Socialist Lawyer

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Haldane Society of Socialist Lawyers

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

Socialist Lawyer

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22nd June 2016: one of many vigils across the UK in memory of the murdered Labour MP Jo Cox. Trafalgar Square, London.

Number 74, October 2016

Throwing out red meat – and human rights

I write this message from the chair on the final day of the Conservative Party conference. As is customary the leader's speech is the set piece event of the closing day. Theresa May took the stage to the Rolling Stones and addressed many topics in her address to her party, including tax evasion, state intervention to improve lives, and her barely disguised delight at Brexit. Yet one clip has dominated the coverage: earlier in the week the defence secretary, Michael Fallon, announced that the government will derogate from the Human Rights Act and Convention in future conflicts. May returned to the theme when she said: 'we will never again – in any future conflict – let those activist, left-wing human rights lawyers harangue and harass the bravest of the brave – the men and women of Britain's armed forces'. The hall rose to its feet in ovation; the camera focused on the contented, corpulent face of Michael Fallon, cheeks crimsoned with excitement as May threw red meat to her party.

The reference, of course, was to those lawyers who have taken claims against the Ministry of Defence (MoD) for alleged abuses committed by service personnel overseas. Two law firms – Public Interest Lawyers and Leigh Day – face investigations following referrals to the Solicitors Disciplinary Tribunal by the Solicitors Regulatory Authority over claims of 'improper fees' being paid to an Iraqi agent handling claims.

One would expect that May and Fallon would know better than to say anything that might prejudice future hearings. But Fallon has form in this area, having regularly verbally attacked Public Interest Lawyers in Parliament over the last two years. On the morning of her speech to the conference, May told Sky News that she is 'not a fan' of human rights law. Yet neither she nor Fallon has taken the trouble to acknowledge that the MoD has paid out over £20 million in compensation in 326 cases of abuse by British service personnel. The MoD doesn't scatter bank notes from the rooftops of its Whitehall premises to anyone passing with a grievance, let alone hand over money for 'vexatious claims'. 326 is a significant number of cases.

May and Fallon also forget – or choose to ignore – that many of the claims are brought by British service personnel or their families alleging breaches of their human rights by the very organisations they are working for. Their plan to derogate from human rights obligations in future conflicts cannot extend to breaches of Article 3 (the prohibition against torture) and so may not have the desired effect, but will only harm the troops in whose interests she claims to act.

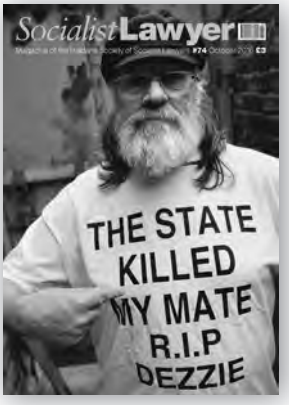
The message, however, is clear: although the last six years of Tory-led cuts it have been masked by arguments for austerity, the prime minister was explicit in her attack on the legal left. Restrictions on judicial review, increased court fees, and the removal from scope of legal aid for social welfare law have all served to damage the work of publicly funded lawyers. And running through each of these measures is a clear and unambiguous attempt to reduce the accountability of government.

That fettering of accountability, tied to the current atmosphere following the EU referendum result, has meant Tories lining up to outdo one another in statements of xenophobia and racism: EU nationals in the UK are pawns in the negotiation process; companies may be required to publish lists of foreign employees (to what end is not stated but the effect is clear); and blaming 'low skilled immigration' for the insecurities of modern day employment.

But as this issue of *Socialist Lawyer* illustrates those activist, left-wing, human rights lawyers are undeterred. We have a report from Calais where members of the Haldane executive committee have, in recent months, been on the ground assisting as best they can with the unyielding crisis. We also feature a piece concerning the shameful deceit that branches of Byron Burgers perpetrated on many of their workforces, and we focus on the work of the Anti-Raids Network doing what it can to oppose dehumanising, terrifying and violent raids.

The UN basic principles on the role of lawyers require governments to ensure that lawyers can work free from intimidation and interference. It might be difficult to credibly argue that the prime minister's statements offend against that principle, but the cumulative effect of her visible disdain and the manner in which her cheerleaders in the press are emboldened by the same rhetoric carries that risk. We must not be deterred from the work that we know is right and must be done.

Russell Fraser, chair of the Haldane Society of Socialist Lawyers



Amongst the chaos we do what we can

Wendy Pettifer on her experience working as a volunteer lawyer in Calais, France

When I arrived in The Jungle refugee camp in May 2016 the estimate of occupants in the camp was 7,000. By the beginning of August 2016 it was 9,000, about 800 of whom were children.

On my first morning in the Jungle as a *pro bono* lawyer there was a thick mist between the motorway and the arid land where the south camp used to be before it was destroyed in February, which had made about 2,000 migrants homeless. I realised, only after seeing small phantom figures with rags around their heads, that the mist was tear gas. The Compagnies Républicaines de Sécurité (CRS) riot squad is a permanent presence.

Someone helped me find the Calais Legal Shelter: a small caravan with two tables and six chairs deep in the Afghan section of the camp. I would spend three hours here every day for three months as part of a mainly French team advising on all aspects of asylum law, and take particular responsibility for requests from children as young as eight to join close family members in the UK.

Our centre has a French and an English lawyer supervising mainly French law students. Like the camp itself it's chaotic: we have no internet, no office, no copying facilities. Yet in the three months I was there, we helped 14 minors out of the many dangers of the camp, to join their families in the UK.

The camp is a violent place. Different nationalities live cheek by jowl in horrendous conditions and fights erupt. At the end of May a massive brawl resulted in 40 hospitalisations and many tents and shelters were razed to the ground. Fires are a constant hazard. Children fall asleep beside lighted candles and there are arson attacks – possibly at the behest of the state. Our previous shelter was destroyed by fire in February 2016.

There are many deaths; mostly when people try to board lorries, but also in fights and fires. In the week of 22nd July three people died – including an 18-year-old Eritrean girl who was run over by the lorry she was trying to board. The French authorities refused to allow us to have a vigil in town.

The authorities do not want the camp. The right-wing mayor of Calais, Natacha Bouchard, declared after the Brexit vote that she was determined to renege on the French/English Le Touquet agreement, which allows the UK to externalise its border in Calais. So far she has failed to get the necessary backing from President Hollande so the camp struggles on, its occupants enduring ever more brutal harassment from the French state.

On 22nd July the CRS raided restaurants and 13 of them, including the Kids Café, were closed on the grounds of failure to pay tax and meet health and safety food standards. On 12th August the Tribunal Administratif at Lille declared the shop closures illegal and the Kids Cafe immediately reopened. The constant

Police fire tear gas into the Jungle refugee camp while 50,000 marched through London

June

'Obama said in his speech that Muslims are our sports heroes. What sport is he talking about?' US Republican presidential candidate Donald Trump.

'Muhammad Ali is dead at 74. A truly great champion and a great guy.' Trump again

7: The European Court of Justice found that France was wrong for imprisoning a woman for using false documents to enter the country. The Court held that the European Union directive for returning third country nationals without a right to stay in the country requires member states to give the person a chance to return voluntarily before forced removal is imposed.

23: The UK narrowly voted to leave the EU. The vote triggered litigation from a number of different parties challenging the lawfulness of the vote.

July

6: The Chilcot Inquiry's long awaited findings were published. The Report strongly criticised the decision to invade Iraq and found that Tony Blair deliberately exaggerated the threat posed by Saddam Hussein, intelligence was flawed and there was no post-invasion strategy.

Pictures: Jess Hurd / reportdigital.co.uk

in support of refugees, a demonstration totally ignored by the mainstream media.

harassment by French police and state aims to destabilise the camp and deter new arrivals.

The camp is the only refugee camp in the world that is not supported by UNHCR so it is run entirely by French and English NGOs (more than 100 of them). The council of community members tries to mediate between warring factions.

On the east side is the main road to the Jules Ferry centre, the enclosed women's camp and the hospital centre. On the west side is a street with over 100 shops, community centres and restaurants, including the Kids Cafe which provides invaluable support to the 800-plus children on camp. At the bottom of the street are 700 containers, access to which is controlled by fingerprinting. Next to that is the Sudanese hill, the sprawling Afghan community and several mosques.

The main activity in the Jungle is trying. Inhabitants are trying to fulfil the delusion that life in the UK will be better by illegally clambering into the juggernaut lorries trawling down the A16 to the port at night. People are killed and many are injured: broken arms and legs, fingers and toes, lacerated faces and hands from scaling barbed wire fences. Calais hospital has a whole unit dedicated to treating camp occupants. The small boys run after the lorries to try and open the back so the adults can get in. They try from after supper until dawn. People then return to their shelters and sleep until midday. An evening meal is provided at 8pm. This is cooked off-site by two large UK NGOs and delivered in plastic containers in vans (there is a troubling dependency on NGOs). The camp has no rubbish processing, only black rubbish bags, so there is an enormous amount of waste. The poisoning of the huge rat population in July led to the surreal sight of flocks of seagulls feasting off rat corpses.

The children run feral. Over three months I have seen children under 12 turn into adults within a month. There is one tiny school. Children are at constant risk of abuse: hundreds of them sleep in tents and shelters with up to six adult men.

After a UK case known as ZAT the French set up a creaking, unfit-for-purpose system to process the children's requests to join family members in the UK. In 2016 over 50 children have passed to the UK thanks to the efforts of the legal shelter and its UK equivalent, Safe Passage. But this is a tiny percentage. There are currently 127 children in the system awaiting either approval by the Home Office or processing by the French once that approval has been granted. And there's still no system for adult discretionary take charge requests. I am about to return to Calais to bring a 19-year-old man to the UK to join his brother. He's been very ill and the Home Office have approved his request but there is no system in place for adults to actually get to the UK.

The Dubs amendment was included in the Immigration Act 2016 to include the safe transfer of an unspecified number of children to the UK. Not one child from Calais has been transferred under the amendment. It would be useful to lobby your MP in this respect, and also to donate to cabane juridique/legal shelter by standing order. (Credit: Cooperative Bank, Gare de l'est, 42559 00003 4102004152351).

The French must put more resources into processing both children and adults who are legally entitled to join family members in the UK. They should assist those who are not applying for asylum in France. It is only then that *La Jongle* can be humanely dismantled. Until that time I remain humbled by the spirit and generosity of both camp occupants and volunteers and I will continue to work to get children to safety.

6: Two Rwandan Mayors were convicted of crimes against humanity and genocide for their part in the Rwandan Genocide in 1994. They were sentenced to life imprisonment by the French Court.

'I feel rather like the grand wizard of the Ku Klux Klan giving an address to the AGM of Black Lives Matter.' Michael Gove MP, in a speech to the Society of Legal Scholars.

16: Activists, Space Hijackers, won £60,000 in damages from City of London police for false imprisonment, assault and breaches of the Human Rights Act. The activists were charged with impersonating police officers despite wearing costumes that bore little resemblance to the real officers. Their case was dropped two weeks before trail.

19: A review led by MP David Lammy found that the Metropolitan Police may be disproportionately targeting black and ethnic minority youths as gang members. This has resulted them in them being treated more harshly by the courts, prisons and justice system.

The DPP or the ICC: Blair must answer to one or the other

On 6th July 2016 the Chilcot Inquiry published its report on the 2003 invasion of Iraq. The report was far more candid and thorough than many had expected, concluding, in Sir John Chilcot's words, that 'the circumstances under which the UK decided there was a legal basis for war were far from satisfactory' and in relation to alleged weapons of mass destruction: "The judgments about Iraq's capabilities […] were presented with a certainty that was not justified".

Chilcot explored the legality of the invasion in some detail (although, of course, the report is not a judgment or legal ruling). The report rejects the contention that United Nations member states can unilaterally enforce Security Council decisions (in this case Resolution 1441): actions under the auspices of the UN must be explicitly authorised by the UN, and the way in which Blair and Bush prosecuted their war leapfrogged steps that the Resolution had set out. That was not, however, the legal advice that then Attorney General Lord Goldsmith ultimately gave Blair's cabinet in a process that Chilcot described as 'perfunctory'.

This is the closest that Tony Blair and members of his government have come to legal accountability for their roles in one of the most misconceived, harmful and aggressive international events in recent history.

Could Blair be prosecuted for crimes against humanity or war crimes? A number of political leaders from the Balkans, Rwanda, the DRC and other African countries have been prosecuted and convicted by international tribunals. Examples include Charles Taylor (ex-President of Sierra Leone) Radovan Karadžić (ex-President of Republika Srpška) and Jean-Pierre Bemba (ex-Vice President DRC). The principle of joint criminal enterprise can help to establish liability for political oversight of military crimes.

However, article 17 of the Rome Statute (the 'complementarity clause') provides that cases are inadmissible 'where the case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution'. (The crime of aggression is a non-starter at the International Criminal Court as it doesn't come into effect until 2017 and may not be applied retroactively).

What does complementarity mean in practice? Put simply, in light of Chilcot's findings it is the unavoidable responsibility of the Director of Public Prosecutions to investigate whether there is evidence that Tony Blair (and others with whom he may have acted in concert) committed any criminal offence.

This cannot be dismissed as the radical opinion of a group of left-wing lawyers, it is what a former DPP has already stated in effect. On 7th July 2016; Lord Ken Macdonald, appointed DPP in 2003 by Blair's Attorney General Lord Goldsmith, told *The Times* that Blair had behaved in a 'disreputable way to win tainted legal backing for massive armed

Picture: Jess Hurd / reportdigital.co.uk

Could Tony Blair be prosecuted for crimes against humanity or war crimes?

July

'I hope it's not necessary to go to war to boost our productivity.' Treasury Commercial Secretary Lord Jim O'Neill

21: Just for Kids has brought a judicial review challenge against the Metropolitan Police and local councils for detaining children under 18 in overnight custody.

£12m
The amount the Israeli government has approved as extra funding for illegal settlements in the West Bank.

53 Percentage of Palestinians in East Jerusalem banned by law from connection to the city's water network.

21: Liz Truss was sworn in as Lord Chancellor. Although she is the first woman in her position, her appointment was received with criticism given her lack of experience in law and in senior ministerial positions.

conflict' and it 'seemed very likely' that Blair had 'roundly abused the trust placed in him by the British public'.

In the opinion of the former DPP, Blair's conduct could amount to the crime of misconduct in public office: acting in a way that is 'calculated to injure the public interest so as to call for condemnation and punishment' (*Dytham* [1979] QB 722), which carries a maximum sentence of life imprisonment.

The public is entitled to know the current DPP's opinion. She has been presented with substantial evidence, a 'damning indictment' in the words of more than one article about Chilcot. The report sets out with forensic precision the particulars of Blair's offences. The DPP is required by statute to exercise her powers on behalf of the community (not on behalf of the legislature or the executive); to investigate evidence of criminality; to determine whether the evidence is reliable, credible and can be used in court, and whether a prosecution is required in the public interest.

Calls for a formal indictment are now more difficult than ever to ignore. Misconduct in public office is not a matter of MPs fiddling their expenses. This is evidence that a British Prime Minister may have committed crimes against humanity. If that is not enough to demand investigation by the Director of Public Prosecutions, then jurisdiction necessarily passes to the prosecutor of the International Criminal Court.

Richard Harvey (former counsel at the ICTY in cases including Prosecutor v Radovan Karadžić) and **Nick Bano**

29: The Extraordinary African Chambers directed that Hissene Habre pay reparations after he was found guilty on 30th May 2016 for crimes against humanity, war crimes and torture.

Young Legal Aid Lawyers

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

What will regime change mean?

