Socialist Lawyer

Magazine of the Haldane Society of Socialist Lawyers ■ *Number* **51** ● January 2009 **£2.50**

Justice for Jean Charles?

Killing fields of Gaza

STOCKWELL INQUEST VERDICT Harriet Wistrich

ISRAEL'S WAR CRIMINALS Daniel Machover & Adri Nieuwhof

EYE-WITNESS ON THE WEST BANK from our correspondent

Plus **KNIFE CRIME, INQUEST VICTORIES, ASYLUM SUPPORT, CUBA'S 50TH** and more

Haldane Society PO Box 57055
London EC1P 1AF
Website: www.haldane.org

The Haldane Society was founded in 1930. It provides a forum for the discussion and analysis of law and the legal system, both nationally and internationally, from a socialist perspective. It holds frequent public meetings and conducts educational programmes.
The Haldane Society is independent of any political party. Membership comprises lawyers, academics, students and legal workers as well as trade union and labour movement affiliates.

HALDANE SOCIETY ANNUAL GENERAL MEETING, OCTOBER 2008

Students and legal practitioners crowded into the College of Law to hear Mike Mansfield QC, Haldane's President, give us a wide-ranging speech covering issues of climate change, recollections of the miners' strike, and an insight into events at the de Menezes inquest.

We passed motions supporting trade unionists and lawyers in Colombia, supporting Hicham Yezza's fight against deportation and expressing our concern at reports of torture of detainees in Egypt.

The full list of officers and executive members elected for 2008 – 2009 is as follows:

Chair: Liz Davies (lizdavies@riseup.net)
Vice-Chairs: Kat Craig (katherinec@christiankhan.co.uk) and Anna Morris (annam@gclaw.co.uk)
Secretary: Marcus Joyce (marcusrjoyce@hotmail.com)
***Socialist Lawyer* Editor:** Kat Craig (katherinec@christiankhan.co.uk)
Treasurer: Declan Owens (declanowens@hotmail.com)
Membership Secretary: Dave Renton (davidkrenton@googlemail.com)
International Secretary: Bill Bowring (b.bowring@bbk.ac.uk)
Executive Committee:
John Beckley, Adrian Berry, Dale Brook, Justine Compton, Rheian Davies, Michael Goold, Margaret Gordon, Richard Harvey, John Hobson, Shakawat Hossain, Marcus Joyce, Catrin Lewis, Chris Loxton, Stephen Marsh, Rob Murthwaite, Marcela Navarette, Carlos Orjuela, Tim Potter, Ripon Ray, Brian Richardson, Hannah Rought-Brooks, Paul Smith, Kezia Tobin, Nick Toms, Camille Warren, Rebekah Wilson, Charles Wright, Azam Zia

Contents

Number 51 *January 2009* ISSN 0954 3635

Illustration: Tim Sanders

Editor: **Kat Craig** *Assisted by*: **Liz Davies, Declan Owens** and **Farah Wise**
Design & Production: **Smith+Bell Design** (info@smithplusbell.com)
Printed by: **The Russell Press** *Cover pictures by*: **Jess Hurd**
Many thanks to all our other contributors and members who have helped with this issue

The fight for justice goes on…

As I write in early January, the news is dominated by Israel's immoral and unlawful war on the inhabitants of Gaza. The Haldane Society condemns unequivocally Israel's willingness to kill civilians, to carry out indiscriminate and disproportionate attacks, and to punish a whole community for the actions of its political leadership. Israel's actions constitute war crimes. In solidarity with our comrades in the Palestinian human rights community, we urge the United Nations to take action against Israel's continued flouting of international humanitarian law, and to impose sanctions on Israel. We condemn violence against civilians in all circumstances, whether those civilians are Palestinian, Israeli or from any other country. However, the firing of rockets from Gaza into Israel cannot justify Israel's air strikes and ground invasion of Gaza. The two are not comparable.

We also condemn the Egyptian government for its failure to open the borders and provide a safe haven to the inhabitants of Gaza fleeing the war.

Almost as shocking as the actions of the Israeli government has been the response of US and UK leaders, and above all the silence of President-Elect Barak Obama. Real 'change we can believe in' would be an acknowledgement from an Obama White House that there will not be peace in the Middle East without justice for the Palestinians, and an immediate ban on all arms sales to the Israeli government.

An eye-witness describes life on the West Bank, and how, even before Israel's assault on Gaza, Palestinians living in Nablus, Jenin and Tulkaram and elsewhere are subject to 'regular nightly terror'. We repeat the writer's call for readers of *Socialist Lawyer* to contact their MEPs to encourage them to vote against a strengthening of the EU-Israel Association Agreement: a vote scheduled in January 2009.

Elsewhere in the world, we celebrate 50 years since the Cuban Revolution. It's an extraordinary achievement to have retained an avowedly socialist state despite the US blockade, attempts to destabilise the government, and the collapse of the Soviet Union, Cuba's ally. Cuba's gains in health and education are testament to the commitment of the Cuban people to their revolution and also to their internationalism. Cuba shares its medical expertise and resources with poor people around the world, generously and unstintingly. There can be no question but that the US should drop the blockade, unconditionally, and recognise Cuban sovereignty. Separately, many human rights activists would also hope that the Cuban government would consider the introduction of multi-party democratic elections and the freedom of the press.

The Haldane Society has followed the inquest into the shooting of Jean Charles de Menezes closely. At a packed Christmas party on 4th December, we listened to a first hand account of the events at the inquest as the coroner withdrew the option of an unlawful killing verdict from a jury. We note that there was a conflict of evidence between the police officers on the scene, who said that warnings had been given and that Jean Charles stood up and moved towards them, and everyone else who was in the carriage at the time. The jury believed the passengers, not the police officers. It seems to us that, if the police felt the need to give such unreliable evidence, the conflict of evidence in itself should be sufficient for a jury to have the option of an unlawful killing verdict.

The jury's open verdict, rejecting the alternative of lawful killing, is a vindication for the tenacity of the de Menezes family and their supporters. It is also a vindication of juries remaining in inquests, which the government was all set to abolish where so-called 'national security' was at stake. As senior lawyers, senior policemen and politicians lined up to defend the coroner, and express surprise at the jury's verdict, the gulf between public opinion and establishment opinion was obvious.

2008 was a good year for the jury system, and for reminding us why juries are so important. In the summer, a Belfast jury acquitted the Raytheon 9. Raytheon is the fifth largest arms manufacturer in the world, the largest manufacturer of guided missiles and has a software plant in Derry. Its software guided the missiles used by Israel in its war against Lebanon in 2006. In direct response to the Qana massacre (where 28 civilians, half of them children, were killed in a bunker), nine peace activists including the socialist writer Eamonn McCann occupied the Raytheon software plant in Derry, and destroyed computers and documents. They were open and straightforward about their actions and argued that they had sought to prevent complicity in war crimes. The jury unanimously agreed.

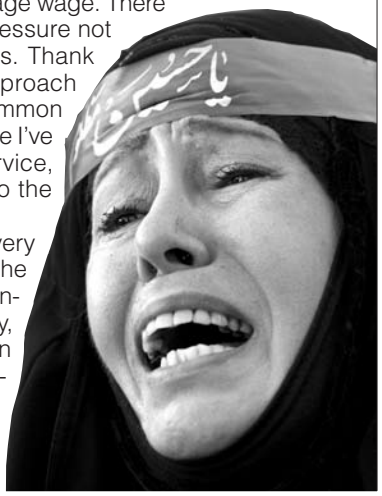
We are fortunate that Eamonn McCann is addressing Haldane's first human rights lecture of 2009, on 29th January (see back page).

In the autumn, six Greenpeace activists were acquitted by a jury of the charge of causing criminal damage to Kingsnorth power station. Like the Raytheon 9, they made no attempt to conceal their actions but argued that they were seeking to prevent a greater crime, that of climate change. The jury agreed. Finally, in December, came the de Menezes open verdict.

It's cases like this that remind us how valuable the jury system is. Professionals in the justice system, even the most radical ones, can become case-hardened. The legal establishment rubs shoulders with the political and financial establishment. The rewards of legal practice mean that many lawyers (although not legal aid lawyers) have no understanding of life on an average wage. There is considerable professional pressure not to step out of line, or take risks. Thank goodness for juries, who approach cases with open minds, common sense and, according to everyone I've ever met who has done jury service, a real determination to come to the just decision.

As ever, the challenges for every socialist remain great. But the events in Gaza once again demonstrate the importance of solidarity, organisation and unity in action, in the face of those who seek to govern, rule and kill with arrogance and apparent impunity.

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



Picture: Jess Hurd / reportdigital.co.uk

Is this goodbye to 42 days?


Well done Jacqui!

Picture: Jess Hurd / reportdigital.co.uk

The short and troubled life of the Government's attempt to increase the maximum amount of time terrorism suspects can be detained pre-charge from 28 days to 42 days came to an end on 12th October when a House of Lords vote on this part of the Counter-Terrorism Bill defeated the proposal overwhelmingly.

The proposal had been the focus of anger and concern amongst campaigners including the Haldane Society who argued that it was unnecessary, unfair and counter-productive. The Government failed to produce convincing evidence that the

> "I'm sorry if some feathers have been ruffled" – Jacqui Smith, Home Secretary

proposal would assist the investigation of crime, and could not waylay fears that such a draconian meaure would alienate and even criminalise communities, rather than make us safer.

The Lords heard evidence about the poor conditions in Paddington Green Police Station and the effect of prolonged detention and interrogation on individuals, their families and their communities.

Among those speaking against the proposal was the former Lord Chancellor Lord Falconer who had supported the Government in relation to the defeated proposal to extend pre-charge detention to 90 days. Now out of office he was no longer persuaded of the case for an extended period of detention.

He cited as his reason the availability of the Threshold Test for charging in the Code for Crown Prosecutors 2004. The Threshold Test requires Crown Prosecutors to decide whether there is at least a reasonable suspicion that the suspect has committed an offence, and if there is, whether it is in the public interest to charge that suspect. The Threshold Test is applied to those cases in which it would not be appropriate to release a suspect on bail after charge, but the evidence to apply the Full Code Test is not yet available.

In a face-saving measure the Government has prepared a draft bill to rush through an extended detention period for terrorism suspects in an emergency.

Despite the victory over 42 days, police can still detain terrorism suspects for 28 days pre-charge. According to research conducted by Liberty in 2007 this is far longer than in any comparable democracy, with only Ireland matching our pre-charge detention period.

In another victory for freedom the Government has also removed the proposals to provide Coroners with powers to hold inquests in secret from the Bill.

The Bill still contains proposals for post-charge questioning, longer sentences for terrorism, extended powers for the seizure of terrorist assets and the use of intercept evidence.

Now the focus of Governent has turned from terrorism to the economy let's hope this is the end of the unhappy spectacle of

Justice for Shrewsbury 24

On a freezing cold night in October a packed meeting (including Ken Loach) at the London Welsh Centre heard the case for the campaign to clear the names of trade unionists jailed in the 1970s.

Ricky Tomlinson, wearing a 'Justice for the 24 Shrewsbury Pickets' t-shirt, sat on the panel alongside Arthur Scargill. Ricky gave a moving speech about the experiences of those arrested, tried and later imprisoned after the 1972 building workers' national strike. He struggled to hold back the emotion as he described the time he spent in prison with Des Warren, whose physical and mental deterioration in prison he directly witnessed. He was convinced that the stress placed on Des during his time in custody contributed significantly to his death at the age of 67 on 24th April 2004.

Des Warren had been a leader in the North Wales and Chester area during the 12 week 1972 building workers' national strike. After the Home Secretary called

October

4: UN Committee on the Rights of the Child makes 150 recommendations in report that says too many children are being imprisoned in Britain today and demonised as criminals. It says the UK should prohibit, as a matter of urgency, all corporal punishment in the family.

7: Director of Public Prosecutions Ken Macdonald tells Bar Council that too many disabled people live in fear because the criminal justice system is letting them down, with police and prosecutors failing to tackle an 'epidemic' of hate crime against the disabled.

16: Home Secretary Jacqui Smith announces plans to give security and intelligence services sweeping new powers allowing them to access personal data using a wide range of internet sites 'to pursue terrorists and suspected criminals'.

18: Court of Appeal rules that terror suspects can be subjected to control orders imposed by the Home Secretary even though they know nothing about the evidence against them.

18: Former MI5 chief Stella Rimington describes the response to September 11 2001 attacks by the US as a 'huge overreaction' and says the invasion of Iraq influenced young men in Britain who turned to terrorism.

a Labour Government arguing for internment. However, in a volatile and uncertain political climate we need to remain even more vigilant that our liberties are not being further curtailed.

● **Margaret Gordon**

Bilbao hears Spanish lawyers persecuted by the state

Several members of the Basque Human Rights Observatory Behatokia are members of the European Lawyers for Democracy and Human Rights (ELDH), of which the Haldane Society is the UK member organisation.

One of them, the practising advocate Julen Arzuaga, has attended and spoken at events organised by the Haldane Society and CAMPACC, together with his colleagues Edurne and Iratxe. In the recent past Julen narrowly escaped a prison sentence, in the context of mass prosecutions of Basque activists being pursued by prosecuting judge Baltazar Garzon, well known for seeking Pinochet's extradition to Spain.

The first such prosecution was *Case 18/98*. Haldane's Tim Potter travelled to Madrid to observe part of the trial. On 19th December 2007 the Audiencia Nacional in Madrid sentenced 47 accused in this case to a total of 525 years in prison for their participation in political and social organisations and a newspaper. Garzon claimed that there was a connection between them and ETA, establishing for the first time the idea that 'everything is ETA': anyone advocating Basque independence or even socialism in the Basque Country.

In 2001, as part of his persecution of the Basque solidarity organisation Gestoras Pro Amnistía, Garzon ordered police to raid the offices of members of the Bar Association of Lawyers in Gipuzkoa and Pamplona. Gestoras had been in existence for 30 years and had developed public advocacy of human rights and solidarity with political prisoners. Both offices were sealed, and computers and documents belonging to the twelve lawyers that worked there, including Julen, were seized. This was a disgraceful interference with professional secrecy. In late 2007 Garzon arrested and detained 17 activists of Gestoras, and in 2008 suspended its activity on the ground that its activities were criminal, and that the 17 in custody and another ten, including Julen, were guilty of 'membership of an armed organisation'(!). Most of them have now been sentenced to terms of imprisonment, and only a few, including Julen, are still at liberty. An appeal is now pending and further prosecutions have commenced. It would seem that far from seeking a peaceful settlement of the Basque conflict, the Spanish Government is doing everything it can to exacerbate the situation.

On 24-25th October the Basque Council of Lawyers Eskubideak and Behatokia organised a well attended conference at the Bar headquarters in Bilbao entitled: 'The Right of Defence vs Special Courts and Laws', sponsored by the European Democratic Lawyers (EDL) and ELDH (see www.eskubideak.com/images/esku_english.gif). In my role as President of ELDH, I attended the conference and presented a paper which received positive feedback; see the ELDH website (www.eldh.eu).

In 2009, ELDH and the Haldane, along with Behatokia, will organise a solidarity delegation to the Basque Country. Let me know if you are interested.

● **Bill Bowring**

for action against the pickets in October 1972, Warren and Tomlinson found themselves under arrest. They were charged with specific allegations of intimidation and affray. However these charges were dropped and the Conspiracy Act was subsequently used against them at trial. Both pleaded not guilty. Tomlinson was sentenced to two years and Warren to three years in custody.

