Europe. As both the incoming and outgoing European Commission presidents, Barroso and Juncker, and German Chancellor Angela Merkel commented, the principle of free movement is fundamental to the EU. Cameron's suggestion of restrictions on member states' nationals was condemned as irresponsible, as were his previous outbursts on 'benefit tourism' (equally unsupported by evidence).

Exit from the EU is far more problematic for the Conservatives' corporate backers than is the retreat from human rights: as James Meek pointed out, the EU is a hybrid project, serving the interests of social justice and global capitalism simultaneously. But what both the Tories' proposals on human rights and free movement have in common is a retreat from international cooperation for the protection of people's rights, towards a more unfettered capitalism combined with a little-Englander social isolation.

Gordon Park - Family Begin Fresh Bid to Clear his Name *Bill Gardner, Telegraph*

New DNA evidence could throw fresh doubt on the murder conviction of Gordon Park, the retired teacher who became known as the Lady in the Lake' killer. Park was jailed for life in 2005 for the murder of his wife Carol, a deputy headmistress, after a jury found he had killed her and dumped her body in Coniston Water in the Lake District nearly 30 years before. The retired teacher's conviction apparently solved one of the longest-running mysteries in British criminal history. However Park always maintained his innocence, until he was found hanging dead in his cell on his 66th birthday in January 2010. Nine months after his death, Park's family - the couple had three children - launched a fresh bid to clear his name.

Now they claim to have identified new DNA evidence which may exonerate him and pave the way for a new police investigation to find his wife's true killer. The evidence will be presented to the Criminal Cases Review Commission (CCRC), the watchdog which probes possible miscarriages of justice in the UK and has been "actively investigating" the case since 2010. It is also understood investigators are considering returning to Coniston Water to test disputed evidence that helped secure Park's conviction.

Serco: Fresh Allegations Over its Running of Yarl's Wood IRC *Mark Leftly*

The National Audit Office (NAO) is looking into fresh allegations over the way a private sector company has run Yarl's Wood, the UK's largest detention centre for women facing deportation. Parliament's independent financial watchdog has been alerted to allegations that Serco, the government contractor that has managed the facility since 2007, has inflated certain figures and failed to carry out mental health assessments for groups of asylum seekers. The NAO is understood to have just started preliminary discussions with some of those who have made the claims and will soon decide whether to launch a full inquiry.

Hostages: Jamie Green, Dan Payne, Zoran Dresic, Scott Birtwistle, Jon Beere, Chedwyn Evans, Darren Waterhouse, David Norris, Brendan McConville, John Paul Wooton, John Keelan, Mohammed Niaz Khan, Abid Ashiq Hussain, Sharaz Yaqub, David Ferguson, Anthony Parsons, James Cullinene, Stephen Marsh, Graham Coutts, Royston Moore, Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, Hyrone Hart, Glen Cameron,Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, John Twomey, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Romero Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan Thakrar, Miran Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Frank Wilkinson, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Paul Higginson, Thomas Petch, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert Knapp, William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard Southern, Jamil Chowdhary, Jake Mawhinney, Peter Hannigan, Ihsan Ulhaque, Richard Roy Allan, Carl Kenute Gowe, Eddie Hampton, Tony Hyland, Ray Gilbert, Ishtiaq Ahmed.

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MOJUK: Newsletter 'Inside Out' No 503 (13/11/2014)

Joint Enterprise: 'They Keep Knocking us Down, We Get Stronger'

Justice Select Committee's follow up Inquiry into Joint Enterprise charging and prosecutions. The change in the atmosphere with the Committee this time was palpable. In 2011 most of the MPs on the Committee had not heard of joint enterprise until our campaign forced it onto their agenda. Certain Committee members were even agitated that we had the audacity to suggest that miscarriages of justice were a common occurrence in our justice system. You see for a country like ours, who prides itself on having one of the best justice systems in the world, any exposure that this is indeed a myth is deeply troubling.

For this session the Justice Select Committee asked us to look at two areas: firstly whether the DPP guidance (issued in 2012) on charging decisions and prosecutorial policy has made any difference; and, secondly, whether the Law Commission's proposals relating to joint enterprise (in its Participating in Crime report PDF) should be implemented by reforming the law into statute.

The DPP was up first and it is honestly difficult to work out whether Alison Saunders is deluded or disingenuous. She pointed out to the committee that she was a civil servant and also an Under Secretary of State, not really sure why, unless it was perhaps to clarify that the opinions given were not necessarily her own. Apparently the aim of the guidance was to 'help prosecutors in their role' and 'improve the way they behave'. Who exactly is she talking about here? Highly educated lawyers who hardly need any 'help' in our adversarial court system determined to get a result. She claimed that there are robust procedures in place to ensure that the 'test' to go ahead with a prosecution is based on 'evidence'. Really? JENGbA's own cursory examination of cases taken to court this year alone shows many, many cases where, mainly, young men are held on remand for up to a year and which do not result in a conviction, which means that the 'test' is evidently not strong enough.

The reality of joint enterprise: We know of a case where three young men were charged with a murder, the 'evidence' against two of them was that they received a phone call from the suspected principle after someone had been shot. The judge in that case berated the prosecutor by telling him that he needed to prove exactly what it was that the defendants were supposed to have done in committing the murder (his answer to the judge was 'not in joint enterprise'). Luckily for those two boys the judge was having none of it and they were acquitted, otherwise they would have been sentence to the minimum mandatory of 30 years. One of those lads' mum died five days before he was acquitted and he has been constantly harassed by the police ever since. The DPP also stressed that they do not prosecute people on the periphery of a crime, that there has to be evidence that they participated or encouraged the offence. What if you are not even there like the previous scenario or as in lots of the cases JENGbA represents.

This idea that innocent bystanders will not be prosecuted is again a nonsense when the police's own film that they take round to schools to educate children about joint enterprise states that 'if you are there and you do nothing to stop a crime occurring you too can be charged'. Dangerous and unhelpful advice when in the instance of a spontaneous outburst all present can be charged because they should have known better than to be in the wrong place at the wrong time. That is the reality of joint enterprise charging.

The DPP went on to suggest that the guidance gave prosecutors the 'thought process' they should go through when deciding whether to charge. However defence practitioners tell us that 10, 15 years ago they simply would not progress with a prosecution based on little or no evidence but now even some defence solicitors want cases to go to trial as it is a way of ensuring they make the most money. Shocking you might think but this was reiterated by Dr Matt Dyson in his supplementary evidence.

The DPP cited the Steven Lawrence case as a good example of how joint enterprise can work – since they did not know who wielded the knife, two of the five men charged are now serving life for his murder. Joint Enterprise charging was in place 21 years ago when Steven was murdered. Why was it that all five were not charged with his murder since all present can be convicted of murder? Yet it takes 20 years, a massive campaign by the Lawrence family to expose the endemic racism and corruption in the Met, reversing double jeopardy and the lazy doctrine of joint enterprise to get two of them. Result! And every member of the establishment who holds joint enterprise in esteem will use the Lawrence case to claim it is a vital tool of law enforcement. If police corruption had not been part of the initial investigation then they could have actually charged all five – and probably found evidence of who participated in the attack. And no-one should be surprised that police corruption, withholding of evidence, using testimony of actual criminals, changing witness statements, paying huge amounts of money to witnesses to corroborate the Police version of events, are all constant common denominators in joint enterprise convictions.

When asked whether the guidance follows the test for young people and those with disabilities, the DPP said the judges do take into consideration the age of children and whether they have disabilities or not. Well, that explains the very recent case in Liverpool where one child was just 14 years old with severe ADHD, who was not the principal but is now serving a life sentence along with three other children, because he was there when another boy stabbed the victim in the leg. JENGbA have many cases with Asperger's (one currently in Broadmoor because the YOI he was in did not know how to cope with him), autism, severe learning difficulties and ADHD – mostly young boys. Which begs the question, how in the instance of a spontaneous violent attack often over in seconds, can a child with any of these disabilities process what his intentions or foresight would be? Having said that, in a spontaneous attack, how can anyone share the same foresight and intention that something seriously wrong might happen. It is a nonsense and Alison Saunders knows it.

She even said that judges throw out cases when they feel the prosecutors have not presented enough evidence to justify a case. Oh really? Like in the case last year where 10 young men, all Afro Caribbean were in the dock. There had been a stabbing in a nightclub in Manchester and because the CPS could not identify from CCTV footage when the stabbing occurred they rounded up these 10 and charged them all. The judge looked at the footage for three days, the prosecutors could not identify any of the individuals, the judge attempted to throw the case out through lack of evidence but the CPS challenged that decision by judicial review in the Royal Courts of Justice. The decision to throw the case out was overturned because, even though the judge could not make any sense of CCTV footage, nor could the experienced prosecutors. The Judge decided that the Jury could decide. All 10 were found guilty and are now serving 137 years between them.

Saunders also stated that the CPS 'do not look to charge the most serious offence – we look to charge the most appropriate offence'. Since JENGbA know of cases where it is simply easier to charge large groups without any real evidence against individuals but the 'group' is deemed 'criminal' by its numbers, this too is simply not true. The most galling part of what we listened to from the DPP and then Mike Penning is that they think the general public (and

open cast mines, oil wells and refineries, industrial livestock farming, to have all the railways and airports they need regardless of noise, air pollution, water poisoning and disruption to ordinary life.