Since the last edition of *Socialist Lawyer* the country has voted to leave the European Union, and a new prime minister has been appointed after an ultimately uncontested Conservative leadership election. Over the summer the Labour Party was engaged in a leadership contest of its own, in which the incumbent Jeremy Corbyn won by an increased majority.

Following her elevation to the top of the Tory tree, Theresa May appointed a new team at the Ministry of Justice, with Liz Truss succeeding Michael Gove to become the first female Lord Chancellor (at least in modern history) and the third successive non-lawyer to hold the post.

In common with her post-Constitutional Reform Act 2005 predecessors, Truss combines the 'legal' Lord Chancellor position – including its sworn oath to respect the rule of law and uphold the independence of the judiciary – with the 'political' function of Secretary of State for Justice. The role of Minister of State for Courts and Justice, which includes responsibility for legal aid, has passed from former solicitor Shailesh Vara to former Solicitor General (and barrister) Oliver Heald QC. We at Young Legal Aid Lawyers will seek to meet with Heald in the near future to discuss the government's policy on access to justice in the hope that the new administration might herald a shift in approach from the austerity economics of the Cameron-Osborne years.

Before dismissing that as hopelessly optimistic, it is worth remembering that it was Theresa May who, as Home Secretary, decided that the families of the 96 victims of the Hillsborough disaster should be entitled to publicly funded legal representation at the recent inquest. Commentators have noted the emphasis placed on social justice in May's first speech as Prime Minister and her vision of 'a country that works not for a privileged few but for every one of us'. It has been said that passages of the speech could have been delivered by Ed Miliband or Jeremy Corbyn, although of course May's government will be judged by its actions rather than her words.

Picture: Jess Hurd / reportdigital.co.uk

Liz Truss MP – the first female Lord Chancellor.

Together with Legal Aid Practitioners Group and Legal Action Group, YLAL sent an open letter to the Prime Minister – published in *The Guardian* – referring to May's support for the Hillsborough victims' families and her maiden speech from outside 10 Downing Street, calling on the government to fulfil its commitment to review the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('LASPO') at the earliest opportunity. Our letter referred to the latest statistics released by the Legal Aid Agency, demonstrating that the number of civil cases funded by legal aid fell from 724,243 in the year before LASPO to just 258,460 last year, concluding that 'this is a picture of justice denied; of ordinary people cut off from the justice system'.

We also expressed our regret that legal aid is not automatically provided to all families at inquests where a public authority has been involved in a death, and we support the recent recommendation of the outgoing Chief Coroner, HHJ Peter Thornton QC, that the Lord Chancellor should consider amending the exceptional funding guidance so as to provide legal aid for representation for families at inquests where the state is funding representation for another party. If an inquest is sufficiently important for the police, the prison service, the NHS or a local authority to instruct lawyers, then justice surely demands that the deceased's family should have lawyers too.

During her much-criticised first appearance before the Justice Select Committee at the beginning of September, the new Lord Chancellor was asked about the promised review of LASPO, which is due to be carried out between three and five years after the implementation of the legal aid cuts in April 2013. Truss's response was both uninspiring and unenlightening, with no date for the review and the familiar government refrain that 'in principle we do have a system which is generously funded'. In principle, everyone should have effective access to justice. In practice, they do not.

During the parliamentary summer recess we were delighted to have the opportunity to meet with Richard Burgon, **>>>**

Young Legal Aid Lawyers

>>> the recently appointed shadow justice secretary. Burgon is a self-described socialist and was a trade union lawyer before being elected as MP for Leeds East in last year's general election. As Haldane members might expect, it was a productive meeting with a politician who understands the importance of legal aid. We will also continue to engage with Labour as the Bach Commission reviews legal aid policy for the party. The Commission was originally due to report by the party conference in September, but we understand that its work will not be completed until next year.

As well as campaigning for an effective and sustainable legal aid system, one of YLAL's core objectives is to promote social mobility and diversity within the legal aid sector. We believe not only in access to justice for all, but access to the legal profession irrespective of wealth or background. To this end, we have previously produced two reports on the state of social mobility and access to the profession, covering issues such as debt, salaries and unpaid work experience with a combination of quantitative data and anecdotal evidence, in 2010 and 2013.

Research for our last report – *One Step Forward, Two Steps Back* – was conducted on the eve of LASPO coming into force and, as such, we believe the time is right to prepare an updated report to assess the impact of the cuts to legal aid on social mobility and diversity. We will shortly be carrying out a survey of our members and would encourage all young and aspiring legal aid lawyers (up to ten years' PQE or call) to contribute in order to ensure our findings are as robust as possible. We hope to publish an updated report in early 2017 and to use it as a catalyst for positive change.

Oliver Carter, co-chair of Young Legal Aid Lawyers

Picture: Jess Hurd / reportdigital.co.uk

Richard Burgon (standing), Labour's shadow Justice Secretary.

Greater Manchester Law Centre Steering Group

Going against the grain: a new law centre in Greater Manchester

Former Court of Appeal Judge Sir Henry Brooke has published a compelling series on his blog (*Musings, Memories, Miscellanea*) called 'Seven Stories of Injustice'. Unsurprisingly, they focus on the narratives of those whose access to justice has been compromised by the ideological legal aid reforms since 2008 (legal aid was introduced after the UK economy had been ravaged by the Second World War). It illustrates the importance of legal aid (which is so often taken for granted), the consistent popular public support for it, and as the lawyers whose commitment to social justice is necessarily connected to the areas of law historically serviced by public money.

Law centres, which revolutionised the ability of disenfranchised, excluded and marginalised communities to access legal help, have similarly taken a hit. As spaces that were not just economically but also physically accessible to their communities, they became sites of political organisation. Read the famous cases of the Okolo family or Anwar Ditta and there are law centres behind them.

Greater Manchester – an area of 2.7 million people – once had nine law centres but now has just two. Huge parts of the region have been reduced to advice deserts. A recent survey found that 90 per cent of people with welfare benefits issues were not in receipt of help.

This is what makes Greater Manchester Law Centre (steering group) so unusual. Law centres are closing down, not opening. To paraphrase one of its early supporters, Mark George QC, 'you are all crazy'. GMLC seeks to provide high quality, free and independent legal advice and representation and has done this by adopting a strategy that honours the tradition of the law centre movement, while also developing innovative ways of securing access to justice.

Like its predecessors, it has situated itself within the community; a point stressed by

August

4: US State Governor Jay Nixon was appointed an individual criminal case by Missouri's lead public defender. The case was assigned under a law which allows the public defender to attribute cases to any lawyer in the state where the public defenders office cannot represent them. He did so because Jay Nixon is blamed for making cuts to the public defence.

15: Sports Direct agreed a deal with UNITE and HMRC to pay warehouse workers approximately £1 million in back pay after an investigation showed that they had been paid less than the national minimum wage.

22: The Government announced plans to create specialist units in prisons to isolate prisoners convicted of terrorism offences.

22: Justice Secretary Liz Truss has confirmed that plans for the UK Bill of Human Rights will go ahead. She could not however set out a timeline of when it was expected to be implemented.

its patron Michael Mansfield QC. Two consultation meetings, held in areas of inner city Manchester, saw unanimous support for opening a new law centre. As a result, a fantastic newly renovated building was found in the historic Moss Side area. As well as providing legal advice and representation, it has also committed to embedding itself into community projects and campaigns and ensuring that people in the area are an essential, everyday part of the organisation.

The developing law centre has also looked forward. Working closely with Avon and Bristol Law centre, GMLC has adopted and developed Bristol's immensely successful student led-project (which provides free legal representation challenging work capability assessments), which will be rolled out this year at the Manchester Law School. The law centre is also working with partners to incorporate their *pro bono* commitments in the provision of its free legal services. Indeed, just last week GMLC rolled out its first free advice and representation service, challenging negative Employment Support Allowance decisions. Another of the many innovations that GMLC has been carefully putting together is the 'lawyer fund generation scheme', which invites lawyers, primarily from private practice (so as not to burden legal aid firms) to donate a monthly standing order equivalent to 0.5 per cent of their earnings. This is ringfenced for services and while the contribution is modest, its impact could be significant.

All of this has been achieved with collective hard work and support. Indeed, the law centre has the backing of judges (including Sir Henry Brooke), peers, firms, chambers, third sector organisations, trade unions, universities and most importantly, the community. It is proud to boast not just Michael Mansfield QC as a patron but also John Hendy QC, Lord Bach, Dr Erinma Bell, Robert Lizar and the critically acclaimed actress Maxine Peake – and all of this in less than a year. But much work has to be done. Volunteers and supporters have been and will continue to be the backbone of this initiative and so it is incumbent on everyone who is committed to access to justice to make a contribution, whether with their time or money. If people want it, there will be a law centre.

To get involved, visit gmlaw.org.uk or follow @gmlawcentre

Tanzil Chowdhury

Picture: Jess Hurd / reportdigital.co.uk

Black Lives Matter UK took to the streets in July and August 2016, with a series of direct actions, followed by large public rallies in cities across the country. Showing solidarity with the families of Alton Sterling and Philando Castile, who were killed by police in the US, activists shut down major arterial transport links in London (including above, in Tower Hamlets), Birmingham, Nottingham, and Manchester.

September

6: Protests against the first deportation flight to Jamaica in two years which would see many who had been in the UK for decades forcibly removed and separated from their families.

30: The Metropolitan police announced that they will start using spit hoods to protect officers from detained persons across London. This follows strong criticism against the hoods and at least two high profile cases being investigated by he Independent Police Complaints Commission.

'In the face of provocation, the nation must defend itself.' French Prime Minister Manuel Valls. The provocation? Muslim women wearing burkinis on the beaches of France.

31: Public Interest Lawyers closed down following the revocation of its legal aid funding. The firm most recently known for its work in representing Iraqi civilians has a strong history in pursuing unpopular cases with an important public interest – including activists who won claims for being unlawfully spied on by police officers, challenging Lambeth Council's plans for libraries and treatment of prisoners in Serco run prisons.

Pictures: Jess Hurd / reportdigital.co.uk

John McDonnell MP, shadow Chancellor of the Exchequer, delivers his keynote speech at the 'Blacklisting, Bullying and Blowing the Whistle' conference.

Dave Smith from the Blacklist Support Group and co-author of Blacklisted.

'Things like that don't happen here'

'The biggest difficulty we faced with the blacklisting and the undercover police campaigns was that people think we live in a liberal democracy and things like that don't happen here,' said John McDonnell MP, Shadow Chancellor of the Exchequer, in his keynote speech at the opening plenary of the 'Blacklisting, Bullying and Blowing the Whistle' conference at the University of Greenwich, co-hosted by Blacklist Support Group (BSG) and the Work and Employment Research Unit (WERU) in September 2016.

The aim of the conference, which was supported by *New Internationalist* and the Joseph Rowntree Reform Trust, was to expose the hidden underbelly of the modern workplace, where intrusive surveillance of workers is common and victimisation of those prepared to stand up for their rights is widespread (but virtually ignored by the mainstream media). We certainly achieved that, with reports about the conference appearing in the press before, during and after the event.

Speakers included legal experts John Hendy QC, David Renton

September

11: A judicial review is sought after the Crown Prosecution Service decision not to prosecute former MI6 officer Sir Mark Allen for his role in the rendition to Libya of Abdel Hakim Belhaj and his wife Fatima Bouchar, who were kidnapped and flown to one of Muammar Gaddafi's prisons.

12: David Cameron quits as MP. **'It isn't really possible to be a proper backbench MP as a former prime minister.'**

15: The International Criminal Court announced that it will consider environmental crimes under its remit. It stated it is not formally extending its jurisdiction but instead reconsidering existing offences in its remit, for example crimes against humanity.

29: Law Centres Network with support from an alliance of organisations including Inquest, Liberty and Tell Mama has brought a judicial review challenge against the government decision to award the contract to G4S to run a national discrimination helpline. However, permission was refused.

and Declan Owens; trade union leaders such as NUJ General Secretary Michelle Stanistreet and assistant secretaries general Gail Cartmail (UNITE), Roger McKenzie (UNISON) and Amanda Brown (NUT). Some of the UK's leading academics in the field of work and whistleblowing were also in attendance, such as Prof. Sian Moore, Prof. Keith Ewing, Prof. Phil Taylor, Prof. David Lewis, Dr Jack Fawbert and Dr Wim Vandekerckhove.

But it was the inclusion of activists on the panels that gave the conference its unique insight to the realities of the modern workplace and the weekend's unique feel. From Roy Bentham and myself from the Blacklist Support Group, to Eileen Chubb and Dr Minh Alexander among many victimised whistleblowers speaking, as well as Lee Jasper and Suresh Grover representing black and Asian communities suffering under the austerity cuts and because of state surveillance.

The conference also included the premiere of *Blacklisted* – a new documentary by director Tom Wood (via *Reel News*) and the launch of the new edition of *Blacklisted: the secret war between big business and union activists* by myself and Phil Chamberlain, published by *New Internationalist*.

The biggest news story of the weekend and the most memorable session in the conference related to undercover police surveillance of activists. The police spy known as Carlo Neri was accused of inciting anti-racist campaigners to firebomb a charity that he claimed was run by an Italian fascist. This allegation, which had appeared in the *Blacklisted* book, made the national press. 'Andrea', the female activist who was deceived into a long-term relationship with the undercover officer spoke in public for the very first time at the spycops plenary session, which was chaired by the BSG and 'Police Spies Out of our Lives' spokesperson Helen Steel.

Andrea's emotional testimony was the most memorable part of the weekend.

McDonnell told the delegates, 'You tell us what you want a Corbyn Labour government to introduce, and I will make sure it gets discussed at the highest level'. We intend to do just that.

Dave Smith

See you all in Lisbon

Between 10th and 12th November this year we are participating in the international conference, 'On the 50th Anniversary of the ratification of the Covenants on Human Rights of the United Nations (The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights)', organised by our Portuguese colleagues the Portuguese Association of Democratic Jurists, together with ELDH and the International Association of Democratic Lawyers (IADL).

The executive committee of ELDH will be held on Sunday 13th, 10am to 6pm, at the Faculty of Law, University of Lisbon, Portugal Cidade Universitária, with representatives from our member organisations in Basque Country, Belgium, Bulgaria, England, France, Germany, Greece, Russia, Serbia, Spain, Switzerland, The Netherlands, and Turkey.

The core theme of the Lisbon Conference is 'The International Covenants on Human Rights (ICESCR and ICCPR) adopted by the UN on 16th December 1966: their historical meaning; the political and legal understanding and vicissitudes'.

There will be three working commissions on 11th and 12th November. The first will examine the historical context of the Covenants, the importance of these international texts, and the principle of indivisibility of human rights. The second is concerned with human rights and their world-wide expression, some of the substantive rights (the right to work, the right to a sufficient standard of living, social security, health, education, trade-union activity, and so on), the situation of refugees, the problems of world and regional peace, the rights that peoples determine for themselves (economic, social and cultural development). The third commission will look at the struggle(s) for human rights today: women's rights, children's rights, the rights of persons with disabilities, the rights of the elderly, hidden or disguised forms of social exclusion or discrimination; the proposal for an International Court of Human Rights.

On 23rd and 24th September Carlos Orjuela and Wendy Pettifer spoke at the international conference 'Migrants Outlawed' in Lille (France), organised by the SAF (Union of French Advocates) in collaboration with the European Democratic Lawyers (EDL) and ELDH. The themes were migrants' rights, the legal and social conditions at the gates of Europe, and how to ensure that migrants can effectively assert their rights (file asylum applications or receive respectful conditions of accommodation that conform to European standards of minimum guarantees for hosting asylum seekers). Various situations in Europe, particularly in Calais, Spain, Greece, Italy and, of course, Turkey were analysed.