Warren and Tomlinson protested against their convictions during their time in custody, which was spent being moved around 14 different prisons. They refused to undertake prison work, wore only blankets instead of prison uniforms, attempted hunger strikes and resorted to dirty protests, as Ricky Tomlinson recalled.

Ricky Tomlinson (centre left) and Des Warren, two of the Shrewsbury 24, pictured in March 1973.

During his time in prison Des Warren endured long periods of solitary confinement and cuts in visits from his first wife and their children. He was administered tranquilising drugs, intended for difficult prisoners, which he referred to as 'liquid cosh'.

The campaign is calling for a public inquiry to investigate any Government or secret service involvement in the trial and subsequent incarceration of the Shrewsbury pickets, during a pivotal moment for the labour movement in the UK.

There will be a lobby of Parliament on Thursday 12th March, which will tie in with the miners' strike's 25th anniversary. For more info see: *www.shrewsburypicketscampaign.org.uk*

● **Tim Potter**

23: Families evicted from their homes on an island in the Indian Ocean lost their long-running battle to return when the Law Lords ruled in favour of the Foreign Office. The islanders were removed from Chagos to accommodate the US military base on Diego Garcia in the 1970s.

24: Court of Appeal rules that judges in rape trials can explain that the trauma of an attack can cause 'shame and guilt' which deters victims from going to the police immediately. A delay in making rape allegations is one of the factors most frequently relied on by defendants.

25: 'The biggest shake-up in immigration policy for 45 years,' claimed Home Office Minister Phil Woolas, on the use of a points-based system for criteria on which people can come to the UK to work. 'It will allow us to control the population,' he said.

27: Mobile fingerprint scanners are to be introduced by the police, enabling them to carry out identity checks on people in the street. But Liberty warned that the law required that any fingerprints taken must be deleted afterwards.

29: A woman who has multiple sclerosis loses High Court battle to clarify the law against assisted suicide. Debbie Purdy, diagnosed with MS, sought a high court declaration obliging the Director of Public Prosecutions to make the position on assisted suicide clear.

Teachers and academics are not immigration officials

'The new immigration rules for overseas students to be introduced in March 2009 by the Border Agency are very worrying. These rules would require universities to report any absences by overseas students from lectures, seminars or tutorials, or any failure to submit any assessment on time.'

Bill Bowring and Liz Davies were two of the signatories to this letter in *The Guardian* on 10th November, together with Ian Grigg-Spall of the Critical Lawyers Group, Sally Hunt of the UCU and others.

The authorities claim that the new rules are needed to clamp down on bogus educational establishments which enable bogus students to obtain education visas for the UK. However, the new rules will require all higher educational institutions, including the University of London, where Bill teaches, to keep records of international student attendance for classes, supervision and assessment, and to report to the Home Office if students miss a certain number.

There are three objections. First, the organisation of accurate records and reporting will certainly mean that universities will have to set up special units. Teachers will become agents of the Home Office, when the attendance records they presently keep are designed to assist teaching and learning, and to alert them to student problems. Second, the new rules will discriminate between EU students, who have a right to study in the UK without such checks, and students from the rest of the world, despite the fact that the latter bring enormous fee income. Third, there are grave human rights implications, with possible violations of Article 8 (right to respect for private life) and Article 3 (inhuman and degrading treatment) of the ECHR. As the letter said: 'This police-like surveillance is not the function of universities, and alters the educational relationship between students and their teachers in a very harmful manner. University staff are there to help the students develop intellectually and not to be a means of sanctioning these students.' ■

European-wide initiative opens in Berlin

Socialist Lawyer has already reported Berlin advocate Wolfgang Kaleck prosecuting former US Defence Secretary Donald Rumsfeld in the German courts for the torture perpetrated at Abu Ghraib. Wolfgang leads the Berlin radical law firm Hummel Kaleck, with Dieter Hummel of Haldane's sister organisation in Germany, the VDJ (Vereinigung Demokratischer Juristennen und Juristen – Association of Democratic Lawyers).

Now Wolfgang has been inspired by the example of Michael Ratner and the Centre for Constitutional Rights (CCR) in New York, and their work in recent years in taking numerous test cases on Guantanamo and other burning issues in the US. With a wide network of European supporters he has founded the European Centre for Constitutional and Human Rights (ECCHR) with its offices in the House of Democracy and Human Rights in East Berlin. It aims to coordinate and thereby strengthen the efforts of human rights advocates across national borders, initiating and supporting key litigation and providing public education and training in international human rights law. It is dedicated to advancing and protecting the rights guaranteed by the Universal Declaration of Human Rights and other international and national laws and constitutions.

In October ECCHR organised a conference in Berlin entitled 'Transnational Corporations and Human Rights' with over 100 participants. Contributions will soon be published on the ECCHR website, www.ecchr.eu

I returned there in November with a training session for the staff of ECCHR, analysing and drawing conclusions from experiences of taking cases to the European Court of Human Rights.

● **Bill Bowring**

Abortion lobby

On 21st October hundreds of supporters of a woman's right to choose protested outside parliament for the first opportunity in a generation to improve women's abortion rights including basic reproductive rights for the women of Northern Ireland. Protesters also opposed further attempts by the anti-abortion lobby to turn the clock back on women's rights. Diane Abbott MP and women from Alliance for Choice – the NI grass roots campaign – addressed the demo, vowing to keep on fighting for the rights of women in Northern Ireland, receiving huge cheers. For more info go to: www.abortionrights.org.uk

Pictures: Jess Hurd / reportdigital.co.uk

November

7: Official report into Bloody Sunday (when 13 people were killed by British soldiers at a civil rights demonstration in Derry in 1972) has been delayed for at least another year. Lord Saville's inquiry cost £181 million and stopped taking evidence in 2005.

7: The costs of the national identity card project went up by a further £50 million so that a small number of transport workers (mainly at airports) will be able to get cards in advance of the official launch date. The cost of supplying cards for British nationals alone wil be £4.7 billion.

15: Lord Bingham, former senior law lord, describes the invasion of Iraq as a serious violation of international law. 'It was not plain that Iraq had failed to comply in a manner justifying resort to force and there were no strong factual grounds or hard evidence to show that it had.'

16: Britain's probation service faces an estimated 20 per cent budget cut. The probation union, Napo predicts the cuts will result in an extra 300,000 crimes a year, with an obvious knock-on effect on the prison service.

17: Ed Miliband, Energy and Climate Change Secretary, is to exempt from the Freedom of Information Act the new US-led private consortia taking over the running of Britain's biggest nuclear facility at Sellafield. The contract is worth £6.5 billion.

'Without principles, the legal aid system flounders'

This year is legal aid's 60th anniversary and to mark this occasion the Legal Action Group is publishing a new book, *The Justice Gap*, providing a health-check on what is, let's face it, an ailing public service.

So, in 2009, what condition do we find publicly-funded law? Our current legal aid system, as readers will well know, was conceived as part of the welfare state in 1949 when free access to justice was viewed as no less a fundamental right than free education or healthcare. The scheme then covered eight out of 10 people. In the mid-1980s cover remained at two-thirds.

New Labour came into power in 1997 promising a new Community Legal Service and eligibility levels were down to 52 per cent.

The Government currently spends two billion pounds of taxpayers' money a year on publicly-funded legal advice: a significant amount but barely enough to keep the NHS going for a couple of weeks. Ministers insist that such a level of commitment is 'non-sustainable'.

The Ministry of Justice's latest figures reveal that less than one in three of us are eligible – just 29 percent of the population.

We describe the 'justice gap' as the legal aid vacuum occupied by an increasing section of society neither sufficiently impoverished to qualify for legal aid, nor rich enough to afford a lawyer.

Research for the book began at Dover County Court one Wednesday morning in mid-April 2008. Courts like this up and down the country occupy the frontline of the so-called credit crunch. On the day LAG visited the court, people's homes were literally on the line.

It was repossessions day and the presiding judge, District Judge Parnell, had 35 cases listed. In the waiting room anxious homeowners struck deals with the mortgage company 'agents' to pay back arrears in stages or give up their homes. Many of those homeowners were 'traumatised', commented Jacqui O'Carroll, a debt adviser from the local Citizen's Advice Bureau who runs the court desk. 'They arrive unsure of what's going on, totally ill-informed, and prepared to lose everything because they think there's no alternative'.

The Government has since called on lenders to show compassion to struggling families. No such leniency was on display that day however. Homeowners committed themselves to hopelessly unrealistic repayment schemes that they couldn't afford for fear of losing their houses or even voluntarily agreed to give up their houses. As O'Carroll explained it, the pressure is immense, 'especially from the less scrupulous providers who will insist they'll get possession and even tell them not to bother not to turn up'.

The reality is that in twenty first century Britain, you can lose the roof over your head through a legal process, often unnecessarily, in ignorance of the law and after having been misled about your rights, without having access to legal advice.

Where does legal aid fit into that dismal picture? Many homeowners will be barred from the legal aid scheme (only available to people who have less than £100,000 equity). The advice available from O'Carroll was not subject to any means test, however its provision is arbitrary – at that point the Legal Services Commission funded 94 such services out of 230 county courts.

LAG argues that a critical test for our legal aid system is not just that homeowners fearful of losing their homes have a right to receive proper independent advice about their legal rights. But that people understand that they have that right, that there is an adequately funded network of advisers well-placed to provide it and that those services are clearly signposted.

It is LAG's contention that without a coherent set of principles, our modern system of legal aid flounders. The Justice Gap begins with a statement of principles that LAG believes should underpin a legal system for the twenty first century. To find out more, see *www.lag.org.uk*

● **Jon Robins** (Director of Communications and Campaigns for the Legal Aid Group)

17: Scottish Court of Criminal Appeal refuses to free Abdelbaset Ali Mohmed al-Megrahi on bail while he awaits his appeal against his conviction as the Lockerbie bomber. Megrahi, who many feel is innocent, has prostrate cancer and is likely to die.

18: Home Office Minister Phil Woolas attacks lawyers and charities working on behalf of asylum seekers, accusing them of undermining the law, 'playing the system' and 'by giving false hope… causing more harm than they do good'.

18: The Democratic Unionist Party and Sinn Féin agree a deal on devolving policing and justice powers. A new Attorney General is to be appointed for Northern Ireland. Currently, the Attorney General for England and Wales also holds the Northern Irish post.

22: Justice Minister Jack Straw (left) says no to a standup comedy course at HMP Whitemoor. Straw said: 'Prisons should be places of punishment and reform' and declared that the courses 'must be appropriate'.

'Hypocrisy' and 'disdain' of Government in cost cutting

November's lecture organised by the Haldane Society, 'Crisis for publicly-funded legal services', had a strong turnout; a good indicator of how important this issue is for those in the legal profession at present.

The subject is obviously of particular concern to those who work in legal aid, and therefore it was appropriate that both speakers that night – Laura Janes of Young Legal Aid Lawyers and June Venters QC – are people whose careers have been dedicated to legal aid work, and who have built themselves excellent reputations in the field.

Laura Janes is the chair and founder of Young Legal Aid Lawyers, an organisation of legal professionals and students committed to working in publicly-funded areas of law. She offered a damning report on the changes to the legal aid system that are currently being put forward by the Government, as a result of Lord Carter's now infamous review of legal aid. Laura started her speech by noting that next year it will be 60 years since legal aid was established by Attlee's post-war Labour Government, and asked the poignant question, whether the current Labour Government is now trying to force it into retirement.

Although it's obvious that at least one of the Government's purposes in legal aid reform is cost cutting – however it tries to couch that in the more palatable language of offering a 'fairer deal' for the taxpayer – Laura suggested more insidious intentions are at work. By cutting down on legal aid, the Government removes funding from actions brought against itself and other public bodies, actions which would usually be publicly funded. The Government is also affecting the ability of citizens to take action against any injustice it commits.

On top of this there is the hypocrisy of the Government's claim that the legal aid budget has reached an untenable level, having risen to two billion pounds annually, when it has recently committed £500 billion to recapitalise the banking system. Although the legal aid budget has increased significantly in recent years, it is still small compared to other established public services (the current annual costs to the Government of health and education are around £150 billion and £78 billion respectively).

Laura pointed out that the people who are going to lose out most over the reforms are the most vulnerable people in our society, those who have no other recourse to the courts than through legal aid. The new single fee system that is being implemented means that lawyers get better paid the less time they spend on a case. It is the particularly vulnerable clients – such as children and people with mental health issues who may need extra contact time with solicitors – who are going to be the most adversely affected and may not get adequate services. Since being introduced, the reforms have also led to more people going unrepresented in the courts, a situation which is going to get worse as the legal profession continues to adapt to the new system. Young Legal Aid Lawyers carried out their own research into this issue, after the Legal Services Commission claimed not to have any recent data on it themselves, and the findings were deeply disturbing. Of the people asked, 60 per cent of those going through the magistrate's courts were unrepresented. The same was true of 15 per cent of those going through the crown court, and a staggering 90 per cent of those going through civil courts.

Lawyers and solicitors demonstrated outside Parliament in 2007 against reforms to

June Venters continued this attack on the Government reforms in her speech. She is a well-respected figure in publicly funded law, having the impressive honour of being the first female solicitor in the country to make QC. She has practised in family law and child care for her entire career, and it was from this background that she approached the problems now facing legal aid. June spoke of the pernicious effects of the Government's attempts at cost-cutting in these fields, such as the recent increase in court fees payable by local councils to

November

24: Figures show that between 1973 and 2000 the rate of incarceration in the United States more than quadrupled. There are more people behind bars than any time in American history. One in every 32 adults is currently on probation, in jail or prison, or on parole.

25: Conrad Black, the disgraced British peer serving a 6½-year sentence in Florida for defrauding millions from his former media empire, asked President Bush to grant him clemency before leaving the White House.

25: United Nations Day for the Eradication of Violence Against Women. In four out of five domestic murders it is women who are victimised, it is the main cause of death and disability globally for women aged 15 to 44. Rape and gross bodily violence cause more death and disability than cancer, motor vehicle accidents, war and malaria combined.

26: Police attempts to outlaw the monthly Critical Mass cycle ride through the streets of London unless its route is notified in advance were blocked by the Law Lords who said it was not governed by section 11 of the Public Order Act 1986.

26: London Mayor Boris Johnson looks at proposals to offer illegal immigrants an 'earned amnesty'. They would need to demonstrate their entitlement for 'well over five years', have 'an adequate command of English…', and be 'a decent upright citizen', he said.

the legal aid system.

Picture: Jess Hurd / reportdigital.co.uk

begin child custody proceedings from £150 to £4,000. At the time these changes were introduced, June made a speech predicting that the Government would end up with blood on its hands, as already cash-strapped councils would be more likely to leave children that were in need of protection with their parents, so as to avoid the punitive fees required to intervene.

This prediction had become particularly pertinent as her Haldane speech was delivered just days after the news of the death of Baby P. The resounding opinion of this tragic event – echoing Lord Laming's report following the equally tragic death of Victoria Climbie eight years before – was that child care departments in local councils are in desperate need of additional finance if similar tragedies are to be avoided, and yet the Government's response is to increase the financial burden involved in these cases.