A government which governs so blatantly in the interests of the corporations and so careless of the resulting damage to the poorest and most vulnerable is bound to face resistance, and to become more authoritarian and less democratic as a result. In the recent past the UK has faced adverse judgments from the Strasbourg Court for the retention of DNA samples of innocent people, and for the blanket use of stop and search under counter-terrorism legislation, which the judges held carried a serious risk of discrimination and abuse.

Is it a coincidence that the DRIP Act, rushed through parliament in three days in July 2014, reinstates the potential for blanket electronic surveillance of the entire population which the Court of Justice of the European Union (informed by ECHR privacy concerns) had just declared unlawfully broad? Or that contemporaneously with the announcement of human rights reforms, we were told that Theresa May plans further to criminalise non-violent 'extremism'? (Remember that those targeted for intensive police surveillance as 'domestic extremists' have included the families of Stephen Lawrence and Ricky Reel, and other campaigners against racism and for police accountability, as well as socialist historians of the stature of Christopher Hill and Eric Hobsbawm.) We are being asked to trust this government with deciding which of our rights are 'trivial' and not worth protecting, and which European Court judgments it should obey.

As justice secretary, Chris Grayling, the main architect of the human rights proposals, has made no secret of his disdain for the law, lawyers and judges. He has presided over the most savage legal aid cuts ever, leaving legal advice deserts across the country as judges struggle to cope with the flood of litigants in person. Hikes in court fees have meanwhile made justice an expensive commodity even without lawyers. His SARAH (Social Action, Responsibility and Heroism) Bill is an attempt to coerce judges into granting 'socially responsible' companies immunity from negligence actions. At the same time, he has flouted an Appeal Court ruling which forbids using physical force on young offenders for disciplinary purposes, and dismissed as insignificant a runaway rise in prison suicides and authoritative warnings of staff cuts, severe overcrowding, rising tensions and 'rapidly deteriorating safety' in British jails.

The government is fed up to the back teeth with judicial activism, with being told it can't push through every element of its slash-and-burn programme of welfare reform, or all of its legal aid cuts, that the State does owe some residual duties to those outside the charmed circle: to prisoners, to 'feckless' families and their children, to the destitute, to the migrants whose labour supports British pensioners. It wants the freedom to carry on its industrial-scale surveillance of phone calls, emails and other internet traffic without judicial interference. It wants its soldiers abroad not to have to worry about the human rights of prisoners, about being held to account for torture or summary execution.. It does not want judges in the domestic courts repeatedly finding that the prolonged detention of suicidal foreign prisoners is inhuman and degrading, or that the denial of redress for human rights abuses and illegality abroad is itself unlawful. It is fed up of rulings by British judges condemning secret evidence by anonymous witnesses, or finding the indefinite detention of foreign (but not British) terrorist suspects discriminatory, or ruling against the deportation of those facing a real risk (a reasonable likelihood) of torture. It wants to let refused asylum seekers starve if they won't go home. It wants to make it impossible for the unmoneyed and unskilled to come to or stay in the UK – whether they come from Africa, Asia or the EU.

The 'emergency brake' proposed by Cameron on the freedom of movement of citizens of the poorer EU states is as impossible a demand for the EU as are the human rights 'reforms' to the Council of

been inspired and informed by the European human rights framework to develop British human rights law in the UK. The right to life enshrined in Article 2 of the Convention includes protection from known and imminent threats to life, so that police forces which fail to protect victims from fatal attacks by known perpetrators (whether violent husbands or racist neighbours) must be held accountable. It has also been held to impose duties of effective investigation on States, particularly of deaths at the hands of State agents – of vital importance for families of those who have died in police or prison custody. Article 3, the prohibition of torture and inhuman or degrading treatment or punishment, has been used against evils as varied as prison overcrowding, corporal punishment in schools and the enforced destitution of asylum seekers. Free speech rights mean that criticism of public bodies must be protected. Derogations from liberty must be justified.

Equality is a cornerstone of the Convention. Equality of arms as between parties to legal proceedings is a key ingredient of fair trial rights, and has been deployed to restrict the growth of secret evidence as well as to ensure that legal aid is not totally abolished. The residence test for legal aid was ruled unlawful in cases where all, resident or not, are equally subject to the law and equally entitled to its protection.

Non-discrimination in the enjoyment of rights has allowed LGBT rights to flourish in the recent past, as well as protecting foreign terrorist suspects from measures such as internment to which British terrorist suspects are not subjected. It has also meant that parents cannot have their children removed into care simply because they are undocumented, and that Roma or Muslim passengers cannot be questioned and prevented from boarding an aircraft purely because of their ethnicity or religion. And the much-maligned Article 8 – the right to respect for the home, family and private life, privacy and correspondence – not only prevents unjustified separation from family members through deportation; it also protects citizens from abusive or blanket surveillance, from excessive air and noise pollution or other environmental harm interfering with physical or mental health, from disclosure of private information and from random searches and raids.

The Human Rights Act brought human rights home, in the sense that it gave British judges the power to act on human rights abuses. Previously, those arguing their rights under the ECHR had been breached had no domestic remedy but had to take their case to the human rights court at Strasbourg. The Act has led to big changes in the law – not least, making legislation and policy accessible. State bodies have had to become more transparent and more accountable. These human rights standards require government not only to control its own agents – whether police or prison officers, but also to provide a legal and regulatory system which prevents and deters violations by private actors such as companies whose activities might interfere with human rights.

Rights for Profiteers, not for People: But, as we saw with the government's relaxed response to zero hours contracts and food banks, and the fate of its promises to curtail corporate lobbying (which morphed into an Act regulating charitable campaigning and trades unions), regulation of corporations and their activities goes against the government's grain. Instead, the coalition's policies over the past four years, from benefit caps and sanctions, work assessments for the terminally ill, to clampdowns on 'benefit tourism', culminating in the frontal assault on free movement of EU citizens, have been designed to regulate people in the interests of the corporations, rather than vice versa.

Corporations are increasingly the perpetrators of human rights abuses. As free marketeers, they want to cut 'red tape' (while of course taking advantage of export credit guarantees, EU agricultural and developmental subsidies and anything else that's going). And the government fully supports corporate rights – to build, to mine, to excavate, to pollute through fracking,

JENGbA families) are stupid because we cannot possibly understand the complexities of the law so we should accept what they say as fact.

'Not very legalistic': Mike Penning kept talking about joint enterprise as 'legislation'. He used that term throughout his evidence until the chair Sir Alan Beith corrected him that joint enterprise was not legislation but a legal doctrine. Mr Penning said that he was 'not very legalistic'. Why is he a justice minister then? It doesn't seem to worry the Coalition that the most senior positions in the Ministry of Justice do not have any legal background or even legal expertise themselves (see our Lord Chancellor, Chris Grayling). I couldn't stay to listen to all of the Justice Minister evidence in person as we had promised to support a case in the Appeal Court being heard at the same time.

Hollie Robinson was 16 years old when her father had been stabbed by her sister's boyfriend. She had already been turned down by the single judge on conviction and 20 year sentence. Her legal team were so convinced by her innocence they took the case to the three judges making strong legal arguments against her participation and the flawed use of joint enterprise. She did not murder her father nor did her sister who got 22 years. They had gone to their family home to retrieve their mother's jewellery, albeit while he slept. The argument was that it was not joint enterprise murder because they had gone with a different plan, to retrieve their property. They also argued that since Hollie was only 16 at the time she would not have properly understood what joint enterprise was and the foresight element was not present as their intention was totally different to the outcome. Hollie was naïve, it was a naïve plan and one that went horribly wrong and ended in the death of her father; but she did not kill him, nor did her sister, but they are serving 20 and 22 years and have to deal with the added tragedy of the loss of their father.

The three judges knocked her back. I have attended countless appeals and cannot fathom how these judges sleep at night, so bizarre are some of their decisions in the face of natural justice. So when Alison Saunders and Mike Penning both suggested the 'right' decision is being made to charge in the first place, because they secure convictions and both were satisfied that the appeal court agrees with the judicial process, they know exactly why this is. This is the establishment not allowing any precedent through with joint enterprise because as soon as someone proves that it is not possible to have 'possible' foresight the doors will open for other appeals. The legal arguments in joint enterprise appeals are based on the fact that no evidence existed in the first place and it is hardly surprising that 22% of appeals in 2013 were joint enterprise but since 2004 only 1 conviction has been quashed after a referral from the CCRC.

When asked if this doctrine is not in danger of contaminating our justice system, Mike Penning said he was not convinced. Obviously this is the Government line and the current tragedy of joint enterprise miscarriages of justice are not entirely the Coalition's fault. That goes straight back to the previous government who follow that same old mantra to be 'tough on crime' and win votes. Labour brought in the mandatory sentencing, which the public are still not aware of. They have no idea that you do not need any mens rea (mind to kill) or actus rea (act of killing) to be convicted to a life sentence. But the public are learning because JENGbA exists and we are relentless in our pursuit for justice for our loved ones.

