government. This article considers how the UK Action Plan focuses on the multiple policy aspects of human trafficking and on Government-wide, cross-departmental, objectives.

AVERY

What is human trafficking?

The Convention defines trafficking in the same way as the earlier Palermo Protocol. Under article 4 of the Convention, trafficking in human beings means 'the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation'. Exploitation includes 'at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs'. The victim's consent to the intended exploitation is irrelevant. In addition, the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation counts as trafficking even if this does not involve any of the means set out above.

Human trafficking must be distinguished from people smuggling. In its report on Human Trafficking, the Joint Committee on Human Rights (JCHR) cites the definition of smuggling in the Protocol Against the Smuggling of Migrants by Land, Sea and Air and sets out a useful and succinct ex-

planation of the difference: 'First, trafficking is carried out with the use of coercion and/or deception, whereas smuggling is not, indicating that the latter can be a voluntary act on the part of those smuggled. Second, trafficking entails subsequent exploitation of people, while the services of smugglers end when people reach their destination. Third, trafficking can take place both within and across national frontiers, whereas international movement is required for smuggling. Finally, entry into a state can be legal or illegal in the case of trafficking, whereas smuggling is characterised by illegal entry'.

The UK Action Plan recognises: 'Some victims of trafficking enter the UK illegally, but many are migrants who have found themselves in a situation where they are being exploited.' There can be no doubt that trafficking has a transnational dimension or that individual trafficking gangs spread their tentacles across borders. On one important level, trafficking raises issues of border control. Among other immigration measures, the Convention stipulates that Parties 'shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in human beings'. Parties must also adopt measures to prevent commercial transportation from being used for trafficking. Domestic measures must ensure that travel or identity documents are 'of such quality that they cannot easily be misused and

“Not merely organised immigration crime but also grave violation of fundamental

▶ cannot readily be falsified’. However, trafficking is not simply a problem about immigration and the Convention recognises this by advocating a broad, holistic approach, rooted in human rights. It seeks to promote a coordinated approach under which agencies of the State not only criminalise trafficking but also undertake measures such as awareness raising, social and economic initiatives, and training programmes. In this way, law enforcement personnel, professionals, the media and civil society each play their part in decreasing demand for exploitation and in protecting the victims of exploitation. Under the scheme of the Convention, these activities should take place against the backdrop of gender mainstreaming. Educational programmes should stress the ‘unacceptable nature of discrimination based on sex, and its disastrous consequences’.

The JCHR has reminded the Government that trafficking: ‘should be seen not merely as organised immigration crime, but also as a grave violation of fundamental human rights. The human rights of victims should be at the core of the UK response to trafficking.’ The European Commission has stated that the ‘needs and rights’ of victims ‘shall be at the centre of the EU policy against human trafficking. This means first and foremost a clear commitment of EU institutions and Member States to follow a human rights centred approach and to promote it in their external relations and development policies’. It follows that UK policy on trafficking should extend beyond border controls and border crime.

How does the UK Action Plan reveal the sort of holistic approach advocated by the Convention? This question can be answered by reference to three principal policy areas: prevention of trafficking at source, investigation and prosecution of perpetrators, and protection for victims.

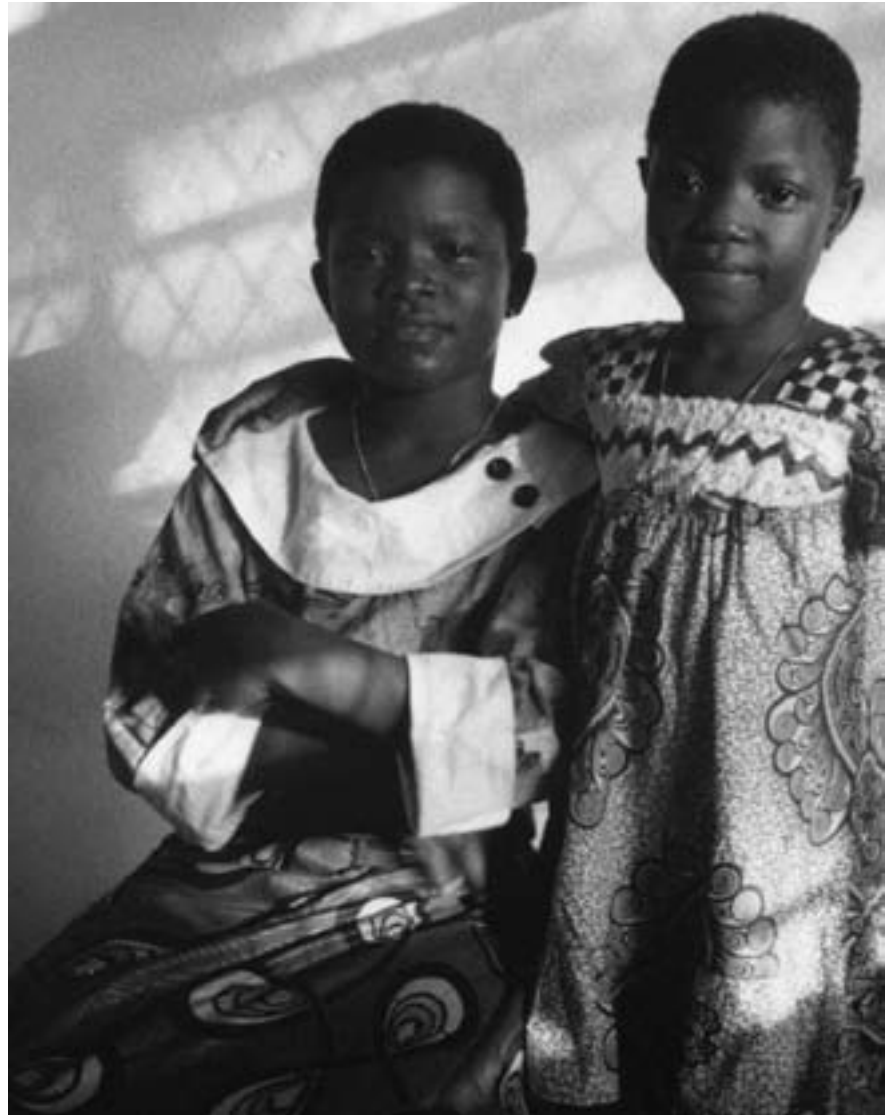
Preventing Trafficking at Source

The UK Action Plan is clear that the Government seeks to implement measures to tackle the root causes of human trafficking. The remit is cross-departmental, involving the Home Office, the Foreign & Commonwealth Office (FCO) and the Department for International Development (DfID). The three prongs to this work are ‘awareness raising measures which highlight the dangers of trafficking, actions to address the factors that make poor people vulnerable to trafficking, and work designed to build capacity in source and transit countries to deal with organised immigration crime’.

The Government has recognised that economics is a driving force for trafficking. The UK Action Plan cites ‘poverty and social exclusion’ as underlying causes of exploitation and confirms that the Government will ‘continue to increase our development programme budget to reach the UN target of 0.7% of national income by 2013 which supports country-led approaches to improve governance and security, health and education, and decent work opportunities for poor people’. The Plan highlights in particular DfID’s £6 million donation to the Mekong Sub-Regional Project to Combat Trafficking in Children and Women. DfID also supports Save the Children’s anti-trafficking work in the Greater Mekong region. In addition, the UK’s existing global commitment to reducing child poverty and to promoting universal primary education are seen as useful means of reducing the causes of child trafficking.

This aspect of the Government’s anti-trafficking work is very ambitious and aspirational: it will address ‘the increasing inequality in prosperity between and within countries and the increasing demand for cheap labour and other exploitative services’. There is thus a clear cross over between anti-trafficking measures and the Government’s global anti-poverty agenda.

In addition to anti-poverty policies, the UK Action Plan relies a great deal on existing economic measures for tackling organised immigration crime. The Plan makes reference



Above: Pelagy and Jocelyne. Both were trafficked from Benin to Gabon. Picture by Mike Sheil/Blackstar with permission from Anti-Slavery International.

to the Government’s Migration Fund which aims to ‘reduce the entry of people causing harm to British society’ and ‘support the development of effective and sustainable returns arrangements’. Reflecting some of the more controversial aspects of the Government’s general immigration policy, the Fund seeks to ‘help to manage migration in third countries where this helps UK interests’, as well as to ‘increase [...] understanding of legal and illegal migratory flows’ and to ‘improve protection of genuine refugees and internally displaced persons’. The UK Action Plan emphasises various objectives of the Fund including improvement in law enforcement functions, utilisation of a multi-agency approach and sharing best practice. More specific action to combat trafficking includes (from the FCO’s Drugs & Crime Fund) a regional anti-trafficking project in the Western Balkans and work with Romanian and Bulgarian anti-trafficking agencies.

As a further tool, the Government believes in awareness raising campaigns both in the UK and abroad. The UK Human Trafficking Centre (UKHTC) has undertaken campaigns in Romania and Bulgaria. The Department for Trade and Industry (now the Department for Business, Enterprise and Regulatory Reform) and the Gangmasters Licensing Authority (GLA) have produced information on workers’ rights in various languages. Advertisements and posters in the UK have ‘explained ways in which instances of possible exploitation can be reported’. The FCO will publicise abroad successful UK prosecutions for trafficking in an attempt to deter traffickers.



The UK Action Plan also argues that the Government has taken steps to deter demand for forced labour, citing the GLA's licensing system and the civil and criminal penalties for employing illegal migrant workers. The system of civil and criminal penalties does not target traffickers in particular and is more properly regarded as part of the Government's ongoing efforts to strengthen the UK's borders against illegal migration as a whole. However, more specific to trafficking, the Government also seeks to 'target men who might use massage parlours, saunas or other kinds of brothel, through men's magazines, websites or other targeted media' by way of advertisements raising awareness of human trafficking. According to the Plan, 'such publicity techniques had an effect on the behaviour and attitudes' of some men. The Government recognises that the success of awareness raising campaigns, which aim to prevent trafficking at source and to reduce demand, can only be ascertained through proper evaluation mechanisms.

Prosecuting perpetrators of human trafficking

As the root causes of trafficking are not going to go away, long-term economic policies need to mesh with specific, detailed and immediate legal provisions. Transnational measures need to be supplemented by effective implementation of national laws. The Government has indeed sought to bolster the domestic legal framework and its implementation. Recent measures in the UK aim to shift human trafficking to the mainstream of police functions and law enforcement activities. The UKHTC, established in October 2006, brings together the police and other law enforcement agencies such as the CPS, Serious Organised Crime Agency (SOCA) and the Border and Immigration Agency (BIA). The UKHTC aims for a multi-pronged approach, combining law enforcement and training of law enforcement personnel with preventive measures and public awareness campaigns. In addition, Operation Pentameter 2 was launched at the beginning of October 2007 which will 'involve a campaign of activity throughout the United Kingdom' aiming to 'discover the extent' of trafficking. It follows Pentameter 1, a nationwide police operation, which confirmed 84 women as victims of trafficking and led to 232 arrests.

Recent years have seen burgeoning numbers of immigration offences reach the statute books, not least in the area of trafficking. The Sexual Offences Act 2003 has created offences of trafficking a person into, within or out of the UK for sexual exploitation (ss.57-60). The Asylum and Immigration (Treatment of Claimants, etc) Act 2004 has created specific offences of trafficking a person for other forms of exploitation such as slavery or forced labour (ss.4-5). Both under the 2003 Act and under the 2004 Act, the maximum sentence on conviction on indictment is 14 years. The Violent Crime Reduction Act 2006 amended the Sexual Offences Act 2003 to allow the forfeiture and detention of land vehicles, ships and aircraft used in trafficking for sexual exploitation. The Action Plan confirms that 'the Government is committed to keeping the legislation on trafficking under review' to ensure its effectiveness and deterrent effect. The Government accepts that 'hitherto the focus of enforcement activity has been on trafficking for sexual exploitation' and recognises the need to develop a response to other forms of trafficking. Further legislation may therefore be enacted.