June highlighted the disdain shown by the Government towards the legal profession by instigating the Carter Review with such an obvious agenda, where the outcome had been predetermined long before the conclusions of the review were presented to Parliament, something which Lord Carter himself has since publicly admitted. The Government has been quick to state the cause of the escalating legal aid budget as the inherent greed of 'fat cat' lawyers, who unnecessarily drag out simple cases to increase their fees. This excuse is an attempt to give a simple answer to what is actually a situation with much more complicated facets, for which many the Government itself is directly responsible. Since 1997, the Government has created around 3,000 new offences. More offences will clearly lead to more arrests and subsequent trials, which will require more lawyers' fees, but this goes ignored as it does not assist the Government's cost cutting agenda.

Both speakers were agreed in the conclusions of their speeches; that the changes to legal aid that are taking place – in particular the single set fees for cases – will have a serious effect on the legal profession, as we end up with a system where the quantity of work that a solicitor or barrister can take on will take precedence over the quality. A lawyer's ability to specialise in particular fields will be diminished, as law firms in particular will have to take on a more catch-all approach to cases in order to obtain Government contracts. This will ultimately have a detrimental effect on the quality of the legal advice and representation made available to the public.

June Venters noted that the UK spends more money on legal aid per head than any other country (£37 per head annually). This statistic is being used as justification for the Government's plans to cut funding to legal aid, without any appropriate discussion as to why this may be the case. The UK has benefited from having a legal system that is extremely highly regarded internationally, particularly in relation to the access to justice available to its citizens, and the availability of highly specialised lawyers. It seems strange that rather than boast of this achievement, the Government is instead moving ahead with plans whose effects ultimately will be to reduce the resources available to those in need of justice, as well as the quality of the legal advice that is available to them.

● **Michael Goold & Declan Owens**

Traffick bill gets green light?

In November, Home Secretary Jacqui Smith caused a stir by announcing Government plans for legislation which will make it an offence to pay for sex with any woman who has been trafficked or 'controlled for any gain'.

It includes women who are debt-bonded for any reason to pimps, drug dealers or landlords. It will apply regardless of a punter's awareness of the woman's situation and background, making the offence one of strict liability attracting a criminal record and a fine. In cases where a customer is aware of the woman's situation, a charge of rape may be brought.

The proposals follow six months of study into the impact of demand on the sex trade. It is estimated that of around 80,000 women working in the industry in the UK, 70 percent have been trafficked and are forced to work against their will. Applauded by many, such as the Eaves Poppy Project which works with trafficked women, the move places a degree of responsibility for the exploitation of vulnerable women on the men who fuel the industry. Those opposing the legislation say that, by criminalising customers, those women who entered the profession willingly and of their own volition will also be compromised.

There is an argument about how difficult it will be for the laws to be enforced, but perhaps the Government has taken a step in the right direction. Though the proposals fail to address the underlying issues which force women into the sex trade, putting the onus on men to think twice before paying for sex does go some way towards protecting those women who are already involved.

● **Kezia Tobin**

27: People from black and minority ethnic (BME) groups are three times more likely to be admitted as inpatients in mental health units, says the Healthcare Commission. Some BME mental health inpatients are more likely to be detained via the criminal justice rather than the health system and are 65% more likely to be secluded in hospital.

28: An estimated 2.5 million people trying to combine work with caring for disabled or elderly relatives will have the right to claim against employers who discriminate against them in refusing to offer flexible working, following a ruling by the Employment Tribunal. Sharon Coleman, a legal secretary who was forced to resign because she wanted more time to care for her disabled son, was told she would be able to claim before the English courts that she suffered 'discrimination by association'. Anti-discrimination law is not 'restricted to disabled people only', the tribunal said.

28: Out-of-court punishments, such as spot fines, warnings and cautions, accounted for 51% of crimes dealt with by the criminal justice system in England and Wales in 2007, only the second time more crime was dealt with through summary justice rather than in court.

28: Tory frontbencher Damian Green is arrested by counter-terrorism police over the publication of leaked documents allegedly sent to the Tories by a Government whistleblower.

Unions in dismay as new Employment Act is passed

Trade unions were left deeply disappointed when the new employment bill completed its passage through Parliament on 13th November. The Government boasts that the new measures will save business £175 million per year and the Minister for Employment Relations, Pat McFadden, declared that: 'In the current climate regulations can be a big concern for businesses and we want to help simplify them where we can. These changes will save employers valuable time and money.'

Amongst its main proposals the Employment Act 2008 makes changes to the law relating to dispute resolution in the workplace. Since the last major employment legislation in 2005, most employment cases have been subject to statutory dispute resolution procedures. Employers have had to have in place internal procedures for hearing workers' complaints ('grievances'), and for allowing workers to appeal dismissals. As a result, it is now much more common for employers to hear workers' grievances or appeals quickly.

The main disadvantage of the procedures is that in-house disputes have become much more complex, with each side worried about jeopardising its action or defence before a later tribunal hearing. Lawyers have been involved earlier, and the costs of these procedures – chiefly, but not only – to employers, have risen.

The Employment Act removes the compulsory aspect of these procedures, although there will be a new Advisory Conciliation and Arbitration Service (Acas) code on discipline and grievance. The Trades Union Congress (TUC) welcomed the change; although some unions (notably the construction workers union UCATT) have opposed it.

Unions hoped that the new legislation would incorporate key sections of the trade union freedom bill, a document drafted in 2006 by the TUC General Council to mark the centenary of the Trade Disputes Act 1906, in a situation where workers today enjoy fewer rights to take industrial action than 100 years ago.

John Hendy QC drafted amendments to the bill, also sponsored by the TUC, which would have protected workers taking part in lawful industrial action, removed the industrial action balloting procedures, and made it harder for employers to use agency workers in place of striking workers. Forty-five Labour MPs voted in favour of the amendment, the biggest revolt of Gordon Brown's premiership, but it was defeated, largely due to Tory support for the Government's position.

Section 19 of the new Act also amends the rules concerning situations where unions seek to exclude people from membership. In recent years several members of the far-right British National Party (BNP) have joined unions.

Athens explodes

Picture: Jess Hurd / reportdigital.co.uk

Riot police confront demonstrators after the fatal shooting in December of 15-year-

It would appear that this infiltration of unions has been part of a conscious strategy followed by the BNP. Jay Lee was an active BNP member who joined Aslef in February 2002, just before standing for election in Bexley as a BNP candidate.

The party's leadership is fully aware of the political affiliations of many trade unions, Aslef included, and has encouraged them to join, anticipating expulsion. Other BNP members are known to have joined unions surreptitiously, ingratiated themselves with fellow members and been nominated to participate in union representatives courses.

Lee brought proceedings against Aslef under section 174 of the Trade Union and Labour Relations (Consolidation) Act 1992 and was successful in the UK courts. Aslef challenged that ruling and in a judgment dated 27th February 2007, Aslef v UK [2007] IRLR 361, the European Court of Human Rights (ECtHR) held that the right of freedom of association, including the right to form and join a trade union, gave the union its own right to expel members whose political views were incompatible with its stated objectives, where that expulsion would not prejudice the dissident's employment prospects.

The Government has suggested that section 19 brings UK law into line with the ECtHR ruling. However, critics, includ-

December

1: The Foreign Office holds an open day 'to highlight the importance of human rights in our work as part of the 60th anniversary of the Universal Declaration of Human Rights' with 'stalls', 'panel discussions', and Foreign Secretary David Miliband giving a human rights 'prize'.

2: Justice Secretary Jack Straw defends introduction of 'vests of shame', bright orange bibs designed as reminders that offenders cleaning graffiti or performing other community service tasks are being punished and not paid. 'They're not medieval,' he said.

3: 100 governments sign an international convention banning the production of cluster bombs. The US, China, Russia, India, Pakistan and Israel refuse to sign up...

15: Justice Minister David Hanson decides to allow privately-run child jails to continue to use pain-inflicting techniques to restrain young offenders in their care 'in exceptional circumstances'. Physical restraint was used 2,729 times on 227 children in the 12 months to June 2008.

17: European Parliament votes to scrap 15 years of special treatment that has allowed British workers to work longest hours in the EU. It has abolished all opt-outs from the EU working time directive (which sets the maximum working week at 48 hours).

old student, Alexandros Grigorolopoulos.

ing anti-fascist magazine *Searchlight*, are more sceptical. It has been suggested that following amendments in Parliament, far from incorporating the ECtHR judgment, the new Employment Act has actually strengthened the rights of people faced with expulsion, including BNP members, providing a new and lengthy set of circumstances under which expulsion would be unlawful.

In a context where the BNP continues to encourage its members to join unions, telling them that they are bound to receive generous payouts from the courts, unions seeking expulsion will have a more difficult task as a result of the new law.

● **Brian Richardson**

Young Legal Aid Lawyers

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

2009: 60 years of legal aid but what are we celebrating?

Legal Aid celebrates its 60th birthday this year and Young Legal Aid Lawyers (YLAL) its fourth. YLAL was set up in part to resist the Government's plans to dumb down and reduce legal aid. We have fought hard and it looks as though we will need to continue to do so: 2008 was the year in which all our worst fears for legal aid began to take shape, leaving us to the rather risky business of damage limitation and picking up the pieces.

This mini review of the year is with great thanks to Omar Khan, a new member, who is one of the many YLAL members that give us hope and inspiration to keep up the fight. At the age of 24 he is funding his LPC with a 24 percent interest rate bank loan as he has been unable to get a Government-backed Career Development Loan in the current economic climate. He is committed to legal aid, despite this and, if he makes it, I am sure it will be to the great benefit of our clients.

At the end of 2007, the Court of Appeal ruled in the Law Society's favour in its judicial review of the LSC's unified contract. Following the decision, the Law Society, the LSC, and the MoJ reached a settlement which included a range of measures designed to assist practitioners adjusting to the changes and signaled an improved working relationship between the Government and the professional body.

Government ensured continuing consultation fatigue in 2008. Just before Christmas the LSC issued consultations on the next civil contract and full means testing in the Crown Court. The LSC and MoJ announced plans to make convicted criminal defendants pay their own costs and to allow acquitted defendants only to be able to recoup costs at legal aid rates. In July last year the LSC published a consultation paper on Best Value Tendering. Key concerns about BVT include its impact on the quality of work, lack of competition outside urban areas, and the negative impact of similar scheme on access to justice in the USA. Despite the LSC's claim to have 'carefully listened to these views', it said it remains 'confidant [*sic*] that with careful planning and attention to detail we can create a competitive system that overcomes providers concerns and that is sustainable in the long term'.

Willy Bach, previously a criminal barrister, was appointed as Minister for Legal Aid. From day one in his new role, Lord Bach ruled out any increase in the legal aid budget and it looks as though he is ploughing ahead with the planned changes to legal aid. However, his department has at least agreed to do some research into the impact of the recent changes, in light of the economic crisis. As usual there is no mention of halting or slowing the changes until the research is completed.

The impact of recent changes will result in effective sweeping cuts to legal aid. This year has seen many well-respected firms close down legal aid departments and there is strong anecdotal evidence of the pressure on practitioners to provide a reduced quality service to make ends meet. The reliance on paralegals for often complex and difficult work is now accepted as common place.

At the junior end of the profession, the LSC made an important step towards attracting would-be legal aid lawyers to the sector by awarding 50 percent more LSC-sponsored training contracts on the previous year's award – something that YLAL had strongly argued for. Despite the initiative, Lord Goodhart warned the House of Lords that young lawyers are 'turning away from legal aid work'. The Minister for Legal Aid responded that resources are limited in the current economic climate.

Despite all this, YLAL was very proud that two of our members were commended in awards this year. Our vice chair, Felicity Williams was awarded the title Young Legal Aid Barrister of the Year and Katherine Craig was highly commended at the Law Society's Excellence Awards.

● **Laura Janes**

January

22: Judges and magistrates are jailing young offenders at more than three times the rate recommended by experts, according to figures released. Local youth offending teams recommended custodial sentences in just 1,077 cases, 29 per cent of the final total jailed.

22: The man who threw shoes at George Bush – Muntazer al-Zaidi – was tortured into writing a letter of apology to Iraq's Prime Minister, his brother said. Film of Zaidi was broadcast worldwide and he became a hero for opponents of the US-led invasion and occupation.

6: Head of MI5, Jonathan Evans, warns that Israeli attacks on Gaza give 'extremists' in Britain more ideological ammunition. He pointed to 86 succesful prosecutions in 'terror' trials since January 2007, which has had a 'chilling' effect on al-Qaida-inspired people.

10: Immigration Minister Phil Woolas argues for revision of the international convention on refugees. 'The Geneva Convention was intended to protect individual people from persecution. A significant number of people who claim asylum are doing so for broadly economic reasons.'

13: Justice Secretary Jack Straw revived his plan to hold inquests that involve aspects of national security in private without a jury. Also in the Coroners and Justice Bill will be a civil recovery scheme targeting profits made by criminals serving sentences of at least two years.

JEAN

Picture: Jess Hurd / reportdigital.co.uk

CHARLES DE MENEZES

'...if any shooting by the police was liable to result in an unlawful killing verdict and possible prosecution of the police officers, surely this was it... or was it?'

The shooting of Jean Charles de Menezes on 22nd July 2005 caused widespread shock and alarm from all sections of society. Interestingly, media coverage from across the political spectrum has been largely sympathetic to the campaign for justice for Jean, with some of the most in depth and critical coverage coming from the traditionally right wing *Daily Mail*. The news coverage following the verdict at the inquest was almost uniformly sympathetic to the family and damning of the police, with only the *Daily Express* unable to resist the predictable column querying the young Brazilian's immigration status.

Jean Charles was an entirely innocent man effectively executed on a busy underground carriage; if any shooting by the police was liable to result in an unlawful killing verdict and possible prosecution of the police officers, surely this was it…or was it?

Of course the horror of this individual shooting was set against the backdrop of the London suicide bombings and, as the police and those sympathetic to their predicament would say, Jean Charles was simply the 53rd victim of the 7th July bombers. The shooting was collateral fall out from the war on terror.

As one of the lawyers representing the family of the deceased and with experience of attempting to hold the police to account, right from the onset I could foresee significant obstacles to establishing that the shooting was unlawful. The police were likely to argue it was a lawful killing because the shooting occurred 'as a consequence of a series of unfortunate coincidences'. I was not surprised that the CPS made a decision not to prosecute any individual officer, although somewhat intrigued by the decision to bring a Health and Safety prosecution. I feared that following that prosecution it might be argued that no inquest would be required or, that the scope of the inquest would be narrowed down to an analysis of what happened on the tube carriage, with limited or no opportunity to explore the systemic failings that led to the fatal shooting.

Whilst inquests have produced unlawful killing verdicts, the police have become adept at challenging such verdicts in the higher courts even in cases where there is evidence to suggest the officers lied about the circumstances of the shooting. In the case concerning the shooting of Harry Stanley, following an unlawful killing verdict the police challenged the coroner's ruling. In *Sharman v HM Coroner for Inner North London [2005] EWCA Civ 967*, it was held that it was unsafe and perverse on the evidence to leave a potential verdict of unlawful killing. The judge commented, "it is not enough, and simply does not follow, to assume that the availability of a verdict of unlawful killing, meaning in this case a verdict that beyond reasonable doubt the officers had no belief in an imminent threat to them, follows from the rejection as untruthful of the particular account that they gave. It was still necessary for the jury to look at the matter as a whole, and necessary for the coroner, in deciding whether to leave the matter to them, to look at the whole circumstances to see whether there was a realistic chance of it being possible to establish, beyond reasonable doubt, that the officers did not have the belief alleged."