ELDH continues to be fully engaged in the struggles of our Turkish colleagues. Together with Clemens Lahner (Austria) and Robert Sabata (Catalonia) – and probably other observers – ELDH general secretary Thomas Schmidt will observe the next session of the ÇHD (Haldane's sister organisation, the Progressive Lawyers of Turkey) lawyers trial on 5th October 2016 in Istanbul. The evening before the trial they will have a meeting with colleagues from ÇHD.

Please let me know if you are interested in any of these events: *b.bowring@bbk.ac.uk*

Bill Bowring, Joint International Secretary, Haldane Society and President, European Lawyers for Democracy and Human Rights (ELDH)

October

'We will never again in any future conflict let those activist left-wing human rights lawyers harangue and harass the bravest of the brave, the men and women of our armed forces.'

Theresa May, Prime Minister, 5th October 2016, at the Conservative Party conference.

30: The Independent Inquiry into Child Sexual Abuse has been shaken by the most recent resignation of Ben Emmerson QC following his suspension. Two weeks earlier, Elizabeth Prochaska, the inquiry's second most senior lawyer, resigned.

9: The government has abandoned plans to force businesses to reveal how many foreign staff they employ, following widespread condemnation. Companies will *not* be made to publish the data as suggested by Home Secretary Amber Rudd during the Conservative Party conference.

Picture: Jess Hurd / reportdigital.co.uk

For those in peril

Two thousand, five hundred orange life jackets, once used by refugees and brought over from Greece, turned Parliament Square in London into a 'graveyard' on Monday 19th September 2016.

As world leaders gathered in New York for a United Nations summit on refugees and migrants, the event, organised by the International Rescue Committee, called for attention to the increasingly serious refugee crisis.

Six hundred of the 2,500 jackets belonged to refugee children who wore them on the sea in an attempt to arrive in Europe. Each life jacket represents three people who died or have gone missing trying to reach Europe.

Pictures: Jess Hurd / reportdigital.co.uk

May: look at her record

Usman Sheikh shows that the new prime minister's time at the Home Office should be a warning.

I would like to be able to celebrate Theresa May's departure from the Home Office. Unfortunately, she is now Prime Minister. What does this mean for the country? There may be no real link between her time as home secretary and her time as Prime Minister. After all, as Prime Minister she will be dealing with a range of people and policy areas that she did not deal with as home secretary. And one of her main policy areas as Home Secretary – immigration – may now undergo fundamental change in light of the recent referendum result. But I fear that there will be a link. Looking at her time as home secretary, a consistent image emerges: a nasty image.

Of course, many will say that if an immigration lawyer is unhappy with the Home Secretary, that is probably a good thing – it means that immigration is 'under control'. In fact, as we know, immigration is not 'under control' in any conventional sense: net migration is at an all-time high. But my frustration with the former Home Secretary is not about numbers, whether high or low. It is about an immigration system that is more and more about exploitation and cruelty.

This matters in a Prime Minister. After all, you can judge a country by how it treats foreigners. But moreover, it engenders an atmosphere of fear and mistrust between those who were born in this country, and those who make it their home. We are an increasingly diverse country with growing interactions between natives and foreigners, whether in the family, at work or in education. It would be nice if we could be a little more comfortable with ourselves – a little more at ease in our mixed skins. Unfortunately, there is little sign of this with our new Prime Minister.

In the highly emotive area of family migration, her reforms have brought misery to many. She introduced a minimum income requirement for people who want to bring their non-European partners to the UK. This has led to many divided families, forced to try to maintain ties through Skype. It is currently under appeal at the Supreme Court and the Court's decision may provide an interesting perspective from which to judge the Prime Minister's record as Home secretary. She made it all but impossible for people to bring their non-European elderly relatives to the UK, a change which is also currently under appeal. In work and study, she has tried to move from long term to short term migration. Skilled workers must generally earn £35,000 to settle here. It is harder for students to stay in the UK to work after they finish their studies. Whether or not you agree with this move, this constant coming and going of people must make integration more difficult.

Throughout, this has given the impression of a country more interested in money than love or social cohesion. This has surely been confirmed by the Prime Minister's much trumpeted decision to "roll out the red carpet" to wealthy migrants early in her time at the Home Office. She introduced accelerated settlement for those willing to invest large sums of money in the UK. Unlike those in most other immigration categories, these investors do not need to (deign to) speak English. This category has come under significant criticism for enabling wealthy foreign criminals to launder the proceeds of crime. Recent evidence suggests that the red carpet treatment is failing: the numbers of applications has fallen sharply.

By contrast, the Prime Minister sought to secure her image as a tough home secretary for other, poorer criminals. In perhaps the most famous case, she was ultimately able to secure the return of Abu Qatada to Jordan. She had –controversially – obtained assurances from the Jordanian authorities that they would not use evidence based on torture in his trial. However, earlier in the legal dispute, her lawyers appeared to have miscalculated the deadline for him to lodge an application with the European Court of Human Rights. Also, ultimately he returned to Jordan voluntarily. And in the end, he was acquitted in his trial in Jordan. So the Abu Qatada case is hardly a positive story for our new Prime Minister.

As Home Secretary, she extended her battle to other poor migrants. She set welfare payments to asylum seekers at levels that were simply vindictive. The High Court ruled that she had acted unlawfully, but after reviewing the levels, she simply maintained them. She fought a lengthy legal battle to defend the Government's system for the detention of asylum seekers until the criticisms from many different parts of the judiciary simply became too strong. She recently tried to revive the system, but – for now – it seems that this will not happen. She was responsible for the mass removal of students after a *Panorama* investigation into student visa fraud. The Immigration Tribunal recently strongly criticised the evidence on the basis of which many of these students were removed. There were suggestions that there would be a Parliamentary investigation into this. If this happens, again, this would provide an interesting perspective on the Prime Minister's time as Home Secretary.

Perhaps her greatest claim for praise from those seeking to help migrants would be her work on modern day slavery. She rightly described this as a scourge, "hiding in plain sight" in our country. But I for one am not entirely convinced. I worry that the focus on this group of migrants comes from a desire to find objects of pity. This reinforces our sense of virtue, while denying the migrants all agency. There is also generally no straightforward route to settlement for migrants in this category. So our objects of pity do not have the opportunity to stick around long enough to make us question our naïve distinctions.

One clear indication of her as Prime Minister came in her speech to the Conservative Party conference last year. Quite apart from being extremely negative about immigration, it was also criticised for being 'dangerous and factually wrong'. She was denounced as simply 'nasty'. With such a person as Prime Minister, I worry for our diverse nation.

The Conservative Party conference this year seems to have confirmed many of these fears about our new Prime Minister. Her Government is apparently against foreign NHS doctors, foreign students and their families, companies employing foreign workers and – bizarrely – foreign taxi drivers. Refugees were barely even mentioned at the conference. Her plan to increase the number of grammar schools fits with this: a return to the 1950s, to a Britain without foreigners – so to speak. It seems then that her time as Prime Minister will be a painful experience for this diverse nation.

Usman Sheikh is a lawyer living in London. He set up and runs Ansar, a law firm that helps migrants in London. See: http://www.ansar.london

Picture: Jess Hurd / reportdigital.co.uk

Declan Owens on the rights and dignity of migrant workers under attack

Fast food **poisons** workplace justice

In his excellent blog 'Cosmopolis', Haldane Society member Adrian Berry reminds us that free movement is a human right in the context of the toxic Brexit debate on the position of EU workers. He emphasises that migration is an ordinary human activity, undertaken by individuals and groups in furtherance of ordinary human goals not limited to work, but will include study, love, family reunion, protection and even curiosity.

The increasingly ugly atmosphere towards migrants, asylum seekers and, indeed, non-white British citizens in the Brexit referendum campaign, and the increase in incidents of racist behaviour in the aftermath of the vote, is perhaps symbolised by the disgraceful behaviour of Byron Burgers towards its workers in collaborating with Home Office immigration officials to facilitate deportation. Thirty-five non-EU workers at Byron Burgers were called to a staff meeting in July 2016, ostensibly for a health and safety briefing, only to find themselves entrapped by their employer and placed in the hands of Home Office immigration officials for swift deportation.

This sequence of events was wrong on so many levels that it is difficult to know where to start, but a safe foundation is to resolve the question of the legality – readers will assess the morality quite easily – of the action of both the employer and the state. Article 23(1) of the Universal Declaration of Human Rights on the right to work states that: 'Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment'. Unfortunately, as with so many of its international commitments, the United Kingdom government has failed to live up to its international law obligations through legislating to give effect to these rights under domestic law, so that there is unlikely to be any good legal claim for individuals with no (statutory or common law) right to work in the United Kingdom. However, this does not absolve the government of its international law obligations and we must continue to hold it to account.

Contrary to the views of the Conservative government, the rights to work and to dignity have not diluted over time and the UK remains obliged to give them effect. However, assuming that the Byron Burgers workers were not the victims of trafficking, it is impossible to seriously argue that they had their rights to work protected and to dignity (under Article 1 of the Universal Declaration of Human Rights: 'All human beings are born free and equal in dignity and rights') respected. Some conservative commentators and legal scholars believe that Byron were acting according to law and had no choice but to comply with Home Office immigration officials, one of the most prominent expressions of which included an argument by Thom Brooks of Durham University that, in the age of Byron Burgers, we are all de facto border agents. Needless to say, such repugnant and depressing interpretations of the law do not dwell on the human rights of workers and their families.

Unfortunately, as Corporate Watch have shown in their report (*Snitches, Stings & Leaks: how Immigration Enforcement works*), Home Office immigration officials have used the collusion tactics deployed during the Byron Burger sting as standard operating procedure. However, contrary to Byron Burger's protestations and notwithstanding the deplorable state of the immigration laws in this country, they were not obliged to comply with Home Office immigration officials to the extent of entrapping their own workers, as they would have a defence to any action against them on the basis of the allegedly forged documentation used by the workers. If employers merely conduct administrative 'right to work' checks in line with government guidance they cannot then be held liable under civil or criminal law if it is found that certain workers do not have (the Home Office's interpretation of) the right to work.

It is worth noting how carefully organised Byron's operation seems to have been. Given that management must have known the likely outcome of the raid, in all likelihood they would have had plans to minimise disruption to the business. In other words the raid was probably arranged at Byron's economic convenience. That is not bare compliance with (problematic) immigration rules; it is cynical and calculated collusion.

It does not take much imagination to work out which workers are most likely to be subject to intrusive questioning, breach of data protection rights, or which workers will be subjected to other forms of discrimination as employers fall over themselves to assist Home Office immigration officials (albeit immigration status per se is not a protected characteristic under the Equality Act 2010). >>>

Protestors outside the Holborn Byron Burgers branch in London after an immigration raid. The chain was accused of entrapment after telling workers without correct immigration documents to attend a staff meeting where they were confronted with Home Office officials. Twenty-five workers have been deported.

Pictures: Jess Hurd / reportdigital.co.uk

Pictures: Jess Hurd / reportdigital.co.uk

"Employers take advantage of the vulnerable nature of migrant workers to seek to ensure low wages and a compliant workforce estranged from the empowering force of trade unions, extracting the maximum amount of labour they can from those perceived to have the least rights."

>>> As Corporate Watch have demonstrated, people from Pakistan, Bangladesh and India make up 75 per cent of those arrested in workplace raids. Although it would be difficult to establish, a discrimination claim by a migrant worker against her employer might be possible where any pattern emerges which shows that workers of a particular nationality or racial or ethnic background are being targeted by the employer entrapping workers with the Home Office.

Indeed, Corporate Watch have detailed widespread collaboration by employers in the Home Office's approximately 6,000 workplace raids per year. Socialist lawyers will be aware that there are larger forces at play than a single corporation's over-zealous compliance with immigration policies, whether the irregular immigration paperwork was discovered through a tip-off or a Home Office investigation. Workers often move across borders due to forces beyond their control such as war, famine or the devastating economic policies wrought by globalisation. Accordingly, the presence of workers in the workplace should be presumed to be legal and the burden of proof remains on the state to prove otherwise, in accordance with the right to a fair hearing under Article 6 of the European Convention on Human Rights. Shockingly, the Independent Chief Inspector of Borders and Immigration reported in December 2015 that officers had warrants in only 43 per cent of raids and usually claimed (without documentary support) that business managers grant 'informed consent' to enter the employers' premises. .

This injustice does not affect just a small minority. Irregular working or the so-called black economy represents a significant part of the British economy, with many migrant workers in construction, cleaning, food processing, logistics and transport. Significantly, it is apparent that major companies factor this irregular workforce into their business model because of their ability to contract and subcontract workers who are not directly employed by them. Liability for 'right to work' compliance will then usually pass to contractors or subcontractors and end user companies will avoid liability in a labour market rife with agency workers and the false self-employed. The duties owed by employer to worker are therefore subject to the employment status of the individuals involved (a perennial problem under English law: greater duties are owed to those deemed employees than to workers) and there is a possibility that contractual rights and duties owed to employees can be nullified where the contract is illegal from inception due to immigration status.

There are, however, encouraging signs of vulnerable migrant workers fighting back against their precarious position, so often exploited by unscrupulous employers. The United Voices of the World is a grassroots member-led trade union mainly comprised of low paid migrant workers in London's outsourced sectors, which has been increasingly active in recent months. The Wood Street cleaners have received solidarity in their strike action against anti-union discrimination and for the London Living Wage from other activist groups such as the Blacklist Support Group and Art Against Racism.

The reality is that in any conflict between the rights and dignity of workers, especially vulnerable migrant workers, and the interests of employers and capital, the latter will favour compliance and collusion with the state, especially if they are potentially facing civil fines of up to £20,000 per worker (regardless of whether they have a valid defence in law). Employers will take advantage of the vulnerable nature of migrant workers to seek to ensure low wages and a compliant workforce estranged from the empowering force of trade unions, extracting the maximum amount of labour they can from those perceived to have the least rights. The response of socialist lawyers must be to raise awareness and show solidarity with migrant workers and their representatives in civil society (such as the Anti Raids Network), as well as encouraging the unionisation of the workers in trade unions (such as the inspirational United Voices of the World) to provide strength in unity. Accordingly, it befalls members of the Haldane Society and others to increase their vigilance in an age of increased populist and institutionally racist policies in the United Kingdom to maintain the simple but profound premise enshrined in Article 23(1) of the Universal Declaration on Human Rights that everyone has the right to work and no worker is illegal.

Declan Owens is a solicitor specialising in labour law.

Colombia 2016: challenges ahead on the road to peace

by **Tim Potter**

24th August 2016 was an undeniably positive day in Colombian history. The Colombian government and the Fuerzas Armadas Revolucionarias de Colombia (Farc) signed peace accords aimed at bringing to an end a conflict that has lasted more than 50 years. This culmination of four years of negotiations in Havana was swiftly followed by the announcement of a bilateral ceasefire between the Farc and the Colombian government on 29th August 2016. To great shock this process has since entered uncertain territory as a slim majority of approximately 61,000 voted 'No' to the peace accords in a referendum on 2nd October 2016. The referendum was marked by major voter abstention. Sixty per cent of the electorate did not cast a ballot.

It is estimated that in the region of 260,000 people have been killed during Colombia's lengthy conflict. Some six million Colombians have been internally displaced inside their own country, an invidious statistic that places Colombia second only to Syria globally in terms of numbers of refugees within its own borders.

While there were outward displays of celebration among certain sectors in the capital, Bogotá, on 24th August 2016, the signing of the peace accords was met with wariness in other parts of Colombia. One such place was Tumaco, a city of approximately 200,000 people situated on Colombia's south-western Pacific coast. Tumaco is in the state of Nariño, not far from Colombia's border with Ecuador.