As in its efforts to combat trafficking at source, the Government advocates a multi-agency response to enforcement of anti-trafficking laws. Those agencies include the UKHTC, SOCA, the Child Exploitation and Online Protection Centre (CEOP), the Scottish Crime and Drug Enforcement Agency (SCDEA) and the Trafficking Working Group which has been formed by Scottish police forces. The UKHTC 'will continue to take forward the development of a victim centred approach to trafficking' and 'will play a key role in coordinat-

I was trafficked (Lien, China)

I was trafficked to the UK two years ago from China. I had tried to escape from my aunt, who had kept me as a prostitute in her house after my parents died when I was 13. Instead of looking after me she did not feed me properly and she kept me tied to a chair and beat me.

I lived like that for six years. I was very depressed. I thought about killing myself and I wanted to run away. Then one of the men who visited me at my aunt's house offered to help me escape. He said he felt sorry for me and wanted to take me somewhere safe. He told my aunt he wanted to take me out for the day, and gave her some money. But instead he took me to the airport and brought me to England. He arranged my travel and told me that he had arranged immigration papers for me. He paid for everything too.

He was nice to me but that changed when we arrived here. He left me at a brothel while he went for a drink with a friend. He did not come back. He had sold me and gone back to China. I did not know where I was. I was made to work as a prostitute again, with at least five other women. Only one other woman was Chinese; the rest were all white, but I don't know where they were from. They threatened me and kept me locked up.

I was kept there for several months and then I managed to escape in the middle of the night. I walked for three days before anybody helped me, and then a stranger called the police for me. The police locked me up overnight before they came with an interpreter and realised I had been trafficked.

I am very tired now, all the time, and I have very bad nightmares. I am still depressed. I think I always will be.

Case study from the POPPY Project: Lien is not her real name

ing work across stakeholders'. It will work not only with other Government agencies but also with NGOs. Given the transnational aspect of trafficking, the UKHTC aims as a 'key objective' to establish good working relationships with foreign law enforcement agencies. It has already engaged with Europol, Interpol, the USA, Canada, Ireland, Nigeria, Poland, the Netherlands and France. Consistent with a victim-centred approach, the UKHTC employs a Victims' Co-ordinator and has established a special group to address victim issues.

SOCA's organised programmes against immigration crime cover 'source countries, nexus points on route to the UK, exploitation of illegal migrants in the UK and trafficking of people, in particular women and children for the vice trade'. SOCA's Liaison Officers work in more than 100 posts in almost 40 countries. Liaison Officers collate overseas intelligence, carry out intervention activity and liaise with UK and international agencies.

CEOP was launched in April 2006. It fosters links in the UK and internationally 'to deliver a holistic approach that combines police powers with the dedicated expertise of business sectors, government, specialist charities and other interested organisations'. It focuses on tackling child sex abuse but does not deal with child labour.

Protecting victims of trafficking

The Plan also recognises that 'any end to end strategy requires a supportive balance between its different strands and that there is a need for a strong enforcement arm to have the corol-



“Child victims exemplify how victims of trafficking may not always be the victims of organised crime”

defence to entering the UK without a passport. Moreover, the CPS can exercise discretion to discontinue a case on the basis that it is not in the public interest. The Plan says that it is ‘difficult to envisage circumstances where it would be in the public interest to prosecute genuine victims of human trafficking for immigration offences’. Where prosecutions for immigration offences have taken place, they are (according to the Action Plan) attributable to a ‘lack of awareness’; it is hoped that better training will ameliorate the problem.

The Convention, which mandates a child-sensitive approach to the development of anti-trafficking measures, provides that States ‘shall take specific measures to reduce children’s vulnerability to trafficking, notably by creating a protective environment for them’. The Action Plan, which dedicates a Chapter to child victims of trafficking, affirms that children have special and different protection needs flowing from ‘a reduced capacity to assess risk and an increased dependence on others’. A number of cross-departmental projects and schemes aimed at providing assistance to health and education professionals are in train.

Child victims exemplify how victims of trafficking may not always be the victims of organised crime. Children may enter the UK accompanied by family members who then force them into illegal labour for the family or for others. It may be particularly difficult to identify this sort of victim, as there is no obvious investigative target for law enforcement agencies and these victims, even more than others, may not understand how to approach protective agencies. This is part of the wider problem that trafficking for forced labour is often ‘a hidden problem within families and communities making it harder to identify and detect’. The Action Plan recognises that research in this area is required even to establish the scale of the problem.

Conclusion

There can be no doubt that the UK Action Plan contains plenty of food for thought. In some ways, its approach is evolutionary – building on existing measures within the spheres of economic, criminal and immigration policy. The major exception – and a huge step forward – has been the establishment of the UKHTC. The Convention too provides a detailed framework for further developments with which the Government will have to grapple sooner or later. Whilst the Convention contains provision for strong border controls, it recognises that crossing borders is only one aspect of the overall scourge of trafficking. Border controls do not assist in tackling exploitation and the other root causes of trafficking. By the time a trafficked woman or child arrives at a border, she may already have been the victim of exploitation and is already in a dangerous position. Victims of trafficking may appear to immigration authorities like regular migrants: they may have regular visas and some may not need visas at all if travelling within the EU. A human rights based, victim-centred approach should extend far beyond strict immigration measures. The Government’s decision to sign the Convention marks a significant step forward. It must now harness the various agencies and departments – inside and outside Whitehall – to deliver the full range of Convention protections.

Judith Farbey is a barrister at Tooks Chambers

Left: A former trafficker – Mono Region, Benin. She worked as a trafficker for 26 years taking children from Benin to Nigeria. Picture by Mike Sheil/Blackstar with permission from Anti-Slavery International.

lary victim provision’. Chapter III of the Convention deals with measures to protect and promote the rights of victims. Under article 10(2), if a party to the Convention has reasonable grounds to believe that a person has been the victim of human trafficking, that person shall not be removed from the territory until the process has been undertaken to identify him or her as a victim. Victims must receive assistance in their physical, psychological and social recovery including accommodation, medical treatment, translation and interpretation services, information about their legal rights and access to education for children. The Action Plan sets out the various means by which the UK seeks to fulfil its protective duties to victims.

Under article 13 of the Convention, each party must provide victims with a ‘recovery and reflection period’ of at least 30 days. The period must be sufficient for victims to escape the influence of traffickers and take an informed decision on co-operating with the authorities. Victims must not be expelled from the territory during this period. Moreover article 14 allows victims of trafficking to reside in a State when the authorities consider that their stay is necessary for investigation or criminal proceedings. We must wait and see how the UK will implement these provisions on ratification of the Convention. Whilst victims of trafficking may currently be granted humanitarian protection or even (in some circumstances) refugee status, the implementation of these provisions of the Convention would mark a radical change to immigration law. The Plan alludes to the provisions without casting light on how the UK will implement them.

The Action Plan emphasises that it is UK policy to avoid the criminalisation of victims of trafficking. Hence victims should not usually be prosecuted under section 2 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 because their circumstances are likely to constitute a

At any one time there are three thousand children in prison in the UK. Sometimes they are children with no papers. **Laura Janes** asks why?

PRISON: NO PLACE FOR MINORS

Next year the UK Government falls under the scrutiny of the UN Committee of the Rights of the Child. Article 37 of the Convention requires that we imprison children as a last resort and for the shortest possible period of time. Our own youth justice system aims to be primarily preventative and reflect these aims.

Yet some 10,000 children pass through the secure estate for juveniles per year. At any one time there are approximately 3,000 children under the age of 18 held in secure children's homes, Secure Training Centres (STCs) or Young Offender Institutions (YOIs). As of 2nd November 2007, there were 3,018 children in the secure estate.

Worse still, and for some years now, incidents of lone asylum seeking children being incarcerated within the criminal justice system for failing to provide immigration papers have been reported. Typically, children were said to be arriving without papers, being remanded to custody and then sentenced to four-month detention and training orders (DTOs), of which they would serve two months in custody and two months in the community. For these children, their first experience of this country was a significant period behind bars. Re-offending work with such children was usually irrelevant or inappropriate. It is clear that for such children the use of custody as 'a last resort' was simply not being applied. According to Home Office policy, children arriving alone are not allowed to be detained in immigration detention.

Moreover, there is often a risk that an unaccompanied child arriving in this country without papers may have been trafficked. The criminal justice system is simply not equipped to deal with these issues.

In July of this year, the Howard League was contacted by staff at a secure centre who were unsure as to what offending behaviour work

they would be able to do with one such young girl and where she would be released to. MJ had arrived from China without papers. She had been incorrectly identified as an adult and remanded to an adult women's prison for some six weeks before being produced at the Crown Court. The judge decided that she was in fact a child and sentenced her to a further four month detention and training order, incorrectly believing that time on remand would count towards her sentence (it does not for a DTO).

The Howard League represented MJ in an appeal against sentence some weeks later, having secured an address from social services and successfully applied for bail. *R v MJ* [2007] EWCA Crim 1999 held that, as the minimum custodial penalty for a child is four months and the appropriate penalty for an adult committing the same offence would be approximately two months, no custodial penalty should be imposed. The case was argued as a straightforward sentencing case and, although issues surrounding the purpose of the DTO and the vulnerabilities of unac-

companied asylum seeking children were prepared, the Court did not need to hear those arguments.

However, in the course of representing MJ, it became clear following basic research that there was a strong possibility that MJ had been trafficked. Given the responsibility of all professionals, including lawyers, to make appropriate referrals to ensure children are safe, we explored this issue further. Hours of research indicated that many of the hallmarks of trafficking were present in her story. We were able to locate the relevant team at the Refugee Council and make an appropriate referral to ensure her well-being. However, it would have been extremely helpful if we could have used the new NSPCC trafficking advice and information line launched on 8th October 2007, precisely to help professionals to identify potential victims of trafficking (see box below).

Unfortunately, the judgment only goes as far as to confirm that a Detention and Training Order should not normally be imposed on a juvenile convicted of an offence under s2 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004. However, many children who are trafficked or simply vulnerable arrive with false documents provided to them by traffickers. There is no judicial guidance (yet) as to the appropriate penalty for children with false papers or as to whether a custodial sentence is wrong in principle for such offences. The Director for Public Prosecutions is due to issue guidance on the appropriate charging policy for people who may have been trafficked this year. Yet, it remains difficult to see the extent to which this will help, unless steps are taken to ensure that the signs of trafficking are spotted by the professionals that lone children come into contact with.

Laura Janes is a Solicitor and Legal Officer for the Howard League for Penal Reform. For more info go to www.howardleague.org

The NSPCC Child Trafficking Advice and Information Line (CTAIL) on 0800 107 7057 will help people working with children, such as immigration officers, the police, social workers, teachers, and health workers, to better identify and protect child victims. It will also shed light on the scale of child trafficking in the UK.

The free service has been set up with funding from the Home Office and Comic Relief. It will run in partnership with the Child Exploitation and Online Protection Centre (CEOP) and End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes (ECPAT UK).



IMRAN KHAN
talks to **SULTANA
TAFADAR**

“It’s now assumed you’re guilty and you’ve got to prove your innocence”

Sultana: The counter terrorism bill proposes extending the period of detention without charge from 28 days to 56 days. According to the Government, the period of detention needs to be increased to deal with the increasing complexity of cases – that suspects will need to be held for a longer period of time so that evidential as well as jurisdictional issues can be dealt with before charge. What are your views on the proposals and the rationale for seeking such an extension yet again?

Imran: ‘Firstly, in relation to the issue of jurisdiction the world’s getting smaller. Unlike in the past access to information now via databases, email, and telephone is easy. We saw this in the Glasgow case where we found out here in the UK what was happening in Australia within a very short space of time. So if we can get that information that quickly, I don’t see why the authorities, who co-operate on an international basis, can’t have access to information very quickly.

