

## Annex PI – Summary of PI’s Expertise in Migration Issues

1. Privacy International (PI) has specific expertise in the defence of privacy rights in migrant communities. It has been investigating, analysing and challenging the exploitation of data and new technologies as it relates to the rights of migrants and asylum seekers in the UK and abroad. Below paragraphs summarise the legal and advocacy work of PI in support of migrants’ rights.
2. In July 2019, PI joined migrant organisations in a formal complaint<sup>1</sup> by the Platform for International Cooperation on Undocumented Migrants against the UK for breaching the General Data Protection Regulation by including the “immigration control” exemption in the Data Protection Act 2018.
3. In February 2021, PI published a report on the UK’s migration surveillance regime.<sup>2</sup> This report resulted from extensive research and investigations, using procurement, contractual and open-source data, into the use of surveillance systems and tools by HM Government to police the UK’s borders.
4. PI regularly publishes various analyses of threats to the privacy of migrant communities<sup>3</sup> and primers on technologies used for migration surveillance, including one published on 21 July 2021 on satellite and aerial surveillance.<sup>4</sup> Of direct relevance to this complaint is a primer we published on 9 February 2022 on electronic monitoring using GPS tags.<sup>5</sup>
5. On 23 May 2022 PI made submissions to the Independent Chief Inspector of Borders and Immigration in relation to the Inspector’s investigation into the Home Office use of satellite tracking.<sup>6</sup>
6. PI was granted permission to intervene in the recent case of *R (on the application of HM, MA and KH) v SSHD* [2022] EWHC 695 (Admin) which challenged the Defendant’s policy and practice of seizing mobile phones of migrants who arrived in small boats on the south coast of England for a period of some months in 2020, and of performing mobile phone extraction (“MPE”). PI provided a detailed witness statement concerning the use of MPE, explaining the technical functioning of MPE technology and resulting privacy concerns.<sup>7</sup> The Court

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<sup>1</sup> PI, ‘Privacy International is joining migrant organisations to challenge the UK’s “immigration control” data protection exemption - find out why!’ (10 July 2019), <https://privacyinternational.org/news-analysis/3064/privacy-international-joining-migrant-organisations-challenge-uks-immigration>.

<sup>2</sup> PI, ‘The UK’s Privatised Migration Surveillance Regime: A Rough Guide for Civil Society’ (February 2021), [https://www.privacyinternational.org/sites/default/files/2021-01/PI-UK\\_Migration\\_Surveillance\\_Regime.pdf](https://www.privacyinternational.org/sites/default/files/2021-01/PI-UK_Migration_Surveillance_Regime.pdf).

<sup>3</sup> PI, ‘10 threats to migrants and refugees’ (8 July 2020), <https://privacyinternational.org/long-read/4000/10-threats-migrants-and-refugees>.

<sup>4</sup> PI, ‘Non-fitted devices in the Home Office’s surveillance arsenal: Investigating the technology behind GPS fingerprint scanners’ (29 October 2024), <https://privacyinternational.org/long-read/5457/non-fitted-devices-home-offices-surveillance-arsenal-investigating-technology-behind>; PI, ‘Satellite and aerial surveillance for migration: a tech primer’ (21 July 2021), <https://privacyinternational.org/explainer/4595/satellite-and-aerial-surveillance-migration-tech-primer>

<sup>5</sup> PI, ‘Electronic monitoring using GPS tags: a tech primer’ (9 February 2022),

<https://privacyinternational.org/explainer/4796/electronic-monitoring-using-gps-tags-tech-primer>.

<sup>6</sup> PI, ‘Privacy International’s submissions for the Independent Chief Inspector of Borders and Immigration Inspection of the Satellite Tracking Service Programme’ (23 May 2022), [https://privacyinternational.org/sites/default/files/2022-05/Submissions%20to%20ICIBI%20FINAL%2023.05.2022\\_0.pdf](https://privacyinternational.org/sites/default/files/2022-05/Submissions%20to%20ICIBI%20FINAL%2023.05.2022_0.pdf).

<sup>7</sup> PI, ‘*R (HM and MA and KH) v Secretary of State for the Home Department* – Case Page’, <https://privacyinternational.org/legal-action/r-hm-and-ma-and-kh-v-secretary-state-home-department>.

found that section 48 of the Immigration Act 2016 did not authorise the Defendant to search individuals and seize their phones, and that the secret and blanket seizure and extraction policy violated Article 8 of the European Convention on Human Rights.

7. On 17 August 2022, PI filed a complaint<sup>8</sup> against the UK Secretary of State for the Home Department (Home Office) with the UK data protection authority, the Information Commissioner (ICO). PI's complaint challenged the collection, processing and sharing of location data of migrants released on immigration bail via the imposition of electronic monitoring (EM) through GPS ankle tags.<sup>9</sup>
8. In September 2023, the UN Office of the High Commissioner for Human Rights (OHCHR) published a comprehensive study into Digital Border Governance, calling for a human-rights based approach to the use of digital technologies at borders. Amongst others, it highlights concerns with surveillance-based alternatives to immigration detention ("GPS tagging"), exploitation of migrants' biometric data<sup>10</sup>, and border externalisation<sup>11</sup>, referencing work presented by PI.<sup>12</sup>
9. In August 2023, the UN Secretary General of the United Nations raised concerns about the use of autonomous technologies such as drones for monitoring and securing borders was raised as an increasing concern<sup>13</sup>. This concern was put forward based on evidence provided by Privacy International<sup>14</sup>.
10. On 1 March 2024, following PI's complaint, the ICO found that the UK Home Office's GPS tagging of migrants arriving to the UK by small boats and other "irregular" routes was unlawful as it failed to comply with data protection law in a number of ways.<sup>15</sup>
11. On 12 March 2024, the Upper Tribunal (Immigration and Asylum Chamber) ruled that the GPS tagging of a migrant had been unlawful for over a year as the Home Office failed to conduct lawful or timely reviews of claimant's tagging.<sup>16</sup> This was