The opening sentence of *El Puente*, a monthly local church pamphlet distributed to Tumaco parishioners, encapsulates the scepticism: '*Queridos amigos y amigas, Sabemos que los acuerdos de paz de la Habana no nos traerán paz.*' – 'Dear friends, we know that the peace accords of Havana will not bring us peace'. The pamphlet continues in a more positive tone, urging church members to vote for peace in the referendum vote on the accords on 2nd October 2016.

The city's population is overwhelmingly of Afro-Colombian descent. There is also a large indigenous population from the Awá community, many of whom live in reserves surrounding the city of Tumaco. Tumaco's climate is tropical; very different from the more temperate climes of Bogotá. The city is mainly spread over two relatively small islands. The main urban area is densely packed with low-rise

Opposite page, top: Tumaco's prison; below: Peace march in Bogotá on 27th August 2016; right: Stilt houses on the sea front, Tumaco.

Pictures: Eleri Davies

buildings, a maze of streets and narrow alleyways with many houses near the sea built on stilts to deal with the incoming tide. The thousands of motorbikes, which constitute the main form of transport for *Tumaqueños*, thunder through its packed roads. The main road in and out of town is controlled in the countryside by paramilitaries.

Many in Tumaco, including representatives of the Colombian state, talk of having been abandoned by the government. There is a pervading sense that Tumaco is not considered a priority by central government given its distance geographically, culturally and politically from the capital. Residents describe how 20 years' ago Tumaco did not even feature on Colombian maps. There are however two maps on which the city does feature prominently in 2016: Tumaco is one of only two places in Colombia to which the British Foreign & Commonwealth travel map advises against all travel. The United Nations' map of coca cultivation in Colombia places Tumaco at the heart of coca cultivation. As many attest and allege in Tumaco, the cocaine trade permeates every level of society including the state apparatus. The city and surrounding countryside have become notorious as a hub of violence.

As the Spanish newspaper *El País* recently reported: 'Tumaco is the municipality with the most illicit cultivation, in the department (Nariño) with the most illicit cultivation, in the country with the most illicit cultivation'.

Those involved in civil society in Tumaco have a sense that the city has more of an economic connection with Mexico than with Bogotá and Colombia. Much of the cocaine produced in Nariño is shipped northwards along the Pacific coast to Mexico for onwards supply to North America.

Violence and impunity in Tumaco are rife. Human Rights Watch reported in 2014 that over a seven-year period there had been some 1,300 murders with only seven cases leading to prosecutions. The local prison is woefully overcrowded, yet many of its inmates are languishing on remand awaiting plea and case management hearings or trials that are frequently adjourned.

Six people were reported to have been killed in Tumaco in the week commencing 15th August 2016. Four Awá indigenous community members were killed from 26th to 29th >>>

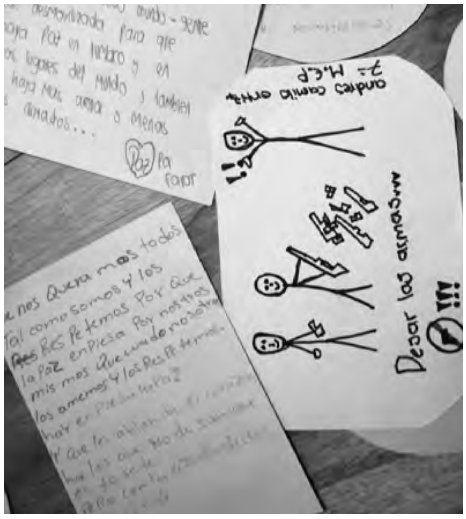
>>> August 2016. Human rights defenders, lawyers, leaders of civil society and members of victims' organisations are all under constant threat of assassination. Death threats are commonplace. There is no confidence among the civilian population in Tumaco of the government being able to provide an effective justice system. A member of a victim's group spoken to, who requested to remain anonymous, described the situation as such: *'El miedo se mata'* – 'The fear, it kills you'.

Transitional justice is a key pillar of the peace accords signed in Havana and one that proved highly contentious among those Colombians who voted 'No' to the accords in the referendum on 2nd October 2016. There is little sense in Tumaco that talk of transitional justice will translate into reality. This is a reflection of a city where even a local state official in a prominent public office is candid enough to admit that: 'the system of protection provided by the state is not working' and 'they have abandoned us.'

In one respect there is a large state presence in Tumaco. However it is overwhelmingly a military presence. Army Black Hawk helicopters are visible upon arrival at the civilian airport. The Colombian Marines occupy a large barracks close to the airport. Police and soldiers are a visible armed presence on Tumaco's streets. There are reported to be 3,000 army and police personnel in Tumaco. Many residents of Tumaco call the efficacy of their presence into question.

Non-government organisations such as Médicins Sans Frontières, Save the Children, the Norwegian Refugee Council and the United Nations are also visibly active on the ground, attempting in their own small but limited way to plug the gaps left by the absence of the state. Armed groups, be they guerrillas, paramilitary groups or criminal gangs involved in drug trafficking, also fill the vacuum created by the absence of the rule of law or effective civil authorities.

The Farc has been extremely active in Nariño and Tumaco in recent years. The Farc has now agreed to assist the Colombian government in challenging the cocaine trade as part of the peace accords. Despite the change of context for the Farc, there are reported to now be a multiplicity of different armed groups involved in the ongoing trafficking of cocaine in Tumaco and Nariño state. These include right-wing paramilitaries and the guerrilla group ELN.



Above and right: Stilt houses in Tumaco. Left: Hand written messages for peace, Casa de La Memoria, Tumaco.

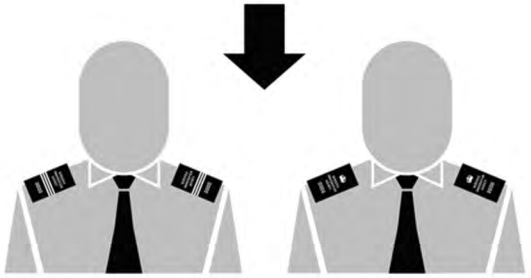
These armed actors have not been parties to the peace accords in Havana. Violence has paradoxically surged in Tumaco in recent months in spite of the peace process.

These essentially criminal armed groups have not committed to a bilateral ceasefire, albeit that the ELN is now involved in their own peace negotiations with the Colombian government. Their fight for territory and valuable cocaine trafficking routes persists. Invisible frontiers, which rival factions are not to cross, run throughout Tumaco.

As with other peace processes, such as in Northern Ireland, the signing of peace accords and the announcement of a bilateral ceasefire only marks the beginning of peace. The outcome of the referendum on 2nd October 2016 has put the process at peril but not beyond salvaging. There is a palpable appetite for peace among many Colombians. Those regions in Colombia which have suffered the most because of the conflict, including Nariño in which Tumaco is situated, voted in favour of the peace accords while larger urban areas, which have been less affected by the conflict, voted 'no'.

Within Tumaco there are positive forces at work at a grass roots level, whether they be neighbourhood leaders or the impressive Casa de la Memoria. Despite the bleak outlook in Tumaco, victims of the armed conflict are keen to stress that *'tenemos sueños, tenemos aspiración'* – 'we have dreams, we have aspiration'. Despite the 'yes' vote in the state of Nariño for peace, without a renewed drive for peace and massive investment in social programmes the task of establishing peace in locations such as Tumaco will remain immense. As the outcome of the referendum on 2nd October 2016 illustrates, the opponents of peace in Colombia are many, the challenges ahead are significant and in places such as Tumaco peace for many feels far away.

Tim Potter is a barrister at 4 Brick Court and was a participant in the 5th Colombian Caravana delegation of Lawyers & Judges to Colombia in August 2016, which visited six regional areas in Colombia including Tumaco. He was present in Tumaco on the day the peace accords were signed. The report of the delegation's findings is due to be published. For more information visit www.colombiancaravana.org.uk

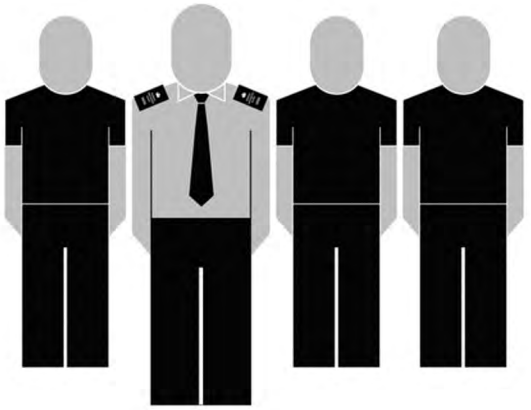


insignia/numbers on shoulders.
They often hide them.

WHERE DO THEY GO?

Streets, Train & Tube stations,
Buses, Workplaces, Homes.

HOW DO THEY ACT?



Arrive in groups, sometimes
with plain clothes officers.
Often block entrances/exits.

1. Immediately make the person aware they do not have to answer questions & they can leave
2. Remind the officers of the law
3. Film the incident, where possible asking the person stopped if that's ok, or just film the officers involved. This may be useful in making a claim in the event of an unlawful stop or arrest.
4. Record lapel numbers of officers involved
5. Make other members of the public aware of what's happening
6. Get witnesses' contact details if the stop leads to an arrest or the person wants to pursue it afterwards.
7. Attempt to pass on a phone number to the individual if you think the stop will lead to arrest
8. Do not get aggressive or physically obstruct officers if you want to avoid arrest for obstruction.

* If you want to refer to their guidance when speaking to Immigration Officers, everything can be found in Chapter 31 UKBA Operational Enforcement Manual: tinyurl.com/7b7s9yn

network23.org/antiraids,
facebook.com/antiraids, @AntiRaids

Please display this poster in the waiting room of your firm or law centre. Anti Raids Network – network23.org/antiraids – C

HOW TO SPOT AN IMMIGRATION RAID

Anti Raids Network

HOW DO THEY ARRIVE?

Vans marked IMMIGRATION ENFORCEMENT
Sometimes unmarked white/blue/black vans accompanied by police car.

WHAT DO THEY LOOK LIKE?

Should be wearing UKBA

HOW CAN YOU HELP?

If you see someone being stopped by UKBA officers or police on immigration grounds, and your immigration status does not put you at risk, we recommend you:

@AntiRaids. Printed in *Socialist* **Lawyer** – the magazine of the Haldane Society, #74, October 2016 – www.haldane.org

It's an uphill struggle but we won't give in

Ricky Tomlinson speaks to *Socialist Lawyer*

Ricky Tomlinson is fired up about a criminal trial that took place almost 45 years ago. In 1973 he along with six others was prosecuted for picketing at Shrewsbury during nationwide industrial action by workers in the building trade. The Heath government reverse-engineered a prosecution under an arcane 19th century criminal law, which led to prison sentences for him and fellow picket organiser Dennis 'Dezzie' Warren.

"The trial was a cock-up from start to finish. It was politically motivated" says Tomlinson. The parallels with Orgreave and Hillsborough are clear: there is evidence that some of the original statements were destroyed as part of a deliberate policy.

"We got reports of two police chiefs where the picketing took place saying that there's no charges to answer they were overruled by the powers that be. We've produced absolutely amazing documentation stuff from Ted Heath to Woodrow Wyatt saying 'get whatever material you can on these fellas'". Despite heavy policing on the day (Tomlinson estimates 60 to 80 police officers) there were no arrests, no cautions and no names or addresses were taken. Almost four months later 271 criminal charges were laid.

The trial itself is mired in suggestions of outrageous state interference. "The judge was a gobshite. He didn't have a clue. He wasn't a criminal [judge] he was an ecclesiastical barrister who had been sort-of elevated to take over the trial". Tomlinson's brothers were pulled out of

the public gallery and interrogated. But most troubling of all is the apparent interference with the jury. Tomlinson explained to *The Guardian** in 2014 that there had been a physical altercation between the foreman and one of the other jurors when the sentence was announced: "two of them had been persuaded to change their thing by saying we were only getting fined fifty quid". The foreman apparently later explained that it had been a court official who had told them what the sentence would be when the jury were in an 8:4 deadlock.

Both Tomlinson and Warren were given immediate custodial sentences of two and three years respectively. "When we went to the appeal it was supposed to be heard by a fella called Lord Justice Salmon. When we got there, who's in the chair but the Lord Chief Justice Widgery. When he sent us back in he said 'these are deterrent sentences'".

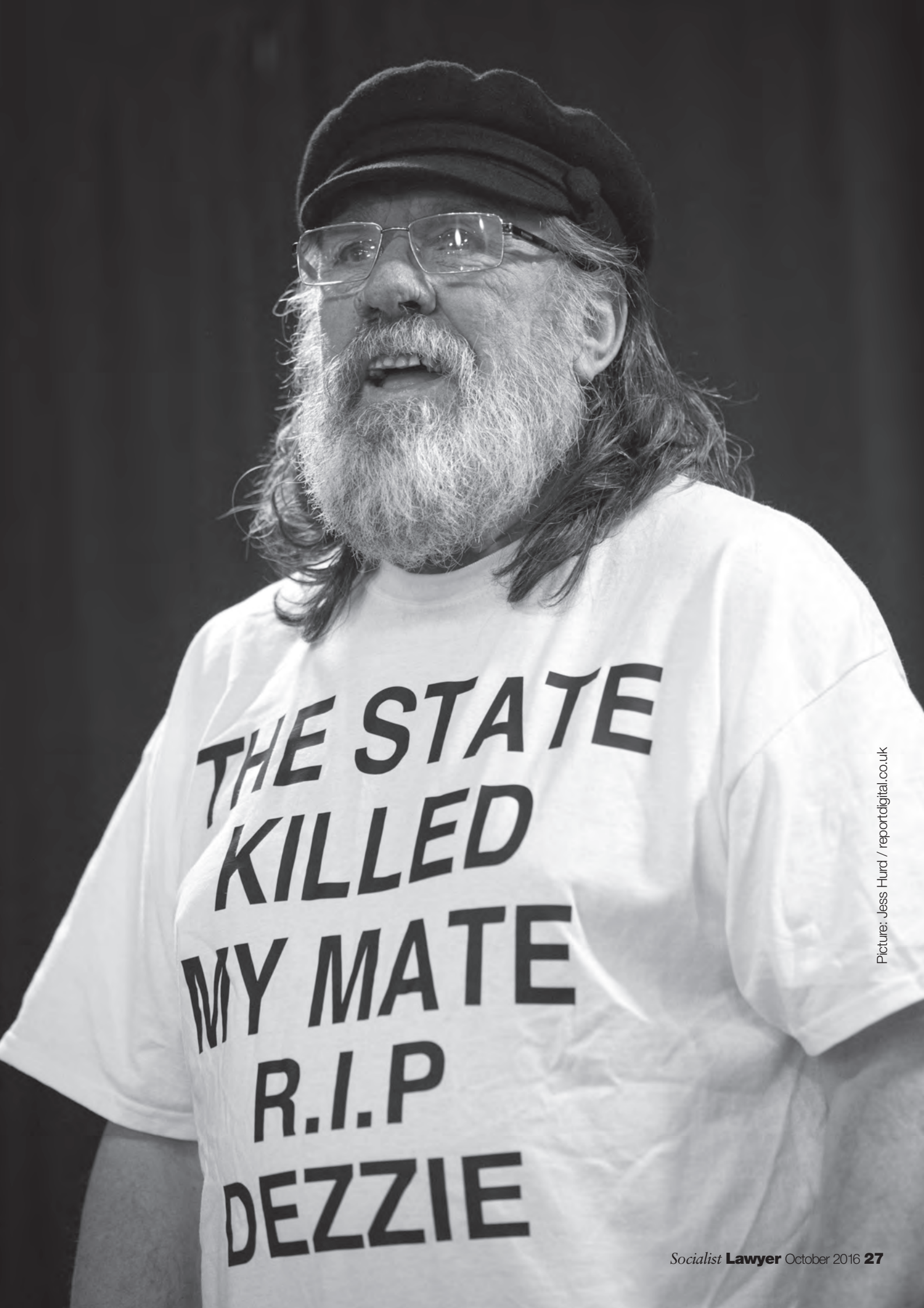
Since his release Tomlinson has been active in trying to uncover the truth about the Shrewsbury prosecutions. He is working with Des Warren's son Andy. He is sure of the political motivation behind the state's actions: "it was done by the Conservative government and it wasn't done particularly to hurt the building workers: we were the whipping boys for the miners. We were before Hillsborough, we were before Orgreave. We were the starting point, because they got away with it with us".