Secondly, on the issue of complexity, 28

Imran Khan, with Michael Mansfield QC, brought Britain’s first private prosecution for a racist murder on behalf of Stephen Lawrence’s parents. Though unsuccessful, it led to the McPherson report which cited “institutionalised racism” in the police force and which resulted in unprecedented apologies, procedural changes and also vindication for the Lawrences in their pursuit for justice. He has also represented the families of Zahid Mubarek and Victoria Climbié. Imran Khan favours “impact cases... cases that are dead and buried”, done free of charge, especially in the early stages as there is no state help available. “That’s why I’ve gone grey,” he says.



days or 56 days are both arbitrary time limits. Complexity and jurisdictional issues don’t stop at any particular day. It has now become normal for the prosecution to serve its case against the defendant many months down the line. The argument put is that this is because of jurisdictional issues or because of the complexity of computer material, mobile telephone analysis, interrogation or getting the material into an evidential format. In most cases this is information which the police would already have at the police station. The delay is about “softening up”. The way to look at this issue is when the police arrest somebody they must be in a position to put the material that they have at that stage to them, enough for the authorities to be able to say whether the suspect can be charged or not. In the vast majority of cases, it is intelligence-led operations where there has been substantial surveillance and interception material weeks and months prior to the event. Mr Justice Calvert-Smith QC, who deals with case progression of these types of cases, has made it absolutely clear, that where there are intelli- ▶

► gence-led operations there has to be a truncated timetable by which the prosecution need to give this material because they've had a head start. So I think the Government's "justification" is a red herring. The idea that we need "x" amount of time is completely arbitrary. It allows the police to put a huge amount of pressure over a long period of time on a suspect at a police station. They feel that these individuals will crack and say things. The police and the prosecution need to do their jobs gathering the evidence without relying on pressure and confessions.'

As someone who represents defendants charged with terrorism related offences, what has been your experience of the pre-charge detention period, its impact on your clients, and its overall effectiveness in combating terrorism?

'Seven days, in my experience, was a fairly oppressive period of time and I've dealt with many people who have been held beyond seven days. There invariably comes a time during that period, almost regardless of the people you are dealing with, when you sense that there are cracks appearing in the suspect's personality. By this I mean psychological problems where people start debating whether they've done something wrong and you can see that the whole process is not about eliciting information but simply wearing somebody down. And what I sense you may end up getting is people being so worn down that they'll be prepared to say anything at a police station leading to false confessions from people who may not have done anything. The "committed" individual may be able to stand up to that sort of interrogation but not the innocent ones that will be dragged in, in nearly every case. Now those individuals, those "innocents who are dragged in" may end up being the ones who would falsely confess, with or without the protection of a lawyer, in order to simply get away from what is oppressive treatment. I can't even imagine the scenario of spending 90 days in a police station. When I go to Paddington police station, after ten days I feel pretty awful and that's me walking in and out of the police station. But being held there, in that sort of condition where you are isolated, you don't speak to anybody, you get very little reading material, that sense of isolation is such that it would lead to people making false confessions. People who make this kind of false confession do so in order to simply get away from the oppressive regime. So I think it's a false economy to think that we are somehow going to be able to get all the information in that period of time. What, in fact, you may end up getting is that those who are committed to remaining silent, will remain silent whether you can put the material to them or not. Those that are likely to talk will talk within seven days or 14 days. If it's to draw inferences from silence that doesn't need a lengthy detention. I just don't see the rationale for this approach. Are the police saying, "we don't know within 14 days whether there is sufficient evidence to charge somebody?" I just can't believe that. The police do, already, whether they admit it or not, charge on the basis that it's easier to charge and then drop the charges later on if the evidence doesn't quite match up. What I've seen with the increase of the detention period to 28 days is a





lack of police focus on the cases they deal with. The number of interviews cuts down, the number of personnel involved cuts down. There's a complacency involved in the investigation which I think would definitely expand during the extra period of time. If you count up the number of hours somebody's being interviewed over a 28 day period and a seven day period, you'll probably find that they've been interviewed the same number of times. I've dealt with 'seven day' cases where there were three or four interviews during the course of the day but with the increase to 14 days, you had maybe one interview during a single day. When it went to 28 days you had some days with no interviews. It was about pressure – pure and simple.'

Some see post-charge questioning, another measure outlined in the new bill, as an alternative to pre-charge detention. What are your views on this proposal?

'We already have a situation where identity parades and some questioning can take place after charge and it's been the thin end of the wedge. Would it be the case that such questioning after charge is allowed if there's some issue that needs to be put and it is viewed by the police as a last resort? Or are they simply going to rehearse the same arguments and put forward the same questions simply to try and force somebody into saying something? I suppose it could be argued that suspects dealing with the evidence in interviews once it is all available and dealing with subsequent discrepancies would be better than having a long initial period of detention. However, it seems to me that post-charge questioning serves no practical purpose. Having determined that there is enough to charge somebody and this means (particularly with the CPS now involved in this decision) the police have decided that there is a "reasonable prospect of conviction", what purpose does the ongoing questioning serve other than a dress rehearsal for the trial? So whilst there may be an argument, that this a pragmatic approach and perhaps the lesser of two evils (in that it is better than a long period of initial detention) because suspects are bound to have lawyers post-charge whereas pre-charge they may not, it is simply a device for the police to draw more adverse inferences, as defendants are more likely to be advised to exercise their right to silence knowing that the police already believe they have committed the offence by charging them.'

As you well know, having represented two of the defendants, in the Fertiliser Bomb Plot trial, supergrass and intercept evidence were a crucial part of the Crown's case. The Government envisages the use of such evidence in future cases and is therefore seeking to place them on a statutory footing. What are your views on the Government's proposal?

'Supergrass evidence is completely and utterly unreliable. To have people give information on the basis of an incentive means that the likelihood of that evidence being reliable is non-existent. To have people convicted on the basis of that type of testimony alone is a recipe for disaster. Scores will be settled and all sorts of deals could be done in the back rooms of the

"The problem with intercept evidence is that it is incredibly difficult to challenge"

security services. I think it will end up being a real deep cesspit of lies and deceit against individuals so I certainly wouldn't advocate that as a means of dealing with terrorism.

The problem with intercept evidence is that it is incredibly difficult to challenge. We already have a situation where there's lots of covert audio material in terrorism cases when there has been a substantial period of time from when that surveillance took place. I can imagine intercept material which has been taking place over a period of time eventually coming to court a year or two years later. The ability of the defendant to challenge that becomes quite difficult given the length of time that's involved. Given that the authorities would choose what to intercept, when to intercept and edit the intercept in such a way that what you eventually get is a picture which is prosecution-loaded and because you don't have it at the time, the defendant would have great difficulties in contextualising the conversations or otherwise dealing with the issues present at the time which would explain what was said. At the moment we have a huge problem with obtaining, from the Crown, all audio probe material that was taken, relying on their discretion and the CPIA rules as to what we are given or not given and that argument is going to keep going. What the prosecution will do is choose what they want to put forward and the defence will have to draft defence case statements and hope to bring out conversations that may or may not have been recorded or which are open to interpretation by disclosure officers and prosecution lawyers, a year to two years after the event.'

What are your views on the measure outlined in the bill that seeks to extend the ambit of section 58 of the Terrorism Act 2000 to cover the collection of information of service personnel?

'Collection of information as an offence is just surreal. You could write a whole book on how wide section 58 is in terms of its ability to catch any act. It is an almost strict liability offence. The new proposal takes it to the completely surreal level. On the face of it, if I were to Google the names of the head of the army, then I could be committing an offence. Where the State has already said in cases and in terms that section 58 allows the arrest, in theory, of an old lady carrying an A-Z on a London bus, then I dread to think who might be subject to this discretionary arrest and prosecution. Legitimate enquiries ought to be allowed to be made about our service personnel. Journalists, researchers, members of the public, should be entitled to ask questions. Its all about making Government accountable and transparent. You already find difficulties when asking questions about service personnel. This would make it a criminal offence to do so. People mock the idea that we're living in some sort of police state but we're getting pretty close to



► it when you can't even ask legitimate questions about service personnel.

One may ask "what's the harm in making this an offence? If it's for a legitimate purpose they should be able to prove it?" There are all sorts of reasons why you might collect information. Shouldn't it be that they ought to be able to prove that it was for a terrorist purpose? But the onus has shifted and in a climate in which it's assumed you're guilty and you've got to prove your innocence, it becomes really difficult. Who knows what you were thinking about when you were Googling a particular thing. I'm particularly concerned about students at colleges and university who may be exploring the world around them and that really is what we've seen in the deployment of section 58. It's targeting young Muslim men in particular who are naturally eager to explore the world around them in the same way that all young people in all corners of the earth

do in an almost given rite of passage to adulthood. Arrest and prosecute when people act against clear laws. What this is trying to do is to get people at the time they're simply thinking about their environment. I never thought I'd see the day when our thoughts were policed in Britain. But essentially that's what this legislation is about. It sounds like a fiction that you'd read in a book by George Orwell but it's getting pretty close to that reality.'

The Government also seeks to apply enhanced sentences for terrorism related offences? Is this justified?

'This is complicated because I was certainly in favour of stiffer penalties when there was a racist element to an offence. However, the reason why we were asking for increased sentences in race-related crimes was because it was part of a campaign to force the police to take action in those sorts of cases. We're not living in the sort of environment where the

courts and the prosecuting authorities are reluctant to investigate and prosecute offences where there is a terrorist element.

What used to happen in race-related crimes was that the police would deem them as minor crimes because of the low sentences they attracted. There wasn't the motivation to proceed with the investigation and prosecution. It seemed like too much trouble for very little. That's not the case here. I think again this is one of those where the cart's been put before the horse. With racially aggravated offences, it was about sending out a signal, it was about making sure that racism wasn't allowed to flourish and the Government wanting to be clear about its stance on racism. All very well and the Government should be lauded and applauded for all of that. I don't think that this Government in particular has any problem in its so called anti-terrorism credentials and the sentences which have been given out are un-



need to reflect that in sentences. One of the ironies in the section 58 case of the “Bradford students” was that the lad who went with his family to the police station and admitted that he had tinkered with this idea of extremism but actually got homesick and came back, was himself prosecuted. It would have been an opportune moment for the state to say, “you are exactly the sort of person who we should credit”, and not prosecute. The message has gone out that it doesn’t matter whether you admit to it or not, the State is going to prosecute first and talk later.’

There is also a proposal that, after completing their sentence, persons convicted of terrorist offences should be required to notify the authorities of their identities, their whereabouts and foreign travel plans. What are your views on this proposal?

‘I think the problem is putting them in the same category as sex offenders, who also have this notification requirement. It sends out the wrong message to the Muslim community.

Whether we like it or not there are people who see themselves righting wrongs. We’ve seen in Northern Ireland that these sorts of repressive measures don’t actually work in the long term. What is particularly pernicious about this idea, not just of a thought police but a control police, is that you’re never going to get rid of the shackles of the State having done your sentence. With sex offenders, the issue is that they are seen to have a pathological condition which means that they live with it for the rest of their lives. How are we to equate that with somebody who holds certain political ideological views? Does that mean that the Government has completely given up on prisoners’ rehabilitation? If it is, then we might as well just not send anybody to prison because what they’re assuming is that anybody who is punished for this is going to be, for a very long time, maybe the rest of their life, an extremist. So measures are not put into place to rehabilitate but simply to control. An assumption is made that once an extremist always an extremist.

Ideologies are by their very nature complex nuanced thoughts and processes. One day you may believe a particular argument, the other you may not. Just because you’re meeting somebody who holds extremist views doesn’t mean you share them and the whole point of ideological discussions is about trying to understand your religion and trying to understand the world in which you live. Why shouldn’t people be allowed to consider a range of views? The problem arises when they do something about it. This provision is trying to predict what somebody does before they do it and poses a huge problem.’

What are your views on the storage of DNA of terrorist suspects on a database?

‘I am in principle against mass storage of DNA. DNA is already kept as soon as anybody is arrested and in terrorism cases there’s no way that you can prevent that at the moment. One of the problems is, or will be, that people who have not done anything wrong will have their DNA going onto the database. Just by the mere fact of your DNA being on what’s called a counter-terrorism

database, is going to be enough of a stigma to stop all sorts of things happening or cause things to happen. Just imagine you travel from here to another country and a search is carried out or there’s a whisper that your DNA’s on the database, despite the fact that you’ve not done anything, you’ve not been charged with anything, you’ve not been convicted of anything. There already exists the ability to cross-reference it on a database to see whether any other offences have been committed and targeting individuals in this way is further stigmatisation.’