As we were approaching the conclusion of evidence at the inquest, those representing all the interested persons were invited to make representations as to what verdicts should be left to the jury. The evidence that had emerged showed that there were failings at every level of the police operation that had contributed to the shooting of an innocent man.

In summary these failings included:

- The met policy and training for dealing with suspected suicide bombers was not fit for purpose;

▶

by **Harriet Wistrich**

Left: Maria Otoni de Menezes, the mother of Jean Charles.

● The police had intelligence on Hussein Osman but failed to access this intelligence before Jean Charles was shot;
● Only one poor quality image of Osman was used by the surveillance officers, but the police had access to much better images which would almost certainly have prevented the misidentification of Jean Charles;
● By failing to ensure that firearms teams and a silver commander were deployed urgently to Scotia, a critical window of opportunity to stop Jean Charles before he entered the public transport system was lost;
● The surveillance team failed to exercise tight control of the premises but they never got more than a fleeting glance of Jean Charles. However the Grey team leader was prepared to say he "believed [Jean Charles] to be him";
● There was a fundamental failure of critical communications between the command team, the surveillance team and the firearms team;
● The firearms team were given an unbalanced briefing to the extent that they were ready to deliver a critical shot to any suspect suicide bomber, without being warned of the risks of uncertain identification;
● The firearms officers were sent into a situation where the chances of arresting as opposed to shooting dead the suspect were almost negligible;
● The command team failed to ascertain that both the firearms team and the surveillance officers could have attempted to stop Jean Charles before he entered the tube system.

I conducted a straw poll from other lawyers working in this field as to whether we should be arguing for unlawful killing or a narrative verdict or some combination of both. Almost without exception, those with the most experience in this area argued that we would have huge difficulties overcoming the current law in respect of unlawful killing and that even if we persuaded the coroner to leave such a verdict, the police would almost certainly seek a judicial review of the decision. Going for a narrative verdict on the other hand could produce a set of reasons which would effectively hold the police to account but without bumping up against the increasingly intractable case law.

I shared these comments with counsel and we began to formulate the position that tactically going for a narrative only verdict might be the best approach. However, when we discussed this approach with members of the family and the campaign group that were supporting them, they were shocked that we might not seek an unlawful killing verdict. Although this case (probably more than any other, historically) had received widespread coverage and been the subject of several highly critical reports, so far none of these had simply stated that the shooting was against the law. Whilst a lengthy list of critical findings might be of use, what the family wanted to hear and what the world wide public needed to hear, was the word "unlawful".

We accepted that given the particular profile of this case, we should, at very least, make forceful submissions that the jury should be permitted to consider such a verdict. Our submissions were that there were two ways in which the jury might be directed to return an unlawful killing verdict. Firstly, in respect of the two shooters, the jury could return unlawful killing on the basis of murder: namely, if they considered that the shooters did not have an honest and genuine belief that Jean Charles de Menezes was a suicide bomber about to detonate a bomb. Secondly, we argued that the jury could decide that there was evidence amounting to gross negligence manslaughter in respect of three senior members of the command team (Cressida Dick, the Designated Senior officer, who took control of the operation; John MacDowall, the Gold commander who set the strategy for the operation and failed to keep it under review, and Vince Esposito, the firearms tactical adviser to Cressida Dick). We also argued that the jury should return a narrative verdict in respect of other systemic failings contributing to the death.

Our submissions were roundly opposed by the five legal teams representing different subsections of interested persons within the Metropolitan police. The coroner concluded, following Sharman, that unlawful killing should not be left in respect of the shooters. He also concluded, in considering the four elements of gross negligence manslaughter, that whilst a duty of care might exist in respect of the operation (but only at the stage that the firearms team was sent in – the Commissioner's team arguing that no duty of care existed at all), there was no breach of that duty and, hence, there was no need to consider whether the breach was causative of death or so serious that it might amount to a criminal failing. He then proposed that the jury could return either lawful killing or an open verdict and proposed a series of questions to which the jury could only answer 'yes' or 'no'.

Whilst for us the lawyers, the coroner's decision was disappointing but not totally surprising, the media and public response was that of shock and disbelief. There then followed detailed discussion and debate as to if and how we should challenge the coroner's ruling. To cut a long story short, following further submissions which resulted in some additional questions for the jury and a failed expedited judicial review, the family instructed us to withdraw from the proceedings and there followed a silent protest in court which captured further media coverage and fury from the coroner and remaining legal teams. Ultimately, the jury took over a week to deliver probably the best possible verdict given the limitations that were placed on them. The end result was that whilst we never got our one word verdict, the overall message to the public, through media reporting was a damning critique of not only the police operation but also the coroner's ruling.

Harriet Wistrich is a solicitor at Birnberg Peirce and acted for the de Menezes family

Deaths at the hands of the state – will police officers ever be held to account?

by **Kat Craig**

In the last 15 years a staggering 1141 people have died in police custody or following other forms of contact with the police . Unsurprisingly, males from black and minority ethnic backgrounds are disproportionately represented amongst those who die at the hands of state agents, as are those from disadvantaged backgrounds and those with mental health problems.

Whilst the coroner's decision not to leave an unlawful killing verdict to the jury at the inquest into the death of Jean Charles de Menezes was met with outrage by the press and public, his family is sadly not the first to be greatly let down by the system. Over the years it has become clear that the coronial and criminal justice systems are both ill-equipped and unwilling to deliver justice and provide the answers families need and deserve.

But the state's ineptitude in dealing with deaths at the

Picture: Jess Hurd / reportdigital.co.uk

hands of its own agents arises well before coroners and courts become involved. Both Lord Scarman's inquiry into the Brixton riots in 1981 and the Stephen Lawrence inquiry called for the establishment of an independent body to investigate complaints against the police. The impotent and unpopular Police Complaints Authority (PCA), with its limited powers to supervise or review complaints against the police, was replaced by the Independent Police Complaints Commission (IPCC) in 2004. Although the IPCC has a wider remit, and an additional power to conduct a full and independent investigation, it appears that it remains largely unwilling to challenge or criticise the police's actions.

This has been the experience of the family of Sean Rigg, who died in police custody in August 2008. His family have recently condemned the actions of the IPCC and its failure to carry out the rigorous, impartial and transparent search for the truth they deserve. The family's concerns include the fact that the IPCC has refused to interview the officers involved, failed to tell the family of wounds to Mr Rigg's head and then subsequently discouraged the family from seeing his body. IPCC investigators also applied for an order from the coroner to ensure Mr Rigg's personal medical records were not disclosed to the family. Unsurprisingly, Mr Rigg's family have started to query the efficacy and independence of the IPCC.

These failings during the investigative stage are unfortunately often echoed in the coroner's court. Coroners seem to be easily intimidated and bullied by the representatives of the state. It is not unusual that coroners are addressed by numerous representatives for state bodies whilst the family's interests are voiced by a single representative. Weak-willed coroners, afraid of being judicially reviewed, are swayed by the probability of facing a legal challenge rather than by intellectual debate and legal argument. When there are numerous powerful bodies with seemingly endless resources and only one publicly funded and traumatised family, some coroners may decide to take the easy option rather than face judicial challenge by the state. This is especially the case with the police, who have demonstrated in their litigation strategy that they are more than willing to put traumatised families through the wringer to avoid liability and justified public criticism, no matter what the cost.

Unlike coroners, juries in inquests seem on the whole more willing to criticise state agents, and this has recently resulted in some excellent narrative verdicts. Because juries are told that inquests are non-adversarial proceedings which cannot determine matters of civil liability or criminal liability of a named individual, they perhaps feel that their condemnation will not directly impact on state agents. Other bodies, be it the CPS or a disciplinary body, need to make a subsequent decision whether to take further action.

And it is at this stage that families are again too often let down by the system. The CPS have demonstrated a clear lack of political will to bring charges against police officers, and a readiness to accept the officers' accounts without testing their evidence in court. This has seen many police officers walk away from fatal shootings and restraint deaths without facing criminal charges, as happened in the case of Brian Douglas. Mr Douglas died from a fractured skull and internal bleeding after he was beaten by the police with batons. The police officers involved stated at the inquest that they did not strike Mr Douglas on the head, and that their blows must have glanced off Mr Douglas' upper arm. This was flatly contradicted by forensic evidence that clearly indicated that the injuries to Mr Douglas' head were as a result of a downwards blows instead of upwards deflection. Despite this factual dispute, which should have been resolved by a jury, the CPS decided there was insufficient evidence to charge the officers.

The reality is that many of those who die in police custody are considered 'undesirable' by less enlightened sections of the public, or at least viewed as insignificant by the establishment. Our justice system, apparently intended to level out society's inequalities, is so permeated by respect for authority and the establishment it does little to challenge the actions of the state. It remains sadly and abundantly clear that the legal system is not geared towards helping the vulnerable in society, but towards protecting the interests of the establishment.

Although there is no sign of our legal systems undergoing radical change to serve the interests of the majority anytime soon, there does seem to be some hope on the horizon. The de Menezes family were able to capture the sympathy of the nation, and public outrage ensued. In December the death of a 15 year old student shot by Greek police led to weeks of rioting in Athens and solidarity demonstrations around Europe. On New Year's Day a 22 year old unarmed man was shot dead by police in Oakland, USA, sparking violent protests. Although this is not the first time communities have showed their disgust at police violence, the proximity of these events, and the scale of protest may herald a change for the better. If society's attitude towards vulnerable people, and the value of each individual life regardless of background, race or mental health, can change, then police violence may increasingly be met with outrage instead of indifference. And although this may not change the fundamental underpinnings of our system, and its favouritism to those with money and power, as a whole, it may go some way to ensuring police officers are no longer able to get away with murder.

With thanks to Leslie Thomas and Anna Mazzola for their assistance.

Kat Craig is a solicitor at Christian Khan and editor of *Socialist Lawyer*

WHAT'S BEHIND THE CRIES?

Tabloid scare stories of 'knife crime' don't give the whole story. **Brian Richardson** learns more from new research by the Howard League

During the summer months of 2008 there was a predictable hue and cry in the media following a spate of fatal stabbings on the streets of the UK. In particular, there has been a major focus on the supposedly menacing and murderous activity of marauding teenage gangs. The fact that the majority of both the victims and alleged perpetrators of these tragedies were black males added an extra dimension to the stories.

The racial aspect to this reporting was, in fact, the subject of an interesting debate on BBC Radio 4 in September. The reporter Steve Hewlett challenged a panel of print and broadcast journalists to consider whether knife crime really has risen or whether it is simply the reporting of it that has changed since the death of Stephen Lawrence in 1993. Notably, the programme contrasted the prominent and sympathetic treatment given to white victims such as Ben Kinsella and Jimmy Mizen, with that of the black youth who had been slain in similar circumstances.

During the programme, the chair of the Commission for Equality and Human Rights, Trevor Phillips, himself a former TV executive, made an interesting observation. He suggested that media portrayals typically fall into one of two camps: they are either heart-rending stories of dignified victims – invariably God-fearing families, or they seek to demonise supposedly feral and uncontrollable youth. The truth, Phillips argued, is more subtle and complex. He suggested that it is apparent from the names of most recent victims and alleged perpetrators that a significant proportion are from refugee backgrounds. The significance of this is that those young people's formative experiences will almost certainly have involved the sight of, and flight from, the most brutal violence. Many of them may even have suffered at the hands of persecutors themselves. The psychological impact that this will have had upon those young minds and the difficulty they will have faced adjusting to a new environment are factors that have not been properly taken into consideration. Such an analysis suggests that, rather than leading the cry for tougher sentences, the media should provide the forum for an informed debate about these underlying causes.

Such a debate could begin with a sober and honest account of the real levels of knife crime. The British Crime Survey (BCS) is widely regarded as the most authoritative snapshot of crime in England and Wales. Its most recent report indicated that overall violent crime, the category into which knife crime fits, has actually decreased by 41 per cent since its peak in 1995. The health warning that applies to this however is that the BCS does not record crime amongst those aged under 16, precisely the age group amongst whom the problem would appear to have exploded. It would be dangerously complacent to ignore the evidence – including that presented to a commission convened by Channel Four television and chaired by Cherie Booth QC – that suggests that there has been a marked increase in such activity. This evidence is not simply anecdotal. At the time of writing 28 young lives had been, literally, cut short on the streets of Britain between January and mid-November 2008.

The reasons for this increase are explored in a thoughtful new piece of qualitative research published by the Howard League for Penal Reform. Written by Nicola Marfleet, *Why Carry A Weapon?* is based upon a series of focus groups with a cohort of young males aged between 15 and 17 at Pupil Referral Units (PRUs) and Young Offenders Institutions (YOIs). Marfleet uses her own experience as a prison governor to empathise with her interviewees and draw out a number of astonishingly frank testimonies.

Her research identifies a range of causal factors including parental influence, absent fathers and gang related activity. However it is clear that the primary concern of young people is simply to avoid being stabbed themselves. A number of interviewees admitted to having carried, and been prepared to use knives as a form of pre-emptive self-defence. One particular response is worth highlighting:

'I'd rather have a shank and flick it out and start wetting man than get stabbed myself. 'Cos if you have a shank and they haven't, they're gonna back off.'

In such circumstances, for these young people, the threat of a stiff prison sentence at some point down the road, should they get caught, comes a distant second to staying alive. Whether these fears are justified is a moot point.

Marfleet's research cites a MORI poll, which reported that 62 per cent of excluded pupils, compared with 29 per cent of young people in schools, admit to carrying knives. Once they are out on the streets these young people find themselves trapped in a seemingly inevitable

Families marching against gun and knife crime from Hackney to Tottenham in 2007.

Picture: Jess Hurd / reportdigital.co.uk

spiral of descent that sucks them into the penal system. No less a figure than the former Director General of the Prison Service, and now the Chief Executive of children's charity Barnados, Martin Narey suggested in a 2007 report commissioned by the then Department for Education and Skills that:

'*The 13,000 young people excluded from school each year might as well be given a date by which to join the prison service some time down the line.*'

The obvious conclusion that should flow from these assertions is that stiffer sentences for young offenders offer no lasting solution to the problem.

At the height of the summer, the Court of Appeal did, in fact, remind judges of the need for a tough approach. The judgment in *R v Povey and others [2008] EWCA 1261*, was delivered by Sir Ivor Judge, shortly before his appointment as Lord Chief Justice. He began by noting that: 'Offences involving knife crime have recently escalated to epidemic proportions.' He then declared that: 'It is important that the public has confidence in the criminal justice system.' He suggested that prevailing conditions are now 'much more grave than five-and-a-half years ago when the guideline authority had been decided'. He therefore concluded: 'Magistrates Court Sentencing Guidelines as to bladed articles and offensive weapons should normally be applied at the most severe end of the appropriate range of sentences.'