All the campaigners who attended the Select Committee came to the Royal Courts of Injustice as soon as the evidence hearing was over to support Joanne, whose two daughters are Hollie and Ashleigh. Although there were some tears, there is a sense that if they keep knocking us down we will get up stronger, and as we grow in numbers and sadly we are, the government will have to take stock and do something to restore the public faith in the Police and the CPS that natural justice must exist for every member of society and not just for those who can afford it. *Gloria Morrison for 'The Justice Gap, 03/11/14*

Three Women Prisoners - Unlawfully Strip-Searched

JT, BK and RH v Secretary of State for Justice

1) There are three claims before the court by prisoners who at the relevant time were held at HMP Send and who contend that they were unlawfully strip-searched. Two, BK and RH, were searched on 28 February 2013 following the indication by a dog trained to react to drugs, and perhaps alcohol, outside their respective cells following a wing search. This had resulted, according to what is set out in the grounds served in opposition to the claims, from the knowledge that a dishonest prison officer had smuggled alcohol and other prohibited items into the prison. JT was searched on 5 April 2013 as a result of information, which she disputes, that she had been dealing in drugs.

2) At the outset of the hearing we had to consider an application made on behalf of the claimants, first to amend the grounds and, secondly, to debar the defendant from defending because of failures to comply with various orders made in relation to service of evidence and acknowledgement of service. So far as the former is concerned, nothing really turned on that and we will give such relief as we consider to be appropriate on the basis of the material that is before us.

3) So far as the latter, that is the application to debar is concerned, we accept that it can apply in public law cases but, generally, that will be the case only where the claim involves an individual who has, it is said, been unlawfully treated by a particular decision or action of a public body. But where, as here, there is an attack on a policy, or the judgment of the court is intended to deal with a matter which could have a wide effect, then in my view it would be exceedingly rare that to debar would be appropriate.

4) I have learnt not to say never, but it seems to me that in a case such as that, never would almost certainly be appropriate. The reason is obvious. If it is to have a wide effect, it is necessary that the court is in a position to have considered all the arguments and all necessary evidence to support whatever action or policy is in issue before reaching its decision. If it does not, then its decision will carry far less weight and it will always be open to another to say, that that court did not consider the arguments in full and therefore its decision can be reconsidered. That is not a satisfactory state of affairs.

5) Despite what are recognised to be serious failures to meet the terms of court orders - and the excuses put forward are not in the least satisfactory - nonetheless, it cannot be said that there has been any prejudice to the claimants in the arguments that they have been able to put forward. Accordingly, we rejected the application to debar.

Conclusion: 25) Finally, it is necessary in our judgment and indeed it is conceded on behalf of the defendant, that there is a requirement to give reasons for the carrying out of the search in question. That was not done. It is quite insufficient to amount to reasons simply to say, you have been targeted. At the very least it would be necessary in the case of BK and RH to indicate that the drugs dog had shown that there was likely to be some drugs or perhaps alcohol in the cell. The search, not having found it in the cell, entitled them to go on to the search of the person. Of course they did not carry out the search of the cell in advance.

26) It is all the more surprising that these breaches occurred because it is said that there is training of all prison officers so that they can comply with the instruction. All one can say is that either the training at HMP Send was grossly deficient, or there was a deliberate failure to comply with what was required. We can only hope it was the former as opposed to the latter.

27) So far as the policy is concerned, the contention on behalf of the claimants is that there are a number of deficiencies in it. The correct approach when considering instructions or policies such as this is to be found perhaps most helpfully in the decision of the House of Lords in R

omits freedom from torture or the right to life). Parliament would define a threshold below which violations of human rights would not be justiciable in the UK courts.

If the UK remained signed up to the European Convention, those denied a remedy here could go to the European Court in Strasbourg – and human rights lawyers have pointed out that the British Bill would result in many more cases at Strasbourg. The document has the answer to that too – rulings of the European Court would no longer be binding on the government, but purely advisory. If, as appears to be the case, this radical redefinition of the Court's role is not acceptable to the Council of Europe (the creator of the Human Rights Convention and its court), the Tory proposal is simple: we leave the Council of Europe (membership of which requires compliance with the Convention) and the European Union (which is in the process of signing up to the ECHR – a process which, as the document points out menacingly, requires unanimity among member states).

Behind the 'Legal Illiteracy': Legal commentators have remarked on the 'legal illiteracy' of the human rights proposals – the fact that, for example, treating the Strasbourg Court as an advisory body and refusing to be bound by the Convention is not permitted by the Convention itself and so cannot be accepted by the Council of Europe. Former attorney-general Dominic Grieve condemned the plans as 'almost puerile and unworkable', adding that they would damage the UK's reputation, and his old colleague Kenneth Clarke, a former justice secretary, concurred. (Both men were removed from ministerial posts in advance of the proposals, to ensure they got through Cabinet.) Other political commentators have seen the move exclusively in terms of addressing the twin threats to the Tory leadership from UKIP and from their own members.

There is more to it, though, than electioneering. While it is clearly a useful way of retaining the votes of UKIP-leaning right-wingers, it is first and foremost calculated to free government ministers, together with their corporate allies, from the excessive demands of the rule of law. It is part of the project to dismantle the post-war settlement which gave ordinary people not only protection from want, from sickness, homelessness and destitution, but also unprecedented legal protection for basic rights. The same impetus behind cutting to the bone the welfare state, the educational infrastructure of libraries and youth provision, social housing, the impetus which led to the privatisation of water and the post, probation and prisons, underlies this assault. Removing workers' protections, slashing environmental, health and safety inspectorates, diluting equalities duties, cutting legal aid, making it more difficult and expensive to enforce rights against employers, landlords and government officials – these are all of a piece with the attack on human rights.

Protective Infrastructure: The European Convention on Human Rights does not guarantee rights to work, livelihood, decent working conditions or trade union representation, to social security or health care, or to housing, These economic and social rights, although proclaimed as human rights in the 1948 Universal Declaration, the founding post-war human rights document, were believed too 'socialist' for its drafters. But the Convention, and the Strasbourg court which stands at the apex of human rights protection in Europe, have been a success story on a par with the NHS. The Court's enormous backlog of cases testifies to its usefulness as a court of last resort against member states' human rights violations, and as a standard-setter for human rights protection across Europe. This success has been achieved through the right of individual petition, whereby anyone, whatever their nationality, affected by a decision of a signatory state, can petition the Court directly if they cannot get a remedy from the domestic courts.

The Court has been criticised for excessive deference to the liberal governments of western Europe, particularly over issues such as national security. But its judgments taken as a whole have created a protective infrastructure for citizens and denizens of Europe, and British judges have

national security or the country's economic interests, and prevention of crime or disorder.

But the government would prefer foreigners, and other unpopular groups like Travellers and prisoners, not to have rights at all. The Blair government attempted, without success, to persuade the European Court to permit those regarded as terrorists to be deported regardless of the risks they faced in the destination country. In the aftermath of the Court's ban on the deportation of Abu Qatada to a trial based on torture evidence in Jordan, Cameron complained that the Court was in danger of becoming a 'small claims court'. Ministers of both governments have repeatedly and freely expressed their frustration with British judges who refused to allow asylum seekers to starve, declared lengthy post-sentence detention of mentally ill foreign offenders inhuman, or overruled deportation of foreign offenders on the basis of rights to family life. In this they were aided by the anti-human rights press, which inter alia kept a meticulous tally of the (comparatively few) successful deportation appeals and ruthlessly named and shamed the responsible judges.

The Right's campaign has already led to repeated legislation to get rid of foreign offenders. In 2007, the New Labour government removed appeal rights against deportation, except on asylum or human rights grounds, for all but the least serious offences. In 2012, the coalition defined the scope of family life for the purposes of deportation through immigration rules – although judges were entitled to (and did) continue to apply the more generous tests set out in ECtHR rulings. In parallel with these changes, British ministerial lobbying led to reforms to the Strasbourg court to make it less hands-on and to allow member states much more leeway in their implementation of the Convention rights – particularly in the field of immigration and deportation. The most recent legislation, in force in October 2014, decrees that deportees cannot stay in the UK pending appeal (unless they can show that their deportation would lead to serious, irreversible harm).

But these changes, predictably, have not satisfied the anti-human rights lobby, and the document proposes that while the British Bill would incorporate the text of the Convention rights, they would be subject to a number of 'clarifications', which would in practice seriously limit their scope and in some cases completely eviscerate them.

Limiting Protection for Foreigners: It is not just foreigners' family life rights that are under attack. Under the proposals, someone fearing torture as a result of deportation would have to prove more than just a 'real risk' of torture, as at present – a test which reflects the difficulty of proving in advance that a fear is well-founded, as Lord Bingham observed in 2005: The foreign torturer does not boast of his trade. The security services, as the Secretary of State has made clear, do not wish to imperil their relations with regimes where torture is practised. The special advocates have no means or resources to investigate. The detainee is in the dark. It is inconsistent with the most rudimentary notions of fairness to blindfold a man and then impose a standard which only the sighted could hope to meet. Another 'clarification' would narrow the definition of 'inhuman or degrading treatment or punishment' to enable foreigners to be deported to war zones.