Finally what do you think will be the impact of such measures on, firstly, the Muslim community and secondly, the effectiveness in dealing with terrorism?

‘To effectively deal with terrorism, the approach you need to have is intelligence coming from the community in which those suspects are operating. There has to be a two-way dialogue. The authorities need to give the community confidence so that individuals can come to them and tell them about what’s going

“We’ve seen in Northern Ireland that these sorts of measures don’t actually work in the long term”

on. At the same time the authorities have got to say that we’re not going to treat the whole community as potential suspects. If we’re to learn lessons from what happened in the past – and it doesn’t look like we have – if you look at what happened with the African-Caribbean community and what the whole Lawrence Inquiry brought out, was that you need to police by consent and that’s something which has been completely forgotten. What we’re doing with the Muslim community is that we’re policing by coercion – we’re forcing people into a corner. The number of times I’ve gone into communities and people say they want to go and give information to the police, they want to trust the police and the security services but the problem is that whenever they do try that, it is they themselves who end up under suspicion. That was what happened, and is still happening in the African-Caribbean communities but it’s now happening more and more within the Muslim community. We have to see these issues in context. If our Government, in our name, carries out reactionary wars and targets a whole community at home as a potential “fifth column” there is an inevitable consequence. History is littered with examples: the Irish community in the 1970s and 1980s; German Jews in the Second World War; the list goes on. In ten years time we do not want to have to apologise to people whose lives have been wrecked and families destroyed by a State that was promoting fear.’

Sultan Tafadar is a pupil at Tooks Chambers

doubtedly the strictest sentences you’re going to get. That’s been set very clearly by the Court of Appeal in the case of Dhiren Barot which sets out precisely the sort of sentences people would get for being involved in terrorist-related crime. So I don’t think we have a problem that needs to be sorted out here. It looks like this is window dressing, giving the Government extra credibility to show they are tough on terrorism. As a result, the sheer length of the sentence, whether you plead guilty or not, is not encouraging people to admit liability. Rather, its discouraging people from admitting liability. In fact what you’re probably going to get is more and more people saying, “well we might as well fight it because we’re going to get a lengthy sentence in any event”. What the Government and the courts should say is “if you co-operate, if you admit to this and in particular if you move away from what you were going to do”, then we

The case of the Miami Five raises serious questions about the US justice system, argues **Steve Cottingham**, who says it also calls into question America's attitude to terrorism

MIAMI FIVE: WHO ARE 'TERRORIS

The Five are Gerardo Hernandez Nordelo, Ramon Labanino Salazar, Antonio Gurrero Rodriguez, Fernando Gonzalez Llort and Rene Gonzalez Sehowerert. Both Antonio Guerrero and Rene Gonzalez are US citizens. They have been charged, and convicted following a profoundly flawed trial, of conspiracy to commit offences against the USA and of acting as agents of the government of the Republic of Cuba. One of them, Gerard Hernandez, was also convicted of knowingly and wilfully conspiring to perpetrate murder.

The Five deny all the charges. Their trial was unfair, their conditions in prison were inhumane, and they were fall guys in an attempt to cover up the US's support for illegal activity to overthrow the government of the Republic of Cuba.

Who are the terrorists?

Since 1959 the US has waged a terrorist war against Cuba. Testifying before the Senate Committee investigating the CIA's attempts to assassinate Fidel Castro, Richard Helms, the former CIA Director, admitted that 'We had task forces that were striking at Cuba constantly. We were attempting to blow up power plants. We were attempting to ruin sugar mills. We were attempting to do all kinds of things in this period. This was a matter of American government policy.'

In *Terrorism and Civil Society as Instruments of US Policy in Cuba*, Philip Agee, a former CIA operative, points out that no US administration since that of Eisenhower has renounced the use of state terrorism against Cuba. True, President Kennedy gave an undertaking to Khrushchev that the US would not invade Cuba at the end of the 1962 missile crisis. This commitment was ratified by successive US administrations but disappeared when the Soviet Union ceased to exist in 1991. As Agee says: 'terrorism against Cuba has never stopped'.

Cuban exile terrorists groups, mostly based in Miami have continued attacks against Cuba. Agee again: 'whether or not they have been operating on their own or under CIA direction, US authorities have tolerated them'.



THE TS'?



“It was clear to the Five’s defence team that it would not be possible for them to have a fair trial in Miami”

These terrorists include a group called Brothers to the Rescue. Its founder, Jose Basulto, has been accused of terrorist attacks against Cuba. His group operate openly in Florida.

The shutdown

On 24th February 1996, Basulto and Brothers to the Rescue took off from Florida in three aircraft. Once airborne, they disregarded their flight plans and flew towards Cuba. Basulto and his cohorts had overflown Cuba a number of times in the past. This time, they were warned by Cuban Air Control that they were entering a prohibited area. The Cuban authorities say that Basulto’s aircraft continued to fly towards Cuba. Once inside Cuban airspace, they were intercepted. Two aircraft were shot down by the Cuban Airforce. Although a number of Basulto’s colleagues were killed, his own plane was not hit and he returned safely to Miami. Basulto and the US government argued that the shutdown took place over international waters and not in Cuban airspace.

The shutdown was a cause celebre among Cuban exiles in Miami. A street and plaza were named after those who died. A monument was erected in a county building in their honour.

Shooting the messengers

Some Cubans (including some US citizens) attempted to infiltrate these exile groups. Their activities were not directed against the US government. No classified information was ever obtained.

In 1997 there were a number of bombings of tourist locations in Havana. An Italian tourist was killed.

Following the 1997 bombing campaign, the Cuban government gave the FBI information that had been obtained concerning terrorist activities. A diplomatic note sent by the US State Department to the Cuban Interests Section at Washington DC dated 5th November 1999 confirms this.

Instead of taking action against the terrorists in their midst, the US authorities arrested a number of Cubans (including some Cuban Americans) on 12th September 1998. Two days later, a Grand Jury in the Southern District of Florida indicted the Five. For the next 17 months, they were held in solitary confinement in Miami.

Miami

The cases against the Five were due to be heard in Miami. It was immediately clear to the Five’s defence team that it would not be possible for them to have a fair trial in the city. The Five’s defence team commissioned a survey on attitudes in Miami. The results showed that the Five would not get a fair trial there.

The Court-appointed defence expert on psychology, Dr Gary Moran PhD, testified that 69 per cent of all respondents to a survey in Dade County and 74 per cent of all Hispanic respondents were prejudiced against people charged with the types of activities outlined in the indictment. Dr Moran also found that nearly 49 per cent of all respondents actually said they could not be fair or impartial. Approximately 90 per cent of the respondents said there were no circumstances that would change their opinions. Knowing that the local population was hostile to the Five, the defence team applied to the Court several times to transfer the case away from Miami. Each application was refused.

The case against the Five remained in Miami.

The jury

Prior to the hearing the local press in Miami described the Five as spies. Gerardo Hernandez was called an ‘assassin’.

“During selection, all [jury] candidates were asked whether they agreed to the US trade embargo against Cuba. All potential jurors who expressed an opinion against the embargo were disqualified”

▶ This type of reportage inflamed the situation and put more pressure on those Miami residents selected to serve as jurors.

The jury selection process took seven days. During selection, the defence team managed to remove every Cuban American from the jury. By the time the process had been concluded, the jury was composed of approximately one third African American, one third whites and one third non-Cuban Latinos.

During selection, all candidates were asked whether they agreed to the US trade embargo against Cuba. All potential jurors who expressed an opinion against the embargo were disqualified.

The foreman of the jury, when asked his attitude about Cuba, said that he regarded Fidel Castro as a communist dictator and would be pleased on the day he was removed. Another juror agreed with him and acknowledged that his daughter had been an employee of the FBI for 10 years.

Although the jurors were not Cuban exiles, they felt pressured by that community's aims and expectations. This was understandable. News reporter Jim Mullin from Miami has written an article about the 'lawless violence and intimidation (which) had been the hallmarks of the el exilo for more than 30 years'. This included bombings, assaults, murder attempts and even assassinations in Miami and elsewhere by anti Cuban terrorists.

On 2nd December 2000, the Nuevo Herald newspaper published an article dealing with fear among the jurors, which said: 'Fears of a violent reaction by Cuban exiles against the jury that decides to acquit the Five men accused of spying for Cuba has caused many potential jurors to ask the judge to excuse them from their civic duty.' It quoted one potential juror as saying: 'Sure I'm afraid for my safety, if the verdict doesn't suit the Cuban community there.'

These issues confirmed the grave misgivings of the defence team about the attitude of a Miami courtroom.

The trial

The trial began in Miami in November 2000. The indictment contained 26 separate counts. As well as the relatively minor charges relating to the use of false identification, the most serious charges concerned conspiracy.

The Court heard evidence from 43 witnesses for the prosecution and 31 for the defence over a period of nearly seven months. The jury also had to consider hundreds of documents. These included documents seized from the Five at the time of their arrest. Although these documents were used by the prosecution, they were helpful to the defence. There were no documents that were classified nor any that compromised US security. The law on espionage in the United States is clear. Information generally available to the public cannot form the basis of an espionage prosecution. This documentation was 'open source' intelligence, that is it contained information available to anyone in the public domain.

A key witness for the prosecution was General James R Clapper Jr, who had 30 years experience in the military working in intelligence. He had been director of the Defence Intelligence Agency. Having reviewed all the documents seized by the government, he was asked in cross examination if they contained secret national defence information that was transmitted to Cuba. He responded: 'Not that I recognised, no.'



The prosecution were unable to prove that classified information had been obtained or that any harm had been done to US interests. This did not stop them arguing at the conclusion of the trial that the Five were in the country 'for the purpose of destroying the United States'.

The Five did not simply defend themselves by denying that they were spies and showing they received no classified information. Their defence team called a number of impressive expert witnesses. These included Eugene Carroll, a retired Rear Admiral in the US Navy with 35 years active service. At the time of trial he was Vice President for the Centre for Defence Information in Washington DC. He stated categorically 'Cuba is not a military threat to the United States'. Edward Breed Aitkisen was a Major General in the US Army. He described the Cuban military threat to the United States as 'zero'.

Gerardo Hernandez alone was charged with conspiracy to commit murder. This related to the shootdown on 24th February 1996. The prosecution produced two high frequency messages allegedly sent by Havana to Gerardo Hernandez in Miami. These, they said, showed that Gerardo Hernandez was aware of, and complicit in, the shootdown.

Lawyers for Gerardo Hernandez argued that the Brothers to the Rescue planes were shot down over Cuban sovereign territory, which as an act of government could not amount to a crime by an individual.

When the evidence had been concluded, the US government had not entered any evidence in support of the allegation that Gerardo Hernandez had conspired to commit murder. The prosecution became seriously concerned that Gerardo Hernandez would be acquitted. In an unusual move, the prosecution filed an extraordinary appeal to the Court of Appeals for the Eleventh Circuit. This emergency application tried to persuade the trial judge to present the legal position to the jury in a way that favoured the prosecution. The Court of Appeal, to its credit, refused to intervene.

Despite the lack of evidence of espionage or damage to US interests the jury took a remarkably short time to convict all the Five on all counts on 8th June 2001. After months of testimony and having considered hundreds of pages of documentation, the jury asked no questions. There was also concern that the jury also announced the date on which it was to give its verdict. All of this suggested that the defence team's worst fears about the trial venue were entirely justified.

Sentence

The Five remained in prison, often in solitary confinement, until sentencing in December 2001.

- Antonio Guerrero was sentenced to life plus 10 years imprisonment.
- Rene Gonzalez was sentenced to 15 years imprisonment.
- Fernando Gonzalez was sentenced to 19 years imprisonment.
- Ramon Labanino was sentenced to life plus 18 years imprisonment.
- Gerardo Hernandez was sentenced to two terms of life imprisonment plus 15 years.

The Five were then dispersed to jails in different parts of the USA. Family members from Cuba were denied visas and visiting rights. Despite being model prisoners, the Five were frequently placed in solitary confinement.

An appeal was lodged with the Eleventh Circuit Appeal Court in Atlanta.