Another controversial preventative measure has been the increased use by the police of powers under section 60 of the Criminal Justice and Public Order Act 1994. These provisions allow officers to stop and search persons in a given locality for a period not exceeding 24 hours if an officer of superintendent rank or above reasonably believes that 'incidents involving serious violence may take place' and 'it is expedient (to authorise such activity) to prevent the occurrence of such violence'. Moreover, the section allows any officer in uniform to:

'*[S]top any person or vehicle and make any search he thinks fit whether or not he has any grounds for suspecting that the person or vehicle is carrying weapons or articles of that kind.*'

In the London area, the Metropolitan Police claim that the use of this tactic under its Operation Blunt 2 initiative led to a 12 per cent reduction in knife crime between May and November 2008. However critics, including the prominent criminologist Professor Marian Fitzgerald of Kent University, have highlighted the fact that 97 per cent of stops produce no result. This raises serious questions both about the effectiveness of the tactic and the impact that these encounters have upon the relationship between the police and young people.

The teenagers interviewed by Nicola Marfleet expressed mixed and contradictory views about the role of the police. Those interviewees from the PRUs tended to mistrust the police and also felt that they offered them little protection. In contrast, and perhaps surprisingly, those from the YOI felt that the police were necessary because 'you need law and order in the world' and that they were 'just doing their jobs' when conducting stop and searches. However these young people also believed that the police could not protect them, hence their decision to arm themselves with knives.

No doubt many in the tabloid press would argue that Phillips' observation, if true, reinforces the need for the UK to impose tighter immigration controls and tougher restrictions on the leave to remain of refugees. Unhappily for them however, and despite periodic mutterings by politicians about the need to 'overhaul' the Refugee Convention, the UK cannot breach its obligations under international humanitarian law.

How people are treated once they have been granted refugee status is another matter. The premature deaths of dozens of young people and the fear that constricts the minds and movements of thousands of others are a tragic waste of their potential. If Trevor Phillips' and Nicola Marfleet's assessments are correct, the solution to knife crime amongst young people must lie, in part, in the search for more sensitive approaches to the integration of traumatised arrivals from conflict stricken societies, a less punitive approach to school exclusions and the development of a more stimulating and inclusive curriculum.

● *Why Carry a Weapon? – A Study of Knife Crime Amongst 15-17 Year Old Males in London* is published by the Howard League for Penal Reform.

Brian Richardson is editor of the book 'Tell It Like It Is – How Our Schools Fail Black Children' and will be taking up pupillage at Garden Court Chambers in the autumn

Abettors of war crimes will be held accountable

by **Adri Nieuwhof** and **Daniel Machover**

Israel's military offensive in Gaza is being perpetrated with enormous disregard for civilian life in violation of fundamental principles of international humanitarian law (IHL). The appallingly high number of civilian deaths and injuries and widespread damage to civilian buildings reflects unlawfully excessive, indiscriminate and disproportionate use of force by Israel.

Two weeks into the Israeli offensive, many international lawyers are raising their voices to condemn Israeli actions from every perspective, challenging Israeli claims to be acting in lawful self-defence. That is, even before examining the unlawful way Israel has deployed its military might, lawyers assessing the self-defence arguments of Israel have found as many holes as in the Gazan ground: Israeli actions were not taken as a last resort, as a necessary response to attacks. Before using force in self-defence a state must need to do so in response to an armed attack, having found no other realistic method of redress or resistance.

In other words, force is only lawful if peaceful attempts to repel the armed attacks either have not worked or would clearly be ineffective. The justification posited by Israel that their objectives of 'stopping the rockets being launched from Gaza' and striking Hamas a 'severe blow' necessitate the use of overwhelming military force is without legal substance. No force may have been necessary had Israel agreed on 19th December 2008 to open all Gaza's crossings and lift its unlawful siege.

Hamas scrupulously observed the agreed ceasefire until 4th November when Israel launched an unprovoked attack inside the Gaza Strip, killing six persons. Hence the easiest way for Israel to prevent rocket fire would have been to continue to abide by, and then renew the truce it violated on 4th November.

But the threat posed by rockets fired into Israel can never justify the military actions actually taken since 27th December: figures released by the human rights organization Al Haq on 8th January 2009 indicate that 80 percent of the 671 Palestinian deaths documented until then were civilian (547) including 155 children. The morning of 9th January, Al Jazeera reports raise the Palestinian death toll in Gaza to 769, including more than 200 children. More than 3,121 people have also been wounded. How has this come about?

Despite Israeli claims of complying with the laws of war, the outrageous Israeli attack on Gaza is in line with a rather different approach to war. Under the 'Dahiyah Doctrine' (named after an area of Beirut bombed by Israel in 2006), unveiled early October 2008 by Major General Eisenkot, former Israeli military secretary under then prime minister Ehud Barak, the army '... will wield disproportionate power against every village from which shots are fired on Israel, and cause immense damage and destruction. From our perspective these are military bases. This is not a suggestion. This is a plan that has already been authorised.' In a report for Tel ▶

Aviv University's Institute for National Security, Colonel (Res.) Gabriel Siboni backed Eisenkot's statements. The answer to what Israel describes as rocket and missile threats from Syria, Lebanon and the Gaza Strip, he believes, is 'disproportionate strike at the heart of the enemy's weak spot, in which efforts to hurt launch capability are secondary.'

It is obvious that the Dahiyah Doctrine, founded on using disproportionate force to respond to rocket and missile attacks, violates IHL. It is no surprise, therefore, to find that Israel does not abide by basic definitions of 'combatant' and 'civilian' or distinguish between a military objective and a civilian population. One of the first of Israel's attacks on Gaza on 27th December was on a graduation ceremony of police officers employed by the Hamas government. Police stations are civilian buildings, and police officers and law enforcement officials are classified under international law as civilians. Targeting them while they were not engaged in military action is unlawful. Israel has produced no evidence at all that the trainee police officers were preparing to fire rockets during or after their graduation ceremony, and thus they were civilians and appear to be the victims of a premeditated war crime.

Israel consistently labels civilian buildings as 'legitimate military targets' that no other government on earth would successfully describe as such. Police stations, mosques, university buildings, medical storage buildings, government institutions, chicken farms and schools cannot become military targets simply by being called Hamas infrastructure.

Already on the first day of the carefully planned Israeli military operation in Gaza, UN Special Rapporteur for Human Rights in the occupied territories, Richard Falk, released a statement pointing out the severe and massive violations of IHL as defined in the Geneva Conventions, mentioning collective punishment, targeting civilians and a disproportionate military response. He noted, 'Certainly the rocket attacks against civilian targets in Israel are unlawful. But that illegality does not give rise to any Israeli right, neither as the Occupying Power nor as a sovereign state, to violate international law and commit war crimes or crimes against humanity in its response.' Falk reminded all member states of the United Nations that the UN is bound to its obligation to protect any civilian population facing massive violations of international humanitarian law.

Evidence is also emerging of the use of illegal weapons, with reports and pictures showing 'tell-tale [phosphorous] shells... spreading tentacles of thick white smoke to cover the troops' advance.' An Israeli security expert explained: 'These explosions are fantastic looking, and produce a great deal of smoke that blinds the enemy so that our forces can move in.' Phosphorus burning through the air causes severe injuries to anyone caught underneath. Israel admitted using white phosphorus during its 2006 attack on Lebanon.

The Geneva Treaty of 1980 prohibits the use of white phosphorus as a weapon of war in civilian areas, but there is no blanket ban under international law on its use as a smokescreen or for illumination. However, Charles Heyman, a military expert and former major in the British army, was quoted by *The Times* on 5th January 2009 as saying: 'If white phosphorus was deliberately fired at a crowd of people someone would end up in The Hague. White phosphorus is also a terror weapon. The descending blobs of phosphorus will burn when in contact with skin.'

As director of operations in Gaza for the UN agency for Palestine refugees (UNRWA), John Ging told the BBC on 6th January, the situation in Gaza is horrific, because a huge military operation is being carried out in a densely populated area. The population is terrified, there is no place to be safe in Gaza. One million have no electricity, 750,000 no water and everyone is short of food. Trucks with food arrive piecemeal at UNRWA distribution centres, seriously obstructed by the Israeli military operation. Parents have to leave their homes to collect food at centres, taking the risk of being caught in the line of fire. A recent attack on a UN convoy bringing supplies from the crossing point of Gaza caused casualties. All convoys to the main crossing point used for bringing humanitarian supplies into Gaza were suspended after the incident.

100,000 people demonstrated in London in January against the Israeli attacks on Gaza.

Emergency meeting condemns Israeli force

The Haldane Society and Lawyers for Palestinian Human Rights (LPHR) hosted an emergency meeting on 19th January, 'Israel in Gaza: violations of international law', in a tightly packed lecture theatre in central London.

Chair and prominent Palestinian author, Dr Ghada Karmi, opened the meeting, arguing that any analysis of the current conflict must be prefaced by a recognition that Gaza remains under occupation. The dismantlement of settlements and withdrawal of troops in 2005 have not ended the military, economic, social and political assaults suffered by the Palestinian people.

Ruth Tanner, campaigns director of NGO War on Want, put the current Palestinian death toll at 1,204, amongst them 346 children. She told the meeting of the targeting of schools, mosques and medical facilities, as well as of the use of white phosphorus in densely populated areas which can cause burns to the bone. Ruth also told of the shelling of a UN compound, being used to shelter hundreds of fleeing civilians, and put the estimated number of internally displaced people, who have nowhere to go but these UN 'safe zones', at a shocking 38,000.

Professor Ian Scobie, lecturer of international law at the School of Oriental and Asian Studies, challenged Israel's claim to be acting in self-defence, citing two overarching regulatory principles of necessity and proportionality as the basis of his argument. He explained how the UN Security Council have essentially taken a head-counting approach when determining proportionality, and compared the approximated 26 deaths caused by rocket and mortar attacks from Gaza with over 1,200 deaths caused by the Israeli offensive. Even if Israel were able to argue its actions were necessary, it seems unlikely it would be able to argue they were proportionate, particularly when the UN claims that 40% of deaths are women and children, and we should not assume that all men killed were Hamas combatants.

Pictures: Jess Hurd / reportdigital.co.uk

Picture: Jess Hurd / reportdigital.co.uk

Ging also reminded the international community of its responsibility to protect the civilian population. And if it fails to do so, it should be held accountable. All states have an independent obligation to protect any civilian population facing massive violations of IHL. The members of the UN Security Council, who are all also party to the Geneva Conventions, have failed in that duty by not passing a resolution under Chapter VII of the UN Charter as early as 27 December, requiring Israel to cease all military operations in and around Gaza. Each day since then without a UN Security Council resolution and with the willful killings and mass destruction rising inexorably, has strengthened the case against US and UK officials of criminal complicity in Israeli war crimes, given that these veto-holding states were not prepared to call a halt to the violence.

The UN Security Council did not wait for Iraq to be ready for a resolution in August 1990 when Iraq acted with equally clear disregard for international law by invading Kuwait. What has the UN Security Council been waiting for since 27th December? No Israeli agreement to a resolution or terms of ceasefire was or is required for a resolution to be passed that has the legal effect of requiring Israel as a UN member state to cease the violence. It took the UN Security Council almost 14 days to pass a resolution that 'stresses the urgency of and calls for [i.e. not 'demands'] an immediate, durable and fully respected ceasefire, leading to the full withdrawal of Israeli forces from Gaza.' The US backed its ally and abstained. A series of explosions has rocked the Gaza Strip despite the UN Security Council passing a resolution calling for an 'immediate ceasefire' there. Any attack after the call for an immediate ceasefire can be considered a violation of international law.

Striking populated areas with the kind of force used by Israel, even if some of the targets were in principle legitimate military targets, can never be in compliance with an ordinary understanding of the laws of war. Israel's acts are therefore war crimes and crimes against humanity. Lawyers from Lawyers for Palestinian Human Rights in the UK and other countries are committed to bringing the perpetrators of these suspected war crimes and crimes against humanity to justice, as well as third parties that have been aiding and abetting war crimes.

Adri Nieuwhof is a consultant and human rights advocate based in Switzerland, and Daniel Machover is a solicitor at Hickman & Rose in London and co-founder of Lawyers for Palestinian Human Rights. This article was first published on 10th January at http://electronicintifada.net

Daniel Machover, chair of LPHR, explained how individual contracting parties to the Geneva Convention have on many occasions failed to take action against Israel. He cited as examples the cases against Doran Almog and Moshe Yaalon. In 2005 a warrant was issued by a London court against retired Major General Almog in relation to the destruction of 59 houses in Rafah refugee camp in 2002. However, attempts to bring Almog to justice were thwarted when information about the warrant was leaked by officials. Almog evaded arrest at Heathrow airport by staying on the airplane that landed there that afternoon and returning to Israel on the same aircraft. In 2006 Moshe Yaalon, former head of the IDF, avoided arrest when a warrant following allegations of war crimes was overruled, in unprecedented manner, by the New Zealand attorney general. The petition sought General Yaalon's trial for his part in the dropping of a one-ton bomb in a residential area, killing at least 14 civilians and injuring over 150 others.

In this context, it was not surprising that Salma Karmi, barrister at Tooks Chambers, expressed cynicism about the international community's willingness to hold Israel to account. Salma highlighted the failure of the UN Security Council to pass a binding resolution under Chapter 7 of the UN Charter demanding a ceasefire. She contrasted this with the Council's readiness to impose binding obligations on Iraq in 1990. No less than 12 resolutions were passed in approximately two months, eventually resulting in a resolution for the use of force.


Ghada Karmi

But instead of demanding the withdrawal of Israeli troops, guaranteeing the inviolability of Gaza's borders or imposing (or even threatening) sanctions, the Security Council passed a resolution on 8th January under the non-binding and rather impotent Chapter 6 of the UN Charter, calling for an immediate ceasefire that would, hopefully, lead to the eventual withdrawal of troops. Forcefully arguing that this meekly worded resolution is not commensurate with the gravity of the aggression, and that it has little diplomatic leverage to boot, Salma called on all those present to join LPHR and support the Palestinian struggle for justice.

● *LPHR supports Palestinian people in their legal struggle to exercise their right of self-determination. It works, both in the UK and abroad, on legal issues focused on protecting and promoting Palestinian human rights. For more information visit the LPHR website at:* www.lphr.org.uk/aboutus.php

Gaza: prelude to genocide?

This eye-witness account from the West Bank arrived with us shortly before the Israeli forces attacked Gaza

The Wall near Qalandiya checkpoint.

The situation in the West Bank hasn't changed much since I was last here in 2006. Two more years of occupation and two more years of Israel consolidating the settlements, building the wall, grabbing the land, ruining livelihoods and stifling the economy. Two more years of incursions, house demolitions, and checkpoints, more killed and injured, more homes lost and continued restrictions on movement and access to education, hospitals, farmland and work.

The situation in Gaza is, as John Ging, the director of operations of the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA) says, a 'disaster for everybody' where the population has been reduced to a 'subhuman existence'. Richard Falk, now the Special Rapporteur for the Occupied Palestinian Territories, has called the situation in Gaza a 'prelude to genocide'. Like almost everyone except a few UN workers and a few determined and dedicated activists and politicians entering by boat, I am not able to get into Gaza.