Impunity for British Violations Abroad: The Bill would restrict human rights protection to those in the UK itself, denying it to those shot, tortured, abducted or illegally detained by British soldiers or officials overseas, relatives of those killed by drones operated from the UK, who would have no remedy in the British courts. This would put an end to the stream of litigation by survivors and those bereaved by British torture from Iraq to Kenya. But the impunity would also extend to officials who denied family reunion visas in embassies and High Commissions, perhaps on a flagrantly discriminatory basis, or who refused to provide consular assistance to British citizens illegally detained or ill-treated by foreign governments.

Limiting Protection for All: The proposals would also limit the use of human rights law to the most serious cases such as criminal law and liberty, and property (the paper curiously

(Gillan) v Commissioner of Police of the Metropolis [2006] 2 AC at 307. In that case, Lord Bingham, at paragraphs 31 to 34 considered what was required for lawfulness within the convention and at paragraph 34 he said this: "34. The lawfulness requirement in the Convention addresses supremely important features of the rule of law. The exercise of power by public officials, as it affects members of the public, must be governed by clear and publicly-accessible rules of law. The public must not be vulnerable to interference by public officials acting on any personal whim, caprice, malice, predilection or purpose other than that for which the power was conferred. This is what, in this context, is meant by arbitrariness, which is the antithesis of legality. This is the test which any interference with or derogation from a Convention right must meet if a violation is to be avoided. and 35. The stop and search regime under review does in my opinion meet that test. The 2000 Act informs the public that these powers are, if duly authorised and confirmed, available. It defines and limits the powers with considerable precision. Code A, a public document, describes the procedure in detail. The Act and the Code do not require the fact or the details of any authorisation to be publicised in any way, even retrospectively, but I doubt if they are to be regarded as "law" rather than as a procedure for bringing the law into potential effect. In any event, it would stultify a potentially valuable source of public protection to require notice of an authorisation or confirmation to be publicised prospectively."

28) It is true that the European Court of Justice decided that the provisions in question did not satisfactorily meet the appropriate test but it did not challenge the test itself which was set out essentially in paragraph 34.

29) We have no doubt that reasons should be given. Miss Mountfield, as we have said, contends that what is contained in the instruction is insufficient. That is the indication that the officer in charge should explain the need for the search and each step. It seems to us that it is clear, as a matter of sensible construction of what is said, and putting us in the place of a reasonable reader, that it does indicate that the prisoner must be told why the search is being carried out. Why was there a need for the search? The answer must be, whatever is appropriate in a given case. That it was a targeted search is clearly insufficient. That it was a search based upon intelligence is equally prima facie insufficient. I say prima facie in that context because it is possible, no doubt, that in an intelligence case there are problems, or may be problems, in giving very full information in order to protect the source of that intelligence. But, surely it is possible in every case to say we have information which tells us that you have been doing whatever it may be, or that you may have drugs in your possession. That at the very least should be given.

30) We have referred to Rule 10 of the Prison Rules. In our view, consideration should clearly be given as to whether some information about when searches can take place of a particular nature is something that ought to be given to a prisoner. We note that Nacro, when asked to comment on the question of searches, did make this very point, that prisoners ought to be made aware of the circumstances in which strip-searches could properly take place. We would underline that and suggest that it is appropriate and consideration should clearly be given to providing the prisoner with that advance information. But that does not preclude the necessity to give reasons, however short, for a search in any given case. We do not believe that the instruction is so deficient in the respect submitted by Miss Mountfield as to be unlawful.

31) The need to search in order to avoid contraband coming into prisons is all too obvious. The suggestion made by Miss Mountfield that the instruction was not rationally connected with keeping contraband out of prison seems to us to be utterly unarguable; it clearly is. The other matter that she particularly relies on is that there was a failure to consider properly vulnerability, and to draw to the attention of prison officers the need to avoid searches or rather the need to take account of a prisoner's vulnerability in deciding whether a search should take place.

There is no question but that an officer is required to consider the particular circumstances of an individual and there is reference, as we have already said, to the Prison Office circular that deals with suicide and mental problems.

32) Miss Mountfield complains that it does not specifically spell out as it should that that is a matter which should be considered in advance. Again, we take the view that any sensible reading of the instruction simply does not support that argument. Of course we accept that strip-searches can result in degrading treatment, which can breach Article 3. No doubt, if carried out in a thoroughly abusive fashion contrary to the instruction or if, for example, in the presence of an officer of another sex then, indeed, it would be a breach of Article 3. But there is nothing in this instruction which, in our judgment, could lead to a real risk that that breach might occur, provided that searches are carried out in conformity with it.

33) In our judgment, the same applies to Article 8. Again, there is a risk that a strip-search looked at in isolation can breach Article 8. But the purpose of it is a proper one, namely to ensure that contraband does not come into prisons and, again, provided that it is carried out in a manner which is in conformity with the policy there is, in our view, no possible breach of Article 8.

34) It follows therefore that the only relief that we will give relates to the individual searches which we will declare, having been conceded, and for the reasons that we have enlarged upon in this judgment to be unlawful. So far as the attack on the policy is concerned, that we reject.

Solicitors for JT, BK and RH, Express Concerns for Future Actions

"We recognise that searches are necessary to prevent contraband articles from entering prisons. However, the power to strip search female prisoners must be used sparingly as such searches were described in a recent Prison Service report as humiliating, degrading, undignified and a dreadful invasion of privacy. On this occasion, the court decided that the searches on our clients were undertaken without good reasons and were therefore unlawful.

Although we are happy to have secured victory for our clients, we are concerned that some of the most vulnerable female prisoners will not be able to bring similar claims in future due to the government's cutbacks on funding on judicial review proceedings and its proposed abolition of the Human Rights Act. It would be a travesty of justice if such abuses of the power to strip search were to go unchecked and unchallenged".

Samuel Genen, for Lound Mulrenan and Jefferies Solicitors

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Prisoners Confidential Phone Communications With Their MPs Recorded

Oral Statement on prisoner communications by Chris Grayling Secretary of State for Justice, 11 November: With permission Mr Speaker, I want to inform the House that telephone calls between prisoners and their constituency Members of Parliament, or their offices, may have been recorded and in some cases listened to by prison staff. This issue stretches back to 2006, and primarily relates to the period prior to autumn 2012, when this government made changes to tighten up the system.

This is a serious matter, and I would like to start by apologising unreservedly to the House on behalf of the Department for any interception of communications between a prisoner and their constituency MP. I also want to set out the steps I am taking to address the issue, which include an independent investigation by HM Chief Inspector of Prisons, Nick Hardwick. The issue was first brought to my attention on 5 November, and having asked for urgent work to establish the basic facts, I have come to this House at the earliest opportunity.

Mr Speaker, I will first explain how telephone calls in prisons are managed. Prisoners'

endum in 2017 on Britain's membership of the EU, a new protocol to the European human rights Convention tightening criteria and making access to the Court more difficult, further restrictions on foreign offenders' family life rights and reduced welfare protection for EU citizens in Britain. The corporate press were jubilant at the prospect of the 'End of human rights farce' (Mail), 'End of human rights madness' (Express), and putting 'Rights Act in dustbin of history' (Sun). But the Telegraph's Peter Oborne argued that the Human Rights Act embodies 'values – freedom of speech, the right to private property, personal liberty etc – that are exquisitely Conservative', and gives 'a wide range of protections against the power of the State that all Conservatives should welcome'. An anonymous, ironic tweet on the proposal to repeal the Human Rights Act read: 'Can't decide which right I hate most – life, liberty, free speech?' So how and why have the Tories managed so successfully to demonise human rights?

Rights for the Deserving: The aspect of the Human Rights Act which the Right has monstered most violently and persistently is the universality of its protection. As soon as it came into force in October 2000, the tabloid press characterised the Act as a villains' charter, and ever since, the power and reach of papers like the Mail, the Sun, the Express and the Telegraph have been used to spread lies, distortions and misinformation about rights awarded to 'undeserving' groups such as migrants and asylum seekers, terrorists and offenders, by mad 'Eurojudges' and their British disciples.

With the Orwellian-sounding title, Protecting human rights in the UK, Grayling's paper, after first reassuring readers that the home of the 800-year-old Magna Carta and the 1688 Bill of Rights is not about to jettison human rights, then tells us that the European Court of Human Rights is guilty of 'mission creep', inventing new rights and illegitimately extending the scope of old ones. Nothing in the Convention, he complains, allows the Court to interfere with the UK's blanket ban on prisoners voting. (It does.) Nor should domestic courts be forced to obey rulings of the European Court of Human Rights. (They are not) The UK's constitutional balance is distorted and parliamentary sovereignty undermined.

The solution, according to the paper, is repeal of the Human Rights Act and its replacement by a British Bill of Rights and Responsibilities. This, with its reassuring echo of the 1688 Bill, manages to suggest sturdy yeoman British (as opposed to fancy Continental) rights, to be granted not just to anyone but to good citizens, who fulfil their civic duties. According to Grayling's speech on the proposals, Travellers will be expected to obey planning laws and keep out of green belt land, even where no provision has been made for lawful sites for them and their families. 'Foreign criminals' will be unable to use rights to family life to avoid removal. Rights are not for criminals, particularly foreigners, villains, or other undeserving folk. At a stroke, the notion of universal human rights disappears. And the other thing that will disappear is judicial independence – the careful, case-by-case judicial balancing of personal rights against public interest considerations, a balancing process which lies at the heart of the Convention, but is in danger of being swept away by restrictive blanket rules.