The first appeal hearing

The first appeal hearing took place in March 2004. The main argument for the Five concerned the trial venue. The Five's



“The Judges believed a re-trial was necessary because of: ‘the surge of pervasive community sentiment, and extensive publicity both before and during the trial, merged with improper prosecutorial references’”



lawyer, Leonard Weinglass, argued that the trial should never have been permitted in a community where more than 500,000 residents ‘have lost their homes, their businesses and their livelihood to the government that sent the Five to the US’.

The Appeal Court took nearly 18 months to give their decision. Throughout this time the Five remained in prison, sometimes in solitary confinement and often in appalling conditions.

In May 2005 the United Nations Working Group on Arbitrary Detentions reviewed the Five’s case. They criticised the US government for keeping the Five in solitary confinement for 17 months which prevented them from preparing properly for the hearing; denying the Five’s legal team access to certain documents which would have assisted their defence; and the ‘climate of bias and prejudice against the accused in Miami [which] [...] helped to present the accused as guilty from the beginning’.

The first appeal decision

In August 2005, the three judges from the Appeal Court overturned the Five’s convictions and ordered a re-trial. Although the Five appealed on a number of points, the decision itself concentrated on the issue of the trial venue. The judgment concluded that the Five did not get a fair trial in Miami.

The Appeal Court decision records the trial judge complaining that people were briefing the media as there was a ‘parade of articles appearing in the media about this case’. Also jurors were filmed and photographed outside the court and were shown on television. The decision also quotes prospective jurors expressing their hostility to the Cuban system during the selection process. One candidate, David Cuervas, was reported as saying ‘I will be a little nervous and have some fear ... for my own safety if I didn’t come back with a verdict that was in agreement with the Cuban community at large’.

The Appeal Court judges were particularly critical of the conduct of the prosecution in the last stages of the trial in Miami. The prosecution made a number of offensive remarks about Cuba. It was also alleged that the Five were ‘bent on destroying the United States’ and were ‘paid for by the American tax payer’. The Five’s lawyers made frequent objections to these inaccuracies. The trial judge agreed and instructed the jury to ignore these remarks, reminding them that the prosecution’s comments were not evidence.

The Appeal Court judges appeared particularly impressed

by the surveys, reports and news articles used in support. They quoted Dr Lisandrio Perez, Professor of Sociology at Florida International University and Director of the Cuban Research Institute, who emphasised the influence of Cuban Americans in the Miami area and Dr. Kendra Brennan, a legal psychologist, who analysed the survey results presented to the court by the Five’s defence team and concluded that the documented community bias showed a: ‘deeply entrenched body of opinions (so entrenched as to often not be consciously held) that would hinder any jury in Miami ... from reaching a fair and impartial decision in this case’.

The Appeal Court reviewed US case law and concluded that the courts attempts to remove community prejudice in the jury selection process did not work. Publicity about the shootout and the Elian Gonzalez case had aroused passions within the Miami community. The local media’s ‘Spies Among Us’ campaign was cited. The presence of Cuban exile groups and paramilitary groups in the Miami area was seen as highly relevant. The Judges believed that a re-trial was necessary because of: ‘the perfect storm created when the surge of pervasive community sentiment, and extensive publicity both before and during the trial, merged with improper prosecutorial references’.

The decision concluded by stating that a fair trial should be given to all defendants no matter how unpopular they may be as ‘our constitution requires no less’.

Leonard Weinglass hailed this Appeal Court ruling as a landmark decision on the question of trial venue in US law. The judges’ reasoning was based on existing case law with specific reference to the US constitution. It was hoped that the US government would either allow the retrial to take place or alternatively free the Five completely. Unfortunately it was not to be.

The second appeal

This first appeal had been heard by three judges out of a panel of twelve covering the Florida area. The prosecution then exercised its right to appeal to all twelve judges in an attempt to overturn the decision to award the Five a retrial.

The appeal hearing took place in Miami in February 2006. It was heard by all 12 judges on the circuit including two of the original appeal judges, one having retired.

Again the Five had to wait for the decision. When the result arrived in August 2006, it was a major disappointment to the Five as the full panel of judges overturned the original hearing decision for a retrial.

The Court of Appeals found in favour of the prosecution and upheld the original trial judge’s assessment of jury credibility and impartiality. They stated that the trial judge, as a member of the community, was best placed to evaluate whether there was a reasonable certainty that prejudice against the Five would prevent them from obtaining a fair trial. In the circumstances they did not believe that the Five were denied a fair trial.

Judges Birch and Kravitch put forward a strongly argued dissenting judgment along the lines of their original findings in the initial appeal.

The next step

The Five’s case does not end here. If all else fails they have the right to reply to the Supreme Court.

Under the lengthy and complex US procedure the Five have not exhausted their rights at the Court of Appeals stage. This is because the Court of Appeal has only really looked at the question of venue. There are a number of aspects to the Five’s appeal which have yet to be resolved. These include the question of whether the evidence was sufficient to convict the

► Five on charges of conspiracy; whether the conviction of Gerardo Hernandez on conspiracy to commit murder was safe based upon the apparent lack of evidence; whether the prosecutors committed misconduct in their final remarks to the jury; whether the sentencing was lawful as it was the maximum for everyone; whether the government violated the Five's basic rights in breaking into their apartments to download computers (pursuant to the Foreign Intelligence Surveillance Act); whether evidence was wrongly withheld from the Five's defence team (under the Classified Information Procedures Act) and other related issues.

The decision of the 12 judges in August 2006 sent the case back to the original three judges for consideration of these outstanding issues. With the retirement of Judge Oakes, another judge was appointed to sit with Birch and Kravitch to decide these points.

The hearing in August 2007 was attended by a large number of foreign observers, jurists and political activists. This was testament to the ever growing campaign to defend the Five.

After the hearing Weinglass told reporters: 'The court is having difficulty with this [lack of evidence].'

While they await the result of this latest stage of the appellate process in the US, the Five remain in prison. They have been there for nine years. Their relatives have the greatest difficulty in seeing them. Cuban based relatives are often refused visas to enter the United States and so have no chance of seeing their loved ones.

Despite the injustice of their arrest, conviction and incarceration, the Five remain in good spirits. They know that they have done nothing wrong. They have not attempted to obtain classified information or otherwise act against the interests of the USA. Their sole aim was to protect their homeland from terrorist attacks.

The US government and its legal process has been left with some difficult questions to answer. They have imprisoned the Five at a time when they are apparently prosecuting a war on terror. Terrorist organisations have been allowed to act with impunity in Florida. Orlando Bosch and also Luis Posada Carilles who have a history of complicity in terrorist activity.

For the Five the labyrinthine US appeal process grinds slowly on. It is likely that at least one further appeal will be lodged, possibly to the Supreme Court. Meanwhile the Five remain in prison, separated from their families, with their lives on hold. An ever-growing international campaign in support of the Five is developing. The support for the Five is becoming more vocal, the longer the case drags on.

Last year Weinglass sent a message to the Five's British supporters: 'First I would like to thank those of you who have stood by the Five during these last eight years, as well as those who are new to their cause. Your support, as well as that of thousands of others has already achieved success in making their case known to the public. However we are now at a critical juncture. If we lose before the court currently considering the case, the possibility of bringing the Five home to Cuba in the near future will be greatly reduced. This is the time to renew and expand our efforts in building up support. It was world wide support that saved the life of Angela Davis. The same could and should happen to the Miami Five.'

The Five's case has already been taken up by the United Nations Working Group on Arbitrary Detention. Amnesty International has written letters to the US authorities concerning the human rights aspects of the US government's treatment of the Five. Activists, jurists and celebrities are continuing to pledge their support.

It is fervently hoped that the Five will win their freedom through the US legal system. However it is clear that a political campaign in support of the Five is vital to ensure that justice is eventually done.

Steve Cottingham is a partner at O.H.Parsons & Partners Solicitors. For more information about the Miami Five campaign visit: www.freethefive.org

How can we reconcile 'terrorism' lists with the rights to self-determination and democracy?

by Desmond Fernandes (CAMPACC)

"A Non-Self-Governing Territory, listed under Chapter XI of the UN Charter, can exercise the right of self-determination through the creation of an independent state, or through the establishment of an association with an independent state, or integration with an independent state [...] If the State and its successive governments have repeatedly oppressed a people over a long period, violated their human rights and fundamental freedoms, and if other means of achieving a sufficient degree of self-government have been tried and have failed, then the question of secession can arise [...] The internal aspects of the right of self-determination include the right of the people to freely pursue its economic, social and cultural development. It is often taken to mean *participatory democracy*. However, it can also mean the right to exercise cultural, linguistic, religious, territorial or political autonomy within the boundaries of the existing state." John Henriksen 'Implementation of the Right of Self-Determination of Indigenous Peoples', (2002) *IWGIA Indigenous Affairs*.

When we look at the situation globally, it is apparent that many states have failed miserably to abide by their obligations to indigenous people – through policies that are discriminatory, racist, colonial and often genocidal. In situations where no meaningfully open democratic spaces are allowed to address these legitimate concerns, groups and organisations have emerged to confront these pressing issues through acts of non-violent and/or violent resistance – they have tended to be categorised as terrorists by the states that are themselves arch-terrorists and genocidal terrorists in practice.

Troublingly, even in contexts where organisations such as the PKK (the Kurdistan Workers Party) and Kongra-Gel have sought to engage in dialogue, which has been rejected, with the Turkish state to effect internal (not even external) aspects of self-determination

Seven years ago the Campaign Against Criminalising Communities (CAMPACC) was set up to protest against the Terrorism Act 2000, which authorises the Home Secretary to ban groups deemed "terrorist". For further information about CAMPACC and their campaigns contact see their website: www.campacc.org.uk or e-mail: estella24@tiscali.co.uk



through non-violent means (that is, through a framework of participatory democracy that seeks to non-violently address problems relating to the ongoing cultural genocide and the threat of physical genocide that Kurds face), we see them appearing on UK, EU, and US 'terrorism lists'. This, even as the PKK has offered a complete platform to politicise the peace process, entirely consistent with EU accession criteria. This process, along with the current unilateral PKK ceasefire, were dismissed out of hand by both the Ankara and Washington regimes. Such criminalisation occurs even as the Turkish state remains free from inclusion in any such list, despite being a clearly racist, genocidal and colonial terrorist state. As Article 19, Ismail Besikci and others have pointed out, there is ample evidence to indict the Turkish state for racist and genocidal crimes during the 1990's (as defined by the 1948 United Nations Genocide Convention). The Turkish state, moreover, still practices linguistic genocide; it is still in breach of two articles of the Genocide Convention, and currently criminalises any pro-Kurdish parties and municipalities that attempt to promote basic multilingual services for people whose mother tongue is Kurdish, not Turkish.

According to Remzi Kartal of the Kongra-Gel Executive Council: 'Politics and in particular the politics of banning and criminalizing our struggle [via these "terrorism lists"], led by the UK and other EU member states, have played a critical role in the continuation of the military conflict in Turkey and in preventing the democratic political solution of the Kurdish question [...] It is clear that these politics are exacerbating the conflict at a time when an increasing number of people are supporting [initiatives and calls for] peace and democracy.' (Friends of Kongra-Gel Appeal, February 2007)

These 'terrorism lists' are being cynically and unethically used by a number of govern-

ments and deep political interests to intentionally frustrate a range of peace initiatives that stand in the way of arms deals and other geostrategic and imperialist agendas. The Kurdish case highlighted here is just one of many situations worldwide that we need to be concerned about. With the criminalisation that comes with these 'terrorism lists', it is disquieting to note that asylum seekers and refugee communities who support the ideals of participatory democracy and the right of self-determination, are now being supposedly legitimately targeted as terrorist or terrorist suspects.