Since I arrived here, the Israelis have continued their practice of incursions into the heart of the West Bank. They enter cities like Nablus, Jenin and Tulkarem to search for alleged militants, but normal practice is to shoot to kill rather than to arrest and detain. Recent coverage by the Israeli *Haaretz* newspaper highlighted that the Israeli Defence Force (IDF) is ignoring the advice of the Israeli High Court by carrying out assassinations of alleged militants when less drastic measures, such as arrest could have been used. *Haaretz* reported on 26th November 2008 that: 'The documents reveal that the IDF approved assassinations in the West Bank even when it could have been possible to arrest the targets instead, and that top-ranking army officers authorised the killings in advance, in writing, even if innocent bystanders would be killed as well.' Israel is also acting in contravention of the recommendations of the UN Human Rights Committee who monitor compliance with the International Covenant on Civil and Political Rights and who condemned Israel's practice of using 'targeted killings' as a deterrent or punishment. The Committee stated that Israel: 'should ensure that the utmost consideration is given to the principle of proportionality in ▶

all its responses to terrorist threats and activities. State policy in this respect should be spelled out clearly in guidelines to regional military commanders, and complaints about disproportionate use of force should be investigated promptly by an independent body. Before resorting to the use of deadly force, all measures to arrest a person suspected of being in the process of committing acts of terror must be exhausted.'

These attacks result in regular nightly terror for the residents of the refugee camps and built up areas where the incursions take place, people are unable to leave their homes and innocent bystanders are caught up in the attacks. They also contribute to the economic and social strangulation in the West Bank, which is caused by the infrastructure of the occupation – the wall, the checkpoints and the confiscation of land for settlements. While in Ramallah, although not immune to Israeli incursions, life is pretty normal: there are cultural events – dance and music, and the shops and streets are busy and bustling. In cities like Nablus and Tulkarem surrounded by checkpoints and subject to nightly raids, little happens after dark, economic conditions are poor and unemployment is high.

Those living in rural areas also suffer as farmers are unable to access their land because of attacks from settlers or lose their land to confiscation orders for the building of the wall. The protests against this land confiscation for the wall continue in villages like Bil'in and Nil'in. In 2007, the Israeli High Court actually ordered that the wall should take a different route through the village of Bil'in, that the route decided upon was not necessary even accepting (as the Court did) that the purpose of the wall was for security. However, one year on the section of the wall has not been dismantled and the weekly protests continue. In Nil'in the villages are waiting for a court decision on whether the route through their land is 'proportionate' or not but after the experience of Bil'in and of other villages like Azzun and Nebi Alias, where sections were declared illegal by the Court over two years ago, the villages cannot be confident of any change. The protests – by the villagers, Israeli and international activists – are largely peaceful (although sometimes the youths of the villages indulge in some largely pointless stone throwing). The response from the Israeli soldiers is not peaceful, and tear gas and rubber bullets are fired out at protesters. At a November protest in Jayyous, where people gathered to protest the re-routing of the wall and the permanent isolation of 5,582 dunums of village land for the expansion of Zufim settlement, three people were shot in the legs and back by rubber bullets and two were shot in the face.

The UN Human Rights Committee also condemned what it considered the partly punitive nature of the demolition of property and homes in the Occupied Territory stating that: 'In the Committee's opinion the demolition of property and houses of families some of whose members were or are suspected of involvement in terrorist activities or suicide bombings contravenes the obligation of the State party to ensure without discrimination the right not to be subjected to arbitrary interference with one's home (art. 17), freedom to choose one's residence (art. 12), equality of all persons before the law and equal protection of the law (art. 26), and not to be subject to torture or cruel and inhuman treatment (art 7).' Despite this, house demolitions continue apace, many taking place because of 'administrative reasons', that is, they have not been given a permit by the Israeli authorities to build in the occupied West Bank and East Jerusalem. Area C, which under the Oslo Accords remained under full Israeli administrative and military control, covers 60 per cent of the West Bank, home to around 70,000 Palestinians. It is also the area in which most Jewish settlements, all illegal under international law, are built. Statistical evidence shows that while it is extremely hard for Palestinians to obtain building permits, settlements continue to grow rapidly. Research by the Israeli group Peace Now found that 94 per cent of Palestinian permit applications for Area C building were refused between 2000 and September 2007. Only 91 permits were granted to Palestinians, but 18,472 housing units were built in Jewish settlements. As a result of demolition orders 1,663 Palestinian buildings were demolished, against only 199 in the settlements.

The olive harvest this year was one of the worst for attacks on Palestinian farmers by Israeli settlers. The Israeli human rights organisation, B'Tselem reported on a number of serious incidents. In one, near the Yitzhar settlement, settlers threw stones at farmers for over an hour, while soldiers stood by and did not intervene. One farmer was wounded in the head and hospitalised. In a grove by the village

Soldiers throw tear gas at protesters at the regular Friday demonstration at Ni'lin.

of Azmut, near the Elon Moreh settlement, settlers attacked a family picking olives. The settlers stole the family's sacks of olives, emptied the contents on the ground, and beat the father of the family. Despite the presence of Israeli soldiers during these incidents, they rarely intervene and investigations and prosecutions of the perpetrators are virtually non-existent.

The behaviour of the soldiers is not altogether surprising. The soldiers are often responsible for the abuse and assaults on Palestinians and their property. A recent study by Yesh Din has revealed that in the seven years between the outbreak of the second intifada and 2007, only six per cent of investigations into complaints by Palestinians against Israeli soldiers lead to the filing of indictments. More than 2000 Palestinian civilians have been killed by the Israeli army in those seven years, yet the same study reveals that only 13 investigation files lead to indictments charging soldiers with responsibility for killing civilians and the Court-Martials have only convicted in relation to four deaths: three Palestinians and one British citizen (Tom Hurndall).

Hebron is the site of some of the worst incidents of violence and abuse, by both settlers and soldiers, on Palestinians. Most recently, the highly unusual order from the Israeli High Court for the eviction of the occupants of the 'House of Contention', a house in the centre of Hebron occupied by extreme right wing Jewish settlers who claimed ownership of the property, has lead to increased tensions in what is already a deeply troubled city for its Palestinian residents. Before the eviction, the extreme right wing settlers, who refused to leave the property, moved their supporters into the city to protest against the eviction. They desecrated Muslim graves and mosques, destroying grave stones and writing hate graffiti such as 'Death to the Arabs' and 'Mohammed is a pig' on Muslim homes and mosques. The operation to remove settlers by Israeli police triggered broad settler protests across the occupied West Bank and in Jerusalem . Despite the great likelihood that such acts would occur, security forces failed to provide suitable protection to Palestinian residents of the city in the hours following the eviction. Settlers made incursions into Palestinian neighbourhoods, torched houses and cars, threw stones, shattered windows, and damaged solar water containers, satellite dishes and water tanks. In one case, settlers shot two Palestinians, a father and son.

The occupation also slows and stifles Palestinian law reformers and women activists' attempts to reform and improve discriminatory laws and practices. The reality of the occupation means that there is always a reason why there is something more pressing to be dealt with before addressing women's rights. And there is a long way to go internally on women's rights: reformers are up against both the occupation and a patriarchal society. But things need to change, they can't wait until the occupation is over. Women who are the victims of domestic violence rarely report to the police for fear of the consequences of a subject that is largely taboo. If a woman does make a complaint she may end up in prison for her own protection, as there is no law that allows for the exclusion of the perpetrator from the family home and no effective injunctive relief or criminal procedures that would allow her to live safely in the community. Women who are the victim of a sexual assault or even rape cannot proceed with a complaint without the consent of a male relative, no matter what her age and even if the perpetrator is one of those male relatives. The occupation and Israel cannot be blamed for these practices. But these are things that many women in Palestine are working hard to change and while the occupation continues, this hampers the ability of those women to develop effective strategies to deal with the issues as well as providing a reason for those in power to maintain the status quo. The brutal and relentless occupation and strangulation of Palestine needs to end but so do these discriminatory and patriarchal practices. All the people of Palestine need our support and solidarity.

Meanwhile, readers of *Socialist Lawyer* can contact their MEP to encourage them to vote against the EU-Israel Association Agreement. The vote that was to be rushed through and held on the agreement on 4th December 2008 has been postponed until January 2009. The agreement involves the strengthening of a broad spectrum of ties between Europe and Israel – including economic, trade, academic, security and diplomatic relations at a time when the European Union should be challenging Israel and holding it accountable for its persistent violations of human rights and international law. Israel is not a party to the European Convention on Human Rights or subject to the censure of the court and would be unlikely to agree to submit to its authority, knowing that this would bring a right of petition to millions of Palestinians. Why then should it benefit from preferential trade agreements with Europe while the Palestinian people continue to suffer under occupation. ■

VICTORY ON 'SECRET' INQUESTS

by **Deborah Coles and Helen Shaw**, co-directors of INQUEST

Secret inquests, RIPA, and coronial reform

In a significant climb-down after sustained campaigning by INQUEST for almost 10 months, the Government dropped its plans for 'secret' inquests from the Counter Terrorism Bill 2008 in November. The victory is an important one for INQUEST and we remain determined to fight any attempt to re-introduce similar legislation in the long-overdue coroners and justice bill, which was announced in the Queen's speech on 3rd December 2008.

One consequence is for the family of Azelle Rodney, shot seven times by police in North London in April 2005. The issue of operationally-sensitive police evidence led to the coroner announcing that he could not hold an inquest until he could hear the sensitive material redacted by the Metropolitan Police in this case.

An amendment to the Regulation of Investigatory Powers Act (RIPA) 2000 was proposed in the Lords, to allow police surveillance evidence to be heard by the jury, family and their representatives in certain cases to be held before a High Court judge acting as a coroner. This was then further amended by the Government in late November and was finally defeated by peers, so it remains to be seen what proposals the coroners and justice bill will include.

It has emerged that in another case, the shooting of Terry Nicholas by Metropolitan Police officers in 2007, the coroner has said his inquest also cannot proceed because of problems related to how sensitive information is dealt with. INQUEST is working with parliamentarians and lawyers representing the families of Azelle Rodney and Terry Nicholas to try and find some resolution to this issue so that both inquests can go ahead.

Child restraint techniques abolished but government continues to stall on Restraint Review

In another significant victory for INQUEST and child rights campaigners, the Court of Appeal abolished as 'unlawful' the restraint rules which allowed children in custody to be restrained for reasons of 'good order and discipline'.

However, the Government again delayed publication of the review of restraint in juvenile secure settings until December. INQUEST, the NSPCC and the Children's Rights Alliance for England (CRAE) urged the Government to publish the report of the review to allow concerned organisations and the mothers of Adam Rickwood and Gareth Myatt the opportunity for consultation: the very things criticised by the Court of Appeal judgment. This request was refused. The Government has to date also failed to meet the families prior to publication of the review.

INQUEST's concerns about child deaths continue to be taken up at senior political levels with, most recently, the Commissioner for Human Rights of the Council of Europe highlighting the issue, and also the UN Committee for the Rights of the Child in their UK report.

On the 8th annual protest march against death in custody, in prisons and mental health institutions by the United Families and Friends Campaign (UFFC) in London in October.

Picture: Jess Hurd / reportdigital.co.uk

European Committee for the Prevention of Torture (CPT)

INQUEST made a detailed submission to the CPT and met them on their recent visit to the UK, to discuss issues arising from our casework on deaths in custody. We also met child rights groups to discuss specific issues of concern relating to child deaths in penal custody.

Evaluating the Independent Police Complaints Commission

INQUEST made a submission to the Independent Police Complaints Commission's consultation on how far the IPCC was succeeding against its original aims and on its new proposals for improving the way local police forces deal with the majority of complaints, excluding deaths and serious injuries.

Our submission raised our ongoing concerns about the treatment of families by the IPCC and on the quality of the decision making in their reports. We also contributed to a seminar attended by the then-Policing Minister Tony McNulty and the then- Metropolitan Police Commissioner Sir Ian Blair, among others, where we raised concerns that a review of how deaths and serious injuries are investigated was needed. This is now receiving serious consideration from the IPCC.

A plea for help

Without INQUEST's active and sustained campaigning, controversial proposals like those for 'secret' inquests would have crept into law – and as we note above, are still likely to be included in some form as part of the forthcoming coroners and justice bill 2009.

Every donation, no matter how small, each book purchase, every subscription to *Inquest Law* magazine, or membership of the INQUEST Lawyers Group, will make a significant difference to our work. Please visit *www.inquest.org.uk* for more information. ■

SLOUGH OF DESPAIR

A recent ruling is not good news for lawyers seeking to help asylum seekers battle for their rights in Britain, argues **Angus King**

Since the coming into force of the Immigration and Asylum Act 1996 (the 1996 Act) just over 10 years ago, asylum support has been the subject of constant litigation between a state seeking to reduce the rights of asylum seekers and lawyers endeavouring to resist that reduction.

The recent case of *M v Slough Borough Council [2008] UKHL 52* is the latest round in the battle and the decision is not good news for asylum seekers.

Before the passage of the 1996 Act, virtually all asylum seekers had the same rights to welfare benefits and public housing as British citizens.

Responding to a largely tabloid agenda, the 1996 Act withheld rights from those asylum seekers who had not made applications on entry into the UK. The basis of this prohibition was the questionable assumption that applications made on entry are more likely to be genuine.

Forbidden from working, such applicants who could not rely on the charity of friends faced the choice of destitution or return to the country from which they had fled.

The 1996 Act was challenged in the courts shortly after it came into force. In *R v Hammersmith and Fulham London Borough Council, Ex parte M (1998) 30 HLR 10, CA* (commonly known as MPAX), three destitute asylum seekers argued that in the absence of support from any other source the council had a duty to provide accommodation under section 21 of the National Assistance Act 1948 (Section 21).

Section 21 of the 1948 Act is a measure of last resort. It imposes on councils the obligation to provide support and assistance (including if necessary the provision of accommodation) to those 'in need of care and attention not otherwise available to them'.

As the date indicates, Section 21 was one of the foundation stones of the welfare state. However by the time of MPAX, it had fallen into disuse superseded by other social welfare legislation.

In MPAX, the claimants argued that, barred from all other forms of support and facing starvation and street homelessness, they would soon reach a condition where the Section 21 threshold for care and attention would be passed and in those circumstances the 1948 Act compelled the local authority to help them. The Court of Appeal agreed.

The practical consequence of MPAX was to undermine the policy of forced destitution and transfer the responsibility of support for destitute asylum seekers from central Government to local authorities.

London local authorities in particular perceived this to be an unreasonable burden on their resources. The Government responded to this lobbying by the creation in the Immigration and Asylum Act 1999 (the 1999 Act) of the National Asylum Support Service (NASS).

The 1999 Act prohibited all applicants with unresolved asylum claims from benefits and housing (including those who had made their applications at port) and compelled them to seek support from NASS.

Asylum seekers were compelled to take accommodation outside London and the South East or be destitute. Only in the most restricted circumstances was accommodation provided in London or the South East, and as the policy was rolled out these exceptions became even tighter.

Picture: Jess Hurd / reportdigital.co.uk

Tens of thousands of asylum seekers, many of whom had fled trauma and persecution, were moved to areas of major social deprivation where they faced hostility and even violence. A report commissioned from Oxford Brooks University by the Home Office in 2002 (but only released in 2007 after a Freedom of Information request by the Liberal Democrats) warned that in the areas to which many asylum seekers had been dispersed there was: 'a worrying level of spontaneous racial harassment and racial attacks. The procurement of housing in the poorest areas polarises entrenched views held by the host community against the incomers' (quoted in *The Independent*, 16th March 2007).

Although dispersal was the main focus of the 1999 Act, it did not repeal Section 21, but amended it to restrict its application to those whose need for care and attention did not arise solely from destitution.