Tomlinson is closely following the Pitchford Inquiry into undercover policing. He strongly believes that one of his co-defendants was a police informer. He is working hard, gathering information to prove what is sadly now a very familiar allegation of undercover policing of leftwing activists.

"As late as November 2014 they were shredding the Shrewsbury papers while they're still going through the legal proceedings. It came out during the trial that the telephones were tapped and I've been tapped since 1973. Nothing was done about it. What went on is absolutely farcical".

Pitchford LJ has recently refused Tomlinson's application for core participant status on the basis that there isn't sufficient evidence. It is a difficult and ironic >>>

*** 'Ricky Tomlinson: I'm a whingeing scouser, and I will whinge until they're made to pay', Decca Aitkenhead, *The Guardian*, 27th December 2014.**



Picture: Jess Hurd / reportdigital.co.uk

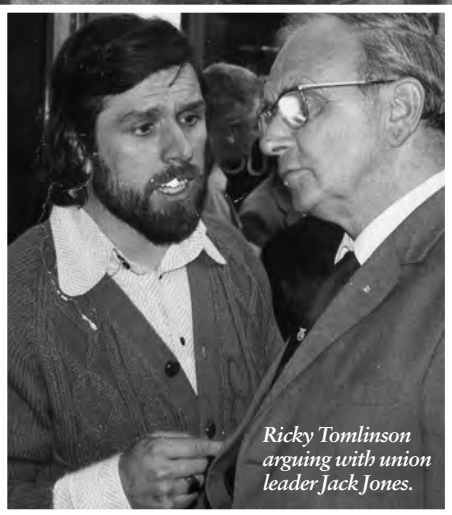
>>> situation: it is hard to show evidence of a secret campaign by the state.

Given the unfairness of his trial why does he set any store by the Pitchford Inquiry? "I've got no faith, honest to god, I've got no faith in the judicial system whatsoever. [The Pitchford Inquiry] knocked us back but they're going to keep it under review. How can you keep it under review? What more do they want? So the point is this: I don't give a bollocks. It's more important to me that the public find out what they done to us. It's an uphill struggle but we won't give in".

While in prison Warren and Tomlinson were deliberately uncooperative. "I bet you now they are so sorry that they put me and Des Warren in jail. They couldn't have chose two worse fucking blokes to do it. Because we wouldn't work, we wouldn't soldier, all the time I was in prison I would not shut my own cell door, I would never ring the bell, I wanted nothing off them. That's why we spent so much time in solitary confinement and the segregation unit". He then refused to leave on his release until friends persuaded him that there might be repercussions for Warren, who was still a serving prisoner.

That stubbornness has characterised Tomlinson's campaign. He is a thorn in the government's side, but he has also come into conflict with apparent allies. He feels badly let down by the trade union movement, who refused to fund his trial and removed him from the TUC conference after his release from prison (and he describes GMB general secretary Paul Kenny as a "shithouse" for accepting a knighthood). He's also clashed with Amnesty International, who originally supported Warren as a prisoner of conscience but 'unadopted' him three months later. Tomlinson organised a demonstration outside Amnesty who eventually conceded that they had been 'leaned on' by the government. They released a statement in May 2016: "it is clear that the UK government sought to influence Amnesty International's decision to take up the case. Forty years on, it is impossible to state conclusively that the pressure unduly influenced Amnesty International's internal decision making process; however, we acknowledge that the organization at the time did not act in a manner that would meet research and casework standards to which we adhere today".

Tomlinson is very vocal about his belief that the government is responsible for Des Warren's death. "He went into prison a fine, big, strapping man. He was a steel fixer by trade and he came out of prison and never



Ricky Tomlinson arguing with union leader Jack Jones.

Before he was better known as TV's Bobby Grant in *Brookside* and most famously as the *Royle Family*'s Jim, Ricky Tomlinson was a construction worker and trade unionist.

In 1972 he took an active part in the first ever national building workers' strike. Ricky was among 24 people arrested for picketing in Shrewsbury. Government papers now show collusion between police, security services and politicians to ensure these people were prosecuted. Six were convicted, and Ricky and his mate Des Warren (pictured, above with Ricky, and far right), were jailed for conspiracy to intimidate and unlawful assembly.

At the end of the trial, and before sentencing, Des and Ricky spoke from the dock. Both speeches laid out clearly their thoughts on how the trial had been set up to criminalise picketing, that it was a political trial.

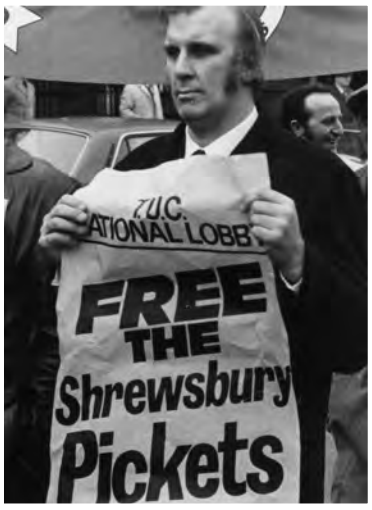
The pickets had become victims of the government's aim to shackle union activity, and they had every right to believe that the movement would fight to get them out. But despite workers on building sites across

worked again. And the last time I was with him I've got a photograph to prove it he was strapped with three straps round him, strapped to a wheelchair, he couldn't hold his head up". Tomlinson says the medication Warren received in prison led to the Parkinson's disease that killed him. "If [the government] thinks that's wrong, well come and arrest me prove that you never".

With that in mind, Tomlinson is conscious that he needs to work quickly. "Five of the lads are dead including Dezzie [Warren], two of them died in their 90s, one's 89, so we haven't got a lot of time. They've got no fucking intentions of releasing the papers that will throw a light on this". When Tomlinson spoke to the Haldane Society at a Labour Party conference fringe event in September it was his 77th birthday. His energy is extraordinary: he's charging around the country gathering evidence, talking to people, tracking down documents and organising support. They day after we spoke he was due to visit Arthur Scargill in Barnsley.

"Since I went on *Russia Today*, then I went on *Look North* and then I went on *Granada Reports*, the phone hasn't stopped with people coming forward saying 'well we know this, we know that'. And so that's the amazing thing to me". Tomlinson urges anyone who has information relating to undercover policing to contact his solicitors (Public Interest Law Unit, c/o Lambeth Law Centre, Unit 4, The Co-Op Centre, 11 Mowll Street, London SW9 6BG; email: office@pilu.org.uk). Matters relating to the CCRC are being handled through Bindmans on behalf of the 24.

"They're waiting for me to snuff it. Because I'm still kicking up a fuss".



Pictures: Morning Star

the country walking out on strike their union leaders told them to go back. In 1974 a Labour Government was elected and the union leaders did not want to 'rock the boat'.

Des and Ricky continued their sentences, Des in 14 different jails often in squalid conditions and with hostility from prison staff. To prove their innocence and that they were political prisoners, both men went on hunger strike for long periods and refused to do prison work. Des, in particular, was singled out for punishment, with many months of solitary confinement and cuts in visits from his wife, Elsa, and the children.

When Ricky came out of jail in July 1975, he joined the campaign for Des's release but, once again, there was a lack of support from the union leaders.

Des served all but four months of his sentence and was released in August 1976. He died in April 2004 of Parkinson's disease. He laid the blame for his illness on the tranquillising drugs administered to difficult prisoners like him.

Despite clear evidence of being targeted by undercover police officers, Ricky has been denied 'core participant' status at the Pitchford Inquiry.

'Don't get sick of them, make them sick of you'

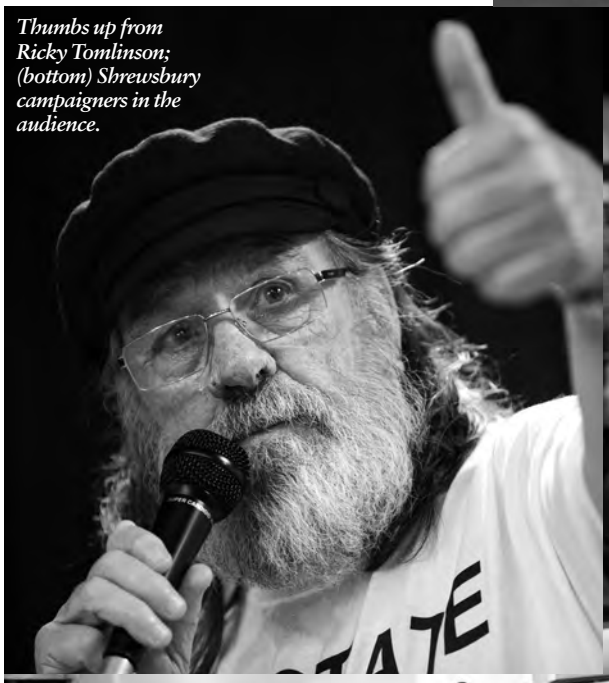
by **Liz Davies**

The Haldane Society hosted a packed fringe meeting near the Labour Party Conference in Liverpool in September. Over 150 people turned up to hear – and cheer – speakers Mike Mansfield QC, Margaret Aspinall from the Hillsborough Family Support Group, Chris Peace from the Orgreave Truth and Justice Campaign and Ricky Tomlinson from the Shrewsbury 24 Campaign.

Shadow Secretary of State for Justice, Richard Burgon MP, one of the MPs who stood by Jeremy Corbyn when he was attacked by the majority of the Parliamentary Labour Party, opened the meeting. He praised the courage and tenacity of the Hillsborough campaigners, and their 26-year struggle for justice. He backed the call from the Orgreave Truth and Justice Campaign for a public inquiry and went further, calling for a public inquiry into the policing of the whole of the 1984-85 miners' strike. At a time when left lawyers and human rights lawyers are under attack from the government, Burgon praised the role of lawyers in exposing miscarriages of justice and scrutinising the state.

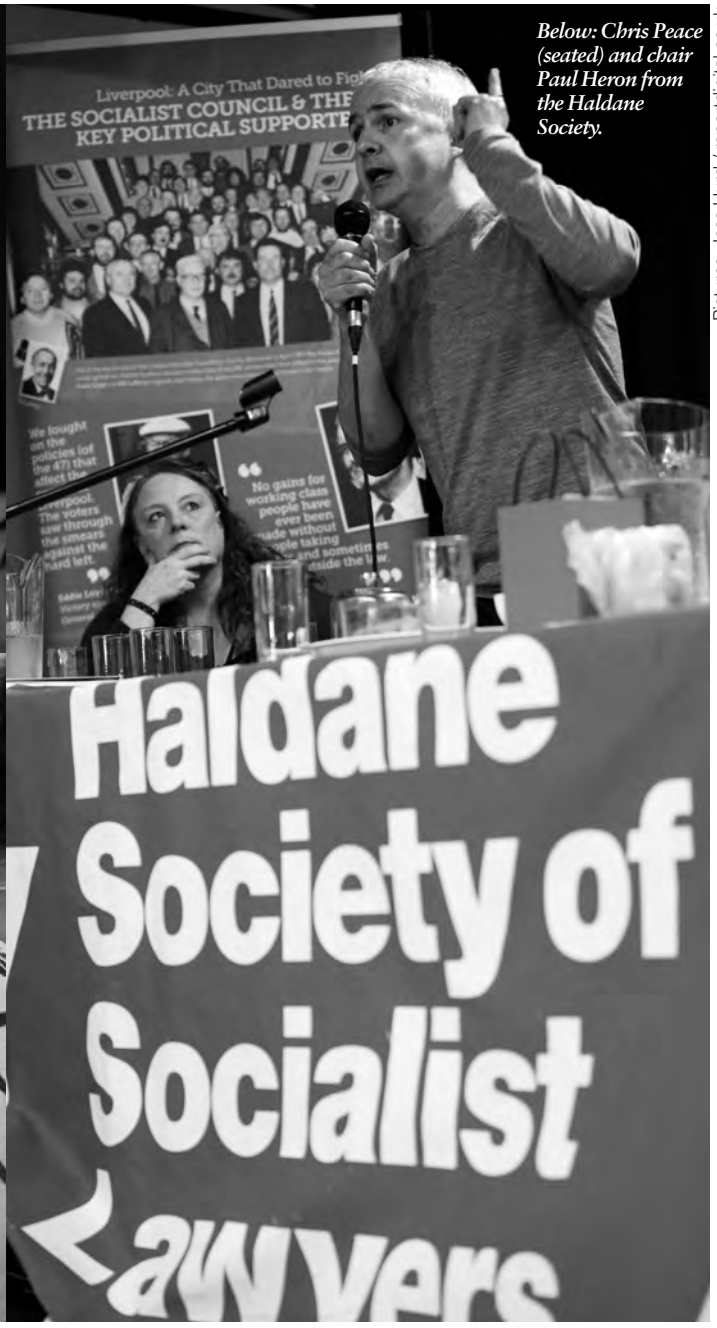
Haldane President Mike Mansfield QC has spent his career representing victims and families who have suffered injustice, including most recently the Hillsborough families. He said that, in his 50 years of practice, it has always been the victims and campaigners who have brought about change. He described meeting both the former Home Secretary, now Prime Minister, and, more recently, the current Home Secretary to lobby for a public inquiry into the events at Orgreave. The meeting with Amber Rudd had been 'non-committal', and the following day a review, not a public inquiry, had been announced. Besides his active involvement in the Orgreave and Shrewsbury campaigns, Mike is supporting the call for a public inquiry, or inquest, into the British Army's shootings of 11 civilians in Belfast in 1971: the Ballymurphy campaign. Known as the 'Belfast Bloody Sunday', this is another legacy of the Troubles which has never been sufficiently investigated.

Margaret Aspinall took to the stage to cheers, and left it with a standing ovation. She was direct in her condemnation of the South Yorkshire police in the mid-to-late 1980s: if there had been a public inquiry into Orgreave, Hillsborough might never have happened, she said. A few weeks after her son James had died at Hillsborough, she had attended a memorial service at which Thatcher was present. She had refused to shake Thatcher's hand and said that she realised then and there that Thatcher's support for South Yorkshire police over Hillsborough was political pay-back for the actions of the police during the miners' strike. She urged both Orgreave and Shrewsbury campaigns to stand firm. 'Don't ask them, tell



Thumbs up from Ricky Tomlinson; (bottom) Shrewsbury campaigners in the audience.

Below: Margaret Aspinall with (seated) Michael Mansfield; (centre) Chris Peace speaking, with Orgreave campaigners in the audience.



Below: Chris Peace (seated) and chair Paul Heron from the Haldane Society.

Pictures: Jess Hurd / reportdigital.co.uk

them what you are entitled to...' she said. 'Don't get sick of them, make them sick of you".

Chris Peace, Treasurer of the Orgreave Truth and Justice Campaign, soberly set out the events of 18th June 1984 at Orgreave. The pickets were in a field, enclosed on three sides and with the police horses on the fourth side. The horses did not walk, they trotted. It was an early form of what we now call 'kettling'. All of the miners arrested on that day found that their trials later collapsed, as the police had clearly worked together to concoct evidence. The determined campaign by the Hillsborough families had been an inspiration for Orgreave families to come together and call for the truth.