Under the UK Terrorism Act 2000 it is now an offence: to belong or profess to belong to the PKK; to invite support for it or its aims; to arrange a meeting that is to be addressed by a member of it; or to address a meeting to encourage support for it. This is even if the meeting is being held privately, with only three people attending. By these criteria it is possible to officially criminalise asylum seekers and refugees for wearing traditional Kurdish costumes, on the grounds that the colours of the clothes worn may arouse suspicion that they are nationalist PKK sympathisers. The PKK can no longer fundraise or organise meetings, *not even to discuss why it shouldn't be banned*. The Campaign Against Racism and Fascism warned in 2001 that 'the Act's provisions are drawn so widely as to give police and prosecutors freedom to arrest most people who are

"It is possible to officially criminalise asylum seekers and refugees for wearing traditional Kurdish costumes. . ."

involved in any way in refugee communities' activities or in solidarity work [...] Writing an article or speaking in support of [...] Kurdish self-determination could be construed as inviting support for a proscribed organisation [...] The criminalisation of the refugee communities has been formalised.' Peace in Kurdistan and the Campaign Against Criminalising Communities (CAMPACC) have also noted that 'Britain has banned Kongra-Gel as an organisation that "glorifies terrorism" [...] Anyone expressing support for the group or [even] simply wearing clothes *implying support* will be committing an offence.'

'Terrorism lists' serve to legitimise the profiles of many racist, patently undemocratic, even genocidal regimes. Mark Muller, as vice-chair of the Bar Human Rights Committee, recently argued that the controversy over 'terrorism lists' is *'not* just a political question, it is both a legal and political question [...] How we describe ourselves both socially and politically has an important effect on how we treat each other. One can cast one's mind back to Senator McCarthy and see just how destructive the consequences can be once you are placed on a list. This is true in the case of the terrorism labels [...] *The purpose is to ostracise, to censor, to criminalise and to silence unfortunate groups on the list*. I say unfortunate advisedly, because it is clear that whether you are on the list has more to do with politics rather than the application of law, more to do with geopolitical relations rather than national security, and more to do with the heightened anxiety of terrorism after 9/11.'

It is clear that intelligence agencies, neo-conservative circles and various lobbies have exploited and abused the issue of heightened anxiety of terrorism after 9/11 to pursue their own unaccountable, deep political agendas. We must oppose this framework of 'justice' and 'governance' that threatens our very civil liberties. ■

Do you know they have fingerprint systems in schools today? **Mikhail Karnik** found this out and argues it's a trivialisation of biometric data

PRINTS CHARMING

I was astonished when my children arrived home one evening and told me that their school had decided to introduce a fingerprint system to manage payment for school meals in the canteen, which incidentally is separately operated by a private contractor. My concerns were not allayed when on telephoning the head-teacher he suggested the system might be extended at some later stage to regulate entry into the school building, effectively making this 'voluntary' system compulsory.

In fact my children's school is one of many that are dashing to introduce this sort of technology, sometimes with little or no input from parents. Anecdotal reports abound of fingerprints being taken without parental consent. According to Baroness Walmsley in a debate on the matter in the House of Lords in March 2007, the practice is widespread, in some cases it appears that parental consent is deemed to have been given in the absence of any confirmation it is being withheld.

Where does the impetus for this rush into installing new systems come from? Clearly there is a convenience to the management of schools that these systems bring: in an online poll for *Teachers* magazine in March 2007, in response to the question 'Should schools fingerprint pupils for registration and cashless catering?', 57 per cent of respondents said they should. One further answer may lie in the system of grants that lies behind much of school funding nowadays. Appropriately structured applications for fingerprint systems are capable of falling into the category of equipment that can be purchased using e-Learning credits, in effect DfES subsidies.

Opposition to the systems

In January this year, 83 MPs signed an early day motion which said:

'That this House is alarmed at the growing practice of schools collecting and storing the biometric details of children as young as three; notes that up to 3,500 schools use biometric software to record the data of approximately three quarters of a million children; shares parents' concerns that children's data, often including photographs and fingerprints, is stored on unregulated data collection systems and potentially insecure school computer networks and could therefore potentially be misused; notes that collecting the data from children under 12 without parental consent directly contravenes the Data Protection Act; believes that no child should have biometric information taken without the express written permission of their parents; further believes that no child should be excluded from school activities where this permission is not forthcoming; welcomes the decision by the Department for Education and Skills to update guidance to local authorities and schools; and calls on the Government to conduct a full and open consultation with stakeholders, including parents and children, on this issue as part of their redrafting process.'

In a House of Lords debate earlier this year when asked how many schools hold records of children's fingerprints, Lord Adonis Parliamentary Under-Secretary of State, Department for Education and Skills, was unable to provide an answer. Jacqui Smith, in her previous appointment in response to a written question stated: 'My Department has issued no guidance to schools on the collection and recording of pupils'





biometric information [...] It will be for the school to establish that it is acting lawfully in collecting data and is, on a case-by-case basis, compliant with Human Rights and Data Protection duties and the common law of confidentiality.'

Private information and consent

Article 2a of Directive 95/46/EC defines 'personal data' as 'any information relating to an identified or identifiable natural person [...]; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental [...] identity'. The Data Protection Act 1998 (DPA 1998) is the principal mechanism whereby the directive requirements are transposed into English law. However, the DPA has to be read down in the light of the Human Rights Act 1998 (HRA 1998).

As Lord Hoffman observed, human rights law has identified that private information, as part of the broad term private life, is something worth protecting as an aspect of human autonomy and dignity (*Campbell v MGN* [2004] 2 AC 457). Moreover the extent to which private information should be communicated to other people is plainly something which an individual is entitled to decide for themselves, and in any event in the context of children the ratification by the United Kingdom of the United Nations Convention on the Rights of the Child in November 1989, represented an important step in showing a desire to give children greater rights. It would seem therefore that the obligation to consider whether the introduction of a system is appropriate, is a stringent one.

In a busy school environment where consent is often treated as necessary for a wide range of activities, there is a risk that the matter of consent may be treated as a trivial inconvenience. However, not only does any consent have to be informed, the greater the intrusion the greater the necessity to ensure that any consent is real. In a ruling, that at the time troubled many on the left and in the women's rights movement, and which was seen as a fettering of the right of children to receive advice without the knowledge of parents (*Gillick v West Norfolk and Wisbech Health Authority* [1986] 1 AC 112), the House of Lords affirmed the concept that only where a young person was capable in all the circumstances of making an informed decision, was any consent they gave valid.

Consent is a mechanism whereby individuals may waive some of their rights. However, any waiver will rarely be unconditional, and for consent to be deemed lawful it has to be real. In the case of competent adults in many circumstances the hurdle of consent may not be very high, and in the case of the release of personal information it is often merely a matter of personal choice.

Where children are involved the matter of consent becomes more complicated, and arguably the hurdle that much higher. Human rights law recognises that children and young people should be afforded more protection. The United Nations Convention on the Rights of the Child, article three states:

'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative au-

"It appears that parental consent is deemed to have been given in the absence of any confirmation it is being withheld."

thorities or legislative bodies, the best interests of the child shall be a primary consideration. [...]

Lawful consent may be given by the child if they are in a position to make an informed choice about the matter in hand, so called Gillick consent. This will vary from child to child and depends upon their ability to understand the consequences of their decision. For consent to be valid the young person will have to have achieved *a sufficient understanding and intelligence to enable him or her to understand fully what is proposed*. Otherwise lawful consent can only be provided by the parent or guardian, and in that case I suggest for it to be lawful the parent or guardian also has to have given consideration to the best interests of the child concerned.

Establishing whether informed consent has been provided will be contingent upon the process by which that consent was obtained, that is to what extent were the risks that uninformed consent might be provided mitigated. What efforts were made to ensure that the young person was competent to provide consent, and what efforts were made to ensure that the young person was in a position to understand the nature of the decision? This will not simply be a matter of age, and any mechanism for consent which simply relies upon age (for example, all students in years 10 and 11), as being deemed capable for providing informed consent may not be seen to be valid.

The observations of the European Court of Human Rights make clear that article eight protects privacy in the sense of private life lived behind closed doors, which is entitled to be kept secret or confidential. However it also has confirmed that private life is a broad term not susceptible to exhaustive definition and can embrace aspects of an individual's physical and social identity (*Pretty v the United Kingdom* (2002) 35 EHRR 1). Moreover it has frequently noted that whilst not compelling authorities to abstain from interference, the object of article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities (*X and Y v the Netherlands* [1985] ECHR 8978/80).

Taking these basic principles as an initial starting point it can be seen that any recording, copying or storage of private information *without proper consent* risks being seen as an interference with fundamental human rights. Furthermore, in the case of children the care necessary to ensure that any consent is real, is all the greater.

It follows that when examining the electronic storage of biometric data in the context of these basic legal principles, the duty on public bodies lies in three principal areas:



- ▶ firstly in ensuring that the circumstances in which personal information abstracted is appropriate,
- secondly in ensuring that the purpose(s) for which that information shall be used is legitimate,
- and thirdly that the protection that is afforded to prevent that information from further publication is adequate, both in terms of a duty of confidence and as a public body holding personal data under the DPA 1998.

Additionally, a public body will find itself under an overarching duty to ensure it is able to *demonstrate* that sufficient consideration has been given to the above mentioned areas.

Establishing the legitimacy of purpose is a potentially difficult, but nevertheless necessary hurdle that schools have to overcome. It is important to be able to demonstrate that the purpose for which the information is to be used is not frivolous. This essentially involves undertaking a balancing act, ensuring the harm prevented by the use the information is to be put, outweighs the harm the child suffers by releasing their information. One very real difficulty here lies in evaluating the harm to the individual that releasing this information in this context would cause. For example, as well as the potential for inadvertent further release by the data manager, the harm may well include the trivialisation of identity information in the minds of pupils.

Benefit to the school, I would argue, does not initially become a relevant consideration because of the overriding need to take into consideration the interest of the child. Only where the harm prevented outweighs or is equal to the harm inflicted by the taking of the information, do other factors such as the benefit to the school become relevant.

Ensuring that any information once obtained is appropriately stored is a duty that falls upon the public body. This relates to security of storage, deletion of records and by whom it is to be held. Protection here is afforded by both the DPA 1998 and the HRA 1998, although under the DPA 1998 there exists the additional risk that the data manager may be liable to pay out

compensation in the event of a breach of the Act. Consent would normally only extend to the public body. The passing of that information onto others is likely to require explicit consent in its own right. If information is to be held by others the circumstances and controls in which they hold or have access to that information would also have to be made clear.

The Government's response

The DfES through the British Educational Communications and Technology Agency (Becta) has belatedly provided limited guidance on the introduction of fingerprint systems. The underpinning premise of the guidance is that fingerprint systems assist in the good management of schools and can be lawfully introduced without difficulty. The guidance suggests that powers under section 19(1) of the Education Act 2002 enable school to introduce fingerprinting systems, although it concedes that schools should normally involve parents in their decisions to use biometric data. The guidance is based primarily upon consideration of the DPA 1998 rather than the HRA 1998 and so should not be seen as conclusive or comprehensive.

Otherwise the Government's general response has been one of inaction, leaving it to individual schools and their governing bodies to make decisions on individual schemes. Lord Adonis stated that 'the Government have no plans to make regulations on the collection and storage of the biometric data of children in schools'. A cynic might say the Government is happy to leave all issues to the schools themselves. Some might say that this is a deliberate abdication of responsibility, knowing full well that busy schools stretched by the demands of new initiatives could well be attracted by hard sell and the convenience of such systems and therefore might not enquire too deeply into the risk to civil liberties of the introduction of such systems.

In the meantime companies with technology to sell are lining up to provide schools, which have seen an influx of new technology over the past few years, systems which provide

control over libraries, school meals and attendance records.

The implementation of such schemes should offer educators an opportunity to discuss with students the importance of human rights, the need for their protection and the risk that complacency to personal data poses. In order for young people to be able to make a properly informed decision they need to be provided with information on what the consequences of that decision might be. However because of the many other targets and pressures that fill the school day in practice such discussions are unlikely to occur.

Citizenship is increasingly forming a part of the curriculum and in a situation where what is being abstracted is something personal to each child there is a compelling case for arguing that if it is left to governing bodies to decide on the appropriateness of systems, they should take soundings from those directly affected before making their decisions. However, what is really needed is a moratorium on the installation of further systems so that the full consequences of the taking of fingerprints in a generation of children, including the potential for trivialisation of personal data, is properly assessed.