The Attack on Universality: The ECHR, like all human rights treaties, recognises that human rights belong to all human beings, and the denial of Convention rights to 'undeserving' groups, for which British ministers have lobbied the Council of Europe for a decade or more, is impossible, as it is incompatible with the Convention itself. Universality does not however mean that human rights always take priority over the public interest. The Convention's only absolute right, which cannot be removed in any circumstances, is the ban on exposing someone to torture. Rights to respect for family and private life have never been absolute, and judges have always weighed them against public interest considerations, which can include protection of health, morals,

263 Children Sectioned Under the Mental Health Held in Police Cells

Ministers must end the "wholly unacceptable" practice of holding children sectioned under the Mental Health Act in police cells, MPs have said. In a damning assessment of the state of NHS children and adolescents' mental healthcare, the Health Select Committee said there were "serious and deeply ingrained problems" throughout England. A severe shortage of beds in mental health hospitals means that often children must be taken to facilities many miles away from home. In 2012/13 there were also 263 instances of children being held in police cells – often because there were no beds in hospital available.

The committee said it would be "unthinkable" for a child suffering a physical health problem to be held in a cell and called on the Department of Health to be "explicit in setting out how this practice will be eradicated". Children's doctors said that the "crisis" in children's mental health had been ignored and was now becoming "a hidden epidemic".

Local NHS organisations, which are under severe financial pressure, have disproportionately cut funding for mental health services, and there has been a fall in both the number of nurses and the number of doctors working in the sector. The health committee said that some local mental health services had "increased referral thresholds" for young people requiring psychiatric help, meaning that only the most severely affected are getting appointments. MPs heard from patients and parents who had been forced to "battle" to get access to care, the report said.

The Royal College of Paediatrics and Child Health (RCPCH) estimates that one in 10 children has a diagnosable mental health disorder. However, a national survey of children's and young people's mental health has not been carried out for 10 years and there is concern that NHS managers have been planning services without vital information about disease prevalence. Health minister Norman Lamb, who has set up a taskforce to improve children's mental health services, backed the report.

However, Labour's shadow Health Secretary Andy Burnham said the state of mental health services for young people had become "a national disgrace". Mental health services have got worse and worse on this Government's watch and are now at breaking point," he said.

Dr Hilary Cass, president of the Royal College of Paediatrics and Child Health, said that if the problems seen in mental health services were happening in physical health care, it would deemed "a national scandal". For too long policy makers have failed to tackle the crisis in child and adolescent mental health," she said. "So much so that it is now becoming a hidden epidemic." *Charlie Cooper, Indpendent*

Human Rights – at the Government's Discretion *Frances Webber for IRR*

There is more to the Tories' proposals on human rights and free movement than mere electioneering. The October 2014 Conservative party conference was dominated by justice minister Chris Grayling's announcement that a future Conservative government will repeal the Human Rights Act, replace it with a British Bill of Rights and Responsibilities, and ignore unwelcome rulings of the European Court of Human Rights at Strasbourg. A fortnight later, government sources reported that prime minister David Cameron was saying that immigration was a 'red line' issue for Britain in Europe. He was said to be urgently considering an 'emergency brake' on the free movement of its citizens, one of the founding principles of the European Union, in order to close Britain's borders to citizens of the EU's eastern states.

Is there anything behind these proposals other than a desperate attempt to placate the UKIP tendency of the Tory Right? The proposals represent a huge success for the anti-European, anti-foreigner Right, which in the past two years has won the promise of an 'in-out' refer-

ability to phone and talk to family members, friends and others is an important part of the Prison Service's work to help prisoners in maintaining family and other ties that support their rehabilitation. However, you will recognise that in facilitating such phone calls, it is important that safeguards are in place to ensure prisoners do not abuse the system, for example, by contacting victims or by continuing their involvement in criminality whilst still in prison.

All public sector prisons and Youth Offender Institutions, as well as the majority of private sector prisons in England and Wales have operated the same PIN Phone System for the past ten years. Prisoners are issued with a Personal Identification Number to activate the system and are informed that all calls are, by default, recorded and may be listened to by prison staff. This is set out in a Communications Compact, introduced in 2008, which prisoners are required to read and sign. The Compact is clear that the prisoner must advise prison staff of their legal and other confidential numbers to stop these numbers being recorded. This is because the PIN phone system requires an action from staff to override the default setting that all calls will be recorded.

Prior to 2012, provided that prisoners did not present a specific risk, they could contact any telephone number that had not been proactively barred from their PIN account. For example the telephone number of their victim would most likely have been barred. In 2012, this government implemented greater control over those whom prisoners were allowed to contact, limiting it to specifically identified phone numbers. As part of that process, prisoners supply the legal and otherwise confidential telephone numbers that they wish to contact. Prison staff are then required to carry out checks that the number is indeed a genuine number that should not be recorded or monitored, so confidentiality is respected but not abused.

Now, Mr Speaker, let me turn in more detail to the issues that were brought to my attention late last week, and which will rightly be of concern to this House. The Prison Rules and policy are clear that communication between prisoners and Hon. Members themselves must be treated as confidential, where the prisoner is a constituent of theirs. As a result of an inquiry from a serving prisoner and following a rapid internal investigation, NOMS has identified instances since 2006 – when detailed audit records start – where calls between prisoners and MPs' constituency and Parliamentary offices have been set to record. In a smaller number of cases, those calls have been recorded and listened to by prison staff.

From the initial investigation, NOMS has identified 32 current Members of this House whose calls – or those of their offices – appear to have been both recorded and listened to. For 18 of these MPs, it appears that the prisoner did not list the number as confidential and therefore the action was not taken to prevent recording. As these calls were not marked as confidential, some would also have been subject to the random listening that is completed on all non-confidential calls. In a further 15 cases, Members appear to have been identified correctly on the system as MPs, but due to a potential failure in the administrative process, the required action was not taken by prison staff, so the calls were recorded and appear to have been listened to. One Member falls under both categories.

We are not yet in a position to confirm the details surrounding each occurrence, and this requires further investigation. I have however been able to establish that the most recent call recorded was to the constituency office of my colleague the Rt Hon Member for Bermondsey and Old Southwark, Simon Hughes. The prisoner in question spoke to a member of the constituency office, rather than to the Rt Hon Member, to enquire about the progress of some constituency correspondence. In each case it is important to understand whether the prisoners were speaking to an MP directly rather than their office, and whether that MP was their constituency MP. These are relevant questions if we are to get to the bottom of what has gone on.

I must say, Mr Speaker, that I have seen nothing to suggest that there has been an intentional strategy of the Prison Service listening into calls between prisoners and individual members of Parliament. Indeed, given that – in the case of the Rt Hon Member for Blackburn – one of my predecessors' calls were being recorded and listened to, this issue appears to have arisen by accident rather than by design. That is not however to detract from the fact that confidential phone calls between Members of this House themselves and their constituents in prison may have been recorded and monitored. It is unacceptable and I want to ensure that we have taken every reasonable step to protect the confidentiality of communications between prisoners and their constituency MPs.

It has also been brought to my attention that, in a similar way, there have been a small number of cases over the last few years where a call between a prisoner and a lawyer was accidentally recorded. Whilst these have been dealt with individually with the prisoner at the time, I want to be confident that the safeguards for all confidential calls are satisfactory. I have therefore asked HM Chief Inspector of Prisons, Nick Hardwick to conduct an independent investigation, which will firstly assure me by the end of this month that the necessary safeguards are now in place, and secondly by early 2015 report in full on the facts and make further recommendations. I will make a further statement to the House once Nick Hardwick's investigation has reported to me.

I want to close by reassuring the House that significant improvements were made to the system in autumn 2012, and that since then we have identified only one instance where an individual clearly identified on the system as an MP has had their – or their office's – call recorded and listened to. But there is more that can be done. On the PIN phone system the main switchboard number for the Houses of Parliament is listed as confidential; as an interim measure, pending the outcome of Nick Hardwick's review, I have asked that all MPs' office numbers – as listed on the Parliamentary website – and Constituency Office telephone numbers be marked as confidential. All phone calls from prisoners to those numbers cannot for now be recorded or monitored.

The Prisons Minister, the Hon Member for South West Bedfordshire (Andrew Selous) will be writing to all Members asking them to provide any further numbers that should be registered in this way. I will also write individually to all Members where we have particular concerns that their conversations may have been monitored, and intend to place a list of those MPs in the library of the House. Before doing so I want to inform those affected and give them an opportunity to agree. I hope to conclude this by the end of this week. The relationship that exists between MPs and our constituents is crucial and must be protected. That is why I have acted at pace to bring these issues to the House's attention, and have taken immediate steps to ensure our confidentiality is respected.

38% of Incarcerated Young Offenders are Black, Asian, Minority Ethnic

Mr Shailesh Vara: Overall crime and proven offending by young people has fallen in recent years. Fewer young people have entered the criminal justice system, and as a result fewer young people have ended up in custody. The average number of young people in custody fell from 2,418 in 2009/10 to 1,233 in 2013/14, a decrease of 49%.