The decision of the House of Lords in *R (Westminster City Council) v National Asylum Support Service [2002] 1 WLR 2956, HL*, created a further distinction between the 'able bodied' and the 'infirm' asylum seeker: the latter being the responsibility of social services and the former the responsibility of NASS.

Successful Section 21 applicants in the South East remained the responsibility of social services departments in that region. NASS applicants were almost all dispersed.

Local authorities in the South East resented even this residual obligation to support destitute asylum seekers and litigated hard against it.

The meaning of the phrase 'in need of care and attention not otherwise available' - the gateway condition for support - has been at the centre of this litigation and it was this issue that was the central question addressed in *M v Slough London Borough Council*.

In the time between *Westminster v NASS* and the House of Lords' decision in *M v Slough*, the courts had given a fairly generous interpretation to the words and it could extend to 'the provision of shelter, warmth, food and other basic necessities' [*2007, LGR 225*]. This approach was not followed by the House of Lords.

The applicant in *M v Slough* was a Zimbabwean asylum seeker. He was HIV positive but had responded well to treatment and was well. It seemed that he would continue to be in health as long as his treatment continued. His only non-medical need (apart from for support and accommodation) was for a fridge for his medicines.

The local authority argued that his real need was not for care and attention but was for medical treatment (which could be supplied by the NHS and was therefore otherwise available) and for accommodation and support (which could be provided by NASS).

The House of Lords agreed. It held that the meaning of 'in need of care and attention' was that the applicant must need 'looking after', which was defined as 'doing something for the person being cared for which he cannot or should not be expected to do for himself: it might be household tasks which an old person can no longer perform or can only perform with great difficulty; it might be protection from risks which a mentally disabled person cannot perceive; it might be personal care, such as feeding, washing or toileting'.

At a stroke the decision removed a large number of applicants from eligibility for help under Section 21 and many social services departments are now withdrawing support from all but the most ill. Anecdotal evidence suggests that for obvious reasons, the asymptomatic HIV positive have borne the brunt of this.

Applicants no longer entitled to Section 21 support may be entitled to NASS support. Those in the South East will mostly be dispersed.

Many of them have been forced into long dependence on social services support because of inordinate delays in decision making by the Home Office. They now face separation from family and friends, and isolation and risk in their new communities. If granted status many will not be able to return because of the local connection rules for local authority housing.

The decision has therefore boosted the policy of dispersal. It is difficult to see for what gain as there seems little convincing evidence that the policy has brought large scale savings to the taxpayer.

Neither will it bring an end to litigation about Section 21. It did not deal with the question of those who have a need for care and attention as a result of mental rather than physical problems. Neither did it address the situation of non-asylum seekers barred from mainstream support by their status. Future litigation is inevitable and whether that litigation will diminish the current misery of asylum seekers and other persons subject to immigration control remains to be seen.

● Angus King is a solicitor specialising in housing and community care at Cambridge House Law Centre

59-CU

2009 marks the fiftieth anniversary of the Cuban Revolution. **Bernard Regan** looks at the last 50 years, notes the enormous successes of the modern Cuba and the pressures it has faced and still endures...

In 1959 after a long period of sustained struggle across the whole of the island of Cuba in the mountains of the Sierra Maestra and in cities like Santiago and Havana, the reactionary and bloody dictatorship of Fulgencio Batista was ousted.

Batista, who came to power following a coup in 1952, had the backing of the United States president, Harry Truman. He subsequently became president in 1954 in an election in which he was the only 'legal' candidate. A friend of mafia boss Meyer Lansky he ran the country for the benefit of the wealthy few. Under Batista life expectancy was low (60 years) and infant mortality rates stood high at 60 per 1,000 live births. There were 6,000 doctors (8 per 10,000 people), overwhelmingly based in the cities. Illiteracy was widespread.

For the people of Cuba, the ending of the corrupt and brutal Batista regime saw the introduction of dramatic changes to this developing country which have brought benefits which challenge those of far more developed nations across the world. In Cuba today for example there are 70,594 doctors equivalent to 6.3 per 1,000 members of the population. In the United Kingdom the equivalent figure is 2.3 per 1,000. Indeed Cuba's statistics in many fields bare comparison with the United Kingdom. Infant mortality in Cuba is 5.3 per 1,000 live births compared to 5.5 in the UK. Family doctor to patient ratios are 1 to 333 in Cuba compared to 1 to 1,822 in the UK. No wonder that the Cuban health service has been praised by the World Health Organisation as a model for others.

These are staggering achievements by any measure but the real comparisons for the island should of course be made with other Latin American and developing countries where the gulf is very obvious to see.

In the fields of education Cuba is recognised internationally as having an outstanding system praised by UNESCO as a model for de-

Cuba's exemplary education system has gained international recognition.

veloped countries as well developing ones to emulate. Cuba's programme for eradicating illiteracy called "¡Yo Sí puedo!" is now being used in many other countries like Venezuela but is also being put to use in developed countries like Spain and New Zealand.

Of course Cuba hasn't attained these levels by accident. The gains in health and education have resulted from deliberate choices by the Cuban people. What adds to their significance however is not just that they are viewed as crucial within Cuba but that Cuba itself has shared these gains with others. The Cuban view of solidarity is not that you give of what you have left but rather that you share what you have. In that spirit this year alone 36,500 Cuban medical practitioners will be working in 81 countries across the globe treating patients. Since the early 1960s Cuban medical workers have treated over 85 million patients in over 100 countries and around 615,000 lives have been saved by their interventions.

When Pakistan suffered the devastating earthquake of 8th October 2005, Cuba immediately sent a medical team of 200 doctors which grew to 2,260 medics (including 1,400 doctors) and treated 1,043,125 patients. A similar offer to send medical teams to the United States to help in the wake of the devastation caused by Hurricane Katrina in 2005, was rejected by President Bush.

These achievements have taken place in the teeth of the most bitter blockades carried out by successive United States administrations. Legislation enacted in the United States not only prohibits any form of business transaction between US firms and Cuba, but also bans trade by third party countries. This dimension of extra-territoriality has resulted in, for example, fines being imposed on 77 companies in 2004, including two Swiss Banks. In April 2008 it was revealed that Barclays Bank is under investigation in the United States whilst at the same time it has asked two London-based Cuban concerns, Havana International Bank and travel organisation Cubanacam, to close their accounts with the bank.

It is estimated that this cost the Cuban economy in excess of four billion dollars in 2007 alone, and in total around $86 billion since the blockade's inauguration in 1962. These would be significant sums in any budget but when judged against the context of a country that is developing its economy, this is absolutely brutal. Whilst the costs of goods are increased because of the need to resort to circuitous means to obtain even basic commodities, there is a toll of human suffering that results from this action. Children being treated for cancer have been denied basic pain relieving medicines because of these policies.

Of course the United States administrations have not limited their interventions against Cuba to an economic blockade. In 1961 they underwrote an attempted invasion ▶

BA-09

at Playa Giron (Bay of Pigs) which was repelled but not without loss of life. Over the succeeding years United States administrations have backed myriads of overt and covert assaults, led by terrorists linked to bodies like the Cuban American National Foundation (CANF), which have resulted in over 3,400 Cubans being killed and thousands more injured. CANF, which touts itself as a non-violent body, is in fact the spiritual home of the terrorists who have initiated the attacks causing the deaths detailed above. Some of the evidence for this was provided by Luis Posada Carriles, a self-confessed terrorist linked by declassified CIA and FBI papers to the 1976 downing of the Cubana airlines flight which killed 73 people. It is the height of irony that, in the same moment that the Bush administration claims to be leading a 'war against terror', the United States is itself harbouring Luis Posada Carriles who proudly flaunts his terrorist credentials. For Bush however Posada Carriles cannot be a terrorist because his actions are directed against Cuba.

Throughout this time Cuba has not undertaken any overt or covert actions against the United States. Cuba has however taken measures to protect itself from the machinations of groups like CANF by undertaking counter-terrorist surveillance measures; a fact it shared with the United States administration. Despite providing the CIA and the FBI with this information, five Cubans were arrested and were given sentences ranging from 15 years to life sentences (see box on the Miami 5 below). Their trial, or rather mistrial, its conduct and outcome, are all under challenge.

On 1st January 2009 the Cuban people celebrated 50 years of the Cuban Revolution. A span of time which has seen their lives transformed by their own efforts against colossal odds. There is much that they want still to change – for example to improve their transport system, housing and to keep the price of food in check as pressures from the world economic crisis ratchet up the price of imports. New economic relations with Venezuela and other Latin American countries as well as those with China and Russia may help in this. Whatever the future, the Cuban people and the Cuban people alone have the right to determine their own economic, social and political path, free from economic blockades and intimidation. It remains to be seen what will be the attitude of President Obama but it is not possible to be too sanguine about this. The political aides whom he has surrounded himself with suggest a continuity of the existing Bush administration policies towards Cuba. Cuba for its part has said that it is fully prepared to talk to the new administration. However it is clear that this will not be fruitful unless it is based on respect for Cuban sovereignty and a recognition that it is the United States administration that is going to have to make the changes.

This year, alongside the Cuban people, we should all celebrate the achievements of fifty years of the Cuban Revolution and make a commitment that we will work to ensure that they are the sole arbiters of their own future.

Bernard Regan is secretary of the Cuba Solidarity Campaign in the UK

CUBA SOLIDARITY CAMPAIGN

The Cuba Solidarity Campaign works in the UK to raise awareness of the illegal US economic blockade of Cuba and defends the Cuban people's right to self-determination.

CSC organises public events, study tours and work brigades to Cuba, lobbies MPs and the British government, and provides information explaining the reality of the situation in Cuba which is rarely reported in the media.

CSC is non-party political, not-for-profit organisation that depends entirely upon subscriptions, events, sales and donations.

Through our national campaigning work and network of local groups we have achieved support for Cuba from over 200 MPs, 25 national trade unions, and thousands of individuals and community groups.

Now more than ever, support for Cuba is needed. Progressives should join CSC because not only is Cuba a progressive country, but it is also an independent country that should be defended against what is in effect imperialist aggression. In terms of healthcare, education, culture and many other areas, Cuba is proving that another world is possible. 2009 marks the 50th anniversary of the Cuban revolution. Now is the time to support and defend the achievements of Cuba over the course of the past five decades. For more information please go to: *www.cuba-solidarity.org.uk* ■

THE MIAMI FIVE – TEN YEARS ON

Since 1959, almost 3,500 Cubans have been killed as a result of violent attacks from right-wing paramilitary groups, including 73 people killed when a Cuban airline was blown up in 1976.

The Miami Five are Cuban trade unionists arrested by the FBI in 1998 while trying to gather information on Miami-based groups responsible for terrorist attacks against the Cuban people.

Following a bombing campaign against Cuba in the mid 1990s, the Five were sent to infiltrate those organisations responsible and to find out about attacks before they happened. This information was then handed to the US government. But rather than arrest those planning future attacks, the FBI arrested the Five. The Five were convicted in 2001 by a court in Miami – where the Cuban exile community wields enormous political power – on a range of charges including being foreign agents and conspiracy to commit murder. Sentences ranged from between 15 years to double life.

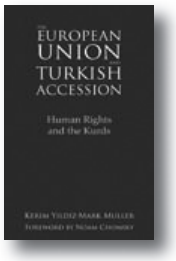
The Cuba Solidarity Campaign and British trade unions believe the US are using these five men and their families to make a political point. The Miami Five were acting to defend their country and have paid an enormous price. They are locked up in prison thousands of miles away from their children and wives.

2008 was the 10th anniversary of the imprisonment of the five men. Two of the wives, Olga Salaneuva and Adrian Perez, have been denied visas to visit their husbands nine times. Human rights organisations have condemned the treatment of the families and Amnesty International has described it as 'contrary both to the standards for the human treatment of prisoners and to a state's obligation to protect family life.'

We need your support to gain family visitation rights and, ultimately, the release of the Miami Five.

- Visit the website at *www.cuba-solidarity.org.uk/miami5* for more information;
- Sign the petition – send your name to *campaigns@cuba-solidarity.org.uk;*
- Watch the video on the case of the Miami Five at *www.cuba-solidarity.org.uk/miami5/5film.htm;*
- Join the Cuba Solidarity Campaign – 0208 800 0155.

Turkey, the EU and the Kurd question



The European Union and Turkish Accession: Human Rights and the Kurds
Kerim Yildiz and Mark Muller.
Foreword by Noam Chomsky
Pluto Press, 2008, xix and 239pp

Turkey, like France, is in its present form a revolutionary republican state. The comparison is quite straight-forward. The French Revolution is just over 200 years old; the national anthem, the *Marseillaise*, sings of blood, treachery and freedom. Public buildings, even the newest, proclaim "Liberté, Egalité, Fraternité"; there is strict separation of state and religion; the French Senat embodies republican virtue just as the House of Lords embodies feudal mythology. And France as a matter of republican principle does not recognise the existence on its territory of any minorities, only of citizens, French men and women, equal before the constitution. As I write, the latest bomb has exploded in Corsica, and Basques and Bretons fight for recognition.

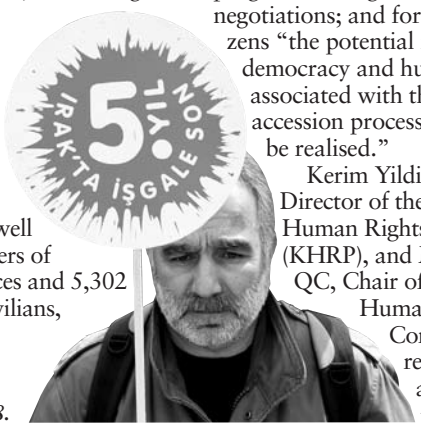
And in Turkey, according to the Constitution, there are only Turks, all equal. In 1922 Mustapha Kemal Ataturk – whose extraordinary profile and piercing eyes are still seen everywhere in Turkey – effectively saved Turkey from the dismemberment threatened by the Treaty of Sèvres, signed in 1920 by the defeated Ottoman Empire. He instituted the most radical changes in Turkey: a republican constitution with strict separation of the State and Islam, emancipation of women, and no recognition of minorities.

From this standpoint Turkey would seem to be an obvious candidate for EU membership.

However, the victims of Turkey's revolutionary republicanism were and are the Kurds. This is no small problem, since Turkish Kurds number at least 15 million, about 23% of Turkey's 69 million population.

The Treaty of Sèvres had envisaged independence for all the Ottoman Empire's minorities, including the Armenians and the Kurds. In 1923 the Treaty of Lausanne, which established the current borders of Turkey, ignored the Kurds' claims to self-determination and recognised the needs to protection of religious minorities only. The Kurdish homeland was divided between Turkey, Iran, Iraq and Syria. Kurds in Iraq number four million, 20% of the population; in Syria one million (9%); and in Iran seven million (15%). Altogether there are at least 27 million Kurds in their homeland, which is a contiguous territory albeit divided by state borders – more than enough for an independent state.

In Turkey, the Kurds rebelled in 1925 and 1937; and during the armed conflict resulting from the PKK-led insurgency from 1984 to 1999, the official count is that 23,638 Kurds died, as well as 5,555 members of the security forces and 5,302 non-Kurdish civilians, while at least three million Kurds were displaced from their homes in the Kurdish villages of south-east Turkey through the state's policy of village destruction and became internal refugees.



An anti-war demonstrator in Istanbul, 2008.