In the case of my children, the school has in the face of parental pressure stepped back from a compulsory system, permitting students to adopt an alternative – a swipe card. Whilst the system is obviously more difficult to administer, I suggest it meets all of the administrative requirements the biometric systems could. Many pupils and parents have refused to consent to the school taking fingerprint data, and in perhaps a reflection of attitudes of pupils to the system, within a short while of its introduction the scanners required for taking fingerprints were tampered with so that they no longer could take readings. And the response of the school? Apparently consideration was being given to introducing CCTV surveillance of the scanners to capture those involved in the tampering on camera.

● Mikhil Karnik is a barrister at Garden Court North Chambers, and a school governor.

UKRAINE:



THE MURDER OF GYORGY GONGADZE



During the hot summer of 2000, a young internet journalist, Gyorgy Gongadze (pictured right), complained to friends in Kyiv that he was being followed by men he presumed were plain-clothes police officers. **Valentina Telychenko** (left), a lawyer and friend of Gyorgy's wife Myroslava, speaks to **Simon Pirani** for *Socialist Lawyer*. She recognised a pattern: as a student supporter of Ukraine's beleaguered dissidents in the 1980s, she had herself been followed and threatened. ►



Valentina Telychenko in her office. Having graduated in 1998, she has worked as a campaigner and lawyer, spending more and more time on the individual cases of those who had tried and failed to get justice through the courts.



▶ Valentina, like many of Gyorgy's friends, urged him to be careful. His brusque campaigning style, and a hard-hitting interview technique Ukrainian politicians weren't used to, had irritated some powerful people. He had been involved in pro-democracy campaigning – and specifically, in exposing procedural violations in the constitutional reform referendum in April 2000 – that Ukraine's bullying government did not take kindly to. The surveillance might well lead to a cautionary beating, Valentina feared. That had been the standard method used by those in power to frighten opponents since late Soviet times. 'I told him that they probably intended to get hold of him, say in the entry to his apartment building, and tell him to pack in his opposition activity. I didn't for a moment believe that he would be killed.'

Things turned out shockingly and unpredictably worse. On 16th September 2000, Gyorgy disappeared. 'After he had been out of touch [with his friends and family] for three days, I already knew that he was not alive. I knew that all the statements [by the general prosecutor and media] that he had gone into hiding in the US, or Israel, were nonsense.'

Two months later, Gyorgy's body was found. His severed head has never been recovered.

Gongadze fell victim to a series of events in which the very top of the Ukrainian political establishment was involved. After his body was found, an audio tape was played to parliament on which Leonid Kuchma, then Ukraine's president, was heard complaining about Gongadze to his cronies – including other senior politicians, some of whom remain influential. The tape was just one of many hundreds of hours of recordings made by presidential bodyguard Mykola Melnichenko, who later fled the country.

'The Chechens should kidnap him and take him to Chechnya on his dick', the president argued in the famously vulgar conversations, as the interior minister and state security chief assured him Gongadze would be dealt with. 'Drive him out, throw [him] out. Give him to the Chechens and [demand] a ransom.' After the tape became public, Valentina said "I knew this was a case with serious ramifications for the state.'

Seven years later, the case remains at the centre of political attention. Every year on 16th September, thousands who despise

Ukraine's corrupt political establishment gather in Kyiv to remember Gongadze, its most well known victim.

A tortuously slow investigation of the crime has resulted in the trial of three police officers who helped Gongadze's murderer – whom prosecutors believe was Oleksey Pukach, a former head of the internal affairs ministry intelligence directorate. The trio pleaded guilty, and a judgment is expected early in the new year [2008].

The instigators and organisers of the crime remain unpunished: Pukach has disappeared; Yuri Kravchenko, the former internal affairs minister who told Kuchma he would deal with Gongadze, shot himself – or had his suicide staged by others – after being called to the prosecutor's office in March 2005; Yuri Dagaev and Eduard Fere, two other senior officers who were close to Pukach, both suffered heart attacks in June 2003 that left Dagaev dead and Fere in a coma.

The vast majority of Ukrainians believe that the political establishment, both before and after the 'Orange revolution' of December 2004, has covered up for the instigators of the murder. Mykhaylo Potebenko, the general



a mountain of other material besides, and spoken out about the failure of successive prosecutors to proceed against the instigators of the murder. She took the Gongadze case to the European Court of Human Rights, which ruled that the state's failure to protect Gyorgy's life and its refusal to investigate the case constituted a breach of article 2 of the European Convention on Human Rights, and that articles 3 (inhumane treatment) and 13 (efficient legal protection) had also been violated.

Valentina's persistence on the Gongadze case won her a reputation for taking on the toughest human rights causes. As a result, she represented the political activist Oleksiy Podolsky, who in that same summer of 2000 was kidnapped by a group of police officers under Pukach's command, taken to woods outside Kyiv, threatened, stripped, and severely beaten. Some of his attackers are now serving time. Valentina also worked on the 'werewolves' case, in which a gang of former and serving internal affairs ministry officers that had engaged in a campaign of kidnapping, extortion and murder, were brought to trial.

When *Socialist Lawyer* caught up with the hectically busy Valentina, we asked why Gongadze's death had come as such a shock. 'The killings [of oppositionists] had already stopped in the late 1980s', she explained. Surveillance had become crude, and threatening, but very rarely fatal – and that remained the case after the collapse of the USSR in 1991.

'I remember, for example, on New Year's Eve 1988, when I was on the metro with the 14 year old daughter of one of our very well-known dissidents. It was about 10pm; I was accompanying her home, and then I was going to go back to the university. We got on the escalator. A young man came up to me, got hold of me by the throat and started to choke me. As he did so, he was saying that I should end my involvement with the wrong type of people.'

'There were people all around; there were police officers at the top and bottom of the escalator. He obviously wasn't going to kill me. It was just a warning. I was bruised, and the girl was terrified, but that was [as far as it went]. Another time I was walking along with a plastic bag containing samizdat literature. Some guy just came up, punched me on the ear and stole the bag.'

Then, there were dissidents who had to be controlled, within the limits imposed by the Soviet Union's concern for its international reputation. Now, after the accession to power in Russia of Vladimir Putin, new methods have come into play, Valentina believes. 'When Putin came to power, we began to see something completely different from what had happened with [Soviet] dissidents. We have had journalists and social activists being killed [in recent years].

'In my view we have witnessed special operations to establish, or strengthen, [Russia's] influence on this or that state. In Ukraine, criminals, and those who

worked for the KGB in Soviet times – some of whom are high officials now – are helping. It seems possible that some senior Ukrainian officials may have been blackmailed by the Russian security services.'

Everyone in Ukraine has their opinion about the ultimate cause of Gongadze's death, and Valentina – who knows the complex case better than anyone – believes that the involvement of the Russian security services is a more than credible explanation. By prompting corrupt networks in the interior ministry to arrange the killing, while having in hand the tape recordings of Kuchma's conversations, they could have collected useful *kompromat* (compromising evidence of illegal activity) on Ukrainian leaders.

Gongadze's murder was, Valentina believes, the outcome of 'some sort of special operation, by means of which the Russian government and the Russian security services sought to strengthen their influence in Ukraine, to make the president dependent – whether it was Kuchma or someone else. If Kuchma had stayed, he would have been compromised;

"I have seen how politicians can exert influence on the courts, for example, or on the investigating authorities"

Russia would have had *kompromat* on him. If someone else had taken over, Moroz for example, there would have been *kompromat* on him. It's my opinion that Moroz more than likely played an ambiguous role and negative role in this affair.'

While the work on the case by journalists and campaigners has, on one hand, so far revealed only uncorroborated hints of possible Russian involvement, it has on the other hand untangled a mass of detail about how the mechanisms of state power in Ukraine operate against human rights. Valentina has become an expert on the network of relationships among state officials that supersedes the formal hierarchy of authority, and on the methods by which pressure can be applied to courts and investigators.

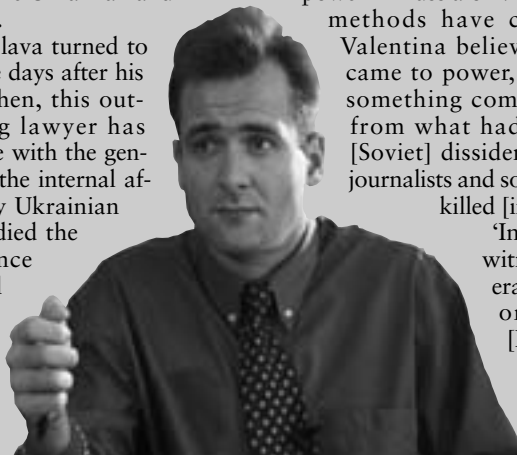
Ministers do not always run their ministries; in practice, the strings may be pulled by other powerful people, she explains. Deputy ministers may be dependent not on the ministers but on other, more powerful people who operate away from public scrutiny. 'Much depends on personal relationships, on the previous experience of civil servants, on money.' And hypocrisy plays a great role. 'The Gongadze case has shown that the level of hypocrisy acceptable among Ukrainian politicians is intolerable, is extremely wide.'

'I have seen how politicians can exert influence on the courts, for example, or on the investigating authorities,' she says. 'There are behind-the-scenes warnings to judges about the consequences of taking such-and-such a

prosecutor who sabotaged the initial investigation into it, was this year [2007] awarded a medal by president Viktor Yushchenko. The role of Aleksandr Moroz – the Socialist party leader who originally played the infamous tape in parliament, but later became reticent about his relationship with the renegade bodyguard Mykhaylo Melnichenko and with high-ranking internal affairs ministry officers – remains unclear. So does that of the Ukrainian and Russian security services.

Gyorgy's wife Myroslava turned to Valentina for help in the days after his disappearance. Since then, this outstanding campaigning lawyer has fought a relentless battle with the general prosecutor's office, the internal affairs ministry and many Ukrainian politicians. She has studied the 150 volumes of evidence compiled by the general prosecutor's office, and

Gyorgy Gongadze: his hard-hitting interview technique didn't go down well with Ukrainian politicians.



Steps leading to court: Valentina's biography

Valentina Telychenko was born in 1969 in Poltava region, eastern Ukraine. Her parents were both Communist party members; her father was a strong believer in justice – “a justice he knew could not be achieved in the Soviet Union”.



In 1983, at the age of 14, Valentina was accepted at Ukraine's most prestigious secondary school, the Academy of Mathematics and Sciences in Kyiv. In the personal file held by school authorities, she was labelled a “nationalist” (“I can't imagine why: I speak Russian as often as Ukrainian, and at that

age didn't have a nationalist idea in my head”). When she finished school and hoped to study in Moscow, a friendly teacher advised her not to go, warning: “With that on your file, they won't accept you.” Valentina

entered the physical sciences and maths faculty at Kyiv University in 1986, the year of the Chernobyl disaster. She soon became one of the joint presidents of an unregistered students' association that discussed ecology, history and other issues. She made friends with the older generation of Ukrainian dissidents, many of

whom had recently returned from lengthy terms of imprisonment. When KGB officers came to question her, she naively tried to convince them of the dangers of the Soviet nuclear reactor construction programme.

In March 1989, Valentina was one of a group of students expelled for “not corresponding to the requirements of being a Soviet student”. In July, thanks to the more liberal atmosphere in Moscow, she was able to sign on at the university there, but six months later, having heard news of the formation of the liberal nationalist organisation Rukh, returned to Kyiv.

In 1990, Valentina did “everything all at once” in the mushrooming democratic

movement: in organisations such as the Ukrainian Ecological Club and the Ukrainian Helsinki Union, she wrote leaflets, did broadcasts on Radio Liberty, and edited books. In 1991, as the Soviet Union collapsed, she returned to Kyiv University, this time in the philological faculty. In 1993, she transferred to the faculty of sociology and law, while working simultaneously as deputy director at the Institute of Democracy.

Having graduated in 1998, Valentina worked as a campaigner and lawyer, spending more and more time on the individual cases of those who had tried and failed to get justice through the courts.

● **Simon Pirani**

▶ decision. But not only that: there are also public statements by politicians, to which judges listen. It's a combination, a system of encouraging judges who work not according to the law but according to the wishes of the rich and powerful.'