Ricky Tomlinson's t-shirt said 'The state killed my mate. RIP Dezzie' and the actor was emotional as he remembered his and Des Warren's time in prison, the support that their families received and the appalling effect on Warren, who died in 2004 having been subject to 'the liquid cosh'. They were jailed in 1972 after 24 building workers had been prosecuted for events on pickets lines during the first ever building workers' strike for better pay and health and safety. This was a political prosecution; they had been arrested several months after the strike. Last year, it was revealed that undercover police officers had been operating amongst the strikers and the Shrewsbury 24 campaign is due to play a part in the forthcoming Pitchford inquiry.

The call for a 'Hillsborough Law' (Public Authorities Accountability Bill) was supported by all the speakers. It would require public bodies to be subject to a duty of candour and to assist inquiries, the police and judicial investigations. It seems extraordinary that such a measure is necessary, but the 26-year search for justice by the Hillsborough families, and the ongoing campaigns for justice into events at Orgreave and Shrewsbury make the point. Then 150 people sang Tomlinson *Happy Birthday*.

Liz Davies is a barrister and Haldane Society executive member

Time for radical change in corporate laws: six proposals

by Alastair Hudson

As though we did not know it already, the BHS scandal has proved that corporate law must change radically. Ideas that socialist lawyers have long held dear must be put into action immediately. The goal must be to prevent another public company being taken into private ownership, and then being immolated in the shadows at such cost to its employees and pensioners.

The super-wealthy 0.1 per cent floating above from the laws that bind the rest of us, immune from the rule of law. They can disembowel companies to fund their lifestyles, with company law seeming powerless. Trust law, tax law and pension law also seem to help rather than constrain them.

This article sets out six specific proposals to prevent a repetition of the BHS farrago. First, let us think about what happened to BHS long before it passed into insolvent administration in 2016.

The joint report of the Work and Pensions and BIS select committees ("BHS", 20th July 2016) is unlikely to leave any reader unmoved. The cost in snapped pencils and broken coffee cups alone must be enormous. Briefly put, the company was taken into private ownership and immolated, and the pension fund was allowed to run into eye-watering deficit. The 'Green family' (as the purchaser is generally described in the select committee report) bought BHS Plc for £200 million in 2000, when its pension fund was in surplus. A *Private Eye* investigation (13th May 2016) found that the purchase was conducted through an offshore family trust and, while it cost £200 million, it also included the acquisition of a £44 million cash pile. *The Economist* reported (29th May 2003) that the complex transaction was put together by the troubled investment banking arm of West LB, the German regional bank, which needed to be bailed out during the financial crisis. >>>

>>> After the acquisition in 2000, BHS was quickly 'taken private', putting it beyond the reach of regulations and the oversight that governed listed public companies. It was beyond the reach of the Financial Services Authority, which had come into existence that same year. The dividends paid out between 2002 and 2004 (£414 million) were double the company's profits (£208 million), meaning that those dividends were being funded directly or indirectly through other assets or through debt. In 2005, after the Arcadia group of companies had been formed to include BHS, a dividend of £1.2 billion was paid by Arcadia to Christina Green (or, rather, to a company under her control) to stuff under the metaphorical mattress: her home in the tax haven of Monaco. These trusts and companies were like remote drones working for the Greens.

There were other uses for the companies under the Greens' control. They charged BHS millions of pounds in 'administration fees (£58 million in 2013 alone). Premises were acquired from BHS and then leased back at rents of approximately £12 million annually. In these ways, the Greens sucked cash out of BHS using all the old tricks: manufactured dividends, sale-and-leaseback arrangements, and service fees. Consequently, the Greens were able to take £1.2 billion out of BHS in total without the burdens of direct ownership.

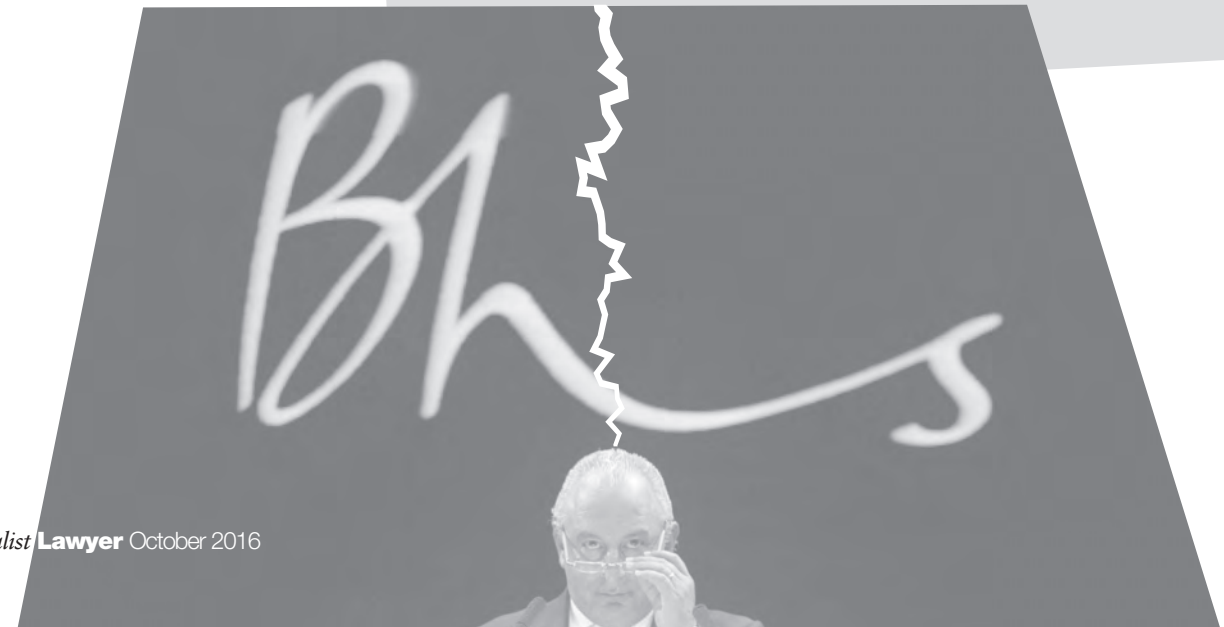
BHS was sacrificed. The company's assets fell from £501 million in 2001 to £295 million by 2014, and the accumulated reserves shrank from a surplus of £228 million to a deficit of £323 million over the same period. Genuine trading turnover in the company remained flat and then fell away. Purported early profits were primarily based on the sale of assets and cost-cutting. Even *The Economist* was fooled into thinking that BHS had been 'revived' (17th February 2005) when that growth was driven by paper profits. Growing the business itself does not appear to have been a part of the plan. A company worth £501 million in 2001 was sold to a man with no relevant experience in 2015 for £1. For any savvy capitalist the principal reason for offloading the company would have been the stricken pension fund.

Most controversially, the pension fund went from a surplus in 2002 to a deficit of £571 million today. That cannot be blamed entirely on the credit crunch. The fund was already in deficit to the tune of £75 million during the boom in 2005. In essence, the company was simply hollowed out. While Philip Green spends his summer aboard his £100 million, 90 metre super-yacht (*Lionheart*), the employees and pensioners of BHS are left worrying about what will be left for them as the company wallows in insolvent administration.

Six key changes are needed for our corporate laws to combat this sort of activity. The shadow chancellor of the exchequer John McDonnell signalled his support for them in an interview in *The Mirror* on 30th July 2016 with the proposed introduction of a 'Philip Green law'.

First, the laws on 'financial assistance' must be redefined. It is currently 'unlawful' for a company to give money (directly or indirectly) to anyone so that they can buy shares in that company. The law must be changed so that it applies to private companies as well as to public companies. The concept of indirect financial assistance (which has been illegal since the 19th century because it gives a false picture of the amount of capital held in a company) must be clarified so as to include a company becoming burdened with the repayment of a loan that was used to buy the shares originally. It is common for a purchaser to arrange to take out a loan to acquire a company, having planned from the outset to use the company to repay that loan after the acquisition. Despite this mechanism having the same effect as 'indirect financial assistance' (the company effectively funds its own purchase) it is only the order of the sequence of events that prevents it from counting as such. The mechanism has been used to buy several Premier League football clubs: the company pays dividends to its new shareholders while it also repays the loan that acquired those shares in the first place. The first proposal is therefore to amend section 678 of the Companies Act 2006 so as to widen the definition of financial assistance.

This leads to a second proposal, which relates to the ways in which dividends can be paid out of companies. The Greens took a total of about £1.5 billion in dividends out of BHS (even putting to one side the single dividend payment of £1.3 billion paid to Christina Green in 2005 from the Arcadia group). When dividends are double the company's profits that must mean, in general terms, that the dividend was funded from the liquidation of assets or from debt. The Glazer family has taken £15 million in dividends out of Manchester United in one year after issuing bonds through the company (i.e. burdening it with extra debt), listing it on the New York Stock Exchange and moving its holding company to the Cayman Islands. These companies are having their balance sheets liquidated or turned to account in other ways so that dividends can be paid to the super-wealthy capitalists who own them.



There must be a clarification of the law so that dividends can only be paid out of earned profits and not out of borrowed money. The requirement in section 830 of the Companies Act 2006 – that dividends must be paid out of 'profits available for the purpose' – must be clarified to address this. If a company's assets are liquidated, if debt is piled on and if the pension fund is under-funded then it is the company's employees, pensioners and creditors who are funding the capitalists' profits.

Third, there must be an amendment to the Takeover Code (building on Principle 5 of that code) so that anyone proposing to acquire a company must clarify how they will pay for the shares that they are buying. They must publish a clear strategy for the takeover for approval by the Takeover Panel, which must show how they would add to success of the company under the Companies Act 2006. That strategy must also make clear how they will maintain the pension fund and that part of the strategy must be approved by the Pensions Regulator. These principles will build on Principle 3 of the code to place obligations on both bidder and offeree to commit to the best interests of the company, as understood under the Companies Act 2006.

Fourth, there must be an expansion of the rights of minority shareholders. Section 260(3) of the Companies Act 2006 should be amended so as to allow minority shareholders to bring derivative actions challenging the sale of a company by the majority shareholders when such a sale would not further the success of the company. They must also be able to object to corporate strategies that would lead to the corporate pension fund falling into deficit. The shareholders in our largest public companies include pension funds and other institutions on which ordinary people rely. If those companies are sold off and gutted in the process, ultimately it is ordinary people who will pay either through their loss of pension (a form of deferred pay) or through an increased burden on the welfare state.

Fifth, there must be a statutory 'claw back' provision to recover any dividends that are funded indirectly by debt, or that breach any of the other principles set out above. It often happens that these cases end up in the insolvency courts (as is the case with the insolvency of BHS, which is now in administration). Insolvency law already contains claw back provisions (for example, in section 423 of the Insolvency Act 1986), which allow the courts to recover assets purportedly transferred several years before the insolvency if the intention was to defraud creditors.

Sixth, and most significantly, supervisory boards must be created for UK companies. These boards will entitle workers and pensioners to be involved in the company's decision making. The supervisory board should have the power to object to a takeover of the company on grounds that the takeover will adversely affect the future success of the company, the rights of workers or the pension fund. The only protection from predatory capitalists taking companies over and disembowelling them is to empower a supervisory board to prevent their actions before they take effect.

This progressive idea was in the last Labour manifesto and was then copied by Theresa May when she became prime minister ("remind you of anybody?") It seems that the democratisation of company boards is now genuinely on the agenda. However, it is only the Corbyn-led Labour party that is talking in earnest about the complete raft of measures that are necessary to protect our economy, our productive businesses and our pension funds, alongside the 'Tax Transparency' code announced in April.

There is much more to do in reforming our corporate laws to prevent a repeat of the BHS debacle. There needs to be more pro-active regulation of pensions. The Pensions Regulator appears to have been too sanguine about the treatment of the BHS pension scheme, for example. A deficit of over half a billion pounds was allowed to build up steadily over 13 years without its intervention. Similarly, the activities of private equity firms who take public companies private so that they can be disembowelled in the shadows must be regulated more closely. Employees and the real economy must not be affected by their determined asset-stripping. After all, BHS was reduced to its bones within a few years of its acquisition. Dividends of £1.6 billion were taken out of the Arcadia group by 'the Green family' (as the select committee report describes the recipient) within five years of the acquisition of BHS. It is unsurprising that the business struggled and that the pension fund went unfunded when so much had been stripped out of it.

Furthermore, our corporate governance code remains voluntary when it must become enforceable by law (not just for listed public companies). The corporate governance failures at the board level in banks like HBOS, on trading floors in Barclays and on the sales floors of every British bank are truly staggering. The inability of anyone to challenge the asset-stripping activities in relation to BHS, as the main business stalled even during the boom years of the mid-2000s, has left many thousands of people in uncertainty.

The devil is both in the detail of these sorts of activities (which went unnoticed even in the financial press) and in the implementation of the reform of corporate law.

Philip Green's 90 metre super-yacht *Lionheart* was said to be sailing among the Greek islands when the Work and Pensions and BIS select committees issued their joint report on the collapse of BHS. His wealth remains under his wife's mattress in Monaco despite the harm he has caused to 20,000 employees and pensioners (and many more besides in the supply chain). The super-wealthy 0.1 per cent must be controlled. They are the ultimate in rentier capitalists: milking corporations of their assets using trusts and shell companies, and then disposing of the husk when there is nothing left. There is no useful production in this activity. The super-rich get richer while the workers are forced to rely on the state.

The continued existence of laissez-faire corporate law and tax havens within developed countries (like Monaco, the Channel Islands and Delaware) puts the super-wealthy beyond the reach of the laws and the burdens that bind the rest of us. Making radical changes to our regulatory culture is essential both to control the asset-strippers and to maintain the rule of law.

Alastair Hudson is professor of equity and finance law at the University of Exeter

Far from being completely illegal, says **Janis Voyias**, squatting is a potential legal minefield for police and landowners alike.

Unlocking doors: demystifying squatting in Scotland

Perhaps because of the absence of any Scottish squatting movement, there is a public perception that all squatting is illegal in Scotland. In contrast to England, which had a vibrant mass movement in the 1970s of more than 50,000 people, the most recent squatting movement in Scotland involved homeless Second World War veterans occupying abandoned army properties. By late 1946 the movement had faded, due to the government's willingness to re-house the squatters. More recently, however, in the face of austerity, empty public buildings – such as Govanhill Baths in Glasgow in March 2001 – have been occupied. This article reviews the main areas of Scots law relating to squatting, in both a criminal and civil context.

Criminal liability

Under section 68 of the Criminal Justice And Public Order Act 1994, any squatting which is intended to intimidate, obstruct or disrupt lawful activity carried out on that or adjoining land would constitute the offence of aggravated trespass.

The only other criminal law against squatting is the Trespass (Scotland) Act 1865. The Act was passed in the wake of the turbulent Highland Clearances, where Scottish lairds brutally evicted thousands of labourers and their families in order to use the lands as sheep farms. Many peasant and Traveller families became homeless, leading to an increase in nomadic people in Scotland. The Act was intended to dissuade these displaced people from returning, and to keep certain Scottish clans, such as the MacPhees, off their native land. A nineteenth century commentator described how it was 'passed for the purpose chiefly of preventing strolling tinkers, gipsies, and others, from squatting without permission on private property or private roads'.

The Act criminalises: 'Every person who lodges in any premises, or occupies or encamps on any land, being private property, without the consent and permission of the owner or legal occupier of such premises or land, and every person who encamps or lights a fire on or near any […] road or enclosed or cultivated land, or in or near any plantation, without the consent and permission of the owner or legal occupier of such road, land, or plantation'.