In his foreword to this book, Noam Chomsky reflects on his own recent visit to Turkey, especially Diyarbakir. He left Turkey feeling, to his surprise, optimistic: he was inspired by the courage and dedication of artists, writers, academics, journalists and publishers who continue the struggle for freedom of speech and human rights despite facing severe penalties. At a public meeting in Diyabakir, several students bravely presented him with a Kurdish-English dictionary, in front of TV cameras, risking identification and prosecution. Inside they had written:

"Do you know the pain of not seeing our dreams in our mother tongue?... And we gave 1,600 applications to see our dreams in our mother tongue. And we are being judged "human interference" in order to see our dreams in Kurdish. And we are arrested to see our dreams in Kurdish. Our main goal is to shout our language that has lost its voice for ages."

Although the EU opened formal accession negotiations with Turkey in 2004, the fact that the constitutional, political and cultural problems of the Kurds have not yet been resolved is, as the conclusion to this book notes, "an endemic source of political instability in Turkey." Little progress is being made in the negotiations; and for Turkish citizens "the potential for peace, democracy and human rights associated with the Turkish accession process will fail to be realised."

Kerim Yildiz, Executive Director of the Kurdish Human Rights Project (KHRP), and Mark Muller QC, Chair of the Bar Human Rights Committee, researched and wrote their book in the summer of 2007, and it provides a wealth of information on the complex issues confronting Turkey's application for accession. With a map which shows at a glance why Kurds are sure of the justice of their claim to self-determination, Yildiz and Muller provide the essential background on the plight of the Kurds, followed by an analysis of Turkey's relations with the EU and its fulfilment of the Copenhagen criteria for accession. Two chapters examine the situation with civil and political rights, and cultural and minority rights respectively. Chapter five looks at the history of the conflict in south-east Turkey, of which the KHRP has the most detailed knowledge, and is followed by the international dimension in Iraq, Iran and Syria.

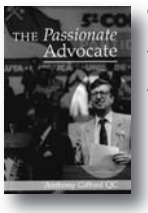
Yildiz and Muller do not focus exclusively on the Kurdish problems facing Turkey. Chapter seven provides a timely analysis of the conflict between secularists, especially the military, and Islamists. Since the book was published, the ruling "moderate Islamist" AKP has narrowly escaped dissolution by the Constitutional Court. There is a further complication. When the Haldane Society delegation visited Turkey earlier this year, Dengir Firat, the Deputy Chairman of the AKP, himself a proud Kurd, insisted that his party in fact represents the great majority of Kurds in south-east Turkey; that 52 of their deputies are Kurds; and that nonetheless there was no conceivable question that Turkey could ratify the Council of Europe's Framework Convention for the Protection of National Minorities or its Languages Charter.

Following a chapter on internal displacement, whose cause is noted above, Yildiz and Muller devote a chapter to the EU's attitude to the Kurds, and how the Kurds view the EU, and finally reflect on the future of Turkey's bid for EU accession. Until the Kurds obtain justice and recognition, Turkish accession will remain bedevilled by conflict and instability.

● **Bill Bowring**

Picture: Jess Hurd / reportdigital.co.uk

Reviews



The Passionate Advocate
Lord Gifford QC.
Wildy, Simmonds and Hill, 2007

Lord Gifford QC is probably best known to readers of *Socialist Lawyer* for his activities over the last four decades as a criminal defence barrister in some of the most high profile cases of recent times: from the trial of the journalist Duncan Campbell in 1978 for possessing information useful to an enemy, to the defence of picketing miners in 1984-5, and the Birmingham Six and Guilford Four appeals. Other readers will recall his part in setting up the first neighbourhood law centre in North Kensington, or his involvement in founding Wellington Street Chambers in 1974, the first chambers outside the Inns. And when I write 'outside the Inns', it is worth being precise. For its first two years, Wellington Street survived in inner city Lambeth. Lord Gifford chaired inquiries into race inequality at Broadwater Farm in 1985, the Liverpool Nine in 1989 and acted for families in the recent Bloody Sunday Inquiry.

The historian EP Thompson once wrote that: 'One must, to survive an unassimilated socialist in this infinitely assimilative culture, put oneself into a school of awkwardness. One must make one's sensibility all knobbly – all knees and elbows of susceptibility and refusal.' Lord Gifford's memoir opens with knees and elbows and they reappear throughout his narrative. They begin with memory of his appearances in the press as Lord Potty (*The Sun*) and Lord Splifford, a reference to his belief in the legalisation of cannabis.

Another knee: Lord Gifford's work for the Committee for Freedom in Mozambique, including booking and filling London's Central Hall when Amilcar Cabral came to speak on behalf of the guerrilla campaign FRELIMO, and actually visiting liberated areas of the country in 1972, a full two years before the revolution in Portugal which finally secured Mozambican independence. Hereditary peers aren't supposed to behave like that.

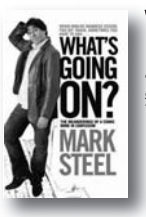
Another well-placed elbow: in 1995, Lord Gifford describes attending an international conference of lawyers in Canada, where he had been asked to speak on the Birmingham Six. Trying to get a feel for the audience in the sessions beforehand, he describes watching another panellist being asked: 'How do you deal with those clients who are real donkeys?' The whole conference laughed. Later, addressing the whole conference, Gifford described the job done by barristers representing the Birmingham Six at the first hearings. They had been competent. They had raised every allegation that their clients had asked. Yet somehow the defendants had got the impression that their representatives never entirely believed in their innocence. Had the barristers gone back to chambers and asked themselves, 'how do we deal with these donkeys?' The conference was not amused. A point had been successfully made.

Not all the book is knees and elbows. Lord Gifford speaks warmly of his admiration for the work of Michael Mansfield, Helena Kennedy and Richard Harvey, and many others besides, and he has kind words for the activities of the Haldane Society.

But the sharpest implied rebuke to the way in which others of his class and generation have lived was undoubtedly Lord Gifford's decision at the age of 50 to leave Britain and settle permanently in Jamaica. In 1989, he studied for and obtained the Caribbean Legal Education Certificate. In 1990, he was called to the Jamaican Bar, and in 1991 he started a firm, Gifford, Haughton and Thompson in Kingston. Perhaps a third of the book is dedicated to the cases he has taken as an attorney in the Caribbean. Highlights have included the Grand Lido case, the leading case on unfair dismissal in Jamaica, and Lewis and Others, which entrenched the rights of death row inmates to appeal to higher courts. Lord Gifford argues for reparations for slavery and supports moves towards a Caribbean Supreme Court.

His book is a fine testament to a remarkable life.

● **Dave Renton**



What's going on?
Mark Steel, Simon and Shuster, 2008, £12.99

Mark Steel's new book tells of the end of two long-standing relationships; one with his former partner, the second with the Socialist Workers' Party.

I found the part dealing with the end of Mark's personal relationship uncomfortable reading. It felt overly intrusive into the life of a person, his former partner, who has not chosen to live her life in the public eye. Because Mark obviously found this difficult to write about it also lacks his normal sense of humour.

I found the part dealing with the Respect debacle and Mark leaving the SWP much more successful. Some members of the SWP have suggested that Mark has been captured by the world of celebrity, which he spends part of the book criticising, and that as a result he has begun to make his way down that well-trodden path from left to right. That is nonsense. Mark makes blistering attacks on globalisation, war and New Labour in his usual witty and effective way. He clearly remains someone who wants to fight to change the world; he doesn't want to spend his time appearing on celebrity television shows, despite being given opportunities to do so.

What Mark does criticise is

Mchael Fassbender as Bobby Sands in Steve McQueen's film Hunger.

the way that the SWP leadership, at least publicly, went from being uncritical cheerleaders for George Galloway – at a time when he was pretending to be a cat with Rula Lenska and wearing an overly tight red leotard whilst dancing, robotically, with Pete Burns – to treating him as the devil incarnate when he had the temerity to criticise the way that Respect was being organised. The result is that the possibility of building an organisation to the left of the Labour Party is greatly reduced at a time when global capitalism is in crisis, war continues to rage in Afghanistan and Iraq and the Labour Party is so far to the right that its Minister of State for Immigration suggests denying welfare benefits and social housing to immigrants for 10 years.

Mark is feeling the lack of certainty that comes with leaving a revolutionary party. On the strength of this book, his sharpness and wit will continue to be used as weapons in the fight for a better world.

● **John Beckley**

Hunger
film by Steve McQueen, 2008

Steve McQueen, winner of the Turner Prize in 1999, faced an unenviable task when he chose the hunger strikes in the North of Ireland as the subject matter of his directorial debut. His challenge, amongst others, was to convey what happened in a brutally honest yet sensitive manner. Not only did he achieve this, he has also created a work of great cinematic beauty.

One of the most striking aspects of the film is the obvious lack of dialogue coupled with the use of sound. The opening sequence of bin lids being crashed against the ground to warn of British army presence and the following abrupt and deafening silence introduces the film. A 2-3 minute sequence of a man gradually sweeping urine back into the striker's cells and the corresponding rhythmic sound of his brush acts almost as a form of visual and audio rest bite following the brutal scene of prison officers in riot gear assaulting inmates with batons and conducting searches of their mouths with the same gloved hands used to perform anal searches moments earlier.

The single substantial sequence of dialogue takes place between Bobby Sands (played by Michael Fassbender) and Sands' priest, Father Moran (Liam Cunningham) who visits him prior to the start of the hunger strike. It is a spell-binding 17 minute sequence with no cuts and the rhythmic beat of a Beckett play. The priest tries to convince Sands not to go ahead with the strike and Sands responds with his motivations. Moments of seriousness are interspersed with sharp humour; Sands explains that his possession of a copy of the bible comes not from a desire to save his soul but rather a more practical need to use the pages as cigarette papers.

The early characters in the film including a prison guard and another inmate have by now all been displaced by Sands who becomes the focus of the last part of the film. McQueen presents his suffering in an almost clinical manner. It would have been all too easy to brush over the horrors of this physical decay. Equally there is nothing manipulative in the presentation of the images of Sand's bodily sores and protruding ribs. The images should evoke great emotion, yes, but one has the strong feeling they are shown for the purpose of bearing witness. They are testimony of what happened to a human being over 27 years ago under British occupation.

At the film premiere in London, McQueen told his audience that the hunger strikes took place when he was just 11 and had remained imprinted in his memory. When asked why he made the film he explained that he felt a need to make it because of the importance he attached to what had happened.

His attachment to the story of the hunger strikers is apparent. That attachment and his great skill as a director have led to the creation of a piece of art, as one audience member put it, which treats its subject matter with the great dignity it deserves.

● **Marcus Joyce**

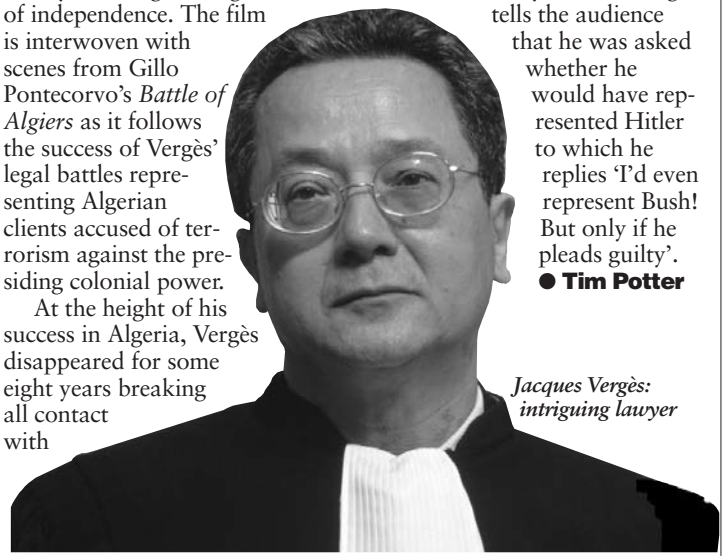
Terror's Advocate
film by Barbet Schroeder, released 2008

This engrossing documentary by Barbet Schroeder follows the life story of lawyer and ardent anti-colonialist Jacques Vergès. Vergès became a lawyer at the age of 30 having fought for France during the Second World War. He dryly notes that the only war injury he ever sustained was cutting himself trying to open a can of sardines upon landing in Marseilles. He travels to Algeria to work as a lawyer during the Algerian war of independence. The film is interwoven with scenes from Gillo Pontecorvo's *Battle of Algiers* as it follows the success of Vergès' legal battles representing Algerian clients accused of terrorism against the presiding colonial power.

At the height of his success in Algeria, Vergès disappeared for some eight years breaking all contact with his new wife and family. Those close to him are only able to speculate as to where he went. Some suggest Palestinian training camps in Libya or Lebanon. Others say that he spent those eight years in Cambodia along side the Khmer Rouge. He re-emerges from his sabbatical to take on clients including Carlos the Jackal and 'The Butcher of Lyon' Klaus Barbie amongst others.

This is an intriguing story about morality, law, anti-colonialism and an individual attempting to relive the highs of his early thirties. Vergès tells the audience that he was asked whether he would have represented Hitler to which he replies 'I'd even represent Bush! But only if he pleads guilty'.

● **Tim Potter**



Jacques Vergès: intriguing lawyer

Haldane Society of Socialist Lawyers

Lectures

Thursday 29 January, 6.30pm–8.30pm
Political protest in Northern Ireland: the Northern Ireland Civil Rights Movement (1968), Bloody Sunday, the Raytheon 9 acquittal Speakers: **Eamonn McCann** (socialist writer and activist, one of the Raytheon 9), **Richard Harvey** (barrister, counsel in the Bloody Sunday Inquiry and for the Raytheon 9)

Thursday 19 February:
Using the Human Rights Act in the civil Courts
Speakers: Louise Christian, solicitor and Liz Davies, barrister

Forthcoming:
Thursday 12 March: **Challenging arms suppliers in the Courts**
Thursday 23 April: **Lawyers who go the extra mile**

All lectures at the College of Law, 14 Store Street, London WC2
Nearest tube Goodge Street. Admission free
CPD points available (£10 to legal practitioners requiring CPD points)
Further information: www.haldane.org

Join

If you would like to join or renew your membership of the Haldane Society, which includes subscription to *Socialist Lawyer* for a year, please fill out the form below and forward with the appropriate membership fee.

Haldane Society of Socialist Lawyers **Membership**

☐ **I would like to join/renew my membership of the Haldane Society**
Rate (tick which one applies): ☐ Students/pupils/trainees/unwaged/outside UK: **£20**
☐ Practising barristers/solicitors/other employed: **£50**
☐ Senior lawyers (15 years post-qualification): **£80**
☐ Trade unions/libraries/commercial organisations: **£100**

Name (caps) .....
Address .....
.....
.....
Postcode .....
Email .....
Tel .....

Standing**Order** please cancel all previous standing orders to the haldane society of socialist lawyers

Please transfer from my account no: .....
Name of Bank.....
Address (of branch).....
To the credit of: Haldane Society of Socialist Lawyers,
Account No 29214008, National Girobank, Bootle,
Merseyside G1R 0AA (sorting code 72 00 05) The sum of £ .....
now and thereafter on the same date each month/year* until cancelled
by me in writing (delete where applicable)
Signed ..... Date.....

Please send this form to: **The Membership Secretary, Haldane Society, PO Box 57055, London EC1P 1AF**