There are also ways and ways of investigating a case, Valentina points out. 'I have seen how an investigator can work intelligently, or can simply not see what is in front of his nose. If those in charge don't want to investigate a particular case effectively, all they need to do is put a stupid investigator in charge, and he won't find anything. He won't do anything. And that's all.'

'And yet', she adds, 'at the same time, in any situation, one can still find people who are interested in working honestly, in getting results, in adhering to the law': investigators who would rather quit their jobs than obey orders to act illegally or dishonestly, and judges who can not be bought, who opt not to make unjust decisions. 'The existence of such people encourages me and gives me hope: it tells me that we can work, we can change something and achieve something.'

How does Valentina evaluate the human rights situation in Ukraine in general? It is 'very, very far from meeting international standards' – but is also 'far from hopeless; better than it looks from a formal point of view'.

Valentina recently undertook an analysis of Ukrainian applications to the European Court of Human Rights, and believes the fact that they have increased sharply is a good sign, suggesting that more people have become aware of their rights to file them. Most recent applications concern a relatively narrow range of issues: high on the list are the non-payment of wages by employers over long periods, especially in the 1990s; the failure by executive authorities to implement decisions by courts; and inhuman treatment in prisons and the detention of prisoners on remand for unacceptable and illegal periods.

And what would Valentina do, if tomorrow she became minister of justice? 'Propose

reform of the courts ... although that depends on the president and parliament, not on the minister of justice, of course.' Both president and parliament have long acknowledged that the reform is required, but have not pushed it forward. A related issue is the reform of the criminal investigation and prosecution system.

'The prosecutorial system in Ukraine is very corrupt. It is often used by politicians as a tool against their political opponents. The investigation department of the general prosecutor's office gathers materials on corruption and other crime, and in many cases keeps it for years without sending it to court. It's a form of speculation.

“The prosecutorial system in Ukraine is very corrupt. It is often used by politicians as a tool against their political opponents”

'Moreover, the investigation of serious crimes needs to be taken out of the internal affairs ministry's hands. Its employees are not professional enough – and all too often they themselves are suspects. Ukraine needs a national bureau for investigations, with a high level of accountability.'

In contrast to the relatively large, albeit besieged, community of human rights lawyers and activists in Moscow, the handful of such campaigners in Kyiv is much smaller. Valentina and others like her rely on a tremendous amount of self-confidence and self-belief.

'Part of me is still stuck in that world where the main principle by which people are regarded is justice, and not by the amount of money they can make,' she says. 'That's why I do, and have always done, a great deal of unpaid work. I started out as a human rights

lawyer just because I wanted to help people: I didn't see it as a means of earning money.'

Valentina started to see herself as a *pravo-zhchitnitsa* – literally, human rights defender, a badge of pride worn by dissidents in Soviet times – in the late 1980s. She participated in pro-democratic and ecological groups at university that sprung up in Kyiv in the wake of the Chernobyl nuclear accident in 1986.

Having plunged into campaigning activity in 1989-91 as the Soviet Union collapsed, Valentina only began studying for a law degree, in newly-independent post-Soviet Ukraine, in 1993. By then she was already a seasoned campaigner, holding down a senior position in a non-governmental organisation at the same time. And she focused on constitutional law, imagining that the new Ukrainian state would need people to help construct its new juridical framework. But as the chaotic, poverty-stricken 1990s wore on, she became more and more interested in administrative law. She found herself involved in the defence of numerous civil cases involving a breach of human rights.

'I was never interested in doing criminal law, and when Myroslava turned to me and asked for help, I never thought that I would be able, given the character of my legal education, to deal with such a big and complex criminal case.' Valentina's law degree, with strong constitutional and administrative elements, meant she was unprepared. She didn't even have an advocate's licence to address the courts: luckily, Ukraine's complicated court rules means she has been able to fight the case without one.

'But the way things have turned out, I'm conducting a number of criminal cases. And I've won some of them!' And helped keep Ukraine's most important human rights case at the centre of public attention right across Europe.

Simon Pirani, a journalist who writes about Russia and Ukraine, co-authored a series of reports on the Gongadze case for a coalition of journalists' unions and campaign groups.

Shami Chakrabati, director of Liberty since 2003, has succeeded in raising the profile of issues of human rights and civil liberties. **Marcus Joyce** reports on her lecture at the Haldane Society's Annual General Meeting in October.



Picture: Jess Hurd / reportdigital.co.uk

LIBERTY AND THE LAW

There were two themes to the lecture: anti terrorism policy and threats to the architecture of human rights protection in the UK.

Anti-terrorism policy

'Today Ian Blair gave evidence to the Home Affairs Select Committee and raised the issue of extension to pre-charge detention of terror suspects. The last time this issue came to a head was August 2005 after the 7th July bombings. You will remember that the detention period was reduced from the 90 days requested by the Government to 28 days. This period still represents the longest pre charge detention in the Western world. In the US it is 48 hours.

The genesis of this policy is to be found in the press releases from ACPO (Association of Chief Police Officers) around the time of 7th July 2005. ACPO has traditionally been one of the most powerful lobby groups especially in the way it speaks to opposition politicians. That voice became more powerful in the wake of 7th July. There was a potential for the police to abuse its role at that particular time.

When Charles Clarke was on the *Today* programme after 7th July he was asked if he thought that ID cards would have prevented the attacks on the tube and in fairness to him he admitted that they would not have. He was also asked if it was time to round up the "preachers of hate" and he told the presenter that there was a difference between those who say wrong things and those who plant bombs. He did his best to give an element of statesmanship to the situation.

Then Tony Blair returned from his Gleneagles and gave his now infamous "the rules of the game have changed" speech. Between Charles Clarke appearing on the *Today* show and Tony Blair's speech, came the ACPO press release which was effectively a shopping list for new police powers. Top of the list without any consultation with the Home Office, was the request for extension to pre-charge detention. The request was put to the public in the following terms: "what we need to keep you safe is 90 day detention". One month after that press release Tony Blair was asking for 90 day detention. This demonstrates clearly the way that policy is often formulated: Chief Constables calling backbench MPs to lobby and campaign.

Ian Blair wants more than 28 days detention as a "pre-emptive strike before another atrocity occurs". Any anti-terrorism investigation does not begin at arrest but long beforehand. Why then do we need such long periods of pre-charge detention? In relation to "pre-emptive strikes" there are already pre-emptive terrorism offences on the statute books: being a member of a proscribed organisation; attending terrorist training camps; etc.

The police say that they cannot question past the point of charge and so they need more time before they charge. Liberty say, yes you can question after charge with judicial supervision and access to a lawyer.

Liberty also calls for the admissibility of phone tap evidence in court. There should be judicial warrants for phone tapping. And there is also the Civil Contingencies Act which allows for emergency regulations to be passed after ter-

rorist attacks or at the time that such an attack is imminent. This power can of course be guarded by the courts through the Human Rights Act. However the power itself is something that the Home Office doesn't appear to have even known existed.'

The architecture of human rights protection

'Compared to America, we in England do not have a lot to be proud of. Even after 9/11, Bush could not have called for the repeal of the Bill of Rights. He and his administration may have often ignored the Constitution but there is no call to repeal any part of it. I am concerned that the Human Rights Act will not survive the "war on terror". David Cameron is calling for the scrapping of the Human Rights Act so that it can be replaced with a "British bill of rights with common sense". Make no mistake that this would allow the deporting of foreign nationals to places which permit torture. It is a move away from human rights to citizen's rights, a bill of rights and duties: do you lose your rights if you do not fulfil your duty?

The aim of the bill of rights is to make a distinction between those who have rights because they are worthy and those who are not worthy and so have no rights. This debate goes to the very heart of the criminal justice system and the architecture of human rights protection in this country. We are fighting for the framework of human rights and though we may disagree on some small policy aspects, we must remember that we as a group are fighting for the framework itself.' ■

Poignant and deeply moving accounts: we badly need reform



Unlocking the Truth – Families’ Experiences of the Investigation of Deaths in Custody

Helen Shaw and Deborah Coles
£10.00 ISBN 9 780 9468 5821 7
To order copies go to
www.inquest.org.uk

In a climate where the numbers of those held in custody continues to rise, *Unlocking the Truth – Families’ Experiences of the Investigation of Deaths in Custody* is a timely contribution to the discourse surrounding the crisis of accountability within penal and other state institutions.

Although the problems experienced by bereaved families facing investigation and inquest procedures are commonly recognised by advisors, the recording of those experiences in any detail has to date been largely absent from critiques and academic enquiry. The authors set out to draw in those experiences by way of detailed qualitative research, through the careful citing of poignant and deeply personal accounts, that in themselves are revealing of the need for substantive reform.

At the core of the publication are evidence-based chapters pertaining to four very clear stages faced by those bereaved: immediately after a death in custody; the attendant investigation; the inquest; and pursuant to the inquest. As well as setting out

findings drawn from the monitoring of patterns and trends relating to deaths, there are also sections detailing the legal and procedural framework pertaining to the inquest system.

As ever, Shaw and Coles’ work makes reference to the wider social and political context, drawing upon and restating clear insights and conclusions borne from comprehensive scrutiny of issues consistently raised over many years.

It is in the placing of the families’ direct experiences within that wider context and in view of recent advances in coronial law, that the authors then proceed to make two key proposals. These concern the improvement of the processes following the conclusion of the investigation and inquest, and the establishment of a standing commission on custodial deaths. The latter would be a well-resourced overarching independent body which *inter alia* could identify common/recurring themes, develop policy and research and where appropriate, intervene in individual inquest and attendant court proceedings.

The authors make many other practical recommendations such as the establishing of protocols concerning the notification of the deceased’s family, the establishment of a family support worker role by the coroner service and the clear conveying of information to families about the complicated post mortem process.

The authors also point out that the injection of misleading

information into press reporting increases distress as well as squinting public perception of the issues raised. The latter is all too familiar in cases where deaths have aroused wider public concern and parallel state responses elsewhere, such as during the aftermath of the Hillsborough disaster in 1989, and more recently the death of Jean Charles de Menezes.

In a context where the voluntary sector has by necessity filled the vacuum in assistance and support, the authors also recommend full statutory provision of the same and to complement the work of INQUEST in particular.

The bibliography is a rich resource and pointer for those wishing to read further around the area. The appendices contain information about the methodology used and contain a useful table setting out best practice under the current system and what may otherwise be achieved by further reform.

A reading of the publication is a reminder that the struggle for justice in this whole area has taken, and will continue to take, significant collective effort by all those drawn – however drawn – to the issues raised. In a context of widening societal inequality, such efforts, through grassroots family campaigns and the support galvanised by INQUEST, remain ever present and urgent.

● **John Hobson**



Pathways to Justice BMER Women, Violence & the Law

By Rights of Women
Aldgate Press
£12.00

(including post and packaging). Available from www.rightsofwomen.org.uk

Rights of Women is a women’s voluntary organisation committed to

informing, educating and empowering women concerning their legal rights. With their latest publication, *Pathways to Justice*, Rights of Women have fulfilled their commitment in the book’s introduction ‘of producing a book which makes law transparent, accessible and user-friendly, giving service providers and individuals the knowledge and skills to enable women to access justice’. This book follows on from the organisation’s excellent publications already available, including *From A to Z: A woman’s guide to the law* and the *Domestic Violence DIY Injunction Handbook*.

Pathways to Justice provides information about women’s legal rights in a range of inter-related areas. It is divided into four parts. The first looks at the conceptual and legal framework and covers human rights, violence against women, marriage and civil partnerships as well as the financial arrangements and the movement of children following relationship breakdown. The second part deals with immigration and asylum law as it relates to women. The third covers the forms of domestic violence experienced specifically by BMER women, including forced marriage, female genital mutilation and trafficking. The final chapter deals with practical issues including legal aid and access to the courts.

As with all their publications *Pathways to Justice* is very good value and is clearly written. The helpful use of text boxes throughout to highlight important points, pink boxes containing case summaries and the key points section at the end of each chapter, make the book user-friendly for lawyers and non-lawyers alike. I strongly recommend *Pathways to Justice* for the bookshelves of both practitioners and support workers as well as being an invaluable source of information for women themselves.

● **Abi Smith**



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