What counts as private land? Two 'institutional writers' (noted academics, who may be cited in court as legal authority), Bankton and Erskine, drawing on Roman law, consider crown – and therefore state – properties as public. They treated private property as excluding properties 'exempted from commerce' – *res universitatis*, i.e. properties of chartered communities or corporations, such as hospitals and market places. Church property was also excluded. Although, at the time of these writings, corporations were created by royal charter for public or state-controlled purposes (whereas private profiteering took on other forms, such as partnerships or unincorporated associations, and the writers only class property owned by those private mechanisms as private land) the institutional writers seem to have focused on not only the titleholder's identity, but on whether the property is used or held on trust for public uses. Following that approach, the properties of private bodies that operate public services and receive state funds, such as housing associations and Network Rail, would fall outside the Act.

As to 'occupying or encamping' a purposive interpretation would include any form of living in temporary structures on the land, and would

Picture: Jess Hurd / reportdigital.co.uk

probably encompass caravans, which were widely used by the 'strolling tinkers, gipsies, and others' who were the target of the legislation. If this construction is correct, then following *Royal College of Nursing of the UK v DHSS* [1981] 2 WLR 279, interpretative allowances would be made for scientific advances, thereby bringing modern motor vehicles used by Travellers within the Act.

'Premises' are defined by section 2: '"Premises" shall mean and include any house, barn, stable, shed, loft, granary, outhouse, garden, stackyard, court, close, or inclosed space'. It seems to be an illustrative, rather than exhaustive, list. However, it is notable that the properties listed are buildings that might be found in a rural residential setting in Scotland at the time. It could therefore be argued that a purposive reading, bearing in mind the Act's purpose of preventing evicted peasants from returning to the buildings most likely to be squatted by peasants attempting to return home after the Clearances, would mean 'premises' could only include properties of that same genus. While this appears to contradict *Henderson v Chief Constable Fife Police*, where the Act was applied to a hospital, that case was an appeal by way of case stated, and the accused never argued the point.

In *Paterson v Robertson*, trespass was treated as distinct from 'effecting a lodgment', necessary for a breach of section 3 of the Act. In *Paterson* and in *Henderson* the accused had slept overnight in the premises – in *Henderson* they had also been eating meals there. It therefore appears that the word lodging requires living in or at least staying overnight and taking meals in the premises, for however short a period – visitors, people occupying for other purposes, or on a rota basis, are excluded. Housing activists in England and Wales have successfully used rotas to circumvent section 144 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which criminalises trespass in a residential building when someone is 'living or intends to live there'.

Does the Act apply to former lawful occupiers holding over after permission has ended? In *Paterson v Robertson* former subtenants returned almost immediately after being evicted and lived at their former home for a few days. They were subsequently charged under the Act. They were treated as trespassers and convicted because the subtenancy had been 'terminated in law and their possession determined in fact'. However, *Paterson* might be distinguished from cases where the former tenants remain without parting with possession as there would be no 'fresh lodgment' without consent. Both scenarios would now be subject to the ruling in *Kay v the UK* which, as discussed below, would make it unlawful for former lawful occupiers to be evicted without being given a chance to challenge the proportionality of the eviction in court.

The Act gives the police the power to arrest squatters without a warrant. However, *Henderson* made it clear that any attempts by the police 'to remove someone from premises for the sole purpose of terminating his presence there', as in the case of providing assistance to an owner evicting squatters, would be illegal. The power to arrest without a warrant seems unaffected by section 1 of the Criminal Justice (Scotland) Act 2016 ("CJA"). However, section 2(2) provides that someone charged with an offence cannot be arrested without a warrant for 'an offence arising from the same circumstances': it seems that a squatter >>>

Picture: Jess Hurd / reportdigital.co.uk

>>> who is charged and then continues their occupation cannot be arrested without a warrant.

In certain cases, arrest resulting in the eviction of an occupier under the Act will be an interference with the occupier's rights under Article 8 of the ECHR. Following *Kennedy v the UK*, such interference may be lawful only if it is sufficiently accessible, clear and foreseeable as to its application. The number of ambiguities in the Act, especially with regards to its application to vehicles used by Scottish Travellers, who form a significant portion of the arrests made under the Act, would arguably fall foul of this requirement. As the Act is so vulnerable to human rights challenges it is remarkable that no test cases have yet arisen, especially given that Police Scotland receive no guidance or training on the Act's application.

Any new statute in this area would, following *Kay v the UK*, need to either exclude former lawful occupiers or provide them with the opportunity to have the proportionality of their eviction assessed by an independent tribunal, or risk being declared unlawful under section 29(2)(d) Scotland Act 1998.

Civil law

Trespass has been described as 'temporary or transient intrusion into land owned or otherwise lawfully possessed by someone else'. Rankine describes the word as an English import 'unknown in our early law'. If the trespass is more than transient, then it more properly falls under the delicts (the Scots law equivalent of tort) of ejection or encroachment. To evict squatters a landlord can begin a summary cause action for the recovery of heritable property, and must prove his title to the property and the defender's lack of title. Where there is an existing or historical landlord and tenant relation between the squatter and landlord, an action of removing will be the correct approach.

The remedy of interdict – the Scottish equivalent to an injunction – is a discretionary remedy against trespassers. Delay in applying will usually be a bar. Applications for interdict or specific relief are much more vulnerable to human rights proportionality defences, bearing in mind the draconian nature of these orders, which are backed by criminal sanctions.

In the case of evictions of protest occupations, following *Scottish Parliamentary Corporate Body v Petrs* [2016] CSOH 113, the European Convention of Human Rights articles 10 and 11 rights to freedom of expression and freedom of association are engaged and the courts must declare any eviction proportionate before ordering it. Following English authorities such as *Haw* [2011] EWHC 585 (QB), *Samedi* [2012] EWCA Civ 160 and *Tabernacle* [2009] EWCA Civ 23, the court held that relevant factors will include whether there is a pressing social need for the petitioner to recover possession and whether the act of occupation is a vital element of the protest.

The delict of spuilzie (the forcible taking of property) would, if it continues to be available, make most self-help evictions of squatters unlawful and provide a powerful remedy against such evictions. It is a spuilzie for anyone to vitiously deprive someone of their possessions – this applies to both moveable and real property. For spuilzie purposes, the control a squatter exercises over a secured building would qualify as possession. An eviction would be vitious if it was carried out without judicial authority and without the consent of the possessor. Whether the person dispossessed was unlawfully in possession, as in the case of a squatter, and whether the dispossessor is the rightful owner, are of no relevance, as spuilzie is based on possession and not title. In practice, this means that a forcible self-help squat eviction by a landlord would be a spuilzie and entitle the squatters to an order of ejection against the spuilzier (in this case the landlord) thereby restoring them into possession. However, a landlord may use self-help against his dispossession of a property by squatters, but only if this is done immediately and before possession has been completely lost – in such cases the self-help eviction will not be a spuilzie. Although there has been no action founded on spuilzie for about two hundred years, it has not been abolished by any statute, and, following the decision in *McKendrick v Sinclair*, a Scots common law doctrine is not automatically extinguished after a long period of non enforcement.

Cited by the Scottish Law Commission as a basis for the abolition of spuilzie, section 91 of the Court of Session Act 1868, as partly re-enacted in section 45(a) of the Court of Session Act 1988, provides what appears as a statutory version of the delict: 'The Court may, on application by summary petition— (a) order the restoration of possession of any real or personal property of the possession of which the petitioner may have been violently or fraudulently deprived'. As with spuilzie, there is no requirement that the petitioner have any right or title to the property, and would provide a squatter with immediate redress against *brevi manu* eviction.

The very ambiguous jumble of criminal and civil legislation and case law makes the law on squatting very fertile ground for litigation. In the absence of any test cases, it seems inevitable that squatters will be subject to arbitrary and often illegal treatment by untrained police. Likewise, squatters forcibly evicted without any court order will need to establish, or re-establish as the case may be, a right against extrajudicial evictions.

However, this uncertainty is just as perilous for police and landowners as for squatters, as it renders the legality of many arrests and self-help evictions highly questionable. As matters stand, it seems that the only approach that does not carry the risk of expensive litigation would be for police to refer landowners to the civil courts, where they can start an action for ejection.

Janis Voyias LLB is a legal caseworker at the Advisory Service for Squatters. A fully referenced version of this article is available on request (socialistlawyer@haldane.org) and a similar piece by the same author appeared in the Law Society of Scotland's *The Journal*.

Advocacy is not a crime: the end of welfare sanctions and equality before the law

Tony Cox recounts his experience of being arrested, charged and found guilty for standing up for people under pressure from the government.

Tony Cox is on the left of the picture above.

The Scottish Unemployed Workers Network (SUWN), which was established over five years ago, is a network of welfare and community organisations. Originally the SUWN kept the wider progressive movement informed of the latest developments in the field of welfare reform through its website and newsletters, but its work changed during the 2014 Scottish independence referendum: during the campaign we had organised advice stalls outside Dundee Job Centre, and we were horrified by the appalling stories we heard from many vulnerable people. We began a research project, 'Sanctioned Voices', which aimed to determine the extent of sanctioning of the unemployed in Dundee. Some of the stories we unearthed were truly shocking, and after the referendum we found that many supporters of independence were keen to become involved in our campaign.

Between September 2014 and April 2015 the main focus of our campaigning was reducing the rate of sanctions in Dundee, which had earned the unenviable soubriquet 'Scotland's Sanction City'. We later learned that, between January and March 2015 alone, the sanction rate in Dundee fell by 40 per cent. We would claim a degree of credit for that, as we had moved towards an advocacy-based model of welfare work. We had a group of between 15 and 20 people who were willing to represent unemployed people in meetings with the Department for Work and Pensions (DWP) and assessments for Personal Independence Payments (PIP) and Employment and Support Allowance (ESA). Our method of work was very simple: every person entering the Job Centre was given a 'know your rights' leaflet and every person who left the job centre was asked if they were having problems with the DWP. The stalls themselves also became a major focus of activity in their own right, as a place where information was shared and solidarity organised. Many people have commented that it lifted their spirits to find people outside the job centre who greeted them with a smile and who respected them as human beings, in stark contrast to the way they that were generally treated by DWP staff. We are still regularly told that we should be outside the Job Centre more often, because sanction activity and instances of gross disrespect are much rarer when we are on duty.

The DWP and firms like Maximus and ATOS are not used to being challenged, and when they are they tend to react aggressively. I was arrested at Arbroath Job Centre in January 2015, and when the case eventually came to court a few months later my lawyer systematically dismantled the allegations of 'threatening behaviour'. I had been accused of shouting and swearing at the top of my voice in the Job Centre while I was in representing a highly vulnerable woman with learning difficulties who was being forced to use the computerised Universal Job Match (UJM) system, which was totally inappropriate for her, particularly as she suffered from severe dyslexia. When faced with the prospect of repeating these allegations in open court, all of the DWP witnesses declined. One of the security guards actually said that, as far as he was concerned, no crime had taken >>>

>>> place and that he could not see what all the fuss was about. In our view it was about intimidation, and it did not work. Indeed, the arrest, and general targeting of our group – by the police, DWP and their outside contractors – actually gave us even more credibility in the eyes of many unemployed people who had been treated in the same shameful manner as we had.

In November 2015, two weeks before this first case was finally dealt with – and after eleven months and five or six different hearings – I was again arrested while accompanying another vulnerable woman into an ESA assessment at the Maximus assessment centre in Dundee. An argument had broken out between myself and Maximus staff, who were refusing to allow me to accompany the woman into the assessment because – in their view – I had been 'barred from the building'. When I demanded to speak to the manager I was told that if I did not leave immediately the police would be called. I refused to leave before speaking to the manager, in order to lodge a complaint about my treatment at the hands of the Maximus staff. Despite remaining seated throughout this 'incident' I was found guilty of threatening behaviour; the Sheriff concluded that he 'preferred' the evidence of the Maximus employees to my evidence and that of the woman that I had represented (who insisted that I did not swear, abuse, threaten or shove anyone, as the Maximus employees had claimed). I was sentenced to 150 hours' community service, which showed that what Sheriff Griffiths lacked in impartiality he more than made up for with his keen sense of irony. I was determined to appeal but my lawyer told me that I would not qualify for legal aid as I had more than £1,700 in savings. When we were informed that the cost of the appeal would be at least £4,000, it was obvious that I would not be able to pursue the case any further.

It is also a matter of great concern that the police appear very keen to be the DWP's 'little helpers'. We have had the police called on us on a number of occasions, and, while they are very ready to respond to all and any call outs from the DWP, they refuse to treat the complaints of unemployed people against the DWP with any degree of seriousness – we regularly intervene when angry and distraught unemployed people are physically ejected from the Job Centre following arguments with their 'job coaches'. The last time I was arrested the police did not even bother to ask any questions of myself or the unemployed woman I was representing, or, indeed, other witnesses: I was simply approached, asked my name and – when I answered – I was informed of my rights (which does not seem to amount to much) and taken into custody. While the police have the legal right to act in this way, which is shocking enough, we do not believe this amounts to impartial policing. Indeed, this seems to us to be politicised policing: the SUWN in general and myself in particular are being targeted by the DWP, by their various agencies and by the local police.

We have become used to the dismissive and contemptuous attitude of DWP staff, but we find it a little harder to bear when we are criminalised by police officers who appear to accept without question any allegation that is made against our activists. The irony is that the DWP are forcing their front line staff to systematically deny some of the most vulnerable people their legal entitlement to financial support, and their right to disagree or challenge decisions. That is the real crime – it is certainly the only crime that we have witnessed in nearly three years of campaigning against the so-called 'welfare reforms'.

Police officers are intervening in a conflict situation where there is already a skewed balance of power in favour of the DWP. Conflicts often arise when DWP staff impose penalties or sanctions on unemployed people, and when advocates try to intervene to point out mistakes or anomalies in the decision making of DWP staff. Both of my arrests resulted from challenges to DWP staff when they were not following their own guidelines: in the first case the use of UJM was inappropriate and in the second Maximus staff were interfering with the legal right of a disabled person to be represented in an ESA assessment, without proper

justification. Surely, cases such as this need a much more sensitive approach from the police?

Our experience of the criminal justice system has been eye opening, and underlines the necessity of far-reaching legal reform. The system is based on an outmoded and hierarchical conception of class with, in the Scottish system, far too much power in the hands of the Sheriffs: a body of men and women who, in the vast majority of cases, are removed and distant from the people who appear before them, and who remain virtually unaccountable for their decisions, no matter how prejudiced and politically partial those decisions may seem to be. The changes to legal aid entitlement has exacerbated this problem: a Dundee lawyer has told me that there has been a distinct downturn in successful appeals from the Sheriff courts.

We believe that the criminal justice system is becoming more punitive, and is being used by vested interests to protect themselves from any challenge. It has, of course, always been thus, but the last few years have seen an unmistakable erosion of the legal rights of citizens, particularly where those citizens are involved in openly opposing government policy or the attempts by private businesses to further their interests at the expense of community or individual rights. The right to

Protesting outside Arbroath job centre.

protest is also being dramatically eroded, with the police and local authorities seeking to force organisers to comply with their 'official guidelines' as to what constitutes legitimate forms of protest. Organisers who give police and local authorities notice of their intention to protest are also regularly having their applications for demonstrations and events refused, often on specious grounds, as with the recent decisions of Glasgow City Council not to allow the Green Brigade and Solidarity respectively to use George Square for proposed demonstrations. In both of those cases, however, the demonstration organisers went ahead with their actions anyway, and there were no arrests or incidents of public disorder.