There are some occasions when it is necessary to remove young people from association because their behaviour is likely to be so disruptive that keeping them on ordinary location would be unsafe, or because their own safety and wellbeing cannot reasonably be assured by other means. Removal from association cannot be used as a punishment, and there are careful limits placed on the length of time for which young people can be separated. In the consultation on

Responsibility Act of 1996 – that mandate detention and deportation and deny authorized immigrants with convictions an opportunity to argue for a second chance.

California voters approved a ballot measure that will cut the time some offenders spend behind bars for common drug and theft crimes in the state. Under Proposition 47, which reclassifies certain felonies as misdemeanors punishable by up to one year in jail, as many as 7,000 inmates could be eligible for early release from state prisons, and courts will likely dispense around 40,000 fewer felony convictions per year. The measure, which takes effect immediately, is good criminal justice policy – in a state that has long had some of the most severe sentencing laws in the country.

Less obvious but no less positive, the new law will protect authorized immigrants in the state from harsh deportation laws that have been ripping thousands of US families apart over the last two decades. Under federal law, some crimes must be punishable by at least one year to result in deportation of the offender. Proposition 47, combined with a bill signed by Governor Jerry Brown in July, ensures that a minor conviction for shoplifting, forgery, fraud, petty theft, receipt of stolen property, or – most significantly – simple possession of marijuana will no longer trigger deportation for a person who is otherwise in the United States legally.

Nationwide over 375,000 deportations since 2003 have involved people whose most serious conviction was for a drug offense. In these cases, those deported often end up doubly punished: on top of serving long prison sentences in the US, they experience permanent exile from their US-based families and from the country they consider home. Even after the success of this ballot initiative in California, many will still continue to suffer such treatment by virtue of being convicted for a minor crime in another state under still unreformed sentencing laws. California's move does not lessen the need for reforming federal immigration laws. Indeed, the US Congress should repeal draconian provisions put into effect by several pieces of legislation – from the Anti-Drug Abuse Act of 1988 to the Illegal Immigrant Reform and Responsibility Act of 1996 – that mandate detention and deportation and deny authorized immigrants with convictions an opportunity to argue for a second chance. Until that happens, though, other states should look to California's Proposition 47 as a model for how to improve state sentencing laws while at the same time alleviating their harsh immigration consequences.

Prisons: Mobile Phones

Jim Cunningham: To ask the Secretary of State for Justice, how many mobile telephones and SIM cards were found in each prison in England and Wales in 2013.

Andrew Selous: The total number of finds of mobile phones was 7,451 in the calendar year 2013. Please note that one find may constitute a handset containing one SIM card or media card, a handset only, or a SIM card only. The five highest findss were HMP Altcourse 290, HMP Ford 202, HMP Doncastor 182, HMP Brinsford 182, HMP Aylesbury 176. This Government is clamping down on the use of mobile phones in prisons, and seizures have increased. Prisons use a comprehensive range of robust searching and security measures to detect items of contraband such intelligence-led searches, body searches, use of x-ray machines, metal detectors and CCTV surveillance cameras, as well as body orifice scanners. The Offender Management Act 2007 made it a criminal offence to convey specific items, including mobile phones and associated equipment into or out of a prison or to transmit sounds or images from within a prison. In March 2012, the Crime and Security Act 2010 also made it an offence, with a penalty of up to two years' imprisonment and/or an unlimited fine, to possess an unauthorised mobile phone or other electronic equipment or component element that can receive or transmit information electronically within a prison.

Will Cornick Life Sentence 'Out Of Step With Rest Of Western Europe'

The 20-year minimum sentence handed out to the killer of teacher Ann Maguire is too harsh and puts Britain out of step with more lenient attitudes in the rest of Europe, according to a leading youth justice campaigner. Will Cornick, who was 15 when he stabbed to death the Spanish teacher in April, was told that he may never be released when he was sentenced to at least 20 years on Monday by Mr Justice Coulson.

Its chairman, Penelope Gibbs, said Cornick should have been given a chance at rehabilitation by being sent to a specialist psychiatric jail such as Grendon in Buckinghamshire, which tries to reform violent criminals through group therapy. Speaking on BBC Radio 4's Today programme, Gibbs said: "Everybody has the capacity to change. It seems clear that he [Cornick] had serious mental health issues. He should not be released until he has changed sufficiently to make society safer. But there is no evidence that will take 20 years. There are very good prisons, there's a prison called Grendon, which is a therapeutic community, and prisoners go there for a few years, and it has great results." Gibbs, a former magistrate, claimed nowhere else in western Europe would impose such a long sentence on a child. She said: "We are out of line with the whole of western Europe. There are no other countries in western Europe which give children, and this boy is seen as a child under the UN convention on human rights … a life sentence. We think this is the longest sentence given to a child in at least 10 years. I'm not going to tell you what the right sentence would have been, but 20 years and a life sentence is too long." Gibbs asked: "What do we want from the justice system? What I want is that those who offend come out less likely to offend. Punishment is also incredibly important, particularly for the victims and families, but the fact is how many years do we need for punishment? We have given him a sentence which is more than his own lifetime. He was 15 when he did this crime and we would say you don't need that long to punish."

Announcing the sentence, the judge said that he was going for a higher tariff than the minimum of 12 years for the crime because of seven aggravating factors. These included the fact that it was premeditated, committed in public, in front of children and witnesses who were traumatised, and that Maguire had died in "extreme pain". Leeds crown court heard he hoped to kill two other teachers, including one who was pregnant. He told doctors his plan was to stab her in the stomach to kill her unborn child. That penalty is the longest given to a child in Britain for more than a decade, according to the Standing Committee for Youth Justice.

California Justice Measure Helps Immigrants *Clara Long, Human Rights Watch*

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Even after the success of this ballot initiative in California, many will still continue to suffer such treatment by virtue of being convicted for a minor crime in another state under still unreformed sentencing laws. California's move does not lessen the need for reforming federal immigration laws. Indeed, the US Congress should repeal draconian provisions put into effect by several pieces of legislation – from the Anti-Drug Abuse Act of 1988 to the Illegal Immigrant Reform and

our plans for Secure College Rules we are seeking views on the safeguards that should be included in the Rules to ensure that separation is used appropriately in Secure Colleges.

Young people in Young Offender Institutions (YOIs) cannot be removed from association and placed in a separation and care unit for more than 72 hours without the authority of the Secretary of State. If authorised by the Secretary of State, separation cannot be for longer than for 14 days, but it may be renewed after review for the same period again. The Secure Training Centre (STC) rules state that a young person cannot be removed from association for more than three hours in any 24-hour period. The regulatory framework for Secure Children Homes (SCH) does not set a time limit on the use of separation.Separation is defined as where, during the core day, including evenings and weekends, a young person is removed from his/her scheduled activity and placed away from other young people and members of staff without any meaningful interaction and is prevented from returning even where he/she may request to do so. The proportion of offenders in youth custody who are black, Asian and minority ethnic averaged at 38%, in the years - 2012/2013 and 2013/2014.

Source: House of Commons Written Answers / Friday 7th November 2014

No Justice for Iraqi Victims of Murder, Rape, Torture by UK Troops *J onathan Owen*

Victims and families of those allegedly murdered, raped or tortured by British soldiers in Iraq could be forced to wait decades before the Iraq Historic Allegations Team (Ihat) completes its work, despite officials admitting that some cases could amount to "war crimes". The investigation team is understaffed, several years behind schedule, and will miss its target of completing its investigations by 2016, according to documents seen by The Independent on Sunday. Based on the current rate of progress, it would take almost 50 years for it to complete the cases on its books. And lawyers claim the interviewing process alone will take 18 years.

Britain is facing increasing scrutiny over alleged war crimes in Iraq – a delegation from the International Criminal Court (ICC) visited Ihat in June this year. This follows a dossier of allegations by Public Interest Lawyers (PIL) and the European Centre for Constitutional and Human Rights (ECCHR), which prompted the ICC to begin a preliminary investigation into claims of war crimes.

Bloody Sunday Investigation Faces Judicial Review *BBC News*

The decision to scale back the police investigation into the deaths of marchers killed by soldiers in Londonderry in 1972 will be challenged in court by victims' relatives. A judicial review has been requested into the proposal by Northern Ireland's chief constable George Hamilton.

Solicitor Peter Madden represents most of the Bloody Sunday families. He said the chief constable was trying to "effectively end this multiple murder investigation". The murder investigation commenced in 2010 after the Saville Report. In effect, that meant that Lord Saville indicated that there were murders on the streets of Derry on Bloody Sunday and as far as that investigation's concerned, it is not an historic case."

John Kelly, whose brother was shot dead on Bloody Sunday, said the chief constable should reactivate the investigation. "Put it back in place again, because he had no right to stop this murder investigation. This was a live murder investigation and I think it's the first time ever that a murder investigation has been stopped simply because of a lack of money. There is no lack of money, the money was there."

Most of the Bloody Sunday investigation team is to be laid off in the wake of £50m cuts to the policing budget. Chief Constable Hamilton has said his priority had to be policing the present. The Historical Enquiries Team, which reviews unsolved Troubles killings investiga-

tions, is also due to close as part of the cuts.