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<sup>8</sup> PI, 'Submission to the Information Commissioner - Request for Assessment of Processing Operations by the Secretary of State for the Home Department' (17 August 2022), [https://privacyinternational.org/sites/default/files/2022-08/2022.08.17%20-%20Privacy%20International%20complaint%20against%20Home%20Office%20use%20of%20GPS%20Ankle%20ags%20\[public%20version\].pdf](https://privacyinternational.org/sites/default/files/2022-08/2022.08.17%20-%20Privacy%20International%20complaint%20against%20Home%20Office%20use%20of%20GPS%20Ankle%20ags%20[public%20version].pdf)

<sup>9</sup> PI, 'Electronic monitoring using GPS tags: a tech primer' (9 February 2022),

<https://privacyinternational.org/explainer/4796/electronic-monitoring-using-gps-tags-tech-primer>

<sup>10</sup> PI, 'Afghanistan: What Now After Two Decades of Building Data-Intensive Systems?' (19 August 2021), <https://privacyinternational.org/news-analysis/4615/afghanistan-what-now-after-two-decades-building-data-intensive-systems>

<sup>11</sup> PI, 'The EU, the Externalisation of Migration Control, and ID Systems: Here's What's Happening and What Needs to Change' (15 October 2021), <https://privacyinternational.org/long-read/4651/eu-externalisation-migration-control-and-id-systems-heres-whats-happening-and-what>

<sup>12</sup> OHCHR, 'Digital Border Governance: A Human Rights Based Approach' (September 2023),

<https://www.ohchr.org/sites/default/files/2023-09/Digital-Border-Governance-A-Human-Rights-Based-Approach.pdf>

<sup>13</sup> A/HRC/54/81, paragraph 25, <https://docs.un.org/en/A/HRC/54/81>

<sup>14</sup> PI, 'Submission to the UN Secretary General's Report on the Human Rights of Migrants' (24 July 2023),

<https://privacyinternational.org/advocacy/5086/submission-un-secretary-generals-report-human-rights-migrants>

<sup>15</sup> PI, 'GPS tagging of migrants UNLAWFUL, UK authority finds after PI complaint' (29 February 2024),

<https://privacyinternational.org/news-analysis/5261/gps-tagging-migrants-unlawful-uk-authority-finds-after-pi-complaint>

<sup>16</sup> Mark Nelson v. Secretary of State for the Home Department, [2024] JR-2023-001472

a breach of the right to privacy under Article 8 of the European Convention on Human Rights (ECHR) and a public law error. PI provided evidence in support of this case, on the technical functioning of the GPS tags, resulting privacy intrusion and data reliability concerns, relying on the research conducted by PI's technologists.<sup>17</sup>

12. In May 2024, London Administrative Court delivered an important decision in a judicial review<sup>18</sup>, for which PI also provided evidence on the technical functioning of the GPS tags and resulting privacy intrusion for migrants subjected to these tags.<sup>19</sup> The Court found that the significant intrusion of GPS tagging into private lives of migrants was not properly justified and the few safeguards that existed against abuses were not complied with.
13. On 3 May 2024, the Human Rights Committee (HRC), the body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights (ICCPR) issued its concluding observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland.<sup>20</sup> Drawing on evidence provided by PI,<sup>21</sup> the HRC was deeply concerned “by reports revealing that anyone subject to immigration control can be subject to surveillance, including through GPS tracking”<sup>22</sup>, and the committee urged the government to “...increase the use of alternatives to detention, particularly for children, pregnant women and families with children, that are respectful of human rights, including the right to privacy, instead of surveillance-based technological alternatives”<sup>23</sup>.

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<https://www.doughtystreet.co.uk/sites/default/files/media/document/JR-2023-LON-001472%20FINAL%20FOR%20HAND%20DOWN%20v3.pdf>

<sup>17</sup> <https://privacyinternational.org/legal-action/uk-migrant-gps-tracking-challenges>

<sup>18</sup> ADL & Ors v Secretary of State for the Home Department, [2024] EWHC 994

<https://caselaw.nationalarchives.gov.uk/ewhc/admin/2024/994>

<sup>19</sup> PI, 'UK Migrant GPS Tracking Challenges' (2024), <https://privacyinternational.org/legal-action/uk-migrant-gps-tracking-challenges>

<sup>20</sup> UN Human Rights Committee, 'Concluding observations on the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland', CCPR/C/GBR/CO/8, (3 May 2024),

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FGBR%2FCO%2F8&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FGBR%2FCO%2F8&Lang=en)

<sup>21</sup> PI, 'UN Human Rights Committee urges United Kingdom to respect the right to privacy' (27 February 2024),

<https://privacyinternational.org/advocacy/5259/un-human-rights-committee-urges-united-kingdom-respect-right-privacy>

<sup>22</sup> Ibid, paragraph 42.

<sup>23</sup> Ibid, paragraph 43.