I am an ordinary citizen activist and not a legal specialist. Even though I have been educated up to PhD level I have found the legal system forbidding and byzantine. I have also been disgusted at the barely concealed class character of the court system. Ordinary people are treated as supplicants, and the tone and mood of the courtroom itself feels like the manorial or laird courts of the middle ages. It does not seem to occur to those charged with dispensing justice that we are citizens, not subjects or serfs.

Since the trial and verdict we have continued with front-line advocacy, a method of welfare work that is attracting wider attention from other anti-austerity and welfare-activist groups, including Edinburgh Coalition Against Poverty, Castlemilk Against Austerity and the London-based Boycott Workfare and London Coalition Against Poverty. We are confident that front-line advocacy is the way forward for the growing anti-austerity movement. It may put activists in the line of fire, but, as this movement grows, solidarity and support will offer much greater protection from harassment and spurious allegations than the class-ridden justice system could. We should remember that, while we have not asked for this battle, the struggle can lead to change for both old and new activists and for the unemployed themselves (and there is often overlap). It can induce confidence in place of isolation, and optimism in place of hopelessness, and it can transform the power relation between the unemployed and the DWP, and between the governors and the governed. The appetite increases with the eating, and once people have recognised the extent of their power and the limitations of those that oppress them, the stage is set for radical change.

Tony Cox is part of the Scottish Unemployed Workers Network. See: https://scottishunemployedworkers.net

Free Andy Tsege

Yemi Hailemariam demands her partner's death sentence is overturned and that he is released from prison in Ethiopia

The UK government must protect its own citizens

In recent months the Ethiopian government has increased its oppression of dissenters. In August 2016 security forces shot dead dozens of protestors across the country.

The coverage of the escalating violence has caused me to worry even more about my partner, who faces execution in Ethiopia for his political views. Andargachew Tsege, we call him Andy, is a British citizen and father of three. He is no stranger to protests in Ethiopia – he was a student activist in the 1970s, demonstrating against the then-government and eventually had to flee to London for fear of persecution. He went on to become a key figure in Ethiopia's pro-democracy movement.

In 2005 Andy braved a trip back to Ethiopia to launch his book, which criticised government corruption and abuse. He was among the thousands who were arrested in a post-election crackdown by the ruling party, the EPRDF, which rules Ethiopia with an iron fist. Andy was badly beaten in jail, but was thankfully released a month later.

Back in the UK Andy became general secretary of an opposition coalition and one of Ethiopia's top pro-democracy activists. He testified to the US Congress about the dire state of human rights under the EPRDF, and was a regular commentator on Ethiopian affairs for the BBC.

In 2009 Ethiopian security forces again moved to crush dissent, arresting dozens of people who had spoken out against the government. Andy was charged in absentia and sentenced to death after a trial that observing US diplomats described as 'lacking in basic elements of due process'. Ethiopia's then-prime minister, Meles Zenawi, who oversaw my partner's death sentence, was an old university friend whom Andy had once hosted in London.

Andy continued to call for democracy in Ethiopia, criticising the regime's human rights abuses and the suffocation of free speech. This authoritarian tendency escalated ahead of the most recent elections, where the EPRDF won 100 percent of the parliamentary seats.

Independent bloggers were rounded up and given lengthy sentences. Andy wasn't safe either, even though he's a British passport holder who had avoided setting foot in Ethiopia for nearly a decade. In 2014, a few weeks before Andy, the kids and I were due to go to Rome on holiday, he was kidnapped by the Ethiopian authorities miles outside their border.

He was passing through an international airport in Yemen *en route* to meet exiled Ethiopian opposition politicians when he was snatched and taken forcibly to Ethiopia. He has been held there by the country's security forces ever since, facing a death sentence.

Weeks after Andy disappeared, British diplomats found out what had happened and informed me. It broke my heart. I screamed and I wept, knowing Andy was now a captive in Ethiopia. He was in the lion's den. There is no place more dangerous for him in the world.

He was kidnapped from a plane in the Middle East and bundled into Ethiopia, where he was shackled for the first fortnight and held in a secret prison for months. He now sits in a cell facing execution for his peaceful political opposition to a repressive Ethiopian regime, after a trial where he was not invited to be present.

I am not allowed to visit Andy. While he was initially held in a secret location for a year, he is now in a prison outside the capital called Kality, which holds journalists and political activists and has been dubbed 'Ethiopia's gulag'.

Here in London, I look at our three children and it breaks my heart. Although I try my hardest to stay positive I can tell that they see through it. It is especially hard on them: our two twins turned nine without their father here, and our eldest daughter, Holly, has turned 16, taken her exams, and started college without him here. Sometimes the children cry and talk about their fears that their papa may not come home. This nightmare has been going on for over >>>

>>> two years and our three children desperately want their dad back.

I can only imagine that the EPRDF is going to these extreme lengths because they know that Andy is one of the most important people in the Ethiopian opposition, and represents a threat to them. Andy wants to see fairness, democracy and choice – which we take for granted in the US and the UK – offered to a nation that has spent decades under the oppression of dictatorial regimes.

So far the British government has refused to call for Andy's release – a call that has been made by the UN, members of the US Congress, the European parliament, and British MPs. The Foreign Office says it's trying to get Andy supplied with paper and pens so he can ask for a lawyer, but it's plain that there are no fair trials for political activists in Ethiopia.

During this ordeal the one thing I hadn't expected was the resistance I have encountered from the Foreign & Commonwealth Office, which continues to refuse to call for his release. The horrible human rights abuses Andy has faced – his abduction in an international airport; his secret imprisonment for over year; the denial of regular consular access to the UK; the lack of written assurances from the Ethiopian government to the UK in respect of any of their demands including the stay of execution; the lack of access to a lawyer; the lack of due process; the Ethiopian government's refusal to give us a visa to go to see him – seem to have been ignored by the UK government.

British passports supposedly require 'such assistance and protection as may be necessary'; Boris Johnson, the Foreign Secretary, has a duty to help British citizens like Andy when they are in peril abroad.

When Johnson became Foreign Secretary I hoped he would help. As Mayor of London he had written to me: 'I am truly saddened to hear of Mr Tsege's situation […] with no foreign policy remit, any other intervention is beyond my powers as Mayor of London […] I very much hope Mr Tsege safely returns to the UK in the near future'. Instead, Johnson is repeating the line of his predecessor, Philip Hammond: 'Britain does not interfere in the legal systems of other countries by challenging convictions, any more than we would accept interference in our judicial system.'

"The horrible human rights abuses Andy has faced seem to have been ignored by the UK government."

(Below) Yemi and their three children outside the Royal Courts of Justice and (top) the family when they were together.

On 7th September I went to the High Court in London with our three children for a hearing for permission for judicial review on how the government has handled his case. I was sickened to see the government's lawyers tell the court they were 'comfortable' that Andy is not being ill-treated. British Embassy staff only visit Andy with a guard in the room: Andy would be forced to say he is the victim of torture in front of his torturers.

Johnson should listen to the UN, whose Special Rapporteur on Torture said in February that 'Ethiopia, by subjecting Mr. Tsege to torture, ill-treatment, prolonged solitary confinement and incommunicado detention, by denying him access to adequate medical care and legal process, and by sentencing him to death without due process for a non-violent crime, has violated his right to be free from torture', or to the US State Department, which, in its 2015 report on Ethiopia, found that 'security officials tortured and otherwise abused detainees'.

Instead, the Secretary of State's barristers argued that there has been no 'grave breach of international law, particularly in the context of human rights'. That is plainly wrong.

The FCO claims that doing more for Andy 'would have consequences for [our] relationship with Ethiopia'. They also claim that it would also have a negative effect on progress. It is mind-boggling: Johnson is willing to overlook the 'consequences' for a British citizen facing a death sentence because he is worried about offending a totalitarian state. That is appeasement. It is cowardly. It is wrong.

Yemi Hailemariam is the partner of Andy Tsege – a British man who is currently held under sentence of death in Ethiopia. Yemi and their three children live in Islington, London. For more information, see http://freeandargachew.com and sign Andy's 38 Degrees petition.

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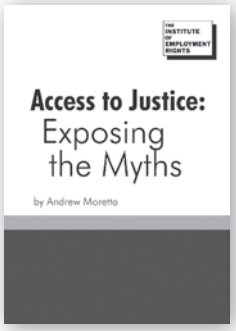


Politically motivated attacks

Access to Justice: Exposing the Myths, Andrew Moretta, published by the Institute of Employment Rights, 2016

Readers of *Socialist Lawyer* are aware of the problems in relation to their clients obtaining access to justice in their various practice areas and the devastating impact of legal aid under New Labour, the Coalition Government and the Tories. One of the Coalition's most far reaching reforms was the introduction of fees in the employment tribunals in 2013 (except for Northern Ireland) and the removal of employment law from the scope of legal aid, which had a major impact on law centres and firms. Andrew Moretta provides the reader with a clear, concise and detailed critique of how access to justice for workers in the United Kingdom has been gorged and outlines why the myths propagated by the Tories and businesses need to be exposed.

Moretta sets out eight myths and then forensically debunks them: (1) employment tribunals favour the worker; (2) employment protection laws reduce levels of employment; (3) there was a wave of 'vexatious' claims; (4) charging fees at tribunal serves to weed out 'vexatious' claims; (5) ACAS conciliation is an effective alternative to tribunal; (6) the claimant will be paid the compensation awarded by the tribunal; (7) a successful claimant can choose to be reinstated or re-engaged; and (8) workers are likely to receive large awards at tribunal. He uses interviews with lawyers, relevant statistics (presented in clear tables and graphs) and the accompanying insightful analysis to reach the inevitable conclusion that the employment reforms by the Coalition and Tory governments were politically motivated attacks on workers and trade unions that were unsupported by empirical evidence, despite the skilfully deceptive crafting of the Beechcroft Report to perpetuate the myths.

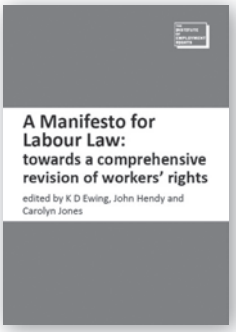
Building upon a previous strong critique of the employment tribunal system by Haldane Society member David Renton in his excellent book *Struck Out: Why Employment Tribunals Fail Workers and What Can be Done*, Moretta laments the decline of voluntarism in British industrial relations, individualisation and the juridification of the employment relationship. Moretta tracks the ideological de-regulation / re-regulation of industrial relations and how it has been targeted to undermine the position of workers, reaching its apogee with the Trade Union Act 2016, which was still passing through Parliament as he was writing. Echoing the call by trade union leaders such as Unite's Len McCluskey, Moretta anticipates that the action necessary to create the impetus to remove that legislation and to restore the trade union freedoms lost since 1979, 'will now involve breaking the law'.

However, regarding access to justice, Article 6(1) of the European Convention of Human Rights and – notwithstanding the implications of Brexit – Article 47 of the EU Charter of Fundamental Rights guarantee the right to legal assistance in civil proceedings. These provisions should allow individuals to access justice irrespective of their means. What is to be done in the present situation in the United Kingdom when its government is clearly in breach of its international law obligations regarding access to justice? Moretta has achieved his objective in dispelling the myths; his prediction of the next steps for the labour movement is surely correct and one that readers of *Socialist Lawyer* will endorse: 'The unions now face a decisive battle, one which will be fought in workplaces, on the streets, in Parliament and in the courts'.

Declan Owens

Picture: Jess Hurd / reportdigital.co.uk

Echoing the call by union leaders such as Unite's Len McCluskey, Moretta anticipates that the action necessary 'will now involve breaking the law'.



Too much law and not fit for purpose!

A Manifesto for Labour Law: towards a comprehensive revision of workers' rights, published by the Institute of Employment Rights, 2016

Workers who read the Institute of Employment Rights' Manifesto will recognise its diagnosis of the problem of labour law in the UK and it is likely that they will agree the recommended solution: a comprehensive revision of workers' rights. Workers' rights in the UK are already subject to a framework of law that is the most restrictive in the western world, a grim reality proudly endorsed by Tony Blair on the eve of his election in 1997 and not effectively addressed by any UK government since. Nevertheless, the Manifesto recognises that the world of work has changed and the law must follow.

The 25 principal recommendations, set out in the concluding chapter, are based on the need to ensure that workers' voices are heard and respected through a ministry of labour, a national economic forum and sectoral employment commissions. These recommendations are supported by the 'four pillars of collective bargaining' with transformative implications across four spheres of social life: (i) workplace democracy (making workers stakeholders in their employer); (ii) social justice (the reader will be particularly

alarmed by a stark graph outlining the correlation between the decline in UK union membership/collective bargaining and the rise in income inequality); (iii) economic policy (showing how collective bargaining can turn a vicious cycle of lower living standards into a virtuous cycle of growth and prosperity); and (iv) the rule of law (requiring the UK to comply with international labour standards). The dejuridification of the employment relationship achieved through the shift from legislation to collective bargaining as a regulatory mechanism is to be welcomed by those labour lawyers who care about the interests of workers because it would reduce expensive and lengthy litigation; in this respect, as in other practice areas, lawyers should be glad of less work.

The proposals also include the need to ensure that universal rights at work for all workers (not just employees), freedom of association, and the right to strike (without which collective bargaining 'is little more than collective begging'), and a call to repeal the Trade Union Act 2016. In an era of blacklisting of trade unionists in the construction sector; zero hours and exploitative temporary agency work contracts across sectors in firms such as Sports Direct, Deliveroo and Uber Eats; exploitation and betrayal of migrant labour by firms such as Byron; and sharp practice by employers such as BHS in business restructuring, the manifesto is a further call to arms for the labour movement as they continue their fight back against injustice at the workplace, especially through rank and file mobilisation. The recommendation for the creation of a specialist labour court and an effectively resourced labour inspectorate would help to further address many of these injustices.

The recommendations are not even particularly radical: they reflect policies that have been in place in many countries within Europe for decades, or were seen as prerequisite thresholds for EU accession countries, and there is a limited focus on the need for radical reform of corporate governance. The Manifesto was written and published before the Brexit vote but its validity and the implications of a possible further lowering of standards in the aftermath of the referendum make the adoption of the recommendations even more necessary to safeguard the position of workers in the UK. This is particularly necessary as there is likely to an ideological pivot under the Tories to deregulate the labour market further and seek to make the UK a low tax and low regulation economy, notwithstanding that the UK is already in breach of international labour standards in a number of areas, especially the right to strike.

The manifesto was drafted by a dream team of 15 academic labour lawyers and labour specialists whose expertise cannot be doubted. The stated intention is that the manifesto should be offered to Labour's Workplace 2020 Commission and, promisingly, John McDonnell MP confirmed at the Labour Party Conference in September 2016 that they will now look at ways to implement the recommendations of the manifesto. The question remains whether there will be the political will and capacity within the party to adopt the recommendations at a general election and legislate accordingly. Regardless of the internal policy debate within the Labour Party, it is clear that any party professing to represent the interests and preferences of labour now has the formula for winning the votes of 31 million workers throughout the UK and achieving social justice through the recommendations in this manifesto. The IER will be holding meetings and producing briefings and video clips to promote the manifesto in the autumn of 2016; the reader is advised to read the manifesto, attend the meetings and spread the word.

Declan Owens

Haldane Society of Socialist Lawyers

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Thursday 27 October

Speakers:
Jacob Bindman
Garden Court Chambers
Catherine Rose
Haldane Legal Observer

6.30pm to 8.30pm at **BPP University Law School**, 68-70 Red Lion Street, London WC1R 4NY

Joint enterprise in the wake of Jogee

Wednesday 23 November

Speakers:
Joanne Cecil
Garden Court Chambers
Gloria Morrisson JENGbA

6.30pm to 8.30pm at **University of Law**
14 Store Street, London WC1E 7DE

For more information:
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