Speaking at the Policing Board last week, Assistant Chief Constable Will Kerr said: "We just don't have the money to be able to employ the people that give us that flexibility, particularly round these types of investigations. That means we're going to have to increasingly use police officers of today, that means they won't be able to do something else and that's when it comes to having to prioritise the use of current-day resources against lots of risks today."

Paratroopers opened fire on a civil rights marchers in January 1972. Thirteen people were killed. Fourteen others were wounded, and one later died. The 2010 Saville Report concluded that soldiers from the Parachute Regiment opened fire first, and Prime Minister David Cameron said in Westminster: "I am deeply sorry". A fresh police investigation was opened after calls from families to investigate the actions of troops involved.

ECtHR: Delay in Access to Rehabilitative Courses Not Unreasonable

[John Dillon and David Thomas complained that the authorities' failure to put in place the necessary resources to ensure their access to appropriate courses in prison to address their offending behaviour and the impact of this failure on their ability to show the Parole Board that they were rehabilitated and could safely be released.]

Dillon @ para 54 of his judgement. The Court concludes that unlike in the case of James, Wells and Lee, prompt steps were taken to begin the applicant's progression through the prison system even before the expiry of his tariff. The nine-month delay between the expiry of his tariff and his reassessment for the SOTP was not unreasonable having regard to the access to courses which he had enjoyed by that date, the continued efforts to ensure further progress through the prison system and his overall progression throughout the period of his detention.

Thomas @ para 54 of his judgement. In the present case, it can be seen that unlike in the case of James, Wells and Lee, prompt steps were taken to begin the applicant's progression through the prison system. It is true that the applicant did not commence the SOTP until some twenty months after he had disclosed that his offending had a sexual element. However, the evidence demonstrates that throughout this period his case was under active examination by the relevant professionals and relevant assessments were being identified and carried out. In this respect it is clear that the applicant's representatives were mistaken in expressing the view in December 2011 that no progress had been made since April (see paragraph 30 above). Finally, once it was established in late November 2011 that the applicant was suitable for participation in the SOTP, it was not unreasonable that he had to wait until May 2012 to commence the course having regard both to resource considerations and to the progress that he had already made. A prompt modification was made to the applicant's parole timetable presumably to enable completion of the course and preparation of post-course assessments in time to be taken into account at his next review.

In the circumstances the Court is satisfied that a real opportunity for rehabilitation was provided to both applicants and that there was no unreasonable delay in providing them access to assessments and courses. There has accordingly been no violation of Article 5 § 1 of the Convention.

Control and Restraint Techniques Used in Forced Removals are Lawful

The physical restraint of persons being removed from the UK by aircraft is subject to a sufficient framework of safeguards to fulfil the state's obligations under Articles 2 and 3 of the European Convention on Human Rights. Further, the decision of the Home Secretary not to publish aspects of the applicable policy on the use of such control and restraint is lawful.

half a dozen of the other, as all indeterminate sentences essentially do. I'm not saying it's wrong to lock people up for life, in order to protect the public from them. I'm saying that it's wrong to present this as a punishment rather than pragmatism.

It has been agreed that Cornick was fit to plead guilty to murder – he is not considered to be criminally insane. But it is also acknowledged that he must have some kind of personality disorder – "psychopathic tendencies" and "adjustment disorder" have been mentioned. I think it's weird to punish people for their neurological deficits. I think it's weird that releasing the teenager's name to the media is thought to be helpful as a "deterrent". What are other people going to be deterred from? Having similarly inadequate neurological systems? Developing similarly lethal personality disorders?

Is it possible that Cornick could have been deterred? Doesn't logic dictate that he could have, if his example is considered to be a deterrent? The public debate around this, led by the media, seems confused. It's shocking now to learn that Cornick's antipathy towards Maguire had been publicly and flamboyantly advertised for three years, that his feelings of violent hatred for the popular teacher had been well known. Yet if one believes that the right intervention at the right time could have averted this tragedy, then how can one believe there may well be no right intervention, no right time, in even the near future?

At 15 or 16, a human brain is far from fully developed. The volatility of teenagers is partly a consequence of the accelerated neural sculpting that goes on in these years. We all understand this – it's most probably the reason why Cornick's rage against his teacher wasn't seen as the extreme problem it turned out to be. It's also the reason why the medical profession is reluctant to diagnose personality disorders before a child is 18. Even then, the idea that personality disorders are permanent and incurable is no longer in the ascendant. It's impossible to predict with certainty that a person who has "psychopathic tendencies" now will have them in five years, let alone 20 years.

Obviously, and thankfully, Cornick's case is unique. But I have noticed that in the many reports about how bright and clever he is, that brightness and cleverness are seen as an advantage in life that should have gone some way to saving him from his awful course of action. In truth, however, intellectually gifted children quite often run into psychological difficulties. The rest of us tend not to understand how differently such children can see the world, and how isolated that can make them. I'm struck by reports that Cornick says he wanted to be caught and wanted to be in prison. He clearly saw it as an environment where the burden of achievement would be removed from his shoulders.

As I said, I'm not interested in making a compassion argument against the sentence passed on Cornick. As it happens, I do have compassion for inadequate humans, humans who visit the degree of pain and suffering on other humans that he has. Fate dealt Maguire a terrible hand. But fate has not been kind to Cornick either. Cornick – or any person who commits a crime at 15 years of age – is not a fully developed human being. The man serving Cornick's sentences will have a materially different brain and mind from the boy who committed the crime. Child criminals should be treated differently to adult criminals for this reason, and I'm appalled that this country's criminal justice system is unwilling to present this entirely logical argument to the public.

Cornick should have been given a sentence that pertained until his adulthood, at which point a judge would have been in a realistic position to receive information about the manner in which the rest of his sentence should be conducted. No one, not even a judge, can know at this point what kind of a man Cornick will become. It is a terrible thing when a child commits such a crime. But children don't stay children for ever, and our criminal justice system should be structured to reflect that. It may well be that Cornick is no more amenable to rehabilitation at 21 than he is now. But it's when he's 21 that this matter should be decided.

Convention, but went on to caution that this finding was not to be understood as giving Mr Harakchiev the prospect of imminent release.

52. In the instant case, the applicant's sentence of life imprisonment without commutation became final in 1999, and his very restrictive prison regime has apparently been maintained, with some variations, since that time, with no educational or other courses or group activities. In those circumstances, the Court sees no reason to depart from its ruling in Harakchiev and Tolumov (cited above, §§ 247-67), and finds that there has been a breach of Article 3 of the Convention. However, as in that case, the Court notes that this finding cannot be understood as giving the applicant the prospect of imminent release.

Violation of Article 3 (inhuman and degrading treatment) – in relation to the regime and conditions of Mr Manolov's detention and Violation of Article 3 – in relation to the impossibility for Mr Manolov to obtain a reduction of his sentence of life imprisonment without commutation from the time when it became final. Just satisfaction: EUR 3,000 (non-pecuniary damage).

20-Year Sentence for the Killing of Ann Maguire Defies Logic *Deborah Orr, The Guardian*

One or two people have been idealistic – and brave – enough to complain that there has been a lack of compassion in the sentencing of 16-year-old Will Cornick for the murder in April of his teacher, Ann Maguire. I'm not among them. What irks me is the lack of logic. I don't want a criminal justice system that exists to convert public outrage into incarceration years. I want a criminal justice system that stands above that, simply coming as close as possible to doing what is right, under the most challenging of circumstances. This case suggests that what we have instead is a system that doesn't know what is right, but does know what is popular.

Cornick – or any person who commits a crime at 15 years of age – is not a fully developed human being. The man serving Cornick's sentences will have a materially different brain and mind from the boy who committed the crime. Child criminals should be treated differently to adult criminals for this reason, and I'm appalled that this country's criminal justice system is unwilling to present this entirely logical argument to the public. Cornick should have been given a sentence that pertained until his adulthood, at which point a judge would have been in a realistic position to receive information about the manner in which the rest of his sentence should be conducted. No one, not even a judge, can know at this point what kind of a man Cornick will become. It is a terrible thing when a child commits such a crime. But children don't stay children for ever, and our criminal justice system should be structured to reflect that. It may well be that Cornick is no more amenable to rehabilitation at 21 than he is now. But it's when he's 21 that this matter should be decided.

The judge, Mr Justice Coulson, imposed an indeterminate sentence on Cornick, who was 15 at the time of the murder, stipulating that he should serve a minimum of 20 years and warning that he may never be released. I'm not keen on indeterminate sentences anyway, and this case highlights their manifest shortcomings. Is the judge saying that he simply doesn't know how long Cornick should serve – that he doesn't quite know whether the taking of Maguire's life deserves a punishment of 20 years or 60? Or is he saying that he's no expert, but that in his amateur opinion it'll be at least 20 years before Cornick is rehabilitated and no longer a danger to the public, and maybe many more years than that?

Whatever. I'm afraid that one of these elements can't help but contradict the other. If it's truly a possibility that Cornick is so dangerous that he can never be released, then what is he being punished for? Having an unacceptable mind? Being Will Cornick? It's one thing to incarcerate a person because of what he has done, and quite another to incarcerate a person for who he is and what, therefore, he might do. This sentence seems to assume that it's six of one and

Identifying the Culprit: Assessing Eyewitness Identification

American National Academy of Sciences Releases Landmark Report on Memory and Eyewitness Identification, Urges Reform of Police Identification Procedures Most recent data from the National Registry of Exonerations shows that for the 1,467 wrongful convictions currently in the registry, 35% had mistaken eyewitness identification as a contributing factor. Eyewitness misidentifications contributed to 72% of the 318 wrongful convictions that were later overturned by DNA evidence. Eyewitnesses play an important role in criminal cases when they can identify culprits. Estimates suggest that tens of thousands of eyewitnesses make identifications in criminal investigations each year. Research on factors that affect the accuracy of eyewitness identification procedures has given us an increasingly clear picture of how identifications are made, and more importantly, an improved understanding of the principled limits on vision and memory that can lead to failure of identification. Factors such as viewing conditions, duress, elevated emotions, and biases influence the visual perception experience. Perceptual experiences are stored by a system of memory that is highly malleable and continuously evolving, neither retaining nor divulging content in an informational vacuum. As such, the fidelity of our memories to actual events may be compromised by many factors at all stages of processing, from encoding to storage and retrieval.

Unknown to the individual, memories are forgotten, reconstructed, updated, and distorted. Complicating the process further, policies governing law enforcement procedures for conducting and recording identifications are not standard, and policies and practices to address the issue of misidentification vary widely. These limitations can produce mistaken identifications with significant consequences. What can we do to make certain that eyewitness identification convicts the guilty and exonerates the innocent?

Blind Administration — Research shows that the risk of misidentification is sharply reduced if the police officer administering a photo or live lineup is not aware of who the suspect is. This prevents the witness from picking up intentional or unintentional clues from the officer conducting the lineup. *Confidence Statements* — Immediately following a lineup, the eyewitness should be asked to describe in his or her own words how confident he or she is in the identification. As the report notes, the level of confidence a witness expresses at the time of trial is not a reliable predictor of accuracy. Having the witness describe their level of confidence at the time an identification is made will provide juries with a useful tool for judging the accuracy of the identification. *Instructions* — The person viewing the lineup should be told that the perpetrator may not be in the lineup and that the investigation will continue regardless of whether the witness identifies a suspect. *Videotape the Procedure* — The report recommends that police electronically record the identification procedure to preserve a permanent record of the procedure.

Theresa May Loses Appeal on £36,000 Asylum Detention Damages *Dave Finlay, Herald*

Home Secretary Theresa May has failed in an attempt to overturn a £36,000 damages award made to a failed asylum seeker for wrongful imprisonment. Nemah Shehadeh, of Petershill Drive, Glasgow, considers herself to be a stateless Palestinian, although the Home Secretary regards her as a Jordanian national, Shehadeh was granted visas to enter Britain in 2000, 2001 and 2002 as a visitor but subsequently overstayed. She was arrested at Heathrow Airport, London, in 2005 attempting to fly to Canada with a false passport. She was sentenced to four months imprisonment for offences stemming from the incident and recommended for deportation.

Shehadeh was subsequently detained from December 2006 until August 2009 and has since made a fresh claim for asylum on the basis she has converted to Christianity. Last

year a judge held she was unlawfully detained for a year by immigration authorities from August 2008 until August 2009 when she was freed on bail. Lord Tyre awarded her damages and the Secretary of State appealed against the ruling to three judges at the Court Of Session, Edinburgh. But Lord Drummond Young, sitting with Lady Dorrian and Lord Philip, said Lord Tyre was "fully justified" in concluding that from August 2008 onwards the immigration authorities were in breach of legal principles that govern the lawfulness of detention in such circumstances. The Home Secretary also claimed the amount of damages awarded was excessive, but the appeal judges also rejected that argument.

Prisons: Mental Health Services

Lord Bradley: Which prisons in England and Wales will include a new specialist mental health centre as part of their health care provision.

Minister of State: The Justice Secretary has recently announced that he has agreed with the Secretary of State for Health that our officials work together to ensure that any prisoner can have mental health treatment equivalent to the best they would receive in the community. Officials are currently drawing up options for the scope of this work, including consideration of specialist mental health centres within the prison estate. I am unable to say what form they may take and in which prisons they may operate.

Early Day Motion 446: Alternative Strategies To War On Drugs *Sponsored by 11 MPs*

That this House acknowledges the failure of the global War on Drugs; recognises that this approach increases gross human rights violations and the spread of hepatitis C; shares the view of the UN Office on Drugs and Crime that drug addiction is a health problem and not a crime; and calls on the Government to commit to meaningful engagement at the UN General Assembly Special Session on drugs in New York in 2016, by giving urgent and comprehensive consideration to evidence-based alternative strategies including the legal regulation of drugs, as advocated by the Global Commission on Drug Policy.

Early Day Motion 444: Review Of Drug Policy *Sponsored by 13 MPs*

That this House notes that it is two years since the final report of the UK Drug Policy Commission highlighted the need for a fresh approach to drug policy; further notes that the Commission concluded that there was insufficient evidence to judge the effectiveness of drug policy which costs each taxpayer about £400 per annum; is alarmed that crimes related to drugs cost the UK £13.3 billion every year; reminds the Government of the Commission's recommendation that the direction of drug policy needs to be considered in a cross-party environment; and calls on the Government to initiate a cross-party review of both the current drug strategy and the Misuse of Drugs Act 1971.

Early Day Motion 445: Naloxone Availability *Sponsored by 10 MPs*

That this House notes that there were 765 deaths involving heroin or morphine in 2013, a sharp rise of 32 per cent from 579 deaths in 2012; further notes that many of these fatalities could have been prevented by the use of naloxone as an intervention; recognises that naloxone is a safe and effective medicine which can reverse the effects of opioid overdoses; recalls that in May 2012 the Advisory Council on the Misuse of Drugs (ACMD) recommended that naloxone should be made more widely available; is concerned that regulations to give effect to the ACMD recommendations in England are not planned to be implemented until October 2015; further notes that in Scotland and Wales successful pilots have resulted in national programmes to make naloxone widely available but there has been no such development in England; and calls on the Government to prioritise the roll-out of naloxone across the whole of the UK.

Manolov v. Bulgaria - Life imprisonment without commutation Violation of Article 3

The applicant, Biser Manolov, is a Bulgarian national who was born in 1970. The case concerned Mr Manolov's complaint about his sentence of life imprisonment, which he is currently serving in Bobov Dol Prison (Bulgaria), and about the conditions of his detention, in particular the strict detention regime, involving isolation, in which he is held.

Having been convicted of a number of violent offences and initially sentenced to death in 1996, his sentence was replaced with life imprisonment without commutation in February 1999 following the abolition of the death penalty in Bulgaria. Mr Manolov submitted that his detention conditions had been inadequate during various periods, in particular the food had been poor and insufficient, outdoor activity had been limited, the temperature in his cell had been below 12 degrees in winter, and his cell had been infested with rats. He complained that those conditions, as well as his isolation and his being routinely handcuffed when taken out of his cell, had been in violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention. He also maintained that his sentence of life imprisonment without commutation had amounted to inhuman and degrading punishment in breach of Article 3.

Life Imprisonment Without Commutation - 50. The applicant submitted that his sentence had condemned him to isolation for the rest of his life and had deprived him of any hope of a normal life. The lack of any, however limited, prospect of release, and of procedures whereby his sentence could be adjusted, meant that that sentence had, from the very moment of its imposition, amounted to inhuman and degrading treatment. The presidential power of clemency could not be regarded as providing a realistic prospect of release.

51. In its recent judgment in Harakchiev and Tolumov (cited above, §§ 247-68), the Court considered whether Mr Harakchiev's sentence of life imprisonment without commutation could be regarded as giving rise to a breach of Article 3 of the Convention. The Court found that from the time when that sentence had become final – November 2004 – until the beginning of 2012, it could not be regarded as reducible, as required under the Court's case-law under Article 3 in relation to life sentences, for two reasons. First, it was unclear whether before a 2006 amendment to the Criminal Code 1968 that had expressly provided that the presidential power of clemency extended to that type of sentence, the sentence had been de jure reducible. Secondly, the manner in which the presidential power of clemency had been exercised before the early months of 2012 had been quite opaque, and there had existed no concrete examples showing that persons serving sentences of life imprisonment without commutation could hope to benefit from the exercise of that power and obtain an adjustment of their sentence. Mr Harakchiev's sentence could not therefore be regarded as de facto reducible before that time. The Court went on to say that although there was no right to rehabilitation under the Convention, its Article 3 required the Contracting States to give life prisoners a chance, however remote, to someday regain their freedom. For that chance to be genuine, those prisoners had to be given a proper opportunity to rehabilitate themselves. In that context, while Contracting States had a wide margin of appreciation to decide on such things as the regime and conditions of a life prisoner's incarceration, those points could not be considered as a matter of indifference. Mr Harakchiev had been subjected to a particularly stringent prison regime, which had entailed almost complete isolation and very limited possibilities for social contacts, work or education, and had been kept in unsatisfactory material conditions. He could not therefore be regarded as being able to entertain a real hope that he might one day achieve and demonstrate progress towards rehabilitation and on that basis seek an adjustment of his sentence. The Court accordingly found that there had been a breach of Article 3 of the